

DEPARTMENT OF IMMIGRATION AND MULTICULTURAL
AND INDIGENOUS AFFAIRS

Attachment 5.

MINUTE

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Office: Central Office
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Minister for Immigration and Multicultural and Indigenous Affairs

Through: Secretary

cc: Minister for Citizenship and Multicultural Affairs
Deputy Secretaries
FAS, Refugee and Humanitarian
FAS, Migration and Temporary Entry
FAS, Offshore Centre Management and Infrastructure Division
AS, Unauthorised Arrivals and Detention Services
AS, Humanitarian
AS, Onshore Protection
AS, Temporary Entry
AS, Offshore Asylum Seeker Management
Chief Financial Officer

**RETURN OF IRANIAN NATIONALS ; UPDATE ON NEGOTIATIONS AND
PROPOSED NEXT STEPS**

PURPOSE

To provide you with an update on our recent discussions with Iranian officials on the involuntary return of Iranian nationals and to seek your approval of our proposed next steps, including the offer of a financial incentive for voluntary return to those Iranian nationals currently in detention in Australia.

BACKGROUND

2 In the continuation of our ongoing negotiations with Iran on the involuntary return of their nationals currently in detention in Australia, I visited Tehran on 19-21 October and held discussions with senior officials of the Iranian Ministry of Foreign Affairs (MFA). These discussions were primarily aimed at putting before the Foreign Ministry officials the package of cooperation that you have previously approved to secure Iran's agreement to involuntary returns (Minsub PR2002/5402 dated 27 August 2002 on Return of Iranian Nationals), incorporating:



- the establishment of a Work and Holiday Visa arrangement for young Iranians and Australians to visit and work in the other country;
 - the offer of a financial incentive for the voluntary return of Iranian nationals currently in detention in Australia; and
 - the development of a program of further technical cooperation and capacity building initiatives in the areas of migration management and border control through.
- 3 My visit to Iran confirmed our expectation that the Iranian Foreign Ministry remains committed to working within the Iranian bureaucracy to resolve this issue as an irritant in the bilateral relationship. Foreign Ministry officials have claimed that there is now a broad consensus on the need to resolve the situation of the Iranian nationals in detention in Australia, reporting that the President has instructed all Ministries to cooperate in developing a resolution.
- This consensus does not, however, automatically translate into cooperation by all the relevant Ministries with our request for assistance with involuntary return; we understand that the Interior Ministry, particularly the Bureau of Alien and Foreign Immigrant Affairs, remain of the view that more should be done to promote voluntary returns.
 - The only other country to have achieved progress on this issue to date is Switzerland, which has reportedly secured the agreement of the local Embassy to the deportation of up to 100 Iranian nationals. They have advised that they have only achieved only one return to date. We are monitoring this situation to see if it is sustainable, as previous such aberrations have resulted from a lack of knowledge of the broader policy position by particular Embassies and have been quickly reversed when it became known to Tehran.
- 4 Discussions with the Director-General of Consular Affairs, Mr Ansari, highlight that a number of Iranian Ministries, including the Foreign Ministry, are very interested in the proposed Work and Holiday Visa (WHV) program with Australia, even though the numbers envisaged for the program are relatively small from the Iranian perspective.
- 5 Iranian officials have raised some concerns with the program, including twelve month limit on the validity of the visa and their perception that the arrangements involved "penalty clauses" for Iran should some individuals not comply with their visa conditions (ie the intention to reduce the size of the program by the number of any protection visa claims or overstayers). I expect that these issues can be relatively easily dealt with and should not cause the discussions to be unnecessarily prolonged.
- I have assured the Iranians that the duration of the visa could be reviewed after a few years of successful operation of the program.
 - We can easily avoid the perception that the program incorporates "penalty

clauses" by undertaking to conduct the review of the annual allocation under the program, envisaged at the beginning of each program year, in the light of overall trends, rather than an accounting for individual instances of no-compliance.

6 In my discussions with Mr Ansari, he made it clear that progress on this issue would depend largely on ensuring that the objections that can be raised by other Ministries are minimised. In particular, Mr Ansari stressed that the implementation of efforts to minimise the potential involuntary caseload, possible to zero, would be critical. This submission, accordingly, recommends the implementation of a strategy, in cooperation with the Iranian Embassy in Canberra, to maximise the number of voluntary returns in the short term.

- This strategy, which we have discussed with the Iranian Foreign Ministry in Tehran and the local Embassy, includes the early offer of the financial incentive for voluntary return.
- In return, we would be seeking a clear statement from the Iranian-side that they are preparing for the removal of those Iranians who did not volunteer to return.

