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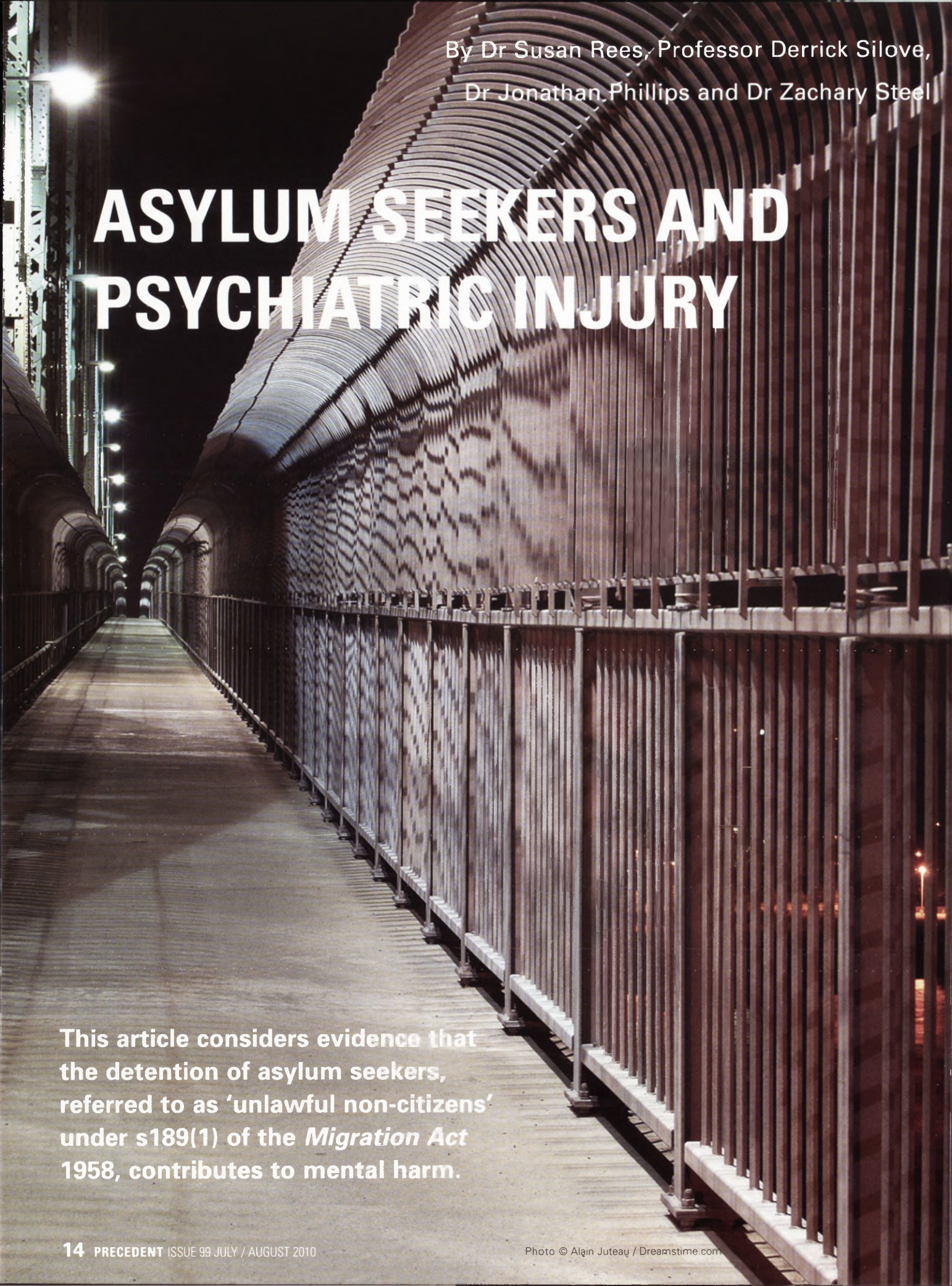
ASYLUM SEEKERS AND PSYCHIATRIC INJURY



This article considers evidence that the detention of asylum seekers, referred to as 'unlawful non-citizens' under s189(1) of the *Migration Act* 1958, contributes to mental harm.

The issue is of key importance given the contemporary climate in Australia in which the major political parties are engaged in contentious debate, and where policy has changed repeatedly in relation to the reliance on detention as a strategy to deter the arrival of asylum seekers.

