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Submission to the Joint Standing Committee on Migration on the harmful effects of

mandatory detention

Researchers for Asylum Seekers

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This submission to the 2008 *Inquiry into immigration detention in Australia* is provided by Researchers for Asylum Seekers (RAS), a volunteer group affiliated with the School of Behavioural Science at the University of Melbourne which is concerned about the plight of asylum seekers in Australia. Through this submission, we aim to address the first and second point of the Inquiry's Terms of Reference (i.e., criteria for determining how long a person should be held in immigration detention and when they should be released). We also aim to demonstrate that immigration detention is highly undesirable and detrimental to the health and well-being of detainees, and that it should only be applied in accordance with the UNHCR Guidelines on Detention. The submission briefly outlines some of the history and known impacts of immigration detention on the mental health of asylum seeker adults and children. It also outlines research that suggests that an environment characterised by chronic stress and social/environmental deprivation – such as that of Australia's immigration detention centres – has negative effects on brain function and structure.

For more detail on the impact of prolonged immigration detention on mental health and brain function, the Joint Standing Committee on Migration is referred to two chapters in an edited book by RAS members Dean Lusher and Nick Haslam (*Yearning to Breathe Free: Seeking Asylum in Australia*, The Federation Press, 2007). The first chapter, by Austin, Silove & Steel, addresses 'The impact of immigration detention on the mental health of asylum seekers', and the second, by Canty and Benjamin, explores 'Mandatory detention and brain function and structure'.

To address the fourth point of the Inquiry's Terms of Reference on the preferred infrastructure options for immigration detention, we refer you to page 244 of *Yearning to breathe free*, where Grant Mitchell outlines alternatives to the current detention system. A copy of the book has been mailed to the Committee.

## *Australia's policy of mandatory detention*<sup>1</sup>

The detention of people seeking asylum in Australia is harmful and undesirable from whichever angle it is considered; whether moral, ethical, legal, medical, educational or economical. By detaining asylum seekers, Australia violates its obligations to the United Nations Refugee Convention, to which it became a signatory in 1954

Australia was the first country to introduce a policy of mandatory detention, and remains the only country in which the length of time spent in detention is indefinite. Many European countries, such as Germany, Spain and Austria place a limit on how long asylum seekers can be detained. Other countries, such as Finland, Denmark and Belgium, only detain asylum seekers in exceptional and high risk circumstances (Amnesty International Australia).

The UNHCR Guidelines on Detention specify that the use of detention against asylum seekers is “inherently undesirable” (UNHCR, 1999). The guidelines allow provision for countries to subject asylum seekers to health, identity and security checks, which it acknowledges may require some form of detention. However, Australia’s policy of mandatory detention extends beyond these UNHCR permitted checks to include the application process itself, which may require a number of court appeals. Australia is the only country to do this, and as a result asylum seekers may be in detention for up to six years.

The Australian government states that the policy of mandatory detention has five main aims, but these aims are often not met. First, the policy of mandatory detention aims to protect the community from the dangers posed by unlawful arrivals. As ASIO reported to the Parliament in 2002, not one of the 6000 unauthorised arrivals screened by ASIO in the previous five years was deemed to be a security risk (Crock et al., 2006). Second, mandatory detention aims to prevent unlawful arrivals disappearing into the community, yet there is little evidence to support the idea that asylum seekers would abscond. Third, the policy aims to facilitate the speedy processing of asylum claims. For obvious reasons, administrative processes are made more difficult by detaining asylum seekers in remote places like Port Augusta (Baxter), Port Hedland, or Christmas Island, where administrative processes are slowed by the lack of access of legal support. Fourth, the policy aims to ensure failed asylum seekers are available for removal. Is it necessary to detain all asylum seekers for the whole length of their application process, so the few who are deported are available? Finally, the

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<sup>1</sup> Parts of this section are adapted from Lusher, D., Balvin, N., Nethery, A., & Tropea, J. (2007). Australia’s response to asylum seekers. In D. Lusher & N. Haslam (Eds). (2007). *Yearning to breathe free: Seeking asylum in Australia*. The Federation Press, NSW.

policy aims to deter potential unlawful migrants from coming to Australia, yet there is no evidence to suggest that this has been achieved.

Aside from failing to meet these explicit objectives, there are other objections to the policy of mandatory detention. Building, maintaining and running detention facilities is enormously costly. More fundamentally the long-term detention of asylum seekers, many of whom have already experienced torture and trauma, is damaging to their mental and physical well-being. In May and June 2002, the UN Working Group on Arbitrary Detention was invited by the Australian Government to compare Australian detention practices to international standards. The UN Working Group concluded that detention centre conditions were similar to those of prisons, with razor wire fences, permanent supervision, handcuffing of detainees escorted outside the centre, and the escape from detention constituting a criminal offence. They also reported high amounts of self-harm by detained adults and children.

