

**Submission to the
Inquiry into the Administration and Operation of
the Migration ACT 1958**
The Senate Legal and Constitutional References Committee

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Summary of submission

The Australian Psychological Society (APS) has some ethical and humanitarian concerns with the Administration and Operation of the Migration Act 1958.

There is much well-documented evidence about the deleterious effects of immigration detention on the mental health and well-being of refugees and asylum seekers, and particularly those who are already a vulnerable group, especially children, or with pre-existing trauma or mental illness.

The APS also has serious concerns about the ability of contracted facilities and staff to manage such mental health problems, and strongly recommends that people with identified mental health problems be removed immediately from detention. Then appropriate care can be provided, consistent with the standards of public mental health care in Australia.

Recommendations

The APS recommends that:

1. The processing and assessment of visa applications should:
 - Be conducted by staff who have been trained in and have demonstrated skills in managing and recognising symptoms of post traumatic stress;
 - Be conducted in a sensitive and humane way, which may require postponing of assessment until satisfactory completion of any necessary psychological treatment;
 - Ensure legal and language assistance is provided so that a fair and just assessment can be made.
2. The deportation of persons from Australia
 - Is inappropriate for people with a mental illness;
 - Should ensure the person's ability to survive, cope and integrate into the other country upon repatriation.
3. Immigration detention should be only short term for as long as is needed to enable appropriate security and health clearances to be completed;
4. Detention of families with children should take place in the community;
5. Family groups should be maintained;
6. Vulnerable Immigration detainees be allowed to reside in the community where health care needs can be better met;
7. Persons identified as suffering from mental illness be removed immediately from detention and treated within the community;
8. Mental healthcare provided to persons in immigration detention be provided by mainstream mental health services;
9. Screening and the provision of mental health care be demonstrably independent of the custodial organisation;

10. The special mental health needs and vulnerability of refugees and asylum-seekers, who must be detained for any period, are more likely to be met adequately by the provision of mental health care through existing state mental health services, which will need additional support for this task;
11. Temporary Protection Visas be replaced with Permanent Visas especially for those people with mental health care needs;
12. All asylum seekers, independent of their citizenship or visa status, have universal access to basic health care, Medicare, PBS, education, and work rights, and that this be recognized as a basic human right.

1. Introduction

The APS welcomes the opportunity to provide input to the Inquiry into the Administration and Operation of the Migration Act 1958 insofar as it impacts on the mental health and wellbeing of refugees and asylum seekers. The profession of psychology is well placed to contribute to the current Inquiry through its evidence-based and integrated approach to mental health issues.

About the Australian Psychological Society

The APS is the premier professional association for psychologists in Australia, representing over 14,500 members. Psychology is a discipline that systematically addresses the many facets of human experience and functioning at individual, family and societal levels. Psychology covers many highly specialised areas, but all psychologists share foundational training in human development and the constructs of healthy functioning. Psychologists frequently work in a multidisciplinary context with other health professionals, including GPs, to support wellbeing, to contribute to the effective management of emotional health life event-related problems, and to address mental health concerns.

The APS supports nine professional Colleges that promote specialist areas of psychology, including the Colleges of Clinical, Neuropsychology, Community, Counselling, Educational & Developmental, Health and Organisational Psychologists. A range of interest groups within the APS also reflect the Society's commitment to investigating the problems, of and promoting equity for, refugees and asylum seekers, indigenous Australians, women, gay and lesbian people, ageing people, children, adolescents and families.

Organisation of APS submission

The APS submission will confine itself to comments regarding the mental health and wellbeing concerns of refugees and asylum seekers in the following sections:

- Processing and assessment of visa applications;
- Deportation of people from Australia;
- The adequacy of mental healthcare provided to people in immigration detention;
- The outsourcing of management and service provision at immigration detention centres;
- Under 'other matters', temporary protection visas.

Within each section, we have included recommendations for appropriate policy initiatives.

