Submission to the Joint Standing Committee on Migration: Inquiry into Immigration Detention.

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Guy Coffey[1] and Steven Thompson[2].

1. Introduction

This submission relies on the authors' experience in psychologically assessing and treating people held in immigration detention centres and people formerly detained who now live in the community.

We are both psychologists employed at specialist torture and trauma rehabilitation services which are funded by the State and Federal governments and which belong to the national network of such agencies, the Forum of Australian Services for Survivors of Torture and Trauma.

Together we have had some level of clinical contact with several hundred detained or formerly detained people, primarily protection visa applicants. The level of clinical contact has ranged from single assessments to the provision of ongoing psychological treatment over months or years. The authors' combined experience covers people detained in each of the mainland centres. With respect to assessment of people while detained, since 1998 one of us has assessed and treated people detained at Maribyrnong Immigration Detention centre; the other author has assessed people while detained at Baxter and Woomera over a five year period, and has treated formerly detained asylum seekers for ten years.

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[1] Clinical Psychologist, Direct Service Coordinator, Victorian Foundation for Survivors of Torture.
[2] Counselling Psychologist, Senior Counsellor, Survivors of Torture and Trauma Assistance and Rehabilitation Service, South Australia.

We make this submission as individuals rather than as representatives of our employer organisations. We regard the views expressed here as complementary to those expressed in the submission made by the Forum of Australian Services for Survivors of Torture and Trauma.

This submission to the inquiry does not attempt to cover the breadth of issues raised by the terms of reference. Rather, we confine our attention to observations about the psychological effects of immigration detention; the effectiveness of immigration detention health service responses to the psychological needs of detained persons; and the implications of the mental health consequences of detention for decisions regarding when detention of visa applicants is warranted. This submission therefore provides information and opinions relevant to several of the terms of reference:

- The criteria that should be applied in determining how long a person should be held in immigration detention
- the criteria that should be applied in determining when a person should be released from immigration detention following health and security checks, and
- options for the provision of detention services and detention health services across the range of current detention facilities.

2. The detained person at the time of detention: legal and psychological considerations.

2.1 The blanket operation of mandatory detention.

Most asylum seekers in immigration detention have been detained at the time of their arrival in Australia. The exception has been the occasional practice of detaining refused protection visa applicants who arrived in Australia with a valid visa and who are waiting judicial review or a ministerial response to requests made under section 417 of the Migration Act. A striking feature of mandatory detention is the undifferentiated nature of

its application. Unlike a remanded prisoner, a person convicted of an offence or a person detained under a form of civil commitment (such as pursuant to a State Mental Health Act), the only characteristic relevant to whether a person is detained is whether she or he possesses a valid visa. In this regard in *Al Katab v Goodwin* Gleeson CJ stated that[3]:

> One of the features of a system of mandatory, as distinct from discretionary, detention is that circumstances personal to a detainee may be irrelevant to the operation of the system. A person in the position of the appellant might be young or old, dangerous or harmless, likely or unlikely to abscond, recently in detention or someone who has been there for years, healthy or unhealthy, badly affected by incarceration or relatively unaffected. The considerations that might bear upon the reasonableness of a discretionary decision to detain such a person do not operate.

The particular vulnerabilities of the individual and the effects which immigration detention have upon the individual are therefore irrelevant to whether the individual is detained. Consequently, the legislation sets the immigration detainee at a considerable disadvantage compared to others who are lawfully deprived of their liberty. A presumption of release on bail operates for a person charged with a criminal offence except in circumstances where an unacceptable risk is demonstrated or the nature of the alleged crime is among a narrowly prescribed set of offences[4]. An important principle in sentencing a person convicted of an indictable offence – which in Victoria constitute an aspect of the so called "*Tsiaras* principles" – is the psychological effect of a custodial sentence on the person considered in light of that person's particular vulnerabilities[5]. Persons subject to civil commitment under State mental health acts must satisfy strict criteria in order to be deprived of their liberty for the purposes of treatment, and the decision must be reviewed regularly by an independent board, tribunal or court. The deprivation of liberty applied wholesale to those deemed not to possess a valid visa, achieved in the absence of supervision by an independent tribunal or a court, is a striking feature of the operation of the mandatory detention legislation.

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[3] (2004) 219 CLR 562 [12].
[4] Eg., in Victoria, the *Bail Act 1977* (Vic) s 4.
[5] *R v Verdins; R v Buckley; R v Vo* [2007] VSCA 102 (23 May 2007).

2.2 Immediate psychological reactions to immigration detention.

Although the initial reaction of detained persons varies widely, it in many ways reflects the nature of the law applied to them. Most recently detained persons in our experience are surprised and associate detention with a criminal sanction. The distinction between administrative detention and imprisonment is one most detainees find difficult to draw. In our experience detention is usually regarded as punitive. This perception increases with length of detention. Some detainees who are in contact with their family overseas have difficulty convincing them they have not committed an offence; that they are detained simply because they are awaiting for the outcome of a visa. When families have made enormous sacrifices to secure the family member's passage to safety and they believe the asylum seeker has committed an offence, detention can be a source of shame for the detained person. There is commonly also distress regarding the detained person's inability to send funds to their family who may be reliant on them and who believed the asylum seeker would begin sending earnings on arrival in the country of asylum. For asylum seekers who found work in countries where they resided on their way to Australia, detention is the first time they have been unable to support their family.
A proportion of asylum seekers have suffered persecution in the form of arrest, detention and sometimes also torture[6]. Immigration detention directly reinvokes those experiences. For this group detention, even for short periods, has often been a particularly distressing and damaging experience.

