

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 20 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

### **(Maintaining Good Order 001) - Parliamentary Inquiry - Maintaining the Good Order of Immigration Detention facilities - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

Was the Commonwealth Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, issued by the Attorney-General's Department, consulted in the preparation of the Bill, and is the department satisfied that the provisions in the Bill are consistent with the Guide?

In particular, how do the new coercive powers in the Bill contain equivalent limitations and safeguards to those in the Crimes Act 1914 (Cth)?

*Answer:*

The Attorney-General's Department was consulted in the preparation of the Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015 (the Good Order Bill).

The Guide to Framing Commonwealth Offences, Enforcement Powers and Infringement Notice Schemes (the Guide) generally provides that provisions that confer a broad power to use force against a person should only be granted in exceptional, specific and defined circumstances.

The Guide contemplates that coercive powers support specific purposes such as search, arrest and investigation purposes. The purposes for which authorised officers may use reasonable force in immigration detention facilities is sufficiently specific in the Good Order Bill to address this requirement in the Guide.

The Good Order Bill specifies the circumstances for which authorised officers may use reasonable force in immigration detention facilities in some detail in proposed subsection 197BA(2). While a broader power is specified in proposed subsection 197BA(1) to cover the variety of situations in an immigration detention facility that may not be foreseeable. Proposed subsection 197BA(1) still limits the use of force to the protection of life, health or safety of any person in an immigration detention facility or maintaining the good order, peace or security of an immigration detention facility.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 21 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

### **(Maintaining Good Order 002) - Parliamentary Inquiry - Use of Force - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

In most cases, AFP officers are required to use no more force than is objectively reasonable and necessary. Why does the department consider it appropriate to permit private security guards to rely on their subjective judgment of what is reasonable when AFP officers do not have this power?

*Answer:*

There are a number of ways in which the power to use reasonable force has been drafted in legislation that involves the policing environment and the detention environment across Australia. Immigration detention facilities are unique and operate in a much narrower context than that of the Australian Federal Police. The department believes the drafting in the Good Order Bill is appropriate for immigration detention facilities.

The test in proposed section 197BA of the Good Order Bill contains a subjective element, but is most accurately described as a hybrid test. Proposed section 197BA of the Good Order Bill requires the force used to be reasonable force this is an objective test based on the facts in the particular circumstance. Proposed section 197BA also contains a subjective element which requires the authorised officer to reasonably believe the force is necessary.

The powers in proposed section 197BA are restricted to use by 'authorised officers'. The Good Order Bill places restrictions upon who can be authorised as an authorised officer. Proposed subsection 197BA(6) provides that an officer must be authorised as an authorised officer for the purposes of proposed section 197BA unless the officer satisfies the training and qualification requirements determined by the Minister under proposed subsection 197BA(7).

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 21 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

### **(Maintaining Good Order 003) - Parliamentary Inquiry – Use of Force - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

The Public Order (Protection of Persons and Property) Act 1971 (Cth) contains an authority for AFP officers to use force when confronted with a public order disturbance. This power is separate to, and broader than, the power to use force in more routine situations.

As stated by the Australian Human Rights Commission at paragraphs 43 to 44 of their submission:

43. The test in s 3ZC(1) of the Crimes Act is an objective one. The use of force in making an arrest must be no more than is 'necessary and reasonable' in the circumstances. (Note that section 7.1 below deals with the equivalent provision in the Bill to the limitation in s 3ZC(2).) The objective test in s 3ZC(1) is consistent with the test for the use of force in other parts of the Crimes Act.

44. For example, under the Crimes Act the use of force must be no more than is 'necessary and reasonable' when: executing a warrant (s 3G), searching a conveyance without a warrant in emergency situations (s 3U(d)), stopping and searching a person (s 3UD(4)), entering premises without a warrant in emergency situations (s 3UEA(6)), entering premises under a warrant to arrest a person (s 3ZB(1) and (2)), conducting a strip search at a police station (s 3ZH(7)), taking fingerprints, recordings, samples of handwriting or photographs (s 3ZJ(4)), carrying out a prescribed age determination procedure (s 3ZQI) and executing a delayed notification search warrant (s 3ZZCD(1)).

Why does the department believe it is not appropriate to separate the powers of private security guards' to use force in routine situations and when confronted with a public order disturbance, in the same way these powers are separate for AFP officers?

*Answer:*

There are a number of instances where the power to use reasonable force has been drafted in legislation relating to the policing environment and the detention environment across Australia (see [Attachment A](#)). Immigration detention facilities are unique and operate in a much narrower context than that of the Australian Federal Police. The Department of Immigration and Border Protection believes the drafting in the Good Order Bill is appropriate for immigration detention facilities.

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

**Attachment A**

**Reasonable use of force - comparative legislation**

**Good Order Bill**

<b>Legislation</b>	<b>Powers</b>	<b>Exercise of reasonable force</b>
<p><i>Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015</i></p>	<p>197BA</p>	<p>An authorised officer may use such reasonable force against any person or thing, as the authorised officer <u>reasonably believes is necessary</u>, to:</p> <ul style="list-style-type: none"> <li>• protect the life, health or safety of any person (including the authorised officer) in an immigration detention facility; or</li> <li>• maintain the good order, peace or security of an immigration detention facility.</li> </ul> <p>Without limiting the general power to use reasonable force, the Bill in particular provides that an authorised officer may use such reasonable force as the authorised officer reasonably believes is necessary to:</p> <ul style="list-style-type: none"> <li>• protect a person (including the authorised officer) in an immigration detention facility from harm or a threat of harm; or</li> <li>• protect a detainee in an immigration detention facility from self-harm or a threat of self-harm; or</li> <li>• prevent the escape of a detainee from an immigration detention facility; or</li> <li>• prevent a person from damaging, destroying or interfering with property in an immigration detention facility; or</li> <li>• move a detainee within an immigration detention facility; or</li> <li>• prevent action in an immigration detention facility by any person that:             <ul style="list-style-type: none"> <li>– endangers the life, health or safety of any person (including the authorised officer) in the facility; or</li> <li>– disturbs the good order, peace or security of the facility.</li> </ul> </li> </ul>

## Police/Corrections environment

<p><i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)</p>	<p>Sections 230 and 231</p>	<p>It is lawful for a police officer exercising a function under this Act, or under another Act or law, in relation to an individual or thing to use such force as is reasonably necessary to exercise the function.</p> <p>A police officer may also use such force as is reasonably necessary to make an arrest or prevent the escape of a person after arrest.</p>
<p><i>Crimes Act 1958</i> (Vic)</p>	<p>Section 462A</p>	<p>The Victorian Police rely on the power in 462A of the Crimes Act. It provides that a person may use such force when:</p> <ul style="list-style-type: none"> <li>- it is not disproportionate</li> <li>- there are reasonable grounds necessary</li> <li>- it is necessary to prevent continuation or completion of indictable offence or</li> <li>- it is necessary to effect or assist in affecting the lawful arrest of a person committing or suspected of committing any offence.</li> </ul>
<p><i>Police Powers and Responsibilities Act 2000</i> (QLD)</p>	<p>Sections 615 and 652</p>	<p>When exercising or attempting to exercise a power under this Act or any other Act against an individual, it is lawful for a police officer or anyone helping the police officer to use <u>reasonably necessary force</u> to exercise the power or to prevent a person from escaping from lawful custody.</p> <p>The force does not include force likely to cause grievous bodily harm to a person or the person's death.</p> <p>It is also lawful for a watch-house officer to use reasonably necessary force to exercise powers under the Act, but not exercise force likely to cause grievous bodily harm to a person or the person's death.</p>
<p><i>Crimes (Administration of Sentences) Regulation 2008</i> (NSW)</p>	<p>Section 121</p>	<p>In dealing with an inmate, a correctional officer may use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the inmate is to be avoided if at all possible. The exercise of force must not exceed such force that is necessary for the control and protection, having regard to the personal safety of correctional officers and others. A correction officer may have</p>

		<p>recourse to force for the following purposes :</p> <ul style="list-style-type: none"> <li>- to search an inmate or seize a dangerous/harmful article</li> <li>- to prevent the escape of an inmate</li> <li>- to prevent an unlawful attempt to enter a correctional centre by force or to free an inmate</li> <li>- to defend himself or herself if attacked, or threatened to be attacked, but only if they cannot otherwise protect themselves from harm</li> <li>- to protect other persons</li> <li>- to avoid an imminent attack if there is a reasonable apprehension of an attack</li> <li>- to prevent an inmate from injuring himself or herself</li> <li>- to ensure compliance with a proper order, or maintenance of discipline</li> <li>- to achieve the control of inmates acting in a defiant manner</li> </ul>
<i>Corrections Act 1986 (Vic)</i>	Sections 9CB and 55E	<p>Staff of police goals may, where necessary, use reasonable force to compel a person deemed to be in custody to obey an order. Where a person uses force, the person must report it to the Chief Commissioner of Police. A person who uses force under this section is not liable for injury or damage cause by that use of force.</p> <p>An escort officer may also use reasonable force, where necessary, to compel a prisoner to obey an order given by the escort officer in the exercise of a function or power. An escort person who uses force under this section is not liable for injury or damage cause by that use of force.</p>
<i>Corrective Services Act 2006 (QLD)</i>	Section 143	<p>A corrective services officer may use force, other than lethal force, that is <u>reasonably necessary</u> to:</p> <ul style="list-style-type: none"> <li>- compel compliance with an order given or applying to a prisoner</li> <li>- restrain a prisoner who is attempting, preparing to commit, or is committing an offence or a breach of discipline</li> <li>- compel any person who has been lawfully ordered to leave a corrective services facility, and who refuses to do so, to leave the facility</li> <li>- restrain a prisoner who is attempting to or preparing to harm themselves or</li> </ul>

