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# Gender and Sexual Orientation

## Procedural Instruction

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# 1. Purpose

This procedural instruction (PI) provides policy and procedural guidance for interviewing female as well as lesbian, gay, bisexual, transgender, intersex and queer (as well as other genders and sexualities outside of those (LGBTIQ+)) onshore Protection visa (PV) and offshore humanitarian visa applicants and assessing claims relating to gender, sexual orientation and gender identity. PV applications and Humanitarian visa applications are assessed under different legal and policy frameworks. The Department of Home Affairs (the Department) recognises that PV and Humanitarian visa applicants who are LGBTIQ+ may experience persecution, significant harm and discrimination specific to, and because of, their sexual orientation and/or gender identity. The Department also acknowledges that women may experience persecution, harm and discrimination because of their gender or specific to their gender.

It is generally believed that sexual orientation and gender identity are determined by a range and combination of factors including genetic, hormonal, developmental, societal and cultural factors. While sexual orientation and gender identity may be determined at an early age for some people, for others these realisations can evolve over a lifetime.

The experiences of LGBTIQ+ individuals are diverse and are affected by a broad range of factors not limited to family, cultural, political and religious influences. The way a person expresses their gender identity or sexual orientation may be impacted by their background and life experience. LGBTIQ+ individuals are not characterised by any single set of qualities or characteristics.

These guidelines have been developed to support officers in understanding the experiences and perspectives of women and LGBTIQ+ individuals to ensure that their claims are not assessed on a superficial understanding or erroneous, culturally inappropriate or stereotypical perceptions or assumptions.

These guidelines support officers to effectively and sensitively address and assess claims related to sexual orientation and gender identity in order to enhance the efficiency, consistency and integrity of PV and humanitarian visa decision making.

## 2. Scope

### 2.1. In Scope

This PI provides policy and procedural advice on assessing claims relating to sexual orientation, gender identity and other gender-related claims to determine if the applicant is a person who:

- engages Australia's protection obligations and may be eligible for grant of a PV under the onshore component of the Humanitarian Program; or
- meets the relevant persecution/substantial discrimination provisions and may be eligible for a Humanitarian visa under the offshore component of the Humanitarian Program.

The guidelines focus on two elements of decision making that are most likely to present challenges in assessing gender and sexual orientation related claims: interviewing and assessment of claims. Some parts in these guidelines relate to assessments under the PV framework only.

### 2.2. Out of Scope

This PI does not address all elements associated with assessing protection claims and should be used in conjunction with the following documents:

- Protection Visa Processing Guidelines – PI (VM-4825);
- Complementary Protection Guidelines – PI (LS-1815);

- Use of Country of Origin Information – PI (VM-3245); and
- Offshore Humanitarian Program Management and Class XB (Refugee and Humanitarian) Visa Processing – PI (VM-6236).

## **3. Procedural Instruction**

### **3.1. Challenges**

#### **3.1.1. Recognising the barriers for women**

Gender-based claims are claims that are specific to the applicant's gender or gender identity. Gender-based claims can encompass a range of claims and experiences in which gender is a relevant consideration. These may relate to an applicant's assigned sex, gender, sexual orientation and/or gender identity. Gender-related claims may be raised by women or men, although they are more commonly raised by women.

Most forms of harm or human rights abuses are the same for men and women. However, there are some forms of harm that are used more frequently, or solely, against women. Such harm includes sexual violence, sexual exploitation, family violence, domestic slavery, human trafficking, forced pregnancy, forced abortion, forced sterilisation, forced marriage, 'honour' crimes, female genital mutilation and punishment for transgression of social mores. Due to the personal nature of gender-based claims, it is important that officers approach such cases with sensitivity.

Officers should be aware that women may face multiple obstacles when applying for a PV or Humanitarian visa, including any one or more of the following dot points below.

- Social and cultural shame in lodging their applications or putting forward their own claims as it might be considered inappropriate for women to be outspoken or to come forward with information (some female applicant's claims may not be clearly articulated in PV applications due to these factors, or they may not be recorded as raising their own claims for protection).
- They may not realise that their experiences give rise to claims of persecution or discrimination as their experiences may not be a crime in their country of origin or may be accepted practice within their community or family. Therefore, applicants may not know that an incident is relevant to their claims and fail to disclose it. Officers should consider all information provided in the application or at interview and consider claims that are not explicitly raised by the applicant but clearly arise on the material before the decision maker.
- Low literacy; illiteracy or language barriers may prevent some women from being able to clearly and confidently express their experiences, complete forms on their own or obtain information about the application and assessment process.
- Women may not have the same level of access to information, freedom of movement or financial resources as men to seek asylum and lodge a visa application.
- In families where the male is head of the household and has responsibility for the family's official dealings, the claims of female family members may not be known, mentioned or given any weight by either the male head of the household or the female family member herself.
- Women may have difficulties providing information at interview where their experiences are too traumatic to describe or difficult to explain, and they may worry about how these experiences will be perceived by an interpreter or officer.

- Women who have experienced rape or other sexual assault may fear reprisals from other family members for failing to protect their virginity or marital dignity, or for disclosing the claims to a third party. They may be unwilling to disclose information about these experiences or downplay or deny claims that have already been disclosed.
- The presence of strangers, family or friends, particularly males, combined with fear and mistrust of authority (including the interviewing officer), can seriously inhibit an applicant's willingness to divulge their experiences at interview.

Due to these barriers, it is important that officers take appropriate steps to ensure women's claims relating to discrimination and persecution are acknowledged as having been heard and are appropriately assessed.

An awareness of the conditions affecting women in the applicant's country of origin (and/or countries of transit) and the circumstances which may give rise to persecution, will provide useful context and enable officers to better target their research and investigation of the applicant's claims (including at interview). Relevant areas for research may include (as suggested by the UNHCR Guidelines on the Protection of Refugee Women):

- the position of women before the law, including their standing in court, the right to lay a complaint and give evidence, divorce and custody law, the right to own property, the right to have or refuse an abortion;
- the political rights of women, including the right to vote, to hold office and to belong to a political party;
- the social and economic rights of women, including the right to marry the person of her choice, the right to an education, a career, and a job or remunerated activities, the status of a widow or divorcee, freedom of dress;
- the incidence of reported violence against women, the forms it takes (such as sexual assaults, "honour" killings), protection available to women and the sanctions or penalties on those who perpetrate the violence; and
- the consequences that a woman may face on return to the country in light of the circumstances described in their claims.

### **3.1.2. Challenges related to considering LGBTIQ+ claims**

Claims relating to sexual orientation or gender identity are complex to assess due to their personal nature and because, other than the applicant's claims, there is often little or no supporting objective evidence available.

Further to this, officers should be mindful of any potential biases that they may bring when assessing LGBTIQ+ claims. Officers should think about the questions they're going to ask before an interview and consider whether they demonstrate biased thinking.

Not all applicants will identify with LGBTIQ+ terminology and may be unaware of these terms. Some people may only identify with and use terms that are derogatory. Officers should be cautious about their use of LGBTIQ+ terms. Officers should not assume which terminology is appropriate for an applicant; the applicant should determine how they identify their sexuality and/or gender identity. Making assumptions regarding an applicant's sexuality and/or gender could lead to not identifying a claim.

LGBTIQ+ individuals may adopt self-protective behaviours, keeping aspects of their lives concealed and many will not have openly identified as LGBTIQ+ in their country of origin. Some individuals may not have had any intimate relationships and may hide their sexual orientation or gender identity in order to avoid consequences of discovery. Internalised homophobia and the impact it can have on a person's mental health, can significantly impact on the ability or willingness of some applicants to freely express their claims.

Officers should be aware that an applicant may have claims related to sexual orientation or gender identity but choose to make alternative claims rather than discuss such sensitive and personal matters. While officers cannot determine an applicant's claims for them, they should be alert to instances where an applicant may have sexual orientation and gender identity claims they have not explicitly raised but that may become apparent during the interview.

Claims relating to sexual orientation or gender identity will often rely largely on the applicant's own account of their experiences because:

- there is a lack of available corroborating evidence;
- the applicant may have deliberately hidden their sexuality or gender identity;
- the applicant may not have outwardly expressed their sexuality and/or gender identity;
- the applicant may not know how to outwardly express their sexual or gender identity;
- persecution, substantial discrimination and/or significant harm may have largely occurred in the private sphere and therefore be unverifiable; and
- official records may hide or deny the mistreatment of LGBTIQ+ people.

Officers need to carefully consider the credibility of LGBTIQ+ claims. Please see paragraph 3.3.5 of this PI below.

It may also be difficult to obtain country information about the treatment of LGBTIQ+ people in an applicant's country of origin. If there is insufficient country information available, officers can contact Country of Origin Information Services Section (COISS) at s. 47E(d).

Officers should ensure they understand LGBTIQ+ considerations and issues in the context of the applicant's country of origin. They must not allow their personal feelings, attitudes, stereotypic views, religious views, biases or assumptions to influence their interviewing or assessment of claims related to sexual orientation or gender identity. For example, officers must not assume that a person's sexual orientation or gender identity is a lifestyle choice, or that individuals who identify as bisexual can choose to be attracted to men or women, depending on which is less likely to reduce or remove a real chance of persecution, substantial discrimination or a real risk of significant harm.

When considering how to approach questions about fleeing persecution and seeking protection, officers should consider the compounded challenges that LGBTIQ+ applicants might face when travelling in order to seek protection, due to financial disadvantage and social disempowerment. This is in addition to the risk of violence or sexual assault that may be inherent in travelling without family or community protection.

## **3.2. Interviewing**

Guidelines for interviewing applicants for protection and Humanitarian visas are in, respectively:

- The Protection Visa Processing Guidelines – PI (VM-4825) – Part 9 – Interviewing
- Offshore Humanitarian Program Management and Class XB (Refugee and Humanitarian) Visa Processing – PI (VM-6236) – Part 3.6 Interviewing

This section provides additional guidelines for interviewing women and LGBTIQ+ applicants with gender and sexual orientation based claims. Subsection 3.2.8 of this PI provides guidance on the types of questions that can be used to obtain further information from LGBTIQ+ applicants about their sexual orientation and gender identity and how to sensitively and effectively explore the credibility of their claims.

Officers must be mindful of cultural differences in the experience and expression of sexual orientation, gender identity and gender based violence, and the difficulty applicants may have in discussing matters of a personal or sensitive nature, including incidents of sexual violence, sexual exploitation and family violence.

