



REPUBLIC OF NAURU

## Refugees Convention Act 2012

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**As in force from 5 May 2017**

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This consolidation comprises Act No. 12 of 2012 as amended and in force from 5 May 2017 (being, at the time the consolidation was prepared on 9 June 2017, the date of commencement of the most recent amendment).

The notes section at the end of the consolidation includes a reference to the law by which each amendment was made. The Table of Amendments in the notes section sets out the legislative history of individual provisions.

The operation of amendments that have been incorporated in the text of the consolidation may be affected by application provisions that are set out in the notes section at the end of the consolidation.

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## REPUBLIC OF NAURU

### Refugees Convention Act 2012

An Act to give effect to the Refugees Convention; and for other purposes

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#### PART 1- PRELIMINARY

**1 Short title**

This Act may be cited as the *Refugees Convention Act 2012*.

**2 Commencement**

- (1) Subject to subsection (2), this Act commences on the day it receives the certificate of the Speaker under Article 47.
- (2) Parts 3, 4 and 5 of this Act commence on the date to be fixed by the Minister by Gazette notice.

**3 Interpretation**

In this Act, unless the contrary intention appears:

**'asylum seeker'** means:

- (a) a person who applies to be recognised as a refugee under section 5; or
- (b) a person, or persons of a class, prescribed by the Regulations;

**'complementary protection'** means protection for people who are not refugees as defined in this Act, but who also cannot be returned or expelled to the frontiers of territories where this would breach Nauru's international obligations;

**'corresponding law'** means a law of another jurisdiction that provides for a person to apply for recognition as a refugee under the Refugees Convention as modified by the Refugees Protocol;

**'dependent'** of a person means:

- (a) the person's spouse other than a spouse from whom he or she is formally separated; or

- (b) the person's child under the age of 18 years; or
- (c) someone dependent on the person for financial, emotional, psychological or physical support;

**'Deputy Principal Member'** means a Deputy Principal Member of the Tribunal;

**'derivative status'** means the status given to a person, who is a dependent of a person who has been recognised as a refugee, given derivative status, or found to be owed complementary protection;

**'member'** means the Principal Member, a Deputy Principal Member or any other member of the Tribunal;

**'personal identifier'** means any of the following (including any of the following in digital form):

- (a) fingerprints or handprints of a person, including those taken using paper and ink or digital technologies;
- (b) a measurement of a person's height and weight;
- (c) a photograph or other image of a person or of the face and shoulders or other part of a person;
- (d) an audio or video recording of a person;
- (e) an iris scan;
- (f) a person's signature;
- (g) any other identifier prescribed by the Regulations;

**'Principal Member'** means the Principal Member of the Tribunal;

**'refugee'** means a person who is a refugee under the Refugees Convention as modified by the Refugees Protocol;

**'Refugee Determination Record'** means the certificate issued to a person who is owed international protection by Nauru under section 6(2A);

**'Refugees Convention'** means the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951;

**'Refugees Protocol'** means the Protocol Relating to the Status of Refugees done at New York on 31 January 1967;

**'Secretary'** means the Head of Department;

**'Tribunal'** means the Refugee Status Review Tribunal established under section 11.

**4 Principle of non-refoulement**

- (1) The Republic must not 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 except in accordance with the Refugees Convention as modified by the Refugees Protocol.
- (2) The Republic must not expel or return any person to the frontiers of territories in breach of its international obligations.

**PART 2 – DETERMINATION OF REFUGEE STATUS**

**5 Application for refugee status**

- (1) A person may apply to the Secretary to be recognised as a refugee.
  - (1A) A person may include one or more dependents in an application made under section 5(1).
  - (1AA) A person may apply to the Secretary to be given derivative status.
  - (1B) A person included in an application for refugee status under section 5(1A) is taken to have applied to be given derivative status.
- (2) An application to the Secretary to be recognised as a refugee made under section 5(1), or to be given derivative status under section 5(1AA), must:
  - (a) be in the form prescribed by the Regulations; and
  - (b) be accompanied by the information prescribed by the Regulations.
- (3) No fee may be charged for the making or processing of an application made under this section.

**6 Determination of refugee status**

- (1) Subject to this part, the Secretary must determine:
  - (a) an application to be recognised as a refugee made under section 5;
  - (b) an application to be given derivative status made under section 5; or

- (c) whether a person who has made an application under section 5 is owed complementary protection.

