

3 November 2016

Committee Secretary
Senate Legal and Constitutional Affairs References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email to: legcon.sen@aph.gov.au

Dear Committee Secretary

Re: Inquiry into serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre

Thank you for your letter inviting the Royal Australian and New Zealand College of Psychiatrists (RANZCP) to contribute to the Senate Legal and Constitutional Affairs References Committee inquiry into the serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre.

The RANZCP represents around 3700 psychiatrists in Australia, many of whom have specific interest and expertise relevant to this inquiry including direct experience working with asylum seekers and refugees in immigration detention centres, both onshore and offshore. As such, we strongly support the purpose of this important inquiry and welcome the opportunity to contribute.

In recent years, the RANZCP has consistently advocated for the mental health needs of asylum seekers and refugees who are being held in immigration detention, including in regional processing centres in the Republic of Nauru and Papua New Guinea. The RANZCP believes that prolonged, indefinite detention of asylum seekers and refugees in immigration detention centres violates basic human rights and contributes adversely to their mental health. The RANZCP particularly opposes the routine, prolonged and indefinite detention of child asylum seekers and refugees under the Australian Government's policy of mandatory detention.

Please see the attached submission which we hope will be of assistance in the inquiry. If you would like to discuss any of the issues raised in the submission, please contact Rosie Forster, Senior Department Manager, Practice, Policy and Partnerships via

[REDACTED]

Yours sincerely



Professor Malcolm Hopwood
President

Senate Legal and Constitutional Affairs References Committee inquiry
into the allegations of abuse, self-harm and neglect of asylum seekers

October 2016

maximising opportunities for recovery

About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness and advises government on mental health care. The RANZCP is the peak body representing psychiatrists in Australia and New Zealand and as a binational college has strong ties with associations in the Asia-Pacific region.

The RANZCP has more than 5000 members, including around 3700 fully qualified psychiatrists and almost 1200 members who are training to qualify as psychiatrists. Psychiatrists are clinical leaders in the provision of mental health care in the community and use a range of evidence-based treatments to support a person in their journey to recovery.

Introduction

The RANZCP welcomes the opportunity to provide information to the Senate Legal and Constitutional Affairs References Committee (the Committee) regarding their inquiry into the serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre (the inquiry). Many RANZCP Fellows have specific interest and expertise relevant to this inquiry including direct experience working with asylum seekers and refugees in immigration detention centres, both onshore and offshore. As such, we strongly support the purpose of the inquiry and welcome the opportunity to contribute.

In recent years, the RANZCP has consistently advocated for the mental health needs of asylum seekers and refugees who are being held in immigration detention, including in regional processing centres in the Republic of Nauru and Papua New Guinea. The RANZCP believes that prolonged, indefinite detention of asylum seekers and refugees in immigration detention centres, including regional processing centres, contributes adversely to their mental health and violates basic human rights. The RANZCP particularly opposes the routine, prolonged and indefinite detention of child asylum seekers and refugees under the Australian Government's policy of mandatory detention.

The RANZCP has developed position statements that advocate for the mental health needs of asylum seekers and refugees and a practice guideline to provide guidance for psychiatrists working with asylum seekers and refugees:

- [Position Statement 46: The provision of mental health services to asylum seekers and refugees](#) (2012 – currently under review)
- [Position Statement 52: Children in immigration detention](#) (2015)
- [Practice Guideline 12: Guidance for psychiatrists working in Australian immigration detention centres](#) (2016)

We urge the Committee to take these documents into account when making recommendations in relation to the current inquiry.

Detailed responses to each of the inquiry's terms of reference have been provided below along with recommendations for each section.

Summary of recommendations

The RANZCP would strongly support the development of policies that ensure the timely processing of asylum claims in onshore community settings. The RANZCP opposes the policy of offshore processing.

Where offshore processing centres remain in use, the RANZCP recommends:

- improved education and training of staff around the mental health needs of asylum seekers, including appropriate responses to allegations of abuse and threats or actual instances of self-harm and the identification of behaviours in children which indicate a possible exposure to sexual abuse
- thorough screening of potential staff members during recruitment processes
- increased mechanisms to ensure transparency and accountability including:
 - increased press freedoms
 - clear, documented and transparent processes for handling complaints
 - independent monitoring of the conditions and circumstances in which asylum seekers are detained, conducted regularly and continuously, by relevant experts
- the repeal of part 6 of the *Border Force Act* and/or clarification of the legality of health and other professionals working with asylum seekers to advocate on their behalf under all circumstances
- the development of appropriate protocols for investigations relating to abuse and/or neglect
- the development of strategies to ensure that all adequate supports are provided to local authorities as well as all staff working with asylum seekers and refugees detained in regional processing centres
- policies guaranteeing equivalence of care for those with mental illness in regional processing centres, taking into account the higher prevalence of mental disorder amongst individuals in detention when compared to the general community
- the provision of mental health services with appropriate resourcing to ensure interventions and treatments are adequately tailored to the needs of asylum seekers and refugees
- mechanisms that enable asylum seekers to be diverted into appropriate mental health settings if they are in need of involuntary mental health treatment or other mental health services that cannot be provided in the detention environment
- pre-transfer screening to assess asylum seekers' mental health needs followed by regular monitoring by independent psychiatric professionals including comprehensive assessments of children
- the establishment of an independent guardian(s) for unaccompanied children in immigration detention along with an independent children's advocate
- the implementation of UNCRC recommendations made within the *Nauru State Report*
- the implementation of a 'pass-through' policy for children and their caregivers, characterised by maximum lengths of stay in detention no greater than 3 months and timely processing of asylum claims taking no longer than 6 months
- the addressing of allegations of child sexual abuse in regional processing centres by the Royal Commission into Child Sexual Abuse
- a commitment by the Commonwealth Government to take allegations of abuse, violence, neglect and self-harm seriously and impartially, based on the evidence of each individual case, and unimpeded by political bias.