		<p>is harming themselves</p> <p>The corrective services officer may only use the force only if the officer:</p> <ul style="list-style-type: none"> <li>- reasonably believes the act or omission permitting the use of force cannot be stopped in another way</li> <li>- gives a clear warning of the intention to use force if the act or omission does not stop</li> <li>- gives sufficient time for the warning to be observed</li> <li>- attempts to use the force in a way that is unlikely to cause death or grievous bodily harm</li> </ul>
<i>Corrections Act 1997 (Tas)</i>	Section 34B	<p>A correctional officer may use force that is necessary and reasonable for the Act, including:</p> <ul style="list-style-type: none"> <li>- to compel compliance with a direction given in relation to a prisoner or detainee by the Director</li> <li>- to prevent or stop the commission of an offence or disciplinary breach</li> <li>- to prevent the escape of a prisoner or detainee</li> <li>- to prevent unlawful damage, destruction or interference with property</li> <li>- to defend the correctional officer or someone else</li> <li>- to prevent a prisoner or detainee from inflicting self-harm</li> <li>- any other thing prescribed by the regulations</li> </ul> <p>A correctional officer may use force only if the correctional officer believes, on reasonable grounds, that the purpose for which the force may be used cannot be achieved in another way.</p>

### **International immigration acts**

<i>Immigration and Asylum Act 1999 (UK)</i>	Section 146	An immigration officer exercising any power conferred on him by the Act may, if necessary, use reasonable force.
<i>Immigration Act 2009 (NZ)</i>	Section 328	Where an immigration officer is exercising the power of detention, the immigration

		<p>may use such physical force as the officer has reasonable grounds for believing is reasonably necessary, including:</p> <ul style="list-style-type: none"> <li>- to prevent the detained person from harming any person, damaging property, escaping or attempting to escape;</li> <li>- recapture a person who has fled; and</li> <li>- to search a person and seize any items which pose a threat to the safety of the officer or any other person</li> </ul>
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### Other administrative forms of detention

<i>Mental Health (Treatment and Care) Act 1994 (ACT)</i>	Subsections 35(2) and 36G(2)	<p>The chief psychiatrist or care coordinator of the community care facility may, for the purpose of taking or authorising someone to take a person to the premises:</p> <ul style="list-style-type: none"> <li>- use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the premises</li> <li>- if the person is at a particular premises, enter those premises using force and assistance that is necessary and reasonable.</li> </ul> <p>The Act also gives the chief psychiatrist or care coordinator the power to subject the person to confinement or restraint that is necessary and reasonable.</p>
<i>Mental Health Act 2009 (SA)</i>	Paragraph 56(3)(c)	<p>Authorised officers have the power to restrain the person and otherwise use force in relation to the person as reasonably required in the circumstances. An authorised officer includes</p> <ul style="list-style-type: none"> <li>- mental health clinician</li> <li>- ambulance officer</li> <li>- a person employed as a medical officer or flight nurse</li> <li>- a person prescribed by the regulations</li> </ul>
<i>Protective Services Officers (PSOs) Victoria</i>		<p>PSOs are based on the Victorian railway network. PSOs are not sworn members of the police force but are employed by Victoria Police and are armed with semi-automatic guns. PSOs are given a wide range of powers including:</p> <ul style="list-style-type: none"> <li>- the ability to arrest and detain, including arrest for drunk and disorderly</li> </ul>

		<p>offences;</p> <ul style="list-style-type: none"> <li>- the ability to search people and property and seize such items as weapons and alcohol;</li> <li>- issue on the spot fines, including for graffiti offences; and</li> <li>- issue a direction to 'move on' from the area.</li> </ul>
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### Protection from liability

#### Good Order Bill

Legislation	Powers	Exercise of reasonable force
<i>Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015</i>	197BF	<p>(1) No proceedings may be instituted or continued in any court against the Commonwealth in relation to an exercise of power under section 197BA if the power was exercised in good faith.</p> <p>(2) This section has effect despite anything else in this Act or any other law.</p> <p>(3) Nothing in this section is intended to affect the jurisdiction of the High Court under section 75 of the Constitution.</p> <p>(4) In this section: Commonwealth includes:</p> <ul style="list-style-type: none"> <li>(a) an officer of the Commonwealth; and</li> <li>(b) any other person acting on behalf of the Commonwealth.</li> </ul>

#### Police

<i>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)</i>	Various including section 232	<p>Provides for various protections from liability for persons who are performing functions under the Act. For example section 232 provides protection for proceeding (whether criminal or not) are brought against a police officer in execution of a warrant.</p> <p>There is no overarching provision that covers all actions of officers.</p>
<i>Victoria Police Act 2013 (Vic)</i>	Division 8 of Part 4	<p>Division 8 of Part 4 provides extensive provisions relating to circumstances in which protection from liability for tortious conduct by police and protective services officers in the performance of the officer's duties.</p> <p>The Crown is responsible for such liability</p>
<i>Police Services Administration</i>	Section 10.5	Section 10.5 provides for civil liability of police officers and others for engaging in

<i>Act 1990 (QLD)</i>		conduct in their official capacity where they have acted in good faith and without gross negligence The Crown is responsible for such liability
<i>Police Act 1988 (SA)</i>	Section 65	A member of SA Police does not incur any civil or criminal liability for an honest act or omission in the exercise or discharge, or the purported exercise or discharge, of a power, function or duty conferred or imposed by or under this Act or any other Act or law. The Crown is responsible for such liability
<i>Police Act 1892 (WA)</i>	Section 137	Section 137 provides that an action in tort does not lie against a member of the Police Force for anything that the member has done, without corruption or malice, while performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law. The Crown is responsible for such liability.
<i>Police Service Act 2003 (Tas)</i>	Section 84	Section 84 provides that a police officer does not incur any personal liability for any act or omission done or made in good faith in the exercise or performance, or purported exercise or performance, of any powers or duties at common law or under this or any other Act or law. The Crown is responsible for such liability.
<i>Australian Federal Police Act 1979 (Cth)</i>	Section 64B	Section 64B provides that the Commonwealth is liable in respect of a tort committed by a member or a protective service officer in the performance or purported performance of his or her duties as such a member or a protective service officer in like manner as a person is liable in respect of a tort committed by his or her employee in the course of his or her employment, and shall, in respect of such a tort, be treated for all purposes as a joint tortfeasor with the member or the protective service officer

### **Corrections environment**

<i>Crimes (Administration of Sentences) Act 1999 (NSW)</i>	Section 263	Section 263 a corrections officer is not personally liable for an act or omission if it was done in good faith in the execution of powers under the Act or any Act that confers or imposes function on the corrections officer.
<i>Corrections Act 1986 (Vic)</i>	Various including	This Act provides for specific sections that provide protection from liability for prison officers.

	section 23	For example section 23 provides that a prison officer is not liable for injury or damage caused by the use of force for the control of prisoners. Protection from liability is also provided for injury or damage caused by the use of force to exclude visitors for safety reasons, carrying out searches or by an approved dog.
<i>Prison Act 1981 (WA)</i>	Section 111	Section 111 provides that no action or claim for damages shall lie against any person for or on account of anything done, or ordered or authorised to be done, by him which purports to be done for the purpose of carrying out the provisions of this Act, unless it is proved that the act was done, or ordered or authorised to be done, maliciously and without reasonable and probable cause

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 21 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 004) - Parliamentary Inquiry – Use of Force - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

The Public Order (Protection of Persons and Property) Act 1971 provides a number of pre-conditions and safeguards before AFP officers are empowered to use force. Why does the department believe private security guards should not be subject to the same pre-conditions and safeguards as AFP officers when confronted with a public order disturbance?

*Answer:*

The Bill does not provide authorised officers with the same powers afforded to police officers.

Rigorous risk mitigation measures and governance controls on the exercise of reasonable force in Australian immigration detention facilities will be introduced to complement the new legislation. These measures will include training for authorised officers, policy and procedural guidelines and administrative arrangements.

From 1 July 2015 there will be a uniformed superintendent from the Australian Border Force present at immigration detention centres to ensure that contracted staff comply with the contract, the requirements of the Migration Act and all other applicable laws.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 22 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 005) - Parliamentary Inquiry – Legislation governing detention environments - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

Your submission states (at p13) that:

similar provisions to those in this Bill can be found in the legislation of Australian States and Territories that governs other detention environments and deal with similar behavioural challenges as those faced in an [immigration detention facility].

Please provide examples of similar provisions in other Australian laws. Please provide both the similarities and the differences between these laws and this Bill and, where there are differences, state the reason for departing from established laws.

*Answer:*

Immigration detention facilities are unique in that they are the only large-scale Commonwealth facilities providing a detention environment. Similar provisions to those in the Good Order Bill can be found in State and Territory legislation that governs other detention environments that deal with similar behavioural challenges to those faced in immigration detention facilities. A series of tables that provides some comparable provisions is at [Attachment A](#).

