Australian Refugee and Asylum Seeker Policy

Concerns for health and well-being
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For those who’ve come across the seas we’ve boundless plains to share...”
- Australian National Anthem

This book is dedicated to the medical and health professionals who have worked within the challenging environment of immigration detention. We, the future doctors of Australia, are grateful for the support and inspiration you have provided us in striving for a fairer, healthier Australia.

AMSA would like to thank the doctors, lawyers, medical students and other professionals that have contributed to the production of this booklet. We would also like to thank the Australian Human Rights Commission for the use of images drawn by children living in immigration detention.
The health impacts of Australia’s immigration detention policies, including but not limited to, indefinite mandatory detention, offshore detention, temporary protection visas (TPVs) and children and families policy, have been well established. The evidence has been compiled by a large number of reports by independent bodies and peer-reviewed studies by health practitioners. AMSA has compiled numerous summaries of the data available, included in multiple submissions to official bodies, and these reviews have painted a concerning picture of the wellbeing of vulnerable people under Australia’s care.

It is known that “prolonged mandatory detention compounds past trauma and abuse, leading to a demonstrated negative effect on health, particularly mental health” [1]. An assessment pertaining to the mental health of detainees held in an Australian detention facility for more than two years concluded that every adult had major depressive disorder and 82% of adults had PTSD [2]. However, prior to detention, only half reported having PTSD, 21% had comorbid depression and no adults had self-harmed or had experienced suicidal ideation [2]. Subsequent to detention, most expressed suicidal ideation with a third having physically harmed themselves during their detention [2].

Substantial risk of physical illness has also been reported. Proctor et al noted a lack of

Improvements to Australia’s immigration policies would draw public support from the AMSA and the broader medical community. It is up to our government to take its responsibility as a global citizen seriously.

James Lawler
President
Australian Medical Students’ Association
physical and sexual abuse” in Australia’s offshore detention centres [3]. The recent Moss review found further evidence of inadequate standards of safety, including the alleged rape of two women and one minor (currently being investigated by Nauru authorities) and a culture of under-reporting due to cultural reasons and fear of adverse effects on asylum claims [5]. Incidents of uncontrolled and widespread physical violence have been well-documented, for example by the independent Cornall report into rioting on Manus Island which saw at least 69 injuries including one detainee wounded by shooting, another losing their eye and Mr. Reza Berati killed [6].

Finally, the effect of prolonged detention on children is perhaps the most concerning aspect of current policy. In response to the suicide attempt of a 9 year old child in detention, the Australian Medical Association (AMA) stated “detention of asylum-seeker children and their families is a form of child abuse” [7]. Indeed, 81.1% of Australian paediatricians responding to a recent survey agree or strongly agree with this statement [8]. The Forgotten Children Report found that children were spending an average of 231 days in detention. The prolonged detention of children has profound negative impacts on their mental health and development with 34% being assessed as having a mental health disorders of a severity experienced by only 2% of children in Australia [9].

There is an significant body of evidence demonstrating the incompatibility of current immigration detention practises and respect for human well-being and dignity. In a context where the health consequences of particular policies are well known, it is unacceptable for a wealthy democratic nation such as Australia to continue to enact such policies. Genuine reform is needed and AMSA’s recommendations regarding this matter can be found at the end of this booklet.
It is hard to envisage a more toxic environment for the well-being of children than Australia’s Immigration Detention system. Part of it is about the horrible environments; historically Curtin, Woomera, Baxter; currently Christmas Island, Nauru. But even when the environments are more physically comfortable (for example the recently closed Inverbrackie Centre near Adelaide), children are severely damaged by the experience.

The main contributors are as follows:

1. Being in a culture where there is a lack of hope. The impact here is particularly from the effect on parents. The strongest determinant of children’s emotional survival of traumatic experiences is how well their parents deal with the trauma. In our experience, because of the toxic effect on adults in this environment, previously competent parents often fail in the detention environment; that is they become unable to provide reasonable levels of structure and predictability in their children’s lives and keep safe their children and are unable to attend to and help make sense of their emotional needs.