a. the factors that have contributed to the abuse and self-harm alleged to have occurred

Risk factors for mental health issues among asylum seekers and refugees

Understanding the reasons behind the suicidal behaviour, including self-harming, of asylum seekers and refugees requires an understanding of the general risk factors for psychiatric illness and suicidality which have been identified among this population group. Suicide is a tragic event with a complex mosaic of causal risk factors including psychological, neurobiological, social and occupational determinants (Christensen et al., 2016). Similarly, self-harm may arise from a variety of inter-related risk factors including exposure to recent stressful life events, conflicts, and disciplinary or legal crises (Hawton et al., 2003).

Of all migrant groups, asylum seekers and refugees are the most vulnerable to mental and physical ill health with common mental disorders twice as high in refugee populations in comparison with economic migrants. Asylum seekers and refugees are at particular risk of developing a range of psychological disorders including post-traumatic stress disorder (PTSD), anxiety, depression and psychosomatic disorders. Contributing factors include previous traumatic experiences including torture and persecution as well as forced migration, cultural bereavement, culture shock, discrepancies between expectations and achievements and/or non-acceptance by a new nation (Bhugra et al., 2011).

The vast majority of 'irregular maritime arrivals' are found to be refugees according to consistent reports from the Department of Immigration and Border Protection (DIBP, 2013). According to the *UN Convention relating to the status of refugees* (1951), a refugee is someone with a 'wellfounded fear of being persecuted' in their home country. In addition to persecution in their home countries, asylum seekers have also suffered the stress of separation from family and familiar surroundings and, for those seeking entry into Australia by boat, they have experienced a treacherous journey across the ocean. Many asylum seekers and refugees also have experienced war, famine, torture, catastrophic events and/or other traumatic events in their countries of origin (UN Human Rights Commissioner, 2010).

Exposure to traumatic events significantly increases the risk of suicidal ideation and behaviour including self-harm. The relationship between trauma and suicidality has been found to exist independent of psychiatric disorders although comorbidities with mood and substance abuse disorders may still be factors. Numerous studies have demonstrated a positive relationship between cumulative trauma and suicidality (Pizarro et al., 2006). A World Mental Health Survey found a dose response relationship between the number of suicidal ideations and attempts and the number of traumatic event experiences, although the size of the association noticeably diminished with multiple trauma exposures (Stein et al., 2010). As such, many asylum seekers detained in Australia's regional processing centres in Nauru and Manus Island have already experienced events which put them at risk of developing suicidality – that is, before they are even detained.

Risk factors for mental health issues among asylum seekers and refugees within detention settings

The initial health assessments conducted in the 48 hours after boat arrival do not include assessment of mental health or developmental status. There is currently no routine mental health or developmental screening of children detained for prolonged periods of times. The position of the DIBP is that it is government policy that all persons who arrive by boat are to be sent to regional processing countries and that all pre-transfer assessments need to be made according to this policy. With the exception of specific infectious diseases there are no exclusion criteria and the DIBP have been unresponsive to recommendations to establish clear criteria or list exclusion conditions. Furthermore, there is no longer a mechanism to ensure the continuous monitoring of the impact of pre-transfer assessments. The

RANZCP views as regretful the disbanding of the Immigration Health Advisory Group which would have been able to perform this function. Thus, asylum seekers with pre-existing mental health conditions will be sent to regional processing centres regardless.

There is a body of evidence demonstrating the detrimental effects of detention on the mental health of asylum seekers including the potential of prolonged detention to cause long-term damage to social and emotional functioning of children (RANZCP, 2014). There is also clear evidence establishing a relationship between the length of detention and the severity/comorbidity of psychiatric disorders (Bull et al., 2012). Detention has also been found to compound distress in children with prior experience of trauma, torture or neglect (Burrell, 2013). Furthermore, many mental illnesses, including PTSD, are complex to address and often unresponsive to first-line treatment; these require specialist therapeutic intervention, resources and settings which are not available in Australian immigration detention centres (Ashcroft, 2005).

The indefinite nature of immigration detention is especially known to contribute to adverse health outcomes as a result of prolonged exposure to factors including deprivation of liberty, dehumanisation, isolation and lack of social support (UNCAT, 2014). The prolonged uncertainty created by a system of indefinite detention is a major factor in increasing hopelessness and mental deterioration (Newman et al., 2013). The Australian Human Rights Commission (AHRC) has criticised the Commonwealth Government, saying uncertainty over their future and delays in processing refugee claims is detrimental to the mental health of detainees (Australian Human Rights Commission, 2011).

The RANZCP acknowledges the 'open' nature of regional processing centres but believes that the centres will continue to contribute to adverse mental health outcomes due to the detention-like setting. This is because the factors noted above are no different in regional processing centres when compared to onshore immigration detention facilities. There are reports that regional processing centres have oppressive levels of security that limit the freedom of detainees, undermine parenting and family life, and are not natural environments. Families are subjected to intrusive surveillance and monitoring limiting privacy. Arbitrary rules and restrictions apply and these are changed on an ad hoc basis by local staff from DIBP and security without clear oversight or governance. Particularly concerning is that these are frequently reported to be contrary to stated written policies and procedures. Furthermore, with the Commonwealth's position that individuals in offshore processing centres will never be accepted into Australia and the failure of third country resettlement mechanisms to provide alternative avenues, the uncertainty for asylum seekers in offshore processing centres is even more prolonged.

