

Offshore processing: an overview

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This factsheet provides an overview of Australia's 'offshore' or 'third country' processing policies, whereby asylum seekers seeking to enter Australia by boat without a visa are sent to the Republic of Nauru (Nauru) or Manus Island in Papua New Guinea (PNG) to have their claims for refugee status processed. This factsheet serves an introduction to the Kaldor Centre's [series of publications on offshore processing](#).

Introduction

Since 13 August 2012, asylum seekers without a valid visa who have arrived in Australia by boat (or who have been intercepted at sea and brought to Australia) have been subject to 'offshore processing' in Nauru and on Manus Island in PNG. The terms of Australia's agreements with these countries were originally set out in two memoranda of understanding signed in August and September 2012 with Nauru and PNG respectively. They were subsequently superseded by [agreements](#) in largely similar terms in August 2013. The 2013 agreement between PNG and Australia is also supported by a [Regional Resettlement Arrangement](#), signed by the two countries on 19 July 2013.

The agreements between these countries provide that Australian authorities will first conduct identity and health screening of asylum seekers in Australia. In practice, Australian authorities have also performed 'pre-transfer assessments' to determine whether each asylum seeker is fit to be sent offshore, before removing them to Nauru or PNG at the earliest possible opportunity. These transfers have persistently been criticised as 'inadequate',¹ especially in cases involving [children](#).

All asylum seekers who have arrived by boat since August 2012 have been liable to removal to Nauru or PNG, even if they applied for asylum immediately upon arrival in Australia or had characteristics warranting special consideration (such as being an unaccompanied minor, a survivor of torture and trauma, or a victim of trafficking; or having special health needs requiring treatment in Australia, or immediate family already living in Australia). However, while all asylum seekers have been liable to be sent offshore, in practice some were kept in Australia due to a lack of space in the offshore facilities, or for other reasons.

At various times asylum seekers have been brought back from Nauru or PNG and permitted to remain in Australia, either temporarily or on an ongoing basis. More information about these exceptional cases is set out below.

It is also worth noting that, despite the policy of offshore processing remaining on foot, [official statistics](#) from the Australian Department of Immigration and Border Protection (DIBP) indicate that no new asylum seekers have been transferred from Australia to PNG or Nauru since 2014. All new asylum seekers trying to reach Australia by boat since this time have instead been [turned back at sea](#) or otherwise returned to their countries of origin.

Brief history of offshore processing

Between 2001 and 2007, under arrangements referred to as the ‘Pacific Solution’, the Australian Coalition government of Prime Minister John Howard sent asylum seekers who arrived and sought protection in Australia ‘offshore’ – in other words, to be detained and processed either in Nauru or PNG. Despite formally remaining open throughout this six-year period, the last asylum seeker [left Manus Island in 2004](#), after spending the previous 10 months as the only person detained at the centre there.

Offshore processing was suspended and the detention centres in Nauru and PNG were formally closed after the Labor government of Prime Minister Kevin Rudd came to power in late-2007. In August 2012, however, offshore processing was re-established by the Labor government under Prime Minister Julia Gillard, and these arrangements continued to evolve under the second-term Rudd government (2013), and the subsequent Coalition governments of Tony Abbott (2013–2015) and Malcolm Turnbull (2015–).

Offshore processing since August 2012

Asylum seekers who are or have been subject to offshore processing since 2012 are divided into two cohorts of people, depending on when they arrived in Australia and the agreements that were in place with Nauru and PNG at that time.

Offshore processing: the first cohort

Asylum seekers who arrived in Australia by boat between 13 August 2012 and 18 July 2013 were the first cohort of people. Some of them were sent offshore to Nauru and PNG, while others remained in Australia. More than 600 asylum seekers were sent to Nauru and more than 350 to PNG during this period. All those sent to Nauru were adult males, while some of those sent to PNG were women and children.²

In June 2013, women, children and some of the most vulnerable men on Manus Island [began to be brought back to Australia](#) after the Australian government acknowledged that the facilities at the site there were insufficient to support their needs. After 19 July 2013, everyone in this cohort who was still offshore began to be brought back to Australia, where they were required to wait extended periods of time (either in the community or in detention) before being permitted to lodge fresh claims for asylum, and start the process again. It is

believed that ‘several hundreds’ of initial decisions were ready to be handed down to asylum seekers on Nauru as at 19 July 2013,³ but no one transferred offshore in this cohort ever completed the RSD process there or received an outcome. No one transferred to PNG in this cohort ever completed the RSD process there, with reports that this process was [still in a preliminary stage](#) of its development when they started to return to Australia.

