Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 and related legislation

Introduction

1.1 The Parliamentary Joint Committee on Human Rights (the committee) has been examining the human rights implications of the Migration Regional Processing package of legislation.

1.2 This package of legislation re-establishes offshore processing for those asylum seekers, defined as 'irregular maritime arrivals' who arrived in Australia on or after 13 August 2012. The package comprises:

- *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012*;
- Migration Act 1958 - Instrument of Designation of the Republic of Nauru as a Regional Processing Country under subsection 198AB(1) of the Migration Act 1958 - September 2012;
- Migration Act 1958 - Instrument of Designation of the Independent State of Papua New Guinea as a Regional Processing Country under subsection 198AB(1) of the Migration Act 1958 - October 2012;
- Migration Amendment Regulation 2012 (No. 5);
- *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013*;
- *Appropriation (Implementation of the Report of the Expert Panel on Asylum Seekers) Act (No. 1) 2012-2013* and *Appropriation (Implementation of the Report of the Expert Panel on Asylum Seekers) Act (No. 2) 2012-2013*;
- Migration Regulations 1994 - Specification under paragraphs 050.613A(1)(b) and 051.611A(1)(c) - Classes of Persons - November 2012; and
- Migration Amendment Regulation 2013 (No 2).[1]

1.3 The committee decided to examine a private Senators' bill as part of the overall package:

- Migration Amendment (Health Care for Asylum Seekers) Bill 2012.

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1 In its *Seventh Report of 2013*, the committee noted its decision to examine this instrument as part of its examination of the Migration Regional Processing package of legislation.

1.4 Details of the legislation under examination, and a brief description of each, are provided at Appendix 1.

Conduct of the examination

1.5 The committee initially wrote to the Minister for Immigration and Citizenship (Immigration Minister) on 22 August and 31 October 2012 seeking information about the human rights compatibility of the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012.* The Minister provided a response on 15 November 2012.[2]

1.6 The committee subsequently held two public hearings, the first in Canberra on 17 December 2012 and the second in Melbourne on 19 December 2012. The committee invited the Department of Immigration and Citizenship (Immigration Department) and the Attorney-General's Department to both hearings. The Immigration Department made officials available for both hearings but the Attorney-General's Department declined to attend either hearing. A full list of witnesses who appeared at the hearings is at Appendix 2, and the *Hansard* transcripts are available on the committee's website.[3] The committee sought and received ten written submissions, which are listed at Appendix 3.

1.7 Following the public hearings the committee wrote to the Immigration Minister and the Attorney-General on 12 February 2013 seeking further information on several matters that had been highlighted through the investigation of the legislation.

1.8 On 14 May 2013, the committee received a letter from the Attorney-General advising that he would not be responding to the committee's written questions on notice as his Department 'does not provide legal advice to parliamentary committees' and that the Immigration Minister was best placed to respond to questions relating to the consistency of the legislation with human rights standards.

1.9 On 29 May 2013, the committee received a response from the Immigration Minister, providing information valid as at 14 February 2013. On 3 June 2013, officers from the Immigration Department attended a private briefing with the committee to provide more up to date information.

Acknowledgements

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

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2 Letter from the Immigration Minister, 15 November 2012: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=humanrights_ctte/activity/migration/correspondence/min_response.pdf.

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

Background to the legislative package

1.11 In June 2012, following a political impasse in relation to the government's attempts to respond to 'irregular maritime arrivals',[4] the government formed an Expert Panel to provide it with a report on the best way forward. The panel was made up of the former chief of the Australian Defence Force, the Director of the Victorian Foundation for Survivors of Torture Inc., and the Director of the National Security College at the Australian National University.[5]

1.12 The *Report of the Expert Panel on Asylum Seekers* was released on 13 August 2012 and contained 22 recommendations.[6] The recommendations sought to present an integrated approach to asylum seeker issues by providing disincentives for irregular migration and advancing regional engagement strategies, including regional processing, within a framework which adhered to Australia's international obligations.

1.13 The report was premised on the assumption that action by the Australian Government, including offshore processing and cooperation with regional governments, would have the effect of deterring people from seeking to come to Australia by boat without prior authorisation.

1.14 A central plank of the Expert Panel's recommended approach was a 'no advantage' principle to ensure 'no benefit is gained through circumventing regular migration arrangements'.[7]

Government response

1.15 In response to the report, the government immediately committed to implementing all of the Expert Panel's recommendations. Legislation[8] was introduced to give effect to those aspects of the Expert Panel's recommendations

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4 The government's preferred response involved an arrangement with Malaysia, where up to 800 boat arrivals would be sent directly from Australia to Malaysia, and 4000 refugees would be resettled to Australia from Malaysia over four years. This arrangement was signed by both governments on 25 July 2011. On 31 August 2011, before any transfers had been made, the High Court found it to be invalid: see *Plaintiff M70/2011 v Minister for Immigration and Citizenship*; *Plaintiff M106 of 2011 v Minister for Immigration and Citizenship* [2011] HCA 32. Unable to get support from either the Opposition or the Greens for legislation to enable the arrangement to proceed, the government abandoned it.

5 Air Chief Marshal Angus Houston AC AFC (Ret'd), Mr Paris Aristotle AM and Professor Michael L'Estrange AO, respectively.

6 Report of the Expert Panel on Asylum Seekers, August 2012, see summary of Recommendations, pp 14-19: http://expertpanelonasylumseekers.dpmc.gov.au/.

7 See Report of the Expert Panel on Asylum Seekers, Overview: The Approach Underpinning this Report, para v, p 11.

8 See list in para 1.2 above.

that primarily related to the 'disincentive' elements of the Expert Panel's approach,[9] namely:

- that amendments to legislation be made 'as a matter of urgency' to enable the transfer of people to regional processing arrangements, and that capacity be established in Nauru and Papua New Guinea (PNG) to process asylum seekers;[10]
- that amendments be made to the offshore excision arrangements in the *Migration Act 1958*, to disapply the usual provisions of the Act to anyone arriving in any part of Australia by irregular maritime means;[11] and
- that family reunion concessions for people who arrive in Australia through 'irregular maritime voyages' be removed and future arrivals be barred from sponsoring family members through the Humanitarian Program, so that family members would need to seek a visa under the family stream of the Migration Program.[12]

1.16 The government has stated that the 'no advantage' principle will inform the implementation of these legislative changes.[13] To date, this has included the adoption of measures which are not reflected in the Expert Panel's

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9 The Expert Panel's recommendation that the 2011 Malaysia Agreement be implemented after adding additional safeguards, however, remains unfulfilled as the Coalition, the Greens and key Independents continue to oppose the so-called 'Malaysia Solution': see Report of the Expert Panel on Asylum Seekers, August 2012, recommendation 10.

