



STARTTS

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OF TORTURE AND TRAUMA SURVIVORS

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Submission to the inquiry into Australia's efforts to
advocate for the worldwide abolition of the death penalty

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1. About STARTTS

The NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) is a non-profit organisation established in 1988 to assist refugee survivors of torture and trauma rebuild their lives in Australia. STARTTS' clients are survivors of torture and trauma in the context of organised violence and state terrorism, the majority of whom arrived in Australia under the *Refugee and Humanitarian Program*¹ or have sought asylum after arriving in Australia.

STARTTS' services form a part of the NSW public health system through its recognition as an Affiliated Health Organisation (AHO). AHOs are not-for-profit religious, charitable, or other non-government organisations which provide health services and are recognised as part of the public health system under the *Health Services Act 1997* (NSW).² Additionally, STARTTS is the NSW member of the Forum of Australian Services for Survivors of Torture and Trauma (FASSTT). STARTTS has a proud 35-year history of successful services and projects, funded through a variety of government and non-government bodies including NSW Health, and the Commonwealth Departments of Health, Social Services and Home Affairs.

STARTTS' service model incorporates a large range of clinical and psycho-social interventions informed by the latest advances in neuroscience and evidence-based practice in relevant fields. Our service provision philosophy is predicated on a bio-psycho-social framework, in recognition of the complex interaction between this essential building block for personal and collective wellbeing, and pre-migration and 'normal life cycle' events post-settlement, which have the potential to impede the recovery of individuals from their traumatic experiences.³ As such, our service offer is broad in scope and includes assessment; counselling for all age groups; psychiatric assessment and interventions; family therapy; group interventions; body-focused interventions such as nutrition, massage, physiotherapy, acupuncture and pain management groups; support groups; programs for children and youth; advocacy and policy input; training for service providers; and various strategies to increase the capacity of support networks and refugee communities to sustain their members.

The focus of the STARTTS approach is on building capacity and utilising cultural strengths to empower individuals, families, and communities to take control over their own lives. Further information about STARTTS services and programs can be found at <http://www.startts.org.au/>.

¹ Department of Home Affairs, 'Refugee and humanitarian program,' <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program>, accessed 24 June 2024.

² *Health Services Act 1997* (NSW), Section 13, <https://legislation.nsw.gov.au/view/html/inforce/current/act-1997-154>.

³ J. Aroche & M. Coello, 'Toward a systemic approach for the treatment and rehabilitation of torture and trauma survivors in exile: The experience of STARTTS in Australia,' *Paper presented at the 4th International Conference of Centres, Institutions and Individuals Concerned with Victims of Organised Violence: Caring for and Empowering Victims of Human Rights Violations*, 1994, Dap Tagaytay City, Philippines.

2. Overview

STARTTS welcomes the opportunity to provide a submission to this inquiry. Our submission, which seeks to elevate the voices of people from refugee backgrounds, has been informed by our clinical work and expertise, as well as our extensive work with people and diaspora communities who have been at risk of (or impacted by) the death penalty. Many experienced this risk before they were resettled in (or sought safety in) Australia due to their sexual orientation, gender identity, ethnicity, religion, and/or political beliefs.

This submission provides an overview of the experiences of people from refugee backgrounds, including the impact of refugee torture and trauma, and how various factors can adversely influence the asylum process and outcome. Our submission addresses the Terms of Reference of the Inquiry, with specific reference to the following:

3. Opportunities and risks for Australia to advocate for the abolition of the death penalty internationally, including:

b) Addressing heightened risk of the death penalty based on sexual orientation and gender identity, ethnicity, religion and political beliefs;

4. Any related matters.

STARTTS commends the Australian Government for its proactive efforts to advocate for the abolition of the death penalty globally. STARTTS notes that the Australian Government has a policy of not deporting individuals to countries where they will face risk of the death penalty,⁴ and we commend the Australian Government for its commitment to upholding its obligations under international law. However, we are deeply concerned that this is not consistently adhered to in practice. Australia's Refugee Status Determination (RSD) process continues to place many asylum seekers at risk of deportation to countries where they face a high risk of the death penalty for the same grounds they sought asylum.

Australia's advocacy efforts to abolish the death penalty cannot be achieved in isolation: they must be supported by domestic policies that reflect a genuine commitment to human rights. It is imperative to address this issue comprehensively and through a whole-of-government approach that includes the Department of Home Affairs and bodies conducting reviews of their protection visa decisions. Strengthening protection measures and addressing systemic issues within the RSD process will safeguard people from refoulement and the death penalty. It will also align with Australia's broader commitment to international human rights standards and reinforce its position as a global leader in advocating for the abolition of the death penalty.

Our submission highlights two groups of people seeking asylum in Australia who are at a high risk of being refouled to countries where they may face the death penalty. These include lesbian, gay, bisexual, transgender, queer, intersex and/or asexual (LGBTQIA+) asylum seekers who were refused protection and hail from countries where they could face the death penalty, and/or those who were

⁴ Australian Mission to the United Nations, 'UNGA Third Committee Item 72: Dialogue with Special Rapporteur on extrajudicial summary or arbitrary executions' (24 October 2019), p. 2, <https://www.dfat.gov.au/sites/default/files/unga-74-3c-id-sr-extrajudicial-killings-intervention-points.pdf>, accessed 24 July 2024.

refused protection under the flawed Fast Track system. As we demonstrate in this submission, both groups are more vulnerable to receiving erroneous negative protection visa decisions.

It is important to note that, aside from the death penalty, people seeking asylum also face a variety of other threats to their lives and freedoms. It is therefore imperative that all individuals seeking asylum have access to free legal advice and are subjected to a rigorous, fair, and trauma-informed RSD process.

3. Recommendations

RECOMMENDATION 1: Visa decision makers must approach their decision making through an intersectional lens, which includes considering the impact of trauma.

Visa decision makers should assess refugee claims using an intersectional approach. This involves considering how various aspects of an asylum seeker's intersecting identities and situation — including their culture, religion, health, age, ethnicity, family, socioeconomic status, and experiences — interact and impact their experiences of persecution. Visa decision makers must also give full consideration to how trauma impacts the brain and can influence how people engage with the RSD process, including how they present their claims, recall details, and interact with decision makers.

