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Committee Secretary
Senate and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 6200

By email: legcon.sen@aph.gov.au

14 August 2019

Dear Committee Secretary,

RE: Submission to the inquiry on the Migration Amendment (Repairing Medical Transfers) Bill 2019

The Asylum Seeker Resource Centre (ASRC) welcomes the opportunity to provide a submission to this bill. This submission has been drafted with, and endorsed by the National Justice Project (NJP).

The ASRC is an independent, not for profit organisation working to support and empower people seeking asylum in Australia and those subject to offshore processing in regional processing countries, Papua New Guinea (Manus Island) and Nauru.

The submission is based on the ASRC's 18 years' experience working with and providing services to people seeking asylum. The ASRC works directly with people in Papua New Guinea and Nauru via our Detention Rights Advocacy Program and Human Rights Law Program. In 2017 the ASRC visited Papua New Guinea, including Manus Island, and reported on the health conditions and medical crisis witnessed during the visit.

The NJP has legally represented refugees and people seeking asylum in Nauru and Papua New Guinea and was instrumental in leading court matters for the transfer of sick refugees to Australia for urgent treatment. The NJP has extensive experience in advocating for the humane and fair treatment of refugees and has intimate knowledge of the urgent medical situation facing refugees in Papua New Guinea and Nauru.

The ASRC and NJP are members of the Medical Evacuation Response Group (MERG), established in 2018 to manage transfer requests as part of the Medevac Law.

We are deeply concerned by the Migration Amendment (Repairing Medical Transfers) Bill 2019 ('**the Bill'**). This Bill is unnecessary and removes access to vital medical care to refugees and people seeking asylum in Papua New Guinea and Nauru.

The 'Medevac Law' amendments to the Home Affairs Legislation Amendment (Miscellaneous Measures) Bill 2018 were carefully drafted in order to introduce a medically led framework into the *Migration Act 1958* (Cth) to allow for the urgent transfer of refugees and people seeking asylum held in offshore processing countries to receive medical care in Australia at the recommendation of medical professionals.

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The passing of the Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019 **(`Medevac Law'**) has resulted in over 110 people suffering from physical and mental health conditions accessing urgent medical care in Australia.

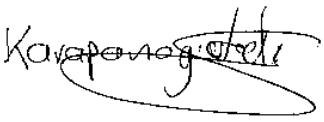
Prior to the passing of the Medevac Law, sick refugees were waiting an average of at least 2 years, and some for up to 5 years, for medical transfer **after** it had been recommended by the Government's appointed Doctors, and the majority of transfers were the result of legal intervention. There have been **twelve deaths in immigration detention offshore**, many for **treatable illnesses**. The Medevac Law ensures there is no longer political interference with the transfer system.

The medical transfer of refugees under the Medevac Law has occurred **without any threat to Australia's national security** or adverse impact on Australia's medical system.

The ASRC and NJP oppose the bill in its entirety.

We would welcome the opportunity to discuss our submission at any public hearings. Please do not hesitate to contact me on kon.k@asrc.org.au or 03 9326 6066 for any further discussion.

Yours sincerely,



Kon Karapanagiotidis
Chief Executive and Founder ASRC

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The need for the Medevac Law

The medical crisis

There has been a rapid deterioration of people's physical and mental health conditions in Papua New Guinea and Nauru. Before the Medevac Law passed, most people had been detained for over 5 years and the lack of future or options, as well as the separation from family, without an end in sight, caused a sense of helplessness and hopelessness in people with devastating physical and mental health impacts.

Twelve people have died in offshore detention.[1] Many of these deaths relate to treatable illnesses. An Australian coroner in 2018 found that one young refugee's death was directly related to inadequate medical care and the Australian Government's failure to transfer the young man for appropriate medical treatment.[2] This report was related to a death that occurred in 2014 and more people have died since whose cases are yet to be examined.

