

2022-2023

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

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

**No. , 2023**

*(Senator McKim)*

**A Bill for an Act to amend the *Migration Act 1958*,  
and for related purposes**



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1      **A Bill for an Act to amend the *Migration Act 1958*,**  
2      **and for related purposes**

<sup>3</sup> The Parliament of Australia enacts:

## 4 1 Short title

5                   This Act is the *Migration Amendment (Evacuation to Safety) Act*  
6                   2023.

## 7 2 Commencement

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1 **Schedule 1—Amendments**

2

3 **Migration Act 1958**

4 **1 Subsection 5(1)**

5 Insert:

6 *transferred person determination* has the meaning given by  
7 paragraph 199C(1)(b).

8 **2 Paragraph 42(2A)(ca)**

9 After “section 198B”, insert “or 199C”.

10 **3 At the end of Division 8 of Part 2**

11 Add:

12 **Subdivision D—Transfers of certain persons from Nauru or**  
13 **Papua New Guinea to Australia**

14 **199A Persons to whom Subdivision applies**

15 This Subdivision applies to a person if:

16 (a) the person is:

17 (i) a person who was taken to The Republic of Nauru or the  
18 Independent State of Papua New Guinea under  
19 section 198AD; or

20 (ii) a child of a person mentioned in subparagraph (i), who  
21 was born in that country and was not an Australian  
22 citizen at the time of birth; and

23 (b) on the commencement of this Subdivision, the person is in  
24 that country.

25 **199B Making of transfer offer**

26 (1) Within the period of one month after this Subdivision commences,  
27 the Minister must make an offer, in writing, to each person to  
28 whom this Subdivision applies, to transfer the person to Australia  
29 so that the person can, from Australia, seek a durable solution for

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the person's permanent settlement in a third country that is a party to the Refugees Convention or Refugees Protocol.

(2) However, if an adverse security assessment in respect of a person to whom this Subdivision applies is in force under the *Australian Security Intelligence Organisation Act 1979*:

- (a) the Minister must not make an offer to the person under subsection (1); and
- (b) within 7 days after the end of the period mentioned in subsection (1), the Minister must give the person notice, in writing, that an offer to transfer the person has not been made under that subsection because of the assessment.

## 199C Transfer to Australia

- (1) If a person accepts an offer made to the person under subsection 199B(1):
  - (a) an officer must, as soon as practicable, bring the person to Australia, and in doing so may exercise the same powers as an officer bringing a transitory person to Australia under section 198B; and
  - (b) the Minister must make a determination (*a transferred person determination*) to the effect that the person is to reside at a specified place in Australia, instead of being detained at a place covered by the definition of *immigration detention* in subsection 5(1); and
  - (c) the Minister must arrange for any appropriate medical or psychiatric assessment or treatment of the person to be made available to the person as soon as practicable after the person's arrival in Australia.
- (2) A transferred person determination must:
  - (a) specify the person covered by the determination by name, not by description of a class of persons; and
  - (b) specify the conditions to be complied with by the person covered by the determination.
- (3) A transferred person determination must be made by notice in writing to the person covered by the determination.

## 11 199D Withdrawal of person's acceptance of offer

12 If a person accepts an offer made to the person under  
13 subsection 199B(1):

14 (a) the person may withdraw the acceptance at any time before  
15 the person is brought to Australia under  
16 paragraph 199C(1)(a); and  
17 (b) where the person withdraws the acceptance—the acceptance  
18 is taken never to have been given.

19 **199E Tabling of information relating to the making of transferred**  
20 **person determinations**

21 (1) If the Minister makes a transferred person determination, the  
22 Minister must cause to be laid before each House of the Parliament  
23 a statement that (subject to subsection (2)) states that the Minister  
24 has made the determination.

25 (2) A statement under subsection (1) in relation to a transferred person  
26 determination is not to include:

27 (a) the name of the person covered by the determination; or  
28 (b) any information that may identify the person covered by the  
29 determination; or  
30 (c) the address, name or location of the place specified in the  
31 determination; or  
32 (d) any information that may identify the address, name or  
33 location of the place specified in the determination; or

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

9 (1) This section applies if, in accordance with subsection 199B(2), the  
10 Minister does not make an offer to transfer a person to Australia  
11 under subsection (1) of that section because an adverse security  
12 assessment in respect of the person is in force under the *Australian*  
13 *Security Intelligence Organisation Act 1979*.

14 (2) The Minister must cause a statement, to the effect that an offer was  
15 not made to a person for that reason, to be laid before each House  
16 of the Parliament within 3 sitting days of that House after the end  
17 of the period mentioned in subsection 199B(1).

18 (3) A statement laid before each House of the Parliament in  
19 accordance with subsection (2) of this section must not include:  
20 (a) the name of the person concerned; or  
21 (b) any information that may identify the person; or  
22 (c) the name of any other person connected in any way with any  
23 person covered by paragraph (a); or  
24 (d) any information that may identify that other person.

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

27 (1) This section applies if:

28 (a) a person accepts an offer made to the person under  
29 subsection 199B(1); and

30 (b) the person has not been brought to Australia under  
31 paragraph 199C(1)(a) at the end of:

32 (i) the period of 7 days after that acceptance was given; or

#### **4 Subsection 474(4) (before table item 1)**

Insert:

1A Subdivision D of Transfers of certain persons from Nauru or  
Division 8 of Part 2 Papua New Guinea to Australia

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