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Submission re MIGRATION AMENDMENT (Maintaining the Good Order of Immigration Detention Facilities) BILL 2015

The Loreto Sisters, a congregation of Catholic Religious Women, have worked in Australia for over 100 years in education, social work, parishes, chaplaincies and pastoral care. In more recent years a number of our sisters have worked with refugees and asylum seekers in Australia and overseas. It is from the experience of our members that we make this submission to the Senate Standing Committee on Legal and Constitutional Affairs.

Recent reports from Philip Moss, regarding the physical and sexual abuse of asylum seekers in Nauru, and Professor Gillian Triggs, from the Human Rights Commission regarding the detention of children, indicate all is not well in our detention centres. Sexual harassment and abuse from guards, as well as locals and inmates, is constant; physical violence and intimidation are endemic to the centres, while enforced stays with little prospect of release, family reunion and employment are the catalysts for mental illness, self-harm and suicide attempts. “Good Order” is, most certainly, required but will this Bill provide the safety and security we owe to people who have sought our protection from the conflict, the threats and the upheavals of their countries of origin?

1. The “Good Order” Bill aims to authorize an officer to use *reasonable force* against any person in refugee detention in order to protect the lives, health, and safety of others, including the officer, or to maintain the good order, peace and security of an immigration detention facility. While the aims of this Bill, to protect and maintain peace, are laudable the generalized and unspecified nature of the terms “reasonable force” and “good order” allow too much scope for interpretation. Who defines “reasonable” and what are the characteristics of “good order”? Without adequate definition and clearly stated circumstances when “reasonable force” is able to be used, situations can easily give rise to physical violence and unnecessary force. Do, for example, peaceful protests, verbal arguments or disagreements disturb the “good order” of immigration detention facilities? The Loreto Sisters cannot be supportive of a Bill which is vague when it should be specific and may place people at risk of unnecessary force.

2. The Bill aims to establish a complaints mechanism which allows a person to make a complaint to the Department of Immigration and Border Protection about the use of force, rather than have the complaint adjudicated in a court of law. Under no circumstances could we support any Bill which limits the rights of people to apply to a court for adjudication. Making a complaint to a Department, which may or may not respond, is, in no way comparable, to having a matter heard before a judge or magistrate. What measures would be in place to ensure the complaint was heard? We have a responsibility to protect the rights and freedoms of people who have sought our protection. Such fundamental human rights cannot be so easily brushed aside.
3. It seems to us that this Bill is totally unnecessary. Protecting people from harm and maintaining peace and security are surely fundamental to running any organisation, detention centre or, for that matter, prison? Why is it necessary to enshrine something so essential in a Bill? What the Bill does is limit the rights of people, who feel they have been mistreated, to seek a review. For people who pose a risk to others the option already exists, in some places and could be extended, to accommodate them in separate facilities. A more obvious, less costly and eminently more practical solution to this situation is to release people, who pose no risk, into the community as soon as the requisite checks have been completed.
4. It seems to us that this “Good Order” Bill tinkers at the edges of the Australian immigration detention system without really addressing its fundamental problems. There is ample evidence to indicate that the prolonged incarceration of people, often traumatised, in isolated and inhospitable places, frequently without their families, with little prospect of a happy and purposeful life will bring about tension, mental illness, protest and disruption of any order, good or otherwise. The Government does not need to prolong the detention of people and it must end, immediately, the detention of children in Immigration detention facilities.

The measure of any nation is its capacity to care for the most vulnerable, particularly those who expressly ask for our help and protection. Australia can do better than respond with further “legal” threats of force; the powers to keep “good order” already exist and what is required is that we provide a humane and supportive response to those who seek asylum in Australia.

for Loreto Sisters Australia & South East Asia

6 April 2015