2. Lack of space to play. This is not just about having a friendly, safe play environment; children can play with a few rocks in a scruffy yard. This is about psychological space for play. Children use play, especially imaginative play to process emotions. For example, a small child might act out aggressive behaviour between dolls or other figures as a way of processing distressing memories of witnessing violence [1]. Immigration detention is anti-play. For example, frequent arbitrary security checks and searches and officious rules are two of the factors that make immigration detention an unsafe environment for play. This compounds the already toxic environment, because play is an important way in which children cope with distressing experiences.

3. Exposure to violence. It is a natural and healthy response to mistreatment to protest, sometimes violently. Unfortunately in the toxic immigration detention environment such protest often takes destructive form – lip sewing, cutting, physical violence – and children are exposed to this behaviour from a young age. Of course this is not unique to the immigration detention environment but it is much more prevalent and from my experience has damaging effects on children.

Unfortunately protest often gives way to despair and hopelessness, and we sadly see children with alarmingly high rates of self-harm, developmental regression and mood disorders [2, 3, 4]. Once this occurs, the chances of real recovery after discharge from detention is severely diminished.

References:
Health Concerns Regarding the Re-Introduction of Temporary Protection Visas

By Professor Zachary Steele

Internationally, temporary protection has historically been used for mass displacement or for countries of first asylum where undertaking individualised refugee merits based assessments is not possible [1]. The use of temporary protection for persons already found to be refugees is unique to Australia. These provisions are in direct breach of International principles [2] laid out in the United Refugee Convention of Refugees, including that refugee status should be granted continuously and that refugees who are resident should have a range of rights including the right to travel documents and to be treated with the same rights as other citizens.

There are important concerns about the re-introduction of this policy. The permanent restriction on TPV holders from being able to reunite with immediate family, who are often dependent on the TPV holder, is a particularly distressing and is at odds with all accepted international norms in protection and resettlement. In the first implementation of TPVs, refugees are required to undertake a full merits review of their refugee claim to re-establish continuing need for protection, and the inability to travel in case of family emergency, as well as an increase in daily living stressors [6, 7].

Mandatory and compulsory assessment is not possible [1]. The use of individualised refugee merits based assessments is not possible [1].

A second study confirmed the high levels of pre-migration adversity, which continued at two year follow up of both groups [10]. Resettlement outcomes in the TPV group were also poorer amongst the TPV cohort with no improvement in the very low levels of English language proficiency in the TPV group compared to the permanent protection group, and high levels of living difficulties at the two-year follow up period.

A second study confirmed the high levels of mental health impairment amongst an independent sample of 341 refugees and immigrants from Iraq. TPV holders were two to three times higher to have a stress related mental disorder than refugees with permanent protection visas despite similar levels of pre-migration traumatic exposure. A follow up, undertaken after TPVs had been abandoned, and most converted to permanent protection visas and found significant improvement in depression, PTSD and mental health related quality of life for these refugees.

TPVs are associated with a consistent set of adverse mental health and resettlement outcomes. Reports indicate that TPV holders do not display the normal pattern of recovery and reintegration observed amongst refugees with permanent protection [3-5], suffer significant hardship associated with uncertainty created about the future, lack of access to family reunion, and the inability to travel in case of family emergency, as well as an increase in daily living stressors [6, 7].

Momartin and colleagues [9] found refugees on TPVs experienced substantially higher number of daily living difficulties, anxiety, depression and PTSD than their compatriots with permanent residency as a result of the TPV provision, despite reporting a similar level of pre-migration adversity, which continued at two year follow up of both groups [10].

Resettlement outcomes in the TPV group were also poorer amongst the TPV cohort with no improvement in the very low levels of English language proficiency in the TPV group compared to the permanent protection group, and high levels of living difficulties at the two-year follow up period.

Collectively, all sources provide a clear picture that TPVs are associated with sustained high levels of daily stress and poor resettlement outcomes across all indices.

