

ACTION ALERT: IMMIGRATION DETENTION CENTRES

New Legislation

The Government has introduced legislation to Parliament under the title *Migration Amendment (Maintaining Good Order of Immigration Detention Facilities) Bill*. The legislation passed the House of Representatives and went on to the Senate in March, to be considered by the Legal and Constitutional Affairs Committee. Their response is due by 5 June 2015.

The provisions of the legislation allow for officials at detention centres to “use such reasonable force against any person or thing as the authorized officer reasonably believes is necessary to (a) protect the life, health or safety of any person...or (b) maintain the good order, peace and security of an immigration detention facility”. There are provisions that endeavour to restrict the use of force in situations which might lead to grievous bodily harm, and to ensure that the officers have approved training and qualifications.

The Government believes the legislation is necessary because of the increasing presence of ‘high risk detainees’. The Immigration Minister, Peter Dutton, told Parliament that detention centre staff currently rely on common-law powers to exercise reasonable force to manage safety, peace and security. The Department’s deputy CEO of operations Michael Outram has said that the legislation is a ‘measured response’ to the threat posed by a small number of detainees. The legislation does not apply to Nauru or Manus Island.

The Parliamentary Joint Committee on Human Rights reported in March 2015 that the bill appears to lack a number of safeguards that apply to analogous state and territory legislation governing the use of force in prisons. For example, there is no requirement that:

- the use of force only be used as a last resort;
- force should be used only if the purpose sought to be achieved cannot be achieved in a manner not requiring the use of force;
- the infliction of injury is to be avoided if possible;
- use of force to protect a person from a ‘threat of harm’ applies only to an ‘imminent’ threat;
- the use of force to ‘prevent a person from damaging, destroying or interfering with property’ is permissible only if the person is in the process of damaging the property and, if not, there must be a reasonable apprehension of an immediate attack; and
- the use of force be limited to situations where the officer cannot otherwise protect him or herself or others from harm.

Claire Higgins (UNSW International Refugee Law Centre) said (*The Drum*, 27 March 2015) that the changes, along with the creation of the new Border Force, represent an alarming trend. “Since the Fraser government launched Australia's first formal refugee policy, the way governments manage the needs of those seeking protection has changed dramatically. If the new bills pass, Australia will only cement its growing reputation in the international community as a country that uses militaristic force in response to requests for asylum”.

Paul Farrell (*The Guardian*, 8 April 2015) underlined the likely impact of the legislation in allowing officers with basic training to inflict bodily harm if they reasonably believe it necessary to protect life of a person including themselves. It would also limit severely the capacity of a detainee to lodge a complaint for personal injury, as they would need to demonstrate that the officer did not act in good faith. This is a level of protection not available to police.

Michael Gordon (*The Canberra Times*, 16 April 2015) reported that the Senate Legal and Constitutional Committee had received a submission from former Victorian Court of Appeal judge Stephen Charles QC that the law would allow security guards to use lethal force ‘with impunity’ because it would be almost impossible for them to face prosecution. The president of the Human Rights Commission, Gillian Triggs, reinforced this by commenting that limits on the use of force by contractors should be based on clearly objective criteria of necessity and reasonableness, and be subject to legal challenge.

Other submissions to that committee from human rights, refugee and law bodies said the government should either scrap or comprehensively amend the so-called ‘good order’ legislation on the grounds that it will give largely unchecked power to guards. The Law Council saw the legislation as exacerbating tensions in the centres, and the Asylum Seeker Resource Centre called on the government to address the real problems in detention centres, including poor living conditions, lack of information to people about their cases, and the indefinite nature of detention.

Possible Responses

The Greens have indicated they will oppose the Bill. It is not yet clear whether the ALP will support it, given the strong views among groups like Labor for Refugees for a more humane policy. The independents have mostly not indicated much interest in the issue, although a couple (Senator Glenn Lazarus and Senator Ricky Muir) have spoken of the right of asylum seekers to be protected and asked for allegations of abuse to be investigated. Friends are urged to monitor Senate proceedings on this issue once the committee’s report has been tabled in mid-May, and to take up concerns with their own State or Territory representatives in the Senate. The progress of the Legal and Constitutional Committee’s deliberations can be checked on the following website: www.aph.gov.au/Parliamentary_Business/Committees/Senate

Points that could be covered in any lobbying:

- The legislation appears to be a security-focused reaction to some specific incidents rather than a comprehensive response to the basic challenge of mandatory detention for asylum seekers.
- The Government seems more concerned to distance itself from the behaviour of the contractors than to seek humane solutions to the needs of asylum seekers held for long periods.

- The power being proposed are greater than those available to police.
- The impact of the legislation is likely to reinforce the secrecy surrounding the operation of detention facilities by reducing the opportunity for the contractors and their staff being held to account legally.
- The fact that the legislation does not cover Nauru or Manus Island centres leaves unresolved the issues arising from serious incidents in those places.

QPLC will be pleased to learn of action taken on this matter, and will continue to provide information as the concerns require.

Canberra
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