

2022-2023

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**MIGRATION AMENDMENT (EVACUATION TO SAFETY) BILL 2023**

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator Nick McKim)

# MIGRATION AMENDMENT (EVACUATION TO SAFETY) BILL 2023

## OUTLINE

This Bill will compel the Government to offer transfer to Australia to all persons subject to offshore processing still in PNG or Nauru who are not subject to an adverse security assessment by the Australian Security Intelligence Organisation (ASIO) under the *Australian Security Intelligence Organisation Act 1979*.

Persons accepting the Government's offer will be transferred to Australia where they will remain until they are provided with a durable third-country solution with a state party to the United Nations' 1951 Convention Relating to the Status of Refugees or the 1967 Protocol relating to the Status of Refugees.

All persons accepting the Government's offer will automatically be placed into community detention.

This Bill will compel the Government to make offers of transfer to all eligible persons within one month of the commencement of the Bill.

Any person who receives an offer under the provisions of this Bill is able to reject the offer.

People transferred to Australia under the provisions of this Bill will remain in Australia with the temporary purpose of securing a durable solution to their displacement.

Existing powers within the *Migration Act 1958* regarding the taking of unauthorised maritime arrivals to a regional processing country do not apply to persons transferred to Australia under the provisions of this Bill.

## NOTES ON CLAUSES

### Clause 1: Short Title

1. This clause provides for the Act to be cited as the *Migration Amendment (Evacuation to Safety) Act 2023*.

### Clause 2: Commencement

2. This clause provides for the whole of this Act to commence the day after it receives Royal Assent.

### Clause 3: Schedules

3. Each Act specified in a Schedule to this Act is amended or repealed as is set out in the applicable items in the Schedule. Any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### ***Migration Act 1958***

#### **Item 1 – Subsection 5(1)**

4. This item inserts a signpost definition which identifies where in the Act a definition for *transferred person determination* is provided.

#### **Item 2 – Paragraph 42(2A)(ca)**

5. This item inserts into paragraph 42(2A)(ca), after a reference to section 198B of the *Migration Act 1958* (Power to bring transitory persons to Australia), a reference to section 199C (Transfer to Australia) which is inserted by item 3 of the Schedule. This will provide that a visa is not required for a non-citizen being transferred to Australia under section 199C.

#### **Item 3 – At the end of Division 8 of Part 2**

6. This item adds a new Subdivision, Subdivision D, titled: Transfers of certain persons from Nauru or Papua New Guinea to Australia.

#### ***199A Persons to whom Subdivision applies***

7. Section 199A identifies who the new Subdivision D will apply to, namely, persons, and their children, from the over 4,000 people that arrived since 2012 by boat in Australia seeking asylum and were subject to offshore processing, who still remain in either Papua New Guinea (PNG) or the Republic of Nauru (Nauru) on the date of the commencement of the Act.

#### ***199B Making of transfer offer***

8. Section 199B identifies how, when, and to whom an offer to be transferred to Australia will be made under the provisions of this Act. The offer will be made in writing, by the Minister, within one (1) month of commencement of the Act, to all eligible persons.

9. Eligible persons will be any and all persons within the offshore cohort remaining in PNG or Nauru at the commencement of this Act, except for those subject to an adverse security assessment by the Australian Security Intelligence Organisation (ASIO).

10. Any persons within the offshore cohort currently in PNG or Nauru at the commencement of this Act who are ineligible for an offer of transfer due to an adverse security assessment will be notified of their ineligibility within one (1) month and seven (7) days of commencement of the Act.

11. A transfer to Australia will be for a temporary purpose, which is to seek a durable solution for their displacement with a third country that is a state party to the United Nations' 1951 Convention Relating to the Status of Refugees or the 1967 Protocol relating to the Status of Refugees.

12. Any persons who are taken to an offshore processing country after the Act commences as part of any current or future offshore processing program will not be covered by the Act.

### ***199C Transfer to Australia***

13. Section 199C defines how, when, and to where a person accepting an offer by the Minister will be transferred to Australia.

14. An eligible person who has accepted the offer must be transferred to Australia as soon as is practicable after their acceptance of the offer.

15. Upon arrival in Australia, persons transferred under the provisions of the Act will be immediately placed into community detention under a transferred person determination by the Minister. As such, transferred persons will not be placed into a held detention facility (including alternative places of detention).

16. As soon as is practicable after a transferred person's arrival in Australia, the Minister will arrange and make available any appropriate medical or psychiatric assessment or treatment that person requires.

17. Once in Australia under a transferred person determination, the Minister may grant a person transferred to Australia under this Act with a visa under existing powers provided by section 195A of the *Migration Act 1958*.

18. Under the provisions of the Act, people transferred to Australia will be exempt from powers under the *Migration Act 1958* that require unauthorised maritime arrivals to be taken to a regional processing country.

### ***199D Withdrawal of person's acceptance of offer***

19. Section 199D ensures that any person accepting an offer under the provisions of the Act is free to withdraw their acceptance of the offer at any time prior to being transferred to Australia.

### ***199E Tabling of information relating to the making of transferred person determinations***

20. Section 199E compels the Minister to report to the Parliament on transferred person determinations made under the provisions of the Act. The section details what the reports will and will not contain, to ensure the report is de-identified and that persons reported on have their privacy protected. The section provides that this must be done within 15 sitting days after the determination is made.

### ***199F Tabling of information if offer not made to a person***

21. Section 199F compels the Minister to report to the Parliament on why a person was deemed ineligible for an offer of transfer to be made by the Minister. The section details what the reports will and will not contain, to ensure the report is de-identified and that persons reported on have their privacy protected. The section provides that this must be done within 3 sitting days after the end of the one month offer period provided for offers of transfer to be made.

***199G Tabling of information relating to delays in transfers of persons to Australia***

22. Section 199G compels the Minister to report to the Parliament on any delays to the transfer of a person who accepted an offer of transfer made by the Minister. The section details what the reports will and will not contain, to ensure the report is de-identified and that persons reported on have their privacy protected. It provides that this must be done if seven (7) days have passed since the person accepted the offer and the person hasn't been transferred, and if the person has not been transferred within seven (7) days after the last report was tabled. These reports will be tabled in the Parliament on the next sitting day after the end of the relevant seven (7) day period.

**Item 4 – Subsection 474(4) (before table item 1)**

23. This item provides that a decision under Subdivision D of Division 8 of Part 2 is not a privative clause decision, meaning certain restrictions on challenging the decision do not apply.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Migration Amendment (Evacuation to Safety) Bill 2023**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Bill**

This Bill will have the effect of:

- providing an offer of transfer to Australia from the Minister to all persons in the offshore cohort in Papua New Guinea or the Republic of Nauru at the commencement of this Act, who have not had an adverse security assessment made against them by the Australian Security Intelligence Organisation
- placing all transferred persons into community detention, and making any medical assessment and treatment they require available to them, while that person pursues a durable solution for their displacement with a third-country that is a state party to the United Nations' 1951 Convention Relating to the Status of Refugees or the 1967 Protocol relating to the Status of Refugees

#### **Human rights implications**

This Bill does not negatively engage any of the applicable rights or freedoms.

#### **Conclusion**

This Bill is compatible with, and enhances, human rights.

**Senator Nick McKim**

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