Guy Coffey

Clinical Psychologist

[redacted]

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Ms Fiona Patten, MLC
Chair
Legal and Social Issues Committee Parliament House
Spring Street
East Melbourne, VIC 3002

Dear Ms Patten

Inquiry into Victoria's Criminal Justice System

Thank you for the opportunity to contribute to this inquiry into Victoria's Criminal Justice System (the 'Inquiry'). This submission addresses the first two questions in the Inquiry's terms of reference. This is not a scholarly or research-based contribution. Rather, I draw on my experience providing psychological assessments of offenders for the Victorian courts. I have particular knowledge of people of refugee background and the CALD community involved in the criminal justice system having worked with this group both as a clinical psychologist and a lawyer for many years (a brief resume is attached to this submission).

Lack of treatment of mental illness and identification of cognitive impairment among remand prisoners

I have assessed many young people while on extended remand either in youth detention centres or adult remand prisons who receive no or inadequate treatment for their mental illness. Those who suffer posttraumatic conditions are virtually never treated with evidence-based interventions. Similarly, often serious addictions are not treated except for some brief group educational sessions.

In my experience there are young people with cognitive impairment on remand who have apparently never had learning difficulties or the sequelae of head injuries properly identified and who receive no formal neuropsychological assessment while on remand.

While it may be the case that more services will become available once the offender is sentenced, remand can last for months or years and the offender may be released

soon after sentencing due to time served. Providing inadequate treatment during remand is a wasted opportunity to improve the person's well-being and reduce the likelihood of recidivism.

A comprehensive treatment plan should be designed for all remanded youth detainees and adult prisoners in need of one and implemented as soon as the person is receptive to receiving assistance. In my experience many prisoners want treatment. Those pleading guilty or considering that course, who, in other circumstances may have been reluctant to receive assistance, may be motivated to receive treatment as a means to demonstrate that they have commenced their rehabilitation.

Such assistance while on remand may significantly benefit the person's psychological well-being and is likely to make recidivism much less likely. Mental illness and substance abuse are often strongly related to the probability of reoffending.

Accused persons on bail are often eligible for the Court Integrated Services Program ('CISP'). If an aim of pre-sentencing management of offenders is rehabilitation and reduced recidivism it makes no sense that intensive case management and treatment is available for people on bail but not remand prisoners. I am not aware of any evidence that remand prisoners are less likely to be in need of mental health and drug and alcohol services than people on bail. A CISP or a program that delivers at least an equivalent level of service should be made available to remand prisoners and participation in the program should have the same potential to be considered in sentencing as does engagement with CISP by a bailed accused.

The availability of offence specific treatment

Some accused people and convicted prisoners require offence specific treatment. To ensure that as much progress as possible is made prior to the person living in the community unsupervised, this treatment should commence as early as possible. Therefore such treatment should be available to remand prisoners as soon as they decide to plead guilty. Offence specific treatment should also be part of CISP if there is a guilty plea.

It is my experience that offence specific services delivered by specialists in the provision of such interventions (by, for example, forensic psychologists and psychiatrists) are difficult to access in the community and in prison. The accessibility of such services is something I believe the Inquiry should investigate. Categories of people I have assessed recently who lacked access to offence specific services include:

- Prisoners whose release is imminent whose criminogenic needs have not been addressed while in custody but for whom there is no plan of offence specific treatment in the community. While prisoners whose offending involved

serious violence and sex offences are likely to have had access to specific programs, the majority of offenders, those who have committed general offences, will not have[1].

- Recently released prisoners who are concerned about the possibility of further offending;
- People who have offended in the past and are concerned about the possibility of further offending;
- Accused persons on bail who are pleading guilty;
- Remanded or convicted non-citizens who face visa cancellation or visa refusal (or whose visas have been cancelled or refused) who need to demonstrate progress in addressing the risk of re-offending and who are motivated to engage in offence specific treatment.

