Submission to the Australian Parliament Senate Legal and Constitutional Affairs Committee

Inquiry into serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre.
The Australian College of Mental Health Nurses (ACMHN) welcomes the opportunity to provide a submission to the Australian Government Senate Legal and Constitutional Affairs Committee inquiry into allegations of abuse, self harm and neglect of asylum seekers in Regional detention centres located at Nauru and Manus Island.

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CONTENTS

Our Organisation ..................................................................................................................................... 4
Summary of ACMHN involvement in advocating for appropriate mental health care of refugees and people seeking asylum ............................................................................................................................ 4
1. Introduction ........................................................................................................................................ 4
2. The impact of prolonged, indefinite detention on the mental health of people detained or held on Nauru and Manus, causes pervasive and long term psychological harm ............................................................................................................................... 5
3. The mental health impact, on children detained or held on Nauru of exposure to abuse, self-harm, neglect, bullying and domestic violence, constitutes secondary trauma and will have long term mental health impacts ....................................................................................................................................... 5
4. The impact of conditions in immigration detention on the emotional wellbeing and mental health of the health workforce ........................................................................................................................................... 6
5. The Border Force Act .......................................................................................................................... 8
6. Optional Protocol to the Convention against Torture (OPCAT) .......................................................... 8
7. Outstanding care concerns ............................................................................................................... 9
Our Organisation

The Australian College of Mental Health Nurses (ACMHN) is the peak professional organisation representing mental health nurses in Australia. A primary objective of the ACMHN is to enhance the mental health of the community through the pursuit of efforts to improve service and care delivery to those affected by mental illness and disorder. The ACMHN also sets standards of practice for the profession and promotes best practice in mental health nursing.

Summary of ACMHN involvement in advocating for appropriate mental health care of refugees and people seeking asylum

ACMHN has been actively involved in a number of activities as part of its advocacy to improve the mental health and wellbeing of refugees and people seeking asylum, including:

- Drafting and publishing a letter calling on the Government to Ratify the Optional Protocol to the Convention Against Torture (OPCAT) and amend the Border Force Act
- Supporting the position statements of Australian Health Professional Colleges around refugee health and mental health e.g. The Royal Australasian College of Physicians (RACP) Refugee and Asylum Seeker Health Position Statement (2015 Attached as an appendix); the Australian College of Nursing Quality Health Care for all Refugees and Asylum Seekers Position Statement (2015); the APS Position Statement on the Psychological Wellbeing of refugees and asylum seekers in Australia (2011); the Royal Australian and New Zealand College of Psychiatrists (RANZCP) Position Statement 46 on the Provision of mental health services to asylum seekers and refugees.
- Sending an open letter to Prime Minister Malcolm Turnbull (dated 8 October 2015) regarding the prolonged detention of people seeking asylum, particularly children, in offshore processing centres on Nauru and Manus Island.
- Contributing to the development of a mental health screening tool for people being held in immigration detention.
- Contributing to the Immigration Detention Health Advisory Group which convened from 2006-2013, including this groups’ development of suicide and self-harm protocols and clinical reviews for designing new mental health clinical pathways for use in immigration detention across Australia.

1. Introduction

The ACMHN acknowledges the Terms of Reference (TOR) for the Senate Legal and Constitutional Affairs Committee inquiry, which covers the serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre.

This submission will focus on a number of key issues that are relevant to the TOR:

- The impact of prolonged, indefinite detention on the mental health of people detained at Nauru and Manus detention centres
- The combined mental health and developmental delay impacts on children detained within the Regional Processing Centre on Nauru and subsequent relocation to settlement sites, specifically their exposure to abuse, self-harm, neglect, bullying and domestic violence
- The impact of conditions in immigration detention on the emotional wellbeing and mental health of the health workforce
- The Border Force Act
• The Optional Protocol to the Convention Against Torture (OPCAT)
• Outstanding care concerns

2. The impact of prolonged, indefinite detention on the mental health of people detained at Nauru and Manus detention centres, causes pervasive and long term psychological harm

