

Fact checking Acting Immigration Minister Alan Tudge on his media statements about the indefinite detention of people who were transferred to Australia for medical reasons

The facts provided in this document come from Hansard and Government department publications.

Background

People transferred from offshore detention to Australia

Since offshore processing was re-started in 2012, Australia transferred a total of 4,183 people to PNG and Nauru. Of whom 2,063 were returned to Australia.¹

1,221 of them were transferred for medical reasons, the majority at the initiation of the Government or under court order. They are classified as 'transitory persons', meaning their return offshore remains a live option.²

192 of the 'transitory persons' cohort were transferred under the 'medevac' legislation. They remain in locked detention onshore, many for more than a year now.³

819 of the 1,220 'transitory persons' onshore are in community detention (CD). In legal terminology, the Minister is said to have made a 'residence determination'.^{4,5} This occurs when the Minister uses their discretionary power under s197AB of the Migration Act to move someone to a designated address where the person can come and go, but is required to adhere to a curfew. The house is paid for by the Government. They receive a stipend in lieu of work. There are no guards present.

A further 148 'transitory persons' were granted a Bridging Visa E (BVE). This occurs when the Minister exercises their discretionary power under s195A of the Migration Act. A BVE allows someone to live where they like, and at their own expense. Work rights can be applicable to the BVE. There is no financial support available from the Government. The visa is subject to renewal (usually 6 monthly). 'Transitory persons' who are currently in the community (CD or BVE) averaged 65 days in locked detention in Australia.⁶

The Minister has chosen not to use his discretionary powers for any of the 192 people who were brought here under the 'medevac' legislation.

Locked Detention in Hotels

Around 170 'transitory persons' (all men) are locked in hotel detention. In Melbourne approx. 60 men are detained in the Mantra Bellcity (Preston) and in Brisbane approx. 110 men are detained in the Kangaroo Point Central Hotel Apartments. It is not possible to be precise about the number of people detained at

¹ Figures at 31 March 2020. Refugee Council of Australia 'Seven Years On,' July 2020

<https://www.refugeecouncil.org.au/wp-content/uploads/2020/07/RCOA-Seven-Years-On.pdf>

² Senate Estimates, Constitutional and Legislative Affairs, AE20-123 'Medical transfers and transitory persons in Australia, 2 March 2020, available at https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/eqon

³ Refugee Council of Australia 'Seven Years On,' July 2020

⁴ Ibid

⁵ Senate Estimates, Constitutional and Legislative Affairs, AE20-104 'Transfers from Nauru and PNG to Australia,' 2 March 2020, available at https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/eqon

⁶ Senate Estimates, Constitutional and Legislative Affairs, SE19-138 'Transitory persons from Nauru and PNG,' 21 October 2019, available at https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/eqon

each site because people are moved between sites with no notice and because the Melbourne hotel is also being used to Covid-19 quarantine facility for anyone in immigration detention in Melbourne.

The hotel detention facilities are managed with the same rules and procedures as detention centres. The Office of the Commonwealth Ombudsman confirmed that those detained in hotels are assessed, by Australian Border Force (ABF), as posing a low flight risk and low behavioural risk.⁷

Cost of locked detention

Serco is subcontracted to manage Australia's immigration detention network. The contract value is \$2.5 billion.⁸ This does not include contracts with other providers for health, construction, maintenance and other services. The contract for health provision in onshore detention, for example, is \$563 million with an amendment of \$125 million approved in December 2019.⁹

The cost of hotel detention has not been communicated through any Senate processes.

People who are moved into the community under CD incur accommodation, casework and Medicare expenses for the Government. People who are granted a BVE incur Medicare expenses for the Government.

23 of the most recent group of 'transitory persons' have family in Australia (spouses, children, siblings, extended family). They are standing by to provide accommodation and support. A further 40 have accommodation offers from non-relatives. Almost all of the 2019 arrivals have offers of support from friends, and community and faith groups. This information is known to the ABF caseworkers. Written requests have been made to Minister Tudge to move the men into the community while their resettlement to a third country is resolved. These requests and offers of support have been ignored.

The Government is choosing to keep people in detention when there are better and cheaper options available.

