DISSENTING REPORT BY THE AUSTRALIAN GREENS

Introductory remarks

1.1 This bill, the Migration Amendment (Health Care for Asylum Seekers) Bill 2012, seeks to create an independent panel of experts with the expertise, resources and necessary powers to investigate and report on the health and wellbeing of asylum seekers under the care of the Commonwealth in offshore detention facilities. Because of the fragile mental and physical health of asylum seekers, the stresses of detention and the remoteness of the locations where offshore detention is maintained, ensuring adequate care of these people is both an urgent responsibility and an extremely difficult task. The Australian Greens maintain that unless the system that cares for such vulnerable people is transparent, accountable and subject to independent oversight, then the health of these people will inevitably suffer.

1.2 Evidence received during the inquiry overwhelmingly supports this view. Although some made suggestions for strengthening the bill, medical experts – including those familiar with immigration detention oversight through previous involvement with the Detention Health Advisory Group (DeHAG)[1] – were strongly supportive of the need for an offshore detention oversight body as proposed by the bill. We therefore recommend the bill be passed with the amendments outlined below.

1.3 Further evidence, such as that given by Amnesty International Australia, highlighted the unacceptable conditions already present at the detention centre in Nauru.[2] This evidence underscores the need for timely and robust intervention, especially given the complexity, political sensitivity and gravity of the situation faced by asylum seekers transferred to Nauru and Papua New Guinea.

Merits of an Independent Panel over a Departmental Advisory Group

1.4 Some evidence presented to the Committee focussed on the previous work of DeHAG and on the Immigration Health Advisory Group (IHAG) which is yet to be properly established. The Department and others canvassed the idea that IHAG could fulfill the role intended for the Panel provided for in the Bill. This proposal forms the bulk of the recommendations in the majority report.

1.5 The Australian Greens do not support this model. The overwhelming majority of evidence received, including from former members of DeHAG, indicates that such a body will not have the capability or remit to properly safeguard the health of asylum

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1 Independent group of health experts representing key Australian health and mental health professional organisations, *Submission 12*, p. 1.

2 Ms Tamara Lions, Amnesty International Australia, *Committee Hansard*, 23 November 2012, p. 13.

seekers in detention offshore. Most critically, it will not have the independence to properly highlight deficiencies in care provided under the auspices of the Department. Dr Choong-Siew Yong of the AMA pointed out the 'clear distinction' between an internal body and one that sits outside the Department.[3] As noted in their submission, the independent group of health experts made clear the importance of oversight separate to 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.[4]

1.6 The Australian Greens also have concerns about the ability of IHAG to focus on the particular challenges inherent in offshore detention. Evidence was heard by the Committee that IHAG's role is much broader than this and deals with health and mental health in the immigration system more broadly. In evidence from the Department, Mr Ken Douglas said:

> Building on the good work that has been done by DeHAG, which has been in operation for six years, the incoming secretary has said, 'I would like to build on that and create a group that looks more broadly across the immigration spectrum, not just in the detention environment, and looks at it not solely from a clinical perspective but also from a broader health policy and systems perspective.' That is what he is working to do in establishing the new IHAG.[5]

1.7 Because of the urgency and sensitivity of overseas detention, a panel dedicated to safeguarding the welfare of people under those circumstances is necessary to achieve the required level of timely and detailed oversight.

1.8 The need for an independent panel is reinforced by evidence regarding the fate of previous recommendations made by DeHAG. Without the necessary transparency, these recommendations are likely to languish with the Department or the Minister.[6] An independent body, whose reports are made public via reports to Parliament, and whose remit includes oversight of the response to and implementation of recommendations, has a greater chance of seeing changes effected in a timely manner.

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

4 *Submission 12*, p. 1.

5 *Committee Hansard*, 23 November 2012, p. 35.

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

Powers and terms of reference of the Independent Panel

1.9 Several witnesses called for the powers of the Panel to be further enumerated and clarified in the legislation.[7] The Australian Greens agree with this suggestion, particularly with regard to establishing the powers of the Panel to visit and monitor operations in offshore detention facilities.

1.10 The Committee also heard evidence from the Department that no medical experts were consulted in the design of the existing facilities on Nauru,[8] which the Committee heard are inadequate and already leading to serious health problems.[9] To the degree that it is possible to do so, the bill should therefore ensure that the Panel is consulted proactively in the design of systems to accommodate asylum seekers in the challenging conditions of offshore processing centres in remote locations. Failing this, another body composed of medical experts, such as IHAG, should be consulted.