Evidence from the Australian Human Rights Commission National Inquiry into Children in Immigration Detention (AHRC 2014)\(^iii\) and many peer-reviewed journal articles (see for example Newman et al 2013\(^iv\), Triggs 2013\(^v\)) demonstrate that the effects of long term surveillance and suspended liminality, created by prolonged detention and uncertainty over claims for asylum, causes pervasive and long-term psychological harm (Coffey et al 2010\(^v\); McLoughlin & Warin 2008\(^vi\)) - including increased risk of suicide and self harm (AHRC 2014\(^vi\), Cohen 2008\(^vii\)) mental illness, mental distress, ongoing resettlement difficulties, social isolation and difficulty acculturating (Steel et al 2011\(^v\); Newman et al 2010\(^x\)). This is particularly the case where people in detention are isolated and have poor access to health and social services – which is clearly the situation for detainees on Nauru and Manus Island.

In particular, prolonged detention has a profoundly negative and lasting impact on the mental and emotional wellbeing and development of children.

For the purpose of this submission, when ACMHN refers to people being held it detention, this also refers to those people who have been re-located to one of six settlement sites, but remain restricted to the small Island of Nauru or on Manus Province. While they may have left held detention, these individuals remain severely restricted in their movement - they cannot leave the Island, they cannot be re-united with their family and have little or no prospect of economic and/or social participation. Many have given up hope and openly talk of killing themselves as a way of bringing an end to their suffering and excruciating distress and despair.

A majority of people seeking asylum on Nauru and Manus will have already experienced primary trauma prior to arriving in Australian waters. The current immigration policy subjects people who have a right to seek asylum, to secondary trauma and creates further barriers for them to live a full and contributing life in the long term. They are being denied the same basic rights and prospects many in Australians are able to take for granted.

**ACMHN Recommendation:** The mandatory and indefinite detention of asylum seekers at Nauru and Manus Island should be ceased in favour of less restrictive and more cost-effective community-based alternatives in Australia where access to appropriate health, mental health and social support services can be obtained. It is essential that the Australian Government commit to implementing the most appropriate of these measures, rather than continue to exacerbate the trauma experienced by those fleeing war, poverty and conflict.

3. The mental health and developmental delay impacts on children detained on Nauru who have been exposed (often repeatedly) to abuse, self-harm, bullying, neglect and domestic violence, constitutes secondary trauma and will have long term mental health impacts

There is overwhelming evidence of the severe impact on the mental health and overall wellbeing of asylum seekers and refugees as a result of being subjected to inhumane conditions while living in
detention on Nauru and Manus Island and other facilities prior to their transfer to a Regional Processing Centre. It is likely that their mental health will deteriorate further unless Australia ratifies the OPCAT and establishes a system for working alongside national and international oversight bodies and implements other preventative mechanisms as required.

Involvement in or exposure to a deeply distressing event or experience, a ‘single incident trauma’ such as physical assault, rape, robbery or a life-threatening accident or event such as a natural disaster can cause emotional shock that has long-lasting effects on a person’s thoughts, feelings and behaviours. The term ‘complex trauma’ describes multiple kinds of adversity and overwhelming life experiences. The cumulative effects of this type of trauma are pervasive and represent major risk for lifelong physical and mental illness, poor quality of life and even premature death (MHPOD 2011).

Childhood experiences of trauma cause neurobiological changes and can be particularly damaging. For children in detention, trauma experiences related to being forcibly displaced are common – with exposure to violence shown to be a key risk factor (Fazel et al 2012). Many refugees have experienced genocide, imprisonment, violence, trauma of war and bereavement (Vijakaumar 2016).

Maltreatment and trauma in childhood is one of the most powerful risk factors for the development of mental disorders in later life (Perry, 2008) causing impairments to social, emotional and cognitive functioning. Put simply, trauma in the early ears shapes brain and psychological development, sets up vulnerability to stress and increases vulnerability to a range of mental health problems (ASCA, 2012).

Detention of refugee and asylum seeker children in immigration detention centres is in contravention of Australia’s responsibilities under the United Nations’ convention on the Rights of a Child. Detention in any form is an inappropriate place for any child to live (AHRC 2014) and detrimental to children’s mental health.