RECOMMENDATION 2: LGBTQIA+ competency training should be provided to all visa decision makers.

Comprehensive training on LGBTQIA+ issues should be provided to all decision makers involved in the RSD process. Training should cover the specific risks faced by LGBTQIA+ individuals in different countries, the nuances and diverse nature of LGBTQIA+ experiences, and how intersectional factors can shape what an individual discloses and how they identify or present. Visa decision makers should also be trained on how to identify conscious and subconscious bias to ensure that bias and stereotypes of LGBTQIA+ identity do not influence their decisions and place people at risk.

RECOMMENDATION 3: Guidelines on assessing asylum claims based on sexual orientation and gender identity should be revised and amended.

In consultation with people with lived refugee and LGBTQIA+ experience, and the legal and community organisations working alongside them, guidelines for assessing sexuality or gender identity based asylum claims at all stages of the RSD process should be revised and amended. They should be trauma-informed, aligned with international best practice standards, and regularly reviewed to ensure they reflect advancements and emerging issues.

RECOMMENDATION 4: All people seeking asylum who were refused protection under the Fast Track system should have their protection claims reassessed.

Many people refused protection under the Fast Track system would likely engage Australia's protection obligations if reassessed under a more robust body. This includes many who hail from countries which implement the death penalty, including Iran, and fled life-threatening persecution based on their political beliefs, ethnicity, religion, sexuality, and/or gender identity.

Although the current Australian Government acknowledges that the Fast Track system is fundamentally flawed,⁵ it has attempted to implement punitive measures that would penalise many asylum seekers failed by it.⁶ For Australia to ensure its RSD process is robust, judicially sound, and does not inadvertently contribute to the risk of the death penalty, individuals refused protection under the Fast Track process must be given a viable and accessible avenue to reapply for protection and have their claims reassessed.

RECOMMENDATION 5: Australia should halt all actions that would enable the deportation of asylum seekers to countries where they may face the death penalty.

This includes deportations of 'failed' asylum seekers and halting any discussions with Iran⁷ to facilitate the involuntary removal of Iranian asylum seekers who were denied protection. Applicants should instead be permitted to reapply for protection (ensuring they obtain free legal assistance to do so), and/or have their applications reviewed. Australia should also refrain from deporting people who express an intention to seek asylum before they clear Australian airport customs. All such individuals should instead be permitted to apply for protection and have their claims thoroughly assessed.

RECOMMENDATION 6: Visa pathways should be provided to protect family members of refugees and diaspora communities in Australia from the death penalty.

This includes offering family reunification pathways for relatives at risk of the death penalty or severe persecution, and fit-for-purpose emergency visa options to facilitate the swift entry of family members at high risk into Australia. Visitor visas are not an appropriate solution.

4. People from refugee and refugee-like backgrounds

STARTTS works with people granted refugee status through Australia's offshore and onshore humanitarian programs, people seeking asylum, and people who migrated to Australia through non-refugee visa streams but with refugee-like backgrounds and experiences.

People from refugee backgrounds often experience multiple traumatic events over a prolonged period, including intimidation, systematic discrimination, physical and sexual violence, arbitrary imprisonment, raids, and war. Many of STARTTS' clients are also survivors of systematic state terrorism, having fled death-penalty states which terrorise and oppress their populations through harassment, mass executions, disappearances, and torture. States do this to create a sense of fear and distrust among their population, leaving people disconnected from each other and with no choice but to

⁵ Australian Labor Party, 'ALP National Platform - As Adopted at the 2021 Special Platform Conference' (2021), <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>, p. 124, accessed 12 July 2024.

⁶ For example, the Labor Government's proposed *Migration Amendment (Removal and Other Measures) Bill 2024*, if passed, would penalise people refusing to comply with deportation orders. On a related note, the High Court held in *ASF17* that indefinite detention is lawful if the only barrier to a person's removal from Australia is a lack of cooperation. Both developments could disproportionately impact people seeking asylum in the community from countries which do not accept involuntarily returned citizens, as well as people subject to offshore processing arrangements.

⁷ M. Knott & D. Crowe, 'Iran seeks extradition treaty with Australia despite vast differences,' *Sydney Morning Herald* (5 June 2024), <https://www.smh.com.au/politics/federal/iran-seeks-extradition-treaty-with-australia-despite-vast-differences-20240605-p5ijcc.html>, accessed 30 July 2024.

comply with their orders.⁸ Many people and communities we work with were systematically targeted and discriminated against due to their gender, ethnicity, religion, sexual orientation, or diverse gender expression and identity, both by society and by the state itself.

People from refugee and refugee-like backgrounds sit in the middle of a complex interaction between:

- The impact of torture and/or refugee trauma.
- Resettling in a new country, such as learning the language and culture, making friends, and understanding complex new systems (including for asylum seekers who have to navigate the RSD process).
- The normal challenges we all face throughout life, including with employment, relationships, housing, illness, and ageing.

Refugees often face ongoing migration challenges even after they are granted protection, including barriers to family reunification and to obtaining Australian citizenship.⁹

5. The impact of the death penalty on diaspora and refugee communities in Australia

An important outcome of Australia's international advocacy efforts against the death penalty is that they help to address the impact that the use of the death penalty has on diaspora communities in Australia.

Many people from refugee backgrounds in Australia are deeply concerned for family, friends, and community members overseas, whose lives remain at risk due to state-sanctioned violence, which frequently includes the use of the death penalty to instil fear and suppress opposition. Distressing developments in an individual's country of origin can disrupt their recovery from past torture and refugee trauma, which can lead to poorer resettlement outcomes and a deterioration in their mental health and sense of safety.¹⁰ For example, STARTTS heard from many Iranians who expressed significant distress and anxiety during and after the 'Woman, Life, Freedom' (WLF) protests in Iran. We highlighted this in more detail in our submission to the Foreign Affairs, Defence and Trade References Committee's inquiry on human rights implications of recent violence in Iran.¹¹ Similarly, recent developments in Bangladesh and Myanmar, including the persecution, disappearances, and executions of political activists,¹² have heightened fears and distress among the diaspora communities here in Australia.

