

Media release

Wednesday 28 August 2019

Government slapped down for dragging sick asylum seekers through pointless legal battle

Leading social justice lawyers Maurice Blackburn Lawyers and the National Justice Project today slammed the government for launching frivolous and expensive legal battles against asylum seekers after the Federal Court today rejected its claim that it did not have jurisdiction in the area.

Maurice Blackburn Lawyers and the National Justice Project have been involved in a long legal battle about whether over 50 refugees who required life-saving medical treatment could take action in the Federal Court to ensure they received treatment.

Since December 2017 in excess of 50 separate legal proceedings have been commenced in the Federal Court of Australia to facilitate the transfer of refugees and people seeking asylum from Nauru or Manus to Australia for urgent medical care. In every case the applicant has been successful and brought to Australia for medical treatment.

The majority of these cases were commenced as injunctive proceedings and remain before the Federal Court as ongoing legal matters. Countless more families were brought to Australia as a result of legal intervention outside of court processes.

The Minister for Home Affairs and the Commonwealth tried to argue that section 494AB of the *Migration Act 1958* (Cth) prevented the Federal Court from having the power or jurisdiction to hear and continue hearing these cases.

The Federal Court today rejected the argument, ruling that it did have jurisdiction to hear and determine the injunctions and the substantive matters for refugees and people seeking asylum on Manus and Nauru.

However, the decision also means that there are some limits to the jurisdiction. Lawyers are currently reviewing the decision to determine the best way forward for those matters.

Maurice Blackburn Principal Jennifer Kanis said the Bill and the government's attitude meant asylum seekers had no choice but to fight for their rights through the courts.

"The legal proceeding at the centre of this decision were only initiated when we felt we had run out of other options. These legal proceedings were costly, time consuming, absorbed large amounts of court resources and required hundreds of hours of pro bono work from our lawyers, paralegals and support staff. Counsel routinely had to be engaged, often after hours, and they too acted on a pro bono basis," Ms Kanis said.

"Not only is it wrong to use a legal process to determine medical treatment, it is also incredibly inefficient, but that was the only option the Federal Government left for countless

asylum seekers when they refused to provide urgent medical assistance for people in Australia's care.

"The government's approach to this litigation will see further delay in the delivery of much-needed treatment for those concerned. It will also clog up the courts and places an adversarial process at the centre of what should be a discussion about health and medical need.

"It is hard to imagine that most Australians would proudly own a system where the decisions about who gets medical attention are not made by doctors – but are instead subject to a process governed by lawyers and unelected government officials.

"That is a situation that would be deemed utterly unacceptable by most Australians, and it is equally as unacceptable for those people who have been entrusted to Australia's care," she said.

Adjunct Professor George Newhouse, Director of the National Justice Project, said that this case just proves that the Government cannot be trusted to treat people that it has sent to offshore detention humanely.

"The Government has again this week argued that the system before Medevac was working. However, 12 people died under the old system. The only reason there weren't countless more deaths was because an army of lawyers, doctors and case workers forced the Minister to transfer people to safety.

"The Minister is still looking for ways to subvert legal processes and resist medical transfers, recently appealing a medical transfer matter. The needless human suffering, and waste of court resources, is staggering."

Court action has been needed to save the lives and prevent further harm to children and adults because of the Government's refusal or delays in providing medical care. Through their aggressive and costly approach, the government is seeking to make it even harder for refugees to receive much-needed medical care. These medical decisions should be made by doctors and health professionals, not bureaucrats and politicians.

In all four cases before the Court today, children's lives were at imminent risk, and the Government refused to provide them with the treatment that experts said that they urgently needed. They all required medical treatment in Australia (in both our cases the children were hospitalised); one of the children was in hospitalised for several months.

The National Justice Project ran the first legal case that established that the Commonwealth Government has a duty of care to refugees and asylum seekers on Manus and Nauru (Plaintiff s99/2016 v Minister for Home Affairs) and created the legal precedent that allowed for medical evacuations (FRX17). Their intervention was required in the transfer of over 150 people from offshore detention to Australia for urgent medical care in 2018 alone.

Maurice Blackburn has acted pro-bono for asylum seekers for many years and intervened on behalf of more than 30 people – including babies as young as six months old - held in offshore detention to bring them to Australia for medical treatment.

The development comes amid proposed changes to the so-called Medevac Bill which will threaten the health of refugees, whose medical needs will again be decided by bureaucrats rather than medical professionals and risks a return to costly legal battles to ensure refugees get the care they need.

The Medevac Bill became law in March 2019 and allowed for a transparent process through which off-shore detainees could be brought to Australia for medical treatment.

But proposed changes to the law threaten the health of asylum seekers and represent a return to the days of litigation to get people the medical care they need.

Media inquiries: Paddy Murphy at Maurice Blackburn on 0490 297 391;
George Newhouse at National Justice Project on 0422 255 109