3. The psychological effects of the first months of detention.

For some vulnerable asylum seekers, particularly but not exclusively with histories of torture and trauma or imprisonment, psychological deterioration has occurred almost immediately. We have observed individuals who have developed severe levels of

[6] See for example the studies surveying asylum seekers' pre-migration experiences in Silove, D; and Steel,Z (1998) The Mental Health and Well-Being of On-Shore Asylum Seekers in Australia. Psychiatry Research and Teaching Unit; Steel, Z; Silove, D; Brooks,R; Momartin,S; Alzuhairi,B; and Susjik,,I.(2006) Impact of immigration detention and temporary protection on the mental health of refugees. *British Journal of Psychiatry* 188,58-64.

depression, anxiety and the activation of pre-migration related post traumatic reactions very soon after being detained. Although the number of asylum seekers detained is now much lower than previously, and they are generally detained for shorter periods, we are still observing very adverse reactions across the course of the first several months of detention. The authors and our colleagues have assessed a series of asylum seekers in the past 6 months who have histories of trauma and loss and who have deteriorated significantly within a month or two of being detained. They were distressed, depressed and suffered a range of post traumatic symptoms. Some have been imprisoned and tortured in their country of origin and have had family members murdered. They did not feel safe in detention. Some have been exposed to acts of violence between detainees. Several worried about losing their sanity. Most were preoccupied by the safety of their family who were living in unsafe circumstances. None were released until their successful primary decisions which occurred after about four months in detention.

For asylum seekers with histories of trauma, the detention environment directly reinvokes experiences they have suffered at the hands of their persecutors. The enclosing walls, presence of supervising officers and institutional routines results in an increased presence of asylum seekers' persecution through frequent vivid memories and nightmares of abuse and a general sense of a lack of safety. The exact nature of these experiences of course varies. It may involve spontaneously reliving an experience of torture during which the individual is disoriented for minutes or even hours. It may involve panic reactions produced by reminders of imprisonment. It may be the person frequently wakes disoriented and for several minutes believes themselves to be imprisoned. Occasionally one sees a rapid deterioration where an asylum seeker loses the ability entirely to distinguish their current situation from that of their past. The authors have assessed detainees who have hallucinated events from the scenes of their torture – blood on their detention centre bedroom walls for example – and who are convinced that their lives are imminently at risk. More commonly, detained asylum seekers well know that they are not subject to the same level of risk as in their country of origin, but find the environment very deeply unsettling because it doesn't allow them to put the past behind them and commence their recovery. They often fear forced repatriation, which is heightened by

witnessing the involuntary removal of other detainees. Many are constantly apprehensive about the welfare of their families who may remain in dangerous situations.

The monotony and lack of worthwhile activities results in detainees having few means to distract themselves from their many fears and concerns. We have observed that the majority of detained asylum seekers, over varying periods of time, become increasingly disinclined or unable to participate in those activities that do exist due to depression, withdrawal and a sense of hopelessness.

It is not the case that a history of trauma is a necessary condition for rapid psychological deterioration in detention. Nearly all asylum seekers with bona fide claims have been forced from their country[7], often precipitously, leaving behind their family, community and livelihood, and have sought protection knowing little about what will eventuate. That set of experiences alone is likely to be overwhelming for many individuals, and they enter detention in a fearful and vulnerable state. For a person affected in such a way immigration detention can be a profoundly disorienting, isolating and unsettling experience, sufficient to precipitate the prodrome of mental illness.

Within the course of the first months of detention the detained asylum seeker must prepare him or herself for the assessment of their protection visa claims. It is our opinion that the disturbed psychological state an asylum seeker develops materially affects their capacity to give instructions to their migration agent and to undertake a hearing. While it may be rare that asylum seekers at the primary decision are unfit in a formal sense to give instructions and participate in a hearing, there is little doubt that their mental state often decreases their ability to provide a convincing and credible account of their claims. It is worthy of note that the absence of formal legal representation during departmental hearings and at the Refugee Review Tribunal means that applicants must largely make out their claims by themselves, and the demands on concentration and memory of the applicant are considerable. A psychological condition which affects their cognitive

[7] The rare exception to this statement is where a person has left their country for travel purposes and the situation in their country has changed such that they would be persecuted if they returned.

functioning compromises their ability to make their submissions, and potentially introduces a lack of procedural fairness to the hearing. Over the past ten years the authors have been aware of large numbers of cases where detained persons' applications were weakened by their accounts of persecution being rendered less coherent by the cognitive impairments induced by detention.