Before the Medevac Law was passed, the ASRC Detention Right Advocacy Program (DRAP) worked with people held offshore who suffered from a wide range of treatable physical illnesses such as cardiac and respiratory conditions, kidney stones, abdominal conditions like gastritis, internal and external infections, joint conditions, gynaecological and urological conditions and chronic and acute pain conditions.

The lack of appropriate medical treatment caused these illnesses to escalate and result in possible organ failure, suspected blindness and repeated incidents of self-harm and suicidality, mood disorders and symptoms relating to ongoing trauma and post trauma.

In our experience, when the first diagnosis of a physical condition was medically neglected or not treated, people's mental health deteriorated over time, resulting in an intensification of physical symptoms. We had a caseload of about 90 people, with a further 215 on the waiting-list, a situation made all the more severe because of the extremely limited pathways to access appropriate or even adequate medical care.

In the lead up to the Medevac Law being voted on by the Senate late last year, close to 6,000 doctors and 13 medical colleges, including the Australian Medical Association, signed and delivered an open letter to the Prime Minister to express widespread concern of the medical situation of those in Papua New Guinea and Nauru.

Despite concern from the medical profession, and community pressure, transfers continued to be delayed and transfer requests ignored. The Medevac Law was drafted and passed as the only way to force the Government to act on doctor's recommendations regarding the medical treatment of refugees in Papua New Guinea and Nauru.

Flawed transfer system - political interference, delays and fear of death

The medical situation was (and continues to be) urgent for ill men, women, and young adults who arrived in offshore detention as children. Medical experts, including doctors who have worked in Papua New

[1] Australia Border Deaths database available at: https://arts.monash.edu/border-crossing-observatory/research-agenda/australian-border-deaths-database.
[2] Inquest into the death of Hamid Khazaei by Qld State Coroner File 2014/3292 delivered on 30 July 2018.Available at: https://www.courts.qld.gov.au/__data/assets/pdf_file/0005/577607/cif-khazaei-h-20180730.pdf.

Guinea and Nauru, have spoken repeatedly about their concerns regarding the transfer system, identifying political interference in clinical recommendations.

In February 2019, the ASRC released data on our then current caseload of critically sick people held in offshore detention. The Government's own health records showed that more than half of this cohort were recommended by Government-appointed doctors for transfer for medical treatment, but remain untreated offshore.[3] Sick people were waiting an average of two years for transfer after treatment recommendation and some waited up to five years, effectively meaning the Government was ignoring the advice of its own appointed Doctors.

Medical whistleblowers formerly employed by the Government have spoken out about the consistent disregard of clinical recommendations by the Australian Government in its treatment of those held offshore.[4]

Prior to the passing of the Medevac Law, former International Health and Medical Services (IHMS) staff and whistleblower, Dr Peter Young said:

> *"Medical transfer requests are made sparsely and reluctantly because doctors know they will be blocked by the department. So many people who need them but have not reached critical need yet don't get transfer requests. The department doesn't like it if we make too many requests for the one person either, so staff would sometimes just give up after a while. It's appalling and unconscionable that our government is doing everything it can to prevent doctor's advice being followed and to increase illness and suffering of people in offshore detention."*[5]

The transfer process previously relied heavily on the cooperation of the Department of Home Affairs (**'the Department'**) and resulted in highly cumbersome and extremely resource intensive court cases that spanned months and years.

The Minister for Home Affairs and the Department required organisations to lodge complex legal proceedings in court to get severely ill people the required medical treatment in Australia, resulting in long delays often resulting in the exacerbation of medical conditions. In all cases the court found that the Australian Government owed a duty of care to sick refugees and people seeking asylum and ordered for the urgent transfer of men, women and children. **Attached** court orders highlight two examples of cases where lawyers were forced to go to court to get access to urgent medical treatment and transfer.