⁷ Senate Standing Committee Legal and Constitutional Affairs Legislation Committee, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020, Answers to Questions on Notice, 3 July 2020, available https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ProhibitedItems/Additional_Documents?docType=Answer%20to%20Question%20on%20Notice

⁸ Legal and Constitutional Affairs Migration Amendment (Prohibiting items in Immigration Detention Facilities) Bill 2020 [Provisions], 3 July 2020, available at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ProhibitedItems/Additional_Documents?docType=Answer%20to%20Question%20on%20Notice

⁹ Austender <https://www.tenders.gov.au/Cn/Show/d6c87cb5-2f14-4ddd-9f32-f4b11089526a>

Fact Checking Acting Immigration Minister Alan Tudge

In December 2019 Minister Coleman took indefinite personal leave and Minister Alan Tudge has been Acting Immigration Minister since. Following are recent public statements Minister Tudge has made about people who have been brought to Australia for medical reasons. They are contradicted by facts that his own department has provided to Parliament.

1. Minister Tudge states that those in locked detention who were previously offshore can choose to go to the USA or PNG/Nauru and the Australian Government 'would organise for that to occur'.¹⁰

Facts:

- 1) The USA resettlement deal has always been on the basis that the USA decides who and how many people they will resettle under the deal. Australia cannot determine this.¹¹
- 2) The USA's travel ban on certain Muslim-majority countries was upheld by the Supreme Court. Many of the 'transitory persons' are nationals of those banned countries.¹²
- 3) Men who are not from those banned countries have received rejection notices from the USA without any explanation for their rejection.
- 4) The Department of Home Affairs and Minister Tudge have, separately, confirmed that the Government has not initiated any returns to PNG/Nauru because they anticipate legal injunctions would be instigated.^{13,14}
- 5) A handful of men have asked their ABF caseworker to return them to PNG because they can't cope with detention anymore. They have been told it is not possible. To be clear these men have explained that they have made these requests because they have become so unwell in locked detention in Australia, not because life in PNG was good.¹⁵

2. Minister Tudge states that the legislation itself requires 'transitory persons' to be detained while they are in Australia.¹⁶

Facts:

- 1) The discretionary powers outlined previously (to move someone into CD or grant them a BVE) are available to the Minister at any time.

¹⁰ Transcript of interview with Rebecca Levingston, ABC Radio Brisbane, 17 July 2020, available at

<https://minister.homeaffairs.gov.au/alantudge/Pages/interview-with-rebecca-levingston-abc-radio.aspx>

¹¹ <https://www.theguardian.com/australia-news/2017/jan/31/us-could-resettle-zero-refugees-from-manus-and-nauru-and-still-honour-deal>

¹² <https://www.bbc.com/news/world-us-canada-39044403>

¹³ Senate Legal and Constitutional Affairs Legislation Committee hearing into the Migration Amendment (Repairing Medical Transfers) Bill 2019, Pg75-76 available at

https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/ee145774-565b-41ee-9f62-5fb6b80c6fa9/toc_pdf/Legal%20and%20Constitutional%20Affairs%20Legislation%20Committee_2019_08_26_7115.pdf;fileType=application%2Fpdf#search=%22committees/commsen/ee145774-565b-41ee-9f62-5fb6b80c6fa9/0000%22

¹⁴ Transcript of interview with Neil Breen, 4BC Radio, 29 July 2020, available at

<https://minister.homeaffairs.gov.au/alantudge/Pages/interview-with-neil-breen-4bc-breakfast.aspx>

¹⁵ Australians who are in constant contact with the men in detention can attest to this

¹⁶ Transcript of interview with Rebecca Levingston, ABC Radio Brisbane, 17 July 2020, available at

<https://minister.homeaffairs.gov.au/alantudge/Pages/interview-with-rebecca-levingston-abc-radio.aspx>

- 2) The Minister has used his discretionary powers to move 967 'transitory persons' into the community.
- 3) The Minister has chosen not to use his intervention powers for anyone who was transferred onshore from July 2019 to January 2020.

3. Minister Alan Tudge states that prior to medical transfer people sign consent forms that confirm they will be in detention for the duration of their stay in Australia.¹⁷

Facts:

- 1) The pre-departure forms included the following statement '...while in Australia for this temporary purpose, I will be detained in an immigration detention facility on the basis that I am an unlawful non-citizen in Australia'.¹⁸
- 2) These pre-departure forms have been used since around 2015.¹⁹ This did not prevent the Minister from using his discretionary powers to move at least 967 'transitory persons' into the community (CD or BVE).²⁰
- 3) The Minister has failed to explain why he has chosen not to exercise his powers for the people who were transferred onshore from July 2019 to January 2020.

