



29 August 2011

H16, 79.6  
RB; rp

Mr Bill Grant  
Secretary-General  
The Law Council of Australia  
GPO Box 1989  
CANBERRA ACT 2601

Attn: Rosemary Budavari

Dear Bill

### **Inquiry into Australian Malaysian Asylum Seeker Agreement**

I refer to your memorandum of 22 August 2011 and thank you for your invitation to provide comments to the Law Council for a submission to the Inquiry into the Australian Malaysian Asylum Seeker Agreement. The matter has been considered by the Society's Human Rights and Children and the Law Committees.

The Society is pleased that the LCA is preparing a submission to this Inquiry. We have observed the unravelling of the Agreement with concern. at Australia is willing to process those persons' claims fairly and with dignity.

In regards to the specific terms of reference being considered by the inquiry, the Society supports the Law Council's proposals for its submissions as set out in its memo dated 22 August 2011. In particular, we provide the following comments in relation to them

1. While the international obligation against redoublement has been addressed in the Agreement, we note with concern that clause 16 renders the Agreement non-binding against either party. We therefore question how the Minister can declare Malaysia to be a safe third country without any assurances that they will not refuel genuine refugees.
2. Article 13 of the ICCPR states that any person prior to being expelled from a country should have access to have their expulsion reviewed, and to be represented in such a review. However the Agreement does not make any reference to allowing representation to the transferees in any stage of the proceedings mentioned in the operational guidelines.

We provide the following additional comments

- Given the particular vulnerabilities of children and young people seeking asylum as either unaccompanied minors or travelling with family members, we request that the UN Convention on the Rights of the Child be one of the seven human rights instruments against which the LCA reviews the Australia – Malaysia Agreement. We are pleased the LCA intends to address in its terms of reference the practical implementation of the Agreement as it relates to unaccompanied

minors (7(c)(v)). The conflict of interest for the Minister as both guardian and decision-maker warrants investigation and review.

- Australia should treat all asylum seekers the same way, regardless of how they arrive in Australia. To treat people who arrive by boat differently to those who arrive by plane undermines Australia's obligations under the Refugee Convention.
- Australia should allow asylum seekers to live in community based residences as an alternative to detention whilst their refugee claims are assessed.
- The threat of being sent to a third country, upon arrival in Australia simply adds further distress to those who have already suffered torture and trauma in their own country.

I trust these comments are of assistance. Should you have any questions in relation to them, please do not hesitate to contact me.

Yours sincerely



Ralph Bönig  
**PRESIDENT**