

Australian Greens Dissenting Report

1.1 The Australian Greens acknowledge the extensive work of the Committee in this inquiry, and thank everyone who made a public submission and/or public representation.

1.2 The Australian Greens hold substantial concerns regarding this bill.

1.3 The Australian Greens oppose the retrospectivity of this bill. Retrospective laws are widely considered inconsistent with the rule of law—particularly when applied to punitive legislation. As the Kaldor Centre for International Refugee Law noted:

The government's own policy guidance at the Commonwealth level recommends that retrospective legislation that adversely affects rights or imposes liabilities should not be made except in 'exceptional circumstances' and with adequate justification ... [and should] include an assurance that no person would be disadvantaged by the retrospective application of the Act.¹

1.4 The retrospectivity of this bill is even more objectionable when you consider what this bill seeks to do through validation of the port appointment. As the Refugee Council of Australia submitted:

This Bill is a shameful attempt to retrospectively authorise repeated unlawful actions by the Australian Government, in an attempt to evade its international human rights obligations.²

1.5 This denial of human rights is further facilitated by the appointment classifying people seeking asylum entering through the 'appointed port' as unauthorised maritime arrivals. As the Senate Standing Committee for the Scrutiny of Bills noted in its inquiry into the bill:

The question of whether a person is or is not a UMA is of great significance with respect to how a person's rights and obligations under the Migration Act should be determined and how their applications should have proceeded.³

1.6 As unauthorised maritime arrivals, this already vulnerable cohort of people is condemned to a fast-track review system that denies them access to a full administrative review by the Migration and Refugee Division of the Administrative Appeals Tribunal. As Australian Lawyers for Human Rights submitted:

1 Andrew and Renata Kaldor Centre for International Refugee Law, *Submission 9*, pp. 2–3.

2 Refugee Council of Australia, *Submission 11*, p. 1.

3 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest No.7 of 2018*, p. 3.

The fast track process has been consistently found to fall short of international human rights standards ... [including by the Australian Parliament's] Parliamentary Joint Committee on Human Rights.⁴

1.7 Furthermore, this can lead to further internationally recognised and condemned denials of human rights resulting from indefinite detention on Nauru or Manus Island. The Law Council submitted:

...but for that[invalid] Instrument this cohort would have been able to seek permanent protection from Australia and, if that application were refused, have access to full merits review under Part 7A of the Act.⁵

1.8 Also of concern is the consideration and treatment of children by this bill and invalid port appointment. As submitted by Asylum Seeker Resource Centre:

A further legal consequence of being incorrectly classified as an 'unauthorised maritime arrival' is that children who are born in the migration zone to a parent who has that status, are also considered to be 'unauthorised maritime arrivals'.⁶

1.9 The port appointment—invalid as it was—has also demonstrably been misused by the Australian Government, which has overseen Australian Defence Force vessels towing boat arrivals hundreds of nautical miles out of their way, through the territory of Ashmore and Cartier Islands, so that it could be claimed these people seeking asylum entered Australia at an excised offshore place, and were therefore unauthorised maritime arrivals.

1.10 The Australian Greens are also concerned for the welfare and rights of the approximate 1600–1800 people who are unjustly affected by the bill, and invalid port appointment. As Doctors for Refugees submitted:

As the Australian Government has failed to excise the Territory of Ashmore—incorrectly described as being a port—from Australia's Migration Zone, the offshore detention and processing of refugees in between 2002-2013 has been deemed as illegal.⁷

1.11 Having been subjected to this wrongful and unlawful denial of justice and rights, the Australian Greens believe this cohort of people seeking asylum must now rightfully be afforded long-overdue on-shore processing, access to justice and procedural fairness, and appropriate physical and mental healthcare.

4 Australian Lawyers for Human Rights, *Submission 4*, p. 2.

5 Law Council of Australia, *Submission 10*, p. 4.

6 Asylum Seeker Resource Centre, *Submission 8*, p. 7.

7 Doctors for Refugees, *Submission 5*, p. 2.

Recommendation 1

1.12 The Australian Greens recommend that the bill not be passed.

**Senator Nick McKim
Senator for Tasmania**