(2) *[Repealed]*

(2A) A Refugee Determination Record must be issued to a person who is:

- (a) determined to be a refugee;
- (b) given derivative status; or
- (c) determined to be owed complementary protection.

(2B) Any application made by a person under section 5(1), section 5(1AA) or section 5(1A), that has not been determined at the time the person is given a Refugee Determination Record, is taken to have been validly determined at that time.

(3) The determination under section 6(1) must be made as soon as practicable after the application is received.

**7 Powers of Secretary in determining refugee status**

(1) For the purposes of making a determination under section 6(1), the Secretary:

- (a) may require the asylum seeker:
  - (i) to provide one or more personal identifiers to assist in the identification of, and to authenticate the identity of, the asylum seeker; and
  - (ii) to attend one or more interviews; and
  - (iii) to provide information required by the Secretary, within the period specified, for the purposes of the determination; and
  - (iv) to consent to the release by any other person of relevant documents or information relating to the asylum seeker; and
  - (v) if the Secretary believes on reasonable grounds that the asylum seeker has in his or her possession or control a document relating to the asylum seeker (including a passport or a travel document) – to produce the document; and
  - (vi) to verify, by statutory declaration or on oath or affirmation, information provided to the Secretary; and

- (b) may seek information from any other source and for that purpose may, if the Secretary believes on reasonable grounds that a person has in his or her possession or control a document relating to the asylum seeker (including a passport or travel document) – require the person to produce the document; and
  - (c) may rely, without further enquiry, on a determination made under the Refugees Convention or a corresponding law.
- (3) However, the Secretary:
- (a) is not obliged to seek information, evidence or submissions further to that provided by the asylum seeker; and
  - (b) may make the determination as to whether the asylum seeker is recognised as a refugee on the basis of the information, evidence and submissions provided by the asylum seeker; and
  - (c) may decline to make a determination if the asylum seeker has declined to provide a personal identifier reasonably required by the Secretary.
- (4) If an asylum seeker which is required to attend an interview fails to attend the interview, the Secretary may determine whether the asylum seeker is recognised as a refugee without conducting the interview.

## **8 Subsequent asylum claim**

- (1) A person may not make an application under section 5 if a determination has previously been made under section 6(1) with respect to that person.
- (2) Despite section 8(1), the Secretary may permit a person to make an application under section 5 if the Secretary is satisfied that the grounds of the application either:
  - (a) have not been substantially determined by the Secretary, nor by the Tribunal; or
  - (b) are based on a change in the person's circumstances since the previous application was finally determined, including the circumstances in a territory to which the applicant may be expelled or returned.
- (3) The Secretary is not under a duty to consider whether to exercise the power under section 8(2) in any circumstances.
- (4) Neither the Tribunal, nor the Supreme Court, has any jurisdiction in respect of a decision of the Secretary not to exercise, or not to consider the exercise of, the Secretary's power under section 8(2).



- (5) A request that the Secretary exercise, or consider the exercise of the Secretary's power under section 8(2) is not, for the purposes of section 11 of the Immigration Act 2014, an application to the Secretary to be recognised as a refugee or to be given derivative status.

**9 Notice of determination**

As soon as practicable after making a determination as to whether an asylum seeker is recognised a refugee or is owed complementary protection, or a decision to decline to make a determination, the Secretary must give the asylum seeker a notice specifying:

- (a) the relevant determination or decision; and
- (b) *[Repealed]*
- (c) if the asylum seeker has not been recognised as a refugee or is found to be owed complementary protection, or the Secretary declined to make a determination, the reasons for the determination or decision and details of the claimant's right to merits review.

**10 Cancellation of refugee status**

- (1) The Secretary must cancel a person's recognition as a refugee if the Secretary is satisfied that:
- (a) the Refugees Convention as modified by the Refugees Protocol ceases to apply to the person; or
  - (b) the recognition given by the Secretary was procured by fraud, forgery, false or misleading representation, or concealment of relevant information.
- (2) As soon as practicable after cancelling a person's recognition as a refugee, the Secretary must give the person a notice specifying:
- (a) the decision; and
  - (b) the reasons for the decision; and
  - (c) details of the person's right to merits review.
- (3) The Secretary may cancel a person's recognition as a refugee if requested by the person while in Nauru.

