



Australian Government
Department of Home Affairs



**Department of Home Affairs submission to the Inquiry
into the Criminal Code Amendment (Protecting
Commonwealth Frontline Workers) Bill 2024**

Legal and Constitutional Affairs Legislation Committee

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Table of Contents

Introduction	3
Detention workforce	3
Other contractors	4
<i>Civil maritime</i>	4
<i>Customs and border management</i>	4
Attachment A - Detention workers – additional information	5
<i>Current environment</i>	5
<i>Assaults against frontline workers</i>	5
<i>Amendment support</i>	6

Introduction

The Department of Home Affairs (Home Affairs), including the Australian Border Force (ABF) welcomes the opportunity to provide a submission to the Inquiry into the Criminal Code Amendment (Protecting Commonwealth Frontline Workers) Bill 2024.

ABF employees are considered Commonwealth law enforcement officers and are already covered under the *Criminal Code Act 1995* for the conduct being considered by this reform. However, ABF and Home Affairs rely on contractors for critical functions in managing the immigration, civil maritime and customs functions we perform. Including these important contractors in the scope of this Act and therefore affording them protection against deliberate or negligent acts of harm in performing duties on behalf of the Commonwealth is imperative to our obligations under Workplace, Health and Safety legislation. The amendments reinforce and recognise the importance of these contractors and the role they perform in enabling border protection outcomes.

Detention workforce

As an example, the ABF manages an Immigration Detention Network (IDN) as a key component in maintaining the integrity of the migration program and protecting the Australian border. The IDN enables Home Affairs to hold unlawful non-citizens, such as those who have arrived without a valid Australian visa, over stayers, and those whose visa was cancelled, while their immigration status is resolved. Pursuant to these objectives, Home Affairs engages a Facilities and Detainee Service Provider (FDSP) and a Detention Health Service Provider (DHSP) to provide relevant services within the immigration detention network, including transportation, charters and removals to and from the Immigration Detention Centres.

The detention workforce is made up of frontline workers comprising ABF Officers (Australian Public Service) and service delivery contractors.

Under Commonwealth Contract the service delivery contractors fall within two groups of frontline workers:

- Facilities and Detainee Services which includes garrison, security, transport and escort, welfare and engagement, and facilities management.
 - Security, garrison and welfare services provided to detainees are fundamental to maintaining positive mental, physical and general wellbeing.
- Detention Health Services which includes onsite primary and mental healthcare with referral to allied and specialist health providers as required, and referral to hospitals for secondary or tertiary healthcare.
 - Mental health, primary care, drug and alcohol, and other clinical health services are provided to a standard broadly commensurate with healthcare available to people in the Australian community through the public health system.

We believe contracted FDSP workers would fall within the definition of a Commonwealth frontline worker proposed in the Criminal Code Amendment (Protecting Commonwealth Frontline Workers) Bill 2024.

Additionally, frontline worker contractors occupying specific positions are authorised officers under the *Migration Act 1958* under an instrument of authorisation by the then Minister of Immigration, Citizenship and Multicultural Affairs. Serco officers are also considered to be Immigration and Border Protection Workers under the *Australian Border Force Act 2015*, noting that this Act does not provide the protections for Immigration and Border Force workers we believe are proposed by the Criminal Code Amendment (Protecting Commonwealth Frontline Workers) Bill 2024.

Further details on detention workers are provided at **Attachment A**.

Other contractors

Civil maritime

In the marine environment, the ABF contracts maritime crew to complement ABF employed maritime specialists and enforcement officers for specialist deck and engineering positions on our large hull vessels. While their interaction with any Illegal Foreign Fishers (IFFs) or Unlawful Maritime Arrivals (UMAs) would be in exceptional circumstances, the ABF considers that these contractors would be covered as frontline workers proposed in the *Criminal Code Amendment (Protecting Commonwealth Frontline Workers) Bill 2024*.

Other contracted personnel who interact with the public and who ABF considers may be covered by the reform include:

- Medical specialists who are contracted to deliver medical services and have direct contact with IFFs and UMAs on board our blue water fleet, often in confined spaces. The potential for harm to these officers is significant.
- Contracted logistics staff located at ports may also come into contact with IFFs and UMAs while they are being transported from our vessels. While ABF will maintain control of IFFs and UMAs in this environment, there is the potential for direct contact.
- Transport Security Element (TSE) contracted officers are deployed on our vessels under a Memorandum of Understanding with Defence on a cost recovery basis. Their interactions are likely to be significant as TSE provide a security function on board our large hull vessels for IFFs and UMAs.

Customs and border management

Contractors engaged by the Department to support our automated traveller processing capability (known as 'SmartGate') operate within our arrivals hall. The ABF considers that these contractors will also be covered by the amendments proposed in this Bill. The contractors are frequently onsite at major airports to provide technical support for the equipment (part replacement, troubleshooting etc). During peak travel periods, and during recent technology refresh activities, the contractors have also been engaged to provide traveller assist functions, engaging with members of the public to facilitate their movement through the airport. This may be in the form of stepping travellers through the correct use of the SmartGates, or marshalling activities to ensure the safe and efficient movement of travellers through customs controlled areas.

