

Response to questions on notice: Inquiry into the Migration Amendment (Repairing Medical Transfers) Bill 2019

13 September 2019

Question from Senator Stoker: For the purposes of this discussion I'm happy to accept the proposition that some of the public campaigns had an impact, but, nevertheless, even in the last year there were 500 people, according to the Human Rights Commission's table, brought to Australia by the Minister without the Medevac Bill in place in an effort to provide medical care to people who were in need of it urgently. We have evidence that there were an overwhelming number—500 compared to 28 going through the IHAP process versus the direct Ministerial approach to providing care. Don't those figures being so far apart demonstrate that there is a willingness to provide medical care in the vast majority of cases because the Australian Government wants to see people treated properly?

Senator Stoker referred to the statistics provided by the Department of Home Affairs, summarised by the Australian Human Rights Commission, that approximately 500 people were transferred to Australia from regional processing countries in the financial year 2018-19 outside of the medevac process. In fact, the majority of those transfers resulted from legal intervention rather than voluntary action by the Department, which demonstrates why the Medevac laws are necessary and must be retained.

Transfers resulting from legal intervention

Prior to Medevac, at least 343 people have been transferred to Australia as a result of legal intervention undertaken by HRLC and a coalition of law firms acting pro bono. These 343 women, men and children secured medical transfer to Australia either by commencing court proceedings or through legal negotiations with the Government. The majority of these people were transferred between June 2018 and March 2019. Accordingly, these numbers show that the Department was unwilling to provide medical care in the majority of cases, and it took legal intervention to obtain appropriate care.

Fluctuations in yearly medical transfer statistics

While over 500 people were transferred in 2018-19, the numbers in previous years were much lower. As the Australian Human Rights Commission observed in its opening statement to the Committee, transfer numbers rose steadily during the first three years of offshore processing, in line with the increasing population which peaked in June 2014. Transfers then drastically reduced when the Government introduced a new policy limiting transfers to Australia in July 2015. As Mr Santow observed, at that time:

*...there was a very sharp reduction in the number of people being transferred to Australia. You will see from the chart that in 2014-15 there were 465 people transferred to Australia, and in 2015-16 there were only 62 people. In a Federal Court case in April 2016 a first assistant secretary of the department gave evidence about the new policy. He said it was directed at ensuring that **IMAs, illegal maritime arrivals, are treated in a third country outside of***

Australia for medical support, other than in exceptional circumstances. The department made similar comments in its submission to a Senate inquiry in November 2016. As a result of the change in policy, the number of people permitted to come to Australia for medical treatment continued to drop over the next three years.

As observed in the submission of Mr Robert Richter QC and Mr Max Costello, the Department's policy as at December 2018 was that:

*Requests for temporary medical transfers to Australia ... **will only be considered** ... where the person faces a **life-threatening medical emergency that would otherwise result in their death or permanent, significant disability.** [Home Affairs FOI disclosure logs, 12 April 2019.]*

Very few people were transferred to Australia in years after the new policy was introduced. As a result of the Government's official position that no one should even be *considered* for transfer to Australia for medical treatment except in extreme circumstances, many easily curable conditions went untreated and became chronic. Many people's physical and mental health deteriorated without access to adequate care. The medical crisis¹ on the islands intensified during these years, and it was the Government's inaction which forced sick refugees and people seeking asylum to bring legal action, which occurred with increasing frequency from December 2017 onwards.

This legal intervention combined with increasing public pressure from the #KidsOffNauru campaign caused the number of transfers to rise significantly in 2018. As Mr Santow observed:

*In 2018-19, you will see from the graph, 536 people were brought to Australia for medical treatment and **approximately 60 per cent were transferred as a result of actual or prospective litigation.** In those cases, either the court decided or the department agreed that it was necessary to transfer those people in order for them to obtain the treatment that they required. What this strongly indicates is that the **previous regime under section 198B and the government's policy position since July 2015 were not sufficient to ensure that people received the medical care they needed.***

Government is not willing to provide adequate care in majority of cases

The Government has not demonstrated a willingness to provide medical care to people who need it. We know from our work with people and families in offshore detention that the Government has repeatedly failed to transfer those who are at risk of death or in need of urgent medical care. The Government's refusal to transfer sick people to Australia is not only demonstrated in our experience, but has been official Department policy.

The Government has refused to transfer people where independent medical experts, or even the Department's own contracted doctors, have recommended transfer to Australia. The Government has demonstrated that it cannot be trusted act in accordance with medical advice when decisions about transfer are left to the Minister's discretion. Before Medevac, decisions about transfer were too often

¹ Royal Australian College of Physicians, "Royal Australian College of Physicians calls for an end to the medical crisis in offshore detention", 30 November 2018, available at <https://www.racp.edu.au/news-and-events/media-releases/royal-australasian-college-of-physicians-calls-for-end-to-medical-crisis-in-offshore-detention>.

made for political, rather than medical, reasons. The Medevac process is necessary to ensure that doctors make decisions about transfer, and that legal intervention is not the only way for sick people to access medical care.