

## Research Brief

# REFUGEE STATUS DETERMINATION ON MANUS ISLAND

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### Contents

Contents.....	1
Introduction .....	1
Refugee status determination (RSD) in PNG.....	3
Legislation .....	3
Early observations about PNG's capacity to perform RSD .....	5
How RSD is performed in practice.....	6
RSD outcomes .....	9
The search for durable solutions .....	9
Endnotes.....	11

### Introduction

Papua New Guinea (PNG) is an independent Pacific nation, north of Australia across the Torres Strait from Queensland's Cape York Peninsula. PNG is considerably larger than most of its Pacific island neighbours, with a population of around 7.3 million people spread across the eastern half of the island of New Guinea and the six hundred islands making up its 463,000 km<sup>2</sup> territory. It is also vastly more diverse than many of its neighbours. While the official languages are English, Tok Pisin and Hiri Motu, more than 800 other languages are spoken throughout PNG's many societies and tribes. The population is predominantly Christian, although a variety of indigenous beliefs and religions continue to be practiced. PNG lifestyles range from traditional village life based on subsistence and small agriculture, through to modern living in the main towns, including the capital Port Moresby.

Manus Province, situated approximately 800 kilometres due north of Port Moresby, is the smallest and least populated of PNG's twenty-two provinces. It comprises a close collection of islands covered in jungle and tropical rainforest, and takes its name from its largest island, Manus Island, which is commonly referred to as the site of the former 'regional processing centre' (RPC) in Manus. In fact, the RPC was situated on the Lombrum naval base on

Los Negros Island, immediately adjoining but separated from Manus Island by a narrow stretch of water. The capital of Manus Island is the town of Lorengau.

Since 13 August 2012, asylum seekers arriving in Australia by boat without valid visas have been subject to 'offshore' or 'third country' processing either on Manus Island or in the Republic of Nauru (Nauru). The terms of these arrangements were originally set out in a memorandum of understanding between Australia and PNG signed in September 2012 and were superseded by a new agreement in August 2013. The 2013 agreement is also supported by a Regional Resettlement Arrangement, signed by the prime ministers of Australia and PNG on 19 July 2013.<sup>1</sup>

Asylum seekers have been sent to Manus Island in two cohorts. The first cohort comprised more than 350 asylum seekers, including men, women and children, who arrived in Australia by boat between 13 August 2012 and 18 July 2013.<sup>2</sup> While these asylum seekers were transferred to Manus Island, others arriving at the same time were transferred to Nauru or permitted to remain in Australia. Women, children, and some of the most vulnerable men began to be transferred back to Australia in June 2013, after the Australian government acknowledged that the facilities at the site there were not of a sufficient standard to support their needs.<sup>3</sup> After 19 July 2013, the remainder of the asylum seekers still on Manus Island also began to be brought back to Australia. No one transferred offshore in this cohort ever completed refugee status determination (RSD) or received an outcome on in PNG. 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>4</sup> Between July 2013 and December 2014 more than 1300 asylum seekers were forcibly transferred to Manus Island. This group was supposed to comprise only adult males, although there were reports that minors were also sent there by mistake.<sup>5</sup> 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.<sup>6</sup> No new asylum seekers have been transferred to Manus Island since December 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 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>7</sup> People who are recognised as refugees in PNG may be permitted to stay there, but face obstacles to permanent settlement. See [below](#) for more information.

# Refugee status determination (RSD) in PNG

## Legislation

### *History of PNG refugee law*

Despite acceding to the 1951 Convention Relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol in 1986, PNG's domestic refugee law remained underdeveloped for more than two decades. The PNG *Migration Act* 1978 regulates the movement of persons entering PNG, and deals in very brief terms with the status of asylum seekers and refugees in the country.<sup>8</sup> Section 15A provides that the PNG Minister for Foreign Affairs and Citizenship (Minister) 'may determine a non-citizen to be a refugee for the purposes of this Act'. Prior to May 2015, sections 15B, 15C and 15D authorised the Minister to declare a place to be a 'relocation centre', direct a refugee or refugees to reside at a relocation centre, and appoint an officer to be the Administrator of a relocation centre. These provisions constituted the entirety of the domestic law governing the status and processing of refugees in PNG until April 2013.