Attachment A - Detention workers – additional information

Current environment

The IDN operating environment is characterised by significant challenges. This is, in part, attributable to the composition of the detained cohort, which is comprised of detainees with higher security and health related risks, criminal backgrounds, and prison experience.

Detainees with serious convictions related to violence and drugs adds a higher degree of volatility and criminal behaviour into the system. Contracted FDSP frontline workers directly delivering services to detainees, do so in an environment with increased risks. There are increased risks to maintaining immigration detention where a detainee is taken outside an immigration detention facility, including for specialist medical appointments and court appearances.

Of the current detainee cohort in the IDN, approximately:

- 90 per cent have a criminal history.
- 80 per cent are rated as a high to extreme security risk.

The proportion of detainees with criminal histories continues to increase as individuals are released from prison, or have their visa cancelled on character and security grounds. This increase in high-risk individuals has contributed to:

- The emergence of a prison-like culture amongst detainees, including the use of criminal standover tactics
- Increasing levels of threats and physical violence against other detainees, and frontline workers
- Concealment and infiltration of illicit substances, and other contraband
- Organised criminal activity.

Existing statutory search powers available under the *Migration Act 1958* no longer offer adequate controls to manage a high security risk detainee cohort and ensure the safety of frontline workers. The *Migration Act 1958* contains search powers that enable authorised officers to find out whether a detainee has intentionally concealed a weapon or other thing capable of being used to inflict bodily injury, or a thing that would help the detainee, or any other detainee, to escape from immigration detention. The *Migration Act 1958* does not provide authorised officers with legislative authority to search for and seize illicit drugs and other contraband items, which in turn creates safety, security and health risks to detainees and frontline workers, and may compromise the good order of an immigration detention facility. This creates operational and legal risks for authorised officers to be able to lawfully seize illicit drugs and other contraband, and increases the risk of a detainee under the effects of illicit substances causing greater harm to themselves, other detainees and frontline workers. The addition of contractors, as frontline workers, to the *Criminal Code Act 1995* may act as a deterrent and as an improved and consistent judicial model for our contractors to undertake important high risk work on behalf of the Commonwealth. In the meantime Home Affairs and the ABF will continue to pursue powers to search and seize as preventative strategies that offer an optimal workplace, health and safety system of control.

The ABF refers alleged assaults on frontline workers in the IDN to the relevant state or territory police or the Australian Federal Police (AFP), with the police determining whether to accept the referral. The ABF maintains a number of Memorandums of Understanding with state, territory and federal policing jurisdictions relating to attendance of police representatives at an Immigration Detention Facility (IDF) for routine and extraordinary incidents, including allegations of assault and escapes.

Assaults against frontline workers

Under the *Work Health and Safety Act 2011*, Home Affairs and ABF hold duty of care responsibilities to ensure, so far as is reasonably practicable, the health and safety of all workers and others. Both ABF and contracted frontline workers in the IDN are at risk of harm from aggression from detainees.

In 2022-2023, there were:

- 132 incidents of detainees being in possession of a weapon.
- 57 serious assaults of detainees by other detainees.
- 43 major disturbances.
- 16 serious assaults by detainees against frontline workers.

In 2023-2024 (as at 31 March 2024), there were:

- 102 incidents of detainees being in possession of a weapon.
- 33 serious assaults of detainees by other detainees.
- 19 major disturbances.
- 12 serious assaults by detainees against frontline workers.

Two examples of serious assaults include:

- On 8 January 2024, a male detainee became verbally abusive towards, and aggressively approached a contracted frontline worker. When close to the worker, the detainee pulled an improvised weapon (sharpened piece of metal) from his waistband and lunged at the worker stabbing him to the left side of the neck multiple times. The worker required emergency transfer to hospital via ambulance where he was admitted and underwent emergency surgical procedures. As of 30 May 2024 the worker has not returned to work. The detainee was taken into custody by law enforcement and charged with state based offences including intentionally cause injury and common law assault with a weapon. The detainee pled guilty to the assault with a weapon charge. The Magistrate imposed a sentence of 39 days which had already been served, resulting in him being released from criminal custody back into detention.
- On 21 January 2024, a male detainee assaulted a female frontline worker outside a communal area in an IDF. The detainee punched the female worker in the face causing her to lose consciousness and fall to the ground. The female worker sustained injuries requiring her to be transported to hospital. The detainee was charged and pled guilty to one charge of causing harm to Commonwealth official and has been sentenced to 10 months imprisonment (minus time served).

Amendment support

The *Criminal Code Act 1995* already applies to ABF employees as law enforcement officers. This same level of protection is not afforded to contracted workers, including FDSP frontline workers who work in one of our highest risk environments for non-law enforcement officers. As a result, a detainee assaulting a contracted frontline worker will receive a lesser charge than if they assaulted an ABF employee.

The safety, health and well-being of detainees and workers is a priority for Home Affairs and the ABF. Recognising contracted FDSP employees as Commonwealth frontline workers will send a strong deterrence message to detainees who use violence against frontline workers. The safe delivery of duties by contracted frontline workers is imperative to maintain the safety and security of detainees and other workers, and is pivotal in maintaining immigration detention as a critical pillar of Australia's migration strategy. The frontline worker determination will assist Home Affairs and ABF to fulfil its commitment to workplace health and safety, the overarching safety within the IDN, and the safety of the Australian community.