



Jesuit Refugee Service Australia

24 Roslyn Street Elizabeth Bay NSW 2011

PO Box 522 Kings Cross NSW 1340

T: +61 2 9356 3888 **F:** +61 2 9356 3021

W: www.jrs.org.au **E:** jrsinfo@jrs.org.au

Submission to the Senate Inquiry into Migration Amendment (Repairing Medical Transfers) Bill 2019

Jesuit Refugee Service (JRS) Australia



Jesuit Refugee Service Australia
24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340
T: +61 2 9356 3888 F: +61 2 9356 3021
W: www.jrs.org.au E: jrsinfo@jrs.org.au

About Jesuit Refugee Service (JRS)

An international organisation

Jesuit Refugee Service (JRS) is an international Catholic organisation, founded in 1980 as a social ministry of the Society of Jesus (“the Jesuits”).

Seeking social justice for refugees worldwide: JRS’ mission is to accompany, serve, and advocate for the rights of refugees and other forcibly displaced people worldwide.

Programs offering global support: JRS works in 56 countries, assisting refugees, people seeking asylum and other displaced people in camps, detention centres, war zones and urban settings. JRS’ programs focus on access to education, emergency assistance, healthcare, livelihood activities and social services.

At the end of 2018, more than 670,000 individuals worldwide were direct beneficiaries of JRS projects.

JRS in Australia In 2018-2019, JRS Australia served more than 3,000 refugees and people seeking asylum with emergency assistance, temporary shelter, a foodbank, professional casework, community activities, employment support, school engagement, legal advice, targeted advocacy, and a project to support the empowerment of women seeking asylum.

Strong alliances: JRS Australia has strong links with parishes, communities and schools across Australia, religious orders, local and state governments, refugee organisations, campaigns and coalitions, and other organisations in the community in the not for profit and education sectors. JRS Australia is the co-convenor of the Catholic Alliance for People Seeking Asylum (CAPSA).

A global presence: JRS Australia maintains an active presence on policy development and advisory forums in the Asia-Pacific region, and at the global level, participating in international campaigns and coalitions and contributing to UN forums.

A stronger voice for refugees: Advocacy is a central pillar of JRS’ work. JRS’ advocacy is characterised by the following principles:

- It stems directly from our close engagement with refugees and others forcibly displaced
- It flows from [accompaniment](#) and [service](#) and is linked to JRS projects
- It is based on [Jesuit values, inspired by Ignatian spirituality](#)
- It is built on solid research.

JRS Australia’s advocacy takes a number of forms including research and commentary, policy development, lobbying, and grassroots engagement with community members.



Jesuit Refugee Service Australia

24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340

T: +61 2 9356 3888 F: +61 2 9356 3021

W: www.jrs.org.au E: jrsinfo@jrs.org.au

Introduction

The following submission is based on evidence from inquiries, reports, speeches, and JRS Australia's first-hand experience working with up to sixty children, women, and men who have been transferred from Manus Island, Port Moresby, and Nauru for medical reasons. JRS Australia's submission is focused on the following arguments:

1. Reiterating the legal reality of Australia's effective control over people transferred from Australia to Manus Island and Nauru under the offshore detention, and processing regime;
2. Highlighting key features of the refugee and asylum-seeker healthcare crises in Nauru and Papua New Guinea (PNG);
3. Outlining key features demonstrating the inadequacy of specialist healthcare provision in Nauru, Manus Island, and Port Moresby;
4. Highlighting concerns with pre-Medevac medical transfer processes;
5. Noting that the Medevac process appears to be fulfilling its very specific objectives
6. Highlighting key statements demonstrating Catholic support for an end to offshore detention and processing;

We would be happy to provide further clarification and comment on the points below.

Australia's effective control over people transferred to Manus Island and Nauru under the offshore detention and processing regime

The Australian government has effective control over refugees and people seeking asylum in Nauru and Papua New Guinea (PNG), and this implies clear responsibilities for ensuring their safety, health, and wellbeing under international law. Fundamentally, the offshore processing regime exists to address Australian domestic political and policy objectives. Moreover, Australia has driven the design, operation, and trajectory of this policy regime.