Exposure of remanded young people to violence

Youth detention centres can be violent places. Many young people entering youth detention have histories of child abuse, family violence and violence among their peers and some have committed violent crimes. Young people of refugee background have often witnessed civil violence, have seen people die around them including family, friends and members of their community and may have experienced many other traumas, losses and adversities including forced displacement, separation from parents, a series of life threatening situations during dangerous flight and transit, and extended severe material deprivation.

Axiomatically, a young person's rehabilitation will be compromised if they are placed in an unsafe environment. For children and young people who have 'post-traumatic conditions' of some kind - whether that manifests as a mental disorder, maladaptive personality traits, substance abuse or disengagement from education - an unsafe environment in which violence is a real possibility is likely to exacerbate pre-existing vulnerabilities and promote the possibility of future offending.

I have assessed many young people suffering from post-traumatic conditions who have been assaulted while on remand or have witnessed frightening episodes of serious violence among detainees. I have also assessed young people who came to Australia as profoundly traumatised children, who began offending after dropping out of school, and who on remand have been repeatedly assaulted.

Whatever immediate protection of the community may be achieved by keeping young people on remand in these circumstances, the longer term consequence is

[1] The Adult Parole Board of Victoria, Parole Manual (2020) notes that 'General offenders (prisoners who are serving a sentence for offences that are not classified as serious violent offences or sexual offences) may be eligible for substance abuse programs but are ordinarily not eligible for offence-focused programs, such as violence intervention programs'.

likely to be that rehabilitation is undermined and the probability of recidivism is increased.

Confining remand prisoners in seclusion cells

I have assessed young adults of refugee background who have been both the victims and perpetrators of assaults while on remand and who have been put in seclusion. Seclusion has lasted for weeks or months at a time during which the prisoner's mental health has deteriorated. For instance, I recently assessed a young man who arrived in Australia as a child refugee with an extensive trauma history. For all but about a month of his nine months of remand he was locked down for 22 hours a day in a management unit. He suffers from a psychosis and a posttraumatic condition. Another example was a young refugee who had substance addictions and posttraumatic symptoms related to civil war and refugee camp experiences who had been violent in custody and who around the time of his 18th birthday was held in 22 hour lockdown for four months during which his mental state deteriorated.

I do not know how common this practice is and I would recommend that the Inquiry considers this issue in detail. It is my experience that the mental health of psychologically vulnerable remand prisoners deteriorates when they are isolated for any length of time. In addition to seclusion as a form of behavioural management, I have assessed young people, including in youth detention, who have been locked down for all but a few hours a day for weeks at a time due to staff shortages or unrest in the centres.

Extended periods of social isolation are incompatible with improving the mental health of young offenders and inimical to their rehabilitation. I have no expertise in how order in a custodial centre is achieved and little knowledge of the repertoire of measures available. However, I recommend to the Inquiry that it considers how our corrections system can create ways of maintaining discipline and order that are consistent with the rehabilitation of young people.

Continuity of care

Many prisoners are released into the community with ongoing mental health needs and substance addictions but without detailed plans as to how these will be addressed. Prisoners who are to commence a Community Corrections Order ('CCO') have services they are required to engage with but I understand that detailed treatment plans are often developed after the prisoner's release. Many prisoners on a CCO that I assess have had intermittent and poor engagement with treatment services. In my view post-release treatment may be significantly improved through ensuring the prisoner engages with the community services well prior to their release. Engagement with services - whether the post release conditions involve parole, a CCO or no court directed supervision - should occur at least a month prior

to release and preferably the prisoners should have a number of 'treatment sessions' before entering the community. Such an arrangement should ensure:

- the person is oriented to the nature of the service(s) and what assistance can be provided;
- the person can express their views on what help is needed and what should be prioritised;
- a comprehensive treatment plan is finalised;
- barriers to engagement with assistance can be identified at the outset and addressed;
- scenarios in which recidivism is more likely can begin to be discussed (e.g., unstable accommodation, relapse into drug use; association with drug using or criminally inclined peers; family conflict etc.);
- rapport with clinicians and community workers can begin to be built.

