

## Monitoring the health of asylum seekers

### The need for transparency, accountability and acceptance of responsibility

#### Introduction

The Australian Lawyers Alliance (ALA) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee regarding the *Migration Amendment (Health Care for Asylum Seekers) Bill 2012* (Cth).

#### Who we are

The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual. More information about us is available on our website [www.lawyersalliance.com.au](http://www.lawyersalliance.com.au)

#### OUR POSITION

The ALA does not support regional processing as a means of assessing the validity of asylum seekers' claims for refugee status.

We believe that regional processing is in direct violation of Australia's obligations under the *Convention Relating to the Status of Refugees* and its Protocol (Refugee Convention); the *International Covenant on Civil and Political Rights*, the *International Covenant of Economic, Social and Cultural Rights*, the *Convention on the Rights of the Child*, the *Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (CAT) and its Protocol (OPCAT).

However, we support the Bill's proposed actions as steps that can and should be taken *in the interim* to mitigate the violations of human rights and the further deterioration of the health of asylum seekers.

The ALA believes that the failure of the Australian government to appropriately cater for the health and legal rights of asylum seekers will result in major future compensation claims and we note that already successful claims made by asylum seekers against the Commonwealth has already cost taxpayers in excess of \$20 million since 1999.

#### Conditions in regional processing areas

The ALA has previously highlighted our concerns regarding conditions in regional processing areas.



We are concerned about the housing of asylum seekers in tents, especially during the wet season, and the capacity for the spread of disease and illness.

We are also concerned by reports in *New Matilda*, where an anonymously signed petition from asylum seekers in Nauru stated:

*'After getting moved here, we realized that there is no life here; there are no essentials necessary for life. There is no health, no hygiene, and most importantly they're not processing our asylum application.'*<sup>1</sup>

We are also concerned regarding the ongoing impact on asylum seekers' mental health, lack of access to qualified professionals such as psychologists and psychiatrists, and translators.

We note that there has also already been one report of a suicide attempt on Nauru.<sup>2</sup>

## THE BENEFITS OF THE BILL

### Accountability

The requirement of a 6 monthly report on the health of offshore entry persons who have been taken to regional processing countries is important as it provides a layer of accountability and transparency.

The Panel has an important role as it provides an independent voice on the health of asylum seekers in the Parliament, and is likely to ensure accurate reporting as it does not have an inherent conflict of interest.

### Public health reporting

We believe that the Bill will increase transparency and provide a more systemic picture of public health among asylum seekers through the provision of the 6 monthly written report to Parliament.

Given that asylum seekers are being housed in tents, and monsoon seasons occur over the summer months, there is a significant risk of outbreak of tropical disease and therefore accurate public health reporting is essential.

### Recommendations

The ability of the Panel to make recommendations will provide expert information directly to the Minister. This will provide cost savings as best practice in health outcomes will be

<sup>1</sup> Wendy Bacon, 'Nauru Asylum Seekers Protest Delays', *New Matilda*, 15 October 2012. Accessible at <<http://newmatilda.com/2012/10/15/asylum-seekers-protest-nauru>>

<sup>2</sup> Adam Brereton, 'Asylum Seeker Attempts Suicide on Nauru', *New Matilda*, 12 October 2012. Accessible at <<http://newmatilda.com/2012/10/12/asylum-seeker-attempts-suicide-nauru>>



advised directly, therefore avoiding bureaucracy and delay in instances of public health emergency.

### Accountability

We believe that mechanisms as proposed within the Bill should be developed to ensure that the systemic picture of asylum seekers' health is seen and scrutinised within the Parliament.

### ONGOING ISSUES

The Australian Human Rights Commission has also noted that regional processing appears to be in breach of Australia's obligations<sup>3</sup>, and that damage to asylum seekers' health via offshore processing is well documented.

Given the previous detrimental impact of processing in Nauru on asylum seekers' health and wellbeing, we believe that the development of mechanisms to ensure greater transparency is a step that should be taken to ensure that the systemic nature of individuals' health has some access to professional opinion, and ultimately, some access to healing and redress.

### A duty of care

We submit that the Australian government continues to have a duty of care to provide for the health of asylum seekers under its international obligations within the *Convention on the Rights of the Child*, the *Refugee Convention*, and the *International Covenant of Economic, Social and Cultural Rights*.

We submit that the assumption of a duty of care by the Australian government is also implicit in its funding of the regional processing centres, at a cost of approximately between \$1.2 billion to \$1.4 billion.<sup>4</sup>

We submit also that the Australian government has a duty of care to the communities in Nauru and Manus Island to prevent the spread of disease and/or public health crises. This responsibility is also evident through the payments currently made by the Australian government through the AusAID program to these countries.

While the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* (Cth) removed the guardianship power of the Minister for Immigration and Citizenship for unaccompanied minors, we question as to whether this was a valid transfer of power.

<sup>3</sup> Australian Human Rights Commission, 'Human rights issues raised by the transfer of asylum seekers to third countries' (October 2012) Accessible at [http://www.humanrights.gov.au/human\\_rights/immigration/transfer\\_third\\_countries.html#fn55](http://www.humanrights.gov.au/human_rights/immigration/transfer_third_countries.html#fn55)

<sup>4</sup> Estimates provided by the Department of Treasury to the Expert Panel on Asylum Seekers. *Report of the Expert Panel on Asylum Seekers*, August 2012, at 143.



We submit that the Minister for Immigration and Citizenship may continue to have a duty of care for unaccompanied minors at common law, and that it may be non-delegable in nature.

### **No apparent costing for breach of duty of care**

We note that we have been in discussion with the Department of Finance and Deregulation regarding budgeting future projections for compensation payments to asylum seekers within the regional processing program.

We note that there do not appear to have been estimates projected for the cost of compensation for asylum seekers as a result of regional processing, however we are still awaiting written confirmation of this information.

This is despite the fact that documentation released under freedom of information laws revealed that there had been a spike in compensation payouts in the years following the Tampa affair.<sup>5</sup>

Such failure to budget for compensation payouts reveals a lack of intent to provide adequately for the rights of asylum seekers, and appears to indicate that on Nauru and Manus Island, asylum seekers are out of sight, out of mind, and outside of access to legal redress.

### **CONCLUSION**

We support the proposed Bill as an interim measure to mitigate the damage to asylum seekers' health.

Ultimately, we believe that processing individual's claims in Australia would be fairer, and would be more in keeping with our obligations.

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<sup>5</sup> For more information, see Australian Lawyers Alliance, 'Release of Freedom of Information – Asylum Claims' (2011) <<http://www.lawyersalliance.com.au/public.php?id=117>>