4. The psychological consequences of medium and longer term immigration detention.

4.1 The detained Asylum Seeker

The Department of Immigration owes a duty of care to people detained in immigration, a duty it has acknowledged in the context of litigation[8]. This duty extends to meeting the mental health needs of detainees[9].Notwithstanding this, the Department has never undertaken or permitted a systematic investigation of the psychological well-being of persons detained in immigration detention centres. We therefore do not have the benefit of population wide investigations of the levels of psychological well-being and psychiatric morbidity associated with immigration detention of varying duration. We do however, possess psychological studies of subgroups of detainees and people who were formerly detained, and a wealth of clinical observation of the course of detained persons psychological well-being. The authors do not propose to review the available literature which is published and readily accessible. Suffice to say that the evidence of the research and clinical observations is convergent. Firstly it can be said with confidence that there have been high rates of post traumatic stress disorder and depression among detained asylum seekers. There is no reason to believe that those asylum seekers who have been detained are less likely to have histories of trauma and loss than asylum seekers entering Australia with a valid visa. There is some empirical evidence to believe the contrary, at

[8] In *S v Secretary, Dept of Immigration and Multicultural and Indigenous Affairs* [2005] FCA 549 the Commonwealth acknowledged a non-delegable duty owed to detainees.
[9] See *S v Secretary, Dept of Immigration and Multicultural and Indigenous Affairs* [2005] FCA 549 [220] (Finn J).

least for particular groups that have been studied[10]. It may be that persons who are unable to organise valid visa before departure are more likely to have faced immediate threat to their lives or liberty. Studies of specific cohorts of asylum seekers, both those detained and in the community have demonstrated that experiences of combat situations, life threatening events, the murder of family or friends, detention and torture are very common, and sometimes the majority of the group studied have suffered such traumas[11]. Secondly, there is some empirical research and a great deal of clinical observation indicating a deterioration of detainees' mental state, both asylum seekers and other detained persons, over time[12]. Thirdly there is emerging evidence of the long term effects of immigration detention on the psychological well-being of asylum seekers who were formerly detained[13].

Our own observations are entirely consistent with this brief overview of the evidence. In preparing this submission, the authors sought to summarise the nature of the psychological changes they observed among detained asylum seekers who had been detained for one year or more[14]. We identified fifty asylum seekers who we assessed while they were in detention and where the first and last assessment was separated by at least two months. All assessed asylum seekers suffered a level of psychological disorder when referred to us. Depression was the most common disorder. Post traumatic anxiety

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[10] Steel, Z; Silove, D; Brooks,R; Momartin,S; Alzuhairi,B; and Susjik,,I.(2006) Impact of immigration detention and temporary protection on the mental health of refugees. *British Journal of Psychiatry* 188,58-64. Silove,D; Steel,Z; McGorry,P et al. (1998) Psychiatric symptoms and living difficulties in Tamil asylum seekers: comparison with refugees and immigrants. *Acta Psychiatrica Scandinavica* 97, 175-181.

[11] Silove, D; and Steel, Z (1998) The Mental Health and Well-Being of On-Shore Asylum Seekers in Australia. Psychiatry Research and Teaching Unit; Steel, Z; Silove, D; Brooks,R; Momartin,S; Alzuhairi,B; and Susjik,,I.(2006) Impact of immigration detention and temporary protection on the mental health of refugees. *British Journal of Psychiatry* 188,58-64.

[12] Sultan, A, O'Sullivan,K.(2001) Psychological disturbance in asylum seekers held in long-term detention: a participant observer account. *Medical Journal of Australia* 175,593-596; Steel, Z; Momartin, S; Bateman,C; Hafshejani,A; Silove,D.(2004) Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia. *Australian and New Zealand Journal of Public Health* 28:6 527-536

[13] Steel, Z; Silove, D; Brooks,R; Momartin,S; Alzuhairi,B; and Susjik,,I.(2006) Impact of immigration detention and temporary protection on the mental health of refugees. *British Journal of Psychiatry* 188,58-64. Momartin, S; Steel, Z; et al (2006) A comparison of the mental health of refugees with temporary versus permanent protection visas. *Medical Journal of Australia* 185:7 357-361.

[14] At the time of the submission, we are not able to assemble a detailed statistical analysis of the psychological state of asylum seekers assessed while in detention. We are currently embarking on such a study.

symptoms and grief were also common, and were frequently concurrent with depression. Based on reported history, all of the people assessed had deteriorated while in detention, indeed the referral was often precipitated by emerging mental illness. Very few of the asylum seekers we assessed improved over the period in which we saw them, despite most receiving treatment from detention centre health services. The pattern of deterioration in mental state was not uniform. One group declined insidiously into a state of depression, despair and withdrawal. They were almost completely inactive and had virtually given up any hope of a successful visa outcome. They exhibited marked cognitive impairments including very poor short and long term memory. Their lives had become constricted to a spare routine revolving around sleep and meal times. This group was largely unresponsive to treatment.

A second group deteriorated rapidly following an adverse event such as a visa application refusal, witnessing of or being subject to violence, or receiving distressing news about their family. Depending on their pre-existing vulnerabilities they became intensely anxious, with an intensification of post traumatic symptoms, or severely depressed. The deterioration was often accompanied by suicidality, and sometimes protests against and conflict with detention authorities and the Department.

It must be conceded that these observations can not be regarded as representative of the mental state across the entire population of detained asylum seekers, or of detainees generally. It is probable we saw the detained persons who were most adversely affected by the detention environment. On the other hand we know from treating former detainees that many asylum seekers who psychologically deteriorated while in detention were not referred to external services, including our own. It can be concluded reading the empirical studies alongside clinical observations, that psychological deterioration is common among detained asylum seekers and that a proportion become seriously psychiatrically unwell.

