

This factsheet describes current arrangements for refugee processing and protection in the Republic of Nauru (Nauru). It introduces Nauru and the offshore processing regime that has been in place there since August 2012, and then sets out the arrangements for refugee status determination (RSD), including the [relevant legislation](#), [early observations about Nauruan capacity to perform RSD](#), [how RSD is performed in practice](#), and the [search for durable solutions](#) for people found to be refugees on Nauru. The factsheet also sets out more general information about Nauru's [human rights obligations](#) under international and domestic law, [key facts and figures](#), and [key dates](#) in relation to refugee processing since August 2012.

This factsheet is part of a series on offshore processing, including a factsheet on [RSD for asylum seekers on Manus Island](#), a factsheet on [Australia's responsibility for asylum seekers and refugees in Nauru and Papua New Guinea under international law](#), and an [In Focus brief on the resettlement of refugees from Nauru to Cambodia](#).

## Introduction

### Nauru

Nauru is the world's smallest island nation, stretching to just twenty-one square kilometres. Sitting just below the equator, some 3000 kilometres north-east of Cairns on Australia's east coast, Nauru is a raised, fossilised coral atoll in the Pacific Ocean. The Nauruan population of about 10,000 people comprises twelve tribes, each symbolised by one of the twelve points of the star on the Nauruan flag. The people are a mixture of Micronesian, Polynesian and Melanesian descent, predominantly Christian, and speak Nauruan and English.

Most of Nauru's land area is degraded and unsuitable for habitation, agriculture or other development, as a result of extensive strip mining to extract phosphate soil over the last century.<sup>1</sup> Due to Nauru's increasing population, the lack of arable land for agriculture, the degradation of land, coastal and marine resources, and water contamination and scarcity, the island faces serious food and water insecurity and is dependent on foreign imports. This dependency is particularly concerning in light of Nauru's struggling economy, which faces difficulties as a result of the nation's small size, remoteness, harsh natural environment, lack of exploitable resources and struggle to create jobs and promote growth for an expanding population. [According to the Australian government](#), revenue associated with the regional processing arrangements constitute 'Nauru's most significant revenue stream'. Almost all of Nauru's population lives along the island's coastal flat areas, making the country highly vulnerable to climate change, sea-level rise and natural disasters.

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 to be detained and processed either on Nauru or on Manus Island in Papua New Guinea (PNG).

Offshore processing was suspended and the detention centres in Nauru and on Manus Island 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 of 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 (2015-2016).

Since 13 August 2012, any person arriving in Australia by sea without a valid visa has been subject to offshore processing in Nauru or PNG, even if they applied for asylum immediately upon arrival in Australia. 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, and were subsequently superseded by agreements in largely similar terms signed in August 2013.

Asylum seekers who are or have been subject to offshore processing 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 in Nauru: the first cohort**

Asylum seekers who arrived in Australia by boat between 13 August 2012 and 18 July 2013 comprise a first cohort of people, some of whom were sent offshore to Nauru (and Manus Island) while others remained in Australia. More than 600 asylum seekers were sent to Nauru during this period, all of whom were adult males.<sup>2</sup> After 19 July 2013, everyone in this cohort who was still offshore began to be brought back to Australia, where they waited in limbo to be permitted to lodge fresh claims for asylum. 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,<sup>3</sup> but no one transferred offshore in this cohort ever completed the RSD process or received an outcome on their claim on Nauru. When they were brought back to Australia, they were required to start the process again.

The Australian government did not start to process anyone brought back from Nauru as part of 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](#) which established a ‘fast track’ system for processing the asylum claims of these and other eligible asylum seekers. As at May 2016, fast track processing had only recently begun, and the vast majority of people in this cohort were still waiting either in the community or in detention in Australia to be assessed. 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 in Nauru: the second cohort

Asylum seekers who arrived in Australia by boat on or after 19 July 2013 comprise a second cohort of people, subject to a new policy [introduced by then Prime Minister Kevin Rudd](#), under which they must all be sent offshore for processing and will never be given an 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.<sup>4</sup>

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,<sup>5</sup> and for [the families of thirty one 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*.