In the absence of established processes or institutional capacity for the performance of RSD between 2001 and 2007, when PNG first hosted a refugee processing centre under the Howard government's 'Pacific Solution', the claims of asylum seekers held there were assessed by Australian immigration officials applying generally the same procedures and standards as they would elsewhere.<sup>9</sup>

The new arrangements introduced in 2012 envisioned that PNG would this time be responsible for performing RSD, however when asylum seekers started to be transferred from Australia in November of that year there was still little by way of law to govern how processing would occur. While section 15A gave the Minister the power to 'determine a non-citizen to be a refugee', the Act did not transpose the definition of a refugee from the Refugee Convention or provide any procedural or substantive guidance on how this determination should be made.

### ***April 2013 amendments to the Migration Regulation***

On 26 April 2013, an amendment to PNG's Migration Regulation 1979 came into force which sought to elaborate on the Minister's power under section 15A of the *Migration Act* to determine a non-citizen to be a refugee.<sup>10</sup> Newly inserted reg 14 introduced a variation of the definition of a 'refugee' in the Refugee Convention, which applied specifically to asylum seekers transferred to PNG from Australia pursuant to the agreement signed by the two countries in September 2012.

The Regulation varied the definition of a 'refugee' in the Refugee Convention by providing that a person is not a refugee if they meet any of eight listed criteria, which go beyond the exclusions contained in Article 1 of the Refugee Convention. For example, a person will be excluded from recognition as a refugee in PNG if they had, within PNG, 'exhibited a demeanour incompatible with a person of good character and standing' (reg 14(2)(h)). The

newly inserted definition of a refugee did not include recognition of PNG's '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).

Newly inserted reg 15 provided that 'as soon as practicable' after making a decision about whether or not an asylum seeker transferred from Australia meets this definition of a refugee, the Minister should give notice of the decision in writing, setting out the decision and reasons for it. The amendment did not establish any mechanism for merits or judicial review of the Minister's decision, instead providing that 'the Minister must not re-open a decision for further consideration after his decision has been made.'

In response to these changes, the UN High Commissioner for Refugees (UNHCR) reported in July 2013 that several provisions of the Migration Regulation, as amended, were inconsistent with PNG's commitments under the Refugee Convention and other international human rights treaties. In particular, UNHCR noted that the Regulation:

- reinforced differential treatment of asylum seekers depending on manner of arrival, which could amount to discrimination;
- incorrectly applied the limited exclusion provisions of the Refugee Convention to ordinary criminal matters more properly dealt with under PNG criminal law, which could lead to wrongful denial of refugee status for certain categories of persons;
- incorrectly allowed for exclusion on the basis of 'a demeanour incompatible with a person of good character and standing' in relation to behaviour carried out at or after arrival in PNG; and
- did not provide for adequate procedural safeguards, such as independent merits review of first instance decisions.<sup>11</sup>

UNHCR encouraged PNG to further amend its Migration Act and Regulation to cover both complementary protection and non-refugee statelessness claims to align the treatment of transferees more closely to applicable international standards and commitments made by Australia and PNG.<sup>12</sup>

Later in 2013 UNHCR released another report, this time describing the April 2013 amendments to the Migration Regulation as 'redundant', because they referred to the 2012 agreement with Australia which had been superseded by new agreements in July and August 2013.<sup>13</sup> UNHCR had been advised that PNG immigration officers conducting RSD for asylum seekers transferred under the new agreement were 'guided, but not bound' by the Migration Regulation, leading UNHCR to conclude that there was still 'no clear legislative or regulatory guidance' for PNG officials to follow when determining whether a person was a refugee.<sup>14</sup>

In April 2014, PNG passed another amendment to its Migration Regulation, extending its application to asylum seekers transferred from Australia under the 2013 agreement, as well

as to other classes of asylum seekers.<sup>15</sup> However, as at July 2018 PNG law still did not contain any express protections against *refoulement*.