Such questions should only be undertaken if necessary and should be handled with due sensitivity. Detailed questions about a traumatic event are not appropriate.

Officers should be aware that the PV interview may be the first time the applicant has discussed, in detail, their innermost feelings in relation to their sexuality and/or gender identity. The formality of the interview setting and the power dynamic/consequences of the interview may act as barriers to an applicant's ability to fully and credibly express their claims. Officers should consider that applicants may not have lived openly as an LGBTIQ+ person in their country of origin and may not have had many, or any, LGBTIQ+ relationships. Furthermore, it may be difficult for the applicant to relive painful memories, or the applicant may never have discussed their claims previously due to feelings of shame or the fear of violence or social exclusion. An applicant may be reluctant to discuss, or have difficulty discussing, their claims with an officer or interpreter, particularly where intolerant state officials in the applicant's country of origin have fostered mistrust of authority.

Some applicants may relish the opportunity to openly express their sexuality and/or gender identity in Australia. This presents a valuable opportunity for officers to test onshore evidence to potentially support their claims. However officers should be mindful that just because the applicant has moved to a country with more lenient attitudes towards LGBTIQ+ issues does not mean they will feel comfortable with manifesting their gender identity or sexual orientation publicly. Applicants may not have outwardly expressed their sexuality and/or gender identity for a range of credible reasons. This lack of outward expression by an applicant also presents a valuable opportunity to respectfully explore the reasons for this at interview.

### **3.2.1. Preparing for an interview**

Given the challenges of interviewing an applicant about sensitive claims, as with all cases, it is important to create a safe and non-judgmental interview environment that allows the applicant to feel secure enough to discuss the details of their claims. An open and reassuring environment will help establish trust and will assist the disclosure of sensitive personal information. An applicant will more likely discuss their claims fully, thereby facilitating a more efficient and comprehensive assessment of the claims by the officer.

As with any application, officers should be familiar with the applicant's claims and relevant country of origin information before an interview. This will enable them to question the applicant effectively and identify any gaps in their story or claims that are inconsistent with available country information.

If gender-related claims have been included in the application, every effort should be made to ensure the interviewing officer and the interpreter are the same sex as the applicant (or the same gender of which the applicant identifies). Officers should be mindful of cultural and social norms when considering applications by family groups, and should consider whether separate interviews may be required (for example where a female has raised sensitive, gender based claims). As per the Protection Visa Processing Guidelines – PL (VM-4825) – Part 9 – Interviewing, a request for a joint interview can be refused if an officer considers that separate interviews are necessary. The request and the refusal should be documented by the officer.

### **3.2.2. Appropriate terminology for LGBTIQ+ claims**

Sexual orientation and gender identity are broad concepts that individuals may express in many different ways. This guidance is intended to apply to the diverse range of claims that may be made by LGBTIQ+ applicants. It is essential that officers appreciate the uniqueness of each applicant's claims and acknowledge that their individual claims may not fit generally accepted LGBTIQ+ definitions, terminology or societal expectations.

Before the interview (and where such information is available), officers should familiarise themselves with the appropriate terminology for discussing sexual orientation or gender identity in the applicant's country of origin. Officers should use language that is respectful to the individual, reflects that person's self-identification and avoids negative connotations. Officers should seek permission to use terms that the applicant is comfortable with. When working with an interpreter, care must be taken to ensure the interpreter is using the appropriate terminology to accurately convey the meaning of complex concepts.

Some LGBTIQ+ applicants may use derogatory terms about themselves as these may be the only words available in their language, or be in common use in their country of origin, when describing their sexuality. This does not indicate that the applicant is or is not LGBTIQ+. 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. It may be appropriate if the applicant requests for that terminology to be used, though officers may wish to ask why the applicant uses that terminology. Extreme derogatory language should never be used by departmental officers.

Officers should also carefully consider and investigate what an applicant means if they use ambiguous 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 with whom they communicate only over the internet.

### **3.2.3. Interview arrangements**

All applicants should be provided with a safe, supportive environment throughout the interview so they can present their claims fully and without fear. Where it is indicated in the application, or becomes apparent during the interview, that an applicant on a combined application with other family members may have sensitive claims (including those relating to gender and sexual orientation), it may be necessary to schedule a separate interview for that applicant so that their claims can be appropriately explored, without having other family members in attendance. Where female members of a family unit (including spouses and dependants such as mature children) have raised their own claims for protection on a combined application, officers should consider making arrangements to facilitate a separate interview, in recognition of the barriers for women in claiming protection, discussed at section 3.1.1.

In arranging such interviews, officers should be aware that in many societies, official matters are generally dealt with by the male head of household and there may be a perception that a request for a separate interview with a female applicant is an attempt by this applicant to act independently. Depending on the circumstances of the case, it may be best to announce the interview plan and treat it as routine procedure.

The male head of a household may regard a female applicant as having failed if she attends a separate interview and the family's application is unsuccessful. This risk can be minimised by informing applicants that other members of the family may be interviewed separately to establish whether they have additional claims to submit.

Section 5AAA of the Migration Act 1958 (the Act) makes it clear that it is the responsibility of the applicant to specify all particulars of their claims, and that decision makers do not have any responsibility or obligation to establish or assist in establishing an applicant's claims. This suggests that where a dependant family member has not raised their own claims for protection, there is no requirement to interview that applicant. However there may be instances where information in the main applicant's claims and/or country of origin information relevant to the applicant's circumstances, suggests that a dependent applicant may have their own claims that have not been expressed in the application (but which are implied, based on the material before the decision maker). The additional information provided by a dependant applicant could also assist in the consideration of the main applicant's claims, in terms of providing another perspective and corroborating information provided.

Officers should use their judgement after considering the country of origin and claims information available to them, to determine whether separate interviews for dependant applicants who have not raised specific claims may be warranted, including dependents with gender or sexual orientation implied claims for whom COI suggests a particular risk of harm. Officers may should consult with a team leader/manager if in doubt (or consult with the Protection visa help desk at [s.47E\(d\)@homeaffairs.gov.au](mailto:s.47E(d)@homeaffairs.gov.au)).

For further information regarding family interviewing considerations, please see the Protection Visa Processing Guidelines– PI (VM-4825) – Part 9 – Interviewing. For further information

regarding implied claims, see the [Protection Visa Processing Guidelines – PI \(VM-4825\) – 3.40.2 An implied claim](#).

Generally, infants under 12 months of age may accompany the mother during the interview, and breastfeeding mothers should be given breaks and privacy as needed to feed their children, noting that these breaks may be unscheduled.

### **3.2.4. Other procedural considerations**

#### **Sensitive claims and combined applications**

Applicants who are included in a family member's application and submit sexual orientation or gender related claims may wish to nominate a separate address for any correspondence with the Department. These issues should be discussed and agreed upon at interview.

Officers should alert other users of a file containing information that an applicant has asked to receive correspondence that is separate to correspondence to other family members, by marking the relevant files and entering case notes in the applicable departmental system.

Officers should be mindful of procedural transparency in terms of sensitive claims, ensuring that vulnerable applicants are able to make informed choices regarding a separate or combined application (including who may be able to view their claims information). For example, if an applicant on a combined application makes sensitive claims and is interviewed separately, and that application is then refused (or the other applicant requests a copy of the approval under FOI), the other applicant could receive sensitive information which may put that applicant at risk. Officers should inform applicants in these circumstances of the ramifications for staying on the same application, and the options available to them, as a separate interview alone may not be sufficient.

For guidance on sensitively interviewing applicants who have claims involving sexual assault or other sensitive or traumatic matters see [the Protection Visa Processing Guidelines– PI \(VM-4825\) – Part 9 – Interviewing](#) – 3.28 Interviewing survivors of torture and trauma.

#### **Ensure all family members are included on the application**

The low status of girls in some cultures may lead to their omission from some Protection or Humanitarian visa applications. The interviewing officer should ensure by careful questioning, that all members of the family unit have been declared and all vital information pertinent to the application has been elicited. It is important to ensure that questions about family are broad, and encompass:

- biological and non-biological children in the family unit;
- legal and customarily 'adopted' children;
- children from former relationships/or from persons other than their current partner; and
- any former marriages, or marriages to more than one person (polygamy is legal in approximately 58 countries and customary in many more). As polygamy is not legal in Australia (except for polygamous marriages entered into prior to arriving in Australia), applicants may be hesitant to disclose polygamous relationships and all children from them, leading to anomalies in family composition details. The [OECD Development Centre's Social Institutions and Gender Index \(SIGI\) Country Profiles](#) indicate the prevalence of polygamy.

### **3.2.5. Support persons at interviews**

Guidelines on bringing support persons to interviews for protection and humanitarian visa applicants are located in the following documents:

- [The Protection Visa Processing Guidelines – PI \(VM-4825\) – Part 9 – Interviewing – 3.26 Attendance of joint applicants or others at interview](#)

- Offshore Humanitarian Program Management and Class XB (Refugee and Humanitarian) visa processing - PI (VM-6236) – 3.6 Interviewing - Interpreters and others at interview

Officers should carefully consider the impact that family, friends or other support persons may have on the applicant's willingness to discuss private issues. For instance, a female applicant may be reluctant to talk about gender-related claims in the presence of male strangers, family members and/or friends. The use of female officers and female interpreters to conduct the interview can help female applicants feel more comfortable about discussing sensitive matters.

If the applicant has indicated that they wish to bring a support person, it may be appropriate to advise the applicant separately that sensitive and detailed questions will be asked during the interview. This provides the applicant with the opportunity to decide whether they would like their support person to wait in the waiting room rather than join them in the interview room.

### **3.2.6. Building rapport**

Building trust and rapport is critical for officers to elicit the detail about gender or sexual orientation related claims required to decide a case. Officers should take steps to establish a rapport with the applicant by:

- providing applicants with an assurance of confidentiality at the beginning of an interview, explaining that all aspects of their claims will be treated with confidence and that interpreters are also bound by confidentiality (it may be necessary to repeat this during the interview as sensitive topics are addressed);
- if working with an interpreter, invite the interpreter to explain their role and the ethical code they are bound by;
- beginning with questions not directly related to sexual orientation or gender identity, such as biographical details;
- not rushing an applicant and allowing sufficient time for the applicant to express themselves uninterrupted;
- having self-awareness and being mindful of their own and the applicant's body language, choice and tone of words and facial expressions;
- being mindful of the applicant's demeanour and providing breaks during the interview if necessary;
- avoiding expressing either verbally or through body language, judgement about the applicant's sexual orientation, gender identity, sexual behaviour or relationships; and
- using vocabulary that is non-offensive and shows a positive disposition towards diversity of sexual orientation and gender identity.

