The Senate

Legal and Constitutional Affairs Legislation Committee

Migration Amendment (Health Care for Asylum Seekers) Bill 2012

December 2012

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ISBN: 978-1-74229-737-8

This document was produced by the Senate Legal and Constitutional Affairs Committee secretariat and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

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RECOMMENDATIONS

Recommendation 1

3.31 The committee recommends that the terms of reference for the Immigration Health Advisory Group (IHAG) should explicitly state that IHAG's role includes the oversight and monitoring of health services to offshore entry persons in regional processing countries.

Recommendation 2

3.32 The committee recommends that the terms of reference for IHAG should include provision for IHAG to:

- **access processing facilities in regional processing countries to conduct monitoring and oversight activities;**
- **meet with offshore entry persons in processing centres in regional processing countries (with the consent of those people); and**
- **review the implementation of recommendations it makes, or other professional health organisations make, and provide further advice on the implementation of those recommendations.**

Recommendation 3

3.33 The committee recommends that the Department of Immigration and Citizenship should be required to consult with IHAG on the development and design of all aspects of the Australian Government's policy to send asylum seekers to regional processing countries.

Recommendation 4

3.34 The committee recommends that IHAG's terms of reference should include the requirement that IHAG provide the Minister with a report on its work at least every six months, and that the Minister make that report publicly available.

Recommendation 5

3.35 The committee recommends that the Minister table in the parliament a response to all reports by IHAG, within three months of those reports being made public.

Recommendation 6

3.36 The committee recommends that the health expertise represented on IHAG should also include a representative from a disability organisation.

Recommendation 7

3.37 The committee recommends that the Senate should not pass the Bill.

CHAPTER 1

Introduction

Referral of inquiry

1.1 The Migration Amendment (Health Care for Asylum Seekers) Bill 2012 (Bill) is a private senators' bill introduced by Senator Sarah Hanson-Young and Senator Richard Di Natale on 11 September 2012.[1] On 13 September 2012, the Senate referred the Bill to the Legal and Constitutional Affairs Legislation Committee (committee) for inquiry and report by 20 November 2012.[2] The reporting date was subsequently extended to 7 December 2012.[3]

Purpose of the Bill

1.2 According to the Explanatory Memorandum (EM), the purpose of the Bill is 'to help safeguard the health and wellbeing of asylum seekers under the care of the Commonwealth'.[4] The Bill seeks to amend the *Migration Act 1958* (Cth) (Migration Act) to create an independent panel of medical, psychological and other health experts to monitor, assess and report to the parliament on the health of asylum seekers who are taken to regional processing countries.[5] The EM states:

> The [panel] is intended to have the expertise and independence to make a thorough investigation and deliver findings in a way that is not subject to interference by the Minister, the relevant Department and other organisations responsible for the provision of health services and the care of detainees.[6]

Key provisions of the Bill

1.3 Section 198AB of the Migration Act provides that the Minister may, by legislative instrument, designate a country as a 'regional processing country'. The Minister for Immigration and Citizenship, the Hon Chris Bowen MP, designated Nauru as a regional processing country on 10 September 2012, and

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1 *Journals of the Senate*, No. 108, 11 September 2012, p. 2940.

2 *Journals of the Senate*, No. 110, 13 September 2012, pp 2973-2974.

3 *Journals of the Senate*, No. 123, 20 November 2012, pp 3324-3325.

4 Explanatory Memorandum (EM), p. 1.

5 EM, p. 1.

6 EM, p. 1.

designated Papua New Guinea as a regional processing country on 9 October 2012.[7] A designation takes effect immediately after both houses of the parliament have passed a resolution approving the designation (paragraph 198AB(1B)(a) of the Migration Act). In the cases of Nauru and Papua New Guinea, this occurred on 12 September 2012 and 10 October 2012 respectively.

1.4 Item 1 of Schedule 1 of the Bill proposes to amend the Migration Act by inserting new section 198ABA – 'Health advisory panel' (Panel). Proposed new subsection 198ABA(1) provides that the Minister must establish a Panel to 'monitor, assess and report on the health of 'offshore entry persons'[8] who are taken to regional processing countries'.