7 In addition, any package of cooperation settled in the current negotiations should only apply to the current detainees, not future unauthorised arrivals (with the exception of those arriving under the WHM who subsequently break their visa conditions). I have conceded this point, in the interim, as:

- The flow of Iranian nationals attempting to enter Australia illegally appears to have substantially declined, even before the implementation of the offshore processing arrangements.
- The demonstration effect that would be provided by the deportation of the current group of detainees should ensure a significant disincentive to those considering illegal entry to Australia.
- Once the current caseload has been dealt with, there would be no impediment to seeking to establishment these arrangements for future arrivals down the track. At the least, these arrangements would provide a precedent for the involuntary removal of later arrivals.

8 Throughout my discussions with the Iranian officials I have emphasised the urgency of this issue and the need to move forward quickly, which they have acknowledged. The Iranians have indicated that their consideration of our proposals could be completed in a matter of weeks but, in our previous experience, is likely to stretch into early 2003. We have been actively following up these issues, both in Canberra and Tehran, and will continue to do so.

ISSUES

9 This submission proposes that, as a result of these discussions, we implement a range of joint-initiatives with the Iranian authorities to encourage the voluntary

resolution of the Iranian caseload in detention, including:

- a program of consular visits to Iranian nationals in detention by officials from the Iranian Embassy in Canberra to highlight the desire of the Iranian Government to see these people return to Iran voluntarily;
- the consular visit by supported by the distribution of a leaflet to Iranian detainees making it clear that they will be removed if they do not leave voluntarily;
- the offer of a financial incentive for voluntary return to the Iranians currently in detention; and
- the development of arrangements to facilitate the removal of those cases that cause difficulties in detention.

Encouraging voluntary departures

- 10 The Department's experience suggest that, for all but the hard-core of detainees, the key to ensuring voluntary departure lies in the creation of a credible threat of involuntary removal. We have, therefore, previously recommended that the offer of a financial incentive for voluntary return to Iranian detainees be withheld until it is clear that the Iranian authorities will cooperate on involuntary removals if required.
- 11 In my recent discussions, the Iranian authorities have indicated that they would be prepared to consider making it clear to the detainees that they are considering accepting their involuntary return if it were accompanied by the offer of a financial incentive.
- As discussed above, the Foreign Ministry is primarily concerned to be able to discuss the resolution of the caseload with the Interior Ministry in the context where they could say that the involuntary removal caseload was actively being reduced to zero, or near-zero.
 - From our perspective, voluntary removal is preferable in terms of costs, cooperation with the airlines and the impact on the remaining detention caseload.
- 12 To progress this matter, the Iranians have also proposed that a representative from the Iranian Embassy undertakes a consular visit to the detention centre to meet with the detainees and to urge them to return to Iran voluntarily. I indicated that this could be acceptable if we could agree on an appropriate form of advice to the Iranian detainees that made it clear that Iran and Australia were reviewing their approach to those whom refuse to return voluntarily.
- The majority of Iranian detainees are currently housed in the Woomera, Baxter and Port Hedland IRPCs.
- 13 In line with this approach, we have drafted the leaflet at Attachment A, which could be distributed to the detainees in the context of any consular visit to the detention

centres. The leaflet focuses on encouraging the detainees to actively consider their options and foreshadows the offer of a financial package by the Australian Government.

14 In urging the detainees to consider accepting the package, the leaflet also alludes to consultation between Iran and Australia "on the issue of your removal should you not depart voluntarily". We consider that agreement by the Iranian authorities to the distribution of this leaflet with this text included would provide a substantial incentive to voluntary removal and would warrant an early offer of the financial incentive.

- We have provided the draft leaflet to the Iranian Embassy in Canberra for their informal feedback on the acceptability of the approach and the language used. We have indicated that we would be prepared to recommend that you offer the financial incentive if they agreed to this approach.

15 We are seeking, therefore, your in-principle approval of the offer of a financial incentive to the Iranians in detention in Australia, subject to the development of an acceptably worded leaflet.

16 We suggest that any offer be made on a similar basis as that currently on offer to the Afghan detention caseload and the offshore processing caseloads:

- a quantum of \$2,000 per person, up to a maximum of \$10,000 per family (defined as husband/wife and depend children);
- a fixed 28-day period in which to accept the offer;
- Australia would meet the costs of the required airfares and travel documents for the return; and
- waiving of the debt owed to the Australian Government for the cost of detention, return to Iran and any court costs incurred.