The Australian Human Rights Commission (AHRC) is categorical ‘that Nauru is an inappropriate place for asylum seeker children to live (either in detention or in the community)’ and that 34% of children in detention experience serious mental health disorders – this compared with 2% of children in the Australian population. It has recommended that:

- All children be immediately removed from immigration detention to community detention in mainland Australia or granted a bridging visa
- Under no circumstances should any child detained on the mainland be returned to or transferred to Nauru

**ACMHN Recommendation:** That all asylum seeker children and their families, currently held or detained on Nauru be released into community detention on mainland Australia. Ultimately, all refugee children and their families currently held or detained on Nauru must be re-settled as part of Australia’s humanitarian intake.

### 4. The impact of conditions in immigration detention on the emotional wellbeing and mental health of the health workforce, and the workforce more broadly

Another important consideration relates to the health workforce and the workforce more broadly, including nurses and mental health nurses, who are also exposed to traumatic events, and subjected to vicarious trauma, during the course of providing services to people being held in immigration detention on Nauru and Manus Island.

ACMHN’s response to news that the Department of Immigration and Border Protection recently advertised for providers to contract to provide “resilience training” for up to 1000 Immigration Staff was mixed. While ACMHN welcomes any move to protect and promote the mental health of
people living in detention or working with asylum seekers and refugees in held detention or in the community, this initiative does not address the underlying problem, which is the repeated traumatic incidents that are taking place in detention centres on a daily basis. Health, human service and settlement providers see the distress and despair as a direct result of current national policy settings. Mental Health workers are reporting symptoms of mental disorder as emerging from the context of both the detention environment and excruciating uncertainty (Newman & Steel 2008). Resilience training for staff and the provision of mental health services to people seeking asylum who are being held in immigration detention is of limited utility when people continue to be held indefinitely in a confined, often unsafe environment, where hopelessness and uncertainty are endemic. Even upon release from held detention, uncertainty and restriction continue. It is the responsibility of the Minister to determine whether a person released from held detention into the community (currently around 28,500) is eligible for work rights. The prospect of employment or other opportunities to improve their circumstances and live a normal life as a free citizen is severely limited for people seeking asylum and this further contributes to poor mental health amongst this group of people.

The NMBA Code of Ethics outlines the nursing profession’s commitment to respect, promote, protect and uphold the fundamental rights of people who are both the recipients and providers of nursing and health care. The Human Rights and the Nursing Profession component acknowledges the diversity of people in Australian society, including immigrants, people seeking asylum, refugees and detainees, and the responsibility of nurses to provide just, compassionate, culturally competent and culturally responsive care to every person requiring or receiving nursing care. The current environment in which mental health nurses and other professionals provide care to people being held in immigration detention on Nauru and Manus conflicts with these provisions.

**Recommendation:** All nurses working in immigration and detention settings, including Nauru and Manus, need to be provided appropriate professional development and clinical supervision, in order to deliver optimal quality clinical care. A comprehensive needs based education and clinical skills program should be developed that specifically addresses health, cultural and social needs of refugees and asylum seekers. All nurses working in immigration and detention settings, including Nauru and Manus, need to be provided with clinical supervision that meets their needs and is provided to meet the requirements of the Royal Australian College of Physicians (2015) Refugee and Asylum Seeker Health position statement, which ACMHN has endorsed and the ACMHN on Clinical Supervision (2016):

1. Clinical Supervision is a core component of contemporary professional nursing practice.
2. All relevant health service employers positively support and actively promote demonstrable and effective Clinical Supervision, through organisational policies, procedures and workplace culture.
3. All nurses be fully orientated to Clinical Supervision upon entry to their relevant health workforce and thereafter engage in sustained and meaningful Clinical Supervision, whatever their role and wherever they practice.
4. Supervisors access appropriate bona fide educational preparation for this role whether Clinical Supervision is delivered in dyads or within groups.
5. Regular systematic evaluations of the quality and efficacy of Clinical Supervision arrangements be undertaken at the local service level, taking care not to compromise the integrity of confidentiality agreements between supervisors and supervisees.
5. The Border Force Act

The ACMHN, as a part of a coalition of Australia’s health groups, has previously called for the Australian Border Force Act 2015\textsuperscript{xvii} to be amended, specifically the secrecy provisions which threaten jail for up to two years for health and medical professionals who disclose information about the conditions in immigration Detention Centres.

