



OBSERVATIONS

REFUGEE HEALTHCARE

When doctors start civil disobedience it's time to take notice

Australia must repeal provisions of an act that can imprison doctors for doing the right thing

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Paediatricians at the Lady Cilento Hospital in Brisbane are now entering the sixth day of their protest against the Australian government's intention to send the young baby of asylum seeker parents back to a refugee detention centre on the Pacific island of Nauru.¹ They believe that the centre cannot provide a safe environment for her, an assertion that is backed by ample evidence.²⁻³ These doctors risk up to two years' imprisonment under the 2015 Border Force Act for their actions,⁴ and yet in seeking to ensure the safety of their patient they are doing nothing more than following their own ethical code.

This conflict between today's law of the land and the right of doctors to do what they think is best for their patients (and in this case let us remember that the patient is a 1 year old baby who has not been convicted of any crime) goes to the heart of the Australian government's policy of detaining asylum seekers who arrive by boat for indefinite periods in offshore detention centres in impoverished, third world, island nations.

Doctors have an ethical code that has been in development since the time of the Hippocratic physicians on the Greek island of Kos nearly 2500 years ago. It was this ethical code that marked out the Hippocratics from their Aesculapian predecessors, and the code's persistence and development from that time to the present day are proof enough of its importance to us as individuals and to wider society. At some time in our lives we will all be patients, and we all need to be able to have absolute trust in our doctors to do the right thing for us, whatever actions others may wish them to take.

Set against this 2500 year old ethical code we now have a recently passed law in Australia, the Border Force Act, that gags healthcare professionals and others involved in caring for asylum seekers and that compels them to follow the instructions of the government, even if they believe that this might be to the detriment of their patients. And, in a double whammy, not only can they be rendered powerless to protect the welfare of their patients as they see it, but they can be imprisoned even for disclosing that fact.⁵

Keilloh case

The 2012 Derek Keilloh case in the United Kingdom illustrates just what an impossible ethical and legal position doctors now face in Australia when they care for asylum seekers, as they are

caught between the profession's ethical code, which places patients' welfare at the heart of their endeavours, and the law of the country, which places unacceptable obstacles in the way of doing so.

Keilloh was a British army doctor in Iraq in 2003 who was involved in the care of Baha Mousa, an Iraqi civilian who was beaten to death by British soldiers while in their custody. Keilloh faced no judicial charges, but in 2012, after many years of blemish free subsequent practice as a GP in the UK, he was struck off "with regret" by the Medical Practitioners Tribunal Service in a controversial decision. Among other reasons for this decision, the tribunal cited that, knowing of Mousa's injuries and sudden death, Keilloh did not do enough to protect his patients (the other detainees) from further mistreatment—breaking a "fundamental tenet" of the medical profession.^{6,7}

In the eyes of the British military authorities Keilloh had evidently done nothing wrong, and the official inquiry into the incident did not identify him as being someone who should accept responsibility for the appalling events.^{8,9} But in the eyes of the tribunal designed to police and punish breaches of the doctors' ethical code his actions were "fundamentally incompatible with continued registration."

Whatever the rights and wrongs of the particular decision in the Keilloh case, it illustrates that compliance with the law cannot inoculate medical practitioners completely against the need to comply with their ethical code, and nor should it. Just two months ago the Australian Medical Association updated its position statement on the healthcare of asylum seekers and refugees to say this:

The primary ethical duty for medical practitioners working with asylum seekers and refugees is to put their patients' health needs first. In order to do this, doctors require reasonable professional autonomy and clinical independence without undue external influence.¹⁰

Doing the right thing

The actions of the Brisbane doctors, then, are not simply a piece of political grandstanding but the courageous stand of

professionals seeking to do the right thing by their patient and to live up to the standards of an ethical code by which they are morally and quasi-judicially bound and which places patient welfare at its pinnacle. They are behaving according to the very highest standards of their profession, and the Australian government must realise that when it pushes such a traditionally conservative group as doctors to take such a solid stand as this it is time to sit back and ask whether the path it is taking is really worthy of one of the world's leading democracies.

As an Australian registered doctor and as a committee member of Doctors4Refugees, I add my voice once again to the clamour for the Australian government to repeal the provisions of the Border Force Act that gag and constrain doctors and other professionals involved in the care of asylum seekers and refugees and to adopt a humane stance towards people seeking asylum. The Australian government must surely now heed the persistent and unanimous criticism that its refugee policies are inhumane and that it is becoming impossible for Australian doctors to do their jobs.¹¹⁻¹³ It has no grounds to do otherwise.

Competing interests: These opinions are my own and not necessarily those of my employer, Western Australia Country Health Service. I am a committee member of Doctors4Refugees, a not for profit association of healthcare professionals that provides medical advocacy for individuals and campaigns for better healthcare for asylum seekers and refugees in Australia. I am a member of the BMJ board.

Provenance and peer review: Not commissioned; not peer reviewed.

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