



Australian Government
Department of Immigration and Citizenship

**Submission by the Department of Immigration and
Citizenship to the Legal and Constitutional Affairs
References Committee**

**'Inquiry into the agreement between Australia and
Malaysia on the transfer of asylum seekers to
Malaysia'**

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1. Introduction

1. Irregular migration, people smuggling, and asylum are complex and enduring global problems. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), at the end of 2010 there were over 43 million people forcibly displaced worldwide, the highest number in 15 years.¹
2. Of the total number of displaced persons, 15.4 million were refugees (and those in a refugee-like situation), 27.5 million were internally displaced persons and 837 500 were asylum seekers. Of these displaced persons, almost 4 million refugees were in the Asia-Pacific region at that time.
3. According to UNHCR, most refugees (about 70 per cent) sought refuge in countries neighbouring their country of origin, with developing countries continuing to host four-fifths of the world's refugees.
4. At the end of 2010, Pakistan hosted the largest number of refugees worldwide, with 1.9 million refugees, Iran was next, with 1.1 million refugees; followed by Syria, with 1 million refugees. Africa was host to one-fifth of the world's refugee population, primarily from Somalia, the Democratic Republic of Congo and the Sudan.
5. In the Asia-Pacific region, a number of countries such as Thailand, Malaysia and Indonesia host large numbers of refugees and asylum seekers. These countries permit UNHCR to access these individuals although they are not parties to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Refugees Convention).
6. Conflict, political insecurity and current global economic conditions are driving vulnerable people to seek safety and improved living conditions outside of their country of origin. Further, people with protection concerns move alongside those who travel for other reasons. These people movements place significant pressure on host and transit countries.
7. Governments continue to work towards achieving a balance between managing border security concerns with providing protection to those in need. However, inconsistency in approaches to reception, assessment of protection claims and provision of durable solutions has created an environment in which the people smuggling trade flourishes.
8. Secondary movement - moving from a place of initial protection to another - is a particular challenge in the region with many asylum seekers moving irregularly to Australia in the hope of having their asylum claims assessed quickly in a more hospitable environment and being settled in Australia.

¹ UNHCR Global Trends 2010, page 1, available at <http://www.unhcr.org/4dfa11499.html>

Regional Cooperation Framework

9. It is clear that no one country on its own can provide the whole range of solutions required to resolve the problems of displacement. There need to be practical cooperative arrangements to effectively address the issues presented by asylum seekers, refugees and irregular migration.

10. This has been a key topic of discussion in regional fora and has gained momentum in the last few years, building to the landmark fourth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime on 30 March 2011, when delegates agreed to the establishment of a Regional Cooperation Framework (RCF) (see Attachment A).

11. This milestone demonstrates a clear recognition by Bali Process members - a forum which involves 43 member countries and international organisations including UNHCR and the International Organization for Migration (IOM) - of the need for a cooperative international response to address the challenges of people smuggling, and to discourage asylum seekers from taking life threatening journeys in overcrowded boats. While States recognised that border control measures were important there was a new acceptance that the issue of asylum seekers travelling in irregular flows - including the need for protection and humanitarian assistance - could not be ignored and needed to be addressed.

12. The RCF is based on a set of core principles which include that:

- wherever possible, asylum seekers should have access to consistent assessment processes (potentially through a regional assessment centre or centres);
- those found to be refugees should be provided with a durable solution; and
- those found not to be in need of protection should be returned to their countries of origin.

13. It also reflects the idea that when protection is available for asylum seekers they should be obliged to access those arrangements and not move irregularly to access asylum at a place of their choosing. In this regard the RCF contemplates transfer arrangements as a disincentive to such irregular secondary movement.

14. The RCF is based on the concept of responsibility-sharing and cooperation between source, transit and destination countries. It lays the foundation for the implementation of practical bilateral and sub-regional arrangements that will contribute to a sustainable regional response. The Arrangement between the Government of Malaysia and the Government of Australia on Transfer and Resettlement (the Arrangement) is one such practical bilateral arrangement.