As outlined in the Memorandums of Understanding (MOU) between Australia, PNG, and Nauru, Australia's financial contributions to the creation and operation of the detention, welfare, and processing regimes, and the incentives it provides partners to participate, imply a significant level of influence over the people transferred and held there.

- Clause 6 of the Memorandum of Understanding (MOU) between Australia and Nauru states that "the Commonwealth of Australia will bear all costs incurred under and incidental to this MOU as agreed between the participants."¹

¹Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the transfer to and assessment of persons in Nauru, and related issues, 29 August 2012, <<https://dfat.gov.au/geo/nauru/pages/memorandum-of-understanding-between-the-republic-of-nauru-and-the-commonwealth-of-australia-relating-to-the-transfer-to-and.aspx>>



Jesuit Refugee Service Australia
24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340
T: +61 2 9356 3888 F: +61 2 9356 3021
W: www.jrs.org.au E: jrsinfo@jrs.org.au

- Clause 6 of the Memorandum of Understanding (MOU) between the Australia and Papua New Guinea (PNG) states that “the Government of Australia will bear all costs incurred under this MOU.”²
- Clause 7 of the Memorandum of Understanding (MOU) between the Australia and Papua New Guinea (PNG) states that “separate to the costs incurred for the specific operation of this MOU, the participants will develop a package of assistance and other bilateral cooperation, which will be in addition to the current allocation of Australian development cooperation assistance to PNG.”³

In practice, the Australian government has “financed the building and running costs of the detention centres, has been responsible for undertaking refugee status determinations, and has maintained a staff presence at each of the centres.”⁴ Since 2013, the Australian government has directly or indirectly regulated the arrival, transfer and resettlement of the refugees and people seeking asylum to and from the islands; has determined every aspect of life within the detention centres, including where people sleep; what food people eat; how long people shower for, and when they can use the internet.⁵ The Australian government has determined the nature and level of health and welfare support they can receive, including via the termination of health, pharmaceutical, counselling, interpreting, case management, recreational, and educational activities after the official closure of the Regional Processing Centre (RPC) on Manus Island in November 2017.⁶

UN bodies, academics, judges, and civil society bodies have argued that the Australian government bears *some* responsibility for the rights of refugees and people seeking asylum in Nauru and PNG, along with the governments of those sovereign nations.

In its submission to an Australian Senate inquiry into allegations relating to conditions and circumstances at the RPC in Nauru 2015, UNHCR said:

“UNHCR has previously observed a high degree of effective control at the Centre, including Australia’s financing and appointing of the service providers at the Centre and numerous Australian government officials who are present to assist with the management and day-to-day running of the Centre, as well as Australia’s close involvement and mentoring of Nauruan officials in respect to

² Memorandum of Understanding between the Government of the Independent State of Papua New Guinea and the Government of Australia relating to the transfer to, and assessment and settlement in, Papua New Guinea of certain persons, and related issues, 8 September 2012, available at <<https://www.kaldorcentre.unsw.edu.au/sites/default/files/australia-png-mou-2013.pdf>>

³ Ibid.

⁴ Emilie McDonnell, “Australia’s Legal Responsibility for the Refugees and Asylum Seekers it has left Languishing in Offshore Detention,” (OxHRH Blog, 15 March 2018), <<https://ohrh.law.ox.ac.uk/australias-legal-responsibility-for-the-refugees-and-asylum-seekers-it-has-left-languishing-in-offshore-detention/>>

⁵ JRS Australia interviews with persons transferred from Nauru, November 2018 and March 2019.

⁶ Taking responsibility: conditions and circumstances at Australia’s Regional Processing Centre in Nauru, Select Senate Committee Final Report, 31 August 2015, <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final%20Report/c02>



Jesuit Refugee Service Australia

24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340

T: +61 2 9356 3888 F: +61 2 9356 3021

W: www.jrs.org.au E: jrsinfo@jrs.org.au

refugee status determination...UNHCR is of the view that the physical transfer of asylum seekers, refugees, and stateless persons from Australia to Nauru does not extinguish the legal responsibility of Australia for their protection.”⁷

