SENATE STANDING COMMITTEES ON LEGAL AND CONSTITUTIONAL AFFAIRS

# SUBMISSION TO THE INQUIRY ON THE MIGRATION AMENDMENT (REPAIRING MEDICAL TRANSFERS) BILL 2019

The Refugee Council of Australia (RCOA) is the national peak body for refugees, people seeking asylum and the organisations and individuals who work with them, representing over 190 organisations. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, people seeking asylum and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds and this submission is informed by their views.

RCOA welcomes the opportunity to provide feedback on the ***Migration Amendment (Repairing Medical Transfers) Bill 2019*** and its impact on health and provision of medical care to refugees and people seeking asylum who are subject to offshore processing regime. We are extremely concerned that this Bill seeks to repeal a law that has allowed sick men and women access to medical treatment that is otherwise unavailable to them on Nauru or in Papua New Guinea (PNG). It is inherently apparent that doctors need to make decisions about the medical treatment of people, not bureaucrats without medical training. It is deeply troubling that this Bill seeks to reverse this without any reasonable justifications, apart from politicising the wellbeing and lives of a small group of people whose lives have been systemically abused for so long.

## 1 Medical care in Nauru and Papua New Guinea

1.1 In late 2018, RCOA published two reports focusing on the situation of people on Nauru (jointly with the Asylum Seeker Resource Centre) and in PNG (jointly with Amnesty International). The reports looked at a variety of issues created by Australia's offshore processing policy, including the lack of a durable solution for many men and women who are now in their seventh year of perpetual limbo. However, the most urgent issue of concern identified on both islands was the declining physical and mental health of the majority of people and the inadequate medical care available to them.

1.2 Our reports were neither groundbreaking nor unique. They repeated what UNHCR, the Australian Parliamentary committees, doctors, lawyers and many of those who worked on the islands have said previously. More than anything the reports showed a systemic lack of regard for those calls and concerns.

### Nauru

1.3 In September 2018, we documented increasing incidents of self-harm and spiralling mental health problems amongst the Nauru refugee and asylum seeking population, including children. At that time, children had begun developing a rare psychiatric condition called 'Traumatic Withdrawal Syndrome'. People were also suffering from a range of physical health issues. Some were pre-existing, some psychosomatic, and others such as infectious diseases

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resulted from the environment and poor nutrition. Many physical health issues had become chronic due to inadequate medical care.[1]

1.4 More than anything, our report highlighted the inadequate medical care on Nauru despite significant spending by Australia. A range of health issues, many of them related to women's health, could not even be treated or managed in the Island's health facilities. For example, women who have experienced female genital mutilation or require gynaecological surgeries cannot be treated on the island. Women who needed a pregnancy terminated often had to wait until they were 20 weeks into their pregnancies.[2]

1.5 Dr Nick Martin is a former senior medical officer working with International Health and Medical Services (IHMS) on Nauru. From 2016 to 2017, he was Australia's most senior doctor on Nauru. His scathing assessment of the health facilities on Nauru reveals that, despite large spending on buildings and exteriors, the facilities remained inadequate, under-resourced and unable to address even straightforward emergency presentation, let alone complex issues that the refugee population deal with:

> *To compare the RoN [Republic of Nauru hospital] facility to anything remotely resembling an Australian hospital, even in a remote outback town, was unrealistic. There had been a significant cash injection and a building program, widely lauded by the Australian government. I think more than $26 million had been spent, and you could indeed see the shiny new porta-cabins containing operating theatres, a shiny new pharmacy and office spaces…*
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> *It was, of course, only half the story. The emergency department and wards remained in the older buildings, with inadequate equipment, poorly trained staff and creaking infrastructure. The sparkling new pharmacy routinely ran out of basic drugs, not all doctors were medically qualified. There were no pathologists on the island and no way of conducting post-mortems. Any deaths were not investigated, and the deaths I heard about were quickly hushed up, even if serious concerns were raised by our staff. We again ran the risk of being deported if we upset the staff by pointing out any of the glaring mistakes being made…*
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> *…The number of things [done at the hospital to a Nauruan] that were done incorrectly, ignored, just plain screwed up, due to incompetence and ignorance, wilful or otherwise, was astounding. It painted a picture of a hospital utterly ill-equipped to deal with what should have been a fairly straightforward emergency presentation… This was the hospital that the Australian government was relying on to give emergency and secondary care to the refugees and indeed asylum seekers it had placed on Nauru. The hospital was a completely unsuitable place to be treated, for locals and refugees alike. In no way could I recommend it as a suitable, safe or competent facility, and to say otherwise would be a blatant lie.* [3]

## Papua New Guinea

1.6 The joint report of RCOA and Amnesty International, published in November 2018, provided numerous examples of significant mental and physical health issues that remained untreated for long periods of time. The testimonies of the men whose physical and mental health were

