

Helping professionals and Border Force secrecy: effective asylum-seeker healthcare requires independence from callous policies

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Abstract

Objective: To examine the Australian Border Force Act (BFA) and its context, its implications for asylum-seeker healthcare and professionals, and contemporary and historical parallels.

Conclusions: Prolonged immigration detention and policies aiming to deter irregular migration cause maritime asylum-seekers undeniable, well-publicised harms and (notwithstanding claims about preventing drownings) show reckless indifference and calculated cruelty. Service personnel may be harmed. Such policies misuse helping professionals to underwrite state abuses and promote public numbing and indifference, resembling other state abuses in the ‘war on terror’ and (with qualification) historical counterparts, e.g. Nazi Germany. Human service practitioners and organisations recently denounced the BFA that forbids disclosure about these matters.

Continuing asylum-seeker healthcare balances the likelihood of effective care and monitoring with lending credibility to abuses. Boycotting it might sacrifice scrutiny and care, fail to compel professionals and affect temporary overseas workers. Entirely transferring healthcare from immigration to Federal and/or State health departments, with resources augmented to adequate standard, would strengthen clinical independence and quality, minimise healthcare’s being securitised and politicised, and uphold ethical codes. Such measures will not resolve detention’s problems, but coupled with independent auditing, would expose and moderate detention’s worst effects, promoting changes in national conversation and policy-making.

Keywords: Border Force Act, asylum-seeker, mental health, human rights, immigration detention

More than 40 health workers and humanitarian staff challenged the government to prosecute them for disclosing abuses at detention centres. *Guardian Australia*, 1 July 2015

The Australian Border Force Act (BFA), initiated 1 July 2015, amalgamated customs and immigration to create a ‘Border Force’ and Commissioner. The BFA provides maximum two-year prison sentences for ‘entrusted persons’ breaking its secrecy provisions.

Recent policy context

For 25 years, many Western governments have addressed forced refugee migration with policies of interception and deterrence. Australians negatively appraise boat arrivals, and both major political parties endorse immigration detention and offshore processing.

Under present Liberal-Coalition Government policies, with little Opposition resistance, secrecy intensified. The Asylum Legacy Caseload Act (December 2014) authorised oceanic detention and transfer, curbed parliamentary or judicial review, fast-tracked assessments, removed Refugee Convention references, capped Protection Visas and reintroduced harmful Temporary Protection Visas. Reclassifying infants as ‘unauthorised arrivals’ enabled their relocation for regional processing, contravening their health needs and denying them nationality. The

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Act breached Australia's international legal obligations over arbitrary detention and non-refoulement and potentially violated other states' sovereignty.

The 'Forgotten Children' Report of the Australian Human Rights Commission (2014/2015) meticulously demonstrates prolonged detention's harms. It recommends: immediately releasing children and families, an independent guardian for unaccompanied children, legislating maximum mandatory detention for child health, identity and security checks, and a royal commission into child immigration detention. Despite bipartisan messaging, the Government denounced the Report's timing as partisan and sought to remove Commissioner Gillian Triggs.

Without scrutiny, abuses proliferated. After Manus Island riots killed one asylum-seeker in February 2014, allegations in September 2014 of sexual assault of asylum seekers on Nauru and mass self-harm triggered the Moss independent review. This exposed defective safety and privacy, parlous living conditions, hindrances to reporting assault and debunked allegations that charity staff coached detainees to self-harm. Seventeen months before Moss reported, the government knew women and children were assaulted, but neglected to protect them from repetition, retaliation for informing and traumatic re-exposure.¹ Child protection frameworks are absent. Additionally, an ensuing Senate Report noted extreme child mental disorders and self-harm, lawlessness, dehumanising practices, endemic employee misconduct, frequent departmental ignorance or inaction and Australian responsibility despite government denials.²

Immigration detention's calculated cruelty

Multidisciplinary inquiries and research, Australian and international, indisputably establish that contemporary asylum-seeker policies harm child and adult mental health. Specifically, indefinite immigration detention contravenes Australia's endorsement of international conventions on refugees, civil and political rights, torture, children and disability, compounds prior trauma inducing mental illness, self-harm and suicide, and undermines recovery.³⁻⁵ Government-commissioned research and government officials agree mental illness worsens with time detained:^{6,7} the Government extensively understands detention's risks.² Detention cost \$3.3 billion in 2013–2014,⁸ and from 2000 to 2013, over \$28 million in compensation, with many claims outstanding.⁹ While corporations profit, community alternatives could save 69% of detention costs.¹⁰ National bodies of medicine, paediatrics, psychiatry, public health, psychology, nursing and social work oppose detention, which defies medical science and ethics, economics and human rights (freedom from abuse and the right to highest attainable health standards).

