

**Low legal rights in Malaysia, Melbourne court told in 'refugee swap' case**  
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MELBOURNE, Aug 23 — The highly controversial Malaysia-Australia refugee swap was accused yesterday of not protecting the legal rights of the 800 refugees once they are interned in Malaysia.

The High Court heard a case brought by two Afghans — an unaccompanied 16-year-old and a 24-year-old man seeking to prevent their deportation to Malaysia.

Counsel for the two, Debbie Mortimer, argued Immigration Minister Chris Bowen cannot declare Malaysia as a processing point because the treatment there would fail to meet Australian standards, The Age newspaper reported.

Mortimer told a full bench that Australia's Migration Act requires Bowen to declare in writing that Malaysia has effective procedures to assess asylum seekers and protect them while meeting human rights standards.

She said Malaysia has no objective legal regime to meet those requirements.

There was examination by the court of Clause 16 pointed out by Justice William Gummow , stating the deal was "not legally binding", and then Clause 10 which lists Malaysia's "commitments".

Mortimer said that political commitments in regards to future outcomes do not meet the criteria listed.

She said that the operational guidelines for the deal only describes unenforceable promises for the 800 refugees to be sent to Malaysia.

Since the deal was struck, 335 refugees have arrived and temporary located in Christmas Island — 92 of them children, of whom 30 being unaccompanied minors.

The plaintiffs are from the 335 arriving by boat on August 4. They have both transited through Malaysia before and claim being persecuted there.

Mortimer said refugees in Malaysia face authorised assault, coercion and deprivation of liberty by officials. She said the situation was dire because Australian courts were the only opportunity for judicial review.

The Australian government is set to argue through its counsels that Bowen has been given commitments by Malaysia to improve its treatment of refugees, which include the right to work in Malaysia.

The focus will be on the practical realities of what the deal offers refugees.

Lawyer David Manne who brought the case up initially said outside court that his clients were very vulnerable and were petrified of being sent to Malaysia, and glad the case is being heard

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