More than 1200 people have been sent from Australia to Nauru as part of the second cohort. By [30 April 2016](#) 1163 asylum seekers had been processed, with 77% found to be refugees and living in the Nauruan community or inside the regional processing centre (RPC) under ‘open centre’ arrangements. This number may go up after the negative cases have been reviewed (those who do not receive positive decisions at first instance are entitled to merits review and possibly judicial review: see [below](#) for more information). It is worth noting that in the last five years before Australia stopped processing the claims of people who arrived by boat seeking asylum (2008-2013), between 88 and 100% of people were found to be refugees, after any negative decisions had been reviewed. For certain groups arriving at certain times, up to 100% of the negative first decisions were overturned on appeal.<sup>6</sup>

Up to date statistics about the number of people transferred to Nauru and the outcomes of their claims are available in the [Operation Sovereign Borders monthly updates](#).

People who are recognised as refugees in Nauru will be permitted to stay there on a temporary basis, however with Australia refusing to resettle them and no other viable resettlement countries, the future for these people remains unclear. See [below](#) for more information.

## Refugee status determination (RSD) in Nauru

### Legislation

Between 2001 and 2007, when Nauru hosted two refugee processing centres under the Howard government’s ‘Pacific Solution’, the claims of asylum seekers held in these centres were assessed by either the UN High Commissioner for Refugees (UNHCR) or Australian immigration officials, applying generally the same procedures and standards as UNHCR used for the processing of claims elsewhere in the world.<sup>7</sup>

Nauruan refugee law did not begin to develop until the country acceded to the 1951 Convention Relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol in 2011. At this date, and until October 2012, Nauru did not have in place any domestic law, process or institutional capacity for the performance of RSD.

In 2012, Nauru passed the [Refugees Convention Act 2012](#), which governs Nauru's RSD process. [According to the Nauruan government](#), this law gives effect to the Refugee Convention:

... by incorporating the principles and obligations under the Convention into the laws of Nauru. This ensures that Nauru is satisfying its international obligations while at the same time giving effect to the rights of asylum seekers and refugees.

The *Refugees Convention Act* adopts the definition of a 'refugee' set out in the Refugee Convention, and establishes a RSD procedure for determining whether asylum seekers are entitled to refugee status. RSD is formally the responsibility of the Nauruan Secretary for Justice and Border Control (the Secretary). The law also establishes a Refugee Status Review Tribunal (the Tribunal), which is empowered to perform merits review of negative decisions about an asylum seeker's application for refugee status. The Tribunal sits as a three member panel and must act according to the principles of natural justice. As a final stage of review, some asylum seekers who are not recognised as refugees after merits review may be allowed to apply to the Supreme Court of Nauru for judicial review of their case, if it involves a challenge on a point of law (see [below](#) for more information).

Section 4 of the *Refugees Convention Act* transposes Nauru's obligations under the Refugee Convention 'not [to] expel or return a person determined to be recognised as a refugee to the frontiers of territories where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion' (*non-refoulement* obligations). In 2014, Nauru [amended the Refugees Convention Act](#) to include recognition of its '[complementary protection](#)' obligations under international law, including its obligations not to return any person to a place where he or she would face a real risk of significant harm (such as being exposed to arbitrary deprivation of life, torture, or cruel, inhuman or degrading treatment or punishment).

### **Early observations about Nauruan RSD capacity**

After visiting Nauru in December 2012, UNHCR returned with significant concerns about the state of Nauru's RSD system, as well as the 'lack of clarity as to the legal and operational roles and responsibilities of the two States parties to the transfer arrangements'. According to [UNHCR's report](#), the passing of the *Refugees Convention Act* was insufficient, and 'a great deal of preparatory work' needed to be done before it could be said that a functional, fair and effective system for RSD was in place. The report noted at that time that no substantive assessments of refugee claims had begun, and that there were:

- no asylum procedures in place;
- no experienced RSD decision makers in the Government of Nauru; and
- no potential candidates identified to be a members of the Tribunal and perform independent merits review.

UNHCR concluded that ‘delays in commencement of substantive processing arrangements for asylum-seekers may be inconsistent with the primary and, arguably, sole purpose of transfer to a ‘Regional Processing Centre’, namely, to undertake refugee processing in a fair, humane, expeditious and timely way’. A number of asylum seekers detained on Nauru at this time described the lack of clarity about RSD procedures and their timeframes as ‘cruel’.

