



Australian Government

Department of Home Affairs

25 MAR 2019

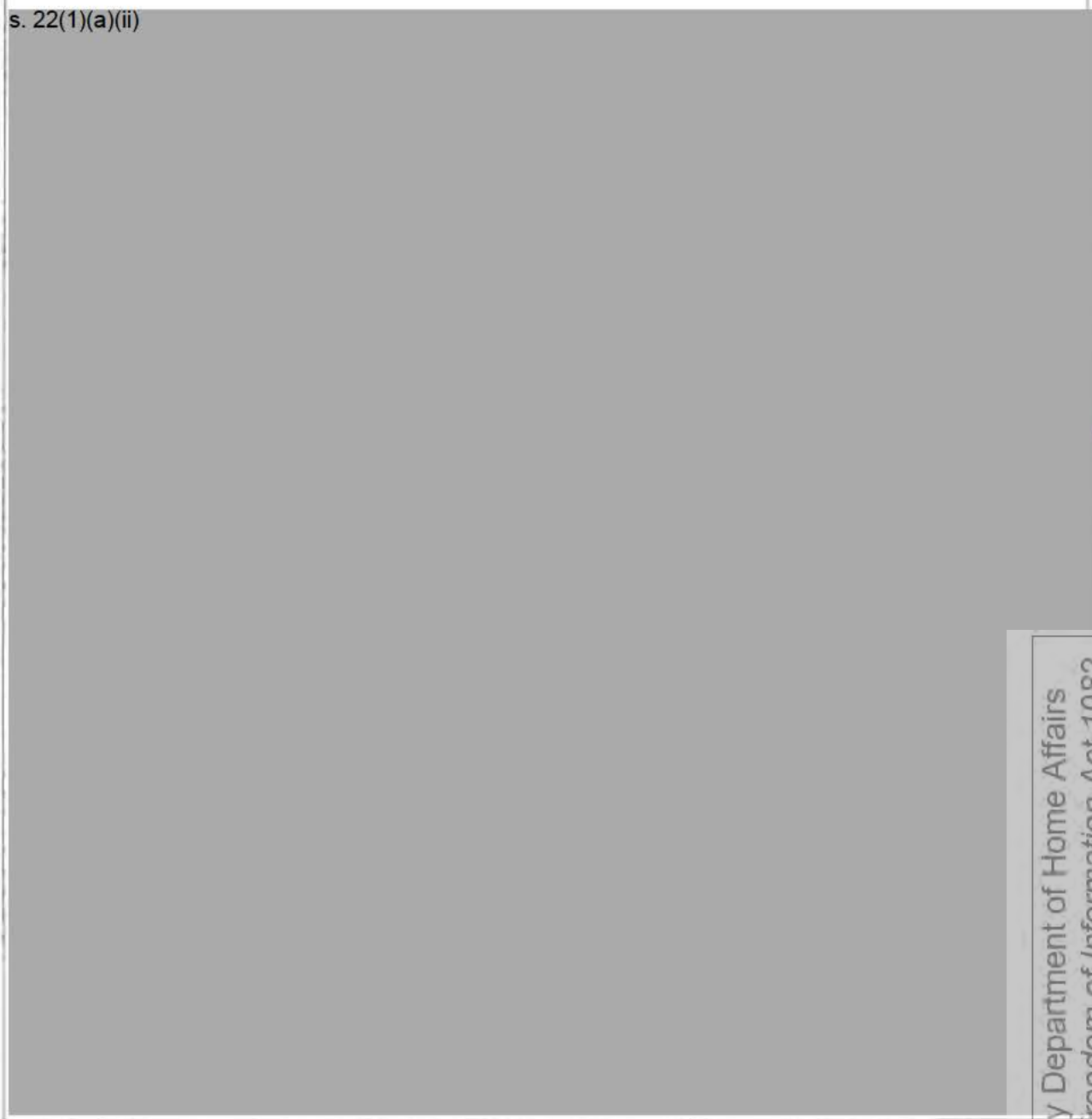
Submission

For decision

PDMS Ref. Number MS19-000540

To Minister for Immigration, Citizenship and Multicultural Affairs
Subject 2019-20 Humanitarian Program Composition
Timing At your convenience.

s. 22(1)(a)(ii)

A large rectangular area of the document is completely redacted with a solid grey fill, covering the majority of the page content below the header and above the footer.

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~~PROTECTED SENSITIVE: Cabinet~~

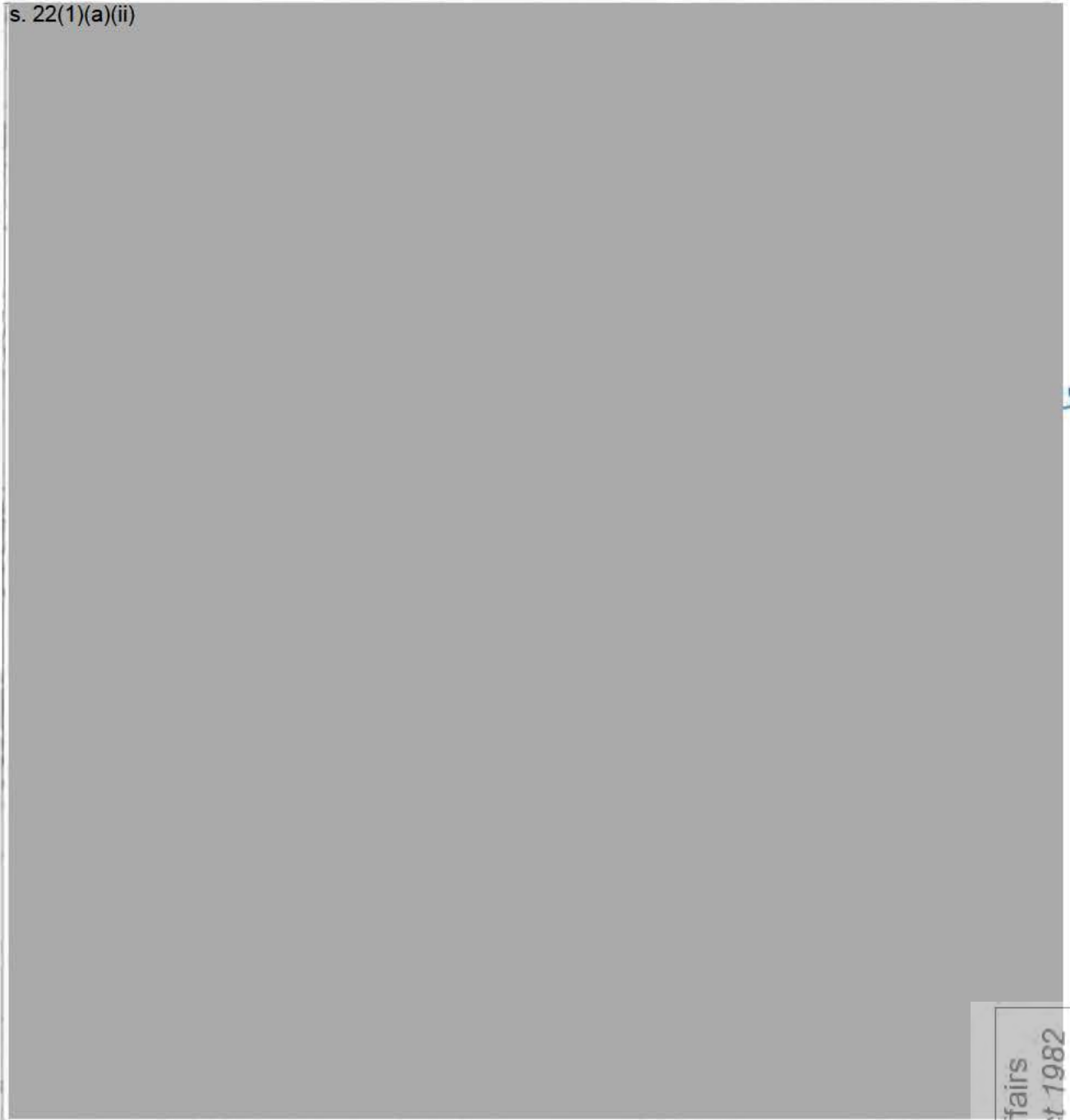
s. 22(1)(a)(ii)

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~~PROTECTED SENSITIVE: Cabinet~~

~~PROTECTED Sensitive: Cabinet~~

s. 22(1)(a)(ii)



s. 22(1)(a)(ii)



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Minister's Comments

s. 22(1)(a)(ii)

no ties to Australia. Please work with the UNHCR to establish an LGBTQ pilot of up to 100 places. Both of these pilots are not subject to the composition allocation.

s. 22(1)(a)(ii)

From: [Humanitarian Helpdesk](#)
To: s. 22(1)(a)(ii)
Cc:
Subject: RE: 2019-20 humanitarian program allocations [SEC=UNCLASSIFIED]
Date: Tuesday, 16 July 2019 8:59:42 AM
Attachments: [20190712 Definition VWC LGBTQI - 2019-20 -For Posts.docx](#)

UNCLASSIFIED

Hi s. 22(1)(a)(ii)

I've made some comments below and attached an updated document on s. 22(1)(a)(ii), LGBTQI, s. 22(1)(a)(ii) that has examples.

Hope this clarifies things for you but always happy to discuss or for you to send through case summaries for our thoughts. We have confidence in your ability to assess cases and code as appropriate!

Cheers

s. 22(1)(a)(ii)

Offshore Humanitarian Program Section
 Humanitarian Program Capability Branch | Refugee, Humanitarian and Settlement Division
 Immigration and Settlement Services Group
 Department of Home Affairs

s. 22(1)(a)(ii)

N.B. I do not work on Wednesdays

UNCLASSIFIED

From: s. 22(1)(a)(ii)
Sent: Monday, 15 July 2019 11:39 PM
To: Humanitarian Helpdesk s. 47E(d)
Cc: Emma Hope (DFAT) s. 22(1)(a)(ii)
Subject: FW: 2019-20 humanitarian program allocations [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hello again s. 22(1)(a)(ii)

We have another few questions about the following glossary/definitions provided by Program Management.

Component
s. 22(1)(a)(ii)
LGBTQI
s. 22(1)(a)(ii)

My questions relate to a number of self-referred Iranian citizens residing in Turkey who have lodged s/c 200 visa applications. At this stage we have around 30+ individuals who identify as LGBTQI s. 22(1)(a)(ii). It would be very helpful to understand policy parameters

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and intent given the s. 22(1)(a)(ii) (as has been the case for several years in Turkey) and the allocated number for this cohort (5).

We're happy for posts to code cases VWC if they feel the case meets the broad parameters. The key point is **vulnerability** – s. 22(1)(a)(ii)

This broader definition gives us more flexibility to accept cases that may not meet the sc204 criteria. LGBTQI in all its forms can be seen as being vulnerable given the countries they came from and even currently reside in. If you feel the case meets this broader definition, regardless of biological gender identity, then feel free to code the application as VWC. Also, only one applicant needs to meet VWC for the case to be coded that way. s. 22(1)(a)(ii)

The easiest way to approach this is through specific questions:

- Given the extension of the definition of VWC, can female applicants whose claims are based on persecution/discrimination due to sexual orientation be included as VWC and processed outside of the allocated number of LGBTQI applicants - as s/c 200 and s/c 204, and s/c 202 for those with family in Australia? Thereby effectively acknowledging risk/threat to the individual comes from danger of victimisation, harassment or serious abuse because of applicant's gender, but not solely categorising this threat as having a basis in the applicant's sexuality. While there is a 'pilot' program for LGBTQI applicants, and posts have been an allocation for this pilot, we've been accepting this cohort for years and s. 47E(d). If you assess them in it is open to you to process them as sc200, sc202 or sc204.
- Transsexual/Transgender applicants who identify as women – could you please provide some specific advice on differentiating between applicants who have undergone gender realignment surgery and those who have not (in terms of allocation under the policy). Each case is different but generally the applicant should be asked how they want the Dept to identify them (M or F) and if you believe it meets the broad parameters of WVC. The reality is that transgender/transsexuals are particularly vulnerable regardless of how they identify, biological gender or transition status so it is open to you to code this as VWC.

s. 47F(1)

- We have a number of self-referred homosexual males s. 22(1)(a)(ii). We do not know if we will receive 5 referrals from UNHCR, so can we take these from our s/c200 self-referred onhand? LGBTQI claims lift cases outside government policy on SAMs if that's a concern for you. I'd hope that UNHCR can find 5 cases but if they can't provide the referrals then you certainly can take them from your self-referred caseload. If you can't find five cases at all please let us know and your allocation can be redistributed elsewhere, not a problem.

