



REPUBLIC OF NAURU

# Asylum Seekers (Regional Processing Centre) (Amendment) Act 2014

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No. 3 of 2014

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An Act to amend the *Asylum Seekers (Regional Processing Centre) Act 2012*

Certified on 21 May 2014

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Enacted by the Parliament of Nauru as follows:

**1 Short title**

This Act may be cited as the *Asylum Seekers (Regional Processing Centre) (Amendment) Act 2014*.

**2 Commencement**

This Act shall come into force upon certification by the Speaker.

**3 Act Amended**

The Schedule amends the *Asylum Seekers (Regional Processing Centre) Act 2012*.

**SCHEDULE – AMENDMENT OF ASYLUM SEEKERS (REGIONAL PROCESSING CENTRE) ACT 2012**

**[1] Amendment of section 3 (Definitions)**

**1.1 Omit the following definitions**

‘Instruments of restraint’

‘Secretary’

**1.2 Amend definition of prohibited items**

**Omit subsection (e)**

‘any other article that may reasonably be regarded as posing a risk to the security of a regional processing centre’

**Substitute**

(e) any other article as provided under section 18 (3) of this Act.

**1.3 Insert the following in alphabetical order**

**‘breach of discipline’** under section 24 includes but is not limited to-

(a) wilful disobedience of the Centre Rules;

(b) disobeying a lawful direction of an authorised officer, police officer or an Operational Manager;

- (c) using abusive, indecent, insulting, obscene, racial, offensive or threatening language toward an authorised officer, staff of the Centre, visitors or other protected persons;
- (d) acting in a way that is contrary to the security or good order of the Centre;
- (e) wilfully damaging, destroying, removing or otherwise interfering with any property of the Centre; or
- (f) attempting to do any of the above.

**'Centre'** means regional processing centre;

**'controlled item'** means any article provided in a list by an Operational Manager under section 18 (3) of this Act.

**'general search'**

- (1) of a person means a search -
  - (a) to reveal the contents of the person's outer garments, general clothes or hand luggage; or
  - (b) in which the person may be required to open his or her hands or mouth for visual inspection or to shake his or her hair vigorously.
- (2) of a place means a search –
  - (a) to reveal the contents of a person's living space and any cooking, washing or recreational facilities used or frequented by persons, including protected persons, within the Centre; or
  - (b) to reveal the contents of the infrastructure of, or other property at, the Centre.

**'instruments of restraint'** include handcuffs, ankle cuffs, batons, strait jackets, long range acoustic devices, gas and water deployment devices, chemical substances or riot control equipment;

**'regional processing centre'** includes:

- (1) any land or premises operating wholly or predominantly as a place where protected persons reside;
- (2) a prison, a police station, a remand centre, a holding cell, an isolation room, a hospital, a school, a court room, an airport and anywhere in transit between these places; and
- (3) any another place that is approved by the Minister in writing.

**'Secretary'** means the Secretary for Justice and Border Control.

**'scanning search'**

- (1) of a person, means a search carried out by using an electronic or mechanical device, whether handheld or otherwise, over or in close proximity to person's outer clothing; or
- (2) of a place, means a search carried out by using an electronic or mechanical device, whether handheld or otherwise, in and around an area of the regional processing centre;

**[2] Amendment of section 17**

Omit section 17 (1) and substitute with-

'The Secretary may appoint as an authorised officer for a regional processing centre a staff member who is employed by a service provider who has been contracted to provide services for the Centre'.

**[3] Amend title of Part 4 - Division 2**

**Omit current title and substitute with-**

'Division 2 – Provisions relating generally to the Centre'

**[4] Omit section 18**

**Insert new section 18**

**18 Taking prohibited or controlled items into Centre**

- (1) A person must not-
  - (a) take, or attempt to take, a prohibited or controlled item into the Centre facilities; or
  - (b) cause, or attempt to cause, a prohibited or controlled item to be taken into the Centre facilities; or

- (c) give, or attempt to give, a prohibited or controlled item to a protected person in a Centre facility; or
  - (d) cause, or attempt to cause, a prohibited or controlled item to be given to a protected person in a Centre facility.
- (2) A person does not commit an offence against subsection (1) if, for the relevant act carried out or attempted, the person has the approval of an Operational Manager of the Centre.
- (3) An Operational Manager after consultation with the Secretary shall from time to time publish a list of prohibited and controlled items that shall apply to protected persons, visitors and staff at the Centre.