Nevertheless, neither widespread dissent nor impartial evidence sway successive governments or induce

consideration of alternatives.¹⁰ Former immigration minister Vanstone said releasing detained children would encourage people-smugglers.¹¹ Although researchers,¹² and former ministers Bowen and Morrison, concur that immigration detention does not deter asylum-seekers,^{7,13} and minors should 'only be detained as a measure of last resort' (Section 4AA, Migration Act), the Government detains children first. Policy defenders energetically talk 'strong borders', 'offshore solutions', 'stopping boats and drownings', 'denying visas' and 'difficult work by dedicated staff'.^{7,13} Successive governments commission research,⁶ and receive innumerable national and international official reports, while disregarding recommendations.

Ethical aims of healthcare and detention prove incompatible. To avoid detainees accessing Australian legal counsel, patient transfers from Manus Island and Nauru are delayed. Mentally ill and suicidal people endure or re-enter detention against medical advice. Voluntary starvation may trigger force-feeding. Non-medical staff misuse patient notes.¹⁴ Commitment to deterrence, secrecy and denial (of impacts) strengthens reluctance to record detention's mental health statistics and to recruit doctors opposing detention, and degrades patients' mental health.^{14,15}

Detention healthcare predicaments are twofold. Firstly, deterrence dominates. Harm is a calculated by-product and a direct aim:^{2,14} senior workers observe that detention's hostile environment and culture intend that asylum-seekers indefinitely suffer without hope so they will repatriate, regardless of life and health.¹⁴ This is knowing and wilful abuse by inadvertent consequence and by design.⁴ It corresponds to torture,¹⁴ which doctors must oppose.

Secondly, detention's health standards neither guide nor bind.¹⁶ Unlike prisons, healthcare is subservient to detention, not independent, and privately outsourced. The 2005 Palmer Inquiry recommended an independent statutory monitoring body to detect and remedy detention's human rights abuses. This never happened. The Detention (later, Immigration) Health Advisory Group independently informed the Immigration Department from 2006, but was disbanded in December 2013.

Thus helping professionals encounter interference with clinical care, secret agreements, loyalty conflicts and deficient treatments. These sabotage independence, quality, advocacy, confidentiality and the patient's pre-eminence, risking complicity with human rights abuses.¹⁷ Isolation, under-resourcing, detainee mistrust and vicarious traumatising by horrors magnify difficulties.

The BFA's secrecy provisions

Emphasising security, the BFA requires 'entrusted persons' to keep work information secret. This includes departmental employees, consultants or contractors and

Commonwealth, State or Territory public servants, including hospital workers treating asylum-seekers.

Exclusions comprise express legal warrant (Section 42 (2), c&d), matters in the public domain (Section 49) or saving life (Section 48). However, disclosure concerns particular cases, not broader systemic problems. Unauthorised recording is prohibited.

Helping professional and legal responses

Peak bodies noted the Australian Border Force Bill traded humane solutions for enforcement, threatening health professionals' essential advocacy about care and conditions. They demanded urgent amendments.¹⁸

Upon the BFA's introduction, 40 human service workers signed an Open Letter to the Prime Minister, Minister of Immigration and Leader of the Opposition, denouncing the secrecy provisions, because 'standing by watching sub-standard and harmful care, child abuse and gross violations of human rights is not ethically justifiable'. They protested double standards in handling child abuse in the community versus detention, and challenged systemic tolerance of abuses.¹⁹

The government countered the workers were overreacting: the Act's exemptions or the Public Interest Disclosure Act (PID) would protect them. However, Minister Morrison used the Crimes Act's similar clauses (Section 70) to investigate Save the Children for allegedly leaking information.²⁰ The BFA's exemptions disqualify disclosures about conditions – for example, a Minister ordering an infant be sent to Nauru; that schooling or tampons are unavailable. Whistleblowing pertaining to policy is unprotected. By imposing disproportionate penalties, infringing free speech and overriding health workers' ethico-legal obligations, the BFA undermines transparency and accountability via secrecy and punishment, breaching international law commitments.²¹ Confining disclosure to emergencies is dangerously antiquated, violating public health principles of prevention and early intervention.