References:
10. Steel, Z., et al., Two year psychosocial and mental health outcomes for refugees subjected to restrictive or supportive immigration policies. Social Science and Medicine, 2011. 72(7): p. 1149-1156.
Conditions on Christmas Island

By Professor Elizabeth Elliot

In July 2014, during the National Inquiry into Children in Immigration Detention, I visited Christmas Island with the President of the Australian Human Rights Commission (AHRC) Gillian Triggs, as an expert paediatrician. There I witnessed first-hand the conditions for children and the extent to which they were deprived of their human rights.

Families barely existing in small metal rooms in searing tropical heat; absence of clean, cool areas for play and exploration; lack of opportunity to attend school; a restricted diet; no freedom of movement; and limited access - in this remote location - to timely specialised paediatric and child mental health services.

We interviewed, heard the experiences of, and brought to everyday Australians, the words of over 200 previously ‘voiceless’ families who had been stripped of their identity during mandatory detention; a practice that contravenes the international conventions to which Australia is a signatory. After more than a year in detention, many had lost hope. Asylum seekers understand the need for assessment of their claims, but cannot understand why this process is so protracted. They reminded us of the fact that a prisoner at least knows his sentence, in contrast to their plight of indefinite limbo.

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As one layer of trauma was piled onto another, children had become more and more mentally disturbed. Many had witnessed brutal events in their homeland, endured a frightening passage by boat to Australia and had now come to the realisation that, according to current policy, they would never be settled in Australia. Some of the teenagers had the flashbacks typical of Post-Traumatic Stress Disorder (PTSD), many could not sleep, and some reported feeling depressed and crying every day. One 12-year old summed up her predicament in the words ‘My life is really deth.’

In order to thrive emotionally and physically, young children need a stable environment. Cramped living conditions and traumatised parents are not conducive to this. At the time we visited Christmas Island a dozen women with children aged less than 12 months were deemed at risk of repeat self-harm or suicide and were under 24-hour eye-contact surveillance. Against best clinical practice, they were supervised by security guards rather than by medical staff. We met children who had developed bed-wetting, regressed in their speech, withdrawn socially, become mute or self-harmed. We met children who had been waiting weeks for specialist medical care or assessment and parents so distressed that they could not contemplate a future.

The AHRC report on the National Inquiry – The Forgotten Children – tabled in Parliament on February 11th includes quantitative data from standardised assessments of child mental health and evidence given under oath by health service providers and others. It documents unacceptable levels of mental ill-health in children, providing credible evidence of harm from detention. It leaves the reader in no doubt that mandatory detention is bad for child mental health. Regardless of our politics - and acknowledging the international challenges of dealing with asylum seekers - we must find a more humane way to treat asylum seeker children. The report has two key recommendations. First, Australia must abolish arbitrary detention of children and release all children detained on mainland Australia and Nauru into community detention, or into the community as soon as possible. Secondly, legislation should be enacted so that in future children may be detained under Migration Act for only as long as is necessary for security, identify and health checks. We must develop methods for timely processing of claims for refugee status and in the meantime must ensure that children in our care are treated humanely, with compassion and provided the opportunities for health and education that are their right.
Changes to the Migration Act passed in the Australian Senate on December 5 2014

Legal Changes Relevant to Refugee Wellbeing

By Claire O’Connor SC
Katie Milanowicz

Law Council of Australia’s submission to the Senate Standing Committee on Legal & Constitutional Affairs inquiry into the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Submission 129):

Summary of the changes/issues overall:

“Key amendments relate to: the increase of Executive and non-Executive powers to detain and transfer people at sea and the restriction of the court’s ability to invalidate such actions; the reintroduction of Temporary Protection Visas (TPVs) and the introduction of the Safe Haven Enterprise Visa (SHEV); the introduction of fast track processing for the ‘legacy caseload’, including the removal or restriction of merits review; the removal of most references to the Convention relating to the Status of Refugees (Refugee Convention) in the Migration Act 1958 (Cth) and the requirement to consider Australia’s non-refoulement obligations; clarifying that babies born in Australia or in offshore processing centres will have the same designation under the Migration Act as their parents; and allowing the Minister to cap the number of protection visas issued.”

