

## **Submission to the Senate Legal and Constitutional Affairs Committee**

### **Inquiry into the Migration Amendment (Health Care for Asylum Seekers) Bill 2012**

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## 1. Executive summary and recommendations

The Australian Psychological Society (APS) welcomes the opportunity to make this submission to the Senate Legal and Constitutional Affairs Committee.

The APS supports the proposal to amend the *Migration Act 1958* to create a panel of medical, psychological, dental and health experts to monitor, assess and report to the parliament on the health of asylum seekers who are taken to regional processing countries, as an important step in building transparency and accountability into the delivery of health services in offshore detention locations.

Long-term indefinite immigration detention has been shown to have serious adverse effects on the mental health and wellbeing of those detained, with these impacts lasting well beyond the period of detention, particularly for those who are detained in remote and/or offshore detention facilities. The APS therefore:

- considers the proposal to establish an independent panel of health experts to be a least-worst form of damage control after the fact, and does not in any way diminish our stated position that detention should not take place offshore or in remote locations
  - recommends that such a panel have full access to offshore detention centres for investigation of the physical and mental health conditions of detainees
  - supports the continuation of the Psychological Support Program (PSP) that has been implemented in on-shore detention centres in recent years, whereby all staff are trained in communicating with detainees in ways known to improve the possibility of positive outcomes
  - recommends that all detention centre staff receive training in mental health, human rights and cross cultural issues
  - recommends the on-site employment of qualified mental health staff to support general staff in implementing the PSP, and to provide the specialist mental health services to detainees that the evidence suggests will be in high demand in conditions known to be toxic to mental health and wellbeing
  - recommends that, for persons in immigration detention to receive mental health care commensurate with care to the broader community, mental health employment and service delivery contracts be developed in line with National Practice Standards for the Mental Health Workforce, including adequate provisions for clinical supervision and peer support of frontline service providers
  - supports the establishment of an independent panel of health experts with specific targets, timelines, and reporting requirements as an accountability mechanism that should encompass responsibility on the part of the Australian Government to act on any findings from the panel's reports
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## 2. About the Australian Psychological Society

The Australian Psychological Society (APS) is the premier professional association for psychologists in Australia, representing more than 20,000 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.

For at least a decade, psychologists have been actively involved in advocating for the mental health needs and human rights of those seeking asylum in Australia. The APS, in consultation with psychologists working directly with asylum seekers, has long expressed concern regarding the impact of policies of deterrence such as mandatory detention and temporary protection visas on the psychological wellbeing and mental health of asylum seekers.

A key goal of the APS is to actively contribute psychological knowledge for the promotion and enhancement of community wellbeing. The APS therefore takes a stand against the destructive consequences of racism and xenophobia, both for populations and for individuals. It expresses deep concern over the adverse public health and mental health consequences of such prejudices. Because of these significant adverse consequences, the APS calls for any national debates (e.g., on policies such as immigration and population, border control and response to terrorism) involving people of diverse ethnic, backgrounds to be based on objective data, and not on prejudices, ideology or political expedience.

The APS's response to this inquiry, therefore, draws on the research and practice of psychologists working with asylum seekers, particularly those working (or who have worked) in detention settings, as well as on psychological research on mental health issues of refugees and asylum seekers.

Along with this submission, the APS draws the Committee's attention to its 2010 Position Statement on the *psychological wellbeing of refugees and asylum seekers*, and a comprehensive Literature Review undertaken on behalf of the APS in 2008 on *psychological wellbeing of refugees resettling in Australia*, and numerous submissions made to government inquiries into detention and migration reform over the past 10 years. These resources can be accessed at: <http://www.psychology.org.au/community/public-interest/refugees/> and some particularly relevant and recent excerpts are included in the following pages.

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### 3. Overview

Over the past decade, the APS has consistently voiced its concern that sending asylum seekers offshore to countries other than Australia risks exacerbating existing vulnerabilities, adding to their sense of uncertainty, fear and despair. Moreover, these are extremely costly options both short and long term, in economic and public health terms.

The APS endorses the submission prepared by an independent group of health experts who represent key Australian health and mental health professional and consumer group organisations, and who constituted the former Detention Health Advisory Group (DeHAG). Past experience has shown that asylum seekers processed offshore had higher rates of mental illness than those on the mainland. To date there has been no indication of independent oversight of health care on the two new centres, despite offshore processing being a 'high risk situation'.

