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QUICK GUIDE

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Australia's offshore processing of asylum seekers in Nauru and PNG: a quick guide to statistics and resources

Elibritt Karlsen
Law and Bills Digest Section

This Quick Guide contains official statistics released by the Department of Immigration and Border Protection (DIBP) from the resumption of offshore processing in 2012 until October 2016. The statistics contained herein include:

- [Cost of operating the offshore processing centres in PNG and Nauru](#)
- [Total number of asylum seekers at Offshore Processing Centres](#)
- [Number of asylum seekers at each Processing Centre](#)
- [Nationalities of asylum seekers at each Processing Centre](#)
- [Number of children accommodated at the Processing Centres](#)
- [Number of females accommodated at the Processing Centres](#)
- [Number of arrivals and departures from Processing Centres](#)
- [Refugee determinations per month at each Processing Centre](#)
- [Percentage of asylum seekers found to be refugees in Nauru](#)
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This Quick Guide also contains:

[Annex 1 – List of inquiries and reports into offshore processing](#)

[Annex 2 – List of court judgments and related commentary](#)

Background

On 8 February 2008, seven months after Kevin Rudd was sworn in as Prime Minister, the former Labor Government [announced](#) that the last remaining asylum seekers on Nauru had been transferred to Australia ending the Howard Government's controversial 'Pacific Solution', which had begun in 2001 in response to rising numbers of asylum seekers arriving by boat.

However, by July 2010, then Prime Minister, Julia Gillard [announced](#) in her first major policy speech that the Government had begun having discussions with regional neighbours about the possibility of establishing a regional processing centre for the purpose of receiving and processing irregular entrants to the region. Whilst

only 25 asylum seekers had travelled by boat to Australia to seek asylum in the 2007–08 financial year by the time Prime Minister Gillard made her announcement in July 2010, more than 5,000 people had [travelled](#) by boat to Australia to seek asylum (that is, during the 2009–10 financial year).

Whilst Prime Minister Gillard [acknowledged](#) that the number of asylum seekers arriving by boat to Australia was ‘very, very minor’ and that at the current rate of arrival it would take about 20 years to fill the Melbourne Cricket Ground (MCG) with asylum seekers, she identified a number of reasons why the processing of asylum seekers in other countries was, again, considered necessary:

- to remove the financial incentive for the people smugglers to send boats to Australia
- to ensure that those arriving by boat do not get an unfair advantage over others
- to secure Australia’s borders and create a fair and orderly migration
- to prevent people embarking on a voyage across dangerous seas with the ever present risk of death
- to ensure that everyone is subject to a consistent, fair assessment process
- to improve the protection outcomes for refugees by establishing a framework for orderly migration within the region
- to prevent overcrowding in detention facilities in Australia
- to respond to increased numbers of unauthorised people movements in the region and around the world and
- to acknowledge that irregular migration is a global challenge that can only be tackled by nations working together.

Though it took another two years for her Government to secure the statutory and practical arrangements for asylum seekers to be sent to third countries, people began to be transferred to [Nauru](#) on 14 September 2012 and to [Papua New Guinea](#) (PNG) on 21 November 2012.

Two months before the 2013 federal election, and in the wake of growing support for the Opposition’s tougher border protection policies, newly appointed Prime Minister, Kevin Rudd made a surprise [announcement](#) on 19 July 2013 that Australia had entered into a Regional Resettlement Arrangement with PNG. Under the Arrangement, *all* (not just some) asylum seekers who arrive by boat would be transferred to PNG for processing and settlement in PNG and in any other participating regional State. He subsequently [made](#) a similar Memorandum of Understanding (MOU) with Nauru.

Notwithstanding Prime Minister Rudd’s announcement, the Australian Labor Party was unable to secure another term in office and, on 7 September 2013, the Liberal and National parties were voted in to form a Coalition Government, led by Tony Abbott. The current Coalition Government, led by Malcolm Turnbull, continues to implement the former Government’s offshore processing arrangements. However, the offshore processing of asylum seekers in Nauru and PNG has proved contentious for a number of reasons, including:

- the financial cost (see statistics below)
- ongoing concerns about the safety and security of asylum seekers and refugees in the Processing Centres and in the broader community
- ongoing concerns about the desirability and sustainability of involuntary settlement (currently in Nauru and PNG)
- prolonged uncertainty and punitive living conditions which are said to be causing or exacerbating psychological harm and
- inadequate transparency and independent oversight.

See Annex 1 for further information about these concerns.

Cost of operating the offshore processing centres in Nauru and PNG

The Parliamentary Library's 2016–17 [Budget Review](#) explains that the 2016–17 Budget allocated an additional \$61.5 million in 2016–17 to support offshore processing arrangements. This built on the additional funding of \$342.1 million over two years that was provided in the 2015–16 Mid-Year Economic and Fiscal Outlook (MYEFO) for this purpose. The additional funding, in MYEFO and in the 2016–17 Budget, illustrates the difficulty the Government has in accurately predicting costs in this area. The 2015–16 Budget provided for spending of \$810.8 million for irregular maritime arrivals (IMA) Offshore Management in 2015–16. However, the 2016–17 budget papers indicate that estimated actual spending in that year was almost \$1.1 billion.