UNHCR published a [second report](#) on refugee processing in Nauru after visiting the island in October 2013. While acknowledging the establishment of the legal framework for RSD as a positive development since its last report, UNHCR concluded that the arrangements for the transfer of asylum seekers from Australia, in their totality, did not comply with international standards. At this 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 seconded to the Government of Nauru. Australian decision makers seconded to Nauru had been conducting eligibility interviews and RSD processing;
- processing had commenced in March 2013, but had then been suspended in July 2013 (after the announcement of Rudd’s new policy and a riot in the RPC on the same day). At the date of UNHCR’s visit processing had not yet resumed; and
- Nauru has not yet codified its complementary human rights obligations, nor introduced a statelessness status determination procedure.

UNHCR noted that despite the establishment of a ‘sound’ legal framework, Nauru still did not 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;
- in its assessment, ‘the current expertise and experience of the Nauruan officials is not at a level where they are able to conduct fair and accurate assessments of refugee claims without substantial input from Australian officials’. UNHCR stressed that it was ‘essential’ for experienced decision makers to continue to provide ‘close mentoring, supervision and support to ensure the fairness and accuracy of assessments, and overall quality control and assurance’; and
- asylum seekers continued to express ‘significant concerns’ about processing delays, and confusion as to whether Australia or Nauru was responsible for the process .

UNHCR again pointed out that the overarching purpose of the transfer arrangement between Australia and Nauru was supposed to be processing, and as such deemed the delays to be ‘unacceptable’ and ‘of deep concern’.

The Nauruan RSD system continued to develop over the following months until, in May 2014, [the government announced](#) that a first group of families and single adult males had been recognised as refugees, and settled in the Nauruan community. Since that time the Tribunal has started to perform merits review of the cases of asylum seekers who received a negative initial decision, and judicial review has also begun.

## RSD in practice

According to the *Refugees Convention Act* and the [Nauruan Refugee Status Determination Handbook](#) (RSD Handbook), the RSD process in Nauru consists of the following stages:

- the transfer interview: when asylum seekers arrive in Nauru they have a 'transfer interview' with a representative from the Government of Nauru to collect general biographical information and a summary of the asylum seeker's claim. Notes from this interview go on the asylum seeker's RSD file, are read by RSD decision makers, and may be used to draw conclusions about the credibility of the asylum seeker;<sup>8</sup>
- submitting an RSD application: asylum seekers then begin to prepare their application for refugee status with the assistance of Claims Assistance Providers (CAPS), who explain the definition of a refugee and criteria upon which the claim will be assessed, and the various stages of the procedure for applying for RSD in Nauru (including the avenues for appeal and assistance that is available).<sup>9</sup> As a general rule, only one asylum seeker in each family will complete an application, with the other family members and dependent children included under the main claim (unless they choose to have their eligibility for refugee status determined independently).<sup>10</sup> CAPS representatives will assist asylum seekers in completing their RSD application forms, and attach any other documents or material that might support the claim. Formally, asylum seekers have the right to engage their own legal representative at their own cost;<sup>11</sup> practically, however, they may face difficulties finding available lawyers and the financial means necessary to afford them.
- RSD interview: after submitting an RSD application asylum seekers have an interview, which is supposed to be 'conducted in a non-intimidating, nonthreatening, and impartial manner, with due respect for the safety and dignity' of the asylum seeker.<sup>12</sup> Interviews are audio-recorded and conducted by Nauruan RSD officers on behalf of the Secretary, often under the close supervision of 'mentors' from the Australian Department of Immigration and Border Protection (DIBP). A CAPS representative normally accompanies each asylum seeker to their interview, however the RSD Handbook states that 'it is for the [RSD officer] to conduct the interview and it is the role of the [CAPS representative] to intervene only where they believe there has been some confusion or misunderstanding between the [RSD officer] and [asylum seeker], or where they believe there has been some breach of procedural fairness'.<sup>13</sup> An interpreter may also be present if necessary during the interview.<sup>14</sup> During the interview, the RSD officer will confirm the asylum seeker's biographical data and ask questions about his or her claim. After a short break, the CAPS representative may present further submissions to the RSD officer about the asylum seeker's case.
- assessment of the claim: after receiving all relevant information, RSD officers make an assessment of the claim (on behalf of the Secretary). This decision is made by reference to the Refugee Convention and Nauru's complementary protection obligations under international law, with RSD officers advised that 'Nauru's RSD

procedures and principles seek to follow international standards, as used by UNHCR in its RSD processes'.<sup>15</sup> RSD Officers may be guided by case law from Australia and other jurisdictions, however they are advised that these cases are 'not authoritative in Nauru, and are therefore for illustrative purposes only', and that they should 'take care to ensure that they do not adopt interpretative tests and approaches from foreign case law which are not part of Nauru's RSD process'.<sup>16</sup>

