



Coalition for Asylum Seekers Refugees and Detainees

245 Stirling Street
Perth WA 6000
Phone: (08) 9227 7322
Fax: (08) 9228 9749
E-mail: office@carad.org.au

17 December 2012

Julie Dennett
Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Madam,

Inquiry into the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012

CARAD welcomes the opportunity to make this submission to the Inquiry.

Introduction

CARAD is a Perth based non-government agency established 12 years ago to provide settlement and related services to refugees who held a Temporary Protection Visa. We have provided advocacy and services for asylum seekers and rely on a strong network of trained volunteers. Since 2000 CARAD volunteers have also visited Immigration Detention Centres (IDCs) to provide support, friendship and advocacy. From these visits and other documentation, the agency has developed a comprehensive understanding of the conditions in which asylum seekers are detained. CARAD now holds a sizeable archive of documents, letters and reports related to IDCs throughout Australia as well as Nauru.

The current functions of CARAD include:

- agency of last resort for persons who have applied for protection and hold a bridging visa;
- home tuition for school-children and for parents (State Government funded and supported);
- a range of practical supports for people with a refugee background;
- a volunteer visiting, advocacy and referral service for asylum seekers in IDCs;

Besides advocacy for individuals in IDCs, since 2000 CARAD has made submissions to a number of relevant/related enquiries.

Comment

CARAD opposes this Bill on the following grounds -

1. It contravenes Australia's international obligations under human rights treaties including:
 - a. The International Covenant on Civil and Political Rights 1966;
 - b. The Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment 1987;
 - c. The Convention on the Rights of the Child 1991;
 - d. The Convention Relating to the Status of Refugees 1951.
2. It will have deleterious effects on the mental and physical health of individuals seeking asylum.

1. Australia's international obligations under Human Rights treaties

Under international law, everyone has the right to seek and to enjoy in other countries asylum from persecution (Article 14 of the Universal Declaration of Human Rights). Australia has fundamental human rights obligations under international law that it cannot delegate to third parties.

CARAD notes that, contrary to popular opinion, nearly 90% of all individuals who arrive by boat and seek asylum in Australia are later judged to be deserving of a protection visa. The proposed Bill will delegate Australia's responsibilities to refugees to regional processing countries, despite the fact that these refugees came to Australia and seek protection in Australia. Furthermore, the ability of the regional processing countries (Nauru and Papua New Guinea) to provide effective protection to refugees is highly questionable. Thus Australia is further deliberately neglecting its human rights obligations, including those under the Convention Relating to the Status of Refugees and the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment (e.g., Papua New Guinea is not a signatory to this Convention). Neither of these countries has any kind of migration infrastructure, including trained or experienced assessors and interpreters to make Refugee Status Determinations.

We note the cynical exclusion of the whole of Australia for the purposes of the Migration Act has no deterrent effect and confuses all in the Asia-Pacific Region.

By imposing mandatory detention and regional processing on those asylum seekers who arrive by boat but not those who arrive by plane, the proposed Bill is discriminatory. This is a violation of the International Covenant on Civil and Political Rights 1966.

The proposed Bill will apply to all 'unauthorised maritime arrivals' including children. This is a violation of the Convention of the Rights of the Child, in which the best interests of the child are paramount. We detail some of the evidence of the harmful effects of detention on children and adolescents under point 2, below.

2. The mental and physical health of individuals seeking asylum

The Bill seeks to impose mandatory detention for all individuals designated 'unauthorised maritime arrivals' (unless the Minister thinks it is against the public interest).

There is a large body of research indicating that immigration detention causes asylum seekers psychological harm. This was acknowledged in the Final Report of the Joint Select Committee on Australia's Immigration Detention Network earlier this year¹.

Post traumatic stress disorder, depression and anxiety are highly prevalent amongst failed asylum seekers and refugees who have previously been detained, with the extent of their mental ill health linked to the length of time they have spent in detention. Time spent in immigration detention has been found to contribute to the severity of symptoms relating to PTSD, depression, anxiety and suicidal ideation.²

The experiences of fleeing, seeking asylum and resettlement are likely to leave asylum seekers at high risk of mental health problems and they are likely to need significant social, psychological and psychiatric support. The types of support required are not adequately accessible in immigration detention. Additionally, a high level of stress caused by uncertainty about the future is likely to further negatively impact the health of asylum seekers.^{3,4}

¹ Final Report of the Joint Select Committee on Australia's Immigration Detention Network, March, 2012. Retrieved from

<http://apo.org.au/research/joint-select-committee-australias-immigration-detention-network-final-report>

² Coffey, G.J., et al., The meaning and mental health consequences of long-term immigration detention for people seeking asylum, *Social Science and Medicine*, 2010 (70).

³ Mueller, J., et al., Mental health of failed asylum seekers as compared with pending and temporarily accepted asylum seekers, *European Journal of Public Health*, 2011, 21(2): p.184, The mental health of detained asylum seekers in Australia – Mental Health Wiki.

In the past, a number of professional health organisations have made representations to the Human Rights and Equal Opportunity Commission, which can be obtained from the Amnesty International Australia website. These include:

- Alliance of Health Professionals Concerned about the Health of Asylum;
- Australian Association for Infant Mental Health (AAIMH);
- Australian Reproductive Health Alliance;
- Dieticians Association of Australia;
- Australian Nursing Federation (Vic Branch);
- Royal College of Nursing and the Australian Nursing Federation;
- Australian Society of Traumatic Stress Studies (ASTSS);
- Australian Association for the Welfare of Child Health (AWCH);
- Australian and NZ College of Mental Health Nurses (Qld Branch);
- Australian Psychological Society;
- Mental Health Council of Australia;
- Public Health Association of Australia; and
- Suicide Prevention Australia.⁵

Some of the major findings and recommendations of these professional bodies were as follows:

- Research suggests that asylum seekers and refugees (including children) suffer from psychological and physical symptoms sufficiently serious to warrant thorough and routine physical and psychological assessment.

