CHAPTER 2

Need for independent oversight of health services

2.1 The committee received evidence from a wide range of individuals and organisations, including health professionals, human rights experts, advocates for refugees and asylum seekers, and lawyers. All submissions and witnesses emphasised the importance of the independent oversight of health services provided to asylum seekers who are sent to regional processing countries.[1]

2.2 In its submission, the Australian Human Rights Commission (AHRC) stated:

> Given that Australia retains some responsibility for the treatment of asylum seekers transferred to third countries, and given that it is well documented that the prolonged detention of asylum seekers and refugees in remote locations may have a detrimental impact on their physical and mental health, the [AHRC] encourages the Australian Government to take necessary steps to establish a mechanism to monitor the health and mental health of people transferred to third countries for processing of their claims for protection.[2]

2.3 Dr Gillian Singleton of The Royal Australian College of General Practitioners argued that independent expert oversight for the provision of health services in regional processing facilities would 'minimise the risk of harm to clients, to staff and to the department in these challenging environments'.[3]

2.4 An officer from the Department of Immigration and Citizenship (Department or DIAC) told the committee that '[t]here is a range of scrutiny bodies that will be looking at the healthcare provision to people in regional processing centres', and referred specifically to the proposed Joint Advisory Committees and the Immigration Health Advisory Group, which are to be established by the government for this purpose.[4]

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1 See, for example, Ms Tamara Lions, Amnesty International Australia, *Committee Hansard*, 23 November 2012, p. 13; Independent group of health experts representing key Australian health and mental health professional organisations, *Submission 12*, p. 1.

2 *Submission 18*, p. 7.

3 *Committee Hansard*, 23 November 2012, p. 3.

4 Mr Ken Douglas, Department of Immigration and Citizenship (DIAC or Department), *Committee Hansard*, 23 November 2012, p. 36. See also: the Hon Chris Bowen MP, Minister for Immigration and Citizenship, *First transfer to Papua New Guinea*, Media Release, 21 November 2012, which discussed arrangements for an interim Joint Advisory Committee to play an initial oversight role for the processing centre in Nauru, available at: http://www.minister.immi.gov.au/media/cb/2012/cb191879.htm (accessed 30 November 2012).

Proposed Joint Advisory Committee

2.5 The Australian Government has signed Memorandums of Understanding (MOUs) with Nauru and Papua New Guinea (PNG) relating to the transfer and assessment of asylum seekers to those countries. Each MOU provides for a 'Joint Committee with responsibility for the oversight of practical arrangements required to implement this MOU including issues relating to the duration of stay of Transferees'.[5]

2.6 At the public hearing, officers of the Department updated the committee on the progress of these arrangements with Nauru and PNG:

> The administrative arrangements with both Nauru and Papua New Guinea are in the process of being finalised, but both of those documents contemplate having a joint advisory or oversight committee to look at the operations, the welfare of [asylum seekers], the management of the centres et cetera. At the moment we are in the process of establishing an interim joint committee to advise the minister. That will run for about six months and will be able to advise the respective governments of what is happening on the ground in that six months and also of permanent terms of reference for a permanent advisory committee for each regional processing country.[6]

2.7 Officers from the Department were unable to advise the committee on the specific medical or health qualifications of the individuals appointed to the interim Joint Advisory Committee.[7] Professor Louise Newman of The Royal Australian and New Zealand College of Psychiatrists pointed out that none of the members of the interim Joint Advisory Committee are representatives of professional health organisations, such as The Royal Australian College of General Practitioners and The Royal Australasian College of Physicians.[8]

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5 Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues, signed 29 August 2012, Clause 17, available at: http://www.minister.immi.gov.au/media/cb/2012/cb189579.htm (accessed 30 November 2012); and Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia, relating to the transfer to and assessment of persons in Papua New Guinea, and related issues, signed on 8 September 2012, Clause 21, available at: http://www.minister.immi.gov.au/media/cb/2012/cb189719.htm (accessed 30 November 2012).

6 Ms Vicki Parker, DIAC, *Committee Hansard*, 23 November 2012, p. 31. See also DIAC, *Submission 19*, p 3.

7 See Ms Vicki Parker, DIAC, *Committee Hansard*, 23 November 2012, pp 31-32.

8 *Committee Hansard*, 23 November 2012, p. 3. Although Professor Newman did note that one of the representatives had sat on the Detention Health Advisory Group mental health subcommittee.

