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Ms Sophie Dunstone
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Senate Standing Committees on Legal and Constitutional Affairs
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By email: legcon.sen@aph.gov.au

Dear Ms Dunstone

Inquiry into Maintaining the Good Order of Immigration Detention Facilities Bill 2015

The Asylum Seeker Resource Centre (ASRC) thanks the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) for the invitation to make a submission regarding the Maintaining the Good Order of Immigration Detention Facilities Bill 2015 ('the Bill').

The ASRC strongly opposes the proposed amendments on the following grounds:

- They represent an abuse of power, granting authorised officers broader and more *subjective* powers than police officers or prison guards;
- They deny asylum seekers access to natural justice should they be subjected to excessive force while in detention, as the proposed amendments severely restrict the liability of both individual officers and the Commonwealth.

There is no reasonable basis for granting broad, sweeping powers to authorised officers to use force indiscriminately with a lack of accountability or review. These laws are unnecessary and dangerous.

The ASRC believes that rather than introducing more punitive, coercive measures against asylum seekers, the Government should address the real problems in detention centres – the poor living conditions, the lack of information given to people about their cases and the arbitrary, lengthy nature of detention – with people currently being held for a record 442 days on average.

Please find following the ASRC's submission to the Committee. If you have any questions please do not hesitate to contact us

Thank you for the opportunity to participate in this important inquiry.

Kon Karapanagiotidis OAM
CEO

1. Background

The Asylum Seeker Resource Centre (ASRC) protects and upholds the human rights, wellbeing and dignity of asylum seekers. We are the largest provider of aid, advocacy and health services for asylum seekers in Australia. Most importantly, at times of despair and hopelessness, we offer comfort, friendship, hope and respite.

We are an independent, registered non-government agency and we do not receive any direct program funding from the Australian Government. We rely on community donations and philanthropy for 95 per cent of our funding. We employ just 59 staff and rely on over 1000 dedicated volunteers. We deliver services to over 2,000 asylum seekers at any one time.

Our submission is based on 13 years of experience working with asylum seekers.

2. Executive Summary

The ASRC strongly opposes the proposed changes in this Bill on the basis that they:

- Increase the powers of authorised officers to use force;
- Allow the increased use of force with an unacceptably low *subjective* standard;
- Severely restricts the liability of authorised officers and the Commonwealth, removing access to justice for asylum seekers should they be subjected to excessive force ;
- Establish an insufficient complaints process with the removal of independent oversight;
- Provides inadequate training and qualifications standards for authorised officers with such broad powers;
- Are not compatible with human rights standards.

The powers in the Bill are broad and excessive, allowing the use of force in a broad range of circumstances in immigration detention facilities (IDF) with virtually no oversight or recourse.

There are sufficient and appropriately specific powers already contained within the *Migration Act 1958* for authorised officers.

There is no evidence base to support an increase in these powers.

The ASRC contends that the Government should address the real problems in Australia's immigration detention system – the length of time people are being held, overcrowding, lack of information about their case and a lack of access to legal assistance through the refugee determination process.

All of these factors are putting an enormous mental and emotional strain on people held in detention.

Compounding the problems arising out of the current indefinite, indiscriminate nature of detention, asylum seekers are being housed alongside convicted criminals who have been released from the prison system, often after long sentences for serious offences.

Not only is this potentially dangerous for asylum seekers, but it also means they are conflated with the convicted criminals they are detained alongside. This Bill seeks to reinforce this conflation.

The ASRC contends that broadening authorised officers' coercive powers is unnecessary and dangerous and recommends that the Bill is opposed in full.

3. Increased powers to use force

The proposed new s197BA of the Migration Act gives authorised officers powers to 'use such reasonable force' against 'any person or thing' as the *authorised officer* 'reasonably believes' is necessary to:

(a) protect the life, health or safety of any person (including the authorised officer) in an IDF; or
(b) maintain the 'good order, peace, or security' of an IDF.