Thanks and regards

s. 22(1)(a)
(ii)

Regards

s. 22(1)(a)(ii)

Second Secretary (Immigration and Border Protection) / Senior Migration Officer
Australian Embassy, Ankara, Turkey

s. 47E(d)

Website: www.homeaffairs.gov.au or www.turkey.embassy.gov.au

From: Humanitarian Helpdesk s. 47E(d)

Sent: Tuesday, 2 July 2019 1:01 AM

To: s. 22(1)(a)(ii)

Cc:

Subject: RE: 2019-20 humanitarian program allocations [SEC=UNCLASSIFIED]

Hi s. 22(1)
(a)(ii)

Good questions.

- s. 22(1)(a)(ii)
-

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)

Sent: Monday, 1 July 2019 7:15 PM

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To: s. 47E(d)

Cc:

Subject: RE: 2019-20 humanitarian program allocations [SEC=UNCLASSIFIED]

UNCLASSIFIED


s. 22(1)(a)(ii)



s. 22(1)(a)(ii)

Second Secretary (Immigration and Border Protection) / Senior Migration Officer
Australian Embassy, Ankara, Turkey

s. 47E(d)




Website: www.homeaffairs.gov.au or www.turkey.embassy.gov.au

From: Humanitarian Helpdesk s. 47E(d)


Sent: Monday, 1 July 2019 9:03 AM

s. 22(1)(a)(ii)




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s. 22(1)(a)(ii)



Subject: 2019-20 humanitarian program allocations


s. 22(1)(a)(ii)



Program distribution


The Minister has distributed the offshore program into two broad elements.

s. 22(1)(a)(ii)



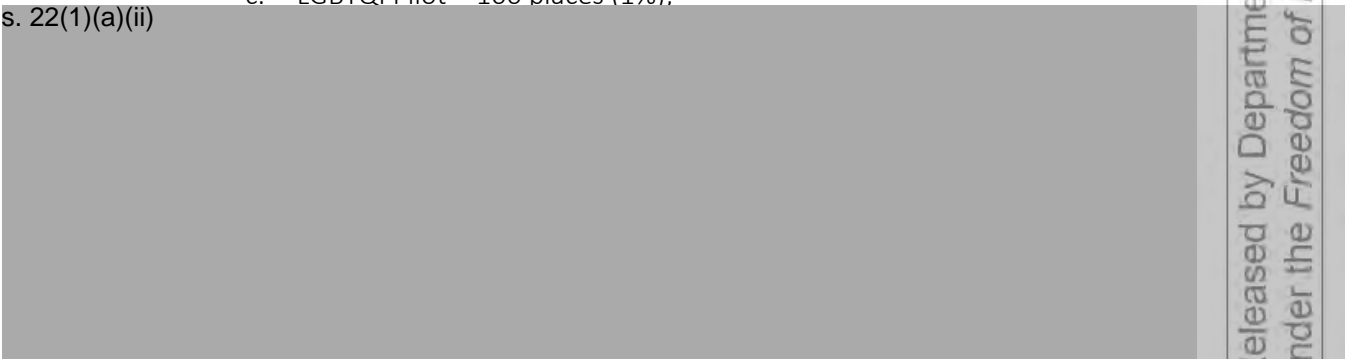
2. Cohort specific allocations (not limited by geography) -- 4,610 places (27%)

s. 22(1)(a)(ii)



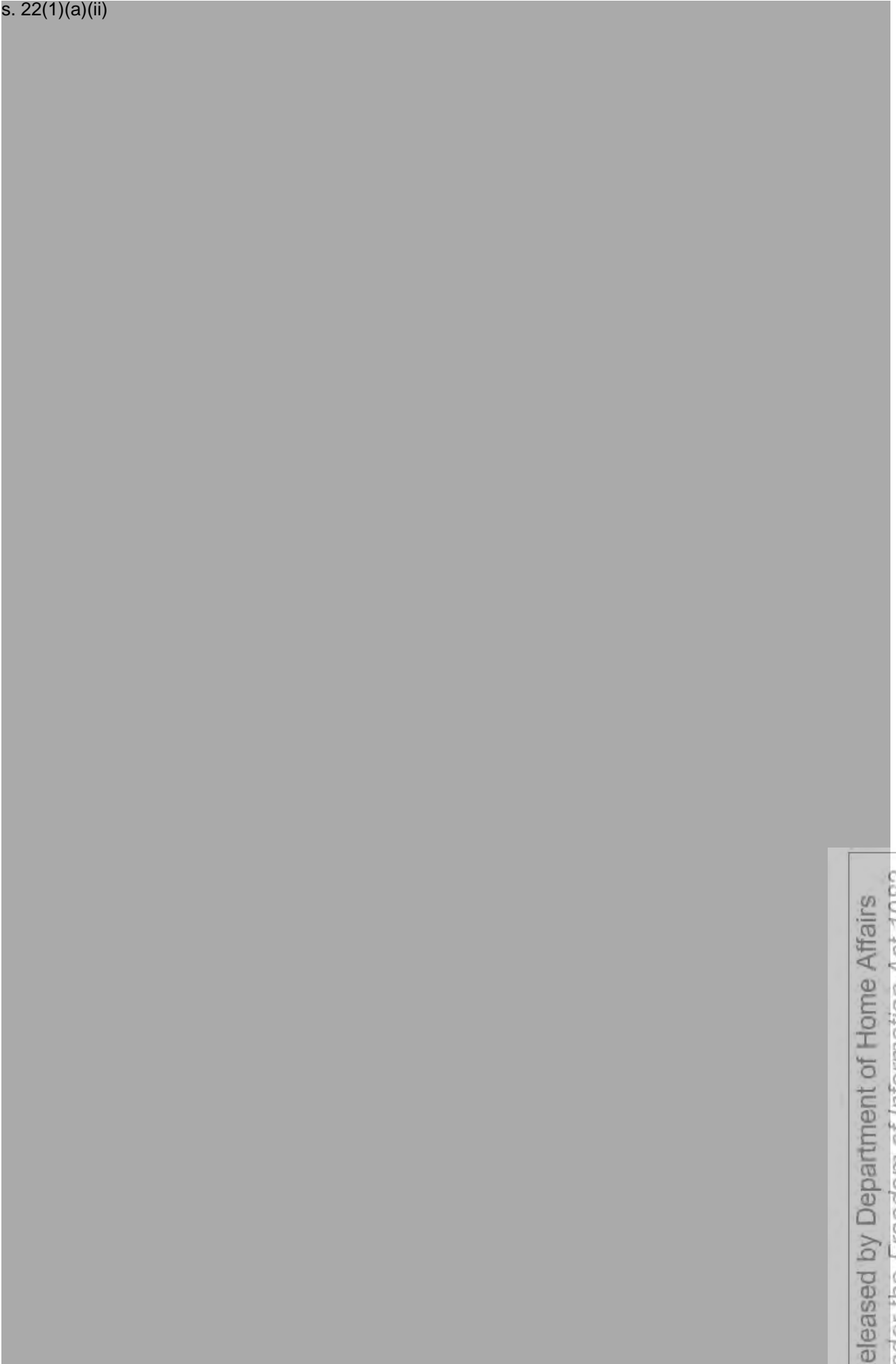
- c. LGBTQI Pilot - 100 places (1%);

s. 22(1)(a)(ii)



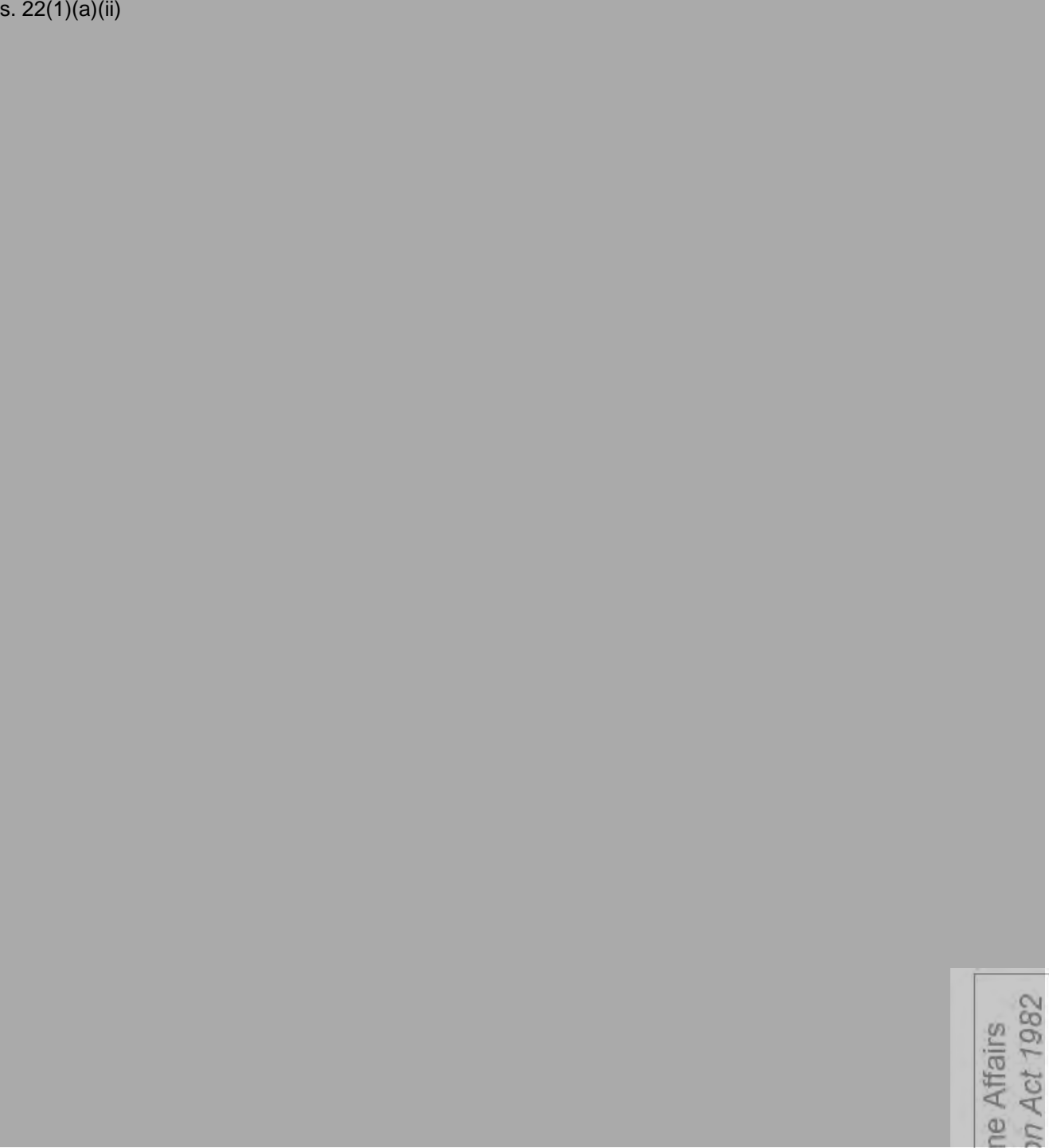
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s. 22(1)(a)(ii)



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s. 22(1)(a)(ii)




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GLOSSARY FOR OVERSEAS POSTS


Component	Definition	Case Example
s. 22(1)(a)(ii)		
LGBTQI	<p>LGBTQI places will be filled through UNHCR referrals. The No-Single-Adult-Male (No SAM) Policy does not apply to LGBTQI cases.</p> <p>There are minimum 100 places allocated to the LGBTQI pilot this year.</p>	<p>People who are LGBTI are likely to have:</p> <ul style="list-style-type: none"> • common experiences of self-realisation of their sexuality or gender identity • a sense of difference or shame

- | | | |
|--|--|---|
| | | <ul style="list-style-type: none">• experience hiding their identity• exclusion from family or community• attempted to conform to avoid mistreatment• Some experiences of past mistreatment. |
|--|--|---|

s. 22(1)(a)(ii)



s. 22(1)(a)(ii)



s. 22(1)(a)(ii)

From: Humanitarian Helpdesk
Sent: Wednesday, 4 December 2019 3:00 PM
To: s. 22(1)(a)(ii)
Cc:
Subject: RE: New Delhi - Coding against VWC and LGBTQI categories [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Double-coding mucks up reporting for our data team as the case gets counted twice. Another post also posed a similar question as they have several cases of lesbians who are also considered vulnerable women due to their peculiar circumstances. The case you have mentioned certainly qualifies to be coded both as LGBTQI and VWC. The best way to resolve it to double code it and then advise us its details so that we can count it only once against the category where we are running short of grants (while noting its profile against both categories).