To reduce stress, officers should provide a clear outline of the interview at the start (for example, that it will start with questions about their identity, family, etc followed by questions about their claims). Officers may wish to explain why it is necessary to ask certain questions and what will happen next in the process. Informing vulnerable applicants that doors to interview rooms are not locked may also assist in mitigating fears of government officials or formal interviews.

Factors such as fear of judgment, fear of the interpreter and anxiety about disclosing traumatic experiences may affect an applicant's ability to provide information during an interview. Therefore, officers need to be sensitive and patient in their questioning.

It is important that the questions focussed on assessing the credibility of claims are considered on an individual basis and are asked in a sensitive manner. Questions crafted to be open-ended and delivered in a non-judgemental manner enable the applicant to explain their claims in a non-confrontational way. It is not appropriate for officers to ask applicants for details of their intimate sexual activity, although it is possible that applicants may seek to volunteer information or evidence (eg. photographs, mobile apps or verbal evidence).

In such instances, officers should explain that while this evidence would be taken into consideration, you are also interested in exploring other aspects of their claims not related to sexual activity. If an applicant solely raises, or continues to refer to sexual activity, you may use this as an opportunity to explore why they are unable to discuss other facets of their sexuality.

As with all interviews, it is important to begin with open questions that allow the applicant to tell their story and progress to focussed questions to fill in gaps or confirm details. Trauma, post-traumatic stress disorder, other mental health conditions, feelings of 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 applicants to identify key experiences and to explain how these have impacted their life.

### **3.2.7. Interpreters**

Applicants may feel increased anxiety about disclosing private information in front of a person from their own community or ethnic or religious background as they may fear judgement or that this information will be passed on to others in their community. The applicant should be informed that the interpreter is bound by a code of ethics which includes:

- confidentiality not to disclose any details of the interview; and
- impartiality and boundaries (the role of the interpreter is to convey meaning from the source language to the target language. Interpreters do not take sides, nor are they advocates for either the applicant or the officer).

If an applicant makes a request in relation to the gender of the interpreter, every effort should be made to ensure this is met.

When it is apparent from the application that LGBTIQ+ related claims or sensitive gender-based claims will need to be discussed at the interview, options can be considered to ensure the interpreter is comfortable and confident interpreting for the interview.

- When booking through the Translating and Interpreting Service (TIS Online) officers can provide generic, non-identifying information advising that LGBTIQ+ claims will be discussed in the 'Interpreter instructions' field of the booking.
- For particularly sensitive interviews, officers can request a pre-briefing with the interpreter to confirm they will be confident and competent given the sensitivity of the case and the terminology that will be used (officers may also wish to consider a telephone interpreter in such cases, as this can reduce feelings of stress for applicants).
- The relevant LGBTIQ+ terms can be provided to an interpreter on accepting the TIS booking.

Note that the Australian Institute of Interpreters and Translators (AUSIT) Code of Ethics includes the requirement that an interpreter be competent to perform any assignment they accept. If an interpreter does not feel competent with the terminology that will be used, they are to hand the assignment back so that another interpreter can be booked and briefed.

For further guidance on using interpreters in Protection visa interviews, refer to the [Protection Visa Processing Guidelines – PI \(VM-4825\) – Part 9 – Interviewing – 3.2.9 Interpreters](#). An information sheet on interpreting for PV interviews is also available at ADD2018/117438 (Translating and interpreting services (TIS) – Interpreting for PV interviews), and may be provided to interpreters.

### **3.2.8. Appropriate lines of enquiry for LGBTIQ+ claims**

Preparing questions ahead of an interview will be helpful in ensuring that questions are crafted in a way that is not judgemental and supports the building of rapport and trust. Officers may wish to have some questions for LGBTIQ+ applicants prepared regardless of the claims presented, noting that relevant claims could be raised at any time. Effectively questioning an LGBTIQ+ applicant can be difficult, due to the diversity of

individual experiences and because a person may, for example, identify as LGBTIQ+ without having ever been in an LGBTIQ+ relationship. However, people who identify as LGBTIQ+ may have:

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Asking sensitive questions about these experiences is the most useful way of obtaining further information from applicants about their sexual orientation and gender identity and to thoughtfully and effectively establish the credibility of an LGBTIQ+ claim. It is important to explore what the concepts and experiences mean to the applicant. 'Why' questions are often more useful than 'what' or 'how'.

Officers may wish to take the language used in the applicant's claim as a 'hook' to explore a particular line of questioning. For example, if the words 'shame', 'difference' or 'fear' are used in the claim then officers can use these to guide the interview.

It is recommended that rather than come to an interview with a list of questions memorised, officers should pursue a thorough understanding of this PI and then tailor their questions to the mood and content of the interview. Questions that are inappropriate in one context may be perfectly acceptable in another. A thorough understanding and flexible approach ensures that due sensitivity is observed, and will lead to a higher quality interview and thus a stronger basis for decision making.

The following examples are appropriate lines of questioning for LGBTIQ+ applicants that may enable officers to obtain useful information and may also be helpful in establishing the credibility of claims relating to sexual orientation and gender identity. For details of matters about which applicants should not be questioned, refer to subsection 3.2.9 - Inappropriate lines of enquiry.

### **Family**

It may be useful to ask the applicant about their relationships with family members, noting that some applicants may not have disclosed their sexual orientation and/or gender identity to their family. Some applicants may be married, divorced, have had previous non-LGBTIQ+ relationships and/or have children. These factors do not mean that an applicant is not LGBTIQ+.

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### **Relationships**

The extent of an applicant's relationship experience will vary significantly and some applicants may not have had any close or intimate relationships at all. The absence of relationships does not mean that the applicant's claim is false, but it may be useful to explore the reasons why.

To obtain more information about the applicant's relationship experiences or, if applicable, their lack of experiences, officers may ask about:

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### Perception of others

Officers may ask about:

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### Claims

Officers may ask about:

s. 47E(d)



### Community

s. 47E(d)



Some applicants may still have strong cultural, family and/or religious ties to communities in Australia in which they are unable or unwilling to be 'out' (and in some cases there may be adverse consequences for an applicant or their family in either their home country or Australia if their LGBTIQ+ status is known within

these communities). An applicant's level of involvement in such communities may have a significant impact on their willingness or ability to be involved in an LGBTIQ+ community in Australia.

To obtain information about an applicant's involvement with/links to the LGBTIQ+ community, officers may wish to ask about:

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When establishing the credibility of claims relating to sexual orientation and gender identity, it may also be

s. 47E(d)



By exploring some or all of these aspects of a person's life, an officer can collate a fuller view of the applicant's experiences without resorting to inappropriate questioning about a person's sexual activity.

Officers assessing PV applications lodged by persons in Australia should be aware that whether the applicant has engaged with LGBTIQ+ communities in Australia will vary from case to case. On one hand, some applicants may not feel comfortable with engaging with LGBTIQ+ communities, particularly if they are living in a community with others from their country of origin. On the other hand, if an applicant claims to have engaged with a community, the officer could investigate and assess the veracity of these claims by asking further questions of the applicant. Officers should be mindful that there is not any 'one' LGBTIQ+ community but a large number of communities that can take a wide variety of forms.

An applicant's individual answer to a particular question on any of these topics should not, on its own, lead to an adverse credibility finding. Rather the information from an applicant about any of these topics should be considered cumulatively in assessing their credibility.

Credibility is discussed further at subsection 3.3.5. For additional guidance on assessing the credibility of applicants and guidelines on how to proceed following an adverse credibility finding, refer to the [Protection Visa Processing Guidelines – PI \(VM-4825\) – Part 13 – Assessing credibility](#).

### **3.2.9. Inappropriate lines of enquiry for LGBTIQ+ claims**

There are some lines of enquiry that should be considered out of bounds unless an applicant requests they be discussed. It is not appropriate to ask applicants for information about their sexual activities. It is also not a useful line of enquiry, because it is easy to invent and difficult to verify. Officers can verify claims more effectively by asking the sorts of open-ended questions around relationships and experience outlined previously in this procedural instruction.

It is also not appropriate to ask questions that assume an applicant will be familiar with Western gay cultural icons or, for PV applicants, the gay and lesbian communities in Australia. PV officers should carefully consider the value of asking about familiarity or knowledge of gay and lesbian culture or communities in Australia or activities in those communities, for example, night clubbing, music or literature. It may be appropriate for officers to question the applicant on these topics only if they are raised by the applicant in their claims and require further exploration. However, lack of knowledge of such topics should never be used to justify a denial of the applicants' claims.

Officers should also avoid projecting their own cultural expectations or preconceived notions onto applicants as a legal error may arise if they find that an applicant is not LGBTIQ+ because they do not conform to the officer's expectations or their personal knowledge of LGBTIQ+ cultural references, or how they think an LGBTIQ+ person should appear or behave, for example in their dress, mannerisms or style of speech.

Officers should not ask about the following matters during a protection or humanitarian visa interview:

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When questioning applicants about their relationships, officers may find it useful to advise the applicant in advance that they do not need to provide details of intimate or sexual activity, and to reassure them that they will not be asked for detailed information about traumatic events such as sexual assault.

### **3.2.10. Interviewing gender diverse applicants**

When interviewing a gender diverse (including transgender) applicant, the officer should ask the applicant for their gender, name and gender pronoun identification (e.g. he, she or gender-neutral pronoun), so these can be used when addressing the applicant during the interview. Officers should avoid saying '*preferred*' gender pronouns as this term implies that gender is a preference or a choice. Instead officers could introduce themselves with their pronouns. Some people do not use pronouns at all, and simply prefer that they be referred to by name.

Asking and correctly using someone's pronouns is courteous and shows your respect for their gender identity (although you should be aware that this question may be challenging and potentially triggering for gender diverse and transitioning people).