The Andrew & Renata Kaldor Centre for International Refugee Law (Kaldor Centre) notes that while Australia cannot impose its laws or exercise executive power in Nauru or PNG, Australia has obligations to people it has sent to those countries under international human rights law. These individuals are under the effective control of government officials or contractors and therefore within Australia’s jurisdiction.⁸ In defining effective control, the Kaldor Centre argues “the crucial question is not where a person is, but rather which State has (or which States have) sufficient control over a person to affect directly his or her enjoyment of rights.”⁹

Emilie McDonnell of Oxford University argues that:

“the situation on Manus Island is the *direct consequence* of the Australian government’s policy to indefinitely detain asylum seekers in extremely poor conditions...this amounts to the exercise of effective control over the detainees, which the UN Human Rights Committee considers to give rise to protective obligations to those detained. It is beyond dispute that Australia bears primary responsibility for those in offshore detention under its policies and has an ongoing legal duty to find a durable solution.”¹⁰

A number of Federal Court of Australia judgements pertaining to the provision of medical treatment to people on the islands address the question of effective control and the potential obligations they give rise to. For example, in *EHW18 v Minister For Home Affairs [2018] FCA 1350*, Justice Mortimer writes:

“I was satisfied that the evidence before the Court established, at least at a level sufficient for the determination of an interlocutory application, a sufficient likelihood that the applicant could make out his allegations about the level of control exercised by the respondents [the Department of Home Affairs] over the lives and welfare of persons in Papua New Guinea in the position of the applicant.”¹¹

Although the closure and downscaling of detention facilities on Manus Island and Nauru respectively may have altered the level of effective control the Australian government

⁷Ibid.

⁸ Andrew & Renata Kaldor Centre for International Refugee Law, “Who is legally responsible for offshore processing on Manus and Nauru?”, (Kaldor Centre website, 1 October 2018), <<https://www.kaldorcentre.unsw.edu.au/publication/offshore-processing-australia%E2%80%99s-responsibility-asylum-seekers-and-refugees-nauru-and>>

⁹ Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 60*, p. 10; https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final%20Report/footnotes#c02f6

¹⁰ McDonnell, “Australia’s Legal Responsibility.”

¹¹ *EHW18 v Minister for Home Affairs [2018] FCA 1350*.



Jesuit Refugee Service Australia
24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340
T: +61 2 9356 3888 F: +61 2 9356 3021
W: www.jrs.org.au E: jrsinfo@jrs.org.au

exercises over the lives and outcomes for people still on the islands, JRS Australia believes that the Australian government retains significant, if not primary legal, political and moral responsibility rights of people on the islands and must act in the interests of their wellbeing.

Refugee and asylum-seeker healthcare crises in Nauru and PNG

The nature and extent of physical and mental health illnesses among refugees and people seeking asylum in Nauru, Manus Island, and Port Moresby is well known. However, JRS Australia believes it important to reiterate key features of these crises:

There have been 12 known deaths on Manus Island and Nauru since 2013, including due to suicide and medical neglect.¹²

A November 2016 UNHCR survey found that 88% of refugees and people seeking asylum on Manus Island (n = 181) were experiencing depressive or anxiety disorders and/or post-traumatic stress disorders as compared to the rates of moderate or high psychological distress in newly resettled refugees in Australia (35%), and the global prevalence of depression or anxiety in male prisoner populations (10%).¹³

A December 2018 a rare, public Medecins San Frontieres(MSF) report found that 62% of MSF refugee and asylum-seeker patients (n = 208) were experiencing moderate to severe depression and 65% had suicide ideations and/or engaged in self-harm or suicidal acts.¹⁴ The report also found that 92% of refugee and asylum seeker patients also faced stressors unique

In JRS Australia's experience working with children, women, and the men transferred from Manus Island and Nauru, the following issues have come to the fore: severe forms of complex Post-Traumatic Stress Disorder (PTSD), major depressive disorders, adjustment disorders, and anxiety disorders. People report experiencing regular, intrusive flashbacks triggered by everyday sights and sounds, feelings of unexplained and debilitating fear, and the pervasive inability to trust others. Suicide ideations are a daily occurrence for people in this group for weeks, and sometimes, months after being transferred. Many people report chronic pain with causes that have not been determined yet. Many people are also dependent on pain or sleeping medication. At least three women have experienced pregnancy loss or still birth. A number of children are still experiencing symptoms of Traumatic Withdrawal Syndrome (TWS) months after being transferred.

