

ACTION ALERT AA 19-3: MEDICAL EVACUATION OF REFUGEES

As Quakers we seek a world without war. We seek a sustainable and just community. We have a vision of an Australia that upholds human rights and builds peace internationally, with particular focus on our region. In our approach to government we will promote the importance of dialogue, of listening and of seeking that of God in every person. We aim to work for justice and to take away the occasion for war.

This Alert summarises the legislation passed by the Parliament in February 2019. This aims to require the temporary transfer to Australia of those on Manus or Nauru who are assessed to need medical treatment. Because the legislation was opposed by the Government, it has proved controversial and become part of the ongoing political debate about border protection and refugee policy.

The Legislation

The proposed legislation was originally introduced into Parliament by Dr Kerryn Phelps MP (Independent) under the title Migration Amendment (Urgent Medical Treatment) Bill. She emphasized that the Bill was compatible with Australia's obligations under international refugee and human rights law. After considerable debate and amendment, it was eventually passed by both House and Senate on 13 February 2019.

It seeks to amend the 1958 Migration Act to require the temporary transfer to Australia of transitory persons on Manus Island or Nauru, and their families, if they are assessed by two or more treating doctors as requiring medical treatment. It also requires the temporary transfer of all children and their families from offshore detention to Australia for the purpose of medical or psychiatric assessment.

The Guardian's Katherine Murphy (13 February) offered a short list of the main features of the legislation as follows:

1. In the event there is medical advice from two or more treating doctors that a person needs to be evacuated, the Home Affairs Minister has 72 hours to act on any of three grounds for refusal – if the Minister disagrees with the assessment, if the transfer would be prejudicial to security, and if the person has a substantial criminal record. If health grounds are used, the matter is referred to an independent health advice panel which decides within 72 hours whether the transfer should go ahead.
2. The independent panel will include the commonwealth chief medical officer, the home affairs chief medical officer, and six others nominated by medical professional bodies. No payment will be made.

3. The legislation applies only to those already on Manus or Nauru, and not to new boat arrivals. Detention will continue while the person is in Australia for treatment.
4. The legislation does not destroy the border protection regime. Boat turn backs remain in place. Its effect on people smuggling is a matter of speculation rather than certainty.

Nicholas Procter (Uni of SA) and Mary Anne Kenny (Monash) wrote in *The Conversation* (13 February) spelled out the criteria of health need:

- Medical or psychiatric assessment or treatment.
- Appropriate treatment not available on Nauru or Manus.
- Transfer for appropriate medical or psychiatric assessment or treatment.
- Temporary transfer only.

They pointed out that, had the legislation been in place earlier, the death of refugee Hamid Khazaei from a leg infection, and the attempted suicide of a woman refugee, could have been prevented by earlier treatment from an expert overview of clinical decisions.

Subsequent Action

Since the legislation was passed, the government has sought to 'undermine' its impact by (a) stating it will reopen the Christmas Island detention centre for Manus and Nauru detainees sent to Australia under the legislation, as well as any new boat arrivals, and (b) claimed there are doubts that the legislation is compatible with the constitution and other legislation on border protection.

Refugee and human rights groups have welcomed the legislation as offering some hope to those who have suffered severe mental and physical distress on Manus and Nauru. They have pointed out that it does not deal with the ongoing challenge of keeping people in indefinite detention off-shore, and the absence of a proper and orderly program for determining refugee status and resettlement.

On 1 March, the Refugee Council of Australia (RCOA) issued a media release which announced that key national organisations have banded together in a Medical Evacuation Response Group to oversee and ensure the timely and orderly assessment of applications for medical transfers under the new legislation. The process will include a triage arrangement with medical professionals and supported by caseworkers. The agencies that are part of this are – RCOA, Asylum Seeker resource Centre, Human Rights Law Centre, Refugee Legal, National Justice Project, Asylum Seekers Centre, Refugee Advice and Casework service, and Amnesty International Australia. Further information can be found at www.merg.org.au

According to Dr Kerryn Phelps MP (*Sydney Morning Herald*, 28 February) about 70 refugees are expected to need evacuation for medical reasons.

QPLC will endeavor to monitor developments in implementation of the legislation. Friends are encouraged to make clear to MPs and Senators their support for the legislation, and to urge further moves towards closing the off-shore processing and achieving regional agreements with UNHCR and neighbouring countries about a fairer approach to people in distress from war, oppression and displacement.

Canberra,
March 2019