## **PART 3 – REFUGEE STATUS REVIEW TRIBUNAL**

### **Division 1 – Establishment and membership of Tribunal**

#### **11 Establishment**

The Refugee Status Review Tribunal is established.

#### **12 Membership**

(1) The Tribunal consists of:

- (a) a Principal Member; and
- (b) 2 Deputy Principal Members; and
- (c) such number of other members as are appointed in accordance with this Act.

(2) The total number of persons appointed under paragraph (1)(c) must not exceed the prescribed number.

#### **13 Appointment of members**

(1) The members of the Tribunal must be appointed by Cabinet in consultation with the Chief Justice.

(2) A person is eligible for appointment as the Principal Member or as a Deputy Principal Member if the person meets one or more of the following requirements:

- (a) the person is qualified to be appointed a judge of the Supreme Court.
- (b) the person is or has been a member of the Tribunal.
- (c) the person has been admitted as:
  - (i) a barrister or solicitor in England, Northern Ireland or the Republic of Ireland, as an advocate, law agent or writer to the Signet in Scotland, as a barrister or solicitor, or as a barrister and solicitor, in Australia or New Zealand; or
  - (ii) a legal practitioner (whether described as a barrister, a solicitor or in any other way) in any other country duly notified by the Minister for the purposes of section 5(a) of the *Legal Practitioners Act 1973*;

and the person has:

- (iii) has been so admitted for not less than five years; and
  - (iv) not been struck off the roll of practitioners, or equivalent list, maintained by any Court in which the person was so admitted.
- (3) The Regulations may prescribe other eligibility requirements for appointment as a member.
  - (4) Subject to this Part, a member holds office for the period, not exceeding 5 years, specified in the instrument of appointment, and is eligible for reappointment.
  - (5) A member holds office on such other terms and conditions as are determined by the Minister in writing.

#### **14 Principal Member**

- (1) The Principal Member is the executive officer of the Tribunal and is responsible for the overall operation and administration of the Tribunal.
- (2) The Principal Member is responsible for allocating the work of the Tribunal among the members (including himself or herself).
- (3) The Principal Member may give directions in writing, not inconsistent with this Act, as to:
  - (a) the operations of the Tribunal; and
  - (b) the conduct of reviews by the Tribunal.
- (4) The Tribunal should, as far as practicable, comply with the directions.
- (5) However, non-compliance by the Tribunal with a direction does not affect the validity of a decision of the Tribunal.

#### **15 Resignation**

A member may resign by writing signed by him or her and sent to the President as Chairman of the Cabinet.

#### **16 Disclosure of interests**

- (1) A member who has a conflict of interest in relation to a review by the Tribunal:
  - (a) must disclose the matters giving rise to that conflict to the applicant and:
    - (i) if the member is the Principal Member – to the Minister; and

- (ii) in any other case – to the Principal Member; and
- (b) must not take part in the review or exercise powers in relation to the review unless:
  - (i) if the member is the Principal Member – the applicant and the Minister consent; or
  - (ii) in any other case – the applicant and the Principal Member consent.
- (2) For this section, a member has a conflict of interest in relation to the review by the Tribunal if the member has an interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that review.

**17 Removal from office**

- (1) The President, with the consent of Cabinet, may remove a member from office on the ground of misconduct or physical or mental incapacity.
- (2) The President may remove a member from office if:
  - (a) the member ceases to be eligible to be appointed a member (and the ground on which the person ceases to be eligible was prescribed before the appointment of the member); or
  - (b) the member fails, without reasonable excuse, to comply with his or her obligations as a member.

**18 Registrar and officers**

- (1) The Minister:
  - (a) must appoint a Registrar of the Tribunal; and
  - (b) may appoint such other officers of the Tribunal as are required.
- (2) The officers of the Tribunal have:
  - (a) the functions and powers prescribed by the Regulations; and
  - (b) any other functions as directed by the Principal Member.

## **Division 2 – Constitution, sittings and powers**

### **19 Constitution for merits review**

- (1) For the purpose of a particular review, the Tribunal is to be constituted by:
  - (a) the Principal Member or a Deputy Principal Member, who will preside; and
  - (b) 2 other members.
- (2) The Principal Member must determine who is to constitute the Tribunal for the purpose of a particular review.