Until the Medevac Law was passed the Minister for Home Affairs required the preparation and/or file of an application in the Federal Court of Australia seeking urgent interim orders that a person be transferred to Australia for treatment. Not only was legal intervention time consuming but the vast majority of cases related only to people detained in Nauru, meaning that for sick refugees and people seeking asylum in Papua New Guinea it was almost impossible to access the urgent medical care required.

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[3] Helen Davidson, The Guardian 'Australian government ignored refugee transfer advice from its own doctors for up to five years', 7 February 2019, accessible at: https://www.theguardian.com/australia-news/2019/feb/07/australian-government-ignored-refugee-transfer-advice-from-its-own-doctors-for-up-to-five-years

[4] ABC News, 31 October 2017, 'Every clinical decision questioned:' Doctor accused Border Force of exerting political influence on Nauru' available at: https://www.abc.net.au/news/2017-10-31/every-clinical-decision-questioned-by-non-medic-on-nauru/9093070

[5] ASRC Media Release, 3 February 2019 'Medical data released by the ASRC shows people offshore are waiting at least two years for medical treatment', available at: https://www.asrc.org.au/2019/02/08/people-waiting-two-years-for-medical-transfer/.

In 2018, approximately 150 such matters were run by over 100 pro bono lawyers, resulting in 50 applications filed (with the balance settled out of court). This work required an extraordinary number of pro bono legal hours, was a significant demand on court resources including frequent out-of-hours sittings, and cost taxpayers hundreds of thousands of dollars[6] in Government legal fees.

We can attest from the Court matters we have been directly involved in, that the Minister appeared to consistently respond to cases from a position of skepticism and disbelief, rather than genuine concern for health and safety. In those matters medical experts had assessed that our clients suffered from very serious and urgent medical conditions such as; high risk of renal failure, respiratory failure leading to death, peritonitis causing death, acute psychiatric disorders, haemorrhage requiring massive transfusion, neonatal death and maternal death.

Given the medical urgency of these conditions and the clear lack of capacity to provide effective treatment in Nauru, we placed the Minister on notice that if no steps were taken to urgently transfer our clients, we would have no choice but to file in Court. In response, the Minister's representatives consistently failed to obtain timely instructions, refused to provide medical records in a timely manner, alleged to the Court that our clients' urgent medical needs had no basis (without any evidence for making such statements), alleged our clients were undermining their treatment through their own actions and even on occasion withheld relevant evidence from the Court, as we later became aware through a Freedom of Information response.

These behaviours resulted in the loss of precious time and in the Court having to convene for urgent out-of-hours sittings, such as late on Sunday afternoon or at all hours of the night. Our lawyers had to work from 8am until 2am, every night, remaining in constant communication with our clients, family members and professionals to ensure our client was still alive and fit enough for travel, while preparing affidavits, and evidence to put to the court in support of our position.

Often cases took several weeks to resolve and in some circumstances, the Minister did not comply with court orders, including orders that our client be provided with immediate medical assistance and be transferred to Australia as soon as possible. Rather, our clients were left waiting for a seat on the next commercial flight to become available, (which only run twice weekly) and in the meantime were left at home for days in Nauru without receiving medical treatment or even monitoring.

Upon arrival in Australia, we found that pre-admission arrangements had not been made for our clients, again, jeopardising their access to timely appropriate treatment and placing their lives at further risk.

Prior to the Medevac Law, the transfer system was a failure and there was a very real fear that more people would die.

Insufficient medical treatment available

The urgent need for medical care and transfer is well documented, as is the lack of sufficient medical care in both Nauru and Papua New Guinea. For years, national and international human rights and medical associations have criticised the physical and mental health conditions of those held offshore.

[6] Helen Davison, The Guardian, 29 September 2018, 'Australia spent $275,000 fighting requests for urgent medical transfers of asylum seekers' accessible at: https://www.theguardian.com/australia-news/2018/sep/29/australia-spent-320000-fighting-requests-for-urgent-medical-transfers-of-asylum-seekers.