4. Minister Alan Tudge states that 1/3 of the most recent medical transferees (192 people) have refused medical treatment.²¹

Facts:

- 1) On 2 March 2020, ABF stated that 2 people had declined medical treatment and 10 people had denied any health issues at assessment.²²
- 2) On 16 June 2020, Department of Home Affairs reported that 165 required secondary or tertiary medical treatment and 67 are on a waitlist for further treatment.²³
- 3) On 12 July 2020 Minister Tudge stated that 50% had completed their medical treatment.²⁴
- 4) Minister Tudge has not provided any evidence to support his claim that 1/3 refused medical treatment.

¹⁷ Ibid

¹⁸ Consent form has been sighted

¹⁹ Consent form has been sighted

²⁰ Refugee Council of Australia 'Seven Years On,' July 2020

²¹ Interview with Neil Breen, 4BC Radio, 29 July 2020

²² Senate Estimates, Question on Notice AE20-218 'Medevac Transferees', 2 March 2020, available at https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/eqon

²³ Senate Estimates, Question on Notice 1531_46, 14 May 2020, available at https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/eqon

²⁴ Transcript of interview on Insiders, ABC, 12 July 2020, available at <https://minister.homeaffairs.gov.au/alantudge/Pages/abc-insiders-12072020.aspx>

5. Minister Tudge states that the men detained in hotels have access to outdoors for exercise.²⁵

Facts:

- 1) This is true for those in immigration detention centres such as MITA, BITA and the like, where people are detained in compounds and can move around within their compound (indoors and outdoors).
- 2) People detained in hotels have very limited access to outdoors. For the approx. 60 men in the Melbourne detention hotel, they can ask to go to a courtyard under guard escort only, and for a few minutes at a time. The courtyard is approx. 50m² in size. They are not permitted to go to the courtyard of their own accord and they are not permitted to stay there for long. Recently a make-shift basketball half-court area was installed outside. A maximum of 8 people can register their interest to go there (under guard escort) for 40 minutes at designated times. These two options are their only opportunities to go outdoors. The bedroom windows can open a fraction, for standard building code reasons. Prior to the Covid-19 pandemic they could register to go on excursion each day to MITA for outdoor access in the main compound (body searched prior to departure and upon return).

At the Brisbane detention hotel, the rooms have balconies where the men can sit outside. They can go into the hotel car park, under guard escort, for sunshine.

6. Minister Tudge states that nearly a quarter those brought here for medical treatment have been assessed as not being refugees.²⁶

Facts:

- 1) In 2014 a number of the men on Manus Island received, ill-advised, legal advice not to engage in the refugee process there.²⁷ The Australian Government has defaulted those people as being 'non-refugees' despite the fact that they have not yet had their claims assessed. A correct classification for these people would be 'asylum seekers', rather than 'non-refugees'.
- 2) In PNG some people chose not to engage in the refugee process because they did not trust the integrity of the system there.²⁸ They too have been defaulted as 'non-refugees' despite not having had their claims assessed. A correct classification for these people would be 'asylum seekers', rather than 'non-refugees'.

²⁵ Transcript of interview with Mark Levy, 4BC Radio, 13 July 2020, available at <https://minister.homeaffairs.gov.au/alantudge/Pages/4BC-drive-13072020.aspx>

²⁶ Ibid

²⁷ Known to those directly in contact with the men

²⁸ Known to those directly in contact with the men

7. Minister Tudge states that medical transfer is a backdoor to getting into Australia and he suggests the aim is permanent settlement here.²⁹

Facts:

- 1) People who come to Australia by boat, without a valid visa, are unable to make an application for a visa without the express invitation of the Minister.³⁰ If their refugee claim is accepted they will get a 3 year or 5 year visa only. They are not eligible for permanent residency. The purported risk that they will seek permanent settlement here is, therefore, not possible under Australia's asylum system.
- 2) The request is to move people into the community pending finalisation of their resettlement pathway. These requests have been made in writing, but have been ignored.

Written by Trudy Hairs, Melbourne

5 August 2020

²⁹ Transcript of interview with Neil Breen, 4BC Radio, 29 July 2020, available at <https://minister.homeaffairs.gov.au/alantudge/Pages/interview-with-neil-breen-4bc-breakfast.aspx>

³⁰ This legislation is explained in Question on Notice SE19/451 'Transitory persons currently in Australia', 21 October 2019, available at https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/eqon