**[5] Insert new section 18A**

**18A Removing items from or bringing items into the Centre**

- (1) An authorised officer may examine anything being brought into or being taken out of the Centre, and may stop and search, or cause to be stopped and searched-
- (a) any person reasonably suspected of bringing or attempting to bring any prohibited article into the Centre; or
  - (b) any person reasonably suspected of taking or attempting to take any such article out of, the Centre; or
  - (c) any person reasonably suspected of carrying or attempting to carry, out of the Centre, any property belonging to the Centre,
- and inform an Operational Manager of any such article or property so found during the search.
- (2) Any article, item, product or food that is supplied to a protected person for his or her use remains the property of the Centre unless and until it is consumed by the protected person or unless it is removed or disposed of by an Operational Manager or an authorised officer.
- (3) It is an offence under this Act-
- (a) to be found in possession of any article which has been supplied to a protected person, or of any other Centre property; and

- (b) to purchase or receive, without lawful authority, any such article or property from any protected person; or
  - (c) to trade for services or items any such article or property from any protected person; or
  - (d) to aid or abet any protected person in selling or disposing of any such article or property.
- (4) Any person, other than an authorised officer, an Operational Manager or other authorised persons found to be in contravention of subsection (3) shall be liable upon conviction to imprisonment for a period not exceeding three months or to a fine not exceeding \$50 or to both such fine and imprisonment.

**[6] Insert new section 18B**

**18B Entering Centre without approval**

- (1) A person must not-
- (a) enter, or attempt to enter the Centre without prior approval; or
  - (b) assume a false identity for the purposes of entering the Centre.
- (2) Any person found unlawfully within the boundaries of the Centre area shall be guilty of an offence and liable upon conviction to imprisonment for a period not exceeding three months or to a fine not exceeding \$100 or to both such fine and imprisonment.

**[7] Insert new section 18C**

**18C Leaving Centre without approval**

- (1) A protected person must not leave, or attempt to leave the Centre without prior approval from an authorised officer, an Operational Manager or other authorised persons.
- (2) Any protected person found to have left or be attempting to leave the Centre without prior approval commits an offence and is liable upon conviction to imprisonment for a period not exceeding six months.
- (3) A police officer may arrest a person for an offence against subsection (1).

**[8] Insert new section 18D**

**18D Interviewing and photographing protected persons etc.**

- (1) A person must not-
- (a) interview a protected person, or get a written or recorded statement from a protected person, whether the protected person is inside or outside the Centre; or
  - (b) photograph or attempt to photograph a protected person whether the protected person is inside or outside the Centre.
- (2) Any person who contravenes subsection (1) commits an offence and is liable upon conviction to imprisonment for a period not exceeding 3 months or to a fine not exceeding \$100 or to both such fine and imprisonment.
- (3) A person does not commit an offence against subsection (1) if the person is-
- (a) for subsection (1)(a), a lawyer appearing for the protected person; or
  - (b) any person being instructed to do so for the purposes of requirements under the Refugee Convention Act; or
  - (c) an employee of the Centre who has been required by his or her employment to take such photographs or statements; or
  - (d) an employee of a law enforcement agency who has been required by his or her employment to take such photographs or statements and has received approval from the Secretary; or
  - (e) a person who has the Secretary's approval.

**[9] Insert new Part 4 - Division 3 after section 18D**

**9.1 Insert new title**

'Division 3 – Powers of authorised officers and police'

**9.2 Place sections 19 to 26 under new Part 4 – Division 3**

**[10] Amendment of section 19**

**Omit**

All of section 19

**Substitute**

**19 Powers of authorised officer to search person**



- (1) An authorised officer may, for the purpose of detecting the presence of a prohibited or controlled item, require a protected person who is in or about to enter the Centre to submit to a search.
- (2) An authorised officer exercising powers under this section may require a protected person to do any or all of the following-
  - (a) submit to a frisk search, a strip search or a scanning search;
  - (b) empty the contents of all pockets in the person's clothing and allow an examination of those contents;
  - (c) allow any bag or other receptacle carried by the person to be searched, whether by hand or by using an electronic or mechanical device.