⁸ I. Martín-Baró, 'Psychosocial consequences of state terrorism,' Transcript of presentation made on January 17, 1989 at the Symposium on the Psychological Consequences of Political Terrorism, Berkley, California, sponsored by the Committee for Health Rights in Central America.

⁹ Australian Association of Social Workers, NSW Refugee Health Service & STARTTS, 'Working with people from refugee backgrounds: A guide for Social Workers' (2022), p. 57, https://www.startts.org.au/media/Working-with-people-from-refugee-backgrounds-A-guide-for-social-workers-2nd-Edition_2022.pdf, accessed 26 July 2024.

¹⁰ Ibid, p. 15.

¹¹ STARTTS, 'Submission to the Foreign Affairs, Defence and Trade References Committee's Inquiry on Human Rights Implications of Recent Violence in Iran' (2022), submission 375.

¹² Amnesty International, 'Myanmar' (2023), <https://www.amnesty.org/en/location/asia-and-the-pacific/south-east-asia-and-the-pacific/myanmar/report-myanmar/>, accessed 30 July 2024; Amnesty International, 'Bangladesh: Dissent under attack: Submission to the 44th session of the UPR Working Group' (November 2023), <https://www.amnesty.org/en/documents/asa13/6649/2023/en/>, accessed 29 July 2024.

The safety of diaspora activists in Australia, and their family members overseas, can be at risk when they speak up about human rights abuses in their countries of origin.¹³ The Foreign Affairs, Defence and Trade References Committee's inquiry on the human rights implications of recent violence in Iran heard various accounts of Australia's Iranian diaspora being monitored and threatened by the Iranian regime, with this extending to their relatives in Iran too. One man executed over his involvement in the WLF protests was reportedly interrogated about his Australian relatives.¹⁴ We note that the Foreign Affairs, Defence and Trade Committee heard similar accounts during its inquiry into issues facing diaspora communities in Australia. The Australian Securities and Intelligence Organisation (ASIO) reported that these threats directly originated from foreign government representatives, as well as other members of diaspora communities at the direction of these foreign governments.¹⁵ Many countries accused of threatening diaspora communities in Australia enact the death penalty, including China, Iran, Iraq, Myanmar, Saudi Arabia, and Vietnam.¹⁶

To address the impact of the death penalty on refugee and diaspora communities in Australia and their loved ones, viable and expedited visa options should be made available to at-risk family members overseas. Further, the Australian Government must actively engage with affected diaspora communities to ensure their concerns and experiences are meaningfully incorporated into Australia's international advocacy efforts, diplomatic engagements, and policy priorities.

6. Addressing issues within the current RSD process to protect people seeking asylum from exposure to the death penalty

It is important that Australia's RSD process is fair and robust. This will ensure that people who have applied for protection in Australia are not subjected to erroneous negative decisions and subsequently deported to countries where they will face the death penalty for the same reasons they sought protection. We note that the current mechanisms for reviewing decisions made by the Department of Home Affairs — the Immigration Assessment Authority (IAA) and the Administrative Appeals Tribunal (AAT) — are both set to be replaced by the new Administrative Review Tribunal (ART) in October 2024. It is important that the new ART lives up to its intent of being user-focused, efficient, accessible, independent, and fair.

In our experience, many people seeking asylum do not know where to obtain legal advice or what constitutes grounds for protection, which can lead to omissions or delays in providing critical information. Other challenges to engaging with the asylum application process include language

¹³ Senate Committee on Foreign Interference through Social Media, Comments made at the public hearing on 21 April 2023, https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/26690/toc_pdf/Foreign%20Interference%20through%20Social%20Media%E2%80%94Select%20Committee%202023%2004%2021%20Official.pdf;fileType=application%2Fpdf#search=%22committees/commsen/26690/0004%22, accessed 30 July 2024; C. O'Neil MP, 'Foreign interference in Australia' (February 2023), <https://minister.homeaffairs.gov.au/ClareONeil/Pages/foreign-interference-in-australia.aspx>, accessed 30 July 2024.

¹⁴ P. Sakkal, 'Campaign to save Iranian man with family in Australia from execution', *Sydney Morning Herald* (16 January 2023), <https://www.smh.com.au/politics/federal/campaign-to-save-iranian-man-with-family-in-australia-from-execution-20230116-p5ccpr.html>, accessed 25 July 2024.

¹⁵ Commonwealth of Australia, 'Issues facing diaspora communities – Chapter 3: Safety concerns' (February 2021), https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Diasporacommunities/Report/section?id=committees%2freportsen%2f024485%2f73394, accessed 30 July 2024.

¹⁶ Ibid.

barriers, developing levels of digital literacy, difficulty learning how to navigate complex and unfamiliar systems, and homelessness.

As it currently stands, navigating the visa review process can also present significant challenges. If an applicant is unsuccessful at the IAA or the AAT, they can seek judicial review. However, this does not involve a re-examination of the merits of their case, but rather looks at whether the decision involved serious legal error.¹⁷ Applicants who are unsuccessful at judicial review must pay the Department's legal costs, which can exceed \$10,000 and cannot be waived.¹⁸ Failure to pay these costs can result in ineligibility for any Australian visa in the future and restrictions on re-entering Australia if they depart.¹⁹ These barriers and risks, combined with difficulties obtaining pro bono legal assistance and a low likelihood of success, often deter individuals from seeking judicial review. Similarly, many people seeking asylum report being unable to secure pro bono legal assistance to lodge Ministerial Intervention requests, and these requests are reportedly only infrequently successful.²⁰