17 From my discussions in Iran I expect that these arrangements will be broadly acceptable to the Iranians.

- The Foreign Ministry has suggested in discussions a period of up to 6 months for acceptance of the package as they consider the 28-day limit in our offer to be too short a time. We disagreed with this extended period and, in fact, advised the MFA that even with a 28-day time frame, a strong statement on Iran's preparedness to accept enforced removals would be crucial.
- In any event, we would argue that the 28-day time frame is only the last stage in an extended period of time that these detainees have had many months to consider their options following the failure of their claims to remain legally.

18 If you approve this approach, we will provide further briefing on the logistics for making the offer.

19 Funds are available within International Cooperation Branch for this offer, as the 2000-01 Budget created a \$2 million pilot program for the provision of reintegration assistance, which have not yet been required to utilise.

- At \$2,000 per person, and with around 277 Iranians currently in this caseload, we would at most need to utilise \$554,000 of the pilot program in this exercise.
- Under the terms of the original decision that provided funding for the pilot program, we are required to seek the agreement of the Department of Finance and Administration's (DOFA) to the proposed arrangements, which we expect would be forthcoming, as the arrangements are similar to the arrangements for the Afghans. We will seek this agreement following receipt of your views. We will also consult with DOFA on the arrangements for the waiver of the detention and removal costs for those who return voluntarily.

Removal arrangements for difficult cases

20 During my discussions with Mr Ansari, he has also suggested that we negotiate arrangements with the local Embassy to secure the involuntary removal of "emergency cases", that is, those who are disruptive and uncooperative.

21 This move is clearly designed to minimise the potential for public embarrassment for Iran by the misbehaviour of Iranian detainees. It is, however, an important move by the MFA as we believe the enforced removal of a group of difficult detainees, irrespective of the number, is likely to make it easier for others to choose to depart voluntarily.

22 We have pressed the issue with the Iranian Embassy in Canberra to ascertain whether they have received instructions from Tehran that would allow them to commence working on these arrangements. To date, it would appear that this is not yet the case. Once the Embassy is in a position to discuss the issue, we will seek to define the "emergency" group as broadly as possible in cooperation with Unauthorised Arrivals and Detention Division. In particular, we would be seeking to include those who have attempted self-harm or committed acts of violence within the centres.

Next steps in discussions with the Iranian authorities

23 We have indicated to the Iranians that we are prepared to go to Tehran at any stage to negotiate these arrangements. Alternatively, we have offered to host a delegation of Iranian officials if it were clear that such a delegation would be in a position to negotiate.

24 In the interim, we have asked the Embassy in Tehran to pursue all available opportunities to press the issue, including through calls on the relevant officials and Deputy Ministers. We will continue our active dialogue with the Embassy in Canberra.

25 In the event that we return to Iran, or a delegation visits Australia, we intend to provide a draft Memorandum of Understanding as the basis of discussion. Our current draft is at Attachment B for your consideration.

Client Service/ IT/ Legislation/ Parliamentary Implications

26 Nil

Financial Implications

27 As outlined in paragraph 19, the maximum total cost of offering the financial incentive to Iranian detainees would be \$554,000. Funding is available within International Cooperation Branch to cover these expected costs.

CONSULTATIONS

28 Unauthorised Arrivals and Detention Division, Migration and Temporary Entry Division. Department of Foreign Affairs and Trade have been consulted on the draft leaflet and MOU.

MEDIA RELEASE

29 Nil

RECOMMENDATION

11 That you:

- A. note the outcomes from my recent discussions with Iranian officials on the involuntary removal of Iranian nationals (paragraphs 3 – 8);
- B. approve a program of consular visits to Iranian nationals in detention by officials from the Iranian Embassy in Canberra (paragraph 12);
- C. approve the draft leaflet at Attachment A for distribution to the Iranian detainees if agreed to by the Iranian Embassy (paragraph 13 – 15);
- D. approve the offer of a financial incentive for voluntary return to the Iranians currently in detention subject to the Iranian Embassy agreeing to acceptable wording for the leaflet at Attachment A (paragraphs 15 – 19);
- E. note the development of arrangements to facilitate the removal of the disruptive and uncooperative cases in detention (paragraphs 20 – 22); and
- F. note the draft MOU at Attachment B that we intend to use as the basis of further negotiations with Iran (paragraphs 23 – 25).

To the Iranian detainees:

By now you will have been told that your application to remain in Australia has been unsuccessful. We understand that you will be disappointed. Those who smuggled you here misled you by creating expectations that were not realistic.

It is now time, however, for you to take positive action to regain control of your life.