We have noted that among vulnerable asylum seekers with histories of trauma, depression and an intensification of post traumatic symptoms can occur within weeks of the commencement of detention. Among people detained for longer periods depression

and Post Traumatic Stress Disorder remain the most common disorders, together with generalised anxiety symptoms. However in addition one frequently sees a range of chronically disabling changes in the detained persons sense of self and capacity for autonomous activity. Detainees may become profoundly demoralised such that they see no possible future for themselves or any purpose for a future. Distortions in self image and identity occur such that detainees begin to lose a sense of who they are. The detainee may become chronically suicidal, begin to self harm, or become indifferent to his or her health and well-being. A minority express their dejection through protests by means of hunger strikes or by becoming aggressive to detention staff. Social withdrawal is common such that company is avoided whenever possible. Detainees may sleep for most of the day and only get up in the afternoon or night in order to avoid others. Sleep - wake cycle reversal is not uncommon. Many longer term detainees have complained of losing their memory, both short and long term. Short term memory impairment often results in them giving up any classes or regular activities they had been involved in such as English classes. Some detainees begin to struggle to remember their former lives, and fear that they no longer possess the knowledge and experience which forms the basis of their identity. An Afghan woman told one of the authors that she could no longer recall the traditional stories that her mother had taught her and that she had hoped to pass on to her own children. Unable to see a future for themselves, and with their past receding – becoming as one detainee put it "an archipelago of memories surrounded by oceans of forgotten life" - the circle of a long term detainee's existence becomes more and more confined to the present.

Long term detainees have often lost any belief in the fairness or rationality of the visa application process. The government, department, tribunals and courts, even sometimes their legal representatives are seen as either wilfully obstructing their case or being entirely indifferent to their plight. Asylum seekers sometimes develop irrational ideas about why their application is failing. Their ability to participate in pursuing their claims have often been significantly compromised by cognitive impairments induced by mental illness. As previously noted, there have been a large number of protection visa and other

applications marred by a lack of procedural fairness due to detained asylum seekers' inability to adduce the evidence required.

4.2 Summary of the consequences of long term detention.

In our experience, therefore, many asylum seekers who have been detained for several years or more are severely psychologically affected by their experience of detention. They frequently suffer from major depression. They suffer post traumatic conditions the origins of which lie in pre-migration experiences but which have been exacerbated by the detention environment. One needs to look beyond formal psychiatric diagnosis, however, to understand the full range of debilitating effects of long term detention. Long term detainees frequently become profoundly demoralised and dejected. Many become withdrawn and inactive to the point of doing virtually nothing besides sleeping and a few basic activities of self care. A minority attempt to protest through outward aggression or passive resistance. It is very common for detainees' memory for immediate and distant events to be impaired and their ability to retain new information is affected. Many lose any hope for the future. Their sense of personal identity becomes diffuse.

4.3 The causes of psychological harm among long term detainees.

It is not possible to locate, on the basis of empirical research we possess, the characteristics of detention that produce the observed psychological sequelae. The aetiology of adverse psychological reactions and mental illness almost always lies in the interplay of multiple personal characteristics and environmental influences. It is likely however the causes of psychological deterioration in detention lie with the combined effects of the following conditions:

- the indeterminate length of detention and the accompanying uncertainty
- the controlled institutional environment which for persons with a trauma history reinvokes life threatening experiences
- the loss of autonomy, forced inactivity and the lack of availability of activities which provide skills for the future. It is notable that with regard to activities and

learning programs, many detainees who have previously been held in prisons in Australia, compare immigration detention centres highly unfavourably

- for asylum seekers, the sense that detention is unjust and criminalising
- a lack of faith in the fairness and rationality of the visa applicant process
- ongoing fear of repatriation
- apprehension for the well-being of family
- exposure to violence among detainees and a general sense of a lack of safety
- the despair and dejection that pervades life in immigration detention centre; again people previously imprisoned have commented on this aspect of immigration detention compared to prison environments.
- the duration of detention giving rise to the perception by detainees that they have been abandoned and 'lost in the system'.
- the perception by detainees that their health and welfare is not treated as important. This has often taken the form of complaints about: lack of access to appropriate health and psychological services and support; physical problems not being taken seriously; the poor quality of food; the lack of opportunities for exercise.
- the perception that rules affecting everyday life in the centres are arbitrary and unfair. This is expressed in terms of complaints about detention officers and detainees' behaviour not being taken seriously; and about rules and their application regarding a myriad of matters such as access to telephones, payment for work undertaken, what items can be taken in bedrooms and so on.

The authors acknowledge that efforts have been made since the release of the Palmer Inquiry to improve aspects of the physical environment of the detention centres; to improve health services; and to improve relations between detention staff and detainees. Our firm belief is however that whatever worthwhile attempts are made to make detention centres more humane environments, long term detention will continue to be psychologically damaging for many detained people, and particularly, but far from exclusively, for persons with histories of trauma. Indefinite long term detention in an

institutional environment, whatever refinements are introduced to the centres, will psychologically harm many people.

4.4 The psychological effects of long term detention among formerly detained persons.

Both the authors have worked with a large number of people released from immigration detention. We must again acknowledge that the clinical sample we have worked with is not likely to be representative of all those who have undergone long term detention, but will rather tend to represent those who have fared least well. However, the one community survey conducted of refugees from a particular ethnic group found that those who had been detained were at greater risk of mental health related disability[15]. We also note that we know of many very unwell former detainees who are not seeking treatment. Moreover while the description of the psychological disorders we have treated can't be regarded as indicative of the psychological well-being of all people previously detained, the number of people we have assessed post detention is sizeable, upwards of several hundred.