The mental health of refugees and asylum seekers is further compromised by the reality of regional processing centres. There are consistent and well-documented allegations of the exposure of asylum seekers and refugees in detention centres to sexual and physical assault and abuse, and conditions which may be tantamount to cruel, inhumane and degrading treatment (AHRC, 2013; AHRC, 2015; Amnesty International, 2016). These concerns have been documented for many years prior to the release of the Nauru files which document numerous instances of violence, abuse and self-harm at the processing centre in Nauru.

Detention is particularly detrimental to children's physical and mental health and has been shown to result in developmental regression and delays, with the potential to cause long-term damage to their physical, cognitive, social and emotional functioning (Mares, 2016; Australian Human Rights Commission, 2014). While even short periods of detention have been found to impact children's functioning (Fazel et al., 2012; Dudley et al., 2012), children detained for long periods of time have been found to be at high risk of suffering mental illness and post-traumatic symptoms. Children and adults with developmental disability are profoundly vulnerable and their well-being and safety is severely compromised in the institutionalised detention environment. There have been particular concerns raised

about the safety of children and adults with identified developmental or cognitive disability(s) held in Nauru and Manus Island who have very significant limitations to health, education and welfare services and minimal access to legal, advocacy and other support services (Moss, 2015; Proctor et al., 2014). The provision of support services will be addressed in more detail later under term of reference (d).

For these reasons, asylum seekers and refugees detained in Nauru and Manus are at significant risk of developing suicidal ideation and behaviours due to cumulative exposures to trauma, both in their home countries, during their journeys and during their time in detention. Self-harm and suicidal behaviour have subsequently become endemic in immigration detention facilities. The RANZCP recognises the importance of this issue and therefore opposes the prolonged and indefinite detention of all people under the policy of mandatory detention. Claims for asylum should be processed as quickly as is practical with efforts made to minimise risk to mental health and well-being until claims have been resolved. Detention of children should only ever occur as a last resort, with the child's best interests in mind and for the shortest possible length of time (RANZCP, 2015).

Mental illness and suicidality among asylum seekers and refugees

The RANZCP is particularly concerned about the high incidence of asylum seekers with psychiatric, developmental and/or cognitive impairment who are being held in detention. More than a third of children in detention centres have serious mental health disorders compared with 2% in the Australian population (AHRC, 2014). High rates of serious mental health disorders were also noted a decade earlier in the report *A Last Resort?* (HREOC, 2004).

Mental health conditions are unlikely to respond to treatment until key stressors are removed from the patient's life. There is clear evidence that harms to well-being accumulate during detention and that the longer a person is held in detention, the higher their risk of developing or worsening mental ill health (Méndez, 2015; AHRC, 2014). Prolonged immigration detention has been shown to worsen mental illness in those already suffering when detained and to result in the development of completely new conditions in those without mental illness on arrival (Steel et al., 2006). While people continue to be held in difficult, often (re-)traumatising conditions and with an uncertain future, mental disorders are likely to persist or worsen – and where they don't exist, they may be created.

Improved education and training of staff is required in regional processing centres to ensure staff are cognisant of the mental health needs of detainees, including appropriate responses to allegations of abuse and threats or actual instances of self-harm. For instance, on 29 January 2015, an asylum seeker on Nauru repeatedly expressed a desire to die to a case manager, who responded by encouraging the individual 'to think of something positive that she enjoyed prior to detention and to do this everyday to improve her well-being' (Guardian, 2016). The case was subsequently downgraded from a 'minor incident' to 'information' only. Reminding an individual of 'positive' things in their past is not an appropriate way of managing someone's current risk of suicide. Furthermore, the downgrading of an incident of suicidal ideation to 'information' only raises some questions about the capacity for regional processing centres to appropriately recognise and respond to mental health issues. The RANZCP finds unacceptable the apparent neglect of serious mental health incidents and the absence of an appropriate mechanism to ensure these kinds of incidents are immediately referred to an appropriately resourced staff of trained and qualified health professionals.

Allegations of abuse, violence and neglect on the mental health of asylum seekers and refugees

The Nauru files document years of incident reports relating to allegations of violence, abuse and neglect of asylum seekers detained on Nauru. These reports follow recent episodes of conflict and violence on Nauru and Manus Island including the loss of life of detainees on Manus Island amid ongoing tensions between local community members and detainees as well as repeated concerns about the assaults, including sexual assaults, of people placed in the community on Nauru. The case of 'Abyan', who became pregnant after an alleged rape on Nauru and who is currently in a psychiatric facility in Australia, highlights the vulnerability of asylum seekers and refugees in regional processing centres to violence, abuse and neglect. These incidents are likely to provide further traumatising experiences for individuals already at heightened risk of suicidal ideation and other mental health issues. It is therefore essential that these incidents are addressed in meaningful ways.

While some of the cases relate to conflicts between detainees, many document the assault of asylum seekers and refugees by other people including, most troublingly, security guards. On 3 September 2015, a report was logged wherein a guard is alleged to have found a child in a tent and subsequently 'grabbed him around the throat and hit his head against the ground twice [... then] threw a chair on him' (Guardian, 2016). On 15 January 2015, an asylum seeker reported the sexual assault of her child by a guard who had 'put his hand up [redacted] shorts and was playing with his bottom' (Guardian, 2016).