If you choose to return to Iran of your own free will, the Australian Government will provide you with all the necessary help to make this return possible. The Iranian Government will also assist, if necessary, as it is their desire to see all Iranians in detention returned in this way.

If you choose to return to Iran, we will provide the following:

- we will meet the costs of the required airfares and travel documents to get you to your final destination;
- we will waive the debt you owe to the Australian Government for the cost of detention and return to Iran. We will also waive any court costs you may have incurred. This will ensure that you have no legal barrier to submit an application to come to Australia in the future; and
- we will provide you with financial assistance for your reintegration in Iran: A\$2000 (adult or child) or up to A\$10,000 per family (defined as husband/wife and dependent children).

To be entitled to these benefits, you must accept the offer within 28 days of receiving a formal letter of offer, which we expect will be provided on XXXX.

If you do not choose to return in a dignified, voluntary manner, the Australian Government will take steps to return you to Iran in the near future. This return will not provide you with the same benefits:

- You will not be eligible to apply to re-enter Australia legally.
- You will not receive any financial assistance.

We urge you to actively consider your options. Failure to do so will result in your removal from Australia. The Governments of Iran and Australia are currently consulting on the issue of your removal should you not depart voluntarily.

Department of Immigration and Multicultural and Indigenous Affairs

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN

FOR COOPERATION ON ISSUES RELATING TO CULTURAL EXCHANGE,
IRREGULAR MIGRATION AND RETURN OF IRANIAN ASYLUM SEEKERS FROM
AUSTRALIA TO IRAN

The Government of Australia and the Government of the Islamic Republic of Iran (hereinafter referred to singularly as "the Party" and collectively as "the Parties"):

Acknowledging the continued existence of a strong cooperative relationship between the Parties, and the need to strengthen it for greater effectiveness in accomplishing common goals in the increasingly globalised environment;

Recognising the benefits of exchange of cultural experience in improving mutual understanding between the Parties;

Recognising that it is in the international interests, and in their respective national interests, for the Parties to identify, prevent and prosecute illegal activities relating to people smuggling and illegal migration;

Reaffirming their commitment to working with relevant international organisations and multilateral fora to promote international cooperation against people smuggling and illegal migration;

Appreciating that smuggled and trafficked persons are victims of illegal activity and that disrupting smuggling activities plays an important role in preventing hardship for individuals;

Recognising that the prompt return in safety and with dignity of nationals who do not have a legal right to remain in the territory of other countries is an important element in tackling international people smuggling and illegal migration;

Committing to promote cooperative measures of a practical nature,

Have reached the following common understanding on cooperation on issues relating to cultural exchange, irregular migration and voluntary and involuntary return:

AREAS OF COOPERATION

1. The areas of cooperation under this Memorandum of Understanding will include:

(a) activities aimed at promoting cultural exchange;

- (b) activities aimed at increasing the capacity of the Parties to effectively manage their migration and border control arrangements;
 - (c) initiatives aimed at reducing the incidence of people smuggling; and
 - (d) activities to support the return, voluntarily or involuntarily, of nationals of the country of either Party.
2. The Parties may, at any time, mutually determine additional areas of cooperation under this Memorandum of Understanding which fall within its subject matter.

FORMS OF COOPERATION

3. Subject to the laws, regulations and procedures in force in the respective territories of the Parties, the forms of cooperation on issues relating to cultural exchange, irregular migration and people smuggling under this Memorandum of Understanding will include, but are not limited to:
- (a) the establishment of a program to allow the nationals of the countries of the Parties to holiday and work in each other's country;
 - (b) the facilitation of the quick, safe and humane return (voluntarily or involuntarily) of nationals of the country of either Party where required by international law;
 - (c) the exchange of equipment, training and experience relating to migration management and border control;
 - (d) the exchange of information relating to the citizenship, nationality or right of residence of persons of concern to either Party; and
 - (e) the exchange of information relating to people smuggling activities, including the methods of operation and activities of people smuggling rings, routes, transit points and gathering areas used by organisers, and the travel documentation used during this process.

