

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

The Republic of Nauru and the Commonwealth of Australia ('the Participants'), wishing to strengthen their friendly relations, have come to the following Memorandum of Understanding (the MOU) in relation to the assessment in Nauru of certain persons, and related issues.

Preamble

Noting that:

- The Participants are State parties to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*, and acknowledge the importance of inter-country cooperation to undermine the People Smuggling industry;
- The Participants share a long-standing and close bilateral relationship;
- Irregular Migration is a continuing challenge for the Asia-Pacific region;
- While border control and law enforcement measures are important, practical cooperative solutions that also address humanitarian needs are required; and
- The Commonwealth of Australia appreciates the acceptance by the Republic of Nauru of the request made by the Commonwealth of Australia to host a Regional Processing Centre for Asylum Seekers.

Recalling that:

- At the Fourth Ministerial Conference of the Bali Process on People Smuggling, Trafficking and Related Transnational Crime (the MCBP) held in Indonesia on 29-30 March 2011, Ministers agreed:
 - to a regional cooperation framework that would provide a more effective way for interested states to cooperate to reduce Irregular Migration in the region;
 - that the framework would be operationalised through arrangements entered into between interested participating states on a bilateral or sub-regional basis (noting the cooperation that might be available from relevant international organisations regarding implementation);
 - that those arrangements would be consistent with the core principles at paragraph 16 and guided by the considerations set out in paragraph 19 of the MCBP Co-Chairs' Statement;
 - that any arrangements should seek to undermine the People Smuggling model and create disincentives for irregular travel, including through possible transfer and readmission arrangements in appropriate circumstances; and
 - that due to the large scale of irregular movement it would be appropriate to focus arrangements on a selected caseload or caseloads.

Recognising:

- the need for practical action to provide a disincentive against Irregular Migration, People Smuggling syndicates and transnational crime and intended to promote orderly migration and humanitarian solutions;
- the need to take account of the protection needs of persons who have moved irregularly who may be seeking asylum;
- the impact that an arrangement could have in providing a disincentive for Irregular Migration and creating increased protection opportunities for those in need of international protection; and
- the need to ensure, so far as is possible, that no benefit is gained through circumventing regular migration arrangements;

the Participants have reached the following common understanding regarding a transfer arrangement, whereby Australia would Transfer persons to Nauru for processing of any asylum claims that Transferees may raise.

Interpretation

“Participants” means the Republic of Nauru and the Commonwealth of Australia.

“Transferee” means a person transferred to Nauru under this MOU.

“Transfer” means transfer from Australia to Nauru under this MOU.

“Irregular Migration” means the phenomenon of people moving without proper authorisation to a country including for the purpose of seeking asylum.

“Refugee” means a person outside their country of nationality, or in the case of a person not having a nationality, who is outside their country of habitual residence, and who is unable or unwilling to return because of a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group.

“People Smuggling” means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a country of which the person is not a national or a permanent resident.

“Regional Processing Centre” means the facility to be established in Nauru pursuant to this MOU.

Objectives

1. The Participants have determined that combating People Smuggling and Irregular Migration in the Asia-Pacific region is a shared objective.

2. This MOU will enable joint cooperation, including the development of enhanced capacity in Nauru, to address these issues.
3. The Participants understand the importance of regional cooperation and have determined to continue discussions as to how the Regional Processing Centre might over time undertake a broader range of functions under the regional cooperation framework.

Guiding Principles

4. The Commonwealth of Australia will conduct all activities in respect of this MOU in accordance with its Constitution and all relevant domestic laws.
5. The Republic of Nauru will conduct all activities in respect of this MOU in accordance with its Constitution and all relevant domestic laws.
6. The Commonwealth of Australia will bear all costs incurred under and incidental to this MOU as agreed between the Participants.

Operation of this MOU

7. The Commonwealth of Australia may transfer and the Republic of Nauru will accept Transferees.
8. Administrative measures giving effect to this MOU will be settled between the Participants. Any further specific arrangements may be made, as jointly determined to be necessary by the Participants, on more particular aspects of this MOU, for the purpose of giving effect to its objectives.

Persons to be transferred to Nauru for processing

9. Persons to be transferred to Nauru are those persons who:
 - a. have travelled irregularly by sea to Australia; or
 - b. have been intercepted at sea by Australian authorities or rescued in the course of trying to reach Australia by irregular means; and
 - c. are required by Australian law to be transferred to Nauru.

The site

10. The Participants will establish a processing centre at a site or sites to be jointly determined and agreed between the Participants.

Timing

11. The Commonwealth of Australia will make all efforts to ensure that all persons entering Nauru under this MOU will depart within as short a time as is reasonably necessary for the implementation of this MOU, bearing in mind the objectives set out in the *Preamble* and *Clause 1*.

Commitments

12. The Participants will ensure that Transferees will be treated with dignity and respect and that relevant human rights standards are met.
13. Special arrangements will be developed and agreed to by the Participants for vulnerable cases including unaccompanied minors.
14. The Republic of Nauru assures the Commonwealth of Australia that it will:
 - a. not expel or return a transferee to another country 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; and
 - b. make an assessment, or permit an assessment to be made, of whether or not a transferee is covered by the definition of *refugee* in Article 1A of the *1951 Convention Relating to the Status of Refugees* as amended by the *1967 Protocol Relating to the Status of Refugees*; and
 - c. not send a transferee to another country where there is a real risk that the transferee will be subjected to torture, cruel, inhuman or degrading treatment or punishment, arbitrary deprivation of life or the imposition of the death penalty.

Co-operation

15. The Participants may jointly decide to vary this MOU in writing.
16. Communications concerning the day-to-day operation of activities undertaken in accordance with this MOU will be between the Department of Foreign Affairs & Trade of Nauru and the Australian High Commission Nauru.

17. The Participants will establish a Joint Committee with responsibility for the oversight of practical arrangements required to implement this MOU including issues relating to the duration of stay of Transferees. The Joint Committee will meet regularly no less than once monthly and will be co-chaired by mutually agreed representatives of the Australian High Commission Nauru and the Republic of Nauru. Participation in the Joint Committee will be as agreed but may include relevant non-government organisations and service providers where appropriate.
18. This MOU will come into effect on the date of signature by both Participants and will remain in effect until terminated by mutual agreement.

Settlement of Disputes

19. The Participants will resolve any differences arising under or in relation to this Memorandum amicably and by consultation and as soon as reasonably practicable.

This Memorandum of Understanding is signed at on theday of in the year

For the Government of Australia
The Hon Richard Marles MP
Parliamentary Secretary for
Pacific Island Affairs
Parliamentary Secretary for Foreign Affairs

For the Government of Nauru
Hon. Dr. Kieren Keke MP
Minister for Foreign Affairs and Trade