The authors' experience is that asylum seekers who have been detained for several years or more emerge from detention with varying levels of psychological difficulties, as one would expect given that they are a heterogeneous group with varying degrees of pre-migration trauma, personal vulnerabilities, and indeed differing experiences of detention. The most adversely affected are released from detention and directly admitted to a psychiatric hospital. One of the authors is currently treating 14 protection visa holders for whom this occurred. More commonly the former long term detainees we see have not required hospitalisation but have found adaptation to the challenges of settlement very difficult. A proportion several years post detention have not been well enough to work, or struggle to maintain employment. They suffer from depression, insomnia, fatigue,

[15] Steel, Z; Silove, D; Brooks,R; Momartin,S; Alzuhairi,B; and Susjik,,I.(2006) Impact of immigration detention and temporary protection on the mental health of refugees. *British Journal of Psychiatry* 188,58-64.

demoralisation, and a lack of direction. Many have chronic post traumatic symptoms involving recurrent memories of communal violence, attacks on their families, and threats against their lives including imprisonment and torture. They are often preoccupied by the past – both the trauma and losses in their country of origin and what occurred in detention - to the exclusion of what they need to do in order to better their lives in Australia. They are often consumed by a pervasive sense of injustice the source of which is derived from both the persecution of pre-migration experiences and the experience of immigration detention: in fact on the level of emotional response these distinct episodes in their lives tend to be run together. Many talk of the years lost in detention for reasons they still cannot fathom, and have great difficulty putting this aside. Those who lost family members in civil strife before fleeing their county, including witnessing the murder of family members, often feel they have been deprived of the opportunity to grieve. Young Afghan men we have treated for example, who witnessed family members being murdered by the Taliban, have spoken of how they could not cope with simultaneously thinking of lost and surviving family and dealing with the ordeal of immigration detention. However, the mental strategy of attempting to distance themselves from their losses generated persistent guilt and unresolved grief.
For many people formerly detained, the experience of detention continues to colour their experience. So for example, some former detainees report feeling as if they are still within detention whenever they are by themselves; or find any judgement of themselves, for instance in an interview or work context, as reminiscent of detention, and misinterpret benign attention as controlling and hostile. Some fear being re-detained even after acquiring permanent visas. A pervasive lack distrust of others, which may have been established by experiences of persecution, but appears to have been magnified and consolidated into an enduring psychological disposition, has resulted in some former detainees to lead solitary and reclusive lives afflicted by chronic psychological disability. Many have not been able to restore their faith in the Australian government and anticipate unfair treatment whenever dealing with government officers.

We should respond to a reasonable objection to our suggestion that immigration detention is harmful in itself, namely that the clinical presentation we are describing owes its origin

largely to pre-migration experiences. A study involving refugees from the same ethnic community comparing those subject and not subject to detention demonstrated the independent contribution of detention to psychiatric disorder[16]. Further a considerable amount is known about the course of refugees' mental health in their country of asylum. There is good evidence to believe that the majority of refugees do not suffer mental illnesses after a time in their country of settlement[17]. One study of Vietnamese refugees[18] found that 11 years post settlement that their mental health status was at least as good as that of people born in Australia. The pattern of recovery we have seen among former long term detainees does not accord, in our opinion, with what we have observed among traumatised off-shore humanitarian entrants or asylum seekers who have remained in the community during their protection claims. For some former immigration detainees it is as if some of the energy and hope that could have been directed into building a new life in their country of asylum has been squandered in surviving detention. We know that post settlement environment can be as significant in predicting future mental well-being as pre-arrival adverse experiences[19]. Historically Australia has provided relatively benign settlement conditions for traumatised refugees. Immigration detention is not an environment within which the asylum seeker can begin the difficult task of overcoming their traumas and losses and rebuilding their lives. On the contrary, for many it is a further ordeal to be survived, and recovery cannot begin until it is over.

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[16] Steel, Z; Silove, D; Brooks,R; Momartin,S; Alzuhairi,B; and Susjik,,I.(2006) Impact of immigration detention and temporary protection on the mental health of refugees. *British Journal of Psychiatry* 188,58-64.

[17] Fazel et al. (2005) Prevalence of serious mental disorder in 7000 refugees resettled in western countries: a systematic review. *The Lancet* vol 365, issue 9467.

[18] Silove et al. (2007) Trauma, PTSD and longer term mental health burden among Vietnamese Refugees – A comparison with the Australian born population. *Psychiatry and Psychiatric Epidemiology* 44, 6, 467-476.

[19] The importance of a supportive environment and the deleterious effect of a stressful environment for persons who are recovering from trauma is a commonplace clinical observation validated by numerous studies. For a general discussion, see for eg., Herman, J *Trauma and Recovery* (1992). Examples of studies of particular traumatised groups are Hauff,E and Vaglum, P(1995) Organised violence and the stress of exile. Predictors of mental health in a community cohort of Vietnamese refugees three years after resettlement. *British Journal of Psychiatry* 166:360-7; Steel, Z et al. (1999) Pathways from war trauma to post traumatic stress symptoms among Tamil asylum seekers, refugees and immigrants. *Journal of Traumatic Stress Studies* 12:421-435; : Porter, M. & Haslam, N. (2005) Predisplacement and postdisplacement factors associated with mental health of refugees and internally displaced persons: A meta-analysis. *Journal of American Medical Association,* 294, 602-612.
Lindencrona, F; Ekblad,S; and Hauff, E (2008) Mental Health of recently arrived refugees from the Middle East in Sweden: the impact of pre-settlement trauma, resettlement stress, and capacity to handle stress. *Social Psychiatry and Psychiatric Epidemiology* 43:121-131.

