Migration Amendment (Health Care for Asylum Seekers) Bill 2012

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Social Policy Section

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Migration Amendment (Health Care for Asylum Seekers) Bill 2012

Date introduced: 11 September 2012
House: Senate
Portfolio: Private Senator’s Bill
Commencement: On Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and introductory speech can be found on the Bill’s home page, or through [http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation). When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at [http://www.comlaw.gov.au/](http://www.comlaw.gov.au/).

Purpose

To amend the Migration Act 1958 to create a health advisory panel to monitor, assess and report to Parliament on the health of asylum seekers who are being processed outside Australia (offshore).

Overview of the Bill

Senators Hanson-Young and Di Natale tabled the Migration Amendment (Health Care for Asylum Seekers) Bill 2012 in the Senate on 11 September 2012. While it is unclear when this Bill will be debated, it is likely to generate interest as a number of asylum seekers have been transferred to Nauru.¹

The Bill has also been referred to the Senate Legal and Constitutional Affairs Committee for report by 20 November 2012.² Parliament rises for the year on 29 November 2012, unless sitting is extended.

The intention of this Bill is to establish an independent panel (the Panel) of health and mental health experts to monitor and evaluate the well-being of asylum seekers who are sent offshore by Australia.

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for processing of their protection claims. The Bill has one schedule which inserts a new section after 198AB to create *proposed section 198ABA*.

Membership of the Panel will be determined by the Minister for Immigration, based on nominations from peak medical, mental health, nursing, dental and child health organisation. Nominations can only be accepted from the Australian Medical Association, Royal Australian College of General Practitioners, Royal Australian and New Zealand College of Psychiatrists, Royal Australasian College of Physicians, Australian Psychological Society or a professional body prescribed by the regulations (see *proposed paragraph 198ABA(3)(b)*).

The work of the Panel is to be determined by the Panel, independent of the Minister and the Department of Immigration and Citizenship (DIAC). The primary purpose of the Panel is to monitor, assess and report on the health of people whose protection claims are being processed offshore. Despite not mandating the activities of the Panel, the legislation does give some insight into the type of activities it might undertake, such as travelling to ‘regional processing countries’ to conduct monitoring and assessment activities, assigning Panel members to certain countries, and monitoring the health status of people as they arrive, and throughout their stay, in a regional processing country (see *proposed subsection 198ABA(5)*).

The Panel must report to the Parliament on the health of people being processed offshore once every six months, as prescribed at *proposed paragraph 198ABA(6)(a)*. The legislation expressly states that the report must not contain any identifying information (see *proposed subsection 198ABA(7)*). The Bill does not specify who will table the report in Parliament (see *proposed subparagraph 198ABA(6)(a)(ii)*). The Panel is also able to make recommendations to the Minister about the health of people being processed offshore, independent of any recommendations in the report to Parliament, as outlined at *proposed paragraph 198ABA(6)(b)*.

Senator Hanson-Young noted in her introductory speech that the Panel would have similar powers and reporting functions to the Commonwealth Ombudsman. She also noted that it would have the power to subpoena and inspect medical records held by DIAC and the organisations with contracts to provide services on regional processing countries. These powers are articulated at *proposed subsection 198ABA(8)*.

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3. Senator Hanson-Young, ‘Second reading speech: Migration Amendment (Health Care for Asylum Seekers) Bill 2012’, Senate, Debates, 11 September 2012, p. 35, viewed 12 September 2012, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%22bca2-4d47-9-ae77-4d47-bca2-cdb2b9efaa0%2F0129%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%22bca2-4d47-9-ae77-4d47-bca2-cdb2b9efaa0%2F0129%22)

4. Ibid.

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Issues

Nauru as a regional processing country

The Minister recently designated Nauru as a regional processing country. The designation tabled by the Minister states that the arrangements put in place, or about to be put in place, on Nauru, are ‘satisfactory’. Yet very little detail exists about what these arrangements might be, apart from what is outlined in Attachment B of the instrument and the Heads of Agreement between DIAC and International Health and Medical Services (IHMS) for the provision of health services on Nauru and Manus Island. This Agreement has not been published online but is available from the Senate Table Office.

