



COALITION FOR ASYLUM SEEKERS, REFUGEES AND DETAINEES INC

CARAD

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The Senate
Legal and Constitutional Affairs Legislation Committee
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Inquiry into the Migration Amendment (Maintaining Good Order of Immigration Detention Centres) Bill 2015

Thank you for your invitation to make a submission in regards to the above Bill. The Coalition for Asylum Seekers, Refugees and Detainees (CARAD) is a Perth based non-government agency incorporated in 1997, providing advocacy and welfare services to asylum seekers and settlement support to refugees. We rely on a strong network of skilled volunteers. Since 2000, CARAD volunteers have also visited Immigration Detention Centres (IDCs) to provide support, friendship and advocacy.

The current functions of CARAD include:

- agency of last resort for persons who have applied for protection and hold a bridging visa;
- home tuition 'Opening Doors' program for school children and families (State Government funded and supported);
- a range of practical supports for people in community detention and /or with a refugee background;
- a volunteer visiting, advocacy and referral service for asylum seekers in IDCs;
- accommodation assistance for vulnerable asylum seekers.

Besides advocacy for individuals in IDCs, CARAD has made submissions over the years to numerous enquiries relating to Australia's immigration policies, human rights, and treatment of refugees and asylum seekers. This includes our submission to the Joint Select Committee on the Australian Immigration Detention Network in August 2011.

CARAD acknowledges that, over 14 years or so, there have been instances of violence in Immigration Detention Centres as well as instances of self harm and death.

CARAD has a small but active visiting programme at Yongah Hill Immigration Detention Centre, which is the major focus of the submission. We orientate volunteers to their obligations and to the nature of detention for asylum seekers before they first visit. Besides making social visits, we advocate for individuals and, if needed and with the individual's signed consent, refer them to other services and assist them however we can.

Of course CARAD supports the maintenance of good order in Immigration Detention Facilities, but we claim that the need for such legislation could be minimised by improving the physical and social conditions for asylum seekers while in detention.



CARAD is opposed to amendments to the legislation that legitimise the use of force in situations other than for the purpose of self defence or for the protection of the lives of people in the care of the Department of Immigration and Border Protection (DIBP). Recent incidents at Yongah Hill resulted in the involvement of the WA Police and the Australian Federal Police (AFP). These organisations have the training and mandate to deal with such events, and are clearly independent of the DIBP.

Further, we are concerned by possible lack of transparency that could result from this amendment. Firstly there is lack of clarity regarding the training proposed. Under this amendment the Minister and the Secretary of the DIPB hold all responsibility for the training and the qualifications required for the purpose of this section and for its administration.

Secondly the Secretary of the DIBP holds sole responsibility for addressing complaints and issues that arise, including the decision to refer the matter to the Ombudsman, AFP or Commissioner or Head of a State or Territory. There is no process for a person to make a complaint other than to the department that is administering the Detention Facility.

Based on our experience at Yongah Hill IDC, CARAD is of the view that two major issues within the detention system are contributing to the perceived need for increased security within the Immigration Detention Facilities and if these were addressed the need for the use of force would be minimised.

Our underlying concerns, elaborated on below, include:

A: The introduction of people detained under S501 of the Migration Act at Yongah Hill

B: The conditions of mandatory detention and effect on mental health.

A: The introduction of people detained under S501 of the Migration Act at Yongah Hill

The recent and contemporary mix of asylum seekers with people detained under S501 of the Act and waiting for deportation is, we contend, inappropriate. While some may be 'over-stayers', others have had criminal pasts incurring a term of imprisonment.

Asylum seekers who are visited by CARAD have told us of their disquiet as they have been taunted and threatened and men formerly imprisoned for sexual assault have boasted about this to them at meal times and other mixed contact. From time to time we have been told of threats to asylum seekers by others.

It seems that the potential for violence in this population has been recognised by the Minister and that their *"behavioural challenges[might] jeopardise the safety, security and peace of our immigration detention facilities and the safety of all persons within those facilities. In fact public order disturbances have arisen in a number of immigration detention facilities in recent years"* [Explanatory memorandum].

Following a visit in early February a CARAD Yongah Hill visitor wrote; [now updated where changes made]

- Our focus of concern is for the asylum seekers whose conditions of accommodation and social environment have changed adding yet more pressure.



