

Republic of Nauru – 20<sup>th</sup> Parliament

**Refugees Convention Bill 2012**

**SECOND READING SPEECH**

Hon Dominic Tabuna MP

10 October 2012

Mr Deputy Speaker,

It gives me great pleasure to introduce to the House today a Bill for a new Act, the Refugees Convention Bill 2012.

On 28 June 2011 Nauru acceded to the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol Relating to the Status of Refugees done at New York on 31 January 1967. There are presently 145 States party to the Refugees Convention. I will now refer only to the Refugees Convention, by which I mean the Refugees Convention as modified by the Refugees Protocol.

The Refugees Convention creates an international framework for the identification of refugees, and to set out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum. A State Party to the Refugees Convention is obliged to protect refugees who are on its territory, in accordance with the terms of the Convention. Refugees should receive at least the same rights and basic help as any other foreigner who is a legal resident, including certain fundamental entitlements of every individual.

This Bill proposes to give effect to the Refugees Convention in Nauru by incorporating the principles and obligations under the Convention into the laws of Nauru. This ensures that Nauru is satisfying its international obligations while at the same time giving effect to the rights of asylum seekers and refugees. For those purposes, a fundamental clause of the Bill is clause 4 under which 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.

The Bill provides that a person may be recognised as refugee in Nauru and, as a result of such recognition, be afforded the protection and assistance of Nauru. According to Article 1 of the Refugees Convention and for the purposes of this Bill, a refugee is someone who:

is outside his or her country of nationality or habitual residence; has a well founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution.

The process of determining whether a person is recognised in Nauru as a refugee is to be undertaken by the Secretary of the Department that will be responsible for the administration of the Act which is intended to be the Department of Justice and Border Control. The Bill provides that a determination of refugee status must be made by the Secretary as soon as practicable after an asylum seeker makes an application for recognition as a refugee.

The Bill provides the Secretary with the necessary powers to make a determination of refugee status, such as the power to interview the asylum seeker, the power to require the production of information relevant to the determination (including from persons other than the asylum seeker) and power to require a person to verify, by statutory declaration or on oath or affirmation, information provided.

In making a determination about a person's refugee status, the Secretary may also rely on a determination that has been made under the Refugees Convention or a corresponding law – which is a law that gives effect to the Refugees Convention in another jurisdiction – if the circumstances relating to the person have not changed materially since that determination.

If a person has been recognised as a refugee, but the Refugees Convention ceases to apply to the person, or it becomes apparent that the recognition was procured by fraud or a false or misleading representation, the Secretary must cancel a person's recognition as a refugee.

On making a determination about, or decision in relation to, an asylum seeker's refugee status the Secretary must provide the asylum seeker with the reasons for the determination or decision, and, if the asylum seeker has not been recognised as a refugee, details of the claimant's right to merits review.

The Bill establishes the Refugee Status Review Tribunal which will conduct a review of a determination or decision of the Secretary on application by an asylum seeker who is not recognised as a refugee. The Tribunal is comprised of a Principal Member and 2 Deputy Members, who must be persons qualified to be appointed as judges of the Supreme Court. The Tribunal also has an unspecified number of other members. Because it is envisaged that all members will be non-resident, it is proposed that there will be a pool of about 10 members that can be drawn upon from time to time depending on the volume of applications for review and on the availability of members. At any sitting of the Tribunal, the Tribunal will be constituted by 3 members, with either the Principal Member or a Deputy Member presiding. Provisions governing the constitution of the Tribunal for a review, the general powers of the Tribunal and the procedures to be followed are set out in the Bill.

The process of a review by the Tribunal is intended to be relatively informal while at the same time giving an asylum seeker all the rights afforded by the principles of procedural fairness, natural justice and the merits of the case. The reference in clause 22 of the Bill 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.

An appeal is provided to the Supreme Court from a decision of the Tribunal on a point of law. This appellate jurisdiction of the Supreme Court is to be a no costs jurisdiction, except in extraordinary circumstances. The Bill provides that this right of appeal is in addition to any other rights a person may have, for example the right to bring a common law action for judicial review, or the right to appeal to the High Court of Australia against a decision of the Supreme Court of Nauru.

In summary, this Bill proposes to give effect to Nauru's obligations under International Law to the international community and to persons who are asylum seekers and refugees under the Refugees Convention.

Mr Deputy Speaker, the explanatory memorandum describes in detail each provision of the Bill.

I commend the Bill to the House.