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Medevac could cost taxpayers less, better aligns with international obligations, says Law Council

The Medevac law provides an efficient and cost-effective transfer process for refugees requiring medical assistance that better complies with Australia's legal obligations, says the Law Council of Australia.

In its submission to the Senate inquiry into the proposed repeal of medevac legislation, the Law Council also suggested several technical amendments that could close perceived legislative 'loopholes'.

The first amendment would ensure those brought to Australia under the medical transfer provisions could be removed from Australia when their medical issues were resolved. The second would ensure appropriate remuneration for members of the expert panel.

Law Council President, Arthur Moses SC, said while the Medevac law does not provide a durable solution to the situation of refugees in regional processing centres (RPC), it does facilitate access to urgent health care.

"Medevac was designed to complement, not replace, existing powers to transfer refugees and asylum seekers temporarily to Australia. It responds specifically to situations of medical and psychological need as assessed by expert medical practitioners," Mr Moses SC said.

"It will not open the floodgates to asylum seekers – the law clearly states those transferred under Medevac are subject to detention as unlawful non-citizens throughout the transfer period. On the basis of independent expert medical assessments, there is no doubt the medical needs of some people within this cohort are very real and must be met.

"Furthermore, the Medevac law alleviates the need for adversarial, time-consuming and costly litigation by providing a clear and objective mechanism for the assessment of medical transfers, subject to appropriate independent medical oversight."

"Prior to the introduction of Medevac, 52 injunctive proceedings compelling the transfer of asylum seekers to Australia for medical treatment were commenced and all were successful. However, they had to be brought before the Federal Court, expending court and government resources."

Mr Moses SC reiterated the need for a transparent and cooperative regional approach to manage asylum seeker flows and address their protection and material needs. He said the Minister for Home Affairs ultimately retained the discretion to refuse medical transfer.

"Medevac is designed to ensure those in serious medical can come to Australia for essential treatment quickly," Mr Moses SC said. "Under the Convention relating to the Status of Refugees Australia is obliged to provide protection and freedom of movement to asylum seekers and refugees. The transfer of asylum seekers and refugees to an RPC does not relieve Australia of these obligations.

"Medevac provides a clear and formalised process whereby a decision to transfer for medical purposes is treated as a medical decision and should not be repealed."

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