

19th August 2019

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600



Dear Committee Secretary,

Re: The Victorian Refugee Health Network submission to the Senate Legal and Constitutional Affairs Legislation Committee regarding the Inquiry into the Migration Amendment (Repairing Medical Transfers) Bill 2019 (Provisions).

The Victorian Refugee Health Network welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee in relation to the Inquiry into the Migration Amendment (Repairing Medical Transfers) Bill 2019 (Provisions).

The Victorian Refugee Health Network

The Victorian Refugee Health Network (the Network) was established in 2007. The Network facilitates coordination and collaboration amongst health and community services working with people of refugee backgrounds, including those seeking asylum. A principal aim of this collaboration is to improve service accessibility and responsiveness. An executive group provides strategic direction and oversight over the Network's activities. The Network has provided expert advice to the sector and to successive State governments on refugee and asylum seeker health issues.

Key points

The Network opposes The Migration Amendment (Repairing Medical Transfers) Bill 2019 (the bill), which seeks to repeal the medical transfer provisions of the Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019 (the Medevac law). This is based on the following grounds:

- The duty of care of the Australian government to provide a sufficient standard of health care to refugees and people seeking asylum who were transferred to Papua New Guinea (PNG) and Nauru under provisions in the Australian *Migration Act*¹.
- The complex health needs of many refugees and asylum seekers who have been subject to long term detention and offshore processing in PNG and Nauru.
- The importance of independent oversight and public reporting on the health status and health services for the refugees and people seeking asylum who are subject to offshore processing.

¹ Senate Legal and Constitutional Affairs References Committee, Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre, April 2017, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and... (Accessed August 13, 2019).

- The efficiency and effectiveness of the coordinated medical transfer process enabled by the Medevac law, which facilitates acutely unwell people receiving essential, at times lifesaving, medical care that is not available to them in regional processing countries.
- Prior to implementation of the Medevac law, people requiring specialist and other health care not available in PNG and Nauru often had their medical transfers delayed significantly, due to the complex process of seeking approval from the Department of Home Affairs and the Minister for Immigration.
- Decisions relating to people's health should be made by clinicians/doctors.
- Due to the extremely high prevalence of serious health and mental health conditions among refugees and people seeking asylum currently in Nauru and PNG, if the Medevac law is repealed, it is highly likely that there would be serious consequences for the health of the cohorts remaining in regional processing countries.

Health complexities of people transferred to Papua New Guinea and Nauru

"The right to health is a fundamental part of our human rights and of our understanding of a life in dignity."²

Refugees and people seeking asylum often have complex health needs. Many are survivors of torture and trauma sustained in the context of war, conflict and violence, often inflicted on civilians in their countries of origin, or in the course of forced migration. Torture and trauma results in myriad significant, enduring and well documented physical and mental health issues. Survivors of torture are at particularly high risk of lifelong psychological damage from periods of time in immigration in detention³.

Prolonged immigration detention has deleterious, cumulative impacts on both physical and mental health of refugees and people seeking asylum⁴. Harm to physical health can be caused by limited access to nutritious food, restricted movement, insufficient amenities to maintain healthy personal hygiene, and limitations on health care access⁵. Research consistently shows prolonged immigration detention causes significant mental health harm to refugees and people seeking asylum. The indefinite nature of immigration detention leads to experiences of hopelessness, the perceived arbitrariness of detention engenders a sense of injustice, and facility environments are often experienced as dehumanising⁶. There are proven correlations between the length of time in detention and the experience and expression of psychological distress⁷.

² Office of the United Nations High Commissioner for Human Rights, The Right to Health, <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf> (Accessed August 14, 2019).

³ Silverman, Stephanie J. and Nethery, Amy (2015). *Understanding immigration detention and its human impact*, Available at: <http://dro.deakin.edu.au/eserv/DU:30076674/nethery-understandingimmigration-2015.pdf>

⁴ J.P & Eagar, K. (2010). *The health of people in Australian immigration detention centres*. Medical Journal of Australia; 192 (2): 65-70. Available at <https://www.mja.com.au/journal/2010/192/2/health-people-australian-immigration-detention-centres>.

⁵ Silverman, Stephanie J. and Nethery, Amy (2015). *Understanding immigration detention and its human impact*, Available at: <http://dro.deakin.edu.au/eserv/DU:30076674/nethery-understandingimmigration-2015.pdf>

⁶ Coffey, G. J., Kaplan, I., Sampson, R. C & Montagna Tucci, M. (2010). *The meaning and mental health consequences of long-term immigration detention for people seeking asylum*, Social Science & Medicine; 70 (12).

⁷ See for example Green, J.P & Eagar, K. (2010). *The health of people in Australian immigration detention centres*. Medical Journal of Australia; 192 (2): 65-70. Available at <https://www.mja.com.au/journal/2010/192/2/health-people-australian-immigration-detention-centres>.