[1] Refugee Council of Australia and Asylum Seeker Resource Centre (2018), *Australia's Man-made Crisis on Nauru: Six Years On*, https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Nauru_Manmade_Crisis.pdf , 4-6.
[2] Refugee Council of Australia and Asylum Seeker Resource Centre (2018), *Australia's Man-made Crisis on Nauru: Six Years On*, https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Nauru_Manmade_Crisis.pdf , 10-11.
[3] Nick Martin, 'The Nauru Diaries' *Meanjin,* <https://meanjin.com.au/essays/the-nauru-diaries/>.

in rapid decline, presented in our report, echoed what the UNHCR described a month earlier as “a collapsing health situation among refugees and asylum-seekers”.[4]

1.7 The situation in PNG in many aspects has been worse than on Nauru. Since late 2017, the Australian Government has cut back the health care offered to people there, and shifted the responsibility of healthcare provision to local contractors and PNG’s strained public health system. There has been no torture and trauma counselling since October 2017, and the number of mental health staff has halved.

1.8 At the end of October 2017, the Regional Processing Centre (RPC) in Lombrum closed. Refugees and people seeking asylum were transferred to three centres closer to the township of Lorengau. Before the closure of the RPC, it was IHMS that provided the medical care, similar to the arrangement on Nauru. IHMS operated a large clinic at the RPC, with an on-site pharmacy. Since November 2017, refugees and people seeking asylum on Manus Island have had access to a much smaller clinic located in one of the transit centres and to the local hospital. At the end of April 2018, IHMS handed over the provision of health care services to Pacific International Hospital (PIH), a local PNG contractor, under arrangements with the Australian Government.[5]

1.9 In November 2017, when it inspected the health clinic at East Lorengau Transit Centre, UNHCR found that it was much smaller, less well-equipped and had fewer staff than the clinic that was previously run at the Regional Processing Centre. The new clinic did not include services such as dental care, optometry, physiotherapy or specialist medical clinics. There was no ambulance or after-hours patient transport. The clinic also only operates during business hours and on Saturday mornings.[6]

1.10 When there is no treatment available for them on Manus Island, people can be transferred to Port Moresby for treatment. In November 2018, we reported that people wait an average of four to six months for the transfers to happen.[7] Even when people are transferred to Port Moresby, few receive proper treatment and many are told they need medical treatment that is unavailable in PNG.

1.11 As mentioned, the men on Manus Island only have access to a small clinic in the East Lorengau Transit Centre. Many people are referred from that clinic to Lorengau General hospital. The hospital provides treatment after hours or over the weekend, emergency care and a ‘surge service’ in the event of any major health crisis. It did not receive any funding from Australia for expansion, better equipment or increased staff. UNHCR visited the hospital in November 2017 and observed:

> *The hospital was 33% over-capacity, while 50% of medical specialist positions (surgeon, anaesthetist and obstetrician) and 43% of nursing positions were unfilled. The hospital lacked crucial medical infrastructure (ventilators, medical incinerator) and was in need of basic products, such as intravenous fluids.*[8]

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[4] United Nations High Commissioner for Refugees, *UNHCR Urges Australia to Evacuate Off-Shore Facilities as Health Situation Deteriorates* (Briefing Note, 12 October 2018), <https://www.unhcr.org/news/briefing/2018/10/5bc059d24/unhcr-urges-australia-evacuate-off-shore-facilities-health-situation-deteriorates.html>.

[5] For more on provision of healthcare in PNG, including timeline of healthcare provided to people in PNG from August 2013 to now, see Refugee Council of Australia and Amnesty International (2018), *Until When: The Forgotten Men on Manus Island*, https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Until_When_AIA_RCOA_FINAL.pdf, 22-34 and table 3.

[6] United Nations High Commissioner for Refugees, *Medical Expert Mission Papua New Guinea* (10 November 2017), <https://reliefweb.int/sites/reliefweb.int/files/resources/5a3b0f317.pdf>.

[7] Refugee Council of Australia and Amnesty International (2018), *Until When: The Forgotten Men on Manus Island*, https://www.refugeecouncil.org.au/wp-content/uploads/2018/12/Until_When_AIA_RCOA_FINAL.pdf, 31.

[8] United Nations High Commissioner for Refugees, *Medical Expert Mission Papua New Guinea* (10 November 2017), <https://reliefweb.int/sites/reliefweb.int/files/resources/5a3b0f317.pdf>, 2-3.

1.12 In recent months, especially after an increase in the number of self harm incidents, more and more people were referred to Lorengau General Hospital. It often ran out of space, with all four emergency beds being occupied by refugees[9], and had to turn people away. There were instances where people had to sleep outside of the hospital due to a lack of capacity.

