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$70 million is tiny sum in the scheme of the federal government's expenditure to manage asylum seekers who arrive by sea. AAP/Eoin Blackwell

The federal government on Wednesday reached a settlement with 1,905 detainees on Manus Island for A$70 million. The settlement was agreed immediately before a trial was due to begin in Victoria's Supreme Court. The case alleged the Commonwealth and its detention centre contractors, G4S and Transfield, had breached a duty of care owed to the plaintiffs in relation to their detention, and falsely imprisoned them between November 2012 and May 2016.

The decision to reach a settlement can be read in several ways.

It would first seem to be a stunning admission by the Commonwealth that it did owe a duty of care to the detainees, and that it breached this duty through its detention practices.

Alternatively, it may be read as a strategic decision by the Commonwealth to reduce the political damage it believed would be caused through a protracted trial (predicted to be six months). This damage was likely to be exacerbated by the court's decision to allow proceedings to be streamed live .

A small price to pay?

Compared to the federal government's expenditure to manage unauthorised maritime arrivals – $1.078 billion in the 2015-16 financial year, and more than $800 million in 2016-17 – $70 million is a tiny sum.

And $70 million – an average of about $36,000 per detainee – might seem a small price for the Commonwealth to pay for the litany of allegations of mistreatment detailed against it in the statement of claim. These included:

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failure to provide adequate toilet facilities;

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contaminated meals;

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inadequate and delayed medical treatment; and

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illegal detention.

This mistreatment was connected to the death of three detainees, and the serious injury of many more.

The class action brought the issues to a conclusion in a more timely fashion than individual actions could have done. But given the extent of the harm to each individual, the settlement amount for each person is likely to be significantly lower than they might have received in an individual claim.

The action was only peripherally about the money, though. The case provided a platform to lay bare the ugly reality of conditions in detention and the role of the Commonwealth and its contractors in producing and sustaining those conditions over many years.

A new way to hold government to account

In this case, private litigation was able to play a significant role in holding the government to account in an environment in which traditional accountability mechanisms fail to cut through . There are several reasons for this.

First, the case was able to produce new information about conditions on Manus Island. Once the class action was on foot, it provided a platform for expert witnesses and detainees to testify to conditions in detention free from the constraints of other types of investigation. It provided access to sensitive documents, such as the detail of government contracts with detention centre operators.

In contrast, the Australian Human Rights Commission only investigates detention abuses on Australian territory. And it is difficult for NGOs to investigate conditions in the detention centres. They need permission from governments to visit centres, and findings in their reports are easily denied by governments
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As a result, the best information on conditions in detention is through reports of those working in the centres, or through leaked documents .

As Slater and Gordon lawyer Andrew Baker said following the settlement, the case provided a strong reminder of the role the legal system can play in:

… holding governments and corporations accountable.

The case may herald the beginning of a period in which the Commonwealth will be forced to account for its offshore detention policy through protracted legal action.

What remains unclear is how many Manus Island detainees opted out of the action, and are thus free to bring individual claims. In light of the government's decision to settle the claim, detainees outside the class action – and detainees on Nauru – may look to bring individual actions for negligence and false imprisonment against the Commonwealth.

If the treatment of these people was particularly bad, and they manage to reap a significant compensation settlement, this may open alternative pathways to settle in Australia. They might, for example, be able to apply for an investor visa , which requires a $1.5 million investment in a

state or territory upon nomination.

There are no doubt many obstacles to such an application. This includes the ability to meet the health requirements for the visa – which might be compromised due to the applicants' treatment in detention – or understanding Australian values, which may well seem very confusing to those subjected to offshore detention.

However, that such an application could even be contemplated highlights the perversity of Australia's treatment of asylum seekers. It brings into shocking relief the distinction drawn between the same person as an asylum seeker and as a migrant with the means to invest in Australia's economy.

Alex Reilly is is involved in a research project investigating labour supply in the Horticulture Industry, funded by VegetablesWA, and in partnership with the Department of Immigration and Border Protection, the Department of Employment and the Fair Work Ombudsman.

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