10 Expert Panel's recommendations 8 and 9, given effect by the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* together with *the Migration Act 1958 - Instrument of Designation of the Republic of Nauru as a Regional Processing Country under subsection 198AB(1) of the Migration Act 1958 - September 2012*; and the *Migration Act 1958 - Instrument of Designation of the Independent State of Papua New Guinea as a Regional Processing Country under subsection 198AB(1) of the Migration Act 1958 - October 2012*. Funding for these measures was secured by the *Appropriation (Implementation of the Report of the Expert Panel on Asylum Seekers) Act (No. 1) 2012-2013* and the *Appropriation (Implementation of the Report of the Expert Panel on Asylum Seekers) Act (No. 2) 2012-2013*.

11 Expert Panel's recommendation 14, given effect by the *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013*.

12 Expert Panel's recommendations 11 and 12, given effect by *the Migration Amendment Regulation 2012 (No. 5)*. The Expert Panel also recommended that possibilities for private sponsorship arrangements for humanitarian visa holders should be explored (see Expert Panel Report, para 3.17). This recommendation is given effect by *the Migration Amendment Regulation 2013 (No. 2)*, which allocates 500 of the 20,000 humanitarian places to offshore refugees who are sponsored by Australian community organisations. Sponsorship requires payment of almost $20,000 per person by the community organisation.

13 See discussion on the 'no advantage' principle below.

recommendations, such as removing work rights for some 'irregular maritime arrivals' living in the Australian community on bridging visas.[14]

1.17 The government has also taken steps to implement various aspects of the Expert Panel's recommendations which relate to advancing regional cooperation, namely:

- that there be an increase in Australia's Humanitarian Program to 20,000 places a year — including 12,000 for refugees, with the program focused on asylum seekers moving through South-East Asia;[15] and
- that capacity building initiatives in the region be extended,[16] bilateral cooperation on asylum seeker issues with Indonesia and Malaysia be advanced,[17] and there be a more effective strategy for dealing with source countries for asylum seekers to Australia.[18]

14 Given effect by the *Migration Regulations 1994 - Specification under paragraphs 050.613A(1)(b) and 051.611A(1)(c) - Classes of Persons - November 2012*.

15 To give effect to the Expert Panel's recommendation 2, the government has committed to increase the special humanitarian program from 13,750 to 20,000 within the 2012-13 financial year. The intake will include over 3000 Burmese and 600 Middle-Eastern refugees who are in Malaysia: see, media release by the Prime Minister and Immigration Minister, 'Refugee Program increased to 20,000 places', 23 August 2012 http://www.pm.gov.au/press-office/refugee-program-increased-20000-places.

16 Joint media release by the Prime Minister and Immigration Minister, 'Refugee Program increased to 20,000 places', 23 August 2012; (corresponding to the Expert Panel's recommendation 3).

17 Media release by the Prime Minister and Immigration Minister, 'Refugee Program increased to 20,000 places', 23 August 2012; (corresponding to the Expert Panel's recommendation 4).

18 See DIAC, Answer to question on notice No 23, in letter dated 29 May 2013; (corresponding to the Expert Panel's recommendation 6).

Overview of the legislation

1.18 The legislative framework for the new regional processing arrangements was established by the following laws:

- the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012*; and
- the *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013.*

Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012

1.19 The *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012*, which commenced on 18 August 2012, amended the *Migration Act 1958* to replace the existing framework for taking irregular maritime arrivals defined as 'offshore entry persons'[19] to a designated 'regional processing country' for assessment of their protection claims.

1.20 Under the Act, the Immigration Minister may make a legislative instrument which designates a country as a 'regional processing country'.[20] The Minister may exercise this power if he or she thinks that the designation is in the national interest.[21] In considering the national interest, the Minister must have regard to whether the country in question has given any assurances that:

- transferred asylum seekers will not be subject to *refoulement* within the meaning of article 33(1) of the Refugee Convention; and
- it will make an assessment, or permit an assessment to be made, of whether transferred asylum seekers are refugees.[22]

1.21 However, the designation of a country 'need not be determined by reference to the international obligations or domestic law of that country'.[23]

1.22 The designation comes into effect as soon as both Houses of Parliament have passed a resolution approving the designation, or, if there has been no resolution

19 An 'offshore entry person' was a person who entered Australia at an excised offshore place (such as Christmas Island, Cocos (Keeling) Islands and Ashmore and Cartier Islands) without a valid visa.

20 *Migration Act 1958*, s 198AB(1).

21 *Migration Act 1958*, s 198AB(2).

22 *Migration Act 1958*, s 198AB(3).

23 *Migration Act 1958*, s 198AA(d).

disapproving the designation, after five sittings days from the date the instrument was tabled.[24]

1.23 An immigration officer must take an offshore entry person to a regional processing centre as soon as 'reasonably practicable'.[25] However, the Immigration Minister has the discretion to determine that it is in the 'public interest' not to transfer a person.[26] The exercise of this power is not subject to the rules of natural justice.[27]

1.24 The *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* also amended the *Immigration (Guardianship of Children) Act 1946* (IGOC Act). The IGOC Act governs the guardianship arrangements for unaccompanied minors seeking asylum in Australia. The Immigration Minister is the legal guardian of such children. The amendments removed the requirement for the Minister to provide his or her written consent to the removal of an unaccompanied minor to a regional processing country.[28]

Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013

1.25 The *Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Act 2013*, which commenced on 1 June 2013, amended the *Migration Act 1958* to extend the current excision provisions to the whole country. This means that irregular maritime arrivals who arrive anywhere in Australia are subject to the same regional processing arrangements as those who arrive at a previously excised offshore place.

1.26 In addition, the legislation amended the Migration Act to enable the Immigration Minister to revoke or vary a previous determination[29] to exempt a person from being transferred to a regional processing country if he or she considers it is in the public interest to do so.[30] This power will enable a person who had been previously exempted from transfer to be transferred to a regional processing country at a subsequent date. Such determinations are not subject to the rules of natural justice,[31] meaning that a person does not have a right to make representations to the

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24 *Migration Act 1958*, s 198AB(1B).

25 *Migration Act 1958*, s 198AD(2).

26 *Migration Act 1958*, s 198AE(1).

27 *Migration Act 1958*, s 198AE(3).

28 IGOC Act, s 8(2).

29 Made under *Migration Act 1958*, s 198AE(1).

30 *Migration Act 1958*, s 198AE(1A).

31 *Migration Act 1958*, s 198AD(3).

Minister or to be provided with information before the Minister makes his or her decision. A person will not be entitled to be given the reasons for the decision.