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

## Attachment A

### Reasonable use of force - comparative legislation

#### Good Order Bill

Legislation	Powers	Exercise of reasonable force
<p><i>Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015</i></p>	<p>197BA</p>	<p>An authorised officer may use such reasonable force against any person or thing, as the authorised officer <u>reasonably believes is necessary</u>, to:</p> <ul style="list-style-type: none"> <li>• protect the life, health or safety of any person (including the authorised officer) in an immigration detention facility; or</li> <li>• maintain the good order, peace or security of an immigration detention facility.</li> </ul> <p>Without limiting the general power to use reasonable force, the Bill in particular provides that an authorised officer may use such reasonable force as the authorised officer reasonably believes is necessary to:</p> <ul style="list-style-type: none"> <li>• protect a person (including the authorised officer) in an immigration detention facility from harm or a threat of harm; or</li> <li>• protect a detainee in an immigration detention facility from self-harm or a threat of self-harm; or</li> <li>• prevent the escape of a detainee from an immigration detention facility; or</li> <li>• prevent a person from damaging, destroying or interfering with property in an immigration detention facility; or</li> <li>• move a detainee within an immigration detention facility; or</li> <li>• prevent action in an immigration detention facility by any person that:               <ul style="list-style-type: none"> <li>– endangers the life, health or safety of any person (including the authorised officer) in the facility; or</li> <li>– disturbs the good order, peace or security of the facility.</li> </ul> </li> </ul>

## Police/Corrections environment

<p><i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)</p>	<p>Sections 230 and 231</p>	<p>It is lawful for a police officer exercising a function under this Act, or under another Act or law, in relation to an individual or thing to use such force as is reasonably necessary to exercise the function.</p> <p>A police officer may also use such force as is reasonably necessary to make an arrest or prevent the escape of a person after arrest.</p>
<p><i>Crimes Act 1958</i> (Vic)</p>	<p>Section 462A</p>	<p>The Victorian Police rely on the power in 462A of the Crimes Act. It provides that a person may use such force when:</p> <ul style="list-style-type: none"> <li>- it is not disproportionate</li> <li>- there are reasonable grounds necessary</li> <li>- it is necessary to prevent continuation or completion of indictable offence or</li> <li>- it is necessary to effect or assist in affecting the lawful arrest of a person committing or suspected of committing any offence.</li> </ul>
<p><i>Police Powers and Responsibilities Act 2000</i> (QLD)</p>	<p>Sections 615 and 652</p>	<p>When exercising or attempting to exercise a power under this Act or any other Act against an individual, it is lawful for a police officer or anyone helping the police officer to use <u>reasonably necessary force</u> to exercise the power or to prevent a person from escaping from lawful custody.</p> <p>The force does not include force likely to cause grievous bodily harm to a person or the person's death.</p> <p>It is also lawful for a watch-house officer to use reasonably necessary force to exercise powers under the Act, but not exercise force likely to cause grievous bodily harm to a person or the person's death.</p>
<p><i>Crimes (Administration of Sentences) Regulation 2008</i> (NSW)</p>	<p>Section 121</p>	<p>In dealing with an inmate, a correctional officer may use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the inmate is to be avoided if at all possible. The exercise of force must not exceed such force that is necessary for the control and protection, having regard to the personal safety of correctional officers and others. A correction officer may have</p>

		<p>recourse to force for the following purposes :</p> <ul style="list-style-type: none"> <li>- to search an inmate or seize a dangerous/harmful article</li> <li>- to prevent the escape of an inmate</li> <li>- to prevent an unlawful attempt to enter a correctional centre by force or to free an inmate</li> <li>- to defend himself or herself if attacked, or threatened to be attacked, but only if they cannot otherwise protect themselves from harm</li> <li>- to protect other persons</li> <li>- to avoid an imminent attack if there is a reasonable apprehension of an attack</li> <li>- to prevent an inmate from injuring himself or herself</li> <li>- to ensure compliance with a proper order, or maintenance of discipline</li> <li>- to achieve the control of inmates acting in a defiant manner</li> </ul>
<i>Corrections Act 1986 (Vic)</i>	Sections 9CB and 55E	<p>Staff of police goals may, where necessary, use reasonable force to compel a person deemed to be in custody to obey an order. Where a person uses force, the person must report it to the Chief Commissioner of Police. A person who uses force under this section is not liable for injury or damage cause by that use of force.</p> <p>An escort officer may also use reasonable force, where necessary, to compel a prisoner to obey an order given by the escort officer in the exercise of a function or power. An escort person who uses force under this section is not liable for injury or damage cause by that use of force.</p>
<i>Corrective Services Act 2006 (QLD)</i>	Section 143	<p>A corrective services officer may use force, other than lethal force, that is <u>reasonably necessary</u> to:</p> <ul style="list-style-type: none"> <li>- compel compliance with an order given or applying to a prisoner</li> <li>- restrain a prisoner who is attempting, preparing to commit, or is committing an offence or a breach of discipline</li> <li>- compel any person who has been lawfully ordered to leave a corrective services facility, and who refuses to do so, to leave the facility</li> <li>- restrain a prisoner who is attempting to or preparing to harm themselves or</li> </ul>

		<p>is harming themselves</p> <p>The corrective services officer may only use the force only if the officer:</p> <ul style="list-style-type: none"> <li>- reasonably believes the act or omission permitting the use of force cannot be stopped in another way</li> <li>- gives a clear warning of the intention to use force if the act or omission does not stop</li> <li>- gives sufficient time for the warning to be observed</li> <li>- attempts to use the force in a way that is unlikely to cause death or grievous bodily harm</li> </ul>
<i>Corrections Act 1997 (Tas)</i>	Section 34B	<p>A correctional officer may use force that is necessary and reasonable for the Act, including:</p> <ul style="list-style-type: none"> <li>- to compel compliance with a direction given in relation to a prisoner or detainee by the Director</li> <li>- to prevent or stop the commission of an offence or disciplinary breach</li> <li>- to prevent the escape of a prisoner or detainee</li> <li>- to prevent unlawful damage, destruction or interference with property</li> <li>- to defend the correctional officer or someone else</li> <li>- to prevent a prisoner or detainee from inflicting self-harm</li> <li>- any other thing prescribed by the regulations</li> </ul> <p>A correctional officer may use force only if the correctional officer believes, on reasonable grounds, that the purpose for which the force may be used cannot be achieved in another way.</p>

### **International immigration acts**

<i>Immigration and Asylum Act 1999 (UK)</i>	Section 146	An immigration officer exercising any power conferred on him by the Act may, if necessary, use reasonable force.
<i>Immigration Act 2009 (NZ)</i>	Section 328	Where an immigration officer is exercising the power of detention, the immigration

		<p>may use such physical force as the officer has reasonable grounds for believing is reasonably necessary, including:</p> <ul style="list-style-type: none"> <li>- to prevent the detained person from harming any person, damaging property, escaping or attempting to escape;</li> <li>- recapture a person who has fled; and</li> <li>- to search a person and seize any items which pose a threat to the safety of the officer or any other person</li> </ul>
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### Other administrative forms of detention

<i>Mental Health (Treatment and Care) Act 1994 (ACT)</i>	Subsections 35(2) and 36G(2)	<p>The chief psychiatrist or care coordinator of the community care facility may, for the purpose of taking or authorising someone to take a person to the premises:</p> <ul style="list-style-type: none"> <li>- use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the premises</li> <li>- if the person is at a particular premises, enter those premises using force and assistance that is necessary and reasonable.</li> </ul> <p>The Act also gives the chief psychiatrist or care coordinator the power to subject the person to confinement or restraint that is necessary and reasonable.</p>
<i>Mental Health Act 2009 (SA)</i>	Paragraph 56(3)(c)	<p>Authorised officers have the power to restrain the person and otherwise use force in relation to the person as reasonably required in the circumstances. An authorised officer includes</p> <ul style="list-style-type: none"> <li>- mental health clinician</li> <li>- ambulance officer</li> <li>- a person employed as a medical officer or flight nurse</li> <li>- a person prescribed by the regulations</li> </ul>
<i>Protective Services Officers (PSOs) Victoria</i>		<p>PSOs are based on the Victorian railway network. PSOs are not sworn members of the police force but are employed by Victoria Police and are armed with semi-automatic guns. PSOs are given a wide range of powers including:</p> <ul style="list-style-type: none"> <li>- the ability to arrest and detain, including arrest for drunk and disorderly</li> </ul>

		<ul style="list-style-type: none"> <li>offences;</li> <li>- the ability to search people and property and seize such items as weapons and alcohol;</li> <li>- issue on the spot fines, including for graffiti offences; and</li> <li>- issue a direction to 'move on' from the area.</li> </ul>
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### Protection from liability

#### Good Order Bill

Legislation	Powers	Exercise of reasonable force
<i>Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015</i>	197BF	<p>(1) No proceedings may be instituted or continued in any court against the Commonwealth in relation to an exercise of power under section 197BA if the power was exercised in good faith.</p> <p>(2) This section has effect despite anything else in this Act or any other law.</p> <p>(3) Nothing in this section is intended to affect the jurisdiction of the High Court under section 75 of the Constitution.</p> <p>(4) In this section: Commonwealth includes:</p> <ul style="list-style-type: none"> <li>(a) an officer of the Commonwealth; and</li> <li>(b) any other person acting on behalf of the Commonwealth.</li> </ul>

#### Police

<i>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)</i>	Various including section 232	<p>Provides for various protections from liability for persons who are performing functions under the Act. For example section 232 provides protection for proceeding (whether criminal or not) are brought against a police officer in execution of a warrant.</p> <p>There is no overarching provision that covers all actions of officers.</p>
<i>Victoria Police Act 2013 (Vic)</i>	Division 8 of Part 4	<p>Division 8 of Part 4 provides extensive provisions relating to circumstances in which protection from liability for tortious conduct by police and protective services officers in the performance of the officer's duties.</p> <p>The Crown is responsible for such liability</p>
<i>Police Services Administration</i>	Section 10.5	Section 10.5 provides for civil liability of police officers and others for engaging in

