



REPUBLIC OF NAURU

Asylum Seekers (Regional Processing Centre) Bill 2012

Serial No. 23 of 2012

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REPUBLIC OF NAURU

**Asylum Seekers (Regional Processing
Centre) Bill 2012**

Serial No. 23 of 2012

A Bill for:

An Act to regulate the operation of centres at which asylum seekers and certain other persons brought to Nauru under the *Migration Act 1958* of the Commonwealth of Australia are required to reside; to establish certain protections for those persons and set out their obligations; to impose duties on the person managing operations at a centre and confer powers on certain persons in relation to a centre or persons residing there; to appoint the Minister as guardian of certain children and for related purposes

Certified on []

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title

This Act may be cited as the *Asylum Seekers (Regional Processing Centre) Act 2012*.

2 Commencement

This Act commences on a date to be notified by the Minister in the Gazette.

3 Definitions

(1) In this Act:

‘authorised officer’ means a person appointed as an authorised officer by the Secretary under section 17(1);

'Australian Act' means the *Migration Act 1958* of the Commonwealth of Australia;

'centre rules' means rules made under section 7(1);

'frisk search' of a person means a search carried out by quickly running hands over the person's outer clothing;

'health and security clearance certificate' means a certificate issued by the Secretary under section 10(3);

'instruments of restraint' means handcuffs, ankle cuffs, batons, strait jackets or chemical substances;

'Joint Advisory Committee' means the Joint Committee established to oversee the practical arrangements required to implement the MOU, as required by clause 17 of the MOU;

'MOU' means 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 dated 29 August 2012;

'Operational Manager', in relation to a regional processing centre, means the person (however described) who has been given responsibility by the Commonwealth of Australia or by the Minister for managing operations at the centre and who is declared under subsection (2);

'prohibited item' means:

- (a) a firearm, knife or other article made or adapted for use, or capable of being used, for inflicting bodily injury; or
- (b) an explosive or other lethal device within the meaning of the *Counter Terrorism and Transnational Organised Crime Act 2004*; or
- (c) liquor within the meaning of the *Liquor Act 1967*; or
- (d) illicit drugs within the meaning of the *Illicit Drugs Control Act 2004* or any equipment for administering such drugs; or
- (e) any other article that may reasonably be regarded as posing a risk to the security of a regional processing centre;

'protected person' means:

- (a) an offshore entry person within the meaning of the Australian Act who has been brought to Nauru under section 198AD of that Act;
- (b) a person brought to Nauru under section 199 of the Australian Act;

'refugee' has the same meaning as in the *Refugees Convention Act 2012*;

'Refugee Status Review Tribunal' means the Refugee Status Review Tribunal established under section 11 of the *Refugees Convention Act 2012*;

'regional processing centre' means any land or premises operating wholly or predominantly as a place where protected persons reside;

'scanning search' of a person means a search carried out by using an electronic or mechanical device, whether handheld or otherwise, over or in close proximity to the person's outer clothing;

'Secretary' means the Head of Department;

'service provider' means a body that has been engaged by the Republic of Nauru or the Commonwealth of Australia to provide services of any kind at a regional processing centre or in relation to protected persons;

'staff member', in relation to a regional processing centre, means a person employed or engaged to provide services at the centre or to assist in any way in its management or operation and includes:

- (a) any officer of the Republic of Nauru or the Commonwealth of Australia who has been assigned duties at the centre; and
- (b) any person working as a volunteer at the centre;

'unaccompanied child' means a protected person who is a child and who when brought to Nauru was not accompanied by his or her parent or guardian.

- (2) The Secretary must by Gazette notice declare who is the Operational Manager of a specified regional processing centre for the purposes of this Act.
- (3) A person may be declared under subsection (2):
 - (a) by name; or
 - (b) by reference to the office, position or designation held or occupied by the person.

4 Refugee protections not affected

This Act does not affect any rights or protections that a refugee has under:

- (a) the Convention relating to the Status of Refugees done at Geneva on 28 July 1951; or
- (b) the Protocol relating to the Status of Refugees done at New York on 31 January 1967; or
- (c) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 10 December 1984; or
- (d) the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 18 December 2002; or
- (e) the *Refugees Convention Act 2012*.

