

Chapter 3

Committee view and recommendations

3.1 The Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015 has been drafted in response to real and pressing issues facing service providers in Australia's immigration detention facilities. The need for persons working in detention centres to have greater clarity about their powers to manage disturbances and maintain good order and safety has been noted since at least 2011. The more recent change in the demographic profile of the detainee population, with increasing risk of disturbances and violent incidents, makes the case for this legislation now a matter of some urgency.

3.2 The committee is grateful for the large number of submissions that it received to the inquiry, many of them thoughtful and detailed. It has considered the various concerns raised, most of which are discussed in chapter 2.

3.3 The committee notes the government's mandate to deliver border protection policy settings that reflect the best interests of the Australian people, and that the good order and operational efficiency of detention facilities is manifestly essential to this goal. As the department reiterated during the inquiry, '[w]hat we are trying to achieve is the maintenance of standards of safety and security within detention centres that people are entitled to and enjoy within the broader community'.¹

3.4 The committee does not regard it as sufficient to leave service provider staff in detention facilities to manage disturbances and violence without any protection beyond the limited defensive powers provided under the common law. The Bill establishes a clear authority, drawing upon comparative legislation and tailored to the particular circumstances of immigration detention, for service providers in detention facilities to exercise the powers necessary to protect themselves and others, and to maintain an environment of security and safety for all who reside and work there.

3.5 The committee believes that this legislation is necessary and appropriate, and should proceed.

Recommendation 1

3.6 The committee recommends, subject to Recommendations 2, 3 and 4, that the Bill be passed.

3.7 The committee is cognisant of the questions raised during the inquiry around the tests both for the exercise of the use of force power under section 197BA, and the application of the bar on proceedings proposed in section 197BF. The committee regards the existence of objective tests for the reasonableness of the use of force as imperative to ensuring that the Bill is proportionate to meet its objectives, and welcomes the department's clear and repeated assurance that the Bill does not make the threshold for acceptable use of force a purely subjective matter.

1 Mr Michael Outram, *Committee Hansard*, 16 April 2015, p. 35.

3.8 The committee notes some genuine concerns that the use of force powers clarified by the Bill should remain consistent with Australia's customary international obligations, and should operate within a framework of transparency and accountability such that the Australian public would reasonably expect.

3.9 The committee urges the government to ask the department to elaborate on its evidence, provided to the committee's public hearing on 16 April 2015, that the department could consider implementing safeguards to specifically address the circumstances of vulnerable persons and children.

Recommendation 2

3.10 The committee recommends that the Commonwealth Ombudsman's suggestion that the Bill's operation should extend to cover 'situations where detainees are in transit between facilities and in other locations' be given further serious consideration by the government.

Recommendation 3

3.11 The committee recommends that the Explanatory Memorandum clarify the extent of the use of force under section 197BA:

- **that reasonable force must only be used as a measure of last resort. Conflict resolution (negotiation and de-escalation) must be considered and used, wherever practicable, before force is employed;**
- **that reasonable force must be used for the shortest amount of time possible;**
- **that reasonable force must not include cruel, inhuman or degrading treatment; and**
- **that force must not be used for the purposes of punishment.**

3.12 The committee was concerned to satisfy itself that the training and qualifications required of authorised officers vested with this power are adequate to ensure its responsible use. On this point the committee welcomes the department's detailed advice and assurances as to the training that would be provided to all service provider staff, and the department's commitment to monitor the standards applied. The committee also welcomes the protections provided to detention centre employees and contractors under the scheme contemplated by the Bill.

3.13 The committee understands the rationale for providing a discretion to the minister to review and amend the training and qualification requirements from time to time, bearing in mind the importance of maintaining appropriate standards and responding to changing needs. Nevertheless, as proposed during the inquiry, it would give comfort to both the committee and the broader community if those standards were publicly reported and accountable. A simple mechanism to achieve this would be to classify ministerial determinations in this area as legislative instruments, thereby ensuring publication and parliamentary scrutiny of any proposed changes.

Recommendation 4

3.14 The committee recommends that the government remove the word 'not' from subsection 197BA(8) of the Bill, in order to provide that a ministerial determination made under subsection (7) is a legislative instrument.

**Senator the Hon Ian Macdonald
Chair**