1.5 Each member of the Panel must be appointed by the Minister by written instrument and would hold office on the terms and conditions determined in the instrument.[9]

1.6 The Minister must not appoint a person as a member of the Panel unless satisfied that the person has expertise in one or more of the following areas:

- the medical profession;
- the psychology profession;
- the dental profession;
- public health; or
- child health.[10]

1.7 Proposed new paragraph 198ABA(3)(b) provides that the Minister can only appoint a person to the Panel if they have been nominated by one, or more, of the following bodies:

- the Australian Medical Association;
- the Royal Australian College of General Practitioners;
- the Royal Australian and New Zealand College of Psychiatrists;
- the Royal Australasian College of Physicians; or

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7 The Hon Chris Bowen MP, Minister for Immigration and Citizenship, *Nauru designated for regional processing*, Media Release, 10 September 2012, available at: http://www.minister.immi.gov.au/media/cb/2012/cb189739.htm (accessed 19 September 2012); and the Hon Chris Bowen MP, Minister for Immigration and Citizenship, *Papua New Guinea designated for regional processing*, Media Release, 9 October 2012, available at: http://www.minister.immi.gov.au/media/cb/2012/cb190599.htm (accessed 11 October 2012).

8 'Offshore entry person' is defined in section 5 of the *Migration Act 1958* as: a person who has, at any time, entered Australia at an excised offshore place after the excision time for that offshore place, and becomes an unlawful non-citizen because of that entry.

9 Proposed new subsection 198ABA(2).

10 Proposed new paragraph 198ABA(3)(a).

- the Australian Psychological Society.[11]

1.8 The Panel would be responsible for determining how its functions are to be carried out.[12] Proposed new subsection 198ABA(5) outlines activities that the Panel may undertake in performing its functions, specifically:

- assigning Panel members to monitor and assess the health of offshore entry persons in different regional processing countries;
- travelling to regional processing countries to carry out monitoring and assessment activities;
- assessing the health of an offshore entry person when they first arrive at a regional processing country; and
- monitoring an offshore entry person's health on an ongoing basis for as long as they remain in the regional processing country.

1.9 At least every six months, the Panel must prepare a written report on the health of offshore entry persons who have been taken to regional processing countries.[13] A copy of the Panel's report must be given to the Speaker of the House of Representatives and the President of the Senate for presentation to the House of Representatives and the Senate.[14] The report must not include any information that may identify an offshore entry person.[15]

1.10 The Panel may also make recommendations to the Minister in respect of the health of offshore entry persons who have been taken to a regional processing country.[16]

1.11 Proposed new subsection 198ABA(8) provides that, where the Panel believes that a Commonwealth department or prescribed authority (a 'relevant agency'), or a consultant or contractor to a relevant agency, has information, documents or other records relevant to the Panel's performance of its functions, then the Panel may require that the information, documents or other records be given to the Panel.

1.12 Item 2 of Schedule 1 of the Bill seeks to amend section 499 of the Migration Act. Section 499 of the Migration Act provides for the Minister to give directions to a person or body having functions or powers under the Migration Act.

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11 Proposed new subparagraph 198ABA(3)(b)(vi) provides that a person may be nominated by another professional body prescribed by the regulations.

12 Proposed new subsection 198ABA(4).

13 Proposed new subparagraph 198ABA(6)(a)(i).

14 Proposed new subparagraph 198ABA(6)(a)(ii).

15 Proposed new subsection 198ABA(7).

16 Proposed new paragraph 198ABA(6)(b).

The amendment in item 2 specifically excludes the Panel as a body to which the Minister can give directions.

Conduct of the inquiry

1.13 The committee advertised the inquiry in *The Australian* on 26 September 2012. Details of the inquiry, including links to the Bill and associated documents, were placed on the committee's website at www.aph.gov.au/senate_legalcon. The committee also wrote to a number of organisations and individuals, inviting submissions by 17 October 2012. Submissions continued to be accepted after that date.

1.14 The committee received 20 submissions, which are listed at Appendix 1. All submissions were published on the committee's website.

1.15 The committee held a public hearing on 23 November 2012 at Parliament House in Canberra. A list of witnesses who appeared at the hearing is at Appendix 2, and the *Hansard* transcript is available through the committee's website.

