

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 detention¹. 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 detained².

Adverse psychological impacts are prominent in detainees as a result of the detention environment being punitive and dehumanising, characterised by deprivation and confinement³. 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 delusions⁶.

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 development⁶. Furthermore, detained children also experience significant developmental and language delays⁴.

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 issues⁸. 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 baby⁹.

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 world¹⁰.

The 2015 National Ethnic 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 met¹⁰.

¹ Australian Human Rights Commission. The Forgotten Children: National Inquiry into Children in Immigration Detention 2014. Sydney: AHRC,2014. <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>

² St Vincent's Health Australia. Asylum Seeker Health and Wellbeing: Scoping Study. 2012.

³ Coffey GJ, Kaplan I, Sampson RC, Tucci MM. The meaning and mental health consequences of long-term immigration detention for people seeking asylum. *Social Science & Medicine*. 2010; 70(12): 2070-9.

⁴ Robjant K, Hassan R, Katona C. Mental Health implications of detaining asylum seekers: systematic review. *Br J Psychiatry* 2009; 194: 306-312.

⁵ Department of Immigration and Border Protection (Australia). Immigration detention and community statistics summary. 31 March 2015. <http://www.immi.gov.au/About/Documents/detention/immigration-detention-statistics-mar2015.pdf> (accessed Mar 2015).

⁶ Sultan A, O'Sullivan K. Psychological disturbances in asylum seekers held in long term detention: a participant-observer account. *Medical Journal of Australia*. 2001; 175(11-12): 593-6.

⁷ Senate Committee Inquiry. Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru. August 2015.

⁸ de Costa CM. Antenatal care for asylum seeker women: is "good enough" good enough? *Medical Journal of Australia*. 2014; 201:299-300.

⁹ Maternal depression and child development. *Pediatric Child Health*. 2004 Oct; 9(8): 575–583. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2724169/>

¹⁰ National Ethnic Disability Alliance. The plight of people living with disabilities within Australian immigration detention: demonised, detained and disowned. 2015.