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SUBMISSION TO THE LEGAL AND CONSTITUTIONAL
AFFAIRS LEGISLATION COMMITTEE

MIGRATION AMENDMENT (HEALTH CARE FOR ASYLUM SEEKERS) BILL 2012

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1 | Introduction

UnitingJustice Australia is the justice policy and advocacy unit of the Assembly of the Uniting Church in Australia (the national Council of the Uniting Church), pursuing matters of social and economic justice, human rights, peace and those concerning the environment. It works in collaboration with other Assembly agencies, Uniting Church synod justice staff around the country, and with other community and faith-based organisations and groups. It engages in advocacy and education and works collaboratively to communicate the Church's vision for a reconciled world.

UnitingJustice Australia exists as an expression of the Uniting Church's commitment to working towards a just and peaceful world. This commitment arises from the Christian belief that liberation from oppression and injustice is central to the outcome of the work that God has undertaken through Jesus Christ. The Uniting Church in Australia is committed to involvement in the making of just public policy that prioritises the needs of the most vulnerable and disadvantaged in our society. In 1977, the Inaugural Assembly of the Uniting Church issued a Statement to the Nation. In this statement, the Church declared "our response to the Christian gospel will continue to involve us in social and national affairs."¹

In the Christian tradition of providing hospitality to strangers and expressing in word and deed God's compassion and love for all who are uprooted and dispossessed, the Uniting Church in Australia has been providing direct services to refugees and asylum seekers for many years through its network of congregations, employees, lay people and community service agencies. Through our ministers, lay and ordained, who provide ministry to the asylum seekers in detention centres and through our work with asylum seekers and refugees settling into the community, we have first-hand knowledge of the consequences of Government policies.

In July 2002, the Uniting Church released its Policy Paper on Asylum Seekers, Refugees, and Humanitarian Entrants.² In this paper, the Church advocates for a just response to the needs of asylum seekers and refugees that recognises Australia's responsibilities as a wealthy global citizen, upholds the human rights and safety of all people, is culturally sensitive, and is based on just and humane treatment, including non-discriminatory practices and accountable transparent processes.

The Uniting Church is committed to working for a compassionate, socially responsible society and government that takes seriously its national and international obligations. We have consistently expressed our disappointment in the recent policy decisions of the current Government

1 <http://www.unitingjustice.org.au/uniting-church-statements/key-assembly-statements/item/511-statement-to-the-nation>

2 <http://www.unitingjustice.org.au/refugees-and-asylum-seekers/uca-statements/item/477-asylum-seeker-and-refugee-policy>

with regards to asylum seekers and refugees.³ We believe that the current political discourse has served only to harden the hearts of many Australians towards those who are seeking a life free from persecution, suffering and hardship.

The Migration Amendment (Health Care for Asylum Seekers) Bill 2012 (hereafter, Health Care Bill 2012), is designed to:

Create a panel of medical and psychological experts who are tasked with reporting on the health of asylum seekers in offshore detention. These experts are to investigate and report on the health of all persons in offshore detention and would include detailing prevalent health conditions, deficiencies in access to services, and other conditions that impact on the health of detainees.⁴

The Uniting Church believes that the Health Care Bill 2012 is vitally important to ameliorating some of the legal and moral abrogations that have resulted from the passing of the Migration Legislation Amendment (Regional Processing & Other Measures) Bill 2012. One of the key purposes of the Regional Processing Bill was to “affirm that offshore entry persons, including offshore entry persons to whom Australia has or may have protection obligations, should be taken to any country designated to be an offshore processing country, and the designation of a country to be an offshore processing country should not be limited by reference to the international obligations or domestic law of that country.” We believe that the establishment of offshore processing centres is a blatant violation of Article 14 of the United Nations Declaration of Human Rights⁵ and Article

³ <http://www.unitingjustice.org.au/refugees-and-asylum-seekers/news>

⁴ Explanatory Memoranda, p. 2.