<i>Act 1990 (QLD)</i>		conduct in their official capacity where they have acted in good faith and without gross negligence The Crown is responsible for such liability
<i>Police Act 1988 (SA)</i>	Section 65	A member of SA Police does not incur any civil or criminal liability for an honest act or omission in the exercise or discharge, or the purported exercise or discharge, of a power, function or duty conferred or imposed by or under this Act or any other Act or law. The Crown is responsible for such liability
<i>Police Act 1892 (WA)</i>	Section 137	Section 137 provides that an action in tort does not lie against a member of the Police Force for anything that the member has done, without corruption or malice, while performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law. The Crown is responsible for such liability.
<i>Police Service Act 2003 (Tas)</i>	Section 84	Section 84 provides that a police officer does not incur any personal liability for any act or omission done or made in good faith in the exercise or performance, or purported exercise or performance, of any powers or duties at common law or under this or any other Act or law. The Crown is responsible for such liability.
<i>Australian Federal Police Act 1979 (Cth)</i>	Section 64B	Section 64B provides that the Commonwealth is liable in respect of a tort committed by a member or a protective service officer in the performance or purported performance of his or her duties as such a member or a protective service officer in like manner as a person is liable in respect of a tort committed by his or her employee in the course of his or her employment, and shall, in respect of such a tort, be treated for all purposes as a joint tortfeasor with the member or the protective service officer

### **Corrections environment**

<i>Crimes (Administration of Sentences) Act 1999 (NSW)</i>	Section 263	Section 263 a corrections officer is not personally liable for an act or omission if it was done in good faith in the execution of powers under the Act or any Act that confers or imposes function on the corrections officer.
<i>Corrections Act 1986 (Vic)</i>	Various including	This Act provides for specific sections that provide protection from liability for prison officers.

	section 23	For example section 23 provides that a prison officer is not liable for injury or damage caused by the use of force for the control of prisoners. Protection from liability is also provided for injury or damage caused by the use of force to exclude visitors for safety reasons, carrying out searches or by an approved dog.
<i>Prison Act 1981 (WA)</i>	Section 111	Section 111 provides that no action or claim for damages shall lie against any person for or on account of anything done, or ordered or authorised to be done, by him which purports to be done for the purpose of carrying out the provisions of this Act, unless it is proved that the act was done, or ordered or authorised to be done, maliciously and without reasonable and probable cause

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 21 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 006) - Parliamentary Inquiry – Additional committee reports - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

Has the department seen the reports of the Parliamentary Joint Committee on Human Rights and the Senate Scrutiny of Bills Committee in relation to the Bill? What is the department's view on the issues raised by those committees?

*Answer:*

Yes. The Department of Immigration and Border Protection can confirm it has seen reports relating to the Parliamentary Joint Committee on Human Rights and the Senate Scrutiny of Bills. The Minister is expected to make submissions to both Committees.

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 21 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 007) - Parliamentary Inquiry – Use of Force - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

The department's submission (at p.5) refers to a number of safeguards around the use of force contained in relevant policies and procedures, such as that it must only be a last resort, must not include cruel or degrading treatment, and must not be used for punishment. Why does the department not consider it appropriate for these limits on the reasonable use of force to be formalised in the legislation or regulations?

*Answer:*

The Department of Immigration and Border Protection will have in place policies and procedures, which will include extensive coverage of the limitations on the use of reasonable force within immigration detention facilities. Policies and procedures will be regularly reviewed and amended by the department to ensure that authorised officers understand and have access to up to date supporting material.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 21 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 008) - Parliamentary Inquiry – Use of Force - Immunity - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

The Explanatory Memorandum states that immunity from suit is necessary for authorised officers to remove any reluctance they may have to using reasonable force to the extent they are authorised to do so. Why does the Commonwealth also need immunity? Why is it appropriate for the Commonwealth to have greater immunity from suit in relation to the actions of private security guards as opposed to the actions of AFP officers?

*Answer:*

It is not unusual for the *Migration Act 1958* (Migration Act) to specify the jurisdiction and procedures of courts including limiting jurisdiction (refer Part 8 of the Migration Act). The bar on proceedings in proposed section 197BF of the Good Order Bill is modeled on existing subsection 245F(9B) of the Migration Act. The definition of 'Commonwealth' is modeled on existing sections 494AA and 494AB of the Migration Act provides a bar on certain legal proceeding relating to unauthorised maritime arrivals and transitory persons respectively.

Proposed new section 197BF is only a partial bar. The Commonwealth will always be liable for review by the High Court under section 75(v) of the Constitution. Similarly it is always the case that Federal, State or Territory police may institute a prosecution, for example for assault, notwithstanding this provision – it would be up to the Court to determine whether this provision has any application in the particular circumstances.

Proposed section 197BF of the Migration Act contemplates that the Commonwealth will only have protection from criminal and civil action in all courts except the High Court if the powers are exercised under section 197BA and exercised in good faith.

Courts will have the jurisdiction to consider the threshold issues of:

- if the use of reasonable force was an exercise of power under section 197BA; and
- if the power was exercised in good faith.

If the use of reasonable force was not an exercise of the power under proposed section 197BA then it is not captured by the partial bar in proposed section 197BF and court proceedings may be instituted or continued. That is to say, if the force used was 'excessive' in a criminal sense, unreasonable force or the authorised officer did not reasonably believe the use of the force was necessary then the conduct would not be captured by the bar in proposed section 197BF.

If a court decides that the authorised officer did not act in good faith, the court would have jurisdiction to consider the action brought against the authorised officer.

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 21 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 009) - Parliamentary Inquiry – Rapid Departure Assistance programme - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

Please provide details of all incentives offered to asylum seekers in detention (including monetary incentives), both offshore and onshore, to return to their countries of origin or to leave Australia.

*Answer:*

This question goes beyond the scope of the policy intention of the Good Order Bill.

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 21 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 010) - Parliamentary Inquiry – Excessive use of Force - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

What, if any, remedy is it envisaged the High Court would provide in a case brought before it under section 75 of the Constitution relating to excessive use of force by a guard, after the guard had already used excessive force. Could the High Court impose any criminal penalty on the guard? Could the High Court impose any civil penalty on the guard?

*Answer:*

Section 75(v) of the Constitution provides for remedy in mandamus, prohibition or injunction. This is increased by section 75(iii) which provides for the original jurisdiction of the High Court in all matters 'in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth is a party'. Section 75(iii) does not impose limits on the remedies available to the High Court.

The High Court may choose to remit federal criminal matters to a State Supreme Court under the Judiciary Act 1903.

If the force used was not in good faith, 'excessive' in a criminal sense, unreasonable or the authorised officer did not reasonably believe the use of the force was necessary then the conduct would not be captured by the bar in proposed section 197BF, both criminal and civil remedies in any appropriate court would be accessible.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 21 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 011) - Parliamentary Inquiry – Excessive use of Force - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

The department states in its submission that proposed section 197BF would not prevent police prosecution of immigration officers. Does the department acknowledge that s197BF would nevertheless apply to any criminal case brought against a guard, so that the Crown would need to prove bad faith to obtain a conviction?

*Answer:*

The test in proposed section 197BF does not contain a 'bad faith' element. An absence of good faith is not the same as bad faith, '*...bad faith is not necessarily the obverse of good faith. Good faith requires more than the absence of bad faith. It requires a conscientious approach to the exercise of power*' (see *Applicant WAFV of 2002 v Refugee Review Tribunal* [2003] FCA 16 at para 52).

The term 'good faith' is not defined in the Good Order Bill. As such 'good faith' will be given its ordinary meaning. The Macquarie dictionary defines 'good faith' as honesty of purpose or sincerity of declaration.

The concept of good faith has been the subject of some case law in Australia. In *Mid Density Developments Pty Ltd v Rockdale Municipal Council* (1993) 116 ALR 460, the Federal Court examined the concept of good faith. In this case the Court ruled that good faith has two elements:

- First, the act or omission must have been done bona fide (honestly) without malice or an ulterior motive; and
- Second, there must be a genuine attempt to perform the function correctly, that is to say that the function should not be performed without caring whether or not it is properly performed.

On this basis, for actions of an authorised officer to be exercised in good faith, it does not appear that it will be merely enough for an authorised officer to use reasonable force honestly (subjective test) it must also be exercised with due diligence (objective test).

Any person, including police officers, who commits a criminal offence with use of force is subject to criminal sanction. Therefore, a person who unnecessarily, unreasonably or disproportionately uses force under the Good Order Bill that leads to serious injury of another person may be subject to criminal sanctions.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 21 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

### **(Maintaining Good Order 012) - Parliamentary Inquiry – Use of Force - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

Please provide examples of when Serco's uncertainty regarding their ability to use force has resulted in a disturbance at an immigration detention facility. In the examples given, would additional training and education in relation to Serco officer's current ability to use force (as set out in Serco and Departmental manuals) have prevented the incident from occurring? If not, why not?

*Answer:*

The responsibility for providing public order management during critical incidents is an issue of contention that was pointed out in the Hawke-Williams review of the incidents at both Christmas Island and Villawood Immigration Detention Centres. The review raised concerns expressed by the then Department of Immigration and Citizenship (DIAC) and the Australian Federal Police in regards to Serco's capability for public order management. Serco illustrated this in the legal advice it sought on the matter, advising DIAC that it did "not have the power or authority, either contractually or under any statute, to take measures to restore public order in detention centres."