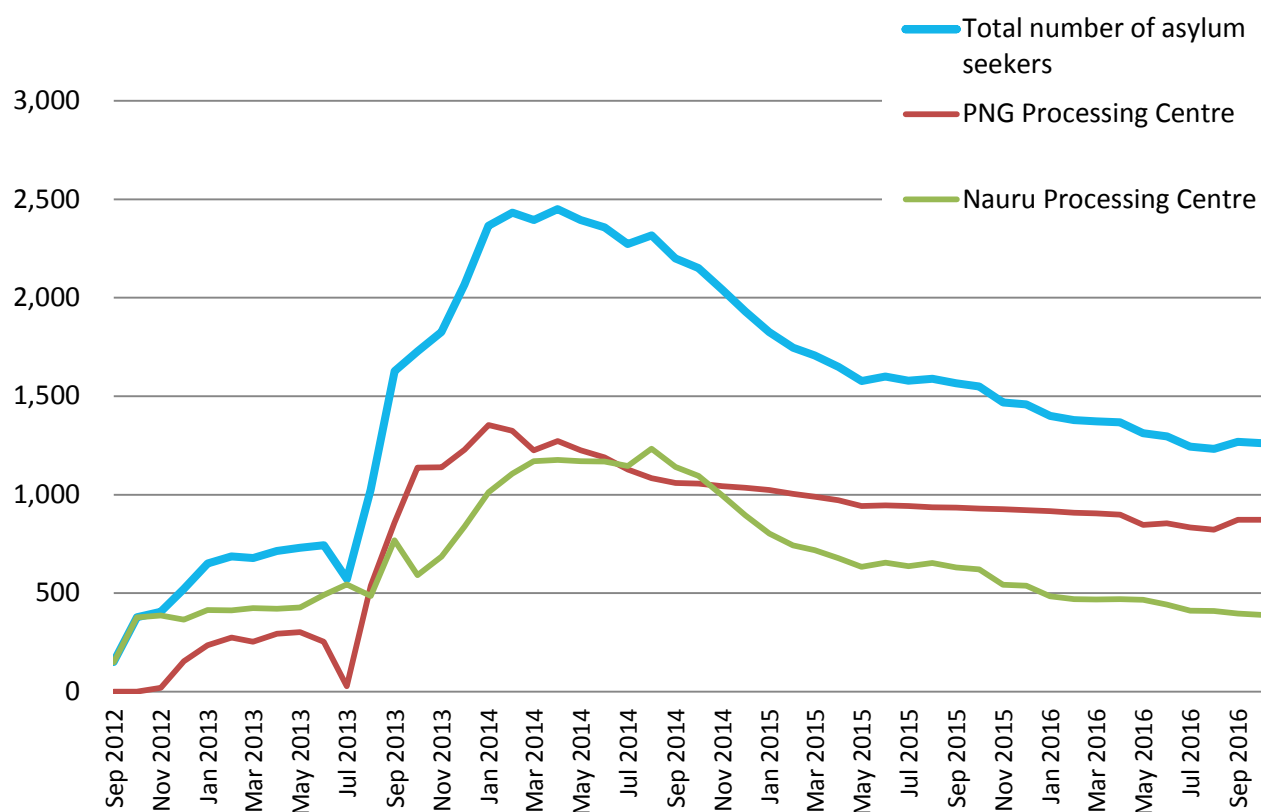
Total number of asylum seekers at Offshore Processing Centres

The first asylum seekers arrived in Nauru on 15 September 2012 and in Papua New Guinea on 21 November 2012. Female asylum seekers were only transferred to PNG during the period 21 November 2012 to 4 July 2013. Since then, all female maritime asylum seekers (and children) have been transferred to Nauru for processing.

The following graph illustrates the combined total number of asylum seekers at the processing centres in PNG and Nauru from September 2012 to September 2016.

It shows that the number of people being accommodated at the centres rose sharply from July 2013 (when the previous Government announced that *all* maritime asylum seekers would be transferred to an Offshore Processing Centre) to April 2014. However, since then the numbers have been gradually declining.

The Nauru Processing Centre was a detention centre from September 2012 until October 2015, when it became an 'open centre', giving people greater freedom of movement. The PNG centre adopted similar measures in May 2016. This change is reflected in the fluidity of the figures after these dates. However, this graph does not contain statistics on the number of asylum seekers and refugees residing offshore within the community.



Source: Data from October 2013 to September 2016 extracted from DIBP Monthly Operation Sovereign Borders updates; Data from September 2012 to September 2013 provided by DIBP on 17 September 2015.

Note: Approximately 1,000 unauthorised maritime arrivals (UMAs) who entered Australia between 13 August 2012 and 19 July 2013 were taken to a regional processing country. On 19 July 2013 the former Rudd Government announced that these UMAs would be returned to Australia to create capacity for the transfer of UMAs who arrived after 19 July 2013. Returns occurred progressively and were completed in October 2015.

Number of asylum seekers at each Processing Centre

The following table provides a snap-shot of the number of asylum seekers who have been accommodated at each of the processing centres at the end of each month from commencement to October 2016. The number of people accommodated at the PNG Processing Centre peaked at 1,353 (in January 2014), while the number of people accommodated at the Nauru Processing Centre peaked seven months later at 1,233 (in August 2014). The highest number of people accommodated offshore was 2,450 (in April 2014). This table does not contain statistics on the number of asylum seekers and refugees residing offshore within the community.

Month	Numbers at PNG Processing Centre	Numbers at Nauru Processing Centre	TOTAL at Processing Centres
27 Sept 2012	0	150	150
Oct 2012	0	377	377
29 Nov 2012	19	386	405
30 Dec 2012	155	366	521
Jan 2013	235	415	650
Feb 2013	274	412	686
Mar 2013	254	424	678
Apr 2013	294	420	714
May 2013	302	428	730
Jun 2013	253	490	743
Jul 2013	27	544	571
Aug 2013	538	486	1024#
Sep 2013	858	769	1627
Oct 2013	1137	591	1728
Nov 2013	1139	686	1825
Dec 2013	1229	838	2067
Jan 2014	1353	1012	2365
Feb 2014	1325	1107	2432
Mar 2014	1225	1170	2395
Apr 2014	1273	1177	2450
May 2014	1225	1170	2395
Jun 2014	1189	1169	2358
Jul 2014	1127	1146	2273
Aug 2014	1084	1233	2317
Sep 2014	1060	1140	2200
Oct 2014	1056	1095	2151
Nov 2014	1044	996	2040
Dec 2014	1035	895	1930
Jan 2015	1023	802	1825
Feb 2015	1004	742	1746
Mar 2015	989	718	1707
Apr 2015	971	677	1648
May 2015	943	634	1577
Jun 2015	945	655	1600
Jul 2015	942	637	1579
Aug 2015	936	653	1589
Sep 2015	934	631	1565
Oct 2015	929	621*	1550
Nov 2015	926	543	1469
Dec 2015	922	537	1459
Jan 2016	916	484	1400
Feb 2016	909	470	1379
Mar 2016	905	468	1373
Apr 2016	898	469	1367