## **Early observations about PNG's capacity to perform RSD**

### ***The first cohort: November 2012 – July 2013***

After visiting Manus in January 2013, UNHCR returned with concerns about the state of PNG's RSD system, as well as the 'very significant inadequacies in the legal and operational framework governing the transfer, treatment and processing of transferees from Australia to PNG'.<sup>16</sup> The relevant authorities were drafting regulations that would establish a legal framework and procedures for RSD, but there was no timeframe for when they were expected to be completed and implemented. In the meantime, there was:

- no adequate domestic legal framework to implement PNG's responsibilities under the Refugee Convention;
- no specific legal provisions for the processing and treatment of child asylum seekers;
- no experienced officials in the PNG government able to undertake RSD on the scale and complexity of cases envisaged under the transfer arrangements; and
- no preliminary data collection of asylum seekers other than biodata collected in Australia prior to transfer, which represented another obstacle to commencing the substantive assessments of refugee claims.<sup>17</sup>

UNHCR concluded that 'the delays and uncertainty surrounding the commencement of the refugee status determination process are inconsistent with the primary and, arguably, sole purpose of transfer from Australia'.<sup>18</sup> Asylum seekers detained in the Manus RPC at this time expressed confusion and frustration over the lack of clarity about RSD procedures, which country was responsible for them, and their timeframes.<sup>19</sup>

After visiting Manus Island again in June 2013, UNHCR acknowledged a number of positive developments since its January visit and welcomed the fact that RSD had commenced in the interim. However, UNHCR also noted significant ongoing shortcomings in the legal framework, including the regulations passed in April 2013. In terms of PNG's capacity to perform RSD, UNHCR welcomed capacity-building initiatives for PNG officials but noted that it would take a period of at least six months before they would be able to undertake RSD with any degree of self-sufficiency.<sup>20</sup> Even then, UNHCR believed some 'quality oversight' would be useful, including ongoing mentoring support from the Australian government.

### ***The second cohort: July 2013 onwards***

According to the Australian government, the RSD process did not commence in PNG until 8 July 2013.<sup>21</sup> When asked about the reasons for this delay, Martin Bowles, then Secretary of the Department of Immigration and Border Protection (DIBP), explained in 2014 that:

PNG was new to this, right down to the point where they had to change legislation to actually get this process in place. What has happened through this process is that they now have a functioning refugee status determination and review mechanism.<sup>22</sup>

The RSD process did not progress very far before Prime Minister Rudd announced the new arrangements with PNG in July 2013, and all asylum seekers on Manus Island at that time started to be transferred back to Australia. The process recommenced towards the end of 2013 for asylum seekers transferred under the new arrangements.

After visiting Manus Island again in October 2013, UNHCR observed the ongoing lack of a clear and adequate legal or regulatory framework for conducting RSD in PNG, and noted that not a single RSD decision had been finalised and handed down since the first transfer of asylum seekers from Australia to PNG in November 2012.<sup>23</sup> UNHCR described the capacity of PNG officials to perform RSD as improved but still ‘very limited’, and overall had ‘serious concerns about the RSD capacity and capability currently available to the Government of PNG to process, in an efficient and timely manner, the asylum-seekers who have arrived, and will continue to arrive, at the RPC’.<sup>24</sup>

Ongoing delays in the RSD process continued to fuel tensions on the island after the date of UNHCR’s last report, and a perceived lack of progress in and information about the processing of claims was reported to be a key contributing factor to the unrest that broke out in the Manus RPC in February 2014.<sup>25</sup> PNG’s Immigration and Citizenship Service Authority (PNG ICSA) delivered the first initial assessment notice to an Iranian asylum seeker on 30 April 2014, however the Minister did not have the necessary approval to begin making final determinations until after November 2014 and the first men were not recognised as refugees and permitted to leave the RPC until January 2015.<sup>26</sup>

### **How RSD is performed in practice**

Very little information has ever been publicly available about how the RSD process operates in practice on Manus Island. Guidelines on how RSD should be performed are contained in Refugee Determination Guidelines issued by the PNG ICSA. It is unclear whether the publicly available version of these guidelines<sup>27</sup> (half of which is in draft form) is current, and whether they are or were ever followed in practice. Three UNHCR reports, as well as the reports of the Cornall Review (commissioned by the Australian DIBP), and an Australian Senate Committee inquiry into the riot at the Manus RPC in February 2014, provided some information about how RSD was carried out in PNG at those times.<sup>28</sup> However, little information has been released about how this process operated after November 2014, when the Minister received approval from PNG’s National Executive Council to start making final decisions on the applications of asylum seekers in the Manus RPC.