DIAC subsequently agreed, indicating that the schedule of incidents for which Serco is required to manage does not include this obligation and that the powers of the police are broader than those of Serco in dealing with significant disturbances. This uncertainty contributed to both the Christmas Island and Villawood disturbances.

The review went on to observe that as the incidents at Christmas Island and Villawood demonstrate, particularly in the environment of the immigration detention network, the application of a public order management response capability for both maintaining and restoring public order can be essential, and roles and responsibilities, as well as the dividing line between the two, must be made clear. Such capability requires personnel who:

- are adequately trained;
- possess relevant public order management qualifications; and
- are legally authorised (under statute or otherwise) to engage in public order management, where necessary.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 21 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 013) - Parliamentary Inquiry – Convicted criminals in IDFs - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

How many convicted criminals are currently in immigration detention facilities (IDFs) in Australia?

*Answer:*

As at 1 April 2015 the immigration detention population held 345 detainees with criminal histories lawfully disclosed to the department by other agencies or the individual for the purposes of status resolution and maintenance of safety and security of detainees, visitors and staff.

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 21 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 014) - Parliamentary Inquiry – Convicted criminals in  
IDFs - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

Please provide a breakdown of the number of convicted murderers, rapists, child molesters and other violent offenders in IDFs over the past year.

*Answer:*

The department records convictions only where it is relevant to the resolution of status of immigration detainees or where this material is relevant for the purposes of managing the safety of individuals in immigration detention facilities where it has been lawfully disclosed for this purpose. As such, material is not available at the level requested.

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 21 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 015) - Parliamentary Inquiry – Convicted criminals in IDFs - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

What extra security measures are in place (if any) to guard this cohort and keep them separate from asylum seekers?

*Answer:*

The government has a range of accommodation options available to manage people in immigration detention and these are managed by the detention service provider to ensure the safety and security of those accommodated there.

All persons in immigration detention are accommodated in facilities which meet their individual needs and associated risk profile. Should a person have any concerns about a placement decision relating to them or their immediate family they can refer the matter to the detention service provider who will investigate any issues they raise.

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 21 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 016) - Parliamentary Inquiry – Contraband at MIDC - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

With reference to the case study set out at the bottom of the fourth page of the submission of Sister Brigid Arthur and Ms Pamela Curr, please set out the department's knowledge of this incident. What contraband was being smuggled into Maribyrnong Detention Centre and for what purpose was it being smuggled into the centre? What was Serco's and the department's knowledge of this incident and the use of this contraband and what action was taken by Serco and the department in response? What was the timing of any action taken in response to this incident in relation to the time when Serco and the department first became aware of this incident?

*Answer:*

The incidents referred to are currently the subject of investigation and review including police investigation. Accordingly it is not possible to provide further detail on these matters until these reviews are finalised.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 21 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 017) - Parliamentary Inquiry – Service Provider staff - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

What is vetting process for Serco and Wilson officers working in IDFs? How many cases of anti-asylum seeker sentiment/other inappropriate attitudes expressed publicly by these officers is the Department aware of from the past year to date? How many officers have been disciplined or stood down for this? How many officers who have engaged in this kind of conduct have not been disciplined or stood down for this? How are processes being improved to prevent the recruitment of inappropriate officers in the future?

*Answer:*

***What is vetting process for Serco and Wilson officers working in IDFs?***

Wilson Security officers do not work in onshore Immigration Detention Facilities.

Candidates for Serco Detention Service Officer roles undergo a number of checks and examinations before being offered the role. These include:

- Telephone screen interview;
- Psychometric testing;
- Assessment centre;
- 100 point identity checks (eg passport, driving licence);
- Proof of right to work (including citizenship or appropriate passport/visa);
- Declaration of any history of detention or relationships with detainees;
- Satisfactory Australian Federal Police check;
- Working with children check (where relevant and in accordance with State legislation); and
- Two employment reference checks.

Once employed, Serco personnel undergo five weeks' intensive training including completing the below courses. On completion personnel are awarded a Certificate II in Security Operations.

- Professional boundaries;
- Bullying, harassment and discrimination;
- Cultural awareness;
- Mental health awareness;
- Psychological support program;
- Conducting interviews;

- Manage conflict through negotiation;
- Working with families and minors;
- Migration Act and associated legislation; and
- Duty of care to persons in immigration detention.

Personnel also undergo annual refresher training and Australian Federal Police checks. Working with children checks are also updated regularly in accordance with state legislation. Toolbox talks, with diverse subjects such as Social Media Behaviour, are delivered regularly to all operational staff across the network.

***How many cases of anti-asylum seeker sentiment/other inappropriate attitudes expressed publicly by these officers is the Department aware of from the past year to date?***

Two – in both occasions Serco dealt with the matter in an expedient and appropriate way.

***How many officers have been disciplined or stood down for this? How many officers who have engaged in this kind of conduct have not been disciplined or stood down for this?***

Two - In both cases the employees were subject to a disciplinary process. One was terminated and one received a final warning. Serco promptly investigates and acts on all such allegations in accordance with their disciplinary procedures.

***How are processes being improved to prevent the recruitment of inappropriate officers in the future?***

The recruitment and training processes used by Serco are kept under constant review to ensure better practice and to minimise the risk of employing staff who would be unsuitable for the role.

Serco recruitment processes have evolved and have become more robust over time and have developed improvements in the training regime in consultation with the Department. For example, Serco are currently introducing an annual mental health refresher training session for all staff with detainee contact.

Serco takes a zero tolerance approach to any staff found to have engaged in publicly expressing inappropriate attitudes. Personnel found to have engaged in such behaviour are immediately subjected to a rigorous disciplinary policy of which staff are made aware at the time of employment engagement.

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 21 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 018) - Parliamentary Inquiry – Iranian Nationals -  
Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

For the period 13 August 2012 to date, please provide the following data:

- a. How many Iranian nationals have been granted a protection visa?
- b. How many Iranian nationals have been granted a temporary protection visa?
- c. How many failed asylum seekers have been returned to Iran?

*Answer:*

This question goes beyond the scope of the policy intention of the Good Order Bill.

**QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 21 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 019) - Parliamentary Inquiry – Iranian Nationals - Manus  
OPC - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

How many Iranians are currently in immigration detention on Manus Island?

*Answer:*

This question goes beyond the scope of the policy intention of the Good Order Bill.

**QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 21 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 020) - Parliamentary Inquiry – Iranian Nationals - Nauru  
OPC - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

How many Iranians are currently in immigration detention in Nauru?

*Answer:*

This question goes beyond the scope of the policy intention of the Good Order Bill.

**QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 21 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 021) - Parliamentary Inquiry – Iranian Nationals - IDFs - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

How many Iranians are currently in immigration detention in Australia?

*Answer:*

This question goes beyond the scope of the policy intention of the Good Order Bill.

**QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 21 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 022) - Parliamentary Inquiry – Service Providers - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

Please outline the views that Serco management have expressed to the Department in relation to this Bill. What concerns, if any, have been expressed by Serco to the Department in relation to this Bill?

*Answer:*

Serco is supportive of the Good Order Bill and have expressed no particular concern in relation to this Bill.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 21 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

### **(Maintaining Good Order 023) - Parliamentary Inquiry – Use of Force - Programme 1.1 Border Management (ACBPS)**

Senator Hanson-Young, Sarah (L&CA) written:

The department's submission cites the Immigration and Asylum Act 1999 (UK), section 146, as a 'comparable' use of force provision. That section provides as follows:  
An immigration officer exercising any power conferred on him by the 1971 Act or this Act may, if necessary, use reasonable force.

Please provide details of how the department believes that provision compares to the following aspects of the Maintaining Good Order Bill:

- The provision for partial immunity from legal action and the breadth of that immunity.
- Authorisation of the use of force by officers based on their subjective assessment of the reasonableness of that use force.
- The broad range of circumstances listed for when officers can use force.

*Answer:*

It is not unusual for the Migration Act to specify the jurisdiction and procedures of courts including limiting jurisdiction (refer Part 8 of the Migration Act). The bar on proceedings in proposed section 197BF of the Good Order Bill is modelled on existing subsection 245F(9B) of the Migration Act 1958 (the Migration Act). The definition of Commonwealth is modelled on existing sections 494AA and 494AB of the Migration Act relating to bar on certain legal proceeding relating to unauthorised maritime arrivals and transitory persons respectively.

The Good Order Bill specifies the circumstances for which authorised officers may use reasonable force in immigration detention facilities in some detail in proposed subsection 197BA(2). While a broader power is specified in proposed subsection 197BA (1) to cover the variety of situations in an immigration detention facility that may not be foreseeable. Even so, proposed subsection 197BA(1) still limits the use of force to the protection of life, health or safety of any person in an immigration detention facility or maintaining the good order, peace or security of an immigration detention facility.

The test in section 146 of the Immigration and Asylum Act 1999 (UK) is an objective test. The test in proposed section 197BA of the Good Order Bill contains a subjective element, but is most accurately described as a hybrid test. Proposed section 197BF of the Good Order Bill requires the force used to be reasonable force this is an objective test based on the facts in the particular circumstance. Proposed section 197BF also contains a subjective element which requires the authorised officer to reasonably believe the force is necessary.