Telehealth communication between prisons and community services can assist pre-release engagement.

The relationship between the criminal justice system and migration law

This section addresses the relationship between Victorian criminal law and Commonwealth migration law. I argue that a consequence of this interaction is that on occasions the intent of the Victorian criminal courts' sentences is undermined and the rehabilitative dimension to sentencing is frustrated. These consequences potentially have an adverse effect on recidivism.

Children from some CALD backgrounds, including some refugee communities, are over-represented in the Youth Justice centre population[2]. Ethnicity is not causally related to this over-representation, rather it is a proxy for forms of social disadvantage that are associated with increased rates of offending[3]. For those young people who are non-citizens, their passage through the criminal justice system may diverge markedly from that of children who are citizens even though the same sentencing principles apply to them. The overarching principle in sentencing children and young people is rehabilitation; the approach is enshrined in legislation[4] and has been unequivocally endorsed by the judiciary:

[T]he primacy of rehabilitation in the sentencing of young offenders is well established, both at common law and by the principles of the *CYFA*…
…

[2] One survey found that 43% of the Victorian Youth Justice remand population comprised children of CALD background: Sentencing Advisory Council (2020) *Children Held on Remand in Victoria: A report on Sentencing Outcomes*. See also Armytage, P and Ogloff, P (2017) Youth Justice Review and Strategy. pp 156 and 176: 37% of young people involved with Youth Justice are of CALD background; they represent 32% of the community.
[3] Armytage, P and Ogloff, P (2017) *Youth Justice Review and Strategy*, p176.
[4] Section 362(1) of the *Children, Youth and Families Act (2005).*

[t]he statutory framework for juvenile justice compels the court sentencing a young offender (almost always the Children's Court) to adopt the offender-centred (or 'welfare') approach, rather than the 'justice' or 'punishment' approach... just as importantly, this strong legislative policy is well supported by the extensive research into adolescent development conducted over the past 30 years[5]

The sentencing of child offenders is consequently governed by considerations including preservation of family relationships, furtherance of education and minimisation of the stigma associated with a criminal sentence[6].

The fate of an asylum seeker or refugee child or young adult or indeed any non-citizen who is charged with a criminal offence is determined, however, by the interaction of Victorian criminal law and the *Migration Act* 1958 (the 'Migration Act'). The provisions of the Migration Act that come into play are those providing for the cancellation of bridging visas[7] on the basis of criminal charges[8] and cancellation of substantive visas (including temporary and permanent protection visas) upon conviction for a criminal offence[9]. The interaction of state criminal and Commonwealth migration law leads to a range of trajectories for offenders who are non-citizens. There are many permutations in these trajectories; in the appendix I provide some illustrative examples (all are drawn from cases I have worked on directly or of which I am aware)[10]. For present purposes the essential point in the predicament of these people is that not having a visa, and therefore not being able to lawfully reside in the community, results in their inability to access the non-custodial component of their sentence – parole and CCOs.

What is pernicious about this cross-jurisdiction interaction is that following their custodial sentence both young people and adults without visas are detained in immigration detention centres which have no rehabilitative intent, often for periods that far exceed their custodial sentence. Recently, for example, I assessed a woman in her sixties who was sentenced to a few months' imprisonment who has spent nearly eight years in immigration detention; a young man who was sentenced to about two years of youth detention has been detained in immigration detention for four years.

[5] *Bradley Webster (a pseudonym) v The Queen* [2016] VSCA 66 (Maxwell P and Redlich JA) at [9] and [28].
[6] Section 362(1) of the *Children, Youth and Families Act (2005)*
[7] Bridging visas are held by people who are waiting for the outcome of a visa application for a substantive visa (that is, a visa allowing the person to remain for a fixed period or permanently in Australia) and allow them to live lawfully in the community while this occurs.
[8] *Migration Act* 1958 s 116.
[9] *Migration Act* 1958 s 501.
[10] Identifying details have been removed; some facts have been changed in order to anonymise the scenario.