The following is a summary of the limited information that is available about how the RSD process operates for asylum seekers at the Manus RPC. It is based on the above sources and a flowchart provided by PNG ICSA,<sup>29</sup> but may not reflect actual practice:

- the transfer interview: after arriving at the Manus RPC, asylum seekers would have an initial interview – in the early days with an experienced Australian immigration official, and by mid-2013 with a PNG ICSA official. These interviews were designed to elicit details about asylum seekers, their families, the route they took to Australia and some basic information about why they went to Australia. In June 2013, UNHCR

described these interviews as similar in nature to the 'entry interviews' usually conducted in Australia. The interviews were 'undertaken with professionalism, consistency and attention to detail', however they were 'rigidly directed by use of a detailed template and script, leaving little scope for capture of information relating to individual circumstances of the applicant in his [or her] country of origin, or protection problems experienced in transit countries'. As a result, 'in some instances ... the nature of the interview template forced the interviewer to record information at variance from that being communicated by the applicant'.<sup>30</sup> By October 2013 UNHCR observed that these interviews had ceased as a matter of practice;<sup>31</sup>

- submitting an RSD application: asylum seekers would then begin to prepare their application for refugee status, usually with the assistance of Claims Assistance Providers (CAPS) funded by the Australian government, who would explain the criteria for refugee status and RSD procedure in PNG, including the avenues for appeal and assistance they could receive.<sup>32</sup> Formally, asylum seekers had the right to engage their own legal representative at their own cost,<sup>33</sup> practically, however, most if not all detained asylum seekers faced difficulties finding available lawyers and the financial means necessary to afford them;
- the RSD interview: although there was no legislative requirement that an asylum seeker be interviewed as part of the RSD process, it was the general policy of the PNG ICSA to conduct an interview unless there were 'substantial grounds' for not doing so.<sup>34</sup> Interviews were conducted by a 'Protection Officer' on behalf of the Minister. Some of the people making decisions in the earlier days were Australian immigration officials 'seconded' to PNG for this purpose.<sup>35</sup> A CAPS representative usually accompanied asylum seekers to their interview, however they were required to 'limit interventions during the interview to those relating to breaches of procedural fairness that cannot wait until the end of the interview to be heard' and 'act consistently with the non-adversarial character of the procedure'.<sup>36</sup> An interpreter could also be present where necessary.<sup>37</sup> At the end of the interview, the CAPS representative would have an opportunity to make brief submissions to the Protection Officer about the asylum seeker's case, on his or her behalf;
- assessment of the claim: Protection Officers were given extensive guidance on how to assess whether an asylum seeker met the definition of a refugee, with the Refugee Determination Guidelines drawing heavily from the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status. Protection officers were advised that while asylum seekers had an obligation to prove they were refugees, 'the duty to ascertain and evaluate all the relevant facts is shared between the Protection Officer and the [asylum seeker]'.<sup>38</sup> All decisions should have included: a summary of the asylum seeker's claim; an assessment of their credibility; a statement of the established facts; an analysis of whether the accepted facts brought the asylum seeker within the definition of a refugee; an assessment of whether the

asylum seeker should be excluded from refugee status for any reason; and an assessment of whether the asylum seeker should be determined to be a refugee.<sup>39</sup>

At this stage of the process, information about how RSD is and has been carried out on Manus Island becomes increasingly unclear. It appears that asylum seekers would receive an 'interim' or 'initial' notification of the outcome of their claim from PNG ICSA. These initial notifications were sometimes called 'recommendations' and were required to be in writing.<sup>40</sup>

If the initial notification was positive the asylum seeker's case was referred to the Minister 'for final decision', with a recommendation that he or she be found to be a refugee. According to reg 15 of the Migration Regulation, once an initial notification was referred to the Minister for a final decision he or she should make and communicate this decision 'as soon as practicable'. There is no legislative guidance on how the Minister should make such decisions. Reg 14 provides only that the Minister 'may' determine a person to be a refugee if they meet the definition contained in the Refugee Convention.