May 2016	847**	466	1313
Jun 2016	854	442	1296
Jul 2016	833	411	1244
Aug 2016	823	410	1233
Sep 2016	873	396	1269
Oct 2016	872	390	1262

Source: Data extracted from DIBP Monthly Operation Sovereign Borders updates; additional data provided by DIBP on 17 September 2015. Figures are as at the end of the month unless otherwise stated.

Approximately 1,000 unauthorised maritime arrivals (UMAs) who entered Australia between 13 August 2012 and 19 July 2013 were taken to a regional processing country. On 19 July 2013, the former Rudd Government announced that these UMAs would be returned to Australia to create capacity for the transfer of UMAs who arrived after 19 July 2013. Returns occurred progressively and were completed in October 2015.

*Nauru Processing Centre became a completely 'open' centre on 6 October 2015 (see Government of Nauru [announcement](#)).

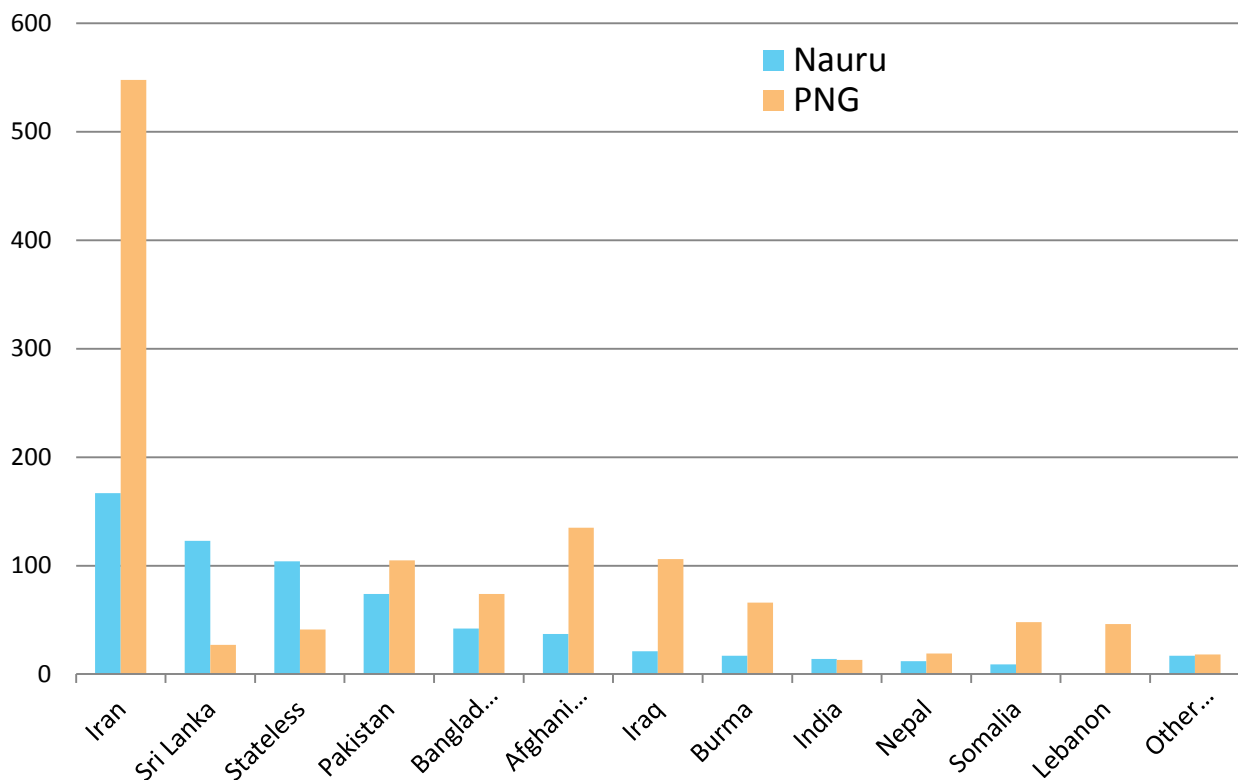
** PNG Processing Centre reportedly not a closed 'detention centre' as of May 2016 (see [media reports](#)).

Nationalities of asylum seekers at each Processing Centre

The following graph provides a snap-shot of the composition of both Processing Centres at two different points in time. The statistics for PNG were as at mid-February 2014 (noting there has only been one asylum seeker transferred to the Processing Centre since then). The statistics for Nauru were as at 13 July 2015.

This graph illustrates that the vast majority of asylum seekers at both Processing Centres come from Iran. The PNG Processing Centre (which only accommodates males) is also largely composed of asylum seekers from the Middle East including countries such as Afghanistan, Iraq and Pakistan.

In contrast, the Nauru Processing Centre (which accommodates males, females and children) is largely composed of asylum seekers from Sri Lanka, Pakistan, Bangladesh, and with people who have no country of nationality (Stateless).



Source: Statistics provided by the DIBP to the Senate inquiry into the *Incident at the Manus Island Detention Centre during 16 February to 18 February 2014*; and the *Senate Inquiry into the recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru*.

