Submission to the

Senate Legal and Constitutional Affairs Committee

Inquiry into the Migration Amendment (Health Care for Asylum Seekers) Bill 2012

Submitted by the Australian Medical Association

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Introduction

The Australian Medical Association welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Migration Amendment (Health Care for Asylum Seekers) Bill 2012.

The Bill under consideration establishes an independent panel of medical experts tasked with investigating and reporting to the Parliament on the health of asylum seekers who are detained in offshore detention and processing facilities.

The AMA supports this Bill, and has consistently argued for improved monitoring and oversight of the health of asylum seekers in detention. Despite the profound health risks posed by immigration detention, there is currently no independent body that systematically monitors the provision of health and mental health services in immigration detention facilities. The demonstrated impacts of indefinite detention, combined with the history of systemic and sustained problems in the conditions and provision of health care, underscore the need to establish an independent expert monitoring panel.

The following discussion elaborates on this position, focusing on the rationale for strengthening monitoring arrangements, and outlining the necessary features and powers that would need to be in place to improve transparency and accountability. It also considers aspects of the proposed Bill that could be strengthened to further improve the monitoring and oversight capabilities across the immigration detention network.

The case for strengthening monitoring and oversight of immigration detention

Mental and physical health impacts of indefinite detention

The AMA has consistently raised concerns about the health and mental health impacts of indefinite detention, particularly where children or people with pre-existing vulnerabilities are detained.

In February and March 2012, the AMA undertook extensive consultations with medical practitioners and frontline services with direct access to children and young people detained in closed and secure detention facilities. Testimony was gathered from a range of health professionals working in different states and territories. This included including psychiatrists, paediatricians, paediatric mental health specialists, and general practitioners. Off-site paediatricians involved in the treatment of children reported developmental delays in children less than five years of age; and mental health problems including mood disorders, post-traumatic stress syndrome, depression, suicidal ideation, self-harming behaviours, and anxiety disorders. Although the deterioration in a child's mental health increases with the length of detention, it was reported that even short periods of detention were having detrimental effects on some children, contributing to post-traumatic stress symptoms, depression, sleep disturbances, developmental delays, and behavioural and attachment problems.

The outcomes of the AMA's consultations are consistent with previous studies and reports documenting the mental health impacts of detention. In 2004, the detrimental

effects of detention, especially on unaccompanied minors, were detailed in the landmark HREOC Report *A Last Resort.*[1] In March this year, the adverse mental health effects on children and the wider detention population were reiterated in the final report of the Joint Select Committee on Australian's Immigration Detention Network.[2] The Inquiry identified the level of mental illness among detainees as "the most pressing areas of concern":

> … the overwhelming majority of submissions to this inquiry consistently highlighted these adverse effects. Media reports of instances of attempted and inflicted self harm barely scratch the surface of what has clearly become an endemic problem in Australia's detention facilities, and one that must be addressed in the interests of detainees and the staff who work with them, as well as the integrity of the country's immigration policy.

The weight of evidence and experience clearly establishes the profound risks to health and, in particular, mental health, posed by immigration detention. Given these demonstrated risks, it is imperative that robust monitoring mechanisms are in place to review conditions and ensure the least possible harm is inflicted on those detained.

Systemic and ongoing deficiencies in the conditions and provision of services in detention

In addition to the inherent mental health risks posed by indefinite detention, a succession of parliamentary inquiries and reports from human rights bodies have documented systemic shortcomings in the provision of detention health services. Indefinite detention poses inherent risks to mental health, however these risks are compounded by poor conditions, overcrowding, and limited access to health screening and appropriate health care. There has been an ongoing failure to put in place the conditions and level of care that would at least mitigate the risks posed by immigration detention.

These systemic shortcomings were highlighted earlier this year in the Final Report from of the Joint Select Committee Inquiry into Australia's Immigration Network. The Inquiry concluded that acute mental illness is widespread across the detention network, and that "mental health services are severely inadequate to deal with the quantum and severity of cases". A high incidence of self-harm and suicide attempts, insufficient health service staffing, poor screening and clinical governance, and delays in accessing essential specialist and mental health care were found to be endemic across the immigration detention network.

Many of the shortcomings documented in the recent Parliamentary Inquiry are reminiscent of the findings of the Palmer Inquiry, which was instigated in 2005 following the immigration detention of Cornelia Rau.[3] This Inquiry recommended that an Immigration Detention Health Review Commission be established to carry out external reviews of health and medical services provided to detainees. To ensure this independent body could fulfil its monitoring functions, Palmer recommended that it have a statutory basis, and that it be appropriately resourced and staffed "with a core of experienced people with relevant skills."

