



**ARRANGEMENT
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF MALAYSIA
ON TRANSFER AND RESETTLEMENT**

THE GOVERNMENT OF AUSTRALIA as represented by the Department of Immigration and Citizenship **AND THE GOVERNMENT OF MALAYSIA** as represented by the Ministry of Home Affairs (are hereinafter referred to singularly as “the Participant” and collectively as “the Participants”),

RECALLING the Joint Statement of the respective Prime Ministers of Australia and Malaysia dated 7 May 2011;

RECALLING the Regional Cooperation Framework agreed to at the recent Bali Process Ministerial Conference in Bali on 30 March 2011; and

RECOGNIZING further the sovereignty of states in determining their own immigration policy and laws relating to immigrants, including determining entry into their territory and under which conditions immigrants may remain;

HAVE REACHED THE FOLLOWING UNDERSTANDINGS:

**Clause 1
(Overview)**

1. The Participants, subject to the terms of this Arrangement and the laws, rules, regulations and national policies from time to time in force in each country, endeavor to promote and develop co-operation in addressing migration issues of concern.

2. The Government of Australia will transfer certain persons seeking international protection to Malaysia for refugee status determination, in exchange for the Government of Australia accepting certain persons who have been determined to be refugees by the United Nations High Commissioner for Refugees (UNHCR) in Malaysia.
3. This Arrangement is subject to the respective Participant's relevant international law obligations in accordance with the applicable international law instruments or treaties to which the Participant is a Party.

Clause 2 (Definition)

For the purpose of this Arrangement, the following words will have the following meaning except where the context otherwise requires:

"Costs" means all agreed direct and indirect costs;

"Resettle" means provide with permanent resettlement outside Malaysia;

"Transferee" means a person transferred from Australia to Malaysia under this Arrangement;

Clause 3 (UNHCR and IOM)

This Arrangement will proceed on the basis that UNHCR and the International Organization for Migration (IOM) can fulfill the roles and functions envisaged in the Operational Guidelines at Annex A.

Clause 4 (Transfers to Malaysia)

Subject to the terms of this Arrangement and the laws, rules, regulations and national policies from time to time in force in Malaysia, the following Transferees will be transferred to Malaysia for processing:

1. Subject to Clause 4(2), the Transferees to be transferred to Malaysia are those persons who, after the date of signing of this Arrangement:

- a) Have:
 - i. Traveled irregularly by sea to Australia; or
 - ii. Been intercepted at sea by the Australian authorities in the course of trying to reach Australia by irregular means; and
- b) Who:
 - i. The Government of Australia determines should be transferred to Malaysia;
 - ii. Under Australian law, may be transferred to a declared country for processing or taken to a place outside Australia or removed from Australia; and
 - iii. The Government of Malaysia provides consent and approval for the transfer.

2. The following persons will not be transferred to Malaysia for processing:

- a) Persons where their transfer would mean that the maximum number of 800 transferees agreed in Clause 7(1) would be exceeded;
- b) Persons determined by Australia to be members of the crew of any intercepted vessels and who are not seeking protection (nothing in this Clause prohibit the rights of the Government of Malaysia to make an extradition request); or
- c) Any persons that the Malaysian authorities have not provided consent and approval to transfer.

Clause 5 (Resettlement to Australia)

Subject to the terms of this Arrangement and the laws, rules, regulations and national policies from time to time in force in Australia, the following persons will be resettled in Australia from Malaysia:

1. Those persons in Malaysia who hold a UNHCR Card:

- a) Who are able to establish that they entered Malaysia and were registered by UNHCR prior to the date of signing of this Arrangement and have remained in Malaysia;

- b) Who meet Australia's legal requirements for resettlement in Australia; and
- c) Where their resettlement would not exceed the total number of four thousand (4,000) persons to be resettled pursuant to this Arrangement.

**Clause 6
(Transferees found to be Refugees)**

Where a Transferee is determined to be a refugee they will be referred to resettlement countries pursuant to UNHCR's normal processes and criteria.

