

Michael de Rohan

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Submission: Migration (Validation of Port Appointment) Bill 2018

Dear Senators,

I understand that this Bill seeks to retrospectively authorise Ashmore Reef as a “port” so that asylum seekers landing in this area are excluded from making protection claims.

I note that the Federal Court ruled last month that Ashmore Reef was never a port and never properly excised due to poor drafting in the original Act. The Federal Court therefore decided that the detention of 1,600 asylum seekers was unlawful.

The Bill purports to correct the original legislation with an obvious aim being to avoid compensation payments to this group of detainees.

The Bill is therefore designed to act retrospectively against this group to deny not only their potential compensation claims for unlawful detention but their rights to lodge claims for protection visas. It is therefore designed to directly affect not only significant rights but also the lives of these people.

I understand that the Government has raised the deterrence argument in respect of other retrospective legislation and that in response bodies acting for detainees have questioned the implicit unfairness of such legislation.

My firm view as an ordinary Australian citizen is that this legislation is decidedly unfair and should not be passed because it will directly and most unfairly impact on this group of 1,600 detainees.

Such retrospective withdrawal or denial of rights in other laws against us citizens would immediately draw widespread condemnation....Why? Because it changes the goalposts in the middle of the game... a much used but very clear metaphor which makes a lot of sense!

These detainees have rights under international law, as accepted by Australia, to seek Australia's protection. The way in which they have arrived in Australia, now deemed “illegal” by amendments made by this Government to the Migration Act is at odds with the ways in which most asylum seekers must escape dangers in their own countries and move to other, hopefully safer countries; without papers; by risky and dangerous means.

They should be allowed to stay and exercise their rights to claim protection. Whether some or all of them would also claim compensation for unlawful detention is a risk which the Government should accept.

As a compromise position the Bill could be amended to acknowledge that it does not apply to this closed group by its starting date being set to a date beyond their last arrival date. It would therefore act as deterrence for future arrivees.

As an ordinary Australian citizen I do not agree in principle with this legislation as it essentially denies basic human rights. But I would ask you to consider this compromise for the sake of at least dealing fairly with those it will directly affect.

Yours faithfully,

Michael de Rohan BA LLB