In summary the authors believe on the available evidence that long term detention has been psychologically harmful for a large number of asylum seekers. Further, a significant minority have developed severe psychiatric disabilities which have deprived them of the ability to successfully adapt to life in Australia. The psychological consequences of detention therefore to a greater or lesser degree affects the capacity for successful settlement and adaptation. For those asylum seekers whose attempt to remain in Australia has failed, their capacity to undergo the ordeal of removal and repatriation has often been compromised by their period in detention.

5. Mental health service delivery to people in immigration detention.

5.1 Mental health and counselling services under the current contractual arrangements.

A large number of inquiries have drawn attention to deficiencies in health and welfare service delivery to immigration detainees, including mental health service delivery. We will not review them here[20], but we will confine ourselves to a few brief observations. The inadequacies in mental health service delivery were a product of the attempt to create stand alone private mental health services for immigration detention centres. Although contractually the private services were obliged to draw on external services as required, the detention mental health services acted autonomously and external State facilities were poorly integrated into treatment approaches. Until recently the highest level of coordination between State services and immigration detention health services existed in South Australia where an arrangement has existed for the admission of detainees to a State psychiatric facility. However no general national policy guidelines have existed for immigration detention centre – State mental health service relationships. There has been a striking tardiness in the formation of agreements between Commonwealth and State health and welfare services. No memoranda of understanding with State mental health

[20] One of the authors has summarized the various inquiries' findings in relation to mental health service delivery: see Coffey, G (2006) Locked up without Guilt or Sin: The ethics of mental health service delivery in Immigration Detention. *Psychiatry, Psychology and Law* 13:1 67-90.

services were formalised until after the Palmer inquiry began[21]. Our experience over the last ten years has been that external service involvement has been approached with caution by the Department. External service recommendations regarding treatment, especially with regard to advice that a detainee needs to be released on mental health grounds have often been ignored. The national network of torture and trauma services was rarely called upon.

Why external services were not actively integrated into detainee care, but instead effectively eschewed is hard to understand. In effect, the array of specialist expertise that has been built up over generations in the State public mental health sector and trauma rehabilitation services was ignored in favour of services cobbled together by contractual arrangements which the Federal Court described as an "extended chain of contracting for service provision [which] left the Commonwealth in no legal relationship with, and remote from, the service providers; and ...[where] service provision itself was fragmented between various, uncoordinated separate providers"[22]. Up until the time of the Palmer Inquiry, the 'Detention Services Contract' was not audited in relation to detention mental health services, contractual breaches were not enforced, and contractual objectives were not been translated into measurable standards[23].

Despite mental health services in immigration detention centres coming under scrutiny following the Palmer Inquiry, there remain considerable shortcomings which we understand the Department is now seeking to address. We believe however adequate detention mental health care is unlikely to be developed unless integrated with State health and specialist services including torture and trauma rehabilitation services. The service needs to be adequately resourced, have access to the range of expertise which exists in the publicly funded sector, must be regularly audited and publicly accountable, and must be independent from the influence of managers of the detention facilities. With

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[21] Inquiry into the the Circumstances of the Immigration Detention of Cornelia Rau: July 2005. 136 (The 'Palmer Inquiry). An MOU between the Immigration Department and the South Australian Health service was signed in April 2005.

[22] *S v Secretary, Dept of Immigration and Multicultural and Indigenous Affairs* [2005] FCA 549 [221] (Finn J).

[23] See Palmer Inquiry, above n 21, 68-69; The Australian National Audit Office *Management of the Detention Centre Contract-Part A* (2004) *and B* (2005). ; and for a summary of the problems with the service delivery model see Coffey, above n 20.

respect to the latter point, the existing mental health services in their decision making regarding mentally unwell detainees, have lacked independence from the influence of the priorities of detention managers and the Department[24].

5.2 The challenge of providing mental health treatment in an immigration detention centre environment.

There have been significant deficiencies in mental health services for detained people. However, regardless of the quality of the service, the efficacy of psychiatric and psychological treatment within a detention centre is limited by the detention environment. Insofar as the environment undermines the psychological well-being of the detainee, treatment can usually only counteract the environmental effects to a limited extent. The results of treatment have been described by one of the authors in the following terms: "the environment is [not] one that that allows psychological and social rehabilitation to take place. The traumatised detainee is unlikely to attain a sense of safety while in detention – a prerequisite for the treatment of post-traumatic conditions. The person recovering from psychosis or depression does not have available the combination of psycho-education, support and opportunity for reengagement in normal social activities [necessary] for recuperation....The author's experience is that the outcome of the vast majority of mental health interventions is at best, the prevention of further deterioration, and for some the decline is ineluctable"[25].

Mental health staff within detention centres, consequently, are faced with the constant dilemma of attempting to treat psychological conditions which are maintained by circumstances they can do nothing about. When a detainee's condition deteriorates to a point where he or she is a significant risk to themselves through active suicidality or self neglect, the tension between treatment objectives and the effects of the environment are heightened even further. At this point the detention health staff have at times sought the

[24] See for examples of the compromise of professional independence and role conflict that can arise in mental health service delivery in immigration detention centres: Coffey, above n 20.
[25] Coffey, above n 20, 80-81.

assistance of external facilities. In our experience psychiatric hospital admission has not always been timely generally because of a reluctance to engage external services, but sometimes also because public mental health services have declined involvement because their assessment is that the person is not treatable while detained and his or her condition is largely a product of extended detention. There have probably been other influences on public mental health facilities' caution in offering treatment to detainees including not having sufficient resources allocated to provide such a service; the lack of formal agreement with the department in relation to service provision; the fact that most detainees do not usually suffer from conditions typically treated in public psychiatric inpatient facilities, namely psychoses and severe mood disorders; and the ethical problem raised by admitting a detained person – the service is required to discharge the detainee back into the environment which may have produced the need for admission.