Supporting a reflective culture in organisations can enable best practice in responding to such incidents by increasing staff awareness of risk factors, and providing them with the skills to respond appropriately. Reflective cultures can be developed via ongoing training opportunities, as well as by providing supervision for staff. The Commission of Inquiry into the Abuse of Children in Queensland found that staff working with children that have access to high levels of training and supervision are more skilled in identifying risk factors, and in responding appropriately to complaints of abuse. Training and supervision was recommended for a range of workplaces involved in childcare, including child welfare organisations, day care centres, schools and community groups (Queensland Crime Commission, 2000). Training should include information on responding proactively to risk factors of child sexual abuse, rather than waiting for a complaint to be made. This should include training on the identification of behaviours that indicate possible exposure to sexual abuse, and how to respond appropriately (RANZCP, 2016c).

Furthermore, there are a variety of mechanisms to ensure transparency and accountability within regional processing centres which would help to prevent the development of situations where harm can occur. Institutions should have documented, transparent policies for complaints handling, including clear indicators for referral to police investigation and child protection. Children in detention centres at risk of abuse, neglect or developmental harm should be reported to child protection authorities. Increased freedoms for health and media professionals are also required to ensure government accountability for the goings on within regional processing centres. The restrictions on the freedom of speech for health professionals engendered in part 6 of the *Australian Border Force Act 2015* will be discussed later under term of reference (f).

Further research is required into the institutional deficiencies which have allowed the development of situations where harm can occur. The Royal Commission into Child Sexual Abuse provides an important avenue for the investigation of these matters and its methods and expertise should be applied to the situation at hand. According to the Royal Commission's terms of reference (2014):

it is important that claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

The RANZCP is concerned that the exclusion of regional processing centres from the Royal Commission's inquiry means that these centres will not benefit from the Royal Commission's vast knowledge relating to the issue, and that children in these centres may therefore remain at heightened risk of abuse.

Where institutions have been subject to criticism regarding their responsiveness to complaints, consideration must be given to engaging outside facilitation to assist in examining responses and overall culture. As such, the RANZCP suggests the independent scrutiny and monitoring of the conditions and circumstances in which asylum seekers are detained, conducted by relevant experts, under a cyclical process of continuous improvement, complemented by regular reporting. This would lead to the development of standards and protocols regarding the protection of asylum seekers in detention. Appropriate governance structures should also include robust complaints mechanisms to ensure asylum seekers feel safe in reporting the actions of guards, and improved screening processes during recruitment processes to ensure that staff have the appropriate attitudes and personality traits for managing at-risk asylum seekers in the detention environment.

The RANZCP recognises that institutions such as immigration detention facilities create environments where there is an increased risk of child abuse. Appropriate oversight mechanisms must be developed to prevent situations where harm can occur. There are many examples in Australia and internationally of comparable institutions in which a lack of external independent security and monitoring has enabled extensive abuse to have occurred. The lack of clarity around children protection legislation and its role in regional processing centres adds to this risk. To reduce the risk of these issues recurring in immigration detention facilities, increased child protection measures are required with increased transparency and accountability.

Recommendations

Pursuant to the evidence above, the RANZCP recommends:

- the development of appropriate policies to ensure the timely processing of asylum claims in onshore community settings, in line with the *UN Convention relating to the status of refugees* (1951) and the *UN Convention of the rights of the child* (1989)
- improved education and training of staff in regional processing centres around the mental health needs of asylum seekers, including appropriate responses to allegations of abuse and threats or actual instances of self-harm and the identification of behaviours in children which indicate a possible exposure to sexual abuse
- the addressing of allegations of child sexual abuse in regional processing centres by the Royal Commission into Child Sexual Abuse
- increased mechanisms to ensure the transparency and accountability of regional processing centres including:
 - increased press freedoms
 - clear, documented and transparent processes for handling complaints
 - independent monitoring of the conditions and circumstances in which asylum seekers are detained, conducted regularly and continuously, by relevant experts
- thorough screening of potential staff members during recruitment processes.

b. how notifications of abuse and self-harm are investigated

Regional processing centres require robust protocols relating to the treatment of people who have suffered abuse or self-harm including appropriate mechanisms for the investigations of incidents. The RANZCP is concerned at any suggestion of the improper and/or incomplete investigation into an allegation of abuse or self-harm. These are serious and grave events which require the attention of child protection services and/or mental health practitioners. Investigations into individual cases should not be prejudiced by authorities dismissing allegations as politically motivated (Newman et al., 2013; Anderson, 2016). Blanket statements from government representatives categorically dismissing allegations severely compromises the semblance of judicial integrity which cases like these require and may even call into question the government's willingness to assume responsibility for the safety of asylum seekers who have been detained under its aegis.

Recommendations

Pursuant to the evidence above, the RANZCP recommends:

- the development of appropriate protocols for investigations relating to the abuse and/or neglect of asylum seekers in regional processing centres
- a commitment by the Commonwealth Government to take allegations of abuse, violence, neglect and self-harm seriously and impartially, based on the evidence of each individual case, and unimpeded by political bias.

c. the obligations of the Commonwealth Government and contractors relating to the treatment of asylum seekers, including the provision of support, capability and capacity building to local Nauruan authorities

Ethical obligations

Psychiatrists have ethical duties of care to their patients and, despite the considerable obstacles to proper patient care presented by the detention environment, Australian psychiatrists in regional processing centres have endeavoured to fulfil their ethical duties. The RANZCP holds that the Commonwealth Government, along with its contractors, has similar obligations with regard to people detained under its aegis. The third principle of the RANZCP *Code of Ethics* (2010) states that 'Psychiatrists shall provide the best attainable psychiatric care for their patients'. For this principle to be met, the Commonwealth must provide an environment within which best attainable psychiatric care can be provided. This requires a re-conceptualisation of processing centres as facilities for the timely processing of asylum claims, rather than methods of deterrence based on the maltreatment of individuals.