⁵ “14(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution” <http://www.un.org/en/documents/udhr/index.shtml#a14>

31 of the Refugee Convention.⁶ We also believe that the use of Nauru and Manus Island⁷ place Australia at grave risk of breaching our obligations under the following international treaties:

- The International Covenant on Civil and Political Rights (ICCPR), particularly articles 2, 9, 24 and 26;
- The International Covenant on Economic, Social and Cultural Rights (ICESR), particularly article 12;
- The Convention on the Rights of the Child (CRoC), particularly article 22; and
- The Convention Against Torture and the Optional Protocol to the Convention Against Torture.

This risk extends to:

- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty;
- The United Nations Standard Minimum Rules for the Treatment of Prisoners;
- The UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention; and
- The Australian Government’s Identification and Support of People in Immigration Detention Who are Survivors of Torture and Trauma.

⁶ “31(1) The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence” <http://www.unhcr.org/3b66c2aa10.html>

⁷ The two locations nominated by the Minister as offshore processing centres since the passing of the Regional Processing Bill.

In addition to these international obligations, we also believe there is a clear breach of the Government's own key immigration detention values.⁸

While the goal of the Health Care Bill 2012 is admirable, we do not believe that monitoring alone is sufficient to protect vulnerable people from breaches of their fundamental human rights. Prolonged and indefinite detention in remote locations is tantamount to 'warehousing' of asylum seekers and refugees, something that will not be resolved by monitoring alone. We do believe, however, that independent monitoring and reporting can have a positive impact on both the conditions of immigration detention as well as the systemic issues confronting our immigration detention network.

It is in line with the past work and future commitment of the Uniting Church, and in light of the above-listed international human rights treaties, that we make the following submission to the Inquiry into the Migration Amendment (Health Care for Asylum Seekers) Bill 2012.

2 | Impacts of offshore immigration detention on the mental health of asylum seekers and refugees

It is well established that our immigration detention network directly contributes to significant mental and physical health problems for asylum seekers. This is particularly true for those detained for lengthy periods of time, as the Government has indicated will be the case for those sent to offshore detention facilities in pursuit of 'stopping the boats' and maintaining 'order' in the mythological asylum seeker 'queue'.

⁸ <http://www.immi.gov.au/managing-australias-borders/detention/about/key-values.htm>

In 2011, UN Human Rights Commissioner Navi Pillay criticised the Australian Government's system of mandatory immigration detention. Noting the "grim despondency" of detainees, she said, "thousands of men, women and – most disturbingly of all children – have been held in Australian detention centres for prolonged periods, even though they have committed no crime. Mandatory detention is a practice that can lead – and has led – to suicides, self-harming and deep trauma."⁹

A report produced by Oxfam detailing the negative impacts on the lives of asylum seekers who were detained offshore when Nauru was last used as a processing centre highlights the long-term devastating effects of detention on such a remote location. In part, the report reads:

Medical studies, figures from the Department of Immigration and Citizenship (DIAC), testimony from staff and former asylum seekers on Nauru all paint a shocking picture of psychological damage for the detainees – including 45 people engaged in a serious hunger strike, multiple incidents of actual self-harm and dozens of detainees suffering from depression and other psychological conditions each year and being treated with anti-depressants or anti-psychotic medication.¹⁰

⁹ <http://www.abc.net.au/news/stories/2011/05/25/3226610.htm>

¹⁰ Bem, K., Field, N., Maclellan, N., Meyer, S. & Morris, T. (2007). A price too high: The cost of Australia's approach to asylum seekers. Melbourne: Oxfam Australia, p. 4.

In response to the damning criticism levelled against the policy of mandatory detention with regards to the mental health of asylum seekers in the 2005 Palmer Inquiry Report,¹¹ the Detention Health Advisory Group (DeHAG) was established in early 2006. One of DeHAG's early recommendations was that independent and Australian-centric research be undertaken into the health of asylum seekers in detention. The findings of this research were released in 2010 after a detailed analysis of the health records of immigration centre detainees.¹² The findings of this study revealed that:

- the reason for detention had a significant additional effect in the rate of new mental health problems of asylum seekers, with the rate of mental illness for those designated "unauthorised boat arrivals" being significantly higher than in other groups; and
- time in detention also had a significant effect with greatly increased rates of mental illness for those detained for more than two years.

