

**Refugees Convention Bill 2012**

**EXPLANATORY MEMORANDUM**

**BACKGROUND AND OBJECTIVES**

The objective of the *Refugees Convention Bill 2012* is to provide a scheme for determination of refugee status under Nauruan law in accordance with Nauru's obligations under the Refugees Convention.

**EXPLANATION OF CLAUSES**

**PART 1 – PRELIMINARY**

**Clauses 1 and 2** are formal provisions.

**Clause 3** contains relevant definitions for the purposes of the measure.

The definition of asylum seeker extends to persons who make application to be recognised as refugees and persons prescribed by Regulations. It is intended to prescribe persons holding Australian regional processing centre visas as asylum seekers.

**Clause 4** sets out the requirements of the Refugees Convention that a refugee not be expelled or returned 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.

**PART 2 – DETERMINATION OF REFUGEE STATUS**

**Clause 5** is the mechanism for making an application for refugee status.

**Clause 6** requires the Secretary to determine an application.

**Clause 7** gives the Secretary various powers to obtain information and evidence necessary for the purposes of determining the application.

**Clause 8** allows the Secretary to decline to make a determination if such a determination has already been made elsewhere and there has been no significant change in circumstances.

**Clause 9** requires the applicant to be given notice of determinations and decisions.

**Clause 10** provides that, in certain circumstances, the Secretary may cancel a person's recognition as a refugee by the Republic. The Convention may have ceased to apply to

the person, the determination may have been procured by fraud or the like or the person may no longer wish to be recognised.

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

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

**Clause 11** establishes the Refugee Status Review Tribunal.

**Clause 12** provides that the Tribunal will be comprised of at least 3 members.

**Clause 13** provides for the appointment of members by Cabinet, acting on the advice of the Chief Justice. The Principal Member and Deputy Members must be persons qualified to be appointed as a judge of the Supreme Court. The maximum term of appointment is 5 years.

**Clause 14** sets out the role of the Principal Member as head of the Tribunal.

**Clause 15** provides for resignation of members.

**Clause 16** requires members to disclose conflicts of interest.

**Clause 17** provides power for the President to remove a member for misconduct or physical or mental incapacity.

**Clause 18** provides that there is to be a Registrar of the Tribunal and provides that the Minister may appoint officers of the Tribunal.

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

**Clause 19** provides that for a particular review the Tribunal is to be constituted of the Principal Member or Deputy Principal Member and 2 other members.

**Clause 20** enables the composition of the Tribunal to be altered to cater for illness or unexpected absence of a member during the course of a review, without having to start afresh.

**Clause 21** enables several reviews to be conducted simultaneously by the Tribunal constituted of different members.

**Clause 22** expresses high level principles concerning the way in which the Tribunal is to operate. The reference to principles of natural justice is intended to have the effect of clarifying that the rights and procedures set out in the Act should not be construed as an exhaustive statement of the requirements of natural justice.

**Clause 23** requires hearings to be conducted in private.

**Clause 24** sets out how the Tribunal may take evidence. It provides for interpreters where necessary.

**Clause 25** allows for the taking of evidence outside the Tribunal, whether in or outside Nauru.

**Clause 26** allows the Tribunal flexibility in the taking of evidence by telephone, closed-circuit television or other means of communication.

**Clause 27** allows the Principal Member to cause decisions to be published if they are of general interest but not so as to identify an applicant or a relative or dependent of an applicant.

### **Division 3 – Offences**

**Clause 28** makes it an offence for a witness to fail to attend as required by summons.

**Clause 29** makes it an offence to refuse to take an oath or make an affirmation or to refuse or fail to answer questions or provide documents. It is also an offence to give false or misleading evidence.

**Clause 30** provides for contempt of the Tribunal.

## **PART 3 – MERITS REVIEW BY TRIBUNAL**

### **Division 1 – Application**

**Clause 31** sets out procedures for the making of an application by a person for merits review by the Tribunal of a determination that the person is not recognised as a refugee, a decision to decline to make a determination or a decision to cancel a person's recognition as a refugee. No fee is to be charged for the application.

**Clause 32** requires the Secretary to be notified of the application and to provide relevant information to the Tribunal.

**Clause 33** requires the Tribunal to make its decision within 90 days of the receipt of the information.

**Clause 34** provides that the Tribunal may affirm the determination or decision, vary the determination or decision, remit matters for consideration by the Secretary with directions or recommendations or set the determination or decision aside and substitute a new determination or decision.

### **Division 2 – Review procedures**

**Clause 35** provides that the applicant and the Secretary may make written submissions.

**Clause 36** provides that the Tribunal may itself invite submissions or hear from persons.

**Clause 37** requires the Tribunal to give the applicant an opportunity to comment on or respond to information that the Tribunal considers would be the reason, or a part of the reason for affirming a determination or decision. This is an important aspect of generally recognised principles of natural justice.

**Clause 38** sets out requirements for an invitation issued by the Tribunal.

**Clause 39** provides that the Tribunal may, in certain circumstances, determine a matter without receiving a requested information, comment or response.

**Clause 40** requires the Tribunal to invite an applicant to appear before the Tribunal. However, a hearing is not necessary if the Tribunal decides in the applicant's favour on the basis of the papers or the applicant consents.

**Clause 41** enables the Tribunal to make a decision if the applicant fails to appear.

### **Division 3 – Miscellaneous**

**Clause 42** provides that the review under this Act does not exclude any other rights of review. This means that a person may opt to exercise common law rights to judicial review rather than, or in addition to, seeking merits review by the Tribunal.

### **PART 5 – APPEAL**

**Clause 43** provides for an appeal to the Supreme Court on a point of law.

**Clause 44** sets out the decisions that may be made by the Supreme Court on appeal.

**Clause 45** provides that the appellate jurisdiction is a no costs jurisdiction, except in extraordinary circumstances.

**Clause 46** gives the Tribunal 90 days within which to reconsider a matter remitted to it.

**Clause 47** provides that an appeal under the Part does not exclude any other rights of review. This means, for example, that a person may also bring an action relating to their rights under the constitution, or a common law action for judicial review. A person may also exercise their right under section 44 of the Appeals Act to appeal to the High Court of Australia, with leave of that Court from a decision of the Supreme Court of Nauru.

### **PART 6 – CONFIDENTIALITY**

**Clause 48** requires the Secretary and the Supreme Court to maintain confidentiality in respect of an asylum seeker and the particulars of a determination.

**Clause 49** allows for information to be given to the Secretary or Tribunal in confidence and for the protection of that information.

**Clause 50** provides for the protection of information obtained essentially in the course of the administration of the Act.

**PART 7 – MISCELLANEOUS**

**Clause 51** requires the Principal Member to report to the Minister in any case where the timeframes are not met in respect of a review or reconsideration of a matter.

**Clause 52** contains a general regulation making power.