2. Processing and assessment of visa applications

Many asylum seekers arrive seeking protection in Australia in a traumatised, disoriented and fearful state (Almqvist & Brandell-Forsberg, 1997), and often unable to speak English. Some will have been victims of or have witnessed torture, assault or killing, possibly of family members or friends (Burnett & Peel, 2001; Davies & Webb, 2000). Long and short-term memory loss, difficulties in retrieving and organising information, disruptions to concentration and impaired cognitive functioning may be present. The current assessment process for visa applications, with an emphasis on detecting and discouraging non-genuine claims for asylum, does not take into consideration the effects of post traumatic stress disorder (ptsd), anxiety, disorientation, language barriers etc on the asylum seeker's ability to present a coherent, accurate and credible appeal for asylum.

The APS recommends that the processing and assessment of visa applications should:

- Be conducted by staff who have been trained and have demonstrated skills in recognising symptoms of post traumatic stress
- Be conducted in a sensitive and humane way, which may require postponing of assessment until satisfactory completion of any necessary psychological treatment.
- Ensure legal and language assistance is provided so that a fair and appropriate assessment can be made.

3. Deportation of Persons from Australia

We will confine our comments to the issue of involuntary return of people with mental illness who sought Australia's protection.

It is the opinion of the APS that the involuntary deportation of people with a mental illness is unacceptable, and that consideration must be given, in determining if a person is 'fit to travel', to the person's ability to survive, cope and integrate into the other country upon their repatriation.

Further, in the case of involuntary removal of a person to a third country, when removal to their country of origin is not possible, it is essential that certain minimum standards are met to ensure that the person is able to integrate into this country, such as some significant prior connection with the country, access to healthcare and mental healthcare, and ability to access other basic rights such as work, education, and legal protection.

The APS recommends that the deportation of persons from Australia:

- Is inappropriate for people with a mental illness;
- Should ensure the person's ability to survive, cope and integrate into the other country upon repatriation.

4. The adequacy of mental healthcare provided to people in immigration detention

Detention of asylum seekers is inherently undesirable and should be resorted to only in exceptional circumstances, according to UNHCR detention guidelines. Prolonged or indefinite detention has clearly documented deleterious effects on the mental health and wellbeing of detainees (Steel et al., 2004), especially children (Mares et al., 2002). This is particularly so for people already in a vulnerable state or with pre-existing mental health concerns (see review of the literature by Thomas and Lau, 2002), which is often the case for people who have suffered in fleeing persecution and seeking protection in Australia. Detention exacerbates this vulnerable state.

The system of mandatory detention in Australia, in which asylum seekers are held for the entire period that their application for asylum is assessed, prolongs the time spent in detention immigration, sometimes for periods of years. Studies have shown that high rates of psychopathology are significantly exacerbated during stays in processing centres awaiting assessment (McKelvey & Webb, 1997). Procedures related to awaiting asylum have been found to contribute to elevated stress levels in children and adolescents (Sourander, 1998),

Children are particularly vulnerable to the deleterious effects of immigration detention. A review of the literature by Thomas and Lau (2002) into the mental health of children and adolescents in the process of sought asylum, show clearly that children and adolescents living in shelters, camps and processing centres are subjected to increased risk for psychological dysfunction (Rudic, Rakic, Ispanovic-Radojkovic, Bojanin & Lazic, 1993). Studies of children in Australian's detention centres have reported extremely high levels of psychopathology, particularly following prolonged periods in detention (Mares et al., 2002; Mares & Jureidini, 2004; Steel et al., 2004; Report of the National Inquiry into Children in Immigration Detention, Human Rights & Equal Opportunity Commission, 2004). The APS welcomes recent changes to detention arrangements in Australia through the Migration Amendment (Detention Arrangements) Act 2005 which specifies that minors be only detained as a measure of last resort.

The APS recognises the importance of the family unit to enable people to achieve the stability required to recover from trauma, cope with major change, and continue their lives. Studies of children who have been displaced from their home due to war or persecution have found that depressive symptoms were more evident in children who had experienced separation from their parents and displacement than those who remained with their parents (Macksoud and Aber, 1996). Furthermore, parental psychological well-being is known to be a key factor in the mental health of child/adolescent refugee and asylum seekers (Papageorgiou et al., 2000; Sack et al., 1994). Minimising the stress and trauma for the parents, and keeping families together, maximises the chance for recovery of mental health and wellbeing in children and adolescents.