Another Australian report revealed similar findings to the Green and Eagar study, noting:

There is now a large body of research indicating that immigration detention causes asylum seekers psychological harm. Studies have found that asylum seekers in detention have high rates of depression and Post Traumatic Stress Disorder (PTSD) and that the extent of their mental ill health is directly correlated

with the length of time spent in detention.¹³

These studies are noteworthy when considering the offshore processing of asylum seekers under the recently passed Regional Processing Bill 2012. The Government has indicated on multiple occasions that those who seek asylum in Australia after undertaking an often perilous journey by boat will be 'punished' and sent to an offshore processing centre as a means of deterring others from undertaking a similar journey. The Government has also consistently demonstrated its preoccupation with the mythological resettlement 'queue' and, through its 'no advantage' principle, has made clear that those sent to an offshore detention facility will be incarcerated there for a significant period of time.

The results of Australian studies are indicative of the international experience with regards to mental ill health and asylum seekers in detention. A recent survey of several international studies noted:

All studies found high levels of emotional distress among individuals who were in detention or who had previously been detained. Among children, mental health difficulties in combination with developmental and behavioural problems were observed. Although in its infancy, research into the effects of detention has used increasingly sophisticated methods in order to attempt to identify and isolate the independent effects of numerous adverse circumstances on the mental health of these individuals. This has produced evidence that the findings relate in part to pre-detention trauma, in addition

11 Palmer, M.J. (2005). Inquiry into the circumstances of the immigration detention of Cornelia Rau. Report. Canberra: Commonwealth of Australia. <http://www.immi.gov.au/media/publications/pdf/palmer-report.pdf>

12 Green, J.P. & Eagar, K. (2010). "The health of people in Australian immigration detention centres," MJA, 192(2).

13 Coffey, G., Kaplan, I., Sampson, R. & Montagna Tucci, M. (2010). "The meaning and mental health consequences of long-term immigration detention for people seeking asylum," Social Science & Medicine, 70(12), 2070 – 2079.

to detention itself having an independent and significant adverse effect on mental health... [Additionally] time in detention was directly related to the severity of symptoms of depression, anxiety and PTSD.¹⁴

In 2004, the Human Rights and Equal Opportunity Commission (HREOC) released their report into the immigration detention of children and young people. The findings of this report were damning, and revealed not only the significant and deleterious effects of immigration detention on the mental health of children, but also the impact that the mental ill health of their parents had on the children's growth and development. While we acknowledge that actions have been taken since the release of this report to reduce the time children and young people spend in detention, we note with tremendous concern the announcement by the Government that children – including unaccompanied minors – will be sent to designated offshore detention centres to prevent them becoming 'anchors' for members of their family in their country of origin.¹⁵

In a longitudinal study assessing child asylum seekers who had been detained for between 1 – 2 years, the following disturbing results were documented:

- children under 5 years of age demonstrated significant developmental delays, particularly in language and social skills. Mood disorders were also observed in this group, resulting in aggressive behaviours, inappropriate emotional outbursts and threats of self-

14 Robjant, K., Hassan, R. & Katona, C. (2009). "Mental health implications of detaining asylum seekers: A systematic review," *British Journal of Psychiatry*, 194, 306 – 312.

15 We also note the serious disconnect between Government policy and reality for children and young people. While the Government maintains that children will not be held in immigration detention, as of 31st August, 694 children and young people were held in immigration detention centres, including alternative places of detention.

harm; and

- in children from 6 – 17 years of age, 100 per cent presented with Post Traumatic Stress Disorder, 100 per cent presented with major depression, 100 per cent displayed suicidal ideation, 80 per cent engaged in self-harm behaviours, and 70 per cent displayed symptoms of an anxiety disorder.¹⁶

A further study conducted in Australia to investigate the mental health effects of immigration detention on children revealed that those subjected to detention in remote facilities suffered a tenfold increase in incidences of mental illness compared to young asylum seekers who were not detained.¹⁷ These highly disturbing results also echo international studies into the impact of immigration detention on the mental health of children and young people.¹⁸

The Uniting Church has long been concerned with the role of the Minister for Immigration as legal guardian of unaccompanied minors in immigration detention facilities. The powers of the Minister to detain children and young people and to determine their refugee status are clearly incompatible. Particularly concerning to us is the fact that the Minister may – and indeed, routinely does – delegate guardianship powers to the Department of Immigration and

16 Gauthier, K., Hiles, D., Marren, S. & Perini, J. (2011). *No Place for Children: Immigration Detention on Christmas Island*. ChilOut.