1.27 A person will not cease to be a 'transitory person' if they have been assessed to be a refugee.[32] Previously, a 'transitory person' was a person who was transferred offshore for processing and was returned to Australia, but persons already assessed to be refugees and sent to Australia would not be considered a 'transitory'. After these changes, 'transitory persons brought back to Australia would be unlawful non-citizens'.[33] In addition, a person returned from a regional processing country to Australia can now be classified as a 'transitory person' for an indefinite period of time.[34]

Designation of Nauru and Papua New Guinea as 'regional processing countries'

1.28 To date, the Immigration Minister has designated two countries as 'regional processing countries', namely, Nauru and Papua New Guinea.[35] The designations of Nauru and PNG came into effect on 12 September 2012 and 10 October 2012 respectively, having been approved by both Houses of Parliament.[36]

1.29 For both designations, the Minister tabled the relevant instrument and accompanying documents in Parliament, including his statement of reasons for considering that the designation was in the national interest.[37] With regard to Nauru, the Minister stated:

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32 *Migration Act 1958*, s 5AA.

33 See explanatory memorandum to the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012, para 131, p. 18.

34 *Migration Act 1958*, s 198AH(2). Previously a person transferred from Nauru or PNG who spent six months or more in Australia would be entitled to an assessment of refugee status in Australia.

35 See: *Migration Act 1958 - Instrument of Designation of the Republic of Nauru as a Regional Processing Country under subsection 198AB(1) of the Migration Act 1958 - September 2012* (FRLI and *Migration Act 1958 - Instrument of Designation of the Independent State of Papua New Guinea as a Regional Processing Country under subsection 198AB(1) of the Migration Act 1958 - October 2012*.

36 Prior to this, Australia and Nauru signed a Memorandum of Understanding (MOU) 'Relating to the Transfer to and Assessment of Persons in Nauru, and Related Issues' on 29 August 2012; and Australia and PNG signed an MOU 'Relating to the Transfer to and Assessment of Persons in Papua New Guinea, and Related Issues' on 8 September 2012.

37 Under s 198AC(5) of the *Migration Act 1958*, the Minister must provide both Houses of Parliament with the following documents (although a failure to do so does not affect the validity of the designation):

(a) the instrument of designation;

> On the basis of the material set out in the submission from the Department, I think that it is not inconsistent with Australia's international obligations (including but not limited to Australia's obligations under the Refugee Convention) to designate Nauru as a regional processing country.
> ...
>
> However, even if the designation of Nauru to be a regional processing country is inconsistent with Australia's international obligations, I nevertheless think that it is in the national interest to designate Nauru to be a regional processing country.[38]

1.30 The Minister made identical statements with regard to the designation of PNG on 9 October 2012.[39]

UNHCR concerns[40]

1.31 The documents tabled with the instrument of designation of Nauru included a letter from the United Nations High Commissioner for Refugees (UNHCR), responding to a request by the Immigration Minister for his views in relation to the possible designation of Nauru as a 'regional processing country'.[41]

1.32 The UNHCR noted that arrangements to transfer asylum seekers to another country are a 'significant exception' to normal practice, should only be pursued as

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(b) statement of the Minister's reasons for thinking that it is in the national interest to designate the country;

(c) a copy of any written agreement (whether legally binding or not) between Australia and the country;

(d) a statement about the Minister's consultations with the UNHCR;

(e) a summary of any advice received from the UNHCR; and

(f) a statement about any arrangements that are in place or are to be put in place in the country for the treatment of persons taken to that country (s 198AC(2)).

38 Immigration Minister, *Statement of reasons for thinking that it is in the national interest to designate Nauru to be a regional processing country*, September 2012 (Statement of reasons – Nauru), paras 35-36: http://www.minister.immi.gov.au/media/media-releases/_pdf/designation-statement-reasons.pdf.

39 Immigration Minister, *Statement of reasons for thinking that it is in the national interest to designate the independent state of Papua New Guinea to be a regional processing country*, October 2012 (Statement of reasons – PNG), paras 35-36: http://www.minister.immi.gov.au/media/pdf/papua-new-guinea-designation-statement-reasons.pdf.

40 Summary drawn from: Australian Human Rights Commission, *Submission 8*, paras 66-75.

41 A Guterres, United Nations High Commissioner for Refugees, Letter to the Immigration Minister, 5 September 2012: http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=264:unhcr-advice-regarding-nauru&catid=37:submissions&Itemid=61.

part of a burden-sharing arrangement to more fairly distribute responsibilities, and should involve countries with appropriate protection safeguards, including:

- respect for the principle of non-refoulement;
- the right to asylum (involving a fair adjudication of claims);
- respect for the principle of family unity and the best interests of the child;
- the right to reside lawfully in the territory until a durable solution is found;
- humane reception conditions, including protection against arbitrary detention;
- progressive access to Convention rights and adequate and dignified means of existence, with special emphasis on education, access to health care and a right to employment;
- special procedures for vulnerable individuals; and
- durable solutions for refugees within a reasonable period.

1.33 The UNHCR expressed concern 'whether Nauru has presently the ability to fulfil its [Refugee] Convention responsibilities'.[42]

1.34 The UNHCR raised similar concerns in relation to PNG in a letter to the Immigration Minister regarding the designation of PNG as a 'regional processing country', noting that:[43]

- PNG retains seven significant reservations to the Refugee Convention that affect a range of economic, social and cultural rights to which refugees would ordinarily be entitled;
- PNG has no effective legal or regulatory framework to address refugee issues;
- PNG has no immigration officers with the experience, skill or expertise to undertake refugee status determination;
- there remains a risk of refoulement despite written undertakings; and
- the quality of protection currently offered in PNG remains of concern.

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42 A Guterres, United Nations High Commissioner for Refugees, Letter to the Immigration Minister, 5 September 2012, p 3.

43 A Guterres, United Nations High Commissioner for Refugees, Letter to the Immigration Minister, 9 October 2012: http://unhcr.org.au/unhcr/index.php?option=com_content&view=article&id=272&catid=37&Itemid=61.

1.35 The UNHCR concluded:

> [I]t is difficult to see how Papua New Guinea alone might meet the conditions set out in UNHCR's paper on maritime interception and the processing of international protection claims. ... [I]t is the UNHCR's assessment that Papua New Guinea does not have the legal safeguards nor the competence or capacity to shoulder alone the responsibility of protecting and processing asylum seekers transferred by Australia.[44]

44 A Guterres, United Nations High Commissioner for Refugees, Letter to the Immigration Minister, p 3.

The 'no-advantage' principle

1.36 The Expert Panel recommended the application of a 'no advantage' principle to ensure that no benefit is gained by asylum seekers through circumventing regular migration arrangements.[45] The panel considered that:

> The single most important priority in preventing people from risking their lives on dangerous maritime voyages is to recalibrate Australian policy settings to achieve an outcome that asylum seekers will not be advantaged if they pay people smugglers to attempt dangerous irregular entry into Australia instead of pursuing regular migration pathways and international protection arrangements as close as possible to their country of origin.[46]

1.37 The government has adopted this recommendation and has consistently stated that those who arrive on or after 13 August 2012 will receive 'no advantage' – including that they 'will not be processed any faster than had they waited in a refugee camp overseas'.[47]

1.38 The 'no advantage' principle has been criticised as having no meaning or content under international refugee and human rights law. The President of the Australian Human Rights Commission has stated that 'the difficulty with the no advantage principle is that it appears not to have legal content because it is very unclear what you are comparing it with—no advantage over what?'[48]

1.39 Similarly, the UNHCR has questioned the basis of such a principle, stating that there is no 'average' time for resettlement.[49] The UNHCR has noted that the 'no advantage' principle:

> appears to be based on the 'longer term aspiration that there are, in fact, effective 'regional processing arrangements' in place. … However, for the moment such regional arrangements are very much at their early conceptualization. In this regard, UNHCR would be concerned about any

45 Report of the Expert Panel on Asylum Seekers, August 2012, recommendation 1.

46 Report of the Expert Panel on Asylum Seekers, August 2012, para v, p 11.

47 See media release by the Immigration Minister, 'Families to be considered for bridging visas but 'no advantage' principle applies', 7 May 2013: http://www.minister.immi.gov.au/media/bo/2013/bo202819.htm.