Impact of the Arrangement with Malaysia

15. The Arrangement with Malaysia (see Attachment B) seeks to ensure that asylum priorities are decided in an orderly way and demonstrates that Australia is determined to give priority under its Humanitarian Program to people in greatest need – and more of them – rather than allowing smugglers and individuals to determine its composition.

16. The Arrangement seeks to undermine the people smuggling business model by eliminating the certainty marketed by people smugglers that, if people use their services, they will be processed and resettled in Australia. In doing so, it removes the incentive for asylum seekers to make the dangerous journey to Australia by boat. At the same time, it provides asylum seekers in the region with access to orderly asylum procedures and opportunities for resettlement within global resettlement arrangements.

17. Early indications suggested that, prior to the decision of the High Court of Australia on 31 August 2011, the prospect of the Arrangement and the Arrangement itself had already acted in some part as a deterrent to irregular movement. The second-lowest number of irregular maritime arrivals (IMAs) since August 2009 was recorded in June 2011, the month following the joint announcement of the proposed Arrangement by the Prime Ministers of Australia and Malaysia. This is assessed as reflecting concern among people smugglers and a reluctance among potential IMAs to travel, as a result of the game changing nature of the announcement. A return to onshore processing would likely result in increased and sustained levels of IMAs.

18. Once operational, the Arrangement, as part of the broader RCF, will build the region's capacity to manage asylum seekers and refugees, increase protection space and address irregular movement.

19. Both Australia and Malaysia view the Arrangement as a possible model for wider use within the region and more broadly.

Other Regional Processes

20. In recent times the responses of other States to displacement have involved the development of long term regional frameworks. The Mexico Plan of Action of November 2004 aims to strengthen international protection of refugees in Latin America. The plan focuses on durable solutions for Latin American refugees including a resettlement framework. The 2009 Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) is another example of a regional approach to human displacement. The Common European Asylum System aims to provide better protection and solidarity for people seeking international protection. These moves are indicative of the broader recognition of the need for, and value of, regional approaches to displacement.

21. A major example of an international cooperative response to an irregular flow of people was the Indo-Chinese Comprehensive Plan of Action (CPA). The CPA, which was adopted by 75 countries (including Australia, the United States, Great Britain, the ASEAN countries and Vietnam), represented an attempt to deal with the continuing exodus of people from Indo-China, in a regionally coordinated, consistent and comprehensive way.²

22. The CPA agreement was designed to create consistent regional Refugee Status Determination (RSD) procedures in accordance with international refugee criteria and conventions as well as coordinate repatriation and resettlement.³ Upon its completion in 1996, the CPA had met its objectives of ending clandestine departures and restoring first asylum for asylum seekers until their status had been established and repatriation or resettlement had occurred.⁴

Other initiatives to address displacement

23. The Arrangement builds on work undertaken by successive Australian Governments to engage with countries in the region and with international organisations including UNHCR and IOM to address displacement in the region.

24. Other initiatives have been developed to provide a humane and appropriate response to refugees both in the domestic context and internationally, consistent with Australia's international obligations. These include efforts to stabilise displaced populations in source and transit countries and to provide a viable future for vulnerable populations through the provision of international development assistance.

25. For example, the Australian Government, through DIAC, provides support to manage irregular migration in Indonesia under Regional Cooperation Arrangements (RCA).

26. Under these arrangements, DIAC funds IOM to provide food, accommodation, emergency medical assistance, counselling and transport to asylum seekers and also provides assistance to people who wish to return voluntarily to their country of origin. These arrangements have been in place since 2000. Asylum seekers under IOM care who raise protection claims are referred to UNHCR for assessment. This provides an opportunity for persons to have their claims assessed in Indonesia rather than resorting to making use of the services of people smugglers.