**[11] Insert new section 19A**

**19A Powers of authorised officer to search premises**

An authorised officer who suspects on reasonable grounds that a protected person may have in their possession a prohibited or controlled item, may, without warrant, break, enter and conduct a search of any place within a regional processing centre at or in which the authorised officer suspects that a prohibited item may be found.

**[12] Insert new section 19B**

**19B Provisions relating to search of persons**

- (1) A strip search or frisk search under section 18 (2) (a) must only be conducted if-
  - (a) an authorised officer suspects on reasonable grounds that it is necessary to conduct a search of the person for the purposes of the search; and
  - (b) the seriousness and urgency of the circumstances require the strip search to be carried out; and
  - (c) the Secretary has been notified.
- (2) If the seriousness and urgency of the circumstances make it impossible to comply with subsection (1) (c), then authority to conduct a search under this section may be sought from an Operational Manager.

**[13] Insert new section 19C**

**19C Preservation of privacy and dignity**

- (1) An authorised officer who searches a person must, as far as is reasonably practicable in the circumstances, comply with this section.
- (2) The authorised officer must inform the person to be searched of the following matters:
  - (a) whether the person will be required to remove clothing during the search,
  - (b) why it is necessary to remove the clothing.
- (3) The authorised officer must conduct the search:
  - (a) in a way that provides reasonable privacy for the person searched, and
  - (b) as quickly as is reasonably practicable.
- (4) The authorised officer must conduct the least invasive kind of search practicable in the circumstances.
- (5) The authorised officer must not search the genital area of the person searched, or in the case of female or a transgender person who identifies as a female, the person's breasts unless the authorised officer suspects on reasonable grounds that it is necessary to do so for the purposes of the search.
- (6) A search must be conducted by an authorised officer of the same sex as the person searched or by a person of the same sex.
- (7) A person must be allowed to dress as soon as a search is finished.
- (8) If clothing is seized because of the search, the authorised officer must ensure the person searched is left with or given reasonably appropriate clothing.

**[14] Insert new section 19D**

**19D Rules for conduct of strip searches**

- (1) An authorised officer, before conducting a strip search, must –
  - (a) be trained to conduct such searches; and
  - (b) must have informed the Secretary of the necessity of such a search; and
  - (c) have received the authority to conduct such a search from the Secretary.
- (2) If the seriousness and urgency of the circumstances make it impossible to comply with subsection (1) (c), then authority to conduct a search under this section may be sought from an Operational Manager.
- (3) An authorised officer who strip searches a person must, as far as is reasonably practicable in the circumstances, comply with the following -
  - (a) the strip search must be conducted in a private area,
  - (b) the strip search must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched,
  - (c) except as provided by this section, the strip search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.
- (4) A parent, guardian or personal representative of the person being searched may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched has no objection to that person being present.
- (5) A strip search of a child who is at least 10 years of age but under 18 years of age, or of a person who has impaired intellectual functioning, must, unless it is not reasonably practicable in the circumstances, be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the child or person, in the presence of another person (other than an authorised officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.
- (6) A strip search must not involve a search of a person's body cavities or an examination of the body by touch.

- (7) A strip search must not involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (8) A strip search must not involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (9) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if the person being searched has no objection to that person being present.
- (10) This section is in addition to the other requirements of this Act relating to searches.
- (11) In this section: "***impaired intellectual functioning***" means:
  - (a) total or partial loss of a person's mental functions, or
  - (b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or
  - (c) a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.
- (12) A strip search must not be conducted on a person who is under the age of 10 years.