48 G Triggs, President of the Australian Human Rights Commission, before the Legal and Constitutional Affairs Legislation Committee, Senate Estimates, 29 May 2013, *Committee Hansard*, p 50.

49 A Guterres, United Nations High Commissioner for Refugees, Letters to the Immigration Minister, 5 September 2012 and 9 October 2012, discussed above.

negative impact on recognised refugees who might be required to wait for long periods in remote island locations.[50]

1.40 The application of the 'no-advantage' principle has different consequences for people who are transferred to Nauru and Manus Island and for those who remain in Australia. These differences are described briefly below.

Asylum seekers transferred to Nauru or Manus Island[51]

1.41 Under the new regional processing arrangements, any asylum seeker arriving in Australia by boat after 13 August 2012 must be transferred to Nauru or Manus Island for processing, subject to a pre-transfer assessment being conducted by the Immigration Department to determine whether it is 'reasonably practicable' for the person to be transferred.[52] A person may be transferred regardless of whether they come with family, have family already in Australia or are under 18 years old.

1.42 Transfers to Nauru commenced on 14 September 2012 and transfers to Manus Island commenced on 21 November 2012. As of 27 May 2013, there were 302 people, including 34 children, on Manus Island and 430 in Nauru under these arrangements. To date, 61 people have been removed voluntarily from Nauru and 2 from Manus Island.[53]

1.43 Asylum seekers transferred to Nauru or Manus Island will have their protection claims assessed by the government of the host country, under that country's legal framework. The Immigration Department has stated that 'claims assistance will be available to asylum seekers and merits review will also be available

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50 A Guterres, United Nations High Commissioner for Refugees, Letters to the Immigration Minister, 5 September 2012 and 9 October 2012, discussed above. The Refugee Council of Australia (RCOA) has also observed that the 'no advantage' principle is 'premised on the assumption that asylum seekers who seek to enter Australia irregularly by boat should instead have applied though 'regular migration arrangements'….Currently, such arrangements do not exist in the Asia-Pacific region and the [Expert] Panel itself acknowledges that any changes to protection standards in the region are likely to be incremental. RCOA finds it very troubling that asylum seekers attempting to enter Australia by boat will face indefinite exile in offshore processing facilities on the basis that they have 'circumvented' a 'managed regional system' which as yet is non-existent.' See Refugee Council of Australia, *Analysis of the recommendations of the Expert Panel on asylum seekers*, August 2012, p 3: http://www.refugeecouncil.org.au/r/rpt/2012-Expert-Panel.pdf.

51 Summary drawn from J Phillips and H Spinks, 'Boat arrivals in Australia since 1976', Parliamentary Library, 29 January 2013: http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/BoatArrivals.

52 See DIAC Guidelines for Assessment of Persons Prior to Transfer Pursuant to section 198AD(2) of the *Migration Act 1958*, made available 14 October 2012 (in use since 12 September 2012), p 5: http://www.immi.gov.au/visas/humanitarian/_pdf/s198ad-2-guidelines.pdf.

53 See M Bowles, Secretary, DIAC, before the Legal and Constitutional Affairs Legislation Committee, Senate Estimates, 27 May 2013, *Committee Hansard*, p 19.

to all asylum seekers who are processed in a regional processing country'.[54] Processing of claims had begun by March 2013 in Nauru but has not commenced on Manus Island.[55]

1.44 The Immigration Minister has stated that people transferred to Nauru or Manus Island will be subject to a 'no advantage' principle, meaning that they will not be resettled any sooner than they would have been had they not travelled to Australia by boat. The government has not specified how long people may have to wait for resettlement but the previous Immigration Minister suggested:

> Five years could be an accurate reflection of how long people would wait, depending on their individual circumstances in relation to how long they would have waited at a regional processing centre around the South-East Asia region.[56]

1.45 A person transferred to Nauru or Manus Island will not be able to make a valid application for an Australian offshore protection visa until invited by the Immigration Minister to do so.[57]

Asylum seekers processed in Australia

1.46 It is estimated that over 18,000 people have arrived in Australia by boat since 13 August 2012. Due to the high number of arrivals, the government has acknowledged that it will not be possible to transfer everyone to Nauru or Manus Island in the immediate future.[58]

1.47 However, the Immigration Minister has made clear that asylum seekers subject to the new arrangements who are processed in Australia will also be subject to the 'no advantage' principle:

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54 V Parker, First Assistant Secretary, Expert Panel Recommendations, DIAC, *Committee Hansard*, 19 December 2012, pp 41-42.

55 M Bowles, Secretary, DIAC, before the Legal and Constitutional Affairs Legislation Committee, Senate Estimates, 27 May 2013, *Committee Hansard*, p 33. Mr Bowles expressed hopes that processing on Manus Island may commence in June or July 2013.

56 Minister Bowen, Doorstop interview, 22 November 2012: http://www.minister.immi.gov.au/media/cb/2012/cb191923.htm.

57 See *Migration Regulations 1994*, regulation 2.07AM, as inserted by the *Migration Amendment Regulation 2012 (No. 5)*, dated 27 September 2012. This differs from the situation under the previous 'Pacific Solution' when a person on Nauru or Manus Island was able to make an application for an Australian offshore protection visa at any time.

58 It is understood that Nauru and Manus Island currently have capacity for around 1,000 people and a projected capacity of 2,100. Current capacity is for around 500 people on Nauru: see Minister Bowen's comments on 22 November 2012: http://www.minister.immi.gov.au/media/cb/2012/cb191923.htm). Current capacity on Manus Island is around 500: see Parliamentary Standing Committee on Public Works inquiry into Manus Island Regional Processing Centre Project, DIAC, *Submission 1*, p 8.

> Consistent with 'no advantage', people from this cohort going onto bridging visas will have no work rights and will receive only basic accommodation assistance, and limited financial support…. However, consideration can be given to transfer these people offshore at a future date. Their status as offshore entry people is unchanged.[59]

1.48 Since 13 August 2012, around 7000 people have been released into the community on bridging visas while their asylum claims are processed. Another 8000 or more people remain in detention.