### **20 Reconstitution if necessary**

- (1) The Principal Member may reconstitute the Tribunal if:
  - (a) one or more of the 3 members who constitute the Tribunal for the purposes of a particular review:
    - (i) stops being a member; or
    - (ii) for any reason, is not available for the purpose of the review at the place where the review is being conducted; or
  - (b) the Principal Member thinks the reconstitution is in the interests of achieving the efficient conduct of the review.
- (2) The Tribunal as reconstituted is to continue to finish the review and may have regard to any record of the proceedings of the review made by the Tribunal as previously constituted.

### **21 Sittings**

- (1) Sittings of the Tribunal are to be held from time to time as required, in such places as are convenient.
- (2) The Tribunal constituted by 3 members may sit and exercise the powers of the Tribunal even though the Tribunal constituted by another 3 members is at the same time sitting and exercising those powers.

### **22 Way of operating**

The Tribunal:

- (a) is not bound by technicalities, legal forms or rules of evidence;  
and

- (b) must act according to the principles of natural justice and the substantial merits of the case.

**23 Review to be in private and recording made**

- (1) The hearing of an application for review by the Tribunal must be in private.
- (2) An audio or audio visual recording must be made of a hearing.

**24 Evidence and procedure**

- (1) For the purpose of the review, the Tribunal may:
  - (a) take evidence on oath or affirmation; or
  - (b) adjourn the review from time to time; or
  - (c) subject to Part 6, give information to the applicant and to the Secretary; or
  - (d) require the Secretary to arrange for the making of an investigation, or a medical examination, that the Tribunal thinks necessary with respect to the review, and to give to the Tribunal a report of that investigation or examination.
- (2) The Tribunal in relation to a review may:
  - (a) summon a person to appear before the Tribunal to give evidence; and
  - (b) summon a person to produce to the Tribunal such documents as are referred to in the summons; and
  - (c) require a person appearing before the Tribunal to give evidence on oath or affirmation.
- (3) A member of the Tribunal or the Registrar may administer an oath or affirmation to a person appearing before the Tribunal.
- (4) A person appearing before the Tribunal to give evidence is not entitled to examine or cross-examine any other person appearing before the Tribunal to give evidence.
- (5) If a person appearing before the Tribunal to give evidence is not proficient in English, the Tribunal may direct that communication with that person during his or her appearance proceed through an interpreter.

**25 Authorisation of person to take evidence**

- (1) The power of the Tribunal to take evidence on oath or affirmation for the purpose of a review may be exercised on behalf of the Tribunal by a person authorised in writing by the Tribunal who is:
  - (a) a public officer; or
  - (b) another person approved in writing by the Minister for the purposes of this section.
- (2) The power to take evidence on oath or affirmation may be exercised on behalf of the Tribunal:
  - (a) inside or outside Nauru; and
  - (b) subject to such limitations (if any) as are specified by the Tribunal.
- (3) If a person other than a Tribunal is authorised to take evidence for the purpose of a review:
  - (a) the person has, for the purpose of taking that evidence:
    - (i) all the powers of the Tribunal under section 24; and
    - (ii) the power to administer an oath or affirmation to a person appearing before the first-mentioned person to give evidence; and
  - (b) for the purpose of the exercise of those powers by that person, this Part has effect (except where the context otherwise requires) as if a reference to the Tribunal included a reference to that person.
- (4) If a person exercises the power of the Tribunal to take evidence on oath or affirmation for the purpose of a review, the person must cause a written record of the evidence taken to be made and sent to the Tribunal.
- (5) If the Tribunal receives the record of evidence given by the applicant, the Tribunal is taken to have given the applicant an opportunity to appear before it to give evidence.

**26 Oral evidence by telephone etc.**

For the purposes of a review, the Tribunal may allow the appearance by the applicant before the Tribunal, or the giving of evidence by the applicant or any other person, to be by:

- (a) telephone; or

- (b) closed-circuit television; or
- (c) any other means of communication.

**27 Certain Tribunal decisions to be published**

- (1) A decision of the Tribunal that the Principal Member thinks is of general interest may be published.
- (2) The published decision must not identify an applicant or a relative or other dependent of an applicant.

**Division 3 – Offences**

**28 Failure of witness to attend**

- (1) A person who has been served with a summons to appear before the Tribunal to give evidence must not:
  - (a) fail to attend as required by the summons; or
  - (b) fail to appear and report from day to day unless excused, or released from further attendance, by the Tribunal.