The Australian government did not start to process anyone brought back from Nauru or PNG in this cohort until 2015. In December 2014, the Australian government passed the [Migration and Maritime Powers Legislation Amendment \(Resolving the Asylum Legacy Caseload\) Act 2014 \(Cth\)](#), which established a ‘fast track’ system for processing the asylum claims of these and other eligible asylum seekers. It is [expected to take several years](#) for all the claims of people subject to the fast track system to be processed. For more information about the fast track process, see our [factsheet](#).

Offshore processing: the second cohort

Asylum seekers who arrived in Australia by boat on or after 19 July 2013 comprised the second cohort of people. They were subject to a new policy [introduced by then Prime Minister Kevin Rudd](#), under which they were all sent offshore for processing and permanently denied the opportunity to settle in Australia. People in this group may be brought back to Australia temporarily in certain circumstances (such as to receive medical treatment or give birth), at which point they are called ‘transitory persons’. However, all transitory persons must be sent back offshore as soon as the reason for their return to Australia has been resolved.⁴

Exceptions to the rule that everyone in this cohort must be transferred offshore and never be settled in Australia were made for people who arrived in Australia by boat between 19 July and 31 December 2013 but had not yet been transferred offshore,⁵ and for [the families of 31 babies](#) who were born in Australia before 4 December 2014 after their mothers were transferred back from Nauru. These exceptions were made as part of the Abbott government’s political negotiations to secure votes to pass the *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014*.

Between July 2013 and December 2014, more than 1300 males were sent from Australia to the ‘regional processing centre’ (RPC) on Manus Island in PNG. This centre was meant to accommodate only adult males, but some minors were also sent there. Over 1350 men, women and children were sent to the RPC in Nauru. Up-to-date statistics about the number of people transferred to Nauru and PNG and the outcomes of their protection claims are available in the [Operation Sovereign Borders monthly updates](#), and the Kaldor Centre’s [Transfer Tracker](#).⁶

Living conditions in Nauru and PNG since August 2012

When offshore processing was first reinstated in 2012, all asylum seekers and refugees transferred to Nauru and PNG were detained there. The conditions of this detention, and related violations of the human rights of asylum seekers and refugees, have been [comprehensively covered elsewhere](#).

From May 2014, recognised refugees began to be settled outside the RPC to various dedicated sites around Nauru.⁷ The conditions in some of these settlement sites, especially in the earliest days, were grossly inadequate.⁸ In February 2015, the [Nauruan government announced](#) the introduction of partial ‘open centre arrangements’ at the RPC, under which some asylum seekers were granted permission to leave on certain days, between certain hours and subject to certain conditions. In October 2015, the [Nauruan government announced](#) that the RPC was a completely open centre, thus marking the end of formal detention and allowing refugees and asylum seekers relatively free movement in Nauru.

On Manus Island, from January 2015, some men who had been recognised as refugees began to be permitted to leave the RPC and reside at a ‘transit facility’ near the town of Lorengau on Manus Island.⁹ Over the following years, more men moved out to the transit facility, a small number were relocated to live in the community elsewhere in PNG, and a large number remained at the RPC. On 26 April 2016, the Supreme Court of PNG [ruled unanimously](#) that the ongoing detention of men at the RPC was unconstitutional and illegal under PNG law, and ordered the governments of Australia and PNG to put an end to their illegal detention ‘forthwith’. The following day, PNG Prime Minister Peter O’Neill [announced](#) that the Manus RPC would be closed, and that Australia would need to make ‘alternative arrangements’ for the men who remained there. However, as at the date of publication, men continue to be detained at the RPC (albeit with some operational modifications which seek to provide them with greater freedom of movement).