1.49 Asylum seekers released on bridging visas are not allowed to work but will be eligible to receive a support payment the equivalent of 89% of the minimum Newstart allowance.[60]

1.50 Asylum seekers who remain in Australia will have their protection claims assessed by the Immigration Department and the Immigration Department have said they will have access to some form of independent merits review.[61] Processing of claims has not yet begun for this group.[62]

1.51 A person subject to these arrangements will not be able to apply for a protection visa unless invited by the Immigration Minister to do so.[63] Such persons will remain liable to be transferred to Nauru or Manus Island at any point up until the point they are granted a protection visa.[64]

1.52 People arriving by boat after 13 August 2012 will also be barred from proposing family members under the Humanitarian Program. Family members will need to seek a visa under the family stream of the Migration Program instead.[65] In addition, all such applications will now be given lower processing priorities.

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59 Minister Bowen, Doorstop interview, 22 November 2012: http://www.minister.immi.gov.au/media/cb/2012/cb191923.htm.

60 This is likely to be support under the Asylum Seeker Assistance Scheme (ASAS) which provides basic living expenses, equivalent to 89 per cent of the Centrelink Special Benefit allowance (usually the same rate as Newstart) and general healthcare through Medicare. Currently this amounts to $442 a fortnight for singles (or $31.50 a day) and $478 a fortnight ($34 a day) for families with children.

61 Access to the Refugee Review Tribunal processes under the *Migration Act 1958* only apply once a person has been allowed to make a valid application for a visa.

62 M Bowles, Secretary, DIAC, before the Legal and Constitutional Affairs Legislation Committee, Senate Estimates, 27 May 2013, *Committee Hansard*, p 9. Mr Bowles expressed hopes that processing would commence 'very shortly'.

63 *Migration Act 1958*, s 46A(2).

64 See discussion in para 1.27 above.

65 *Migration Regulations 1994*, Schedule 2, clauses 202.222 and 202.225, as inserted by items 12 and 13 of the *Migration Amendment Regulation 2012 (No. 5)* dated 27 September 2012.

Asylum seekers who are not subject to the 'no-advantage' principle

1.53 To understand the nature and extent of these new arrangements, it is useful to briefly describe the processes that apply to asylum seekers who arrived before 13 August 2012 and the processes that apply to asylum seekers who arrive by air.

Asylum seekers who arrive by air

1.54 Asylum seekers who arrive by air and who clear Australian customs are entitled to make an application for a protection visa at any time while in Australia.[66] Applicants will remain on any substantive visa that they held at the time of lodging their application until that visa ceases to be in effect (eg, they will remain on their student or tourist visa). Once that expires they are eligible for a bridging visa while waiting for their application to be decided. The bridging visa allows the person to remain living in the Australian community until their application for a protection visa has been finally determined. Those granted a bridging visa generally have permission to engage in work.[67] Since July 2009, the Immigration Department's policy has been to grant permission to work to all protection visa applicants who arrived by air on a valid visa.[68]

1.55 Once an application for a protection visa is made, the Migration Act requires that a decision on the application be made within 90 days.[69] Those applicants who are refused in the first instance (which in 2011-12 was 75 per cent of all applicants[70]) have the right to apply to the Refugee Review Tribunal (RRT) for review of the decision. Almost all unsuccessful applicants choose the option of appealing to the RRT,[71] and around one-quarter[72] have their case remitted back to the Immigration Department for reconsideration. Once the RRT has considered the case, the applicant also has the right to appeal a decision to the Federal Court of Australia or the Federal Magistrates Court and, at any time after the initial decision, has the ability to apply to the High Court of Australia.[73]

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66 See section 46 of the *Migration Act 1958* which allows a person to make an application for a visa, and section 36 which establishes the class of visa known as protection visas.

67 See DIAC,' Fact Sheet 62 – Assistance for Asylum Seekers in Australia': http://www.immi.gov.au/media/fact-sheets/62assistance.htm.

68 See DIAC, 'New Permission to work arrangements': http://www.immi.gov.au/refugee/permission/.

69 *Migration Act 1958*, s 65A.

70 See DIAC,' Asylum Trends – Australia: 2011-12 Annual Publication', 2012, p 12.

71 In 2011-12, 90% of refused applicants appealed to the RRT. See DIAC,' Asylum Trends – Australia: 2011-12 Annual Publication', 2012, p 16.

72 In 2011-12, 28% of RRT reviews were remitted to DIAC (up from 20% in 2007-08). See DIAC, 'Asylum Trends – Australia: 2011-12 Annual Publication', 2012, p18.

73 Under the High Court's original jurisdiction under the Constitution.

1.56 Those granted protection visas are entitled to remain in Australia indefinitely[74] and have access to all the benefits of a permanent resident. This includes access to Medicare and the public health system, permission to work, access to welfare benefits, the ability to sponsor (or propose) certain relatives for entry to Australia, to travel and re-enter Australia, and eligibility to apply for Australian citizenship. They will also be eligible for assistance through the Humanitarian Settlement Services program (which helps with accommodation, household goods and other services) and help with learning English if necessary.[75]

Asylum seekers who arrived before 13 August 2012

1.57 Those who arrived by boat at an excised offshore place (but not the Australian mainland) before the new regional processing system came into effect, were not automatically entitled to make an application for protection.[76] Instead, the Immigration Minister could decide that an application could be made if it was in the public interest to do so.[77] However, from 24 March 2012[78] Ministerial guidelines were amended to provide that the Minister would likely allow a valid application to be made when a person arriving by boat raised claims that 'prima facie, engage Australia's protection obligations'.[79] Following this, the application would be considered by a Departmental officer, and if a negative decision were made, the applicant had the right to seek merits review by the RRT and judicial review by the federal courts. Once a valid application was made, the Migration Act provides that a decision on the application must be made within 90 days[80] (although failure to comply with this timeframe does not affect the decision).[81]

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74 A Protection (Class XA) visa is a permanent visa for people in Australia found to be a person to whom Australia has protection obligations*: Migration Regulations 1994*, Schedule 1, Part 4, item 1401 which prescribes the subclass 866 (Protection) visa within the Protection (Class XA) visa class.

75 Under the Adult English Migrant Program.

76 *Migration Act 1958*, s 46A (introduced in 2001 by *the Migration Amendment (Excision from Migration Zone) Act 2011*, Act 127 of 2001.

77 *Migration Act 1958*, s 46A(2).

78 Before 24 March 2012 claims were first assessed by a Departmental officer and, if a negative assessment was made, by an independent protection assessor. Only if a person was considered under that process to have engaged Australia's protection obligations would the Minister consider exercising his or her discretion to allow a valid application for a protection visa to be made. There was no access to merits review by the RRT or judicial review by the Federal Court or Federal Magistrates Court. The constitutional right to apply to the High Court remained; see section 75(v) of the Constitution of the Commonwealth of Australia.