**Clause 7
(Agreed Numbers)**

1. The Government of Malaysia will accept up to an agreed maximum of eight hundred (800) Transferees. The Participants understand that the agreed number of transfers may occur prior to any resettlement pursuant to Clause 5.
2. The Government of Australia will resettle four thousand (4,000) persons over four (4) years as referred to in Clause 5 commencing from the date of this Arrangement at a rate of approximately one thousand (1,000) per year, (although recognizing that less may be settled in the first year and any shortfall will be taken up in subsequent years);
3. This number of persons will be resettled by Australia even if the Government of Australia does not seek to transfer the total eight hundred (800) Transferees to Malaysia.

**Clause 8
(Joint Commitments of the Participants)**

1. Transferees and persons to be resettled in Australia will be treated with dignity and respect and in accordance with human rights standards.
2. Special procedures will be developed and agreed to by the Participants to deal with the special needs of vulnerable cases including unaccompanied minors.

Clause 9
(Commitments of the Government of Australia)

Financial

1. The Government of Australia will meet all costs that arise under this Arrangement in relation to the following:
 - a) Any interdiction and Transferee management costs involved in the actual transfer from Australia to Malaysia and any Australian detention cost;
 - b) Transportation costs incurred to transfer Transferees to Malaysia including the costs of any escorts and interpreters;
 - c) Costs related to the health and welfare (including education of minor children) of Transferees in accordance with UNHCR's model of assistance in Malaysia;
 - d) Additional "safety net" costs related to meeting any special welfare needs of Transferees (especially vulnerable cases) drawing also on the services of IOM as necessary;
 - e) Costs for registration of Transferees and for their refugee status determination (and any appeal in relation to that determination) and assessment of any other protection obligations;
 - f) Costs related to the resettlement in a third country of those Transferees determined to be in need of international protection, that are not met by the third country;
 - g) Costs relating to increased referrals by UNHCR of refugees to Australia;
 - h) Costs relating to the resettlement of persons from Malaysia to Australia that Australia has approved for resettlement;
 - i) Costs associated with the voluntary repatriation of a Transferee;
 - j) Costs related to the deportation from Malaysia of a Transferee found not to be in need of international protection, to their country of origin (or elsewhere if appropriate) which includes the cost of reintegration or relocation assistance where appropriate;
 - k) Such other costs that may be agreed in writing between the Participants from time to time.

2. The Government of Australia will take responsibility for payment of costs directly or through third party providers according to Australian financial management procedures.
3. The Government of Australia will put in place an appropriate pre-screening assessment mechanism in accordance with international standards before a transfer is effected.

Return of Transferee found not to be in need of international protection

4. The Government of Australia will provide assistance to the Government of Malaysia and facilitate the return from Malaysia to a country of origin (or a third country if appropriate) of a Transferee who is determined not to be in need of international protection. This may involve, as determined by the Government of Malaysia:
 - a) Financial costs referred to in Clause 9;
 - b) Provision of assistance with administrative arrangements through use of a service provider such as the IOM;
 - c) Liaison with the country of origin; and
 - d) Any other assistance as may be agreed between the Participants.

Clause 10
(Commitments of the Government of Malaysia)

1. Malaysia will provide all necessary assistance to facilitate the transfer and disembarkation of Transferees.
2. (a) The Government of Malaysia will provide Transferees with the opportunity to have their asylum claims considered by the UNHCR and will respect the principle of non-refoulement.
 - (b) The benefit of non-refoulement may not, however, be claimed by a Transferee who is a refugee:
 - i. Whom there are reasonable grounds for regarding as a danger to the security of Malaysia; or

- ii. Has been convicted by a final judgment of a particularly serious crime that constitutes a danger to the community of Malaysia.

(c) Where the exceptional circumstances in paragraph (b) may have arisen the Government of Malaysia will discuss a suitable country of destination with UNHCR.

3. The Government of Malaysia will facilitate:

(a) Transferees' lawful presence during any period Transferees' claims to protection are being considered and, where Transferees have been determined to be in need of protection, during any period while they wait to be resettled; and

(b) Persons to be resettled in Australia pursuant to this Arrangement.

4. (a) While in Malaysia Transferees will enjoy standards of treatment consistent with those set out in the Operational Guidelines at Annex A.

(b) While in Australia persons resettled pursuant to this Arrangement will enjoy standards of treatment consistent with those set out in the Operational Guidelines at Annex A.

Clause 11 (Return of Transferees)

1. In relation to the return of a Transferee found not to be a refugee:

a) Voluntary return is the preferred option;

b) Where the Transferee does not agree to return to their country of origin voluntarily, forced returns may be necessary.

c) The Government of Australia will assist the Government of Malaysia as may be agreed by the Participants to facilitate the return of Transferees.