- notification of decision: the Secretary is required by law to make a determination on a claim, and then to notify the asylum seeker of that determination, 'as soon as practicable' after a person applies for asylum in Nauru.<sup>17</sup> According to the RSD Handbook, the Secretary will 'endeavour' to notify asylum seekers of his (or her) decision within 4 to 6 months of their RSD interview.<sup>18</sup> In practice, some asylum seekers remained in detention awaiting a decision for significantly longer than this timeframe. Decisions should be in writing, and notification letters should be delivered to asylum seekers in person by a CAPS representative.<sup>19</sup> Negative decisions must include reasons why the asylum seeker failed to meet the eligibility criteria for refugee status, including information about whether the evidence submitted by the asylum seeker was insufficient or not accepted, and all relevant information about the asylum seeker's right to apply for merits review of the decision.<sup>20</sup>

If an asylum seeker's claim for refugee status is successful, he or she (and any dependent children and family members included in the application) will be allocated a residence either in the Nauruan community or inside the RPC (which, as of October 2015, is no longer a detention centre). People recognised as refugees will continue to hold the same type of visa they held as asylum seekers (a 'regional processing centre visa'), which must be renewed every three months, however the conditions of this visa will change. Refugees will be required to reside in the premises notified to them, 'must not behave in a manner prejudicial to peace or good order in Nauru', and must take 'all reasonable steps' to ensure that any dependents comply with the conditions of their visas.<sup>21</sup> Other restrictions that would previously have been attached to a refugee's regional processing centre visa while they were an asylum seeker will be lifted, including the prohibition on working and additional limitations on their freedom of movement.<sup>22</sup>

If an asylum seeker's claim for refugee status is not successful at first instance, he or she may apply for merits review by the Tribunal.<sup>23</sup> The Tribunal 'stands in the shoes' of the original RSD officer, and may exercise all of the powers and discretions that officer had.<sup>24</sup> 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>25</sup>

If an asylum seeker's claim for refugee status is successful after merits review, he or she will be temporarily settled in Nauru. If not, he or she may be able to apply for judicial review to the Supreme Court of Nauru, which consists of three judges: Chief Justice Ratu Joni Madraiwiwi, the former Fijian vice-president, and Justices Mohammed Shafi Khan and Jane Elizabeth Hamilton-White, both of whom are Australian. Judicial review is only available if there has been a possible error on a point of law; it does not allow for any reconsideration of

the merits of the claim.<sup>26</sup> In making a decision about a case, the Supreme Court is empowered to make an order either (i) affirming the decision of the Tribunal, or (ii) remitting the matter back to the Tribunal for reconsideration in accordance with the Court's instructions.<sup>27</sup> If the Supreme Court affirms the Tribunal's decision that the asylum seeker's claim for refugee status should be rejected, he or she may face deportation to his or her country of origin (provided there are no other legal reasons that the person cannot be deported). As at May 2016, this situation does not yet appear to have arisen for any asylum seeker on Nauru.

## The search for durable solutions

RSD and the grant of status is not the end of the process for refugees on Nauru. It remains for a [durable solution](#) to be found for each person and family.

Refugees may be able to remain on Nauru for [as long as ten years](#), on a rolling series of three-month regional processing centre visas, or until that country decides otherwise. Nauru has never indicated that it will provide refugees with permanent residency or citizenship. A durable solution must be found for them elsewhere.

Since July 2013, successive Australian governments have [firmly and consistently stated](#) that no refugee on Nauru will ever have the opportunity of settling in Australia. [New Zealand offered](#) to resettle a small number of the refugees on Nauru (and/or Manus Island), but Australia refused the offer. A handful of refugees [took up an offer of resettlement](#) in Cambodia under an [agreement between Australia and that country](#), but three have subsequently left, and it is unclear whether that arrangement remains viable. Two refugees, a father and his teenage son, were [resettled in Canada](#) under a family reunification visa after the man's wife and boy's mother was recognised as a refugee in that country. The remaining people found to be refugees on Nauru are in a state of indefinite limbo, unless and until an appropriate resettlement country can be found (or Australia allows them to return and settle in the Australian community).