Scope of this report

1.16 The committee received a number of submissions which focussed on broader issues in relation to the Australian Government's policy of regional processing for asylum seekers. The broader issues raised in submissions include:

- opposition to offshore processing of asylum seeker claims on the basis that it breaches Australia's human rights obligations;[17]
- the impact of detention on the health of asylum seekers, particularly in relation to their mental health;[18]
- the poor conditions in processing centres in Nauru and Manus Island (Papua New Guinea) and the impact that these conditions have on the health of asylum seekers;[19] and

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17 See, for example, UnitingJustice, *Submission 5*, pp 3-4; Australian Lawyers Alliance, *Submission 9*, p. 1; Amnesty International Australia, *Submission 8*, p. 6. See also: Australian Human Rights Commission, which stated that it 'holds serious concerns about the approach taken to Australia's international obligations in the designations of Nauru and Papua New Guinea as a 'regional processing country'' (*Submission 18*, p. 7).

18 See, for example, Independent group of health experts representing key Australian health and mental health professional organisations, *Submission 12*, p. 2; Coalition of Asylum Seekers Refugees and Detainees, *Submission 14*, pp 2-3; Amnesty International Australia, *Submission 8*, pp 4-6; Australian Psychological Society, *Submission 13*, pp 8-10; Australian Human Rights Commission, *Submission 18*, pp 5-6.

19 Castan Centre for Human Rights Law, *Submission 4*, pp 5-6; Amnesty International Australia, *Submission 8*, pp 3-4.

- inadequacy of health services for detainees in immigration detention in Australia and asylum seekers in regional processing countries.[20]

1.17 In this report, the committee has limited its consideration to the Bill only, and has not examined the broader policy debate relating to regional processing countries.

Acknowledgement

1.18 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

Note on references

1.19 References to the committee *Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.

20 Asylum Seeker Resource Centre, *Submission 2*, pp 2-3; Castan Centre for Human Rights Law, *Submission 4*, pp 4-6; UnitingJustice, *Submission 5*, pp 8-9.

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.

CHAPTER 3

Key issues relating to the Bill

3.1 The majority of submissions and witnesses supported the Bill and its objectives.[1] This chapter discusses the key issues raised during the inquiry, including:

- the need for clarity of the Panel's powers and functions;
- the access the Panel will have to regional processing countries and the processing facilities in those countries;
- the requirement for the Panel to report to the parliament; and
- the health expertise requirements for members of the Panel.

Clarity of powers and functions

3.2 One of the specific issues raised in relation to the Bill was whether the functions and powers of the Panel, as set out in proposed new subsections 198ABA(4) and (5), are sufficiently clear. Professor Louise Newman, who is also the former Chair of the Detention Health Advisory Group (DeHAG), argued that the Bill should be 'much clearer' in terms of the power and terms of reference for the proposed Panel:

> DeHAG…[has] not had any clearly defined capacity to necessarily enter centres, have access to the sort of data that is very important to monitor health and mental health outcomes, nor to actually review any actions that might be taken about recommendations. I think our collective experience has been that over the years of existence of DeHAG we have made many recommendations about things that we thought would improve health and mental health within the centres, but we have had absolutely no mandate to review the implementation of any of those recommendations. This amendment should be much clearer in terms of the power and terms of reference of a group to really oversight in a clear way what recommendations are made, what actions are then taken and whether they actually lead to improvements in the situation.[2]

3.3 UnitingJustice also commented on the lack of specific monitoring arrangements in the Bill and argued that these details should be codified in the legislation.[3]

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1 See, for example: Dr Gillian Singleton, The Royal Australian College of General Practitioners, *Committee Hansard*, 23 November 2012, p. 1; Ms Ellisa Scott, Hotham Mission Asylum Seeker Project, *Committee Hansard*, 23 November 2012, p. 14; Mr Kon Karapanagiotidis OAM, Asylum Seeker Resource Centre, *Committee Hansard*, 23 November 2012, p. 15; Professor Gillian Triggs, Australian Human Rights Commission, *Committee Hansard*, 23 November 2012, p. 21; UnitingJustice, *Submission 5*, p. 12; Australian Lawyers Alliance, *Submission 9*, p. 1; Coalition for Asylum Seekers Refugees and Detainees, *Submission 14*, p. 8.

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

3 *Submission 5*, p. 11.

