



Committee Secretary  
Senate Legal and Constitutional Affairs Committee PO Box 6100  
Parliament House  
Canberra ACT 2600

30 August 2018

**Re: Doctors for Refugees (D4R) response to the Parliament of the Commonwealth of Australia's 'Migration (Validation of Port Appointment) Bill 2018'**

Doctors for Refugees (D4R) is an organisation, registered with the Office of Fair Trading NSW, whose members are Australian doctors, medical students and other health professionals. D4R works to improve access to medical advice and treatment for refugees and asylum seekers in Australian immigration detention centres and the offshore regional processing system. We share the assertion of the Australian Medical Association and the Public Health Association of Australia that refugees seeking asylum in Australia have the same rights to healthcare as other Australians. It is therefore hoped that the rights of refugees in offshore detention are prioritised in the same manner as that of patients being cared for in Australia.

D4R expresses concern for the fourth clause of the 'Migration Bill 2018' which states that the proposed change,

***'applies to a thing done under the Migration Act 1958 at any time before the day this Act commences'*** (PCA, 2018, section 4: 1)  
and that, ***'The thing done is as valid and effective, and is taken always to have been as valid and effective'*** (PCA, 2018, section 4: 2).

D4R is particularly concerned by the retrospective nature of these changes and maintains the view that the Australian Government should be held accountable for the illegal offshore detention of refugees that arrived in Territory of Ashmore and Cartier Islands between 2002 and 2013. Retrospective laws are in opposition to the Rule of Law, which states that the law should be 'capable of being known to everyone, so that everyone can comply' (Saunders, 2003). We share the view of the Senate's Standing Scrutiny of Bills Committee that retrospective legislation such as the proposed Bill 'can

undermine values associated with the rule of law' (SCSB, 2018). Furthermore, we share their view that 'governors are, like the governed, bound by the law and cannot exceed their legal authority' (SCSB, 2018).

Previous retrospective changes to Australia's migration law have been problematic. Retrospective change to the 'Migration Act s 45AA: unauthorised maritime arrivals' were enforced by the Australian Government in order to 'make it clear that there will not be permanent protection for those who travel to Australia illegally' (PCA, 2014). This change had significant impacts on the protection laws surrounding thousands of persons seeking asylum in Australia. Just as it was indefensible to retrospectively enforce legal change in the name of deterrence in 2014, it is likewise indefensible to retrospectively pardon the illegal acts of the Australian Government in relation to refugees that entered the relevant waters of the Territory of Ashmore and Cartier Islands.

D4R denounces the fifth clause of the Bill which claims that it:

***'is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.'***

D4R considers that the Bill does not accord with the human rights and freedoms recognised or declared in the international instruments in Section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. 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. The 'Statement of Compatibility with Human Rights within the Bill' is therefore noncompliant and invalid. Disparate to the human rights implications outlined within the Bill, the 'right to freedom of movement' has not been, and cannot be, upheld under such circumstances. D4R strongly maintains that refugees should be afforded with the same human rights as other Australians. We support on-shore processing, whereby refugees have adequate and just accessibility to healthcare and medical treatment.

## **RECOMMENDATIONS**

1. Immediate release of any persons that are in offshore detention that entered the relevant waters of the Territory of Ashmore and Cartier Islands after 23 January 2002.
2. The Australian Government should be held accountable for the illegal detention of persons offshore who entered the relevant waters of the Territory of Ashmore and Cartier Islands after 23 January 2002.
3. Legal advice should be provided to refugees affected by the Migration Bill 2018.

## **REFERENCES**

Saunders, C. and Le Roy, K. (eds.), *The Rule of Law*, The Federation Press, 2003.

Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 7 of 2018*, Commonwealth of Australia, 2018.

The Parliament of the Commonwealth of Australia, *Migration (Validation of Port Appointment) Bill 2018*, 2018.

The Parliament of the Commonwealth of Australia, *Explanatory Memorandum, Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014*, 2014.