This will provide authorised officers with powers that are extremely broad and almost entirely discretionary in their potential application. In particular, the Bill provides no clarity around the meaning of 'good order, peace or security', effectively leaving it open to individual officers' subjective judgement.

The operative effect of the legislation is that authorised officers will essentially be permitted to use whatever force they think fit in an almost unlimited variety of circumstances.

Case study – current use of force in IDFs

The ASRC works with asylum seekers in IDFs. We are aware of incidents where excessive force has been used by authorised officers against asylum seekers.

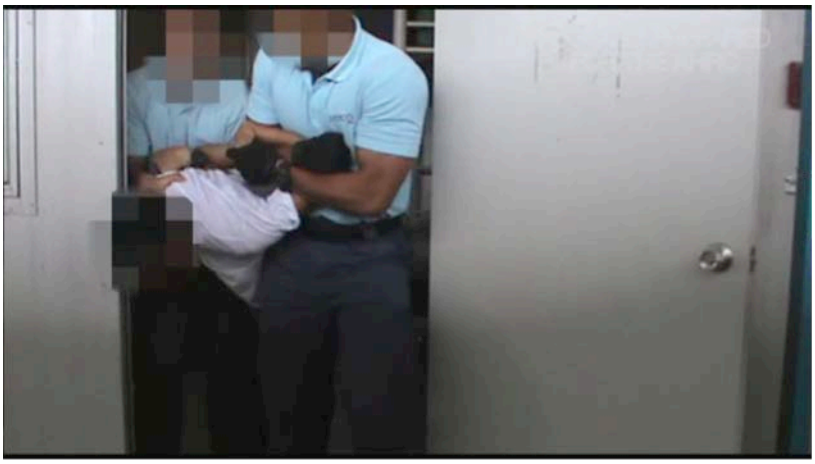
In a recent case, seven Serco officers restrained a young woman, resulting in the pictured injuries:

Increasing powers to use force risks encouraging inappropriate responses to difficult situations in closed environments. Force is not a suitable management tool in detention, as it is more likely to escalate rather than diffuse a potential situation, particularly where people are experiencing mental health issues.

The *Forgotten Children* report by the Australian Human Rights Commission (AHRC) details a distressing incident from March 2014 where asylum seeker children on Christmas Island were forcibly removed from one compound and taken to another[1]. The Commission found that, in this incident, the approved use of force was in violation of article 37(c) of the *Convention on the Rights of the Child.*

The below footage was submitted to the AHRC:

[1] Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014,* p161 – 163.



I think force was over-used. Yes I do. I don't think it was necessary. I think the whole thing could have been handled very differently from the start[2]*.*

- Testimony provided to the AHRC by Ms Deborah Homewood, Managing Director of MAXimus Solutions, the care and welfare provider for unaccompanied children on Christmas Island.

Other incidents at Australian-run detention centres include:

- The use of excessive force by guards at Maribyrnong Detention Centre, with officers themselves reporting repeated assaults on asylum seekers, which is currently under investigation;[3]
- The brutal murder of Iranian asylum seeker Reza Barati and injuring of around 70 other asylum seekers by authorised officers during protests on Manus Island in February 2014[4];
- Distressing evidence of physical and sexual abuse by guards against women and children in Nauru detention as outlined in the Government-instigated Moss Report released in March 2015.[5]

[2] Australian Human Rights Commission, *The Forgotten Children: National Inquiry into Children in Immigration Detention 2014*, p 161 – 163.
[3] See, http://www.theage.com.au/victoria/maribyrnong-detention-centre-growing-culture-of-excessive-force-20150213-13e22f.html
[4] See http://www.theaustralian.com.au/national-affairs/immigration/beating-of-reza-barati-on-manus-island-ended-with-a-rock-dropped-on-his-head-review/story-fn9hm1gu-1226931855221 and Robert Cornall, Review into the events on 16-18 February 2014 at the Manus Island Detention Centre available at https://www.immi.gov.au/about/dept-info/_files/review-robert-cornall.pdf
[5] Review into recent allegations relating to conditions and circumstances at the Regional Processing Centre on Nauru available at http://www.immi.gov.au/about/dept-info/_files/review-conditions-circumstances-nauru.pdf

Given that there are numerous, very serious reported incidents where officers have abused their existing powers and used excessive force against children, women and men in detention, a broadening of powers with limited to no liability or oversight is greatly concerning and potentially very dangerous.