A proportion of these non-citizens will re-enter the community. In order for that to happen they must be granted a visa and to achieve that they will often need to have demonstrated their rehabilitation to the Administrative Appeals Tribunal or the Minister for Immigration. They are being asked to do this while hobbled by their circumstances: they are deprived of access to rehabilitative services at the end of their custodial sentence in youth detention or prison by way of a CCO or parole; and they are held in immigration detention which has no rehabilitative services, limited mental health services and over time is damaging to mental well-being. In relation to young people whose disposition is governed by the *Children, Youth and Families Act* (2005), the modern humane approach to young offenders enshrined in this legislation is undermined by Commonwealth migration law and policy.

There are many injustices in how the current visa refusal and cancellation regime operates; most of these are beyond the scope of the Inquiry. What might be done, however, is to find ways in which non-citizen offenders without visas can have access to CCOs and parole. The Victorian Parole Board states that when considering whether to grant parole, its current practice in relation to a prisoner 'subject to deportation' is to have regard to (inter alia):

> whether the prisoner is seeking to overturn the cancellation of their visa or to challenge their removal from Australia. The Board will ordinarily avoid paroling such a prisoner until they have exhausted any such challenges. This is because if the Board were to parole such a prisoner, they would go into Federal immigration detention pending the resolution of their matter. While in Federal immigration detention an unlawful non-citizen is in practice unable to comply with the ordinary requirements of parole and may be moved to a facility outside Victoria and hence outside the Board's jurisdiction[11].

A consequence of this approach, in my experience, is that prisoners otherwise eligible for parole who have been notified that their visa may be cancelled or have had their visa cancelled and are seeking to have that decision revoked or reviewed, are deemed not eligible for parole and have to serve their full term of imprisonment (after which they are placed in immigration detention if their visa has been cancelled). The upshot is that the intent of the Court's sentence – that parole should be granted contingent on the prisoner's rehabilitative efforts and good behaviour in prison – is frustrated. Further, as already outlined, the prisoner is deprived of the opportunity to pursue treatment and rehabilitation through parole and is thereby unable to strengthen their claim that they no longer pose a risk to the community – this being a central issue in relation to whether their visa is restored. We know that some prisoners who have had their visas cancelled have lived in Australia for most of their life, some indeed from early childhood to middle or old age; others have come to Australia as refugees, have offended in the context of mental health problems associated with their refugee experiences, and cannot be returned to their country without Australia breaching its obligations under the Refugees Convention.

[11] The Adult Parole Board of Victoria, Parole Manual (2020).

Arguably these people have the most to lose - their residency in Australia and in the case of refugees, their future safety - if they do not ensure they are unlikely to re-offend yet the current system obstructs their ability to rehabilitate themselves.

In my view this interaction between State and Commonwealth law is unjust. The rehabilitative intent of criminal sentences should not be undermined, and non-citizens should not be disadvantaged in their ability to demonstrate rehabilitation. Short of legislative changes to Commonwealth law, a way of addressing the current situation would be for non-citizens who are eligible for parole or who have a CCO to fulfil be permitted to lawfully reside in the community and complete this element of their sentence. State authorities should negotiate with the Commonwealth to ensure that a decision is not made on whether a visa should be cancelled until after the completion of parole or the CCO; and in the situation where a visa has already been cancelled (due for example to mandatory visa cancellation), negotiations with the Commonwealth should be directed to allowing the prisoner to lawfully enter the community by grant of a bridging visa or 'community detention' through exercise of provisions under the Migration Act[12].