1.13 We know from many reports and experts that many refugees and people seeking asylum in offshore facilities have developed severe mental health issues as a result of their indefinite detention and limbo. The PNG mental health system is particularly ill-equipped to deal with this high level of need, as it lacks both resources and expertise.

1.14 A 2015 report on psychiatric care for PNG stated that there were only seven clinical psychiatrists in the country, with five in Port Moresby.[10] Port Moresby General Hospital has a psychiatric ward, while PIH in Port Moresby, which provides services to refugees, does not.

1.15 In 2016, UNHCR submitted to a senate inquiry that:

> *The type, extent and severity of mental disorders presented by the asylum-seeker and refugee population sharply contrasts with the range of disorders typically seen within the Papua New Guinea context… Papua New Guinea mental health services are structured to assess and treat low prevalence illnesses such as schizophrenia, bipolar disorder and substance related disorders. There is no current skills capacity within Papua New Guinea public mental health services to address severe-post traumatic stress disorder and current resourcing will not be able to cope with the surge of cases with major depression.*[11]

1.16 Even though since 2016 the Australian Government granted a major contact to PIH and there has undoubtedly been significant cash injection, the lack of expertise in provision of appropriate mental health care remains a significant issue. This is a problem that is compounded by lack of mental health outreach and monitoring, as well as ongoing absence of torture and trauma counselling for a highly traumatised population.

1.17 Since the publication of our report, we have continued to hear that mental health issues and self harm are treated as behavioural issues. An example of this is the treatment of a man who tried to end his life by setting fire to himself and his room in June 2019. The PNG police stated that they would charge him with arson and attempted suicide.[12] Under the PNG criminal code, attempting suicide remains a crime which carries a penalty of up to one year in prison.[13]

1.18 The response of the health system has not been vastly different. People who are experiencing severe mental health issues are often considered to be "acting out". On numerous occasions, people who self-harmed on Manus Island were quickly sent back to their rooms from hospital without proper treatment, consultation and safety plans. It is often up to their peers to check in

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[9] Natalie Whiting, 'Manus Governor demands action from Australia as Behrouz Boochani says self-harm has spiked' *The ABC News* (13 June 2019) <https://www.abc.net.au/news/2019-06-13/manus--self-harm-crisis-escalates-as-governor-calls-for-help/11199258>.

[10] Leah Beth Miller (November 2018), *Needs Assessment: Protection and Service Gaps for Refugees and Asylum Seekers in Manus Island and Port Moresby, Papua New Guinea*, <http://www.osstt.org.au/servlet/Web?s=5551418&action=downloadResource&resourceID=1887905166>, 17.

[11] United Nations High Commissioner for Refugees, *Inquiry on the Serious Allegations of Abuse, Neglect and Self-Harm on Nauru and Manus Island* (Submission, November 2016), <https://www.aph.gov.au/DocumentStore.ashx?id=125eb4f5-9a67-4313-8b19-c6664a24398d&subId=460245>, 18, 33.

[12] Helen Davidson and Michael McGowan, 'Manus Island asylum seeker who set himself on fire to be charged with attempted suicide' *The Guardian* (25 June 2019) <https://www.theguardian.com/australia-news/2019/jun/25/manus-island-asylum-seeker-who-set-himself-on-fire-to-be-charged-with-attempted-suicide>.

[13] Clause 311 of PNG *Criminal Code Act* 1974, available to download here: <http://www.paclii.org/pg/legis/consol_act/cca1974115.rtf>.

and ensure they are safe and to alert others to issues. Severe mental health issues are still only treated with a high dosage of sedative medication.

## 2 Current situation of people in PNG and Nauru

2.1 Over the past months there has been a rapid decline in the mental health of people on Nauru and in PNG. In the aftermath of the 2019 election, there was a spike in the number of self-harm and suicide attempts, especially by men in PNG. Many believed the return of the Coalition Government would result in another three years of limbo, especially by those to whom resettlement in the United States was not available.

2.2 In the first four days after the election, nine incidents of suicide attempts and self-harm were reported.[14] Less than a month later, that number rose to 70 incidents by 50 people on Manus Island.[15] Those on the island reported that there was "an increased sense of desperation and hopelessness among the island's refugee population".[16] The sense of hopelessness was prevalent in the case of a middle-aged man who tried to overdose on pills because he lost hope of seeing his family and "couldn't tolerate another three years" on the island.[17]

2.3 As mentioned, the PNG health system is unable to deal with the critical situation like what we have seen on Manus Island recently. It does not have the resources nor the expertise. To manage the increase in incidents of self harm and suicide attempts in May and June 2019, PNG authorities deployed a notorious paramilitary police unit to patrol the camps. Manus provincial police commander, David Yapu, told Guardian Australia:

> *Just to reduce [the self-harm and suicide attempts]. Because … once they see police then things go back to normal. Although we have the contracted security Paladin, they will continue unless they see policeman wearing a uniform at the camp. That will change that.*[18]

2.4 It is alarming to see the response to declining mental health and incidents of self harm was further policing, especially as many of these men fled persecution by police and paramilitary agencies in their home countries.