It is the opinion of the APS, therefore, that mandatory detention of all asylum seekers arriving undocumented is inappropriate, in particular, the use of detention centres that are remote and isolated. These remote centres increase the disintegration of inmates and exacerbate the difficulties of integrating into the community once issued with a visa.

It is the recommendation of the APS that:

- Immigration detention should be only short term for as long as is needed to enable appropriate security and health clearances to be completed;
- Detention of families with children should take place in the community;
- Family groups should be maintained.

5. Adequacy of healthcare including mental healthcare, and other services and assistance provided to people in immigration detention

Indefinite and protracted immigration detention causes psychological harm (Thomas and Lau 2002) and high levels of mental illness will continue under the present system.

Immigration detention is an inappropriate place to provide mental healthcare. Detention facilities have a focus on security rather than care and the routine practices and resultant atmosphere are not only not supportive but actively antagonistic to the maintenance or recovery of mental health.

Current practices of managing mental health problems within detention centres are unacceptable and increase trauma (for example the use of 'Management Units' and solitary confinement, hand-cuffing and excessive physical force, using psychotropic medications for behavioural control).

Mental health practitioners working within detention centres are at risk of being ethically and professionally compromised in their duty of care. They are being required to work in an environment that is non-conducive to effective treatment being implemented and that is, in fact, inherently bad for mental health. There is often a lack of clarity about who has duty of care, mental health care providers cannot ensure that their clinical opinions are being followed, continuity of care is usually absent or impossible, and they are not seen by the detainees as working independently of the interests of management.

The APS recommends that:

- Vulnerable Immigration detainees be allowed to reside in the community where health care needs can be better met;
- Persons identified as suffering from mental illness be removed immediately from detention and treated within the community;
- Mental healthcare provided to persons in immigration detention be provided by mainstream mental health services;
- Screening and the provision of mental health care be demonstrably independent of the custodial organisation.

6. Outsourcing of management and service provision at immigration detention centres.

It is the opinion of the APS that the outsourcing of management of immigration detention centres increases the risk that they are not managed in a way that is consistent with international treaties, conventions and guidelines that are concerned with the rights and wellbeing of people deprived of their liberty, because of the inevitable focus on profitability by nongovernmental security agencies. It is the responsibility of the Australian Government to ensure adherence to these conventions, and this is best ensured when the management of immigration detention centres remains with the Government.

The notion of contracting out the provision of mental health services is also a concern with regard to the mental health provider's ability to provide an acceptable professional standard of care if employed by the same company undertaking the detention. Mental health care providers have to be able to work clearly independently from detention providers.

There are also concerns about the separation of mental health care of detainees from the mainstream mental health system. The mental health care of detainees needs to be subject to same standards of care applied to mental health services in this country. Mechanisms of accountability and legislation and policies to protect patients' rights need to be applied in detention centres.

State mental health services will require extra funding in order to be able to adequately provide necessary mental health care to detainees, in addition to their existing workloads, particularly since some refugees are seriously traumatised.

The APS recommends that:

- The special mental health needs and vulnerability of refugees and asylum-seekers, who must be detained for any period, are more likely to be met adequately by the provision of mental health care through existing state mental health services, which will need additional support for this task.

7. Temporary protection visas.

The allocation of Temporary Protection Visas is associated with ongoing and anticipatory stress and limits the capacity to recover from past trauma. A report by the Queensland Department of the Premier and Cabinet concluded that the system of TPV's have negative impact on asylum seekers physical and psychosocial health, employment prospects, settlement and general wellbeing.

On other matters, The APS recommends that:

- Temporary Protection Visas be replaced with Permanent Visas especially for those people with mental health care needs;
- All asylum seekers, independent of their citizenship or visa status, have universal access to basic health care, Medicare, PBS, education, and work rights, and that this be recognized as a basic human right.

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