to their circumstances, which exacerbated their feelings of vulnerability and mental health

¹² Australian Border Deaths Database, available at <<https://arts.monash.edu/border-crossing-observatory/research-agenda/australian-border-deaths-database>>

¹³ United Nations High Commissioner for Refugees (UNHCR), Submission by the Office of the United Nations High Commissioner for Refugees on the Inquiry into 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, 12 November 2016, <<https://www.unhcr.org/58362da34.pdf>>

¹⁴ Medecins Sans Frontieres (MSF), "Indefinite Despair: the tragic mental health consequences of offshore processing on Nauru", (MSF website, December 2018), Pg 25, 27, available at: https://www.msf.org.au/sites/default/files/attachments/indefinite_despair_3.pdf



Jesuit Refugee Service Australia

24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340

T: +61 2 9356 3888 F: +61 2 9356 3021

W: www.jrs.org.au E: jrsinfo@jrs.org.au

symptoms. These included 64% who felt that they could not control events in their lives, 73% who cited the lack of daily activities as a stressor, and people separated from family members, who were 40% more likely to have suicidal ideations and/or attempt suicide.¹⁵

A May 2018 Amnesty International Australia (Amnesty) report describes a range of serious physical health symptoms encountered in Port Moresby, including “suspected cancerous lumps, kidney stones, gastric problems, typhoid, dengue fever, vision impairment, deteriorating eyesight, and physical injuries.”¹⁶

Media coverage of the Independent Health Assessment Panel (IHAP)’s first quarterly report tabled in parliament in July 2019 reveals that there have been 8,260 consultations at the Nauru RPC medical centre and the IHMS Nauru settlement medical centre, 1,981 consultations at East Lorengau refugee transit centre, and 21 admissions to Lorengau general hospital between January and April 2019. These numbers demonstrate the extent of the crises on both islands.¹⁷

Inadequacy of specialist healthcare for refugees and people seeking asylum in Nauru and PNG

The healthcare crises described above are compounded by the absence of adequate specialist healthcare in Nauru, Manus Island, and Port Moresby. Again although the evidence is widely available, JRS Australia views it important to reiterate key features of this challenge.

In December 2018, MSF found that for the period of its presence on Nauru there was no psychiatrist affiliated with the Republic of Nauru (RON) Hospital to properly assess and treat Nauruan nationals or refugees living in the community; that there was only one 24-hour facility with three inpatient beds in the Regional Processing Centre (RPC 1); and that family members were often “using all their resources to provide increased care and support” to kin who were unwell.¹⁸ MSF also conducted 2,132 psychiatric assessment and treatment sessions, including 285 assessments and 1,847 follow ups. MSF’s significant involvement in this work highlights the high level of psychiatric illness on the island, and the Nauruan government’s inability to cope with the demand for support to recognised refugees living outside the RPC.

In a September 2018 report, the Refugee Council of Australia (RCOA) and the ASRC argued that Nauru is simply not equipped to provide the services needed to adequately treat the complex healthcare issues at hand. People could not obtain glasses, or timely supplies of specialist medications. Women who had experienced female genital mutilation (FGM) and

¹⁵ Ibid.,18,21.

¹⁶ Amnesty International Australia, “Health Care Cuts: Australia’s reduced health care support for refugees and asylum seekers in Papua New Guinea,” (Amnesty International Australia website, May 2018, Pg. 8, available at: <https://www.amnesty.org.au/wp-content/uploads/2018/05/AMNESTYINTL-Manus-Health-Care-Cuts-REPORT-18052018.pdf>)

¹⁷ Katharine Murphy, “Mental health conditions behind most Nauru and Manus refugee medical admissions,” (Guardian Australia website, 23 July 2019), <<https://www.theguardian.com/australia-news/2019/jul/23/mental-health-nauru-manus-refugee-medical-admissions>>

¹⁸ MSF, “Infinite Despair,” 29.