The provision of medical care is outlined at paragraphs 10-13 of Attachment B. IHMS will be responsible for medical facilities and the provision of medical care, under a $22 million, six month contract. The medical facility building was expected to be ready for occupation by 10 September 2012 but this has not been confirmed. It appears that asylum seekers requiring hospital services will use the facilities on Nauru as reference is made to hospital facilities being available on Nauru, including x-ray, pharmacy, pathology and dental services. Arrangements are in place for medical evacuation to Australia and transfer to Australia for non-emergency medical care that cannot be provided on Nauru. What constitutes ‘non-emergency medical care’ is not specified.

On 9 October 2012, the Minister announced that he had designated Papua New Guinea as a regional processing country and would be moving the resolution in the House of Representatives that afternoon. The provision of health care on Papua New Guinea is not considered in this Digest.

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5. C Bowen (Minister for Immigration and Citizenship), Nauru designated for regional processing, media release, 10 September 2012, viewed 13 September 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1906349%22
7. F2012L01851, Attachment B, op. cit., paragraph 12. Please note that the Attachments to the Instrument have not been published online on either the Minister’s, DIAC or ComLaw websites. It has been included as an Appendix to the Digest. It also is available from the Senate Table Office.
8. C Bowen (Minister for Immigration and Citizenship), Designating Nauru as a regional processing country, transfers to Nauru, asylum seeker boats, the Greens, transcript, 10 September 2012, viewed 13 September 2012, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1908194%22

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Provision of care by IHMS

In response to an order from the Senate, the contract for the provision of health care services on Nauru by IHMS was released on 21 September 2012. No financial details were released.

The objectives of the Heads of Agreement are as follows: (clause 5)\(^2\)

(a) To provide an open, accountable and transparent health care service to Transferee and Recipients on Nauru and Manus Island

(b) To provide Transferee and Recipients with a standard range of health care that is the best available in the circumstances, and utilising facilities and personnel on Nauru and Manus Island, and that as far as possible (but recognising as unavoidable limitations deriving from the circumstances of Manus Island and Nauru) are broadly comparable with health services within the Australian community; and

(c) To provide that health care through the Services identified in the Statement of Work in Schedule 1 (Statement of Work) to this Agreement, in addition to the Services specified in the Existing Contract (but subject to clause 1.2 of this Agreement in respect of any inconsistency).

It also includes provisions for medical evacuations and the transfer of non-emergency medical care that cannot be provided in Nauru.\(^3\)

The Heads of Agreement is effectively an addendum to the five year contract between IHMS and DIAC to provide health services in immigration detention signed on 28 January 2009.\(^4\) IHMS was contracted to provide a ‘comprehensive range of health services including those related to mental, physical and dental health’ across the detention network (community and facilities based).\(^5\) The health care provided is to be ‘fair and reasonable, commensurate with Australia’s international obligations and comparable with that available to the broader Australian community’.\(^6\)

As at March 2012, the value of the contract was estimated to be $769.3 million.\(^7\) In 2010–11, more than 100,000 individual health services were delivered in immigration detention facilities.\(^8\)

\(^{12}\) Commonwealth of Australia represented by Department of Immigration and Citizenship and International Health and Medical Services Pty Ltd, *Heads of Agreement relating to the provision of health services on Nauru and Manus Island*, clause 5.1, p. 5.

\(^{13}\) See clause 23, Medical escort and evacuation services (local or international), *Heads of Agreement relating to the provision of health services on Nauru and Manus Island*, pp. 41-42.


\(^{15}\) Ibid.

\(^{16}\) Ibid.

