

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
INQUIRY INTO THE MIGRATION AMENDMENT (PROHIBITING ITEMS IN
IMMIGRATION DETENTION FACILITIES) BILL 2017

Australian Human Rights Commission

Senator Macdonald asked the following question on 27 October 2017:

CHAIR: I will come back to recommendations 3 and 4 and move now to recommendation 5, which relates to strip searches. It seems, to my reading, to be balanced and sensible. Does that apply anywhere else in Australia at the moment—the log of conduct of strip searches, notifying the Commonwealth Ombudsman et cetera and then the Ombudsman’s role? Does it apply anywhere else in Australia that you are aware of?

The response to the honourable Senator’s question is as follows:

The Commission’s submission in the present inquiry drew attention to an investigation by the Queensland Ombudsman of the use of strip search powers at Townsville Women’s Correctional Centre.¹ The Ombudsman referred to regular inspections conducted by the Chief Inspector’s Office – an office that has responsibility to provide independent scrutiny of correctional centres’ compliance with legislation and of Queensland Corrective Services (QCS) practices and treatment of prisoners.²

While the Queensland Ombudsman was critical of the level of oversight provided at Townsville Women’s Correctional Centre, and in particular the three-year gap between visits of the Chief Inspector, it referred with approval to the way in which inspections occurred when they did take place. The Queensland Ombudsman noted:

Inspections of correctional centres in Queensland were historically conducted by the Chief Inspector’s Office approximately every three years. These inspection visits take several days and involve a team of experienced personnel who assess correctional centres against a range of factors set out in QCS’ *Healthy Prisons Handbook*. In relation to strip searches, the *Healthy Prisons Handbook* requires the Chief Inspector’s Office to look for confirmation that strip searches are conducted in accordance with procedure and policy around searches, to ask prisoners for complaints about strip searches and to check that strip searches are authorised, logged and regularly checked.³

At the federal level, an example of an oversight regime for the use of coercive measures by Commonwealth authorities can be found in Part V, Division 7 of the *Australian Federal Police Act 1979* (Cth) (AFP Act). Division 7 provides for a system of

¹ Queensland Ombudsman, *The Strip Searching of Female Prisoners Report – An investigation into the strip search practices at Townsville Women’s Correctional Centre*, September 2014. At <https://www.ombudsman.qld.gov.au/improve-public-administration/reports-and-case-studies/investigative-reports/strip-searching-of-female-prisoners-report--2014-> (viewed 2 November 2017).

² *Corrective Services Act 2006* (Qld), Part 8.

³ Queensland Ombudsman, *The Strip Searching of Female Prisoners Report – An investigation into the strip search practices at Townsville Women’s Correctional Centre*, September 2014, p 24.

independent oversight by the Commonwealth Ombudsman of certain functions of the Australian Federal Police (AFP).

The AFP has an internal system for investigating complaints about 'AFP conduct issues' and 'AFP practice issues'. AFP conduct issues relate to whether an AFP appointee has engaged in conduct that contravenes the AFP professional standards or engaged in corrupt conduct.⁴ There are four categories of conduct in increasing levels of seriousness. Category 3 conduct:

- is serious misconduct by an AFP appointee; or
- raises the question whether termination action should be taken in relation to an AFP appointee; or
- involves a breach of the criminal law, or serious neglect of duty, by an AFP appointee.⁵

Complaints relating to excessive use of force are dealt with as category 3 conduct. There are similarities in degree of seriousness between this kind of conduct and the conduct of strip searches in immigration detention.

Part V, Division 7 of the AFP Act provides that the Ombudsman, for the purpose of reviewing the administration of the AFP's internal review processes for dealing with complaints:

- must, at least once every 12 months, inspect records relating to the internal review process for AFP conduct issues and AFP practice issues
- may inspect these records at any time
- must prepare an annual report of its work under these provisions for presentation in Parliament.⁶

In its submission to this Committee's inquiry into the Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015 (Cth), the Commission recommended that the internal review process for complaints about the use of force by immigration officers be subject to a degree of independent oversight that is at least equivalent to that provided for under Part V, Division 7 of the AFP Act.⁷ The Commission considers that the same principle should apply to the strip search powers proposed in the present Bill (as detailed in Recommendation 5 in the Commission's submission).

⁴ Australian Federal Police Act 1979 (Cth), s 40RH(1).

⁵ Australian Federal Police Act 1979 (Cth), s 40RP.

⁶ Australian Federal Police Act 1979 (Cth), ss 40XA, 40XB, 40XD.

⁷ Australian Human Rights Commission, Submission No 25 to the Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *Inquiry into the Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015* (7 April 2015), pp 29–30. At <https://www.aph.gov.au/DocumentStore.ashx?id=b379d254-2492-4f5a-97dc-981b64e054d6&subId=350099> (viewed 2 November 2017).