Jesuit Refugee Service Australia

24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340

T: +61 2 9356 3888 F: +61 2 9356 3021

W: www.jrs.org.au E: jrsinfo@jrs.org.au

require gynaecological surgeries cannot be treated on the island, whereas women who needed a pregnancy terminated needed to wait 20 weeks on average.¹⁹

A UNHCR report on the basis of a medical expert mission to PNG in November 2017 also found that access to adequate healthcare in Manus Island was limited. Challenges included the withdrawal of pharmaceutical, counselling, case management services provided within the RPC and its replacement with the limited business-hours primary clinic; the accompanying overburdening of the Lorengau General Hospital, which has 120 beds, lacks crucial infrastructure (eg. ventilators, IV fluids, pathology services), lacks specialist nurses and doctors (eg. anaesthetists, surgeons, and psychiatrists), and was operating at 33% over capacity; the unavailability and prohibitive cost of antibiotics and antipsychotics such as quetiapine; and the absence of surge medical capacity in case of a major incident.²⁰

A UNHCR finding from December 2017 quoted in Amnesty's May 2018 report noted that men transferred to Port Moresby for treatment at the Pacific International Hospital (PIH) required diagnostic testing and treatment unavailable at that hospital or indeed anywhere in PNG. These include lithotripsy, complex colo-rectal surgery, and electrophysiological cardiac studies.²¹

Each of these examples illustrates that medical transfers to Australia must continue to be a core element of any offshore processing regime, should the government continue with its current policy framework.

Concerns with pre-Medevac medical transfer procedures

¹⁹ Refugee Council of Australia (RCOA) and Asylum Seeker Resource Centre (ASRC), "Australia's Man-made crisis on Nauru," (RCOA website, 3 September 2018), available at:

<<https://www.refugeecouncil.org.au/nauru-report/7/>>

²⁰ UNHCR, Medical Expert Mission PNG: 10 to 16 November 2017, available at

<http://www.unhcr.org/en.au/5a3b0f317.pdf>

²¹ UNHCR quoted in Amnesty, "Health Care Cuts", 6.



Jesuit Refugee Service Australia

24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340

T: +61 2 9356 3888 F: +61 2 9356 3021

W: www.jrs.org.au E: jrsinfo@jrs.org.au

As of February 2019, 1,246 refugees and people seeking asylum, including 257 children, had

In JRS Australia's experience working with children, women, and the men transferred from Manus Island and Nauru, the following issues have come to the fore: that people experiencing pain, flu or malaria-like symptoms, rashes, or other ailments would routinely be given generic pain relief medication (eg. paracetamol) without further testing or referrals; that where further testing (eg. an X-ray) and specialist referrals were agreed to, there would be unexplained delays, often for weeks or months; that the possibility of an overseas medical transfer would only be considered and communicated after a critical incident (eg. a suicide attempt, an epileptic seizure, a heart attack), but that even so, there would be unexplained delays of weeks or months before the transfer was effected; that adults, and children self-harmed or attempted suicide multiple times before being considered for overseas medical transfer; that diagnoses for serious, life-threatening illnesses would be made after preventative treatments were no longer appropriate, and in a handful of cases, in situations where palliative care was the only option; that some people were either too afraid to report issues due to previous negative experiences with authorities, too cynical about the prospects of adequate support, or too incapacitated to request specific forms of testing or treatment;

been transferred from offshore processing countries to Australia for medical treatment under a pre-existing provision for temporary transfers within the Migration Act.²² There have long been concerns about the intent, adequacy, and healthcare consequences of this pre-existing process. In the period before the Medevac Bill was passed, obtaining a transfer for appropriate medical care, unavailable on the islands, was an unnaturally long, arduous, and unpredictable process.

The anecdotes above about a.) the processes of requesting, registering, and responding to symptoms of physical or mental health illness on Nauru and Manus Island, and b.) the unexplained delays in actioning specialist treatment overseas can be corroborated by evidence from inquiries, reports, and whistle-blower accounts. Here we summarise a couple of key recent findings.

MSF stated that patients felt they received inadequate healthcare from the Australian government's mental healthcare providers.²³ In an eleven month period, MSF heard "36 allegations, 11 of them involving children, which ranged from not receiving timely and appropriate treatment to being denied treatment altogether."²⁴ MSF also notes that "requests for medical evacuation often took a long time to process...[including] cases of children who had been referred for medical evacuation seven to eight months earlier but were still on the island."²⁵

²² Andrew & Renata Kaldor Centre for International Refugee Law, "The medevac law: Medical transfers from offshore processing to Australia," (Kaldor Centre website, 5 March 2019), <<https://www.kaldorcentre.unsw.edu.au/publication/medevac-law-medical-transfers-offshore-detention-australia>>

²³ MSF, "Indefinite Despair," 26 – 27.