The Public Interest Disclosure (PID) Act only addresses suspect or probably illegal wrongdoing inside Australia. The whistleblower must prove public interest and exhaustion of normal internal complaints processes. Such delays will 'chill' whistleblower disclosures. Prohibiting recording prevents normal professional communications,²² criminalising essentials like peer review, supervision, research, evaluation, reporting and private recording for these purposes.

American psychologists, torture and abuse and the US Department of Defense

Contemporaneously, an independent investigation for the American Psychological Association (APA) found

psychologists supported torture and abuse of post-9/11 detainees by the US Department of Defense (DoD). The DoD, having conferred benefits on psychology, was deciding its role in intelligence; the APA wanted to curry favour. In the 'War on Terror', mental health professionals endorsed the prevailing socio-political ideology, and the APA's revised Codes of Ethics (2005) left gaping loopholes for government to exploit. Psychologists had strong reasons to suspect torture but purposely avoided knowing details.²³ A cover-up involving unethical secret arrangements, denial and/or minimisation followed for years. Dissenters were suppressed.²³

Historical echoes

The Nazi doctors arguably embody the worst state-based abuses by medical professionals.²⁴ It is tempting to distance Australia from that murderous history, citing for example post-Nazi ethical codes and Australia's 'peacetime' democracy. Yet various modern states have 'protected' citizens by identifying security threats, targeting 'undesirables' and eliminating public scrutiny. Similar abuses recur. Nazi helping professionals were usually ordinary people, not psychopaths or villains. Peer and situational pressures, careerism and ideological commitments motivated them. Euphemism, bureaucratic routines and missionary zeal facilitated psychic numbing and denial.²⁴

Australia has not had extermination camps, but since white settlement, racist policies often have tarnished general and medical responses to Indigenous people. White Australia mutates into callousness towards boat people: almost all are declared refugees. A drowned toddler's image softens public and governmental responses: yet detention remains. Australians may be psychically numbed about boat interceptions and gulags, but cannot claim ignorance.

Reverberations and resolutions

International protests against Australia's asylum-seeker policies recur. The Forgotten Children recommendations should be implemented and offshore centres, which patently are fundamentally dangerous, must be closed.

Disturbingly, the professionalism of detention service personnel is lauded as honourable and exemplary,^{7,13} yet their adherence to political-institutional policies may violate human rights. If refugees receive future apologies, personnel believing they rendered extraordinary national service may regard themselves as victims. Some suicide or sustain workplace injuries,^{25,26} raising compensation questions for employee and detainee alike. Regarding human rights abuses, future inquiries will ponder the extent staff at all levels have been victims and survivors, rescuers, bystanders, perpetrators or combinations thereof, and appropriate responses.

Continuing asylum-seeker healthcare balances the likelihood of effective care and monitoring with lending abuses credibility. Boycotting asylum-seeker healthcare might sacrifice scrutiny and care, while potentially failing to compel individual professionals and affecting temporary overseas workers. Entirely transferring healthcare to Federal and/or State health departments, with resources and monitoring augmented to adequate standard, would strengthen clinical independence and quality, minimise healthcare's being securitised and politicised, and uphold ethical codes. Such measures will not resolve detention's problems, but would expose and moderate detention's worst effects, promoting changes in national conversation and policy. Immigration deaths and injuries may perceptibly decrease through exercising freedom of information laws,^{25,27} and/or mandatory (e.g. Ombudsman) audits.²⁸

The challenging, perplexing international refugee crisis requires collective, responsive global leadership and statecraft, not closed borders and gulags. Future judgments about dishonour to Australia's reputation may substantially depend on helping professionals' witness and resistance.

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