



Australian Government
Department of Immigration and Citizenship

ACTING SECRETARY

22 September 2011

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Ms Dennett

Supplementary submission to the Inquiry into the Malaysia Arrangement

I refer to the Committee's Inquiry into the Agreement between Australia and Malaysia on the transfer of asylum seekers to Malaysia.

Enclosed is a supplementary submission from the Department of Immigration and Citizenship which seeks to clarify matters raised in the Commonwealth Ombudsman's submission to the Committee.

I trust this will assist the Committee with its deliberations.

Yours sincerely

(Peter Vardos PSM)

people our business



Australian Government
Department of Immigration and Citizenship

ACTING SECRETARY

22 September 2011

Mr Allan Asher
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Mr Asher

Ombudsman submission to Senate Inquiry into the Malaysia Arrangement

I refer to your submission to the Senate Inquiry into Australia's Agreement with Malaysia in Relation to Asylum Seekers.

As you are aware, the Department of Immigration and Citizenship has a close working relationship with your office and has made significant efforts over a number of years to engage with the office on a range of portfolio matters. We value the role the office of the Ombudsman plays in ensuring a high level of public accountability and in assisting the department improve our processes and would have welcomed an opportunity to engage with you to better inform the content of this submission.

I would like to take this opportunity to address some aspects of the matters raised in your submission.

- Section 3.2 (Pre-transfer processes): Pre-removal/transfer guidelines were developed by the department in close consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR). These guidelines provide for an assessment of individual vulnerabilities, assessment against both Refugee Convention and complementary protection grounds for any claims an individual may raise against Malaysia, as well as an assessment of the best interests of the child.
- Section 3.2 (Pre-transfer processes): Officers undertaking the pre-transfer assessment were provided with appropriate training commensurate with their levels of experience prior to undertaking the first assessments for transfer.

- Section 3.3 (Transfer processes): In accordance with the Government's immigration detention values, 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. These values state that people in detention will be treated fairly and reasonably within the law and that conditions will ensure the inherent dignity of the person in detention. I also note the department recently provided your office with an extract from the department's Detention Services Manual regarding the use of reasonable force in immigration detention in relation to your Own Motion investigation.
- Section 3.5 (Situation of transferees in Malaysia): As you are aware, Clause 11.2 of the Arrangement provides Australia with the opportunity to conduct complementary protection assessments of individuals transferred who are not determined by UNHCR to be refugees, and who Malaysia may be considering returning to their country of origin. This process allows complementary aspects of protection to be considered and appropriately acted upon to ensure Australia complies with relevant human rights conventions to which it is a signatory.
- Section 3.8 (Costs and utility of the agreement): The total amount provided for the Arrangement with Malaysia over four years is \$292.3 million. In your submission, you incorrectly indicated this amount was \$296 million and did not appear to factor in the costs of receiving and resettling 4000 additional refugees from Malaysia. In fact, the \$292.3 million provided for the Arrangement includes \$216.4 million to increase Australia's humanitarian intake by 4000 places, as well as \$75.9 million allocated to the department for costs associated with the transfer of individuals to Malaysia and their care while in Malaysia.
- Section 3.8 (Costs and utility of the agreement): In relation to your view that there are no guarantees the Arrangement will have any long term utility or efficacy, that is a matter upon which officials of this department and other agencies with responsibility for these matters and relevant experience have formed a particular judgement about which we would have been pleased to brief you.


As you would be aware, the Government considers that the Arrangement with Malaysia is an important initiative under the regional cooperation framework which increases protection space in the region through provision of 4000 additional resettlement places over four years. It reduces the incentive for vulnerable people to take the dangerous sea voyage to Australia. The Arrangement reflects the international principles of protection for people who are transferred and builds a platform for ongoing development of a regional, protection-sensitive approach to border management and irregular movement.

I trust this information is of assistance. If you would like to discuss the Arrangement further, I would be pleased to make relevant departmental officials available.

I will copy this letter to the Legal and Constitutional Affairs Committee Secretariat as a supplementary submission and to the Secretary of the Department of the Prime Minister and Cabinet, Dr Ian Watt AO.

Without wishing to interfere with your statutory role or any Committee process, the department would welcome the opportunity to brief you on factual matters to inform any submissions you may make to future parliamentary inquiries.

Yours sincerely



(Peter Vardos PSM)