



# Summary of Independent Health Advice Panel 30 September 2019 Quarterly Report

## Summary Report

### Overview

The Independent Health Advice Panel (IHAP; the Panel) was established on 2 March 2019 under section 199A of the *Migration Act 1958* (the Act) as amended by the *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019*.

As at 30 September 2019, the Panel was comprised of the following seven members:

Member	Occupying position	Date Appointed
<b>Dr Parbodh Gogna</b> (Chair 2 March 2019 – 28 July 2019)	Chief Medical Officer of the Department of Home Affairs and Surgeon-General of the Australian Border Force	2 March 2019 (through operation of the law)

Member	Nominating Professional Body	Date Appointed
<b>Dr Antonio Di Dio</b> (Chair 29 July 2019 – current)	Australian Medical Association (listed in section 199B(1) of the Act)	1 April 2019, by written instrument (commenced on 2 April 2019)
<b>Associate Professor Susan Evelyn Moloney</b>  (expertise in paediatric health as required by section 199B(1)(c)(iv) of the Act)	Royal Australasian College of Physicians (listed in section 199B(1)(c)(iii) of the Act)	1 April 2019, by written instrument (commenced on 11 April 2019)

Member	Nominating Professional Body	Date Appointed
<b>Associate Professor Neeraj Singh Gill</b>	Royal Australian and New Zealand College of Psychiatrists (listed in section 199B(1)(c)(ii) of the Act)	14 June 2019, by written instrument (commenced on 15 June 2019)
<b>Associate Professor Michael Douglas</b>	Australian College of Rural and Remote Medicine (listed in regulation 1.17(b) of the <i>Migration Regulations 1994</i> for the purposes of s 199B(3)(b)(v) of the Act)	4 July 2019, by written instrument, (commenced on 5 July 2019)
<b>Mr Guy Coffey</b>	Australian Psychological Society (listed in section 199B(3)(b)(iv) of the Act)	4 July 2019, by written instrument, (commenced on 5 July 2019)

The IHAP has two functions:

1. A general objective to monitor, assess and report on the physical and mental health of transitory persons who are in regional processing countries and the standard of health services provided to them (section 199A(2)) of the Act – the **monitoring, assessment and reporting function**; and
2. A specific function under section 198F of the Act to review a decision by the Minister to refuse to approve a relevant transitory person's transfer to Australia on the grounds set out in section 198E(4)(a) of the Act. That is, a refusal based on the Minister's reasonable belief that it is not necessary to remove the person from a regional processing country for appropriate medical or psychiatric assessment of treatment – the **review function**. 57 cases were reviewed by the IHAP during the period 1 July 2019 to 30 September 2019.

### Reporting requirements

As per subsection 199E(1) of the Act, the Panel must, as soon as practicable after 31 March, 30 June, 30 September and 31 December in each year prepare and give to the Minister a report on its operations during the three month period that ended on that day.

Under subsection 199E(2) of the Act, the Minister must cause a summary of each report to be laid before each House of Parliament within three sitting days of that House after the report is given to the Minister.

On 31 October 2019, the IHAP provided its Quarterly Report for the period of 1 July 2019 to 30 September 2019, i.e. the third quarter of 2019. This Report includes:

- a report on IHAP's operations during 1 July 2019 to 30 September 2019; and
- a statement on the timeliness of Departmental provision of information and assistance to the IHAP during this time period.

## **IHAP operations for the quarter ending 30 September 2019**

### **IHAP reviews of Ministerial medical transfer refusals during the reporting period**

During the period 1 July 2019 to 30 September 2019, the IHAP conducted a further clinical assessment of 57 cases. Following each of those 57 assessments, the IHAP informed the Minister of its recommendation within the legislated 72 hour timeframe (this does not include one case that was referred to, but not assessed by, the Panel – refer below).

The Panel recommended:

- transfer to Australia for medical/psychiatric treatment/assessment in 12 cases; and
- the Minister's decision to refuse the transfer to Australia for medical or psychiatric treatment or assessment be confirmed in 45 cases.