On 30 July 2018 the Queensland State Coroner made findings that the death of a refugee on Manus Island, Hamid Khazaei was preventable.[7] The Coroner was critical of the care Mr Khazaei received and was satisfied that if Mr Khazaei's clinical deterioration was recognised and responded to in a timely way at the Manus Island Regional Processing Centre (MIRPC) clinic, and he was evacuated to Australia within 24 hours of developing severe sepsis, he would have survived.

The Coroner's observations on offshore health care (paras 18-22) are directly relevant to the case for Medevac Law legislation:

> *18. While this inquest was not focused on the policy of offshore processing, Mr Khazaei's death occurred in the broader context of Australia's immigration policy framework. That framework required that he be relocated to a small remote island in a developing country in order for his claim for asylum to be processed under PNG law. Although Mr Khazaei was not sent to PNG to be punished, he had been detained on Manus Island for almost 12 months at the time of his death.*
>
> *19. As outlined in these findings, Mr Khazaei was entitled to receive care that was "the best available in the circumstances and broadly comparable with health services available within the Australian community". 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.*
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> *20. It would be possible to prevent similar deaths by relocating asylum seekers to other places, such as Australia or New Zealand, where better health care would be provided. However, I acknowledge such an approach is highly unlikely in the absence of a fundamental revision of the broader policy framework for minimizing the number of "unauthorized maritime arrivals" that offshore processing seeks to address.*
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> *21. The Australian Government retains responsibility for the care of persons who are relocated, for often lengthy periods, to offshore processing countries where standards of health care do not align with those in Australia. It is incumbent on the Australian Government to implement sustainable systems for the delivery of health care that meet the requisite standard. Those systems should also be subject to ongoing and independent scrutiny on behalf of the Australian community, which is required to meet the ongoing and considerable costs of the current arrangements.*
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> *22. The Australian Government has assessed that the cost of offshore processing is significantly less than the cost of continuing to allow boats with asylum seekers to arrive in Australia, which have previously been estimated at $11 billion. On the basis that very significant budget savings have been achieved as a result of offshore processing, a substantial enhancement of the*

[7] Inquest into the death of Hamid Khazaei by Qld State Coroner File 2014/3292 delivered on 30 July 2018, available at https://www.courts.qld.gov.au/__data/assets/pdf_file/0005/577607/cif-khazaei-h-20180730.pdf.

investment in the provision of necessary health care for asylum seekers in regional processing countries is justified. Similarly, where adequate health care cannot be provided in a regional processing country the cost of a transfer to Australia should not be a relevant consideration in the approval process. Decisions about medical transfers should be based on clinical considerations.

In September 2018, the ASRC and the Refugee Council of Australia (RCOA) released a joint report[8] detailing the lack of appropriate health care and conditions facing the men, women and children detained in Nauru.

Further to this, RCOA and Amnesty International released a report in November 2018[9] that documented significant shortfalls in the provision of healthcare on Manus Island outlining cases of people with serious health conditions in offshore detention.

In October 2018, Medecins Sans Frontieres (MSF) were also forced to leave Nauru, leaving all its patients on the island without specialist mental health services. MSF termed the situation "beyond desperate"[10] equating it to humanitarian crisis it encounters in war and conflict.

Effectiveness of Medevac Law

After the passing of the Medevac Law in February 2019, a number of specialist refugee, medical and legal organisations, including the ASRC and NJP, came together nationally to form the Medical Evacuation Response Group (MERG). MERG doctors, lawyers, caseworkers and counsellors work together to facilitate and manage the application of transfer requests under the Medevac Law. MERG is an independent partnership and was established in the absence of any Government process.

The Medevac Law is working as intended - a safe, orderly and timely process providing medical treatment for sick refugees.