Officers should also advise the applicant that their name as listed on their identity documents will be used in departmental communication and acknowledge that this might be uncomfortable for the applicant in some instances. Where an applicant requests to be referred to by a name other than that recorded in Departmental systems, officers should note this name as an alias (and the applicant's preferred name) in the decision record. The Department's Writing Style Guide provides that the gender pronoun (e.g. Mr, Mrs, Miss) is not required to be used in departmental communication. The Department's correspondence templates supports this approach, and decision records can simply refer to 'the applicant'. As such it is also important to avoid the use of gender pronouns in informal correspondence such as cover emails. An applicant's sex, as listed in their identity documents, is recorded on departmental systems and displayed on their ImmiCard.

It may be appropriate to ask transgender applicants whether they are currently taking any physical/outward steps to transition, such as changing clothing, hair, makeup, taking hormones or other medication, undertaking surgery or changing legal documents.

Officers should use the interviewing and questioning guidelines described in section 3.2.8 - Appropriate lines of enquiry, when interviewing transgender applicants and avoid asking blunt or offensive questions such as 'are you a man or a woman?'. Sensitive questions should be asked about how the applicant identifies and whether they were raised male or female.

Officers should also note that, if a transgender applicant has not undergone medical treatment or taken other steps to align their outward appearance to 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 funds or inclination to undertake these changes, or for health reasons may be unable to undergo transition procedures.

### 3.3. Assessment

#### 3.3.1. Issues to consider when assessing female gender-based claims

Women and girls globally continue to face challenges and obstacles to claiming and enjoying their rights. Traditional expectations and their role as child-bearers mean that women are often particularly vulnerable to persecution and other forms of harm. They may not have the same access to protection by state authorities as men or the same opportunities to flee their country of origin.

Women are more likely than men to be harmed by members of their own family or community. They may be imputed with male relatives' political opinion, religion and race regardless of whether they actually share those beliefs or characteristics. They may also be targeted as a means of attracting, contacting or pressuring their male relatives or community. Women who fail or refuse to conform to standards of behaviour imposed on them by the state or society may attract adverse attention. Those who possess a feminist ideology may be viewed as espousing a political opinion hostile to the current administration and may be persecuted on that basis. Women are also more likely than men to be harmed because of their choice of sexual partners.

Women who are forcibly displaced from their country may face new threats of abuse and particular protection challenges related to their gender, cultural and social-economic position and legal status. This may mean that they are less able than men or boys to exercise their rights following flight. These challenges may be compounded if they lack traditional or customary protection in the form of a male relative, noting that the presence of a male relative does not necessarily guarantee a woman's protection. Officers considering the availability of effective protection from a non-state actor (eg. family member/s) under paragraph 5LA(1)(a) of the Act should review the Refugee Law Guidelines – PI (LS-1814) – Chapter 9 Available effective protection measures.

Women who have been forcibly displaced from their homes are likely to have suffered some form of victimisation, harassment or abuse during their journey because of their gender. The longer a woman is displaced, the more likely it is that she will experience (additional) trauma, sexual violence and other human rights abuses, which could trigger secondary movements to another location in search of safety.

Systematic and/or mass rape has also been used against women and girls as a means of oppression and persecution. Sexual assault can lead to shame and ostracism and other forms of violence as victims can be held morally responsible for the assault, lose respect and protection of their family or community, suffer further violence or reprisals, and be denied a livelihood. Sexual violence perpetrated in the private sphere or by non-state agents can also amount to persecution if there is an absence of effective state protection.

The majority of human trafficking victims (approximately 70 per cent) are women and girls, and those displaced are more susceptible to human trafficking. Officers can find out more about the Department's approach to combating human trafficking, and useful support tools such as the Human Trafficking toolbox, on the 'Human trafficking, slavery and slavery-like practices' intranet page.<sup>1</sup>

Other gender-related harm can take the form of restrictions on the way a woman behaves or involve forcing her to act a certain way. Those who flout such restrictions or challenge social conventions may attract a broad range of penalties or persecutory treatment as a result. Non-conformity with religious practices may be interpreted as an attempt to corrupt society or a threat to religious authority and power.

#### 3.3.2. Assessing female gender-based claims under the protection visa framework

Gender is not, in and of itself, a ground for persecution under paragraph 5J(1)(a) of the Act. For example, a PV applicant who fears being killed by a violent husband must demonstrate, for the purposes of satisfying the refugee assessment, that she fears being persecuted for reasons of her race, religion, nationality, political opinion or membership of a Particular Social Group (PSG). She would also need to show that she

<sup>1</sup> <https://intranet.bcz.gov.au/border-ops/policy/human-trafficking>

fears harm of a type commensurate with the definition of 'persecution' and that the authorities in her country of origin cannot or are unwilling to protect her from this harm.

A woman may be persecuted in a gender specific manner for reasons unrelated to gender (e.g. raped because of her membership in a political party), she may be persecuted in a non-gender specific manner, but because of her gender (e.g. flogged for refusing to wear a veil), or she may be persecuted in a gender specific manner because of her gender (e.g. subjected to female genital mutilation). This could mean there may be other or multiple paragraph 5J(1)(a) reasons, and not just fear of persecution for reasons of membership of a PSG. For more information about membership of a PSG based on gender, see Refugee Law Guidelines – PI (LS-1814) – 6.6 Membership of a PSG - Gender based PSG claims.

When considering whether the persecution feared by an applicant involves serious harm (as required by paragraph 5J(4)(b) of the Act, officers should be mindful of the considerations concerning serious harm outside of those examples listed in subsection 5J(5) of the Act. This includes serious mental harm, and multiple harmful acts which may cumulatively amount to serious harm. For further information see the Refugee Law Guidelines– PI (LS-1814) – 11.4 Serious harm.

If a woman faces harm for any reason but the State refuses to protect her because of her gender, then it may amount to persecution. Officers should be mindful of this when considering persecution reasons in paragraph 5J(1)(a) of the Act.

However, the complementary protection framework does not require persecution for one of the reasons prescribed in paragraph 5J(1)(a). Being at real risk of significant harm is sufficient to meet the criteria for the grant of a protection visa under the complementary protection framework set out in paragraph 36(2)(aa) of the Act. Therefore, if they find a gender-based claim does not fall within one of the paragraph 5J(1)(a) categories, officers should then assess whether the claim constitutes 'significant harm' as defined in the complimentary protection framework.

### Domestic and family violence

If an applicant with claims of family violence has separated from the alleged perpetrator (for example their spouse) the family violence would generally be expressed as a form of harm rather than a component of a PSG. For example, the PSG could be characterised as 'separated woman in country [X]' fearing persecution in the form of domestic violence or other harm on the basis of being a separated person in that society. In these cases, consideration of whether a person has faced family violence is not necessary to determine whether the person is a member of such a PSG or if such a PSG exists. The central aspects to these PSG claims are:

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Experience of past harm may be an indicator as to whether there is a real chance of persecution in the reasonably foreseeable future. For example, if an applicant claims to fear harm in the form of family violence if returned to the receiving country because the spouse remains there and the spouse or family will seek retribution for the separation, evidence of past violence may reasonably go to establishing the veracity of that claim. Even if incidents of claimed past harm are considered not to be credible or substantiated by evidence, the officer must address the real chance of persecution occurring in the reasonably foreseeable future.

The real chance of harm occurring must relate to all areas of the receiving country (see paragraph 5J(1)(c) of the Act, and the Refugee Law Guidelines - PI (LS-1814) – Chapter 8 Real chance in all areas of the receiving country - s5J(1)(c)). Furthermore, under subsection 5J(2) of the Act, a person does not have a well-

founded fear of persecution if effective protection measures are available to the person in the receiving country. 'Effective protection measures' are defined in section 5LA of the Act. For further information on 'available effective protection measures' see the Refugee Law Guidelines - PI (LS-1814) – Chapter 9 Available effective protection measures.

Therefore, the adequacy of effective state protection (subsection 5J(2), section 5LA; and paragraph 36(2B)(b) of the Act) and an assessment of whether the State is reluctant to be involved or turns a 'blind eye' to the harm are among the key considerations when assessing domestic/family violence related claims as well as whether there is a real chance of harm occurring in all areas of the receiving country.

For more information about effective state protection in the context of domestic violence see the Refugee Law Guidelines– PI (LS-1814) – 9.4 Willing to offer protection – s5LA(1)(b).

### 3.3.3. Issues to consider when assessing LGBTIQ+ claims

An applicant's personal account may be the only source of evidence and where there is a lack of country of origin information, an officer may have to rely solely on the applicant's statements. Assessing claims is therefore challenging due to the variability of individual experiences.

Applicants should never be requested to bring in documentary or photographic evidence of intimate acts (although where an applicant provides evidence in support of their claims, officers must have regard to it). It is extremely inappropriate to expect couples to be physically demonstrative at an interview in order to establish their sexual orientation. An LGBTIQ+ applicant may be, or have been married or divorced, have had heterosexual relationships, may never have had a gay, lesbian or bisexual relationship, and/or may have children. Additionally, sexual orientation and gender identity are not necessarily fixed and can evolve over time. The presence of any of these factors does not mean the applicant is not LGBTIQ+, as family or social pressures may have forced them to conform to cultural expectations and heterosexual norms, amongst many other reasons.

In some LGBTIQ+ cases, the claimed harm may be in relation to actual or perceived non-conformity with socially defined and traditional gender roles, rather than sexual activity. For example, a gay man might be targeted by his community because he has failed to marry and have children. In some countries, if a person conforms to gender norms and social expectations, there is a reasonably high tolerance of same sex relationships, if they are discrete. Officers should seek country specific information on these issues in order to accurately assess each applicant's claims.

Officers should be aware that not all LGBTIQ+ people will conform to cultural stereotypes associated with LGBTIQ+ communities. There is not one 'community', nor is there a single established set of interests or cultural references.

Officers should not assume that because an applicant has risked facing harm to have a relationship or casual encounter, the applicant does not have a subjective fear of that harm occurring. Relationships and sexuality are such fundamental aspects of life that people may take significant risks, despite being fearful of the consequences.

On the other hand, if an applicant has not had any relationships in their country of origin, or a third country, or in Australia, this does not mean that they are not LGBTIQ+. Rather, it may be an indication that they have been avoiding harm or that they have not yet met someone to whom they are attracted and who reciprocates the attraction. Furthermore, LGBTIQ+ applicants who have grown up in oppressive environments may come to a realisation about their sexual orientation or gender identity later in life than may be common in Western countries.