3.4 The committee received evidence that one aspect of the Panel's functions, as envisaged in the Bill, would be unnecessary or impractical. Proposed paragraph 198ABA(5)(c) of the Bill provides that in performing its monitoring and assessment functions the Panel may 'assess the health of an offshore entry person when he or she first arrives in a regional processing country'. Dr Singleton of The Royal Australian College of General Practitioners stated that she could not see how such assessments would practically work:

> I think ensuring that the processes are in place to ensure that people are being assessed adequately is what is important.[4]

Access to regional processing countries and facilities

3.5 The Department's submission noted that the activities of any Panel in, or in relation to, a regional processing country 'will necessarily depend on the consent and agreement of the government of the relevant regional processing country'.[5]

3.6 At the public hearing, an officer of the Department expanded on this point:

> We are very conscious that in establishing the regional processing centres that they are established within separate sovereign countries. Each time anybody, whether it be a staff member of the department or indeed somebody being transferred to the centre, is seeking permission to enter the country they need to be granted a visa and they need permission to access a centre. It is a shared arrangement. The challenge we were presenting to the committee for it to consider was the coverage of Australian law in relation to a separate sovereign country.[6]

3.7 However, some witnesses dismissed the issue of access as an obstacle to the Panel's operation.[7] For example, Mr David Manne of the Refugee and Immigration Legal Centre argued that the issues in relation to sovereignty could be addressed through further negotiation with the Nauruan and Papua New Guinean governments as part of the transfer arrangement:

> The transfer arrangement has already overcome, it appears, certain issues concerning sovereignty, such as transferring people to Nauru and setting up tents for people to live in at the moment, and so forth. We would see it as a necessary extension of the arrangements that have already been undertaken, rather than overcoming any possibly insurmountable obstacle. Were that not to be the case we would be confronting a situation where the

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4 *Committee Hansard*, 23 November 2012, p. 9. See also: Associate Professor Amanda Gordon, Australian Psychological Society, *Committee Hansard*, 23 November 2012, p. 9.

5 *Submission 19*, p. 3.

6 Mr Ken Douglas, Department of Immigration and Citizenship (DIAC), *Committee Hansard*, 23 November 2012, p. 30. See also: Ms Vicki Parker, DIAC, *Committee Hansard*, 23 November 2012, p. 38.

7 Mr Kon Karapanagiotidis OAM, Asylum Seeker Resource Centre, *Committee Hansard*, 23 November 2012, p. 16; Ms Tamara Lions, Amnesty International Australia, *Committee Hansard*, 23 November 2012, p. 17; Mr David Manne, Refugee and Immigration Legal Centre, *Committee Hansard*, 23 November 2012, p. 27.

> Australian Government was expelling people from its shores to another country without being able to provide for their care.[8]

3.8 Professor Gillian Triggs, President of the Australian Human Rights Commission (AHRC), expressed the view that sovereignty would not be a barrier to a statutory panel accessing regional processing centres:

> [It] is a matter of international law. Australia is legally responsible for all international activities over which it has effective control. That is a very broad statement, but, specifically in relation to asylum seekers, clearly there is an obligation to assess those claims and to ensure that basic humanitarian rights are preserved. By transferring people to an offshore facility, those obligations continue. Certainly they would continue in the specific instances that are in existence at the moment in Papua New Guinea and Nauru, where Australia is playing such a strong role in relation to assisting with legislation, training of those likely to undertake assessment and so on.[9]

3.9 However, Professor Triggs did indicate a problem would arise if the Australian Government were to 'determine for itself that it will not permit the jurisdiction of its agencies to extend to offshore territories, and the Australian parliament would be more than entitled to pass legislation or to make clear that point if [it] chose to do so'.[10]

3.10 An officer of the Department sought to equate efforts by the Australian Government in obtaining access for the Panel with the assistance it might provide for bodies such as Amnesty International Australia or the Australian Red Cross in negotiating access:

> What we are posing for the committee to consider is how that might be applied under Australian legislation with a foreign country. For example, over the last three weeks or so, there have been visits by both the Australian Red Cross and Amnesty International. Both of those visits required the consent of the Nauru[an] government. We did not take their agreement for those visits for granted or lightly. We sought their agreement in the first instance.[11]

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8 *Committee Hansard*, 23 November 2012, p. 27.