- We understand that the local community and the Centre staff are also very concerned about these changes.
- Asylum seekers told us that while Perth IDC is being refurbished, ex-prisoners and some visa 'over stayers' or 'visa non-compliant' are accommodated in one compound at Yongah Hill with overflows distributed into other compounds where asylum seekers are resident.
- This change in population was confirmed in early February in an ABC interview [see link below] with the Shire President of Northam and in a meeting at Yongah Hill, although problems were underplayed by DIBP.
- Asylum seekers have recently said there are fights every day, always involving ex prisoners- be it with other ex prisoners, detainees or guards. They tell us that some appear to be there for a short time and others longer.
- There are no longer activities offered to asylum seekers on the weekend, and their Internet access or "free time" on the computers has been curtailed to an hour per day.
- Some asylum seekers have been moved to different accommodation away from friends. For people who have been at Yongah Hill for a long time, activities and outings play a major role in helping people to cope day by day. *[We have recently been informed that this decision was reviewed and asylum seekers again have access to activities.]*
- The asylum seekers say they feel physically compromised and some told us that some ex- prisoners have boasted about their sex crimes, and made them feel even more vulnerable. Even meal times can be intimidating. Additionally, lock downs because of others fighting restrict their movements through the centre.
- Staff too, are adversely affected. Visitors have been told there have been assaults on staff as well. I think that their trade union has had something to say about this, including the fact that they are untrained for dealing with this potential level of aggression.
- There are apparently soon to be changes to visiting hours, and we surmise this is because of the population change. *[This has since happened with restricted hours making it very difficult for visitors to travel from Perth as most CARAD volunteers do.]*
- We were told some weeks later that half of the population of 411 at Yongah Hill are asylum seekers, meaning more than 200 are either non compliance people or ex-prisoners waiting for deportation. Certainly Perth IDC could never have accommodated so many at the same time. Perhaps the S501 men have been transferred from other states. A few women are there –we gather in a separate compound and am not sure what their status is.



Two links to ABC broadcasts follow

This from ABC following their interview with Northam Shire President

Local: Criminals 'scare' asylum seekers in Yongah Hill detention centre

The Yongah Hill immigration detention centre in Western Australia is now half full of convicted criminals facing deportation and visa overstayers, leaving some asylum seekers "scared" to come out of their rooms. The centre has been radically transformed from its original purpose of housing only single adult male asylum seekers. In another departure from the initial design, there were also six women in the centre at the end of January. Detainees inside Yongah Hill have told the ABC it has become more aggressive and prison-like, and they do not feel safe mixing with potentially violent criminals who view the guards as enemies and "dogs". The \$125 million centre, on the outskirts of Northam, about 90km north-east of Perth, was opened by the t...

full story

<http://abc.net.au/news/6085502>

AND http://www.abc.net.au/news/2015-02-24/convicted-criminals-have-visas-cancelled/6254120?utm_source=PoliticOz&utm_campaign=b6f82324c0-PoliticOZ_Wednesday_25_February_2_2015&utm_medium=email&utm_term=0_673b6b002d-b6f82324c0-302701621

On March 24th 2015, more than 80 asylum seekers were transferred from Yongah Hill to a Darwin centre so that they would, they were told, 'feel safer'. We presume that this is tacit acknowledgement of the effects of the ex prisoner population.

B: the conditions of mandatory detention and effect on mental health

The mental health of asylum seekers is known to deteriorate from about six months' of detention onwards. This has been the subject of peer reviewed and independent research.

It is, as well, the experience of CARAD volunteer advocates who have visited Immigration Detention Centres throughout the State in the last 15 years. Evidence of depression, anxiety, post-traumatic stress disorder and in extreme cases self harm and various psychoses in detention centres has been available for well over a decade. Poor sleeping and eating patterns add to this vulnerability. Behaviour in response to these symptoms can take many forms.

We acknowledge also that aggression may be exhibited by people who do not have a recognised mental illness.

However we also understand that the very slow pace of progress in the determination of their claim coupled with the lack of information about the claim, their perceived treatment by some guards and some Immigration officials leads to frustration and hopelessness.



It might also be that an individual's mental state leads them to violent behaviour or threats to behave in a violent manner putting themselves or others at risk.