Maximum penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.
- (3) An offence against subsection (1) is an offence of strict liability.
- (4) An invitation to appear before the Tribunal is not a summons to appear before the Tribunal to give evidence.

**29 Refusal to be sworn or to answer questions etc.**

- (1) A person appearing before the Tribunal to give evidence must not:
  - (a) when required to take an oath or to make an affirmation – refuse or fail to comply with the requirement; or
  - (b) refuse or fail to answer a question that the person is required to answer by the Tribunal.

Maximum penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.
- (3) A person must not refuse or fail to produce a document that a person is required to produce by a summons served on the person.



Maximum penalty: Imprisonment for 6 months.

- (4) Subsection (3) does not apply if the person has a reasonable excuse.
- (5) An offence against subsection (1) or (3) is an offence of strict liability.
- (6) A person appearing before the Tribunal to give evidence must not intentionally give evidence that is false or misleading in a material particular.

Maximum penalty: Imprisonment for 12 months.

**30 Contempt**

A person must not:

- (a) obstruct or hinder the Tribunal or a member in the performance of the functions of the Tribunal; or
- (b) disrupt the taking of evidence by the Tribunal.

Maximum penalty: Imprisonment for 12 months.

**PART 4 – MERITS REVIEW BY TRIBUNAL**

**Division 1 – Application**

**31 Application for merits review by Tribunal**

- (1) A person may apply to the Tribunal for merits review of any of the following:
  - (a) a determination made under section 6(1);
  - (b) a decision to cancel a person's recognition as a refugee made under section 10(1).
- (2) The application must be made:
  - (a) within 28 days after the person receives notice of the determination or decision; and
  - (b) in the form prescribed by the Regulations.
- (3) The Principal Member may extend the time in which an application for review can be lodged if the Principal Member is satisfied that there are compelling circumstances.
- (4) No fee may be charged for the making or hearing of the application.

- (5) An application made by a person under section 31(1)(a), that has not been determined at the time the person is given a Refugee Determination Record, is taken to have been validly determined at that time.

**32 Secretary to be notified of application and to provide information**

- (1) If an application for review is made to the Tribunal, the Registrar must, as soon as practicable, give the Secretary written notice of the making of the application.
- (2) The Secretary must, within 10 working days after being notified of the application (or such longer period as the Presiding Member may allow), give to the Registrar the prescribed number of copies of a statement about the determination or decision under review that:
  - (a) sets out the findings of fact made by the person who made the determination or decision; and
  - (b) refers to the evidence on which those findings were based; and
  - (c) gives the reasons for the determination or decision.
- (3) The Secretary must, as soon as is practicable after being notified of the application, give to the Registrar each other document, or part of a document, that is in the Secretary's possession or control and is considered by the Secretary to be relevant to the determination or decision.

**33 Period within which Tribunal must conduct merits review**

- (1) The Tribunal must complete a review of a determination or decision within 90 days after the day on which the Secretary gives the Registrar the documents relevant to the review.
- (2) Failure to comply with this section does not affect the validity of a decision on an application for merits review.

**34 Decision of Tribunal on application for merits review**

- (1) The Tribunal may, for the purposes of a merits review of a determination or decision, exercise all the powers and discretions of the person who made the determination or decision.
- (2) On a merits review of a determination or decision, the Tribunal may:
  - (a) affirm the determination or decision; or
  - (b) vary the determination or decision; or

- (c) remit the matter to the Secretary for reconsideration in accordance with directions or recommendations of the Tribunal;
  - (d) set the determination or decision aside and substitute a new determination or decision.
  - (e) determine that a dependent, of a person in respect of whom the determination or decision was made, is recognised as a refugee or is owed complementary protection.
- (3) If the Tribunal:
- (a) varies the determination or decision; or
  - (b) sets aside the determination or decision and substitutes a new determination or decision;
- the determination or decision as varied or substituted is taken (except for the purpose of appeals from the decisions of the Tribunal) to be a determination or decision of the Secretary.
- (4) The Tribunal must give the applicant for review and the Secretary a written statement that:
- (a) sets out the decision of the Tribunal on the review; and
  - (b) sets out the reasons for the decision; and
  - (c) sets out the findings on any material questions of fact; and
  - (d) refers to the evidence or other material on which findings of fact were based.
- (5) A decision on a review is taken to have been made on the date of the written statement.