1.11 As noted in the majority report, proposed paragraph 198ABA(5)(c) of the Bill provides that the Panel may 'assess the health of an offshore entry person when he or she first arrives in a regional processing country'. Several witnesses commented on this clause and the potential difficulties it raises. For example, Dr Singleton, representing The Royal Australian College of General Practitioners, commented:

> I cannot see how that would practically work. I think ensuring that the processes are in place to ensure that people are being assessed adequately is what is important.[10]

1.12 Although the Panel should have access to individuals and individual medical histories, this is only appropriate within the context of identifying or highlighting systemic problems and deficiencies. The bill should therefore be clearer that the Panel will have no role in routine assessment or clinical care.

Location of the group within the government

1.13 During the proceedings of the inquiry, there was some discussion between the Committee and witnesses regarding the proper place of the Independent Panel within the Government, and whether it should be managed by the Department or be housed elsewhere in the bureaucracy.[11] At the public hearing, the Chair canvassed with

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7 Professor Louise Newman, The Australian and New Zealand College of Psychiatrists, *Committee Hansard*, 23 November 2012, p. 10; Australian Human Rights Commission, *Submission 18*, p. 4; Australian Medical Association, *Submission 20*, p. 6.

8 Mr Ken Douglas, Department of Immigration and Citizenship, *Committee Hansard*, 23 November 2012, p. 39.

9 Dr Choong-Siew Yong, Australian Medical Association, *Committee Hansard*, 23 November 2012, p. 8; Dr Gillian Singleton, The Royal Australian College of General Practitioners, *Committee Hansard*, 23 November 2012, p. 8; Ms Tamara Lions, Amnesty International Australia, *Committee Hansard*, 23 November 2012, p. 13.

10 *Committee Hansard*, 23 November 2012, p. 9.

11 *Committee Hansard*, 23 November 2012, p. 20.

witnesses whether the Office of the Commonwealth Ombudsman would be an appropriate auspicing body, following a similar recommendation from the Palmer Inquiry.

1.14 Mr Karapanagiotidis OAM of the Asylum Seeker Resource Centre expressed the opinion that the Panel should exist independently of all other agencies. However, the Australian Greens accept that considerable overheads and delays may result from constituting an entirely new body independent of the rest of government. It is our view that, if properly resourced, the Panel could be auspiced under the Office of the Commonwealth Ombudsman.

Access by the Panel to facilities in third countries

1.15 The Committee heard evidence to the effect that it is not within the power of the government to assure access to offshore detention facilities by an independent panel as granting such access lies within the domain of the authorities in the offshore processing countries.

1.16 The Australian Greens do not consider this a legitimate objection to establishing the Panel. The entire architecture of the offshore processing system requires the Australian Government to gain access to the territories and detention areas for a large and growing number of officials and service providers, including serving military personnel. It is therefore difficult to see how a panel of medical experts would be routinely denied access by the officials of these countries.

Expertise represented on the Panel

1.17 During the inquiry, the question was raised of representation on the panel by a representative of a disability organisation. The Australian Greens note evidence from Associate Professor Amanda Gordon of the Australian Psychological Society who raised no objection to this suggestion.

1.18 The Australian Greens therefore consider it appropriate that such a representative should be eligible for membership of the Panel, in particular if such expertise is not present amongst those members nominated by other professional bodies.

Strengthening of IHAG

1.19 The Australian Greens note the recommendations in the majority report regarding the strengthening of IHAG's role in overseeing the offshore detention system. We maintain that, consistent with abundant evidence received by the Committee, IHAG as envisioned is manifestly inadequate as a mechanism for ensuring sufficient oversight of and action to safeguard the health and wellbeing of asylum seekers housed offshore.

1.20 However, regardless of whether the Bill is passed or not, the Australian Greens agree in principle with bolstering the role of IHAG, especially as their remit includes the immigration system more broadly.

1.21 Evidence received suggests that DeHAG's recommendations were often ignored. To remedy this situation, IHAG should report to the Minister, and this report should be tabled in Parliament. The Minister should be obliged to respond to this report within 45 days.

Recommendation 1

1.22 That the Senate should pass the bill.

Recommendation 2

1.23 That the bill be amended to further clarify the powers and responsibilities of the Panel, including its power to access detention facilities without notice and establishment of arrangements to monitor the implementation of the Panel's recommendations.

Recommendation 3

1.24 That the bill be amended to establish the Independent Panel under the office of the Commonwealth Ombudsman.

Recommendation 4

1.25 That the bill and explanatory memorandum be amended to clarify the role of the Panel with regard to assessing the health of individuals, to make it clear that this is to be done in the context of investigating system-wide problems only and not on a routine or clinical basis.

Recommendation 5

1.26 That the bill be amended to allow for representation on the panel by persons with expertise in disability.

Recommendation 6

1.27 That, if the bill is not passed, the terms and composition of the Immigration Health Advisory Group be amended so that its reports and recommendations to the Minister are tabled in Parliament, that the Minister is obliged to respond to those recommendations, and that IHAG must be consulted on the design of the offshore processing regime.

Senator Sarah Hanson-Young
Australian Greens

Senator Richard Di Natale
Australian Greens