Young people of refugee background and the criminal justice system

Young people are remanded when risk to public safety cannot be adequately mitigated by community-based measures. However, extended remand and detention often does nothing to further rehabilitation and sometimes magnifies pre-existing mental health problems and criminogenic attitudes. The evidence is that the vast majority of young people who pass through youth detention reoffend and that their contact with the justice system does nothing to change this trajectory[13]. Reducing the remand population, making the detention environment more therapeutically oriented and less violent and providing more specific evidence-based interventions for offence related risk factors are what needs to occur in general terms but the details and implementation are self-evidently challenging.

The population of young offenders I am most familiar with came to Australia as refugees or are Australian born with refugee parents. The problems that led to their offending began well before they had any contact with the criminal justice system.

Across the lives of the small proportion of young people of refugee background who offend there are many points of common experience. Among those who arrived in Australia as child refugees many experienced insecure environments early in their childhood produced by social upheaval, civil war, material deprivation and displacement. Their primary attachments and the order and safety of home life may have been disrupted because the family and broader community of relationships were placed under great strain.

[12] Respectively sections 195A and 197AB of the *Migration Act* 1958.
[13] Armytage, P and Ogloff, P (2017) *Youth Justice Review and Strategy* p 161.

Some children have spent extended periods in refugee camps or as refugees in countries of first asylum living lives of material hardship and with limited access to education or health care. Despite such backgrounds most refugee children thrive in Australia but some do not and a portion of those become involved in crime. Most youth and young adult offenders of refugee background have a lot in common. They may have untreated developmental related problems with emotional regulation and attention which were either not identified during their education in Australia or if they were, were never treated. Many, not all, were subject to racism at school which can be experienced as a continuation of the persecutory discrimination they have been subject to previously. Home life may be unstable and lacking in parental attention and care for a variety of reasons: parents are dealing with the multiple stresses of settlement; the family may be large with a single parent; parents may have mental health including posttraumatic conditions adding to the challenge of caring for their children and responding to all the demands of life in a new country.

Success at school is a crucial staging post for the life that follows. Many refugee children are placed in the age appropriate year at school when they have had very little formal education due to lack of access to school in their country of origin or extended periods of displacement. Beginning school in year five or seven with little prior schooling can be confusing, alienating and humiliating. This is what I hear often from young refugee offenders: they felt stupid and rejected at school and this remains vivid in their memory. The rejection can be experienced as global, a repetition of the exclusion their community experienced in the past by the society that has received them. School attendance often finishes in mid secondary school and from there the pathway to offending is short. They do not engage with further education or vocational training and find company and friendship with other young people who are disaffected and angry and some of whom have begun to commit offences. Parents, embroiled in their own struggles to meet the family's basic needs do not have the resources and wherewithal to guide the child and draw them away form anti-social influences.

Australian born young people whose parents were refugees do not have experiences of pre-arrival trauma and displacement. Developmental difficulties for them may arise owing to their parents not having received assistance with posttraumatic conditions which have affected their capacity to create a stable and nurturing home life while coping with all the stresses of settlement - a set of challenges that test even the most well resourced and psychologically resilient person. On the background of a strained home life the child has to negotiate their family's cultural values and those of the host community which can lead to confusion and a negative and defiant identity: they do not feel at home in either culture – suffering racism from the host community and being unable to live up to expectations of their culture of origin. The young adults I have assessed have had a combination of untreated developmental problems and a lack role models and guidance as to how to succeed being themselves within a host culture markedly different from that of their parents.

Addressing offending and recidivism by young offenders of refugee background requires much more than some adjustments to the correctional system. Australia has strong settlement services and some school programs for refugee children but the young people I assess are not being reached by these services. How refugee children with little formal education are integrated into schools and assisted needs to be once again thoroughly thought through. Children who clearly had significant developmental or posttraumatic conditions have not been identified. Children who are failing academically seem to go from year to year falling further and further behind until, as one young adult refugee told me recently, he had no idea what any of his classes were about. Refugee families who are struggling require much more timely assistance. The communities to which refugees belong need assistance in their capacity to provide role models and mentoring to young people who are struggling and on the brink of becoming dislocated from their families and their education and who are fast losing optimism about their future.