² 'Information Package on the Comprehensive Plan of Action on Indo-Chinese Refugees (CPA),' *Office of the United Nations High Commissioner for Refugees*, October 1995, paragraph 2

³ 'International Seminar on the Indo-Chinese Exodus and the International Response - Report,' United Nations University Head Quarters (Tokyo) 27-28 October 1995, p.33

⁴ 'Special Report, Comprehensive Plan of Action- the Indo-Chinese exodus and the CPA,' United Nations High Commissioner for Refugees,' June 1996, p.7, Press Release, REF/1135, Comprehensive Plan of Action for Indo-Chinese Refugees to End in June, 6 March 1996 <http://www.un.org/News/Press/docs/1996/19960306.ref1135.html> Press Release, REF/1135, Comprehensive Plan of Action for Indo-Chinese Refugees to End in June, 6 March 1996 <http://www.un.org/News/Press/docs/1996/19960306.ref1135.html>

27. Additionally, through DIAC's Displaced Persons Program (DPP), the department seeks to strengthen Australia's humanitarian profile by helping to stabilise populations of refugees and displaced persons in source or transit countries and facilitate durable solutions. This is achieved by funding international organisations and NGOs to implement projects that support these objectives. Many of the projects complement the department's capacity building activities which provide assistance to foreign governments to detect, prevent and respond to people smuggling. The DPP has played a complementary role in the success of the RCA.

28. The overarching objectives of the DPP are to:

- reduce the prospect and flow of irregular arrivals from source countries;
- encourage sustainable voluntary returns of persons no longer in need of protection, including assisting negotiations with source countries on returns and with countries of first asylum on readmission;
- support countries of first asylum and transit countries to host refugee populations where return is not practicable/feasible, including support for resettlement and local integration; and
- enhance the protection role of UNHCR and other relevant agencies in source countries, countries of first asylum, and transit countries.

29. Base funding for the 2010-11 program was AUD 6.816 million. In 2010-11 twelve activities have been selected as qualifying for DPP funding. Five are from the IOM; four are from UNHCR; two are from CARE Australia; and one is from ChildFund Australia.

30. The Australian Government also engages with diaspora communities in Australia and internationally to encourage orderly migration pathways and explain the risks associated with engaging people smugglers.

2. Overview of the Arrangement, associated operational guidelines and how the Arrangement will work in practice

31. The Arrangement between the Government of Australia and the Government of Malaysia on Transfer and Resettlement (the Arrangement) is an important initiative under the RCF to help to reduce people smuggling operations in our region, while increasing support for those in need of protection.

32. Malaysia and Australia have a long standing and strong cooperative relationship. We cooperate to manage irregular migration in the region including through: the whole-of-government Malaysia-Australia Working Group on People Smuggling and Trafficking in Persons; information and intelligence sharing; and the development of technical expertise including document examination and intelligence analysis.

33. The Arrangement with Malaysia was negotiated by the Minister for Immigration and Citizenship, officers from his department and officers from the Department of Foreign Affairs and Trade. The Arrangement provides that up to 800 IMAs who arrive in Australia after the date of the Arrangement (25 July 2011) will be transferred to Malaysia for consideration of their protection claims they may make and for provision of a permanent solution. Australia will also resettle 4,000 UNHCR-referred refugees who are currently residing in Malaysia, who were registered with UNHCR prior to 25 July 2011 and who have not left Malaysia since that time.

34. Under the Arrangement, both countries undertake that transferees will be treated with dignity and respect and that the core Refugees Convention principle of non-refoulement will be respected. The Australian Government will work closely with UNHCR and IOM to operationalise the Arrangement. This will include ensuring appropriate services, such as health and education services, are available to the transferees.

35. After an initial short period in a transit centre, transferees will: reside in the community; be able to work; and receive living support if necessary.

36. Under the Arrangement it is intended that Australia will increase its share of the responsibility. The 4,000 refugees that Australia resettles from Malaysia over four years will be in addition to the existing intake under the Humanitarian Program. As a result, should the Arrangement come into effect, Australia will offer 14,750 places annually for people in need of refuge and protection.

