

**QUESTION TAKEN ON NOTICE – LEGAL AND CONSTITUTIONAL AFFAIRS
REFERENCES COMMITTEE**

**INQUIRY INTO AUSTRALIA’S AGREEMENT WITH MALAYSIA IN RELATION TO
ASYLUM SEEKERS: 23 SEPTEMBER 2011**

IMMIGRATION AND CITIZENSHIP PORTFOLIO

(QON 34)

Senator Cash asked (in writing):

[Regarding the Agreement being not legally binding] I refer to clause 3.3 of the Ombudsman’s submission entitled “Transfer Processes” in it is stated that: Where transferees do not disembark voluntarily, Australian authorities will hand control of the transferees to Malaysian authorities who will then effect their disembarkation”. Is the Department able to guarantee this Committee that the Malaysian Authorities will only use proportionate and necessary levels of force and only as a last resort? If not, why not? What are the implications of this?

Answer:

The Arrangement includes a joint commitment between Australia and Malaysia that transferees will be treated with dignity and respect and in accordance with human rights standards.

Arrival arrangements are detailed in clause of 1.4 of the *Operational Guidelines to Support Transfers and Resettlement*.

Transferees are subject to the domestic law of Malaysia on debarkation. In developing arrival arrangements in consultation with the AFP, the Malaysian authorities undertook to manage arrivals in a dignified and appropriate way.

The Department is satisfied with the assurances provided by the Malaysian government on this issue.