

**MEMORANDUM OF UNDERSTANDING BETWEEN THE REPUBLIC OF NAURU
AND THE COMMONWEALTH OF AUSTRALIA, RELATING TO THE TRANSFER
TO AND ASSESSMENT OF PERSONS IN NAURU, AND RELATED ISSUES**

The Republic of Nauru and the Commonwealth of Australia ('the Participants'), wishing to build on their existing strong and cordial relations, have come to the following Memorandum of Understanding (the MOU) in relation to the transfer to, and assessment and settlement in, Nauru of certain persons, and related issues.

This MOU supersedes the *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the Transfer to and Assessment of Persons in Nauru, and Related Issues*, signed by the Participants on 29 August 2012.

Preamble

Noting that:

- The Participants are State parties to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*, and acknowledge the importance of inter-country cooperation to undermine the People Smuggling industry;
- The Participants share a longstanding bilateral relationship of cooperation on migration and in combating transnational crime;
- Irregular Migration is a continuing challenge for the Asia-Pacific region;
- While border control and law enforcement measures are important, practical cooperative solutions that also address humanitarian needs are required; and
- The Commonwealth of Australia appreciates the acceptance by the Republic of Nauru to host Transferees in Nauru, including at one or more Regional Processing Centres or under community-based arrangements, and to provide Transferees who the Republic of Nauru determines to be in need of international protection with settlement opportunities.

Recalling that:

- At the Fourth Ministerial Conference of the Bali Process on People Smuggling, Trafficking and Related Transnational Crime (the MCPB) held in Indonesia on 29-30 March 2011, Ministers agreed:
 - to a regional cooperation framework that would provide a more effective way for interested states to cooperate to reduce Irregular Migration in the region;
 - that the framework would be operationalized through arrangements entered into between interested participating states on a bilateral or sub-regional basis (noting the cooperation that might be available from relevant international organisations regarding implementation);
 - that those arrangements would be consistent with the core principles at paragraph 16 and guided by the consideration set out in paragraph 19 of the MCPB Co-Chairs' Statement;
 - that any arrangements should seek to undermine the People Smuggling model and create disincentives for irregular travel, including through possible transfer and readmission arrangements in appropriate circumstances; and
 - that due to the large scale of irregular movement it would be appropriate to focus arrangements on a selected caseload or caseloads.

Recognising:

- The need for practical action to provide a disincentive against Irregular Migration, People Smuggling syndicates and transnational crime and intended to promote orderly migration and humanitarian solutions;
- The need to take account of the protection needs of persons who have moved irregularly and who may be seeking asylum;
- The impact that an arrangement could have in providing a disincentive for Irregular Migration and creating increased protection and settlement opportunities for those in need of international protection; and
- The need to ensure, so far as is possible, that no benefit is gained through circumventing regular migration arrangements;

the Participants have reached the following common understanding regarding the transfer, assessment and settlement arrangements, whereby the Commonwealth of Australia would Transfer persons to Nauru for processing of any asylum claims that Transferees may raise and the Republic of Nauru would settle an agreed number of those who it determines are in need of international protection.

Interpretation

“Irregular Migration” means the phenomenon of people moving without proper authorisation to a country including for the purpose of seeking asylum.

“People Smuggling” means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the unauthorised entry of a person into a country of which is not a national or permanent resident.

“Refugee” means a person defined in Article 1 of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (Refugees Convention).

“Regional Processing Centre” means a facility established in Nauru for the purposes of processing Transferees’ international protection claims.

“Transferee” means a person transferred to Nauru under this MOU

“Transfer” means transfer from Australia to Nauru under this MOU.

Objectives

1. The Participants have determined that combating People Smuggling and Irregular Migration in the Asia-Pacific region is a shared objective. Transfer arrangements and the establishment of Regional Processing Centres are a visible deterrent to people smugglers.
2. This MOU will enable joint cooperation, including the development of enhanced capacity in Nauru, to address these issues.
3. The Participants understand the importance of regional cooperation and have determined to continue discussions as to how these transfer, assessment and settlement arrangements might over time be broadened under the regional cooperation framework.