Research in Australia and internationally has aimed to examine whether detention in its own right leads to adverse mental health outcomes for detainees, whether adults[1] or children.[2] This issue is of substantial importance to the field of human rights and health in general and, more specifically, to potential claims of injury by ex-detainees against the government and detention centre operators. Within the context of the legal definition of psychiatric injury, does scientific evidence and psychiatric reasoning support a case that detention in the Australian system is an independent form of stress and trauma that may be potentially harmful to mental health? Such an investigation requires clarification of the issues confronting psychiatric research in this area, and how the results of enquiries may be interpreted in supporting the clinical judgements of assessors reporting on individual cases.

THE LEGAL CHALLENGE

The Commonwealth government has a duty to provide healthcare to immigration detainees, a responsibility that extends to addressing vulnerability to psychiatric illness.[3] Based on this duty, legal claims have been made by ex-detainees that the conditions of immigration detention have led to mental injury. In a civil action involving psychiatric injury, the plaintiff must establish that the injury was caused by the defendant's conduct (in this case, by those deemed responsible for detention centres), and expert opinion is relied upon to determine causation. It has been argued that the necessary proof is difficult to establish because asylum seekers have escaped settings of trauma and stress that predispose to mental injury prior to and independent of their subsequent detention. Paradoxically, that argument runs the risk of undermining the right to justice for persons who have fled situations of gross human rights violations specifically to achieve just treatment in the country of asylum. Hence, if it can be shown that immigration detention in fact causes mental injury as a consequence of the violation of rights, then ex-detainees should be offered an optimal avenue to achieve redress.

PSYCHIATRIC INJURY

Detainees who bring actions for negligent psychiatric harm in the absence of physical injury and/or due to insufficient mental health services and psychiatric care have to prove in the first instance, and on the balance of probabilities, that they are suffering from a recognised psychiatric illness. They must also show that the illness was caused by their detention. Finally, they must establish that it was foreseeable >>

that the experiences to which they have been subjected, together with the inadequacy of mental health services and psychiatric care, would have led a person of normal fortitude to suffer a recognised psychiatric illness.[3] Coffey[4] argues that adjudicating claims of negligence by immigration detainees for psychiatric injury is complex because of the multiple causative factors involved. Typically, psychiatric disorders are explained in terms of predisposing, precipitating and maintaining causes, where the contribution of each varies from minor to predominant, and where multifactorial explanations are the norm.[5] Among detained asylum seekers, many have experienced multiple pre-migration traumas which may predispose them to developing psychological difficulties.[6] Hence, in the context of immigration detention, it may be difficult to disentangle the independent effects of several factors: exposure to past traumatic events, ongoing stressors and traumas associated with conditions in detention and the deprivation of liberty, harsh treatment by centre employees, and the uncertainties of the refugee determination process.

THE STATUS OF SCIENTIFIC INQUIRY IN PSYCHIATRY

In considering the value of scientific findings in informing legal proceedings in this field, it is important to consider the status of research in psychiatry in general, and specifically in relation to the detention environment. Given the present state of knowledge, it is rare to be able to demonstrate incontrovertible evidence of causality in the social and mental sciences. It is possible at times to demonstrate necessary causes (for example, that trauma is a prerequisite to the onset of post-traumatic stress disorder (PTSD)) but it is only occasionally possible to identify sufficient causes (a factor that, on its own, can wholly account for a particular outcome; for example, that head injury is the cause of cognitive impairment). Psychiatric diagnosis, particularly relating to the conditions of relevance here (the affective disorders including depression, anxiety and PTSD), is based principally on data obtained from interviewing the person. It is uncommon for objective tests, such as blood tests or brain scans, to assist in the process. In addition, it is rare in relation to detained asylum seekers to be able to obtain corroborative accounts (although at times, family members might provide such information).

So, as clinicians, we are wholly reliant on what the patient discloses, along with some direct observations of their behaviour. Further, assessments are made cross-sectionally – that is, at one point in time – so that historical data depends on the person's recall (for example, of past trauma, previous episodes of mental disorder, the onset of the current episode, and whether symptoms have worsened since being in detention). Inaccurate reporting may, however, arise from difficulties in recall or concentration secondary to mental disorder. Experts do not have a foolproof method for determining the accuracy of reporting or disclosure. Their judgements, also subject to bias, should be based on contextual factors as well as the mental state of the person. Some may assert that asylum seekers in detention are likely to magnify their psychological symptoms in order to draw attention to their plight in the hope that by so doing they will achieve early release, a favourable refugee determination or, at a later time, civil recompense for psychological harm. That immediate motivational bias may be addressed to some extent by undertaking research among refugees who have been released from detention and are resettled in the community (see below).