As mental health experts with specialist knowledge about the psychological and physiological effects of torture, trauma, displacement, and other experiences common to refugees and asylum seekers, psychiatrists in regional processing centres provide essential services to individuals subject to abuse, neglect or self-harm. However, the ability of psychiatrists to intervene effectively is often limited due to the very nature of the setting and its capacity for re-traumatisation. Work environments can experience high staff turn-over and may be under-resourced, under-staffed and geographically remote, leading to worker isolation and increased stress. Health professionals working with asylum seekers and refugees who are in detention may also encounter complex ethical dilemmas including competing responsibilities to their patient and their employer (RANZCP, 2016) as well as to the Commonwealth (Newman et al.,

2013). Psychiatry trainees face particularly complex negotiations when they are required to treat asylum seekers or refugees as part of their training rotation. It is therefore essential that psychiatrists and trainees are able to access adequate support, supervision and opportunities for self-care, thereby increasing service retention of long-term staff and improving service provision.

In accordance with the National Standards for the Mental Health Workforce (Commonwealth Department of Health, 2013) and professional codes of conduct (including the RANZCP *Code of Ethics*), psychiatrists and other mental health professionals have an ethical duty to advocate for the best interests of people under their care, and more generally from a population health perspective. The RANZCP has received reports from members working with asylum seekers that families are routinely separated and that this causes immense distress and hardship. For example, separation of family members occurs when individuals are transferred to the mainland for pregnancy or medical treatment. In many cases, health advocacy is reacted to negatively and staff have been criticised and disciplined for such behaviour. No mental health professional can practise ethically in this setting if prevented from advocating for their patients.

In the event that regional processing centres continue to function despite the protestations from the RANZCP and other organisations, the Commonwealth and its contractors bear the responsibility for the proper management and support of the centres. This includes training and support for staff, including the freedom to advocate for changes, as well as the robust governance mechanisms raised in the response provided for term of reference (d): 'the factors that have contributed to the abuse and self-harm alleged to have occurred'.

Legal obligations of the Commonwealth Government

It is the RANZCP's position that the Commonwealth Government also bears legal responsibilities with regard to both the treatment of asylum seekers and the proper support of all staff working with asylum seekers in processing centres. Australia is the only country to detain asylum seekers indefinitely in jail-like conditions, including adults and children with severe psychiatric impairment as well as those with identified developmental and cognitive disabilities. This represents a clear breach of Australia's human rights obligations and of the rights of these individuals (Newman et al., 2013). Furthermore, the detention of children is in contravention of responsibilities under the *UN Convention on the rights of the child* (1989), ratified by Australia in 1990. The *Migration Act 1958* contains a principle that a minor shall only be detained as a measure of last resort. It has, however, been a source of significant concern that children and their families and unaccompanied minors continue to be subject to routine, prolonged and indefinite detention, despite this legislation.

Australia's *Migration Act* states that any 'unlawful non-citizen' who is in Australia's migration zone must be detained until they can be given permission to remain in Australia; if permission is refused, they must be deported as soon as is practical. The difficulty is that asylum seekers held on offshore islands are not deemed to be in Australia; the Act therefore does not give these people the power to apply for a protection visa, but it does give the Immigration Minister the power to lift this restriction on a case-by-case basis. A 2014 case gave some support to the case that asylum seekers cannot be detained indefinitely, confirming that the process of determining whether or not to grant a visa to a non-citizen must be undertaken and completed as soon as reasonably practicable (High Court, 2014). However, for those seeking justice for asylum seekers, litigation is not a sufficient strategy; the ultimate goal must be amendments to the Act that will bring Australian law into conformity with the demands of justice and of human rights (Emerton, 2014).

A more recent legal case was held to determine the legality or otherwise of detention on Nauru (High Court, 2015). The recent High Court ruling on the legality of detention in Nauru was that retrospective legislation legalised it, but that at the time the case was brought to the High Court, detention had been illegal. There was however a noteworthy dissenting judgement. Her Honour Justice Gordon wrote that the detention remains illegal. She did not accept that detention has been passed to the Government of Nauru and showed that the administrative arrangements confirm that the Australian Government governs the centre. She pointed out that the High Court ruled previously that prolonged detention without judicial process is unconstitutional in Australia, and she states that it therefore cannot be constitutional for Australia to administer long-term detention without trial abroad.

Regardless of legal rulings, it is clear that asylum seekers detained on Nauru and Manus are there due to the policies of the Commonwealth Government. It is the RANZCP's position that the Commonwealth therefore bears the obligations to provide all necessary supports to ensure that the serious issues which have arisen in both centres are adequately addressed. This includes support for Australian workers, including psychiatrists, working at the centres, as well as local staff and authorities. Finally, it includes adequate mental health care services for detained individuals (see term of reference [d]).