Use of telehealth

Psychological assessment and treatments can be effectively delivered via videoconferencing in many situations. Through videoconference technology there is now the opportunity for a much larger integration of community based services into the mental health care of prisoners. Many specialist mental health services scarce in prison-based services could be made available through this means. Videoconferencing could provide the platform for community services to engage soon to be released prisoners for the purposes I have described.

Concluding remarks

Many offenders enter the criminal justice system having never had their developmental disorders, learning difficulties, substance addictions and mental illnesses properly identified or treated. Contact with the criminal justice system should be seen as an opportunity to ensure the medical, psychological and psychosocial needs of the prisoner are comprehensively identified and a detailed treatment plan is devised. The treatment plan should identify the different stages of treatment required - what is to be delivered in custody and what post-release. Community services should be involved at an early stage in treatment planning and should engage the prisoner well prior to their release. Videoconferencing technology could assist this process; to achieve this correctional facilities will need to greatly expand their telecommunications capacity.

I have suggested evidence based psychological treatments for posttraumatic conditions and offence specific treatments for prisoners (especially those without histories of sex offending or serious violence) are two areas for which there is a serious shortfall. Low levels of mental health treatment for people undergoing

extended remand appears to be a wasted opportunity when motivation for treatment is potentially high, particularly if such involvement may be considered in sentencing. I have suggested that a CISP like program should be available for remand prisoners.

I have made a number of proposals in relation to what I believe to be the unjust consequences for non-citizens of the interaction between Commonwealth migration law and Victorian criminal law. These people, many of whom are long term permanent residents or refugees, should be afforded the same opportunity to demonstrate their rehabilitation as Australian citizens.

I have described the lives of young refugees who have offended. To understand what has led to their offending requires an appreciation of their psychological well - being and their experiences within their family, their community and the education system.

Yours faithfully,

Guy Coffey

Appendix

Case examples of the relationship between criminal and migration law

Scenario 1 - visa cancellation of permanent refugee, a humanitarian entrant as a child. Parole disallowed.

A man in his twenties received a three year custodial sentence. He arrived in Australia as an orphaned refugee adolescent boy with a very traumatic history and serious physical injuries related to civil war experiences. In Australia he developed alcohol and cannabis addictions.
During his custody his visa was cancelled and therefore despite good participation in the available courses and no behavioural transgressions he was ineligible for parole because he could not lawfully enter the community without a visa. He served his full term of imprisonment without being able to access the rehabilitative programs of parole and re-entered the community without a supervised plan of treatment.

Scenario 2 – an asylum seeker's bridging visa cancellation upon charges being laid, immigration detention, charges dropped and release into the community
A mentally unwell young adult asylum seeker is charged with an offence. His bridging visa is cancelled and he is therefore by operation of law placed in immigration detention. After some months the charges are withdrawn on the application of the police informant owing to deficiencies in the evidence. The asylum seeker remains in immigration detention for more months until the Minister for Immigration grants a bridging visa[14] and after nearly a year of detention he again lives in the community. While held in immigration detention his mental health

[14] The Minister for Immigration has a discretionary power under s195A of the Migration Act to grant a visa. There is no timeframe as to when the visa grant may occur. If the asylum seeker arrived in Australia without a visa he or she will be unable to apply for a bridging visa while in immigration detention.

deteriorates. He is exposed to violence and witnesses suicide attempts. While detained he is not able to obtain treatment from the public mental health facility he normally attends. He suffers from a complex posttraumatic condition and depression and there are no specialised treatment services available for these conditions while he is in immigration detention. When released his mental health has deteriorated to the point where his ability to engage with his lawyer and participate in the protection visa application process are significantly compromised.

