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HOME AFFAIRS
QUESTION TIME BRIEF (QTB)
MEDIVAC LAWS

QUESTION: What is the impact of the Miscellaneous Measures Act on regional processing and the Government's border protection regime?

KEY TALKING POINTS:

- Non-government amendments to the *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019* (the Act) introduced new medical transfer provisions for transferees in regional processing countries (effective 2 March 2019).
- As at 16 July 2019, 129 medical transfer notifications have been received, of which 107 have been deemed valid.
- As at 16 July 2019, 40 transitory persons have been transferred to Australia for medical or psychiatric assessment or treatment under the new provisions and an additional four transitory persons have been transferred under the split family provisions.
- Since 2 March 2019, the Department has also transferred 36 individuals (including one accompanying) from Nauru and Papua New Guinea under existing medical transfer arrangements.
 - These transfers demonstrate that the non-government medical transfer provisions are unnecessary.
- Existing processes are in place to manage the health needs of individuals under regional processing arrangements, including their access to medical treatment outside Nauru or Papua New Guinea.
- It is for this reason that the Government intends to repeal the medical transfer provisions introduced by the non-government amendments.
 - The *Migration Amendment (Repairing Medical Transfers) Bill 2019* was introduced into the House of Representative on 4 July 2019 and was subsequently referred to the Legal and Constitutional Affairs Legislation Committee for review. The Committee is scheduled to report by 18 October 2019.
 - Repeal will return control to the Government to determine who enters Australia.
 - Repeal will help calm the current self-harming behaviours in the cohorts who seek to use the provisions to reach Australia, while still providing a medical transfer process for transferees in need of additional health care not available in a regional processing country.

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If asked: Is there a loophole that prevents people from returning to a regional processing country at the conclusion of their medical treatment in Australia?

- Yes. While the provisions provide a pathway to Australia following the Minister's decision to approve a medical transfer, they do not provide a return mechanism.
 - The provisions do not link to the existing removal powers or transitory persons return powers in the Migration Act.

If asked: Does the Minister have to approve the medical transfer of all persons, regardless of security or character concerns?

- The Act has broad application, with limited grounds for refusing transfers.
 - The security exception to transfer sets a very high bar. It is based on the Minister's belief that the transfer would be prejudicial to security. The conduct must be prejudicial to security which is a distinct concept defined in the *Australian Security Intelligence Organisation (ASIO) Act 1979*;
 - Character refusal grounds are limited to where the Minister knows that the person has a serious criminal record (as defined by section 501(7) of the *Migration Act 1958*) and reasonably believes the person would expose the Australian community to danger. This provision will not stop people who are charged, but not yet convicted of serious criminal offences, from entering Australia.
- The Department is aware of more than 50 transferees with adverse character or security findings, including charges of child sexual assault and possession of child pornography. These individuals, should they seek to be transferred to Australia under the provisions, may not be rejected under the current refusal grounds.

If asked: Does the Nauruan Health Practitioners (Overseas Medical Referrals Compliance) Regulations 2019 and the Nauruan Health Practitioners (Telemedicine Prohibition) Regulation 2019 impact the operation of the Act?

- The Government of Nauru has introduced Regulations to better control the Overseas Medical Referral process.
- Nauru is a sovereign nation who determines their own laws and regulations.
 - The Government of Nauru has processes in place for the management of regional processing, including the movement of people across their borders.
- In giving effect to transfers under the Act, the Australian Government will comply with the sovereign laws and processes of Nauru.

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If asked: How many legacy minors have been notified to the Minister?

- There have not been any children under regional processing arrangements in Nauru or Papua New Guinea since February 2019.

If asked: Will the recent court decision allowing treating doctors to refer cases after review on the papers only impact transfers

- On 18 June 2019, the Federal Court of Australia made a declaration that doctors referring transitory persons for medical transfer to Australia under the Act could do so by reviewing a person's medical records, without personal interaction/engagement with the person.
- The court decision will validate a number of cases previously found invalid where the treating doctor had not had contact with the transferee.
- This decision will lead to an increase in further transfers, opening a transfer pathway.
- Transfer notifications are managed in accordance with set processes and will be referred to the Independent Health Advice Panel for review if refused by the Minister.

