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AMA Submission to Legal and Constitutional Affairs Committee - Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea

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The Australian Medical Association (AMA) welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea.

The AMA has consistently raised concerns about the physical and mental health of asylum seekers, particularly the health of children. In September 2015, the AMA held a round table, which included some of Australia's leading doctors and experts in children's health, specifically addressing the health of asylum seekers and refugees to help inform our views.

The AMA believes that prolonged, indeterminate detention of asylum seekers in immigration detention centres violates basic human rights and contributes adversely to health.

The longer a person is in detention, the higher their risk of mental illness. The impact on children is magnified. Detention should be used only as a last resort, and for the shortest practicable time. Solutions to prolonged, indeterminate detention must be sought as a matter of urgency.

As part of its normal review process the AMA recently adopted an updated position statement *Healthcare of Asylum Seekers and Refugees – 2015.*

The AMA position is based on a fundamental ethical principle: that all people seeking health care, including asylum seekers and refugees in Australia, or under the protection of the Australian Government, should be able to access appropriate services and be treated with compassion, respect, and dignity.

AMA

AMA Position Statement

The mounting evidence about the serious and far reaching physical and psychological harm asylum seekers suffer, particularly those held in offshore detention centres was thoroughly considered when revising the position statement.

The AMA position statement *Healthcare of Asylum Seekers and Refugees – 2015* and a supplementary Background paper are the basis of this submission. Within these two documents are AMA positions relevant to this Inquiry, specifically the term of reference (a) conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea. Points 42 to 48 in the AMA Position Statement are particularly relevant to this Term of Reference.

In conclusion, the AMA would like to thank the committee for an opportunity to make a submission on this issue. If there are any queries about this submission or if further information is required, please contact AMA Public Health

2 FEBRUARY 2016

Contact

AMA

AMA Position Statement

Health Care of Asylum Seekers and Refugees

2011. Revised 2015.

Preamble

The Australian Medical Association affirms that those who are seeking, or who have been granted, asylum within Australia have the right to receive appropriate medical care without discrimination, regardless of citizenship, visa status, or ability to pay. Like all people seeking health care, asylum seekers and refugees in Australia, or under the protection of the Australian Government, should be treated with compassion, respect, and dignity.

The AMA makes the following observations and recommendations in relation to the health care of asylum seekers and refugees:

Health and Welfare of Asylum Seekers and Refugees

1. In addition to suffering the same health problems as the general population, asylum seekers and refugees are at particular risk from a range of conditions including psychological disorders such as post-traumatic stress disorder, anxiety, depression, and the physical effects of persecution and torture. They may also suffer the effects of poor dental hygiene, poor nutrition and diet, and infectious diseases such as tuberculosis, which may be more common in their countries of origin.

2. To determine their specific health needs, all asylum seekers and refugees should undergo comprehensive and timely health assessments in a culturally appropriate manner by suitably trained medical practitioners as part of a primary health care team. This assessment will be used to establish ongoing care with appropriate and descriptive records of asylum seekers' health being recorded on a regular basis to enable multidisciplinary teams and healthcare providers to give effective ongoing care.

3. All asylum seekers and refugees should have access to the same level of health care as all Australian citizens. In addition, it should be ensured that their special needs, including cultural, linguistic, and health-related, are addressed.

4. A national statutory body of clinical experts independent of government should be established with the power to investigate and advise on the health and welfare of asylum seekers and refugees.

5. All asylum seekers and refugees, independent of their citizenship or visa status, should have universal access to basic health care, counseling and educational and training opportunities. Refugees and asylum seekers living in the community should also have access to Medicare and the Pharmaceutical Benefits Scheme (PBS), state welfare and employment support, and appropriate settlement services. Immigration policies that restrict the social and economic rights of disadvantaged groups of people, such as asylum seekers and refugees, can have adverse impacts on their health and wellbeing.

6. Health and welfare service providers for asylum seekers in detention and in the community should have access to translation and interpretive services and be adequately resourced and integrated at state and federal level. This includes increased staff education, training, and support.

7. Refugees, and asylum seekers living in the community, should have continued access to culturally appropriate health care, including specialist care, to meet their ongoing physical and mental health needs, including rehabilitation.

8. More research is needed into the health status and health care of asylum seekers and refugees, both within the community and in detention centres, to assist medical practitioners in the care of these groups, and the development of appropriate services.

9. More research is needed into the impact of immigration controls, such as the prolonged, indeterminate use of detention, on the health of asylum seekers, including those eventually determined to be refugees.

