

BITA VISITORS GROUP SUBMISSION MIGRATION AMENDMENT (REPAIRING MEDICAL TRANSFERS) BILL 2019

The BITA (Brisbane Immigration Transit Accommodation) Visitors Group is a community organisation of volunteers, who provide friendship and support for refugees held in immigration detention in Brisbane.

The group has close and ongoing contact with many of the people who have been brought to Australia under the medical transfer provisions of Schedule 6 of the Home Affairs Legislation Amendment (Miscellaneous Measures) Bill 2019. (referred to here as Medevac). Accordingly, we believe we have significant insight into the benefits of Medevac, and the dangers of this proposed Bill.

In brief:

We strongly object to the Migration Amendment (Repairing Medical Transfers) Bill 2019 and we implore the Senate Committee to advise against its passage. The basis for this request is simple: we believe the Medevac provisions are saving lives. We do not believe the objections raised by the Minister are sufficient to justify the ongoing loss of life and health that would accrue to this unfortunate cohort if Medevac were repealed.

Our reasoning for this position:

Since the Regional Processing Cohort was created in 2013, there have been 12 deaths in the group, from a peak number of 2,500 detainees. These 12 were almost all young men who had been healthy prior to their incarceration by Australia. The age-specific death rate of men aged 25-29 in Australia is 65/100, 000. This means deaths in offshore detention cohort are occurring at at least 7 times the rate that could be expected if they were in Australia.

The Coronial Inquest into the death of Hamed Khazaei, a 24 year old man incarcerated on Manus Island, who died of sepsis after a much-delayed transfer found that

“While all those involved in his health care were well intentioned, the health care he received on Manus Island was not commensurate with the care he would have received in a remote clinic in Cape York – the benchmark applied in this matter. Similarly, the health care he received from the PIH in Port Moresby (as it was then configured and staffed) was not adequate. The inquest highlighted many practical and operational issues associated with delivering the appropriate standard of health care in a remote offshore processing centre.”

The Coroner further found

“Decisions about medical transfers should be based on clinical considerations”.

The Medevac process addresses these issues by putting the responsibility for medical decisions in the hands of the people with the expertise to make those decisions: doctors.

We note that the Minister has expressed some concerns about the impact of the Medevac provisions and hence the necessity for its repeal and we would like to address those concerns.

1. "The medical transfer provisions undermine the Australian Government's regional processing arrangements"

It is difficult to understand why the Minister believes that providing appropriate medical treatment to a small cohort of people, to whom Australia already owes a duty of care, undermines the regional processing arrangements. Does the Minister truly believe that the integrity of regional processing is dependent upon allowing the deaths of refugees? If so, we believe the price is too high.

2. "The medical transfer provisions have a very broad application with very limited scope for refusing transfers on security or character grounds"

Determinations of illness may seem broad to the Minister. However, as he is not medically qualified, we believe that it is appropriate that those decisions be left to those who are. We reject his assertion that there is limited scope for refusing transfers. In fact, the legislation specifies that the Minister only has to "reasonably suspect" that a person would constitute a security risk or "reasonably believe" there was a risk of criminal conduct in order to refuse transfer. Additionally, ASIO are required to notify the Minister within 72 hours of any security concerns related to a transfer, which would again allow the Minister grounds to refuse transfer.

3. "The timeframes to make decisions do not allow a sufficient amount of time to gather and consider all the relevant information"

We would like to draw the Committee's attention to the telephone call between the former PM, Mr Turnbull and the President of the USA, Mr Trump regarding transfer of members of this cohort. According to Mr Turnbull "They have been under our supervision for over three years now and we know exactly everything about them"... "We know exactly who they are" It is therefore dishonest for the Minister to suggest that more time is required in order to gather relevant information pertaining to security. This information has been known for a long time. Moreover, 72 hours is a long timeframe for the assessment of someone with serious and acute medical concerns. This claim does not stand up to scrutiny.

4. "The medical transfer provisions impinge on the sovereignty of Papua New Guinea and Nauru, the Governments of which are responsible for the management of regional processing arrangements in their respective countries and people residing under those arrangements"

The Federal Court of Australia has found on several occasions that the Commonwealth has a duty of care to the people it transfers to offshore detention in other countries. As long as Australia maintains significant involvement in the day-to-day management of offshore detention centres, as evidenced by the enormous amount of taxpayer dollars being used to fund security, garrison and medical services, it cannot plausibly claim that all responsibility rests with PNG and Nauru.

5. “The medical transfer provisions provide that a person is not entitled to remuneration in relation to their position as a member of the Independent Health Advice Panel (IHAP). “

We believe this provision is appropriate. The doctors who are providing assessments that indicate a need for transfer are working on a volunteer basis out of concern for human life. It is reasonable that the people reviewing those decisions should also be seen to have patient care as their only motivation. Remuneration may lead to the perception of a financial relationship with the Department. We do not wish to see any taint on the integrity of the IHAP.

6.”Furthermore, standard medical processes already exist which provide for the transfer of transitory persons for temporary medical purposes from regional processing countries, including transfer to Australia under the Migration Act. “

Unfortunately, those medical processes have not been working appropriately. The extraordinarily high burden of morbidity and mortality experienced by this cohort are testament to that.

Finally:

7. “There is no provision for transitory persons who are brought to Australia under the medical transfer provisions to be removed from Australia or returned to a regional processing country once they no longer need to be in Australia for the temporary purpose for which they were transferred.”

It is the opinion of the BITA Visitors Group that the people transferred to Australia for medical care should not be returned to a regional processing country. For most of these people, their illnesses are a direct result of the conditions to which they have been subjected for the past 6 years. There is ample evidence that the level of mental illness in this cohort is directly related to the duration of their incarceration and the hopelessness and despair associated with the lack of any appropriate pathway for resettlement. To return them to a regional processing centre would subject them to the same conditions that caused their medical problems in the first place. To return them would violate their right to health and would therefore be a breach of their Human Rights.

Of the 12 men who have died in offshore detention, 2 were transferred to Australia for medical care under the previous legislation. Following their transfer back to offshore detention, they both subsequently died. This is a clear illustration of the lack of appropriate medical supervision and treatment in these centres and the cruelty of returning people to an environment that is responsible for their illness.

It is time for Australia to take responsibility for the dreadful burden of illness it has imposed on a small group of desperate people. Let Medevac do what it was designed to do: save lives!