

## Factsheet

### THE MEDEVAC LAW: MEDICAL TRANSFERS FROM OFFSHORE PROCESSING TO AUSTRALIA

Last update: 8 March 2018

*Australia's parliament passed a new law in controversial circumstances, providing for the transfer of asylum seekers from offshore processing to Australia for medical treatment.*

#### **What is the so-called medevac legislation and what does it do?**

The medevac [legislation](#) passed by Australia's parliament became law on 1 March 2019. It enables asylum seekers and refugees held under [Australia's offshore processing arrangements](#) to be transferred to Australia for medical treatment or assessment if two doctors say they need it, unless the Minister refuses on character and/or national security grounds. The decision-making process (outlined below) will be activated by two doctors' diagnosis rather than by public servants' decisions.

The Morrison government, which voted against the legislation, already has [moved to re-open](#) detention facilities on Australia's remote Christmas Island; any refugee or asylum seeker who receives access to medical services under the new process will be sent there, as a matter of [government policy](#) (page 126). In November 2018 the [Australian Human Rights Commission](#) said that 'due to its remoteness, the nature of its security infrastructure, and the limited access to facilities and services on Christmas Island, [it] is *not an appropriate facility for immigration detention*, particularly for people who are vulnerable or have been detained for prolonged periods of time.' The [Island's CEO](#) has since reiterated that.

On 18 February [media reports](#) emerged that the government of Nauru had passed new laws in response, blocking overseas medical transfers unless the two doctors had examined a patient in person on Nauru; no telemedical diagnosis would be approved. Nauru, which receives payments from the Australian government for each person held there, has [blocked medical transfers](#) in the past.

#### **How does the new medevac decision-making process work?**

A transfer recommendation made by two doctors will [go first](#) to the Minister, to approve or refuse within 72 hours; the Minister may at this stage refuse the transfer due to security and/or character concerns, or on medical grounds (except in cases of minors). If the Minister's objection is medical, the decision goes to an eight-person medical panel, which has a further 72 hours to review the medical case. If the panel recommends transfer,

the case goes back to the Minister, who can still refuse on security and character grounds. In the absence of any such grounds, however, the transfer must at this stage be permitted. An independent [Medical Evacuation Response Group](#) has been established to oversee the triage of people in offshore processing countries who are in need of medical treatment. The group is composed of a number of non-governmental organisations, who will work directly with medical professionals. It also includes [caseworkers, counsellors and lawyers](#).

### **Have people been brought from Manus or Nauru to Australia before?**

Yes. There is a pre-existing process in the *Migration Act* that allows asylum seekers to be brought to Australia from offshore processing countries for temporary purposes, including medical treatment. Home Affairs officials [reported](#) (page 117) that 1,246 asylum seekers and refugees have been brought from offshore processing countries to Australia for medical treatment in the five and a half years to February 2019; that is, 898 refugees and asylum seekers (including 257 children) plus family members. Of those brought to Australia, 282 were returned to Manus or Nauru.

In numerous cases, refugees and asylum seekers were brought to Australia, or allowed to stay, only following legal interventions, after the Department of Home Affairs, which previously decided cases, [contested](#) (page 118) their transfers in the courts. Some refugees and asylum seekers waited [as long as five years](#) for recommended medical treatment; [severe health concerns](#) for the refugees and asylum seekers held offshore have been [well documented](#). The [Queensland coroner found](#) that delays, errors and systemic failures in offshore-processing medical arrangements had led to the death of Hamid Kehzaei from infection on Manus.

### **Will everyone on Manus and Nauru be transferred to Australia now?**

Two Australian-registered doctors must recommend transfer for treatment or assessment that is unavailable on Manus or Nauru. It could apply to [1,025 people](#) (page 115) as of 18 February; 431 on Nauru and 584 on Manus Island in Papua New Guinea. Future asylum seekers are specifically ruled out of the new process.

Dr Nick Martin, who was Australia's most senior doctor on Nauru from November 2016 to August 2017, [estimated about 300](#) applications would be filed in the months following enactment of the new law. Leaked and later declassified advice from the Department of Home Affairs suggested contingency planning for 'approximately 1,000' transfers, though the guidance was prepared in December 2018 before the legislation was amended.

### **Will the medevac legislation let criminals into Australia?**

The legislation allows the Minister to reject a transfer for someone with a substantial criminal record (this includes anyone sentenced to at least one year in prison), provided the Minister reasonably believes that the person would expose the Australian community to a serious risk of criminal conduct. So while government ministers, among others, have suggested ['murderers', 'rapists' and 'paedophiles'](#) could be transferred to Australia, the legislation provides clear power to stop them where they would pose a risk to the community. The legislation also allows the Minister to refuse a transfer on the grounds that the Minister

reasonably suspects it would be prejudicial to security, whether or not the prospective transferee has a criminal record.

The leaked Home Affairs advice noted that of the refugees and asylum seekers held offshore, 'It is not expected that the Minister's ability to refuse transfer on security grounds will significantly reduce the number of potential transferees' but it was unclear whether this was due to limitations of the Minister's authority or because few were criminals or a risk to community security.

In a January 2017 phone call between with US President Donald Trump, then-Prime Minister [Malcolm Turnbull said](#): 'They have been under our supervision for over three years now and we know exactly everything about them.' Asked why the people were still detained, Turnbull replied, 'It is not because they are bad people.'

### **When is a transfer 'prejudicial to security'?**

The legislation picks up the [definition of security](#) in the *Australian Security Intelligence Organisation Act 1979*. A transfer will be prejudicial to security if it jeopardises the protection of the Australian community from serious threats, including: espionage, sabotage, politically motivated violence, the promotion of communal violence, attacks on the defence system and foreign interference.

When the Minister is advised that a medical transfer has been recommended, ASIO will have 72 hours to advise the Minister that the transfer may be prejudicial to security in a way that cannot be mitigated.

### **Do doctors decide who can be transferred to Australia for treatment?**

Under the new medevac process, the Minister can override medical decisions only on security grounds. When the Minister and doctors disagree about the medical basis for transfer, the final say on the medical concerns goes to a medical panel. The panel must comprise at least eight members, including the government's Chief Medical Officer, the Surgeon-General of Australian Border Force and no less than six other suitably qualified medical professionals who have been nominated by the relevant medical body. The Minister can still refuse the transfer, but only for reasons of character or security risk. The legislation stipulates that members of the panel will not be paid.

### **Does the medevac legislation weaken Australia's borders or encourage people to come to Australia via people smugglers?**

It is difficult to see how this could be the case. The medevac legislation applies only to those already on Nauru and Manus Island, or those who are born in regional processing countries. This means it excludes any new asylum seekers. It also does not provide a pathway to settlement in Australia for transferees, who face removal from Australia at the conclusion of their treatment.

## **Will the medevac legislation affect Australians' access to medical services?**

Prime Minister Scott Morrison and Home Affairs Minister Peter Dutton have both suggested that the transfer of refugees to Australia for medical care under the new medevac process would 'displace' Australian citizens from medical services.

Australian Institute of Health and Welfare statistics indicate that in 2016-17, 695 public hospitals in Australia provided 62,000 hospital beds. This is equivalent to about 2.5 public hospital beds for every 1000 people. St Vincent's Hospital has described Morrison's and Dutton's claims as 'baseless', and has further said that 'public hospitals can accommodate the health needs of asylum seekers without disadvantaging anyone' and that it is happy to make its hospitals available to provide care to transferees without affecting waiting lists.

Find out more about offshore processing in our Factsheets, [Offshore processing: an overview](#) and [Who is legally responsible for offshore processing on Manus and Nauru?](#)