

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**

3 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**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
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Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Migration Act 1958

1 Subsection 5(1)

Insert:

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

2 Paragraph 42(2A)(ca)

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

3 At the end of Division 8 of Part 2

Add:

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

199A Persons to whom Subdivision applies

This Subdivision applies to a person if:

(a) the person is:

- (i) a person who was taken to The Republic of Nauru or the Independent State of Papua New Guinea under section 198AD; or
- (ii) a child of a person mentioned in subparagraph (i), who was born in that country and was not an Australian citizen at the time of birth; and

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

199B Making of transfer offer

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

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

- 3 (2) However, if an adverse security assessment in respect of a person
4 to whom this Subdivision applies is in force under the *Australian*
5 *Security Intelligence Organisation Act 1979*:
- 6 (a) the Minister must not make an offer to the person under
7 subsection (1); and
 - 8 (b) within 7 days after the end of the period mentioned in
9 subsection (1), the Minister must give the person notice, in
10 writing, that an offer to transfer the person has not been made
11 under that subsection because of the assessment.

12 **199C Transfer to Australia**

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

-
- 1 (4) Subject to this Subdivision, while a transferred person
2 determination is in force, this Act and the regulations apply as if:
3 (a) the transferred person determination were a residence
4 determination; and
5 (b) the person covered by the transferred person determination
6 were a person covered by a residence determination.
- 7 (5) The Minister’s power to make a transferred person determination
8 may only be exercised by the Minister personally.
- 9 (6) To avoid doubt, section 198AD does not apply to a person who has
10 been brought to Australia under this section.

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

- 1 (e) if the Minister thinks that it would not be in the public
2 interest to publish the name of another person connected in
3 any way with the determination—the name of that other
4 person or any information that may identify that other person.
- 5 (3) A statement under subsection (1) is to be laid before each House of
6 the Parliament within 15 sitting days of that House after the
7 determination is made.

8 **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.

25 **199G Tabling of information relating to delays in transfers of**
26 **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

- 1 (ii) if one or more transfer delay statements have previously
 2 been laid before a House of the Parliament in respect of
 3 the person—the period of 7 days after the most recent of
 4 those statements was first laid before a House of the
 5 Parliament.
- 6 (2) The Minister must cause a transfer delay statement to be laid
 7 before each House of the Parliament on the next sitting day of that
 8 House after the end of the period mentioned in
 9 subparagraph (1)(b)(i) or (ii) (as the case requires) of this section.
- 10 (3) In this section:
- 11 *transfer delay statement* means a statement:
- 12 (a) setting out the reasons as to why the person was not brought
 13 to Australia under paragraph 199C(1)(a) before the end of the
 14 period mentioned in subparagraph (1)(b)(i) or (ii) (as the case
 15 requires) of this section; and
- 16 (b) setting out the timeframe within which the person was
 17 subsequently, or is expected to be, brought to Australia.
- 18 (4) A transfer delay statement laid before each House of the
 19 Parliament in accordance with subsection (2) 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.

25 **4 Subsection 474(4) (before table item 1)**

26 Insert:

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