In each case, the Panel members discussed the case and circumstances and reached a majority decision.

Of particular note during this quarter:

- the Panel was presented with only one case from Nauru which the Panel recommended the transfer be approved; and

During this quarter there were three cases where:

- the Minister made a decision to refuse to approve the transfer of a transitory person under section 198E(4)(a) based on his reasonable belief that it was not necessary to remove the person from the regional processing country for appropriate medical or psychiatric assessment or treatment;
- The IHAP was notified of the Minister's refusal decision under section 198F(1);
- the IHAP conducted a clinical assessment of the person under section 198F(2), informed the Minister of their recommendation that the decision to refuse the person's transfer be confirmed;
- the Minister confirmed a decision to refuse to approve the transfer of a transitory person under s198F(4)(a);
- there was a further notification regarding the same transitory person under section 198E(1);
- the Minister made another decision to refuse to approve the transfer of the transitory person under section 198E(4)(a) based on his reasonable belief that it was not necessary to remove the person from the regional processing country for appropriate medical or psychiatric assessment or treatment; and
- the IHAP was notified of the Minister's refusal decision under section 198F(1).

In this way, the Panel assessed three of the 57 cases twice.

Additionally, during this period, the IHAP was not able to conduct a clinical assessment of one case within the requisite time period in section 198F(2) of the Act. As a result, the IHAP was, at the end of that period, taken to have recommended that the person's transfer be approved and to have informed the Minister accordingly (as per section 198F(3)).

### **Face-to-face meeting of the IHAP**

On 9 September 2019, the Panel held its second face-to-face meeting in Canberra, this meeting was to discuss the 30 September 2019 quarterly report.

#### **Meeting attendance**

The meeting was attended by all seven IHAP members.

**Briefing provided to the Panel by the Department** The Panel was also provided with a verbal briefing from the Department including an update regarding health services in Nauru and PNG and the ongoing relationship with both countries.

During the meeting it was noted that the majority of transitory persons in PNG have been transferred to Port Moresby from Manus Island and that some non-refugees had been detained by the PNG Immigration and Citizenship Authority in the Bomana Immigration Centre.

The Panel also took the opportunity to raise a number of concerns throughout the course of the meeting.

These included:

- Lack of in-person interpreters available for transferees, especially those with mental health issues. There was agreement that interpretation via telephone was not an acceptable option for these people and could be a genuine impediment to providing sound clinical treatment and care. This will be explored during the upcoming visit to Papua New Guinea.
- Delays between treating doctors' referrals and referral to the Minister.
- Lack of movement from Nauru when the Panel has recommended transfer to Australia. The Panel understands the process involved; however, they are frustrated at the lack of progress on individual cases.
- The Panel would like to see regular preventative General Practitioner reviews for all transitory persons.
- The Panel asked what support was available for transitory persons with negative transfer outcomes. The Secretariat informed them of the departmental process involving service providers and legal representatives, to ensure that support was in place prior to these communications.

## **Departmental assistance to the IHAP**

Under section 199D(3) of the Act, the Secretary of the Department must provide appropriate assistance to the Panel for the purpose of ensuring the Panel performs its functions and exercises its powers. The IHAP Secretariat team in the Department's Health Services Division ensures the Panel has appropriate administrative support and assistance to perform its functions as required by section 199D(4)(b) of the Act.

The IHAP Secretariat provided the Panel with access to records, documents and information relating to the health of transitory persons in regional processing countries via a secure community in the GovTEAMS platform, which is managed by the Department of Finance. GovTEAMS allows the IHAP Secretariat to support the operations of the Panel by scheduling meetings and facilitating the centralised provision of medical records and other documentation to Panel members to enable them to perform their functions. The secure platform also allows for the creation and editing of clinical assessment forms for transfer cases with access and visibility to all Panel members in real time. The IHAP Secretariat established access to the GovTEAMS platform for new Panel members appointed during this quarter and provided assistance to all Panel members to allow them to access required clinical information prior to case meetings and to meet reporting requirements.