\(^{17}\) Joint Select Committee on Australia’s Immigration Detention Network (JSCAIDN), *Final report*, Canberra, Parliament House, March 2012, p. 82, viewed 18 September 2012,

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number of IHMS community based health service providers increased by 40 per cent to more than 700 in 2010–11.19 These providers deliver services to the community detention network on behalf of IHMS. There is no provision in the contract to penalise the company for underperformance.20

IHMS conduct a ‘Health Induction Assessment’ (HIA) on all people entering immigration detention. This is conducted within 72 hours of arrival and people are screened for pre-existing medical conditions, including communicable diseases, and have a mental state examination.21 The information from the HIA is to be used to develop an ongoing health care plan, and to make preliminary assessments about mental health concerns as well as to identify signs of torture, trauma and other physical conditions.22

In its inquiry into Australia’s immigration detention network, the Joint Select Committee on Australia’s Immigration Detention Network (JSCAIDN) heard that IHMS provided general health care services to a ‘good standard’.23 The contract for services provided by IHMS is for ‘primary healthcare at a community equivalent standard’.24 This is interpreted as providing a level of service that reflects what is available in the community.25 Concerns were raised about the provision of mental health services and after hours care.26 Only three detention centres, Christmas Island, Scherger Immigration Detention Centre (IDC) and Curtin IDC had a 24 hour paramedic/overnight nursing service.27 DIAC and IHMS have recently signed a contract variation to enable more mental health services (such as increased psychiatric support) to be provided.28 The value of this contract variation is not known.

IMHS relies on the local health care system to provide acute care. As part of the contract arrangements, people who require acute and emergency care are referred by IHMS to local providers. The costs of this are borne by DIAC and some state and territory governments have received additional funding to meet these costs.29 Across the detention network, it is generally

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19. Ibid.
20. JSCAIDN, op. cit., p. 81.
21. Ibid., p. 83.
22. Ibid.
23. Ibid., p. 84.
24. I Gilbert (General Manager, International Health and Medical Services), quoted in JSCAIDN, op. cit., p. 85.
25. JSCAIDN, op. cit., p. 89.
26. Ibid., p. 85.
27. Scherger IDC is located 30 kilometres east of Weipa in Queensland. Curtin IDC is located 40 kilometres south east of Derby in Western Australia.
28. JSCAIDN, op. cit., p. 85.
29. Ibid., p. 89-90.
30. Ibid., p. 95.

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acknowledged that IHMS and local providers work well together, although areas for improvement have been identified.\footnote{Ibid.}

JSCAIDN found that the provision of health care on Christmas Island was challenging given its remote location and limited health care facilities.\footnote{Ibid., p. 96.} Medical care not provided by IHMS is provided by the Indian Ocean Territories Health Service (IOTHS).\footnote{Ibid.} People requiring medical care that is not available on Christmas Island are flown to Perth for treatment.\footnote{Ibid.} As outlined in the contract, people requiring care not available on Nauru will be flown to Australia for treatment.

**Capacity of the Nauruan health care system**

As noted previously, IHMS works with local health care providers to provide emergency and acute care. There is limited information available about the capacity of the Nauruan health care system as there is no information about the Nauruan health care system on the Republic of Nauru Government website.\footnote{Travel websites note that medical care on Nauru is ‘extremely limited’, but ‘adequate’ for routine medical problems. For example, see: ‘Nauru’, MDtravelhealth.com website, viewed 26 September 2012, \url{http://www.mdtravelhealth.com/destinations/oceania/nauru.php#9}} The arrangements between Nauru and Australia about the treatment of persons on Nauru state that there are hospital facilities on Nauru including x-ray, pharmacy, pathology and dental services.\footnote{F2012L01851, Attachment B, op. cit., paragraph 13.} There is provision in the contract for IHMS to enter into provider agreements with Government funded health care services.\footnote{Heads of Agreement relating to the provision of health services on Nauru and Manus Island, op. cit., clause 5.4, pp. 10-11.} An agreement is not required when there is no other provider of general practitioner services in the area or immediate region.\footnote{Ibid.}