37. The Australian Government is strongly committed to supporting UNHCR and the Malaysian Government to manage displaced populations in Malaysia. As such, as part of the implementation of the Arrangement, the Government will provide funding to UNHCR to undertake a range of support activities to assist the Malaysian Government to manage and protect asylum seekers and refugees more generally in Malaysia while they are processed and await a durable solution. Some of the activities that will be funded include community capacity building, enhancement of UNHCR identity cards and improvements to basic health care and emergency health support.

Processing in Malaysia

38. The Government of Malaysia has agreed to provide transferees with the opportunity to have their asylum claims considered by UNHCR and to respect the principle of *non-refoulement*, in line with clause 10(2)(a) of the Arrangement.

39. Transferees will be registered quickly with UNHCR but will not receive preferential processing or resettlement treatment over asylum seekers and refugees already in Malaysia.

40. Once transferees are registered, they will have their RSD undertaken according to their date of transfer to Malaysia. Vulnerable cases will be processed expeditiously according to UNHCR's usual processes. Australia will provide funding to UNHCR to undertake the additional RSD processing resulting from the Arrangement.

41. UNHCR's *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* indicates that every rejected applicant has the right to appeal a negative RSD decision. This will be done in accordance with normal UNHCR processes.

42. UNHCR will seek durable solutions, including resettlement options in third countries, for people found to be refugees, as they do with other mandated refugees in Malaysia.

43. Further, clause 11.2 of the Arrangement provides that, where any forced return is proposed, the Government of Malaysia will provide Australia with the opportunity to consider any claims that may raise issues under other relevant human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

44. Australia will continue to engage with the Government of Malaysia on the status of transferees until they are provided with a durable outcome whether that is resettlement in a third country or if they are determined not to be in need of protection returned to their country of origin.

Transferees' Status in Malaysia

45. The Arrangement states (clause 10.3) that the Government of Malaysia will facilitate transferees' lawful presence during any period transferees' claims to protection are being considered and, where transferees have been determined to be in need of protection, during any period while they wait to be resettled. As provided for in clause 3.0 of the Operational Guidelines (see Attachment C), detailed guidance concerning the operation of the Arrangement as it relates to transferees will be provided to law enforcement agencies and other relevant authorities in Malaysia to ensure:

- the circumstances of the transferees under this Arrangement are clearly understood;
- transferees will be treated in accordance with the Arrangement; and
- transferees will be provided with immediate access to the UNHCR/IOM hotline so that their status as a transferee can be confirmed.

46. Clause 2.3.1 of the Operational Guidelines also states that transferees will be 'permitted to remain in Malaysia and will not be liable to being detained and arrested due to their ongoing presence in Malaysia under this Arrangement'.

Provision of identity document to transferees

47. An identification card has been developed by DIAC to provide to individuals transferred from Australia to Malaysia under the Arrangement. The Malaysian Government will issue a Nexcode (Foreign Identification) label which will be affixed to the identity card. In combination with the identity card, this Nexcode sticker will enable Malaysian authorities to identify that individuals are subject to the Arrangement and in Malaysia lawfully.

48. The card will not have any official status as the transferees' permission to be in Malaysia is by operation of the exemption order mentioned above. The Nexcode affixed to the card is the means by which Malaysian authorities will confirm individuals are subject to this exemption order.

3. Australia's international and domestic obligations

Overview

49. Australia has a long and proud tradition as a protector of human rights, and it is a reflection of this tradition that Australia is a party to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (the Refugees Convention), and to the major United Nations human rights treaties. These include in particular:

- the 1966 International Covenant on Civil and Political Rights (ICCPR) and its Second Optional Protocol Aiming at the Abolition of the Death Penalty;
- the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and
- the 1989 Convention on the Rights of the Child (CRC).

International non-refoulement obligations

50. Under the Refugees Convention, Australia has an obligation not to return a refugee to a place where his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion. Under the CAT, ICCPR and CRC, Australia has non-refoulement obligations not to remove a person (including a child under 18 years of age) to a place where there are substantial grounds for believing that there is a real risk that the person would face harm by way of: arbitrary deprivation of life; application of the death penalty; or torture, or cruel, inhuman or degrading treatment or punishment.