79 DIAC, Procedural Advice Manual (PAM3): Act - Minister's Guidelines on ministerial intervention under s 46A(2), 2012.

80 *Migration Act 1958*, s 65A.

81 *Migration Act 1958*, s 65A(2).

1.58 All those arriving by boat were automatically required to be placed in detention until they were either removed from Australia or granted a visa.[82] From October 2010, the government expanded the program of community detention, with many families and children moved from immigration detention facilities to community detention.[83] In November 2011, the Immigration Department began to release people seeking asylum on bridging visas into the community pending determination of their claims.[84] It remained in the Immigration Minister's discretion whether to grant a bridging visa,[85] including the discretion whether to impose a visa condition allowing the person to work while in the community. From 24 March 2012, the Immigration Minister specified that holders of these bridging visas were a specific class of persons who would have the right to work.[86]

1.59 Those found to be refugees (over 90 per cent of applicants) were entitled, immediately on finalisation of their application, to be granted a permanent protection visa. However, as part of the new regional processing legislative package, while people arriving by boat before 13 August 2012 remain entitled to sponsor family members for entry into Australia under the Humanitarian Program, the 'family reunion concession' has been removed.[87]

Asylum seekers who arrive by air vs boat: numbers and rate of success

1.60 In 2011-12 around half of all people seeking asylum in Australia arrived by boat,[88] and over 90% were ultimately recognised to be refugees and granted

82 *Migration Act 1958*, s 178.

83 See joint media release by the Prime Minister and the Immigration Minister, 'Government to move children and vulnerable families into community-based accommodation', 18 October 2010: http://www.minister.immi.gov.au/media/cb/2010/cb155484.htm.

84 See Immigration Minister, 'Bridging visas to be issued for boat arrivals', 25 November 2011: http://www.minister.immi.gov.au/media/cb/2011/cb180599.htm.

85 *Migration Act 1958*, ss 37 and 73, *Migration Regulations 1994*, reg. 2.20, Bridging Visa E (Class WE) (subclasses 050 and 051).

86 See *Migration Regulations 1994 – Specification under paragraphs 050.613A(1)(b) and 051.611A(1)(c) – Classes of Persons*, IMMI 11/078, F2012L00784, made 27 March 2012, commencing 24 March 2012.

87 See *Migration Amendment Regulation 2012 (No. 5)*, item 8, 17 and 21 of Schedule 2. Under the previous arrangements, family members of irregular maritime arrivals were considered to automatically meet the 'compelling reasons' criterion of the subclass 202 Global Special Humanitarian Visa, but that concession has now been removed.

88 In 2011-12 there were 14,415 people who sought asylum in Australia: 49% arrived by air and 51% by boat. In 2008-09 the numbers were much different, with 88% of applicants arriving by air and less than 12% arriving by boat. See DIAC, 'Asylum Trends – Australia: 2011-12 Annual Publication', 2012, p 2.

protection visas.[89] The other half arrived by air, with the majority of those entering on student visas or visitor visas.[90] Fewer than 50% were ultimately successful in seeking refugee status in 2011-12.[91]

1.61 A summary of the operation of the new arrangements, along with key differences to the previous regime and the regime that applies to asylum seekers who arrive by air is set out below in Table 1:

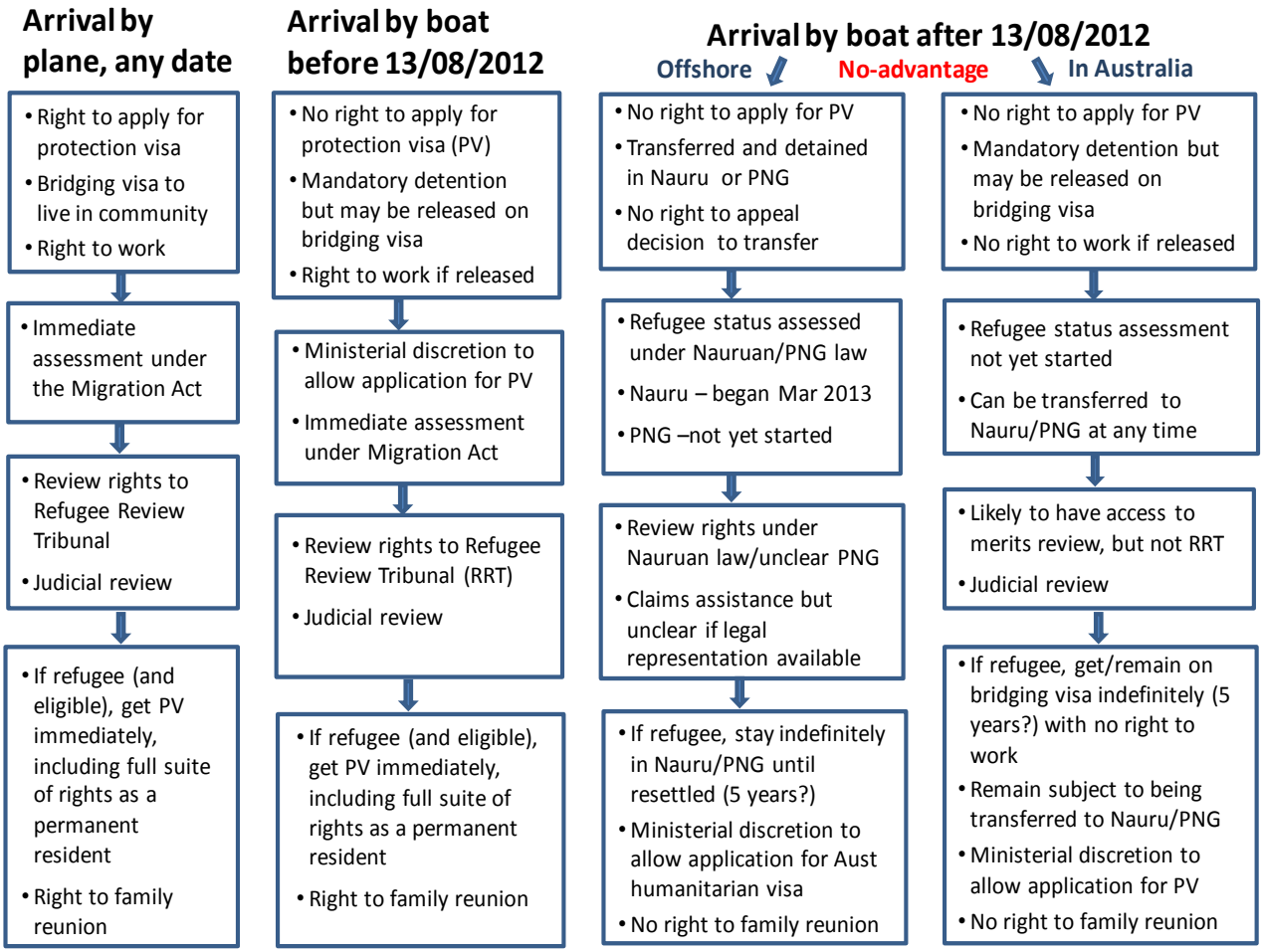

Table 1: Processes that apply to persons seeking asylum

89 In 2011-12, 4,766 protection visas were granted to people arriving by boat, amounting to 91% of all applications following a primary decision, review by the RRT and/or consideration by the courts. See DIAC, 'Asylum Trends – Australia: 2011-12 Annual Publication', 2012, p 31.