²⁴ *Ibid.*

²⁵ *Ibid.*, 29.



Jesuit Refugee Service Australia

24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340

T: +61 2 9356 3888 F: +61 2 9356 3021

W: www.jrs.org.au E: jrsinfo@jrs.org.au

Amnesty made similar findings in reports on the healthcare situation on Manus Island and in Port Moresby since the closure of the Regional Processing Centre at Lobrum airbase in late 2017. Amnesty states “that the procedures for transferring patients who could not be treated or diagnosed in PNG was unclear...[and] that many of those who said they could not be treated or diagnosed in the country were not given information or a timeline on when a transfer might take place or if it would happen at all.”²⁶

Both these reports also explicitly acknowledge to the Australian government’s ultimate control over who is eligible for an overseas medical transfer, when they will be transferred, and the steps by which this will occur. MSF wrote that “in practice, referrals for treatment occurred through the direct action of the Australian authorities either at their own instigation or as a result of a court action, or threat of action, in Australia.”²⁷

Dr. Nick Martin was a senior Australian doctor deployed on Nauru with IHMS. He wrote extensively about how the Australian government controlled the overseas medical transfers regime, often in direct contravention of medical advice.

“Nothing happens without Australian Border Force allowing it. They were where the delays came from: ABF had held up evacuations for my critically-ill patients before. They seemed to work in committees. There was never a name you could pin things on. They used terms such as ‘the delegate’ or ‘the committee’ to guarantee anonymity and avoid accountability...the realisation came slowly but with a certainty I was reluctant to acknowledge. This system would not change. It had been honed by respective governments, reshuffles, rebrandings and reorganisation to work like this, to keep people from speaking out, to keep patients here, and to grind them down.”

In more than fifty cases under the pre-Medevac regime, the Australian government has resisted transferring a sick individual without access to relevant treatment on the islands until an Australian court has ordered it.

In the course of many of these hearings, the government relies on IHMS medical opinions which legitimate the political or bureaucratic decision to delay or refuse a transfer, even in the face of alternative medical opinions. For example, in *FRX17 v Minister for Immigration and Border Protection 2018*] FCA 63 (*FRX 17*), Louise Newman, a specialist in child psychiatry, a Professor of Psychiatry at the University of Melbourne and Director of the Centre for Women’s Mental Health at the Royal Women’s Hospital in Melbourne made five reports on the applicant’s mental health condition. In summary she outlined the need for an “immediate comprehensive psychiatric assessment by a qualified specialist in child psychiatry; the urgent transfer to a child psychiatric facility; and the lack of availability of such facilities on Nauru.”²⁸ The then Department of Immigration and Border Protection

²⁶ Amnesty, “Health Care Cuts,” 8.

²⁷ MSF, “Indefinite Despair,” 29.

²⁸ *FRX17 v Minister for Immigration and Border Protection* [2018] FCA 63



Jesuit Refugee Service Australia
24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340
T: +61 2 9356 3888 F: +61 2 9356 3021
W: www.jrs.org.au E: jrsinfo@jrs.org.au

(DIBP) offered competing assessments provided by IHMS “considering that the applicant can be adequately treated as an outpatient in the Nauru community.”²⁹

Delaying or refusing medical transfers has had damaged and indeed ended human lives. The Queensland State Coroner found that clinical errors, delays in evacuation, and the broader offshore processing framework contributed to Hamid Khazaie’s death.³⁰ JRS Australia is aware of other circumstances in which children and adults attempting suicide after allegedly being raped or sexually assaulted have remained in Nauru for months after the incidents.³¹ The plight of Omid Masoumali is also instructive. Omid lit himself on fire in front officials and could have survived if he obtained timely, specialist treatment. Instead media reports suggest that despite suffering burns to more than 50% of his body, he was treated on a baby’s cot in Nauru and not transferred to Brisbane for 30 hours.³² A coronial inquest into the death is ongoing. In *EHW18 v Minister For Home Affairs [2018] FCA 1350*, the applicant allegedly required ophthalmic treatment of his left eye in which he was losing sight and ended up in intensive in-patient psychiatric care after attempting suicide.³³ Despite the absence of ophthalmic treatment, appropriate acute mental health care facilities, and accredited Arabic interpreters in Port Moresby, he was transferred to there for treatment.³⁴

In the face of the government’s undermining of medical opinion, the costly delays, and dire accompanying human consequences, it is wholly appropriate that the Medevac Bill allows independent medical doctors to initiate proceedings for an overseas medical transfer, and provides powers to the Independent Health Advice Panel (IHAP), which includes government appointed doctors, to review the Minister’s decision to refuse a transfer.