17 Ibid.

18 See, for instance: Lorek, A., Ehntholt, K., Nesbitt, C. Wey, E., Githinji, C., Rosser, E. & Wickramasingh, R. (2009), "The mental and physical health difficulties of children held within a British immigration detention centre," *Child Abuse & Neglect*, 33, 573 – 585; McLeigh, J.D. (2010), "How do Immigration and Customs Enforcement (ICE) practices affect the mental health of children?" *American Journal of Orthopsychiatry*, 80(1), 96 – 100; Chaudry, A. (2011), "Children in the aftermath of immigration enforcement," *The Journal of the History of Childhood and Youth*, 4(1), 137 – 154.

Citizenship (DIAC). As the Australian Human Rights Commission has noted, “it is not possible for the Minister or a DIAC officer to ensure that the best interests of an unaccompanied minor are their primary consideration when they are simultaneously the child’s guardian, the detaining authority and the visa decision-maker.”¹⁹ While our opposition to this blatant conflict of interest stands, we are deeply troubled by the recent announcement that the Minister will not hold a guardianship role for children and young people who are sent to offshore processing centres under the Regional Processing Bill 2012. There has been no statement as to who will now fill this vitally important role – a gaping omission that leaves a highly vulnerable group exposed to potentially gross human rights violations.

Australia’s immigration detention facilities have a long and troubled history of being managed by private contractors, from Australasian Correctional Management in the late 1990s, to Serco who currently manage both onshore facilities and the offshore centre at Christmas Island. Transfield, an engineering company with no experience in the management of immigration detention centres, has been awarded a contract to run the detention centre on Nauru.²⁰ The Salvation Army has also entered into a agreement with the Federal Government to provide humanitarian support for the asylum seekers in Nauru. When asked about the specifics of the arrangement, Salvation Army spokesman Major Bruce Harmer said:

We’ll be working with them in a range of ways. Certainly there’ll be many people, many asylum seekers, who are upset that they’re being processed offshore... the Salvation Army will be working with them to provide a level of care, just humanitarian support, very general type things.²¹

While we welcome the presence of an organisation that will be dedicated to the provision of “humanitarian support”, UnitingJustice does not believe that this sufficiently addresses the mental health issues that will be directly caused by lengthy detention periods on Nauru. We are also concerned that only days before the first attempted suicide on Nauru, the Salvation Army publicly praised the work of the mental health provider on Nauru, maintaining that they were “satisfied the health provider is responding appropriately to all requests of health care for asylum seekers on Nauru and Manus Island so far”.²²

In late September of this year, the Government released further details about specific mental health services on Nauru and Manus Island. The services will be provided by International Health and Medical Services (IHMS) – the organisation that has been providing primary health care services in immigration detention facilities since 2009. The details of the new contract, revealed by the Minister for Immigration, noted:

19 Australian Human Rights Commission (2010). Submission to the Inquiry into the Commonwealth Commissioner for Children and Young People Bill 2010, p. 9.

20 At the time of preparing this submission, the Federal Government had not yet revealed whether Transfield would also be operating the centre at Manus Island.