Assessment of LGBTIQ+ claims can be difficult as the evidence is often limited to the applicant's personal account. Providing objective evidence of their sexual orientation, gender identity, real chance of persecution, substantial discrimination or real risk of significant harm is difficult. For information on managing evidence and the use of corroborating witnesses, refer to Evidence at subsection 3.3.5.

Sexual orientation and gender identity are not visible characteristics and have to be revealed by the applicant. LGBTIQ+ applicants may have only spoken to a small number of people, or none at all, about their

sexual orientation or gender identity and may have kept it concealed before lodging a claim. Officers should therefore not be surprised if an applicant suddenly raises the issue of sexual orientation or gender identity late in an application process. If this occurs, officers should explore the reasons why the information was raised when it was.

For information on appropriate lines of enquiry when interviewing LGBTIQ+ applicants refer to Appropriate Lines of enquiry at subsection 3.2.8.

### **Lesbian applicants**

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

Lesbians may be subjected to gender-related harm by non-state actors, including homophobic rape (sometimes referred to as 'corrective' rape), violence by intimate partners, forced marriage or honour crime committed by family members. Officers should exercise particular sensitivity when assessing 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. As in all cases, findings on lesbian related claims of these applicants must not be based on stereotypical assumptions about the way lesbians ought to appear or behave.

Officers should be aware that the word lesbian does not exist in many languages, as culturally the concept is often not accepted or understood. As with all LGBTIQ+ applicants, officers should familiarise themselves with the relevant COI with respect to the treatment of lesbian women, including terminology (or lack thereof) which may be relevant to discussion of the applicant's claims.

### **Gay male applicants**

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

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

Some gay men may have had previous heterosexual relationships because of social pressures, including pressure to marry and have children (or because they had genuine feelings/attraction for their partner at the time). Officers must not make assumptions about how gay men appear or behave or attach significance to whether or not the applicant appears, for example, effeminate. They should avoid applying stereotypes. Some examples include their number of sexual partners or that all gay men have specific dating applications on their mobile phones.

### **Bisexual applicants**

Bisexuality is a unique identity and people who identify as bisexual are not necessarily attracted to both sexes at the same time. Nor do they necessarily have equal attraction to, or the same number of relationships with both sexes. They may have exclusively engaged in sexual activity with people of one sex, and still identify as bisexual. This could occur for a number of credible reasons, however it would be worth exploring at interview why the applicant has not pursued relationships with the other sex given they identify as bisexual.

Bisexual applicants may describe their sexual orientation as fluid or flexible. Some people might be attracted to the same sex or opposite sex at different times in their life, while others might consistently be attracted to people of either sex. Understanding that bisexuality is varied can assist in investigating these claims.

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

## Transgender applicants

Transgender individuals tend to dress or act in ways that are different from societies expectations of the sex they were assigned at birth. However, they may not always appear or act in these ways and some individuals may express their gender identity only in a safe environment. Gender identity is not the same as sexual orientation and transgender applicants may be gay, lesbian, bisexual or heterosexual. For example, an applicant born biologically male but who identifies as a woman may be sexually or romantically attracted to women and therefore identify as a lesbian (highlighting the difference between gender and sexuality).

Transitioning from one's birth sex is a multi-step process and can involve a range of personal, legal and medical adjustments. However, not all transgender individuals choose, or are able to proceed with medical treatment, so it is important that officers avoid assumptions about, or place emphasis on, sex reassignment surgery.

Transgender individuals are often highly marginalised and may have experienced physical, psychological and/or sexual violence. Further, transgender people may have or are likely to experience significant discrimination in relation to access to housing, health care and employment, as well as severe ostracism which may, in some circumstances, amount to serious or significant harm. Officers need to be mindful that transgender individuals may have an increased risk of experiencing mental health issues (including a higher prevalence of self-harm and attempted suicide). Additionally, a lack of employment opportunities and social services may force transgender individuals into sex work, thereby exposing them to further risk of violence. The experiences of transgender women are likely to be different to those of transgender men and they are likely to have experiences of harm and persecution similar to gender based harm experienced by heterosexual women.

Currently, at least 13 United Nations (UN) member States worldwide explicitly criminalise transgender persons (mostly via "cross-dressing" laws), but a wide range of laws are used to systemically target such individuals in many more countries. There is evidence that laws relating to public nuisance, indecency, morality, loitering, sex work-related offences, and consensual same-sex activity amongst others are deployed in some countries for the purposes of discriminating against transgender persons. The existence of this more implicit form of discrimination should be factored into assessments where necessary. State funded support for transgender people may be provided in some countries (such as in Iran, where limited subsidized support to specific forms of transition are available). Officers should consider the basis for such support, including whether it is linked to the notion of "corrective" action, ie. a psychological/sexual disorder that requires treatment.

Officers should also consider whether a transgender applicant fears harm because of perceived or imputed same-sex attraction.

It is also worth noting that transgender applicants from different cultures may present in ways that are inconsistent with Western stereotypes, and that the roles of such individuals in society may differ. An example of this are the *Pengkid* in Malaysia and the *Fakaleiti* in Tonga and neighbouring Pacific island countries. Both of these represent non-binary gender identities, but the unique cultural and social contexts of these identities means their experience of their gender identity may differ from that of transgender individuals in Western countries. There are also communities for example in South Asia (*Hijra*) and Polynesia (*Fakaleiti*) which have a specific cultural and ceremonial role and as a result have some semblance of societal tolerance. It is also important for officers to be aware that some terms have different meanings, for example the term *Hijra* (mentioned previously) can be considered derogatory in Urdu (equivalent to the term 'eunuch'), where the term *Khwaja Sara* is used instead. Officers should also note that acceptance of such individuals within the cultural/ceremonial context does not necessarily extend to broader acceptance or tolerance in the general community, or discount the possibility that these people can be subjected to serious harm in their communities.

## Intersex applicants

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

Some intersex children are not registered at birth by authorities. In the context of PV assessment, the treatment of such children, 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 fears, claims related to being intersex may be raised by the parent(s) of the intersex child 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 the intersex condition in a given country. This may affect how intersex individuals present their claims and outline instances of persecution at interview.

### 3.3.4. Transgression of traditional gender roles

The UNHCR guidelines on gender-related persecution highlight that persecution on account of a person's sexual orientation, in many cases, is due to the applicant refusing or failing to adhere to socially or culturally defined roles or expectations of behaviours attributed to his or her assigned gender. In some societies, the lives of women are circumscribed by legal, social or religious tradition.

For LGBTIQ+ applicants, it may be the transgression of traditional gender roles that puts the applicant at risk of harm, rather than their sexual orientation itself. Therefore, some applicants may have made significant attempts to conform with traditional gender roles in order to avoid harm. However, the cause of the harm can still be attributed to the applicant's membership of a PSG on the basis of their sexual orientation or gender identity.

### 3.3.5. Credibility

General guidance on assessing credibility that is also relevant for gender-based claims is in Protection Visa Processing Guidelines – PI (VM-4825) – Part 13 – Assessing credibility and the Refugee Law Guidelines – PI (LS-1814) – Chapter 15 Credibility. This section deals specifically with assessing credibility of LGBTIQ+ claims, acknowledging complexities relating to such assessments.

The issue of credibility is central to the assessment of LGBTIQ+ claims because of the personal nature of such claims, and the likely absence of objective supporting evidence. The assessment of credibility must be undertaken in an individualised and sensitive way.

If officers have made enquiries along the lines of those outlined in this PI, s. 47E(d)

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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 solely on a Western perspective. Decisions on credibility should not be based on stereotypical assumptions as there is no uniform way in which LGBTIQ+ people manifest their sexual orientation or gender identity.

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### Benefit of the doubt

For LGBTIQ+ claims, evidence will largely consist of the applicant's own account of their experiences, particularly if the applicant was not open about their gender identity or sexual orientation before leaving their country of origin or if persecution is at the hands of family members or the community.

The *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* at Part Two Section B *Establishing the Facts* gives guidance on assessing claims that cannot be proven by evidence or independent research. If the applicant's statements are coherent, plausible and do not conflict with generally known facts, and if their account appears credible, the applicant "should, unless there are good reasons to the contrary, be given the benefit of the doubt".

In other words, officers should give the applicant the benefit of the doubt in relation to a particular claim only when they are satisfied as to the applicant's general credibility. Officers are not required to accept uncritically an applicant's claims and should consider all available evidence that has been obtained and checked.

Further information on providing benefit of the doubt in the PV assessment context is available in the *Refugee Law Guidelines – PI (LS-1814) – 15.4 Considering evidence – specific situations*.

### Marriage and children

The fact that an applicant is married, was married or has children is not necessarily inconsistent with LGBTIQ+ claims. Some LGBTIQ+ people are aware of their sexual orientation or gender identity from a very early age and others are not aware until later in life. LGBTIQ+ applicants may marry due to societal norms or to meet cultural, religious or family expectations.

If the applicant is married, the officer should investigate how the applicant perceives the relationship and the future of the relationship. If the applicant is able to provide a reasonable context for the marriage and a consistent, credible explanation of how the marriage does or does not affect their ability to express their sexual orientation or gender identity, then the officer can use this response to assess the marriage beyond a superficial level.

### Demeanour

Demeanour is an unreliable indicator of credibility. The nature of LGBTIQ+ claims involves private issues of self-identity and sexual conduct and sometimes personal struggles that may be stressful or unresolved. A lifetimes experience of 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.

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### **Delay in making claims relating to sexual orientation or gender identity**

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 previously or may have experienced serious or significant harm, particularly from government authorities (or even from family), 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 after 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 circumstances of the case. Therefore, if the officer considers that the delay may cast doubt on the credibility of the applicants' claims, officers should ensure they thoroughly explore the reasons for the delay with the applicant at interview. A delay in seeking asylum or in presenting further information should not be the sole reason for rejecting an applicant's claims or the further information provided and there should be other reasons to support a finding that the claims are not credible.

For further information on considering delays in making claims by PV applicants refer to the Refugee Law Guidelines – PI (LS-1814) - Delay in applying for protection.

### **Evidence**

Officers may find it useful to seek evidence relating to past or current relationships, if appropriate. Depending on the nature of the relationships, this evidence might consist of emails, texts, videos, chat transcripts, phone records, social media, photographs or statements from relevant past/present partners. However, officers must not request explicit photographs or films of sexual acts. To do so would be unethical and 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 sections 54 and 55 of the Act.