It is critical that appointed decision makers are equipped with knowledge and understanding of how torture and trauma can impact a person's presentation and functioning. Through our work, we are aware that people seeking asylum have been refused a protection visa because they were perceived to be providing inconsistent accounts (often over several years) of their experiences or could not remember certain details. We believe that this misconception arises from a gap in knowledge about trauma and its impacts. Exposure to trauma can lead to reduced concentration, diminished cognitive functions,²¹ and an impaired ability to recall past traumatic events and establish a coherent timeline of events.²² Neuroimaging studies have revealed that trauma can cause structural changes to various regions of the brain, including areas responsible for emotional regulation, decision-making, executive functioning, and memory.²³ In addition, the body and brain employ dissociation as a protective mechanism to keep the trauma survivor safe from traumatic memories and these symptoms of emotional distress.²⁴ People can also experience flashbacks, nightmares, anxiety, depression and hypervigilance, and are at an increased risk of physical health conditions. These symptoms — which are common in post-traumatic stress disorder (PTSD) but often occur in the absence of a diagnosed

¹⁷ D. Ghezelbash, K. Dorostkar & S. Walsh, 'A data driven approach to evaluating and improving judicial decision-making: statistical analysis of the judicial review of refugee cases in Australia,' *UNSW Law Journal*, no. 5, vol. 543, 2022, p. 1092, <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2022/10/Issue-453-05-Ghezelbash-et-al.pdf>, accessed 25 July 2024.

¹⁸ Refugee Advice and Casework Service, 'Fact Sheet: Judicial Review,' p. 3, <https://static1.squarespace.com/static/64dacc5af8652400c34fe0d/t/6539b9a006efad023d9a8b2d/1698281888871/6.04+Judicial+Review.pdf>, accessed 29 July 2024.

¹⁹ Ibid.

²⁰ Refugee Advice and Casework Service, 'Ministerial Intervention,' <https://static1.squarespace.com/static/64dacc5af8652400c34fe0d/t/6539b932a46fec0f1d9c40ae/1698281779576/6.02+Ministerial+Intervention+Plane+Arrival+s417.pdf>, accessed 31 July 2024.

²¹ M. Marković, N. Kovačević & J. Bjekić, 'Refugee Status Determination Procedure and Mental Health of the Applicant: Dynamics and Reciprocal Effects,' *Frontiers in Psychiatry*, vol. 11, 2020, <https://www.frontiersin.org/journals/psychiatry/articles/10.3389/fpsy.2020.587331/full>, accessed 25 July 2024.

²² A. Saadi et. al, 'Associations between memory loss and trauma in US asylum seekers: A retrospective review of medico-legal affidavits,' *PLoS ONE*, vol. 16, no. 3, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7987192/pdf/pone.0247033.pdf>, accessed 25 July 2024; United Nations High Commissioner for Refugees, 'Procedural standards for Refugee Status Determination under UNHCR's Mandate' (August 2020), p. 93, <https://www.unhcr.org/sites/default/files/legacy-pdf/4317223c9.pdf>, accessed 24 July 2024.

²³ R. Ireton, A. Hughes & M. Klabunde, 'A functional magnetic resonance imaging meta-analysis of childhood trauma,' *Biological Psychiatry: Cognitive Neuroscience and Neuroimaging*, vol. 9, no. 6, 2024, <https://www.sciencedirect.com/science/article/pii/S2451902224000223>, accessed 26 July 2024.

²⁴ STARTTS, 'Dissociation as a symptom of refugee trauma,' *Refugee Transitions*, p. 24, <https://www.startts.org.au/media/Refugee-Transitions/Refugee-Transitions-Issue-14-dissociation-as-a-symptom-of-refugee-trauma.pdf>, accessed 25 July 2024.

mental health condition — can make someone appear inconsistent or unreliable. In addition, as it can be taboo in many cultures and religions to seek treatment for mental ill-health (and Western treatments are often culturally inappropriate), many people may not explicitly describe themselves as having a mental illness, may not seek treatment, or may seek treatment for somatic complaints instead.

A selection of negative protection visa decisions published on the IAA's website and the Australasian Legal Information Institute (AustLII) database²⁵ shows a litany of cases that demonstrate what appears to be a lack of understanding exhibited by decision makers about the impact of trauma and the symptoms it can cause. These cases involved applicants describing significantly traumatic experiences of persecution, torture, and state-sanctioned violence, difficulties with short-term and long-term memory, unexplained somatic symptoms, and/or heightened startle responses. At times, the applicants also exhibited a reduced ability to understand what was being asked. One study highlighted instances of decision makers disregarding expert opinions, including in one case where evidence provided by a psychologist, who detailed that PTSD would affect the applicant's ability to understand and respond to questions, was dismissed because the applicant presented as engaged and intelligent.²⁶

STARTTS is deeply concerned that these examples reflect a limited understanding and acknowledgement of the way trauma impacts the brain, in both people with and without diagnoses like PTSD or depression. These misjudgements can have fatal consequences if they result in someone being refused protection and deported to a country where they will face significant risk of punishment, retribution, imprisonment, and harm, including the death penalty. It is therefore imperative that decision makers undergo appropriate training on the impact of trauma and trauma-informed interviewing techniques and thoroughly understand how trauma can impact a person's presentation and functioning. This would help minimise an erroneous negative decision, which can increase an individual's risk of PTSD, depression, anxiety, and suicidal ideation.²⁷

7. Addressing the heightened risk of the death penalty based on sexual orientation and gender identity, ethnicity, religion and political beliefs

It is important that Australia's domestic policies, specifically the way it processes and reviews the claims of people seeking asylum in Australia, do not heighten the risk of exposing a person to the death penalty based on their sexual orientation, gender identity, ethnicity, religion, and/or political beliefs. A robust and fair RSD process, which includes appropriate mechanisms for review, is essential to ensure an individual is not refouled to a country where they may face the death penalty for the very reasons they sought asylum.

Our submission highlights two key groups of people who are highly vulnerable to erroneous negative asylum decisions and are consequently at a high risk of refoulement and exposure to the death

²⁵ See https://www.austlii.edu.au/cgi-bin/sinocrch.cgi?meta=&mask_path=au%2Fcases%2Fctch%2FAATA&method=auto&query=refugee and <https://www.iaa.gov.au/about/decisions>.