If the initial notification was negative, PNG ICSA was required to advise in writing why the asylum seeker failed to meet the eligibility criteria for refugee status, including whether evidence submitted by the asylum seeker was insufficient or not accepted.<sup>41</sup> The draft procedures manual of the Refugee Determination Guidelines provides that notifications of negative decisions should 'contain information about the automatic referral to the Review Officer',<sup>42</sup> however there is no provision for 'Review Officers' under PNG law.

In late 2013 UNHCR was advised by the PNG government that it intended to establish 'an independent panel comprised of an officer from the Department of Justice and an officer from the Attorney-General's Department, who will review negative RSD decisions'.<sup>43</sup> The Australian DIBP subsequently stated that there was a Refugee Assessment Review Panel in PNG, independent from the PNG ICSA, with authority to 'review the merits of an initial refugee assessment, and provide [a] recommendation for refugee determination to the PNG Minister for Foreign Affairs and Citizenship prior to his making of a refugee determination under PNG law'.<sup>44</sup> The PNG government has also stated that asylum seekers initially assessed not to be refugees may have their claims reviewed by 'an independent panel of eminent Papua New Guinean and international lawyers'.<sup>45</sup> Despite these statements, such a panel is not established under the *Migration Act*, nor does it appear to be established under any other PNG law. Limited information is available about its powers and composition.

It is not clear what opportunities may exist for judicial review of a negative decision by the Refugee Assessment Review Panel. Regardless of the outcome of any review, it appears that the power to make a final determination rests with the Minister, with section 19 of the *Migration Act* providing that any decision of the Minister relating to the grant or cancellation of an entry permit or the removal of a person from the country 'is not open to review or challenge in any court on any ground'.

If the Minister makes a negative decision about an asylum seeker's claim, he may face deportation. At least one man has already reportedly been forcibly repatriated to Iran, even



though at the time of his deportation he had joined a legal challenge to contest the lawfulness of his detention in PNG.<sup>46</sup> It is unclear whether an asylum seeker could challenge deportation on the basis of PNG's complementary protection obligations under international law, which have not been incorporated into PNG's domestic law. It is similarly unclear what process and procedural safeguards apply in relation to asylum seekers who refused to participate in the RSD process, as a number of men are reported to have done.

## **RSD outcomes**

In February 2018, the Australian Department of Home Affairs reported that there were 756 men on Manus Island, of which 589 had been determined to be refugees and 167 had been determined not to be refugees.<sup>47</sup> It was unclear whether further avenues for appeal or review would be made available to those men deemed to be 'failed asylum seekers', and what would happen to those for whom it was too dangerous to return to their countries of origin.<sup>48</sup>

## **The search for durable solutions**

RSD and the grant of status is not the end of the process for refugees on Manus Island. It remains for a durable solution to be found for each person and family.

Under the Regional Resettlement Arrangement and memorandum of understanding signed by Australia and PNG in July and August 2013 respectively, PNG undertook to allow people found to be refugees on Manus to settle locally. This policy is different from that in place in Nauru, where it is less clear whether the government ever formally agreed to allow refugees to remain on a permanent basis.

Despite PNG's undertaking, it took a long time for a settlement policy to be approved by the PNG Cabinet, meaning that a number of refugees were left in limbo – recognised as being entitled to protection, released from detention and housed at a transit facility near Lorengau, but unable to leave Manus Island, find work, or bring their families to join them.<sup>49</sup>

Finally, in October 2013, the PNG government approved a National Refugee Policy, which is intended to apply not only to the refugees transferred from Australia but also to those who arrive by other means in PNG. The policy focuses on refugees becoming self-sufficient and contributing to the PNG economy and society, and provides that PNG will seek assistance from UNHCR and other resettlement countries if refugees arrive with 'complex support needs that prevent them from becoming self-sufficient'.<sup>50</sup> The policy recognises that refugees share most of the same constitutional and legal rights as Papua New Guineans, allows them to sponsor their families to join them through regular migration processes 'once refugees have successfully established themselves and become self-sufficient', and states that after eight years living in PNG refugees will be able to 'fully commit to their new home country and take up citizenship (if they meet eligibility requirements)'.<sup>51</sup>

Despite the introduction of the National Refugee Policy, the settlement of refugees in PNG has remained fraught,<sup>52</sup> and prior to the closure of the Manus RPC in October 2017 some

refugees refused to leave it and move into the transit facility at Lorengau, citing fears for their safety.<sup>53</sup>

