

22 September 2011

Committee Secretary  
Senate Legal and Constitutional Committees  
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Parliament House  
Canberra ACT 2600  
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Dear Committee Secretary

**Re: Inquiry into Australia's agreement with Malaysia in relation to asylum seekers**

In relation to my submission to the above inquiry, I wish to clarify certain matters raised with me today by the Acting Secretary of the Department of Immigration and Citizenship (the Department) and copied to the Committee. In addition, I wish to correct an error of fact that was, regrettably, included in my submission.

3.2 Pre-transfer processes

On 25 August 2011, my office requested from the Department a copy of the operational guidelines relating to the initial handling and pre-transfer processes to be conducted at Christmas Island prior to transfer to Malaysia. On 26 August 2011, the Department advised my office that it *'would like to wait until the High Court hands down its decision on the Malaysian MOU on Wednesday 31 August before providing the requested guidelines'*.

The guidelines have yet to be received by my office.

In the absence of the requested advice, I made a general point in my submission about the need for clearly described and delineated policies with appropriate safeguards and the need for relevant and appropriate training.

I am encouraged by the Department's advice that it has developed pre-removal/transfer guidelines in close consultation with the Office of the United Nations High Commissioner for Refugees.

3.3 Transfer processes

Again, I am encouraged by the Department's advice that *'any use of force in relation to the transfer of individuals by Australia to Malaysia will be as a last resort, only if necessary and in accordance with established procedures'*.

However, I reiterate that it is important that documentation be made publicly available that demonstrates Malaysian authorities will adopt an approach that is consistent and commensurate with Australian standards.

### 3.5 The situation of transferees in Malaysia (including vulnerable transferees)

I acknowledge that the agreement provides Australia with an opportunity to conduct a complementary protection assessment of a transferee to Malaysia who is not determined by the Office of the United Nations High Commissioner for Refugees to be a refugee and whom Malaysia is considering forcibly repatriating to his or her country of origin.

However, my concerns are that the agreement is non-binding and there needs to be clear procedural documentation that sets out how the arrangements will be implemented.

### 3.8 The costs and utility of the agreement

In my submission I incorrectly indicated that the total cost over four years was \$296 million and did not appear to factor in the costs of receiving and settling the 4,000 additional transferees from Malaysia to Australia.

I thank the Department for its advice that the total is in fact \$293.2 million, and includes an allocation of \$216.4 million to accommodate the increase to Australia's humanitarian intake of an extra 1,000 places per annum over the next four years.

I understand that the remaining \$75.9 million has been allocated to the costs of transferring individuals to Malaysia and their care in that country.

In relation to the figures cited in my submission, I relied upon information that was widely reported on in the media. I should have sought confirmation from the Department regarding the costs and, accordingly, apologise for this error.

I would appreciate it if you would please provide this letter to the Committee as a supplementary submission prior to the hearing tomorrow.

Yours faithfully

Allan Asher  
Commonwealth and Immigration Ombudsman

Cc: The Hon Chris Bowen MP, Minister for Immigration and Citizenship  
Mr Peter Vardos PSM, Acting Secretary, Department of Immigration and Citizenship  
Dr Ian Watt AO, Secretary, Department of the Prime Minister and Cabinet