The new powers go well beyond existing provisions in the *Migration Act*, which permit the use of force in specific, prescribed instances, such as carrying out an identification test[6] or conducting a search.[7]

Under the Bill, force will be permitted in any circumstance in which an authorised officer 'reasonably believes' it is necessary to maintain order. Of great concern is that this will be *what that officer reasonably believes* constitutes 'good order' (or 'peace' or 'security').

This may encompass a potentially limitless range of situations, from violent resistance to peaceful assembly and protest. For example, the Explanatory Memorandum refers to the 'deterrence' of disturbances.[8]

This seems to contemplate *pre-emptive* use of force in ways that may potentially impinge on rights of free speech and free association. As a matter of statutory interpretation, the inclusion of ss 197BA(4) reinforces this view. That subsection relates to hunger strikes, which are a form of peaceful protest.

It is arguable that even physical punishment falls within the scope of s 197BA if an authorised officer 'reasonably believes' that such punishment is necessary to maintain the 'good order, peace or security' of an IDF.

By not being tied to specific and prescribed purposes, the new s 197BA could be contrary to the Attorney-General's Department's *Commonwealth Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*[9].

This guide contemplates that coercive powers support specific purposes (such as search, arrest and investigation purposes). It also makes clear that new coercive powers should be created only in exceptional circumstances, where existing powers do not adequately address an identified law enforcement need.

Furthermore, there are already extensive powers for authorised officers in detention facilities to undertake strip searches, regular room searches and detention sweeps. Powers exist for placing detainees in isolation and also physical restraint of detainees. All people are searched as they pass through different sections of the centres.

As well as being unnecessary, the new legislation enshrines a lack of accountability and responsibility if an officer seriously hurts or even causes the death of an asylum seeker.

4. No reasonable basis for the proposed laws

Save for some vague references to 'high risk detainees' in the explanatory memorandum, no attempt has been made by the Government to identify any exceptional circumstances or identified law enforcement need that warrants the granting of new coercive powers to authorised officers in detention centres.

Attachment A of the Bill references the Hawke-Williams Report into *Incidents at the Christmas Island Immigration Detention Centre and Villawood Immigration Detention Centre in 2011*. This report neither

[6] s 261AE *Migration Act 1958.*
[7] s 52 *Migration Act 1958.*
[8] Paragraph 29.
[9] See: http://www.ag.gov.au/Publications/Pages/GuidetoFramingCommonwealthOffencesInfringementNoticesandEnforcementPowers.aspx

discusses nor recommends an increase in powers for authorised officers and as such, does not provide any justification for the Bill.

In considering the Bill, the Parliamentary Joint Committee on Human Rights (PJCHR) noted that the Hawke-Williams Report does not contain any reference to the inadequacy of the common law regarding the use of force and did not recommend creating a statutory use of force power for employees of immigration detention facilities'[10].

The PJCHR also expresses its concerns with the human rights compatibility of the Bill:

> *The Committee considers that this measure engages and limits a number of rights, including the right to life; the prohibition against torture, cruel, inhumane or degrading treatment; the right to humane treatment in detention; and the right to freedom of assembly[11].*

As a consequence of the introduction of new legislation introduced late last year relating to broad character and visa cancellation powers, immigration detention centres are now overflowing with ex-prisoners, who have had their visas cancelled and who face deportation. The ex-prisoners are transferred to immigration detention centres while the visa revocation process is finalised.

