Mental Health Reform Engagement: Mental Health and Wellbeing Act

Submission from the Asylum Seeker Resource Centre (ASRC)

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The ASRC commends the Department of Health's consultative process on the development of a Mental Health and Wellbeing Act, and is grateful for the opportunity to contribute through this submission. The overarching assurance of a rights-based, social determinants of health approach, and the advancement of a commitment to promoting conditions that reduce inequalities and ensure the wellbeing of Victorians, is endorsed by the ASRC. The ASRC felt it important to further add to this dialogue by providing this written submission highlighting the particular needs of people seeking asylum, vulnerable migrants (including victim/survivors of human trafficking or labour exploitation) and refugees. This is in recognition of their unique set of circumstances and to address any factors relevant to this diverse community, which may have been overlooked in the development of the policy feeding into the development of the proposed Mental Health and Wellbeing Act.

Question 1 & 2: Do you think the proposals meet the Royal Commission's recommendations about the objectives and principles of the new Act? How do you think the proposals about objectives and principles could be improved?

Overall, ASRC submits that the objectives and principles of the new Act broadly meet the Royal Commission's recommendations, however suggests the following improvements:

- In stating the Act will "**recognise and respond to the diverse backgrounds and needs and of the people who use them**, including those related to age, disability, **culture**, neurodiversity, **language**, **communication, religion, race**, gender, gender identity, sexual orientation **or other matters,"** the Act should include a defined recognition of:
    - "**Diverse backgrounds**" that specifically includes people seeking asylum, vulnerable migrants and refugees
    - In doing so, the Act, and/ or subsequent emerging policies under the Act, should ensure that the unique experiences of people seeking asylum, vulnerable migrants and refugees is captured and understood specifically including the following considerations and attributes:
- History of Torture and Trauma - Persons seeking asylum, by their very definition, have fled their country of origin following fears for their life and safety or have suffered sustained persecution. Whilst this takes many forms, a large portion of persons seeking asylum have been subject to, or have witnessed acts of violence, or traumatic events which will impact their lives significantly. Traumatic events are not limited to the country of origin but often also include the journey to Australia, countries of transit, time in held detention and commonly, also traumatic events which have occurred within Australia. These include family violence, experiences of racism or discrimination, labour exploitation and in some instances, protracted arbitrary immigration detention. Further, persons seeking

asylum typically must endure a protracted Refugee Status Determination process, as discussed below. Recovery following such experiences, and for many, their ongoing nature, is often long and complex and impacts different cultural groups in varying ways. Necessary for trauma recovery is a sense of safety and stability which is seldom felt for persons seeking asylum who remain in limbo and without permanent status in Australia. All of these components have a strong influence on mental health and subsequent health-seeking behaviours and as such, need to be uniquely recognised under the emerging policies, which will inform the content of the Act.

- Protracted Refugee Status Determination processes and impact on mental health - For all people seeking asylum in Australia, the Refugee Status Determination (RSD) process is typically protracted and can last for up to a decade, during which time they are excluded from eligibility for many forms of social and economic support. This struggle for survival in Australia is often a source of trauma itself, especially for those parents struggling to all meet the needs of their children. Many of those who are eventually recognised as refugees are then only provided with temporary protection for indefinite three or five year periods, leaving them in unending uncertainty about the future. For those at the primary stages of this process, waiting times of up to two or three years are typical for an initial interview with the Department of Home Affairs (DoHA) . For those seeking review before the Administrative Appeals Tribunal (AAT), the average time from lodgement to determination is currently 990 days, or almost three years. Waiting times become progressively protracted as a person seeking asylum moves through the various stages of court appeal, with current waiting times for a Federal Circuit Court (FCC) hearing (directional only) being approximately 3 years. This protracted uncertainty has significant impacts on people seeking asylum and their ability to successfully settle in the Australian community due to their exclusion from eligibility for many forms of federal government economic and social support, creating enormous barriers for them in finding employment, housing, and accessing medical treatment. This struggle for survival in Australia is often a source of trauma itself, especially for those parents struggling to all meet the needs of their children. Many of those who are eventually recognised as refugees are then only provided with temporary protection indefinitely for periods of three or five years at a time, leaving them in unending uncertainty about the future. This endemic uncertainty, coupled with a trauma history is a clear recipe for deterioration in their mental health. Across the client group at ASRC this is a prominent experience of clients, which is often expressed as 'helplessness', 'feelings of worthlessness,' 'loss of purpose or future planning' and 'despair'. This is particularly prominent for people who have experienced extended periods of up to eight or nine years in arbitrary immigration detention, which extensive research highlights is vastly detrimental to mental health.
- Cultural and language considerations - The community of persons seeking asylum is made up of a huge range of ethnic, cultural and language groups. Within those groups there are further broad differences in how culture and language will be expressed based on education, prior employment and life experiences. Language barriers mean that access to interpreters is of vital importance, and in the context of mental health for some communities, considerable stigma and shame exists in the context of a mental health diagnosis, and can prevent help-seeking behaviours from taking place in the first instance. There may be lower levels of health literacy in relation to mental health (including mental health diagnosis; recovery and treatment options; and services available). Mental health vocabulary and literacy is often coupled with stigma towards psychiatric illness and is formed from societal and cultural values and norms within a person's country of origin. For example, in numerous parts of Asia and Africa, mental ill-health is seen as a 'curse' imposed on a person by religious or other entities for wrong deeds, only to be cleansed by violent acts, exorcism or exclusion from society. In other cultures the vocabulary of emotion and mental health is limited to very few words, for example in Liberian English, 'bad', 'sad' and 'mad' are

commonly expressed as the only words available as descriptions for mental health or emotional experiences. These factors impact on persons seeking asylum and their ability to articulate their needs, and presents barriers for themselves in accessing mental health services.

