



Foundation House

The Victorian Foundation for Survivors of Torture

Submission by:

The Victorian Foundation for Survivors of Torture Inc (Foundation House) to the Senate Legal and Constitutional Committee Inquiry into the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006.

1. Introduction

The Victorian Foundation for Survivors of Torture (Foundation House) welcomes the opportunity to provide this submission to assist the Committee in assessing the merits of the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006.

Foundation House is one of Australia's leading services providing psychological care to refugees and asylum seekers. Foundation House has developed its expertise over the past 18 years providing comprehensive support services to Australia's humanitarian program entrants, asylum seekers, people in immigration detention facilities, and those released from immigration detention on temporary protection visas.

In the latter part of 2005 Foundation House assisted the Federal Government in assessing the mental health conditions at the off shore processing centre on Nauru and the psychological functioning of the 27 asylum seekers whom had been residing there for the previous four years. Following the Government's subsequent decision to grant 25 of the 27 people within the group temporary protection visas, Foundation House was engaged to provide mental health services to the group once they arrived in Australia.

Most recently, Foundation House has been engaged in partnership with the Australian Red Cross to provide the initial health, mental health and general casework support for the group of 42 West Papuan asylum seekers granted temporary to protection visas.

As a result of its extensive experience in these fields, Foundation House is well placed to provide the committee with expert advice regarding the psychological consequences of strategies employed to manage unauthorised asylum seekers.

For more comprehensive information about Foundation House please refer to our website www.foundationhouse.org.au

2. Principal Concerns

This submission is provided in the expectation that a critical element of the Committee's considerations is the likely impact of the proposed measure on the people who will be most immediately affected: people detained on (presumably) Nauru pending and following the determination of their applications for protection visas.

Firstly, it is important to state that Foundation House appreciates the complex circumstances the Government finds itself in with respect to its relationship with the Indonesian Government. Foundation House also recognises the importance of undertaking appropriate steps to build an effective and positive relationship between both governments.

In taking account of these important issues, Foundation House urges the committee to consider that the measures contained within the proposed Bill which aim to restore Australia's bilateral relationship with Indonesia will cause serious psychological harm to those affected by it.

Furthermore, we urge the committee to ensure that such measures do not breach any of our international obligations in real terms, particularly, the Refugee Convention and the Convention against Torture Cruel Inhumane and Degrading Punishment or Treatment.

3. Honouring Our Human Rights Obligations

As currently proposed, the government intends to place all unauthorised boat arrivals on Nauru for processing of their refugee claims. It has indicated that such processing will be undertaken by government officials with the availability of an "internal review" where claims are rejected in the first instance. The government has also indicated that it seeks UNHCR's support for such a process, however, to date the UNHCR has not been prepared to give an undertaking that it would participate.

Of particular concern in this context is the lack of any legal representation for asylum seekers sent to Nauru with regards to the preparation of their claims. Without competent advice, people who have virtually no appreciation of the refugee determination system and the bureaucracy that surrounds it, will struggle to present their claims accurately or adequately.

In our experience people who are survivors of torture and trauma require assistance in an environment where they feel safe and secure. If held in detention or isolated from appropriate support on Nauru, thereby creating little confidence that their best interests are of primary concern, it is highly unlikely that they will reveal intimate and personal experiences of violation, abuse or torture. This is particularly the case with respect to women who have been sexually assaulted and children or unattached minors who have been brutalised. It is important to note here that several members of the recent group of 42 West Papuan asylum seekers granted temporary protection had been tortured and traumatised prior to their arrival in Australia. A number of them will continue to require ongoing psychological support to assist them to recover.

Further to this is our concern that the proposal to only provide an internal review process, coupled with inadequate advice in the preparation of claims, creates an unacceptable risk that people with genuine fears of persecution will be incorrectly rejected at review. If this was to occur for example in the case of a West Papuan asylum seeker and the person was returned to West Papua (and therefore to Indonesian Government officials) the system as it is currently proposed risks breaching several of our Convention obligations. In particular, it would breach our obligations not to “refoul” or expel people under article 3 of the Convention Against Torture Cruel Inhumane and Degrading Treatment or Punishment, and article 33 of the Refugee Convention.

