

**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 24)**

Senator Cash asked (in writing):

[Regarding caning] I refer to the report by Amnesty International entitled "A Blow to Humanity – Torture by Judicial Caning in Malaysia" in which it states:

*"Across Malaysia, government officials regularly tear into the flesh of prisoners with rattan canes, travelling up to 160 kilometres per hour. The cane shreds the victim's naked skin, turns the fatty tissue into pulp and leaves permanent scars that extend all the way to the muscle fibres. Blood and flesh splash off the victim's body, often accompanied by urine and faeces. This gruesome spectacle is kept hidden from public view".*

Given that the Malaysia-Australia Transfer Agreement is not legally binding, can the Department provide this Committee with a guarantee that asylum seekers sent by Australia to Malaysia will not under any circumstances be caned?

*Answer:*

The Arrangement was negotiated in good faith and freely entered into by Malaysia. Australia and Malaysia enjoy a strong bilateral relationship based on mutual respect. A legally binding Arrangement is not necessary to fulfil the agreed obligations.

Clause 8.1 of the Arrangement states that all transferees will be treated with dignity and respect in accordance with human rights standards. Malaysian Minister for Home Affairs Hishammuddin has stated publicly that Malaysia would ensure those protections were upheld.

The applicable offence under Malaysia's *Immigration Act 1959/63* that attracts the penalty of caning is section 6. That section provides that a non-citizen commits an offence if they enter Malaysia without appropriate documentation unless the person is exempted from the requirements of the section by an exemption order made under section 55 of the Act. Transferees entering Malaysia pursuant to the Arrangement will be covered by a section 55 exemption order.

Like any person travelling to Malaysia transferees will be subject to normal Malaysian criminal laws for any offences committed. Some of those offences may attract a fine, imprisonment or caning.