The entry for Nauru in the CIA World Fact Book does not contain any information about the health care system apart from health expenditure as a percentage of GDP (12.1 per cent) and limited statistics about life expectancy and infant mortality.\footnote{Central Intelligence Agency (CIA), Nauru, \textit{The World Factbook}, last updated 11 September 2012, viewed 26 September 2012, \url{https://www.cia.gov/library/publications/the-world-factbook/geos/nr.html}} The Department of Foreign Affairs and Trade country brief on Nauru is also silent on the Nauruan health care system but notes the Australian Government helps pay for pharmaceuticals and medical supplies for the hospitals.\footnote{Department of Foreign Affairs and Trade (DFAT), ‘Nauru country brief’, DFAT website, last updated September 2012, viewed 24 September 2012, \url{http://www.dfat.gov.au/geo/nauru/nauru_brief.html}} It also provides assistance with repairing and maintaining Nauru’s hospitals as well as electricity generation and water desalination equipment.\footnote{Ibid.} Access to clean drinking water is an important pre-condition for

\begin{itemize}
\item \footnote{Ibid.}
\item \footnote{Ibid., p. 96.}
\item \footnote{Ibid.}
\item \footnote{Ibid.}
\item \footnote{Travel websites note that medical care on Nauru is ‘extremely limited’, but ‘adequate’ for routine medical problems. For example, see: ‘Nauru’, MDtravelhealth.com website, viewed 26 September 2012, \url{http://www.mdtravelhealth.com/destinations/oceania/nauru.php#9}}
\item \footnote{F2012L01851, Attachment B, op. cit., paragraph 13.}
\item \footnote{Heads of Agreement relating to the provision of health services on Nauru and Manus Island, op. cit., clause 5.4, pp. 10-11.}
\item \footnote{Ibid.}
\item \footnote{Central Intelligence Agency (CIA), Nauru, \textit{The World Factbook}, last updated 11 September 2012, viewed 26 September 2012, \url{https://www.cia.gov/library/publications/the-world-factbook/geos/nr.html}}
\item \footnote{Department of Foreign Affairs and Trade (DFAT), ‘Nauru country brief’, DFAT website, last updated September 2012, viewed 24 September 2012, \url{http://www.dfat.gov.au/geo/nauru/nauru_brief.html}}
\item \footnote{Ibid.}
\end{itemize}

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health. Recent reports have highlighted the lack of consistent supply of clean water and associated health consequences on Nauru, suggesting that the increase in population due to asylum seekers will further compound this.\footnote{D Jopson, ‘Asylum seekers everywhere but not a drop to drink’, \textit{Global Mail}, 27 September 2012, viewed 3 October 2012, http://www.theglobalmail.org/feature/asylum-seekers-everywhere-but-not-a-drop-to-drink/397/}

Australia and Nauru agreed on a partnership for development in 2009.\footnote{Australian Government, ‘Nauru’, AusAID website, 29 August 2012, viewed 24 September 2012, http://www.ausaid.gov.au/countries/pacific/nauru/Pages/home.aspx} This is to facilitate the achievement of the Millennium Development Goals and improve services for the Nauruan community in education, health and utilities (power and water).\footnote{Ibid.} With respect to health, the results to 30 June 2012 show that there have been improvements in infant mortality (40/1000 live births in 2002 to 24/1000 in 2011) and a vaccination rate of 95 per cent for children for the following communicable diseases; tuberculosis, measles, hepatitis B, polio, diphtheria and tetanus.\footnote{Ibid.} The commitments for 2012–13 note that funding will continue for drugs, medical equipment, hospital maintenance, staff training and that skilled Australian personnel will fill key management and medical positions.\footnote{Ibid.}

