

# Phelps medivac bill a national security risk, Home Affairs warns

## EXCLUSIVE

By **SIMON BENSON**, NATIONAL AFFAIRS EDITOR

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Intelligence agencies are understood to have warned in a classified briefing to the government that the “third pillar” of the nation’s border-protection architecture — the offshore processing of asylum-seekers — would be dismantled if Kerryn Phelps’s medivac bill becomes law.

*The Australian* understands that the briefing from the Department of Home Affairs, based on advice from ASIO and Australian Border Force, specifically referred to the threat to the “third pillar” of border control policy, which operates alongside boat turnbacks and temporary protection visas.

The classified briefing is understood to have provided detailed advice on the need for mothballed detention centres in Australia to be reopened to accommodate transfers of people who were unable to be subjected to a timely threat assessment or those deemed not safe to be allowed to live in the community.

The advice warned that up to 1000 asylum-seekers on Manus Island and Nauru would be expected to start arriving “within weeks” of the bill being given royal assent, and being transferred within another four to five weeks.

The reopening of the Christmas Island regional processing centre may have to be considered ahead of a possible revival of people-smuggling. A declassified briefing note provided to *The Australian* yesterday said that Dr Phelps’s bill would render the government powerless to conduct proper security threat assessments or stop transfers to the mainland.

Labor, the Greens and other crossbenchers have said they are inclined to support the bill when parliament resumes next week for the first time this year. Crossbencher Rebekha Sharkie will meet the Prime Minister this week after accepting an offer from his office for a briefing.

Ms Sharkie received the offer late on Tuesday after she confirmed her intention to support the legislation while also remaining open to discussing amendments with the government.

In addition to the offer of a briefing, the letter outlined why the government opposed Dr Phelps's proposal to put two doctors in charge of advising whether asylum-seekers should be transferred off Manus Island and Nauru on medical grounds.

The redacted version of the security advice said that, under existing national security legislation, which defines security as espionage, sabotage, foreign interference and communal violence, the Department of Home Affairs would be unable to stop transfers of people with criminal records, including rape, pedophilia or murder.

The advice said a flaw with the bill was that the new definition of a "relevant transitory person" would mean Australia would be responsible for those already resettled in Papua New Guinea, including children born to transferees and citizens of PNG. This would "impinge" on the sovereignty of Australia's neighbour.

"In its current form, the Home Affairs Legislation Amendment (Miscellaneous Measures) Bill 2018 would undermine regional processing and compromise Australia's strong border protection regime," the redacted advice said. "The bill would enshrine into law processes for the transfer of certain transitory persons in regional processing countries to Australia for a medical purpose. This could result in all transferees in regional processing countries being brought to Australia within a short period of time. The bill takes the decision-making power for border security out of the hands of government and places it in the hands of medical practitioners. These practitioners may be consulting the person remotely."

The amendments passed the Senate last year with the support of Labor and the Greens.

The thrust of the Phelps bill is to take medical transfer decisions away from the department and give them to two or more independently appointed doctors. The home affairs minister would retain the power to refuse a transfer on national security grounds. However, under the ASIO Act 1979, security is narrowly defined by threats to the homeland, including sabotage, espionage, - attacks on defence, and politically motivated violence, but not on other criminality.

The agencies argue that because the minister would have 24 hours to refuse an entry, ASIO would not have enough time to conduct a proper security threat assessment. This would be particularly acute for arrivals of people largely unknown to agencies.

“The amendments in the bill currently provide very limited timeframes for decisions on transfer to be made (within 24 hours) which seriously limits the ability to undertake security and background checks,” the briefing said.

It added that the amendments provided the minister with a limited basis for refusing the transfer of “a relevant transitory person on security grounds if their initial decision to refuse transfer is not agreed to by the independent health advisory panel”. “That is where the minister reasonably believes that the transfer of the person would be prejudicial to security within the meaning of the Australian Security Intelligence Organisation Act,” it said. “This is a very high threshold.”

The advice confirms the government’s claim the Phelps bill would end offshore processing.

The government faces a likely defeat in the lower house, with Labor and the Greens saying they would support the bill and Bob Katter the only crossbencher to say he would vote against it.

Mr Morrison this week announced the government was creating a medical review panel consisting of doctors appointed both independently and by government but it would be limited to providing recommendations and reviews of departmental decisions related to medical transfers.

The government would retain control of all decisions. The Prime Minister said the medical review panel was being established to strengthen the system which was being exploited. Bill Shorten said he was still inclined to support the Phelps bill but was open to considering the government’s plan for a medical review panel.

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