²⁶ J. Hunter, L. Pearson, M. Roque & Z. Steel, 'Asylum Adjudication, Mental Health and Credibility Evaluation,' *Federal Law*, vol. 41, no. 3, 2013, pp. 471-495, <https://journals.sagepub.com/doi/10.22145/flr.41.3.4>, accessed 26 July 2024.

²⁷ Ibid; M.A Kenny, N. Procter & C. Grech, 'Mental Health and Legal Representation for Asylum Seekers in the Legacy Caseload,' *Cosmopolitan Civil Societies Journal*, vol. 8, no. 2, 2016, https://epress.lib.uts.edu.au/journals/index.php/mcs/article/view/4976/5493#CIT0018_4976, accessed 26 July 2024.

penalty: people seeking asylum due to a well-founded fear of persecution on the basis of their sexual orientation and/or gender identity, and people seeking asylum whose applications were assessed as part of the 'Fast Track' process.

7.1 LGBTQIA+ people seeking asylum

Most LGBTQIA+ Australians have experienced violence, harassment, and/or bullying due to their sexual orientation, gender expression and gender identity, and/or sex characteristics.²⁸ According to the Australian Bureau of Statistics (ABS), many have poorer mental health as a result, with 74% of LGBTQIA+ Australians having experienced a mental illness in their life compared to 41.7% of heterosexual Australians.²⁹ 'Coming out' is a very personal and difficult decision, and many may not disclose their identity (or only disclose it in certain spaces) out of concern they will face discrimination or rejection from family or friends, or even out of shame.

However, for people seeking asylum and refugees who are LGBTQIA+, these issues and risks are amplified due to past traumatic and life-threatening experiences in their country of origin, harmful experiences in Australia, and their immigration status. The global situation facing people with expansive genders, sexualities, and bodies — whom the United Nations High Commissioner for Refugees (UNHCR) has identified as one of the most vulnerable groups of refugees and asylum seekers — is exceptionally dangerous.³⁰ Sixty-four countries currently criminalise consensual same-sex activity, and the following twelve impose the death penalty: Afghanistan, Brunei, Iran, Mauritania, Northern Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, Uganda, United Arab Emirates, and Yemen.³¹ LGBTQIA+ people are also commonly found guilty of serious crimes under false pretences and executed in secrecy. Facing routine violence, torture, conversion practices, harassment, and discrimination by family members, society, and state actors, many LGBTQIA+ people are forced to flee to seek safety.

STARTTS runs an LGBTQIA+ program with peer-led support groups offering confidential spaces where people can be themselves, build community, share information, and be referred to services.³² STARTTS also runs inclusive practice workshops for services and interpreters working with LGBTQIA+ people from refugee and asylum seeking backgrounds, and facilitates training on trauma-informed interviewing. Through our work, we know that LGBTQIA+ people from refugee backgrounds can experience multiple and intersecting forms of discrimination based on their race, age, legal status, ethnicity, health, and gender and/or sexual identity.³³ This is substantiated by a survey conducted by the Forcibly Displaced Peoples Network (FDPN) that examined the settlement outcomes of LGBTQIA+ forcibly displaced people. FDPN found that 69% of participants had experienced LGBTQIA+

²⁸ Australian Human Rights Commission, 'Resilient Individuals: Sexual Orientation, Gender Identity & Intersex Rights' (2015), p. 16, <https://humanrights.gov.au/our-work/lgbti/publications/resilient-individuals-sexual-orientation-gender-identity-intersex>, accessed 30 July 2024.

²⁹ Australian Bureau of Statistics, 'Mental health findings for LGBTQ+ Australians' (27 February 2024), <https://www.abs.gov.au/articles/mental-health-findings-lgbtq-australians#:~:text=Of%20all%20LGB%2B%20people%2C%20three,80.1%25%20of%20bisexual%20people>, accessed 30 July 2024.

³⁰ STARTTS, 'STARTTS LGBTQIA Project Walk on Walk Strong' (2023), https://www.startts.org.au/media/STARTTS-LGBTQIA-Project-Walk-on-Walk-Strong-Stories-refugee-trauma_2023.pdf, p. 5, accessed 18 July 2024.

³¹ Statista, 'Number of countries that criminalize homosexuality as of 2024' (5 July 2024), <https://www.statista.com/statistics/1227390/number-of-countries-that-criminalize-homosexuality/>, accessed 18 July 2024.

³² STARTTS, 'LGBTQIA+ Project,' <https://www.startts.org.au/services/lgbtqi-project/>, accessed 18 July 2024.

³³ Forcibly Displaced Peoples Network, 'Inhabiting Two Worlds at Once: Report into LGBTQIA+ Settlement Outcomes' (2024), p. 12, <https://fdpn.org.au/wp-content/uploads/2023/10/inhabiting-two-worlds-report-into-lgbtqi-settlement-outcomes-fdpn-colour.pdf>, accessed 19 July 2024.

discrimination in Australia, 15% had experienced discrimination based on their disability, and 85% had experienced racism and discrimination based on their migration status.³⁴ Many expressed that they do not feel welcome in LGBTQIA+ spaces in Australia because of their ethnicity or religion, nor in refugee or cultural spaces due to their sexual orientation or gender identity and expression. Compared to the national average of 4.4%, 60% of survey participants had experienced violence in Australia too.³⁵

People seeking asylum who are LGBTQIA+ also face additional and disproportionate challenges during the RSD process.

7.1.1 Concerning practices of decision makers assessing asylum claims based on sexual orientation and/or gender identity

During the asylum seeking process in Australia, LGBTQIA+ asylum seekers face greater obstacles to proving their claims, and are subjected to more invasive and degrading lines of questioning and commentary, than any other group. The unnecessarily and disproportionately high burden of proof placed on LGBTQIA+ asylum seekers to prove their identity, along with ill-informed beliefs and attitudes of decision makers, means that they are significantly more likely to be subject to adverse credibility assessments.³⁶

Although the Department of Home Affairs has published best practice guidelines for assessing LGBTQIA+ protection claims,³⁷ many people seeking asylum have reported experiencing invasive questioning techniques and inappropriate comments.³⁸ Similarly, AAT guidelines caution that traumatic experiences can impact someone's capacity to provide an accurate timeline of events.³⁹ The AAT also stipulates that highly sensitive claims, such as those relating to sexual orientation, can be embarrassing or difficult for an applicant to discuss and should therefore be considered in a 'respectful and culturally sensitive' manner.⁴⁰ However, a review of some of the deidentified decisions records for sexuality-based protection cases published on the AustLII database, and on the IAA's website,⁴¹ reveals concerning approaches and significant inconsistencies in the outcomes of similar asylum cases at merits review. It also highlights that decision makers have widely varying levels of understanding regarding the diverse and complex experiences of LGBTQIA+ individuals.

