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Prime Minister Scott Morrison has brushed off a historic defeat to hands of Bill Shorten with the government losing a substantive vote on the floor of the House for the first time since 1941.

Labor's desperate bid to ram through legislation to make it easier to bring boat people to Australia on medical grounds has a glaring legal loophole that means the government has no power to return them to Manus Island or Nauru.

The Australian Government Solicitor provided urgent legal advice to Attorney-General Christian Porter yesterday, revealing Labor's poorly drafted amendments to the Migration Act fail to link the new powers that make it easier to transfer boat people here to the power to send them back to Manus Island or Nauru.



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It comes as The Daily Telegraph can reveal two Doctors Without Borders activist doctors have been caught by Papua New Guinea authorities using tourist visas to gain access to and conduct rogue medical assessments of boat people in a bid to bring them to Australia.

The doctors were seen going room to room – canvassing at least 10 rooms – to conduct their own independent medical assessments of asylum seekers and people already declared non-refugees.

The PNG citizenship authority identified the doctors were breaching visa conditions and has asked them to leave on the next flight available.

It is understood the government views the activity as a sign activist doctors will go to all lengths to get boat people the sign off required to acquire medical transfers to Australia.

Mr Porter has now instructed the Australian Government Solicitor to look for any legal loophole that might exist to help authorities to circumvent Labor’s legislative drafting and enable them to send boat people back to Manus Island after medical treatment.

“We’re now in possession of advice that raises the very serious prospect that the Labor drafting contains no way to remove medical transferees once they are brought here by two medical doctors,” Mr Porter said last night.

“This has the undeniable effect of ending offshore processing.”

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The MSF incident has been reported to the Australian government in official advice.

However, yesterday, an MSF spokeswoman said MSF doctors did not visit Manus Island, visit any patients or conduct any assessments.

“MSF has been active in Papua New Guinea for many years with a well-established program providing medical care to tuberculosis patients,” the spokeswoman said.

“Since 2016, MSF has been speaking with PNG’s Ministry of Immigration to determine whether we can provide mental health care to refugees on Manus Island.

“MSF continues to monitor the situation and remains in discussion with the PNG authorities to assess the healthcare needs on Manus.”

The Daily Telegraph has already reported that Labor’s amendments allow people to be successfully transferred even if they are charged or accused of a serious offence or are otherwise of bad character.



Labor's amendments allow people to be successfully transferred even if they are charged or accused of a serious offence. Picture: Lyndon Mechielsen

“But once they arrive we are now concerned that unlike the medical transfers that we have been conducting efficiently for many months the Labor medical transfers would have no accompanying power to ever return the people to Manus or Nauru,” Mr Porter said.

“We’ll search the legislation to see if there’s some kind of alternative mechanism. We will look for solutions to this.

“The problem has been created by Labor in their haste to draft on the floor of the parliament.”

Specifically, the Labor amendments do not link to section 198AH of the Migration Act, which provides for the removal of people.

The legislation is viewed by experts as “complicated” and “intersecting”.

The Australian Government Solicitor has only just discovered the problem despite the amendments being made last year as it continues the process of combing through the legislation and testing various legal mechanisms.

The government could fix the problem with a legislative amendment or new law which would likely be retrospective.

