Review of the Migration Act 1958

Senate Legal and Constitutional References Committee

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The Mental Health Council of Australia (MHCA) is the peak, national non-Government organisation established to represent the Australian mental health sector. The MHCA has eight membership groups including consumers, carers, clinical service providers, private mental health service providers, non-government organisations, State/Territory peak bodies, Aboriginal and Torres Strait Islander groups, and special needs groups. Through its constituents, the MHCA seeks to promote the mental health of all Australians.

This submission particularly addresses terms of reference c):

> *The adequacy of healthcare, including mental healthcare, and other services and assistance provided to people in immigration detention.*

This paper takes into account the submission made to this Committee by The Royal Australian and New Zealand College of Psychiatrists which is a member of the MHCA.

This paper also draws heavily on the submission and recommendations made by Multicultural Mental Health Australia (MMHA) to the Senate Select Committee of Inquiry into Mental Health Services in August 2005. MMHA is also a member of the MHCA.

This submission also refers to an article by Associate Professor Nicholas Procter from the University of South Australia taken from the International Journal of Mental Health Nursing. This article succinctly describes some of the key issues facing those attempting to provide mental health services in detention settings:

> *If an effective clinical strategy is not properly designed and delivered in the context of how the detention environment is harmful to mental health then change is a mere illusion.*

The experience of the people who are involved in the delivery of clinical services to refugees and asylum seekers (including those who have experienced immigration detention) is that many are suffering adverse mental health consequences as a result of their experiences. This is in line with what is now a growing body of research and literature describing the negative impact of immigration detention on the mental health of detainees (Sultan and O'Sullivan 2001, Thompson et al 1998, Steel et al 2004).

A judgment by Federal Court Justice Finn in May 2005 criticised the Commonwealth for failing in its duty of care for two Iranian men in need of psychiatric treatment in the Baxter Detention Centre.

Significantly, Justice Finn agreed with three independent psychiatrists that the Baxter environment was the primary cause of the men's mental illness and that keeping them there condemned them to ongoing injury. The judge also said the Government's treatment plans for the two men may have actually exacerbated their condition.

Procter has stated that trust is a fundamental requirement for mental stability and for the accurate assessment of mental disorder (see references). On the basis of the MHCA's review of the Palmer Inquiry Report, the inability of the authorities involved in the detention of Ms Cornelia Rau to establish a climate of trust contributed to the inaccurate assessments of her mental health disorder.

All people with mental health problems and mental illness need a safe and predictable environment for independent assessment and treatment of their mental health status. Where asylum seekers' past experiences have been highly traumatic the requirement of recounting these experiences can in itself be detrimental to mental health. In an atmosphere of distrust that assumes that what a detainee says or does is not reliable and needs to be 'tested', it is likely that, even where a person has a mental illness, serious symptoms of that illness will be easily labelled as 'behavioural problems'. Again, in the case of Ms Rau, labeling her symptoms as behaviour problems and advising authorities undertaking psychiatric assessments at Princess Alexandra Hospital that Ms Rau was an illegal immigrant contributed to the failure of authorities to correctly identify her mental condition.

The issues of prolonged detention, lack of safety and security, uncertainty about the future and past traumas has meant that many of those who have been released into the community have also often required specialised mental health treatment and services.

While suicide is not a mental illness (rather, it is a behaviour) it is strongly associated with mental illness and the risk factors pertinent to both mental illness and suicide are overlapping and interrelated. Thus the issue of suicidal behaviour among people in immigration detention necessarily requires an integrated prevention response which acknowledges both the separateness of mental illness and suicide and the association between the two.

In relation to the provision of mental health care to refugees and asylum seekers, specifically those in detention, the following issues need to be considered:

- How aware are those who assess the need for and delivery of mental health services to immigration detainees of the effect of culture on the assessment and diagnosis of mental illness and the particular cultural constructs around mental health in this population group? Have these professionals been trained in working with people from cultural and linguistically diverse backgrounds?

- To what extent are decisions about the assessment and treatment of detainee mental health problems based on a recovery focus? The Council believes that treatment is only provided to assist a person through an acute episode rather than on any ongoing basis. If the detainee in question goes on to live as part of the Australian community in the longer term, poor treatment at this point can have profound and expensive consequences later to be borne by the general community. This burden translates into health and other problems affecting non-government organisations and both State and Federal jurisdictions.

- The MHCA is aware of a current court case being brought against the Commonwealth by an ex-detainee. This person is suing for psychological trauma and mistreatment during their detention. If this case was to succeed, it could set a precedent for many more.

- Do clinicians have sufficient authority to obtain necessary and appropriate treatment? Are the power relationships operating in the detention environment such that professional decisions and recommendations are of sufficient weight to challenge existing situations deemed detrimental to detainees?

- To what extent can mental health services actually be delivered in an environment known to be harmful and detrimental to mental health?

