

Medevac is about health not migration outcomes

- [Kerry Murphy](#)

'The thing about border protection is you've got to be consistent. You've got to be clear and you've got to hold the line. And the minute you show that you're prepared to crack it, well, that's when you start losing.' — Prime Minister Morrison, 2019

Yet again, the government is seeking to punish asylum seekers, with the proposed repeal of the Medevac law. The law was passed by the Senate on 6 December 2018. After the May 2019 election, the re-elected Coalition government sought to repeal the law and that bill is currently before the Senate.



A key issue is that the process is about access to health care, not about 'migration outcomes'. Once here, the person (called a transferee) is barred from applying for any visa at all. It is not an opening to Australian residence.

The Medevac law established a process whereby if a person being held at Nauru or Manus Island was referred for further medical treatment by two or more medical practitioners, and that treatment was not suitable or not available on Manus Island or Nauru, they could be transferred to the mainland for treatment. The Minister can refuse the transfer on three grounds, but must do so within 72 hours: 1. a reasonable belief the transfer is not medically

necessary; 2. a reasonable suspicion the transfer would be prejudicial to security; 3. the person has a substantial criminal record.

If the Minister does not approve the transfer on health grounds, then the transfer would be considered by the Independent Health Advice Panel (IHAP). If the IHAP recommended the transfer, then it would go ahead unless the Minister vetoed it for security reasons.

Prior to the introduction of the law, the government had spent around \$780,000 in legal costs defending the applications brought on to challenge the refusal of Immigration in transferring someone despite the recommendations and referral of doctors. Most cases were successful in the courts, so that meant the government had to pay the legal costs for the applicants as well.

Since the law was enacted, a number of people have been transferred and only one person was blocked by the Minister — a family member of a transferee. Despite this the government insists the borders are at risk. The Prime Minister stated the position of the government was not open to negotiation.

So regardless of the financial, personal and psychological costs to all those involved (asylum seekers, public servants, interpreters, lawyers, advocates and medical practitioners among others), regardless of the fact that the system was doing what it was intended to do, regardless of the fact that no evidence was produced to support the paranoia of the government when it comes to asylum seekers, the government decided it would abolish the Medevac process.

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The Senate Committee considered the bill and the Coalition majority on the committee recommended it be passed; this was opposed by dissenting reports from Labor and the Greens. Submissions to the committee stating the law should continue were not just from the usual suspects in Senate hearings on bills affecting asylum seekers. It included groups such as Royal College of Physicians, ANZ College of Anaesthetists, Australian College of Emergency Medicine, Royal Australian and NZ College of Psychiatrists, and a number of individual doctors. The law is also supported by the UNHCR, MSF, academics, religious organisations, non-government organisations and local community groups.

While the government's political drum beat is 'any change to border laws will lead to disaster', those who work with asylum seekers, the doctors and professionals who treat them, and local, national and international groups all urge the government to keep the Medevac law.

Not every case was recommended by the IHAP, in fact the Bills Digest report on the bill dated 25 September 2019 notes that of 23 cases referred to the IHAP, 13 refusals were affirmed and only ten were recommended for transfer by IHAP.

Senator Roberts of One nation helpfully referred to the medical transfers as an 'abomination' and said that the process provides 'a back doorway for queue jumpers to come onshore to Australia'. His wording is not reflected in the submissions of the medical experts. The ALP, Greens, and Centre Alliance oppose the bill. Senator Lambie is still to state her position.

For the doctors and the medical groups making submissions, the issue is a medical one. As the Royal Australasian College of Physicians notes: 'medical decision are often time critical, and should be made by medical professionals'. This argument is supported by legal bodies such as the Law Council as well as legal centres, Human Rights Watch, Amnesty International and the UNHCR .

One issue is about whether people are able to be returned to PNG or Nauru after medical treatment in Australia. This is not as clear as the government would like but, if needed, a simple amendment could fix that point, without abolishing the whole process.

There is no evidence to support the Prime Minister's view that the process is a crack in border protection. The government's position for asylum seekers by boat has always been absolute — no discussion, no negotiation. It is this very puritanical inflexibility that led to the serious medical problems for asylum seekers in the first place. The absolutist position of government either ignores the human consequences of harsh policies, or accepts the punitive harshness of the policies is a deliberate part of the deterrent.

In the last 25 years, there have been few positive law changes for refugees in Australia. I can think of only one positive reform (complementary protection in 2012) in around 45 legislative changes. The Medevac law was needed because there was no sensible process to arrange for urgent medical treatment for the people we are punishing as a deterrent. The current system is working according to the medical practitioners involved in it. It would be a tragedy for the people affected if the Medevac laws were repealed, just to prove how tough and immovable we are.



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Main image: Prime Minister Scott Morrison (right) sits next to Home Affairs minister Peter Dutton as they lose a vote during divisions for the Medevac Bill in the House of Representatives in February 2019. (Photo by Tracey Nearmy/Getty Images)