For example, some LGBTQIA+ asylum seekers hailing from countries where homosexuality is punishable by death (including Iran) were accused of lacking credibility by the AAT, as they did not

³⁴ Ibid.

³⁵ Ibid.

³⁶ W. Berthelot, 'Sexual Orientation and Gender Identity as a Basis For Refugee Claims In Australia,' *University of NSW Law Journal Student Series*, no. 20, 2020, <https://classic.austlii.edu.au/au/journals/UNSWLawJlStuS/2020/1.html#fn58>, accessed 25 July 2024.

³⁷ Department of Home Affairs, 'Gender and sexual orientation,' <https://www.homeaffairs.gov.au/foi/files/2019/fa-190700951-document-released.PDF>, accessed 25 July 2024.

³⁸ Refugee Advice and Casework Service, 'RACS Toolkit (guide) for legal representatives/community workers – refugee claims based on sexual orientation, gender identity, gender expression, and sex characteristics' (April 2022), <https://static1.squarespace.com/static/64dacc5af8652400c34fe0d/t/653b4d2f122eea092728f7fb/1698385253573/RACS%2BLGB%2B%2BReport.pdf>, accessed 19 July 2024; W. Berthelot, 'Sexual Orientation and Gender Identity as a Basis For Refugee Claims In Australia,' *University of NSW Law Journal Student Series*, no. 20, 2020, <https://classic.austlii.edu.au/au/journals/UNSWLawJlStuS/2020/1.html#fn58>, accessed 25 July 2024.

³⁹ Administrative Affairs Tribunal, 'Guidelines on the Assessment of Credibility' (July 2015), p. 6, <https://www.aat.gov.au/AAT/media/AAT/Files/MRD%20documents/Legislation%20Policies%20Guidelines/Guidelines-on-Assessment-of-Credibility.pdf>, accessed 29 July 2024.

⁴⁰ Ibid.

⁴¹ See <https://www.iaa.gov.au/about/decisions> and https://www.austlii.edu.au/cgi-bin/sinorcrh.cgi?meta=&mask_path=au%2Fcases%2Fct%2FAATA&method=auto&query=refugee.

disclose their sexuality immediately upon arrival to Australia. Despite the applicants explaining their reasons for withholding this information (which included shame and fear), the delegates refused to believe that they were homosexual or bisexual as claimed. They concluded that anyone with a genuine sexuality-based protection claim would ultimately disclose it straight away regardless of their fears, feelings of shame, and history of persecution. Conversely, other delegates reviewing similar cases from the same country in question correctly acknowledged that it is unreasonable to expect people to disclose their sexuality to government officials straight away, when doing so in their origin country would have life-threatening consequences.

The impact of trauma and experiences of persecution, violence, and discrimination

People seeking asylum who are LGBTQIA+ and hail from countries hostile to the LGBTQIA+ community, including those with the death penalty, may feel afraid to talk about their experiences, may not have had any intimate relationships with people of the same-sex, and may have entered into (or been forced into) a heterosexual relationship or marriage. They may not identify themselves using Western understandings or labels, may be fearful to disclose their sexual or gender identity to legal representatives or decision makers, or disclose it late in the process. Additionally, some LGBTQIA+ asylum seekers may feel shame that stems from societal, cultural, or religious norms in their countries of origin which view their identities negatively. This can affect their self-perception and self-acceptance and may mean they do not identify as LGBTQIA+ at all, or identity as such at a later date. The harmful experiences they face in Australia can further impact their ability to feel secure and safe to openly disclose, discuss, and express their identity.

Visa decision makers also refused protection visas to applicants who did not conform to their stereotypical, ill-informed, or Westernised expectations of LGBTQIA+ identity, behaviour, or knowledge. This is contrary to UNHCR best practice standards, which affirm that such practices are unacceptable.⁴² We cited adverse credibility findings that were based on applicants questioning or exploring their sexuality for the first time in their early twenties (which was deemed 'too late' by the decision maker to be believable), not having sufficient knowledge of local gay culture, or not feeling comfortable engaging with the LGBTQIA+ community. Other delegates took issue with applicants stating they felt uncomfortable to disclose their sexuality in some settings, but not in others. Some delegates focused their attention on sexual practices and history, including probing for trivial and immemorable details of past sexual encounters, rather than focusing on sexual orientation.

Using interpreters

LGBTQIA+ people from refugee backgrounds may decline to use interpreters when needed as they fear the interpreter may identify who they are and 'out' them to the community or discriminate against them. Interpreters who are not appropriately trained or LGBTQIA+ friendly may refuse to accurately translate what the applicant says or use offensive language towards them.⁴³

⁴² UNHCR, 'UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity' (2012), <https://www.unhcr.org/au/media/unhcr-guidelines-international-protection-no-9-claims-refugee-status-based-sexual-orientation>, accessed 26 July 2024.

⁴³ Ibid.

People who were not in a same-sex relationship found it difficult to prove their sexual orientation, but even those who were in a relationship or provided evidence to substantiate their identity were disbelieved. In a humiliating invasion of their right to privacy, some individuals felt they had no choice but to provide explicit images depicting private moments with their partners to prove their sexual orientation. However, decision makers accused them of lying about their sexuality and staging the images for the sole purpose of bolstering their protection claims. Reports from mental health practitioners and doctors, who the applicant had disclosed their sexuality to, were also dismissed for the same reason. When provided with similar evidence, other delegates found the applicant to be a refugee. Some people who were successful were not immune to inappropriate lines of questioning and commentary, including instances where their desire to start a family was seemingly insinuated as incompatible with their homosexuality.