## **Division 2 – Review procedures**

### **35 Parties may give information or written arguments to Tribunal**

- (1) An applicant for review by the Tribunal may give the Registrar:
- (a) a statutory declaration in relation to a matter of fact that the applicant wishes the Tribunal to consider; and
  - (b) written arguments relating to the issues arising in relation to the determination or decision under review.
- (2) The Secretary may give the Registrar written argument relating to the issues arising in relation to the determination or decision under review.

**36 Tribunal may seek information**

In conducting a review, the Tribunal may:

- (a) invite, either orally (including by telephone) or in writing, a person to provide information; and
- (b) obtain, by any other means, information that it considers relevant.

**37** *[Repealed]*

**38** *[Repealed]*

**39 Failure of applicant to respond**

If a person is invited by the Tribunal to give information or to comment or respond to information but does not do so as required, the Tribunal may make a decision on the review without taking further action to obtain the information, comment or response.

**40 Tribunal must invite applicant to appear**

- (1) The Tribunal must invite the applicant to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the determination or decision under review.
- (2) Subsection (1) does not apply if:
  - (a) the Tribunal considers that it should decide the review in the applicant's favour on the basis of the material before it; or
  - (b) the applicant consents to the Tribunal deciding the review without the applicant appearing before it.
- (3) An invitation to appear before the Tribunal must be given to the applicant with reasonable notice and must:
  - (a) specify the time, date and place at which the applicant is scheduled to appear; and
  - (b) invite the applicant to specify, by written notice to the Tribunal given within 7 days, persons from whom the applicant would like the Tribunal to obtain oral evidence.
- (4) If the Tribunal is notified by an applicant under subsection (3)(b), the Tribunal must have regard to the applicant's wishes but is not required to obtain evidence (orally or otherwise) from a person named in the applicant's notice.

**41 Failure of applicant to appear before Tribunal**

- (1) If the applicant:
- (a) is invited to appear before the Tribunal; and
  - (b) does not appear before the Tribunal on the day on which, or at the time and place at which, the applicant is scheduled to appear;

the Tribunal may make a decision on the review without taking further action to allow or enable the applicant to appear before it.

- (2) This section does not prevent the Tribunal from rescheduling the applicant's appearance before it, or from delaying its decision on the review, in order to enable the applicant's appearance before it as rescheduled.

**Division 3 – Miscellaneous**

**42 Rights conferred by this Part additional to other rights**

The rights of a person provided under this Part for a review of a determination or decision are in addition to, and not in derogation of, any other right that the person may have for review of the determination or decision.

**PART 5 – APPEAL**

**43 Jurisdiction of the Supreme Court**

- (1) A person may appeal to the Supreme Court against a decision of the Tribunal on a point of law.

(1A) Despite section 43(1), the Supreme Court has no jurisdiction in respect of a determination by the Tribunal that a person is not to be given derivative status.

- (2) The parties to the appeal are the appellant and the Republic.
- (3) The notice of appeal must be filed within 42 days after the person receives the written statement of the decision of the Tribunal.
- (4) The notice of appeal must:
- (a) state the grounds on which the appeal is made; and
  - (b) be accompanied by the supporting materials on which the appellant relies.

- (5) The Supreme Court may by Order, through the Registrar or a Judge, extend the period in subsection (3) as may be considered appropriate if:
- (a) an application for the Order has been made in writing to the Supreme Court specifying that the appellant considers it necessary in the interest of the administration of justice to make that Order; and
  - (b) the Supreme Court is satisfied that it is necessary in the interests of the administration of justice to make that Order.

**44 Decision by Supreme Court on appeal**

- (1) In deciding an appeal, the Supreme Court may make either of the following orders:
- (a) an order affirming the decision of the Tribunal;
  - (b) an order remitting the matter to the Tribunal for reconsideration in accordance with any directions of the Court.
- (2) If the Court makes an order remitting the matter to the Tribunal, the Court may also make either or both of the following orders:
- (a) an order declaring the rights of a party or of the parties;
  - (b) an order quashing or staying the decision of the Tribunal.

**45 Costs**

The Supreme Court may not make an order for costs against the appellant except in extraordinary circumstances.

**46 Period within which Tribunal must reconsider matter remitted**

- (1) If a matter is remitted to the Tribunal for reconsideration, the Tribunal must complete its reconsideration within 90 days.
- (2) Failure to comply with this section does not affect the validity of a decision on an application for merits review.