The detention experience where people

- can be moved to other compounds or facilities without consent or discussion,
- are not given information about the progress of their assessment,
- have rare access to qualified and continuing mental health services,
- the pre-journey experience is likely to put a large proportion of asylum seekers at substantial risk of mental illness, including PTSD,
- in growing numbers have been brought to detention from the community because neither their Immigration assessment nor their RRT hearing determined they are owed protection. For instance we know that men with a Bridging Visa living in Perth are called for an 'appointment' with DIBP. When they enter the office they are met by Serco guards and unable to return to their accommodation to collect personal belongings before being taken to Yongah Hill. They feel a deep sense of injustice and are very fearful they are marked for return.
- feel punished and this compounds their pre-journey experiences that often include torture and trauma as well as displacement, bereavements, grief and concerns about family left behind, which all add to the potential for the development of poor mental health.

These observations are supported by, for instance;

1 MindFrame which reports that

An inquiry undertaken by the Australian Human Rights Commission Human Rights and Equal Opportunities Commission. (1998). *Those Who've Come Across the Seas: The report of the Commission's Inquiry into the detention of unauthorised arrivals*. Canberra, ACT: Human Rights and Equal Opportunities Commission found that:

Mental distress in varying degrees is common in detained asylum seekers with 'a large number of detainees experiencing mental health problems'.

Factors regarded as increasing the risk of mental distress included: prior experiences of torture or other forms of persecution in the country of origin; the stresses created by the length and conditions of detention; and the feelings of anxiety and desperation in those whose refugee claims are rejected.

There is 'considerable tension created by the regime of control necessary to implement the policy of mandatory detention' and the indeterminate nature of the detention made it considerably more difficult to endure.



Prolonged detention has harmful effects on the mental health of adults and development of children and adolescents.

Institutionalisation of children has a negative impact on their mental health. Children in immigration detention centres may suffer from anxiety, distress, bed-wetting, suicidal ideation and self-destructive behaviour including attempted and actual self-harm²⁰.

*The longer children are in detention the more likely it is for them to suffer serious mental harm²¹. Human Rights and Equal Opportunities Commission. (2004). *A last resort? The national inquiry into children in immigration detention*. Canberra, ACT: Human Rights and Equal Opportunities Commission. And more recently the AHRC demonstrated [The Forgotten Children 2014] that those children with poor mental health more often than not belong to a family where the adults also suffer symptoms.*

Mindframe :24/10/2011 "Following last night's alarming look at life inside immigration detention centres on ABC TV's Four Corners, key health and mental health organisations and mental health advocates are demanding the Government urgently review the standards of mental health care in all immigration detention centres."

1 /11/2011 "Over 30 key health and mental health organisations and mental health advocates are demanding the Government urgently review the standards of mental health care in all immigration detention centres".

9 /11/ 2011 "A recent report that the company paid to provide mental health services in detention centres has admitted "that prolonged detention of asylum seekers has created high demand for psychiatric services which its staff can't meet" is further evidence that the Government must urgently review the standards of mental health care in all immigration detention centres".

***2 A senate inquiry** heard in 2014 that about 30 per cent of detainees have mental health issues, with the number expected to rise in offshore detention facilities. Manus Island medical provider Mark Parrish, from the International Health and Medical Services, told the Senate Inquiry there is about a 30% prevalence of mental health problems across the detained asylum seeker population. He predicted this was likely to increase offshore.*

***3 Research conducted by Hotham Mission Asylum Seeker Project** reported asylum seekers in the community who had been in an immigration detention centre were three times more likely to seek medical attention, particularly for mental health issues, than those who had never been in detention.*

There is broad consensus that time spent in detention directly affects the mental health of individuals. Adverse psychological impact from detention is likely to be derived from the deprivation of liberty, the ongoing uncertainty regarding repatriation, social isolation and the environment of the detention centre;



including potential exposure to forced isolation, riots, hunger strikes, racial abuse and self-harming, among other disturbing events. Results of qualitative and quantitative studies on previous detention experiences showed that the asylum seekers had found the detention environment to be punitive and dehumanising, characterised by deprivation and confinement. In addition “boredom, aimlessness and apathy”, difficulties for asylum seekers in accessing interpreters and at times having to negotiate with correctional staff to see a medical practitioner, as other factors which contribute to poor mental health outcomes in detention. [St Vincent’s Health Australia: Asylum Seeker Health and Wellbeing – Scoping Study 2014]

CARAD notes that a newsletter (see Attachment 1) circulated on 27 March 2015 from Yongah Hill authorities to individuals and community agencies (including CARAD), makes no mention of the recent mix of population and its impact on the Centre, the lack of any qualified medical/health care after 5pm on weekdays or the changed visiting hours and conditions.

