

Lanie Stockman

28 July 2019

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Re: submission to the Legal and Constitutional Affairs Legislation Committee Inquiry into Migration Legislation Amendment (Repairing Medical Transfers) Bill 2019 [Provisions]

To the Legal and Constitutional Affairs Legislation Committee

I am an Australian citizen writing to oppose the passing of the Migration Legislation Amendment (Repairing Medical Transfers) Bill 2019 [Provisions] (*Repairing Medical Transfers Bill*) for the following reasons:

1. The stated aim of the *Repairing Medical Transfers Bill* – to address shortcomings of the *Home Affairs Legislation Amendment (Miscellaneous Measures) Act 2019* – is at odds with the apparent intent of the offshore processing regime as part of a policy to “save lives”¹. One of the stated aims of the offshore detention regime is to prevent deaths at sea. However, the lives of people transferred offshore seem to be of less concern. Fourteen people have died in offshore detention between July 2013–June 2018², and instead of acting to prevent such deaths, the *Repairing Medical Transfers Bill* will make it harder for people in regional processing facilities to obtain urgent medical treatment in Australia.
2. The deaths of asylum seekers in offshore detention have been found to be preventable on the part of the Australian Government and that a policy in line with the *(Miscellaneous Measures) Act 2019* should be implemented. The *Repairing Medical Transfers Bill* undermines the recommended framework. In the inquest into the death of Mr Hamid Khazaei, the coroner found:
“Mr Khazaei’s death was preventable. His death was the result of the compounding effects of multiple errors rather than any single action or inaction. This included the failure to ensure the Manus Island Regional Processing Centre had antibiotics available to safely treat Mr Khazaei’s leg infection, the failure to adequately detect and report a severely deteriorating patient, inadequate clinical care and processes surrounding clinical care across the clinical course, ineffective processes for the transfer of a patient off Manus Island, and the unfortunate

¹ <https://www.fpwhitepaper.gov.au/foreign-policy-white-paper/chapter-five-keeping-australia-and-australians-safe-secure-and-free-2>

² <https://arts.monash.edu/border-crossing-observatory/research-agenda/australian-border-deaths-database>. This number does not take into account people who have died in onshore detention, community detention or following their vessel being intercepted at sea by Australian Border Force.

expectation that adequate and intensive critical care could be provided at the Pacific International Hospital.”³

The coroner recommended therefore that:

“the Department of Home Affairs develop and implement a written policy relating to the process for medical transfers requiring Australian Government approval which has, as an overriding consideration, the health and well-being of persons transferred to regional processing countries. Under that policy the approval process for medical transfers should be led by persons located in regional processing countries with clinical training in emergency medicine.”⁴

The *(Miscellaneous Measures) Act 2019* is a policy in line with the coroner’s recommendations and the *Repairing Medical Transfers Bill* will undermine it.

3. The health care of asylum seekers and refugees detained on Nauru and Manus Island is the responsibility of the Australian Government⁵. Therefore “it is incumbent on the Australian Government to implement sustainable systems for the delivery of health care that meet the requisite standard. Those systems should also be subject to ongoing and independent scrutiny on behalf of the Australian community, which is required to meet the ongoing and considerable costs of the current arrangements”⁶. The findings of the coroner who investigated the death of Mr Khazaei suggest current health care arrangements for asylum seekers and refugees in offshore detention do not meet a reasonable standard. Yet, the *Repairing Medical Transfers Bill* seeks to shift responsibility for healthcare to the Governments of Papua New Guinea and Nauru under the guise of respecting the sovereignty of those governments⁷. Decisions about medical transfers should be based on clinical considerations only.⁸
4. The *(Miscellaneous Measures) Act 2019* is already being undermined and the Government should be implementing it, rather than dismantling it. In February 2019, the Government of Nauru passed law that medical transfers of asylum seekers and refugees would not be approved “unless the two doctors had examined a patient in person on Nauru; no telemedical diagnosis would be approved”⁹. This new Nauruan law suggests that the *(Miscellaneous Measures) Act 2019* does not impinge on Nauruan sovereignty. Regardless, and as stated previously (4), decisions about medical transfers should be based on clinical considerations only.¹⁰

³ https://www.courts.qld.gov.au/_data/assets/pdf_file/0005/577607/cif-khazaei-h-20180730.pdf

⁴ https://www.courts.qld.gov.au/_data/assets/pdf_file/0005/577607/cif-khazaei-h-20180730.pdf

⁵ https://www.kaldorcentre.unsw.edu.au/sites/default/files/Factsheet_Legal%20responsibility%20offshore_11.08.08.pdf

⁶ https://www.courts.qld.gov.au/_data/assets/pdf_file/0005/577607/cif-khazaei-h-20180730.pdf

⁷ https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6343_ems_1a615ff8-fbf6-41ba-8ccb-5a02d997cfa1/upload_pdf/711194.pdf;fileType=application%2Fpdf

⁸ https://www.courts.qld.gov.au/_data/assets/pdf_file/0005/577607/cif-khazaei-h-20180730.pdf

⁹ <https://www.kaldorcentre.unsw.edu.au/publication/medevac-law-medical-transfers-offshore-detention-australia>

¹⁰ https://www.courts.qld.gov.au/_data/assets/pdf_file/0005/577607/cif-khazaei-h-20180730.pdf