AUSTRALIA’S *BORDER FORCE ACT (2015)* AND ITS ASSAULT ON NURSING ETHICS

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Australian *Border Force Act* (No. 40)

• Came into force 1 July, 2015

• Contains provisions that would see nurses and other conscientious health professionals gagged from speaking out about harmful conditions they have directly observed in Australia’s ‘immigration’ detention centres.
Part 6: 42(1) of the Act

An ‘entrusted person’ (any current or former Immigration and Border Protection worker) **risks up to two years imprisonment** if ‘commits an offence’ under the Act:

42 Secrecy

(1) A person commits an offence if:
(a) the person is, or has been, an entrusted person; and
(b) the person makes a record of, or discloses, information; and
(c) the information is protected information.

Penalty: Imprisonment for 2 years.
Example:

Isaacs and Maycock revelations that:

• children were being subjected to sexual and physical abuse
• a six-year-old girl tried to hang herself with a fence tie and had marks around her neck.
• women were being raped and physically assaulted
• women not having a sufficient supply of sanitary pads
• women and children sometimes being forced to shower behind ‘a flimsy curtain that often flew open in front of male guards’
Question: How should nurses respond to this?

Problem:

• Nurses vulnerable to media manipulation on important humanitarian and social justice issues

• Need to ensure are well informed about the politics of what is going on here...
What nurses need to be informed about

• Distinction between refugees, asylum seekers and immigrants
• Nature and harmful impact of conservative politics
• Nature and moral implications of vulnerability
• Relationship b/w humanness and moral status
• Nursing ethics and requirement to advocate for human rights + join others in ‘energising dissent’
Refugee

Defined by *1951 Refugee Convention* as:

‘People who are outside their country of nationality or habitual residence, and have a well-founded fear of persecution because of their race, religion, nationality, membership of particular social group or political opinion’
Asylum seeker

• A person who has made a claim that he/she is a refugee, and is waiting for that claim to be accepted or rejected.
• Some asylum-seekers will be judged to be refugees and others will not.
Migrant vs Immigrant

• **Migrant**: a wide-ranging term that covers most people who move to a foreign country for a variety of reasons and for a certain length of time (usually a minimum of one year)

  **Immigrant**: is someone who takes up permanent residence in a country other than his or her original homeland
POLITICS: Legal rights of asylum seekers

• Article 14 of the *Universal Declaration of Human Rights* states that: ‘Everyone has the right to seek and to enjoy in other countries asylum from persecution.’

• The UN 1951 *Convention relating to the status of refugees* and the 1967 *Protocol relating to the status of refugees* guides national legislation concerning political asylum.

**FACT:**

NB. It is **NOT** illegal to seek asylum in Australia
POLITICS: Yet... asylum seekers

Men, women and children seeking asylum in Australia have been portrayed as

• ‘illegals’,

• ‘immoral queue jumpers’

• as a ‘threat to our cherished way of life’
In reality....

• They are none of these things

• They are ‘just’ desperate human beings seeking safety (literally ‘running for their lives’)

POLITICS:

‘Well decide who enters this country….’ (former Prime Minister John Howard)
UN Cancels Australia Visit Over Border Force Laws (SMH 26.9.15)


Government failed to guarantee protection of centre staff from recrimination making honest disclosures to UN rapporteur
POLITICS OF FEAR surrounding asylum seekers

- the politically motivated conflation of the world’s refugee crisis with the rise of Islamist sponsored terrorism

- the recasting of Australia’s asylum seekers as ‘folk devils’ — specifically as ‘Muslin-terrorist-refugees’ — and thus as ‘suitable enemies’ who should justifiably be denounced and detained by Australia’s border protection authorities
‘Folk devils’ and moral panic...

The over-reaching characterisation of asylum seekers as a threat to Australia’s societal values and interests = classic case of ‘moral panic’
Moral panic

‘A condition whereby individuals or groups feel a sudden, disproportionate and exaggerated sense of fear or alarm in response to an issue or situation they perceive as threatening to their societal values and interests’
Elements of moral panic (Goode & Ben-Yehuda 2009).

