# 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.