



## Pitt Street Uniting Church Uniting Network Australia

*welcoming and celebrating lesbian, gay, bisexual, transgender,  
intersex and queer people in the life of the Uniting Church*

# Background Information on LGBTIQ Asylum Seekers and Refugees

*Prepared for a Public Forum jointly sponsored by the Pitt Street Congregation of the Uniting Church in Australia,  
and Uniting Network Australia, conducted as one part of the 2016 Mardi Gras "Queer Thinking" program.  
Held at Pitt Street Uniting Church, 24 February 2016.*

### Uniting Church principles on Asylum Seekers and Refugees

Building on years of policy development and advocacy, in July 2015 the national Assembly of the Uniting Church in Australia adopted a comprehensive range of national policies and principles. They include:

- The human rights of asylum seekers and refugees should be upheld at all times.
- Asylum seekers must not be subject to mandatory and indefinite detention.
- Australia must support and uphold the legal rights of all asylum seekers, including a fair, transparent and timely process for review people's refugee claims.
- Ending the offshore processing of asylum seekers who arrive or attempt to arrive in Australia by boat.
- Closing the detention centres on Christmas Island, Manus Island and Nauru and bring all asylum seekers to Australia to have their claims processed while they reside in the community.

Pitt Street and Uniting Network Australia believe that the above policies and principles must be consistently applied without discrimination on the basis of sexual orientation, gender identity or intersex status - ie, the provisions of Australia's Sex Discrimination Act as amended in 2013. There are particular concerns and issues for LGBTIQ asylum seekers and refugees and these are summarised in the next section. In response to a recent High Court decision, the Pitt Street Uniting Church, along with a range of other churches, has recently offered sanctuary for those asylum seekers currently in Australia.

### Terminology

This paper, and the Forum for which it has been prepared, uses the acronym “LGBTIQ” to refer to lesbian, gay, bisexual, transgender, intersex and queer people, including others who are marginalised due to their physical characteristics, sexuality or gender experience. The acronym “SOGII” is also used, referring to discrimination based on sexual orientation, gender identity or intersex status. Some organisations and documents refer to “LGBT” people as there continues to be limited international recognition of intersex people (i.e., people born with bodies that are not considered strictly female or male according to modern medical norms). Australia is one of the few countries to include intersex status in national anti-discrimination legislation. One of the complex matters of policy, which needs to be addressed in comprehensive training for immigration and refugee support officers, is that not all individuals may use labels like L, G, B, T, I or Q to describe themselves. Further, there is no direct or automatic correlation between an individual’s sexual orientation and either their gender identity or intersex status.

### International laws and policies

In 2007 the ground-breaking Yogyakarta Principles were released on the *Application of International Law in Relation to Issues of Sexual Orientation and Gender Identity*. The principles affirm sexual orientation and gender identity as integral to the dignity of the human person, and oppose any discrimination on those grounds. (To that Australia adds intersex status.) The Yogyakarta Principles have no formal legal standing but have provided substantial policy and ethical direction from a distinguished panel of international judges.

The United Nations High Commission on Refugees (UNHCR) has declared that all people “including LGBTI individuals are entitled to enjoy protection provided for by international human rights law on the basis of equality and non-discrimination” (UNHCR, 2012). This declaration spells out the applicability of the 1951 Refugee Convention Relating to the Status of Refugees and the 1967 Protocol for LGBTI individuals, stating that they belong to a “particular social group” and are therefore the Convention and the Protocol apply to LGBTI people.

### Growing international concern

In August 2015, the United Nations Security Council held its first meeting to specifically address issues for ‘LGBT’ refugees. Although it can only be an estimate, the Organization for Refugees Asylum and Migration (ORAM International) states that as of 2012 there were roughly 175 million lesbian, gay, bisexual, transgender and intersex individuals living in situations of persecution. Of these, ORAM suggests that only about 5,000 apply for asylum each year, with possibly half of these being successful.

### Issues and concerns

**Treatment in detention:** There are reports of sexual abuse and bullying of LGBTQI asylum seekers in Australian immigration detention centres, particularly the offshore detention centre on Manus Island in PNG where homosexuality is criminalised. Homosexual acts are forbidden in the Manus Island detention centre, and inmates report fear of coming out to immigration officials for fear of bullying and abuse.

**Assessment of protection claim:** Asylum can be granted under the Refugee Convention if a person can prove that they face persecution for being a member of a particular social group (ie LGBTQI). Some countries handle the assessment of LGBTQI asylum claims very well, and others badly. The problem with Australia's system is that we expect applicants to reveal all the necessary information within a short period of time after arrival and that isn't always the time when people feel comfortable yet to admit their sexual orientation, particularly if they have faced abuse in detention. In Australia these decisions are made based on evidence about cultural and social venues and behaviours. For example, some migration agents reported submitting photographic evidence of people attending certain bars in Oxford Street, as well as clients having to share very graphic information about their personal lives. There is fear that with the introduction of the Migration and Maritime Powers Legislative Amendment (Resolving the Legacy Caseload) Act 2014 it will be even more difficult to make a successful claim. Also, some people might be denied protection if it is deemed possible for them to modify their behaviour. This could have implications for LGBTIQ asylum seekers.

