



Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

14 September 2011

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

Dear Committee members,

I write to the Senate Standing Committee on Legal and Constitutional Affairs to present comments from UnitingJustice Australia, the policy and advocacy unit of the Uniting Church in Australia National Assembly, on the agreement between Australia and Malaysia for the transfer of asylum seekers to Malaysia.

The Uniting Church in Australia seeks to bear witness to our Christian faith through our program of worship, service and advocacy. In the Christian tradition of providing hospitality to strangers and expressing in word and deed God's compassion and love for all who are uprooted and dispossessed, the Church advocates for a just response to the needs of refugees that recognises Australia's responsibilities as a wealthy global citizen, upholds the human rights and safety of all people, is culturally sensitive, and is based on just and humane treatment, including non-discriminatory practices and accountable transparent processes.

Consistent with the many recent public statements made by the Uniting Church Assembly and other Church bodies, we are opposed to Australia transferring any asylum seekers to Malaysia and believe this deal places Australia at risk of breaching the Refugee Convention and its Protocol and undermines the fundamental human right to seek asylum.

Australia is one of only seven signatory countries to the Refugee Convention and its Protocol in the Asia-Pacific region. Under the Refugee Convention, Australia has obligations to assess the protection of everyone who arrives in our territory, regardless of how they arrive. This Arrangement continues a line of policy attempts by successive federal governments to re-define our obligations to asylum seekers and refugees (such as the excision of territories from our migration zone and the so-called 'Pacific Solution'). In *M106* and *M70 v Minister for Immigration*, the High Court stated that the use of the powers in s198(2) of the Migration Act to remove a

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person to another country, without an assessment of whether that country is safe and without a determination of whether the person is a refugee, would appear to place Australia in breach of its obligations under the Convention. In this regard it may be observed that a Contracting State contemplating the removal of an asylum-seeker to another country is obliged to undertake a proper assessment of the country to which that person is to be sent and the protections it affords.

Much commentary on asylum policy of late has presented only two options: the Malaysia Arrangement or detention and processing on Nauru or Manus Island. The Uniting Church is disappointed to see such a narrow presentation of the issues, and we have a long-standing opposition to the extra-territorial processing of asylum seekers. This nation can and should be dealing in a humane manner with the relatively small numbers of people who arrive by boat to seek protection each year on our mainland.

The Uniting Church maintains its long-standing opposition to use of facilities on Manus Island, Papua New Guinea, which is an inappropriate location for asylum seekers, with no capacity for the delivery of adequate and appropriate legal advice and health and pastoral care services. This concern has been confirmed with recent media reports highlighting the disproportionately high rates of malaria diagnosed on Manus Island. The use of facilities in Nauru for offshore processing, as proposed by the Opposition, is also a matter of ongoing concern for the Uniting Church. We do not believe that it is appropriate for Australia to be entering into arrangements with some of our most poverty stricken neighbours in order to avoid meeting our own international and moral obligations.

People smuggling must be tackled at its source and priority must be given to long-term support for peace-making programs in countries prone to violence, abuse and persecution. The punishment of people who have already suffered and who are exercising their legal right to seek asylum, in order to 'send a message' to another group of people, is not only contrary to the Government's own New Directions in Detention policy, it is in itself a form of abuse. We support the development of a genuine regional protection framework, and believe that the key goal should be its ability to improve the prospects of a durable settlement option for displaced people in the region.

UnitingJustice and the Uniting Church are deeply troubled by the persistent dehumanisation of vulnerable people who are seeking refuge in Australia. We seek positive bi-partisan leadership on this issue, and call upon the Australian Government and the Opposition to end the politicisation of asylum seekers and re-commit themselves to upholding the Refugee Convention and set a high standard in meeting our human rights obligations.

Yours faithfully,

Rev. Elenie Poulos
National Director

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