The breadth of circumstances for the use of reasonable force in section 146 of the Immigration and Asylum Act 1999 (UK) is any exercise of power conferred on an immigration officer under that Act or the 1971 Act. The breadth of circumstances for the use of reasonable force in proposed section 197BA of the Good Order Bill is limited and relates only to the protection of the life, health or safety of any person in an immigration detention facility or maintaining the good order, peace or security of an immigration detention facility.

The Immigration and Asylum Act 1999 (UK) is one of a number of comparative ways in which the power to use reasonable force has been drafted in legislation. The comparative models have a number of varying features across the jurisdictions (see [Attachment A](#)).

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

**Attachment A**

**Reasonable use of force - comparative legislation**

**Good Order Bill**

<b>Legislation</b>	<b>Powers</b>	<b>Exercise of reasonable force</b>
<p><i>Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015</i></p>	<p>197BA</p>	<p>An authorised officer may use such reasonable force against any person or thing, as the authorised officer <u>reasonably believes is necessary</u>, to:</p> <ul style="list-style-type: none"> <li>• protect the life, health or safety of any person (including the authorised officer) in an immigration detention facility; or</li> <li>• maintain the good order, peace or security of an immigration detention facility.</li> </ul> <p>Without limiting the general power to use reasonable force, the Bill in particular provides that an authorised officer may use such reasonable force as the authorised officer reasonably believes is necessary to:</p> <ul style="list-style-type: none"> <li>• protect a person (including the authorised officer) in an immigration detention facility from harm or a threat of harm; or</li> <li>• protect a detainee in an immigration detention facility from self-harm or a threat of self-harm; or</li> <li>• prevent the escape of a detainee from an immigration detention facility; or</li> <li>• prevent a person from damaging, destroying or interfering with property in an immigration detention facility; or</li> <li>• move a detainee within an immigration detention facility; or</li> <li>• prevent action in an immigration detention facility by any person that:             <ul style="list-style-type: none"> <li>– endangers the life, health or safety of any person (including the authorised officer) in the facility; or</li> <li>– disturbs the good order, peace or security of the facility.</li> </ul> </li> </ul>

## Police/Corrections environment

<i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)	Sections 230 and 231	<p>It is lawful for a police officer exercising a function under this Act, or under another Act or law, in relation to an individual or thing to use such force as is reasonably necessary to exercise the function.</p> <p>A police officer may also use such force as is reasonably necessary to make an arrest or prevent the escape of a person after arrest.</p>
<i>Crimes Act 1958</i> (Vic)	Section 462A	<p>The Victorian Police rely on the power in 462A of the Crimes Act. It provides that a person may use such force when:</p> <ul style="list-style-type: none"><li>- it is not disproportionate</li><li>- there are reasonable grounds necessary</li><li>- it is necessary to prevent continuation or completion of indictable offence or</li><li>- it is necessary to effect or assist in affecting the lawful arrest of a person committing or suspected of committing any offence.</li></ul>
<i>Police Powers and Responsibilities Act 2000</i> (QLD)	Sections 615 and 652	<p>When exercising or attempting to exercise a power under this Act or any other Act against an individual, it is lawful for a police officer or anyone helping the police officer to use <u>reasonably necessary force</u> to exercise the power or to prevent a person from escaping from lawful custody.</p> <p>The force does not include force likely to cause grievous bodily harm to a person or the person's death.</p> <p>It is also lawful for a watch-house officer to use reasonably necessary force to exercise powers under the Act, but not exercise force likely to cause grievous bodily harm to a person or the person's death.</p>
<i>Crimes (Administration of Sentences) Regulation 2008</i> (NSW)	Section 121	<p>In dealing with an inmate, a correctional officer may use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the inmate is to be avoided if at all possible. The exercise of force must not exceed such force that is necessary for the control and protection, having regard to the personal safety of correctional officers and others. A correction officer may have</p>

		<p>recourse to force for the following purposes :</p> <ul style="list-style-type: none"> <li>- to search an inmate or seize a dangerous/harmful article</li> <li>- to prevent the escape of an inmate</li> <li>- to prevent an unlawful attempt to enter a correctional centre by force or to free an inmate</li> <li>- to defend himself or herself if attacked, or threatened to be attacked, but only if they cannot otherwise protect themselves from harm</li> <li>- to protect other persons</li> <li>- to avoid an imminent attack if there is a reasonable apprehension of an attack</li> <li>- to prevent an inmate from injuring himself or herself</li> <li>- to ensure compliance with a proper order, or maintenance of discipline</li> <li>- to achieve the control of inmates acting in a defiant manner</li> </ul>
<i>Corrections Act 1986 (Vic)</i>	Sections 9CB and 55E	<p>Staff of police goals may, where necessary, use reasonable force to compel a person deemed to be in custody to obey an order. Where a person uses force, the person must report it to the Chief Commissioner of Police. A person who uses force under this section is not liable for injury or damage cause by that use of force.</p> <p>An escort officer may also use reasonable force, where necessary, to compel a prisoner to obey an order given by the escort officer in the exercise of a function or power. An escort person who uses force under this section is not liable for injury or damage cause by that use of force.</p>
<i>Corrective Services Act 2006 (QLD)</i>	Section 143	<p>A corrective services officer may use force, other than lethal force, that is <u>reasonably necessary</u> to:</p> <ul style="list-style-type: none"> <li>- compel compliance with an order given or applying to a prisoner</li> <li>- restrain a prisoner who is attempting, preparing to commit, or is committing an offence or a breach of discipline</li> <li>- compel any person who has been lawfully ordered to leave a corrective services facility, and who refuses to do so, to leave the facility</li> <li>- restrain a prisoner who is attempting to or preparing to harm themselves or</li> </ul>

		<p>is harming themselves</p> <p>The corrective services officer may only use the force only if the officer:</p> <ul style="list-style-type: none"> <li>- reasonably believes the act or omission permitting the use of force cannot be stopped in another way</li> <li>- gives a clear warning of the intention to use force if the act or omission does not stop</li> <li>- gives sufficient time for the warning to be observed</li> <li>- attempts to use the force in a way that is unlikely to cause death or grievous bodily harm</li> </ul>
<i>Corrections Act 1997 (Tas)</i>	Section 34B	<p>A correctional officer may use force that is necessary and reasonable for the Act, including:</p> <ul style="list-style-type: none"> <li>- to compel compliance with a direction given in relation to a prisoner or detainee by the Director</li> <li>- to prevent or stop the commission of an offence or disciplinary breach</li> <li>- to prevent the escape of a prisoner or detainee</li> <li>- to prevent unlawful damage, destruction or interference with property</li> <li>- to defend the correctional officer or someone else</li> <li>- to prevent a prisoner or detainee from inflicting self-harm</li> <li>- any other thing prescribed by the regulations</li> </ul> <p>A correctional officer may use force only if the correctional officer believes, on reasonable grounds, that the purpose for which the force may be used cannot be achieved in another way.</p>

### **International immigration acts**

<i>Immigration and Asylum Act 1999 (UK)</i>	Section 146	An immigration officer exercising any power conferred on him by the Act may, if necessary, use reasonable force.
<i>Immigration Act 2009 (NZ)</i>	Section 328	Where an immigration officer is exercising the power of detention, the immigration

		<p>may use such physical force as the officer has reasonable grounds for believing is reasonably necessary, including:</p> <ul style="list-style-type: none"> <li>- to prevent the detained person from harming any person, damaging property, escaping or attempting to escape;</li> <li>- recapture a person who has fled; and</li> <li>- to search a person and seize any items which pose a threat to the safety of the officer or any other person</li> </ul>
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### Other administrative forms of detention

<i>Mental Health (Treatment and Care) Act 1994 (ACT)</i>	Subsections 35(2) and 36G(2)	<p>The chief psychiatrist or care coordinator of the community care facility may, for the purpose of taking or authorising someone to take a person to the premises:</p> <ul style="list-style-type: none"> <li>- use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the premises</li> <li>- if the person is at a particular premises, enter those premises using force and assistance that is necessary and reasonable.</li> </ul> <p>The Act also gives the chief psychiatrist or care coordinator the power to subject the person to confinement or restraint that is necessary and reasonable.</p>
<i>Mental Health Act 2009 (SA)</i>	Paragraph 56(3)(c)	<p>Authorised officers have the power to restrain the person and otherwise use force in relation to the person as reasonably required in the circumstances. An authorised officer includes</p> <ul style="list-style-type: none"> <li>- mental health clinician</li> <li>- ambulance officer</li> <li>- a person employed as a medical officer or flight nurse</li> <li>- a person prescribed by the regulations</li> </ul>
<i>Protective Services Officers (PSOs) Victoria</i>		<p>PSOs are based on the Victorian railway network. PSOs are not sworn members of the police force but are employed by Victoria Police and are armed with semi-automatic guns. PSOs are given a wide range of powers including:</p> <ul style="list-style-type: none"> <li>- the ability to arrest and detain, including arrest for drunk and disorderly</li> </ul>

		<ul style="list-style-type: none"> <li>offences;</li> <li>- the ability to search people and property and seize such items as weapons and alcohol;</li> <li>- issue on the spot fines, including for graffiti offences; and</li> <li>- issue a direction to 'move on' from the area.</li> </ul>
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### Protection from liability