Number of children accommodated at the Processing Centres

The following table shows the number of children accommodated at the Processing Centres each month from November 2012 to October 2016. The highest number of children accommodated at the Processing Centres was 222 in August 2014. Since that time, the numbers have declined significantly to 45 in October 2016.

Month	Number of children
Sep 2012	0
Oct 2012	0
29 Nov 2012	4
30 Dec 2012	35
Jan 2013	35
Feb 2013	34
Mar 2013	29
Apr 2013	29
May 2013	26
Jun 2013	12
Jul 2013	0
Aug 2013	30
Sep 2013	87
Oct 2013	108
Nov 2013	109
Dec 2013	116
Jan 2014	132
Feb 2014	177
Mar 2014	208
Apr 2014	190
May 2014	208
Jun 2014	193
Jul 2014	183
Aug 2014	222
Sep 2014	186
Oct 2014	167
Nov 2014	155
Dec 2014	135
Jan 2015	119
Feb 2015	107
Mar 2015	103
Apr 2015	95
May 2015	81
Jun 2015	88
Jul 2015	87
Aug 2015	93
Sep 2015	92
Oct 2015	95
Nov 2015	70
Dec 2015	68
Jan 2016	54
Feb 2016	50
Mar 2016	50
April 2016	50
May 2016	50
Jun 2016	49
Jul 2016	49
Aug 2016	49

Sep 2016	45
Oct 2016	45

Source: Data from October 2013 to October 2016 extracted from DIBP Immigration Detention Statistics; Data from September 2012 to September 2013 provided by DIBP on 17 September 2015.

Note: Figures are as at the end of the month unless otherwise stated.

Number of females accommodated at the Processing Centres

Female asylum seekers were only transferred to PNG during the period 21 November 2012 to 4 July 2013. Since then, all female maritime asylum seekers (and children) were transferred to Nauru for processing. The following table provides a snap-shot of the number of female asylum seekers (excluding minors) accommodated offshore from 2012 to October 2016.

Month	Number of women
Oct 2012	0
Nov 2012	7
Dec 2012	47
Jan 2013	47
Feb 2013	47
Mar 2013	40
Apr 2013	41
May 2013	37
Jun 2013	24
Jul 2013	0
Aug 2013	23
Sep 2013	112
Oct 2013	158
Nov 2013	173
Dec 2013	187
Jan 2014	259
Feb 2014	300
Mar 2014	304
Apr 2014	310
May 2014	304
Jun 2014	289
Jul 2014	268
Aug 2014	263
Sep 2014	239
Oct 2014	226
Nov 2014	198
Dec 2014	164
Jan 2015	134
Feb 2015	126
Mar 2015	126
Apr 2015	113
May 2015	105
Jun 2015	114
Jul 2015	111
Aug 2015	114
Sep 2015	114
Oct 2015	113
Nov 2015	80
Dec 2015	79
Jan 2016	58

Feb 2016	55
Mar 2016	55
Apr 2016	56
May 2016	55
Jun 2016	55
Jul 2016	55
Aug 2016	55
Sep 2016	51
Oct 2016	50

Source: Data from October 2013 to October 2016 extracted from DIBP Immigration Detention Statistics; Data from September 2012 to September 2013 provided by DIBP on 17 September 2015.

Note: Figures are as at the end of the month unless otherwise stated.

Number of arrivals and departures from Processing Centres

The following table shows the number of arrivals and departures including countries of destination (excluding Australia) from the Processing Centres since January 2014. With respect to **arrivals**, the table indicates that only one asylum seeker has been transferred to a Processing Centre since October 2014. With respect to **departures**, the table shows that 63 asylum seekers returned to their home countries in 2015 (a reduction from 303 in 2014) and the majority are returning to countries in the Middle East such as Iran, Iraq and Lebanon. Four refugees agreed to depart Nauru in June 2015 to be settled in Cambodia.

Month	Number of arrivals	Number of departures	Country of destination (excluding Australia) following departure from Nauru or PNG centre
Jan 2014	132 (PNG) 188 (Nauru)	8	Iran (3) Bangladesh (2) Pakistan (2) Sri Lanka (1)
Feb 2014	133 (Nauru)	30	unknown (1) Iran (15) Iraq (11) India (3)
Mar 2014	52 (Nauru)	14	Lebanon (9) Iran (4) Sudan (1)
Apr 2014	41 (Nauru)	29	Iran (26) India (3)
May 2014	47 (Nauru)	37	Iran (32) Iraq (3) Lebanon (2)
Jun 2014	60 (Nauru)	19	Iran (17) Bangladesh (1) Sudan (1)
Jul 2014	41 (Nauru)	62	Iran (55) Lebanon (3) Bangladesh (1) Iraq (1) Pakistan (1) Sri Lanka (1)
Aug 2014	189 (Nauru)	48	Iran (36) Iraq (3) Egypt (2) Somalia (2) Albania (1) Lebanon (1) Sudan (1) Syria (1) India (1)
Sep 2014	5 (Nauru)	26	Iran (11) Iraq (7) Lebanon (6) Jordan (1) Pakistan (1)
Oct 2014	0	7	Iraq (3) Iran (2) India (2)
Nov 2014	0	14	Iraq (10) Iran (3) Sri Lanka (1)
Dec 2014	1 (PNG)	9	Iran (6) Afghanistan (1) Lebanon (1) Sri Lanka (1)
2014 TOTAL	889	303	Iran (210) Iraq (38) Lebanon (22) India (9) Bangladesh (4) Pakistan (4) Sri Lanka (4) Sudan (3) Somalia (2) Egypt (2) Albania (1) Afghanistan (1) Syria (1) Jordan (1) unknown(1)
Jan 2015	0	1	Iran (1)
Feb 2015	0	15	Iran (6) Iraq (8) Lebanon (1)
Mar 2015	0	9	Iran (8) Afghanistan (1)
Apr 2015	0	12	Iran (9) Sri Lanka (1) Afghanistan (1) Lebanon (1)
May 2015	0	8	Iran (5) Somalia (1) Lebanon (1) Iraq (1)
Jun 2015	0	12	Cambodia (4) Iran (5) Lebanon (1) Iraq (1) Sri Lanka (1)
Jul 2015	0	0	0
Aug 2015	0	4 2 involuntary	unknown (6)
Sep 2015	0	2	Unknown (2)