PART 2 — REGIONAL PROCESSING CENTRES

Division 1 — Duties of Operational Manager

5 General duty

The Operational Manager of a regional processing centre has a duty to ensure that each protected person residing at the centre is treated in a fair and humane manner consistent with the law of Nauru.

6 Particular duties

- (1) Without limiting section 5, the Operational Manager of a regional processing centre has a duty to ensure that each protected person residing at the centre is provided with the following:
- (a) information, in a language that he or she can understand, about:
 - (i) the services available to him or her; and
 - (ii) the centre rules; and
 - (iii) his or her rights and obligations under this Act; and
 - (iv) the procedure for making complaints about the operation of the centre and how those complaints will be dealt with;
 - (v) the procedure for having his or her status as a refugee determined under the *Refugees Convention Act 2012*; and
 - (vi) the procedure for obtaining resettlement in a place outside Nauru; and
 - (vii) the procedure for voluntary return to the country of his or her nationality;
 - (b) a copy of the centre rules (as in force from time to time) written in a language that he or she can understand;
 - (c) food that is adequate to maintain his or her health and well-being including any special food that is required for medical reasons or on account of religious beliefs or vegetarianism;
 - (d) clean and sufficient clothing, adequate bedding and other essential items;
 - (e) access to appropriate washing and toilet facilities;
 - (f) access to medical (including mental health and dental) care and treatment to the standard that he or she might reasonably have access to if he or she were living in the general community in Nauru;
 - (g) if a child, access to facilities for obtaining education to the standard that he or she might reasonably have access to if he or she were living in the general community in Nauru;

- (h) access to appropriate interpretation facilities to enable him or her to understand any oral or written communication made or given to him or her;
 - (i) access to counselling facilities;
 - (j) access to facilities for the conduct of religious ceremonies and observances;
 - (k) access to materials and facilities for physical exercise and recreation;
 - (l) opportunities to associate with other residents, including for the pursuit of cultural or religious activities;
 - (m) access to facilities for sending and receiving written correspondence including in electronic form;
 - (n) assistance with transport for the purpose of attending any proceedings connected with the determination of his or her status as a refugee, his or her resettlement in a place outside Nauru or any other right or protection that he or she may have as mentioned in section 4;
 - (o) access to an area where legal advice can be obtained in confidence and privacy ;
 - (p) anything else that the Secretary thinks ought to be provided to the person because of any special needs that he or she has on account of his or her age or because he or she is disabled, a parent, pregnant, an unaccompanied child or a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.
- (2) The Operational Manager of a regional processing centre has a duty to ensure that protected persons residing at the centre are encouraged to maintain their mental and physical health and to use their leisure time constructively.
- (3) The Operational Manager of a regional processing centre has a duty to ensure that restrictions on the movement of a protected person residing at the centre are limited to the minimum necessary to maintain the security and good order of the centre.
- (4) The Operational Manager of a regional processing centre has a duty to ensure that a protected person residing at the centre:
- (a) is not subjected to corporal punishment in any form; and

- (b) does not have any instruments of restraint used on him or her by way of punishment; and
 - (c) is not kept in solitary confinement by way of punishment.
- (5) The Operational Manager of a regional processing centre has a duty:
- (a) to provide a detailed report as soon as practicable to the Secretary on the use of force by an authorised officer against a protected person under section 24(2); and
 - (b) to provide to the Secretary, within the period specified by the Secretary, any information relating to the operation of the centre that the Secretary may request.
- (6) The Operational Manager of a regional processing centre has a duty to facilitate the exercise by a person of a power of inspection conferred by section 13, including ensuring that the person can meet with a protected person without any staff member other than an interpreter being present.

Division 2 — Centre rules

7 Power to make rules

- (1) The Operational Manager of a regional processing centre must make rules for the security, good order and management of the centre and the care and welfare of protected persons residing there.
- (2) Without limiting subsection (1) rules made under that subsection:
- (a) may set out requirements to be complied with by persons seeking entry to the centre; and
 - (b) may restrict the movement of persons into specified areas within the centre; and
 - (c) subject to paragraph (d), may require a protected person who is not a refugee to be present at the centre, except in the case of emergency or other extraordinary circumstances:
 - (i) at all times, if he or she does not hold a health and security clearance certificate; or

