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## Research Brief

# REFUGEE STATUS DETERMINATION

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### Introduction

Nauru is the world's smallest island nation, stretching to just twenty-one square kilometres. Sitting just below the equator, Nauru is a raised, fossilised coral atoll in the Pacific Ocean. The Nauruan population of about 10,000 people is a mixture of Micronesian, Polynesian and Melanesian descent. They are predominantly Christian and speak Nauruan and English.

development as a result of phosphate mining over the last century.<sup>1</sup> Almost all of the population lives along the coastal flat areas, making them highly vulnerable to climate change, sea-level rise and natural disasters. The island also faces serious food and water insecurity and is dependent on foreign imports, which is particularly concerning in light of



memorandum of understanding between Australia and Nauru signed in August 2012 and were superseded by a new agreement in August 2013.<sup>3</sup>

Asylum seekers have been sent to Nauru in two cohorts. The first cohort comprised more than 600 adult male asylum seekers who arrived in Australia by boat between 13 August 2012 and 18 July 2013.<sup>4</sup> While these asylum seekers were transferred to Nauru, others arriving at the same time were transferred to PNG or permitted to remain in Australia. After 19 July 2013, everyone in this cohort who was still offshore began to be brought back to Australia. While it handed down at this time,<sup>5</sup> no one transferred offshore in this cohort ever completed refugee status determination (RSD) or received an outcome on Nauru. Instead, they were transferred back to Australia and required to wait (either in the community or in detention) before being permitted to lodge fresh claims for asylum and start the process again from 2015 onwards.

The second cohort comprises asylum seekers who arrived in Australia by boat on or after 19 July 2013. They are subject not only to offshore processing but also a permanent ban on settlement in Australia if found to be refugees, according to a new policy introduced by Prime Minister Kevin Rudd in 2013.<sup>6</sup> Between July 2013 and September 2014 more than 1350 men, women and children were forcibly transferred to Nauru. The only asylum seekers exempt from transfer and the ban on settlement in Australia were those who arrived in Australia by boat between 19 July and 31 December 2013 and had not been transferred offshore by December 2014, and the families of thirty-one babies who were born in Australia before 4 December 2014 after their mothers were transferred back from Nauru.<sup>7</sup> No new asylum seekers have been transferred to Nauru since September 2014.

People in this second cohort may be brought back to Australia temporarily in certain circumstances (such as to receive medical treatment or give birth), at which point they are

soon as the reason for their return to Australia has been resolved.<sup>8</sup> People who are recognised as refugees in Nauru are permitted to stay there on a temporary basis but must find permanent settlement options elsewhere. See [below](#) for more information.

While waiting for an outcome on their claims, all asylum seekers were previously detained at the Nauru regional processing centre (Nauru RPC). In February 2015, the Nauruan government announced



that a functional, fair and effective system for RSD was in place in Nauru, and noted that:

- ◁ no substantive assessments of refugee claims had begun at that time;
- ◁ no asylum procedures were in place;
- ◁ there were no experienced RSD decision makers in the Government of Nauru; and
- ◁ no potential candidates had been identified to be a members of the Tribunal and perform independent merits review.<sup>17</sup>

for asylum-seekers may be inconsistent with the primary and, arguably, sole purpose of

<sup>18</sup> A number of asylum seekers detained on Nauru

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UNHCR published a second report on refugee processing in Nauru after visiting the island in October 2013. The *Refugees Convention Act* had entered into force in the intervening period, and UNHCR acknowledged the establishment of a legal framework for RSD as a positive development since its last report. However, UNHCR concluded that the arrangements for the transfer of asylum seekers from Australia, in their totality, still did not comply with international standards. At that stage:

- ◁ Nauru had appointed a number of RSD officers, and members of the Tribunal. The RSD officers had received some technical training and were continuing to receive mentoring from experienced Australian decision makers;
- ◁ processing had commenced in March 2013, but had then been suspended in July 2
- ◁ Nauru has not yet codified its complementary human rights obligations, nor introduced a statelessness status determination procedure.<sup>20</sup>

provide a fair, efficient and expeditious system for assessing refugee claims. In particular:

- ◁ there remained long delays in processing claims, with only one claim for refugee status having been finally determined and handed down in the 14-month period since asylum seekers began to be transferred from Australia in September 2012 (this delay could have been due in part to the fact that the first cohort of asylum seekers returned to Australia and processing began again for new arrivals after July 2013);
- ◁



been some confusion or misunderstanding between the [RSD officer] and [asylum

The Tribunal makes decisions based on the evidence before it, and can affirm or vary the original RSD decision, send the matter back to the Secretary with recommendations, or set the original decision aside and substitute it with its own decision on the claim.<sup>41</sup>





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<sup>10</sup> Republic of Nauru, *Government Gazette No 142* (2 October 2015), [http://ronlaw.gov.nr/nauru\\_lpms/files/gazettes/138257d9f8e4223789b5f93e466d76aa.pdf](http://ronlaw.gov.nr/nauru_lpms/files/gazettes/138257d9f8e4223789b5f93e466d76aa.pdf), 1.

<sup>11</sup> Report by the Office of the United Nations High Commissioner for Refugees on the Inquiry into the Serious Allegations of Abuse, Self-Harm and Neglect of Asylum-Seekers in Relation to the Nauru Regional Processing Centre, and Any like Allegations in Relation to

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<sup>37</sup> Immigration Regulations 2014 (Nr), reg 9(6A), available at [http://ronlaw.gov.nr/nauru\\_lpms/files/subordinate\\_legislation/f64e9ad9c21b6d3ed4ad32fef369184b.pdf](http://ronlaw.gov.nr/nauru_lpms/files/subordinate_legislation/f64e9ad9c21b6d3ed4ad32fef369184b.pdf).

<sup>38</sup> Compare: Immigration Regulations 2014, regs 9(6) and (6A).

<sup>39</sup> *Refugees Convention Act*, s 31.

<sup>40</sup> RSD Handbook, 19; *Refugees Convention Act*, s 34(1).

<sup>41</sup> *Refugees Convention Act*, s 34(2).

<sup>42</sup> *Ibid*, s 43.

<sup>43</sup> *Ibid*, s 44.

<sup>44</sup>

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(6 April 2018), <https://blogs.unimelb.edu.au/opinionsonhigh/2018/04/06/news-high-courts-nauru-jurisdiction-silently-disappears/>.

<sup>45</sup> Evidence to Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Estimates*, Canberra, 26 February 2018, 167 (Mandy Newton).

<sup>46</sup> Peter Dutton, Interview with Chris Kenny, Sky News Viewpoint, 26 April 2015, <http://pandora.nla.gov.au/pan/143035/20150915-1829/www.minister.border.gov.au/peterdutton/2015/Pages/interview-sky-news-viewpoint.html>; Evidence to

<sup>47</sup> Immigration Regulations, above n 37, reg 9(5).

<sup>48</sup> New Zealand seeks deal with Australia to resettle Manus and Nauru refugees *Guardian* (online), 17 November 2017, <https://www.theguardian.com/australia-news/2017/nov/17/new-zealand-and-png-could-do-deal-on-refugee>