51. These obligations extend to not removing the person to a country if there is real risk that they would be subsequently removed to another country where they would face such harm.

Engagement with UNHCR

52. UNHCR has been closely consulted on the Arrangement and Operational Guidelines and provided constructive comments, which helped to shape the final wording of the Arrangement. UNHCR has recognised the efforts both parties have made to ensure the Arrangement will be implemented in accordance with human rights standards and in accordance with important protections provided for in the Arrangement.

53. In a recent UNHCR policy paper entitled 'Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing' it is noted that extraterritorial processing may be appropriate as part of a responsibility-sharing arrangement in order to better and more fairly distribute responsibilities to respond to refugee and mixed movement situations among interested States. This includes a Refugee Convention State arranging for people who arrive on their territory to be processed in another territory.⁵

⁵ UNHCR, *Protection Policy Paper: Maritime interception operations and the processing of international protection claims: legal standards and policy considerations with respect to extraterritorial processing*, November 2010 <http://www.unhcr.org/refworld/docid/4cd12d3a2.html>

Pre-Removal Assessment Process for Transfers to a Third Country for Processing

54. The purpose of the Pre-Removal assessment is to:

- identify protection claims, if any, against the third country which may engage Australia's non-refoulement obligations under the ICCPR and its Second Optional Protocol aiming at the abolition of the death penalty, the CAT, the Refugees Convention and the CRC and which may mean it is not appropriate to remove the person to the third country;
- identify vulnerabilities and heightened risks, if any, relevant to all potential transferees but particularly relevant to unaccompanied children; and
- confirm fitness to travel.

55. It is important not to create any blanket exemptions from transfer for defined groups under the Arrangement with Malaysia. Creating a class exemption, such as for unaccompanied minors, would create a perverse incentive to split families and/or for children to be induced to risk their lives taking boats to Australia.

56. Any issues raised by a potential transferee will be considered in accordance with Australia's non-refoulement obligations as outlined under "international non-refoulement obligations" above. The assessment will take into account any issues raised by a potential transferee, general country information and safeguards within the Arrangement including:

- a commitment to provide transferees with the opportunity to have their asylum claims considered by UNHCR and to respect the principle of non-refoulement;
- Malaysia facilitating transferees' lawful presence while their claims to protection are being considered and if they are found to be in need of protection, during any period while they wait to be resettled;
- Australia being given the opportunity to undertake assessments of transferees to ensure that any claims of harm which would have raised Australia's non-refoulement obligations had those claims been assessed in Australia are addressed; and
- the commitment that transferees will be treated with dignity and respect and in accordance with human rights standards.

57. Assessments will also consider whether the person has any particular vulnerabilities that may preclude or delay transfer. These include a consideration of issues directly related to:

- minors – including the consideration of the best interests of the child;
- health issues;
- single women, women at risk and women as the heads of households;
- elderly people;
- victims of trafficking; and
- separated families.

58. Pre-removal assessments will also identify those individuals requiring additional support following their arrival in Malaysia. Persons identified as having particular vulnerabilities will be made known to UNHCR and IOM who would facilitate access to services to assist them while in Malaysia.

59. The assessment will also take into account Australia's obligations under the ICCPR and CRC in relation to the separation of family and the best interests of the child.

Access to legal advice

60. The Department has, and will continue to, facilitate access to legal advice in accordance with the requirements contained in section 256 of the *Migration Act 1958* (the Act).

Domestic legal requirements

61. The High Court's decision of 31 August 2011 (M70/2011 and M106/2011) has effectively removed the ability of the Australian Government to activate the Arrangement or pursue offshore processing arrangements under current legislation.

62. On 12 September 2011, the Prime Minister and the Minister for Immigration and Citizenship announced that the Government will introduce legislation to enable the transfer of IMAs to third countries for the processing of their asylum claims. The amendments will restore the understanding of the third country transfer provisions of the Act that existed prior to the High Court's decision. Such amendments are intended to enable the transfer of IMAs to third countries, including Malaysia, for processing of their asylum claims.