- (ii) from 7 pm each day until 7 am the following day, if he or she holds a health and security clearance certificate;
 - (d) may permit a protected person covered by paragraph (c) to be absent from the centre at times other than those allowed by that paragraph if the absence is approved by the Operational Manager and the protected person is during the absence under the care and control of a staff member or another person approved by the Operational Manager;
 - (e) must put in place procedures for locating and returning to the centre a protected person who is absent at a time when he or she is required to be present at the centre;
 - (f) must put in place procedures to ensure access to the centre for a legal practitioner who wishes to enter in order to provide legal advice to a protected person who is his or her client.
- (3) Persons exercising a power of inspection conferred by section 13 are exempt from rules of a kind referred to in subsection (2)(a) or (b).

8 Power of Minister to cause centre rules to be changed

- (1) The Minister may at any time, on the recommendation of the Secretary, by notice in writing direct the Operational Manager to amend the centre rules by making an amending instrument in the form specified in the notice.
- (2) Subsection (1) applies whether or not the amendments being directed were changes recommended under section 18(4) of the *Interpretation Act 2011*.
- (3) If the centre rules are not amended as specified in a notice under subsection (1) 14 days after the day on which the notice is given to the Operational Manager, the Operational Manager is taken to have made under section 7(1) on that date an amending instrument in the form specified in the notice.
- (4) Section 18 of the *Interpretation Act 2011* does not apply to rules that are taken to have been made by subsection (3) but sections 15, 16 and 17 of that Act do apply.

Division 3 — Obligations of protected persons

9 Obligations of protected persons

A protected person residing at a regional processing centre has the following obligations:

- (a) to comply with the centre rules;
- (b) not to have a prohibited item in their possession;
- (c) to keep their living space, and any cooking, washing and toilet facilities that they use, in a clean condition;
- (d) not to damage the infrastructure of, or other property at, the centre;
- (e) not to do anything that endangers or is likely to endanger the safety and welfare of other protected persons residing at the centre or of a staff member;
- (f) not to do anything that affects, or is likely to affect, adversely the security or good order of the centre;
- (g) to comply with the law of Nauru.

Division 4 — Health and security clearance

10 Assessment about health and security

- (1) As soon as practicable after a protected person first begins to reside at a regional processing centre, the Government of Nauru must cause an assessment to be made as to whether the protected person's presence in the general community in Nauru would pose a risk to public health, safety or security.
- (2) In making an assessment regard may be had to the results of any health checks or security checks made on behalf of the Government of the Commonwealth of Australia in respect of the protected person.
- (3) If as a result of an assessment made under subsection (1) the Secretary is satisfied that the protected person's presence in the general community in Nauru would not pose a risk to public health, safety or security, the Secretary must issue a certificate to the person certifying as to that fact.

11 Cancellation of certificate

- (1) The Secretary may at any time cancel a health and security clearance certificate if satisfied, because of a fresh assessment made about the protected person, that his or her presence in the general community would pose a risk to public health, safety or security.
- (2) The Secretary must in writing immediately inform the protected person and the Operational Manager of the regional processing centre at which the person is residing about a cancellation under subsection (1).

12 Suspension of certificate

- (1) The Secretary may suspend a health and security clearance certificate issued to a protected person, for a period (of no more than 30 days) determined by the Secretary, if notified in writing by the Operational Manager of the regional processing centre at which the protected person is residing of behavioural issues relating to the protected person.
- (2) Without limiting subsection (1), behavioural issues that may justify suspending a health and clearance certificate include a failure to comply with an obligation under section 9(b), (d), (e), (f) or (g).
- (3) The Secretary must in writing immediately inform the protected person and the Operational Manager of the regional processing centre at which the person is residing about a suspension under subsection (1).
- (4) A health and security clearance certificate is of no effect during the period of suspension.

Division 5 — Inspection

13 Inspection

A Judge of the Supreme Court, a member of the Refugee Status Review Tribunal, a member of the Joint Advisory Committee, a representative of the United Nations High Commissioner for Refugees or any person authorised in writing by the Secretary to do so may enter and inspect a regional processing centre at any time.

PART 3 — PROTECTION OF CHILDREN

14 Rights of children

It is the intention of Parliament that, in the treatment of a protected person who is a child, regard must be had to the terms of the Convention on the Rights of the Child done at New York on 20 November 1989.