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

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

11 Mr Ken Douglas, DIAC, *Committee Hansard*, 23 November 2012, p. 30.

Reporting to the parliament

3.11 A number of witnesses welcomed proposed new subsection 198ABA(6) which provides for the Panel to report at least once every six months on the health of offshore entry persons taken to regional processing counties, and to provide a copy of that report to the Speaker of the House of Representatives and the President of the Senate.[12] For example, Professor Triggs noted:

> [I]f independent monitors can report publicly on their findings there will be a significant increase in transparency and accountability…
>
> [R]eporting to parliament gives an element of independent oversight by parliament—that is, a direct role within the democratic system. So I would see that as a very positive improvement.[13]

3.12 Mr Adam Fletcher from the Castan Centre for Human Rights Law argued that public reporting would make the Panel a more effective body than the Immigration Health Advisory Group (IHAG):

> [W]e see that an independent body which has some sort of public reporting requirement is likely to be more effective in achieving good health outcomes than the internal bodies, such as the IHAG – which, we understand, has not yet been formed – because…the transparency and accountability of such an independent body which reported publicly would be far greater.[14]

3.13 Professor Newman spoke of the frustration faced by DeHAG members in relation to being able to follow up on the implementation of recommendations that DeHAG made:

> We share, I think it is reasonable to say, a common view and frustration that many of the recommendations we and our professional bodies have made have not necessarily been implemented, or there have been systemic barriers to implementation, that the reporting back to us has been inadequate, and that we are not provided with adequate data to actually make reasonable policy recommendations. So, part of [both the] challenge and frustration of being an independent advisory body is, of course, that you can make many recommendations and give a lot of advice that is not necessarily acted upon.[15]

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12 See, for example, Professor Louise Newman, The Royal Australian and New Zealand College of Psychiatrists, *Committee Hansard*, 23 November 2012, p. 4; Ms Tamara Lions, Amnesty International Australia, *Committee Hansard*, 23 November 2012, pp 13 and 17; Professor Gillian Triggs, Australian Human Rights Commission, *Committee Hansard*, 23 November 2012, p. 23.

13 *Committee Hansard*, 23 November 2012, pp 21 and 23.

14 *Committee Hansard*, 23 November 2012, p. 27.

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

3.14 Witnesses suggested that, in addition to the Panel providing reports to the parliament, there should be a requirement for the Minister to respond to the reports within a mandated timeframe.[16] Mr Kon Karapanagiotidis OAM of the Asylum Seeker Resource Centre argued for a response from the Minister within 45 days of the Panel's report being presented to parliament:

> We need statutory obligations on the part of the government when these recommendations are put forward. We need the government to be bound to provide a mandated written response within 45 days of this report being tabled by the panel. We need to ensure we have a panel that has clout, standing, rights and, most critically[,] independence – so it can call it like it is, hold the government to account and have binding recommendations, genuine oversight and resourcing[.][17]

Expertise of the Panel

3.15 The committee received some evidence on the range of expertise of the Panel, as provided for in proposed subsection 198ABA(3) of the Bill.[18] For example, Dr Singleton outlined the expertise that key health organisations consider should be represented on the Panel:

> [The] expert panel should include health professionals with experience in health needs of refugees and asylum seekers, including professionals with specific expertise in psychiatry, psychology, general practice, public health, infectious diseases, paediatrics, dentistry and nursing. Representatives with health expertise from the countries in which the centres are located should also be involved in an advisory capacity.[19]

3.16 The inclusion of human rights expertise on the Panel was also raised in some submissions.[20] In relation to this issue, Professor Triggs stated:

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16 Mr Kon Karapanagiotidis OAM, Asylum Seeker Resource Centre, *Committee Hansard*, 23 November 2012, p. 16; Mr David Manne, Refugee and Immigration Law Centre, *Committee Hansard*, 23 November 2012, p. 28. See also: Asylum Seeker Resource Centre, *Submission 2*, p. 1.

17 *Committee Hansard*, 23 November 2012, p. 16.

18 See, for example, Asylum Seeker Resource Centre, *Submission 2*, p. 1; Commissioner for Children and Young People WA, *Submission 7*, p. 4; Victorian Refugee Health Network and Refugee Health Network of Australia, *Submission 15*, p. 1.

19 *Committee Hansard*, 23 November 2012, pp 1-2. See also: Victorian Refugee Health Network and Refugee Health Network of Australia, which suggested that refugee health experience and nursing should be part of the required expertise of the Panel (*Submission 15*, p. 1); and Asylum Seeker Resource Centre, which suggested that psychiatry expertise should be included in the Panel's expertise (*Submission 2*, p. 1).