We recognise the difficulties that decision makers face when evaluating protection visa claims and determining an applicant's credibility. Our intention is not to comment on the merits of individual cases or whether specific decisions were ultimately correct. Instead, we have highlighted these examples to draw the Committee's attention to inappropriate practices throughout the asylum process, and the risk that decisions are unduly influenced by stereotypical, ill-informed, and Westernised narratives of LGBTQIA+ identity. Additionally, decision makers may overlook that an individual and their experience of persecution are not shaped by their sexual orientation and gender identity alone, but rather by the totality of their experiences and intersecting identities.⁴⁴ Such biases can culminate in life-threatening consequences if applicants are denied protection and forced to return to countries where they face persecution or the death penalty.

7.2 People seeking asylum who were assessed and refused protection under the Fast Track system

In 2014, the Australian Government introduced a 'Fast Track' process in an attempt to assess the protection claims of people who arrived to Australia by boat more quickly, which primarily impacted those who arrived by boat between August 2012 and January 2014. Those who were refused protection under the Fast Track process could only seek limited merits review through the IAA. Unlike individuals seeking merits review through the AAT, people subject to review through the IAA are only able to provide new information in exceptional circumstances and have no right to an interview or oral hearing. The Fast Track process has been widely criticised for denying procedural fairness,⁴⁵ and the current Australian Government acknowledges that the system is fundamentally flawed.⁴⁶

This cohort includes people from countries that impose the death penalty, including approximately 1591 people from Iran (with an additional 321 Iranians still awaiting a primary decision), 662 from

⁴⁴ M. Dustin & N. Held, 'In or out? A Queer intersectional approach to 'Particular Social Group' membership and credibility in SOGI asylum claims in Germany and the UK,' *University of Sussex*, 2018, https://sussex.figshare.com/articles/journal_contribution/In_or_out_A_Queer_intersectional_approach_to_Particular_Social_Group_membership_and_credibility_in_SOGI_asylum_claims_in_Germany_and_the_UK/23463953, accessed 25 July 2024.

⁴⁵ E. McDonald & M. O'Sullivan, 'Protecting vulnerable refugees: procedural fairness in the Australian Fast Track regime,' *University of New South Wales Law Journal*, vol. 41, no. 3, 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3277196, p. 1005, accessed 11 June 2024.

⁴⁶ Australian Labor Party, 'ALP National Platform - As Adopted at the 2021 Special Platform Conference' (2021), <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>, p. 124, accessed 12 July 2024.

Pakistan, 401 from Iraq, and 249 from Bangladesh.⁴⁷ Smaller numbers of people have been refused from Afghanistan, Myanmar, and Sudan.⁴⁸ These individuals have been living in limbo in Australia for more than ten years.

Case study: people seeking asylum from Iran

People seeking asylum from Iran are one group of people at risk of deportation to a death-penalty country. They are highlighted in this case study as people from Iran represent the largest cohort refused under the Fast Track system who hail from a country where the death penalty is actively enforced, and Iran has the second highest execution rate globally.

The Iranian government utilises the death penalty to instil fear in its population, exert control, and to suppress political dissent. Iran accounted for 74% of all global executions recorded and verified in 2023,⁴⁹ with at least 853 executions in the country across the year. This is the highest number of executions in Iran in eight years,⁵⁰ and the real numbers are likely to be higher.⁵¹ Some groups are disproportionately represented in these statistics, including people from religious and ethnic minorities, those who criticise the Government or engage in political activism, and those who engage in consensual same-sex or extramarital acts.⁵² Many activists are dubiously charged with a broad range of offences, including espionage, drug charges, corruption and murder, and are not afforded due legal process.⁵³ The use of torture is widespread, including during the sentencing of the WLF protestors, where all protestors facing the death penalty were tortured into providing false confessions.⁵⁴

Many Fast Track refused asylum seekers from Iran, who have been living in limbo in the Australian community for more than ten years, have reported worsening physical and mental health conditions, homelessness, food insecurity, social isolation, and family breakdowns because of their visa status. Many have expressed that their lives have become untenable in Australia, with their visa status rendering them financially destitute, ineligible for any Government support, and enduring more than a decade of separation from their loved ones.

⁴⁷ Senate Standing Committee on Legal and Constitutional Affairs Budget Estimates (16 December 2022), Department of Home Affairs response to question on notice, OBE22-549 - TPV and SHEV Visas - Refused Through Fast Track, <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeed6-EstimatesRoundId19-PortfolioId20-QuestionNumber130>, accessed 26 July 2024; Department of Home Affairs, 'UMA Legacy Caseload: Report on Processing Status and Outcomes' (30 June 2024), <https://www.homeaffairs.gov.au/research-and-stats/files/unauthorised-maritime-arrivals-bve-31-mar-2024.pdf>, accessed 18 July 2024; Refugee Council of Australia, 'Fast tracking and 'Legacy Caseload' statistics' (13 July 2024), accessed 19 July 2024.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Amnesty International UK, 'Iran: 853 people executed last year after surge in use of death penalty in drugs cases' (4 April 2024), <https://www.amnesty.org.uk/press-releases/iran-853-people-executed-last-year-after-surge-use-death-penalty-drugs-cases#:~:text=The%20Iranian%20authorities%20executed%20at,info%20sites%20of%20mass%20killings>, accessed 19 July 2024.

⁵¹ Iran Human Rights and ECPM, 'Annual Report on the Death Penalty in Iran – 2023' (5 March 2024) p. 77, https://iranhr.net/media/files/Iran_Human_Rights-Annual_Report_2023.pdf, accessed 24 July 2024; Amnesty International, 'Iran executes 853 people in eight-year high amid relentless repression and renewed 'war on drugs,' (4 April 2024), <https://www.amnesty.org/en/latest/news/2024/04/iran-executes-853-people-in-eight-year-high-amid-relentless-repression-and-renewed-war-on-drugs/>, accessed 25 July 2024.

⁵² Ibid.