⁴ The Forum of Australian Services for Survivors of Torture and Trauma, *Submission 45* to the Joint Select Committee on Australia's Immigration Detention Network, March, 2012.

⁵ Healey, Justin (ed.) Summary for Dr Bhagwati and Matthias Behnke, Office of the High Commissioner for Human Rights, Refugees and Asylum Seekers – Issues in Society, Vol 193, pp.31-33.

- Health professionals are often unable to speak freely about concerns relating to the health care of detainees due to the contractual arrangements they are required to operate under.
- There should be an immediate clinical review of the physical and mental health status of asylum seekers in detention (Clinical Review) undertaken by independent health professionals (under the auspices of the Committee of Presidents of Medical Colleges) to gain a better understanding of the Health status and needs of those asylum seekers.

CARAD has previously endorsed these findings and recommendations after having had long experience with very distressed clients.

What is observed in the Immigration Detention Centre (IDC) Population

1. Suicide and Self-harm

The number of suicides in IDCs suggests that suicide rates may be at least 10 times in excess of the general Australian rate, and 3 times that of young adult men, the age and sex group at highest risk. Self-harm and suicide attempts, which are endemic in Immigration Detention Centres (IDCs), involve children and young people.

Voluntary starvation or 'hunger strikes' and other serious methods such as hanging, throat-slashing, deep wrist cutting, and drinking shampoo are used. Pre-pubertal children, who almost never make suicide attempts, are involved. Protest, despair and imitation are important motivations for self-harm in IDCs. The Department of Immigration and Citizenship only sees protest (in the form of 'manipulation', or 'terrorism') as significant and ignores the role of these other equally powerful factors.

2. Higher rates of psychological disorders and developmental problems

In the general community, suicide attempts and self-harm are frequently associated with psychological disorders. Social and environmental factors contribute to higher rates for particular groups (such as youth in custody, indigenous youth).

Among adult asylum seekers, rates of depression, anxiety and post-traumatic stress disorder (PTSD) are reportedly higher among ex-detainees than those who have not been detained. It is uncertain whether detained children have more mental health problems than non-detained children, because independent assessments cannot be undertaken. Detainees, including children and adolescents, are an already vulnerable and traumatised group. However, convergent multi-source testimony, including clinical reports and the children's own accounts, suggests that children, like adults, suffer from depression, anxiety and post-traumatic stress disorder (PTSD), and also from disruptions of attachment and development, including disruptions to their sense of self. This testimony also suggests that these disorders and disturbances are greatly augmented by detention.

Severe attachment disorder has been documented in very young children or those born in detention. This implies a long-term risk to neurodevelopment that could lead to vulnerability to stress, long-term relationship difficulties, risk of chronic depression and vulnerability to suicidal behaviours after release from detention.

How the Detention Environment creates and aggravates mental disorders

Specific aspects of immigration detention create or aggravate mental disorders and self-harm, and re-traumatise vulnerable children:

- Detention centres are harsh, depriving environments where children and their parents are held behind razor wire indefinitely. Detention involves a legalistic and adversarial refugee determination process that detainees and others perceive as arbitrary and unjust.
- Evidence exists that some IDC procedures stigmatise and coerce detainees (e.g. detainees are called by number not name, at times exposed to intentional violence, or placed in solitary confinement). The rules of IDCs frequently change in arbitrary ways, e.g., for those arrivals pre and post August 13th 2012 as well as many others.

- Existing government policy concerning asylum seekers and private arrangements with the contractors (Serco and IHMS) prevent accountability.
- Unlike those with a prison sentence, no detained person knows the final date of their detention. Further, the impact of inadequate provisions for those released with a Bridging Visa is predictable in similar ways.
- No appropriate psychiatric treatment can be given within the IDC environment, as it is the environment itself that is a fundamental cause of the problem.⁶ And for community based asylum seekers, the mental health services will also be overwhelmed.

Finally, under the proposed Bill, detention will take place in regional processing countries. The conditions on Nauru have been investigated recently by Amnesty International and judged to be woefully inadequate, consisting of overcrowded tent accommodation that is highly unsuitable for the approaching monsoons⁷. CARAD knows from previous experience that supplies of fresh drinking water and sometimes food can be limited and contribute to both discomfort and illness. At Manus Island there is a very high risk of asylum seekers contracting malaria. Moreover, it is not clear that there are appropriate policies and procedures in place in Nauru and PNG to ensure timely and efficient processing of asylum and/or protection claims, thereby increasing the risk of lengthy – and highly damaging - detention.


⁶ Healey, Justin (ed.) Summary for Dr Bhagwati and Matthias Behnke, Office of the High Commissioner for Human Rights, *Refugees and Asylum Seekers – Issues in Society*, Vol 193, pp.33-34.

⁷ Amnesty International (2012). Amnesty International Media Release & Nauru Brief, 23 November 2012.

Conclusion

CARAD opposes the Bill for the reasons detailed above.

Yours sincerely,


Eira Clapton
Chairperson
Coalition for Asylum Seekers, Refugees & Detainees (CARAD)