Officers should, where necessary, inform applicants that they are not required to, and that they do not need to provide, explicit photographs or films to substantiate their claims. Applicants should also be advised that not providing 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 PV or Humanitarian visa applications, to store the applicant's information and evidence appropriately.

### **Corroborating Witnesses**

An applicant may wish to provide testimony or a contact point for a witness who can corroborate their claims. This can be a useful way for officers to assess the credibility of claims and strengthen the decision to grant or not grant a PV.

Officers may wish to note that historically, applicants with corroborating witnesses have tended to be granted more often than those without. However, the ability to provide a witness is only afforded to those applicants who are 'out' about their gender identity or sexual orientation. Therefore, applicants who are not 'out' can experience bias in this regard. Where a witness provides evidence that undermines the applicant's claims, officers should be mindful of procedural fairness considerations including section 57 of the Act (see Protection Visa Processing Guidelines – PI (VM-4825) – Part 10 – Further information/comment and procedural fairness requirements) for more information.

### **3.3.6. Country information**

Officers should be mindful that information on the situation of LGBTIQ+ people in many countries of origin may be limited or unavailable. This may be due to an absence of LGBTIQ+ 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 LGBTIQ+ individuals in that country.

When considering available country information, it is important to ensure that any recent societal and legal changes are weighed against evidence of ongoing discrimination, violence and impunity. It is also relevant to consider information that does not directly appear to target LGBTIQ+ people but which can be enforced in a discriminatory manner, for example, the presence of 'anti-propaganda' laws. If 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 LGBTIQ+ persons are being persecuted.

It is important to note that treatment may vary significantly between cities, within a country, or even in different parts of a city or regions of a country. Officers should consider that even when information is available that LGBTIQ+ communities or organisations exist, 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.

Officers should also note that there may be very different treatment of gay men compared to other LGBTIQ+ people by authorities in the country of origin. 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 the absence of country information on the treatment of LGBTIQ+ 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. Section 3.1.1 suggests some areas for country of origin research into conditions affecting women.

COISS produce LGBTIQ+ Resource Guides, updated on an annual basis and available on CISNET, which are a useful collection of LGBTIQ+ sources (including by country). These are a recommended starting point for country of origin information research, with the first few pages providing Global LGBTIQ+ sources.

If there is insufficient country information, officers should not turn to inappropriate sources of information as a substitute as this may result in 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. For more information, refer to Refugee and Humanitarian– PI (VM-3245) -Use of Country of Origin Information. Officers can also contact COISS for advice on evaluating sources and other matters related to country of origin information.

### **3.3.7. Assessing claims of LGBTIQ+ protection visa applicants under the Protection visa framework**

It should be noted that while the focus of this section is on assessing 'persecution' under the PV framework and it refers to specific PV related tests, some of its content, in particular the first four subsections, is also relevant to assessing claims of persecution of humanitarian visa applicants.

#### **Harm feared**

If an officer is satisfied that an LGBTIQ+ applicant is a member of a PSG and their claims are credible, they must then consider if the applicant's claims amount to persecution. Applicants may fear a variety of types of harm and the motivation of the agent of harm will also vary. In some societies, diverse sexual orientation or sexual identity is viewed as a disease or mental illness, and the agents of harm may believe they are attempting to 'treat' or 'cure' the person of their 'illness'.

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. However, criminalisation of same-sex sexual conduct may amount to serious harm (under the refugee assessment) or significant harm (under the Complementary Protection assessment), depending on the likelihood of the law being enforced, the severity

of the punishment or whether the law means that the applicant would not have effective state protection from private harm. For further guidance on considering complementary protection refer to the Complementary Protection Guidelines – PI (LS-1815).

As at 2017, there were approximately 72 countries that criminalise same-sex activity between consenting adults, seven of which have the death penalty for such activity (CISED50AD4462). It is open to officers to find that, while these laws may be considered laws of general application, they have a discriminatory impact on LGBTIQ+ persons that may amount to persecution or significant harm, depending on the level of enforcement of the laws and the severity of the punishment. Officers should consult contemporary country information on the legal environment in the applicant's country of origin.

Even if it appears that criminal laws target only gay men, there may be a correlating impact on other LGBTIQ+ people through a climate of fear and private harm. Additionally, laws that appear to have general application may have a disproportionately discriminatory effect on LGBTIQ+ people, for example, laws against extramarital sex. Gay men and lesbians may also risk being deprived of their children if they come out or leave their partners.

Criminal penalties may include arrest, imprisonment, physical mistreatment or torture. 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 LGBTIQ+ persons (CIS22180). Even if not enforced, the existence of criminal laws can promote and reinforce mistreatment within society and result in people abstaining from relationships. Additionally, if the state outlaws same-sex activities, it is very unlikely an LGBTIQ+ person would be able to seek state protection from community mistreatment.

The absence of laws that criminalise or discriminate against sexual or gender non-conforming behaviours in a country does not signify a lack of discrimination in that country; nor does it indicate that state protection is available.

The decriminalisation of same-sex relations, sexual or gender non-conforming behaviours, or the introduction of a new law, programme or other government action designed to improve the situation of LGBTIQ+ individuals in a country, needs to be carefully assessed to determine whether state protection is adequate at the operational level. In these cases, officers need to examine the degree of actual implementation and, the effectiveness and durability of these legislative or other improvements in light of how state actors and general society continue to treat LGBTIQ+ individuals.

Non-state actors may harm LGBTIQ+ individuals in response to the way they dress, act, speak or if they associate with other LGBTIQ+ people. Examples of such harm can include mob violence, sexual assault, harassment, forced marriage, social ostracism and physical abuse. LGBTIQ+ people may also be subject to blackmail or extortion if someone in their community discovers that they are LGBTIQ+ and threatens to make the information public.

Diverse sexual orientation or gender identity may be perceived in various places as pro-Western, sacrilegious, immoral, a psychiatric illness or an unacceptable threat to gender roles. Therefore, the source of opposition from the agent of harm can vary and may not necessarily be focused on the person's actual sexual activity.

### **Cumulative discrimination amounting to persecution**

Discrimination is a common element in the experiences of many LGBTIQ+ individuals, as a result of discriminatory laws, institutions or family and community treatment. LGBTIQ+ 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 a 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 vulnerability to sexual and physical assault and/or other exploitation.

Additionally, the harm faced by LGBTIQ+ women may be compounded by laws of the state that seek to control women's behaviour, appearance or sexuality. These laws could have a discriminatory impact on LGBTIQ+ women.

If 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 (i.e. persecution or significant harm depending on whether a refugee or complementary protection assessment is being conducted) equivalent to persecution.

For further information on assessing cumulative discrimination as part of the PV assessment, refer to the Refugee Law Guidelines – PI (LS-1814) – 11.4 Serious Harm - Other considerations concerning serious harm – Multiple harmful acts may cumulatively amount to serious harm.

### **LGBTIQ+ applicant's economic status**

An applicant's socioeconomic status may impact on their experience of being LGBTIQ+, their access to an LGBTIQ+ community, state protection and their exposure to persecution or significant harm. For example, people from high socioeconomic backgrounds are more likely to have had access to a broader LGBTIQ+ community and funds to allow travel and the opportunity to meet other LGBTIQ+ persons.

Wealthier applicants may be less at risk of being identified as LGBTIQ+ 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/town in which they live. They are also more likely to have access to private space, such as their own home, in which to conduct a relationship. However, if discovered, the applicant could still be exposed to serious or significant harm.

Applicants from a lower socioeconomic background may have had exposure to different types of harm, for example, if they were identified as being LGBTIQ+ on the street or on public transport. People from a lower socioeconomic background are more likely to live outside major city centres and are less likely to have engaged with a broader LGBTIQ+ community due to financial or geographical constraints. They may also have less access to state protection.

### **Agents of persecution**

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. In some circumstances, a non-state actor, who has substantial control of the country, could also provide protection and officers must also consider whether the non-state actor is able and willing to provide protection.

If the police do not respond to requests for protection, or refuse or fail to investigate and prosecute crimes against LGBTIQ+ 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 LGBTIQ+ family member brings shame or disgrace on the entire family. Family disapproval will not itself amount to a 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 the person's capacity to subsist. Instances of 'serious harm' which would threaten a person's capacity to subsist would include significant economic hardship, denial of access to basic services, and denial of capacity to earn a livelihood of any kind. However, there is a high threshold to be met for this to amount to 'serious harm' under the Migration Act. For further guidance on serious harm, please see the Refugee Law Guidelines – PI (LS-1814) – 11.4 Serious harm.

If the applicant is claiming that they fear harm from the authorities, the officer must consider the extent to which relevant laws are enforced. Additionally, officers should consider institutionalised discrimination that may affect the applicant to the point that it cumulatively amounts to serious or significant harm. The UNHCR Handbook, paragraph 83 notes 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."

It is usually more difficult to produce documentary evidence of harm by a non-state actor. Additionally, there is usually less country of origin information available to the officer. This means the assessment of a non-state claim will rely more heavily on assessment of the credibility of the applicant's claims.

### **LGBTIQ+ claims and membership of a Particular Social Group (PV framework)**

The 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 note in paragraph 46 that there is broad acknowledgement that LGBTIQ+ people are members of a PSG within the meaning of the refugee definition, and that claims related to sexual orientation and gender identity will commonly be assessed on this ground. For general guidance on assessing claims relating to members of a PSG, refer to the Refugee Law Guidelines – PI (LS-1814) – 6.6 Membership of a PSG.

However, officers should be aware that claims relating to sexual orientation or gender identity may intersect with other paragraph 5J(1)(a) of the Act persecution reasons, including those imputed to the applicant, such as political opinion or religion.

If the officer is not satisfied that a PV applicant with claims related to sexual orientation and gender identity has a well-founded fear of persecution owing to their membership of a PSG or on any of the other grounds in paragraph 5J(1)(a) of the Act, they must also consider whether there is a real risk of significant harm as provided for in paragraph 36(2)(aa) of the Act (the complementary protection assessment). For guidance about assessing claims against the criteria in paragraph 36(2)(aa), refer to the Complementary Protection Guidelines – PI (LS-1815) – 3.4 Significant harm – s36(2A).

