

Monday 16 March 2015

Attention: Senate Legal and Constitutional Affairs Committee

Submission: Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015

I am concerned about several aspects of this bill, namely:

- It allows 'authorised officers' in immigration detention to use 'reasonable force' – I am concerned that the vague nature of 'reasonable force', combined with the history of violence against asylum seekers in immigration detention by immigration detention authorities will give more power to officers to the detriment of the physical wellbeing of asylum seekers;
- I am concerned that the use of 'reasonable force' to prevent disturbances to the 'good order, peace or security' of immigration detention facilities will limit asylum seekers' right to peacefully protest, as is their right under the Universal Declaration of Human Rights;
- The bill makes reference to members of 'outlaw motorcycle gangs' as a compelling reason for increasing 'authorised officer' powers to use 'reasonable force'. In the absence of any real transparency from the Federal Government on asylum seeker issues, and in light of similar politicking by the former LNP government in Qld, I am concerned that this is being used as a reason to increase authorized officer power in the absence of any real evidence that this is needed;
- I am particularly concerned that 'reasonable force' may be used to 'move a detainee within an immigration detention facility', particularly where an asylum seeker is being forced into solitary confinement, which is detrimental to both their physical and mental health. I am also concerned about the disproportionate impact that the exercise of 'reasonable force' will have on women and children asylum seekers, some of whom have already experienced sexual assault at the hands of immigration detention authorities as outlined in the Triggs report;
- Furthermore, I am concerned that the definition of 'immigration detention centre' is too vague as to allow the Minister for Immigration and Border Protection to determine unilaterally where this is, thus allowing for the use of 'reasonable force' in a broader number of locations;
- I am also concerned about the bar placed on action against the Commonwealth Government if 'reasonable force' is used in an immigration detention facility in good faith – this unnecessarily limits the capacity for asylum seekers to challenge the use of force;
- I am also concerned that the bill limits asylum seekers' access to courts and a fair hearing by implementing an internal complaints process within the Department of Immigration and Border Protection; and
- Finally, I seriously question the validity of the statement in the explanatory memorandum that the bill is consistent with Australia's human rights obligations, particularly in light of recent report by the UN Special Rapporteur on Torture that stated that Australia's mandatory and indefinite detention of asylum seekers contravened Australia's obligations under the UN Convention Against Torture

Yours sincerely

Ms Danieka Montague