Since the establishment of MERG, over 105 people have been transferred to Australia for medical treatment. In the majority of cases (around 80%), the Minister has agreed at the first instance with the initial medical recommendation for transfer. In only a handful of cases the Independent Health Advisory Panel has overturned the decision of the Minister, and in the majority of cases has upheld the Minister's decision.

None of the cases refused for transfer have been on security grounds and at all times the Minister has the unreviewable power to refuse on national security grounds under the ASIO Act and to refuse anyone convicted of a serious criminal offence. The Minister also retains all control over the residence determination of someone transferred, meaning that people transferred remain in immigration detention unless the Minister approves their release. The formalised process provides clear timeframes for decisions and opportunities for transfer refusal at each step. It is also a far more rigorous, transparent and independent process to omit political interference and ensure doctors, not bureaucrats, are making decisions about patients' healthcare.

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[8] RCOA and ASRC 'Australia's man-made crisis on Nauru: 6 years on', September 2018, available at: https://www.asrc.org.au/wp-content/uploads/2018/09/Nauru_Manmade_Crisis.pdf.

[9] RCOA and Amnesty International 'Until when:The forgotten men of Manus Island', 21 November 2018, available at: https://www.refugeecouncil.org.au/manus-island-report/.

[10] MSF, 'Nauru: New MSF report shows the disastrous mental health impact of Australia's offshore processing policy', 3 December 2018, available at: https://www.msf.org.au/article/statements-opinion/nauru-new-msf-report-shows-disastrous-mental-health-impact-australia%E2%80%99s.

The Medevac Law only applies to the current cohort of people seeking asylum detained in Papua New Guinea and Nauru (this includes any babies born to people who are currently there). It does not and will not apply to anyone who is not currently detained in Papua New Guinea or Nauru and future arrivals are not covered by the law.

Additionally, approximately 950 people are currently in Australia who have been transferred from Nauru and Papua New Guinea and over 700 people have been permanently resettled in the US. These transfers have not resulted in a surge in people smuggling, as identified by the Minister for Home Affairs as the primary reason to repeal this sound legislation. No people have arrived in Australia by boat since the Medevac Law passed.

The processes introduced by the Medevac Law have drastically increased efficiencies in securing medical treatment for refugees and people seeking asylum offshore and has also created a more conducive environment for the Government transferring sick refugees of their own volition.

Current situation (ongoing need for Medevac Law)

The consequences of repealing the Medevac Law are life and death.

As outlined above, the medical transfer system was failing sick people, there were 12 deaths offshore and transfer requests were routinely delayed or ignored. The only way to guarantee an independent, robust and orderly medically led process is to retain the Medevac Law.

While over 110 people have been transferred under the Medevac Law, there are still sick refugees in Papua New Guinea and Nauru who require a timely doctor led process to assess their medical needs and transfer requests.

As reported by the Independent Health Panel,[11] in the first quarter of 2019 the majority of the 8,260 medical consultations in Nauru were for mental health problems. The years of uncertainty and lack of access to appropriate care have resulted in despair, hopelessness and helplessness. The report notes that "there is no access to high-quality inpatient psychiatric care in Nauru and patients with severe mental illness at high risk of suicide should be transferred to a hospital with appropriate inpatient psychiatric care".

As long as people are detained offshore, there is a need for an independent, medically led transfer process. Repealing the Medevac Law will result in people's medical care being in the hands of politicians and bureaucrats rather than Doctors. This will again cause unnecessary delays and increase the possibly of further deaths.

The Medevac Law is consistent with and implements the recommendations of the Queensland State Coroner;

> *1. I recommend that the Department of Home Affairs develop and implement a written policy relating to the process for medical transfers requiring Australian Government approval which has, as an overriding consideration, the health and well-being of persons transferred to regional*

[11] Katherine Murphy, The Guardian, 'Mental health conditions behind most Nauru and Manus refugee medical admissions', 23 July 2019, available at: https://www.msf.org.au/article/statements-opinion/nauru-new-msf-report-shows-disastrous-mental-health-impact-australia%E2%80%99s.

processing countries. Under that policy the approval process for medical transfers should be led by persons located in regional processing countries with clinical training in emergency medicine.