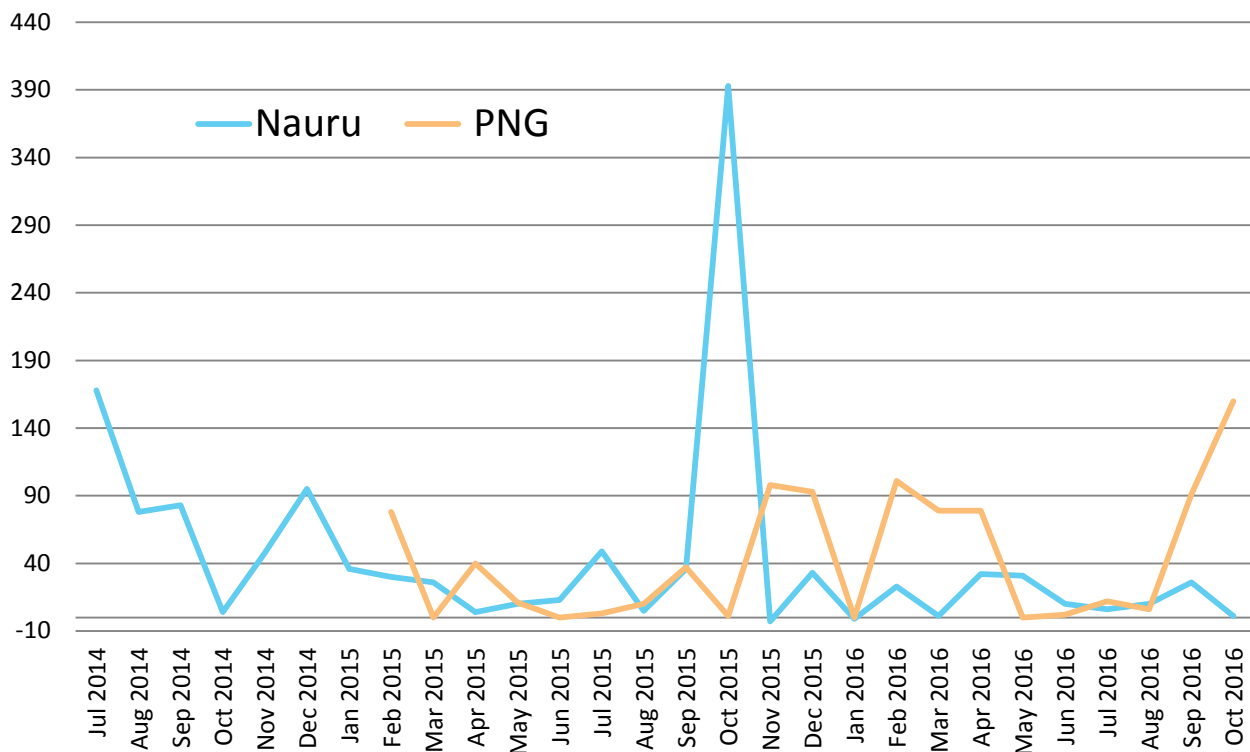
Oct 2015	0	1	Unknown (1)
Nov 2015	0	0	0
Dec 2015	0	1	Unknown (1)
2015 TOTAL	0	63	Iran (34) Iraq (10) unknown (10) Lebanon (4) Afghanistan (2) Somalia (1) Sri Lanka (2) Cambodia (4)
Jan 2016	0	0	0
Feb 2016	0	1	Unknown (1)
Mar 2016	0	0	0
Apr 2016	0	0	0
May 2016	0	1	Unknown (1)
Jun 2016	0	3	Unknown (3)
Jul 2016	0	1	Unknown (1)
Aug 2016	0	2	Unknown (2)
Sep 2016	0	6	Unknown (6)
Oct 2016	0	4	Unknown (4)

Source: Data extracted from DIBP: Operation Sovereign Borders Monthly Updates.

Note: These statistics also indicate that 137 people returned to their countries of origin in 2013 (including 84 to Iran and Iraq) though publicly available statistics for 2013 are incomplete and thus have been omitted from the above table.

Refugee determinations per month at each Processing Centre

In the context of Australia's offshore processing, determination of refugee status is the process by which the Nauruan and PNG Governments determine whether a person seeking asylum is considered to be a refugee under their respective national laws. The Government of Nauru [commenced](#) its refugee status determinations on 19 March 2013. More than a year later, it began handing down its first tranche of refugee status determinations (though the precise number of persons assessed and outcomes was not made publicly available until July 2014). The Government of PNG [commenced](#) its refugee determination process not long after, on 8 July 2013. Though it began handing down its initial [assessments](#) a year later, it did not start handing down final determinations until almost two years after it commenced assessing claims. The following graph contains a monthly break-down of the number of final determinations (including merits review) made from commencement to 31 October 2016.