This has created a situation where ex-prisoners (on various different visas) that were expecting to be released are now detained with asylum seekers in immigration detention. These two cohorts are very different; ex-prisoners are often frustrated that they remain detained beyond the end of their sentence; asylum seekers are awaiting a decision regarding their claims to be protected from harm and persecution. It is inappropriate and unsafe to place these two cohorts together given the very different circumstances of their detention.

The government made a decision to introduce a regime of broad visa cancellations without consideration for the implementation of this policy. Realising that prisoners that have subsequently had their visas cancelled could not be held in prisons past their release dates, the government has resorted to transferring them into the immigration detention and is now seeking to introduce harsh new laws of control. Asylum seekers have been unfairly caught up in this situation.

Case study – conflating asylum seekers with 'high security risk' detainees

The Maribyrnong Detention Centre (MIDC) has an operational capacity for 70 detainees and a surge capacity for 100 detainees. Currently, the centre holds 140 detainees.

43 detainees are ex-prisoners and 30 of these have threatened to kill nine asylum seekers who refused to hand over their sleeping quarters to the new arrivals. One man was bashed and the asylum seekers then retreated to a section of the centre and sought protection from the SERCO officers.

The ex-prisoners reportedly wanted the room because it had access to a window on the fence line through which they hoped contraband could be passed.

"*I never look in their faces- if they see you look they hit. If they come in the bathroom, I leave right away. They scare me*." Afghan asylum seeker MIDC.

This Bill seeks to conflate asylum seekers with ex-prisoners, which is unfair and misleading.

Already asylum seeker men, women and children in detention centres are under constant camera and human surveillance, guards enter their rooms at night to do body counts and their rooms, bags and pockets are searched without notice (children under 15 are exempt, however they witness these acts

[10] Parliamentary Joint Committee on Human Rights 20th Report, p18 available at http://www.aph.gov.au/~/media/Committees/Senate/committee/humanrights_ctte/reports/2015/20_44/20th%20report.pdf
[11] Ibid, p 16.

upon their parents). Given this existing high security regime, there is no evidence that further powers are required.

5. Immunity from legal action for authorised officers and the Commonwealth

The new s 197BF places a bar on proceedings relating to the use of force by authorised officers, except in the High Court of Australia, unless such force was not used in good faith. This severely restricts asylum seekers' right to independent review of the use of force against them while they are in detention.

It also means these broad powers may be used with impunity with virtually no oversight or accountability.

a. Subjective test an inappropriate threshold

The use of a subjective standard to determine whether force is warranted greatly increases the risk that these powers may be exercised arbitrarily and/or excessively against asylum seekers.

It would be extremely difficult, if not impossible, for someone to prove that an authorised officer *did not* hold a reasonable belief that the force used was necessary. This is likely to be particularly so in instances of heightened risk (such as during riots or other disturbances), or in instances where no third party witnesses exist.

This essentially means that authorised officers' use of force against asylum seekers will go unchecked, except in the limited circumstances where it is possible to bring proceedings in the High Court. It is obviously very costly to bring a matter to the High Court and further, it can only be done in limited circumstances.

The new section expressly retains the original jurisdiction of the High Court under s 75 of the Constitution. This has been done to ensure that the new laws are constitutionally valid. However, s 75 of the Constitution is unlikely to be relevant to the exercise of power under the new s 197BA. The most relevant available remedy would be a declaration that the power was exceeded; there would be no scope for damages for compensation.

In addition to virtual immunity for accountability and review of the use of force by authorised officers, the Bill further seeks to remove any liability of the Commonwealth. By exempting the Commonwealth from proceedings as well as individual authorised officers, the new s 197BF goes far beyond indemnities traditionally granted to, for example, individual police officers.

Any protection from liability for individual authorised officers should be in the form of an indemnity rather than immunity. This would achieve the same purpose of protecting individual authorised officers while still retaining the legal rights of detainees who, as discussed above, are extremely vulnerable to the unlawful use of force against them.

