



NATIONAL JUSTICE PROJECT

REFUGEES AND ASYLUM SEEKERS, AND COVID-19

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The National Justice Project is committed to ensuring that refugees and asylum seekers who are in onshore and offshore detention have the right to equal access and status under the law. We firmly believe that this vulnerable group remains Australia's responsibility and the Government should provide them with the necessary medical care and support, especially during a global pandemic that disproportionately affects disadvantaged members of society.

CONTEXT

Australia has enjoyed early success in its containment of the COVID-19 outbreak, however, experts warn that we are merely two months into what is realistically going to be a 12-18 month crisis.¹ Adopting an attitude of complacency at this early stage will likely result in a catastrophic second wave as has been observed in Singapore.

Medical experts and rights groups in Singapore attempted to flag the potential for mass infection amongst the 300,000 migrant workers cohabiting in shared dormitories.² These dormitories feature communal facilities, cramped conditions with up to 20 men per single bedroom, as well as limited access to soap and cleaning supplies, making for highly unsanitary conditions.³ In spite of these warnings, the Singapore Government failed to improve these conditions and the impossibility of implementing social distancing in these dormitories ultimately led to an alarming surge in COVID-19 cases originating from dormitory 'cluster' infections.⁴ Currently, over 75% of Singapore's COVID-19 cases are from migrant workers living in these shared dormitories.⁵ This scenario is analogous to the experience of COVID-19 on cruise ships where cramped conditions, poor ventilation, and challenging sanitation conditions led to rapid infection over a period of four weeks.⁶

We are currently faced with the opportunity to recognise the high risk of infection spread in Australian immigration detention centres and apply our real-time observations from the dire situation unfolding in Singapore. UN agencies, the Australian Human Rights Commission, healthcare professionals, the Australasian Society for Infectious Diseases, and the Australian College of Infection Prevention and Control have all issued warnings regarding the potentially lethal consequence of failing to enact preventative measures in our immigration detention centres.⁷

¹ Nick Baker, 'Warnings that Australia could experience a devastating second wave of coronavirus', *SBS* (Online, 23 April 2020) <<https://www.sbs.com.au/news/warnings-that-australia-could-experience-a-devastating-second-wave-of-coronavirus>>.

² Jake Sturmer, 'Singapore was the envy of the world when it came to coronavirus, but then the second wave hit' *ABC* (Online, 27 April 2020) <<https://www.abc.net.au/news/2020-04-25/singapore-hoped-they-contained-coronavirus-but-second-wave-hit/12172446>>.

³ Namita Bhandare, 'Singapore's Coronavirus success story hits a snag' *Foreign Policy* (Online, 21 April 2020) <<https://foreignpolicy.com/2020/04/21/singapore-coronavirus-response-snag/>>.

⁴ *Ibid.*

⁵ Sophia Ankel, 'How Singapore went from being applauded for its coronavirus response to facing an alarming second wave with thousands of new cases' *Business Insider Australia* (Online, 22 April 2020) <<https://www.businessinsider.com.au/coronavirus-singapore-lost-control-second-wave-2020-4?r=US&IR=T>>.

⁶ Richard Coker, *Report on Coronavirus and Immigration Detention* (Report for Duncan Lewis Solicitors, 7 March 2020).

⁷ Jill Margo and Tom McIlroy, 'Pressure builds for Australia to release asylum seekers', *Financial Review* (Online, 19 April 2020) <<https://www.afr.com/policy/health-and-education/pressure-builds-for-australia-to-release-asylum-seekers-20200418-p5413e>>.

Our detention centres experience continued exposure from staff and lack any feasible social distancing measures, allowing the distinct possibility for a natural, epidemic curve to emerge amongst this population of immunologically naïve individuals.⁸ Failing to heed this international advice would be reckless of the Australian Government and potentially fatal for our onshore and offshore refugees and asylum seekers.