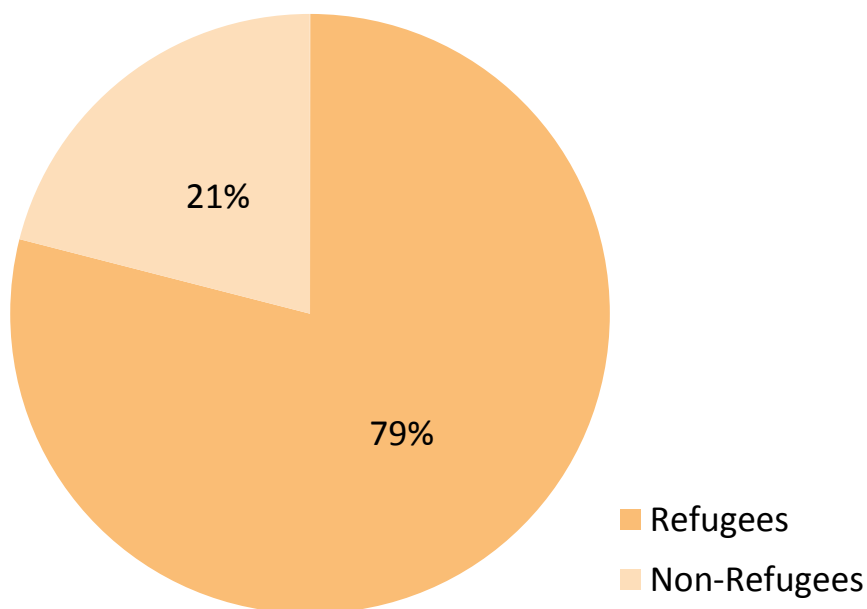


Source: Data extracted from DIBP: Operation Sovereign Borders Monthly Updates.

Note: Though PNG Government officials had completed 1,015 initial assessments as at 31 October 2016 (with 510 persons found to be refugees), this preliminary assessment remains subject to a final refugee determination and is thus not included above.

Percentage of asylum seekers found to be refugees in Nauru

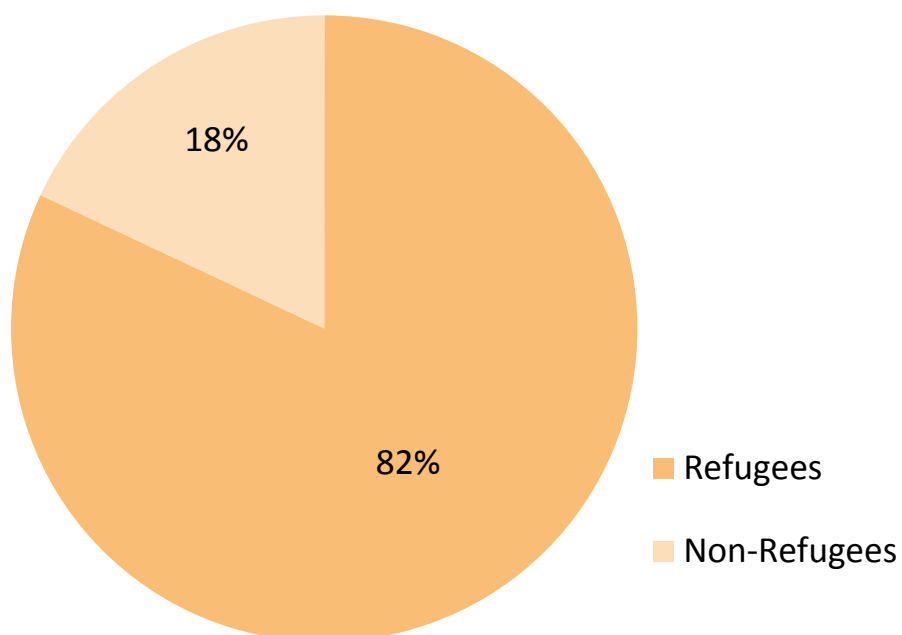
As at 31 October 2016, of the 1,195 people who have had their claims for asylum assessed by the Nauruan Government, **941** (79 per cent) had been found to be refugees.



Source: Data extracted from DIBP: Operation Sovereign Borders Monthly Updates.

Percentage of asylum seekers found to be refugees in PNG

As at 31 October 2016, of the 822 people who have had their claims for asylum assessed by the PNG Government, **675** (82 per cent) had been found to be refugees.



Source: Data extracted from DIBP: Operation Sovereign Borders Monthly Updates.

Annex 1 – List of inquiries and reports into offshore processing

NAURU

- Amnesty International, [Nauru Offshore Processing Facility Review 2012](#), 23 November 2012.
- United Nations High Commissioner for Refugees (UNHCR), [Mission to the Republic of Nauru, 3 to 5 December 2012: report](#), 14 December 2012.
- UNHCR, [Monitoring visit to the Republic of Nauru 7 to 9 October 2013](#), 26 November 2013.
- K Hamburger, AM, [Nauru Review 2013: Executive Report of the Review into the 19 July 2013 Incident at the Nauru Regional Processing Centre](#), report prepared by Knowledge Consulting, 8 November 2014.
- Australian Human Rights Commission (AHRC), [The Forgotten Children: National Inquiry into Children in Immigration Detention](#), AHRC, Sydney, November 2014.
- P Moss, [Review into Recent Allegations Relating to Conditions and Circumstances at the Regional Processing Centre in Nauru](#), Final report, [Department of Immigration and Border Protection, Canberra], 6 February 2015.
- Senate Select Committee on the Recent Allegations Relating to Conditions and Circumstances at the Regional processing Centre in Nauru, [Taking Responsibility: Conditions and Circumstances at Australia's Regional Processing Centre in Nauru](#), August 2015.
- C Doogan, [Review of Recommendation Nine From the Moss Review](#), 26 June 2016.
- Senate Legal and Constitutional Affairs Committee Inquiry, [Conditions and Treatment of Asylum Seekers and Refugees at the Regional Processing Centres in the Republic of Nauru and Papua New Guinea](#), Interim report, May 2016.
- W Bacon, P Curr, C Lawrence, J Macken, C O'Connor, [Protection denied, Abuse Condoned: Women on Nauru at Risk](#), Australian Women in Support of Women on Nauru, [Australia], June 2016.
- Human Rights Watch and Amnesty International, [Australia: Appalling Abuse, Neglect of Refugees on Nauru](#), 2 August 2016.
- P Farrell, N Evershed and H Davidson, 'The Nauru Files: Cache of 2,000 Leaked Reports Reveal Scale of Abuse of Children in Offshore Detention', *The Guardian (Australia)*, (online edition), 10 August 2016.
- Australian National Audit Office (ANAO), [Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services](#), ANAO report, 16, 2016–17, ANAO, Barton, ACT, 2016.
- Amnesty International, [Island of Despair: Australia's "Processing" of Refugees on Nauru](#), October 2016.