- **Concern** (e.g., as measured by media attention, opinion polls, proposed legislation, social movement activity, arrests and imprisonment, and the capacity of these things to generate widespread anxiety)

- **Hostility** (expressed via stereotypes)

- **Consensus** (there is widespread agreement that the threat is real, serious and caused by the wrongdoing group)

- **Disproportionality** (the conduct or threats posed are exaggerated + out of step with ‘actual’ risks of harm)

- **Volatility** (can occur and subside in varying degrees over time)
Primary drivers...

• the mass media
• the public
• law enforcement agencies
• politicians and legislators
• social movement activists
Nurses role and responsibility

International nursing standards, position statements, codes of conduct etc., all make reference to role and responsibility of nurses to:

• consider the needs of the ‘most’ or ‘especially vulnerable’;

• give ‘special attention’ to vulnerable groups and populations;

• ‘emphasise vulnerable groups’ when applying human rights protection
What is vulnerability?

• from the Latin *vulnerāre* to wound
• has many meanings
Working definition

Generally refers to an individual’s or group’s:

• capacity to be wounded/hurt physically and emotionally

• susceptibility to being harmed through being exploited, or exposed to disaster in morally significant ways

• clearly applies to refugees + asylum seekers
Asylum seekers also wounded through dehumanisation

Can be:

• **Explicit/obvious** – conscious deliberate statements (e.g., British PM for labelling migrants a ‘swarm of people’)

• **Subtle/not obvious** – subtly downplaying or attributing fewer ‘uniquely human’ qualities to others (e.g., Asylum seekers to Australia: ‘What kind of people throw their children overboard’ – even though NONE did!)
Kids overboard incident

... claim was completely false
Consequences of dehumanisation

People are:

• perceived as outside the boundary in which moral values, rules, and considerations of fairness apply

• being morally excluded, are perceived as nonentities, expendable, or underserving

• harming them thus appears acceptable, appropriate, or just

(Opotow 1990: 1)
Why is this issue of relevance to nurses?

Because:

• The nursing profession prides itself on being informed, socially relevant, and passionately committed to humanitarian and social justice concerns;

• Challenges the very foundations of our professional ethics and **what we profess**

• Tests our capacity to accept moral imperatives **to act** in this situation (if don’t act – **who and what are we???)**
  
  - If not us, then who?
  
  - If not now, then when?
What are we to do?

• Dehumanisation is a malevolent process
• It unjustifiably denies the humanness of ‘others’
• By virtue of this denial, justifies harming/failing to protect the significant moral interests of those targeted.
• Redressing it is a matter of both professional ethics and social justice
Work with others To *energise dissent* (Martin 2007):

- Expose the actions
- Affirm the value of the targets (e.g. refugees)
- Interpret the situation as unfair
- Mobilise support and avoid or discredit official channels that legitimate it (e.g. injustice and health harming effects of holding children in detention; poor health of refugees)
- Resist and expose intimidation and bribery (every time a progressive bystander speaks out, it makes it easier for others to do the same)
Take home messages

To be ‘lawfully’ required to breach the standards of ethical conduct in any context is not only unconscionable, but a despicable act of political treachery that risks corroding the moral fabric of our society.
We need to adopt vulnerability as a guide to moral action

• Reminds us that all human beings have the capacity to be ‘hurt or wounded’ (‘there but for the grace of God go I’)

• Stands as source of our ‘special responsibilities’ to protect others

• Provides a foundation for ethical sensibility in nursing
As it stands, the *Border Force Act* continues...

- to represent a disgraceful assault on the profession’s agreed standards of ethical conduct (overrides our moral duty to speak out and advocate for the human rights of vulnerable populations)

- demand a response from nurses e.g. to ‘stand up and be counted’, to co-participate with others in ‘energising dissent’ against the cruel and inhumane treatment of Australia’s asylum seekers and refugees, and for the Act to be repealed.
Taking a stand

Demand the repeal of the Act
References