Recommendations

Pursuant to the evidence above, the RANZCP recommends:

- the development of strategies to ensure that all adequate supports are provided to local authorities as well as all staff working with asylum seekers and refugees detained in regional processing centres.

d. the provision of support services for asylum seekers who have been alleged or been found to have been subject to abuse, neglect or self-harm in the Centres or within the community while residing in Nauru

Mental health issues among asylum seekers must be comprehensively addressed to reduce the levels of self-harm and suicidal ideation currently being witnessed in regional processing centres. Mounting evidence points to concerning high rates of severe mental illness in parents and children in detention settings. Incidents of abuse, neglect or self-harm may constitute triggers for mental illness, aggravating factors and/or evidence of symptomology. However, it is also important to remember that it is the environment of detention itself, rather than the adequacy or otherwise of health and rehabilitative facilities, that contributes to the adverse mental health outcomes of detainees. This raises serious issues about the suitability of processing centres – as they are currently operated – for vulnerable groups such as pregnant women, infants and people with chronic physical and mental illness (Moss, 2015). Mental health services do not compensate for the harm being imposed by the policy of keeping people in indefinite detention and cannot effectively treat conditions caused by factors in the environment that persist. However, this should not detract from the absolute need to provide well-resourced and adequately tailored mental health services to asylum seekers and refugees in detention.

In the face of major barriers related to the provision of adequate and independent mental health care, including limited facilities and workforce difficulties, the RANZCP is concerned that insufficient services are being provided in regional processing centres. Pre-transfer screening for mental health issues should be mandated followed by regular monitoring by independent psychiatric professionals for all individuals in detention. Comprehensive assessment of child asylum seekers in particular should examine the roles of environmental deprivation, availability of parental emotional support and traumatic

exposure in contributing to a clinical disorder. Mental disorders in child and adolescent detainees should be assessed by child and adolescent psychiatrists or other relevant mental health specialists and, when identified, are better managed outside the detention environment as continued exposure to traumatic stress associated with the detention environment undermines treatment and the possibility for recovery.

Asylum seekers and refugees should have access to health care at a level comparable to the general populations of Australia and New Zealand, taking into account the higher prevalence of mental disorders among these groups. The 'principle of equivalence' affirms the rights of individuals to access to health care which is appropriate to their needs, regardless of their legal status. This principle is stated and reaffirmed in the *Basic principles for the treatment of prisoners* (1990a), the *Principles for the protection of persons with mental illness and the improvement of mental health care* (1991), and the *Convention on the rights of persons with disabilities* (2009). As such, it is imperative that asylum seekers in regional processing centres have consistent access to high-quality mental health care to address their individual needs. Mental health services should provide culturally competent, evidence-based treatments which follow a trauma-informed approach to care with information regarding how to access health care made easily available in languages understood by asylum seekers and refugees, and with properly trained interpreters provided when needed.

Robust standards and protocols regarding the provision and access to quality mental health care for all refugees and asylum seekers are further required, along with support and training for those who provide the care. Further research into the mental health of asylum seekers and refugees is essential in order to inform the design of standards, service delivery and treatments. Standards should be complemented by appropriate governance and oversight mechanisms which ensure transparency and accountability. The lack of independent scrutiny and review of both the immigration detention system itself and of health service provision, as well as the significant barriers to individuals obtaining independent health assessment and advice, all raise very serious concerns about the safety and well-being of detainees (Dudley, 2016; Sanggaran et al., 2014). There have also been particular concerns raised about the safety of children and adults with identified developmental or cognitive disability(s) held in Nauru and Manus Island who have very significant limitations to health, education and welfare services and minimal access to legal, advocacy and other support services (Moss, 2015; Proctor et al., 2014).

There is also limited access to education and recreation, especially in Nauru, including limited access to play groups, toys, games and schooling (RANZCP, 2014). Meaningful activity, in particular education, is protective for detained children who are often unable to attend school; when they do, they may be treated differently (e.g. denied permission to be photographed in school photos). Meanwhile, security checks limit the freedoms of movement and of social and material exchange between peers. School-aged children also report limiting their relationships with their peers because of their shame about their families being in detention. They report being bullied in schools, and not exchanging toys or bringing things they have made in school back in case they are discovered in the security checks that school children are subjected to daily. In detention itself, basic things such as toys, books and games are often severely limited or simply not available. Parents in detention centres also complain of the difficulties they experience keeping their children safe because of the detention environment and the interference in their parental decision making.

One tension in allowing proper access to support services, including health care and education, is that the stated purpose of detention includes the notion of deterrence and coercion. Detention is designed to be aversive so that it is an effective deterrent to others who might arrive by boat, and to coerce compliance with repatriation. This leads to a tension between any positive experience or service provision and the stated purpose of detention. While the RANZCP acknowledges the tragedies that have occurred during the overseas journeys of asylum seekers to Australia, it does not consider the detention

of individuals who have survived these journeys to be an appropriate tool to address this problem, especially considering the grave impacts of this policy on the mental health of those seeking asylum. This is because the RANZCP considers the causing of harm to one group (those detained) for the purported benefit of preventing harm to others to be ethically indefensible.

Recommendations

Pursuant to the evidence above, the RANZCP recommends:

- pre-transfer screening to assess asylum seekers' mental health needs followed by regular monitoring by independent psychiatric professionals including comprehensive assessments of children
- the provision of mental health services in regional processing centres with appropriate resourcing to ensure interventions and treatments are adequately tailored to the needs of asylum seekers and refugees
- policies guaranteeing equivalence of care for those with mental illness in regional processing centres, taking into account the higher prevalence of mental disorder amongst individuals in custody when compared to the general community
- mechanisms that enable asylum seekers in regional processing centres to be diverted into appropriate mental health settings if they are in need of involuntary mental health treatment or other mental health services that cannot be provided in the detention environment
- improved education and training of staff in regional processing centres around the mental health needs of asylum seekers, including appropriate responses to allegations of abuse and threats or actual instances of self-harm and the identification of behaviours in children which indicate a possible exposure to sexual abuse.