Thanks

s. 22(1)(a)(ii)

Offshore Humanitarian Program Section
 Humanitarian Program Capability Branch | Refugee, Humanitarian and Settlement Programs Division
 Immigration and Settlement Services Group
 Department of Home Affairs

s. 22(1)(a)(ii)

For-Official-Use-Only

From: s. 22(1)(a)(ii)
Sent: Wednesday, 4 December 2019 1:15 AM
To: Humanitarian Helpdesk
Cc: s. 22(1)(a)(ii)
Subject: RE: New Delhi - UNHCR referrals clarification [DLM=For-Official-Use-Only]


For-Official-Use-Only

s. 22(1)(a)

Thanks, I've fed that back to UNHCR.

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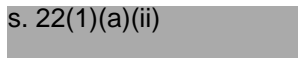
s. 22(1)(a)(ii)



Also, can cases be double-coded – Eg VWC and LGBTI? s. 22(1)(a)(ii), s. 47F(1) who will need to have their sex recorded as female, because that matches with their documents for the exit permit, but they identify as male, that could potentially be coded for both. And there is also the possibility we could be referred Lesbians as well.


Kind regards

s. 22(1)(a)(ii)




Senior Migration Officer | New Delhi
Department of Home Affairs

s. 22(1)(a)(ii)




Website: www.homeaffairs.gov.au | www.india.embassy.gov.au

From: Humanitarian Helpdesk s. 47E(d)




Sent: Tuesday, 3 December 2019 2:57 AM

s. 22(1)(a)(ii)




Humanitarian Helpdesk

s. 47E(d)




Cc: s. 22(1)(a)(ii)




Subject: RE: New Delhi - UNHCR referrals clarification [DLM=For-Official-Use-Only]

s. 22(1)(a)(ii)



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s. 22(1)(a)(ii)

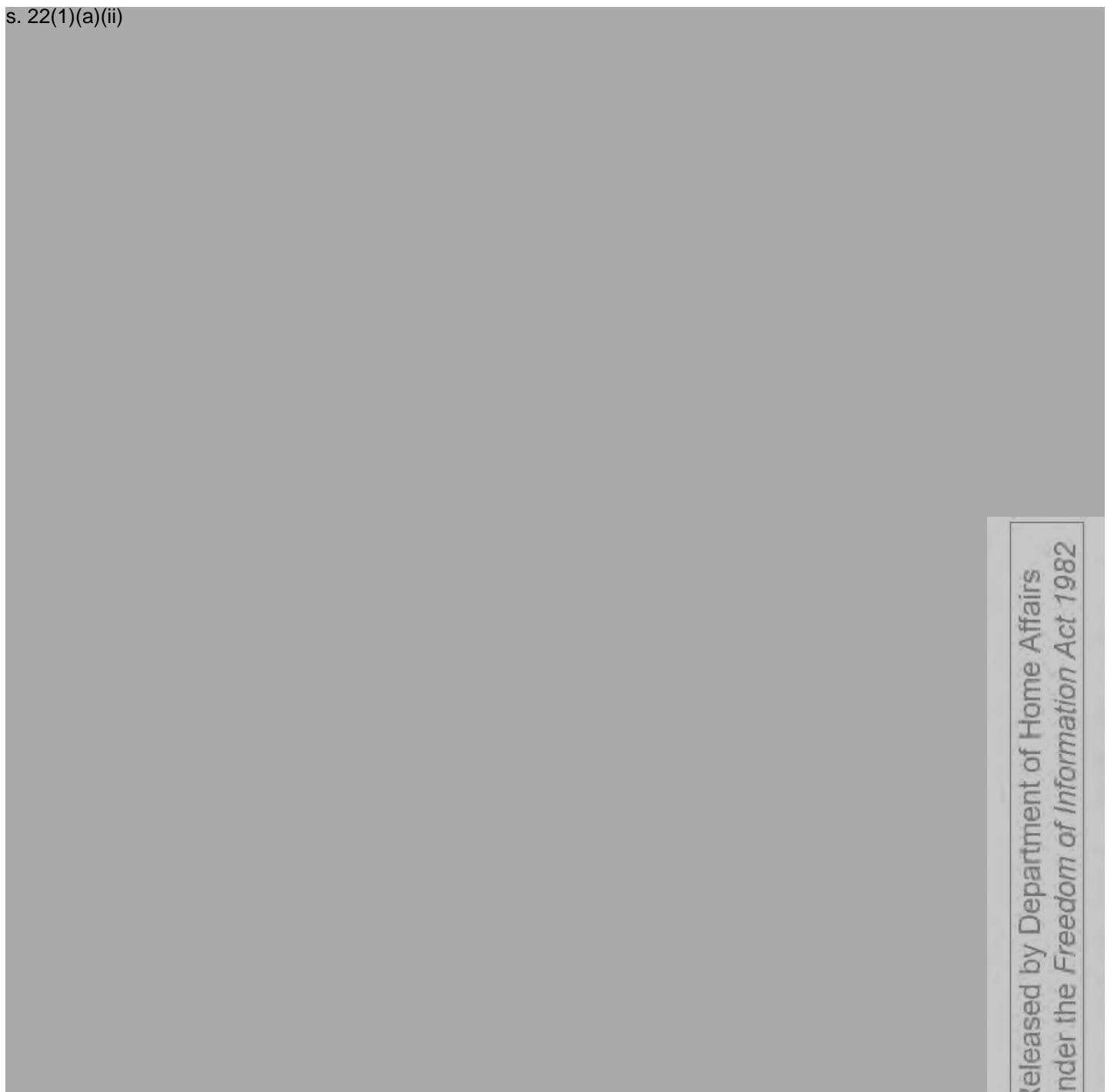


For-Official-Use-Only

From: s. 22(1)(a)(ii)
Sent: Monday, 2 December 2019 11:33 PM
To: Humanitarian Helpdesk s. 47E(d)
Cc: s. 22(1)(a)(ii)
Subject: New Delhi - UNHCR referrals clarification [DLM=For-Official-Use-Only]

For-Official-Use-Only

s. 22(1)(a)(ii)



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s. 22(1)(a)(ii)

s. 47F(1)

Kind regards

s. 22(1)(a)(ii)

Senior Migration Officer | New Delhi
Department of Home Affairs

s. 22(1)(a)(ii)

Website: www.homeaffairs.gov.au | www.india.embassy.gov.au

From: Humanitarian Helpdesk s. 47E(d)

Sent: Thursday, 21 November 2019 4:22 AM

s. 22(1)(a)(ii)

Subject: RE: New Delhi: Iranian LGBTI case [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi s. 22(1)(a)(ii)

Please accept this Iranian LGBTQI referral for consideration. I confirm your understanding around referrals for VWC/LGBTQI/UHM which are priority cohorts.

s. 22(1)(a)(ii)

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s. 22(1)(a)(ii)

Offshore Humanitarian Program Section
Humanitarian Program Capability Branch | Refugee, Humanitarian and Settlement Programs Division
Immigration and Settlement Services Group
Department of Home Affairs

s. 22(1)(a)(ii)

For-Official-Use-Only

s. 22(1)(a)(ii)

Sent: Wednesday, 20 November 2019 6:50 PM

To: Humanitarian Helpdesk s. 22(1)(a)(ii)

Cc: s. 22(1)(a)(ii)

Subject: New Delhi: s. 22(1)(a)(ii) LGBTI case [DLM=For-Official-Use-Only]

For-Official-Use-Only

Hi

New Delhi has received s. 47F(1) LGBTI referrals, with the one attached for an

I just wanted to confirm that even though New Delhi only has a nationality breakdown of Afghan, Myanmar, Bhutanese and Tibetan that we can accept referrals that meet the UHM/VWC/LGBTI quota for any nationality, except Somali, Sudanese and South Sudanese?

Kind regards

s. 22(1)(a)(ii)

Senior Migration Officer | New Delhi
Department of Home Affairs

s. 22(1)(a)(ii)

Website: www.homeaffairs.gov.au | www.india.embassy.gov.au

From: s. 22(1)(a)(ii)

Sent: Tuesday, 19 November 2019 4:36 PM

s. 22(1)(a)(ii)

Dear s. 22(1)(a)(ii)

s. 47F(1)

s. 22(1)(a)(ii)

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s. 22(1)(a)(ii)

From:

s. 22(1)(a)(ii)

Sent:

Tuesday, 26 November 2019 6:38 PM

To:

Humanitarian Helpdesk

Subject:

RE: Out of region referrals - significant medical conditions and Egyptian UHM/LGBTQI [DLM=Sensitive:Personal]

Sensitive:Personal

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

Second Secretary (Immigration and Border Protection)
Department of Home Affairs
Australian High Commission Kuala Lumpur

s. 22(1)(a)(ii)

<http://malaysia.highcommission.gov.au/> / www.homeaffairs.gov.au



From: Humanitarian Helpdesk

Sent: Tuesday, 26 November 2019 9:33 AM

To: s. 22(1)(a)

Subject: RE: Out of region referrals - significant medical conditions and Egyptian UHM/LGBTQI [DLM=Sensitive:Personal]

Sensitive:Personal

Hi s. 22(1)(a)

Thank you for consulting us on these referrals.

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Easy thing first. No issues in accepting the referral for the LGBTQI applicant from [REDACTED] s. 22(1)(a)(ii) You are right that there are no restrictions on nationality with LGBTQI (except Somalia, Sudan and South Sudan). s. 47F(1) [REDACTED].

s. 22(1)(a)(ii)

Happy to discuss if you feel my response is fuzzy and not more prescriptive.

Regards

s. 22(1)(a)(ii)

Offshore Humanitarian Program Section
 Humanitarian Program Capability Branch | Refugee, Humanitarian and Settlement Programs Division
 Immigration and Settlement Services Group
 Department of Home Affairs
 s. 22(1)(a)(ii)

Sensitive:Personal

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From: s. 22(1)(a)(ii)

Sent: Monday, 25 November 2019 5:53 PM

To: Humanitarian Helpdesk s. 47E(d)

Subject: Out of region referrals - significant medical conditions and Egyptian UHM/LGBTQI [DLM=Sensitive:Personal]

Sensitive:Personal

Hi Helpdesk

I am writing to seek your advice on recent UNHCR out of region November referrals. s. 22(1)(a)(ii)

view.

s. 22(1)(a)(ii)

s. 22(1)(a)(ii)

I understand that with the UHM/LGBTQI there are no restrictions on nationality, except for Somalian and South Sudanese.

s. 47F(1)

Thanks again for your help.

s. 22(1)(a)(ii)

Second Secretary (Immigration and Border Protection)
Department of Home Affairs
Australian High Commission Kuala Lumpur

s. 22(1)(a)(ii)

<http://malaysia.highcommission.gov.au/> / www.homeaffairs.gov.au



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s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)
Sent: Friday, 4 October 2019 12:13 PM
To: s. 22(1)(a)(ii)
Cc:
Subject: FW: Processing Updates: Please READ [DLM=For-Official-Use-Only]
Attachments: 2019–20 Offshore Humanitarian Program Data Entry Requirements.pdf

For-Official-Use-Only

s. 22(1)(a)(ii)

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s. 22(1)(a)(ii)



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From: s. 22(1)(a)(ii)
Sent: Thursday, 3 October 2019 12:48 PM
To: s. 22(1)(a)(ii)

³
s. 22(1)(a)(ii)

Subject: Processing Updates: Please READ [DLM=For-Official-Use-Only]

For-Official-Use-Only

Dear Colleagues,

Appreciate your adherence of the following updates. If you need further clarification, please do not hesitate to approach any of the supervisors

Update One: s. 22(1)(a)(ii) and **LGBTQI**

If you have any applications coming from the following cohorts, please do not single process

s. 22(1)(a)(ii)

- Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Intersex – lgbtqi

In addition when you have identified these cohorts, you are also required to add a tracking code (Shift F3 and then F9 from main applicant record), please see below example:

Type: ORC


s. 22(1)(a)(ii)

Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Intersex - **LGBTQI**

s. 47F(1)

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s. 22(1)(a)(ii)




Kind regards

s. 22(1)(a)(ii)

Team Leader | International Obligations and SHP Section
Humanitarian Program Operations Branch | Refugee, Humanitarian and Settlement Division
Immigration and Settlement Services Group
Department of Home Affairs

s. 22(1)(a)(ii)



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2019–20 Humanitarian Program – Data Entry Requirements

s. 22(1)(a)(ii)

	Definition	Case Example
s. 22(1)(a)(ii)		

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s. 22(1)(a)(ii)

Definition	Case Example
s. 22(1)(a)(ii)	

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s. 22(1)(a)(ii)

Definition	Case Example
<div>s. 22(1)(a)(ii)</div>	

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LGBTQI

Definition	Case Example
<p>LGBTQI places will be filled through UNHCR referrals. The No-Single-Adult-Male (No SAM) Policy does not apply to LGBTQI cases.</p> <p>There are 100 places allocated to the LGBTQI pilot this year.</p>	<p>People who are LGBTI are likely to have:</p> <ul style="list-style-type: none"> • common experiences of self-realisation of their sexuality or gender identity • a sense of difference or shame • experience hiding their identity • exclusion from family or community • attempted to conform to avoid mistreatment • Some experiences of past mistreatment.