21 www.abc.net.au/worldtoday/content/2012/s3586647.htm

22 <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/asylum-seekers-very-well-cared-for-on-nauru-salvation-army/1020248> and <http://newmatilda.com/2012/10/12/asylum-seeker-attempts-suicide-nauru>

Nauru – with a maximum capacity of 1,500 asylum seekers – will have up to two counsellors, two psychologists and a part-time [fly-in, fly-out] psychiatrist among its 44 health staff according to the contract. No on-site counsellors are currently listed for Manus Island and again only one part-time psychiatrist will be provided but details have not been finalised.²³

These staffing levels are grossly inadequate for the range and extent of mental health issues that detainees in these two offshore centres are likely to face. IHMS have made it clear during several parliamentary inquiries that full-time psychiatric staff are required in order to provide adequate support to asylum seekers in detention.²⁴ That the Government would choose to ignore successive inquiries that have – over the last twelve years – recommended an increase in mental health staff is tantamount to negligence.

As IHMS has been engaged by the Federal Government in onshore detention centres for several years, the details of their existing onshore service provision are worthy of a brief examination here. The Australian Human Rights Commission (AHRC) has investigated multiple complaints from detainees in our immigration system and has also conducted two national inquiries into the mandatory detention system. The most recent suite of reports provided an in-depth examination of detention centres both in Australia and the offshore detention centre on Christmas Island. In one of these reports, the AHRC noted:

²³ <http://www.psychiatryupdate.com.au/latest-news/one-part-time-psychiatrist-for-nauru-detainees>

²⁴ <http://www.abc.net.au/news/2012-09-22/government-slammed-for-mental-health-services/4275216>

The Commission's most significant concern relates to the staffing level of the IHMS health service, which appears to be inadequate given the number of people in detention. This has a variety of impacts on the quality and timeliness of health services... A further concern relates to the high level of prescription and use of psychotropic medications, including antipsychotics and antidepressants, for their sedative effect.

Many people spoke of feelings of frustration, distress and demoralisation after being detained for a long period of time, and many spoke of the uncertainty and anxiety caused by being detained for an indefinite period of time. People also spoke about the psychological impacts of their prolonged detention, including high levels of sleeplessness, feelings of hopelessness and powerlessness, thoughts of self-harm or suicide, and feeling too depressed, anxious or distracted to take part in recreational or educational activities... leading to high use of sedative, hypnotic, antidepressant and antipsychotic medications and serious self-harm incidents.²⁵

While DIAC, in conjunction with IHMS, maintain that they offer health care services that are "fair and reasonable, consistent with Australia's international obligations and comparable to those available to the broader Australian community,"²⁶ there is significant evidence to suggest that their policies have not been implemented, and that it is the mental health of the asylum seekers in

²⁵ Australian Human Rights Commission (AHRC). (2011). 2011 Immigration Detention at Villawood, AHRC. It should be noted that similar concerns about inadequate mental health provisions were made by the AHRC across its suite of reports into Australia's immigration detention centres.

²⁶ Department of Immigration & Citizenship (DIAC). (2007). Detention Health Framework: A policy framework for health care for people in immigration detention. Available at <http://www.immi.gov.au/managing-australias-borders/detention/services/detention-health-framework.pdf>

detention that has suffered as a result. The final report of the Joint Select Committee on Australia's Immigration Detention Network detailed scathing assessments of the provision of health services to asylum seekers in detention.²⁷ DeHAG advised the Committee that "there has been a significant failure in the implementation of current policies which we were involved in developing, which could potentially reduce the risk of the mental damage we are seeing across the system at the moment".²⁸ The AHRC expressed concern to the Committee about whether the mental health support needs of detainees are met, "particularly because IHMS has a reactive rather than proactive health care model... Unless a person self-identifies as someone who might be in need of mental health care they do not receive it. No-one goes out into the detention centre to see whether there are people there showing signs of needing the services of a mental health carer."²⁹

With this wealth of evidence, UnitingJustice does not believe that IHMS – under the current contract and with the current levels of resourcing and staffing – are able to provide adequate mental health services to asylum seekers on Nauru or Manus Island. When we consider that the Nauruan Government has articulated that they are unable to deal with mental health issues that asylum seekers will face, the importance of a reliable, well-resourced and adequately staffed mental health facility becomes even more important.³⁰

27 http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=immigration_detention_ctte/immigration_detention/report/index.htm