2.5 As mentioned in the previous section, on many occasions during the recent months, the PIH clinic referred the men in serious conditions to the local hospital. Not only is the local hospital unable to respond to such high level of distress and need, these referrals created significant backlash and resentment from the local community who could not access the hospital.[19]

2.6 RCOA is deeply troubled by the misleading commentary from politicians and the Minister for Home Affairs, linking the increase in the number of self harm and suicide attempts to the passage of the Medevac law and accusing people of self harming in order to manipulate the

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[14] Helen Davidson, 'Medevac law repeal a priority, Coalition says, as self-harm rises among refugees' *The Guardian* (22 May 2019) <https://www.theguardian.com/australia-news/2019/may/22/medevac-law-repeal-a-priority-coalition-says-as-self-harm-rises-among-refugees>.

[15] 'Refugee sets fire to himself on Manus Island' *SBS News* (11 June 2019) < https://www.sbs.com.au/news/refugee-sets-fire-to-himself-on-manus-island>.

[16] Michael McGowan, 'Notorious PNG police unit deployed at Manus refugee camp as tensions rise' *The Guardian* (3 June 2019) <https://www.theguardian.com/australia-news/2019/jun/04/notorious-png-police-unit-deployed-at-manus-refugee-camp-as-tensions-rise>.

[17] Behrouz Boochani, 'How many more people must die on Manus before Australia ends indefinite detention?' *The Guardian* (3 June 2019) <https://www.theguardian.com/commentisfree/2019/jun/03/how-many-more-people-must-die-on-manus-before-australia-ends-indefinite-detention>.

[18] Michael McGowan, 'Notorious PNG police unit deployed at Manus refugee camp as tensions rise' *The Guardian* (3 June 2019) <https://www.theguardian.com/australia-news/2019/jun/04/notorious-png-police-unit-deployed-at-manus-refugee-camp-as-tensions-rise>.

[19] Michael McGowan, 'Notorious PNG police unit deployed at Manus refugee camp as tensions rise' *The Guardian* (3 June 2019) <https://www.theguardian.com/australia-news/2019/jun/04/notorious-png-police-unit-deployed-at-manus-refugee-camp-as-tensions-rise>.

system.[20] This commentary shows an absolute disregard for all of the evidence presented over the years about the decline in mental health of people in offshore facilities and the impact of perpetual limbo on people. They are baseless claims that blatantly contradict all of the authoritative evidence presented in numerous reports, testimony and opinions of leading medical professionals.

2.7 In April 2018, UNHCR stated that "over 80 per cent of the people have been diagnosed by clinical psychiatrists and others as suffering from PTSD and trauma and depression, in both PNG and Nauru".[21] It is disingenuous of the Government to, a year and a half after this assessment, use such a decline in mental health and hopelessness as a tool to argue against a law that has provided access to treatment for a small number of people. It is obvious to many that the underlying reason for this level of hopelessness is not to access an avenue to be temporarily transferred for medical treatment, but years of limbo with the prospect of many more to come.

## 3 Implementation of Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019

3.1 When the Medevac legislation passed Parliament and while it was waiting royal assent, RCOA joined a number of other organisations to form the Medical Evacuation Response Group (MERG). The goal of the group partners was to work together to ensure the safe, orderly and effective implementation of applications under the Medevac legislation.

3.2 The organisations who formed MERG included legal centres, casework and human rights organisations. MERG partnered with a large number of doctors and medical specialists to ensure every step of the process is completed with medical expertise. Almost everyone in this group has been working pro bono, dedicating hundreds of hours collectively per week to triaging the applications that MERG receives, responding to the needs of the people on the Islands and submitting applications under the legislation.

3.3 While RCOA worked at an arms-length from the operational side of MERG, we have been heavily involved in ensuring there is optimal coordination between the group partners. We have also ensured that the right information is conveyed to people on Nauru and Manus Island and those who support them. It is obvious to us, as an organisation that has been present from the day of the formation of the Group, that all applications are carefully and thoroughly assessed by leading medical professionals. No "flood gate" was opened and 300 people did not come to Australia at once under this legislation when the law was passed, as was claimed by some politicians. In fact, six months after the legislation received royal assent and became law, the approvals and transfers have been nowhere near that number.

3.4 MERG now has documented accounts of years of neglect and dangerously substandard medical care that resulted in significant physical and mental health problems.