There is no reason to repeal Medevac Law, it is working. It provides sick refugees with timely and coordinated medical care at the recommendation of Doctors whilst maintaining our border security. The attempt to repeal the law is unnecessary and seems purely political while blatantly disregarding the need for a medically led process.

Comment on human rights implications as stated in the explanatory amendment.

The Government's 'Statement of Compatibility with Human Rights' **('the statement')** annexed to the Explanatory Memorandum,[12] is a disturbing re-statement of the Government's longstanding refusal to acknowledge it owes any duty of care to the people who sought Australia's protection more than six years ago, but instead were transferred to Papua New Guinea and Nauru, against their will.

For that entire period and until the current day, the Government continues to prop up and pour billions of Australian taxpayer dollars into all aspects of the management and control of the remaining refugees in Papua New Guinea and Nauru through an extensive web of contracted services. The mere existence of these services provided by the Government directly contradicts its own central tenet that it owes these people no duty of care at all. Of further concern is the basic fiscal accountability of those contractual arrangements which have come into serious question after it emerged that a $423 million dollar contract (approximately $1600 per refugee per day), was awarded to a company with no relevant track record to run the Manus Island Detention Centre, through a closed tender process in 2017.[13]

The Government's statement asserts that the Bill provides adequate protection against refoulement obligations under the Convention relating to the Status of Refugees ('**the Refugee Convention'**), the Convention Against Torture **('CAT'**) and the International Covenant on Civil and Political Rights (**ICCPR**). Yet the only protection mechanism it refers to is 'administrative arrangements' which will purportedly be put into place to prevent refoulement. One is left to guess what these administrative arrangements may consist of. Opaque administrative arrangements, which are not enforceable or referable to any domestic law, can never form an adequate basis for fulfilling protection obligations owed by the Government of Australia.

Given the demonstrated limited capacities of both the Papuan New Guinean and Nauruan states' to provide effective protection from refoulement, it is no answer for the Government to seek to rely on Papua New Guinea and Nauru's compliance with its non-refoulement obligations under the Refugee Convention, in order to meet its own non-refoulement obligations.

There has been extensive international condemnation of the transfer arrangements made by Australia that has also highlighted the inhumane and degrading treatment of those who have been left to perish for six years (and counting) in Papua New Guinea and Nauru. The United Nations has made no less than 61 statements between 2012 until September 2018 criticising these arrangements.[14] Return of transitory

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[12] See Attachment A to the Explanatory Memorandum to the Bill.

[13] SBS News, 18 February 2019, 'Government faces questions over Manus Island contract', available at: https://www.sbs.com.au/news/government-faces-questions-over-manus-island-contract.

[14] United Nations observations on Australia's transfer arrangements with Nauru and Papua New Guinea (2012-present) https://www.unhcr.org/en-au/5bb364987.pdf.

persons to Papua New Guinea and Nauru, who, by definition, do, or have, suffered from acute medical conditions, including psychiatric conditions, which are typically not fully resolved or may be re-triggered by forced return to those locations, would likely breach Australia's obligations under Article 3 of the CAT and Article 7 of the ICCPR. These treaties both prohibit Australia from expelling a person where there are substantial grounds for believing they would be subjected to conditions that amount to torture or cruel, inhuman or degrading treatment or punishment. The Government's position that it will put into place 'administrative arrangements' to protect against refoulement provides little reassurance, especially in light of the callous disregard it has shown for the fundamental rights of this particular group of persons for the past six years. Any steps to transfer members of this group out of Australia, in breach of non-refoulement obligations will likely generate further court actions and a swathe of petitions to international treaty bodies to prevent such refoulement.