Moreover, the COVID-19 outbreak has placed a global spotlight on the general and ongoing sanitary difficulties of cramped living conditions in our immigration detention centres. This calls for urgent policy reform in health-care access and migration laws to better protect these invisible at-risk populations.

ISSUES FACING REFUGEES IN IMMIGRATION DETENTION CENTRES

Social distancing and self-isolation are two strategies that have been implemented globally to reduce the transmission of COVID-19. For facilities such as immigration detention centres, these measures are extremely difficult to implement. Immigration detention centres are designed to house people in close proximity.⁹ These environments are often overcrowded, poorly ventilated, chaotic, and unsanitary.¹⁰ People commonly share spaces for eating, sleeping and bathing.¹¹ Australia's Human Rights Commissioner, Edward Santow, has conceded that it is impossible to adhere to social distancing in immigration and detention centres.¹²

Immigration and detention centres are simply not equipped to handle a pandemic. Infection controls including testing kits, toilet paper, hand sanitiser, soap, and personal protective equipment such as masks and face shields are in short supply.¹³ These infection controls are commonly being used by people in the wider community all over the world in an effort to stop the spread of COVID-19.

COVID-19 is highly transmissible.¹⁴ It has been estimated that 80% of people with COVID-19 are asymptomatic or exhibit mild symptoms.¹⁵ COVID-19 is infectious for as long as 14 days.¹⁶ This means that an asymptomatic person could transmit the disease anywhere between 2-14 days. Thousands of employees leave their homes each day to enter immigration and detention centres and interact in close proximity with colleagues and detainees before returning to their communities

⁸ Coker (n 6).

⁹ Brie Williams et al, 'Correctional Facilities In The Shadow of COVID-19: Unique Challenges And Proposed Solutions', Health Affairs (Blog, 26 March 2020) <<https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/>>.

¹⁰ Ibid.

¹¹ Ibid.

¹² Stefan Armbruster, 'Human Rights Commissioner calls for immigration detainees' release over coronavirus infection fears', *Newspaper* (Online, 13 April 2020) <<https://www.sbs.com.au/news/human-rights-commissioner-calls-for-immigration-detainees-release-over-coronavirus-infection-fears>>.

¹³ Michelle Foster and Katie Robertson, 'Detention Increases COVID-19 Health Risk' *Pursuit: University of Melbourne* (Web Article, 17 April 2020) <<https://pursuit.unimelb.edu.au/articles/detention-increases-covid-19-health-risk>>.

¹⁴ Coker (n 6).

¹⁵ Ibid.

¹⁶ Ibid.

and families at the conclusion of each shift.¹⁷ These workers are not trained on how to respond to a medical pandemic or how to protect themselves from infectious illness.¹⁸ This practice continually places asylum seekers and refugees at risk of contracting COVID-19. Whilst there have been no confirmed cases of COVID-19 among detainees, a Serco employee hired to guard refugees and asylum seekers tested positive for COVID-19 in Brisbane last month.¹⁹

If an outbreak were to occur in any detention facility, it would be disastrous for our hospital system in Australia, particularly in rural areas, as they are often underfunded, under resourced and understaffed. An outbreak in offshore detention facilities would have severe consequences. The health system in Papua New Guinea (PNG) is very fragile. Whilst the number of confirmed cases remains low (currently at 8), the Australian government is more worried about a major outbreak in PNG than any other south pacific country.²⁰ Their health system is underfunded and overwhelmed, with high rates of malaria, tuberculosis, and diabetes among its population of more than 8 million people.²¹ Access to hospitals is also extremely limited and with the rapid spread of a COVID-19 outbreak, hospitals would be unable to adequately treat an increased number of patients.²²

Nauru is one of the few countries currently without a positive case of COVID-19 but has already declared a state of emergency.²³ Nauru is the second smallest UN state with only one hospital, no ventilators, and a shortage of nurses.²⁴ In light of an outbreak, patients would need to be transported overseas to receive treatment.²⁵ This may not be a possibility as many neighbouring countries have locked down their borders, causing fears that an outbreak would decimate the population.²⁶

Additionally, many of the refugees and asylum seekers in these offshore and onshore centres are already suffering from minor or serious health concerns. COVID-19 disproportionately affects those with pre-existing health concerns or compromised immune systems.²⁷ As such, if the virus were to enter these facilities, it is likely to spread even quicker than we have already witnessed.