**47 Rights conferred by this Part additional to other rights**

The rights of a person provided under this Part for an appeal against a decision are in addition to, and not in derogation of, any other right that person may have for review of the decision.

## PART 6 – CONFIDENTIALITY

### 48 Confidentiality

- (1) The Secretary and the Supreme Court must maintain confidentiality at all times as to:
  - (a) the identity of an asylum seeker whose application as a refugee is being considered under this Act; and
  - (b) the particulars of the determination of the application or any other matter relevant to the determination.
- (2) Subsection (1) does not prevent disclosure of particulars:
  - (a) to a person necessarily involved in determining the relevant determination, including any appeal; or
  - (b) to a public officer whose functions in relation to the asylum seeker require knowledge of those particulars; or
  - (c) to the United Nations High Commissioner for Refugees or a representative of the High Commissioner; or
  - (d) in dealing with government officials of other countries, not being the country of feared persecution.
- (3) Subsection (1) does not apply if an asylum seeker has waived his or her rights under that subsection.

### 49 Disclosure of certain information

- (1) This section applies to information that:
  - (a) is given to the secretary or the Tribunal in confidence; or
  - (b) is of a kind prescribed by the Regulations.
- (2) If the Secretary or the Tribunal receives information to which this section applies, the Secretary or the Tribunal (as the case requires):
  - (a) may, for the purpose of the exercise of powers under this Act, have regard to the information; and
  - (b) must, if intending to rely on the information for the purpose of the exercise of powers contrary to the interests of an applicant, disclose the information to the applicant.
- (3) If the Secretary or the Tribunal discloses information to the applicant under subsection (2)(b), the Secretary or the Tribunal (as

the case requires) may give a direction to the applicant that the information must not be disclosed except in a specified manner and to specified persons, or to persons of a specified class.

- (4) A person commits an offence if the person discloses information contrary to a direction of the Secretary or the Tribunal under subsection (3).

Maximum penalty: Imprisonment for 2 years.

**50 Disclosure of confidential information**

- (1) This section applies to a person who is or has been:
- (a) the Secretary; or
  - (b) a member of the Tribunal; or
  - (c) an officer of the Tribunal; or
  - (d) a Judge of the Supreme Court; or
  - (e) an officer of the Supreme Court; or
  - (f) a person providing interpreting services in connection with:
    - (i) a review by the Tribunal; or
    - (ii) an appeal in the Supreme Court.
- (2) This section applies to information or a document if the information or document:
- (a) concerns a person; and
  - (b) is obtained by a person to whom this section applies in the course of performing functions or exercising powers under this Act.
- (3) A person to whom this section applies must not:
- (a) make a record of information to which this section applies; or
  - (b) directly or indirectly divulge or communicate to a person information to which this section applies;  
  
unless the record is made or the information is divulged or communicated;
  - (c) for the purposes of this Act; or



- (d) for the purposes of, or in connection with, the performance of a function or the exercise of a power under this Act.

Maximum penalty: Imprisonment for 2 years.

- (4) A person to whom this section applies must not be required to produce, or permit access to, a document, or to divulge or communicate information, to which this section applies to or in:
  - (a) a court; or
  - (b) a tribunal; or
  - (c) Parliament; or
  - (d) a Parliamentary Committee; or
  - (e) any other authority or person having power to require the production of documents or the answering of questions,  
except if it is necessary to do so for the purposes of carrying into effect the provisions of this Act.
- (5) For this section, a person who is providing interpreting services in connection with a review by the Tribunal or an appeal in the Supreme Court is taken to be performing a function under this Act.

## **PART 7 – MISCELLANEOUS**

### **51 Principal Member's obligation to report to Minister**

- (1) The Principal Member must give a report to the Minister, within 45 days after the end of each reporting period, about each occasion on which the Tribunal has not been able to complete a review or reconsideration of matters remitted to the Tribunal within the required period (see section 33 and section 46).
- (2) A report must include:
  - (a) the date of each application for review or the date on which the matter was remitted to the Tribunal; and
  - (b) the reasons why the decisions were not reviewed or the matters reconsidered within the required period.
- (3) A report must not include:
  - (a) the name of any current or former applicant for review; or
  - (b) information that may identify such an applicant; or
  - (c) the name of any other person connected in any way with an application for review; or
  - (d) information that may identify that other person.

