

REPUBLIC OF NAURU
REFUGEES CONVENTION (AMENDMENT) BILL 2017

EXPLANATORY MEMORANDUM

The Refugees Convention (Amendment) Bill is a Bill for the *Refugees Convention (Amendment) Act 2017*.

EXPLANATION OF CLAUSES

Clause 1 provides that, once enacted, the short title of the Act will be the *Refugees Convention (Amendment) Act 2017*.

Clause 2 sets out when the Bill's provisions will commence. For the purposes of section 22 of the *Interpretation Act 2011*, the proposed section 34(2)(e) commences retrospectively.

Clause 3 is the enabling provision for the amendment of the *Refugees Convention Act 2012*.

Clause 4 makes clear that the repeal of section 37 of the Principal Act, which was effected by section 24 of the *Refugees Convention (Derivative Status & Other Measures) (Amendment) Act 2016* is deemed to have commenced retrospectively on 10 October 2012.

Clauses 5 and 6 declare that the rights, liabilities, obligations and status of persons are, and always have been, the same as if section 37 of the principal act had not been enacted; and ensure that any Tribunal decision which was affected by an error with respect to section 37 of the principal act, has the same force and effect as if it was not affected by that error. These provisions do not purport to 'validate' a decision affected by such an error, but attach to it certain consequences, including with retrospective effect.

These declarations are a valid exercise of the legislative power of the Parliament of Nauru, and do not involve the legislature in an exercise of nor interference with judicial power.

Clause 7 makes clear that the Tribunal continues to be bound to act according to the principles of natural justice, and to afford procedural fairness, under the common law of Nauru.

Clause 8 corrects the place in the principal Act where the Tribunal's power, to determine that a dependent of a review application is a refugee, is located. It also puts beyond doubt that the Tribunal may determine that a dependent of a review application is owed complementary protection.