The APS has also drawn attention on previous occasions to the risk of inadequate mental health and other services being provided within detention, including the difficulty of ensuring ethical, independent psychological services. We therefore support the establishment of a panel of health experts who are independent, and have the powers to investigate and report on the health of persons in offshore detention, including detailing prevalent health conditions, detainee access to and quality of services, and other conditions that impact on the health of detainees.

Further, the APS believes that the panel should have full access to offshore detention centres to investigate of the physical and mental health conditions of detainees, for their investigations to be ethical, and to be seen as being ethical, within these difficult environments. The panel should have ready access to detention facilities on a regular basis, access to health records, and the right to interview detainees and staff and other relevant stakeholders, and should be empowered to ensure the appropriateness of data collection mechanisms to monitor health trends over time.

We also trust that these investigations would be carried out with the minimum of disruption to service provision or undue distress to detainees. We would hope that any findings be taken seriously, and influence future policy and practice as needed.

The APS has read and concurs with the former Detention Health Advisory Group members' submission to this Inquiry, including their recommendations regarding the continuation of the Psychological Support Program (PSP) that has been implemented in on-shore detention centres in recent years. They note 'the importance of ensuring that all staff are trained in appropriate use of psychological support interventions' as part of their induction into the workplace. The APS understands this approach to be somewhat similar to level 1 of the Psychosocial Support in Disasters framework, often described as Psychological First Aid <http://www.psid.org.au/>. The experts' submission emphasises that 'all staff be trained in 'being with' and communicating with clients in a way which will 'minimise

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the risk of isolation and improve the possibility of positive outcomes' instead of purely using observation for clients deemed to be at risk.

However the APS is concerned that having everyone trained in psychological support might be seen as a substitute for the onsite provision of specialist mental health services, and that mental health staff's expertise may be diluted by the suggestion that all staff can provide 'psychological support'. Mental health treatment/intervention should be differentiated from psychological/psychosocial support. General staff should certainly be made aware of the symptoms and manifestations of psychological distress and trauma, so as to not minimise the possibility of significant trauma and or mental health symptoms which may be beyond 'support'. Such symptoms may require appropriate treatment/interventions by mental health trained staff which could be an enormous burden on staff without a mental health background. Research has shown that there is a high likelihood of serious psychological distress emerging when people are held in indefinite detention that is prolonged beyond six months.

It follows that if detainees are experiencing and/or displaying significant distress, more targeted interventions by specifically trained mental health clinicians (e.g., psychologists, psychiatrists, mental health nurses or social workers) will be needed as symptoms escalate in the detention environment. It is extremely important that steps to minimise the risk of suicide or self-harm not take the form of essentially punitive measures such as solitary confinement, 24-hour surveillance or removal of 'privileges'.

While the APS supports the thorough screening and assessment of people to determine a history of trauma to exclude the use of solitary confinement for those people, it is important to note that solitary confinement in and of itself could lead to trauma in a 'non-traumatised' individual. Solitary confinement is an inhumane form of detention and an ineffective deterrent that can cause/escalate psychological distress and trauma. It should only be used as a temporary crisis intervention measure, to protect against harm.

The APS is extremely concerned at reports of proposed low staffing levels at the offshore detention centres, with very few on-site counsellors and/or psychologists and a part-time psychiatrist at both Manus Island and Nauru. At both sites it was proposed detainees could have access to a telephone counselling service. We hope we have been misinformed. It should be obvious even to the layperson that vulnerable people with minimal English and an understandable mistrust and fear of immigration authorities, particularly while their applications for asylum are pending, would be unable and/or unlikely to seek counselling from a stranger by telephone. We have been assured by our members with experience in working with asylum-seekers and refugees that the establishment of sufficient trust to enable an effective counselling or therapeutic relationship is a major challenge in such settings, even face-to-face. Thus we favour the on-site employment of mental health staff in preventive roles, to support general staff in the implementation of the PSP, as well as providing direct services to detainees.