28 Ibid. para. 4.7.

29 Ibid. para. 4.4.

30 <http://www.news.com.au/national/mental-health-fears-real-for-asylum-seekers-detained-on-nauru/story-fndo4eg9-1226479837825>

3 | Impacts of offshore immigration detention on the physical health of asylum seekers and refugees

Multiple reports have been published outlining the negative impacts on the physical health of detainees on Nauru when it was last used as an offshore detention centre from 2001 – 2007. The physical conditions of the centre were grossly inadequate for asylum seekers, including the prolonged use of tents and temporary housing units that were not suitable for the harsh climate of the region. The remoteness of Nauru meant that fresh food was constantly in short supply, and with no fresh water available on the island, the adequate provision of drinking water was a frequent concern:

Unsanitary conditions in the camp led to medical problems, including incidences of diarrhoea and other gastro-intestinal diseases, skin and eye infections, and dengue fever. The lack of adequate medical care on Nauru meant that asylum seekers with conditions requiring specialist attention had to wait lengthy periods for it, with some finally being flown to Australian hospitals to receive it. The consequences for these asylum seekers meant months of pain and suffering that could have been averted or at least minimised should they have been in Australia near appropriate medical facilities. In one case, the lack of medical assistance given to one man with kidney stones meant that he finally had to have one of his kidneys removed.

For a woman who was losing her sight, a specialist told the camp management that she required surgery that could not be performed on Nauru. She finally received the surgery in Australia some two years later, after the specialist had reviewed her case and expressed concerns that she had still not been given the treatment she required.³¹

In its 2011 World Malaria Report, the World Health Organisation (WHO) found that Papua New Guinea is the highest risk country in the Western Pacific Region for malaria, with 616 deaths in 2010 – six times greater than any other nation in the region. Of even greater concern, is that Manus Island was categorised by the WHO as having the highest number of probable and confirmed malaria cases in all of PNG.

When Manus Island was last in operation, a malaria outbreak prompted the Royal Australasian College of Physicians (RACP) 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. Children, also, should not be exposed to repeated applications of DEET, the most common basis of anti-malarial aerosols used in the region, as there is evidence it can – even in small concentrations – lead to staggers, agitation, tremors, slurred speech, convulsions and even death.³² The use of tents and other dilapidated buildings to house asylum seekers are wholly inadequate as they are extremely difficult to effectively seal against mosquito infestations.

Both Manus Island and Nauru have been inspected by military and governmental officials over the last three months. The dilapidated state of the infrastructure on both sites includes unusable demountable buildings with broken windows and holes in the walls and ceilings, inoperative ablution facilities, termite infestations, and a lack of secure freshwater sources on Nauru.

Despite the damning critiques that resulted from the sub-standard physical conditions of the camp on Nauru when it was last in operation, it is clear that the desire of the Government to ‘deal with’ the ‘problem’ of unauthorised boat arrivals outweighs any genuine concern for the physical health and safety of these asylum seekers. In fact, Dr Setareki Vatucaawaqa, the Head of Health Services on Nauru has asked that female and child asylum seekers not be sent to the Pacific island. Dr Vatucaawaqa noted that even when the island’s hospital has been refurbished by the Australian armed services so that it could be used to treat asylum seekers, it would remain woefully inadequate as a treatment centre, with between 4 and 12 beds to service an asylum seeker population estimated at 1500.³³

The Australian Medical Association (AMA), which has consistently spoken out regarding the dangerous negative impacts of inadequate health services provisions for asylum seekers, released a position statement in 2011 regarding the health and welfare of those in immigration detention centres. In part, this statement reads:

31 Fleay, C. (2012). Repeating Despair on Nauru: The Impacts of Offshore Processing on Asylum Seekers, Curtin University, Centre for Human Rights Education.