IRIS Data Entry

- The tracking number should be added to applicants prior to visa grant. It is recorded in the **s. 47E(d)** Status for Case screen (Shift F3).
 - **Tracking Number:** ORC
 - **Number/ID:** LGBTQI

Instructions for adding the tracking number after visa grant are:


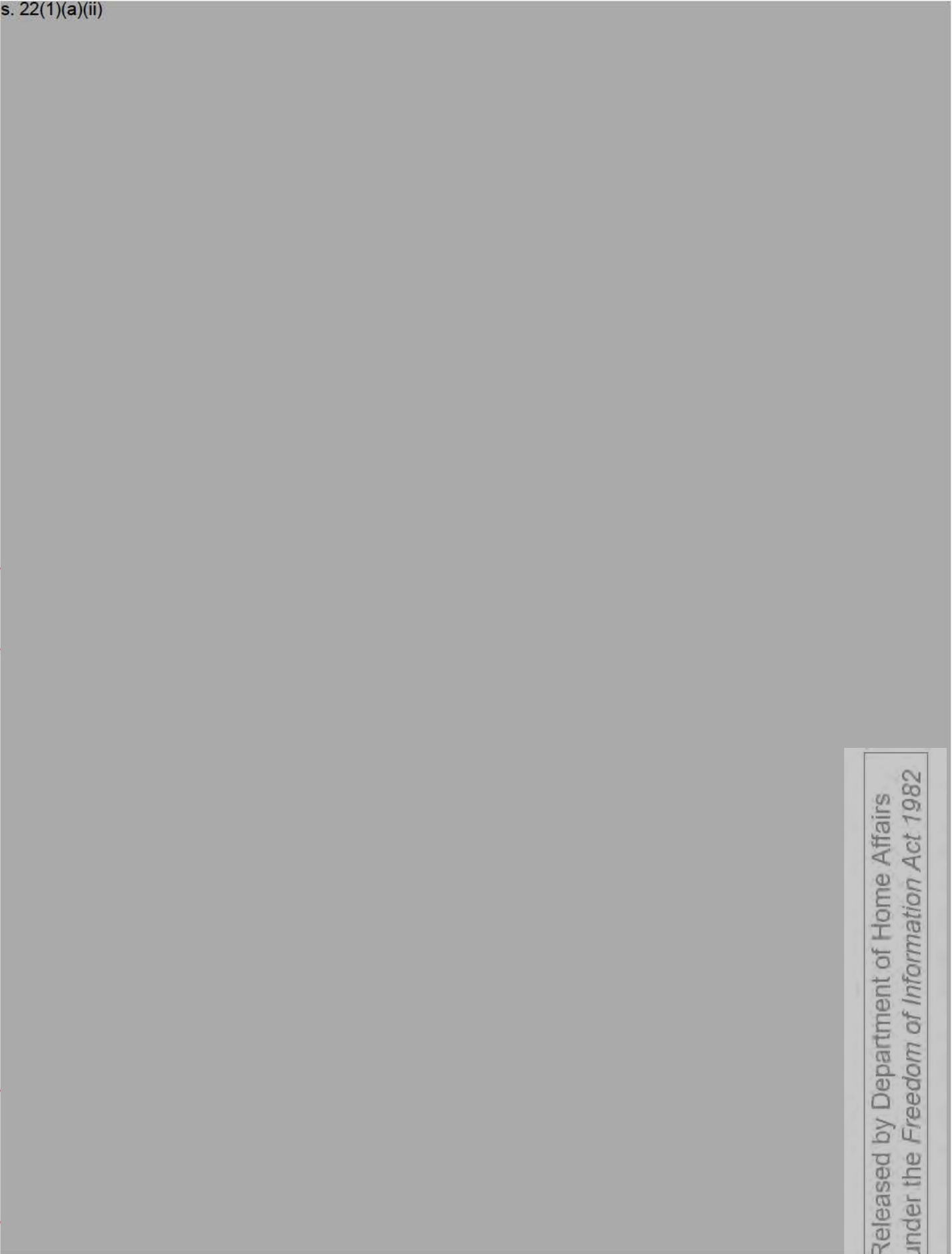
- Void the evidence so that the record sits as Granted (Please make sure you do not undo the grant).
- Enter the code in the **s. 47E(d)** Status for Case screen (Shift F3).
- Finalise the case again (ensuring the grant date remains the same).

s. 22(1)(a)(ii)

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s. 22(1)(a)(ii)


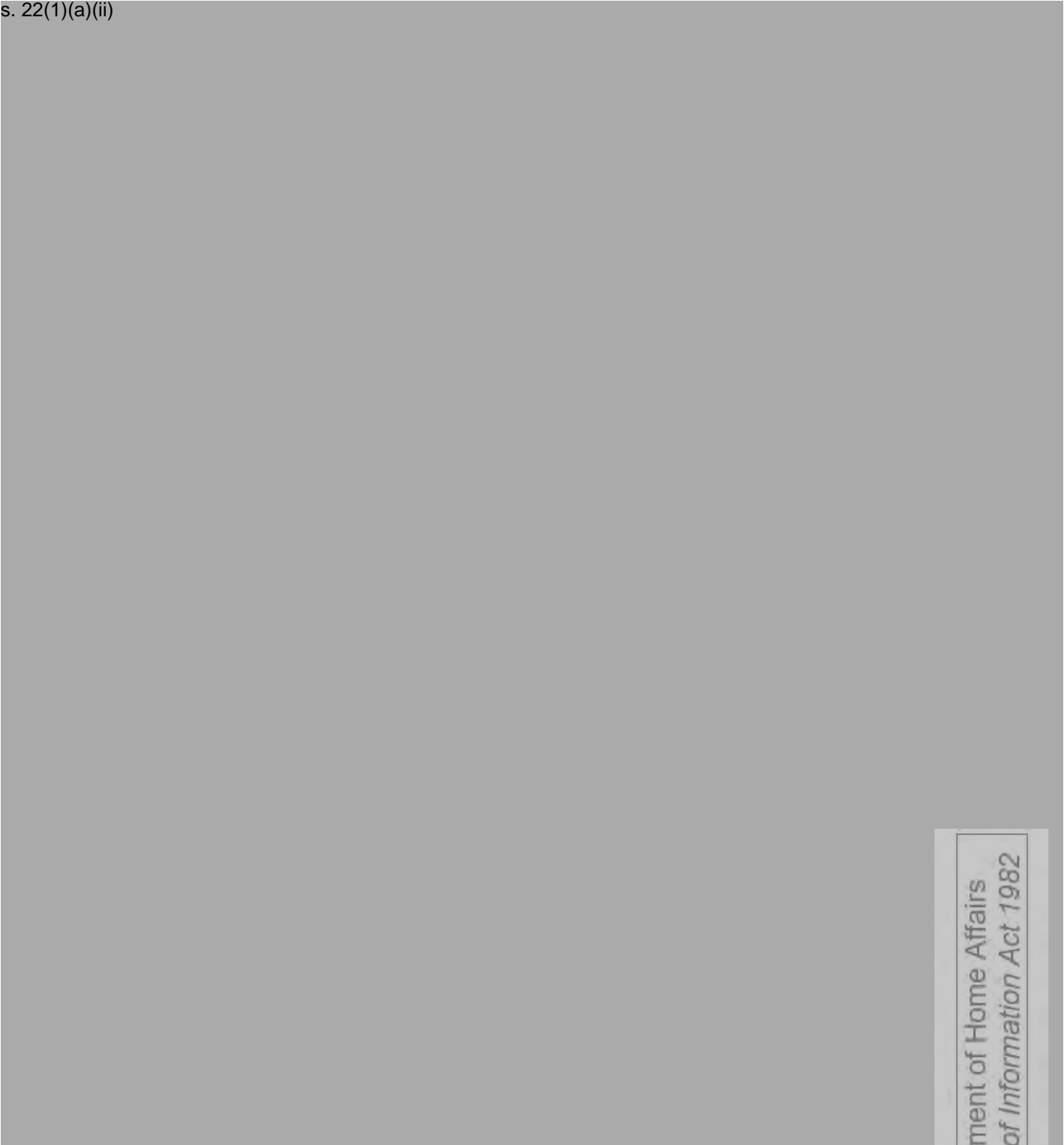


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s. 22(1)(a)(ii)


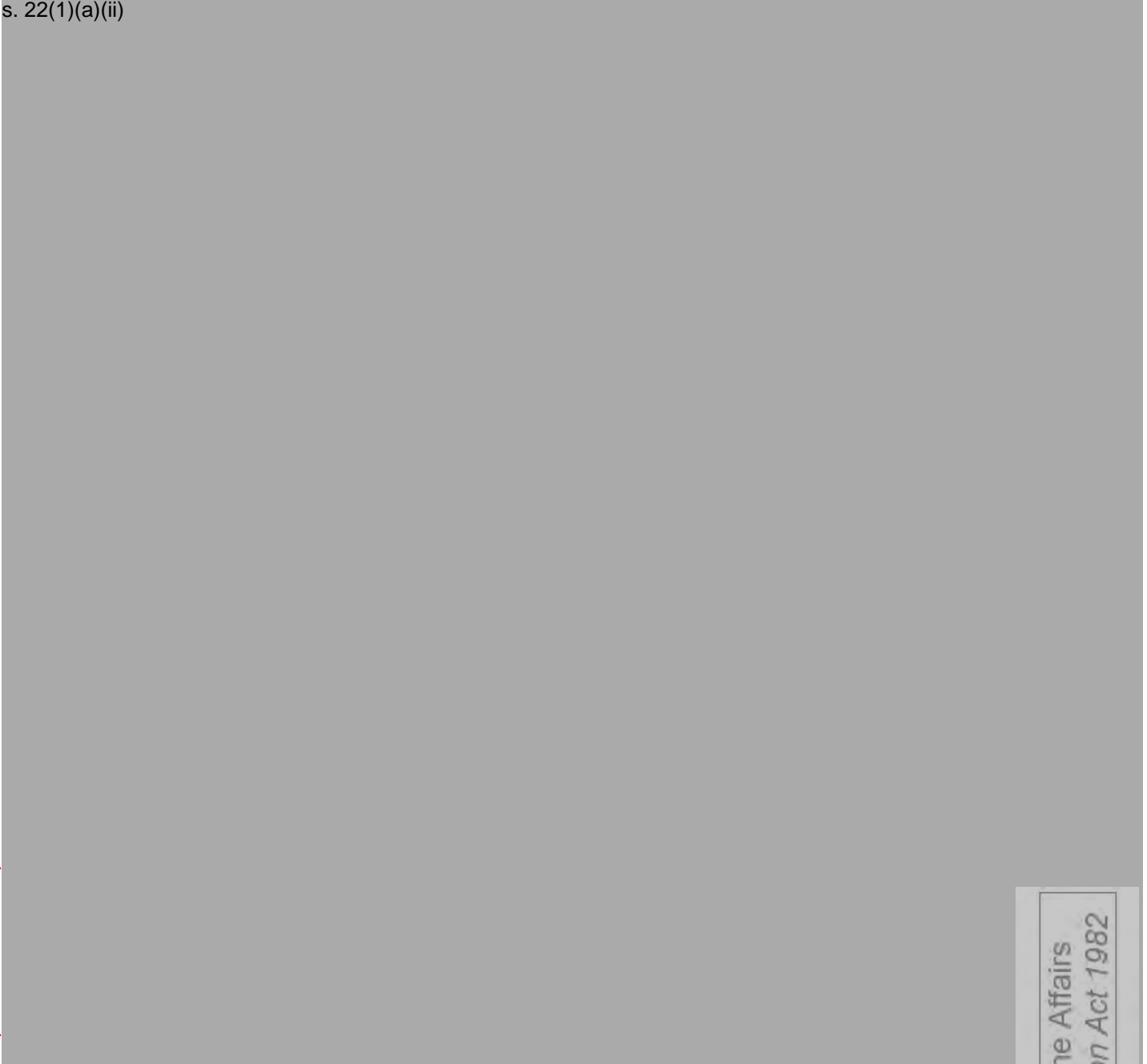


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s. 22(1)(a)(ii)



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Regional Australia Postcode List


State/Territory	Regional areas
AUSTRALIAN CAPITAL TERRITORY	All postcodes
NEW SOUTH WALES (Excluding Sydney)	2250 to 2251
	2256 to 2263
	2264 to 2411
	2415
	2420 to 2490
	2500 to 2551
	2575 to 2594
	2618 to 2739
	2753 to 2754
	2756 to 2758
	2773 to 2780 and 2782 to 2898
NORFOLK ISLAND	All postcodes
NORTHERN TERRITORY	All postcodes
SOUTH AUSTRALIA	All postcodes
TASMANIA	All postcodes
WESTERN AUSTRALIA (Excluding Perth)	6041 to 6044
	6082 to 6084
	6121 to 6126
	6200 to 6799

State/Territory	Regional areas
QUEENSLAND (Excluding Brisbane and the Gold Coast)	4025, 4124 to 4125, 4133
	4183 to 4184, 4211
	4270 to 4272
	4275 , 4280, 4285, 4287
	4306 to 4499, 4507, 4515
	4517 to 4519 and 4522 to 4899
VICTORIA (Excluding Melbourne)	3097, 3099, 3139
	3211 to 3334
	3340 to 3424
	3430 to 3649
	3658 to 3767, 3770, 3775
	3777 to 3783
	3785 to 3789
	3791 to 3793
	3795 to 3797, 3799
	3809 to 3810
	3812 to 3909
	3912 to 3913
	3915 to 3916
	3918 to 3931
	3933 to 3934
	3936 to 3974 and 3978 to 3996

Attachment A from *Adjustment to definition of 'regional Australia' under the Offshore Humanitarian Program Minute* (ADD2019/3802465). The implementation of this list is back dated to 01 July 2019.