### **3.3.8. Sur place LGBTIQ+ claims (PV framework)**

Sur place LGBTIQ+ claims may arise due to changes relating to the gender identity or sexual orientation of the applicant after their departure from their country of origin or because the agent of harm has discovered that the applicant is LGBTIQ+ after their departure or because of changes to the legislation or societal attitudes since the applicant's departure from their country of origin.

LGBTIQ+ applicants may not have identified themselves as LGBTIQ+ before they departed their country of origin, or may have decided not to express their sexual orientation or gender identity while in their country of origin. Claims may arise where an LGBTIQ+ applicant engages in political activism, uses social media, or when their sexual orientation or gender identity is exposed by someone else.

Officers must have regard to sur place claims relating to conduct in Australia only if they are satisfied that it was not for the sole purpose of strengthening the applicant's protection claims as per subsection 5J(6) of the Act.

For further information, refer to the Refugee Law Guidelines – PI (LS-1814) – Chapter 12 Sur place claims.

### **3.3.9. Internal relocation and real chance of persecution relating to all areas for LGBTIQ+ claims (PV framework)**

Broadly speaking, in order to have a well-founded fear of persecution, in addition to having a paragraph 5J(1)(a) reason for the persecution and having a real chance of the persecution occurring if returned to the receiving country, the real chance of the persecution must relate to all areas of the receiving country. Please refer to the Refugee Law Guidelines – PI (LS-1814) – Chapter 8 Real chance in all areas of the receiving country – s5J(1)(c).

Furthermore, under paragraph 36(2B)(a) of the Act, in relation to complementary protection, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm. Refer to the Complementary Protection Guidelines – PI (LS-1815) – 3.6.1 Internal Relocation – s36(2B)(a).

In most cases when the agent of harm is the state, moving to another area of the country will not be available to the applicant. There may be rare cases in which the applicant is safe in an area of the country in which the state does not exercise control.

If the agent of harm is a non-state actor, consideration should be given to their motivation and ability to pursue the applicant, as well as the availability of state or non-state protection in another part of the country. However, 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 and/or if required to modify behaviour in any way as this would be contrary to subsection 5J(3) (which deals with behaviour modification). For more information refer to the Refugee Law Guidelines – PI (LS-1814) – Chapter 10 Modifying behaviour – s5J(3) and the Complementary Protection Guidelines – PI (LS-1815) – 3.5.6.1 Behaviour modification. If further assistance is needed please contact [refs.help.onshore@homeaffairs.gov.au](mailto:refs.help.onshore@homeaffairs.gov.au).

Additionally, if the applicant is likely to be safe from harm due to their sexual orientation or gender identity in another part of the country but could face harm on different grounds, then moving to another area should not be relied upon. This is particularly important in countries featuring ethnic or religious conflict and, in the assessment of complementary protection, where there is particular reliance on family for socioeconomic support and protection.

In LGBTIQ+ related cases, the most likely option in this context would be for the applicant to move to a major city, particularly if there is evidence of an established and accepted LGBTIQ+ community there. However, if the level of acceptance of the LGBTIQ+ community or legalisation of same-sex activity has 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-LGBTIQ+ 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 LGBTIQ+ individuals.

In the context of complementary protection, legal or socio-economic reasons or child-care responsibilities may prevent women from travelling freely or living on their own without family members, limiting their ability to relocate within their country of origin/country of reference. Officers must carefully consider gender-related issues when applying this test.

### **Discretion/modification of behaviour for LGBTIQ+ claims (PV framework)**

Under subsection 5J(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, subsection 5J(3) will not apply to a person if they come under any of the exceptions in paragraphs 5J(3)(a), (b) or (c). These exceptions provide that a person is not expected to modify their behaviour if it would conflict with a characteristic that is fundamental to their identity or conscience, or if it would conceal an innate or immutable characteristic of the person, or without limiting paragraphs 5J(3)(a) or (b), require the person to do any of the things listed in paragraph 5J(3)(c).

LGBTIQ+ claims are likely to fall under the exceptions in subsection 5J(3) if a modification would:

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

In analysing whether subsection 5J(3) is applicable to an applicant's LGBTIQ+ claims, officers must consider the applicant's claims and explain why or why not the exceptions are relevant. If an officer finds that any of the exceptions are relevant, the applicant cannot be asked to take reasonable steps to modify their behaviour so as to avoid a real chance of persecution in a receiving country.

It is important to note that if people are discreet about their sexual orientation or gender identity, they cannot be considered to be 'choosing' to be private when it is the fear of harm that is coercing or forcing them to be secretive.

For more information about the operation of subsection 5J(3) of the Act refer to the Refugee Law Guidelines - PI (LS-1814) – Chapter 10 Modifying behaviour – s5J(3).

## 4. Accountabilities and Responsibilities

| Role                                                                                                   | Description                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Document owner<br>(Assistant Secretary, Humanitarian and Child Wellbeing Policy and Capability Branch) | Responsible for approving, where appropriate, updates to the PI.                                                                                                                                                                                                                            |
| Reviews and updates<br>(Director / Assistant Directors, Protection Assessment Support Section)         | Responsible for: <ul style="list-style-type: none"> <li>regular review of PI, identifying and drafting updates as required;</li> <li>consultation with relevant stakeholders;</li> <li>ensuring Legal Group, document owner and PPCF clearance is obtained prior to publication.</li> </ul> |

## 5. Version Control

| Version number | Date of issue | Author(s)                                    | Brief description of change                                                                                                         |
|----------------|---------------|----------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| 1              | 25 May 2018   | Protection Assessment Support Section (PASS) | The PI combines information from the Gender Guidelines PAM and PVPG in relation to gender and sexual orientation protection claims. |
| 2              | 25 June 2021  | Protection Assessment Support Section (PASS) | Updates following PASS review and stakeholder consultation, including significant updates to useful terminology section.            |

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## Attachment A – Definitions

Please note there may be multiple interpretations of the following terms. Officers should be aware that terminology relating to gender, sexual orientation and gender identity is evolving. Parts of this section have been adapted from sources including the Australian Institute of Family Studies: LGBTIQ+ communities - Glossary of common terms, November 2019 and the Organization for Refuge, Asylum and Migration: Sexual Orientation, Gender Identity and Gender Expression: Essential Terminology for the Humanitarian Sector, 2016.

| Term         | Acronym (if applicable) | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Asexual      |                         | A person who does not experience, or experiences very little, sexual attraction. Asexual people may nevertheless feel romantic attraction to others.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Bisexual     |                         | Bisexual describes a person who is 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 may also change over time.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Cisgender    |                         | A person whose gender identity fits societal expectations based on their sex assigned at birth; someone who is not transgender.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 'Coming out' |                         | A term used to describe a person's disclosure of their sexual orientation or gender identity to others.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Gay          |                         | <p>Gay is generally 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). The term 'gay' is used in these guidelines to refer to men attracted primarily to members of the same sex.</p> <p>Note: The term 'homosexual' is not preferred terminology as it is considered offensive and stigmatising by many members of the sexual and gender diverse community, because of the term's clinical history and associations with criminalisation and pathologisation.</p>                                                                                                                                                                                                                                                                                                           |
| Gender       |                         | <p>Refers to the socially constructed and hierarchical categories assigned to individuals on the basis of their apparent sex at birth. While other genders are recognised in some cultures, in Western society, people are generally expected to conform to one of two gender roles matching their apparent sex; for example, male = man/masculine and female = woman/feminine.</p> <p>Gender norms define how we should dress, act/behave, and the appropriate roles and positions of privilege we have in society (e.g. the power relationships between men and women). Failing to adhere to the norms associated with one's gender can result in ridicule, intimidation and even violence.</p> <p>Many people do not fit into these narrowly defined and rigid gender norms. Some women may feel masculine, some men may feel more feminine and some people may not feel either, or may reject gender altogether.</p> |

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| Term                  | Acronym (if applicable) | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Gender-based violence |                         | Violence that is directed against a person or a group of individuals on the basis of their gender identity or sexual orientation. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, whether occurring in public or private life.                                                                                                                                                                          |
| Gender diverse        |                         | Noting or relating to a person or group whose gender identity or gender expression does not conform to socially defined male or female gender norms.                                                                                                                                                                                                                                                                                                                                                  |
| Gender identity       |                         | Gender identity refers to a person's internal sense of how they feel about their gender. A person's gender identity may not correspond with the sex they were assigned at birth. A person may express their gender identity through behaviour, clothing, speech and body characteristics. Some people may seek to change their sex to align with their gender identity.<br><br>Gender 'affirmation' refers to the process of confirming one's gender identity and expression with self and/or others. |
| Gender incongruence   |                         | Refers to an individual's discontent with their assigned gender, and the identification with a gender other than that of their sex assigned at birth. May also be referred to as 'gender dysphoria' (although some consider this term outdated due to a historic association with pathologisation).                                                                                                                                                                                                   |
| Gender transition     |                         | Gender transition refers to a process where a transgender or gender diverse person takes steps to socially and/or physically feel more aligned with their gender identity. Some people may socially transition, for example by changing their dress or using names and pronouns that reflect another gender. Some people may transition physically by using medical interventions such as hormone therapy and/or surgical procedures.                                                                 |
| Heterosexual          |                         | A heterosexual person is one whose physical/sexual, romantic and/or emotional attraction is primarily, but may not be exclusively, to members of the opposite sex (noting that gender preference/attraction can change over time).                                                                                                                                                                                                                                                                    |
| Homophobia            |                         | Homophobia includes a range of negative attitudes and feelings toward same-sex sexual orientation, 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 and fear. Homophobia can lead to actions and laws that result in LGBTIQ+ people suffering serious and/or significant harm.                                                                               |
| Humanitarian visa     |                         | Refers to the Refugee and Humanitarian (Class XB) visa. The Class XB visa consists of: Subclass 200 (Refugee); Subclass 201 (In-country Special Humanitarian); Subclass 202 (Global Special Humanitarian); Subclass 203 (Emergency Rescue) and Subclass 204 (Woman at Risk) visas.                                                                                                                                                                                                                    |
| Intersex              |                         | An umbrella term that refers to persons who have anatomical, chromosomal and hormonal characteristics that differ from medical and conventional understandings of male and female bodies. Intersex people                                                                                                                                                                                                                                                                                             |