e. the role an independent children's advocate could play in ensuring the rights and interests of unaccompanied minors are protected

Risk factors for mental health issues among child asylum seekers and refugees

The RANZCP has a body of members who work, or who have worked, to provide mental health services to child asylum seekers and refugees in detention, or who have undertaken research into the mental health of children in detention. These members have observed anxiety, depression, developmental regression, emotional and behavioural dysregulation, as well as self-harm and suicidality in detained children, exacerbated by the process of the detention system and the poor conditions in which children are detained. This compounds distress in children with prior experience of trauma or torture in their homeland and/or during their journey to Australia, and where parental mental health and parenting capacity is impaired as a result of prolonged detention. Children who arrive in Australia without parents or family members have the potential for their mental health issues to be compounded by the loss of a parental/caregiving figure for emotional and psychological support. Unaccompanied children in detention are at risk of being exposed to conflict, adult distress and self-harming behaviour. Witnessing riots, violence and suicidal behaviours has significantly distressed some children.

Risks to the mental health, well-being and development of children are the result of a combination of pre-migration experiences, the detention environment, uncertainty around visa outcomes, living in a closed environment, witnessing violence and the incapacity of their guardians to provide care. Children are adversely affected by their time in detention both directly and via the impact on the well-being of their

caregivers; children are also particularly vulnerable to a decline in their health and well-being, to abuse and/or neglect, and to limited or inadequate access to the assessment, support and intervention they and their families require.

The RANZCP further notes the large body of evidence which identifies the high prevalence of mental and physical health issues among children and adolescents in immigration detention, particularly PTSD, self-harm, suicidal ideation, depression and anxiety (Bull et al., 2012, Dudley et al., 2012, Steel et al., 2004, Mares and Jureidini, 2004). Children detained for long periods of time are at high risk of suffering mental illness and post-traumatic symptoms including anxiety, distress, sleep and behavioural disturbances, bed-wetting, suicidal ideation and self-destructive behaviour including attempted and actual self-harm. Children and adolescents in detention are 12 times more likely to self-harm and 10 times more likely to attempt suicide than Australian children who are not detained, with suicide attempts documented even in very young children in detention (UNCRC, 2016; Steel et al., 2003). Furthermore, women giving birth in detention are particularly at risk of post-natal depression or anxiety and attachment difficulties with their infants. Infants and young children born in detention are particularly vulnerable and show signs of developmental compromise (AHRC, 2014).

The detention centre environment is inadequate with respect to developmental opportunities, cognitive and educational facilities and support for parenting. The RANZCP remains extremely concerned that highly vulnerable children are living in conditions known to be damaging to their mental health, well-being and development, particularly when more humanitarian solutions, such as community detention, exist. In all circumstances, the human rights and dignity of all should be honoured. Citizenship status must not be a barrier to early childhood education, acceptable living conditions, appropriate means of support, adequate health care and access to child protection measures.

The RANZCP remains concerned that the limited support for children in detention centres, provided by services such as MAXimus Solutions and Save the Children, is not sufficient to mitigate the harms of detention itself. Often workers are inexperienced and/or poorly trained and there is little organisation, structure, or governance of these arrangements. In considering all the evidence and the alternatives, the RANZCP believes that children and their carers should be removed from closed detention and allowed to live in the community while their claims for refugee status are being processed, to promote their health and well-being.

It is of critical importance that children and families are able to move out of detention (whether that be in immigration detention centres or community detention) and have their claims for asylum processed quickly. Most children – even those traumatised – are resilient and can manage a brief time in detention. Therefore, a properly implemented ‘pass-through’ policy would be significantly less harmful. There is a consensus among psychiatrists working to provide services to child asylum seekers that any period of detention (in any detention-like environment) of greater than 3 months is harmful. At times in the past when throughput was reduced to less than 3 months, dramatic improvements in the health and welfare of detainees was observed. Current policy and practice greatly increases length of stay and has resulted in a marked acceleration of adverse mental health consequences from detention. It is therefore the position of the RANZCP that detention of children should only be seen as a last resort and, if necessary, should only occur for the shortest possible period of time. Children and their parents should be processed within 72 hours where possible and moved into the community to reduce the development or aggravation of mental distress or mental disorders. Community residence should be accompanied by freedom of movement and access to services, and status determination needs to be expedited as prolonged uncertainty is the factor most associated with mental health problems.

A children's advocate?

The RANZCP welcomes attempts by the Commonwealth Government to better support the well-being of children detained in regional processing centres. However, the RANZCP continues to hold the view that the rights and interests of children including unaccompanied minors cannot be protected under the current system of mandatory and prolonged detention for children. Should an independent children's advocate be established, the RANZCP stresses the absolute importance of the role's independence as no children's advocate would be effective without the capacity to provide uncensored criticism to the Commonwealth and its contractors with regards to the care and treatment of detained children.

The RANZCP suggests that the establishment of an independent guardian for unaccompanied children should be considered alongside proposals for a children's advocate. The fact that the Minister for Immigration and Border Protection is responsible for the implementation of current policies as well as being the legal guardian for asylum seeker unaccompanied minors represents a serious conflict of interest. The Minister's responsibility to act in the best interests of the child is often incompatible with the treatment of asylum seekers, including children (Corbett et al, 2014; RANZCP, 2014; AHRC, 2014a). The RANZCP therefore believes it to be inappropriate for the Minister to take on the role of guardian at the same time as being responsible for overseeing and determining policy. Whilst the Minister delegates most of the daily responsibilities to a 'delegated guardian' in each facility, this DIBP employee often has another role (e.g. Manager of Detention Operations) which is likely to equally limit their capacity to advocate for, or consider the best interests of, the children nominally in their care. This presents a particular conflict of interest when children are being harmed by prolonged and unnecessary detention. Independent guardianship is an imperative.