20 Hotham Mission Asylum Seeker Project, *Submission 10*, p. 4; Asylum Seeker Resource Centre, *Submission 2*, p. 1. See also: Coalition for Asylum Seekers Refugees and Detainees, which recommended that there should be a 'certain proportion of non-government organisations representing refugees and asylum seekers and human rights organisations in the Panel' (*Submission 14*, p. 8).

> [I]t would be extremely helpful if a member of the commission had some reasonable competence and understanding of international human rights law…One of the reasons I would encourage you to make a recommendation in relation to this is that so frequently we find in our work here at the commission that we are met with the answer, 'Well, that's not what Australian domestic law provides.' Our benchmark provisions are international human rights treaties that may not have been implemented directly into Australian law. With the scrutiny process that you would be aware of and other increased awareness of international human rights, it would be very helpful if a commission member were at least competent in this area.[21]

3.17 The committee also sought the view of witnesses on whether the Panel should include a representative from a disability organisation. Associate Professor Amanda Gordon of the Australian Psychological Society suggested that such expertise is present within a number of organisations – such as The Royal Australian College of General Practitioners, The Royal Australian and New Zealand College of Psychiatry, the Australian Psychological Society and the Australian Medical Association – which would be nominating representatives to the Panel. However, Associate Professor Gordon did not believe there would be any objection to including a specific reference to such expertise in the Bill.[22]

Committee view

3.18 In the committee's view, the oversight and monitoring of health services provided to asylum seekers transferred to regional processing countries is currently inadequate. Despite this view, however, the committee does not support the establishment of a panel of health experts as proposed by the Bill as the appropriate mechanism to address this deficiency.

3.19 Fundamentally, it is not clear to the committee where the Bill's proposed panel would be administratively and operationally located within the framework of government or, alternatively, how it is to be funded if it is to be a body entirely independent from government. In this context, the committee notes the answer to a question on notice from the Office of the Commonwealth Ombudsman, which stated:

> The Ombudsman is open to further consideration of the establishment of an independent expert panel located within the Ombudsman's Office to monitor and evaluate the well-being of asylum seekers sent to offshore regional processing centres. There are possible benefits to this proposal depending on its construction…[However, the] independent panel would

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

22 *Committee Hansard*, 23 November 2012, p. 11. See also: Associate Professor Karen Zwi from The Royal Australasian College of Physicians, who outlined some of the work that the Detention Health Advisory Group (DeHAG) had done, and recommendations it had made to address issues in relation to disability, and particularly to prevent further disabilities manifesting in detainees (*Committee Hansard*, 23 November 2012, pp 11-12).

> require appropriate expertise and may need a legislative power to undertake inspections in regional processing centres.[23]

3.20 The President of the Australian Human Rights Commission indicated that, while that organisation would be 'very happy to have the [Panel proposed in the Bill]…linked in some way with the Human Rights Commission', it lacked the resources and expertise to support such a panel, and would need a designated legislative function and associated funding in order to have an operational role.[24]

3.21 The committee notes the evidence of an officer of the Department that the Joint Advisory Committee and IHAG will be providing scrutiny of health services in regional processing countries. Clearly the Joint Advisory Committee lacks the necessary expertise to perform the specific role envisaged by the Bill's proposal. Further, it is obvious from the evidence the committee has received that IHAG, if merely a reincarnation of DeHAG, would not be able to carry out independent oversight of health services in regional processing countries.

Establishing IHAG as an independent oversight and monitoring body

3.22 In the committee's view, however, if IHAG is constituted with appropriate expertise, powers and reporting functions to ensure transparency and accountability in relation to the work it undertakes, then it would be able to perform the functions proposed for the Panel. While the committee appreciates that DeHAG is in a 'transition phase' to IHAG,[25] IHAG should be made fully operational as soon as possible and as a matter of urgency.

3.23 In terms of IHAG's remit, the committee has been told that the group will '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' than was the case for DeHAG.[26] In addition, there appears to be some anticipation within the Department that IHAG will provide advice in relation to regional processing centres,[27] but this may not be clear in the current draft of IHAG's terms of reference.[28]

3.24 In addition to clarifying at the most basic level that IHAG will have responsibility for oversight and monitoring of health services for asylum seekers in regional processing countries, the evidence to the committee highlighted the

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23 Office of the Commonwealth Ombudsman, answer to question on notice, received 30 November 2012, p. 2.

