

Australian government signs punitive refugee deal with Malaysia

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Australian Immigration Minister Chris Bowen signed an unprecedented refugee-trading agreement with the Malaysian Home Affairs Minister Hishammuddin Hussein in Kuala Lumpur on Monday. As a result, the next 800 asylum seekers who arrive by boat in Australia will be deported to Malaysia, where they will languish indefinitely in the most oppressive conditions.

In exchange, Australia will accept 4,000 refugees from Malaysia over the next four years, lifting its annual intake to just above 14,000.

The blatant aim of the deal is to block refugees from seeking to exercise their basic rights, under international law, to seek asylum. Australian Prime Minister Julia Gillard boasted that the deal would “smash” the “business models” of “people smugglers,” but the scheme is clearly aimed at the refugees themselves.

The Labor government is establishing a framework for permanently shutting out asylum seekers, in violation of the 1951 Refugee Convention. Bowen referred to the agreement as a “pilot” and said there would be “potential extensions.”

The formal document falsely states that the “transferees” sent to Malaysia will be treated with “dignity and respect.” In reality, they will join 90,000 other refugees living in squalor in that country. Asylum seekers are routinely exploited as a source of cheap labour or subject to extortion to avoid being thrown into the country’s immigration detention centres, where diseases such as leptospirosis are common.

Even if they are ultimately classified as refugees, those sent to Malaysia could wait decades for settlement in a third country. The agreement specifically states that “no transferee should be given any preferential treatment in the order of processing their claims in Malaysia.”

Anticipating resistance, the document permits the use of force to compel asylum seekers to disembark in Malaysia. If any transferee does not do so voluntarily, Australian guards will “escort” them to the aircraft door, whereupon Malaysian authorities will “complete disembarkation.”

Likewise, if transferees are rejected as refugees in Malaysia and do not agree to return voluntarily to their country of origin, “forced returns may be necessary.” Because Malaysia is not a signatory to the Refugee Convention, there is no legal barrier to it deporting asylum seekers to countries where they will face persecution. The agreement merely states that in most cases Malaysia “will respect the principle of non-refoulement” (the Refugee Convention term for non-return to persecution), but there is no legal or other guarantee of that. This makes the Australian government complicit in a scheme that flouts the most basic right in the Convention—not to be sent back to face possible death, retribution or punishment.

In statements uncritically echoed throughout the media, Minister Bowen has claimed that the transferred refugees, unlike those already trapped in Malaysia, will have “work rights ... the right for their children to attend schools and ... the right to basic healthcare.” These claims fly in the face of the agreement itself, which states that transferees will have access to “the same support as other asylum seekers and refugees in the community.”

An attachment to the signed agreement, Annex A, specifies that those sent from Australia will not have access to public healthcare or public education. Rather, they can access “private education arrangements” supported by the United Nations High Commissioner for Refugees (UNHCR). If they cannot afford private education, they will be offered “informal education

arrangements organised by the International Organisation of Migration” (IOM). Similarly, transferees will have access only to “basic medical care” under UNHCR arrangements with private medical clinics.

After being detained for about 45 days, refugees will be provided with just one month’s accommodation. They will then be “encouraged to move into private accommodation” and “become self sufficient as soon as possible.” According to Bowen, a special identity card will ensure they can look for work. However, similar ID cards issued by the UNHCR have not protected asylum seekers from extortion, let alone sweatshop labour exploitation.

So foul are these conditions that the agreement foresees that the refugees will try again to make the dangerous journey by sea to Australia. The document states that the “second and subsequent transfer will not be counted as a part of the 800 transferees.”

Minister Bowen is the legal guardian of unaccompanied minors seeking asylum in Australia, and is required to act in their best interests. Regardless, the document confirms that the Labor government has refused to exempt pregnant women, the sick, and unaccompanied minors. It speaks vaguely of developing procedures “to deal with the special needs of vulnerable cases including unaccompanied minors.”

The Labor government had declared that any asylum seekers who arrived in Australia after May 7, when the Malaysian deal was first announced, would be subjected to it, but the Malaysian government apparently refused to backdate the agreement to May. Labor then hoped to send the refugees to Papua New Guinea’s Manus Island, but was unable to finalise an agreement with the PNG government. Those 568 men, women and children being detained on Australia’s Christmas Island will now be processed in Australia. In violation of international law, which bans “arbitrary detention,” they have been held for as long as 11 weeks without any charge or due process.

Such is the stench surrounding the deal, which amounts to a people trafficking arrangement in breach of international human rights law, that the UNHCR and the IOM refused to put their names to it, despite accepting a role in its implementation.

Labor’s supposed “Left” faction immediately embraced the arrangement, exposing its previous

humanitarian posturing. Faction leader Senator Doug Cameron had said he would only back the deal if it had UN approval. On Monday, Cameron disingenuously claimed: “This deal has human rights front and centre and it has UNHCR involvement.”

The Greens formally condemned the deal. Immigration spokeswoman Senator Sarah Hanson-Young called it the “newest version” of the Pacific Solution—under which the former Howard government transported asylum seekers to Nauru and Manus Island, where they were detained for up to five years before being granted visas.

Nevertheless, the Greens provide crucial parliamentary support to the minority Labor government. They can declare opposition to this particular agreement only because the government does not require a parliamentary vote to approve it. The Greens have voted for all the government’s budget measures, including those funding the “border protection” and detention network. As such, they bear direct political responsibility for Labor’s assault on asylum seekers’ rights.

The Gillard administration’s “Malaysian Solution” far outstrips the draconian measures against refugees carried out by any previous Australian government. Even under the “Pacific Solution,” the majority of those sent to Nauru and Manus Island eventually gained refuge in Australia. For the first time, a government is seeking to permanently block the claims of all asylum seekers who arrive by sea.



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