The Medevac process is fulfilling its objectives

Available evidence suggests that the Medevac Bill is meeting its objectives of ensuring healthcare to sick people, where it is unavailable in Nauru or Papua New Guinea (PNG). Although a relatively small number of people – approximately 90 – have been evacuated under these provisions thus far,³⁵ Andrew Giles MP notes in a recent speech that the Minister has approved 70 of these transfers in the first instance.³⁶ Of the 20 cases the Minister has

²⁹ *FRX17 v Minister for Immigration and Border Protection* [2018] FCA 63

³⁰ Coroners Court of Queensland: Findings of Inquest into the death of Hamid Khazaie, 30 July 2018, <https://www.courts.qld.gov.au/_data/assets/pdf_file/0005/577607/cif-khazaie-h-20180730.pdf>

³¹ JRS Australia interviews with persons transferred from Nauru, November 2018.

³² Melanie Vujkovic, “His burns were ‘very survivable’ but Omid Masoumali died slowly over two days, (ABC News website, 1 March 2019), <<https://www.abc.net.au/news/2019-03-01/inquest-death-iranian-refugee-omid-masoumali-burns/10854742>>

³³ *EHW18 v Minister for Home Affairs* [2018] FCA 1350

³⁴ *EHW18 v Minister for Home Affairs* [2018] FCA 1350

³⁵ Human Rights Law Centre (HRLC), “Government must commit to keeping life-saving refugee medical evacuation laws,” (HRLC website, 16 August 2019), <<https://www.hrlc.org.au/news/2019/8/16/govt-must-commit-to-keeping-life-saving-medical-evacuation-laws>>

³⁶ Andrew Giles, “Speech to Second Reading of Migration Amendment (Repairing Medical Transfers) Bill 2019,” available at:



Jesuit Refugee Service Australia

24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340

T: +61 2 9356 3888 F: +61 2 9356 3021

W: www.jrs.org.au E: jrsinfo@jrs.org.au

refused to approve, only seven have been overturned by the Independent Health Assessment Panel (IHAP), which comprises the Australian government's Chief Medical Officer and the Australian Border Force's Surgeon General.³⁷

The passage of the Medevac Bill has seen no upswing in people being brought to Australia or any upswing in boat arrivals. Nor has the passage of the Bill precipitated the influx of so-called people of 'bad character' into Australia. In any case, the Minister has the power to refuse the transfer on security and/or character grounds. As the Kaldor Centre notes, the legislation allows the Minister to reject a transfer for "someone with a substantial criminal record, provided the Minister reasonably believes the person would expose the Australian community to serious risk of criminal conduct...or if the Minister reasonably suspects it would be prejudicial to security (as defined under s501(7) of the Migration Act) whether or not the person has a criminal record."³⁸ These are broad and non-reviewable powers which negate the so-called threat that the government itself has alluded to.

Concerns with potential removal and return provisions

JRS Australia has strong concerns about provisions in the amended Bill pertaining to the removal and return of people brought to Australia for medical treatment. JRS Australia acknowledges that the Medevac Bill was designed to provide temporary transfers to Australia for medical reasons. Our concerns are as follows:

Given the well-documented evidence of the government and its delegates exercising power against the best interests of medical patients by delaying or refusing transfers and the consequences this has wrought, JRS Australia questions whether the government and its delegates will reliably act in the best interests of medical patients already in Australia in relation to their removal or return. Key questions abound:

- How and when will the government and its delegates determine if medical treatment has been complete?
- What say and weight will be given to independent medical opinion in this process?
- How do decisions to removal and return refugees and asylum seekers square with the ample evidence that conditions and experiences on the islands themselves have caused or contributed to physical or mental health deterioration?
- Will the patient be able to access further medical transfers should his/her health situation deteriorate, as it likely will, given the current state of healthcare provision for refugees and asylum seekers in Nauru and Manus Island?