Scenario 3 – a child asylum seeker is charged, bridging visa cancelled, remanded, Children's Court custodial sentence, upon completion of sentence indefinite immigration detention, refusal of protection visa on character grounds

A child asylum seeker arrives in Australia with his family. He had lived for years in the midst of a civil war and was profoundly traumatised. He suffers from complex PTSD that includes severe dissociative symptoms, unstable mood, intense labile emotion in response to stressors and periodic self-harm and suicidality. When 16 years old he is charged with a serious offence. His bridging visa is cancelled and he is remanded in a youth justice centre. An application for bail is not a viable option because if successful it would lead to him being detained in immigration detention – without a bridging visa his detention is mandatory. While remanded he receives psychological counselling, pharmacotherapy and psychiatric review but no specialist services for his complex needs are available. During remand he is physically and sexually assaulted. The Children's Court sentences him to a term of detention in a youth justice centre. The Court finds that the offending occurred in the context of severe mental health problems and that a rehabilitative disposition including extended specialised psychological treatment is appropriate. He serves a term in a youth justice centre during which he receives further counselling, support and pharmacotherapy which he finds helpful but which are not specialised interventions tailored to his specific needs. Upon the expiration of his sentence he is placed in immigration detention. He is found to be a refugee but a protection visa is refused on character grounds. His emotional lability, severe dissociative symptoms and periodic self-harm are difficult for the immigration centres to manage. He is also vulnerable to mistreatment by older detainees. He is moved between detention centres, including for an extended period in another state and away from his family. On a number of occasions he is held in seclusion rooms as an attempt to contain his agitated and disruptive behaviour. He is held in protection units to remove him from other detainees who pose a risk to him. He receives psychiatric reviews and some intermittent counselling while in immigration detention but no treatment

specific to his needs. He alleges that he has been physically and sexually assaulted several times. His protection visa application remains on foot.

He is now a young adult held in indefinite immigration detention. Of the nearly eight years since arriving in Australia as a traumatised child asylum seeker he has spent about six and a half years in immigration detention or youth justice detention (the majority in immigration detention) and one year in the community.

Scenario 4 – child refugee resettled in Australia with a permanent visa. Youth offending resulting in cancellation of visa, youth detention and then adult prison

A late primary school aged child refugee resettles in Australia with his family. He and his family were displaced due to civil war and then spent a number of years in a refugee camp. He had received no formal education prior to arriving in Australia. He acquires English slowly and seems distractible in class. In mid secondary school he becomes disruptive in class; his literacy and numeracy are two to three years beneath his year level. He receives psychological assessment regarding his learning ability but although post-traumatic symptoms and family conflict are noted to be contributing to his learning difficulties he receives no formal interventions. He begins using substances at 14 years old. From the age of 15 years he begins committing multiple gang related crimes involving theft, armed robbery and home invasion.
He is sentenced to his first term of youth detention when 16 years old. When remanded a psychological assessment notes that he suffers problems with unstable mood, intense labile affect, identity confusion, attention deficits, and stimulant related substance abuse. He receives counselling while remanded and some mood stabilising medication, the first treatment he has received. He is refused bail. While in youth detention he is assaulted, on one occasion causing him to lose consciousness, and he assaults others. Disruptive behaviour while in detention leads to him being confined to his cell for 23 hours a day for three weeks. Further charges are laid and, having turned 18, he is transferred to an adult prison. In adult prison he is confined to his room for 23 hours a day for a number of weeks, although he says he prefers not to leave his cell at all because he doesn't feel safe. He describes a deterioration in his mental state while secluded including more intense memories of traumatic events from his childhood. While serving his sentence in adult prison he is not receiving any mental health care.

Owing to the gravity of the offending he will face mandatory visa cancellation and indefinite immigration detention upon the completion of his sentence. The instability in his country of origin is likely to make repatriation impossible and therefore a very extended period in immigration detention is likely.

Scenario 5 A young adult non-citizen – a child migrant, he arrived in Australia as an infant. Early childhood neglect and abuse. Parents separated when an infant and left in care of severely mentally unwell mother. Placed in foster care where abused. Offending from mid adolescence. Mentally unwell from late adolescence. Visa cancellation in early adulthood.