The Federal Government decided not to implement this recommendation, but instead established the Detention Health Advisory Group (DeHAG), which is now defunct but is in the process of being revived under the new title of the Immigration Health Advisory Group (IHAG). DeHAG has never been resourced or tasked to undertake

the range of functions that the Palmer Inquiry deemed necessary. Despite the establishment of this health advisory group, the lack of corresponding monitoring and compliance mechanisms has meant that its recommendations have not been put into effect.

The failure to implement expert recommendations, and the disjuncture between official health service policies and 'on the ground' experience, was again highlighted during last year's hearings of the Joint Select Committee. The Chair of DeHAG, Professor Louise Newman, revealed that minimum practice standards were not being applied in detention:

> DeHAG has provided a submission outlining our central concerns about this psychological impact of prolonged detention, difficulties in provision of health and mental health support, and services across the immigration system. We would like to stress that in our view *there has been a significant failure in implementation of current policies which we were involved in developing, which could potentially reduce the risk of the mental damage that we are seeing across the system at the moment—specifically the psychological support policies and policies related to survivors of torture and trauma*.

DeHAG contributed to the development of the Detention Health Framework, which was developed in 2007, and which is DIAC's key policy framework for detention health services. The key objectives of the framework are to ensure that policies and practices for health care for people in immigration detention are open and accountable; comparable to those available to the broader Australian community; and subject to quality assurance through independent accreditation. In addition to the Detention Health Framework, DeHAG was instrumental in developing the Psychological Support Program (PSP), which sets out the actions that the detention health service provider (IHMS), DIAC and SERCO must undertake to assist and manage people in detention with a mental illness.

In the absence of independent and transparent auditing, health policies and standards for immigration detention have not been effectively implemented. There are no compliance mechanisms to ensure standards or objectives are met. Despite the development of the Detention Health Framework and PSP, the systemic problems that they were designed to address have persisted. The Joint Select Committee Report into Immigration Detention found that the objectives of the Detention Health Framework were not being achieved, and that there remains "a disconnect between the PSP, a policy document which apparently represents best practice, and the implementation of that policy".

The history of systemic problems in the conditions and services in immigration detention, combined with the failure to implement health standards and policies, underscores the need for improved monitoring in immigration detention settings.

Limitations of previous advisory bodies and monitoring bodies

The failure to effectively implement the recommendations of DeHAG illustrates the limitations of previous advisory bodies. DeHAG has frequently been impeded by a lack of access to basic health service information and data, and its expertise and advice has been consistently underutilised and ignored. It is not resourced to provide inspection or monitoring functions, nor does it provide formal and public reporting of the conditions in detention and the adequacy of detention health services. DeHAG reports directly to the Immigration Department, lacks statutory powers, does not have

its own staff, and has been severely constrained in its ability to monitor and speak out about the extent of the mental health crisis in detention. Lack of access to basic health service information and data has further limited DeHAG's capacity to provide informed policy advice. Finally, there are no provisions in place that require DIAC or the Commonwealth to respond to the concerns and issues raised by DeHAG.

Since the reopening of the Nauru detention processing site, no independent health monitoring or oversight arrangements have been put in place. This is despite the recommendation from the Expert Panel on Asylum Seekers that such a monitoring arrangement be established. The Minister for Immigration and Citizenship has requested that relevant members of his Council on Asylum Seekers and Detention (MCASD) take on an advisory role relating to the transfer of asylum seekers to offshore processing sites. However, there is no indication that MCASD will have an inspection or monitoring role, and its capacity to provide independent and transparent oversight is limited at best. Critically, the membership of MCASD does not encompass the full range of health professions and medical expertise that a properly constituted health panel would need to comprise if it was to undertake comprehensive and specialised monitoring.

At present, there are no Commonwealth agencies that undertake independent and systematic monitoring of the health of immigration detainees. The Commonwealth Ombudsman and the Australian Human Rights Commission have periodically undertaken inspections of immigration detention facilities. However, the principle expertise of these agencies does not extend to evaluating the health of asylum seekers in closed institutions, nor are they funded to undertake this role.

While the Commonwealth Ombudsman has the remit to undertake inspections of immigration detention centres, this role is limited to mainland facilities and does not encompass specialised monitoring of medical and health care. In addition, the Commonwealth Ombudsman primarily plays a remedial or reactive role, addressing complaints of human rights violations rather than undertaking regular or proactive and preventative inspections.

Similarly, while the Australian Human Rights Commission (AHRC) has undertaken periodic inspections of onshore detention facilities, its monitoring functions have been constrained by insufficient resourcing and a lack of specialised medical expertise. Earlier this year, the AHRC announced that it would no longer undertake monitoring and detailed reporting of conditions in immigration detention as it does "not receive any dedicated resources to undertake this work".[4]

The additional risks posed by offshore processing and detention

The unique service challenges and health risks in offshore places of detention heighten the need for robust and independent monitoring. The AMA has consistently raised concerns that detention in remote, climatically harsh and overcrowded conditions poses considerable risks to the health and mental health of detainees.