6. Comparable powers

Given that one of the stated aims of the Bill is to provide certainty around the scope of power to use force, it is unclear why the factors outlined in the Statement of Compatibility are not included in the Bill.[12]

The Statement outlines the following requirements for the level of force applied to be compatible with human rights:

- no more than what is required to achieve the specific legislative outcome;

[12] Statement of Compatibility, p 24.

- consistent with the seriousness of the matter;
- proportionate to the level of resistance being offered by the person;
- required to ensure the safety of officers, clients and third parties; and
- not excessive.

However, these factors are not included in the Bill. Such important parameters on the use of force cannot be implied, they must be clearly prescribed in legislation.

This is in contrast to, for example, s 3ZC of the *Crimes Act 1914* (Cth), which gives Australian Federal Police ("**AFP**") officers the power to use force when making an arrest, and which explicitly provides that 'minimum necessary force or indignity' be effected. This is discussed further in the next section.

In any case, the 'implicit requirements' outlined in the statement of compatibility are not implicit at all.

Instead, the Bill appears to give a clear and consistent explicit direction to authorised officers to use their personal judgment when subjecting IDF detainees to force.

The new s 197BA expressly contemplates that grievous bodily harm (including even death) may be lawfully caused to a detainee on the basis of an authorised officer's *subjective belief* that such force was reasonably necessary.

a. Comparison to powers *granted to corrective officers*

Prison officers' powers to use force are governed by various state and territory laws, regulations and guidelines. Section 143 of the *Corrective Services Act 2006* (Qld), which authorises corrective services officers to use reasonable force in particular circumstances, provides a useful example of the way in which relevant provisions are typically framed.[13]

That section provides that a corrective services officer may use force that is reasonably necessary to:

(a) compel compliance with an order given or applying to a prisoner;
(b) restrain a prisoner who is attempting or preparing to commit an offence against an Act or a breach of discipline;
(c) restrain a prisoner who is committing an offence against an Act or a breach of discipline;
(d) compel any person who has been lawfully ordered to leave a corrective services facility, and who refuses to do so, to leave the facility; or
(e) restrain a prisoner who is attempting or preparing to harm themselves or harming themselves.

The corrective services officer may use the force only if:

(a) they reasonably believe that the act or omission permitting the use of force cannot be stopped in another way; and
(b) they give a clear warning of the intention to use force if the act or omission does not stop; and
(c) gives sufficient time for the warning to be observed; and
(d) attempts to use the force in a way that is unlikely to cause death or grievous bodily harm.

This provides clear guidance on when and how reasonable force may be used in the prison system, compared to the proposed Bill which offers very broad and ill-defined parameters for using force in detention facilities.

[13] Available at https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CorServA06.pdf

b. Comparison to powers granted to police officers

Section 30 and 31 of the Explanatory Memorandum contrasts the lawful use of force by police officers with an authorised IDF officer.

Given what will likely be vast differences in training and testing requirements for authorised officers in IDFs versus AFP officers, it is extremely concerning that authorised officers are essentially being granted police powers, without independent oversight.

Further, the Bill provides no safeguards or requirements to limit the arbitrary use of force by authorised officers.

Police powers are governed by a variety of Commonwealth, state and territory laws. Section 3ZC(1) of the *Crimes Act 1914* (Cth), which gives AFP officers the power to use force when making an arrest, provides a useful example of the manner in which relevant provisions are typically framed.

Under s 3ZC(1), no person (including a police officer) may use more force, or subject a person to greater indignity, than is necessary and reasonable to make an arrest or prevent escape after arrest.

Unlike the new powers envisaged in the Bill, the lawful use of force under s 3ZC is assessed according to an **objective** standard of what is necessary and reasonable in any given circumstance.

This is in contrast to s 197BA(5), which states that in exercising the new powers, an authorised officer must not subject a person to greater indignity than *the authorised officer reasonably believes is necessary* in the circumstances.