2. In relation to any proposed forced return the Government of Malaysia will provide the Government of Australia with an opportunity to consider the broader claims of any Transferee to protection under other relevant human rights conventions. Should the Transferee's claims for broader international protection be established, the Government of Australia will make suitable alternative arrangements for the removal of such Transferee from Malaysia.

Clause 12
(Other Agreed Terms)

1. Operations under this Arrangement will be carried out in accordance with the domestic laws, rules, regulations and national policies from time to time in force in each country and in accordance with the Participants' respective obligations under international law.
2. The Participants will ensure that no Transferee should be given any preferential treatment in the order of processing their claims in Malaysia and that they should receive no processing advantage (including access to resettlement) as a result of having undertaken irregular migration to Australia.
3. The Participants will exchange information and data (including biometric data) regarding Transferees consistent with their domestic information privacy requirements. Each Participant will observe the confidentiality and secrecy of the documents, information and other data received from, or supplied to, the other Participant during the period of the implementation of this Arrangement or any other arrangements made pursuant to this Arrangement.
4. The Participants will not provide personal information on asylum seekers or persons found to be in need of international protection to the country against which the protection is claimed unless authorized by the Transferee.

Clause 13
(Joint Committee and Advisory Committee)

1. The Participants will establish a Joint Committee with responsibilities including management of transfer arrangements, oversight of the welfare of Transferees, ensuring funding is expended appropriately, engaging with service providers, obtaining statistical and other information on refugee status determinations and protection obligations assessments, addressing any concerns of Transferees and refugees and ongoing development of special procedures to deal with vulnerable cases.
2. The Joint Committee will be made up of a representative or representatives from the Malaysian Ministry of Home Affairs, the Australian Department of Immigration and Citizenship and such other representatives as may be agreed.

3. The Participants will also establish an Advisory Committee to provide advice to the respective Governments on issues arising out of the implementation of this Arrangement and be a body to which the Governments might refer issues for consideration.
4. This Advisory Committee will comprise the following members:
 - a) Two representatives from each of the Government of Malaysia and the Government of Australia;
 - b) Subject to their agreement, a representative from each of the UNHCR and the IOM; and
 - c) Other representatives as agreed by the Participants.
5. The terms of reference for the Joint Committee and Advisory Committee will be agreed between the Participants.

**Clause 14
(Operational Guidelines)**

Operational Guidelines for the implementation of this Arrangement are attached as Annex A.

**Clause 15
(Confidentiality)**

The terms and conditions of this Arrangement will remain confidential between the Participants unless otherwise agreed.

**Clause 16
(Effect of Arrangement)**

This Arrangement represents a record of the Participants' intentions and political commitments but is not legally binding on the Participants.

Clause 17
(Other Rights and Interests)

The Participants will consult in circumstances where any Participant is concerned that implementation of this Arrangement is seen adversely to affect its rights and interests with respect to its national security, national and public interest, or public order and protection or intellectual property rights.

Clause 18
(Resolution of Differences)

Any differences between the Participants over the interpretation or application of this Arrangement will be resolved as soon as reasonably practicable by consultation between the Participants.

Clause 19
(Effective Date, Termination and Amendment)

1. This Arrangement will come into effect on the date of signature by both Participants and will remain in effect for a period of four (4) years.
2. The Participants may jointly decide in writing to vary or extend this Arrangement.

Clause 20
(Review of the Operation)

The operation of this Arrangement will be reviewed by the Participants, as and when necessary, to identify any concerns or variations that may need to be made to the Arrangement.

This Arrangement represents the understandings reached between the Government of Australia and the Government of Malaysia upon the matters referred to herein.

Signed in duplicate at Kuala Lumpur on this day 25 of July in the year 2011 in two (2) original English texts.

SIGNED FOR AND ON BEHALF OF THE GOVERNMENT OF AUSTRALIA		SIGNED FOR AND ON BEHALF OF THE GOVERNMENT OF MALAYSIA
HON. CHRIS BOWEN MINISTER OF IMMIGRATION AND CITIZENSHIP		HON. DATO' SERI HISHAMMUDDIN TUN HUSSEIN MINISTER OF HOME AFFAIRS