The Government's statement also purports to uphold the right to health contained in Article 23 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognising the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. It is difficult to reconcile the Government's stated commitment to this right with its plan to remove access to Australian standard medical care to vulnerable medical transferees and to return them to a situation where their access to health services will again be grossly compromised. The Government's position again places these vulnerable people at risk of serious harm or even death, possibly in breach of the right to life itself.

Finally, the Government's statement that this Bill is in accordance with its obligations under the Convention on the Rights of the Child, and the ICCPR; to act in the best interests of children and to protect against family separation, has no basis in law or fact. The Migration Act provides no overarching legal framework for ensuring children's best interests are prioritised in decision making under that Act. This gap is having horrendous consequences for children seeking asylum in Australia which we see unfolding before us every day in our Centre. Some of these children have the Minister as their appointed guardian despite the clear conflict of interest that this arrangement entails. [15] Some children are held in indefinite detention and denied access to adequate health care, education and socialisation opportunities, despite the existence of many less restrictive alternatives.[16] Some children have had their protection visas

[15] See s 6 of the Immigration (Guardianship of Children) Act (Cth) 1946.

[16] For example, a two-year-old girl had four teeth surgically removed and another four treated recently after they began to rot during her time in detention. She may not grow front teeth until the age of 7. Truu, M., 'Two-year-old in immigration detention forced to have rotting teeth surgically removed', SBS News, 26 July 2019, available at: https://www.sbs.com.au/news/two-year-old-in-immigration-detention-forced-to-have-rotting-teeth-surgically-removed.

Another two-year-old girl was forced to wait over seven hours to be taken to hospital after receiving a head injury.Hall, B., 'Iraqi asylum seeker sews his lips together amid mounting despair at MITA, lawyer says', Sydney Morning Herald, 23 July 2019, available at: https://www.smh.com.au/national/iraqi-asylum-seeker-sews-his-lips-together-amid-mounting-despair-at-mita-lawyer-says-20190723-p529sr.html.

Also this month, a lawyer for a family of detainees was forced to call an ambulance for a 15-month-old girl suffering influenza, after complaints were ignored by staff;Razak, Iskhandar, 'Asylum seeker's baby rushed from Melbourne immigration detention centre to hospital with flu', ABC News, 17 July 2019, available at: https://www.abc.net.au/news/2019-07-16/melbourne-immigration-detention-baby-rushed-to-hospital-with-flu/11314074.

cancelled and face refoulement; and many children face separation from their parents and siblings due to the absence of any legal protection of the right to family unity throughout the entire visa application system.

While it may technically be the case that no children have been transferred specifically under section 198C of the Act, hundreds of sick and damaged children have been transferred from Nauru to Australia as transitory persons and more have been born subsequently in Australia. It is ludicrous for the Government to assert it will prioritise these children's best interests while simultaneously planning to transfer them back to Papua New Guinea or Nauru where they will struggle to access even basic health and education services and will have greatly reduced levels of personal security and access to specialised child protection services.

Furthermore, there are tens, if not hundreds, of family units who have been split between Papua New Guinea, Nauru and Australia and separated from each other for years on end. The Government has taken no steps to fulfil its obligations to preserve family unity to date. Returning all family members to potentially life threatening environments in Papua New Guinea or Nauru, as is proposed, is not an act of a Government with genuine concern for protecting family unity when the consequence would be to subject the entire family unit to risk of serious harm. Rather, a Government with a genuine concern for family unity would choose the obvious solution, which would be to bring remaining family members to safety in Australia.

In conclusion, the Government's statement of compatibility with human rights is a cynical exercise to twist and avoid the content of its protection obligations. It reveals a lack of good faith to comply with Australia's international obligations and a disturbing intention to continue breaching fundamental human rights: both of those who remain in Papua New Guinea or Nauru and those who are currently 'transitory persons' in Australia and at risk of being forcibly returned to harmful situations in offshore processing centres.

Recommendation

The bill is opposed in its entirety.