3.5 The Medevac legislation has helped people with serious medical issues receive access to life saving treatments in Australia. Since the law passed, people with serious heart problems,

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[20] Dutton, P. (2019). *Minister's secondary reading speech,* Address to the Australian Parliament, 4 July. <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2Fce759aa1-47bf-467d-a58b-3bf640990032%2F0101%22>. In this speech the Minister for Home Affairs said "the Department of Home Affairs has advised me that since the Migration Amendment (Urgent Medical Treatment) Bill was first introduced by the former member for Wentworth in December 2018, there has been a marked increase in self-harm behaviours in regional processing countries. Many of these acts are undertaken for the explicit purpose of manipulating the system and gaining access to our country."

[21] United Nations High Commissioner for Refugees, *Transcript: UNHCR's top Asia official briefs press on Australian offshore processing on Nauru, and UNHCR talks with Bangladesh and Myanmar* (4 April 2018), <https://www.unhcr.org/news/press/2018/4/5ac60a074/transcript-unhcrs-top-asia-official-briefs-press-australian-offshore-processing.html>.

severe mental health issues, uncontrolled diabetes at risk of going blind, people who were at risk of losing functions of their limbs (to name just some of the conditions) have been given access to treatment.

3.6 Before the passage of Medevac legislation, 12 people died on Nauru and Manus Island. Two of the deaths were directly as a result of medical neglect. In addition, the man who self immolated on Nauru in 2016 could have been saved if he had accessed appropriate care.[22] Four out of five deaths that occurred in the past two years were suicide. They were the result of severe mental health issues that may have been managed if appropriate care was available. Medevac legislation has saved lives.

3.7 Lack of appropriate and timely treatment also resulted in medical issues becoming chronic and dangerous. Before the passage of the Medevac legislation, women with lumps in their breasts remained with no access to treatment for months. Delays in providing appropriate mental health treatment resulted in children becoming catatonic.

3.8 The Medevac legislation does not weaken Australia's borders. It simply facilitates access to appropriate medical treatment to people to whom the Australian Government has a duty of care. It allows the medical professionals to make decisions about medical transfers, as it should have always been. It saves lives and prevents disability and life-long medical issues. Under this legislation the Minister has an express right to veto a medical transfer on national security or substantial criminal history, with no exception. Therefore, it is ultimately the Minister who decides who comes to Australia under this legislation.

3.9 Even when someone is transferred to Australia for medical treatment, they are placed in immigration detention facilities. Unless the Minister sees it in the public interest to release them from detention, people remain in immigration detention.

## 4 Other medical transfer pathways

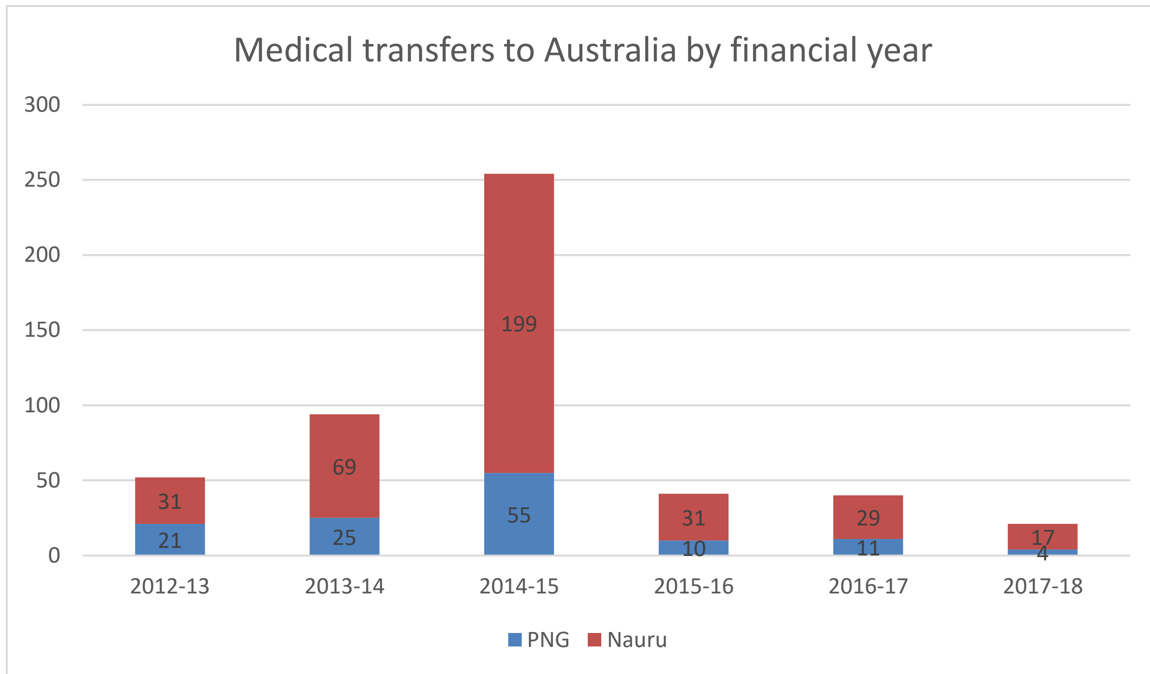
4.1 The Government claims that there was no need for the Medevac legislation as there were existing medical transfer provisions in place. However, medical transfers under those provisions have always been slow, non-transparent and involved overuse of judicial resources.