#### *Mental health of detainees<sup>2</sup>*

The detrimental effects of mandatory detention on the mental health of asylum seekers are well known. Detained asylum seekers have considerably higher rates of depression and post-traumatic stress disorder than the general population (Thompson, 1998). Rates of suicidal behaviour are 48 times the national average for male detainees, and 26 times higher for females (Dudley, 2003). Importantly, these effects are not the result of previous trauma alone: asylum seekers who are not detained experience significantly lower rates of mental illness (Ichikawa, Nakahara, & Wakai, 2006). These alarming figures reflect the severity of the detention centre environment. The excessive level of stress experienced by asylum seekers in mandatory detention is compounded by their lack of control over the situation. In detainees, long exposure to uncontrollable stress is therefore likely to reduce their ability to cope with later stressful situations (e.g., resettlement). Alarmingly, Mares and Jureidini (cited in Austin et al., 2007: 103) found that very young children detained in detention centres exhibited developmental delay and behavioural disturbances, and older children showed symptoms of post-traumatic stress, major depression, suicidal thoughts and bed-wetting.

#### *Effects of detention on brain function and structure*

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<sup>2</sup> The information in this section is taken from Canty, C & Benjamin, B. (2007). Mandatory detention and brain function and structure. In D. Lusher & N. Haslam Eds. (2007) *Yearning to breathe free: Seeking Asylum in Australia*. The Federation Press, NSW. *This information is relevant to the committee's aims of determining how long a person should be held in immigration detention.*

Ongoing periods of extreme stress can have long-term effects on the functioning of the stress response, so that the ability of the system to respond to stress appropriately is impaired. In this situation, individuals may become overly sensitive to stressors within their environment. The inability to regulate the stress response has been implicated as a risk factor for the development of several mental illnesses including depression and post-traumatic stress disorder (Meyer, Chrousos, & Gold, 2001). In asylum seekers, the experience of incarceration of indefinite duration constitutes a situation of chronic stress. Additional ongoing stresses often include separation from and concern about family members still at home, boredom, isolation, and loss of culture and support (Steel et al., 2004). Detainees simultaneously face the stress of immigration applications, which frequently involve conflict with immigration officials, delays in the processing of applications, fears of being sent home and communication difficulties (Thompson, 1998).

Significant impairment of the brain's stress response has also been shown in depressed children with a history of abuse (Kaufman, 1997). This impairment can be attributed to the experience of chronic stress. Importantly, impaired stress responses were only found in children who were living in situations of ongoing adversity. The implication from this research is that damage caused by initial trauma can be reduced if the individual is removed from the stressful situation. Conversely, placing an individual into another stressful environment, such as mandatory detention, is likely to compound the effects of previous trauma. In the case of asylum seekers in Australia, previous experience of severe traumatic stress in their country of origin often includes abuse, exposure to unnatural death, and flight from conflict (Silove et al., 1998). The detention of asylum seekers, then, is likely to significantly impair recovery from previous trauma.

Detention not only presents asylum seekers with many threats and challenges resulting in chronic stress; it also places them in a restricted physical environment and deprives them of emotional interaction. Positive social and emotional interaction improves our health, quality of life and neurological function, while a deprived environment affects brain function negatively (Lewis, 2004). Studies of animals in deprived environments have consistently documented an altered biological stress response (Maestriperi & Wallen, 2003). Further, altered levels of brain chemicals involved in the stress response are observed when monkeys are deprived of maternal and social interaction (Kraemer, 1989).

While the growth of new neurons was thought to be limited to the early stages of development, this has also been demonstrated in the adult brain (Eriksson, 1998). Animal research has shown that these processes increase in response to an enriched environment (Kempermann, Kuhn, & Gage, 1998). By extension, it is likely that when adult humans are placed in an environment limiting physical, social, and emotional stimulation, the brain's capacity for neuronal growth will be reduced. This is likely to negatively affect cognitive abilities, consistent with detainees' reports of impaired attention, memory, and problem solving skills (Steel, 2004).

The research reviewed above provides a compelling case for chronic stress and social/environmental deprivation having detrimental effects on brain function and structure. Animal studies have shown that these adverse experiences impair brain connections and alter important neurobiological systems. Research with psychiatric patients suggests these negative outcomes also arise in humans. It is likely that long-term mandatory detention, a situation in which chronic stress and social and environmental deprivation are endemic, will similarly impair brain function. While it has been shown that some of the effects of chronic stress and deprivation can be reversed, the human cost of reversing these changes in detained asylum seekers is significant.

### *The detention of children*

In July 2005, persistent pressure from community organisations such as Children Out of Detention (ChilOut), and dedicated politicians such as Petro Georgiou resulted in the successful termination of a policy which allowed the detention of children. However, this practice was so shocking and harmful that it must be considered in any inquiry into the effects of immigration detention. The ongoing policy of mandatory detention and the existence of children's facilities at the Christmas Island detention centre give good reason to remain concerned about this issue.

