

Memorandum of Understanding between the Republic of Nauru and Australia on the Enduring Regional Processing Capability in Republic of Nauru

Since 2012, the Republic of Nauru and the Government of Australia (“the Participants”) have worked as partners to address irregular migration and people smuggling throughout the Indo-Pacific region. The Participants have cooperated in the establishment and implementation of regional processing arrangements in the Republic of Nauru, including the delivery of migration outcomes for persons transferred to the Republic of Nauru. The Participants have mutually determined to build on their existing strong and cordial relations to meet the ongoing challenges of irregular migration and people smuggling through the establishment of an enduring regional processing capability in the Republic of Nauru.

The following Memorandum of Understanding (“the MOU”) outlines the Participants’ understanding in relation to an enduring regional processing capability in the Republic of Nauru,

Noting that:

- The Government of Australia appreciates and acknowledges the instrumental role and contribution the Republic of Nauru has made to addressing irregular migration, people smuggling and the needs of individuals seeking international protection in the Indo-Pacific region, including Memoranda of Understanding signed on the 29 August 2012 and 3 August 2013;
- The Participants are states parties to the *1951 Convention relating to the Status of Refugees* and its 1967 Protocol;
- The Participants share a longstanding bilateral relationship of cooperation on migration and in combatting transnational crime, and acknowledge with mutual intent and spirit of the importance of State cooperation to undermine people smuggling;
- Irregular migration and people smuggling are continuing global challenges;
- While border control and law enforcement measures to address people smuggling and transnational crime are important, practical cooperative solutions that also address humanitarian needs are required; and

Recognising:

- The need for practical action to limit opportunities for irregular migration, eradicate people smuggling and transnational crime, and promote orderly migration and humanitarian solutions; and
- The need to take account of the protection needs of persons who have moved irregularly and who may be seeking asylum;

the Participants have mutually reached the following understandings regarding an enduring regional processing capability in the Republic of Nauru.

Interpretation

Unless a contrary intention appears, a term used in this MOU has the meaning set out below:

"Refugee" means a person as defined in Article 1A of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, or whom the Government of Nauru otherwise determines is in need of international protection in accordance with Nauru's *Refugees Convention Act 2012*.

"Transferee" means any person who is subject to this MOU in accordance with clause 8, who has been transferred from Australia, or another country, to the Republic of Nauru.

Objectives

1. The Participants have determined that combating irregular migration and people smuggling in the Indo-Pacific region is a shared objective.
2. Maintaining an enduring regional processing capability in the Republic of Nauru is a visible deterrent to people smugglers and persons who might be considering travelling irregularly to Australia.
3. This MOU will enable joint cooperation between the Participants to address these issues, understanding and valuing the importance of regional cooperation.

Guiding Principles

4. This MOU embodies the understandings of the Participants and:
 - a. will be implemented in accordance with the Participants' respective Constitutions and relevant domestic laws; and
 - b. Australia and the Republic of Nauru will respect each other's application, implementation and enforcement of laws as sovereign nations in their respective countries.

Operation of this MOU

5. The Government of Australia may transfer Transferees to the Republic of Nauru in accordance with this MOU, and the Republic of Nauru will accept such Transferees for the processing of their protection claims and identification of migration outcomes.
6. The Republic of Nauru will host an enduring regional processing capability in the Republic of Nauru and will be responsible for the management of Transferees until the Transferee/s departs the Republic of Nauru, or otherwise permanently settles in the Republic of Nauru with the approval of the Government of Nauru.
7. The Republic of Nauru will ensure Transferees are lawfully entitled to be in the Republic of Nauru for the duration of their stay until they depart the Republic of Nauru or are permitted to permanently settle in the Republic of Nauru in accordance with clause 6.

Persons Subject to this MOU

8. The following people may be transferred to the Republic of Nauru:
 - a. persons eligible to be transferred to the Republic of Nauru under the Australian *Migration Act 1958 (Cth)*; and
 - b. such other specific person or categories of persons, who are capable of being transferred to Nauru as mutually determined by the Participants in writing.

Commitments

9. The Participants will treat Transferees with dignity and respect, and in accordance with the Participants' international legal obligations, including relevant obligations under international human rights laws.
10. The Republic of Nauru assures the Government of Australia that it will:
 - a. not expel or return any 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 group or political opinion;
 - b. make an assessment or permit an assessment to be made, of whether or not a Transferee is a Refugee or is in need of international protection;
 - c. not send any 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; and
 - d. engage openly with Australia, in the spirit and intent of this instrument, on the future of the enduring regional processing capability hosting and its obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.
11. The Government of Australia assures the Republic of Nauru that it will:
 - a. work collaboratively with the Republic of Nauru bi-laterally and multi-laterally to address the challenges and dangers posed by irregular migration, people smuggling and related transnational crime throughout our region;
 - b. support actions to eradicate people smuggling and related transnational crimes; and
 - c. engage openly with the Republic of Nauru, in the spirit and intent of this instrument, on any future changes to enduring regional processing capability requirements and arrangements.

Outcomes for Transferees in the Republic of Nauru

12. The Republic of Nauru undertakes to enable Transferees, who it determines are in need of international protection, to remain in the Republic of Nauru pending a migration outcome, including resettlement.
13. The Republic of Nauru will identify and facilitate migration outcomes for Transferees who it determines are in need of international protection, including third country resettlement options for persons, or permanent settlement in the Republic of Nauru in accordance with clause 6.
14. The Republic of Nauru will remove Transferees who it finds not to be in need of international protection from the Republic of Nauru, as soon as reasonably practicable.
15. The Republic of Nauru will support Transferees to return home voluntarily or to travel to a country to which they have a lawful right of entry.
16. Australia will assist the Republic of Nauru implement durable migration outcomes for Transferees.

Subsidiary Arrangements

17. The Participants may develop confidential subsidiary arrangements to support the effective implementation of this MOU, including funding.

Transitions

18. The Participants acknowledge that this MOU does not intend to prejudice any existing or future agreement or treaty or other arrangement, however does supersede 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*, signed by the Participants on 3 August 2013, which will terminate on the date of commencement of the enduring regional processing capability.
19. All actions taken under the 2013 MOU will remain valid.
20. This MOU will commence on the date of signing by Participants and come into effect on the date of commencement of the enduring regional processing capability.
21. This MOU will remain in effect until the Participants mutually determine in writing otherwise.
22. The Participants may jointly decide to vary this MOU in writing.

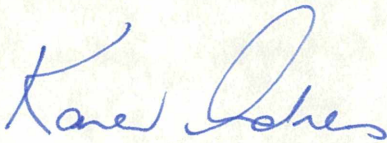
Settlement of Disputes

23. This MOU embodies the understandings of the Participants and is not intended to create, maintain or govern legally binding rights or obligations between the Participants or between the Participants and any Third Party.
24. Any dispute arising with respect to the interpretation or implementation of this MOU will be settled amicably through consultation between the Participants in the following order:
- a. Officials level;
 - b. Ministerial level;
 - c. Heads of Government.

Signatures

This MOU is signed by the following representatives of the Participants:


SIGNED for and on behalf of
the **Government of Australia** by



The Hon. Karen Andrews MP
Minister for Home Affairs

DATE 20.10.21

SIGNED for and on behalf of
the **Republic of Nauru** by



HE Lionel Rouwen Aingimea
President of the Republic of Nauru

DATE 20th Sept 2021