COMMITMENTS

4. In the spirit of cooperation, and subject to mutually determined requirements and to the laws, regulations and procedures in force in the respective territories of the Parties, the Parties agree to undertake the following commitments to meet the objectives of this Memorandum of Understanding.
5. The Government of Australia will:
- (a) establish a Work and Holiday Visa scheme enabling nominated Iranians to holiday and work in Australia (details at Annex A);
 - (b) meet all costs associated with the voluntary or involuntary return of the Iranian asylum seekers from Australia or its offshore processing centres to Iran;

WITHOUT PREJUDICE – FOR DISCUSSION

- (c) provide reasonable reintegration assistance directly to individuals and families who volunteer to return to Iran;
 - (d) exchange information and intelligence with Iranian officials in areas covered by this Memorandum of Understanding;
 - (e) provide specialised equipment and training to Iranian officials in document examination techniques and border control procedures; and
 - (f) provide support for capacity-building projects in the areas of migration management and border control.
6. The Government of the Islamic Republic of Iran will:
- (a) establish a work and holiday scheme for nominated Australians to work and holiday in Iran [?? Scheme supposed to be reciprocal];
 - (b) facilitate the quick, safe and humane return of those Iranian participants of the Work and Holiday Visa scheme who break the conditions of their visa, from Australia to Iran;
 - (c) facilitate the quick, safe and humane return of its citizens from Australia to Iran, either on a voluntary or an involuntary basis, through the verification of Iranian nationality and the provision of travel documentation; and
 - (d) provide information on the methods of operation and activities of people smuggling rings, routes, transit points and gathering areas used by organisers, and the travel documentation used during this process.

IMPLEMENTING AGENCIES

7. This Memorandum of Understanding will be implemented by the relevant agencies from each country responsible for the areas of cooperation identified above.
8. Each Party will designate an agency or mechanism to act as the communication and liaison centre within its respective territory for the purposes of coordinating its internal implementation of this Memorandum of Understanding by the relevant agencies.

COMPLIANCE WITH LAW AND INTERNATIONAL OBLIGATIONS

9. This Memorandum of Understanding will be implemented in accordance with the applicable laws and regulations of each Party and in accordance with their respective international obligations.

AMENDMENT

10. Without prejudice to paragraph 2 above, this Memorandum of Understanding may be modified or amended at any time by mutual written consent of the Parties. Such modification or amendment will come into effect on such date as may be mutually determined by the Parties and will form part of this Memorandum of Understanding.

WITHOUT PREJUDICE -- FOR DISCUSSION

11. Any modification or amendment will be without prejudice to any ongoing cooperation pursuant to this Memorandum of Understanding before or up to the date of such modification or amendments.

COMMENCEMENT AND TERMINATION

12. This Memorandum of Understanding will come into effect on the date of signature by both Parties.
13. This Memorandum of Understanding will remain in effect for two years and may be extended by mutual written consent of the Parties.
14. Paragraph 13 notwithstanding, this Memorandum of Understanding may be terminated by either Party giving three months written notice to the other Party through diplomatic channels.
15. Termination of this Memorandum of Understanding will be without prejudice to any ongoing cooperation arising from or based on this Memorandum of Understanding before or up to the date of its termination.

Signed at on in two original copies in duplicate in the English and Farsi languages, both texts being equally authentic. In the case of a difference in interpretation, the English language will prevail.

FOR THE GOVERNMENT OF
AUSTRALIA

FOR THE GOVERNMENT OF
THE ISLAMIC REPUBLIC OF IRAN



DEPARTMENT OF IMMIGRATION AND MULTICULTURAL
AND INDIGENOUS AFFAIRS

INFORMATION SHEET FOR IRANIAN DETAINEES:

On 12 March 2003 the Government of the Islamic Republic of Iran and the Government of Australia signed a Memorandum of Understanding (MOU) on Consular Affairs. This MOU establishes arrangements to promote the voluntary return of Iranian nationals who are illegally in Australia. The agreement also allows for the involuntary removal of Iranians in detention who have no outstanding protection applications.

Both governments are seeking to maximise voluntary returns and financial assistance for reintegration will be offered to those Iranians currently in detention who return voluntarily.

The process for implementation of the MOU will be:

- Discussions with Embassy officials about the details and logistics of how the returns (both voluntary and involuntary) will be implemented under the agreement.
- Upon finalisation of this process, officials will conduct information sessions at the centres. These briefing sessions will outline details of the financial assistance and the process for both voluntary and involuntary returns.
- Shortly after the briefing sessions, you will be provided with a formal letter of offer of the financial assistance for reintegration. There will be a 28-day timeframe in which you have to consider accepting the offer. The amount offered will be A\$2,000 per person, up to a maximum of A\$10,000 per family.
- If you choose not to accept the offer within 28-days you will be not eligible to receive the financial assistance at a later date and we will commence arrangements for your return to Iran.

You, and any family members accompanying you in Australia, should consider carefully your options for voluntary return to Iran. Those who do not accept the offer will be required to return to Iran in the near future without the benefits of the financial assistance.

Rec'd Fri 21 March 2003