This information would suggest that the capacity of the Nauruan health care system is limited and that it may struggle with the influx of around 1500 asylum seekers, given that the most recent estimate for Nauru’s population is 9378.\footnote{Funding of $31.6 million was provided by the Australian Government in 2012–13.} The need for ongoing support from the Australian Government for the provision of pharmaceuticals, medical equipment, training and staff further supports this. It is likely that IHMS will need to seek medical services from elsewhere or fly-in staff to provide services that cannot be provided on Nauru. It is not clear if there is adequate expertise within Nauru to treat complex mental health issues, although the contract between IHMS and DIAC specifies that mental health clinics comprising of counselling, clinical psychology, mental health nursing and psychiatry must be provided.\footnote{The Government has not officially confirmed the number of asylum seekers to be transferred to Nauru. Media reports on 21 September 2012, note that Nauru could accommodate at least 500 asylum seekers in the Topside camp. See: ‘First Iraqi asylum seekers land on Nauru’, news.com.au, 21 September 2012, viewed 22 September 2012, http://www.news.com.au/news/first-asylum-seekers-land-on-nauru/story-fnejlpw-1226478744656. Refer to CIA World Factbook for population estimates (footnote 39).}

IHMS will need to confront these challenges. Any solution is likely to result in additional cost to the Australian Government, either through increased aid to Nauru to improve the capacity of its health care system or through reimbursement to IHMS for care provided outside of Nauru.

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Consent of asylum seekers and provision of care

While the requirement to remove identifying information from the six-monthly report to be provided to Parliament under **proposed subsection 198ABA(6)** of the Migration Act provides some level of protection for asylum seekers, there is no requirement in the Bill for members of the Expert Panel to seek the consent of asylum seekers prior to them undertaking health assessment and monitoring activities. Consent, and informed consent, is a fundamental tenet of health law and ethics. Not seeking consent would be at odds with medical practice and research. Previous researchers documenting the psychiatric health of asylum seekers in prolonged detention in Australia sought consent.\(^4^9\) While it is unlikely that members of the Expert Panel would not act in the best interests of asylum seekers, informed consent should be a necessary pre-requisite to any screening and monitoring processes. Under the Heads of Agreement between DIAC and IHMS, consent must be sought for the provision of health care and transfer of medical records to other health care providers.\(^5^0\)

Problems may arise from the limited resources available on Nauru. More specifically, screening and monitoring activities may raise expectations about increased levels of treatment by asylum seekers. Questions can also be raised about the ethical issues associated with identifying health needs but not providing subsequent treatment. As part of the arrangements between DIAC and IHMS, asylum seekers on Nauru are able to request health care, but the satisfaction of any request requires approval by the IHMS Health Services Manager.\(^5^1\) Health Service Providers who are contracted to provide health care for IHMS are also able to refer asylum seekers for care but delivery of this care requires approval by IHMS.\(^5^2\)

It is not clear from the Bill if the Expert Panel will provide asylum seekers with their assessment and make recommendations directly about the type of care that should be provided or sought. It is highly likely that the Expert Panel will recommend improved access to mental health services, as the services provided under the contract are likely to be limited. Therefore, it could be argued that with the provision of further accurate information about the health of asylum seekers on Nauru, more health resources might be provided as a result.

There are also ethical tensions about the provision of care in an environment where the underlying cause for the problem is unlikely to be resolved or recommending treatments that are unlikely to be

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50. *Heads of Agreement relating to the provision of health services on Nauru and Manus Island*, op. cit., clause 9.4 and 9.6, p. 22 and 24.

51. Ibid., clause 5.2, p. 10

52. Ibid.

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approved. This dilemma was raised by some of the medical profession who had previously made recommendations for treatment for people in long term immigration detention which were never implemented (under the Howard Government).

**Committee consideration**

The Bill has been referred to the Senate Committee on Legal and Constitutional Affairs for inquiry and report by 20 November 2012. Submissions close on 17 October 2012. Details of the inquiry are at the inquiry webpage. At the time of writing, no submissions had been published on the inquiry webpage.

The Joint Committee on Human Rights had no comment on this Bill apart from noting that the Statement of Compatibility with Human Rights ‘appears adequate’.

**Position of major interest groups**

The Australian Medical Association (AMA) welcomed the Bill and urged all Parliamentarians to support it. The AMA has long advocated on behalf of asylum seekers, arguing that that they have the right to receive medical care without discrimination, regardless of citizenship, visa status, or ability to pay. An independent assessment of health services and conditions in detention facilities and reporting to Parliament was considered vital and an important part of showing the ‘world that

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53. It is important to note a lack of resources (including expertise and specialist medical knowledge) may constrain the services that IHMS can provide. Furthermore, IHMS is to provide services to a standard comparable to what is available in the community. IHMS has previously argued that the provision of specialist psychiatric services is not consistent with this.