Guiding Principles

4. The Commonwealth of Australia will conduct all activities in respect of this MOU in accordance with its Constitution and all relevant domestic laws.
5. The Republic of Nauru will conduct all activities in respect of this MOU in accordance with its Constitution and all relevant domestic laws.
6. The Commonwealth of Australia will bear all costs incurred under and incidental to this MOU as agreed between the Participants. If this requires additional development of infrastructure or services, it is envisaged that there will be a broader benefit for communities in which those settled are initially placed.

Operation of this MOU

7. The Commonwealth of Australia may Transfer and the Republic of Nauru will accept Transferees from Australia under this MOU.
8. Administrative measures giving effect to this MOU will be settled between the Participants. Any further specific arrangements may be made, as jointly determined to be necessary by the Participants, on more particular aspects of this MOU for the purpose of giving effect to its objectives.

Persons to be transferred to Nauru for processing

9. Persons to be transferred to Nauru are those persons who:
 - a. have travelled irregularly by sea to Australia; or
 - b. have been intercepted by Australian authorities in the course of trying to reach Australia by irregular maritime means; and
 - c. are authorised by Australian law to be transferred to Nauru; and
 - d. have undergone short health, security and identity checks in Australia.

The sites

10. The Republic of Nauru will host one or more Regional Processing Centres for the purposes of this MOU.
11. The Republic of Nauru may also host Transferees under other arrangements, such as community-based arrangements.

Outcomes for persons Transferred to Nauru

12. The Republic of Nauru undertakes to enable Transferees who it determines are in need of international protection to settle in Nauru, subject to agreement between Participants on arrangements and numbers. This agreement between Participants on arrangements and numbers will be subject to review on a 12 monthly basis through the Australia-Nauru Ministerial Forum.
13. The Commonwealth of Australia will assist the Republic of Nauru to settle in a third safe country all Transferees who the Republic of Nauru determines are in need of international protection, other than those who are permitted to settle in Nauru pursuant to Clause 12.
14. The Commonwealth of Australia will assist the Republic of Nauru to remove Transferees who are found not to be in need of international protection to their countries of origin or to third countries in respect of which they have a right to enter and reside.

Timing

15. Subject to Clause 12, the Commonwealth of Australia will make all efforts to ensure that all Transferees depart the Republic of Nauru within as short a time as is reasonably necessary for the implementation of this MOU, bearing in mind the objectives set out in the Preamble and Clause 1.

Status of Transferees in Nauru

16. The Republic of Nauru undertakes to enable Transferees, including those who it determines are Refugees, to be lawful during their stay in Nauru.

Commitments

17. The Participants will treat Transferees with dignity and respect and in accordance with relevant human rights standards.
18. Special arrangements will be developed and agreed to by the Participants for vulnerable cases, including unaccompanied minors.
19. The Republic of Nauru assures the Commonwealth of Australia that it will:
 - a. not expel or return a Transferee to another country where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership or a particular group or political opinion; and

- b. make an assessment, or permit an assessment to be made, of whether or not a Transferee is covered by the definition of refugee in Article 1A of the *1951 Convention Relating to the Status of Refugees* as amended by the *1967 Protocol Relating to the Status of Refugees*; and
- c. not send a Transferee to another country where there is a real risk that the Transferees will be subjected to torture, cruel, inhumane or degrading treatment or punishment, arbitrary deprivation of life or the imposition of the death penalty.


Co-operation

- 20. The Participants may jointly decide to vary this MOU in writing.
- 21. Communications concerning the day-to-day operation of activities undertaken in accordance with this MOU will be between the Secretary for Justice and Border Control and the Australian Department of Immigration and Citizenship.
- 22. The Participants will establish a Joint Committee with responsibility for the oversight of practical arrangements required to implement this MOU. The Joint Committee will meet regularly and will be co-chaired by mutually agreed representatives of the Australian Department of Immigration and Citizenship and the Republic of Nauru. Participation in the Joint Committee may include relevant non-government organisation and service providers where appropriate.
- 23. This MOU will come into effect on the date of signature by both Participants and will remain in effect until terminated by mutual agreement.

Settlement of Disputes

- 24. Any dispute arising with respect to the interpretation or implementation of this arrangement will be settled amicably through consultation between the Participants.

Signed on 3rd of August 2013.



His Excellency Baron Waqa MP
President of Nauru

FOR THE REPUBLIC OF NAURU



The Hon Kevin Rudd MP
Prime Minister of Australia

FOR THE COMMONWEALTH OF AUSTRALIA