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## **4. The mental health and wellbeing of asylum seekers and refugees**

Psychologists recognise the vulnerability of people seeking asylum and the potential for mental health problems amongst refugees. The APS Literature Review (2008) identified a range of significant impacts and outcomes of the refugee experience. Most relevant to the current Inquiry, the review identified:

- the significant psychosocial impact of the refugee experience, including experiences of pre-migration trauma, migration and resettlement
- that people seeking asylum are at risk of mental health problems based on specific risk factors including loss and trauma both prior to and post arrival. Mental health problems may be expressed in various ways depending on cultural background, personal experience and reception factors
- the key role that post-migration stressors may have on adjustment, including the experience of loss, restricted access to appropriate supports, and limited educational and employment opportunities.
- the heightened risk of mental health problems among refugees who are placed in detention, especially children.

The review highlighted, however, that positive settlement outcomes are evident when refugees are afforded adequate rights and provided with appropriate legal, settlement, mental health, education and employment supports. Also acknowledged is the importance of positive and accurate representation of refugee issues (e.g., in the media, by government), to the successful settlement and wellbeing of refugees.

However, the APS Position Statement (2010) expressed concern about the significant harmful impacts of policies of deterrence such as immigration detention, offshore processing and turning boats away, on the human rights, mental health and wellbeing of asylum seekers.

Based on psychological evidence and practice, the APS Position Statement (2010) recommended that any response to asylum seekers should include:

- Prioritising the rights of immigrants, refugees, and asylum seekers including rights to safe haven, security and nurturance of their ethnic and cultural beliefs/values and identity, as these are all essential for psychological health.
  - Meeting Australia's obligation under the UN Refugee Convention by upholding the fundamental right of refugees to seek protection by adopting a fair refugee status determination process.
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- Only using immigration detention as a short-term option, for as long as is needed to enable appropriate security and health clearances to be completed.
  - Detention should not take place offshore or in remote locations.
  - Community-based alternatives to detention should be prioritised.
  - Children should not be detained.
  - Adequate mental health and other services to all asylum seekers and refugees, recognising that remote high security detention facilities outside of the migration zone inevitably compromise the ethical delivery of psychological services.
  - Recognising the likely harm caused to asylum seekers who are issued with temporary visas or subjected to conditions that prolong the assessment of their refugee claims and/or restrict access to supports and services.
  - Understanding that the presence of family can have a therapeutic effect on people who have survived traumatic experiences, and plays a pivotal role in providing emotional, physical and economic support to refugees upon resettlement.

## **5. Human Rights for those seeking asylum in Australia**

The APS also recognises the important relationship between mental health and wellbeing and human rights. As such, we welcomed the draft *Australia's National Human Rights Action Plan* as an important mechanism for realising and improving the government's human rights response. The APS believes that a stronger human rights legal framework is required to ensure respect and equality for all people, particularly those who are vulnerable and marginalized, and has therefore *recommended that the Australian Government introduce a Human Rights Act or Charter, as part of its commitment to strengthening human rights in Australia.*

The APS has also argued that better conditions are needed to meet human rights standards in Australia. Relevant to the current Inquiry, we recommend:

- Significant improvements in detention centre facilities and services, including increased access to mental health services, acknowledging the major obstacles to ethical and safe delivery of such services in offshore and remote facilities (Mares & Jureidini, 2004).
- Adequate resources, support and training in mental health, human rights and cross cultural issues should be provided for all detention centre staff, to ensure the optimal health, safety and wellbeing of staff and contractors. Locating detention centres in areas where professional support networks are more

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readily accessible, rather than in remote and offshore locations, will support more effective provision of mental health services.

It is imperative that greater accountability mechanisms be developed to ensure that the prioritised human rights are realised in practice. This includes more specific targets and timelines, greater reporting requirements and further responsibility to act on findings of reports. The APS recommends that for persons in immigration detention to receive physical and mental healthcare commensurate with care to the broader community, service agreements between Commonwealth and State governments be prioritised, and that mental health employment and service delivery contracts be developed in line with National Practice Standards.

The establishment of an independent panel of medical and psychological experts tasked with reporting on the health of asylum seekers held in offshore detention would be an important step in building in transparency and accountability to the delivery of health services in remote and offshore immigration detention locations.

## **6. Policies of deterrence and psychological harm**

Australia's policy response to asylum seekers for over a decade has been based on deterrence (e.g., policies such as immigration detention, offshore processing, temporary visa provision and turning boats away all aim to deter future arrivals). As outlined in an APS Literature Review (2008), these policies have been widely associated with harmful mental health and wellbeing outcomes by compounding pre-migration trauma through the nature of the treatment received by asylum seekers in Australian and offshore settings.