Providing mental health services to people in this situation must involve the development of culturally appropriate interventions, from the prevention of mental illness and the promotion of good mental health to treatment, rehabilitation, recovery and relapse prevention. Interventions should be supported by an appropriate evidence base, and informed by ongoing monitoring and evaluation of their capacity to meet the needs of diverse groups within the population.

Adequate treatment can only be assured by establishing an independent multidisciplinary mental health panel experienced in the delivery of mental health services to a culturally diverse population group to assess the mental health of detainees and oversee treatment. This panel would operate nationally and oversee services to the entire detainee population.

The National Standards for Mental Health Services provide the benchmark of quality care in Australia and have been adopted by all governments, including the Australian Government. Standard 3 asserts that mental health professionals will practise in an appropriate manner through actively responding to the social, cultural, linguistic, spiritual and gender diversity of consumers and carers, incorporating those differences in their practice. People who enter immigration detention are from culturally and linguistically diverse backgrounds.

Until the people who design and deliver care to people inside immigration detention are regulated by some form of public scrutiny and therefore accountable for their actions we cannot be confident that a duty of care will be fulfilled. Currently there is no independent external assessor that can say with confidence that care being delivered is 'in-tune' with the relevant needs of this population group.

The Council is aware of recent Government initiatives designed to place mental health professionals in the detention centres. This is a positive step and one the Council commends. However, the Council also notes that it remains unclear the extent to which DIMIA will accept the advice given by these professionals. It is not clear if the mental health nurses or visiting psychiatrist will be able to act in accordance with their professional standards, including meeting their duty of care to their patients. It is also unclear whether they will have specialist skills in working in cross-cultural and detention situations or access to independent interpreters.

The Council remains concerned that the professional delivery of mental health services in detention is hopelessly compromised by the way in which the system operates. To date, the evidence is clear that the advice of independent mental health professionals has been consistently ignored by DIMIA. In the case of Naomi Leong, the repeated advice of her treating psychiatrist was ignored by DIMIA until such time as her case became public.

The Council maintains that mental health professionals employed by DIMIA contractors or in state services to provide care to detainees are compromised in their professional duty of care to their patients.

On this basis, the following recommendations are made:

Recommendation 1:

If a person is found to be mentally ill, he or she must be removed from detention to an appropriate place of treatment.

Recommendation 2:

Healthcare providers should work separately from detention providers. For as long as the policy of mandatory detention exists, an independent national multidisciplinary mental health panel which is experienced in the delivery of mental health services to culturally diverse population group, and includes consumer and carer representation, be established to oversee the delivery of mental health care in immigration detention centres, including assessment of the mental health status of detainees and the subsequent provision of culturally appropriate and quality mental health care. This panel should report to the relevant state mental health service.

This recommendation is consistent with that made in the Palmer Inquiry Report (Recommendation 6.11).

Recommendation 3:

That DIMIA management review its primary mental health care strategy for Immigration Detention Facilities (IDFs) placing emphasis on individuals whose risk of developing mental health problems or mental illness is significantly higher than average.

Recommendation 4:

Based on the recommendations made by the national panel, that a dedicated team should be established as required at each detention location, to coordinate the psychiatric assessment and therapeutic endeavours, including:

- Implementing evidence based interventions such as psychosocial (broadly defined) supports and medication to reduce symptoms;

- Supporting and encouraging specialist mental health services and general practitioners to initiate and participate in education and guidance of people with regard to their drug therapy, in order to promote a sense of partnership towards adherence and the achievement of therapeutic outcomes;

- Helping to reduce, or remove the need for drug therapy;

- Supporting and encouraging specialist mental health services, primary care services and general health services to respond to risk and protective factors and to early warning signs and symptoms in their regional settings. This will need to be done in collaboration with non-health services, such as volunteer groups.

Recommendation 5:

That the mental health service provided to detainees extend to ensuring that appropriate longer-term services are in place for those who move to reside in the community. Links must be established to minimize isolation and promote continuity of care.

Recommendation 6:

That senior management in DIMIA review its relationships with tertiary educational institutions, clinical schools, to encourage the establishment of education and training for mental health and non-mental health staff.

Recommendation 7:

That in conjunction with the Australian Mental Health Consumer Network, relevant State and Territory Departments of Health (Mental Health) and Drug and Alcohol Services, Regional Division of General Practice, Australian and New Zealand College of Psychiatrists, Australian and New Zealand College of Mental Health Nurses, specific training regarding the assessment, recognition and management of suicidal clients should be provided to all relevant staff.

References

Australian Psychological Society, *Code of Ethics*, 1997.

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Sultan A, O'Sullivan 2001. *Psychological Disturbances in asylum-seekers held in long term detention: a participant observer account*, Medical Journal of Australia 175: 593-596.