



REPUBLIC OF NAURU

REFUGEES CONVENTION (DERIVATIVE STATUS & OTHER MEASURES) (AMENDMENT) ACT 2016

No. 56 of 2016

An Act to amend the Refugees Convention Act 2012

Certified: 23rd December 2016

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Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *Refugees Convention (Derivative Status & Other Measures) (Amendment) Act 2016*.

2 Commencement

(1) Sections 10, 16 and 22 of this Act are deemed to have commenced on 21 May 2014.

(2) Section 23 of this Act is deemed to have commenced on 10 October 2012.

(3) All other provisions in this Act commence upon certification by the Speaker.

3 Amendment of Refugees Convention Act 2012

The *Refugees Convention Act 2012* is amended by the provisions of this Act.

4 Definitions

In this Act:

'commencement day' means the day on which the provisions of this Act, other than sections 15 and 16, commences;

'principal act' means the *Refugees Convention Act 2012*.

5 Validation of Tribunal decisions

For the avoidance of doubt, any decision or purported decision of the Tribunal made with respect to an application to the Tribunal under section 31 of the principal act for merits review of a decision or determination of the Secretary, between 10 October 2012 and the commencement day, which would have been validly made if at the time of the application, section 37 of the principal act had not been enacted, is taken to have been validly made on the day it was in fact made.

6 Preservation of the principles of natural justice

For the avoidance of doubt, nothing in this Act displaces any obligation imposed on the Tribunal under the common law of Nauru to act according to the principles of natural justice and to afford procedural fairness with respect to an application to the Tribunal under section 31 of the principal act for merits review of a decision or determination of the Secretary.

7 Amendment of section 3

Omit

Definition of 'derivative status'

Substitute

'derivative status' means the status given to a person, who is a dependent of a person who has been recognised as a refugee, given derivative status, or found to be owed complementary protection;

Insert

after the definition of '**refugee**'

'Refugee Determination Record' means the certificate issued to a person who is owed international protection by Nauru under section 6(2A);

8 Insert new section 5(1AA)

(1AA) A person may apply to the Secretary to be given derivative status.

9 Amendment of section 5(1A)

Omit

Section 5(1A)

Substitute

(1A) A person may include one or more dependents in an application made under section 5(1).

10 Insert new section 5(1B)

(1B) A person included in an application for refugee status under section 5(1A) is taken to have applied to be given derivative status.

11 Amendment of section 5(2)

Omit

Section 5(2)

Substitute

- (2) An application to the Secretary to be recognised as a refugee made under section 5(1), or to be given derivative status under section 5(1AA), must:
- (a) be in the form prescribed by the Regulations; and
 - (b) be accompanied by the information prescribed by the Regulations.

12 Amendment of section 5(3)

Omit

Section 5(3)

Substitute

- (3) No fee may be charged for the making or processing of an application made under this section.

13 Amendment of section 6(1)

Omit

Section 6(1)

Substitute

- (1) Subject to this part, the Secretary must determine:
- (a) an application to be recognised as a refugee made under section 5;
 - (b) an application to be given derivative status made under section 5; or
 - (c) whether a person who has made an application under section 5 is owed complementary protection.

14 Repeal section 6(2)

15 Insert new section 6(2A)

(2A) A Refugee Determination Record must be issued to a person who is:

- (a) determined to be a refugee;
- (b) given derivative status; or

(c) determined to be owed complementary protection.

16 Insert new section 6(2B)

(2B) Any application made by a person under section 5(1), section 5(1AA) or section 5(1A), that has not been determined at the time the person is given a Refugee Determination Record, is taken to have been validly determined at that time.

17 Amendment of section 6(3)

Omit

Section 6(3)

Substitute

(3) The determination under section 6(1) must be made as soon as practicable after the application is received.

18 Amendment of section 7(1)

Omit

After the words 'For the purposes of' the words 'determining whether an asylum seeker is recognised as a refugee or is owed complementary protection'

Substitute

The words 'making a determination under section 6(1)'

19 Amendment of section 8

Omit

Section 8

Substitute

8 Subsequent asylum claim

(1) A person may not make an application under section 5 if a determination has previously been made under section 6(1) with respect to that person.

(2) Despite section 8(1), the Secretary may permit a person to make an application under section 5 if the Secretary is satisfied that the grounds of the application either:

- (a) have not been substantially determined by the Secretary, nor by the Tribunal; or
 - (b) are based on a change in the person's circumstances since the previous application was finally determined, including the circumstances in a territory to which the applicant may be expelled or returned.
- (3) The Secretary is not under a duty to consider whether to exercise the power under section 8(2) in any circumstances.
- (4) Neither the Tribunal, nor the Supreme Court, has any jurisdiction in respect of a decision of the Secretary not to exercise, or not to consider the exercise of, the Secretary's power under section 8(2).
- (5) A request that the Secretary exercise, or consider the exercise of the Secretary's power under section 8(2) is not, for the purposes of section 11 of the Immigration Act 2014, an application to the Secretary to be recognised as a refugee or to be given derivative status.

20 Amendment of section 21(1)

Omit

After the words 'in such places' the words 'in Nauru'

21 Amendment of section 31(1)

Omit

Section 31(1) (a) to 31(1)(d)

Substitute

- (a) a determination made under section 6(1);
- (b) a decision to cancel a person's recognition as a refugee made under section 10(1).

22 Insert new section 31(5)

- (5) An application made by a person under section 31(1) (a), that has not been determined at the time the person is given a Refugee Determination Record, is taken to have been validly determined at that time.

23 Insert new section 34(4)(e)

- (e) determine that a dependent, of the person in respect of whom the determination or decision was made, is recognised as a refugee.

24 Repeal section 37

25 Amendment of section 43(1)

Omit

Section 43(1)

Substitute

(1) A person may appeal to the Supreme Court against a decision of the Tribunal on a point of law.

26 Insert new section 43(1A)

(1A) Despite section 43(1), the Supreme Court has no jurisdiction in respect of a determination by the Tribunal that a person is not to be given derivative status.

27 Repeal Note for section 43