24 *Committee Hansard*, 23 November 2012, pp 22 and 23.

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

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

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

28 Dr Gillian Singleton, The Royal Australian College of General Practitioners, *Committee Hansard*, 23 November 2012, p. 4.

importance of having the powers and functions of an independent oversight body clearly articulated.

Negotiating access for IHAG in regional processing countries

3.25 The Department put to the committee that one of the matters in the Bill requiring further clarification is acknowledgement that access by the expert health panel would depend on the consent and agreement of the government in the relevant regional processing country.

3.26 The committee appreciates the matter of sovereignty raised by the Department, and accepts the evidence that all workers, visitors, and asylum seekers going to regional processing countries require visas and permission to enter the processing facilities from the relevant country. However, the committee also notes that the Department is already expecting that IHAG will request to visit the regional processing centres and that the Department will 'facilitate' that access.

IHAG reports to be made public

3.27 In terms of IHAG undertaking a review and monitoring role, the committee takes seriously the evidence it received of numerous examples of DeHAG, and other professional health representative organisations, putting recommendations to the Department that have not been implemented or actioned;[29] as well as apparent uncertainty as to whether particular recommendations have been, or are to be, implemented.[30] There also appears to have been ineffectual feedback and communication in relation to the implementation of recommendations.[31]

3.28 While the committee appreciates that, at present, IHAG is intended to have an 'internal' role providing advice to the Department, in the committee's view the Department should make the reports and recommendations of IHAG publicly available. In addition, the committee considers that there would be substantial value in the Minister tabling a response to IHAG's reports and recommendations within three months. Making IHAG's reports and recommendations publicly available, and requiring a ministerial response to those reports and recommendations, will provide transparency and accountability in terms of the implementation of recommendations by IHAG.

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29 See, for example, Associate Professor Karen Zwi, The Royal Australasian College of Physicians, *Committee Hansard*, 23 November 2012, p. 7, regarding recommendations in relation to child and youth health and guardianship of unaccompanied minors.

30 See Dr Gillian Singleton, The Royal Australian College of General Practitioners, *Committee Hansard*, 23 November 2012, p. 3, referring to DeHAG recommendations in relation to general and pediatric health screening in offshore facilities.

31 See Professor Louise Newman, The Royal Australian and New Zealand College of Psychiatrists, *Committee Hansard*, 23 November 2012, discussing the lack of defined capacity for DeHAG to review actions taken in relation to recommendations.

Expertise represented on IHAG

3.29 The evidence that the committee received in relation to the expertise represented on the expert health panel proposed in the Bill indicates that the expertise on that panel should be augmented. The committee understands that the membership of DeHAG covered a much broader cross-section of professional health organisations, and expects that IHAG would cover a similar cross-section of health expertise.[32] However, the committee believes that there would be significant benefit in appointing to IHAG a specialist representative from a disability organisation.

3.30 As a final point, the committee encourages the Department to consider whether the Australian Human Rights Commission should be granted observer status on IHAG in order to address concerns raised during the inquiry in relation to the need for human rights expertise to be represented.

Recommendation 1

3.31 The committee recommends that the terms of reference for the Immigration Health Advisory Group (IHAG) should explicitly state that IHAG's role includes the oversight and monitoring of health services to offshore entry persons in regional processing countries.

Recommendation 2

3.32 The committee recommends that the terms of reference for IHAG should include provision for IHAG to:

- **access processing facilities in regional processing countries to conduct monitoring and oversight activities;**
- **meet with offshore entry persons in processing centres in regional processing countries (with the consent of those people); and**
- **review the implementation of recommendations it makes, or other professional health organisations make, and provide further advice on the implementation of those recommendations.**

Recommendation 3

3.33 The committee recommends that the Department of Immigration and Citizenship should be required to consult with IHAG on the development and design of all aspects of the Australian Government's policy to send asylum seekers to regional processing countries.