4. Unaccompanied minors and the IGOC Act

63. Under the Arrangement special procedures will be developed to deal with vulnerable cases including unaccompanied minors. Any minors will have a 'best interests of the child' determination as part of the Pre-Removal Assessment. In relation to unaccompanied minors, the best interests assessment will include an additional interview and consideration of the minor's particular vulnerabilities. An independent person will be present at these interviews. Minors of an appropriate age will have an opportunity to be heard and to express their views on their potential removal to Malaysia.

64. The CRC does not mandate a particular process for a State to follow in undertaking a 'best interests' assessment. The Department is confident that its pre-removal assessment process, combined with existing detailed guidance for assessing compliance with Australia's international obligations, will ensure that officers' assessments are consistent with Australia's international obligations. The best interests of the child will be treated as a primary consideration in all cases and officers will be in a position to make an assessment as to whether it is appropriate to remove the minor for processing in Malaysia.

65. Generally, under the *Immigration (Guardian of Children) Act 1946* (IGOC Act), the Minister for Immigration and Citizenship is the guardian for non-citizen children who:

- are under 18 years old at the time of arrival in Australia;
- intend to become permanent residents of Australia; and
- do not enter in the charge of (or for the purposes of living in Australia under the care of) a parent; a relative who has turned 21; or an intending adoptive parent.

66. If the Minister is the guardian of a child he has a responsibility to provide for the child's basic needs, including food, housing, health, education and protection from harm. The policies, programs and services established by the Government ensure that all minors, including unaccompanied minors of whom the Minister is the guardian, have their care and welfare needs met while in immigration detention.

67. The pre-removal assessment process for transfers to a third country for processing is distinct from the Minister's guardianship responsibilities under the IGOC Act. Consistent with this, and to avoid any conflict of interest, the pre-removal assessment process for transfers to a third country for processing will not be conducted by anyone who also exercises the Minister's delegated guardianship powers under the IGOC Act.

68. Existing arrangements for unaccompanied minors in detention will also continue while in Australia to apply to unaccompanied minors subject to transfer to a third country for processing. This includes the independent observer role provided by a service provider, currently Life Without Barriers.

69. An independent observer will attend interviews with unaccompanied minors to:

- observe the interaction between the interpreter and the child or young person, and advise the interviewer of any concerns;
- observe the conduct of the interview/examination/assessment and the demeanour and presentation of the child or young person; and to draw to the attention of the interviewer any concerns about the emotional and physical state of the child or young person;
- provide a reassuring and friendly presence for the child or young person;
- ensure each process is adequately explained and understood by the child or young person;
- be attentive to non-verbal cues of the young person that indicates a need to take a break; and
- be attentive to signs that the young person may benefit from trauma counselling and provide this advice to DIAC.

70. Prior to the High Court's decision on 31 August 2011, appropriate arrangements were also in the process of being made for any unaccompanied minors transferred to Malaysia. Prior to arrival, the Malaysian authorities, IOM and UNHCR will be advised of relevant details in relation to each unaccompanied minor. Using this information IOM and UNHCR would undertake preliminary planning pertaining to care arrangements for minors in both the transit centre in Malaysia and in the community.

71. It is envisaged that unaccompanied minors entering Malaysia would fall under the provision of the *Malaysian Child Act 2001* such that an official of the Malaysian Government would become their legal guardian. That official would seek a court order (within 24 hours) for the unaccompanied minors to be placed in suitable care arrangements including supervised group house arrangements for older unaccompanied minors and foster care arrangements as appropriate.

72. As noted in chapter three, above, following the High Court's decision of 31 August 2011 (M70/2011 and M106/2011) the government has announced it will introduce legislation to enable the transfer of IMAs to third countries for the processing of their asylum claims. In addition to amendments to the *Migration Act 1958* amendments will be made to the *Immigration (Guardianship of Children) Act 1946* to enable decisions to be made with respect to minors.