4.2 Due to significant public pressure, in late 2018 and early 2019, the Government brought the children who were living in Nauru and their families to Australia. The Government also used its own mechanisms to transfer larger numbers of sick refugees to Australia after the Medevac legislation was passed. While the increase in transfers under the existing medical transfer provisions in financial year 2018-19 is welcome, they occurred because of public pressure and the pressure created by the passage of Medevac legislation.

4.3 A look at the number of medical transfers before the financial year 2018-19 (**Figure 1**) provides a clear evidence that before the events of 2018 and 2019, the number of people transferred to Australia for medical treatment, were minimal, despite the significant need.

[22] Melanie Vujkovic, 'His burns were 'very survivable' but Omid Masoumali died slowly over two days' *ABC News* (1 March 2019) <https://www.abc.net.au/news/2019-03-01/inquest-death-iranian-refugee-omid-masoumali-burns/10854742>.

**Figure 1**




*Sources: Senator Kim Carr, Question on Notice AE18/147 26 February 2018; Senator Stirling Griff, Question on Notice SE 18/134 22 October 2018*

4.4 Before the passage of the Medevac legislation, the number of medical transfers from PNG to Australia had always been much lower than those from Nauru. This was despite the significant need in PNG and as mentioned in paragraph 1.7, more gaps in provision of medical care in that country. In fact, the figures available at the time of the draft of our report about the situation of the men in PNG showed that in the course of 18 months, between 1 January 2017 and 30 July 2018, there were only nine transfers from PNG to Australia, in comparison to 40 transfers from Nauru.[23]

4.5 While the number of transfers, especially from Nauru, increased in late 2018 and 2019, many were as a result of a court order. Before the public pressure due to the Kids Off Nauru campaign resulted in the Government voluntarily bringing the remaining children and their families to Australia, lawyers had to fight in courts to be able to transfer sick refugees to Australia.

4.6 From June 2015 to September 2018, the Australian Government spent $986,014 in legal costs to fight against the transfer of sick refugees, many of them children.[24] In the Senate estimates hearing on 18 February 2019, the Department of Home Affairs provided an updated figure, stating that from 1 July 2018 to 31 January 2019, $1.373 million was spent in legal costs.[25]

4.7 RCOA understands that in many cases reviewed by MERG doctors, there was an existing recommendation from treating doctors for transfer which was not acted upon. In relation to

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[23] Senator Nick McKim, Answer to Question on Notice BE18/312 (14 September 2018) <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId3-PortfolioId20-QuestionNumber272>.

[24] Senator Kim Carr, Answer to Question on Notice SE18/101 (22 October 2018) <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId6-EstimatesRoundId4-PortfolioId20-QuestionNumber101>.

[25] Department of Home Affairs, Legal and Constitutional Affairs Committee Estimates 18 February 2019 < https://parlinfo.aph.gov.au/parlInfo/download/committees/estimate/3240c844-7e08-4975-85c1-34afe52a21d0/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2019_02_18_6942.pdf;fileType=application%2Fpdf#search=%22committees/estimate/3240c844-7e08-4975-85c1-34afe52a21d0/0000%22>.

disregarding those medical opinions and the intrusion of bureaucrats into patient care decisions, Dr Nick Martin paints a very dire picture. Dr Martin, who also worked as a surgeon lieutenant commander with the British Royal Navy, said in his interviews:

> *Every clinical decision that you made was being questioned by a non-medic… Your expertise and your autonomy was respected in the Royal Navy but in Border Force you did absolutely feel there was a political influence on the clinical cases.*[26]
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> *I was on nuclear submarines, was involved in the Second Gulf War, the Afghanistan campaign. I think my military background prepared me for dealing with lots of the little or petty rules and regulations, but not in terms of the obstruction, the bureaucracy and, particularly in the children, the level of hopelessness. We might have someone with, let's say obstructive kidney stones, and that would be something semi-urgent and you'd expect them to get off to have a stent put in. You would put it down as,* ***"This has to happen in a month", and then 18 months later they are still [on Nauru].***[27]

4.8 Over the years, the Australian Government did everything it could to minimise the number of people who came to Australia for medical treatment. When people on Nauru needed urgent medical treatment, they were sent to other countries instead of Australia.