90 In 2011-12, 47% of asylum seeker applicants arriving by air arrived on student visas, and 35% arrived on visitor visas. See DIAC, 'Asylum Trends – Australia: 2011-12 Annual Publication', 2012, p 5.

91 In 2011-12, 2,272 protection visas were granted to people arriving by air, amounting to 44% of all applications following a primary decision, review by the RRT and/or consideration by the courts. See DIAC, 'Asylum Trends – Australia: 2011-12 Annual Publication', 2012, p 19.

Related parliamentary inquiries

1.62 Concurrent with the committee's examination of this legislation, related inquiries and scrutiny into particular aspects of the legislative package have been conducted by other parliamentary committees:

- The Senate Legal and Constitutional Affairs Legislation Committee reported on the Migration Amendment (Health Care for Asylum Seekers) Bill 2012 on 7 December 2012.
- The Senate Legal and Constitutional Affairs Legislation Committee reported on the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012 on 25 February 2013.
- The Senate Standing Committee for the Scrutiny of Bills reported on the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012 on 27 February 2013.[92]
- The Parliamentary Standing Committee on Public Works reported on the proposed permanent regional processing centre at Manus Island in Papua New Guinea on 15 May 2013.

1.63 These inquiries have elicited a broad range of evidence relevant to this committee's inquiry and have been drawn on in this report where appropriate.

Senate Legal and Constitutional Affairs Legislation Committee inquiry into Migration Amendment (Health Care for Asylum Seekers) Bill 2012

1.64 On 13 September 2012, the Senate referred the Migration Amendment (Health Care for Asylum Seekers) Bill 2012, to the Senate Legal and Constitutional Affairs Legislation Committee (LCA Committee). This bill was introduced by Senators Hanson-Young and Di Natale and seeks to create an independent panel of medical, psychological and other health experts to monitor, assess and report to the Parliament on the health of persons seeking asylum who are taken to regional processing countries.

1.65 The inquiry attracted 20 submissions from individuals and organisations and received evidence from eleven organisations (and the Immigration Department) at a public hearing in Canberra on 23 November 2012, including a number of health professionals. The committee tabled its report on 7 December 2012.

1.66 The LCA Committee's majority report concluded that the current oversight and monitoring of health services provided to persons transferred to regional processing countries is inadequate.[93] However, it did not support passage of this bill

92 Senate Standing Committee for the Scrutiny of Bills, *Report No. 2 of 2013*, 27 February 2013.

93 Senate Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Health Care for Asylum Seekers) Bill 2012*, December 2012, para 3.18.

due to concerns as to whether a new health panel would be 'the appropriate mechanism to address this deficiency'.[94]

1.67 Instead, the LCA Committee recommended that the terms of reference of the soon-to-be established Immigration Health Advisory Group (IHAG) should explicitly state that its role includes the oversight and monitoring of health services to persons in regional processing countries.

1.68 It also recommended that the IHAG should have access to facilities in Nauru and Manus Island, the ability to meet with asylum seekers in Nauru or Manus Island and have a role in the development and design of the policy to send people to those countries.[95]

1.69 In a dissenting report, the Australian Greens supported the passage of the bill, subject to amendments to, among other things, clarify the powers and functions of the independent panel, provide for its establishment under the office of the Commonwealth Ombudsman, and to allow for disability experts to be represented on the panel.[96] They, however, agreed that the role of IHAG should be strengthened:[97]

> [T]he terms and composition of the Immigration Health Advisory Group [should] 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.[98]

Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012

1.70 On 1 November 2012, the Senate referred the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012 to the Senate Legal

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94 Senate Legal and Constitutional Affairs Legislation Committee, *Migration Amendment (Health Care for Asylum Seekers) Bill 2012*, December 2012, para 3.18.

95 Senate Legal and Constitutional Affairs Legislation Committee, *Report on the Migration Amendment (Health Care for Asylum Seekers) Bill 2012*, December 2012, recommendations 1-3 at paras 3.31-3.33.

96 Senate Legal and Constitutional Affairs Legislation Committee, *Report on the Migration Amendment (Health Care for Asylum Seekers) Bill 2012*, December 2012, recommendations 1-5 (Dissenting Report by the Australian Greens).

97 Senate Legal and Constitutional Affairs Legislation Committee, *Report on the Migration Amendment (Health Care for Asylum Seekers) Bill 2012*, December 2012, para 1.20 (Dissenting Report by the Australian Greens).

98 Senate Legal and Constitutional Affairs Legislation Committee, *Report on the Migration Amendment (Health Care for Asylum Seekers) Bill 2012*, December 2012, recommendation 6 (Dissenting Report by the Australian Greens) .

and Constitutional Affairs Legislation Committee. This bill proposed extension of the application of the regional processing regime on excised offshore places such as Christmas Island to the Australian mainland.[99]

1.71 The inquiry received 36 submissions and held a public hearing in the Canberra on 31 January 2013. The committee tabled its report on 25 February 2013.

1.72 All of the submissions, except for those from the Immigration Department and the Australian Customs and Border Protection Service (which presented a description of the amendments), opposed the bill. Most of the objections focused on the human rights implications of the amendments and expressed concerns about the damage prolonged detention in offshore facilities could cause.[100] A number of submissions argued that the rationale for the bill was flawed and that the policy of regional processing does not deter asylum seekers from undertaking maritime journeys to Australia.[101]

1.73 The LCA Committee ultimately recommended the passage of the bill subject to an amendment to require the Immigration Minister to report annually to Parliament on issues such as refugee status determination procedures and their outcomes, as well as arrangements for the accommodation, health care and education of asylum seekers in regional processing countries.[102] The government agreed to these changes and moved the necessary amendments prior to the bill's passage through the Senate on 16 May 2013.

1.74 The Australian Greens did not support passage of the bill. In a dissenting report, they stated that:

> This Bill has been heavily criticised by a wide range of legal and human rights experts who submitted to the inquiry. The Australian Greens concur

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99 The Bill is identical in effect to the Migration Amendment (Designated Unauthorised Arrivals) Bill 2006, which sought to extend the 2001 excision regime to the whole country. That Bill was opposed by the Australian Labor Party together with certain Coalition members who crossed the floor. While that Bill was passed by the House of Representatives, it was never debated in the Senate following the Senate Legal and Constitutional Legislation Committee's recommendation that the Bill not proceed.