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s. 22(1)(a)(ii)



s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii)
Sent: Monday, 1 July 2019 1:00 PM
To: s. 22(1)(a)(ii)
Cc:
Subject: RE: Tracking number for recording the LGBTQI s. 22(1)(a)(ii) cohorts
[SEC=UNCLASSIFIED]

s. 22(1)(a)(ii)

UNCLASSIFIED

From: s. 22(1)(a)(ii)
Sent: Monday, 1 July 2019 12:43 PM
To: s. 22(1)(a)(ii)
Subject: RE: Tracking number for recording the LGBTQI and UHM (unlinked) cohorts [SEC=UNCLASSIFIED]

UNCLASSIFIED


s. 22(1)(a)(ii)

UNCLASSIFIED


From: s. 22(1)(a)(ii)
Sent: Monday, 1 July 2019 10:56 AM

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s. 22(1)(a)(ii)


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s. 22(1)(a)(ii)

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UNCLASSIFIED

s. 22(1)(a)(ii)


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s. 22(1)(a)(ii)



s. 22(1)(a)(ii)




UNCLASSIFIED

From: Humanitarian Data s. 47E(d)

Sent: Wednesday, 26 June 2019 2:57 PM

s. 22(1)(a)(ii)




Subject: RE: Tracking number for recording the LGBTQI and s. 22(1)(a)(ii)) cohorts [SEC=UNCLASSIFIED]

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s. 22(1)(a)(ii)




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From: s. 22(1)(a)(ii)


Sent: Tuesday, 25 June 2019 3:38 PM

s. 22(1)(a)(ii)



Subject: RE: Tracking number for recording the LGBTQI and UHM (unlinked) cohorts [SEC=UNCLASSIFIED]

s. 22(1)(a)(ii)



Thank you in advance

s. 22(1)(a)(ii). Offshore Humanitarian Program Section
Humanitarian Program Capability Branch | Refugee, Citizenship and Multicultural Programs Division

Immigration and Citizenship Services Group
Department of Home Affairs

s. 22(1)(a)(ii)

From: s. 22(1)(a)(ii) >

Sent: Tuesday, 25 June 2019 3:07 PM

To: s. 22(1)(a)(ii)

Subject: RE: Tracking number for recording the LGBTQI s. 22(1)(a)(ii) cohorts [SEC=UNCLASSIFIED]

UNCLASSIFIED

s. 22(1)(a)(ii)

Regards

s. 22(1)(a)
(ii)

s. 22(1)(a)(ii)

Director
Humanitarian and International Protection Policy Section
Migration Policy Branch
Immigration, Citizenship and Multiculturalism Policy Division

s. 22(1)(a)(ii)

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s. 22(1)(a)(ii)

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s. 22(1)(a)(ii)⁶
Subject: FW: Tracking number for recording the LGBTQI and s. 22(1)(a)(ii) [SEC=UNCLASSIFIED]

s. 22(1)(a)(ii)

Find below information on how posts will need to record the tracking numbers so that we can easily identify applicants that will count towards the LGBTQI and UHM (unlinked) cohorts.

The tracking number should be added to applicants prior to visa grant. It is recorded in the s. 47E(d) Status for Case screen (Shift F3).

Cohort	Tracking Number	Number/ID
LGBTQI	ORC	LGBTQI

s. 22(1)(a)(ii)

s. 47E(d)

Thanks,
s. 22(1)(a)(ii)

Offshore Humanitarian Data, Reporting and Analysis unit
Public Information and Reporting Section
Humanitarian Program Capability Branch | Refugee, Citizenship and Multicultural Programs Division
Immigration and Citizenship Services Group
Department of Home Affairs

s. 47E(d)

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Australian Government

**Department of Immigration
and Border Protection**

Sexual orientation and Gender Identity

Facilitator guide

Document details

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Policies in relation to the Department of Immigration and Border Protection (DIBP, the department) programs change over time. For current information visit the department's website at [s. 47E\(d\)](#)

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Contents

Module purpose	5
Target audience	5
Module duration	5
Learning outcomes	5
Participant prerequisites	5
Materials / equipment required	5
Module agenda	5
Glossary of terms/abbreviations	6
Contacts	6
Slide 2 and 3 - Module overview	7
Slide 4 - The Genderbread Person	7
Slide 4 - Gender	7
Slide 5 - Sex	8
Slide 7 - Lesbian and gay rights in the world	9
Slide 8 - Lesbian women	9
Slide 9 - Gay men	9
Slide 10 - Bisexual	10
Slide 11 - Transgender	10
Slide 12 - Intersex	11
Slide 13 - Interviewing challenges	11
Slide 14 - Effective and sensitive interviewing	13
Slide 15 – Effective and sensitive interviewing	14
Slide 16 - Useful areas of questioning	14
Slide 17 - Difference, stigma and shame	15

Slide 18 - Family, marriage and community.....	15
Slide 19 - Relationships	16
Slide 20 - Questions and topics to avoid.....	17
Slide 21 - Assessment	17
Slide 22 – Assessment.....	18
Slide 23 – Assessment.....	19
Slide 24 - Assessing credibility.....	21
Slide 25 - Evidence	22
Slide 26 - Country Information	23

Module purpose

The purpose of this module is to ensure protection visa decision makers have an understanding of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) issues and are able to effectively and sensitively interview LGBTI applicants and robustly assess LGBTI claims.

Target audience

All Protection visa decision makers

Module duration

Approximately 2 hours

Learning outcomes

Develop a greater understanding of:

- claims related to sexual orientation and gender identity
- how to sensitively and effectively interview LGBTI applicants
- how to robustly assess claims relating to sexual orientation and gender identity.

Participant prerequisites

- PV Induction Training, including Refugee Law, Complementary Protection and Fast Track components

Materials / equipment required

Materials you will need to deliver this training:

- Light pro and PC/laptop for powerpoint presentation.
- Case Study Handouts.

Module agenda

Content	Time Allocated
Introduction/Learning outcomes	5 mins
Background	15 mins
Interviewing	20 mins
Assessment	20 mins
Case Studies	15 mins
Questions	10 mins
End module	

Glossary of terms/abbreviations

Acronym	Meaning
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex

Contacts

This presentation has been developed by Protection Assessment Support Section, Onshore Protection Branch. All requests to amend the content should be made to Protection Programme Quality Assurance and Training Section at s. 47E(d)

Slide 2 and 3 - Module overview



Introduce yourself and any colleagues.

Briefly outline the structure and learning outcomes for the session as per slides.

Slide 4 - The Genderbread Person



The way gender identity, biological sex and sexual orientation is expressed is on spectrums, rather than in boxes, as each individual sits somewhere on the scale and this can also be fluid over time.

Slide 4 - Gender



Gender is the social expression of being male or female. It refers to the different social and cultural expectations of men and women, rather than biological differences. Gender includes a combination of identity, expression and social expectations related to masculinity and femininity.

Gender identity

Gender identity is each person's deeply felt internal experience of gender, which may or may not correspond with their sex at birth. It includes a person's sense of their body, as well as other expressions of gender, including dress, speech, mannerisms and social roles. Some people may seek to change their sex to more fully match their gender identity.

Transgender

'Transgender' describes people whose gender identity and/or gender expression differs from their biological sex. Transgender is a gender identity, not a sexual orientation. A transgender person may be heterosexual, gay, lesbian or bisexual. For example, an applicant who was born biologically male but identifies as a woman, may be sexually or romantically attracted to men and, therefore, identify as a heterosexual woman.

It is important to note that there is a difference between cross-dressing and being transgender. Most cross-dressers are not transgender because they do not feel that they are a different gender to their biological sex. Rather, cross dressers enjoy temporarily wearing clothing typical of another gender.

Gender transition

Gender transition is the process by which a person strives to more closely align their internal sense of their own gender with their outward appearance. Some people may socially transition,

for example by changing their dress, or using different names. Some people also transition medically, for example using hormone therapy or having gender re-assignment surgery.

Slide 5 - Sex



Sex is a person's physical anatomy, which can be female, male, or intersex. It includes internal and external reproductive organs, chromosomes and hormones.

Intersex

The term 'intersex' refers to a condition in which an individual is born with the reproductive or sexual anatomy that does not fit typical biological categories of male or female. For example, a person may be missing internal reproductive organs or may have both male and female external genitalia.

These conditions may be apparent at birth, may appear at puberty or may be discovered only during a medical examination. Individuals with these conditions were previously referred to as 'hermaphrodites', however, this term is outdated and should not be used unless the applicant uses it.

An intersex person may identify as male or female, and this gender identity may or may not be the same as their apparent sex. Their sexual orientation may be heterosexual, gay, lesbian, or bisexual.

Sexual orientation

'Sexual orientation' is each person's capacity for intimate relations with, and profound emotional and sexual attraction to, another person. This can include individuals of a different gender, the same gender or more than one gender.

Sexual orientation is not the same as gender identity. Sexual orientation relates to who a person is attracted to, whereas gender identity relates to a person's sense of their own gender.

Lesbian

A 'lesbian' is a woman whose enduring physical/sexual, romantic and/or emotional attraction is primarily to other women.

Gay/homosexual

A 'gay' or 'homosexual' person is attracted primarily to members of the same sex. 'Gay' is often used to describe a man whose enduring physical/sexual, romantic and/or emotional attraction is to other men, although the term is also used to describe women (lesbians).

Bisexual

'Bisexual' describes an individual who has the capacity to be physically/sexually, romantically and/or emotionally attracted to both men and women. Bisexual people do not necessarily have

equal attraction to men and women as they may have a preference towards men or women, which can also change over time.

Slide 7 - Lesbian and gay rights in the world



It is estimated that between 70 million – 1.7 billion people in the world are lesbian, gay, bisexual, transgender or intersex.

At least 75 countries criminalise consensual same-sex conduct and 8 of these countries can sentence a person to death for this.

People who are sexual or gender non-conforming suffer high rates of physical violence, sexual abuse, verbal abuse, discrimination and alienation. This happens at home, at school, at work and in public places. LGBTI persons often experience severe social isolation, inadequate legal protection, lack of access to responsive health care, unsafe housing, lack of employment and are targets for community violence.

Slide 8 - Lesbian women



Lesbian women in many countries often suffer cumulative discrimination due to their gender, lower socioeconomic status than men, in addition to their sexual orientation. Officers may find that the treatment of women in general in a society provides useful insight into the situation of lesbian applicants in their country of origin.

Lesbians may be subjected to gender-related harm by non-state actors, such as 'corrective' rape, violence by intimate partners, forced marriage or honour crimes committed by family members. Case officers should exercise particular sensitivity when interviewing applicants with claims involving sexual violence or intimate partner violence.

In some cases, lesbians may have had heterosexual relationships because of social pressures to marry and have children.

Slide 9 - Gay men



Gay men are often more publicly visible than other LGBTI groups and can be subjected to homophobia.

Gay men may be at particular risk of harm in detention, prison, the military and in other traditionally male dominated environments.