5. Standards of treatment in Malaysia

Services and Support

Accommodation

73. Under clause 2.1 of the Operational Guidelines, transferees will be accommodated in a transit centre on arrival in Malaysia. The transit facility will not be an existing Malaysian immigration detention centre, but separate accommodation. At the time of writing two hostel/hotel style lots of accommodation have been located in Port Dickson. Transferees will generally reside in the transit centres for the minimum time possible (no longer than 30 to 45 days) to allow for identity, health and security checks to be completed.

74. Transferees will reside in the community in Malaysia after initial checks are undertaken in the transit centre. Other than transferees who require short-term assisted accommodation in the community, transferees will reside in private accommodation which IOM will assist them to locate.

Self reliance and basic support

75. Transferees will have ongoing access to self reliance opportunities particularly through employment. They will be encouraged to become self sufficient as soon as possible. In their first month in the community IOM will pay transferees a support payment to cover living costs. In doing so IOM will take account of the rates of payment UNHCR already makes to vulnerable refugees where applicable. The support payment will be discounted by an accommodation component if the transferee is in short-term IOM accommodation, and, following the first month, IOM (or UNHCR for registered asylum seekers) will make an assessment on a case-by-case basis of any further need for financial assistance consistent with UNHCR's current practice.

Vulnerable transferees

76. Any transferee who has been identified as having particular vulnerabilities through the pre-removal assessment process will, with their consent, be made known prior to transfer to UNHCR and IOM who will facilitate access to services to assist them while in Malaysia. Transferees will have access to the existing arrangements which UNHCR has in place for identifying and supporting vulnerable cases and a backup 'safety net' will be provided by IOM. Existing UNHCR services provide support arrangements for persons who have suffered torture or trauma and other persons assessed as vulnerable by UNHCR.

77. Transferees will have access to an existing UNHCR 'hotline' so they can identify any issues impacting their welfare. UNHCR will provide support through its existing arrangements to transferees following a UNHCR assessment, consistent with existing practice. As a backup, UNHCR will refer any transferees who require further support to IOM who can provide early intervention and support.

Medical services

78. Transferees will have access to an initial health assessment by IOM to guide any future medical support. They will have access to basic medical care under arrangements UNHCR has for asylum seekers and refugees with certain private clinics. For emergency access, UNHCR will refer cases to IOM who will use existing IOM arrangements with a private hospital.

Education

79. Provision is being made to ensure that school-age children who are transferred will have access to education. This will be through either existing private education arrangements in the community or educational services organised by IOM.

6. Oversight, monitoring and evaluation

Joint Committee

80. A joint committee has been established with representatives of the Malaysian Ministry of Home Affairs and DIAC, other representatives from Australian and Malaysian Government agencies, and UNHCR and IOM as required. The committee has met informally on several occasions.

81. The committee will oversee the day to day operational arrangements under the Arrangement, including:

- management of transfer arrangements;
- the welfare of transferees;
- ensuring funding is expended appropriately;
- provision of services by service providers;
- obtaining statistical data and other information on refugee status determinations and protection obligations assessments;
- receipt of reports from Australia regarding progress with resettlement of the 4,000 refugees; and
- addressing any concerns of transferees.

Advisory Committee

82. An Advisory Committee is also being established to provide strategic oversight. Members will include two representatives from each of the Malaysian and Australian governments. An invitation has been extended to IOM and UNHCR to be committee members. Australia is discussing with Malaysia the possibility of members such as NGO representatives being on the Committee.

83. The Advisory Committee will also provide advice to Ministers on matters arising out of the implementation of the Arrangement.

Variations to the terms of the Arrangement

84. Clause 20 of the Arrangement provides that its operation will be reviewed by participants, as and when necessary, to identify any concerns or variations that may need to be made to the Arrangement.

85. This commitment will be assisted by the establishment of the Joint Committee to oversee the operation of the Arrangement including oversight of any liability issues that may be raised in the course of the implementation of the Arrangement.

86. While, like any memorandum of understanding between States, the Arrangement is not legally binding (see Clause 16 of the Operational Guidelines), there is strong political commitment from both governments to ensure implementation in accordance with its terms.