It does note that in recent disturbances both the WA Police and the AFP have been brought in. If so then this begs the question as to why others need to be trained as proposed.

- **In summary, CARAD opposes the need for the legislation and contends that the requirement for this amendment would be negated if the conditions inside Immigration Detention Facilities for detainees were improved with greater focus on providing case status information for people and on mental health issues encompassing prevention and treatment.**
- **People detained under S501 should be accommodated separately from asylum seekers.**

“Good Order” and “Reasonable force”

We have major concerns with the amendment and despite our view that the legislation should not be changed make these comments:

We note [S7] that the “Minister will determine in writing, training and qualification requirements for the purposes of this section”. The training and qualification of guards to use where warranted, ‘reasonable force’ in an Immigration Detention centre. Despite reading the explanatory notes that describe aspects of the Bill and its intent in our view these issues are left open:

- what the syllabus for the course of training will be,
- who the trainers will be,
- whether officers will apply for the course or be selected,
- whether all officers will be expected to train,
- what standard is necessary to qualify,
- what refresher course/s there will be,
- how ‘reasonable force’ will be defined and



- whether a superior's approval will be necessary before force is applied.

Other training questions should include:

- How other non-participants would be protected;
- The need for a special training course and recognition for assisting persons with challenging behaviours because of mental illness;
- When and to whom is the use of reasonable force reported?

The Statement of compatibility with Human Rights answers some of these points, however we feel bound to say that for the past 15 years or so, no government or Minister [with the exception of Minister, Senator C. Evans] paid attention to their responsibility to uphold the rights of asylum seekers under the applicable treaties Australia has signed up to.

The asylum seekers detained at Yongah Hill are accommodated in prison like physical conditions. Most have

- no idea what the outcome of their case will be, nor are they told its progress,
- no legal assistance,
- no opportunity for a durable solution,
- are under threat of deportation,
- had visiting hours curtailed and
- do not get appropriate treatment for adverse mental health conditions (guards with limited medical training are now triaging people for all health complaints between 5pm and 9am),

An argument can be made that the rights of these men are not respected now. The permitted use of 'reasonable force' can only add to their distress.

We are concerned that there is no process for a person to complain about the use of 'reasonable force' outside the DIBP. Complaints are to be made to the Secretary who may decide to refer them on. This has the potential for lack of transparency with is likely to be damaging for those complaining and potentially for the DIPB itself.

CARAD is as we have stated, most concerned as to how asylum seekers with mental health problems are dealt with if they threaten themselves or others. After wide consultation the WA Government has passed a new Mental Health Act 2014, to be proclaimed this year. As attachment [1], CARAD has produced, for the Senate's consideration, the sections of this Act that relate to seclusion and restraint in hospitals where involuntary patients are treated and transported. In particular S12 describes The Exercise of Certain Powers and its Division 1 the protocols for detention underlined by the time, care, privacy expected and a concern for dignity and respect. Division 6 sets out protocols for bodily restraint. .



CARAD thinks that if the legislation proceeds, the WA Mental Health Act [2014] can be adapted and provide guidelines for the way in which many long term asylum seekers could and should be treated if their behaviour threatens themselves or others.

CARAD recommends that

- 1 Detained asylum seekers and those awaiting deportation under S501 be held in separate IDC facilities
- 2 That there be a focus on the mental health of asylum seekers detained for more than six months
- 3 This should include both prevention and treatment at a standard expected in all other circumstances
- 4 An emphasis should be put on the prevention of critical events
- 5 This would include the regular provision of information to asylum seekers about their claim which in turn means that DIBP officers are actively and continuously engaged with the assessment process
- 6 Protocols for the protection of vulnerable and psychotic, suicidal or violent asylum seekers should follow those recently passed by the WA Parliament for seclusion and restraint [see attachment 2]
- 7 This should include appropriate training for guards as 'authorised officers mental health'
- 8 There should be access to interpreters in any such circumstances
- 9 The Secretary should ensure that copies of complaints and responses to those complaints are translated as necessary.
- 10 The scope for complaints receipt and assessment should broaden to enable complaints to be made directly by the individual or their advocate to, for instance, the Ombudsman or the Commissioner of the AFP.
- 11 A report on complaints, their type and outcome, should be made to Parliament on an annual basis.
- 12 If these amendments become law, the same standards and conditions as adopted in Australia should apply at Offshore facilities.

Kris Halliday
Chairperson
Coalition for Asylum Seekers, Refugees and Detainees Inc