

EXPLANATORY STATEMENT

Migration Act 1958

**INSTRUMENT OF DESIGNATION OF THE REPUBLIC OF NAURU
AS A REGIONAL PROCESSING COUNTRY UNDER SUBSECTION 198AB(1) OF THE
MIGRATION ACT 1958**

1. This Instrument is made under subsection 198AB(1) of the *Migration Act 1958* ('the Act').
2. This Instrument operates to designate that The Republic of Nauru is a regional processing country.
3. Subsection 198AB(1) of the Act provides that the Minister may, by legislative instrument, designate that a country is a regional processing country.
4. Subsection 198AB(2) of the Act provides that the only condition for the exercise of the power under subsection 198AB(1) is that the Minister thinks that it is in the national interest to designate the country to be a regional processing country.
5. Subsection 198AB(3) of the Act, provides that in considering the national interest for the purposes of subsection (2), the Minister:
 - (a) must have regard to whether or not the country has given any assurances to the effect that:
 - (i) the country will not expel or return a person taken to the country under section 198AD 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
 - (ii) the country will make an assessment, or permit an assessment to be made, of whether or not a person taken to the country under that section is covered by the definition of *refugee* in Article 1A of the Refugees Convention as amended by the Refugees Protocol and:
 - (b) may have regard to any other matter, which in the opinion of the Minister, relates to the national interest.
6. The notes to the Instrument refer the reader to the above provisions, which are relevant to the making of this Instrument.
7. The purpose of the Instrument is to enable the taking of offshore entry persons to The Republic of Nauru, in accordance with subsection 198AD.

Commencement

8. Subsection 198AB(1B) of the Act provides that, despite subsection 12(1) of the *Legislative Instruments Act 2003*, this Instrument commences at the earlier of the following times:
- (a) immediately after both Houses of the Parliament have passed a resolution approving the designation;
 - (b) immediately after both of the following apply:
 - (i) a copy of the designation has been laid before each House of the Parliament under section 198AC; or
 - (ii) 5 sitting days of each House have passed since the copy was laid before that House without it passing a resolution disapproving the designation.

Consultation

9. Consultations regarding the designation of The Republic of Nauru as a regional processing country have been undertaken with the Office of the United Nations High Commissioner for Refugees, The Government of the Republic of Nauru, International Organisation for Migration and relevant non-government organisations. In addition, a range of Commonwealth government agencies have been consulted.
10. The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required (OBPR Reference 14206).

Not subject to disallowance

11. Under section 44 of the *Legislative Instruments Act 2003*, this Instrument is not subject to disallowance.

Statement of Compatibility with Human Rights

12. In accordance with section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, a statement of compatibility with human rights has not been completed for this Instrument. This is because that section requires a statement of compatibility to be prepared only for a legislative instrument to which section 42 of the *Legislative Instruments Act 2003*, and the effect of section 44 of that Act is that section 42 does not apply to this Instrument.