32 See http://www.nevdgp.org.au/info/travel/bots/min_mosq_full_bot.htm and <http://www.cdpr.ca.gov/docs/risk/rcd/deet.pdf>

33 <http://www.illawarramercury.com.au/story/353693/nauru-has-healthcare-concerns/>

In addition to suffering the same health problems as the general population, asylum seekers and refugees are at particular risk from a range of conditions including... the effects of poor dental hygiene, poor nutrition and diet, and infectious diseases such as tuberculosis. To determine their specific health needs, all asylum seekers and refugees should undergo comprehensive and timely health assessments in a culturally appropriate manner by suitably trained medical practitioners as part of a primary health care team. All asylum seekers and refugees should have access to the same level of health care as all Australian citizens. In addition, it should be ensured that their special needs, including cultural, linguistic, and health-related, are addressed.

Health and medical services in immigration detention centres should only be provided by organisations that have the full capacity to provide an appropriate range of health and medical care to all detainees as needed, and according to best practice standards in health care delivery. Adherence to these standards should be guaranteed through a process of ongoing monitoring of detainees health by an independent statutory body of clinical experts with powers to acquire information and investigate conditions in centres as it determines.³⁴

The woefully inadequate staffing levels and access to health care facilities, including specialist medical care, on both Nauru and Manus Island, ensures that the recommendations of the peak medical authority in Australia cannot possibly be upheld.

³⁴ Australian Medical Association (AMA). (2011). Health Care of Asylum Seekers and Refugees, AMA, p. 2 – 3.

4 | Monitoring of offshore detention centre facilities under the Health Care Bill 2012

While the Health Care Bill 2012 does not outline specific monitoring arrangements for the independent panel of medical experts, UnitingJustice believes that such details are of vital importance. Too many policies dealing with the health and welfare of asylum seekers and refugees languish in administrative ‘black holes’ unless they are codified in legislation. For this reason, we suggest the inclusion of a specific monitoring framework in the legislation, akin to that established by the Optional Protocol to the Convention Against Torture (OPCAT). Under OPCAT, the framework for monitoring places of detention provides for:³⁵

- a mandate to undertake regular preventative visits;
- independence (functional independence as well as independence of personnel);
- expertise (required capabilities and professional knowledge);
- necessary resources (financial and otherwise);
- access (to all places of detention; to all relevant information; and, the right to conduct private interviews);
- appropriate privileges and immunities;
- dialogue with competent authorities regarding recommendations;

³⁵ Australian Human Rights Commission (2012). Applying Human Rights in Closed Environments: Practical Observations on Monitoring and Oversight, Speech delivered by The Hon Catherine Branson QC, 21st February, Melbourne. See also: http://www.hreoc.gov.au/human_rights/opcat/index.html

- power to report publicly on their monitoring; and
- power to submit proposals and observations concerning existing or proposed legislation.

Additionally, we recommend that the Health Care Bill 2012 provides for the establishment of detainee-focussed mechanisms for consultation and communication. Asylum seekers should be provided with the tools and resources to communicate on a regular basis with the independent panel their experiences and ongoing concerns with medical and mental health services in offshore detention facilities. This would provide for no-cost monitoring between site visits from the independent panel of medical experts. Ensuring that asylum seekers have a voice in this manner would also lead to a feeling of empowerment for asylum seekers trapped in a situation that is designedly disempowering.

5 | Conclusion

The negative impact on asylum seekers of inadequate medical and mental health facilities is both well documented and far-reaching. Long after detainees have been released, many report suffering from the consequences of a system that served only to compound their prior experiences of persecution and torture, and indeed a system that has been proven to create new traumas and illnesses.

Effective, independent and well-resourced monitoring of offshore detention centres is not – on its own – an adequate solution to Australia breaching its international obligations to a highly vulnerable group of people. However, it is a vitally important first step to ensuring that the rights of those in immigration detention centres are upheld.

The Uniting Church encourages an ongoing scrutiny of our immigration detention network, particularly remote and offshore sites. For us, ‘out of sight’ will never be ‘out of mind’. We reiterate our belief that offshore detention facilities are tantamount to a grave moral failure, and that – as a matter of urgency – the Government should prioritise onshore community processing, with immigration detention used only for security and health checks of those seeking asylum. While the Government persists with policies that we believe violate the rights of asylum seekers, we support the introduction of an independent and expert panel of medical and allied health experts as outlined in the Health Care Bill 2012.