Currently there are stringent measures in place in relation to visitors which have banned all visits, personal or not, in order to eliminate the risk of transmission between visitors and detainees and

¹⁷ Williams et al (n 9).

¹⁸ Ibid.

¹⁹ SBS News 'Fears coronavirus could spread to asylum seekers in Australian immigration detention', *Newspaper* (Online, 22 March 2020) <<https://www.sbs.com.au/news/fears-coronavirus-could-spread-to-asylum-seekers-in-australian-immigration-detention>>.

²⁰ Anthony Galloway, 'Fears for PNG as COVID-19 appears in different parts of the country', *Newspaper* (Online, 23 April 2020) <<https://smh.com.au/politics/federal/fears-for-png-as-covid-19-appears-in-different-parts-of-the-country-20200422-p54m3d.html?fbclid=IwAR3bYBLZU41jK5KgBxpf8ISqDvpzMpG9IBKyvIJ-oACzRB7uvwyQSirlwrg>>.

²¹ Georgie Bright, 'Papua New Guinea's Health System Unprepared for COVID-19', Human Rights Watch (Blog, 8 April 2020) <<https://www.hrw.org/news/2020/04/09/papua-new-guineas-health-system-unprepared-covid-19>>.

²² Ibid.

²³ Owen Amos, 'Coronavirus: Where will be the last place to catch Covid-19?', *Newspaper* (Online, 3 April 2020) <<https://www.bbc.com/news/world-52120439>>.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Foster and Robertson (n 13).

control the spread of COVID-19.²⁸ These measures have caused added stress to detainees. Immigration detention is already a deeply traumatic experience with the average time spent in immigration detention being 454 days.²⁹ The Australian Government has a duty of care that extends beyond the risk of contracting the coronavirus.³⁰ It is contended that the Australian Government is ultimately accountable for any violation of human rights that occur in their onshore and offshore immigration and detention centres, and they are obliged to adhere to their international humanitarian and human rights obligations.³¹

RECOMMENDATIONS

In the six years since offshore detention centres started operating on Manus Island and Nauru, there have been countless cries for the International Criminal Court to investigate the conditions and demand that the Australian Government make changes.³² The spread of COVID-19 has increased the serious concern for the health and wellbeing of individuals in these offshore centres. This article has demonstrated the numerous health care issues which relate to both onshore and offshore detention of refugees and asylum seekers during the COVID-19 pandemic. The recommendations based on these findings are split into those specific to offshore and onshore facilities.

Offshore Detention Centres

The offshore detention of refugees and asylum seekers is of heightened concern due to the risk that COVID-19 poses to the health and safety of individuals. The Australian Government has a limited duty of care for this vulnerable group in offshore detention centres which was first established in *Plaintiff S99/2016 v Minister for Immigration and Border Protection*.³³ The restricted duty of care may require the Government to implement steps to ensure the health of individuals even if this requires moving patients to onshore facilities. It is contended that this duty of care must be extended to cover all refugees and asylum seekers currently in offshore detention. In addition to the established duty of care under Australian law, international human rights treaties dictate the requirement that all refugees be treated with care and receive adequate medical attention whilst being detained. The high number of detainees make social distancing impossible with the space available. As outlined above, without effective prevention methods in place, COVID-19 could

²⁸ Paul Gregoire, 'Release Immigration Detainees for COVID: An Interview With Advocate Margaret Sinclair', Sydney Criminal Lawyers (Blog, 26 March 2020) <<https://www.sydneycriminallawyers.com.au/blog/release-immigration-detainees-for-covid-an-interview-with-advocate-margaret-sinclair/>>.