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| Term                    | Acronym (if applicable) | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------|-------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                         |                         | <p>may be 'neither wholly female nor wholly male; a combination of female and male; or neither female nor male'</p> <p>Intersex people were previously referred to as 'hermaphrodites', however, this term is outdated and considered offensive.</p> <p>People who identify as intersex may be viewed by others as transgender as there may be no understanding of the intersex condition in a given culture.</p> <p>Intersex people may identify their sex <i>and</i> gender as being intersex. However some may identify as male, female or gender diverse. It is important to remember that gender is not determined by sex characteristics.</p> |
| Lesbian                 |                         | A lesbian is a woman whose physical/sexual, romantic and/or emotional attraction is primarily, but may not be exclusively, to other women.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| LGBTIQ+                 | LGBTIQ+                 | <p>The acronym 'LGBTIQ+' refers collectively to people who identify as lesbian, gay, bisexual, transgender/gender diverse, intersex and/or queer. The + sign is used to represent genders and sexualities outside of the letters LGBTIQ+.</p> <p>Officers may encounter other variations of LGBTIQ+, however this is the accepted departmental acronym.</p>                                                                                                                                                                                                                                                                                         |
| Misgendering            |                         | An occurrence where a person is described or addressed using language that does not match their gender identity. This can include the incorrect use of pronouns (she/he/they), familial titles (father, sister, uncle) and, at times, other words that traditionally have gendered applications (pretty, handsome, etc.). It is best to ask a person, at a relevant moment, what words they like to use.                                                                                                                                                                                                                                            |
| Non-binary              |                         | Non-binary is a spectrum of gender identities that are not exclusively masculine or feminine (identities that are outside the gender binary).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Protection visa         | PV                      | <p>A Protection visa is a term used to describe the following visas:</p> <p>Protection (Class XA) - Subclass 866 (Protection) visa;</p> <p>Temporary Protection (Class XD) - Subclass 785 (Temporary Protection) visa; and</p> <p>Safe Haven Enterprise (Class XE) - Subclass 790 (Safe Haven Enterprise) visa.</p>                                                                                                                                                                                                                                                                                                                                 |
| Particular Social Group | PSG                     | <p>As defined in <u>section 5L</u> of the <i>Migration Act 1958</i> a person is to be treated as a member of a PSG (other than family) if;</p> <p>(a) a characteristic is shared by each member of the group; and</p> <p>(b) the person shares, or is perceived as sharing, the characteristic; and</p> <p>(c) any of the following apply:</p>                                                                                                                                                                                                                                                                                                      |

| Term                            | Acronym (if applicable) | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                 |                         | <p>(i) the characteristic is an innate or immutable characteristic;</p> <p>(ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;</p> <p>(iii) the characteristic distinguishes the group from society; and</p> <p>(d) the characteristic is not a fear of persecution.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Queer                           |                         | <p>A term used to describe a range of sexual orientations and gender identities. Although once used as a derogatory term, for many the term queer now encapsulates political ideas of resistance to heteronormativity and homonormativity and is often used as an umbrella term to describe the full range of LGBTIQ+ identities.</p> <p>Some people may still find this term offensive and it should not be used unless otherwise advised by the applicant.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Sex                             |                         | <p>Sex is the structural and biological characteristic of a person's physical anatomy which leads to their assignment as female, male or intersex at birth. Sex is determined by internal and external reproductive organs, chromosomes and hormones. Sex is not always straightforward as some people may be born with an intersex variation, and anatomical and hormonal characteristics can change over a lifespan.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Sexual and gender nonconformity |                         | <p>Sexual and gender non-conformity refers to sexual and gender expression that does not conform to societal expectations of male and female gender identities.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Sexual orientation              |                         | <p>Refers to a person's sexual and romantic attraction to another person. This can include, but is not limited to, heterosexual, lesbian, gay, bisexual and asexual. However, these are just a handful of sexual identifications – the reality is that there are infinite ways someone might define their sexuality, and this can evolve and change for persons over time.</p> <p>People can identify with a sexuality or sexual orientation regardless of their sexual or romantic experiences. A person's sexual orientation should not be defined or evidenced solely by their sexual activity or romantic experiences. For example, a celibate person or a virgin can be gay/lesbian/queer/bisexual.</p> <p>It is important to understand the difference between gender identity and sexual orientation as these are distinct concepts and confusing the two may negatively affect PV decision outcomes.</p> |
| Transgender                     |                         | <p>Transgender describes people whose gender identity differs from the sex they were assigned at birth. Transgender/trans or gender diverse people may choose to live their lives with or without modifying their body, dress or legal status, and with or without medical treatment and surgery.</p> <p>Transgender people have the same range of sexual orientations as the rest of the population. Transgender people's sexuality is referred to in reference to their gender identity, rather than their sex. For example, a</p>                                                                                                                                                                                                                                                                                                                                                                             |

| Term                                          | Acronym<br>(if applicable) | Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                               |                            | <p>woman may identify as lesbian whether she was assigned female at birth or male.</p> <p>Transgender people and cross-dressing people are distinctly different and are in no way mutually linked or exclusive. Cross-dressing refers to people who dress in clothes which are commonly attributed to the opposite sex. Cross-dressing is independent of gender identity, sexual orientation or being transgender. It should never be assumed that transgender persons cross dress, or vice versa that cross-dressing persons are transgender (or, are not heterosexual).</p> <p>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. The term transvestite may be used by some applicants to refer to transgender, however this term is considered outdated and offensive.</p> <p>Transgender/trans or gender diverse people may also use a variety of different pronouns including he, she, they, hu, fae, ey, ze, zir and hir. Using incorrect pronouns to refer to or describe transgender/trans or gender diverse people is disrespectful and can be harmful.</p> |
| Transphobia                                   |                            | Refers to negative beliefs, prejudices and stereotypes that exist about transgender and gender diverse people.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| United Nations High Commissioner for Refugees | UNHCR                      | UNHCR is a United Nations agency mandated to aid and protect refugees, forcibly displaced communities and stateless people, and to assist in their voluntary repatriation, local integration or resettlement to a third country.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

## Attachment B – Assurance and Control Matrix

### 1.1 Powers and Obligations

| Legislative Provision     |                          |                                                             | Is this a delegable power? | If delegable, list the relevant instruments of delegation                                                                                |
|---------------------------|--------------------------|-------------------------------------------------------------|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Legislation               | Reference (e.g. section) | Section heading/provision description                       |                            |                                                                                                                                          |
| <i>Migration Act 1958</i> | Section 36               | Protection visas – criteria provided for by this Act        | Yes                        | <u><i>Social Cohesion and Citizenship Group AND Immigration and Settlement Services Group (Minister) Instrument 2020 (LIN20/188)</i></u> |
| <i>Migration Act 1958</i> | Section 54               | Minister must have regard to all information in application | Yes                        | <u><i>Social Cohesion and Citizenship Group AND Immigration and Settlement Services Group (Minister) Instrument 2020 (LIN20/188)</i></u> |
| <i>Migration Act 1958</i> | Section 55               | Further information may be given                            | Yes                        | <u><i>Social Cohesion and Citizenship Group AND Immigration and Settlement Services Group (Minister) Instrument 2020 (LIN20/188)</i></u> |
| <i>Migration Act 1958</i> | Section 56               | Further information may be sought                           | Yes                        | <u><i>Social Cohesion and Citizenship Group AND Immigration and Settlement Services Group (Minister) Instrument 2020 (LIN20/188)</i></u> |
| <i>Migration Act 1958</i> | Section 57               | Certain information must be given to applicant              | Yes                        | <u><i>Social Cohesion and Citizenship Group AND Immigration and Settlement Services Group (Minister) Instrument 2020 (LIN20/188)</i></u> |
| <i>Migration Act 1958</i> | Section 59               | Interviews                                                  | Yes                        | <u><i>Social Cohesion Group and Citizenship AND Immigration and Settlement Services Group (Minister) Instrument 2020 (LIN20/188)</i></u> |
| <i>Migration Act 1958</i> | Section 65               | Decision to grant or refuse to grant visa                   | Yes                        | <u><i>Social Cohesion Group and Citizenship AND Immigration and Settlement Services Group (Minister) Instrument 2020 (LIN20/188)</i></u> |

## 1.2 Controls and Assurance

|                                                                                                                        |                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Related Policy</b>                                                                                                  | Department of Home Affairs – Operating Model                                                                                                                                                                                                                                                                |
| <b>Procedures / Supporting Materials</b>                                                                               | <ul style="list-style-type: none"> <li>- Protection Visa Processing Guidelines – PI (VM-4825)</li> <li>- Refugee Law Guidelines – PI (LS-1814)</li> <li>- Complementary Protection Guidelines – PI (LS-1815)</li> </ul>                                                                                     |
| <b>Training/Certification or Accreditation</b>                                                                         | <ul style="list-style-type: none"> <li>- Departmental Induction Phase 1</li> <li>- Visa and Citizenship Vocational Training Pathway (VCVTP) Foundation program Phase 2</li> </ul>                                                                                                                           |
| <b>Other required job role requirements</b>                                                                            | Nil                                                                                                                                                                                                                                                                                                         |
| <b>Other support mechanisms (eg who can provide further assistance in relation to any aspects of this instruction)</b> | Protection Assessment Support Section:<br><a href="mailto:Protection.Assessment.Support@homeaffairs.gov.au">Protection.Assessment.Support@homeaffairs.gov.au</a>                                                                                                                                            |
| <b>Escalation arrangements</b>                                                                                         | The support mechanism for guidance on the Gender and Sexual Orientation PI is the Protection Assessment Support Section (PASS) via s. 47E(d) <a href="mailto:PASS@homeaffairs.gov.au">PASS@homeaffairs.gov.au</a> . The escalation arrangements are to contact the Director, PASS via the provided mailbox. |
| <b>Recordkeeping (eg system based facilities to record decisions)</b>                                                  | TRIM and ICSE                                                                                                                                                                                                                                                                                               |
| <b>Program or Framework (i.e. overarching Policy Framework or Business Program)</b>                                    | The Humanitarian Program Quality Management Framework (ADD2020/2210702) provides assurance to the program manager that relevant controls such as legislation, and policy guidance are being appropriately implemented.                                                                                      |
| <b>Job Vocational Framework Role</b>                                                                                   | Visa and Citizenship Decision Maker                                                                                                                                                                                                                                                                         |

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## Attachment C – Consultation

### 1.1. Internal Consultation

- Consultation on the development of this procedural instruction, including PPCF Legal clearance, is detailed at ADF2020/37024.

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