57. Australian Medical Association (AMA), *AMA welcomes Greens’ Bill to establish health care panel for refugees*, media release, 10 September 2012, viewed 9 October 2012, [http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1908171%22](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F1908171%22)
we are a compassionate society’.\textsuperscript{58} The AMA also argued that the role of the Expert Panel should be extended to onshore detention facilities.\textsuperscript{59}

During the debate in the Senate about the designation of Nauru as a regional processing country, Senator Di Natale noted that Professor McGorry, Professor Newman and others supported the Greens proposal for independent health advice and monitoring in offshore processing centres with reporting to the Parliament.\textsuperscript{60} In the same debate, Senator Wright listed the number of organisations and persons that were ‘united in demanding that there be an independent investigation into the standards of mental health care in our detention centres’. They are as follows:\textsuperscript{61}:

- the Australian College of Mental Health Nurses;
- the Australian Nursing Federation;
- the Australian Medical Association;
- the Royal Australian and New Zealand College of Psychiatrists;
- the Mental Health Council of Australia;
- the Brain and Mind Research Institute; Orygen Youth Health;
- the National Mental Health Consumer and Carer Forum;
- the Australian Psychological Society;
- Sane Australia;
- Professor Louise Newman, Royal College of Nursing Australia;
- Lifeline Australia;
- the Australian College of Psychological Medicine;
- the Mental Health Research Institute;
- Catholic Social Services Australia;
- the Mental Health Association of Central Australia;
- the Alcohol and Other Drugs Council of Australia;
- the Australian Association of Social Workers;
- the Royal Australian College of General Practitioners;
- and Suicide Prevention Australia.

**Main issues**

This Bill does not appear to empower the Expert Panel to enter a detention facility to undertake monitoring and assessment activities. While it is envisaged that asylum seekers will be able to freely move around Nauru (subject to night curfew), this has not yet been implemented. Further, if asylum seekers are free to move around Nauru, how will the Expert Panel undertake their assessments if their role is not recognised in the legislation or in the contract between DIAC and IHMS? The Bill does not compel IHMS (or the contract provider) to cooperate, or provide assistance, to the Expert Panel. This potentially undermines the effectiveness of the Expert Panel.

It also unclear why existing bodies, for example, the Auditor-General, the Australian Human Rights Commission or the Commonwealth Ombudsman could not be empowered (or instructed) to perform similar functions to the Expert Panel. It might be said that they do not have the necessary expertise

\textsuperscript{58} Ibid.
\textsuperscript{59} Ibid.
\textsuperscript{60} R Di Natale, ‘Motions: Instrument of designation of the Republic of Nauru as a Regional Processing Country’, Senate, Debates, 12 September 2012, p. 3, viewed 25 September 2012, \url{http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2Ff502bfd4-d86e-47d0-9876-bc76488b1b81%2F0003%22}
\textsuperscript{61} P Wright, ‘Motions: Instrument of designation of the Republic of Nauru as a Regional Processing Country’, Senate, Debates, 12 September 2012, p. 8, viewed 25 September 2012, \url{http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2Ff502bfd4-d86e-47d0-9876-bc76488b1b81%2F0005%22}

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to assess the provision of health care to asylum seekers, however, they do have the capacity to adapt to the differing requirements of each inquiry.

These bodies are independent of government and have existing statutory powers to investigate as well as access information. A further benefit of this approach is that appointments, such as the Auditor-General and the Commonwealth Ombudsman, are independent officers of the Parliament and less likely to be subject to Ministerial interference. To ensure that the relevant body has access to appropriate expertise, they could be instructed to consult with peak medical bodies such as those prescribed in the Bill. Section 486O of the *Migration Act 1958* already requires the Commonwealth Ombudsman to give an assessment of detention arrangements. As an alternative, this power could be expanded to specifically take into account the provision of health care services.

