

# JustComment

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The School of Education, Australian Catholic University

## If you see something, **say something** — hope for those whose voices and rights are suppressed

### Australian Border Force Act - protection or defense of injustice?

This law has been passed with bipartisan support<sup>1</sup>. Professionals working in immigration detention centres are prevented from raising concerns about detention centre conditions and the physical and psychological treatment of asylum seekers or risk two years in jail. Despite the wall of secrecy to prevent public scrutiny, a growing chorus of voices is growing against abuses and poor conditions and a law that is not about stopping the boats or protecting our borders but protecting politicians<sup>2</sup>.

Doctors, concerned for asylum seeker welfare and the implications of the new laws, have said they would not keep silent: *'We have advocated, and will continue to advocate, for the health of those for whom we have a duty of care, despite the threats of imprisonment, because standing by and watching sub-standard and harmful care, child abuse and gross violations of human rights is not ethically justifiable.'*<sup>3</sup>

They know the 'devastating effects of institutional self-protection and blindness to child abuse' as manifested in the Royal Commission into institutional child abuse, and will 'not to collude with a system that repeats these same mistakes' and make asylum seekers suffer.

*'If we witness child abuse in Australia we are legally obliged to report it to child protection authorities. If we witness child abuse in detention centres, we can go to prison for attempting to advocate for them effectively.'*

### Whistleblowing

People make decisions for others every day. They may be made by corrupt, lazy or incompetent or lazy people. Accidents and human rights violations occur when people who see or hear wrongdoing are afraid.

The disclosure of illegal, dangerous or unethical activities by governments or corporations is crucial for accountability. It is important in exposing corruption, mismanagement and fraud. Putting people above the institution and speaking out can save lives, protect dignity and save resources. Whistleblowers can expose themselves to personal risk, such as imprisonment, isolation or loss of employment, physical and psychological danger, in order to protect the public.

The Act could see professionals imprisoned for reporting child abuse in immigration detention centres, when in all states and territories, doctors, nurses and teachers are legally required to report cases of



child abuse. This legislation that could see workers jailed was criticised by President of the Human Rights Commission, Professor Triggs<sup>6</sup>.

I do find it rather curious that a Government that in fact came into office promoting rights to freedom of speech has in fact diminished that freedom piece by piece.

Professor Gillian Triggs, President,  
Human Rights Commission

Medical professionals in the frontline see what is happening to refugees. The Government has ignored their reports on serious mental and physical harm caused by indefinite detention, especially in remote environments and appalling conditions. Disclosure about the mistreatment of refugees in detention will be suppressed. More brutality, damage and secrecy can be expected.

### Hypocrisy

The Government is sanctioning child abuse to protect all involved in immigration detention whilst an Inquiry into past institutional abuse of children is being conducted in this country and abusers were protected by various self-protecting institutions. But, people working in detention centres are forced to be silent or look away when vulnerable people are mistreated. People already suffering psychological illness and trauma and compounded by indefinite detention have no hope when violated by other detainees or staff. The Act will allow private companies to act without scrutiny and with impunity. There will be no recourse for abuse behind closed doors.

### Responsibility and risk

Barrister Julian Burnside has repeatedly stated that lawyers are obliged to speak out against unjustifiable breaches of human rights. ***'It's too easy for a system to go badly off the rails if people accept complacently that what's being done is being done with the authority of law. I think all lawyers, especially, have an***

**'If I were to remain silent, I'd be guilty of complicity.'**

Albert Einstein

### ***obligation to look at the law and see whether it is justifiable.'***

Australian laws have resulted in indefinite detention of asylum seekers in inhuman conditions, some for years, despite never having committed any offences. The conspicuous lack of public outrage over the treatment of asylum seekers is troubling<sup>7</sup>.

Burnside calls on Australians to face the fact that cruelty, selfishness and dishonesty is carried out in our name. When asked if it was appropriate for members of the bar to speak publicly about these matters, Burnside responded ***'Do you think it appropriate to know about these matters and remain silent?'*** Now is the time to stand up for justice, he says<sup>8</sup>. Australia now gets overseas media attention for all the bad reasons – its harsh treatment of vulnerable people. The ***British Medical Journal*** recently said 'Australia sets a disgraceful example in its treatment of refugees'.

### Hope

Burnside and others have been joined by doctors who would 'absolutely' consider flouting laws that could see people jailed if they

speak out about what they see in detention centres. Doctors would speak out if '... a child is being abused or subjected to emotional abuse through being in a detention centre....' They have been put in an 'uncomfortable ethical dilemma' where they diagnose people found to be suffering from ongoing damage through abuse in the detention centres, and then have to return them into that same environment of abuse. They acknowledge their responsibility to care and advocate for patients. Gagging them from speaking out diminishes their ability to care for a vulnerable group.<sup>9</sup>

The Australian Medical Association has said that this law is a direct attack on a clinician's ability to perform his/her ethical duty and contravenes a doctor's code of conduct. They must be able to tell the truth about what is happening to protect people whose welfare must take priority over the government's desire to maintain the secrecy of its detention regime.<sup>10</sup>

History will have to record that the greatest tragedy of this period of social transition was not the strident clamour of the bad people, but the appalling silence of the good people.

Martin Luther King, Jr.

Full set of resources and references are on the ERC website [www.erc.org.au](http://www.erc.org.au)



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