The young adult has never applied for citizenship. He is diagnosed with schizophrenia and borderline personality disorder when 19 years old but has only received intermittent treatment for his condition at the time he is remanded when 21 years old. He receives a mandatory visa cancellation after he is given a 14 month custodial sentence – he had previously received many non-custodial sentences. He is not granted parole because he cannot re-enter the community without a visa. Upon completion of his sentence he faces many months or years of immigration detention while legal appeals are finalised. He requires treatment for his complex set of mental disorders. In prison he has received medication for his psychotic illness but no psychological treatment. In immigration detention his treatment is likely to be less comprehensive still. Forensic psychological reports tendered during his sentencing indicated a need for thorough ongoing treatment involving pharmacotherapy for his psychosis and mood instability; psychotherapy for complex developmental trauma and to assist the management of recurrent psychotic symptoms; treatment for substance addiction; case management; and vocational training.

Summary of resume

I have worked for more than 30 years as a clinical psychologist in public mental health facilities and specialist psychological trauma services throughout which a primary focus has been the assessment and psychological treatment of asylum seekers and refugees. I worked part time for 21 years within Veterans' Psychiatry and the Psychological Trauma Recovery Service at the Austin and Repatriation Medical Centre providing assistance to veterans, police and emergency service personnel. I am currently the Practice Advisor at Foundation House, a psychological treatment and advocacy service for refugees where I have worked part time for twenty years.

I act as a consultant to organisations on psychological and legal issues in relation to refugees including the UNHCR and the Department of Home Affairs. Since 2017, in conjunction with the UNHCR, I have delivered a training program to refugee status decision makers in the Department of Home Affairs and to members of the Administrative Appeals Tribunal with respect to psychologically vulnerable protection visa applicants. This is an ongoing training program which has been contracted by the Department of Home Affairs. The training was also provided to refugee status decision makers in New Zealand. In 2017 and 2018 I co-authored a UNHCR document 'Guidance Note on the Psychologically Vulnerable Applicant in the Protection Visa Assessment Process' which has provided the basis for the training. In 2017, upon the request of the Government of Nauru, I developed similar guidelines for refugee status decision makers in Nauru.

In 2018 and 2019 I was a member of an international working group revising the 'Istanbul Protocol', the principal document used by courts and investigators to guide the documentation of torture pursuant to the Convention Against Torture.

In 2019 I was a member of the Independent Health Advice Panel, a statutory body created under the *Migration Act 1958* whose duty it was to monitor the physical and mental health of asylum seekers in regional processing countries and to review decisions by the Minister for Home Affairs as to whether transfer to Australia was necessary for treatment. I was the nominee of the Australian Psychological Society on the panel.

In 2019, together with a colleague, I revised the Australian clinical guidelines on the psychological treatment of refugees who suffer from Posttraumatic Stress Disorder.

I am an honorary fellow at the Centre for Mental Health, Melbourne School of Population and Global Health, University of Melbourne.

Throughout my career I have conducted research in the field of refugee mental health. Recent research has included an inquiry into the mental health of detained asylum seekers in Melbourne which is shortly to be submitted for publication. I am a co-author of a series of published papers examining self-harm among detained asylum seekers.

In addition to my work in organisations, for much of my professional career I have conducted a private practice in which I have provided forensic psychological reports for the courts in Victoria; a proportion of the work has involved assessments of asylum seekers and refugees. In recent years I have provided evidence to the Supreme Court of Victoria in high profile cases involving serious crime, including homicide and terrorism. I regularly provide psychological assessments of applicants for refugee status to legal representatives.

I am also a lawyer and have a current practising certificate. Between 2009 and 2020 I worked part-time in the migration section of Victoria Legal Aid; the majority of my duties involved instructing in the Federal Courts in relation to reviews of protection visa and character cancellation decisions.