Medical Practitioners

10. Medical practitioners should:
- act in the best interests of the patient;
- not authorise or approve any physical punishment, nor participate in any form of inhumane treatment, nor be called upon to do so by authorities; and
- provide medical treatment in a culturally and linguistically appropriate manner.

11. Medical practitioners should at all times insist that the rights of their patients be respected and not allow lower standards of care to be provided. In particular, the right to privacy and confidentiality must be protected.

12. Appropriate medical treatment teams should include members with the skills outlined below. Medical practitioners providing full assessment of asylum seekers and refugees should be suitably trained in:

- identifying victims of torture and assessment and management of related trauma;
- identification of suicide risk, screening for mental health conditions (including among children and adolescents) and monitoring and management of these conditions;
- responding to the medical, physical, emotional, and developmental needs of children and families; and
- recognising particular health-related conditions which may be more common in an asylum seeker's or refugee's home and transit country than here in Australia (e.g., tuberculosis).

13. Professional medical organisations should develop a set of ethical guidelines to support medical practitioners working with asylum seekers and refugees in whatever context.

14. The primary ethical duty for medical practitioners working with asylum seekers and refugees is to put their patients' health needs first. In order to do this, doctors require reasonable professional autonomy and clinical independence without undue external influence.

15. Doctors should have the freedom to exercise their professional judgement in the care and treatment of their patients and doctors should be supported in seeking guidance and/or discussing the management and care of their patients with peers.

16. Medical practitioners should be able to speak out about unjust, unethical maltreatment of asylum seekers without persecution.

Issues Specific to Asylum Seekers

Immigration Detention Centres

17. Doctors have a duty to speak out when health care services or the environment within an immigration detention centre is inadequate or poses a threat to health.

18. Prolonged, indeterminate detention of asylum seekers in immigration detention centres violates basic human rights and contributes adversely to their health. The longer a person is in detention, the higher their risk of mental illness. Detention in immigration detention centres should be used only as a last resort, and for the shortest practicable time. Solutions to prolonged, indeterminate detention must be sought as a matter of urgency.

19. In order that asylum seekers do not spend a prolonged, indeterminate period of time in detention, the Government must set in law an absolute maximum duration that an asylum seeker can spend in detention. After such time, the asylum seeker should be allowed to live in the community while their visa application continues to be assessed.

20. Where immigration detention centres continue to be used to detain asylum seekers, Government must provide basic humane standards of living conditions. They must strive to achieve world's best practice in all Australian detention centres, whether located within Australia or offshore. This includes accommodating the health, linguistic, cultural, social, educational, privacy, gender-specific and religious needs of asylum seekers.

21. Health and medical services in immigration detention centres should only be provided by organisations, in facilities accredited to Australian standards, that have the full capacity to provide an appropriate range of health and medical care to all detainees as needed, and according to best practice standards in health care delivery (as would apply in the general community). Adherence to these standards should be guaranteed through a process of ongoing monitoring of detainees' health by an independent statutory body of clinical experts with powers to acquire information and investigate conditions in centres as it determines.

22. The assessment and provision of medical care to asylum seekers in detention must be undertaken by medical practitioners.

23. Health screening should be undertaken by a medical practitioner or a nurse. Health screening for addictive, physical, and psychiatric problems, including potential suicide risk, should occur on admission to the centre. All significant medical findings should be referred immediately to a medical practitioner.

24. Medications should be administered by medical professionals or nurses and not detention centre staff, and provisions should be in place for the appropriate management of detainees' medications.

25. Detention centre staff and management should ensure that the instructions provided by medical practitioners for the health and wellbeing of detainees are implemented, documented and maintained efficiently and to Australian standards.

26. Doctors providing services in immigration detention centres should be experienced medical professionals. Where junior doctors are contracted, they must have available to them appropriate medical professional support and advice, and their welfare should be ensured.

27. Continuity of medical care for detainees should be ensured as much as is reasonably possible and steps should be taken to avoid a high turnover of medical and other staff in services provided to detainees.

28. Periodic regular assessment reviews of detainees' health status must occur as appropriate to their health needs.

29. The provision of health care is potentially constrained due to the physical and social environment of detention centres, particularly those located 'offshore'. Those in detention should have timely access to good quality ongoing health care, including emergency and specialist services, to the same standard as is available to Australian citizens. Those who require assessment or treatment that cannot be undertaken within the detention centre environment should be transferred to an appropriate centre in a timely manner.

30. Those in detention should have access to appropriate specialist services including sexual and reproductive health, obstetric and gynaecological services, antenatal and postnatal care, paediatric services, mental health, rehabilitation, allied health services, and dental services.

