

THE HON. STEPHEN CHARLES Q.C.

14 April 2015

Senators,

My daughter Lucy Hamilton and Linda Cusworth, now in Indonesia, have prepared the following submission to the Senate Committee considering the above Bill. I am a retired Judge of the Victorian Court of Appeal, and am in complete agreement with their submission.

As Concerned Australian citizens who have spent almost 50 years between us working in community service programs, accommodation facilities and educational institutions, we are horrified at the systematic abuse that this Bill will allow to be inflicted on vulnerable people. We ask that the Senate Legal and Constitutional Affairs Committee reject the whole of this Bill for the following reasons:

1. The Bill allows an authorised officer to use whatever force he/she believes is necessary to "maintain the good order, peace or security of an immigration detention facility" and to prevent the disturbing of that peace and good order. However there is no definition of the terms "good order", peace or "security" in the document. Therefore this bill allows for force to be used against detainees who are protesting peacefully or not complying with instructions. It allows excessive force to be used in almost any circumstance, as "reasonably believe" is entirely subjective.
2. The Bill gives permission for an authorised officer to act in a way that could cause grievous bodily harm if the authorised officer "reasonably believes" that it is necessary to do so. A duty of care is owed to asylum seekers who are detained in Australian-funded detention centres. Allowing such officers to cause grievous bodily harm is unacceptable. It will cause similar human rights abuses to those which occurred at the Manus Island detention centre in February 2014.
3. This Bill allows authorised officers to act out of Australian common and criminal law. It states that court proceedings may not be instituted or continued against the Commonwealth if the use of force was "exercised in good faith". The bill states that this is "despite anything else in this Act or any other law. Therefore an authorised officer can beat an asylum seeker to death without criminal charge if he/she believes the lethal force was used " in good faith", which again is entirely subjective.
4. The Bill states that an authorised officer must not "subject a person to greater indignity than the authorised officer reasonably believes is necessary in the circumstances". This implies that treatment which causes indignity is a given, and will only be considered to be unlawful or inappropriate if more indignity was perpetrated than the officer reasonably believed was necessary in the circumstances. Again the standard is entirely subjective.
5. Under this Bill, the training and qualifications necessary for authorised officers will be decided by the Minister alone. Without any accountability, this could cause one of two disturbing situations:

- (a) authorised officers may be under-equipped for their role;
 - (b) authorised officers may be given training which would increase the use of combative approaches to asylum seekers.
6. This Bill removes the need for thorough investigation of incidents. While detainees will have opportunity to lodge a complaint about their treatment in detention facilities, the Secretary will be given the power to conduct the investigation in any way he/she decides is appropriate, or to simply dismiss the complaint as "frivolous" or "misconceived" and decide not to investigate it at all.

Reza Barati was beaten to death with a rock, inside an Australian-funded immigration detention centre facility. Many others were injured that same night. Video footage has emerged from Manus Island which provides evidence of injuries sustained by asylum seekers when a hunger strike was ended by the use of force in January this year. This Bill provides an open licence for further deaths and injuries to occur both onshore and offshore, at the hands of authorised officers. It will remove the power of the courts to impose penalties on those responsible.

This approach would not be tolerated in our schools and our community residential units and for people who have a disability. We are appalled that it could be allowed in centres for those who have already been traumatised by violence and persecution. We urge the Senate Legal and Constitutional Affairs Committee to reject this Bill in its entirety.

Wes and Linda Cusworth and Lucy Hamilton

I have sent this submission on behalf of the signatories and because my daughter is at this moment still in Indonesia. As stated at the outset, I entirely agree with their submission and join in their request that the Committee reject this Bill in its entirety.

The Hon, Stephen Charles QC..