Some gay men may also have had heterosexual relationships because of social pressures, including pressure to marry and have children.

Slide 10 - Bisexual



Bisexual applicants may describe their sexual orientation as fluid or flexible. There are many manifestations of bisexuality. For example, some people might be attracted to the same sex or opposite sex at different times in their life, while other people might consistently be attracted to people of either sex, and sexuality can vary for an individual at different times. Understanding that bisexuality is varied can assist in investigating such claims.

Officers should also note that some applicants may raise claims relating to being gay or a lesbian without actually articulating that they identify as bisexual. In some countries, while serious or significant harm may not explicitly be directed at bisexuals, harm targeted at gay or lesbian conduct may also impact bisexuals and this may raise imputed claims based on being perceived to be gay or a lesbian.

Slide 11 - Transgender



Transgender individuals tend to dress or act in ways that are different from general societal expectations based on their sex at birth. However, they may not appear or act in these ways all the time and some of them may express their gender identity only in environments where they feel safe.

As with all LGBTI persons, transgender individuals are often highly marginalised and may have experienced physical, psychological and/or sexual violence. Further, transgender people are likely to experience discrimination in relation to access to housing, health care, and employment, as well as severe social ostracism which may, in some circumstances, amount to serious or significant harm.

Transitioning from one's birth sex is a multi-step process and can involve a range of personal, legal and medical adjustments. Not all transgender individuals choose medical treatment, therefore it is important that officers avoid assumptions about sex-reassignment surgery.

Officers should also consider whether a transgender applicant fears harm because of perceived or imputed homosexuality.

Slide 12 - Intersex



Intersex people may face discrimination and abuse for having a physical anomaly, a medical condition, or not conforming to the expected physical appearance of males or females. Further, some intersex people who had surgery at an early age, may not identify with the sex they were assigned.

Some intersex children are not registered at birth by authorities and do not hold documentation. The treatment of such children by authorities, because they do not have documentation, may amount to a real chance of persecution or a real risk of significant harm in some circumstances. In some cultures, being intersex can be associated with evil or witchcraft and can result in the whole family being targeted by the community.

When the applicant is a minor and is unable to clearly express their own fear because they are intersex, claims related to being intersex may be raised by the parent/s of the intersex child due to the harm they fear for wanting to protect their child. People who identify as intersex may be viewed by others as transgender or there may be no social understanding or language to describe them.

Many intersex people will have never met another intersex person, let alone someone who has the same intersex variation. Secrecy and isolation is still the reality for most intersex people.

Slide 13 - Interviewing challenges



A person's sexual orientation and gender identity is very personal and sensitive. There are many reasons why it may be difficult for the applicant to open up and discuss these issues at interview.

It may be difficult for the applicant to relive painful memories or the applicant may never have discussed their sexuality or gender identity previously due to feelings of shame, internal homophobia/transphobia or the fear of violence or social exclusion.

It may be difficult for the applicant to trust the interviewer if they have experienced past discrimination/judgement from authorities. They may assume that staff will be hostile or discriminatory.

The applicant, despite being in Australia, may not have expressed their gender identity or sexual orientation to others and may still be concealing this, even to their own family. They may fear that information will get out to their community via the interpreter or their migration agent. These fears can lead to the concealment of *bona fide* claims. They may prefer to try raising other claims first and only raise LGBTI claims when they feel they HAVE to.



Discuss Case example #1

Ask participants to read the situation in case example 1, which is an example of an applicant raising an LGBTI claim late in the process. Ask participants for their ideas about what they would do were they the officer.

Possible Answers:

- Advise the applicant that in order to make a refugee claim about his sexual identity would require information being recorded on departmental systems.
- Explain the department's privacy policy.
- Inform the applicant that you would need to ask him a few questions about his sexuality to provide evidence that he was homosexual and give him the option of either having that conversation recorded or taking notes.

S. 47E(d)

To maintain confidentiality:

- Continue rest of the interview with the agent in the room, making no references to the applicant's sexual identity claim. For example, discuss identity and any other claims raised.
- Advise supervisor after interview.
- COI note in ICSE stating that information relating to his protection claims was not to be released to a third party, including any authorised recipients. Link to TRIM record explaining why.
- Further warnings placed at top of any case notes where applicant's sexuality is discussed.

Wide variations in experiences and identities

Each individual might express their gender identity or sexual orientation in a different way. Some may not have lived openly as a LGBTI person in their country of origin and may not have had many, or any, intimate relationships at all. Some may not be interested in connecting with the LGBTI community, even here in Australia.

Officers should not allow their personal feelings, attitudes, stereotypes, religious views or assumptions to influence their interviewing or assessment of onshore protection or offshore humanitarian visa applications for claims related to sexual orientation or gender identity. Findings on LGBTI related claims must not be based on stereotypical assumptions about the way applicants appear or behave. For example, attaching significance to whether or not an applicant claiming to be gay appears effeminate.

Officers cannot assume that a person's sexual orientation or gender identity is a lifestyle or a choice, or that bisexuals can choose to be attracted to men or women, depending on which is less likely to lead to a real chance of persecution, substantial discrimination or real risk of significant harm.

Slide 14 - Effective and sensitive interviewing



Interview preparation

As well as familiarising yourself with the relevant country information, officers need to be aware of the different ways sexual orientation and gender identity may be understood, discussed and treated in different countries or cultures.

Before the interview case officers should familiarise themselves with the appropriate terminology for discussing sexual orientation or gender identity in the applicant's country of origin.

Some applicants may use derogatory terms about themselves as these may be the only words available in their language, or in common use, to describe their sexuality. This does not necessarily indicate that the applicant is not gay or a lesbian. Use of derogatory terms may also be a result of internalised homophobia caused by growing up in a homophobic culture or in a country in which being gay or lesbian is illegal. Alternatively, some applicants may refer to gay or lesbian activity in gendered terms such as 'playing the man/woman' or describe themselves as gay or lesbian even if their claims or experiences indicate that they might be bisexual.

As a general rule, officers must not use derogatory terminology. However, it may be appropriate for officers to use the same terminology that the applicant uses, to avoid causing confusion or offence. Officers should also carefully consider and investigate what applicants mean when they use terms such as 'friend', which may have a wide range of meanings for them, including a person with whom they have an intimate, romantic or sexual relationship or a person that they just communicate with over the internet.

Interpreters

Challenges may arise in LGBTI cases if the interpreter does not possess the appropriate vocabulary, or has strong personal views on LGBTI people, as this may affect their ability to interpret impartially.

When it is apparent from the application that LGBTI related claims will need to be discussed at the interview, the officer should speak to the interpreter beforehand to inform them of the nature of the claims, and check that the interpreter is familiar with LGBTI terms. If they aren't, organise a different interpreter. It may be necessary to remind the interpreter about their responsibility and role before the interview. Mis-interpretation can cause major issues with the assessment and interpreter body language/facial expressions can influence an applicant's ability to express themselves freely.

Support persons

Officers should carefully consider the impact that family, friends or other support persons may have on the applicant's willingness to discuss private issues relating to their sexual orientation or gender identity. Where the applicant has indicated that they wish to bring a support person, it may be appropriate to advise them separately that sensitive and detailed questions will be asked during the interview, and give the applicant the opportunity to decide if they would like their support person to wait in the waiting room, rather than join them in the interview room.

Slide 15 – Effective and sensitive interviewing



At the interview

Compared to some other applicants, LGBTI people may require a more supportive environment and have greater difficulty articulating claims, so establishing trust and confidentiality is key.

When interviewing a transgender applicant, the officer should ask the applicant for their preferred gender, name and pronoun, so these can be used when addressing the applicant.

Do not express judgment through body language or words. Using the wrong words may offend a person and/or negatively impact on their participation in the process.

Stress the confidentiality of the interview from:

- family and community
- unessential departmental staff
- other refugees/applicants
- authorities of the country of origin and country of transit.

As with other interviews, it is important to begin with open questions and progress to direct questions to fill in gaps or confirm details. In interviews dealing with LGBTI claims, it is recommended that officers begin by discussing non-sensitive biographical details to establish rapport, before progressing to the crux of the claims.

Questions should be crafted in a non-judgmental manner to enable the applicant to answer without fear of confrontation.

s. 47E(d)



It is important to explore what the concepts and experiences mean to the applicant. s. 47E(d)

Trauma, post-traumatic stress disorder, other mental health conditions, shame, habits of secrecy, difficulty recalling painful events and the passage of time since events occurred, may impact on an applicant's memory and their ability to provide a coherent narrative. Officers should encourage LGBTI applicants to identify key experiences and then focus on how these impacted on their life.

s. 47E(d). In LGBTI related claims, applicants may have suffered a lifetime of discrimination that may cumulatively amount to serious or significant harm but not have experienced a single 'serious or significant harm event' that by itself meets the threshold for our protection obligations. It is important to advise applicants that their claims will be considered as a whole when assessing a risk of future harm, rather than only focussing on a particular event.

Self-realisation

There is no set standard or universal process of self-realisation or development of sexual orientation or gender identity. Intersex people will typically find out about their intersex variation from their parents or a doctor. It is common for intersex variation to be viewed as a personal medical experience, rather than the basis for shared community experience of difference or stigma.

Slide 17 - Difference, stigma and shame



Applicants may have experienced feeling different as a child or at a later stage in their life. In some cases, people may have no recollection of same-sex attraction in childhood or adolescence. In addition, applicants may have grown up in cultures where their sexual orientation or gender identity is shameful or taboo resulting in experiences of disapproval and suppression. s. 47E(d)

s.

Slide 18 - Family, marriage and community



s. 47E(d)

An applicant may be married to a person of a different gender or divorced and/or may have children. Such relationships should not be taken as evidence that a person is not LGBTI. If such circumstances raise issues of credibility, it may be appropriate to ask questions surrounding the

reasons for the marriage, s. 47E(d)

. Previous marriages may simply be evidence of the applicant discovering their sexual orientation later in life, which is particularly common for lesbians. An applicant may be able to provide a consistent and reasonable explanation for their marital status.

If the applicant has links to an LGBTI community, it may be useful to ask about this. However, lack of knowledge of these should not be interpreted as an applicant lacking credibility, as it may be the result of the applicant not having been open about their sexual orientation or gender identity or other factors. Officers should not assume that an applicant will know of such organisations, or be interested in being involved with them now that they are in Australia.

Slide 19 - Relationships



Romantic and sexual relationships, including relationships the applicant hopes to have in the future, may form part of their narrative. When questioning applicant's about their relationships, officers may find it useful to advise the applicant in advance that they will not need to provide intimate or sexual details, or to reassure them that they will not be asked for detailed information about a traumatic event such as sexual assault.

It is important to understand that lack of romantic or sexual relationships in the applicant's country of origin is not necessarily an indication that they are not LGBTI. It may demonstrate that they have been seeking to avoid harm. s. 47E(d)

Questioning about relationships should be approached with sensitivity and focus on the relationships generally, rather than details of sexual activity. The personal nature of this area of questioning may mean that an applicant will be reluctant to discuss it.

Transgender Transition

It may be appropriate to ask transgender applicants whether they are currently taking any steps to transition, such as changing clothing, hair, makeup, taking hormones or other medication, undertaking surgery or changing legal documents. Officers may enquire whether the applicant plans to transition or continue transitioning, in the future.

If an applicant has not taken steps to help their outward appearance match their gender identity, this should not be taken as evidence that the person is not transgender. Some transgender people may not be ready, or have the access, funds or inclination, to undertake these changes. Others may be unable to undergo treatment for health reasons.

By exploring some or all of these aspects of a person's life, officers can put together a full view of the applicant's experiences without resorting to inappropriate questioning that invades a person's dignity. Information from an applicant about any of these topics should be considered cumulatively in assessing their credibility, and the fact that individual experiences vary widely should be taken into account.

Slide 20 - Questions and topics to avoid



Questions about an applicant's sexual activities is inappropriate, infringes a person's dignity and are also not useful, as it is easy to invent stories of sexual activities and difficult to verify. Officers can more effectively gain an understanding of a person's sexual orientation by asking them about their experiences and relationships more generally.

As mentioned, officers should not rely on stereotypical assumptions about what it means to be LGBTI when considering an application. This includes stereotypes involving sexual behaviour, social behaviour, choice of dress, mannerisms and other characteristics. There are no typical interests, such as types of music, literature or social activities, including frequenting gay clubs or participating in LGBTI internet groups.

It is not appropriate to:

- discuss whether the applicant could change their behaviour in order to conform or avoid harm
- assume sexuality or gender identity is a lifestyle or a choice
- assume that bisexuals can choose to be attracted to men or women depending on which is less likely to lead to persecution.