31. Continuity of care needs to be maintained for refugees and asylum seekers released into the community. They should be fully informed about the Medicare and PBS schemes and how to access the full range of health care and medical options available in the community. Provision must also be made for ongoing social support services in the community when an asylum seeker is released.

32. Individuals who are released into the community must have timely access to their medical records from their time in detention. Those who are deported should receive a copy of their medical record from their time in detention to take with them.

33. Temporary Visas have negative impacts on asylum seekers' mental health as these visas impose undue stress and anxiety on individuals because they cannot apply for permanent visas and are unable to travel in and out of Australia, or access family reunion schemes. Temporary Visas undermine the ability to successfully integrate into the community.

34. All asylum seekers and refugees should be afforded access to support services, settlement services, employment services and entitlement to family reunion. Failure to access these services have significant negative health consequences.

35. Asylum seekers should not be transferred from one detention facility to another without notice. This can exacerbate their physical and psychological conditions and denies them continuity of care.

36. If a detainee needs to be transferred, their clinical records should be transferred with them to ensure a smooth transition for health needs. Where possible, investigations and treatments should be completed before transfer.

37. Medical practitioners treating asylum seekers who are transferred should be able to provide appropriate handover of relevant documents.

38. Asylum seekers with disabilities are at a particular risk and should receive the same equitable access to appropriate support and health services.

Mothers and Babies

39. Pregnant women held in detention facilities are at a particularly high risk of deteriorating mental and physical health and should receive adequate support services with appropriate pre and post-natal care.

40. Pregnant women should have access to appropriate obstetric and neonatal services for the safety of delivery.

41. While giving birth, women should be afforded privacy and dignity.

Children

42. Detention facilities are unacceptable for children as they create risks for their development, and their physical and mental health.

43. Children are particularly vulnerable and the detention environment places enormous stress on them. Children often witness behavioural and psychological distress in adults, including their parents, violence and self-harm, and experience separation from family members.

44. Children are at a particular risk of sexual violence.

45. An unaccompanied child should never be placed in detention facilities.

46. An accompanied child should be kept in detention facilities for the shortest possible time, but no more than one month. By the end of one month, a suitable placement for the child with at least one adult family member must be identified.

47. Children and their families should be accommodated in separate, safe and appropriate living areas.

48. Families should be prioritised for processing as separation of family members can exacerbate physical and mental conditions.

Hunger Strikers

49. Hunger strikes in detention facilities may be related to the quality of the detention environment or frustration due to ongoing processing issues. The AMA believes such issues should be taken into account in the development of policy and provision of resources for those in immigration detention to try and reduce these situations wherever possible.

50. Where an individual voluntarily refuses nourishment and is considered by a medical practitioner to be capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, the practitioner should be free to refuse to co-operate in artificial feeding. The decision as to the capacity of the individual to form such a judgment should be confirmed by at least one other independent medical practitioner. The practitioners must explain to the individual the consequences of refusal of nourishment.

51. Doctors should become involved with the hunger strikers before, or immediately upon commencement of, a hunger strike in order to continually assess the hunger striker's physical and mental health, counsel the hunger striker regarding the adverse health effects associated with going on a hunger strike, and discuss with the hunger striker his/her wishes regarding artificial nutrition/hydration should he/she lose decision-making capacity. Health staff should have free and unfettered access to hunger strikers, subject to the wishes of a hunger striker with decision making capacity.

52. In accordance with the World Medical Association Declaration on Hunger Strikers (Declaration of Malta), if the hunger striker loses decision-making capacity, the doctor must be free to make treatment decisions that he/she considers to be in the best interests of that particular individual.

53. It is recognised that an individual who takes part in a group hunger strike may feel pressured by the other participants to continue the strike, even if he/she does not want to continue. A hunger striker must be allowed to withdraw from the hunger strike at any time, for any reason.

See also:

AMA Code of Ethics 2004 – Editorially Revised 2006.

World Medical Association Declaration on Hunger Strikers (Declaration of Malta), as editorially revised at the 44th World Medical Assembly Marbella, Spain, September 1992.

World Medical Association Declaration of Tokyo, Guidelines for Medical Doctors Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment as adopted by the 29th World Medical Assembly, Tokyo, Japan, October 1975. and editorially revised at the 170th Council Session, Divonne-les-Bains, France, May 2005 and the 173rd Council Session, Divonne-les-Bains, France, May 2006.

