



Australian Government

Department of Immigration and Border Protection

Reference: 1402/01895

Mr Alastair Lawrie

Dear Mr Lawrie

Treatment of homosexual, bisexual, transgender and intersex asylum seekers

Thank you for your letter of 2 February 2014 to the Hon Scott Morrison MP, Minister for Immigration and Border Protection, concerning the treatment of homosexual, bisexual, transgender and intersex asylum seekers. The Minister appreciates the time you have taken to bring these matters to his attention and has asked that I reply on his behalf. I regret the delay in responding.

As a party to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* (the Refugees Convention), Australia takes its international obligations seriously. Australia is committed to treating asylum seekers fairly and humanely, and providing protection to refugees consistent with the obligations set out in the Refugees Convention, and other relevant international treaties to which Australia is a party.

The Australian Government has taken a number of measures to deter people smuggling and to ensure that people do not take the dangerous journey to Australia in boats organised by people smugglers. Under Australian domestic law, all illegal maritime arrivals (IMAs) entering Australia by sea without a visa will be liable for transfer to Nauru and Papua New Guinea (PNG) where any asylum claims they may have will be assessed, and if found to be a refugee, they will be resettled in Nauru and PNG or in another country.

Any claims made against Nauru and PNG by an IMA, including claims concerning the treatment of homosexuals, bisexual, transgender and intersex asylum seekers in either country, are considered prior to transfer. Where an IMA makes such a claim, consideration is given to whether the IMA can be transferred to the proposed country, or an alternative country, or whether the IMA's case should be referred to the Minister for consideration of exemption from transfer.

Nauru and PNG are also both parties to the Refugees Convention. The Memoranda of Understanding (MOU) they have signed with Australia on the offshore processing arrangements reaffirm their commitment to the Refugees Convention and to treating people transferred with dignity and respect in accordance with human rights standards.

The enforcement of PNG domestic law is a matter for the Government of PNG. The government is aware of laws relating to homosexual activity in PNG and understands that there have been no recent reports of prosecutions under those laws.

people our business

If homosexual activity should occur in the OPC, there is no mandatory obligation under PNG domestic law for Australian officers or contracted services providers to report such activity to the PNG Government or police.

The department notes the release of the reports by both the United Nations High Commissioner for Refugees (UNHCR) and Amnesty International on the Manus OPC. Any reports received by the department will be reviewed, and observations or comments verified. Where reports make practical observations that can be implemented and would improve the operations of the centres, the government will address these in partnership with Nauru and PNG to address any deficiencies in good faith.

Any claims of mistreatment at the Manus OPC would be primarily a matter for the Administrator of the OPC. The Manus OPC is administered by PNG under PNG law, with support from Australia. The PNG Minister for Foreign Affairs and Immigration appoints the Administrator of the Centre (a PNG national) under section 15D of the *Papua New Guinea Migration Act 1978* (the Act). The Administrator, who, under the Act has control and management of the Centre (currently the Chief Migration Officer, Head of the PNG Immigration and Citizenship Service Authority) has an Operations Manager at the OPC reporting to him, who has oversight of the day-to-day operations of the OPC.

To assist PNG in the implementation of the MOU, the government has contracted appropriately trained and experienced service providers to ensure that transferees' needs are adequately met, including through the provision of health and welfare services. Transferees can report any concerns to OPC staff.

Regarding the distribution of condoms, I can assure you that condoms are available at the Manus OPC, and the department's contracted health service provider, International Health and Medical Service, conduct regular health information sessions on safe sex practices.

Thank you for bringing your concerns to the Minister's attention.

Yours sincerely

Acting Assistant Secretary
Community Programmes Services Branch

9/17/2014