



Australian Government
Department of Immigration and Citizenship

Mr Alastair Lawrie

Dear Mr Lawrie

Thank you for your email of 7 September 2012 to the former Minister for Immigration and Citizenship, the Hon Chris Bowen MP, concerning the treatment of lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum seekers. Your letter has been referred to me for a reply. I apologise for the delay in responding.

The Australian Government's commitment to removing discrimination was demonstrated by its reforms to remove discrimination from 85 Commonwealth laws. These reforms, which passed in 2009, removed discrimination and equalised treatment for same-sex couples in areas of taxation, social security, health, aged care, superannuation, immigration, child support and family law.

The Government is also proceeding with introducing long overdue protections against discrimination on the basis of sexual orientation, gender identity and intersex status. On 21 March 2013, the Attorney-General introduced the *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013*. This Bill will ensure that protections from discrimination for people who are gay, lesbian, bisexual, transgender and intersex are put in place as soon as practicable.

Concerning the transfer of post-13 August 2012 irregular maritime arrivals (IMAs) to Regional Processing Countries (RPC) and the treatment of LGBTI asylum seekers, as a signatory to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* (the Refugees Convention), Australia takes its international obligations seriously and is committed to providing protection to refugees consistent with the obligations set out in the Refugees Convention and other human rights treaties to which Australia is a party. Any person has the right to seek protection in Australia from persecution in their home country.

The Government has signed Memoranda of Understanding (MoU) with the Governments of Nauru and Papua New Guinea which permit people who arrived irregularly by boat on or after 13 August 2012 to be taken to Nauru or Papua New Guinea (Manus Island) for assessment of their claims against the Refugee Convention. Changes to the *Migration Act 1958* (the Act) which give effect to regional processing arrangements were passed by the Australian Parliament and became law on 18 August 2012.

The MoU signed with Nauru and Papua New Guinea reaffirms the commitment of both countries to the Refugee Convention, with people transferred to the Regional Processing Country (RPC) to be treated with dignity and respect in line with human rights standards.

people our business

The Department of Immigration and Citizenship recognises that human rights abuses and gender-related persecution can also be experienced by people on the basis of their sexual orientation and/or gender identity. As such, an applicant's gender-related claims may include claims relating to their sexual orientation and/or gender identity.

In the guidelines set out in the Departmental Procedures Advice Manual 3 (PAM3), for the guidance of interviewing officers, they are advised that

"Unlike other persecuted groups, sexual orientation and gender identity is not a readily visible characteristic and has to be revealed by the individual. Homosexual and transsexual applicants may, therefore, have only spoken to a handful of people, or none at all, about their sexuality and have kept it a secret. Interviewers and decision makers should, therefore, not be surprised if an applicant suddenly raises the issue of sexual orientation or gender identity late in an application process, prefaced perhaps by an earlier weak or false claim on other grounds."

Pre-Transfer Assessment is undertaken prior to a person's transfer to an RPC to consider whether there are specific circumstances or special needs that mean it is not reasonably practicable to transfer an asylum seeker to an RPC at this time.

Where a person raises concerns against a designated RPC, the Departmental officer refers to relevant country information, as well as the assurances received by Australia from the RPC governments, to assess if those charges are credible. If the person makes credible protection claims against all RPCs, the case is brought to the Minister's attention in accordance with his guidelines for considering the exercise of his power under section 198AE of the *Migration Act 1958 Act* to exempt that person from transfer.

A copy of the Minister's s198AE guidelines and the Pre-Transfer Assessment form and guidelines can be found on the Department's website at:
www.immi.gov.au/visas/humanitarian/whatsnew.htm

Also for your information, I attach a copy of the relevant sections of PAM3 regarding gender and sexual orientation. For a full interactive copy of that document you may need to contact your nearest public library which should be able to provide free access.

Thank you for writing about this matter and I apologise again for the delay in responding.

Yours sincerely

Director
Protection Policy Section

6 June 2013