Section 3ZC(2) does go on to empower AFP officers to use force to inflict grievous bodily harm in limited circumstances, however, it is no broader power than is proposed to be granted to authorised officers under the Bill.

By way of further example, police officers have a common law power to use force to prevent a breach of the peace from occurring. However, when compared to the new Bill, this power is confined to very limited circumstances.

Unlike 'maintain the good order, peace or security of an [IDF]', this definition of 'breach of peace' limits police officers' common law powers to use force in specific and limited circumstances.

Further, the common law makes clear that a police officer may not use force to prevent a breach of the peace unless they hold a reasonable belief that a breach of the peace is *imminent*.

There is no indication in the Bill or in the Explanatory Memorandum that given the similar powers to the AFP that the level of training or testing would be required for authorised officers would be similar. According to the AFP website, an AFP officer must pass six "gateways" of recruitment in order to be able to exercise police powers.[14]

In particular, there is no requirement in the Bill for authorised officers to receive any level of psychometric or psychological screening. Nor is it likely that this level of training and screening will be subsequently implemented by the Minister as contemplated by the new ss 197BA(7).

It is extremely concerning that, under this Bill, powers akin to – and in some respects broader than – police powers will be granted to individuals who are less skilled, trained and vetted than police officers.

[14] AFP Sworn Recruitment Gateways via http://www.afp.gov.au/jobs/sworn-recruitment-gateways.

Lastly, the complaints mechanisms in place in relation to the use of force by police officers are much more sophisticated and satisfactory than the complaints mechanisms contemplated by the Bill. As discussed above, there are fewer restrictions on bringing court proceedings in relation to the use of force by police officers than there are in relation to the use of force by authorised officers under the proposed laws.

c. Comparison to powers granted to employees of mental health facilities

Given the unique vulnerabilities and difficulties faced by asylum seekers and particularly those in detention, it is also worth considering powers to use force granted to employees of mental health facilities.

The regulation of mental health facilities appears to be governed by various state and territory laws. The *Mental Health Act 2014* (Vic) ("***MHA***") provides a useful example.

The MHA ***does not*** authorise the use of force by employees of mental health facilities against patients. Part 6 of the MHA authorises 'restrictive interventions'.[15]

Broadly speaking, 'restrictive intervention' is defined as 'bodily restraint' or 'seclusion' and may only be exercised where it is objectively necessary to prevent *imminent and serious harm* to the patient or another person.

Bodily restraint may also be used where it is *objectively* necessary to administer medication or treatment to a patient. To ensure proper oversight, bodily restraint and seclusion must be authorised as soon as practicable by an authorised psychiatrist, or, if one is not readily available, a registered medical practitioner or the senior registered nurse on duty.

The MHA also establishes a Mental Health Complaints Commissioner and a sophisticated mechanism to deal with complaints relating to relevant mental health facilities.

The provisions of the MHA are in stark contrast to the new powers contemplated by the Bill, even though asylum seekers face a range of complex mental health issues that should be managed sensitively and humanely, rather than coercively.

7. Complaints mechanism – no independent review

The new ss 197BB, 197BC, 197BD and 197BE deal with the making and investigation of complaints, but do not allow for the independent review of the use of force by authorised officers.

Complaints may be made to the Secretary about an authorised officer's exercise of power under the new s 197BA. The Secretary may decide not to investigate the complaint where such investigation 'is not justified in all the circumstances'. This wording means that the mandatory language of s 197BC(1) (that 'the Secretary must investigate a complaint made under s 197BB') is effectively meaningless.

There would rarely be any scope to review the Secretary's state of satisfaction as to such a broad discretion.

If the Secretary does decide to investigate the complaint, they may do so 'in any way' they think appropriate.

There is no procedure in the Bill for the merits review of any decision under ss 197BB to 197BE.

Judicial review would be available, but only for jurisdictional error.

[15] Part 6, Mental *Health Act 2014 (Vic)*.