The other notable omission from the Bill is the lack of consent. This Bill does not require the Expert Panel to seek the consent of asylum seekers to be assessed and monitored. This is at odds with the contractual arrangements between DIAC and IHMS which expressly state that informed consent must be given for the delivery of health care. Consent must also be sought when transferring health care records to another health care provider.

Finally, there could be a problem with duplication. IHMS is bound by contract to screen asylum seekers within 72 hours of arrival as part of DIAC’s health screening process. This Bill also provides for the Expert Panel to assess asylum seekers on arrival (proposed paragraph 198ABA(5)(c)). Two medical examinations in short succession could potentially cause stress to asylum seekers and may not be the best of use of resources. While it is important to establish what health care may be required, a more viable alternative may be a data-sharing arrangement between IHMS and the Expert Panel (subject to consent from asylum seekers). There is provision in this Bill for the Expert Panel to obtain information and documents relating to the health status of asylum seekers from DIAC, relevant agencies and their contractors (proposed subsection 198ABA(8)).

**Financial implications**

The Bill does not indicate who will meet the costs associated with the Expert Panel. There will be costs associated with flights to Nauru and Manus Island and reimbursement for time spent. It is standard practice for most advisory councils appointed by Government to be paid and the provisions for this to be set out in legislation. For example, the Remuneration Tribunal Determination 2012/13: Remuneration and Allowance for Holders of Part-Time Public Office sets out the fees and conditions for travel to support the operation of an authority or advisory council. Key government

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62. The following organisations have been prescribed: the Australian Medical Association, Royal Australian College of General Practitioners, Royal Australian and New Zealand College of Psychiatrists, Royal Australasian College of Physicians and Australian Psychological Society.

63. *Heads of Agreement relating to the provision of health services on Nauru and Manus Island*, op. cit., clause 9.6, p. 24.

64. Ibid., clause 9.4, (c)-(d), p. 22.

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advisory councils and authorities are included on this list. A default rate is included for ‘non-specified’ advisory councils.65

It is also not clear if the Expert Panel will have administrative or secretariat support to perform its functions.

**Concluding comments**

The intention of this Bill is to improve transparency and accountability of the provision of health care in regional processing countries. This is important as the negative health effects of long term detention are well known. However, there are several omissions in this Bill which could potentially undermine its effectiveness. Firstly, the Bill does not give the Expert Panel any power to enter a detention facility to conduct monitoring and assessment activities. Without this power, it is not clear how the Expert Panel will undertake its functions. Secondly, the Bill is silent on whether consent from asylum seekers will be required.

While the effect of the Bill might be to identify unmet health care needs, there is nothing, apart from moral argument, to compel the Government or IHMS to provide this care to asylum seekers. There are two reasons for this. The role of the Expert Panel is to make recommendations to the Minister but the Bill is silent about how the Minister is to respond. This is in contrast, for an example, to an Australian National Audit Office (ANAO) report where the Minister (and/or Department) must detail how they will address the recommendations. Secondly, the contract between IHMS and DIAC is based on a model of care that is similar to what is provided in the Australian community. As was canvassed in the JSCAIDN inquiry, this may not be a sufficient level of care, especially for asylum seekers requiring extensive psychiatric support.66 The Greens have already severely criticised the Government for the lack of specialist psychiatric support on Nauru (as outlined in the contract) but the Government has rejected this, arguing that the services provided are ‘broadly consistent’ with what is provided in the community.67

The debate about the appropriate level of care to be provided to asylum seekers in detention is unlikely to be resolved in the near future and this is outside the scope of the Bill. This, however, does not diminish the importance of appropriate oversight of detention facilities and publicly available, independent, information about the standard of care provided. Previously, there was limited oversight of the conditions on Nauru and Manus Island and the information that was available painted a grim picture. The Howard Government did not grant permission for what is now the