## Nauru's human rights obligations

### International law

Nauru has been a State party to the 1951 Convention Relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol since 28 June 2011. Nauru is not a State party to either of the two conventions on statelessness: the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Nauru is a signatory or State party to a range of human rights treaties, as set out in Table 1. The RSD Handbook, published by the Nauruan Department of Justice and Border Control, states that whilst Nauru has not ratified the International Covenant on Civil and Political Rights, 'it has signed it, which signifies its intention to be bound by the obligations in the Covenant'.<sup>28</sup> Nauru has also signed but not ratified the International Convention on the Elimination of All Forms of Racial Discrimination.



Table 1: Human rights treaties to which Nauru is a signatory or State party

Treaty	Date of signature	Date of ratification or accession (a) <sup>29</sup>
International Convention on the Elimination of All Forms of Racial Discrimination 1966	12 Nov 2001	x
International Covenant on Civil and Political Rights 1966	12 Nov 2001	x
International Covenant on Economic, Social and Cultural Rights 1966	x	x
Convention on the Elimination of All Forms of Discrimination against Women 1979	n/a	23 Jun 2011 (a)
Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment 1984	12 Nov 2001	26 Sep 2012
Convention on the Rights of the Child 1989	n/a	27 Jul 1994 (a)
Convention on the Rights of Persons with Disabilities 2006	n/a	27 Jun 2012 (a)

Source: United Nations Treaty Collection, *Status of Treaties: Chapter IV: Human Rights*, undated, <<https://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>>.

## The Constitution of Nauru

According to the 1968 Constitution of Nauru, 'every person in Nauru is entitled to the fundamental rights and freedoms of the individual... whatever his [or her] race, place of origin, political opinions, colour, creed or sex' (article 3). Articles 3 to 13 set out the rights to:

- life, liberty and security of person;
- freedom from torture or treatment or punishment that is inhuman or degrading;
- the enjoyment of property;
- protection of the law;
- freedom of conscience and expression;
- freedom of peaceful assembly and association; and
- respect for private and family life.

Article 5(1) provides that 'no person shall be deprived of his [or her] personal liberty, except as authorised by law' for one of a specified list of purposes, including 'for the purpose of preventing his [or her] unlawful entry into Nauru, or for the purpose of effecting his [or her] expulsion, extradition or other lawful removal from Nauru'. All persons in Nauru, including asylum seekers and refugees, are entitled to bring a case before the Supreme Court of Nauru if they believe their rights or freedoms have been breached, and the Supreme Court may make any orders and declarations that are necessary and appropriate to enforce and protect those rights (article 14). If an asylum seeker or other person believes that they have been unlawfully detained, they can make a complaint to the Supreme Court of Nauru, which is entitled to order their release if the detention is found to be unlawful (article 5).

Prior to the introduction of full open centre arrangements in October 2015, asylum seekers detained inside the Nauru RPC challenged their detention in the Supreme Court of Nauru. In June 2013, in the case of *AG v Secretary of Justice*, Justice von Doussa held that asylum seekers were being 'detained', but that this detention did not violate their constitutional right to liberty. He accepted that 'it never has been the intention of Nauru in granting visas to the [asylum seekers in the detention centre] that their stay in Nauru will be other than temporary' (at [72]). Since all asylum seekers, after being processed, were expected to be removed

either to another country for resettlement or to their country of origin, their detention was held not to violate their constitutional right to liberty because it was ‘for the very purpose of ultimately “effecting ...lawful removal from Nauru”’ (at [75]-[76]). It is unclear whether the Court would have made the same finding after July 2013, given that the offshore processing regime evolved to provide for refugees to settle in Nauru, albeit ‘temporarily’. In any case this issue is no longer live, since in early October 2015 the [Nauruan government announced](#) that the RPC would be opened fully ‘to allow for freedom of movement of asylum seekers 24 hours per day, seven days per week’.