**[15] Insert new section 19E**

**19E General search provisions**

- (1) The Secretary or an Operational Manager may, at any time, order an authorised officer conduct a scanning search or a general search of a protected person, a visitor or staff of the Centre or of the Centre facilities if the Secretary or an Operational Manager receives information or has reasonable belief that the protected person is in possession of something that jeopardises or is likely to jeopardise –

- (a) the security or good order of the Centre; or
  - (b) the safety of persons in the Centre.
- (2) An authorised officer who during a search finds a prohibited item or controlled item or to whom a prohibited item or controlled item is surrendered may seize and retain that item.
- (3) If an item seized under subsection (2) is an item the possession of which would constitute an offence, the authorised officer must ensure that it is given to a police officer as soon as practicable after the seizure.
- (4) Subject to subsection (3), any other item seized under subsection (2) must be retained and returned to the protected person on him or her ceasing to reside at the centre.
- (5) If it is not practicable to comply with subsection (4), the Operational Manager, in consultation with the Secretary, may authorise the destruction or other disposal of the item.
- (6) The Operational Manager must establish a register that records the details of each search conducted under subsections (1) and (2) including for example-
  - (a) the names of the persons present;
  - (b) the reasons why the search was conducted; and
  - (c) details of anything seized during the search.

**[16] Amendment of section 24**

Omit section 24 and substitute with the following:

**24. Authority to use reasonable force**

- (1) In the exercise of a power under this Part, a police officer or an authorised officer may use reasonable force that is necessary to-
  - (a) compel a protected person to obey a reasonable and lawful order; or

- (b) restrain a protected person who is attempting or preparing to commit an offence against this or another Act or a breach of discipline including but not limited to an attempt to leave the Centre; or
  - (c) restrain a protected person who is committing an offence against this or another Act or a breach of discipline; or
  - (d) to prevent the protected person inflicting injury on himself or herself, inflicting injury on other persons or damaging property; or
  - (e) to compel any person who has been lawfully ordered to leave the Centre facility and who refuses to do so, to leave the facility.
- (2) An authorised officer who uses force against a protected person when authorised by subsection (1) must immediately report full details of the matter to the Operational Manager of the regional processing centre of where the force was used.
- (3) The police officer or an authorised officer may use such force only if the officer-
- (a) reasonably believes the act or omission permitting the use of force cannot be stopped in another way; and
  - (b) gives a clear warning of the intention to use force if the act or omission does not stop; and
  - (c) gives sufficient time for the warning to be observed; and
  - (d) attempts to use the force in a way that is proportionate to the threat and is unlikely to cause death or grievous bodily harm.
- (4) However, the police officer or authorised officer need not comply with subsection (3) (b) or (c) if it would create a risk of injury to-
- (a) the police officer or authorised person using the force; or
  - (b) someone other than the person who is committing the act or omission.
- (5) The use of force may involve the use of instruments of restraint described in section 3 of this Act.

**[17] Insert new section 24A**

**24A Handover and hand back of Centre**

- (1) This section applies if the Secretary, in consultation with a service provider, believes on reasonable grounds-

- (a) that either-
    - i. there exists in respect of the Centre an emergency affecting the safety of protected persons, staff or visitors; or
    - ii. there is an imminent threat of such an emergency; and
  - (b) that the service provider responsible for the management of the Centre is unwilling or unable to immediately deal with that emergency or, as the case requires, that threat to the satisfaction of the Secretary.
- (2) If subsection (1) applies, the service provider may handover the Centre to the police for any period that the Secretary considers necessary in order to deal with the emergency or threatened emergency, and for that purpose the police-
- (a) has and may exercise and perform, in respect of the Centre, all the powers, functions, and duties that would otherwise be exercisable or performed by the service provider; and
  - (b) has all other powers that are necessary or desirable.
- (3) Once the Secretary, on reasonable grounds believes that there is no longer an imminent threat to the Centre, there shall be a hand back of the Centre, including all the powers, functions and duties, from the police to the service provider.

**[18] Insert new section 24B**

**24B Power to establish blockade in emergency**

- (1) This section applies regardless of whether section 24A has been activated.
- (2) A service provider at the Centre may, after consultation with the police-
  - (a) conclude that there is an existing emergency or imminent threat of emergency, including but not limited to a breach of the peace or order of the Centre; and

- (b) establish a blockade consisting of any appropriate form of barrier or obstruction preventing or limiting the passage of vehicles and persons to or from any Centre facility.
- (3) Any blockade established as a result of subsection (2) remains the responsibility of the Director of Police or his delegate.