The RANZCP also understands that the United Nations Committee on the Rights of the Child has raised a number of concerns relating to the child protection authorities working with asylum seekers in Nauru (UNCRC, 2016). These concerns include the lack of training and experience among staff of the Child Protection Directorate. The RANZCP supports the UNCRC's recommendations with regards to child protection services in regional processing centres.

Recommendations

Pursuant to the evidence above, the RANZCP recommends:

- the establishment of an independent guardian(s) for unaccompanied children in immigration detention along with an independent children's advocate
- the implementation of UNCRC recommendations made within the *Nauru State Report*
- the implementation of a 'pass-through' policy for children and their caregivers with asylum claims to be processed within 72 hours where possible.

f. the effect of Part 6 of the *Australian Border Force Act 2015*

The RANZCP welcomes the recent *Determination of Immigration and Border Protection Workers* which exempts health professionals working in immigration detention facilities from the secrecy and disclosure provisions in Part 6 of the *Border Force Act*. The exclusion of health professionals from these provisions is an important step forward in engendering healthy debate about how to best address the mental health concerns of asylum seekers and refugees in regional processing centres.

Discussion and debate is not only a healthy part of democracy but a bedrock of scientific progress. Advocacy in the context of psychiatric practice is a non-partisan activity integral to delivering quality health care. Psychiatrists and other health professionals working in immigration detention centres should be free to advocate for broader structural or systemic issues when these are relevant to promoting and protecting mental health. This includes advocating for the well-being of individuals as well as for policies or practices that promote mental health or against those that harm mental health (WPA, 2011). Increasingly, medical practitioners employed in immigration detention centres are speaking out about ethical dilemmas of concern to them including the ethics of providing medical care in an environment that is itself causing harm, as well as the challenges of meeting conflicting obligations to patients, employers and DIBP, and whether this is even possible. There is a growing discourse regarding the ethical dilemma of how best to proceed in these environments and whether or not a professional boycott is appropriate (Sanggaran et al., 2014). The recent changes provide assurance that these important conversations can continue.

Nevertheless, the RANZCP remains concerned that Part 6 of the *Border Force Act* is still in force with regards to other professionals in regional processing centres who have direct contact with asylum seekers and refugees. Workers such as guards, teachers and NGO staff have an ethical responsibility to report situations of abuse and self-harm; where these are not adequately addressed by institutional mechanisms, it may be appropriate for advocacy to enter the public arena. There are also some concerns that, under the current law, the employment arrangements of health professionals may raise doubts as to whether the provisions apply to them or not. Therefore, it is the RANZCP's position that more needs to be done to ensure there is a sufficiently transparent and accountable system of protection for asylum seekers and refugees in offshore processing centres.

Recommendations

Pursuant to the evidence above, the RANZCP recommends:

- the repeal of part 6 of the *Australian Border Force Act 2015* and/or clarification of the legality of health and other professionals working with asylum seekers *under all circumstances* to advocate on their behalf
- further mechanisms to increase freedom of speech relating to regional processing centres including press freedoms.

g. attempts by the Commonwealth Government to negotiate third country resettlement of asylum seekers and refugees

The RANZCP expresses concern at the worsening conditions in regional processing centres in light of the failure of third country resettlement mechanisms. Attempts at third country resettlement of asylum seekers and refugees has had minimal take-up and is compounded by significant difficulties related to community acceptance, lack of infrastructure and support. Continued efforts to negotiate third country resettlement options have only lengthened the amount of time spent in regional processing centres by asylum seekers, thereby worsening their mental health outcomes, without providing any long-term option for resettlement.

The RANZCP remains concerned that highly vulnerable people continue to live in conditions known to be damaging to their mental health, development, and social health and emotional well-being, particularly when more humanitarian solutions exist. Mandatory detention and limiting access to basic

services is punitive and harsh and will result in a corresponding health burden in the future. Improving conditions now would have far-reaching economic and societal benefits. Further evidence of this is outlined in the RANZCP's *Cost Effectiveness of Prevention and Early Intervention Strategies in Infants, Children and Adolescents* (2011). Given that the majority of asylum seekers are found to be refugees, the RANZCP would suggest that there is a need for a change in attitude and practice at a governmental and societal level that allows for greater compassion and commitment to ensure that supportive, caring, and non-traumatising experiences are provided for asylum seekers and refugees on their way to joining our community.

Without a proper response to the failure of third country resettlement mechanisms amid ongoing allegations of abuse, self-harm and neglect at regional processing centres, the RANZCP believes that Australia may be incurring significant social and economic costs. In the absence of viable options for third country resettlement, Australia maintains its legal and ethical obligations to the protection of asylum seekers and refugees detained under its aegis. As such, the social and economic costs of current policies and practices will rest with the Commonwealth Government and the Australian people for many years to come.

h. additional measures that could be implemented to expedite third country resettlement of asylum seekers and refugees within the Centres

The RANZCP is not aware of any viable measures for third country resettlement and continues to advocate for the development of appropriate policies for the processing of asylum claims in line with the *UN Convention relating to the status of refugees* (1951) and the *UN Convention of the Rights of the Child* (1989).

i. any other related matters

The RANZCP does not wish to raise any other matters.

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