Following a ruling of the Supreme Court of PNG on April 2016 that the detention of asylum seekers at the Manus RPC was unconstitutional and illegal under PNG law,<sup>54</sup> PNG Prime Minister Peter O'Neill announced that it would close and that Australia would need to make 'alternative arrangements' for the men still there.<sup>55</sup> He invited any men found to be refugees to live in PNG 'only if they want to be a part of our society and make a contribution to our community'.<sup>56</sup> For everyone else, including those refugees who were not permitted or did not wish to settle in PNG, durable solutions needed to be found elsewhere. When Australia subsequently withdrew all services from the Manus RPC on 31 October 2017 and the facility 'closed', the 600 men still there demonstrated their unwillingness to move into the PNG community, even on a temporary basis, by refusing to move to the transit accommodation that had supposedly been made available for them in Lorengau.<sup>57</sup>

UNHCR has repeatedly emphasised that 'solutions must be found for all, outside of Papua New Guinea, as a matter of urgency', and maintained that 'Australia remains ultimately responsible, as the state from which these refugees and asylum-seekers have sought international protection, for their welfare and long-term settlement outside of Papua New Guinea'.<sup>58</sup> However, since July 2013, successive Australian governments have firmly and consistently stated that no person transferred to and determined to be a refugee in PNG will ever have the opportunity of settling in Australia. The most viable resettlement opportunity for refugees in PNG is to the United States, under a resettlement agreement between that country and Australia. However it remains unclear how many refugees the United States will accept, and there do not appear to be arrangements in place for those who remain in PNG. New Zealand offered to resettle a small number of people but as at July 2018 Australia had refused this offer.<sup>59</sup> One refugee managed to resettle in Canada through a private sponsorship program,<sup>60</sup> but this option is not open to most other refugees in PNG.

Accordingly, those refugees still in PNG who have not been accepted for resettlement to the United States and do not wish or are unable to settle in PNG will remain 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.

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## Endnotes

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<sup>1</sup> All agreements are available on the Kaldor Centre website at, <http://www.kaldorcentre.unsw.edu.au/bilateral-agreements-offshore-processing>.

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

<sup>3</sup> James Robertson, 'Children taken off Manus Island', *Sydney Morning Herald*, 20 June 2013, <https://www.smh.com.au/politics/federal/children-taken-off-manus-island-20130620-2olze.html>.

<sup>4</sup> Kevin Rudd and others, 'Transcript of joint press conference' (19 July 2013), <http://pandora.nla.gov.au/pan/79983/20130731-0937/www.pm.gov.au/press-office/transcript-joint-press-conference-2.html>.

<sup>5</sup> Oliver Laughland, "'Every day I am crying": boys held on Manus island tell of their despair', *Guardian* (online), 7 November 2013, <https://www.theguardian.com/world/2013/nov/07/every-day-i-am-crying-manus>.

<sup>6</sup> 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* (Cth). See: Scott Morrison, 'Reintroducing TPVs to resolve Labor's asylum legacy caseload, Cambodia', 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, [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), 10,313 (Glenn Lazarus). The families of thirty-one babies who were born in Australia before 4 December 2014 after their mothers were transferred back from Nauru were also exempt: Scott Morrison, 'Babies born to IMAs transferred from Nauru to remain in Australia' (18 December 2014), <http://pandora.nla.gov.au/pan/143035/20141222-1032/www.minister.immi.gov.au/media/sm/2014/sm220187.htm>.

<sup>7</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>8</sup> *Migration Act 1978* (PNG), available at [http://www.paclii.org/pg/legis/consol\\_act/ma1978118/](http://www.paclii.org/pg/legis/consol_act/ma1978118/).

<sup>9</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>10</sup> Migration (Amendment) Regulation 2013 (PNG), available at [http://www.paclii.org/pg/legis/sub\\_leg/mr2013289/](http://www.paclii.org/pg/legis/sub_leg/mr2013289/).

<sup>11</sup> UNHCR, 'UNHCR Monitoring Visit to Manus Island, Papua New Guinea: 11-13 June 2013' (12 July 2013), <http://www.refworld.org/docid/51f61ed54.html>, 6.