**Resettlement offshore:** there is considerable concern that asylum seekers currently detained on Nauru or Manus Island, PNG, will be resettled in those countries, where they could be imprisoned for homosexual acts. It is known that both countries do not have structures in place to protect LGBTIQ people, and that culturally there is still significant negative public opinion.

**Resettlement in Australia:** Many refugees and asylum seekers come from small communities where they know each other. If they were to disclose their LGBQ sexuality or relationship, their trans and/or non-binary gender experience, and/or having been born intersex in order to gain protection in Australia, they fear being ostracised and/or experiencing physical abuse by people from their particular community. This could also have far-reaching implications for their families back home.

### Why it's an important issue

Asylum seekers reach Australia's shores because they have a well-founded fear of persecution in their home country. Asylum seekers who identify as Lesbian, Gay, Bisexual, Transgender, Queer, or Intersex (LGBTIQ) face a particularly difficult situation. Firstly they fear, and have very often experienced persecution and trauma in their home country because of their sexual orientation or LGBTIQ status. Secondly, the detention environment can be very hostile towards them, particularly in PNG, where homosexuality is criminalised. People are often forced to keep their sexuality, gender history and/or identity, and having been born intersex hidden, even after having arrived on Australian soil.

During the assessment process, LGBTIQ asylum seekers face a gruelling process. Under Australian law, they must reveal their LGBTIQ status almost immediately upon arrival, and further down the track can be asked to produce incredibly private documentation and photographs as evidence of their claim. For those who will be resettled offshore, there is ongoing concern for their safety in countries that do not have adequate protections in place for LGBTIQ residents. For those in Australia, there can be significant fear of ostracism and physical abuse from members of their home country community.

Information about Pitt Street and Uniting Network: [www.unitingnetworkaustralia.org.au](http://www.unitingnetworkaustralia.org.au) [www.pittstuc.org.au](http://www.pittstuc.org.au) [www.facebook.com/pittstreetuniting](http://www.facebook.com/pittstreetuniting) Uniting Church policies on justice and human rights are at [www.unitingjustice.org.au](http://www.unitingjustice.org.au)

Written by Warren Talbot using the following references. © Uniting Network Australia

## References

Amnesty International, 2012, [http://www.amnesty.org.au/images/uploads/about/Amnesty\\_International\\_Manus\\_Island\\_report.pdf](http://www.amnesty.org.au/images/uploads/about/Amnesty_International_Manus_Island_report.pdf) (Section 8). See also LGBTIQ media reports such as <http://www.starobserver.com.au/news/local-news/new-south-wales-news/fears-for-gay-refugees-on-manus-island/114562>

Australian Refugee Rights Alliance, 2007, *Refugee Status Determination Based on Sexual Orientation*, Draft Discussion Paper.

Kaleidoscope Australia, (undated, though after 2013), *Looking through the Kailaidoscope: A Guide to Best Practice in Determining Applications for Refugee Status based on Sexual Orientation, Gender Identity and Intersex Grounds*, Kaleidoscope Australia Human Rights Foundation. [www.kalaidoscopeaustralia.org.au](http://www.kalaidoscopeaustralia.org.au)

<http://www.newsweek.com/gay-refugees-addresses-un-security-council-historic-meeting-lgbt-rights-365824>

Noto, O., Leonard, W. and Mitchell, A., 2014, *Nothing for Them: Understanding the support needs of LGBTI young people from refugee and newly arrived backgrounds*, Monograph Series No.94, Gay and Lesbian Health Victoria, The Australian Research Centre in Sex, Health and Society, La Trobe University, Melbourne.

Organization for Refuge, Asylum and Migration, [www.oraminternational.org](http://www.oraminternational.org)

UNHCR, 2012, *UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the Refugee Convention and/ or its 1967 Protocol relating to the Status of Refugees*, UN High Commissioner for Refugees, HCR/GIP/12/09, 23 October 2012, available at: [www.refworld.org/docid/50348afc2.html](http://www.refworld.org/docid/50348afc2.html)

Uniting Church in Australia, 2015, *Shelter from the Storm: Principles for Good Policy for the Protection of Asylum Seekers and Refugees*, A Uniting Church in Australia Statement, national Assembly, July 2015.  
[www.unitingjustice.org.au](http://www.unitingjustice.org.au)

Uniting Justice Australia, (undated), Informal Notes from staff, Panel Discussion hosted by the Human Rights Law Centre, 24 November 2014.

Yogyakarta Principles, 2007, *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=48244e602>