## Key facts and figures about Nauru

<b>Population</b>	9,488 (2014)
<b>Ethnic groups</b>	Nauruan 58%, other Pacific Islander 26%, Chinese 8%, European 8%
<b>Languages</b>	Nauruan 93% (official), English 2% (widely understood and used for most government and commercial purposes), other 5% (includes I-Kiribati 2% and Chinese 2%)
<b>Religions</b>	Protestant 60.4%, Roman Catholic 33%, other 3.7%, none 1.8%, unspecified 1.1% (2011)
<b>Median age</b>	25.3 years (2014)
<b>Life expectancy</b>	66.4 years (2014)
<b>Government</b>	Republic (President Baron Waqa)
<b>Human Development Index</b>	0.724 (2013)
<b>Total unemployment</b>	22.9% (2011)
<b>Youth unemployment</b>	45.5% (2011)

Sources: Central Intelligence Agency, ‘Nauru’, *The World Factbook*, 1 May 2015, <<https://www.cia.gov/library/publications/the-world-factbook/geos/nr.html>>; United Nations Development Program Fiji Multi-Country Office, ‘About Nauru’, undated, <<http://www.fj.undp.org/content/fiji/en/home/countryinfo/nauru.html>>.

## Timeline of key events since 2012

Date	Event
<b>August 2012</b>	<ul style="list-style-type: none"> <li>The Expert Panel on Asylum Seekers, commissioned by the Australian Gillard Government, <a href="#">releases its report</a> and recommends the reintroduction of offshore processing and establishment of a ‘no advantage’ test to ensure asylum seekers who arrive by boat are not settled in Australia sooner than they would have been if they had waited to be resettled.</li> <li>Australia <a href="#">passes legislation</a> to allow offshore processing of asylum seekers in Nauru and PNG.</li> <li>A <a href="#">first Memorandum of Understanding</a> between Nauru and Australia is signed providing for the transfer of asylum seekers to Nauru.</li> </ul>
<b>September 2012</b>	<ul style="list-style-type: none"> <li>Australia <a href="#">designates Nauru</a> as a regional processing country.</li> <li>Australia starts to transfer asylum seekers to the processing centre in Nauru, where they are detained.</li> </ul>
<b>December 2012</b>	<ul style="list-style-type: none"> <li>UNHCR <a href="#">releases a report</a> identifying a number of concerns about the legal framework for and conditions in the detention centre on Nauru.</li> </ul>

<b>July 2013</b>	<ul style="list-style-type: none"> <li>The Australian <a href="#">Rudd Government announces</a> that all asylum seekers arriving in Australia by boat on or after 19 July 2013 will be transferred offshore for processing in Nauru or PNG, and will never have the prospect of settlement in Australia.</li> <li>On the same day <a href="#">a riot erupts</a> in the Nauru RPC, during which the majority of its physical infrastructure is burnt down.</li> <li>The processing of asylum claims is temporarily suspended. All asylum seekers in the Nauru RPC at this time start to be moved back to Australia to make room for the second cohort of arrivals to whom Rudd's new policy will apply.</li> </ul>
<b>August 2013</b>	<ul style="list-style-type: none"> <li>A <a href="#">second Memorandum of Understanding</a> between Nauru and Australia is signed, providing for the continuation of transfers of asylum seekers to Nauru and the possibility of refugees being settled in Nauru.</li> </ul>
<b>November 2013</b>	<ul style="list-style-type: none"> <li>UNHCR <a href="#">releases a second report</a> on the detention and processing of asylum seekers in Nauru. The report notes some positive progress but continues to identify many deficiencies with the legal framework for and conditions in detention in Nauru.</li> </ul>
<b>May 2014</b>	<ul style="list-style-type: none"> <li>The <a href="#">first asylum seekers are recognised as refugees</a>, released from detention in the RPC and permitted to settle temporarily in the community.</li> </ul>
<b>September 2014</b>	<ul style="list-style-type: none"> <li>Australia and Cambodia <a href="#">sign an agreement</a> providing for the resettlement of refugees from Nauru to Cambodia.</li> </ul>
<b>February 2015</b>	<ul style="list-style-type: none"> <li>The <a href="#">Nauruan government announces</a> the introduction of 'open centre arrangements' at the Nauru RPC, under which some asylum seekers may be granted permission to leave on certain days, between certain hours and subject to certain conditions.</li> </ul>
<b>May 2015</b>	<ul style="list-style-type: none"> <li>A first group of four refugees <a href="#">accept the offer</a> to go from Nauru to Cambodia. For all further developments regarding the resettlement of refugees from Nauru to Cambodia see our <a href="#">In Focus Brief</a>.</li> </ul>
<b>October 2015</b>	<ul style="list-style-type: none"> <li>The <a href="#">Nauruan government announces</a> that the RPC will be opened fully to allow freedom of movement all day, every day.</li> </ul>
<b>February 2016</b>	<ul style="list-style-type: none"> <li>The High Court of Australia delivers judgment in the case of <a href="#">Plaintiff M68</a>, which challenged the lawfulness of the Australian government's actions in transferring people to Nauru. The majority of the Court held that Australia had not acted unlawfully in transferring people to Nauru.</li> <li>Two refugees are <a href="#">resettled from Nauru to Canada</a>.</li> </ul>

## Further information

For more information or queries about refugee status determination in Nauru, please contact Madeline Gleeson at [madeline.gleeson@unsw.edu.au](mailto:madeline.gleeson@unsw.edu.au).