When a detained person becomes a risk to him or herself, unless admission to an external facility or release from detention occurs, the effective responses available to detention health staff are very limited. For most of the period of mandatory detention, detainees who have posed a risk to themselves, or who have exhibited some kind of behavioural disturbance which has presented a management concern, have been isolated in areas within the detention centre which have prevented them from self harming or causing disruption. The practice was strongly criticized by the Palmer Inquiry[26]. It is the authors' opinion that this practice has frequently exacerbated the underlying condition which has given rise to the person's suicidality or disturbed behaviour. It is an inhumane and an entirely inappropriate approach to treating an individual who is deeply distressed and often very unwell. From the reports we have heard from detainees it appears on occasion it has been employed in a deliberately punitive manner. When, as one assumes has usually been the case, it has been imposed to protect the detainee, it nonetheless is, in effect, punitive rather than therapeutic. It has had the consequence of depressed detainees being reluctant to report thoughts of self harm. As a detained person said to one of the authors recently: "if you tell them about your thoughts they will put you away from the other (detainees)". The authors have assessed detained asylum seekers with a history of

[26] Palmer Inquiry, above n 21, 4.4.1.

imprisonment and torture who have been placed in isolation and for whom the confinement recapitulates, even more directly than detention itself, their abuse at the hands of persecutors. One of the first detained asylum seekers assessed by one of the authors was a man who had been tortured in a prison cell. He said that he frequently paced out the detention centre observation room to reassure himself that it was not in fact the cell in which he had been tortured. Mental health staff in detention centres have been fully involved in the practice of isolating suicidal detainees, and insofar as this measure is not therapeutic and often experienced as punitive, frightening and oppressive, it is ethically compromising for mental health professionals to be involved in such practices. It is acknowledged by the authors that in the past year or two that this practice is employed more sparingly, but it has not disappeared. It appears to have arisen directly out of the contradiction at the heart of mental health care of detainees: while efforts are made to maintain their mental health, the harmful effects of detention itself are ignored.

6. Mechanisms for the release of detained asylum seekers.

The Inquiry will be aware of the existing mechanisms providing for the release from immigration detention centres of persons detained under Section 189 of the Migration Act. We will here make some brief observations about their operation. The Bridging Visa E subclass 051, although designed to provide for the release of detainees with particular vulnerabilities including special health needs or the experience of torture and trauma, has infrequently been granted since its introduction in 1995. Our observation is that it has been conferred capriciously; a large number of persons with mental health problems and trauma histories who, as the regulations require, "cannot properly be cared for in a detention environment"[27] could have been released but were not, for reasons that are unclear to us. A HREOC Report found that the Department failed to actively assess whether bridging visas requirements were met by detainees[28]. It must be said that in light of what the authors believe is the impossibility of effectively treating severe mental

[27] *Migration Regulations 1994* 2.20(9)
[28] HREOC, *A Last Resort? National Inquiry into Children in Immigration Detention* April 2004, 199.

illness or post traumatic conditions within the detention environment, it is difficult to see how a clinical judgment about the possibility of proper care can be made.
The legislative measures introduced in June 2005[29], which permit the minister to grant a visa to a detained person or to release the person into community detention, in our experience have not shortened the period of time persons awaiting protection visa decisions at the primary or review stage are held in detention centres. Until the present, asylum seekers with extensive histories of torture and trauma are remaining in detention centres until granted a protection visa. As has been described, during the first months of detention these traumatised asylum seekers' psychological health has often deteriorated.

In short, the existing mechanisms for the release of asylum seekers for reason of their deteriorating mental health or torture or trauma history, whether through the bridging visa system or ministerial intervention, have not expedited release from detention and therefore have not served their purported purpose of shielding vulnerable asylum seekers from the ill effects of being detained.

7. Conclusions and Recommendations.

7.1 The psychological evidence and human rights obligations support a presumption against detaining asylum seekers and other visa applicants.

That immigration detention has had psychologically deleterious effects on many detained people is incontestable. Adverse psychological effects can occur rapidly or insidiously. While a history of imprisonment, trauma and loss make immediate harm more probable, the course of decline is variable. Our experience is that mental health treatment within detention is of limited efficacy in reversing psychological deterioration. Needless to say though the delivery of comprehensive and expert mental health treatment to immigration detainees is essential if greater harm is to be avoided. The psychological and mental health services available to the population detained in immigration detention during the

[29] *Migration Amendment(Detention Arrangements) Act 2005*

period of private contractual management of detention centres, that is since 1997, have been manifestly inadequate.

This submission has concentrated almost exclusively on the psychological consequences of immigration detention. We have done so because this is the area of our expertise and experience rather than because we believe that the most fundamental argument against the current regime lies with the psychological harm it causes. The fundamental argument, clearly, is articulated by the applicable human rights instruments. Administrative detention, where there can be no question of punishment or deterrence, should always be exercised as a last resort after every other possibility has been thoroughly considered. The arguments regarding the psychological effects of detention are subordinate to this essential principle – they illustrate one of the consequences of abrogating such a fundamental human right.