I'll talk about this further when talking about the assessment, but sexual orientation and gender identity are generally considered to be fundamental to a person's conscience or an innate or immutable characteristic.



Discuss Case example #2

Ask participants to read through the summary of claims for the applicant in the hand out and think about what areas of questioning they would focus on during the interview.

Discuss as a group. Questions should be based on 'useful areas of questioning'.

Slide 21 - Assessment



Challenges

Many LGBTI claims will rely mostly on the applicant's account of their personal experience because:

- In most cases there will be a lack of available corroborating evidence
- people may have deliberately hidden their sexuality or gender identity
- persecution may have largely occurred in the private space
- official records may hide or deny the treatment of LGBTI people.

Therefore, assessment of credibility will be crucial and officers must conduct a thorough investigation of the genuineness of claims relating to sexual orientation or gender identity.

Slide 22 – Assessment



Member of a particular social group (PSG)

UNHCR acknowledge that LGBTI people are members of a PSG and that claims related to sexual orientation and gender identity will commonly be assessed on this ground.

The UNHCR guidelines on gender related persecution¹ highlight that persecution because of a person's sexual orientation can be due to a person refusing or failing to conform to socially or culturally defined gender roles or expectations. It may be this that puts the applicant at risk of harm, rather than their sexual activity or relationships. Some applicants may have made significant attempts to conform with traditional gender roles to avoid harm. However, the cause of the harm still comes down to the applicant's membership of a PSG on the basis of their sexual orientation or gender identity.

Sur place claims

LGBTI applicants may not have identified themselves as LGBTI before they departed, or may have decided not to act on their sexual orientation or gender identity. The applicant may have engaged in political activism, used social media or their sexual orientation or gender identity may have been exposed by someone else.

Complementary Protection

Where an applicant is found not to have a well-founded fear of persecution owing to their membership of a PSG or any other grounds in s5J(1)(a) of the Act, officers must also consider whether there is a real risk of significant harm under complementary protection.

Harm

Applicants may fear a variety of types of harm and the motivation of the agent of harm will also vary. Generally, state interference in a person's private life by means of discriminatory legislation, for example, a ban on same sex marriage, will not amount to persecution.

Criminalisation of same sex sexual conduct may amount to serious or significant harm, depending on the likelihood of the law being enforced, the severity of the punishment or whether the law means that state protection is unavailable to the applicant. Even where these laws only target gay men, there may be a correlating impact on lesbians through a climate of fear and private harm. Other laws, such as those against extramarital sex, may have a disproportionately discriminatory

¹ UNHCR, Guidelines on International Protection: Gender related persecution within the context of 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the status of refugees, HCR/GIP/02/01, 7 May 2002, [CIS15598](#)

effect on LGBTI people. People may also risk being deprived of their children if they come out or leave their partners.

Human rights reports have emphasised that there is a link between criminalisation of same sex activity and homophobic hate crimes, police abuse, torture and family and community violence faced by LGBTI persons. Even where laws are not enforced, it can promote and reinforce mistreatment within society and it is very unlikely an LGBTI person would be able to seek protection from community mistreatment.

LGBTI people may be perceived as pro-western, sacrilege, immoral or having a psychiatric illness – the source of opposition may not be focussed on a person's sexual activity.

Slide 23 – Assessment



Discrimination is a common element in the experiences of many LGBTI individuals, as a result of discriminatory laws, institutions, or family and community treatment. LGBTI individuals may experience difficulties accessing food, healthcare, employment, housing, education and child custody. For example, in some countries, an applicant may be denied medical treatment for HIV because they are gay or lesbian, or may be unemployed due to employment discrimination. A situation in which a person lacks access to basic services because of their sexual orientation or gender identity, may increase their vulnerabilities to sexual and physical assault and other exploitation.

In cases where the applicant cannot point to a particular persecution event or fear of a particular type of incident occurring in the future, officers must consider whether the applicant would face discrimination in their country of origin that would impact on several aspects of their life and amount to a level of harm equivalent to persecution. For assistance in assessing this, refer to the refugee law guidelines.

Keep in mind that an applicant's socioeconomic status may impact on their experience of being LGBTI, their access to an LGBTI community, state protection and their exposure to persecution or significant harm. For example, wealthier applicants may be less at risk of being identified as LGBTI and being harmed by the public or the authorities because they may not need to take public transport, walk through the streets or frequent more dangerous parts of the city. They are also more likely to have access to private space, in which to conduct a relationship. However, if discovered, the applicant could still be exposed to serious or significant harm.

Agents of harm

In cases relating to sexual orientation or gender identity, the agent of harm will frequently be a non-state actor. In these circumstances, officers must consider whether the authorities are able and willing to provide state protection, and whether moving to another area is an option for the applicant.

If the police do not respond to requests for protection, or refuse or fail to investigate and prosecute crimes against LGBTI individuals in a timely fashion, then state protection is unlikely to be either available or effective.

Many claims will relate to the applicant's fear of their family. This will be particularly common in cultural settings where it is considered that an individual LGBTI family member brings shame or disgrace on the entire family. Family disapproval will not itself amount to real chance of persecution or real risk of significant harm, but could lead to other harm, such as violence, forced marriage or ostracism to the point of threatening livelihood.

It is usually difficult to produce documentary evidence of harm by a non-state actor. There may also be little country information on harm by non-state actors.

Where the harm is from state actors, the UNHCR guidelines² note that "the applicant does not need to show that the authorities knew about his or her sexual orientation and/or gender identity before he or she left the country of origin".

Moving to another area

In LGBTI related cases, the most likely option in this context will be for the applicant to move to a major city, particularly if there is evidence of an established and accepted LGBTI community there. However, where the level of acceptance of the LGBTI community or legalisation of same-sex activity have changed recently, officers should consider whether legal or societal changes may swing in the opposite direction in the reasonably foreseeable future. Even when there have been legal reforms, there may still be anti-LGBTI sentiment prevalent in the community. Although country of origin information may indicate that the reforms have occurred, it may take time for the reforms to impact on the day to day treatment of LGBTI individuals.

Officers cannot find that the applicant can move to another area if their safety is contingent on other people not being aware of their sexual orientation or gender identity as this assumes that the applicant must modify their behaviour to be 'discreet'. This is contrary to the exceptions listed under s5J(3) for modification of behaviour which we will talk about next.

Modification of behaviour

Under s5J(3) of the Act, a person does not have a **well-founded fear of persecution** if they could take reasonable steps to modify their behaviour so as to avoid a real chance of persecution in a receiving country. However, s5J(3) will not apply to a person if they come under any of the exceptions in s5J(3)(a), (b) or (c).

Most LGBTI claims would likely fall under the exceptions that a modification would:

- conflict with a characteristic that is fundamental to their identity or conscience
- conceal an innate or immutable characteristic of the person or
- alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status

It is important to note that it is often the fear of harm that forces people to be discreet, rather than their free choice.

² 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 1951 Convention and/or its 1967 Protocol relating to the status of refugees, HCR/GIP/12/09, 23 October 2012, [CIS28955](#)

Slide 24 - Assessing credibility



The assessment of LGBTI claims will frequently centre on credibility because of the personal nature of LGBTI claims and the likely absence of objective evidence to support them. The assessment of credibility must be undertaken in an individualised and sensitive way.

Effective questioning

If officers have made enquiries along the lines of those already mentioned, the assessment of credibility can be based on the applicant's story's overall plausibility and consistency of the applicant's responses, in conjunction with available country information and the applicant's response to any adverse information.

Passage of time and torture

Officers should be mindful that the passage of time and the effects of trauma can impact on an applicant's recollection and, therefore, the consistency of their claims.

Cultural context

Officers should also note that what may be implausible behaviour from a Western perspective, might be reasonable in a different cultural context and therefore officers should be careful in drawing adverse inferences based purely on such findings.

False claim

Officers should also note that even if an applicant provides a false LGBTI claim that they think the officer expects to hear, for example, that they were caught having sexual relations, the applicant may still have genuine LGBTI claims and be at risk of harm based on their other LGBTI claims.

Varied experiences

Officers should be cautious about asserting as part of their credibility assessment that homosexuality is invariably a constant feature in a person's life and using this as a ground for refusal if the applicant does not identify with a fixed or constant sexual orientation. While most people will become aware of their sexual orientation during puberty, some people may only realise, or come to terms with this, later in life. Additionally, bisexual people may engage in heterosexual relationships for a long time before realising or accepting they are also same-sex attracted. If an applicant is claiming to have become aware of their sexual orientation later in life, this experience should be closely investigated by the officer and not dismissed as impossible.

Delays in making claim

Delays in making claims related to sexual orientation or gender identity may occur if the applicant wants to avoid making sensitive claims until they have to do so. Many applicants may not have talked to anyone about their sexual orientation or gender identity before or may have experienced serious or significant harm, particularly from government authorities, as a result of acknowledging their sexual orientation or gender identity. Applicants may also have felt more comfortable raising less personal or sensitive claims. When assessing claims where there has been a delay, applicants should be given the opportunity to explain any delays or changes to their claims.

The significance of any delay in seeking asylum or providing information will depend upon the particular circumstances of the case. Therefore, officers should ensure they thoroughly explore the reasons for the delay with the applicant at interview. A delay in seeking asylum or presenting further information, should not be the sole reason for rejecting an applicant's claims or the further information and there should be other reasons to support a finding that the claims are not credible.

Demeanour

Assessing demeanour is an unreliable source of information. The nature of LGBTI claims involve private issues of self-identity and sexual conduct and sometimes personal issues that may be stressful or unresolved. Social, cultural and religious attitudes to sexual and gender non-conformance in an applicant's society may exacerbate such problems. Caution should be applied when interpreting hesitation or lack of detail, as the applicant may have difficulty talking about these claims.

An applicant's experience of trauma or emotional stress may lead to reactions that are culturally specific and may be difficult for the officer to interpret. Recounting trauma could result in reactions as diverse as nervous laughter to withdrawal or a blank/indifferent expression. Stress, nervousness and anxiety can manifest in various ways including over-reaction and under-reaction.

Benefit of the doubt

The UNHCR handbook³ attests that where an applicant's statements are coherent, plausible, do not conflict with generally known facts and "if the applicant's account appears credible, he [or she] should, unless there are good reasons to the contrary, be given the benefit of the doubt."

Officers should only give the applicant the benefit of the doubt in relation to a particular claim when they are satisfied as to the applicant's overall credibility. Officers are not required to accept uncritically an applicant's claims.

Slide 25 - Evidence



Officers may find it useful to consider evidence relating to past or current relationships, if appropriate. This evidence might consist of emails, texts, videos, chat transcripts, phone records, social media, photos or statements from relevant past/present partners. However, officers must **not** request explicit photographs or films of sexual acts. To do so would infringe the applicant's human dignity and may cause other applicants to believe it is necessary or appropriate to provide such evidence. However, if the information is provided with or in the application or at any time before a decision is made on the application, officers must consider it as required by s54 and s55 of the Act.

³ UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, HCR/1P/4/ENG/REV.3, December 2011 [UNE8ABA086](#)

Officers should, where necessary, inform applicants that they do not need to provide explicit photographs or films to substantiate their claims. Applicants should also be advised that a failure to provide such evidence will not have any bearing on the decision to either grant or refuse their application.

Officers should take care, as with any material related to onshore protection or offshore humanitarian visa application, to store the applicant's information and evidence securely.

Slide 26 - Country Information



Officers should be mindful that information on the situation of LGBTI people in many countries of origin may be limited or unavailable. This may be due to an absence of LGBTI community groups or other non-government organisations, or the restrictions and constraints on the ability of such groups to gather and distribute information in a pressured or oppressed environment. Therefore, the absence of information should not automatically lead to a conclusion that the applicant's claim is unfounded or that there is no real chance of persecution or real risk of significant harm of LGBTI individuals in that country.

It is also relevant to consider information on laws and other measures that don't directly appear to target LGBTI people, but which can be enforced in a discriminatory manner, for example, the presence of 'anti-propaganda' laws. Where country information does not establish whether, or the extent to which, the laws are actually enforced, a pervading and generalised climate of homophobia in the country could be evidence to support that LGBTI persons are being persecuted. In the absence of country information on the treatment of LGBTI people, the treatment of women in a given society may provide useful insight for officers into the rigidity of gender roles and, therefore, the treatment of people who do not conform to those gendered expectations.

It is important to note that treatment may vary significantly between cities within a country, or even in different parts of a city. Officers should consider that even when information is available that LGBTI communities or organisations exist or events such as Mardi Gras occur, this does not necessarily mean that an applicant may be free from a real chance of persecution or a real risk of significant harm in the ordinary course of their life.