In spite of these limitations, it is acceptable to draw provisional causal inferences from cross-sectional data of the type obtained within the detention field, as long as the limitations in so doing are fully explained. The chief responsibility for researchers is to apply the best scientific methods available. This includes attention to sampling (to avoid the bias of selecting the most disturbed persons); applying appropriate measures translated into ethno-specific languages (to standardise assessment and allow comparisons with other data); to ensure that skilled interviewers are adequately trained and monitored (to achieve consistency); and to apply appropriate statistical techniques to the data (to tease out as far as possible the contributions of each relevant predictor variable to the outcome – in this instance, mental disorder).

In judging the likelihood that associations found among variables in any given study represent causal relationships – for example, that length of detention results in a greater risk of mental disorder – several factors need to be considered: whether the findings accord with the theoretical predictions; the consistency of the results with past scientific observations in the same or related fields (for example, the extensive data showing that prolonged, extreme stress leads to the onset of common mental disorders); support from collateral evidence – for example, the general observations of clinicians, commissions of inquiry and others concerning the stresses experienced in detention; the appropriateness of the statistical analyses employed and whether they have taken into account confounding factors; and, most importantly, plausibility – specifically, whether it makes most sense for a correlation between A (for example, length of detention) and B (severity of the PTSD) to be interpreted as A playing a role in causing B (as opposed to B leading to A or the possibility that the association is non-causal (other factors determine the variation in A and B).

THE EVIDENCE THAT DETENTION IS A CAUSE OF PSYCHOLOGICAL INJURY

The following sections summarise the findings from observational studies concerning the psychiatric impact of detention, and we then consider studies that have met the relevant scientific standards.

Observational studies

Australian studies

Families and children

The first systematic research study pertaining to the mental health of detainees in an Australian detention facility was published in 2004.[7] The participants included members of

10 of 11 families from the same language background who had been detained for between two and three years in a remote detention centre. Every adult was diagnosed with a major depressive episode, and the majority had PTSD. Most expressed suicidal ideation, with one-third reporting incidents of actual self-harm while in detention. According to their reports, prior to detention, only half of these persons had PTSD, a small number had co-morbid depression, and no adults had self-harmed or had experienced suicidal ideation.[6] These rates of pre-detention mental disorders are consistent with the general findings of the literature on refugee mental health.

Parents' reports were used to identify mental disorder in children who were too young to be interviewed, a common strategy in research of this type. All children were diagnosed with at least one psychiatric disorder and over three-quarters had multiple disorders. All but one had major depression. Half the children had PTSD and separation anxiety disorder. More than half experienced suicidal ideation and one-quarter had engaged in actual self-harm. A lifetime assessment of symptoms provided by parents revealed low levels of psychiatric morbidity in these children prior to detention.

Mares and Jureidini[8] assessed a separate group of families in an Australian detention centre. The families comprised 16 adults and 20 children. Allied health professionals and child psychiatrists serially assessed all participants over a two-year period. Of the ten children aged five years and under, seven had spent more than half their lives in immigration detention. All children in this age range displayed delays in cognitive development, with some infants showing marked deficits. All children aged 7–17 years fulfilled criteria for PTSD and major depression with suicidal ideation. All were troubled by intrusive memories of traumatic events in detention. Three pre-adolescent children were among seven of the older children who had engaged in suicide attempts and acts of self-harm. The findings of these two studies suggest that the prevalence rate of stress-related mental disorder among children in detention is extremely high, much greater than would be expected of refugee children living in the general community.

These Australian studies are supported by British research[9] that found detained children were experiencing mental and physical health difficulties related to the detention experience. The report concluded that current UK policies regarding the detention of children for purposes of immigration control should be reviewed.

Adults

Silove, Austin and Steel[10] documented a number of clinical assessments that provide credibility to concerns about the mental health impact of detention. In late 1993 and early 1994, the Victorian Foundation for Survivors of Torture (VFST) undertook clinical interviews with the majority of a group of Cambodians held in two detention facilities.[11] The report concluded that prolonged detention exerted a negative effect on asylum seekers, and that detainees' psychological state appeared to deteriorate the longer they were confined.