Schedule 1: Non-Refoulement

Expands the powers of Australian maritime vessels to transfer asylum seekers intercepted at sea (in Australian or international waters) to another ‘destination’. The Bill sets out that the term ‘destination’ will apply to places other than countries, such as a vessel.

Schedule 2: TPVs and Safe Haven Visas

Who this affects
- Asylum seekers who arrived by boat
- Asylum seekers who arrived by plane without a visa or were not cleared by immigration at the airport
- Asylum seekers who have previously held certain types of temporary visas, such as a Temporary Safe Haven Visa or Temporary (Humanitarian Concern) Visa.

Who this does not affect
- Asylum seekers who arrived by plane with a valid visa, cleared immigration and then applied for asylum. You will continue to be eligible for a permanent protection visa.

What is a Temporary Protection Visa (TPV)?
- Valid for up to three years
- Able to work
- Able to access Medicare
- Cannot sponsor family to come to Australia
- Will have to reapply up to every 3 years and will not be eligible for permanent protection

Ban on family reunion for TPV holders
The most concerning aspect of the TPV is the ban on family reunification. TPV holders will not be able to sponsor their families to Australia, and cannot leave Australia to visit their families and then return to Australia. This creates the perverse incentive of encouraging family members to risk their lives on the high seas.

Schedule 4: Fast Track Processing and removal of access to review before the RRT

Who this affects
This will affect asylum seekers who arrived by boat on or after 13 August 2012. (Note: around 30,000 people who are still living in the community/on bridging visas/in onshore detention facilities)

What this means
A new fast-track process has been developed for people who arrived by boat on or after 13 August 2012. Under the fast-track process, you will still be interviewed by a department of immigration official; however there will be limited opportunity to appeal a negative decision of your refugee claim.

This means:
- Under fast track, unsuccessful claims will not be reviewed by the Refugee...
Review Tribunal
• Instead, your application may be referred to a new review body called the Immigration Assessment Authority (IAA)
• The review will not involve a hearing, instead the paperwork of your case will be reviewed
• You will only be allowed to provide new information to the IAA if you are able to explain why it could not have been presented in the first instance
• You can only appeal the decision at court to test whether the law has been applied properly, not to have the facts or merits of your case re-heard
If your claim is successful, you will be granted a temporary protection visa.

Schedule 5:
Changes to the definition of a refugee

“Schedule 5 of the Bill is described in the Explanatory Memorandum as “clarify(ing) Australia’s international obligations”. It does so by removing references to the Refugees Convention from the Migration Act, an act that seriously undermines Australia’s commitment to its non-refoulement obligations, the cornerstone of refugee protection.”

Who this affects
All asylum seekers, regardless of mode of arrival.

Whether modifying behaviour is reasonable
The decision maker assessing your application will determine whether you are able to reasonably modify your behaviour in order to be safe in your home country. This might mean, for example, changing your profession if this is what putting you in danger. It does not require you to change fundamental things about your identity, such as your religion.

The new Bill proposes to change and codify the test for membership of a particular social group (MPSG).
At present, when considering MPSG, decision makers must be satisfied that:
• there is a relevant social group of which the applicant is a member; and
• the persecution feared is for reasons of membership of the group.

Under the Bill, section 5L(1)(b) introduces an additional requirement for MPSG, being that the defining characteristic of the particular social group must be either innate or immutable or so fundamental to the member’s identity or conscience, the person should not be forced to renounce it.

Changes to the test for eligibility for protection aka the 49/51% rule:
(Insertion of 6AA to the Migration Act)

A person is currently eligible for complementary protection from Australia if there is a “real risk” they’ll face significant harm on return. Australian courts have said the current threshold may be met when the probability of harm is well below 50 per cent. As former High Court Justice Michael McHugh has explained:

[A] fear may be well-founded for the purpose of the Convention and Protocol even though persecution is unlikely to occur. … an applicant for refugee status may have a well-founded fear of persecution even though there is only a 10 per cent chance that he will be … persecuted.

The proposed reforms would increase the risk threshold an asylum seeker is required to meet to “more likely than not”, that is, a probability of greater than 50 per cent. This increases the risk of asylum seekers being returned to an environment in which they will experience mental or physical harm associated with persecution.