By detaining children, Australia broke its obligations to the United Nations Convention on the Rights of the Child (CRC), to which it became a signatory on 17 December, 1990. While lack of cooperation with UNHCR and violations of the UN Convention on the Rights of the Child highlighted Australia's isolation in the treatment of refugees and in particular refugee children, the greatest concerns revolved around the psychological trauma suffered by detained children. Various professional bodies, such as the UN Working Group on Arbitrary Detention and the Royal Australian and New Zealand

College of Psychiatrists (RANZCP) reported on damage caused by the “oppressive” detention environment to the psychological well-being of children (HREOC, 2004; United Nations Commission on Human Rights). In May and June 2002, the UN Working Group on Arbitrary Detention was invited by the Australian Government to compare Australian detention practices to international standards. Amongst other shocking observations, the Working Group reported high amounts of self-harm by detained adults and children. They observed children with behaviour problems, such as “sleep problems, night terrors, regression to bed wetting, temper tantrums”, as well as acts of self-mutilation and suicide attempts (United Nations Commission on Human Rights). Similar results were reported in a 2003 psychiatric study of detained children, which found that eighty percent of children had attempted to harm themselves and met the diagnostic criteria for major depression and posttraumatic stress disorder (PTSD) (RANZCP, 2003). The Working Group concluded that detention centre conditions were similar to those of prisons, with razor wire fences, permanent supervision, handcuffing of detainees escorted outside the centre, and the escape from detention constituting a criminal offence. The RANZCP echoed the concerns of the working group, stating that dealing with pre-immigration trauma, detention and parental depression was “damaging” the children (RANZCP, 2003).

The reports and evaluations of experts visiting detention centres are chilling, yet nothing drives the trauma home as much as the stories of detained children. Shayan Badraie is one such child, who spent over one year in immigration detention and is likely to be affected by the experience for the rest of his life. At the age of five, Shayan and his parents arrived in Australia by boat and were detained in Woomera and Villawood detention centres (HREOC, 2004). In Woomera, Shayan witnessed “hunger strikes, fires, riots... and saw an adult detainee slash his chest with a shard of glass and jump from a tree” (HREOC, 2004, Chapter 8, Section 8.7). While in detention, Shayan had nightmares and woke up during the night crying, he hid under his blanket, wet himself, would not eat and could not sleep. His drawings depicted his environment, as well as his anxiety, portraying himself and his family behind razor wire, with guards holding batons and detainees bleeding from self-harm. Shayan was admitted to the Villawood detention centre medical service seventy times, and to Westmead Hospital specialists eight times. He was diagnosed with “acute and chronic Posttraumatic Stress Disorder as a result of traumatic experiences” in detention (from letter written by child psychiatrist to the Minister of Immigration, reported in HREOC, 2004). In August 2002, Shayan’s family were recognised as refugees and granted temporary protection visas. A child should never suffer what Shayan suffered. Many children like Shayan will one

day become Australian adults and will carry the trauma of the detention into other aspects of their lives. The years when mandatory detention of children was high will continue to damage sectors of Australian society for decades and it will be necessary for those responsible to help the victims deal and recover from this tragedy.

The 'Petro Georgiou' changes to immigration policy announced on 17 June 2005 involved discretion given to the Minister for Immigration to release children and their families into community care (Parliament of Australia Bill, 2005). At the end of July 2005, all children and their families were transferred from detention centres into residence determinations (AKA: community detention) for the duration of their immigration application processing (Chilout, 2007). Residence determination accommodation is provided by non-government organisations and funded by the Department of Immigration and Citizenship. While a step in the right direction, these conditions still place families in a place and state of detention, where they cannot work, and are not entitled to government services such as Medicare and social security benefits. Another shortcoming of the reforms is that transfer to community detention is not automatic and relies on a decision made by the Minister of Immigration. Some families, such as the case of Chinese fathers in Villawood detention centre, were divided, with only the children living in the community, while their fathers were detained (Chilout, 2007).

### *Conclusion*

As outlined above, the environment of Australia's detention centres is comparable to that of prisons, but made more difficult and inhumane by the lack of access to appropriate medical and psychological services (Austin et al., 2007). Furthermore, the system punishes vulnerable people, who in most cases are fleeing war and persecution and to whom Australia holds an obligation of protection under the UN Refugee Convention. The detention environment is prone to high incidence of depression, PTSD, self-harm and suicidal behaviour. Most detainees are eventually granted refugee status and permission to remain in Australia and thus the system not only punishes innocent people, but it also cripples future Australian citizens.

In our opinion, there are compelling scientific and moral arguments for a policy where asylum seekers spend the minimum amount of time in detention – a policy that abandons indefinite, mandatory detention. Asylum seekers should be supported and integrated into the community, thereby significantly reducing the lasting negative mental

health and neuropsychological changes experienced by this already traumatised group. UNHCR guidelines on limited detention for the purposes of health, security and identity checks should be consulted and limited detention be implemented only in the most necessary of circumstances.



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