Submission to Senate Legal and Constitutional Affairs Committee

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

Introduction

The Combined Refugee Action Group (CRAG) is based in Geelong, Victoria, and brings together people from a variety of backgrounds –Community and Faith Groups, Unions, Refugee Support Groups, Social Justice and Social Action Groups, students and individuals - united by the shared aim of advocating for just, humane and welcoming policy towards asylum seekers and refugees. We have around 600 people on our membership list, as well as a following of over 1,600 on social media. CRAG advocates for policies that are informed by, and aligned with, the UN Refugee Convention and Protocol, and that are developed in partnership with our regional neighbours, to ensure the safety of vulnerable asylum seekers. CRAG joined a police-estimated crowd of 15,000 people in Melbourne on Sunday 29-03-15 to walk for justice for refugees and asylum seekers and to oppose the harsh, cruel, punitive policies of the Australian Government.

We have very serious concerns about the *Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015.* We oppose this Bill on the grounds that it removes natural justice and paves the way for further human rights abuses to those which have been documented in *The Moss Report* and by the UN Special Rapporteur on Torture.

Concerns in the Bill

- The Bill allows an authorised officer to use whatever force he/ she reasonably believes is necessary to not only protect the life, health and safety of any person, but to "maintain the good order, peace or security of an immigration detention facility". It also allows authorised officers to use whatever force they decide is necessary to prevent action which "disturbs the good order, peace and security of the facility". The Bill contains no definition of the terms "good order", "peace" or "security" actually. The measure of "reasonably believed to be necessary" for the amount of force allowed, is open-ended and subjective. This bill therefore allows for force to be used against detainees who are protesting peacefully, and force excessive force to be used in almost any circumstances.

- The Bill gives permission for an authorised officer to undertake actions which are likely to cause grievous bodily harm if the authorised officer reasonably believes that action is necessary to protect life or prevent serious injury to another person (including the authorised officer). A duty of care is owed to asylum seekers who are detained in Australian funded detention centres. Allowing authorised officers to cause grievous bodily harm is unacceptable and will make way for similar human rights abuses which occurred at the Manus Island detention centre in February 2014.

- The Bill removes accountability and takes immigration detention centre operations outside of the rule of law and natural justice. It states that proceedings may not be instituted or continued in any court against the Commonwealth in relation to an exercise of the power to use force if it was "exercised in good faith". The Bill states that this is "despite anything else in this Act or any other law". This Bill allows authorised officers to act outside of the laws of common and criminal law.

- The Bill also states that an authorised officer must not "subject a person to greater indignity than the authorised officer reasonably believes is necessary in the circumstances." The Bill effectively states that people will routinely be subjected to indignity. Indignity will only be considered problematic if more indignity than is 'reasonable in the circumstances' is perpetrated.

- Under this Bill, the Minister alone will be allowed to determine the training and qualification requirements for authorised officers. Those training and qualification requirements are not listed in the Bill. The staff employed as authorised officers may be extremely ill-equipped for their role. Conversely, they may be given military style training which would increase the use of adversarial approaches to asylum seekers. Allowing the Minister alone to decide on training and qualifications is a recipe for disaster.

- This Bill removes the likelihood of fair and through investigation of incidents. While detainees will have opportunity to lodge a complaint about their treatment in detention facilities, the investigation will either be "conducted in any way the Secretary thinks appropriate.", or not at all. The Secretary may decide not to investigate if he/she believes that the complaint is "frivolous, vexatious, misconceived, lacking in substance or is not made in good faith"; or "not justified in the circumstances." The Bill provides for complaints to be mishandled and ignored.

Conclusion

One man has already been killed, and many others injured, due to the use of force in the detention centre on Manus Island. This Bill will increase the likelihood of further deaths and injuries, and will remove the power of the courts to hold those responsible to account. For this reason, we request that the Senate Legal and Constitutional Affairs Committee recommend that this Bill be opposed in its entirety.