15 Guardianship of unaccompanied children

- (1) The Minister is the guardian of the person, and of the estate in Nauru, of every unaccompanied child who arrives in Nauru to the exclusion of the parents and every other guardian of the child.
- (2) The Minister has, as guardian, the same rights, powers and duties in respect of the unaccompanied child as he or she would have if he or she had been appointed by the Supreme Court or the Family Court as sole guardian of the child under the *Guardianship of Children Act 1975*.
- (3) The Minister continues to be the guardian of an unaccompanied child, even if the child ceases residing at a regional processing centre, until one of the following occurs:
 - (a) the child attains the age of 18 years;
 - (b) the child marries;
 - (c) a parent of the child arrives in Nauru;
 - (d) the Supreme Court or the Family Court makes an order concerning the child's guardianship under the *Guardianship of Children Act 1975*;
 - (e) the child leaves Nauru permanently.
- (4) If the Minister has ceased to be the guardian of a child only because of the arrival in Nauru of a parent of the child and that parent leaves Nauru, the Minister becomes again the guardian of the child and continues as such subject to subsection (3).
- (5) The Minister may, in relation to an unaccompanied child of whom he or she is the guardian, delegate in writing to any person described in subsection (6) any power or function that he or she has as guardian.

- (6) A delegate must be a person whom the Minister is satisfied is:
 - (a) a fit and proper person to exercise the delegated power or function; and
 - (b) a member or employee of, or a person working as a volunteer for, a body corporate established wholly or predominantly for advancing the welfare and protection of children.
- (7) The Supreme Court may, on the application of an interested person, review a decision of the Minister under subsection (5).
- (8) For subsection (7), a person is only an interested person if he or she is aware of particular facts or issues relating to the child that give rise in him or her to a concern that the delegation is not in the best interests of the child.
- (9) On an application under subsection (7), the Supreme Court may confirm the delegation or, if satisfied that it is not in the best interests of the child, must revoke it.

PART 4 — ENFORCEMENT

Division 1 — Service providers and authorised officers

16 Agreement with service provider

- (1) The Secretary may enter into an agreement on behalf of the Government of Nauru with a service provider.
- (2) An agreement under subsection (1) must provide for:
 - (a) the procedure for the appointment as authorised officers of staff members employed by, or engaged to provide services for, the service provider;
 - (b) steps to be taken by the service provider to ensure that all relevant provisions of this Act are complied with;
 - (c) the submission by the service provider to the Secretary of periodic reports in relation to the provision of services by it that are in the form, and deal with the particular matters, specified in the agreement; and
 - (d) an indemnity by the service provider in favour of the Government of Nauru, the Minister and the Secretary.

17 Appointment of authorised officers

- (1) The Secretary may appoint as an authorised officer for a regional processing centre a staff member who is employed by, or engaged to provide services for, a service provider who has entered into an agreement under section 16(1).
- (2) The Secretary may only appoint as an authorised officer a person whom the Secretary is satisfied:
 - (a) is competent to exercise the powers conferred on an authorised officer by this Part; and
 - (b) is a fit and proper person to exercise those powers, having regard to character, honesty and integrity; and
 - (c) has agreed in writing to exercise those powers.
- (3) The Secretary must issue an identity card to each authorised officer.
- (4) An identity card must:
 - (a) contain a photograph of the authorised officer; and
 - (b) specify a unique number by which the authorised officer may be identified; and
 - (c) be signed by the Secretary.
- (5) An authorised officer issued with an identity card must:
 - (a) at all times while on duty, wear it in such a manner that it is visible to other persons; and
 - (b) produce it on being requested to do so by a protected person in relation to whom the authorised officer is exercising, or proposing to exercise, any power under this Part.

Division 2 — Powers of authorised officers and police

18 Powers of authorised officer

- (1) An authorised officer may, for the purpose of detecting the presence of a prohibited item, require a protected person who is in or about to enter the regional processing centre to do any or all of the following:

- (a) submit to a frisk search or a scanning search;
 - (b) empty the contents of all pockets in the person's clothing and allow an examination of those contents;
 - (c) allow any bag or other receptacle carried by the person to be searched, whether by hand or by using an electronic or mechanical device.
- (2) An authorised officer who during a search finds a prohibited item or to whom a prohibited item is surrendered may seize and retain that item.
- (3) If an item seized under subsection (2) is an item the possession of which would constitute an offence, the authorised officer must ensure that it is given to a police officer as soon as practicable after the seizure.
- (4) Any other item seized under subsection (2) must be retained and returned to the protected person on him or her ceasing to reside at the centre.
- (5) If it is not practicable to comply with subsection (4), the Operational Manager may authorise the destruction or other disposal of the item.