BACKGROUND AND CHRONOLOGY

On 6 December 2018, Senators Storer and McKim moved amendments to the *Home Affairs Legislation Amendment (Miscellaneous Measures) Bill* (the Bill) (which was initially introduced into the House of Representatives on 28 March 2018), introducing medical transfers provisions for transitory persons in regional processing country for the purposes of medical or psychiatric assessment or treatment.

The Bill, including non-government amendments, was passed by the Senate on 13 February 2019 and received Royal Assent on 2 March 2019.

As at 16 July 2019, there were:

- 1024 transitory persons temporarily in Australia for a temporary purpose, comprising:
 - 908 transitory persons from Nauru; and
 - 116 from Papua New Guinea.

Lead Division

Contact: Alana Sullivan

Division: Operation Sovereign Borders JATF

Date first prepared: 11 February 2019

Originating Source: MO

Phone: s22(1)(a)(ii)

Action Officer: s22(1)(a)(ii)

Date last Updated: 28/06/2019

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Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number MS19-001418

To Minister for Home Affairs

Subject Repeal of amendments made by Schedule 6 to the Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019

Timing *Urgent to meet drafting timeframes to enable tabling in the first week of sitting.*

Recommendations

That you:

1. s22(1)(a)(ii)

2.

3.

4.

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5. s22(1)(a)(ii)

Minister for Home Affairs

Signature.....

Date:...../...../2019

Minister's Comments

Rejected Yes/No	Timely Yes/No	Relevance <input type="checkbox"/> Highly relevant <input type="checkbox"/> Significantly relevant <input type="checkbox"/> Not relevant	Length <input type="checkbox"/> Too long <input type="checkbox"/> Right length <input type="checkbox"/> Too brief	Quality Poor 1.....2.....3.....4.....5 Excellent Comments:

Key Issues

- As at 12 June 2019, 38 valid notifications have been received under section 198E of the medical transfer provisions in the *Migration Act 1958* (the Act), of which 16 transitory persons have transferred, 10 have been approved pending transfer, seven are under consideration and five have been refused. These notifications were all received from transitory persons in Papua New Guinea. Of note, 24 invalid notifications have also been received.
- Additionally, five individuals from Nauru have been identified under the split family provisions (section 198G of the Act), with four already transferred to Australia and one declining to transfer.

Repealing the amendments made by the Amendment Act with transitional provisions

- The provisions commonly referred to as the 'medevac legislation' were inserted into the Act by Schedule 6 to the *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019* (the Amending Act). s22(1)(a)(ii)

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s22(1)(a)(ii)

[Redacted]

4.

s22(1)(a)(ii)

[Redacted]

5.

s42

[Redacted]

6.

s22(1)(a)(ii)

[Redacted]

7. Recent self-harming behaviour in regional processing countries is connected (among other things) to the medical transfer legislation, which is now perceived by transferees as providing a viable pathway to Australia. Complete removal of this pathway may temper this current trend and reduce the incidence of self-harm. Repeal without transitional arrangements enables a simple repeal application and delivers the Government's intent, without any residual case management issues.

s22(1)(a)(ii)

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Background

13. The *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019* came into effect on 2 March 2019. The provisions obligate the Minister to decide whether to transfer a transitory person to Australia for medical treatment. The provisions introduce decision-

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making timeframes and decision deeming if decisions are not reached within the specified timeframe, and a review panel, the Independent Health Advice Panel.

s22(1)(a)(ii)

Client service implications

16. s22(1)(a)(ii) transitory persons have sought legal action to prevent their return to a regional processing country, resulting in approximately 1000 transitory persons temporarily in Australia. s22(1)(a)(ii)

Sensitivities

17. s22(1)(a)(ii) The Department is aware that advocates are promoting self-harming behaviours to support passage to Australia through the 'medevac' provisions.
18. Following repeal the Department anticipates an increase in legal intervention associated with medical transfers to Australia.