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## Endnotes

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<sup>1</sup> The information in the following two paragraphs is drawn from: Government of Nauru, 'Nauru National Assessment Report for the Third International Conference on Small Island Developing States (SIDS)', 17 May 2013, <<http://www.sids2014.org/content/documents/203NAURU%20National%20Assessment%20Report%20for%20Third%20SIDS%20Conference%202013.pdf>>, pp. 8-13; Australian Government Department of Foreign Affairs and Trade, 'Nauru country brief', undated, <<http://dfat.gov.au/geo/nauru/Pages/nauru-country-brief.aspx>> (accessed 27 May 2016).

<sup>2</sup> 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>>, p. 205.

<sup>3</sup> 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>>, p. 8.

<sup>4</sup> Under the *Migration Act*, 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: *Migration Act*, ss. 46B, 198(1A), 198AH, 198B.

<sup>5</sup> 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, p. 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](http://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/031d80d7-61ca-407e-9e56-9e2d9d467e42/toc_pdf/Senate_2014_12_04_3109_Official.pdf)>.

<sup>6</sup> Department of Immigration and Citizenship, *Asylum Trends 2012 – 2013*, <<https://www.border.gov.au/ReportsandPublications/Documents/statistics/asylum-trends-aus-2012-13.pdf>> pp. 27-30.

<sup>7</sup> Senate Select Committee, Parliament of Australia, 'A certain maritime incident', 23 October 2002, <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Former\\_Committees/maritimeincident/report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/maritimeincident/report/index)>, chapters 10, 11.

<sup>8</sup> RSD Handbook, pp. 119, 129

<sup>9</sup> RSD Handbook, p. 124.

<sup>10</sup> RSD Handbook, p. 124

<sup>11</sup> RSD Handbook, p. 129.

<sup>12</sup> RSD Handbook, p. 126

<sup>13</sup> RSD Handbook, pp. 129-130.

<sup>14</sup> RSD Handbook, p. 130.

<sup>15</sup> RSD Handbook, p. xi. See also: *Refugees Convention Act*, definition of 'refugee' and 'complementary protection'. RSD officers are advised that they 'must interpret the [Refugee] Convention in accordance with the UNHCR model' (p. vii), meaning in accordance with the [UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees](#) (and possibly other UNHCR guidelines).

<sup>16</sup> RSD Handbook, p. xi.

<sup>17</sup> *Refugees Convention Act*, ss. 6(3), 9.

<sup>18</sup> RSD Handbook, p. 136.

<sup>19</sup> RSD Handbook, p. 145.

<sup>20</sup> *Refugees Convention Act*, s. 9; RSD Handbook, pp. 145-146.

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<sup>21</sup> [Immigration Regulations 2014](#) (Nauru), reg 9(6A).

<sup>22</sup> Compare Immigration Regulations 2014, regs. 9(6) and (6A).

<sup>23</sup> *Refugees Convention Act*, s. 31.

<sup>24</sup> RSD Handbook, p. 19; *Refugees Convention Act*, s. 34(1).

<sup>25</sup> *Refugees Convention Act*, s. 34(2).

<sup>26</sup> *Refugees Convention Act*, s. 43.

<sup>27</sup> *Refugees Convention Act*, s. 44.

<sup>28</sup> RSD Handbook, p. 19.

<sup>29</sup> By signing a treaty, a State expresses a willingness to become a party to the treaty in the future and commits to refrain from acts that would defeat its object and purpose in the meantime. States that have signed a treaty may then ratify it in order to become a State party and legally bound by its terms. States can choose to become a party to a treaty either by signing and then ratifying it, or by acceding to it in a single act. Both ratification and accession have the same legal effect of binding the State to the terms of the treaty. For more information see the [United Nations' Glossary of terms relating to Treaty actions](#).