ACMHN welcomes the recent announcement made by the Commonwealth Government that health workers, including nurses, are no longer subject to the provision in the Border Force Act (2015) that previously restricted them from fulfilling their professional duty.

ACMHN holds a firm view that health professionals must not be restricted from advocating for the best possible patient care, and from reporting on conditions in detention and promoting the health and protection of patients. ACMHN supports the Australian College of Nurses’ (ACN) position that ‘government rules and regulations pertaining to refugees and asylum seekers and/or the nurses involved in their care must not interfere with nurses’ obligations under the NMBA’s Code of Ethics (2013a) and Code of Professional Conduct (2013b)\textsuperscript{xviii}. Such non-interference is fundamental if the quality of care and protection of refugees’ and asylum seekers’ other human rights is to be assured.\textsuperscript{xix}

However, ACMHN remains concerned that other detention centre workers, including garrison support, security guards and teachers, are still subject to these secrecy laws when, in all jurisdictions in Australia, these workers would be mandated to report cases of suspected or actual child abuse (physical, sexual, emotional, psychological) and neglect, or concerns about wellbeing under child protection legislation.

The Border Force Act (2015) establishes a mechanism for overseeing the operation of Australian detention centres. In its current form, the Act appoints office holders and establishes powers and obligations for what are largely unspecified ‘duties’. Powers are provided to the Secretary to direct workers to perform functions or exercise powers to which the worker must comply (s56).

**ACMHN Recommendation:** That the legislation should contain explicit provisions that place clear obligations on those responsible for overseeing the operation of the detention centres, to operate the centres in such a way as to maintain reasonable and ethical living conditions, including to maintain an agreed and mandated set of conditions that promote better mental health and emotional wellbeing.

**ACMHN Recommendation:** That the legislation should explicitly exempt all workers from reporting cases of suspected or actual child abuse, including physical, sexual, emotional, psychological abuse, and neglect, or concerns about the physical or psychological wellbeing of children.

6. Optional Protocol to the Convention against Torture (OPCAT)

ACMHN continues to call on the Government to Ratify the Optional Protocol to the Convention Against Torture (OPCAT) in support of the need for best practice care and against harmful conditions or practices, which adversely impact on people who are detained.\textsuperscript{xix}

ACMHN remains highly concerned by the conditions in which the provision of health care to people seeking asylum continues to occur. These conditions adversely impact on the potential benefits of any mental health treatment provided to people seeking asylum, many of whom have already been subjected to significant trauma prior to arriving at the detention centres. As outlined above, trauma is further exacerbated by the indefinite, hopeless circumstances asylum seekers now find themselves living in.
A further concern relates to the current immigration arrangements, which permit refusal of entry to Australia for people seeking asylum who are suicidal or who have a history of attempted suicide. This arrangement is circular in its logic. By denying deeply traumatised and distressed people an opportunity to live in safety and rebuild their lives, Australia may be denying them of what little hope they have left. People being held in immigration detention who are at risk of suicide are being forced to continue living in the very conditions that have contributed to this risk in the first place.

The Australian Government must ratify the Optional Protocol to the Convention against Torture (OPCAT) to promote comprehensive protection of the rights of people in detention in Australia and to confirm Australia’s commitment to ensuring people seeking asylum under the care of Australia are provided with the same opportunity to live full and contributing lives.

**ACMHN Recommendation:** That the Australian Government ratify the Optional Protocol to the Convention Against Torture (OPCAT).

### 7. Outstanding care concerns

ACMHN raises concerns about the conclusion drawn during evidence provided by the Immigration Department at a recent Senate Estimates Hearing (17 October 2016), that in 96% of all incidents published in ‘the Nauru files’xxvi, the actions taken were “immediate and appropriate”. Through its advocacy activities, ACMHN has become aware of events that suggest there is a danger in applying subjective of language such as “immediate and appropriate” when it is not contextualised with respect to human rights, the OPCAT and what constitutes appropriate clinical treatment. For example, medication such as a sedative or an antidepressant prescribed to people seeking asylum who are suffering from severe trauma, including those who have been subjected to further trauma while in detention, such as through self-harm or sexual assault, should not be automatically reported as ‘appropriate treatment’ without a more stringent evaluation of the treatment received, or the underlying cause of the need to seek or receive treatment.