66. JSCAIDN, op. cit., pp. 88-93.

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Australian Human Rights Commission (AHRC) to visit Nauru and Manus Island when investigating children in detention. The Government has given an undertaking that there will be greater oversight for Manus Island and Nauru than previously. This Bill goes some way to facilitating this but potentially lacks the necessary powers and protections for asylum seekers to be fully effective. An alternative may be to strengthen the existing powers of the Commonwealth Ombudsman under the *Migration Act 1953* so that this might be achieved.
Appendix 1

STATEMENT ABOUT ARRANGEMENTS THAT ARE IN PLACE, OR ARE TO BE PUT IN PLACE, IN NAURU FOR THE TREATMENT OF PERSONS TAKEN TO NAURU

1. This document sets out the arrangements that are in place for the treatment of persons taken to Nauru under s 198AD of the Migration Act 1958 (the Act).

Status of transferees in Nauru

2. The Nauruan Government has advised the Commonwealth that:
   a. it will issue visas to all transferees upon arrival in Nauru to enable them to live lawfully in Nauru while any claims that they may make for protection under the Refugees Convention, as amended by the Refugees protocol are assessed;
   b. transferees will have freedom of movement throughout Nauru. It is anticipated, but not legally required, that they will ordinarily return to their accommodation by sunset.

Accommodation

3. Initially, transferees will be accommodated in newly constructed tents, 4.2 metre by 4.2 metre each, with solid flooring, fans, and insect netting over the beds. There are five beds to each tent. There are currently 70 tents which have been constructed with a further 70 tents to be constructed in the week commencing 10 September 2012.

4. Recreation, living, and dining facilities are available in a large breezeway area (approximately 80 metres x 7.5 metres).

5. A new commercial catering kitchen is under construction and is expected to be operational by 14 September 2012.

6. A separate faith room has been set aside at the site. It will be available for use by all denominations for worship.

7. New ablution facilities are being constructed in the existing building currently being renovated in close proximity to the sleeping areas on the site. These facilities are expected to be completed by 13 September 2012.

8. Building contractors are being engaged to construct more permanent accommodation facilities to replace the initial tent accommodation. These facilities will be completed as quickly as possible. It is estimated that this work will take approximately 6 months. When complete, the new accommodation facilities will house a maximum of 900 people.

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9. Work is also progressing to establish a facility at a second site on Nauru which will accommodate another 600 people.

Medical care

10. Medical facilities will be provided to transferees by International Health & Medical Services (IHMS). Medical practitioners and nurses will provide health care, with provision for Nauruan nationals to be trained in ancillary roles, including as nurse aides.

11. Hospital facilities are also available on Nauru, including X-ray, pharmacy, pathology and dental services.

12. A large freestanding building is currently under major renovations and will accommodate a medical facility, including a series of consulting and treatment rooms. These renovations are expected to be ready for occupation by 10 September 2012.

13. For medical emergencies which cannot be dealt with in Nauru, medical evacuation arrangements to Australia are in place. Where appropriate, the Australian government will permit transferees to travel to Australia for non-emergency medical care that cannot be provided in Nauru.

Education

14. Children and unaccompanied minors on Nauru will be provided with access to education, either in Nauruan schools or, if necessary or appropriate, through the direct provision of schooling by contractors engaged for that purpose.

15. A range of accredited training courses will be available to transferees. These courses will be provided by the Salvation Army, which is a Registered Training Authority. These courses will also be available for Nauruans. These courses will be designed to meet both transferee and community needs.

Other

16. Programs and activities for transferees will be provided by the Salvation Army, which has agreed to have at least 17 staff in Nauru initially, and will increase the number of staff as the number of transferees increases. The Salvation Army will also provide welfare and other support to transferees.

17. Existing buildings on site are being refurbished to establish a number of separate computer rooms and a library/reading room. These are expected to be completed by 13 September 2012. Access to computers and telephones will be provided by the Salvation Army.

18. Local Nauruan church groups have indicated that transferees will be welcome to participate in church based activities. Visits from religious leaders will be arranged from time to time in consultation with transferees.

19. Minibuses will operate as shuttle buses to allow transferees to move about country.

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