In a subsequent study in 1995–1996, the VFST assessed East Timorese asylum seekers held in a remote detention centre, and another cohort living in the community.[12] The majority reported exposure to trauma in their home country, including unprovoked harassment, physical assault, arrest and detention, sexual assault, torture, and witnessing murder and violence. The level of symptoms in multiple domains of psychopathology was much higher in the detained versus the community group.

Thompson and colleagues surveyed Tamil asylum seekers from Sri Lanka, 15 while in detention, and 10 within 1 month of being released.[13] All had been exposed to extensive trauma in their homeland, including witnessing the murder of family or friends, being close to death, and torture. They reported high levels of depression, suicidal ideation, post-traumatic stress, anxiety, panic and physical symptoms. Compared with a sample of Tamils living in the community, detainees returned higher scores on six indices of mental and physical health (depression, suicidal ideation, anxiety, PTSD, panic, physical symptoms). Even when levels of exposure to past trauma were taken into account, detained Tamils were much more symptomatic, suggesting that the conditions of detention might be instrumental in generating and maintaining elevated levels of distress.

These small studies suggest that detention itself is associated with high rates of psychiatric symptoms, taking into account the refugee experience and past trauma. Limitations of these studies include small sample size and the >>

difficulty in matching samples in detention and living in the community in a manner that takes into account all possible confounds.

A detained Iraqi medical practitioner, in collaboration with a psychologist working in the Villawood Detention Centre, surveyed inmates who had been confined for over nine months.[14] More than half reported exposure to pre-migration trauma, including physical torture and the murder or disappearance of immediate family members. The majority manifested chronic depressive symptoms (85 per cent) and pronounced suicidal ideation (65 per cent). The detainee doctor was able to observe firsthand the progression of symptoms during the course of detention. There was a clear pattern of deterioration in mental health, as detainees were held for increasingly prolonged periods, suggesting that the length of confinement was the key factor in the worsening of their conditions.

A recent mixed methods study[15] involved adult refugees released into the community after being held in detention for an average of three years and two months. The authors concluded that the psychological and interpersonal difficulties that participants were suffering at the time of interview could be attributed to the legacy of their adverse experiences while detained.

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International evidence

International evidence has supported the contention that immigration detention is associated with adverse mental health consequences. McCallin[16] reported a survey of the psychological status of Vietnamese children detained in a Hong Kong camp. The majority of children exhibited symptoms of depression and anxiety. In the UK, Pourgourides, Sashidharan, and Bracken[17] observed profound levels of despair among asylum-seeker detainees, documenting high rates of suicidal ideation and deliberate self-harm.

Keller and colleagues[18] reported the findings of a clinical survey of asylum seekers detained at three sites in the US. The median length of detention was five months. Seventy-four per cent had been tortured prior to arrival in the US. Seventy-seven per cent were diagnosed with clinical depression and 48 per cent with PTSD, with 70 per cent indicating that their mental health had worsened while in detention. A follow-up survey conducted approximately three and a half months after the initial assessment period indicated deterioration in the mental health of asylum seekers remaining in detention, compared with those who had been released.

This international evidence is further strengthened by a cross-sectional mental health study from the UK involving asylum seekers living in the community, and asylum seekers who had been detained. The study reported that detained asylum seekers had higher scores than asylum seekers living within the community for depression, anxiety, and PTSD symptoms.[19]

Australian studies controlling for past trauma and other variables

Although other studies have attempted to address the issue of multi-causation – that is, that the experiences of refugees prior to detention may be contributing to the overall psychiatric outcomes – two Australian studies have employed statistical methods designed to disentangle these effects. The first study was undertaken among a sample of 241 Arabic-speaking Sabaean–Mandaean refugees residing in Sydney.[20] Mandaean refugees in Sydney fall into two residency categories based on their visa status: those who arrived in Australia without entry documents and who were detained, being released subsequently on temporary protection; and those who were granted permanent residency on arrival. It appeared to be more a matter of chance than design as to which category the Mandaeans fell into. The study was undertaken on average three years after release for those who were detained. Of the refugees surveyed, 150 had been held in detention. The analyses employed a sophisticated multi-level model that allowed the impact of each factor to be assessed in logical order. This included any shared tendency within the family to experience mental disorder, as well as age, gender, pre-migration trauma exposure, and current living stresses, such as having a temporary visa. After taking into account all these influences, length of prior detention continued to make a significant contribution to PTSD, depression and overall mental disability. Specifically, those experiencing prolonged detention had high rates of depression and PTSD compared with those held in detention for fewer than six months and those who were not detained.