Schedule 6:
Legal status of babies born in detention

“Bill sch 6 item 2 inserting ss 5AA(1A) and 5AA(1AA) into the Migration Act 1958 (Cth).

The Bill amends the definition of ‘unauthorised maritime arrival’ to include a child born in Australia or a regional processing centre who has at least one parent who arrived by boat, provided that child is not deemed an ‘Australian citizen’ under the Australian Citizenship Act 2007 (Cth).

Babies born on Australian soil will be subject to: mandatory detention offshore; resettlement in Nauru or Cambodia, not Australia; or statelessness. This breaches article 3(1) of the Convention on the Rights of the Child49 (CRC) to ensure primary consideration is always given to the best interests of the child.”

References:
1. Law Council of Australia submission 129, Executive Summary page 4.
3. ANU College of Law submission 168 page 5.
5. ASRC Submission 131 page 22.
7. ASRC submission 131 page 25.
Border Force Act – implications for doctors’ code of conduct

By Dr Barri Phatarfod

The Australian Border Force Act passed with bipartisan support in May 2015 and states that contracted persons speaking out about conditions in detention centres face penalties of up to two years imprisonment. Since then, medical bodies including the Australian Medical Association (AMA) and the Royal Australasian College of Physicians (RACP) have voiced concerns about the resulting conflict facing doctors working under such conditions.

In clinical practice doctors often have to balance competing ethics; however in this setting the dilemma is one of competing duties rather than ethics, as the ethical course is clearly outlined in the Medical Board of Australia’s Code of Conduct, which is heralded as “consistent with the Declaration of Geneva and the International Code of Medical Ethics issued by the World Medical Assembly (WMA).”

Specific sections of the Code are especially pertinent to the conditions in Immigration Detention Centres.

Section 5.3 on ‘Health Advocacy’ states: “Good Medical Practice involves using your expertise and influence to protect and advance the health and well-being of individual patients, communities and populations.”

Section 6.2 on ‘Risk Management’ describes Good Medical Practice as: “Working in your practice and within systems to reduce error and improve patient safety, and supporting colleagues who raise concerns about patient safety. Taking all reasonable steps to address the issue if you have reason to think that patient safety may be compromised.”

This is consistent with the WMA which states: “A Physician shall act in the patient’s best interest when providing medical care and owe his/her patients complete loyalty and all the scientific resources available to him/her.”

It is primarily from doctors and other health workers speaking out that we have learned about the appalling practices rife in the detention system. This includes lack of basic medication and equipment, dehumanising treatment of patients such as removal of eyeglasses, dentures and other aids including artificial limbs, denying sanitary products to women, sexual assault, trading essential items for sexual favours and unacceptable delays in transferring patients to hospital facilities or offshore, amongst other gross deviations from standard care.

‘Conflict of Interest’ is addressed in Section 8.11 of the Australian Code, confirming: “the doctor’s primary duty is to the patient; doctors must recognise and resolve this conflict in the best interest of the patient,” all of the Code’s principles are superseded by Section 1.3 which states: “If there is any conflict between this code and the law, the law takes precedence.”

However while this disclaimer might reassure some doctors fearful they may lose their medical registration by complying with the new Act, it does nothing to hearten the overwhelming majority who chose medicine because of the desire to treat and uphold the rights of vulnerable patients.

Significantly, this caveat is absent from the WMA Code of Ethics. This is hardly unexpected. Founded in 1947 in the aftermath of the Second World War, the WMA states in relation to prisoners and those in detention: “The physician shall not be present during any procedure during which torture or any other forms of cruel, inhuman or degrading treatment is used or threatened.” ‘Cruel, inhuman and degrading’ are the words used by Amnesty International and the UN to describe the routine treatment witnessed while visiting the offshore detention centres, raising the question of whether doctors ought to not work in these environments at all. Currently before Senate
is a proposed law which effectively allows detention centre staff to use whatever force necessary to keep ‘good order’. There has already been one death on Manus Island last year allegedly caused by a security guard, and this law could remove such actions from being criminal.

