



COPY

**THE HON PETER DUTTON MP  
MINISTER FOR HOME AFFAIRS**

Ref No: MS19-001418

The Hon Scott Morrison MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

Scott,

Dear Prime Minister

I am writing to you regarding the *Migration Amendment (Repairing Medical Transfers) Bill* (the Bill). On 2 March 2019, medical transfer provisions were introduced into the *Migration Act 1958* (the Act) by Schedule 6 to the *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019* (the Amending Act). The Bill seeks to repeal the amendments made by Schedule 6 to the Amending Act that obligates the Minister to decide whether to transfer a transitory person from a regional processing country to Australia for medical treatment.

The Bill is expected to be introduced to the Senate in week 1 of the Winter 2019 Parliamentary sittings. To give effect to the Australian Government's stated intent, I seek your policy authority for the Bill to repeal these provisions, and amend additional provisions in the Act.

The proposed changes made by the Bill will have two main purposes:

1. Repeal the amendments made by Schedule 6 of the Amending Act
  - Remove the 'medevac' provisions, which obligate the Minister to make a decision regarding the transfer of a transitory person from a regional processing country to Australia for medical or psychiatric assessment or treatment.
  - This will result in transitory persons for whom a referral notification was made while the provisions were active, but whose cases are not finally determined, being unable to receive a final decision.
  - The Bill does not propose transitional arrangements to enable completion of these cases following repeal. For any avoidance of doubt, the amendments will make clear the repealing Bill will extinguish any rights, privileges, obligations or liabilities that would otherwise be acquired, accrued or incurred under the repealed provisions by virtue of the operation of section 7(2) of the *Acts Interpretation Act 1901* (Cth).
  - In order to avoid the risk of an unconstitutional interference with a judicial power, the Bill will include a carve out where there is a decision of a Court made prior to commencement of the repeal.

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- Further consequential and necessary provisions may be required in the Bill to amend the Act, including barring the bringing of legal proceedings in relation to transitory persons brought to Australia under section 198C.
  - Medical transfer provisions already in place under section 198B of the Act will continue to be used to enact transfers for medical treatment required outside a regional processing country.
2. Introduce returns (to a regional processing country) and removal (from Australia to a third country) mechanisms for persons brought to Australia for a temporary purpose under section 198C.
- The Amending Act does not provide returns or removal mechanisms for transitory persons brought to Australia from a regional processing country under section 198C of the Act.
  - The amendment would ensure consistency with the existing return and removal provisions for transitory persons brought to Australia for a temporary purpose under s198B.

The officer in the Department responsible for the amendments is Heimura Ringi, Assistant Secretary, Legislation Branch, who can be contacted on s. 22(1)(a)(ii).

Yours sincerely



PETER DUTTON

18/06/19