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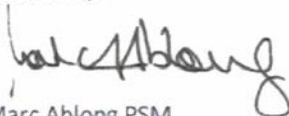
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Attachments

s22(1)(a)(ii)

Authorising Officer

Cleared by:



Marc Ablong PSM
Deputy Secretary Policy

Date: 13 June 2019

Ph: s22(1)(a)(ii)

Contact Officer Alana Sullivan, Senior Assistant Secretary, Regional Processing Taskforce, Ph: s22(1)(a)(ii)

Through Pip de Veau, General Counsel
David Wilden, First Assistant Secretary, International Policy

CC Secretary
ABF Commissioner
Deputy Secretary Executive
Deputy Secretary Corporate and Enabling
Deputy Commissioner Operations
Commander Joint Agency Taskforce

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MEETING BRIEF

SECRETARY: Peter Dutton**ADVISER: Chief of Staff – Tom Fleming**

Meeting Brief - s22(1)(a)(ii) **2.30pm Thursday 20th June**
(CPO Sydney)

Person/ Organisation

s22(1)(a)(ii)

Victorian Foundation for Survivors of Torture and Trauma

s22(1)(a)(ii)s22(1)(a)(ii)

Key Messages

s22(1)(a)(ii)

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Self-harm in Papua New Guinea

- Since December 2018, there has been a substantial increase in self-harming behaviours (threats and actual) across the regional processing population in Papua New Guinea.
 - The behaviour has been reported extensively through the media.
- The rate of self-harm incidents started rising in December 2018, when the Phelps Bill was first introduced, increased following the introduction of new medical transfer legislation in March 2019, and further increased following the federal election in May 2019.
- In the period 18 May-11 June 2019, there were 57 self-harm incidents, and 29 threats to self-harm by transferees in Papua New Guinea.
- The intensity and gravity of incidents has increased, with transferees buoyed by medical transfers to Australia and heightened media coverage.
 - Transferees now see medical transfer as a viable pathway to Australia.
- In response, contracted service providers have bolstered care to transferees:
 - increasing the capacity of the temporary respite site at Manus;
 - introducing 24-hour onsite mental health services; and
 - broadening outreach welfare and mental health services across Manus accommodation sites.

Medical transfers to Australia

- The *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019* (the Act) introduced new medical transfer provisions for transferees in regional processing countries (effective 2 March 2019).
 - As at 18 June 2019, 22 individuals have transferred to Australia for medical or psychiatric assessment or treatment under section 198E of the Act.
 - A further four individuals have transferred to Australia under split families provisions (section 198G).
- In parallel, the Department continues to facilitate medical transfers to Australia, under existing provisions, in cases where medical treatment is not available in Papua New Guinea or Nauru.

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- Since 2 March 2019, 32 individuals have transferred from Papua New Guinea and Nauru to Australia for medical treatment under standard medical transfer processes (section 198B).

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Consultation

- Immigration, Citizenship and Multicultural Policy Division

Clearance

Clearance officer: David Wilden, First Assistant Secretary International Policy Division Phone: s22(1)(a)(ii) Date: 19 June 2019	Contact officer: Alana Sullivan, Senior Assistant Secretary Division: International Policy Division Branch: Regional Processing Taskforce Mobile Phone: s22(1)(a)(ii)
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Australian Government

Visit to Papua New Guinea

The Honourable Peter Dutton MP

Minister for Home Affairs

16-17 July 2019

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Section 22(1)(a)(ii)