Proposed Immigration Health Advisory Group

2.8 The Immigration Health Advisory Group (IHAG) is an independent advisory group to the Department, comprising nominated representatives of professional clinical associations.[9] IHAG will succeed the Detention Health Advisory Group (DeHAG), which was established in 2006 to provide the Department with 'independent, expert advice on health policy, standards for health care services, data and reporting, and mental health training'.[10]

2.9 At the public hearing, an officer of the Department explained to the committee the reasons for the transition from DeHAG to IHAG:

> IHAG has been established by the [Department's] secretary, taking advantage of the lessons learned over the course of the last six years of [DeHAG's] operation. The secretary wants that new group to take a broader, more systemic look at health policy and service delivery across not only the detention environment but also the whole of the immigration environment.[11]

2.10 It is not clear what role IHAG may have in the oversight of health services provided to asylum seekers in regional processing countries. At the committee's supplementary estimates hearing in October 2012, the Secretary of the Department advised that the transition from DeHAG to IHAG 'had been envisaged before we got into regional processing'.[12] The Secretary noted that he did not see any reason why IHAG would not be involved in oversight of the regional processing centres; however, that role had not 'necessarily been included in the terms of reference at this stage'.[13]

2.11 During the current inquiry, a departmental officer told the committee that '[m]any drafts of the terms of reference [for IHAG] have been exchanged with DeHAG members'.[14] Dr Singleton, who was a member of DeHAG, noted that 'it is not clear that in the new IHAG terms of reference there will be any monitoring of offshore centres'.[15]

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9 Mr Ken Douglas, DIAC, *Committee Hansard*, 23 November 2012, p. 35.

10 DIAC website, *Detention Health Advisory Group (DeHAG)*, available at: http://www.immi.gov.au/about/stakeholder-engagement/national/advisory/dehag/ (accessed 28 November 2012).

11 Mr Ken Douglas, DIAC, *Committee Hansard*, 23 November 2012, p. 31.

12 Mr Martin Bowles PSM, DIAC, Senate Legal and Constitutional Affairs Legislation Committee, Supplementary Estimates 2012-13, *Committee Hansard*, 15 October 2012, p. 99.

13 Mr Martin Bowles PSM, DIAC, Senate Legal and Constitutional Affairs Legislation Committee, Supplementary Estimates 2012-13, *Committee Hansard*, 15 October 2012, p. 99.

14 Mr Ken Douglas, DIAC, *Committee Hansard*, 23 November 2012, p. 31.

15 *Committee Hansard*, 23 November 2012, p. 4.

2.12 At the public hearing, the departmental officer indicated that there is an expectation, based on the precedent set by DeHAG visiting onshore detention centres, that IHAG would seek to visit regional processing centres and such requests would be facilitated by the Department.[16]

A role for IHAG in monitoring health services provided offshore?

2.13 Although IHAG is still in the process of being established, and its terms of reference are yet to be finalised, there was some debate during the hearing as to whether IHAG – based on the experiences of DeHAG – could fulfil the role of the expert Panel envisaged in the Bill. A number of witnesses, including some former DeHAG members, commented on the differences between the role of IHAG and the Panel as proposed by the Bill.

2.14 The Department's website notes that DeHAG was established 'in response to the recommendations' in the 2005 report by Mr Mick Palmer AO APM on the immigration detention of Cornelia Rau.[17] The Palmer Report recommended that the Minister for Immigration establish an 'Immigration Detention Health Review Commission' as an independent body under the Commonwealth Ombudsman's legislation to 'carry out independent external reviews of health and medical services provided to immigration detainees and of their welfare'.[18] In an answer to a question on notice in the current inquiry, the Department clarified the events surrounding the establishment of DeHAG:

> The proposed Immigration Detention Health Review Commission [recommended in the Palmer report] was not established following consultation with the Commonwealth Ombudsman and Dr David Chaplow, Director of Mental Health in the New Zealand Ministry of Health and consulting psychiatrist to the Palmer Inquiry. They agreed that the Commission was not needed given the new oversighting role of the Commonwealth Ombudsman for Immigration. In addition, the Detention Health Advisory Group (DeHAG) was established (March 2006) to ensure that the Department was appropriately advised on the development and provision of health care services for people in immigration detention.[19]

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16 Mr Ken Douglas, DIAC, *Committee Hansard*, 23 November 2012, pp 36-37.