The Secretariat assists with arranging visits to Canberra for quarterly reporting meetings as well all necessary support for Panel members' travel to regional processing countries.

During this reporting period, the Secretariat worked to make arrangements to facilitate travel to PNG for two Panel members.

On 21 August 2019, this proposed travel was agreed to by Deputy Secretary Policy, Department of Home Affairs. The Secretariat made arrangements for the travel by Associate Professor Susan Moloney and Associate Professor Neeraj Gill on Wednesday 9 October 2019.

The Panel aims to visit Nauru as soon as possible.

## Provision of information to the IHAP during the reporting period

As per section 199E(7) of the Act, this report must include a statement on the timeliness of the provision of information and assistance provided to the Panel under section 199D of the Act.

The IHAP Secretariat developed a notice template for the IHAP to submit formal requests for information to the head of the Department, entitled, *Notice to produce documents, records or information under section 199D of the Migration Act (1958)*. The IHAP may give this notice to the Department through the IHAP Secretariat, or through the secure GovTEAMS platform.

On 13 September 2019, a section 199D notice was given to the Department. This notice requested the production of a number of documents by 11 October 2019. These documents were provided to the Secretariat and forwarded to the Panel by this date.

After reviewing the information provided under s199D, IHAP noted there had been some capacity issues with psychiatric admissions at Pacific International Hospital Port Moresby at the beginning of the quarter. This was no longer an issue at the end of the quarter.

## Medical transfers to Australia by the Department under Section 198B and 198C of the Migration Act 1958

**Section 198B** of the Act allows for an officer of the Department of Home Affairs (including the Australian Border Force) to bring a transitory person to Australia from a country or place outside Australia for a temporary purpose. The temporary purpose may include medical or psychiatric assessment or treatment, or for the purpose of accompanying a person brought to Australia under section 198B(1) or section 198C of the Act.

Prior to the commencement of the amendments made by the *Home Affairs Legislation Amendment (Miscellaneous Measures Act 2019)*, all medical transfers to Australia for transitory persons in regional processing countries occurred with the exercise of powers by an officer under section 198B of the Act.

This section continues to be utilised by officers to transfer transitory persons in regional processing countries to Australia for appropriate medical assessment and treatment. Decisions to bring a person to Australia under section 198B continue to be made with input from the Department's contracted health service providers in regional processing countries, opinions of Medical Officers of the Commonwealth and senior executives.

**Section 198C** of the Act provides for the transfer, of relevant transitory persons for medical or psychiatric treatment or assessment in Australia, as inserted into the Act by the *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019*. It also provides for the transfer of legacy minors, family members of relevant transitory persons, and other accompanying transitory persons.

Transitory persons may be approved for transfer to Australia under section 198D of the Act (legacy minors), section 198E of the Act (relevant transitory persons), section 198F of the Act (relevant transitory persons approved for transfer after IHAP assessment) and section 198G of the Act ('split family' provision). Persons approved for transfer under those provisions are brought to Australia under the power in section 198C of the Act.

Note: Any transitory person who is brought to Australia for a temporary purpose must be detained whilst in Australia. That detention must continue until the time of the person's removal from Australia or until the person is granted a visa.

The table below provides the number of persons transferred to Australia under these sections during this reporting period.

Processing Country	Section of the Act	Number transferred to Australia
<b>PNG</b>	198B	0
<b>PNG</b>	198C	96
<b>Nauru</b>	198B	16
<b>Nauru</b>	198C	8

*Note: Figures include medical transfers and accompanying family.*

The Department recently advised the Minister that incorrect figures were provided to Parliament via the two previous IHAP Quarterly Reports (for the periods ending 31 March 2019 and 30 June 2019). These figures, and a letter from First Assistant Secretary Stephen Hayward to Minister Dutton will be tabled to ensure the record is corrected and accurately reflects the number of transfers undertaken by the Department during each reporting period.