- Bridging Visas and Access to Medicare - Alongside the issues outlined above, when bridging visas are granted short term, and there are gaps in the renewal of bridging visas, those with Medicare rights attached will experience delays and disruptions in accessing health and mental health services. Further, for those without the grant of a bridging visa with Medicare rights, access to even primary health and mental health services will be limited to specialist asylum seeker specific services, which face overwhelming demand, and emergency services which must still allow access for persons seeking asylum including those without Medicare.
- In expanding the Act, and/ or the emerging policies, and the provision of services available, a recognition of "diverse backgrounds" needs to take into account, and adequately support the appropriate levels of staffing to accommodate these additional needs (i.e. Additional time allocation, appropriate cross-cultural training and supervision), and ensure that the workforce has representation of diverse backgrounds therein

Question 3, 4, 5 & 6: Do you think the proposals meet the Royal Commission's recommendations about non-legal advocacy? How do you think the proposals about non-legal advocacy could be improved? Do you think the proposals meet the Royal Commission's recommendations about supported decision making? How do you think the proposals about supported decision making could be improved?

Overall, ASRC submits that the outlined proposals broadly meet the Royal Commission's recommendations however suggests the following improvements:

- As aforementioned in 'Cultural and language considerations' above, the Act, and/ or subsequent emerging polices under the Act, should ensure that the unique experiences of people seeking asylum, vulnerable migrants and refugees is captured and understood when offering non-legal advocacy and supported decision making processes:
    - Health and Mental health literacy
    - Cultural/ spiritual understandings of mental health
    - Access to interpreters and additional language requirements and needs
    - Information around access to Legal Aid and right to make a complaint

- The ASRC welcomes the Act's specific mention of reduction in the use of seclusion and restraint (including chemical restraints), recognising this is of particular relevance to people seeking asylum and refugees, for whom these forms of involuntary treatment may trigger particularly traumatic responses. Compulsory treatment orders and legal rights for people seeking asylum: people seeking asylum may have experienced persecution in their country of origin, including experiences of being detained or tortured, and may have experienced lengthy stays in mandatory immigration detention, both overseas and in Australia, in which they may have been subject to coercion, brutality (including use of restraints), overcrowding, isolation, and witnessed the deterioration of mental health psychological disturbance and self-harming behaviours in others and/or themselves. The ASRC recommends that for people seeking asylum and refugees, given their myriad of vulnerabilities and past experiences of persecution, that they are provided with additional supports to ensure their rights are protected. These include access to highly qualified interpreters and independent,specialised and free legal representation when attending the Mental Health Tribunal or the Guardianship Division of the Victorian Civil and Administrative Tribunal (VCAT)

- Use of restraints (including chemical restraints) may be additionally re-traumatising and dehumanising for an individual who was previously subject to this treatment in a previous setting. Additional procedures should be put into place to ensure that such measures are only used as an absolute last resort, to the minimum degree necessary and for the shortest possible time, based on knowledge of this trauma history.

- Treatment of people in Victorian hospitals who are subject to immigration detention

  Due to the very poor physical and mental health of immigration detainees, many are transferred to Victorian hospitals for treatment at times. In our experience, there is a strong need for clear and consistent procedures across all Victorian hospitals, as to how they provide treatment to immigration detainees, especially in relation to:

  - Issues concerning the presence and placement of security guards in their hospital rooms, use of restraints, and their right to confidential medical consultations.
  - Access to comprehensive mental health assessments when they are brought to hospital.
  - Access to their discharge summaries and treatment recommendations when they are transferred back to immigration detention centres.
  - Ethical expertise for medical professionals in hospitals treating immigration detainees at high risk of continuing self harm and other mental health illnesses upon their transfer back to detention centres.

Question 7 & 8: Do you think the proposals meet the Royal Commission's recommendations about information collection, use and sharing? How do you think the proposals about information collection, use and sharing could be improved?

Overall, ASRC submits that the outlined proposals broadly meet the Royal Commission's recommendations however suggests the following improvements:

- A specific provision should be included that outlines where a person seeking asylum, vulnerable migrant or refugee has information collected under the Act, or under subsequent service protocols, that the person is required to provide and additional informed consent outlining how their information may be exchanged with other governmental departments. This consent process should clearly outline whether specific information can be shared with other governmental departments, which ones are included, and in what instances this highly sensitive personal information can be provided. Where information may be shared with the Department of Home Affairs, the person should be given the opportunity to consult with their immigration lawyer as part of the informed consent process, and be provided the opportunity to be clearly informed by them as to any impact information collection and sharing may have on their Refugee Status Determination processes including fitness to travel, health and character assessments.

Question 13 & 14: Do you think the proposals meet the Royal Commission's recommendations about governance and oversight? How do you think the proposals about governance and oversight could be improved?

Overall, ASRC submits that the outlined proposals broadly meet the Royal Commission's recommendations however suggests the following improvements:

- Specialised services representing people seeking asylum, vulnerable migrants and refugees (for example those represented through the Network of Asylum Seeking Agencies, Victoria (NaSAVIC), though generally not specialised in mental health, work daily with the specific

vulnerabilities of these communities and the compounded mental health issues which present. Given this, the ASRC suggests these specialised services be included in the Regional Multi-agency panels and the Collaborative Centre for Mental Health and Wellbeing. These bodies should also, where possible, include those with lived experience to expand the ongoing inclusion and representation of those persons seeking asylum, vulnerable migrants and refugees in specialised service discussions.

ASRC thanks the Department of Health for the opportunity to make this submission. If any further clarifications are sought please kindly contact Sherrine Clark on sherrine.c@asrc.org.au.