17 DIAC website, *Detention Health Advisory Group (DeHAG)*, available at: http://www.immi.gov.au/about/stakeholder-engagement/national/advisory/dehag/ (accessed 28 November 2012).

18 Mr Mick Palmer AO APM, *Report of the Inquiry into the circumstances of the Immigration Detention of Cornelia Rau*, July 2005, Recommendation 6.11, p. xxx.

19 DIAC, answer to question on notice, received 29 November 2012, p. 2.

2.15 Dr Choong-Siew Yong of the Australian Medical Association (AMA) noted that the AMA has previously proposed an expert health panel similar to that in the Bill,[20] and sought to distinguish any such Panel from the Department's advisory health groups:

> [The] model that [the AMA] had in mind was one of an inspectorate-type body which would be different from an advisory group within the department which is advising on such things as operational aspects and general issues. One of the things we are aware of is that there is currently nobody that can independently look at the situation of immigration detainees throughout the whole system, particularly now that there are offshore centres outside of Australia, and report back to the parliament or to government about the quality of the healthcare being provided, and the needs of the group. I think that you can make a clear distinction between an internal body to the department with health expertise—which is what they have had in the past—to something that sits outside.[21]

2.16 Dr Yong also referred to DeHAG as being 'reactive rather than proactive':

> [O]n occasions the department and the detention provider have come up with operational policies or plans that really would have benefited from the input around the impact on the health of the detainees. Some of the provisions that the detention provider had around managing behaviour were done without reference to the health impact.[22]

2.17 The Castan Centre for Human Rights Law noted the lack of public information available about the work that has been carried out to date:

> DeHAG seems to have published its last public report in March 2008. The 2008 report reveals that DeHAG made only two visits to detention centres over the course of the preceding year…DeHAG contributed to a 2011 review of the Detention Health Framework, but there is otherwise little information available publicly on DeHAG's activities over the four years since its last report.[23]

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20 See Australian Medical Association, *AMA calls for independent medical panel to oversee the health of asylum seekers*, Media Release, 22 August 2012, available at: https://ama.com.au/media/ama-calls-independent-medical-panel-oversee-health-asylum-seekers (accessed 28 November 2012).

21 *Committee Hansard*, 23 November 2012, pp 4-5.

22 *Committee Hansard*, 23 November 2012, p. 7.

23 *Submission 4*, p. 2.

2.18 Associate Professor Amanda Gordon of the Australian Psychological Society indicated that it may be possible for IHAG to undertake the role of a panel, provided the problems which faced DeHAG are addressed:

> I believe, if the reporting mechanisms could be properly established it could be one and the same, and then have working groups below it…One of the issues with DeHAG…was that we did not always have access. For instance, the only visits that were ever made to detention centres were made when they were organised by the department. They were always prearranged, everything was very sanitised in that there were limits to what we could see and we could not see. I do not believe that if IHAG was a replica of that it would be an appropriate expert advisory oversight panel...IHAG, if it became the expert group, would have to have proper access at its own behest. It would have to have access to records, and it would have to have proper ability to both see what is going on, to advise the Secretary and then to be able to escalate if necessary to the minister through parliament.[24]

2.19 The submission by the independent group of health experts representing key health and mental health professional organisations proposed a model where a panel could work in tandem with IHAG:

> We believe that this should include independent review and monitoring processes of health services and the establishment of a separate, independent body to the Departmental health advisory group (IHAG) which can provide the results of its review and monitoring to the Secretary of the Department of Immigration and Citizenship, the Chief Medical Officer of the Department and the IHAG on health service provision and risk mitigation strategies.
>
> We believe that this is the most robust structure to allow for efficient and timely identification and resolution of issues, which may arise.[25]

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24 *Committee Hansard*, 23 November 2012, p. 4.

25 *Submission 12*, p. 1. See also: Independent group of health experts representing key Australian health and mental health professional organisations, *Supplementary Submission 12*, p. 1.