<sup>12</sup> Ibid.

<sup>13</sup> UNHCR, 'UNHCR monitoring visit to Manus Island, Papua New Guinea: 23 to 25 October 2013' (26 November 2013), <http://www.refworld.org/docid/5294aa8b0.html>, 7.

<sup>14</sup> Ibid.

<sup>15</sup> Migration (Amendment) Regulation 2014 (PNG), available at [http://www.paclii.org/pg/legis/sub\\_leg/mr2014289/](http://www.paclii.org/pg/legis/sub_leg/mr2014289/).

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- <sup>16</sup> UNHCR, 'UNHCR Mission to Manus Island, Papua New Guinea: 15-17 January 2013' (4 February 2013), <http://www.refworld.org/docid/5139ab872.html>, 1.
- <sup>17</sup> Ibid, 9-10.
- <sup>18</sup> Ibid, 10.
- <sup>19</sup> Ibid, 8.
- <sup>20</sup> UNHCR, above n 11, 7.
- <sup>21</sup> Evidence to Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, 'Incident at the Manus Island Detention Centre from 16 to 18 February 2014', Canberra, 10 June 2014, 12 (Mark Cormack).
- <sup>22</sup> Ibid, 29.
- <sup>23</sup> UNHCR, above n 13, 2.
- <sup>24</sup> Ibid, 8.
- <sup>25</sup> Robert Cornall, 'Review into the events of 16-18 February 2014 at the Manus Regional Processing Centre', 23 May 2014, <https://www.homeaffairs.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-robert-cornall.pdf>, 8-9; Senate Legal and Constitutional Affairs References Committee, 'Incident at the Manus Island Detention Centre from 16 February to 18 February 2014', 11 December 2014, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Manus\\_Island/Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island/Report), 146.
- <sup>26</sup> Liam Cochrane, 'PNG govt makes "positive assessment" of Iranian's refugee claim', *ABC News* (online), 30 April 2014, <http://www.abc.net.au/news/2014-04-30/an-png-govt-makes-27positive-assesment27-of-refugee-claim/5421608>; Rimbink Pato, 'Media release: PNG takes action on refugees' (4 November 2014), <http://www.immigration.gov.pg/images/documents/Media%20Release%20-%20PNG%20Takes%20Action%20on%20Refugees.pdf>; Sarah Whyte, 'First two refugees move out of Manus detention compound to resettlement centre', *Sydney Morning Herald* (online), 21 January 2015, <https://www.smh.com.au/politics/federal/first-two-refugees-move-out-of-manus-detention-compound-to-resettlement-centre-20150121-12v4xk.html>.
- <sup>27</sup> PNG Immigration and Citizenship Service Authority, 'Refugee Determination Guidelines' (July 2013) (Attachment 1 to Submission 19 of Elizabeth Thompson to the Senate Legal and Constitutional Affairs References Committee, 'Inquiry into the Incident at the Manus Island Detention Centre from 16 February to 18 February 2014', available at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Manus\\_Island/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Manus_Island/Submissions)).
- <sup>28</sup> UNHCR, above n 11, 13 and 16; Cornall, above n 25; Senate Legal and Constitutional Affairs References Committee, above n 25.
- <sup>29</sup> PNG ICSA, 'Refugee Status Determination Process' (undated), [http://www.immigration.gov.pg/images/documents/refugee\\_fact\\_sheets/Fact%20Sheet%20-%20RSD.pdf](http://www.immigration.gov.pg/images/documents/refugee_fact_sheets/Fact%20Sheet%20-%20RSD.pdf).
- <sup>30</sup> UNHCR, above n 11, 7-8.
- <sup>31</sup> UNHCR, above n 13, 9.
- <sup>32</sup> Refugee Determination Guidelines, 43-44.
- <sup>33</sup> Ibid, 49.
- <sup>34</sup> Ibid.
- <sup>35</sup> UNHCR, above n 13, 8.
- <sup>36</sup> Refugee Determination Guidelines, 49-50.
- <sup>37</sup> Ibid, 50.