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32 In an answer to a question on notice, DIAC indicated that the organisations invited to provide nominations for membership on IHAG include: The Royal Australian College of General Practitioners, The Royal Australian and New Zealand College of Psychiatrists, the Australian Psychological Society, The Royal Australian College of Physicians, the Australian College of Nursing, and the Australian Medical Association (DIAC, answer to question on notice, received 29 November 2012, p. 3).

Recommendation 4

3.34 The committee recommends that IHAG's terms of reference should include the requirement that IHAG provide the Minister with a report on its work at least every six months, and that the Minister make that report publicly available.

Recommendation 5

3.35 The committee recommends that the Minister table in the parliament a response to all reports by IHAG, within three months of those reports being made public.

Recommendation 6

3.36 The committee recommends that the health expertise represented on IHAG should also include a representative from a disability organisation.

Recommendation 7

3.37 The committee recommends that the Senate should not pass the Bill.

Senator Trish Crossin

Chair

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

APPENDIX 1

SUBMISSIONS RECEIVED

Submission Number	Submitter
1	The Royal Australian and New Zealand College of Psychiatrists
2	Asylum Seeker Resource Centre
3	Office of the Australian Information Commissioner
4	Castan Centre for Human Rights Law
5	UnitingJustice Australia
6	Refugee and Immigration Legal Centre
7	Commissioner for Children and Young People WA
8	Amnesty International Australia
9	Australian Lawyers Alliance
10	Hotham Mission Asylum Seeker Project
11	Federation of Ethnic Communities' Councils of Australia
12	Independent group of health experts representing key Australian health and mental health professional organisations
13	Australian Psychological Society
14	Coalition for Asylum Seekers, Refugees and Detainees
15	Victorian Refugee Health Network and Refugee Health Network of Australia
16	The Royal Australasian College of Physicians
17	NSW Commissioner for Children and Young People, Children and Young People Commissioner (ACT), Guardian for Children and Young People (South Australia), Commissioner for Children (Tasmania) and Northern Territory Children's Commissioner

18 Australian Human Rights Commission

19 Department of Immigration and Citizenship

20 Australian Medical Association

ADDITIONAL INFORMATION RECEIVED

1 Response to question on notice provided by the Australian Human Rights Commission on 29 November 2012

2 Response to questions on notice provided by the Department of Immigration and Citizenship on 29 November 2012

3 Response to questions on notice provided by the Office of the Commonwealth Ombudsman on 30 November 2012

4 Additional information provided by Associate Professor Karen Zwi, The Royal Australasian College of Physicians, on 4 December 2012

APPENDIX 2

WITNESSES WHO APPEARED BEFORE THE COMMITTEE

ANDERSON, Ms Adrienne, Policy Officer and Solicitor and Migration Agent, Refugee and Immigration Legal Centre

DOUGLAS, Mr Kenneth, First Assistant Secretary, Detention Infrastructure and Services Division, Department of Immigration and Citizenship

FLETCHER, Mr Adam, Manager, Accountability Project, Castan Centre for Human Rights Law

GORDON, Associate Professor Amanda, Honorary Fellow; Convenor, Refugee Issues and Psychology Interest Group, Australian Psychological Society

GRIDLEY, Ms Heather, Manager, Public Interest, Australian Psychological Society

KARAPANAGIOTIDIS, Mr Kon, OAM, Chief Executive Officer, Asylum Seeker Resource Centre

LIONS, Ms Tamara, Government Relations Adviser, Amnesty International Australia

MANNE, Mr David, Executive Director, Principal Solicitor and Migration Agent, Refugee and Immigration Legal Centre

NEWMAN, Professor Louise, Fellow, The Royal Australian and New Zealand College of Psychiatrists

PARKER, Ms Vicki, First Assistant Secretary, Expert Panel Report Implementation, Refugee, Humanitarian and International Policy Division, Department of Immigration and Citizenship

PENOVIC, Ms Tania, Deputy Director, Castan Centre for Human Rights Law

SCOTT, Ms Ellisa, Case Worker, Hotham Mission Asylum Seeker Project

SINGLETON, Dr Gillian, Fellow, The Royal Australian College of General Practitioners

TRIGGS, Professor Gillian, President, Australian Human Rights Commission

YONG, Dr Choong-Siew, Psychiatry representative, Australian Medical Association (AMA) Federal Council; Deputy Chair, Child and Youth Health Committee, AMA

ZWI, Associate Professor Karen, Fellow, The Royal Australasian College of Physicians