⁵³ Amnesty International, "'Don't let them kill us,' Iran's relentless execution crisis since the 2022 uprising' (4 April 2024), <https://www.amnesty.org/en/documents/mde13/7869/2024/en/>, accessed 19 July 2024.

⁵⁴ Iran Human Rights, 'Annual report on the death penalty in Iran' (2023) https://iranhr.net/media/files/Iran_Human_Rights-Annual_Report_2023.pdf, accessed 19 July 2024.

Despite this, they have expressed that they cannot safely return to Iran due to the risk of the death penalty and arbitrary imprisonment.

According to a Refugee Council of Australia (RCOA) analysis, people seeking asylum from Iran are three times more likely to succeed at the AAT than the IAA due to a 'lack of procedural fairness and safeguards under the IAA [that] has led to a higher refusal rate, putting refugees with legitimate claims at risk of being returned to harm.'⁵⁵ Additionally, a comparison of remittal rates between the previous review system and the IAA demonstrated that Iranian applications were remitted to the Department 81% of the time, versus 16% at the IAA. Between 2018 and 2021, the federal courts found that 37% of decisions made at the IAA on Iranian applications involved jurisdictional error.⁵⁶ Against this and a backdrop of deteriorating conditions in Iran, people seeking asylum from Iran — who were left to navigate a complex system and were not afforded due legal process through the Fast Track system — should be granted the opportunity to reapply for protection. This includes many who fled Iran due to their sexuality, gender identity, religion, political opinion, gender, and/or ethnicity.

Through our clinical work, we have witnessed the devastating mental health impacts of prolonged visa insecurity. The people subjected to the Fast Track process have been described in the literature as being in the 'advanced stages of feeling mentally trapped... boxed in, and especially hopeless and helpless.'⁵⁷ As demonstrated by a substantial body of research, prolonged visa insecurity and processing times can be harmful, causing psychological distress, suicidal ideation,⁵⁸ psychosocial challenges, and poorer resettlement outcomes.⁵⁹ People seeking asylum and refugees with insecure visas have significantly higher rates of mental health conditions (and more severe symptoms) compared to individuals with secure visas or citizenship,⁶⁰ with this risk becoming higher the longer that their visa status remains insecure or unresolved.⁶¹ Children in this cohort experience symptoms similar to their parents, with markedly higher instances of psychological challenges compared to migrants and refugee children of the same age and background with permanent visa status or citizenship.⁶²

⁵⁵ Refugee Council of Australia, 'The performance and integrity of Australia's administrative review system' (2022), <https://www.refugeecouncil.org.au/wp-content/uploads/2022/01/2021-AAT-Inquiry-RCOA.pdf>, accessed 19 July 2024.

⁵⁶ Ibid.

⁵⁷ N. Procter, MA. Kenny, H. Eaton & C. Grech, 'Lethal hopelessness: Understanding and responding to asylum seeker distress and mental deterioration,' *International Journal of Mental Health Nursing*, vol. 27, no. 1, 2018, doi:10.1111/inm.12325, p. 451, accessed 13 June 2024.

⁵⁸ L. Berg, S. Dehm & A. Vogl, 'Refugees and asylum seekers as workers: radical temporariness and labour exploitation in Australia,' *UNSW Law Journal*, vol. 45, no. 1, 2022, <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2022/04/Issue-451-Berg-et-al.pdf>, p. 68, accessed 27 May 2024.

⁵⁹ E. Newnham et. al, 'The mental health effects of visa insecurity for refugees and people seeking asylum: a latent class analysis,' *International Journal of Public Health*, vol. 64, 2019, <https://link.springer.com/article/10.1007/s00038-019-01249-6>, p. 770, accessed 27 May 2024.

⁶⁰ Ibid.

⁶¹ C. Hvidtfeldt, JH. Petersen & M. Norredam, 'Prolonged periods of waiting for an asylum decision and the risk of psychiatric diagnoses: a 22-year longitudinal cohort study from Denmark,' *International Journal of Epidemiology*, vol. 49, no. 2, 2020, <https://pubmed.ncbi.nlm.nih.gov/31106354>, accessed 28 May 2024.

⁶² R. Rostami et. al, 'The mental health of Farsi-Dari speaking asylum-seeking children and parents facing insecure residency in Australia,' *The Lancet Regional Health – Western Pacific*, vol. 24, 2022, <https://www.thelancet.com/action/showPdf?pii=S2666-6065%2822%2900163-8>, p. 9, accessed 5 June 2024.

Given the flaws in the Fast Track process, along with the severe mental health impacts of prolonged visa insecurity, Australia has a responsibility to urgently provide a clear and accessible pathway for those failed under this system to reapply for protection. In addition, anyone refused a protection visa before the situation in their country of origin deteriorated must also be provided with an opportunity to reapply for protection and/or have their claims reassessed. If Australia does not take these steps, it risks violating its non-refoulement obligations under international law and causing harm to people who sought its protection.

We note that Ministerial Intervention requests are sometimes suggested as a potential option available to this cohort. However, our clients report that they encounter significant challenges to lodging a Ministerial Intervention request, including an extremely limited availability to obtain free legal assistance. STARTTS supports suggestions put forward by [RCOA](#) for the Minister of Immigration to lift the bar to enable this cohort to reapply for protection.⁶³ As new applications they would be prioritised, and those receiving a negative decision at the primary stage could then seek review under the new ART. This would ensure that people seeking asylum who were refused under the demonstrably flawed Fast Track process would finally be provided a pathway to have their protection claims reassessed.

Australia has a long history of leading with compassion and providing refuge to those in need. Rather than focusing its efforts on developing ways to criminalise or detain asylum seekers who resist deportation efforts, STARTTS urges the Australian Government to instead create accessible pathways for these individuals to reapply for protection. Not only will this address the needs of people who were failed by a fundamentally unjust system, but it will also demonstrate Australia's commitment to preventing the risk of the death penalty and enhance its credibility as a global leader in advocating against it.

⁶³ Refugee Council of Australia, 'Reform of protection visa process' (6 October 2023), https://www.refugeecouncil.org.au/wp-content/uploads/2023/10/231006_AGiles_PVreform.pdf, accessed 31 July 2024.

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