The Government has stated that it would seek to settle such refugees in ‘a third country’ but there is no assurance as to whether/when resettlement will occur. We are not aware of any country which is likely to accept them and past experience indicates that other resettlement countries around the world are rarely prepared to cooperate. As far as Foundation House can ascertain this has principally been because other resettlement countries believe they have a substantial burden to carry within their own regions and that Australia should take primary responsibility within this region.

While the Prime Minister has indicated that Australia may be a country of settlement, this is extremely uncertain given that the Government has introduced the legislation precisely to stop Papuan refugees settling in this country in order to rebuild its relationship with Indonesian government.

4. The Mental Health Impact of Detention and Failing to Find a Durable Solution

This section of our submission is principally concerned with the psychological impact of the proposed legislation for those asylum seekers transported to Nauru for processing. Our main concern is that the effect if not the intent of the Bill will be to leave people who are assessed as refugees either in

detention or at the very least stranded on Nauru for indefinite periods of time. As is the case with the recently arrived Papuan refugees and others who had previously arrived originating from Afghanistan, Iraq and Iran, a significant number will have had traumatic experiences prior to their arrival. Where this is the case it is virtually inevitable that serious psychological harm and deterioration will be an outcome of such a policy.

Refugee determination is based on the assessment of future risk of persecution for convention reasons. Given that the risk of such persecution is strongly correlated with previous experiences of human rights violations such as torture and other forms of systematic and extreme violence, people who are determined to be refugees are likely to be survivors of such events.

The way in which a history of torture and trauma adversely affects mental health and well-being has been documented by Foundation House and numerous torture and trauma services and researchers (VFST, 1998; Silove and Kinzie, 2003). The negative effects include an internalised state of fear, helplessness and chronic alarm, grief reactions, disrupted attachments and connections to people, destruction of meaning and trust, despair, and profound shame and guilt. In diagnostic terms, depressive disorders, anxiety disorders and post-traumatic stress disorder are common psychological sequelae of torture and trauma. Other typical co-morbid features are psychosomatic symptoms and compulsive and other maladaptive behaviours. These effects are well documented amongst refugee populations and asylum seekers.

Under conditions of detention or prolonged uncertainty about the future, the negative psychological impact of previous experiences of trauma can only be exacerbated. The course of deterioration has been documented in several studies and reports (VFST 1999, VFST 2000, HREOC 2002).

Mental health deterioration occurs in most people, regardless of the prior history of torture and trauma because of the intrinsic stressors which characterise detention and other indeterminate situations. They include:

- Restrictions and control over everyday behaviours
- Confinement and limited access to outside world
- No voice or representation to authorities apart from processing of applications.
- Deprivation of freedom and rights to ordinary privileges
- Routine, monotony with little meaningful activity
- Lack of privacy and autonomy
- Limited access to information, especially news of family left behind
- Inability to control exposure to self-harming behaviour of others
- Limited school hours for children and adolescents

- Communication regarding health and protective issues is compromised by unavailability of external interpreters

Under such conditions, additional common adverse effects are suicidal impulses and self-harming behaviour. Despair, feelings of unfairness, frustration and powerlessness are ripe conditions for acting out against oneself.

5. Adverse effects on families

The act of mandatory detention and loss of freedom, combined with ongoing conditions of uncertainty and isolation result in a situation that undermines the capacity for families to function as a viable supportive unit. Parents are unable to effectively set limits on where and with whom their children spend their time. Time weighs heavily for everyone. There is the daily challenge of trying to communicate across languages – the impotence of not being able to make yourself understood, especially when the needs of your child are involved. Even though there may be classes or activities, more often than not, mental health effects limit the capacity to take up the opportunities. Grief associated with separation or loss of loved ones in the country of origin can result in anxious attachments with clinging behaviour, jealousy, anger and constantly being afraid of losing the parent or parents (VFST 1998).