The impact of visa status was examined further in a second study,[21] since it is possible that temporary protection is the factor that determines whether those who were detained continue to suffer mental difficulties after release. The study compared the mental health status of Persian-speaking refugees with temporary versus permanent protection visas. Standard measures were used to assess past trauma, detention experiences, post-migration stresses, symptoms of PTSD, anxiety, depression and functional impairment. The study found that although the two groups had experienced similar levels of past trauma and persecution, the holders of temporary protection visas (TPVs) returned higher scores on three psychiatric symptom measures. Further analyses suggested that, for TPV holders, experiences of past stresses in detention in Australia contributed to adverse psychiatric outcomes. The researchers concluded that the sequence of post-migration stresses at the time – that is, prolonged detention followed by temporary protection – added to the risk of adverse mental health outcomes among refugees.

CONCLUSIONS

The Commonwealth of Australia has a duty of care to provide immigration detainees access to primary healthcare, including mental health services. McSherry[22] and others have examined the issues relating to the claiming of compensation for inadequate mental health services and psychiatric care while in detention. A key question is whether the multi-factorial issues impacting on the mental health of asylum seekers can be disaggregated to demonstrate the unique effects of detention. The experiences of refugees and asylum seekers prior to immigration detention are commonly those of trauma and abuse. Research supports the view that detained asylum seekers may have suffered greater levels of past trauma than other refugees, and that this may contribute to their ongoing mental health problems. Nevertheless, there is consistent evidence that prolonged detention, together with harsh conditions in centres, contribute independently to adverse mental health outcomes. It is particularly noteworthy that no studies have presented contrary findings. In addition, the results of research are consistent with general observations of the mental state of detainees reported by practitioners working in centres and by successive Commissions of Inquiry into detention in Australia. Furthermore, the findings are wholly consistent with the large body of research into the effects of stress in showing that conditions of powerlessness, uncertainty about the future, insecurity and confinement are detrimental to mental health. Hence, contextual information and the scientific studies converge in indicating that prolonged detention is likely to result in severe stress. Further, the research indicates that trauma associated with detention compounds pre-migration traumas, thereby exacerbating existing mental health problems, and/or triggering the onset of new conditions.[23] In summary, within the limitations of existing methodologies and the constraints associated with undertaking research in this field, it is reasonable to argue that the extant body of research from Australia and elsewhere allows causal inferences to be drawn, indicating a link between prolonged detention and adverse mental health outcomes. Clearly, as with all scientific evidence of this type, the findings are based on averaged data across samples of refugees. Legal assessments involve clinical judgements relating to individual cases. As such, the scientific evidence can only inform and guide interpretations of medico-legal assessments, with judgements being made according to the particularities of each case. Nevertheless, we believe that the data available at the very least provides a foundation of legitimacy for the pursuit of claims asserting that prolonged immigration detention in its own right *may* be a cause of psychological injury. At a more general level, if governments are to protect human rights and take action to prevent mental disability among refugees, they should design policy aimed at maximising the recovery environment for asylum seekers so that they can become effective and productive members of the host society. Governments therefore should take heed of the evidence concerning the detrimental impact of detention and consider more humane policies based on community-based residency approaches for persons seeking refuge from persecution. ■