Beyond this, the complainant's only options would be to go directly to the Human Rights Commission, the Ombudsman or the police.

8. Authorised officers' training and qualifications

The new ss 197BA(6) provides that an officer must not be authorised unless he or she satisfies the training and qualification requirements determined under ss197BA(7).

The Minister is obliged to set out in writing the training and qualifications that an officer must undertake in order to be considered an 'authorised officer', however the new provisions contain no guidance as to what this must entail.

The new ss 197BA(8) expressly states that the Minister's determination in this regard is not a legislative instrument. This means that it is entirely at the Minister's discretion to assess, set and enforce minimum training requirements for authorised officers.

This is inadequate and inappropriate given the breadth of the coercive powers proposed to be granted to authorised officers. The statement in the Explanatory Memorandum that *'it would not be practical to amend the Migration Act or the Migration Regulations on a regular basis to reflect… updated training requirements'* seems implausible given that the *Migration Regulations* are amended several times a month to deal with changes to the detailed criteria for various visa subclasses.

The Explanatory Memorandum[16] suggests that the required training and qualifications may include a Certificate Level II in Security Operations, which covers *'knowledge and skills required for an authorised officer to identify security risk situations, respond to such situations, use negotiation techniques to defuse and resolve conflict and identify and comply with applicable legal and procedural requirements'.*

It is concerning that the contemplated training contains no units in relation to, for example, understanding and applying human rights, or understanding and properly dealing with individuals from different cultures or vulnerable or at risk individuals, including individuals with mental health issues.

Further, paragraph 54 of the Explanatory Memorandum seeks to justify authorised officers' powers to inflict grievous bodily harm with reference to hostage situations. It is obviously undesirable that an authorised officer with rudimentary security training would take it upon himself or herself to deal with such a situation.

Specialist police negotiators and other highly skilled and screened appropriate individuals, such as mental health experts, should deal with these types of high-risk situations.

9. Compatibility with human rights standards

As identified by the Parliamentary Joint Committee on Human Rights, the Bill limits a number of rights protected by the International Covenant on Civil and Political Rights (ICPPR), including:

- The right to an effective remedy (article 2)
- The right to life (article 6)
- Prohibition against torture, cruel, inhuman or degrading treatment (article 7)
- The right to humane treatment in detention (article 10)
- The right to freedom of assembly (21)[17].

[16] Paragraph 61.
[17] Parliamentary Joint Committee on Human Rights 20th Report.

The Committee stated:

> *The committee is therefore concerned that the breadth of the proposed powers may lead to an officer taking action that may constitute degrading treatment for the purposes of international human rights law*[18]*.*

As highlighted earlier, the ASRC is also concerned that current examples of the use of force breach the Convention on the Rights of the Child.

Further to this, blanket immunity from legal action goes against most of the human rights covered in the statement of compatibility, especially those relating to non-discrimination, equality generally and equality before the courts. In *Horvath v Australia*, for example, the UN Human Rights Committee found that a law providing no remedy for persons whose rights had been breached by police misconduct was incompatible with certain human rights.

The only mention the statement of compatibility makes about the immunity is that it 'is consistent with Australia's international obligations because it would constitute legitimate differential treatment and is reasonable in all the circumstances'. The statement does not identify what makes the differentiation legitimate or reasonable.

10. Conclusion

The proposed laws appear to be another example of the Government's increasingly punitive, coercive approach to asylum seekers.

They fail to take into account the traumatic nature of immigration detention – or of the circumstances that forced people in these facilities to seek asylum in the first place – and instead seek to allow Government representatives to use force to further punish already vulnerable people, essentially with impunity.

It is both astonishing and concerning that such expansive powers with such little accountability are being proposed in the wake of a number of serious incidents of violence and excessive force by authorised officers against asylum seekers.

The Government would be better placed to seek to uphold the human rights of people in its care, rather than legitimising the use of force against them.

[18] Ibid.