- (4) A report may include other information that the Principal Member thinks appropriate.
- (5) The Minister must cause a copy of a report under this section to be tabled in Parliament within 4 sitting days after the day on which the Minister receives the report from the Principal Member.
- (6) For the purposes of this section, each of the following is a reporting period:
  - (a) the period that starts on the day that the Tribunal is first constituted and ends 4 months after that day;
  - (b) each subsequent period of 4 months.

**52 Regulations**

- (1) The Cabinet may make regulations under this Act.
- (2) The regulations may:
  - (a) be of general application or vary in their application according to prescribed factors; and
  - (b) give a person discretion to decide a matter.

**53 Delegation of Secretary's powers**

The Secretary may, by writing signed by him or her, delegate to a person, any of the Secretary's powers under this Act.

## Notes for Refugees Convention Act 2012

### Table of Constituent Legislation

Short title	Number	Certification	Commencement
<i>Refugees Convention Act 2012</i>	2012/12	10.10.2012	10.10.2012
<i>Refugees Convention (Amendment) Act 2014</i>	2014/04	21.05.2014	21.05.2014
<i>Refugees Convention (Amendment) Act 2015</i>	2015/18	14.08.2015	14.08.2015
<i>Refugees Convention (Validation and Amendment) Act 2016</i>	2016/02	29.01.2016	29.01.2016
<i>Refugees Convention (Derivative Status &amp; Other Measures) (Amendment) Act 2016</i>	2016/56	23.12.2016	23.12.2016
<i>Refugees Convention (Amendment) Act 2017</i>	2017/05	05.05.2017	05.05.2017

### Table of Amendments

ad.= added or inserted	am. = amended	rep.= repealed	rs.= repealed and substituted
om.= omitted	os. = omitted and substituted	cert.= certified	com.= commence

Provision Affected	How Affected
Section 3	ad. by Act 2014/04 ad. by Act 2014/04 om. by Act 2014/04 am. by Act 2014/04 om. by Act 2016/56  ad. by Act 2016/56
Section 4	os. by Act 2014/04
Section 5	Subs. (1A) ad. by Act 2014/04 Subs. (1A) os. by Act 2016/56 Subs. (1AA) ad. by Act 2016/56 Subs. (1B) cert. by Act 2016/56 Subs. (1B) com. by 21 May 2014 Subs. (2) os. by Act 2016/56 Subs. (3) os. by Act 2016/56
Section 6	Subs. (1) am. by Act 2014/04 Subs. (1) os. by Act 2016/56

	Subs. (2) rep. by Act 2016/56 Subs. (2A) ad. by Act 2016/56 Subs. (2B) ad. by Act 2016/56 Subs. (2B) com. by Act 2014/04 Subs. (3) os. by Act 2016/56
Section 7	Subs. (1) am. by Act 2016/56
Section 8	Subs. (1) os. by Act 2016/56 Subs. (2) os. by Act 2016/56
Section 9	am. of heading by Act 2014/04 ad. by Act 2014/04 Subs. (b) rep. by Act 2014/04 Subs. (c) am. by 2014/04
Section 13	Subs. (2) os. by Act 2016/02 Subs. (2) com. on 9 Sep 2013
Section 21	Subs. (1) am. by Act 2016/56
Section 31	Subs. (1)(d) am. by Act 2014/04 Subs. (1) os. by Act 2016/56 Subs. (3) os. by Act 2014/04 Subs. (4) os. by Act 2014/04 Subs. (5) ad. by Act 2016/56 Subs. (5) com. by 21 May 2014
Section 34	Subs. (2)(e) ad. by Act 2017/05 Subs. (5) com. by 23rd Dec 2016 Subs. (4)(e) ad. by Act 2016/56 Subs. (4)(e) com. by 10 Oct 2012 Subs. (4)(e) rep. by Act 2017/05
Section 37	Rep. retrospectively to 10 Oct 2012 by Act 2017/05
Section 38	Rep. by Act 2014/04
Section 43	Subs. (1) os. by Act 2016/02 Subs. (1) com. by 9 Sep 2013 Subs. (1) os. by Act 2016/56 Subs. (1A) ad. by Act 2016/56 Subs. (3) am. by Act 2015/18 Subs. (5) ad. by Act 2015/18 Note: rep. by Act 2016/56
Section 53	ad. by Act 2014/04