100 See, for example, Law Council, *Submission 13*; Australian Human Rights Commission, *Submission 20*; NSW Council for Civil Liberties, *Submission 3*; Commissioner for Children and Young People, Western Australia, *Submission 12*; Humanitarian Research Partners, *Submission 19*; Office of the Commissioner for Equal Opportunity (SA), *Submission 21*; Refugee Council of Australia (RCOA), *Submission 26*; Law Institute of Victoria (LIV), *Submission 31*.

101 See, for example, NSW Council for Civil Liberties, *Submission 3*; T Penovic, Castan Centre for Human Rights, *Committee Hansard*, 31 January 2013; P Mathew, *Committee Hansard*, 31 January 2013.

102 Senate Legal and Constitutional Affairs Legislation Committee, *Report on the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012*, February 2013, para 2.41.

> with their views that this Bill is inconsistent with the spirit and purpose of the Refugee Convention to which Australia is party and undermines Australia's obligations under international law.[103]

Senate Standing Committee for the Scrutiny of Bills report on the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012

1.75 The Senate Standing Committee for the Scrutiny of Bills reported on the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012 on 27 February 2013.[104]

1.76 The Scrutiny of Bills Committee noted that the bill would enable the Immigration Minister to vary or revoke an initial determination not to send a person to Nauru or Manus Island and that such decisions would not be subject to the rules of natural justice:

> Although such a declaration is conditioned on the Minister's consideration of the public interest, the revocation of a determination … that the provisions for taking an offshore entry person to a regional processing country not apply, will operate to frustrate expectations such a person may reasonably hold based on the initial determination. In such circumstances it may be thought that fairness should require that persons affected be entitled to rely on the common law rules of natural justice that would entitle them to a fair, unbiased hearing. The explanatory memorandum simply states that the rules of natural justice will be excluded, but offers no justification for the approach.[105]

1.77 In response to the Committee's concerns, the Immigration Minister provided the following justification:

> The Government is focused on creating an effective regional processing framework, which allows for the transfer of persons to designated regional processing countries for the processing of their protection claims. To discourage persons from undertaking hazardous sea voyages to Australia, the transfer process needs to be as efficient and streamlined as possible.
>
> Under current section 198AE, the Minister may exempt a person from transfer, for example, where they have a particular vulnerability that cannot be accommodated in the regional processing country at that

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103 Senate Legal and Constitutional Affairs Legislation Committee, *Report on the Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012*, February 2013, at para 1.4 (Dissenting Report by the Australian Greens).

104 Senate Standing Committee for the Scrutiny of Bills, *Report No. 2 of 2013*, 27 February 2013. The Scrutiny of Bills Committee reported on the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2011 on 22 August 2012: *Report No. 9 of 2012*, 22 August 2012.

105 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 14 of 2012*, 21 November 2012.

> particular time. Where circumstances change and it becomes possible to transfer the person, it is consistent with the objectives of the regional processing framework that this occurs quickly and efficiently, in the same way that transfers take place where a person is not exempted under section 198AE.[106]

1.78 The Committee noted the Minister's explanation but concluded that it retained concerns about the abrogation of natural justice:

> If a decision to revoke a determination [to exempt a person from transfer] is based on individual considerations (for example, a changed assessment as to whether an individual is subject to a 'particular vulnerability'), fairness may require that the affected person be given the opportunity to be heard prior to the decision being made.[107]

Parliamentary Standing Committee on Public Works inquiry into the proposed permanent regional processing centre at Manus Island

1.79 On 21 March 2013, the Parliamentary Standing Committee on Public Works (Public Works Committee) commenced an inquiry into the proposed infrastructure and upgrade works to establish a regional processing centre on Manus Island, Papua New Guinea, on referral by the Special Minister of State.

1.80 The inquiry received one submission and eleven supplementary submissions (seven of which were confidential) from the Immigration Department, and a further three submissions from other organisations. The inquiry held a public hearing and an in-camera hearing on 1 May 2013 in Melbourne. The committee tabled its report on 15 May 2013.

1.81 The report noted that the purpose of the project was to establish the capacity to process asylum seekers at permanent facilities on Manus Island.[108] The permanent facilities will replace the temporary facility currently in use and include the following facilities:

- a 600 person regional processing centre able to accommodate families and other vulnerable groups and other cohorts if required;
- health, welfare and recreational facilities;
- staff accommodation for 200; and

106 Senate Standing Committee for the Scrutiny of Bills, *Report No. 2 of 2013*, 27 February 2013, p 52.

107 Senate Standing Committee for the Scrutiny of Bills, *Report No. 2 of 2013*, 27 February 2013, p 52.

108 House Standing Committee on Public Works, *Report on the proposed permanent regional processing centre at Manus Island*, May 2013, para 8.2.

- all engineering infrastructure to support the facility.[109]

1.82 The Public Works Committee was satisfied that there was a need for the works, noting that:

> The existing temporary facility has a very limited life span, provides little amenity for transferees, and does not have the adequate infrastructure required to support the processing of claims.[110]

1.83 With regard to the upgrade of facilities in Nauru, the Public Works Committee noted:

> The facilities in Nauru were subject to an urgency motion in the House of Representatives, thus excluding them from an inquiry by the Committee. Despite this, DIAC has provided to the Committee regular updates on the progress of the works in Nauru. The Committee thanks DIAC for enabling scrutiny of the project in this manner.
>
> Given DIAC's experience in delivering these projects, and the fact that this project is based on the ones in Nauru, the Committee expects that it will also be delivered on time, on budget and fit-for-purpose.[111]

1.84 The submissions from other stakeholders, including the Australian Human Rights Commission, expressed concerns about the closed nature of the proposed facilities and recommended that the construction of the facilities should take account of the vulnerabilities and special needs of children and be informed by the Australian Human Rights Commission's guide, 'Human Rights Standards for Detention', which sets out the relevant international human rights and detention standards.[112] The Public Works Committee did not expressly refer to these submissions in its report but stated that it:

> expects DIAC to continue [to engage in consultation regarding the design of the facility] and to enable increased consultation wherever possible, particularly with the organisations that provided submissions to this inquiry.[113]

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109 House Standing Committee on Public Works, *Report on the proposed permanent regional processing centre at Manus Island*, May 2013, para 8.14.

110 House Standing Committee on Public Works, *Report on the proposed permanent regional processing centre at Manus Island*, May 2013, para 8.11.

111 House Standing Committee on Public Works*, Report on the proposed permanent regional processing centre at Manus Island*, May 2013, paras 8.36-8.37.

112 See submissions by the Australian Human Rights Commission, *Submission 2*; ChilOut - Children Out of Immigration, *Submission 3*; and Save the Children Australia, *Submission 4*.

113 House Standing Committee on Public Works, *Report on the proposed permanent regional processing centre at Manus Island*, May 2013, para 8.32.