The cohort of refugees and asylum seekers who remain in PNG and Nauru have now been in this situation for more than six years. Their complex health presentations mean that prompt, high quality, comprehensive medical and psychiatric assessment and treatment may be required urgently to maintain immediate health and safety. There are significant limitations on access to health care in PNG and Nauru for refugees and people seeking asylum to meet their particular health needs. International Health and Medical Services (IHMS) is contracted on Nauru to provide primary health care. However, for this population, referrals, diagnostics and specialist care are often paramount. The Republic of Nauru Hospital (RON Hospital) is not equipped to support the complex health care needs of the refugee and asylum seeker population, this is additionally demonstrated by the fact that many Nauruans seek tertiary healthcare in Australian health facilities for themselves and their families. IHMS also previously provided primary care in PNG, however the Australian government ended its contract with IHMS on PNG in mid-2018, shifting the healthcare to local contractors (Pacific International Hospital) and the PNG public health system⁸.

The Medevac law enables an effective response to the complex health needs of the cohort of people remaining in Papua New Guinea and Nauru.

The Medevac law provides a legislatively enforceable pathway for medical transfer of refugees and people seeking asylum in Nauru and PNG if doctors have assessed the patient and made recommendations for medical treatment. The law ensures that where the appropriate medical care or diagnostics are not available in the regional processing location, the person must be transferred to Australia for that purpose.

The process outlined in the Medevac law is thorough, requiring **three conditions to be satisfied**:

1. Two doctors assess whether there is a need for medical care
2. The applicant must not be currently receiving the required medical care
3. The applicant must not be able to access the required health care in the country of regional processing

If these conditions are met, medical personnel can make a recommendation for medical transfer to the Minister for Home Affairs. The Minister then must either approve or refuse the transfer within 72 hours. If the Minister refuses the recommendation based on medical grounds, then the recommendation is reviewed by a panel of doctors, the Independent Health Advice Panel (IHAP). The Minister is able to deny recommendations for transfer if the person has an adverse security assessment, or a substantial criminal record⁹.

The Medevac law enables a rapid, potentially life-saving, response to the health care needs of those remaining in PNG and Nauru. Because the law ensures recommendations made for medical transfer are based on the objective health assessments by highly trained medical experts, people's health needs are placed above political and policy decisions. Since the Medevac law came into effect, over 80%¹⁰ of applications for transfer have been approved, demonstrating that the requirement for two

⁸ Amnesty International, *Health Care Cuts: Australia's Reduced Health Care Support for Refugees and Asylum Seekers in Papua New Guinea* (2018). Available at <https://www.amnesty.org.au/wp-content/uploads/2018/05/AMNESTYINTL-Manus-Health-Care-Cuts-REPORT-18052018.pdf> (Accessed August 14, 2019).

⁹ The Kaldor Centre (2019). *The medevac law: Medical transfers from offshore processing to Australia*. Available at <https://www.kaldorcentre.unsw.edu.au/publication/medevac-law-medical-transfers-offshore-detention-australia> (Accessed August 14, 2019).

¹⁰ According to the Medical Evacuation Response Group (MERG).

doctors' medical opinions, along with the anticipated review process, has ensured that valid applications are brought before the Minister.

The effectiveness of the medical transfer process enabled by the Medevac legislation stands in contrast to the previous process for transferring critically ill people to Australia for essential health care. Previously, applications for medical transfer (overseas medical referrals) could only be made by doctors contracted by the Department of Home Affairs (IHMS). These applications were then submitted to the Department of Home Affairs, who could approve or decline at their discretion. This process could result in necessary health care being dangerously delayed. When rapid, comprehensive medical assessment and treatment of critically ill people on PNG or Nauru has been delayed, there have been, and are likely to be, further grave consequences. There are cases where the combination of services being unavailable in PNG along with delays in transfer to Australia for specialised, emergency healthcare, have resulted in the preventable deaths of refugees and people seeking asylum¹¹.

The Medevac law enables independent review of the transfer process and health status of the cohort of people remaining in Papua New Guinea and Nauru.

The Medevac law establishes the Independent Health Advice Panel (IHAP) which is a panel of doctors that can assess the health status of the cohorts of refugees and people seeking asylum in PNG and Nauru, and the health services available to them. The IHAP also has responsibility for assessing cases where Minister has refused the recommendation for transfer based on medical grounds. This means clinical decisions are reviewed by clinicians, and also that IHAP provides legislated oversight and public reporting which ensures accountability and transparency.

Summary

The Victorian Refugee Health Network recommends the Committee make strong recommendations against the Repeal Bill on the basis that medical transfer provisions enabled by the Medevac law provide a streamlined, cost-effective, and accountable way to provide essential health care to the people subject to offshore processing in PNG and Nauru. For those individuals whose health needs cannot be met by health services in these regional processing countries, the Medevac law provides a process whereby trained and experienced medical professionals undertake objective health assessments of a person, make subsequent recommendations about required treatments and appropriate (and timely) access to health care for significantly ill individuals with ongoing medical and psychiatric illnesses. The government of Australia owes a duty of care to the people in PNG and Nauru who were transferred to these locations as a result of Australian immigration legislation¹². Maintaining the provisions of the Medevac law is an essential step towards Australia meeting its obligations to uphold the health and human rights of the people subject to offshore processing on PNG and Nauru.

¹¹ See for example coroner's inquests regarding the deaths of Hamid Khazaei and Omid Masoumali

¹² Senate Legal and Constitutional Affairs References Committee, Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre, April 2017, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and... (Accessed August 13, 2019).