7. Financial Impact

87. The Australian Government will meet all the costs of implementing the Arrangement. The total appropriation for initiatives associated with the Arrangement is \$292.3 million over four years.

Additional 4,000 refugee places

88. Of this funding estimate, \$216.4 million relates to whole-of-government costs associated with the expansion of the refugee program by 4,000 places over four years.

89. This funding estimate incorporates approximately \$203.4 million in administered funding which includes DIAC costs for settlement services such as the Adult Migrant English Program, Settlement Grants Program, Humanitarian Settlement Services and fee-free Translating and Interpreting Services. It also covers normal whole-of-government costs associated with the Humanitarian Program.

90. The funding estimates also includes approximately \$13.0 million in departmental funding to undertake visa processing and administer the program. An estimated \$4.4 million of the departmental funding represents additional processing costs for DIAC in Malaysia to ensure that Australia meets its commitment to resettle an additional 1,000 refugees per year for four years.

Transfer arrangement to Malaysia

91. The remaining \$75.9 million in overall funding over four years has been appropriated to DIAC for costs associated with the transfer of offshore entry persons to Malaysia. This funding amount covers the care of people transferred to Malaysia over four years and arrangements to secure durable solutions for them.

92. Of this funding amount, \$65.7 million is for administered program items and \$10.2 million is departmental funding.

93. A conservative costing estimation has been used to derive the budget estimates and, coupled with flexible funding agreements with implementing agencies such as UNHCR and IOM, it is expected that the final actual costs will vary depending on the number of people transferred under the Arrangement. The costs associated with caring for those asylum seekers who are transferred will also vary in line with their particular needs.

94. The Australian Government has a long-standing and productive relationship with UNHCR and IOM to provide support and services to vulnerable people across our region. As mentioned above, funding under this Arrangement will be provided to these organisations to enable them to conduct refugee status determinations (in the case of UNHCR) and to deliver the services and support to transferees outlined in chapter 5 above. The funding estimates also includes modest allocations to cover costs such as vehicles, office equipment and communication systems. Funding will also be made available under the Arrangement to UNHCR so it can enhance its activities in Malaysia for a range of displaced persons in addition to transferees from Australia.

95. Final costs to deliver support and services for health, education and welfare and accommodation of transferees will be settled following the establishment of funding agreements with implementing agencies. Any funding provided to implementing agencies will be made in accordance with Australian Government financial management procedures.

96. The costs associated with transfers to Malaysia may vary depending upon:

- how many of the 800 places remain unused as the policy takes effect;
- the costs of caring for transferees in Malaysia, which will be better understood as implementation proceeds; and
- the crystallisation of costs associated with any returns of transferees.

97. Any future variations to funding estimates will be considered in accordance with standard Budget rules.

98. Importantly, the costs of the Arrangement will be mitigated by the future avoided costs from the expected reduced numbers of IMAs. The deterrence impact of the arrangements will result in a reduction in costs associated with the detention and care of IMAs in Australia and this has already been factored into the forward estimates predictions of IMA costs.

Attachments

- A. Fourth Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime – Co-Chairs’ Statement
- B. Signed Arrangement between the Government of Malaysia and the Government of Australia on Transfer and Resettlement
- C. Signed Operational Guidelines to Support Transfer and Resettlement

List of abbreviations

ASEAN	Association of Southeast Asian Nations
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CPA	Indo-Chinese Comprehensive Plan of Action
CRC	Convention on the Rights of the Child
DIAC	Department of Immigration and Citizenship
DPP	Displaced Persons Program
ICCPR	International Covenant on Civil and Political Rights
IGOC	Immigration (Guardian of Children) Act 1946
IMA	Irregular Maritime Arrival
IOM	International Organization for Migration
MoU	Memorandum of Understanding
NGO	Non-Governmental Organisation
RCF	Regional Cooperation Framework
RCA	Regional Cooperation Arrangements
RSD	Refugee Status Determination
UNHCR	Office of the United Nations High Commissioner for Refugees