Critically, parents are unable to protect their children from exposure to a vast array of events that would normally be situations they would not want their children involved in. Not only do parents have to deal with their own sense of powerlessness in this situation but have to live with the knowledge that their own children see them as being powerless and unable to protect. Opportunities for privacy and intimacy between husband and wife are also difficult.

The primary causes of harm will be the despair of the detainees at their treatment, their inability to settle in any meaningful way and the uncertainty about their future. The fact that they may be able to wander around Nauru during the day will not reduce the trauma of their situation as the whole island is in effect the place of detention. Children will be exposed to risks associated with a stressful institutional environment.

The cumulative stresses associated with the sense of powerlessness over their family life combined with a sense of hopelessness about refugee processing decisions being made will significantly affect the psychological well-being of parents and children.

6. Effects on Children

Studies have identified that the level of stability and coherence in living arrangements, loss of or separation from family members, the level of family functioning, the parents' own responsiveness being affected by trauma, and parental depression are all factors that influence the child's response to traumatic events. Parents who are traumatised may become aggressive, perpetuating a lack of safety, or their preoccupation with their own situation may make them less available to their children to assist them to deal with their and worries and feelings (Dyregrov, Gjestad and Raundalen, 2002). "Post trauma disturbances in parental responsiveness and impairment in parental role function are a major source of secondary stress for children." (Pynoos, Steinberg & Wraith 1995, p78).

All the risk factors for serious deleterious effects on children prevail under conditions of detention or prolonged uncertainty, particularly for children and their families who have experienced torture and trauma in the past.

7. Limited preventative impact of mental health services

The provision of psychiatric and psychological services can only alleviate the depth of suffering to a limited extent and for a limited period. For example, assessments of the remaining 27 asylum seekers on Nauru conducted in the latter part of 2005 indicated that all cases were considered extremely vulnerable. The deterioration in their mental health had been steady and in many cases the duration of poor psychological functioning had been long-standing. The nature of their symptoms and the indeterminate character of their time on Nauru produced a persistent cycle of deterioration within the group. Symptoms such as hopelessness, worthlessness, self blame, self loathing, cognitive impairment, withdrawal and sleep disturbance were all common features amongst the group.

The prevalence of self harm and the persistence of suicidal thoughts for some in the group were very disturbing. The extreme levels of hopelessness, worthlessness and self loathing in combination with the pervasive sense of isolation present within the group are characteristics that are well recognised in the literature as key predictors of suicide.

In spite of significant and good-quality psychiatric care provided by the International Organisation for Migration to the group, the impact on improving their mental health condition was minimal and at best was barely maintaining them. Towards the end of their time on Nauru any beneficial effect of these services had diminished to the point where they provided little relief whatsoever.

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8. Conclusions

Detention and failure to find a speedy and durable settlement solution will have adverse mental health effects for those who have escaped persecution and human rights abuses. Amongst the causal factors of such adverse effects are isolation from community support, the ongoing deprivation of freedom, the profound sense of injustice associated with being subjected to the deprivation of liberty in the absence of a crime being committed, the almost complete sense of powerlessness, and the pain of seeing the health and well-being of children deteriorate in detention and/or conditions of prolonged uncertainty.

In this context, restricting asylum seekers who have prior experiences of trauma and torture and in particular those found to be refugees, to living on Nauru indefinitely would have deleterious psychological consequences whether they were held within the confines of the off shore processing centre or allowed to move freely around the island during the days as has been suggested.

Foundation House submits to the Committee that the harm which these measures are likely to inflict on the psychological and physical health of vulnerable people makes the bill an unacceptable measure and urges the Committee to advise the Parliament accordingly.