#### Good Order Bill

Legislation	Powers	Exercise of reasonable force
<i>Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015</i>	197BF	<p>(1) No proceedings may be instituted or continued in any court against the Commonwealth in relation to an exercise of power under section 197BA if the power was exercised in good faith.</p> <p>(2) This section has effect despite anything else in this Act or any other law.</p> <p>(3) Nothing in this section is intended to affect the jurisdiction of the High Court under section 75 of the Constitution.</p> <p>(4) In this section: Commonwealth includes:</p> <ul style="list-style-type: none"> <li>(a) an officer of the Commonwealth; and</li> <li>(b) any other person acting on behalf of the Commonwealth.</li> </ul>

#### Police

<i>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)</i>	Various including section 232	<p>Provides for various protections from liability for persons who are performing functions under the Act. For example section 232 provides protection for proceeding (whether criminal or not) are brought against a police officer in execution of a warrant.</p> <p>There is no overarching provision that covers all actions of officers.</p>
<i>Victoria Police Act 2013 (Vic)</i>	Division 8 of Part 4	<p>Division 8 of Part 4 provides extensive provisions relating to circumstances in which protection from liability for tortious conduct by police and protective services officers in the performance of the officer's duties.</p> <p>The Crown is responsible for such liability</p>
<i>Police Services Administration</i>	Section 10.5	Section 10.5 provides for civil liability of police officers and others for engaging in

<i>Act 1990 (QLD)</i>		conduct in their official capacity where they have acted in good faith and without gross negligence The Crown is responsible for such liability
<i>Police Act 1988 (SA)</i>	Section 65	A member of SA Police does not incur any civil or criminal liability for an honest act or omission in the exercise or discharge, or the purported exercise or discharge, of a power, function or duty conferred or imposed by or under this Act or any other Act or law. The Crown is responsible for such liability
<i>Police Act 1892 (WA)</i>	Section 137	Section 137 provides that an action in tort does not lie against a member of the Police Force for anything that the member has done, without corruption or malice, while performing or purporting to perform the functions of a member of the Police Force, whether or not under a written or other law. The Crown is responsible for such liability.
<i>Police Service Act 2003 (Tas)</i>	Section 84	Section 84 provides that a police officer does not incur any personal liability for any act or omission done or made in good faith in the exercise or performance, or purported exercise or performance, of any powers or duties at common law or under this or any other Act or law. The Crown is responsible for such liability.
<i>Australian Federal Police Act 1979 (Cth)</i>	Section 64B	Section 64B provides that the Commonwealth is liable in respect of a tort committed by a member or a protective service officer in the performance or purported performance of his or her duties as such a member or a protective service officer in like manner as a person is liable in respect of a tort committed by his or her employee in the course of his or her employment, and shall, in respect of such a tort, be treated for all purposes as a joint tortfeasor with the member or the protective service officer

### **Corrections environment**

<i>Crimes (Administration of Sentences) Act 1999 (NSW)</i>	Section 263	Section 263 a corrections officer is not personally liable for an act or omission if it was done in good faith in the execution of powers under the Act or any Act that confers or imposes function on the corrections officer.
<i>Corrections Act 1986 (Vic)</i>	Various including	This Act provides for specific sections that provide protection from liability for prison officers.

	section 23	For example section 23 provides that a prison officer is not liable for injury or damage caused by the use of force for the control of prisoners. Protection from liability is also provided for injury or damage caused by the use of force to exclude visitors for safety reasons, carrying out searches or by an approved dog.
<i>Prison Act 1981 (WA)</i>	Section 111	Section 111 provides that no action or claim for damages shall lie against any person for or on account of anything done, or ordered or authorised to be done, by him which purports to be done for the purpose of carrying out the provisions of this Act, unless it is proved that the act was done, or ordered or authorised to be done, maliciously and without reasonable and probable cause

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 16 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 024) - Parliamentary Inquiry – Children in Detention - Programme 1.1 Border Management (ACBPS)**

Senator Macdonald, Ian (L&CA) written:

CHAIR: I indicated previously that it was the department's intention and hope, expressed at previous hearings of this committee, that that would get to zero by the end of the financial year, if I recall—I am not holding you to it—with the exception of what I was told were children who would never leave because their parents were in a situation that they would never leave. Is that still the department's intention?

Mr Outram: It is our intention to reduce that as far as we possibly can. We do not want children in detention any more than anybody else.

CHAIR: No.

Mr Outram: We have worked very hard to reduce the number, we have reduced the number and we will continue to do so. As for time frames, I cannot give you a time frame now as to what has been committed to, but I can come back to you on notice and provide a response to that.

*Answer:*

The number of children in held detention continues to reduce significantly since the announcement of the new temporary protection visas in December 2014. As at 16 April 2015, there were 115 IMA children in held detention in Australia, down from a peak of 1992 in July 2013.

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 16 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 025) - Parliamentary Inquiry – Children in Detention - Programme 1.1 Border Management (ACBPS)**

Senator Macdonald, Ian (L&CA) written:

CHAIR: I might just repeat that for the record, because I suspect that Hansard will not have got that. By way of advice from outside the table: 124 yesterday and 115 today, as an agreed figure. And the suggestion was made that some went to Nauru yesterday. Does that—

Mr Sommerville: I think we should take that one on notice and clarify because there may have been some other releases in terms of people going out on some form of visa from held detention. If it is okay with the committee we will take that on notice.

*Answer:*

As at 7am AEST on 16 April 2015 there were 115 Illegal Maritime Arrival (IMA) children and 10 non-IMA children in held detention in Australia.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

### **(Maintaining Good Order 026) - Parliamentary Inquiry – Community Detention - Programme 1.1 Border Management (ACBPS)**

Senator Macdonald, Ian (L&CA) written:

Senator LINES: What is the process to include community detention?

Ms de Veau: As it stands, the bill provides for the definition of an immigration detention facility to be amended to be a detention centre established under the act or a place approved by the minister under subparagraph B5 of the definition within the Migration Act. So the minister would need to make an approval that links back into that definition such that it created a new category of detention facility.

Senator LINES: How does the minister do that? What is the process?

Ms de Veau: The process is that he would as a matter of policy consider whether he wanted to enliven such a course of action.

Senator LINES: So no parliamentary oversight—policy change?

Ms de Veau: I would have to take that on notice to see whether the approval that links back into subsection 1 is by regulation or disallowable instrument.

*Answer:*

Proposed subsection 197BA(3) defines an ‘immigration detention facility’ to be a detention centre established under the *Migration Act 1958* (Migration Act) or a place approved by the Minister under subparagraph (b)(v) of the definition of ‘immigration detention’ in subsection 5(1) of the Migration Act. These places currently comprise:

1. immigration transit accommodation;
2. immigration residential housing; and
3. selected other alternative places of detention.

Approval of the Minister in writing for the purposes of subparagraph (b)(v) of the definition of ‘immigration detention’ in subsection 5(1) of the Migration Act is not a legislative instrument.

Community detention is provided for under Subdivision B of Division 7 of Part 2 of the Migration Act. Under section 197AB of the Migration Act, if the Minister thinks that it is in the public interest to do so, the Minister may make a determination (a *residence determination*) to the effect that one or more specified persons to whom this Subdivision applies are to reside at a specified place, instead of being detained at a place covered by the definition of *immigration detention* in subsection 5(1).

As residence determinations are excluded from the definition of ‘immigration detention facility’ by operation of section 197AB, it is the department’s view that the Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015

(Good Order Bill) does not extend to community detention. This is because the specified place (i.e. community detention) that the Minister makes a residence determination in relation to is not covered by the definition of 'immigration detention' in subsection 5(1), of which subsection 197BA(3) of the Good Order Bill relies upon.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 027) - Parliamentary Inquiry – Detention Services Contract - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

Senator LINES: Are the contracts publicly available?

Mr Outram: I believe they are. I believe they are like any contract; I do not think it is a secret contract. I will check that.

Senator LINES: Can we get a proper answer—a yes or no on that?

Mr Outram: Absolutely.

Ms de Veau: I would want to take that on notice, given there might be some commercial-in-confidence matters in there.

Mr Outram: There may be commercial-in-confidence elements. There may be some operationally sensitive elements, but we can certainly take that on notice and pass the contract—

Senator LINES: But it may be commercial-in-confidence, so it is not available?

Mr Outram: What I would say is that the contract does already require, for example, a biennial rolling program of refresher training, and so there are training elements contained—

Senator LINES: Is that contract available?

Mr Outram: Again, we will tell you on notice if it is available.

*Answer:*

The contract is not publicly available.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 028) - Parliamentary Inquiry –Service Providers - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

Senator LINES: So currently the department requires that people who manage security hold a certificate IV?

Mr Outram: Managers from Serco—yes, that is right.

Senator LINES: What is a manager?

Mr Outram: It is a person in charge or a supervisor. I can tell you exactly what level that goes down to, but the managers are appointed positions.

Senator LINES: You can take on notice to tell us what level that goes down to. That is the current requirement. Then it says, 'For authorised officers'—and you have already told me that authorised officers do not currently exist. Does this paragraph relate to the current bill?

Mr Outram: I will have to clarify that. The way it is worded is ambiguous. I do not want to mislead you. I can probably quickly answer on notice whether that is in the current contract or not.

*Answer:*

The contract between Serco and the Department of Immigration and Border Protection does not specify any specific requirements to obtain a state or territory authorised security licence. Serco is required to comply with all relevant state and territory legislative requirements. Serco personnel responsible for the general security and safety for detainees are required to hold a Certificate II in Security Operations or equivalent. A Certificate IV in Security Operations or Technical Security or equivalent is required for those personnel required to manage security at the detention facilities, such as Centre Managers and Senior Operations Managers.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 029) - Parliamentary Inquiry – Service Providers - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

Senator LINES: No, I am not asking you that. We have established that authorised officers do not currently exist. We know they are mentioned in the bill before us. We have established the first paragraph applies to the current bill. The second paragraph applies to what is currently required of Serco or anyone who manages detention centres. The third paragraph goes back to 'authorised officers' and it relates to a certificate II. So the question I am asking you is: does paragraph 3 relate to the current bill?