Notes: **1** D Silove, P Austin, & Z Steel (2007, September). 'No Refuge from Terror: The Impact on the Mental Health of Trauma-affected Refugees Seeking Asylum in Australia'. *Transcultural Psychiatry*. 44, pp359-93. **2** S Mares, L Newman, M Dudley, & F Gale, 'Seeking Refuge, Losing Hope: Parents and Children in Immigration Detention', *Australasian Psychiatry*, Vol. 10. No. 2, June 2002, pp91-7. **3** B McSherry, *Providing mental health services and psychiatric care to immigration detainees: what the law requires*. Paper presented at Seeking Asylum in Australia: 1995-2005 Conference, Monash University, 2005. **4** G Coffey, *Tort liability and psychiatric injury sustained during immigration detention: issues in establishing causation*. Paper presented at Compensation, Torts and Immigration Detention Centre Conference, Monash University, 2007. **5** *Ibid.* **6** Z Steel, & D Silove, The mental health implications of detaining asylum seekers, *MJA*, 2001; 175: 596-9. **7** Z Steel, S Momartin, C Bateman, A Hafshejani, D Silove, N Everson, K Roy, M Dudley, L Newman, B Blick, S Mares, Psychiatric status of asylum seeker families held for a protracted period in a remote detention centre in Australia, *Aust N Z J Public Health*. 2004 Dec; 28(6): 527-36. **8** S Mares, J Jureidini. Psychiatric assessment of children and families in immigration detention: clinical, administrative and ethical issues. *Aust N Z J Public Health*, 2004; 28: 520-61. **9** A Lorek, K Ehntholt, A Nesbitt, E Wey, C Githinji, E Rossor, R Wickramasinghe (2009), 'The mental and physical health difficulties of children held within a British immigration detention centre: A pilot study', *Child Abuse & Neglect*, 33: 573–85. **10** See note 1. **11** Victorian Foundation for Survivors of Torture 2001. Cited in Z Steel et al (2004). 'The politics of asylum and immigration detention: Advocacy, ethics and the professional role of the therapist'. In J P Wilson & B Drozdek (eds), *Broken spirits: The treatment of traumatised asylum seekers, refugees, war and torture survivors*). New York: Brunner-Routledge, pp659–87. **12** Victorian Foundation for Survivors of Torture (1998), 'The East Timorese: Clinical and social assessments of applicants for asylum'. In D Silove & Z Steel (eds), *The Mental Health and Well-being of On-shore Asylum seekers in Australia*, Sydney, Psychiatry Research and Teaching Unit, University of New South Wales, pp23-6. **13** M Thompson, P McGorry, D Silove, Z Steel, Maribyrnoong Detention Centre Tamil survey. In D Silove, Z Steel, (Eds), *The Mental Health and Well-Being of On-Shore Asylum Seekers in Australia*, Sydney, Psychiatry Research & Teaching Unit; 1998. pp27-30. **14** A Sultan & K O'Sullivan, 'Psychological disturbances in asylum seekers held in long term detention: a participant-observer account', *MJA*, 2001; 175: 593-6. **15** G J Coffey, I Kaplan, R C Sampson & M Montagna Tucci. http://www.sciencedirect.com/science?_ob=ArticleURL&_udi=B6VBF-4YN5PMJ-3&_user=10&_coverDate=06%2F30%2F2010&_rdoc=1&_fmt=high&_orig=search&_sort=d&_docanchor=&view=c&_acct=C000050221&_version=1&_urlVersion=0&_userid=10&md5=a0805345d0c22f77dc1c16ca4fc981ae - aff1 'The meaning and mental health consequences of long-term immigration detention for people seeking asylum', *Social Science & Medicine*, Vol70, Issue 12, June 2010, pp2070-9. **16** M McCallin, (1992), *Living in detention: A review of the psychological wellbeing of Vietnamese children in the Hong Kong detention centres*, Geneva: International Catholic Child Bureau. **17** C Pourgourides, S Sashidharan, & P Bracken, (1995), *A second exile: The mental health implications of detention of asylum seekers in the United Kingdom*, Birmingham, UK, North Birmingham Mental Health NHS Trust. **18** A S Keller, B Rosenfeld, C Trinh-Shevrin, C Meserve, E Sachs, J A Leviss, et al, (2003), 'Mental health of detained asylum seekers', *Lancet, 362* (9397), 1721–3. **19** K Robjant, I Robbins, and V Senior (2009) 'Psychological distress amongst immigration detainees: A cross-sectional questionnaire study'. *British Journal of Clinical Psychology*, 48, 275–86. **20** Z Steel, D Silove, R Brooks, S Momartin, B Alzuhairi & I Susljik, (2006), 'Impact of immigration detention and temporary protection of the mental health of refugees'. *British Journal of Psychiatry*, 188, 58-64. **21** S Momartin, Z Steel, M Coello, J Aroche, D Silove & R Brooks, (2006), 'The impact of policy on the mental health of refugees: A comparison of temporary and permanent protection visa holders', *MJA*,185, 357-61. **22** See note 3. **22** See notes 1, 5.

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