4.9 In February 2016, the Australian Government started transferring people from Nauru to Papua New Guinea for medical treatment. In that year, Amnesty International reported on a case of young woman who developed lumps in her breasts, throat and uterus and was also diagnosed with ulcers. She was initially sent to Australia for treatment but subsequently to PNG, which as we have noted in this submission does have not appropriate medical facilities. The woman told Amnesty international that

> *When I was in Australia, my doctor told Immigration that I needed surgery for my breasts, but they still sent me back. My problems deteriorated, and a year later sent me to Papua New Guinea for endoscopy and colonoscopy, but then returned me again. They gave me some pills, but they are not working, and I am in constant pain and cannot eat anything.*[28]

4.10 In another case, a young African woman who had been raped on Nauru while unconscious because of a seizure, and then fell pregnant, was transferred to Port Moresby without her informed consent. This was despite the fact that abortion is illegal in PNG, and against the advice of the contracted medical care provider on Nauru. It was only after a Federal Court ruling that she was transferred to Australia. The Court ruled there was a "heightened risk of very serious physical and/or psychological harm to the applicant" if she were to terminate her pregnancy in PNG, while required expertise and facilities were available in Australia.[29]

4.11 In mid-2017, a change in policy meant that people needing medical transfers out of Nauru, including women needing abortions, had to be approved by the Nauruan Overseas Medical Referral committee. At that time it was reported that the Committee refused the transfer request of three pregnant women who needed to terminate their pregnancies. As terminations are illegal in Nauru, that meant they would be denied the choice of an abortion. Psychiatrists

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[26] Paul Farrell and Gina Rushton, 'Every clinical decision questioned: Doctor accuses Border Force of exerting political influence on Nauru' *ABC News* (31 October 2017), <https://www.abc.net.au/news/2017-10-31/every-clinical-decision-questioned-by-non-medic-on-nauru/9093070>.

[27] Paul Hayes, 'Former Nauru doctor wins international free speech award' *News GP (*18 January 2019), <https://www1.racgp.org.au/newsgp/professional/former-nauru-doctor-wins-international-free-speech>.

[28] Amnesty International and Human Rights Watch, *Australia: Appalling Abuse, Neglect of Refugees on Nauru* (2 August 2016), <https://www.amnesty.org/en/latest/news/2016/08/australia-abuse-neglect-of-refugees-on-nauru/>.

[29] Andrew and Renata Kaldor Centre for International Refugee Law, *Case notes: Plaintiff S99/2016 v Minister for Immigration and Border Protection [2016] FCA 483* (July 2016), <https://www.kaldorcentre.unsw.edu.au/sites/default/files/Casenote_S99.pdf>.

raised serious concerns that there were significant risks that they would self-harm or try to induce an abortion themselves.[30]

4.12 In September 2017, Australia signed a deal with Taiwan (which is not a signatory to the Refugee Convention) to transfer people there for medical treatment.[31] The Government tried to send a 30-year-old pregnant Somali woman, who had been subject to female genital mutilation, to have an abortion in Taiwan. In June 2018, a Federal Court judge ruled that there was no suitable medical facilities in Taiwan to perform the complex procedure. He ruled that there were "substantial risks" in terminating the pregnancy in places or by practitioners without the right experience, noting major physical and psychological issues linked to the procedure.[32]

4.13 The Government also tried to send a 63-year-old Afghan refugee dying from lung cancer to Taiwan for palliative care. The man did not know anyone in Taiwan and was concerned there would be no Hazaragi interpreter and no one to perform Shia Muslim ceremonies on his body when he died. Australian Border Force even offered him money to return to Afghanistan to die. He was only transferred to Australia after an intense campaign by doctors, the public, and even government officials.[33] Dr Sara Townend, who launched a petition to bring the man to Australia to die, and has an adult and paediatric palliative caseload in the hospital where she works, said:

> *If he goes to Taiwan, where there are no Hazara, he will die isolated and without community. This is no way to die. If he remains on Nauru, he faces a potentially catastrophic death, without medical expertise to ease his pain and symptoms.*
>
> *His only chance of a good death is to come to Australia so that he can have both community and medical expertise.*[34]

4.14 Another troubling case involves a two-year old girl who was born on Nauru to Iranian parents, who had been transferred there after arriving in Australia without visas in 2013 and were then recognised as refugees and lived in Nauru on temporary settlement visas. In 2018, the little girl became ill and was diagnosed with a serious and life-threatening neurological condition.

4.15 The girl and her mother were subsequently evacuated to a hospital in PNG. This was despite a medical facility in Nauru recommending that an Australian hospital with paediatric ICU capability be the first option and expressing concern that the PNG hospital did not have appropriate capability to treat the patient. In the court case, the judge formed the view that there was a strong, arguable case that the Australian Government provided inadequate medical care by transferring the young girl to a PNG hospital, particularly because of that hospital's failure to perform certain tests. The little girl's mother had a limited ability to understand the medical information being presented to her and had struggled to access interpreting services in PNG. The girl's father was fluent in English but was not transported to

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[30] Ben Doherty, 'Pregnant refugees refused abortions on Nauru must be brought to Australia, says AMA' *The Guardian* (23 August 2017), <https://www.theguardian.com/world/2017/aug/23/refugees-needing-high-level-treatment-should-be-brought-to-australia-medical-bodies-say>.

