

EXPLANATORY STATEMENT

Issued by authority of the Minister for Home Affairs and Minister for Cyber Security

Migration Act 1958

Migration (Regional Processing Country—Republic of Nauru) Designation (LIN 23/017) 2023

- 1 The instrument, Departmental reference LIN 23/017, is made under subsection 198AB(1) of the *Migration Act 1958* (the Migration Act).
- 2 In accordance with subsection 198AB(1B) of the Migration Act, and despite subsection 12(1) of the *Legislation Act 2003* (the Legislation Act), the instrument commences at the earlier of:
 - immediately after both Houses of the Parliament have passed a resolution approving the designation, and
 - immediately after 5 sitting days of each House have passed since a copy of the designation has been laid before each House without either House passing a resolution disapproving the designation.
- 3 The instrument is a legislative instrument for the Legislation Act.

Purpose

- 4 The instrument is made under subsection 198AB(1) of the Migration Act to designate the Republic of Nauru as a regional processing country. The purpose of the instrument is to enable the operation of section 198AD of the Migration Act in relation to the Republic of Nauru. Subsection 198AD(1) provides that, subject to sections 198AE, 198AF and 198AG, an officer must take an unauthorised maritime arrival to whom section 198AD applies from Australia to a regional processing country.
- 5 Subsection 198AB(2) of the Migration Act provides that the only condition for the exercise of the power under subsection 198AB(1) is that the Minister thinks that it is in the national interest to designate the country as a regional processing country.
- 6 Paragraph 198AB(3)(a) of the Migration Act provides that in considering the national interest, the Minister must have regard to whether or not the country has given Australia any assurances to the effect that the country will not expel or return a person taken to the country under subsection 198AD of the Migration Act to another country where the person's life or freedom would be threatened on account of the person's race, religion, nationality, membership of a particular social group, or political opinion; and that the country will make an assessment, or permit an assessment to be made, of whether or not a person taken to the country is covered by the definition of refugee in Article 1A of the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees.
- 7 Paragraph 198AB(3)(b) of the Migration Act provides that in considering the national interest, the Minister may have regard to any other matter which, in the opinion of the Minister, relates to the national interest.

Consultation

- 8 The Office of the United Nations High Commissioner for Refugees (UNHCR) was consulted on the designation of Nauru as a regional processing country.
- 9 No further consultation was done for this instrument. This is because the Australian Government's policy in relation to regional processing arrangements in Nauru has not changed, and this instrument substantially replicates the *Instrument of Designation of the Republic of Nauru as a Regional Processing Country under subsection 198AB(1) of the Migration Act 1958* (IMMI 12/100).
- 10 The Office of Impact Analysis was not consulted in relation to this instrument.

Parliamentary scrutiny etc.

- 11 The instrument is exempt from disallowance under section 42 of the Legislation Act. This is because it is an instrument (other than a regulation) made under Part 2 of the Migration Act, and is prescribed by subitem 20(a) of the table in section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.
- 12 As the instrument is exempt from disallowance, no Statement of Compatibility with Human Rights is required.
- 13 The instrument was made by the Minister for Home Affairs and Minister for Cyber Security, in accordance with subsection 198AB(1) of the Migration Act. The Minister considers that it is in the national interest to designate the Republic of Nauru as a regional processing country.