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Background to AMA Position Statement *Health Care of Asylum Seekers and Refugees – 2011. Revised 2015.*

Definitions

The United Nations 1951 Convention Relating to the Status of Refugees (the Refugee Convention), and the 1967 amendment Protocol Relating to Refugees, both of which Australia is a signatory to, define refugees as persons who are:

- outside their country of nationality or their usual country of residence;
- unable or unwilling to return or to seek the protection of that country due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion; and
- not war criminals or people who have committed serious non-political crimes.

Asylum seekers are people who apply to a country for recognition as a refugee. They are generally not afforded the same rights as refugees, often not given the same access to freedom of movement, to work, or to medical care. These restrictions can adversely affect their physical and mental health and wellbeing.

Australia's Legal Obligations

The AMA's position statement is supported by Australia's international obligations to provide appropriate physical and mental health care to all people residing in Australia, or under the protection or auspices of the Australian Government. The Conventions that Australia signed and/or ratified identifies Australia's responsibilities to asylum seekers and refugees in regards to healthcare.

The *Universal Declaration of Human Rights* clearly defines the responsibilities and obligations to protect those seeking asylum in Australia. It declares that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5); and no one shall be subjected to arbitrary arrest, detention or exile (Article 9).

The *International Convention on Economic, Social and Cultural Rights* (ICESCR) covers the nature of legal obligations to health, specifically, for States to refrain from denying or limiting equal access for all persons, including prisoners, or detainees, minorities, asylum seekers and illegal immigrants, to preventative, curative and palliative health services. Furthermore, it calls for States to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties. States should also ensure that third parties do not limit people's access to health-related information and services.

The *Convention on the Rights of the Child* (CHC) outlines Australia's obligations in relation to children:

- State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child (article 19).
- State Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. State Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services (article 24).
- State Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (article 28).

Health in Detentions

Australia's detention facilities are harmful to both adult and children asylum seekers. Within detention facilities, people face uncertainty, fear for the future and hopelessness which causes their health to deteriorate. Reports and investigations provide evidence that immigration detention facilities have significant psychological morbidity which is directly associated with the amount of time spent detained; with the Australian Human Rights Commission report finding that 85% of parents and children reporting negative effects on their mental health while in detention[1]. The literature consistently confirms high rates of depression, anxiety, Post-Traumatic Stress Disorder (PTSD), self-harming and suicidal thoughts in asylum seekers who have been detained[2].

Adverse psychological impacts are prominent in detainees as a result of the detention environment being punitive and dehumanising, characterised by deprivation and confinement[3]. On average, asylum seekers spend 394 days in detention[4,5]. The cumulative effect of long-term detention can cause a mental state dominated by hopelessness, the inability to concentrate or perform simple tasks, paranoid tendencies, psychotic symptoms and delusions[6].

Detention facilities create an unacceptable risk to children's health. *The Forgotten Children* report provides exceptional direct evidence showing the negative effects of detention on children. Detention not only compounds mental health problems in children but also creates it, resulting in high rates of self-harm. There are commonly observed psychological disturbances among children in detention facilities, including separation anxiety, disruptive conduct, nocturnal enuresis, sleep disturbances, nightmares and night terrors, sleepwalking, and impaired cognitive development[6]. Furthermore, detained children also experience significant developmental and language delays[4].

The Senate inquiry into Australia's regional processing centres recommends the removal of children from immigration detention: "The committee received disturbing evidence relating to conditions for children within the Regional Processing Centre." This evidence includes troubling allegations of abuse (sexual and otherwise) as well as neglect. The report notes that the Australian Human Rights Commission found that "the inevitable and foreseeable consequence of Australia's transfer of children to Nauru is that they would be detained in breach of article 37(b) of the Convention on the Rights of the child"[7].

There have been and continues to be pregnant women in detention facilities. The isolation of the detention environment, coupled with the uncertain future of pregnant women, often results in mental health issues[8]. Untreated Postnatal Depression can result in the failure to build a secure attachment bond between mother and child, a crucial component for the mental, physical and emotional development of the baby[9].

Other Health Concerns

The AMA continues to be concerned about people with disabilities, those unable to make their own decisions and others who are at the end of their life. Asylum seekers with disabilities are not only faced with multiple and diverse challenges but are also ranked one of the most vulnerable persons in the world[10].

The 2015 National Ethic Disability Alliance (NEDA) Report describes how asylum seekers and refugees with disabilities are exposed to higher risks and inadequate access to supports to respond to their needs in detentions, resulting in an inability to engage in activities fundamental to everyday living. Furthermore, they are often ostracised by their circumstances, which leads to increased seclusion. Evidence demonstrates that people with disabilities within detention facilities not only face vast challenges, but also are not having their basic needs met[10].

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