[31] David Wroe, 'Send them to Taiwan: Turnbull government's secret refugee deal revealed' *The Sydney Morning Herald* (23 June 2018), <https://www.smh.com.au/politics/federal/send-them-to-taiwan-turnbull-government-s-secret-refugee-deal-revealed-20180622-p4zn7d.html>.

[32] Angus Thompson, 'Genital mutilation victim on Nauru for five years wins bid to have abortion in Australia', *The Sydney Morning Herald* (21 June 2018), <https://www.smh.com.au/politics/federal/genital-mutilation-victim-on-nauru-for-five-years-wins-bid-to-have-abortion-in-australia-20180621-p4zmto.html>.

[33] Ben Doherty, 'Dying refugee moved from Nauru to Australia after intense campaign' *The Guardian* (23 June 2018), <https://www.theguardian.com/australia-news/2018/jun/23/dying-refugee-moved-from-nauru-to-australia-after-intense-campaign>.

[34] Melissa Davey, 'Hundreds of Australian doctors call for dying refugee to be brought from Nauru' *The Guardian* (17 June 2018), <https://www.theguardian.com/australia-news/2018/jun/17/hundreds-of-australian-doctors-call-for-dying-refugee-to-be-brought-from-nauru>.

PNG with his wife and daughter. The judgement highlighted further inadequacies by the Government:

> *[There is an arguable] case that the [little girl] is dependent on the Commonwealth for her survival and sustenance, and that it is responsible, either directly or indirectly, for the medical care she receives. Further, there is evidence that the Commonwealth has been closely involved in the decision to evacuate the applicant to PNG rather than to Australia and thereby assumed responsibility for that decision. If the Commonwealth is to be involved in medical decisions, such as where a patient will be treated, it must do so competently.*[35]

4.16 The judge also noted that the urgent MRI required had not yet been performed and that her treating doctors would have great difficulty in determining whether she has suffered a brain injury. The judge was "reluctant to allow the applicant to be the first child to undergo an MRI under sedation at the hospital in PNG, with the hospital having been rushed into getting appropriate equipment and training appropriate staff."[36]

4.17 This case highlights that the "community standards" in relation to this toddler's access to appropriate healthcare were not met.

4.18 RCOA supported the Medevac legislation because of our serious concern for the wellbeing of people in offshore facilities and the lack of appropriate medical care that became apparent to us when we drafted our reports about conditions on Nauru and Manus Island. We also supported the legislation because we did not make progress in our persistent quiet advocacy.

4.19 We tried to advocate to the Department and the Minister for the transfer (or at least medical review) of 21 people on Manus Island and Port Moresby that were identified as having some of the worst medical conditions. We provided that list in December 2018 to the Minister for Immigration and Australian Border Force. People on that list were suffering from severe mental health issues, heart issues, failing eyesight, untreated hernia and severe gastric issues. By the time the Medevac legislation passed in February 2019, only two in that list had been transferred. Another man was also transferred while the Bill was awaiting royal assent. Our concern was that decisions about medical transfers were not being made on medical grounds alone but that, in too many cases, decisions were influenced by political and bureaucratic factors. Since the Medevac legislation came into force, 11 more people on that list have been transferred to Australia for life saving treatment. Those who remain are currently being assessed under the Medevac process.

## 5 Children and the right to family unity

5.1 While no child remained on Nauru by the time the Medevac legislation came into force, this was not the case when the legislation was being drafted. As a result, the legislation reflects the importance of avoiding family separation.

5.2 For years, it was the practice of Australian Government to transfer people needing medical transfers without their family members. Pregnant women with complex pregnancies who needed specialist care were transferred without their partners to Australia to give birth. Sometimes men were transferred for medical treatment while the rest of the family remained in Nauru.

5.3 The effect on children suffering family separation is profound. It not only affects their mental health but also their sense of identity and safety. Parents who have been separated from their children speak of their inability to bond with their children after they are reunited, as their

[35] DJA18 as litigation representative for DIZ18 v Minister for Home Affairs [2018] FCA 1050
[36] DJA18 as litigation representative for DIZ18 v Minister for Home Affairs [2018] FCA 1050

children believe they had abandoned them. Some children also blame themselves, thinking they have done something wrong to warrant family separation.

5.4 Section 198C of the Medevac legislation ensures family separation does not happen. The passage of this legislation has enabled fathers who were left behind on Nauru, sometimes for years, to be reunited with their families in Australia and see their children for the first time.

5.5 Every child has a right to family unity. The Medevac legislation safeguards this right.

### *Recommendation 1*

*RCOA strongly recommends that this Bill should* ***not*** *be passed.*