The physical conditions and remoteness of Nauru and Manus Island present particular service challenges, constraining access to health and mental health providers, posing barriers to recruiting onsite staff, and limiting the ability to refer detainees to external health services, including specialist mental health treatment.

Under the previous Pacific Solution, there was limited oversight of the conditions on Nauru and Manus Island, but the information that did emerge painted a grim picture. Around 1,500 asylum seekers were processed in Nauru, resulting in high rates of serious mental health issues, suicide attempts and self-harming. A number were assessed as 'at grave risk' and were transferred to Australia because of their deteriorating mental health. Unsanitary conditions and a lack of access to fresh water contributed to diarrhoea and other gastrointestinal diseases, skin and eye infections, and dengue fever.

While the conditions on Manus were marginally better, a malaria outbreak prompted the Royal College of Physicians to call for an immediate evacuation of all asylum seekers from the island, citing particular concern for pregnant women and children, neither of whom are able to take most malaria prophylaxis. The World Health Organisation has identified Papua New Guinea as the highest risk country in the Western Pacific Region for malaria, and categorises Manus Island as having the highest numbers of probable and confirmed malaria cases in all of Papua New Guinea.

Features of the monitoring panel recommended by the AMA

The AMA recommends that the constitution, powers and capacities of the independent health panel for asylum seekers should be codified in legislation, and should at least include the following:

- the power to access all places of detention, to interview detainees and to have access to all information that is relevant to the health and well-being of detainees, without hindrance and with the full assistance of the Immigration Department and its agencies;
- the necessary material and financial resources to enable the panel to monitor and investigate autonomously and effectively, and to engage appropriate health and medical expertise as it deems necessary;
- the appropriate legal immunities to allow the panel to maintain the confidentiality of information provided by detainees;
- the power to examine the contracts between the Immigration Department and health and welfare service providers to ensure that an appropriate range of services is contracted for, and the providers have the capacity to deliver them appropriately; and,
- the power to report publicly on its monitoring, to engage in dialogue with, and submit proposals to, competent authorities and to make recommendations about legislation.

In the Bill that is currently under consideration, a vital feature is the capacity to report publicly and on a regular basis. The lack of such powers has constrained the independence and effectiveness of previous advisory bodies, which have also lacked the resources and capacity to undertake routine or unfettered inspections of detention facilities. A legislative foundation would also strengthen the perceived and actual independence of oversight mechanisms.

AMA recommendations regarding access to medical information and informed consent

The proposed Bill confers specific powers on the monitoring panel to obtain information that may be necessary to carrying out its duties. The AMA supports these provisions, and recognises that access to such information is critical if full and accurate monitoring is to take place.

However, given the potentially sensitive nature of such information, it is important that the Bill embeds safeguards that would ensure appropriate protections for the privacy of asylum seekers. In addition, informed consent should be enshrined as a prerequisite to any screening or direct monitoring of detainees.

Accordingly, the AMA recommends that the Bill be amended to include provisions that:

- ensure that the panel does not collect unnecessary personal information which is not relevant to its functions;
- ensures personally identifiable information is omitted in public reports; and,
- requires the panel to seek informed consent from asylum seekers prior to interviewing or assessing individual detainees.

Geographic remit

The proposed Bill seeks to establish an independent expert panel to monitor asylum seekers detained in offshore locations, namely Nauru and Manus Island. The AMA strongly supports the establishment of such a Panel, and recommends that its remit encompasses both onshore and offshore detention sites. This would include facilities that are on the Australian mainland, on an excised offshore location (such as Christmas Island), or are in a designated 'regional processing country (Nauru and Manus Island).

To enable the Panel to undertake inspections in offshore sites, it is imperative the Memorandum of Understanding between Australia, Nauru and PNG includes provisions which permit the unfettered access of the independent Panel to detention sites. The current MOU has no such provision.

REFERENCES

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[2] Joint Select Committee on Australia's Immigration Detention Network. *Final Report*. March 2012. http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=immigration_detention_ctte/immigration_detention/report/index.htm [viewed 20-11-2012].

[3] Palmer (2005). http://www.immi.gov.au/media/publications/pdf/palmer-report.pdf [viewed 20-11-2012]

[4] Branson, C, (2012). *Applying human rights in closed environments: practical observations on monitoring and oversight.* Speech delivered by Catherine Branson, President of the Australian Human Rights Commission, at 'Implementing Human Rights in Closed Environments', 21 February 2012, Melbourne. http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&ved=0CFUQFjAF&url=http%3A%2F%2Fwww.law.monash.edu.au%2Fcastancentre%2Fevents%2F2012%2Fbranson-

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