



The Hon Chris Bowen MP
Minister for Immigration and Citizenship

The Hon John Murphy MP
Chair Standing Committee on Petitions
PO Box 6021
Parliament House
CANBERRA ACT 2600



Dear Mr Murphy

Thank you for your letter of 15 December 2011 relating to a petition submitted to the Standing Committee on Petitions regarding the Australian Government's proposed amendments to the *Migration Act 1958*, 'Migration Legislation Amendment (Offshore Processing and Other Measures) Bill 2011' (the Bill). I apologise for the delay in responding.

On 31 August 2011, the High Court of Australia made a decision which effectively removed the ability of the Government to pursue offshore processing under current legislation.

The main purpose of the Bill is to restore to the Executive the power to set Australia's border protection policies. In particular, the power to transfer asylum seekers arriving at excised offshore places to a range of designated third countries within the region, while ensuring protection from refoulement, and providing the opportunity for their claims to be processed.

The Government believes offshore processing, appropriately implemented with regional countries as part of an agreed regional framework, is the best way to respond to people smuggling while meeting Australia's obligations under the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (the Refugees Convention). The Office of the United Nations High Commissioner for Refugees (UNHCR) has also accepted that processing in a third country can be a workable arrangement. No single country acting alone can provide the whole range of solutions required to resolve the problems of displacement - it is a regional challenge that requires a regional solution.

As the United Nations High Commissioner for Refugees Antonio Guterres said in February 2012 while in Australia:

"... what is important is to guarantee that effective protection is granted, that people will not be refouled, that people can have humane reception conditions, they will not have arbitrary detention, that they have access to educational systems and employment. And so it's not only a question of knowing whether a country is or not signatory to the [Refugees] Convention, it's a question of knowing whether a country is able to fully respect these protection concerns."

The Government's view is that processing asylum claims in a third country is consistent with our international law obligations and accepted practice, so long as:

- transferring the asylum seekers will not amount to refoulement under international human rights or refugee law (either directly or by the third country refouling them to another country); and
- the asylum seekers will be given an opportunity to have their refugee status determined in that country.

The Transfer and Resettlement Arrangement with Malaysia was an important initiative under the Regional Cooperation Framework agreed to by the Bali Process members on 30 March 2011 and reflects these key tenets of the Refugees Convention.

The Arrangement was developed in close consultation with UNHCR and contains several protections and commitments from the Malaysian Government. This includes access to services and education supported by UNHCR and the International Organization for Migration, as well as a commitment to durable solutions through resettlement for those in need of protection and safe and dignified return for those not in need of protection.

As a party to the Refugees Convention, Australia takes its international obligations seriously and is committed to providing protection to refugees consistent with the obligations set out in the Refugees Convention. As a member of the international community, Australia shares responsibility for protecting refugees worldwide and resolving refugee situations through the system of international refugee protection.

The recent devastating Indonesian boat tragedies in November and December 2011, and the incident in Malaysian waters in February 2012 - in addition to the loss of life as a result of the SIEV 221 tragedy off Christmas Island in December 2010 - illustrate the significant dangers involved in irregular maritime journeys facilitated by people smugglers who seek to take advantage of vulnerable people. There is nothing humanitarian in having a system that encourages asylum seekers to risk their lives getting to Australia in order to be provided with protection. For this reason, the Government remains committed to the Malaysia Arrangement.

In the absence of legislative amendments required to enable the Government to implement the Arrangement, the Government has commenced working towards making greater use of existing powers to more flexibly manage and process irregular maritime arrivals to Australia. This includes greater use of community detention and bridging visas, on a case-by-case basis, to allow residence in the community while refugee claims are assessed. Individuals will continue to be subject to mandatory detention for initial health, identity and security checks. Individuals who present unacceptable risks to the community will continue to be placed in held detention.

I trust this information is of assistance.

Yours sincerely

CHRIS BOWEN