²⁹ *Report of the Special Rapporteur on the human rights of migrants on his mission to Australia and the regional processing centres in Nauru* GA HRC, 35th sess agenda item 3, UN DOC A/HRC/35/25/Add.3 (23 June 2017).

³⁰ *Ibid.*

³¹ *Ibid.*

³² Ben Doherty, 'Australia's Offshore Detention is Unlawful, Says International Criminal Court Prosecutor' *The Guardian* (Web Article, 15 February 2020) <<https://www.theguardian.com/australia-news/2020/feb/15/australias-offshore-detention-is-unlawful-says-international-criminal-court-prosecutor>>.

³³ *Plaintiff S99/2016 v Minister for Immigration and Border Protection* [2016] FCA 483.

spread rapidly through these facilities. Therefore, implementing higher hygiene standards and increasing testing available is the primary recommendation.

Improved hygiene standards have proven to slow the spread of COVID-19, but the most effective strategy has been social distancing and requiring individuals to stay home unless leaving for essential services. This option is not available to those in offshore detention given the living conditions. The effect of the similar conditions to those of the migrant workers in Singapore demonstrates the detrimental effect this can have on limiting the spread of COVID-19. Therefore, the secondary recommendation is to follow the footsteps of other countries in facilitating the release of as many eligible refugees as possible.

In Belgium, Spain and the United Kingdom, the health of refugees and asylum seekers is prioritised by their Governments releasing individuals from detention centres to ensure they are able to protect themselves from the virus.³⁴ These decisions were based on the opinion of medical experts who considered the overall health of refugees in detention. Many of the refugees and asylum seekers in these detention facilities are already experiencing poor health and compromised immune systems. The average person spends approximately one and a half years in these detention centres with very minimal care provided.³⁵ This contributes to the overall risk of COVID-19 spreading through those who are immunocompromised. Recently the OHCHR, IOM, UNHCR and WHO submitted a joint press release urging governments to release refugees and asylum seekers detained in immigration facilities.³⁶ COVID-19 poses a threat to the entire community and without ensuring every individual is given equal rights and access to healthcare, it will continue to spread. This includes the rights of already vulnerable refugees and asylum seekers in offshore detention sites. However, despite this evidence and recommendations, it is highly unlikely the Australian Government would make such a tremendous change in their treatment of refugees. The support for the releasing of refugees will continue to grow but quick action in regard to hygiene standards and availability of testing must be implemented immediately.

Onshore Detention Centres

Onshore detention facilities pose the same issues in regard to the spread of COVID-19. The primary recommendation in these instances is to also implement hygiene and health care standards which can minimise the threat of the virus spreading. However, individuals in onshore detention centres, including in alternative places of detention (commonly hotels), are unable to keep a safe distance from one another and are often living in cramped spaces. In light of this, the second recommendation would be to enable the release of as many people as possible. While this is more difficult to achieve through offshore community camps, onshore release of refugees is far more plausible. In order to facilitate their release, the Australian Government should look at employing more staff to work through the requirements to release refugees and asylum seekers into community detention housing. Due to COVID-19, many Australians have found themselves

³⁴ Foster and Robertson (n 13).

³⁵ Ibid.

³⁶ United Nations High Commissioner for Refugees, 'The Rights and Health of Refugees, Migrants and Stateless Must be Protected in COVID-19 Response', *Joint Press Release from the OHCHR, IOM, UNHCR and WHO* (Press Release, 31 March 2020).

without jobs, and so this option would aid in increasing the safety of refugees as well as creating jobs for Australians in need.

The health and wellbeing of refugees and asylum seekers in both onshore and offshore community detention must be addressed, especially during such an uncertain time, to ensure that this extremely dependant group are afforded the same access to health care and autonomy as the rest of the Australian population.