PNG

- UNHCR, [Monitoring Visit to Manus Island, Papua New Guinea: 15–17 January 2013](#), 4 February 2013.
- UNHCR, [Monitoring Visit to Manus Island, Papua New Guinea: 11–13 June 2013](#), 12 July 2013.
- UNHCR, [Monitoring visit to Manus Island, Papua New Guinea 23–25 October 2013](#), 27 November 2013.
- Amnesty International, [This is Breaking People: Human Rights Violations at Australia's Asylum Seeker Processing Centre on Manus Island, Papua New Guinea](#), December 2013.
- R Cornall, AO, [Review into the events of 16–18 February 2014 at the Manus Regional Processing Centre](#), report to the Secretary, Department of Immigration and Border Protection, 23 May 2014.
- R Cornall, AO, [Review into Allegations of Sexual and Other Serious Assaults at the Manus Regional Processing Centre](#), September 2013.

- Senate Legal and Constitutional Affairs References Committee, [Inquiry into the Incident at the Manus Island Detention Centre from 16 February to 18 February 2014](#), 11 December 2014.
- Human Rights Watch and Human Rights Law Centre, [The Pacific Non-Solution: Two years on, refugees face uncertainty, restrictions on rights](#), 15 July 2015.
- Senate Legal and Constitutional Affairs Committee Inquiry, [Conditions and treatment of asylum seekers and refugees at the regional processing centres in the Republic of Nauru and Papua New Guinea](#), Interim report, May 2016 (when Committee lapsed for 2016 federal election)
- Australian National Audit Office (ANAO), [Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services](#), ANAO report, 16, 2016–17, ANAO, Barton, ACT, 2016.

Annex 2 – List of court judgments and related commentary

Plaintiff S156/2013 v Minister for Immigration and Border Protection & Anor (2014) 254 CLR 28, [\[2014\] HCA 22](#) (18 June 2014)

The High Court unanimously upheld the validity of the regional processing scheme under sections 198AB and 198AD of the *Migration Act 1958* (*Migration Act*), and former Immigration Minister Bowen’s designation of PNG as a regional processing country. The plaintiff challenged the validity of sections 198AB and 198AD of the *Migration Act* on the ground that neither provision is supported by any head of power in the *Constitution*. Section 198AB provides that the Minister may designate that a country is a regional processing country. Section 198AD provides that ‘unauthorised maritime arrivals’ (UMAs) must be taken from Australia to a regional processing country. The plaintiff also challenged the validity of the Minister’s decision of 9 October 2012 to designate PNG as a regional processing country under section 198AB (the designation decision) and the Minister’s decision of 29 July 2013 to give a written direction under subsection 198AD(5) to take UMAs to PNG or to the Republic of Nauru (the direction decision). The High Court unanimously held that sections 198AB and 198AD were valid under the aliens power conferred by subsection 51(xix) of the *Constitution*. The Court also upheld the validity of the designation decision and the direction decision. The Court rejected the argument that the Minister had failed to have regard to mandatory relevant considerations. The only mandatory condition for the exercise of the power of designation under section 198AB was the Minister forming an opinion that it would be in the national interest to do so.

Commentary and analysis:

- G Stooke, [‘High Court rejects challenge to offshore processing’](#), Human Rights Law Centre, 18 June 2014.
- E Karlsen, [‘High Court gets another chance to have the final word on regional processing’](#), Flagpost, Parliamentary Library blog, 18 June 2014.
- K Murphy, [‘High Court backs ministerial power over asylum seekers’](#), *Eureka Street*, 19 June 2014.
- J Chia, [‘Plaintiff S156/2013: the constitutionality of offshore processing on Manus Island’](#), Andrew & Renata Kaldor Centre for International Refugee Law, University of NSW, 26 June 2014.
- H Ash, [‘The High Court upholds the “PNG Solution”: Plaintiff S156/2013’](#), University of Melbourne, Opinions on High, blog, 11 July 2014.

CPCF v Minister for Immigration and Border Protection & Anor (2015) 255 CLR 514, [\[2015\] HCA 1](#) (28 January 2015)

A High Court majority (4:3) held that a claim for damages for false imprisonment arising out of the plaintiff’s detention at sea on a Commonwealth vessel should be dismissed. The majority of the Court held that subsection 72(4) of the *Maritime Powers Act 2013* authorised a maritime officer to detain the plaintiff for the purpose of taking him from Australia’s contiguous zone to a place outside Australia, being India. Subsection 72(4) states that a maritime officer may detain a person on a detained vessel and take the person, or cause the person to be taken, to a place outside Australia. The Court found that the power under subsection 72(4) was not subject to an obligation to afford the plaintiff procedural fairness. The detention was lawful even though the maritime officer

detained the plaintiff in implementation of a decision by the Australian Government, and without independent consideration of whether the detention should have taken place. The detention was also lawful even though, prior to the commencement of the taking of the plaintiff to India, no arrangement existed between Australia and India concerning the reception of the plaintiff in India.