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- <sup>38</sup> Ibid, 53.
- <sup>39</sup> Ibid.
- <sup>40</sup> Ibid, 67.
- <sup>41</sup> Ibid.
- <sup>42</sup> Ibid.
- <sup>43</sup> UNHCR, above n 13, 10.
- <sup>44</sup> Mark Cormack, Answer to Question Taken on Notice by Senator Hanson Young, Senate Legal and Constitutional Affairs Committee, Budget Estimates, 26-27 May 2014, available at [http://www.aph.gov.au/~media/Committees/legcon\\_ctte/estimates/bud\\_1415/DIBP/BE14-090.pdf](http://www.aph.gov.au/~media/Committees/legcon_ctte/estimates/bud_1415/DIBP/BE14-090.pdf).
- <sup>45</sup> PNG ICSA, above n 29, 1.
- <sup>46</sup> Ben Doherty and Calla Wahlquist, 'Asylum seeker on Manus forcibly returned to Iran amid court challenge', *Guardian* (online), 21 August 2015, <https://www.theguardian.com/australia-news/2015/aug/21/asylum-seeker-on-manus-forcibly-returned-to-iran-amid-court-challenge>.
- <sup>47</sup> Evidence to Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Estimates*, Canberra, 26 February 2018, 122 (Mandy Newton).
- <sup>48</sup> Eric Tlozek, "Negative status" asylum seekers on Manus Island left hanging in legal limbo, unable to leave or stay', *ABC News* (online), 7 March 2018, <http://www.abc.net.au/news/2018-03-07/asylum-seekers-on-manus-island-left-hanging-in-limbo/9521972>.
- <sup>49</sup> Human Rights Watch, *Australia/Papua New Guinea: The Pacific Non-Solution* (15 July 2015), <https://www.hrw.org/news/2015/07/15/australia/papua-new-guinea-pacific-non-solution>.
- <sup>50</sup> Papua New Guinea, *National Refugee Policy* (June 2015), [http://www.immigration.gov.pg/images/PNG\\_National\\_Refugee\\_Policy\\_FINAL\\_ENDORSED\\_BY\\_CABINET.pdf](http://www.immigration.gov.pg/images/PNG_National_Refugee_Policy_FINAL_ENDORSED_BY_CABINET.pdf), 10.
- <sup>51</sup> Ibid, 5, 10, 11.
- <sup>52</sup> See, for example: Lindsay Gordon, 'Resettled refugee's plea: "Send me back to Manus"', *Sydney Morning Herald* (online), 23 February 2016, <https://www.smh.com.au/politics/federal/resettled-refugees-plea-send-me-back-to-manus-20160223-qn0url.html>.
- <sup>53</sup> Ben Doherty, 'Hundreds of refugees are refusing to settle in PNG's "land of opportunities"', *Guardian* (online), 24 October 2015, <https://www.theguardian.com/australia-news/2015/oct/24/hundreds-of-refugees-are-refusing-to-settle-in-pngs-land-of-opportunities>.
- <sup>54</sup> *Namah v Pato* [2016] PGSC 13 (26 April 2016).
- <sup>55</sup> Peter O'Neill, 'PM O'Neill: Manus Regional Processing Centre will close' (27 April 2016), <http://www.documentcloud.org/documents/2813891-PNG-PM-Peter-O-Neill-s-statement.html#document/p1>.
- <sup>56</sup> Ibid.
- <sup>57</sup> UNHCR, 'UNHCR Urges Australia to Stop Unfolding Humanitarian Emergency' (2 November 2017), <http://www.unhcr.org/en-au/news/press/2017/11/59e6b5c77/unhcr-urges-australia-to-stop-unfolding-humanitarian-emergency.html>.
- <sup>58</sup> UNHCR, 'Update on humanitarian situation of refugees and asylum seekers on Manus Island' (13 February 2018), <http://www.unhcr.org/en-au/news/briefing/2018/2/5a82f9d04/update-humanitarian-situation-refugees-asylum-seekers-manus-island.html>.
- <sup>59</sup> Paul Karp and Eleanor Ainge Roy, '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-refugees-peter-dutton-says>.

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<sup>60</sup> Ben Doherty, 'Manus refugee who reached Canada last week says deaths are "very likely"', *Guardian* (online), 6 November 2017, <https://www.theguardian.com/australia-news/2017/nov/06/manus-refugee-who-reached-canada-last-week-says-deaths-are-very-likely>.