19 Exercise of powers

- (1) An authorised officer must exercise a power under this Part with proper care and with due respect for the person in relation to whom the power is being exercised.
- (2) An authorised officer who conducts a search under this Part must not subject the person being searched to greater indignity than is reasonably necessary to conduct the search.
- (3) A frisk search may only be conducted by an authorised officer of the same sex as the person being searched.

20 Powers do not extend to other staff members

- (1) Nothing in this Part confers powers of a kind referred to in this Part on a staff member who is not a police officer or an authorised officer.

- (2) This section does not take away from any powers that a staff member may have in particular circumstances under the *Criminal Code 1899*, the *Criminal Procedure Act 1972* or any other law.

Example for subsection (2)

It is lawful for any person to use reasonable force in specified circumstances under section 261 of the Criminal Code 1899 and section 11(2) of the Criminal Procedure Act 1972.

21 Power of police to search persons

- (1) A police officer who suspects on reasonable grounds that a protected person may have any prohibited item about his or her person may search the person in accordance with this section and detain him or her for that purpose.
- (2) A police officer acting under subsection (1) may search the protected person or clothing that is being worn by, or anything in the possession of, the person.
- (3) The right to search a protected person does not include the right to examine his or her private person.
- (4) A search of a protected person may only be conducted by a police officer of the same sex as the person being searched.
- (5) A police officer who during a search finds a prohibited item or to whom a prohibited item is surrendered may seize that item.
- (6) If an item seized under subsection (5) is an item the possession of which would constitute an offence, the police officer must take appropriate steps to have it dealt with according to law.
- (7) Any other item seized under subsection (5) must be retained and returned to the protected person on him or her ceasing to reside at a regional processing centre.
- (8) If it is not practicable to comply with subsection (7), the Director of Police may authorise the destruction or other disposal of the item.
- (9) Subsection (6) also applies to an item given to a police officer under section 18(3).

22 Power of police to search premises

- (1) A police officer may, without warrant, break, enter and search any place within a regional processing centre at or in which the police officer suspects on reasonable grounds that a prohibited item may be found.
- (2) A police officer may seize a prohibited item found by him or her in the course of a search conducted under this section and take appropriate steps to have it dealt with according to law.

23 Power of police to arrest absentees

- (1) A police officer may arrest without warrant and detain a protected person for the purpose of returning him or her to the regional processing centre at which he or she resides if the protected person is absent at a time when required by the centre rules to be present at the centre.
- (2) For the purpose of arresting a person under subsection (1) a police officer may enter and search any place where that person is or where the police officer, with reasonable cause, suspects him or her to be.
- (3) Section 19 of the *Criminal Procedure Act 1972* does not apply to a person arrested under subsection (1).

24 Use of force

- (1) A police officer may use such force as may be reasonable in the circumstances in the exercise of a power under this Part.
- (2) A police officer or an authorised officer may use force against a protected person to the extent reasonably necessary to prevent the protected person inflicting injury on himself or herself, inflicting injury on other persons or damaging property.
- (3) An authorised officer who uses force against a protected person when authorised by subsection (2) must immediately report full details of the matter to the Operational Manager of the regional processing centre.

25 Protection from liability

A police officer or an authorised officer is not liable in any civil or criminal proceedings for anything done in the exercise or the purported exercise of a power under this Part if the thing was done in good faith on reasonable grounds.

26 Other police powers not affected

Powers conferred on a police officer under this Act are in addition to any other power that the police officer has.

PART 5 — MISCELLANEOUS

27 Delegation

The Secretary may delegate to a public officer his or her functions or powers under this Act (other than a function or power specified by the Regulations).

28 Regulations

- (1) Cabinet may make regulations under this Act.
- (2) The Regulations may be of general application or vary in their application according to prescribed factors.