While the issue concerning compliance with registration requirements might be somewhat resolved, the larger question remains as to the type of society we have where the government passes laws contrary to medical ethics ratified by the Geneva Convention. History provides many examples of state-sanctioned human rights abuses perpetrated against sections of the population, and when the full extent of the atrocities comes to light the community is understandably horrified at the complicity of doctors. One wonders why Australia’s Medical Board has chosen to make these fundamental tenets subject to the prevailing laws of the day.

The harms being done to asylum seekers and refugees, compounded by this new law, are provoking a range of responses from doctors, all trying to achieve the best outcome for people in detention. Some advocate doctors boycott working in detention centres while others advise doctors not to sign contracts that put the employer’s interests between them and their duty to their patients. Several health professionals have affirmed they will continue to work in the system, advocate for their patients and risk imprisonment for defying an immoral law.

References:
8. 2015 Submission to the Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru

Drawing by an child in detention on Christmas Island, given to the Australian Human Rights Commission as part of the National Inquiry into Children in Immigration Detention 2014
AMSA Recommendations:

Given the evidence supported by the scientific and medical literature as well as experts, AMSA has 6 key recommendations for Australia’s humanitarian program:

ONE
Implement a legally binding limit of 90 days for refugees and asylum seekers in onshore and offshore detention.

AMSA is opposed to offshore processing on health grounds. However in the context of this occurring, a legal restriction on the duration of detention would minimise harm.

This limit was recommended by the Joint Select Committee on Australia’s Immigration Detention Network and would reduce the health impacts of indefinite, mandatory detention. The sole purpose of detention should be to perform refugee status, health and security assessments. After this 90 day period refugees and asylum seekers would be moved to and processed in community detention, even if processing was not finalised.

TWO
Introduction of independent oversight of Australia’s processing of refugees and asylum seekers, including offshore centres.

In particular the establishment of an independent national health body to investigate and advise on the health needs of refugees and asylum seekers under Australia’s care. Parliamentarians must be accountable to the Australian public with respect to the conditions and services for refugees in detention and processing centres to whom Australia has a duty of care.

THREE
Move all children out of detention with their guardians. Implement the findings of the Australian Human Rights Commission’s The Forgotten Children report and the Moss Review to ensure that no child under Australia’s duty of care is at risk of sexual, physical or mental abuse.

FOUR
Move all individuals on temporary protection visas (TPVs) to permanent protection visas and abolish TPVs. This will provide certainty to these refugees, facilitating integration and contribution to Australian society and avoid unnecessary mental harm.

FIVE
Facilitate a regional processing and resettlement framework in which Australia, and other countries in our region, accept and process refugees in a manner consistent with international obligations.

This must be a genuine regional agreement solution that is efficient and humane. A key component of this framework must be the guaranteed resettlement of refugees in the region (including, but not limited to, Australia) within a specific time period. This removes the uncertainty compelling asylum seekers to board boats for Australia, truly preventing deaths at sea.

As part of this framework, Australia would further support UNHCR process refugees in the region, and act as a leader by encouraging countries with capacity to become a signatory to the Refugee Convention and Protocol. AMSA understands this is a medium to long term solution involving complex international relations.

SIX
Ensure that medical and other health professionals are not at any risk of criminal prosecution for publically advocating for their patients.

The Border Force Bill (2015) allows for the imprisonment of “entrusted persons” who release information without the Department of Immigration and Border Protection’s consent. Doctors and other professionals contracted or employed by the Department are subject to this legislation. Although the Public Information Disclosure Act provides some protection, this is only in cases where there is a “substantial and imminent” threat to an individual. Thus the PIDA does not provide protection to health professionals who advocate regarding chronic conditions leading to non-life threatening mental illness, environment conditions et cetera. Furthermore, the PIDA may not protect health professionals reporting instances outside of Australia’s jurisdiction; for instance within offshore detention centres.

Drawing by an 11 year old girl in detention in Darwin, given to the Australian Human Rights Commission as part of the National Inquiry into Children in Immigration Detention 2014