Someone who is in acute mental distress will also be in need of counselling delivered by a qualified mental health professional (such as a credentialed mental health nurse or mental health nurse practitioner, psychologist, and/or psychiatrist), who specialises in working with people who have experienced trauma and who utilises a trauma-informed approach to all clinical assessments and approaches. The counselling must be sufficient and clinically appropriate relative to the nature of the person’s distress before a conclusion can be drawn that the response provided has been ‘appropriate’. A person seeking asylum who has been provided with medication (e.g. sedative or antidepressant etc) for acute mental distress, but who is unable to access the counselling services they need should not be reported as having received “appropriate treatment”. The need for greater scrutiny around “appropriate” treatment is further illustrated by the example identified by the Guardian Australia in reference to a recent Amnesty International Reportxxvii on conditions in Nauru which documented “A young girl who was prescribed adult anti-depressive (sic) medication that has a “black box warning” against its use by children, because it causes suicidal thinking”.

Identifying that a form of clinical treatment has been provided in response to psychological distress and trauma does not automatically indicate that the treatment was clinically appropriate, or proportionate to the psychological distress that an individual has presented with. Nor does it indicate whether a treatment was clinically effective in resulting in a reduction in symptoms.
Recommendation: That the Committee seek to investigate the extent to which actions taken in response to allegations of abuse, self-harm and neglect of people seeking asylum being held in detention are clinically appropriate and sufficient to address the harm, including emotional harm and mental distress.

Recommendation: That the Committee seek to investigate the extent to which actions are being taken to prevent psychological harm, are sufficient and appropriate.

Recommendation: That a set of agreed and mandated indicators/standards be applied to the provision of clinical services in the detention centres, so that there is no ambiguity as to whether a response has been “clinically or otherwise appropriate”. These indicators should be informed by the national and international standards of practice, including the professional and clinical standards to which health professionals must comply. Obviously, this requirement relies heavily on clear governance, oversight and accountability, which itself is in need of substantial improvement under the existing arrangements.

It is the position of the ACMHN that Governments and service providers should implement the recommendations of the Royal Australasian College of Physicians (RACP) Refugee and Asylum Seeker Position Statement, which contends that:

- all refugees and asylum seekers be offered a voluntary comprehensive assessment of their physical and mental health on arrival in Australia or New Zealand, that is linked with long-term primary care providers;
- targeted strategies are required to ensure equity of access to healthcare for refugees and asylum seekers;
- specific strategies to address the social determinants of long-term health and wellbeing, including settlement and support services, education and employment opportunities, and strategies to address uncertainty; supports health professionals in their duty of care to their patients and their right to speak out in support of best practice and ethical care; and
- detention has a significant and detrimental impact on health and wellbeing, and is not condoned.

Ultimately, it is the position of ACMHN that all people be released from offshore detention centres. The offshore arrangement creates a situation in which blame shifting is commonplace, which leads to no solution for the long term health, mental health and wellbeing of people being held in these environments. Until this can be achieved, ACMHN will continue to advocate for conditions in offshore detention centres to be improved to facilitate better mental health for the people being held in these centres.

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13 Ibid (ii)

ix Steel, Z. et al; (2011). *Two year psychosocial and mental health outcomes for refugees subjected to restrictive or supportive immigration policies*. Social Science & Medicine, Volume 72, Issue 7, 1149-1156.


xi MHPOD, (2012). *Course: Trauma and Mental Health*. Produced by Cadre Pty. Ltd. and the Psychosocial Research Centre of the University of Melbourne for the Project Steering Committee, on behalf of the Mental Health Workforce Advisory Committee (MHWA). Copyright: Cadre Pty. Ltd., Sydney.


xvi Ibid (ii).


xxiii Ibid (xix).


