



Australian Government
Department of Immigration
and Citizenship

Submission to the Senate Standing Committee on Constitutional and Legal Affairs Inquiry into the Migration Amendment (Health Care for Asylum Seekers) Bill 2012

October 2012



Introduction

The Department of Immigration and Citizenship (the Department) welcomes this opportunity to provide a submission to the Senate Standing Committee on Constitutional and Legal Affairs Inquiry into the Migration Amendment (Health Care for Asylum Seekers) Bill 2012, which Senator Hanson-Young and Senator Di Natale introduced as a private senators' bill into the Senate on 11 September 2012.

The Department's submission provides background on the health services for people transferred to designated regional processing countries and the recommendations of the *Report of the Expert Panel on Asylum Seekers* that are relevant to the Bill. It also outlines a number of issues to be considered in relation to the Bill.

Background

- **Health Services Provision for People Transferred to Designated Regional Processing Countries**

The Committee may wish to consider the information relating to the health services provided to people in immigration detention in Australia which was included in the Department's supplementary *Submission to the Joint Select Committee on Australia's Immigration Detention Network* in September 2011.

A copy of the Supplementary Submission is available at the following web-site:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/submissions.htm

For people transferred to designated regional processing countries, the Australian Government is seeking to replicate the services described in its Supplementary Submission to the Joint Select Committee Inquiry through its on-going discussions with the Governments of Nauru and Papua New Guinea (PNG), which include health-related administrative arrangements.

In addition, the Committee may wish to consider the detailed description of health care services available to persons transferred to Nauru or PNG contained in the Heads of Agreement between the Department and International Health and Medical Services (IHMS) that was tabled in the Parliament on 21 September 2012 as well as the corrected Nauru Staffing Arrangements table, which was tabled at Senate Estimates on 15 October 2012.

- **Relevant Recommendations from the *Report of the Expert Panel on Asylum Seekers***

On 13 August 2012, the Expert Panel on Asylum Seekers released its Report to the Government on the policy options available to prevent asylum seekers risking their lives on dangerous boat journeys to Australia.

Recommendations Eight and Nine of the Expert Panel's Report are relevant to the Bill before the Committee. They read as follows:

Recommendation 8

The Panel recommends that a capacity be established in Nauru as soon as practical to process the claims of IMAs [Irregular Maritime Arrivals] transferred from Australia in ways consistent with Australian and Nauruan responsibilities under international law (paragraphs 3.44-3.55).

Recommendation 9

The Panel recommends that a capacity be established in PNG as soon as possible to process the claims of IMAs transferred from Australia in ways consistent with the responsibilities of Australia and PNG under international law (paragraphs 3.56-3.57).

At paragraph 3.46 of the Report, the Expert Panel proposes that one of the protection and welfare arrangements for people transferred to Nauru should be the 'monitoring of care and protection arrangements by a representative group drawn from government and civil society in Australia and Nauru'.

At paragraph 3.57, the Expert Panel states that, 'if a processing centre for asylum claims were to be re-established in PNG, similar arrangements to those proposed in this Report in relation to Nauru (paragraphs 3.43 to 3.55) would need to be negotiated with the PNG Government.'

Issues for Consideration in Relation to Monitoring and Oversight Arrangements

The Department considers that a range of issues, including the Government's response to the Expert Panel's recommendations regarding oversight and monitoring arrangements, should be considered when deliberating on the Bill. These include:

- **Possible impact on existing and future monitoring and oversight structures**

Since 13 August 2012, the Government has made it clear that it endorses in principle all the recommendations of the Expert Panel's Report and is implementing all of its recommendations as an integrated package.

Accordingly, since 13 August, the Government has worked with the Governments of Nauru and PNG to implement the recommendations of the Expert Panel's Report. This work includes discussions between the Minister for Immigration and Citizenship (the Minister) and his counterparts in Nauru and PNG around advice to respective Governments on arrangements for people transferred to Nauru and PNG. These discussions are on-going.

The Government of Australia has agreed with the Governments of Nauru and PNG to establish Joint Committees to provide advice on the practical arrangements required to implement the Memorandums of Understanding that the Government has signed with the Governments of Nauru and PNG. Subject to the agreement of the relevant Governments, the Joint Committees may include relevant non-government organisation membership where appropriate.

The Minister has requested that relevant members of his Council on Asylum Seekers and Detention (MCASD) take on, as an interim measure, an advisory role relating to transferees under off-shore processing arrangements that is consistent with that described in the Expert Panel's Report. This will include advice on the practical management of all services to transferees, including health services.

The interim advisory committee will report to the Minister and his Nauruan counterpart on how appropriate longer term Joint Committee arrangements might be established, which may include a recommendation that the Joint Committee advise Governments on health services delivered under off-shore processing arrangements.

The Department anticipates that relevant members of MCASD, Departmental officials and officials from PNG will be asked to provide advice about longer term Joint Committee arrangements to the Minister and his PNG counterpart.

- **Legal Issues**

The Department notes that the Bill contains a number of elements that require further clarification. These elements include:

- The Bill assumes that the proposed health advisory panel will be able to carry out a number of activities in, or in relation to a regional processing country. However, the Bill does not acknowledge that this will necessarily depend on the consent and the agreement of the government of the relevant regional processing country.

- The Bill bestows on the proposed health advisory panel a specific power to require the provision of information and documents relevant to the proposed panel's performance of its functions. The Bill also specifies that any notice to require such information may only be directed to the head of a Commonwealth agency (or a person nominated by the head of that agency). However, it is not clear how the agency would be able to comply with such a notice if the information is not held by that agency or is not within its immediate control.
- There is a reference in the Bill to giving a notice to produce information to a Department of the Commonwealth or a 'prescribed authority (a *relevant agency*)'. However, there is no definition of a 'prescribed authority (a *relevant agency*)' in the Bill or the *Migration Act*.

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