Commentary and analysis:

- M O’Sullivan, [‘Australia can detain asylum seekers on the high seas, the High Court decides’](#), *The Conversation*, 28 January 2015.
- M Clark, [‘CPCF v Minister for Immigration and Border Protection’](#), University of Melbourne, Opinions on High, blog, 28 January 2015.
- J McAdam, [‘Case note: CPCF v Minister for Immigration and Border Protection \[2015\] HCA 1’](#), and [‘Our obligations still apply despite High Court win’](#), Andrew & Renata Kaldor Centre for International Refugee Law, University of NSW, 28 and 30 January 2015.
- F Brennan, [‘High Court fails high seas detainees’](#), *Eureka Street*, 1 February 2015.
- A Olijnyk, [‘CPCF v Minister for Immigration and Border Protection \[2015\] HCA 1’](#), University of Adelaide, Public Law Blog, 2 March 2015.
- S Tully and M Smith, [‘Operation "Sovereign Borders": the High Court of Australia considers implications of international law’](#), *American Society of International Law*, 19(12), 5 June 2015.
- P Billings, [‘Operation Sovereign Borders and interdiction at sea: CPCF v Minister for Immigration and Border Protection’](#), *Australian Journal of Administrative Law*, 23(2), 2016, pp. 76–101.

Plaintiff M68-2015 v Minister for Immigration and Border Protection (2016) 257 CLR 42, [\[2016\] HCA 1](#) (3 February 2016)

A High Court majority upheld the validity of the offshore detention arrangements in place in the Nauru Regional Processing Centre. The Court held that the Memorandum of Understanding between the Commonwealth and Nauru establishing the scheme, as well as the Commonwealth’s funding and participation in the scheme, was supported by section 198AHA of the *Migration Act* and section 61 of the *Constitution*. Section 198AHA (inserted into the *Migration Act* on 30 June 2015 (with retrospective effect after proceedings had commenced) was found to be a valid law of the Commonwealth and provided the statutory framework for the exercise of the Commonwealth’s power to enter into an arrangement for regional processing.

Commentary and analysis:

- M Clark, [‘Plaintiff M68/2015 v Minister for Immigration and Border Protection’](#), University of Melbourne, Opinions on High, blog, 3 February 2016.
- M Gleeson, [‘Glimmers of hope for detained asylum seekers in the High Court’s Nauru decision’](#), *The Conversation*, 3 February 2016.
- R Thwaites, [‘Plaintiff M68/2015: the Commonwealth executive’s capacity to participate in detention in Nauru’](#), presentation to the University of NSW Constitutional Law Conference, Sydney, 12 February 2016.
- D Hume, [‘Plaintiff M68-2015 – offshore processing and the limits of Chapter III’](#), University of NSW, AUSPUBLAW blog, 26 February 2016.
- E Pearson [‘Case analysis – Plaintiff M68/2015 v Minister for Immigration and Border Protection’](#), ILA (International Law Association) Reporter, blog, 31 March 2016.

Namah v Pato [\[2016\] PGSC 13](#) (26 April 2016)

The Papua New Guinea Supreme Court unanimously found the detention of refugees and asylum seekers in the Australian-funded ‘processing’ centre on Manus Island to be unconstitutional. Integral to this decision was the requirement in section 42(1) of the PNG *Constitution* that, except in specified circumstances, ‘[n]o person shall be deprived of his personal liberty’. In reaching this decision, the Supreme Court rejected the argument that the detention of the refugees and asylum seekers on Manus Island (not of their own accord but as the result of

agreement between Australia and PNG), fell within the exception provided for in section 42(1)(g) of the PNG *Constitution* for detention 'for the purpose of preventing the *unlawful entry* of a person into PNG'. The Supreme Court also held to be invalid the exemption included in the PNG *Constitution* by the *Constitution Amendment (No 37) (Citizenship) Law 2014* for detention 'for the purposes of holding a foreign national under arrangements made by PNG with another country ...'. Specifically, the Court held that, in qualifying an existing constitutional right (the right to personal liberty), the amendment did not satisfy the further requirement in section 38 of the PNG *Constitution*, that it specify whether or not the detention of asylum seekers could be in the public interest and reasonably justifiable in a democratic society. The amending legislation neither specified the purpose of the amendment or the right which it purported to limit.

Commentary and analysis:

- M Gleeson, '[PNG court decision forces Australia to act on Manus Island detainees](#)', *The Conversation*, 27 April 2016.
- M O'Sullivan, '[The End of Off-Shore Detention, the implications of the Papua New Guinea Supreme Court decision](#)', Monash University, Castan Centre for Human Rights Law, blog, 27 April 2016.
- T Blackshield, '[PNG's Supreme Court and Manus Island](#)', University of NSW, AUSPUBLAW blog, 28 April 2016.
- M Grattan, '[The Manus issue intrudes on carefully crafted pre-election scripts](#)', *The Conversation*, 29 April 2016.

Plaintiff S99/2016 v Minister for Immigration and Border Protection [\[2016\] FCA 483](#) (6 May 2016)

Justice Bromberg of the Federal Court of Australia held that the Minister has a duty of care to the applicant (a young African refugee who was raped on Nauru whilst unconscious and suffering a seizure) to exercise reasonable care to discharge the responsibility he assumed to procure for her a safe and lawful abortion. His Honour also held that the proposed abortion for the applicant in PNG was attended by safety and lawfulness risks that a reasonable person in the Minister's position would have avoided. Thus, the procuring of the abortion by the Minister did not discharge his duty of care. In light of the fact that there was reasonable apprehension that the Minister would fail to discharge his duty of care, his Honour issued an injunction to preclude the Minister from procuring an abortion for the applicant in PNG but did not order the applicant be brought to Australia.

Commentary and analysis:

- T Penovic, '[Dutton's duty: the Minister's responsibility to provide a safe and lawful abortion](#)', Monash University, Castan Centre for Human Rights Law Blog, 11 May 2016.

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