**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 12)**

Senator Cash (L&CA 38) asked:

Do the government's proposed amendments to the Migration Act render illegal or unlawful a decision by any current or future minister to establish offshore processing in a country where refugees can be returned to a country from which they are seeking asylum?

*Answer*:

The validity of a ministerial decision under the new provisions to designate a country as an offshore processing country would depend on whether the Minister had properly exercised the relevant power. Under the amendments, the only condition for the exercise of the power is that the Minister thinks that it is in the national interest to designate the country to be an offshore processing country. In considering the national interest, the Minister must have regard to whether or not the country has given Australia any assurances concerning non-refoulement and access to procedures for assessing the claims of those concerned, and may have regard to any other matter which in the Minister's opinion relates to the national interest.