Durable solutions

People who are recognised as refugees in PNG may be [permitted to stay in the country](#). People who are recognised as refugees in Nauru are [permitted to stay there](#) on a temporary basis, possibly for as long as ten years, but it is unclear what permanent options are available to them.

Successive Australian governments have firmly and consistently stated that [no refugees offshore will ever be resettled in Australia](#), despite a persistent lack of viable alternatives. [New Zealand offered](#) to resettle a small number of refugees from PNG and/or Nauru, but Australia refused the offer. A small number of refugees on Nauru were relocated to Cambodia under a controversial [agreement with Australia, but most have left](#). Finally, in late 2015, a [resettlement deal between Australia and the United States](#) was announced which could potentially provide solutions for some of the refugees in PNG and Nauru. However, as at the date of publication, the terms of this agreement have not been publicly disclosed, and its future and viability remain unclear.

Madeline Gleeson
Senior Research Associate
Andrew & Renata Kaldor Centre for International Refugee Law

Endnotes

¹ Senate Select Committee on the Recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru, *Taking responsibility: conditions and circumstances at Australia's Regional Processing Centre in Nauru*, August 2015
<http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report>, 44.

² Department of Immigration and Citizenship, *Annual report: 2012-2013*, 24 September 2013, <<https://www.border.gov.au/ReportsandPublications/Documents/annual-reports/2012-13-diac-annual-report.pdf>>, 205.

³ UN High Commissioner for Refugees, *UNHCR monitoring visit to the Republic of Nauru: 7 to 9 October 2013*, 26 November 2013, <<http://www.refworld.org/docid/5294a6534.html>>, 8.

⁴ Under the *Migration Act 1958* (Cth), an officer may bring a 'transitory person' back to Australia from an offshore processing country 'for a temporary purpose', however they must be transferred back offshore 'as soon as reasonably practicable after the person no longer needs to be in Australia for that purpose'. Transitory persons cannot apply for a visa while in Australia unless given written permission from the Minister for Immigration and Border Protection to do so: ss. 46B, 198(1A), 198AH, 198B.

⁵ Scott Morrison, 'Reintroducing TPVs to resolve Labor's asylum legacy caseload, Cambodia', press conference, Canberra, 26 September 2014, <<http://pandora.nla.gov.au/pan/143035/20141222-1032/www.minister.immi.gov.au/media/sm/2014/sm218131.htm>>; Commonwealth of Australia, *Parliamentary Debates (Senate)*, 4 December 2014, 10,313 (Glenn Lazarus)
<http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/031d80d7-61ca-407e-9e56-9e2d9d467e42/toc_pdf/Senate_2014_12_04_3109_Official.pdf>.

⁶ When considering these statistics, it is worth noting that in the five years before Australia stopped processing the claims of people who arrived by boat seeking asylum (2008–13), between 88 and 100% of people were found to be refugees, after negative decisions had been reviewed. For certain groups arriving at certain times, up to 100% of the negative first decisions were overturned on appeal: Department of Immigration and Citizenship, *Asylum Trends 2012–2013*, <<https://www.border.gov.au/ReportsandPublications/Documents/statistics/asylum-trends-aus-2012-13.pdf>> 27–30.

⁷ Karen Barlow, 'First group of asylum seekers granted refugee status on Nauru', *ABC News*, 23 May 2014, <<http://www.abc.net.au/news/2014-05-22/first-refugees-on-nauru-released-and-granted-visas/5469244>>.

⁸ Madeline Gleeson, *Offshore: Behind the Wire on Manus and Nauru* (NewSouth Publishing, 2016) 227–243.

⁹ Sarah Whyte, 'First two refugees move out of Manus detention compound to resettlement centre', *The Sydney Morning Herald*, 21 January 2015, <<http://www.smh.com.au/federal-politics/political-news/first-two-refugees-move-out-of-manus-detention-compound-to-resettlement-centre-20150121-12v4xk.html>>.