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- Acknowledge the increase in self-harming behaviour by transferees in Papua New Guinea.
 - Transferees are provided with a range of health, welfare and support services.
 - Notwithstanding, we have asked health and welfare providers to bolster support services delivered in Manus Province and Port Moresby and explore additional in-patient health services for transferees with mental health conditions.
 - We expect this behaviour is occurring for a number of reasons, including:
 - loss of hope and frustration over time in Manus Province
 - encouragement by advocates, and
 - to qualify for medical transfer under the new medical transfer legislation.
 - Transferees have identified the medical transfer legislation (introduced in Australia in March 2019) as a pathway to Australia.
 - While we are working to repeal the legislation to remove the pathway, we unfortunately expect the self-harming behaviour to continue, regardless of additional supports, until the repeal of the provisions occurs.
 - We seek Immigration and Citizenship Authority's ongoing support to stabilise and respond to this situation.
- Viable and durable migration outcomes will play an important role in managing this behaviour.

s22(1)(a)(ii)

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Section 22(1)(a)(ii)

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Section 22(1)(a)(ii)

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- Acknowledge the increase in self-harming behaviour by transferees in Papua New Guinea.
 - Health and welfare service providers have been requested to bolster support services delivered in Manus Province and Port Moresby and explore additional in-patient health services for transferees with mental health conditions.
 - Transferees have identified the medical transfer legislation (introduced in Australia in March 2019) as a pathway to Australia.
 - While we are working to repeal the legislation to remove the pathway, we unfortunately expect the self-harming behaviour to continue, regardless of additional supports, until the repeal of the provisions occurs.
- Viable and durable migration outcomes will play an important role in managing this behaviour.

s22(1)(a)(iii)



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- Viable and durable migration outcomes will play an important role in managing this behaviour.

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Medical transfers to Australia

- The *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019* introduced new medical transfer provisions for transferees in regional processing countries (effective 2 March 2019).
 - As at 10 July 2019, 39 individuals, all from Papua New Guinea, have transferred to Australia for medical or psychiatric assessment or treatment under section 198E of the Act.
- In parallel, the Department of Home Affairs continues to facilitate medical transfers to Australia, under existing/alternative provisions, in cases where medical treatment is not available in Papua New Guinea.
 - Since 2 March 2019, nine individuals have transferred from Papua New Guinea to Australia for medical treatment under standard medical transfer processes.
- The *Migration Amendment (Repairing Medical Transfers) Bill 2019* was referred by the Senate to the Legal and Constitutional Affairs Legislation Committee.
 - The Bill repeals the provisions inserted into the *Migration Act 1958* by Schedule 6 to the *Miscellaneous Measures Act 2019* and introduces a returns and removals mechanism.

Self-harm

- Since December 2018, there has been a substantial increase in self-harming behaviours (threats and actual) across the regional processing population in Papua New Guinea.
 - The behaviour has been reported extensively through the media.
- The rate of self-harm incidents started rising in December 2018, when the Phelps Bill was first introduced, increased following the introduction of new medical transfer legislation in March 2019, and further increased following the federal election in May 2019.
- The intensity and gravity of incidents has increased, with transferees buoyed by medical transfers to Australia and heightened media coverage. Transferees now see medical transfer as a viable pathway to Australia.
- In response, contracted service providers have bolstered care to transferees:
 - increasing the capacity of the temporary respite site at Manus;
 - introducing 24-hour onsite mental health services; and
 - broadening outreach welfare and mental health services across Manus accommodation sites.

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- The Department of Home Affairs has requested contracted service providers submit additional proposals to respond to increasing self-harm incidents, including the potential to utilise hospitals across Papua New Guinea to increase the number of accessible in-patient beds and expanding the capacity of the permanent respite accommodation at the East Lorengau Refugee Transit Centre (currently under construction).

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UNCLASSIFIED**Key Brief Number: ABF-08**

**Home Affairs Portfolio
Australian Border Force
Budget Estimates – April 2019**

KEY BRIEF**Topic: Operation Sovereign Borders****Responsible Deputy: DCO Mandy Newton****Key Points:**

s22(1)(a)(ii)

- People smugglers follow events and reporting from Australia very closely. They take every opportunity to misinform PIs and promote a perception of relaxed, changed or weakened Australian Government policies.

s22(1)(a)(ii)

¹ As at 28 February 2019

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SB19-000567

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Key Brief Number: ABF-08

s22(1)(a)(ii)



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Key Brief Number: ABF-08

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