

## WATCHING BRIEF WM15-10: AUSTRALIAN BORDER FORCE

*This report outlines the creation and role of the Australian Border Force (ABF), its characteristics, and various assessments of its likely impact on Australian society and beyond. Quakers are encouraged to use this as a basis for conversation about the implications and possible action in response.*

### Background

The Minister for Immigration and Border Protection, Peter Dutton MP, announced on 26 June 2015 that

From 1 July, the ABF, as the operational arm of the Department of Immigration and Border Protection, will be the nation's primary border protection agency. Under the ABF, Australia will have a tougher approach to immigration compliance and an intelligence-led targeting regime focused on networks seeking to breach our border.

The Australian Border Force (ABF) was formed on 1 July 2015 as a result of the integration of the functions of the Department of Immigration & Border Protection and the Australian Customs & Border Protection Service. It brings together the operational, investigative, compliance, detention and enforcement functions of the two agencies. Its functions are:

- Facilitating the lawful passage of people and goods.
- Investigation, compliance and enforcement re illicit goods and immigration.
- Offshore detention, removals and support to regional processing.

The border is seen as “a complex continuum stretching offshore and onshore, including the overseas, maritime, physical border and domestic dimensions of the border”. The intention of ABF is to “deliver effective border control over who and what has the right to enter or exit, and under what conditions”. The ABF is headed by a Commissioner (currently Roman Quaedliviog, a former police officer) and has an operations group and a support group, working with a variety of other government agencies.

The ABF Act was passed on 14 May 2015 with bipartisan support. It establishes the new body, and delegates extensive power to the Minister, and sets out employment conditions including criminal liability for disclosing ‘protected information’ about detention centres. In response to concerns about his, both Government and Opposition have said that workers can raise issues under the Public Interest Disclosure Act 2013. The Greens opposed the creation of the ABF as unnecessary and sought to amend the legislation to give greater protection to whistleblowers.

## Operation Fortitude

On 28 August 2015, a media release revealed that there were plans for uniformed Victorian police and ABF officers to move through Melbourne on 29 August checking visas. This generated a response via social media, leading to a large gathering of people near Federation Square/Flinders St Railway opposing such a move. As a result the plan was abandoned, and politicians and police and ABF scrambled to explain that it had all been a mistake because of a poorly-worded media release. It is clear that the ABF must have a reasonable belief of an offence before it can detain someone for a suspected visa violation.

On the same day (28 August) the ABF removed about 30 detainees from the Maribyrnong Detention Centre in Melbourne in a raid described by a witness as 'brutal and intimidating'. A report by Neelima Choahan in *The Age* (1 Sept 2015) said the raid was described by the Immigration Department as a routine search for unauthorized and illicit contraband. However it appears that many detainees were handcuffed and taken away, possibly to detention centres in WA or Christmas Island. Pamela Curr of the Asylum Seeker Resource Centre was quoted as saying that families have been contacting them to find out where their relatives have been taken. She speculated that the raid was to make space for people expected to be caught up in Operation Fortitude the next day.

## Analysis and Comment

Peter Hartcher (*Sydney Morning Herald*, 1 September 2015) said the embarrassment caused by Operation Fortitude did not affect the build-up of the ABF to a strength of around 6000. Whereas previously Immigration officials did not become involved in raids, most ABF staff will eventually be defined as 'use of force' officers, have training in handling guns, and be empowered to "restrain and handcuff people". Working in counter-narcotics, counter-terrorism, marine patrol and bikie gang operations, these armed officers will number about twice the former levels in Immigration and Customs.

Patrick Stokes, Senior Lecturer in Philosophy at Deakin University, wrote (*The Conversation*, 2 September 2015) about the understandings of 'border'. He described the varying definitions of 'border' over the centuries leading to some strange anomalies in where physical borders are seen to be. "In the simplest of terms, modern states demand the right to determine how they will live within their own boundaries, but also seek the benefits of open movement of goods and people and of a rule-governed international order. The tension here is that we claim the right to make rules for ourselves while living in a broader environment that requires us to subject ourselves to external rules if we are to gain certain benefits".

He goes on to point out that the use of a flexible definition of 'border' favours those who have the good fortune to live in certain places, and raises a basic question of "how to balance sovereignty against the demands of global commerce....what entitles us to make or withhold a gift of something we haven't ourselves earned?" He argues that the approach of the ABF and the Government places too high a priority on 'border protection' and 'right of exclusion' rather than accepting any moral demand for compassion towards asylum seekers. Given the scale of the refugee population in the world, can developed nations assume the right to be comfortable?

Graham Philipson (*Government News*, 31 August 2015) said that, according to the Community and Public Sector Union (CPSU), ABF officials “fear the Federal Government has made them political pawns and targets for violence” following the abortive Operation Fortitude. “Our members were deeply concerned at the suggestions they would be stopping all people on the street, which is not how their work has been done in the past”. While industrial action is unlikely, many staff are unhappy at being part of a paramilitary organization. Graham Philipson quotes the Council of Civil Liberties as saying “it is inconsistent with democratic principles to establish an armed border paramilitary agency subject to political whim and lacking independent oversight”.

Gillian Triggs, president of the Australian Human Rights Commission, spoke in Darwin about “the creeping powers of government and how they infringe upon civil liberties”. A report in *The Guardian* (4 September 2015) said she pointed to “the metadata retention laws, foreign fighter laws, mandatory detention of asylum seekers and refugees, paperless arrests, and laws banning doctors and people in public employment from speaking about conditions in detention centres” as examples of how civil and human rights are threatened. In relation to the ABF, Gillian Triggs said that no MP in the major parties in the House of Representatives challenged the additional powers given to it, and only the Greens in the Senate raised objections.

Stephen Clibborn (*The Canberra Times*, 9 September 2015) drew attention to the link between ABF operations and the recent scandal surrounding underpayment of foreign students by the 7- Eleven stores. He said that complaints about poor treatment are considered by the Fair Work Ombudsman (FWO), but this is a problem because the Ombudsman is also required to help the Department of Immigration and Border Protection to investigate visa breaches. “This compromises the FWO’s ability to properly execute its primary function of investigating compliance with employment laws. The same fear of detention and removal preventing 7-Eleven workers from recovering lost wages will prevent other visa holders reporting to the FWO”. He advocates an independent role for FWO.

## **International Response**

On 26 September 2015 the *ABC News* reported that the United Nations Special Rapporteur on human rights of migrants (Francois Crepeau) has postponed a planned visit to Australia, claiming that the Federal Government’s immigration legislation preventing people talking about what happens in detention facilities does not allow him to carry out his job. He was quoted: “In preparing for my visit, it came to my attention that the 2015 Border Force Act, which sanctions detention service providers who disclose ‘protected information’ with a two-year court sentence, would have an impact on my visit as it serves to discourage people from fully disclosing information relevant to my mandate”.

## **Quaker Response**

The emergence of Australian Border Force signals a trend towards more paramilitary-style approaches in a range of government agencies. QPLC will keep Friends informed on this matter, and welcomes feedback on action taken at a regional or local level to raise public awareness.

Canberra

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