Having witnessed at first hand the deplorable human cost of the mandatory detention policy as practised over the past fourteen years, we welcome the statement by Senator Evans of 29 July 2008 in which he said that "[t]he presumption will be that persons will remain in the community while their immigration status is resolved". This is the humane and common sense approach consistent with our human rights obligations. In order to fully realise the objectives of detaining only when absolutely necessary, fulfilling human rights commitments and avoiding psychological harm we believe the following considerations are vital.

7.2 Arrangements while health, security and identity checks are undertaken

There is a yet to be resolved tension in the Minister's statement between the principle of detaining as a last resort and only when justified and the contention that mandatory detention should be retained for the purposes of health, identity and security checks. An absence of adverse evidence should *not* found grounds for immigration detention. Asylum seeking by its nature very often results in precipitous departure from the country of origin without identity documents. Asylum seekers should not in effect be punished for

this often necessary incident of their flight from persecution. There are other sound reasons why asylum seekers should not be detained during checks. It is self evidently unnecessary. We urge the Inquiry to review the security assessments of asylum seekers over the past 15 years. We are confident such a review will demonstrate that as a whole asylum seekers are very infrequently of any security concern at all. Despite the rhetoric of mandatory detention, the practice with regard to the public risk posed by unassessed asylum seekers has tacitly acknowledged this in that immigration cleared asylum seekers who have entered the country on false papers have almost always been permitted to live in the community while checks are carried out. Both of the authors have worked with immigration cleared asylum seekers living in the community whose identities remained in doubt for years. The arrangements while checks are occurring should not be organised according to the very remote possibility that the individual assessed may pose a risk to the community, in order to justify detention. An arrangement consistent with detaining only when justified and avoiding harm while meeting reasonable security concerns can be provided by a bridging visa with reporting requirements. If there are prima facie reasons for believing there is a security concern, the reporting requirements imposed may be strict. If security concerns are confirmed then detention may be justifiable. As we have said, we suspect, at least based on the asylum seeker population that has historically sought Australia's protection, that it will be very rare that the imposition of immigration detention will be necessary.

This submission has provided psychologically based reasons for why detention should not be imposed even for brief periods. We have described the psychological harm and distress that can occur in the first weeks or months of detention. At the time of writing such harm is still occurring even where asylum seekers are granted a protection visa at first instance after several months in detention. The rational application of the presumption of detaining only when necessary will avoid this harm in the vast majority of cases.

7.3 The decision to detain and the review of whether continuing detention is necessary

The authors do not have any knowledge as to how security assessments are undertaken, but there have been times when we have had reason to doubt their accuracy, at least with regard to flight risk. A not uncommon practice until several years ago was for the detention centres to bring detained people to appointments with external health services in wearing handcuffs and security belts. We have assessed people restrained in this way who were too depressed and withdrawn to effect any kind of escape. Some were not long after being treated in this way granted visas and released. Needless to say some detainees declined appointments with external health providers because they refused the indignantly of being shackled. If the arrangements during health, identity and security checks are undertaken as suggested above, the asylum seekers detained during this phase will be those for whom preliminary evidence suggests there is a real security concern. We believe that the decision that detention is necessary and justified should be undertaken by an independent tribunal the decisions of which are appealable to a court. A decision to deprive a person of his or her liberty should not be taken by the detaining authority. The Minister's statement indicates that the decision to detain will be reviewed every three months by a senior departmental officer. The decision to impose ongoing detention should be we believe also reviewed by an independent tribunal, and the review should be both at regular intervals and on the instigation of the detained person. If detention has occurred due to prima facie evidence, a failure to expeditiously produce supporting evidence should place a heavy onus on the department to demonstrate why detention should continue. There should be a very strong presumption that detention of an asylum seeker for longer than 3 months should never occur.

7.4 Summary of conclusions and recommendations.

1. Holding asylum seekers in immigration detention has often caused them psychological harm.
2. Short term detention, particularly but not exclusively of asylum seekers with histories of trauma, has caused psychological harm.
3. Longer term detention has produced in large numbers of asylum seekers considerable psychological harm and in some instances chronic psychiatric disability.
4. Many formerly detained persons who now hold protection visas have found the challenges of settling in Australia far more difficult as a consequence of their experiences of immigration detention. Their opportunity to settle was delayed in some cases for many years and they now struggle with the psychological sequelae of their time in detention.
5. A presumption that asylum seekers and other visa applicants should not be detained unless it is absolutely necessary, all other options having been exhausted, is consistent with Australia's human rights commitments and avoids the psychological harm that has been caused by the current mandatory detention policy.
6. Asylum seekers should not be detained during health, identity and security checks. They should live in the community on bridging visas. Where there is prima facie evidence suggesting grounds for a security concern, reporting requirements should be imposed with a strictness commensurate with that concern.
7. The decision to place a visa applicant in immigration detention should be made by an independent tribunal. The decision should be appealable to a court. Ongoing reviews of the decision to detain should occur at regular intervals, and should be able to be instigated by the detained person. If detention has occurred due to prima facie adverse evidence, a failure to expeditiously produce supporting evidence should place a heavy onus on the Department to demonstrate why detention should continue. There should be a very strong presumption that

8. detention of an asylum seeker for longer than 3 months should never occur.

The authors look forward to learning of the Inquiry's findings and recommendations. Thank you for the opportunity to make this submission.

Guy Coffey and Steven Thompson.

25 August 2008.