Mr Outram: I do not believe so, but I want to look at the term 'authorised officer' and whether that achieves a different definition within the contract. That is what I want to check. But, on my read of this, this is the existing contract. It says 'requires that'. 'Requires' is present tense. They must hold something or obtain something within six months of commencement.

Senator LINES: So it is erroneously using the term 'authorised officers'?

Mr Outram: My advice is that this applies to current officers but not authorised officers. I want to go and check on that terminology. It seems to be ambiguous. I will clear that up for you.

*Answer:*

The third paragraph under section 2.6 “Training and Qualifications” of the Department’s submission to the Committee contains a typographical error. The word “authorised” should be replaced with “current” so that the paragraph reads as follows: “For current officers responsible for the general safety of detainees the Department requires that they must hold at least a Certificate Level II in Security Operations or equivalent...”

In future we expect authorised officers will meet (at least) the same or equivalent qualification. A corrected extract of the Department’s submission as submitted to the Committee appears below:

### *2.6 Training and qualification requirements*

*Authorised officers will meet minimum standards in training and qualification requirements. A person cannot be an authorised officer for the purposes of section 197BA unless he or she satisfies the training and qualification requirements determined by the Minister in writing.*

*The Department currently expects and has stipulated in the IDSP contract that all officers, who manage security at an IDF, will hold at least a Certificate Level IV in Security Operations or Technical Security or equivalent and will have acquired at least five years of experience in managing security.*

For authorised current officers responsible for the general safety of detainees the Department requires that they must hold at least a Certificate Level II in Security Operations or equivalent or obtain a Certificate Level II in Security Operations within six months of commencement. The Department requires that:

- the successful completion of the IDSP's mandatory induction training leads to staff being awarded the Certificate II in Security Operations; and
- no officer will be placed in an IDF without this essential qualification.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 030) - Parliamentary Inquiry – Service Providers - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

Senator LINES: What that enables them to do is deliver nationally accredited courses. It does not give them any training experience or skills to develop these courses.

Mr Outram: But the department and the Customs and Border Protection Service—what will be the Border Force—do and will have significant involvement in that development. We will establish a standard through the contract.

Senator LINES: Do you have accredited curriculum writers?

Mr Outram: We have people who are qualified in training. Whether we have accredited curriculum writers I would have to take on notice.

Senator LINES: Mr Outram, I am qualified in training; I am not qualified in writing curriculum.

Mr Outram: I would have to take that on notice. What we do have is people who are very experienced in training in relation to the use of force or enforcement activities.

*Answer:*

Serco is a Registered Training Organisation and are qualified to develop and deliver accredited training. All training programs and activities developed by Serco are endorsed by the Department of Immigration and Border Protection.

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 16 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 031) - Parliamentary Inquiry – Service Providers - Training - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

Senator LINES: I am very experienced in delivering training. It does not mean I can write curriculum.

Mr Outram: Police organisations and corrective services departments train all their people—I talked about that earlier on—in duty of care, human rights.

Senator LINES: I think you need to take on notice: who is going to write these courses; who is going to deliver this course; and which elements of that course will be accredited.

Mr Outram: We will come back to you on that.

*Answer:*

Serco is a Registered Training Organisation and are qualified to develop and deliver accredited training. All training programs and activities developed by Serco are endorsed by the department of Immigration and Border Protection.

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 16 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 032) - Parliamentary Inquiry – Service Providers - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

Senator LINES: The Wilson Security officers who have been stood down. Did the department ask, through Transfield to Wilson Security, for those officers to be stood down?

Mr Outram: We will have to take that on notice. We can talk about this bill in relation to the domestic situation—

Senator LINES: I am sorry, Mr Outram, I did not think you had responsibility for Manus and Nauru, which is why I am asking Mr Sommerville.

Mr Sommerville: I will have to take that one on notice.

Senator LINES: So you do not know?

Mr Sommerville: No. I do not know, so I will have to find out. I will have to take it on notice.

*Answer:*

This question goes beyond the scope of the policy intention of the current bill as the bill does not encompass offshore Immigration Processing Centres.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 16 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 033) - Parliamentary Inquiry – Service Providers - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

Senator LINES: Okay. Are any of you aware that Serco is currently about to finalise its enterprise bargaining agreement?

Mr Sommerville: I understand that they are in current negotiations with their staff, yes.

Senator LINES: So the new agreement does not have any provision for additional pay for authorised officers?

Mr Sommerville: I would have to take that one on notice. We are not party to their pay arrangements.

Senator LINES: I get that you are not party, but we are now expecting Serco officers to do this enhanced security work for \$25, \$26 an hour or whatever their current hourly rate is. Is that correct?

Mr Sommerville: As I said, the honest answer is that we can take that on notice for you and see what we can find out from Serco.

*Answer:*

The department's contract with Serco will not change as a result of Serco's enterprise bargaining agreement.

The remuneration of Serco personnel is a matter for Serco, and Serco alone.

## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 22 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 034) - Parliamentary Inquiry – Service Providers - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

To work as a security officer, a licence from a state authority is required. Does the department require this licence for officers working for contractors in Detention Centres?

*Answer:*

The contract between Serco and the Department of Immigration and Border Protection does not specify any specific requirements to obtain a state or territory authorised security licence. Serco is required to comply with all relevant state and territory legislative requirements. Serco personnel responsible for the general security and safety for detainees are required to hold a Certificate II in Security Operations or equivalent. A Certificate IV in Security Operations or Technical Security or equivalent is required for those personnel required to manage security at the detention facilities, such as Centre Managers and Senior Operations Managers.

<b>PDR Number: 34T</b>	<b>QON Number: Maintaining Good Order 036</b>
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**QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 23 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 036) - Parliamentary Inquiry – Service Providers –  
Training - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

Can the Department provide a copy of ongoing training matrices or schedules provided by IDSP to ensure all authorised officers maintain capability and training standards?

*Answer:*

Attached is a copy of the current training schedule provided to Immigration Detention Service Providers.



## **QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 23 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 037) - Parliamentary Inquiry – Service Providers – Training - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

Can the Department provide verification that all Immigration Detention Services Provider (IDSP) personnel have been properly inducted and are at least progressing toward Certificate II in Security Operations or similar?

*Answer:*

The Department of Immigration and Border Protection can confirm that all Serco personnel have been properly inducted and have attained a Certificate II in Security Operations.

**QUESTION TAKEN ON NOTICE**

**Parliamentary Inquiry : 23 April 2015**

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 038) - Parliamentary Inquiry – Service Providers –  
Training - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

How many Immigration Detention Services Provider (IDSP) personnel have started duties, but failed to complete a Certificate II?

*Answer:*

In the past 12 months, there have been no instances of Serco officers failing to complete a Certificate II in Security Operations after commencing duties at an Immigration Detention Facility.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 23 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 039) - Parliamentary Inquiry – Service Providers – Training - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

Does the Department require that the IDSP undertakes training for its' personnel in cultural appropriateness and sensitivity, basic counselling skills, first aid, managing conflict through negotiations, and the provision of appropriate security measures? If so; Can the Department outline this training? How many hours of this training are undertaken and delivered? If not; Why not?

*Answer:*

The contractual arrangement between the Department of Immigration and Border Protection and Serco requires Serco personnel undertake 200 hours of training. Training includes completing the following courses and qualifications:

- 'Apply First Aid' qualification;
- cultural awareness;
- suicide awareness and observation skills;
- the Department's objectives for Immigration Detention;
- conflict de-escalation;
- duty of care responsibilities;
- communication and interaction with departmental personnel, stakeholders and other service providers;
- problem solving and decision-making in the workplace;
- self-harm awareness;
- mental health policy training in accordance with the departmental policy;
- skills on interacting with Detainees;
- record keeping procedures with departmental policy; and
- human rights and human interaction training.

## QUESTION TAKEN ON NOTICE

Parliamentary Inquiry : 23 April 2015

IMMIGRATION AND BORDER PROTECTION PORTFOLIO

**(Maintaining Good Order 040) - Parliamentary Inquiry – Service Providers – Training - Programme 1.1 Border Management (ACBPS)**

Senator Lines, Sue (L&CA) written:

Does the Department require that the IDSP undertakes training for its' personnel in relation to dealing with clients who have complex needs e.g. mental health issues, torture & trauma issues, domestic & family violence, adolescent & child issues and critical incidents? If so; Can the Department outline this training? If not; Why not?

*Answer:*

The contractual arrangement between the Department of Immigration and Border Protection and Serco requires Serco personnel undertake 200 hours of training. Training includes completing the following courses and qualifications:

- 'Apply First Aid' qualification;
- cultural awareness;
- suicide awareness and observation skills;
- the Department's objectives for Immigration Detention;
- conflict de-escalation;
- duty of care responsibilities;
- communication and interaction with departmental personnel, stakeholders and other service providers;
- problem solving and decision-making in the workplace;
- self-harm awareness;
- mental health policy training in accordance with the departmental policy;
- skills on interacting with Detainees;
- record keeping procedures with departmental policy; and
- human rights and human interaction training.