<<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F6de0d50b-0944-45f2-a320-4c1eb07a7e9c%2F0167%22>>

³⁷ Andrew Giles, "Speech to Second Reading of Migration Amendment (Repairing Medical Transfers) Bill 2019," available at:

<<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F6de0d50b-0944-45f2-a320-4c1eb07a7e9c%2F0167%22>>

³⁸ Kaldor Centre, "The medevac law," <<https://www.kaldorcentre.unsw.edu.au/publication/medevac-law-medical-transfers-offshore-detention-australia>>



Jesuit Refugee Service Australia
24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340
T: +61 2 9356 3888 F: +61 2 9356 3021
W: www.jrs.org.au E: jrsinfo@jrs.org.au

JRS Australia also has serious concerns about the potential for the exercise of such powers to generate a situation in which children and their families are being removed and/or returned to Nauru.

Catholic support for an end to offshore detention and processing

Catholic leaders and communities have long called for the end to offshore processing and for children, women, and men languishing on the islands to be resettled in Australia or a safe third country. To provide just a handful of recent examples,

- Archbishop Mark Coleridge, President, Australian Catholic Bishops Conference (ACBC) stated, “after five years, we have to ask: “if our government is unable to find a home for these people in another country, should we not provide them with a home in Australia or New Zealand?”³⁹
- Bishop Vincent Long, Bishop of Parramatta and Chair, Bishops Commission for Social Justice, ACBC, himself a refugee who arrived in Australia by boat, has called on the Australian government to “find an alternate and conscionable solution...to bring them here or to New Zealand.”⁴⁰
- Fr. Giorgio Licini, General Secretary of the Catholic Bishops Conference of PNG and Solomon Islands, who is currently on an awareness-raising tour of Australia and visited JRS Australia earlier this week, has stated that “if you want to save their [the refugees and people seeking asylum in Port Moresby] lives you have to take them to Australia or another country.”⁴¹
- Fr Malcolm P. Fyfe MSC, Vicar General, Catholic Archdiocese of Darwin wrote to the Prime Minister and called for consideration of “the feasibility of a carefully planned, once and for all amnesty, with cross-party support” for those on Nauru and Manus Island.⁴²

Recommendation

JRS Australia recommends that the Medevac Bill be preserved in its current form without amendment or repeal.

Carolina Gottardo, Director

³⁹ Australian Catholic Bishops Conference (ACBC), “Statement from ACBC President Archbishop Mark Coleridge,” 18 December 2018, <<https://www.acmro.catholic.org.au/acmro-media/media-release/2018/957-acbc-media-release-statement-of-refugees-and-asylum-seekers/file>>

⁴⁰ Bishop Vincent Long, “Statement on the 6th Anniversary of Australia’s Mandatory and Indefinite Offshore Detention Policy,” 19 July 2019, <https://catholicoutlook.org/statement-on-the-6th-anniversary-of-australias-mandatory-and-indefinite-offshore-detention-policy/?fbclid=IwAR0Qjt8tXPKYlbpkejFsHf_aV0gdIJHmnBFwi9I5NkBY2PonDp4j7xr0ywl>

⁴¹ Benjamin Robinson-Drawbridge, “Enough is Enough- Catholic church condemns Manus detention,” (Radio NZ, 26 January 2019), <<https://www.rnz.co.nz/international/pacific-news/380827/enough-is-enough-catholic-church-condemns-manus-detention>>

⁴² CAPSA, “Fr. Malcolm P. Fyfe MSC writes on the 6th Anniversary to the Prime Minister,” 19 July 2019, <<https://capsa.org.au/fr-malcolm-p-fyfe-msc-writes-on-the-6th-anniversary-to-the-prime-minister/>>



Jesuit Refugee Service Australia
24 Roslyn Street Elizabeth Bay NSW 2011
PO Box 522 Kings Cross NSW 1340
T: +61 2 9356 3888 F: +61 2 9356 3021
W: www.jrs.org.au E: jrsinfo@jrs.org.au

Nishadh Rego, Policy & Advocacy Coordinator