Country information relating to gay men, or common claims raised by gay men, should not be taken as a template for other cases relating to sexual orientation or gender identity, as the experiences of women and transgender or intersex applicants can vary widely from those of gay men.

In situations where there is insufficient country information, officers should not turn to unreliable sources of information as a substitute as this may amount to a legal error. For example, officers should not use travel or tourist information promoting gay travel as evidence that a country is safe, as this information is unlikely to be an accurate or reliable representation of life for individuals that are citizens or former habitual residents in that country.



Module overview

- Learning outcomes
- Background
- Interviewing
- Assessment
- Questions



A cartoon illustration of a female teacher with short dark hair and glasses, wearing a white lab coat over a white dress. She is holding a pointer stick and pointing towards the list of topics. The background behind her is a light brown, irregular shape.

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2

Learning outcomes

Develop a greater understanding of:

- Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) protection visa claims
- how to sensitively and effectively interview LGBTI applicants
- how to robustly assess claims relating to sexual orientation and gender identity.

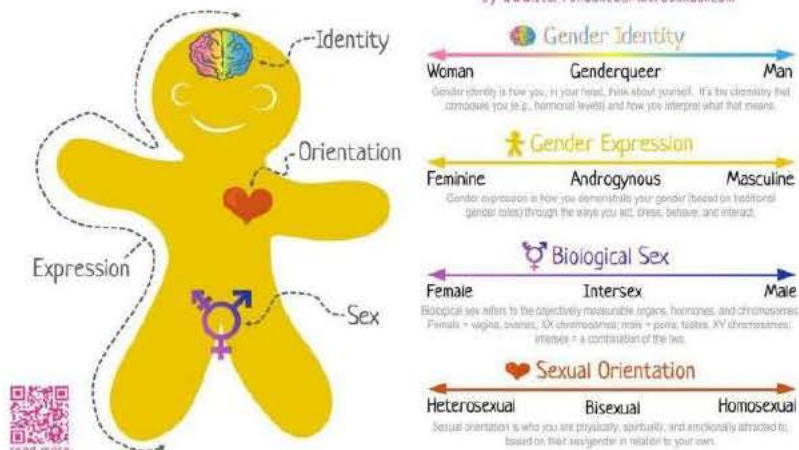


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3

The Genderbread Person

by www.ItsPronouncedMetrosexual.com



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4

Gender



Gender identity is how you, in your head, think about yourself. It's the chemistry that composes you (e.g. hormonal levels) and how you interpret what that means.



Gender expression is how you demonstrate your gender (based on traditional gender roles) through the ways you act, dress, behave, and interact.

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5

Sex



Sexual orientation is who you are physically, spiritually, and emotionally attracted to, based on their sex/gender in relation to your own.

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6



- Cumulative discrimination due to their gender, lower socio-economic status and sexual orientation.
- May be subjected to gender related harm by non-state actors eg. 'corrective' rape, forced marriage, domestic violence, honour crimes.
- May have heterosexual relationships and children.

Gay men

- Often more publically visible and can be subjected to homophobia.
- Risk of harm in detention, prison, military or in other traditionally male dominated environments.
- May have heterosexual relationships and children.

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9

Bisexual

- May describe their sexual orientation as fluid or flexible.
- May raise claims relating to being gay or lesbian without articulating that they identify as bisexual.
- Imputed claims based on being perceived as gay or lesbian.

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10

Transgender

- May only express their gender identity in environments where they feel safe.
- Cumulative discrimination in relation to access to housing, health care, employment, severe social ostracism.
- Not all choose medical treatment for gender re-assignment.
- Perceived or imputed homosexuality.

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11

Intersex

- Discrimination or abuse for physical anomaly or not conforming to expected physical appearance of male or female.
- Surgery at an early age.
- Birth not registered by authorities.
- Sometimes associated with evil or witchcraft which may impact whole family.

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12

Interviewing challenges

- Shame about identity and experiences.
- Fear of being overheard and 'found out' by other staff, other refugees or community.
- Inability to trust others.
- Fear of homophobic interviewers, migration agents, interpreters.
- Depression, extreme anxiety and post-traumatic stress disorder (PTSD), which may lead to memory problems and inconsistencies.
- Interviewer and interviewee discomfort.
- Wide variations in experiences and identities.
- Lifetime of concealment and deception to avoid harm.

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13

Effective and sensitive interviewing

Interview preparation:

- Familiarise yourself with terminology and how sexual orientation and gender identity are understood and treated in applicant's country of origin.
- Check interpreter is comfortable and familiar with LGBTI terms and issues.
- Consider attendance of family or support persons at interview.



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14

Effective and sensitive interviewing

At the interview:

- Use preferred gender pronoun and name and self-identifying language.
- Maintain a warm and pleasant facial expression and open body language.
- Remind applicant of the confidentiality of the interview.
- Begin with simple non-sensitive topics to establish rapport such as explaining the objective of the interview, go through interview preamble.
- Pose open questions first.
- Pose focussed questions later.
- Don't rush, be gentle and patient - delay raising sensitive subjects.
- Offer breaks if person becomes overwhelmed or temporarily move to an easier topic.

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15

s. 47E(d)

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Questions and topics to avoid

- Sexual activities and practices
- Details about traumatic events such as sexual violence
- Stereotypes
- Whether the applicant can change their behaviour to conform/avoid harm
- Whether the applicant can 'prove' they are LGBTI
- What happened to make you XXX?
- Why did you choose to be XXX?
- Do you like men or women more?
- If you are gay, why are you married?
- Have you ever tried to be straight/heterosexual?
- What are you, a man or a woman?



Assessment



Challenges

- Lack of corroborating, objective evidence
- The agent of harm is often a non-state actor
- Lack of country information regarding treatment of LGBTI people
- Difficult to assess the credibility of such personal claims
- Sexual orientation can be fluid and may change over time.

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21

Assessment

- Member of a Particular Social Group (PSG)
 - Where transgression of gender roles – harm still attributed to membership of LGBTI PSG
- *Sur place* claims – conduct in Australia
- Real risk of significant harm under complementary protection
- Is the harm feared = persecution?
 - Criminalisation of same sex sexual conduct – likelihood of enforcement, severity of punishment, unable to access state protection from private harm.
 - Hate crimes, police abuse, torture, family and community violence
 - May be perceived as pro-western, sacrilege, immoral or a psychiatric illness

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22

Assessment

- Cumulative discrimination – does it amount to persecution?
- Agents of harm – often non-state actors
- Authorities willing and able to provide protection?
- Moving to another area
 - Cannot make finding on the basis of discretion/anonymity
- Modification of behaviour – likely to meet exceptions in s5J(3)(a), (b) or (c)



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23

Assessing credibility

- Overall plausibility and consistency of responses at interview
- Passage of time and effects of trauma can impact consistency
- Cultural context will determine what is plausible
- One false claim does not mean all claims are false
- Varied experiences – investigate further, do not dismiss as implausible
- Delays in making LGBTI claim – investigate reasons, should not be sole reason for rejecting claim
- Demeanour is unreliable
- Benefit of the doubt in the absence of evidence to the contrary

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24

Evidence

- Can consider evidence of past or current relationships if related to claim eg. emails, text, videos, photos, social media etc.
- Must not request explicit photographs or films of sexual acts.
- If provided explicit materials at any time before a decision, officers must consider it as required by s54 and s55 of the Act.
- Take care to store information and evidence securely.

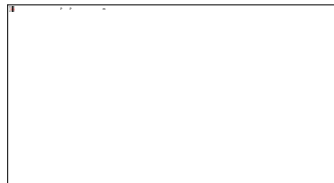


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25

Country Information


- Country Information on treatment of LGBTI people is often limited or unavailable.
- Should not automatically lead to finding that claim is unfounded.
- General homophobia or the treatment of women indicates treatment of people who do not conform to gendered expectations.
- Existence of LGBTI communities, Mardi Gras and safe travel for homosexuals does not always equate to evidence that a country is safe.



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26

Further assistance

- Common Processing Guidelines
 - Refugee Law Guidelines
 - Gender Guidelines
 - Credibility Guidelines
- 
- Ask your manager for assistance in the first instance
 - For complex queries, contact the Protection visa helpdesk via s. 47E(d) _____@border.gov.au

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27

Questions?



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28

Key terms

The following is a list of key terms which can be used in relation to LGBTI applicants.

Bisexual

Bisexual describes an individual who has the capacity to be physically/sexually, romantically and/or emotionally attracted to both men and women. Bisexual people do not necessarily have equal attraction to men and women, as they may have a preference for men or women that can also change over time.

Coming out

This term refers to the process in which a person acknowledges and accepts their sexual orientation. It also refers to the process in which a person discloses their sexual orientation to others.

Gay

Gay is often used to describe a man whose physical, romantic and/or emotional attraction is to other men, although the term can also be used to describe women who are attracted to other women (lesbians).

Gender

Gender is the societal expression of being male or female. It refers to the different social and cultural expectations of men and women, rather than biological differences. Gender includes a combination of identity, expression, and societal expectations related to masculinity and femininity.

Gender identity

Gender identity is each person's internal experience of gender that may or may not correspond with their sex at birth. It includes a person's sense of their body, as well as other expressions of gender, including dress, speech, mannerisms and social roles. Some people may seek to change their sex to more fully match their gender identity.

Gender transition

Gender transition is the process by which a person strives to more closely align their outward appearance with their internal sense of their own gender. Some people may socially transition, for example by changing their dress, or using different names. Some people also transition medically, for example using hormone therapy or having gender re-assignment surgery.

Heterosexual

A heterosexual person is one whose physical/sexual, romantic and/or emotional attraction is primarily to members of the opposite sex.

Homophobia

Homophobia includes a range of negative attitudes and feelings toward homosexuality, or people who identify or are perceived as being gay, lesbian, or bisexual. It can be expressed in a variety of ways, including antipathy, contempt, prejudice, aversion, dislike, hatred or fear. Homophobia can lead to laws and actions that result in LGBTI people suffering serious or significant harm.

Homosexual

A homosexual person is one who is attracted primarily to members of the same sex and can apply to both men and women. The terms 'homosexual' or 'gay' are often used to describe a man whose

physical/sexual, romantic and/or emotional attraction is to other men, although the terms can also be used to describe women who are attracted to other women. In this document the term 'gay' is used to refer to men attracted primarily to members of the same sex.

Intersex

The term intersex refers to a condition in which an individual is born with the reproductive or sexual anatomy that does not fit typical biological categories of male or female. For example, a person may be missing internal reproductive organs or a person may have both male and female external genitalia.

These conditions may be apparent at birth, may appear at puberty, or may be discovered only during a medical examination. Individuals with these conditions were previously referred to as 'hermaphrodites', however, this term is outdated and should not be used unless the applicant uses it.

An intersex person may identify as male or female, and this gender identity may or may not be the same as their apparent sex. Their sexual orientation may be heterosexual, gay, lesbian or bisexual.

Lesbian

A lesbian is a woman whose physical/sexual, romantic and/or emotional attraction is primarily to other women.

LGBTI

The acronym 'LGBTI' refers collectively to people who are lesbian, gay, bisexual, transgender, and/or intersex.

Queer

Queer can be used as an umbrella term to refer to the entire LGBTI community (sometimes LGBT, LGBTIQ or LGBTIQ+). However, some people may find this term offensive and it should not be used unless the applicant uses it.

Sex

Sex is a person's physical anatomy, which can be female, male or intersex. It includes internal and external reproductive organs, chromosomes and hormones.

Sexual and gender nonconformity

Persons whose sexual practices, attractions and/or gender expression are different from the societal expectations based on their assigned sex at birth.

Sexual orientation

Sexual orientation is a person's capacity for intimate relations with, and emotional and sexual attraction to, another person. This can include individuals of a different gender, the same gender or more than one gender.

Sexual orientation is not the same as gender identity. Sexual orientation relates to who a person is attracted to, whereas gender identity relates to a person's sense of their own gender.

Transgender

Transgender describes people whose gender identity and/or gender expression differs from their biological sex. Transgender is a gender identity, not a sexual orientation. A transgender person may be heterosexual, gay, lesbian or bisexual.

As well, there is a difference between cross-dressing and being transgender. Most cross-dressers are not transgender because they do not feel that they are a different gender to their biological sex. Rather, cross-dressers enjoy wearing clothing typical of another gender.

Transgender people have previously been referred to as transsexual. However, this term should no longer be used as it confuses gender identity with sexual orientation.

More information on key terms is available in the UNHCR's [Guidelines on International Protection No. 9](#). While more information about relevant terminology in a range of refugee producing countries is available on CISNET at [CIS38A8012612](#).