



Andrew & Renata Kaldor Centre
for International Refugee Law

Factsheet

MEDICAL TRANSFERS FROM OFFSHORE PROCESSING TO AUSTRALIA

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Refugees and asylum seekers subject to offshore processing in Nauru and Papua New Guinea have been transferred back to Australia for a variety of purposes, including medical treatment.

Transitory persons brought to Australia from offshore processing may in some circumstances be granted visas authorising them to stay in Australia, but this is subject to government discretion. Generally, they are [barred from making an application for a substantive visa](#), though this bar can be lifted by the Minister on public interest grounds. The Minister may also elect to grant a person in detention a [Bridging Visa E](#) – a short term visa allowing them to live in the community, with limited rights and social supports. The Minister also has an even broader power under [s 195A](#) of the *Migration Act*, that enables him or her to grant any kind of visa to a person in detention on public interest grounds, whether the visa has been applied for or not.

How many asylum seekers have been transferred from offshore processing to Australia?

As of [31 March 2021](#), there were 1,219 transitory persons in Australia (including 267 children, 146 of whom were born in Australia or Nauru). As of [30 April 2021](#), 240 people remained in Nauru and PNG.

Duty of care and medical transfer litigation

The *Migration Act* creates broad powers allowing Australian officials to transfer people from offshore processing to Australia, but no direct obligation to do so, even when urgent medical treatment is required. Nevertheless, Australia has a range of legal obligations under international human rights and refugee law that extend to people transferred to Nauru and PNG, including with respect to their health and well-being, and in 2016 the Federal Court of Australia found that the Commonwealth [owed a duty of care under Australian law](#) to a refu G(m)-7(11(0.478 RG[RG(t)5(o)-11()5(a)-11()5(r)-7(e)-11(5.1 0.75 re25 842 reW*nBT/F2 14 Tf1 0

transfer decisions rested in the hands of public servants.

Under the Medevac process, if two doctors recommended that a person be transferred to Australia for medical treatment the Minister was required to approve or refuse the transfer within 72 hours of receiving that recommendation. A transfer could be refused due to character and/or national security grounds, or (in the case of adults only) on medical grounds. Any transfers refused by the Minister on medical grounds were referred to an eight-person medical panel, which had 72 hours to review the case and make a recommendation for or against transfer. If the medical panel recommended transfer, the Minister retained a power to refuse the transfer on security or character grounds, but would otherwise have to approve the transfer.

The Morrison government opposed the Medevac law. It was passed when the government did not have a majority in parliament, with the support of [Labor and most of the crossbench](#). After the Morrison government was re-elected in May 2019, it sought to repeal the Medevac law as a matter of priority. In December 2019, just eight months after the law was introduced, the government secured its repeal, after [striking a deal with Tasmanian Senator Jacqui Lambie](#). The details of the agreement with Senator Lambie have not been made public.

During the time that the Medevac law was operational, 192 people were transferred from offshore processing under its provisions.

How are medical transfers made now that the Medevac law has been repealed?

The repeal of the Medevac law has meant that if a person in offshore processing needs to be transferred to Australia for medical treatment, the provisions in the *Migration Act* authorising transitory persons to be transferred to Australia for a temporary purpose will apply. Where the need for treatment is urgent and the government does not authorise a transfer, litigation seeking a court ordered transfer may be commenced.

[Series of publications on offshore processing.](#)