### **6.1 Immigration Detention**

For over a decade, the APS has highlighted the harmful impacts of detention on the mental health and wellbeing of asylum seekers. These include:

- the association between the experience of immigration detention and poor mental health – for example, Robjant, Robbins and Senior (2009) found that detention has an independent, adverse effect on mental health, over and above any pre-existing illness or trauma
  - the heightened risk of mental health problems among refugee children who are detained
  - the negative socialisation experience associated with detention, particularly for children, young people and families
  - the potential for immigration detention to exacerbate the impact of other traumas
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- the ongoing psychological consequences of detention that extend beyond the actual period of detention (Coffey et al, 2010)
  - the risk of inadequate mental health and other services (including education) being provided within detention, including the difficulty of ensuring ethical, independent psychological services.

Detention is experienced by asylum seekers as dehumanising, characterised by confinement, deprivation, injustice, inhumanity, isolation, fractured relationships and mounting hopelessness and demoralization (Coffey et al 2010). The harmful impact of detention persists upon release into the community, and include high incidence of mental health symptoms such as depression, anxiety and post-traumatic stress disorder, as well as debilitating problems with concentration, memory and profound changes to views of self and ability to relate to others. In this way, detention eventually compromises the capacity of refugees to benefit from opportunities ultimately afforded by permanent protection (Coffey et al, 2010), and is implicated in far greater long-term costs to the eventual host country (most commonly Australia).

## **6.2 Offshore processing and detention**

The APS has particular concerns about detaining and processing asylum seekers offshore (in places such as Christmas Island, Manus Island or Nauru), for the following reasons:

- the history of escalating mental health issues resulting from detaining people offshore including suicide attempts, serious self-harm incidents including hunger and water strikes, lip-sewing, riots, protests, fires, break-outs
- the remoteness of offshore locations restricts the access of mental health and other services, as well as compromising the safe and ethical delivery of such services in an environment that is demonstrably detrimental to mental health and wellbeing
- contractual clauses that prevent staff or contracted service providers from speaking out about human rights of detainees or conditions that undermine health and rights also compromise ethical practice.
- psychologists and other health professionals are faced with the ethical distress (see Jameton, 1984) that arises when the best interests of clients, employers and government authorities collide.
- links to community resources, networks and legal assistance are severely limited in detention centres in remote locations
- inequity in human and legal rights for those detained offshore

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- vulnerable groups such as unaccompanied minors, children and families and those with pre-existing torture and trauma experience are likely to be at particular risk 'parked' in offshore detention without adequate support
  - the lack of appropriate access to interpreters and translation services limits basic communication and access to services.

The APS is seriously concerned that sending such vulnerable people to countries other than Australia risks exacerbating existing vulnerabilities, adding to their sense of uncertainty, fear and despair. Again, these are extremely costly options in both short and long term. Apart from human rights concerns, the lack of adequate mental health and other services in other countries within the region is of great concern. The service systems in such economically vulnerable Pacific countries are significantly less developed than in Australia.

The APS shares the concerns expressed by the Australian Human Rights Commission (2011) that timely resettlement options would be unlikely for people transferred to Nauru or Manus Island if and when they are found to be refugees. Research has clearly demonstrated that prolonged periods of detention, coupled with ongoing uncertainty about the future, lead to poor psychological and health outcomes for asylum seekers (Robjant et al, 2009).

## **7. Conclusion**

Evidence regarding mental health does not support policies of deterrence such as mandatory, indefinite detention or offshore processing. Immigration detention has been shown to have an independent, adverse affect on the mental health and wellbeing of those detained, with the impacts of detention lasting well beyond the period of detention, particularly for those who are detained in remote and/or offshore detention facilities.

It is therefore essential to state clearly that the establishment of the proposed independent panel of medical and psychological experts tasked with reporting on the health of asylum seekers held in offshore detention represents a least-worst response to a situation with a high likelihood of severe mental and physical health consequences for those detained.

However the APS welcomes the proposal to amend the *Migration Act 1958* to create a panel of medical, psychological, dental and health experts to monitor, assess and report to the parliament on the health of asylum seekers who are taken to regional processing countries, in recognition of the major ethical, professional and practical challenges to the establishment and delivery of quality health services in such settings, and of the importance of accountability mechanisms that minimize risk and maximize transparency and the possibility of compassionate, quality care.

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## 8. References

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