



Office of International Law

02/7763

13 September 2002

Mr Peter Hallahan
Secretary
Senate Legal and Constitutional References Committee
Parliament House
CANBERRA ACT 2600

Dear Peter

MIGRATION LEGISLATION AMENDMENT (FURTHER BORDER PROTECTION MEASURES) BILL 2002

I refer to Hansard for Monday 19 August 2002 and to the questions that I took on notice from committee members. I am writing to give the answers to those questions.

Senator Bolkus L&C 156

In the drafting of regulations/legislation when was advice sought from AGs? On what dates? On what particular issue? Was advice sought in respect of a possible breach of Australia's obligations under the Convention relating to the Status of Refugees, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment or any other international obligation that Australia might be party to?

Answer

In accordance with previous practice, we would not normally provide information on legal advice given to the Government on particular matters or on whether such advice has been sought. That said, we can provide the following information. The Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 contains the substance of the disallowed Migration Amendment Regulations 2002 (No.4) 2002. Those Regulations were drafted by the Attorney-General's Department on instructions from the Department of Immigration and Multicultural and Indigenous Affairs ('DIMIA'). The Bill, if passed, (and the regulations had they not been disallowed) would create additional 'excised offshore places'. A person entering the migration zone unlawfully at one of those places (an 'offshore entry person') would not be permitted to apply for a visa under the *Migration Act 1958* by reason of that entry. However, that would not affect the

continued application of Australia's international obligations to those areas, nor Australia's continued compliance with those obligations. As I indicated in my answers as recorded on pages L&C 156 through to L&C 158 there were practical reasons for proposing the "excision" of the northern islands.

Senator Payne L&C 166

The arrangement that which we are making for off-shore entry persons granted 3 year visas as refugees is for only one entry into Australia by that person, not the readmission at any time provision of the schedule to the Refugees Convention. Is there any inconsistency between that and paragraph 13 of the Schedule which requires readmission at any time during the validity of a travel document which is issued to a refugee lawfully staying in the country?

Answer

We are consulting with the Department of Immigration and Multicultural and Indigenous Affairs on this issue and will provide a substantive answer to the question as soon as possible.

Senator Bolkus L&C 168

Can you find out whether the implications for Iraqis and Afghanis of last week's case involving a Palestinian man have been raised with your Department

Answer

We are not aware of the implications being raised with this Department.

Senator Scullion L&C 168

It would be valuable to know whether as part of the Charter of the International Organization for Migration (IOM) they refer to non-refoulment.

Answer

I was not able to find a reference to "non refoulment" in the Constitution of the IOM. Article 1 of the Constitution sets out the purposes and functions of the IOM. It provides as follows:

1. The purposes and functions of the Organization shall be:
 - (a) to make arrangements for the organised transfer of migrants for whom existing facilities are inadequate or who would not otherwise be able to move without special assistance, to countries offering opportunities for orderly migration;
 - (b) to concern itself with the organised transfer of refugees, displaced persons and other individuals in need of international migration services for whom arrangements may be made between the Organization and the States concerned, including those States undertaking to receive them;
 - (c) to provide, at the request of and in agreement with the States concerned, migration services such as recruitment, selection, processing, language training, orientation activities, medical examinations, placement, activities facilitating reception and integration, advisory services on migration questions and other assistance as is in accord with the aims of the Organization;

- (d) to provide similar services as requested by States, or in cooperation with other interested international organizations, for voluntary return migration including voluntary repatriation;
- (e) to provide a forum for States as well as international and other organizations for the exchange of views and experiences, and the promotion of cooperation and coordination of efforts on international migration issues, including studies on such issues in order to develop practical solutions.

2. In carrying out its functions, the Organization shall cooperate closely with international organizations, governmental and non-governmental concerned with migration, refugees and human resources, in order inter alia to facilitate the coordination of international activities in these fields. Such cooperation shall be carried out in the mutual respect of the competencies of the organizations concerned.

3. The Organization shall recognise the fact that control of standards of admission and the number of immigrants to be admitted are matters within the domestic jurisdiction of States, and, in carrying out its functions, shall conform to the laws, regulations and policies of the States concerned.

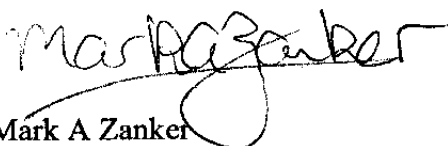
In relation to persons who are trafficked migrants, the IOM policy is as follows:

IOM offers voluntary return and reintegration to trafficked migrants. Based on individual needs, return travel and reintegration assistance will be tailored to the individual situation of the migrant. Assistance may consist of counselling, further education, vocational training, provision of micro-credits and/or other income generating activities...IOM has traditionally implemented a large variety of return programmes.

As is apparent, IOM is concerned with orderly migration and voluntary repatriation, and is required to respect national laws and policies, and the competencies of other international organizations working in the migration field, such as the United Nations High Commissioner for Refugees.

This information has been extracted from the internet site of the IOM, <http://www.iom.int>.

Yours sincerely



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