



The Hon Chris Bowen MP
Minister for Immigration and Citizenship

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The Hon John Murphy MP
Chairman, Standing Committee on Petitions
Member for Reid
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Murphy

Thank you for your letter of 4 July 2011 relating to a petition submitted to the Standing Committee on Petitions regarding the Australian Government's Arrangement with Malaysia to counter people smuggling. I apologise for the delay in responding.

In the intervening period, I (on behalf of the Australian Government) signed the formal Arrangement on Transfer and Resettlement (the Arrangement) with my Malaysian counterpart, Minister Hishammuddin bin Tun Hussein, in Kuala Lumpur.

As you would be aware, the decision by the High Court on 31 August 2011 has had significant implications for the policy of offshore processing, including the Arrangement with Malaysia. On 21 September 2011, the Government introduced legislation to the Parliament to enable the transfer of people to third countries for the processing of their claims. This would restore the provisions to the situation that had existed for many years.

The Australian Government is committed to working with countries in the region under the Regional Co-operation Framework to improve protection outcomes for refugees and reducing people smuggling activity.

The Arrangement was developed in close consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR) and contains several protections and commitments from the Malaysian Government. The Arrangement document has been made public, together with the annexed Operational Guidelines, and is available on my website (www.minister.immi.gov.au/media/cb/2011/cb168739.htm).

The protections include respecting the principle of non-refoulement and providing transferees with access to assessment procedures, which are key tenets of the Refugees Convention, as well as a commitment to treat transferees with dignity and respect and in accordance with human rights standards.

Contrary to early media reports and speculation, transferees will clearly not be subject to caning and will not be placed in existing Malaysian detention centres. Rather, after a period of up to 45 days in a purpose-leased transit centre, they would be permitted to live – lawfully – in the community, with access to employment and education. Transferees would also have guaranteed access to essential health care, with the assistance of both UNHCR and the International Organization for Migration.

The Australian Government has worked hard to ensure that the Arrangement is in line with our international obligations and, as UNHCR has noted, falls within the Regional Co-operation Framework, which was agreed at the Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime in March this year.

In consultation with UNHCR, the Government has developed pre-transfer arrangements to guide the case-by-case assessment of individuals who are particularly vulnerable or have extraordinary circumstances that may militate against transfer. Arrangements are also being made to ensure appropriate levels of assistance are available in Malaysia to vulnerable transferees, such as unaccompanied minors.

There are several key benefits to the Arrangement.

The Arrangement has the potential to put pernicious people smugglers out of business by removing the incentive for people to pay for the hazardous – and sometimes deadly – boat voyage to Australia.

The Arrangement demonstrates that asylum priorities will be decided in an orderly way and that Australia is determined to give priority under our Humanitarian Program to people in greatest need – and more of them – rather than to those who avail themselves of the services of people smugglers. This would encourage asylum seekers to use regular migration avenues in countries of first asylum instead of risking their lives and money using people smugglers.

The Arrangement involves Australia resettling an additional 4,000 people in need, referred to us by UNHCR. This significant increase would bring our Humanitarian Program to a total of 14,750 people each year.

In line with the Regional Co-operation Framework, this Arrangement provides a practical approach for action in the region on asylum seeker issues.

The importance of engagement with Malaysia and other countries in our region that are not signatories to the Refugees Convention should not be underestimated. These are the very countries in which a majority of refugees in our immediate neighbourhood reside.

While these countries are not signatories to the Convention, we cannot afford to refuse to deal with them on principle – to the detriment of the hundreds of thousands of refugees and asylum seekers who live in them. Instead, it is important that we start taking practical actions that are likely to slowly but surely improve conditions in those countries.

The Malaysian Government has taken very significant steps in regard to its approach to its refugee and asylum seeker population since we commenced discussions with them over the Arrangement. This is perhaps one of the most remarkable – but under-reported – outcomes of this engagement.

Specifically, key protections in the Arrangement include:

- 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 complementary protection assessments to ensure refoulement of transferees does not occur under broader human rights obligations; and
- Australia and Malaysia's commitment to not provide personal information on asylum seekers or persons found to be in need of international protection to the country against which protection is claimed unless authorised by the transferee.

In addition, appropriate oversight mechanisms will be established. Australia, Malaysia and – with their agreement – the International Organization for Migration (IOM), UNHCR and possibly non-government organisations, would oversee the management of the Arrangement and the ongoing welfare of transferees.

There is no quick fix to people smuggling and the complex, global challenge of irregular migration. The Government strongly believes that these issues cannot be solved by acting alone but must be tackled by countries working together under the auspices of regional and international frameworks.

I trust this information is of assistance.

Yours sincerely

CHRIS BOWEN

11 OCT 2011