7 April 2015

Senate Legal and Constitutional Affairs Committee

PO Box 6100 Parliament House

Canberra ACT 2600

Dear Secretary

We write in regard to the Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015, with reference to the following which would be allowed if this Bill were passed.

1. Allowing an authorised officer to use reasonable force against any person in immigration to detention, to in order to protect the life, health or safety of any person (including the officer) in an immigration detention facility, or maintain the good order, peace or security of an immigration detention facility is not appropriate because this gives inappropriate powers to the authorised offices of the immigration detention facility. Of course, protecting the 'life, health and safety' of all at these facilities is very important. Our major concerns are as follows. The bill does not define 'reasonable force' or 'good order'. Nor does it set out the circumstances under which it would be acceptable to use 'reasonable force' against people in detention. For example, it is unclear if these powers would be used to prevent or stop peaceful protest. Protest is a lawful and important element of the democracy we celebrate in Australia, and has led to many of the reforms which make this country so livable. Authorised officers should not be given the power to circumscribe this right. Detainees, while not citizens, deserve the right to freedom of expression guaranteed in Article 19 of the Universal Declaration of Human Rights.
2. Establishing a complaints mechanism to allow a person to make a complaint to the Secretary of the Department of Immigration and Border Protection about the use of force, rather than have the complaint adjudicated by a court is highly disturbing because it removes an important mechanism for independent, impartial adjudication of complaints. To give the body exerting the force adjudication of complaints regarding that force is unworkable and undemocratic.
3. Imposing a bar on any action against the Commonwealth (including an authorised officer) relating to the use of force in an immigration detention facility, if the power to use force was exercised in good faith is equally questionable. 'Good faith' is a nebulous term which will offer even less certitude than that currently in place for the authorised officers. It is a provision that is difficult to administer in a way that is transparent and acceptable to the Australian public. It gives far too much power to the detaining forces who should be focused on providing care, rather than punishment. There is nothing in this provision that will ensure that 'that force is not to be exercised capriciously or inappropriately'.

We appreciate the difficulties in having 'high risk' detainees, such as overstayers convicted of violent crimes, accommodated with others, including asylum seekers, who offer little or no risk at all. However, people who may pose a judged high risk to the safety of others could be accommodated

separately in higher security facilities, as already occurs in some detention facilities. We are also aware of the harm that has been done in treating asylum seekers like hardened criminals. This in itself creates a high risk environment. The proposed Bill is not the right way to attend to this very real problem. Other forms of care, in the first instance for low risk refugees, children, would be far more sensible. Ensuring the prompt release of people who pose no risk to the community would lessen the risk of unrest that tends to build due to frustration when people are subjected to lengthy and indefinite detention.

In this very regard, we note the misguided spirit of this legislation, which treats asylum seekers as criminals a priori, rather than as people legally exercising their human right to seek asylum as stated in Article 14 of the Universal Declaration of Human Rights and in the Refugee Convention 1951 and its 1967 Protocol. The Australian Government is being increasingly castigated by the international community for this wrongful treatment. It would be far more appropriate to use the resources of the Government to bring its policies into line with other democratic countries participating in an international community that seeks to do good rather than harm. Detaining innocent people, including children who are innocent of any wrong doing, is the crime apparent to our global onlookers.

We entreat the Senate to not pass this Bill and focus instead of making significant changes in the approach our country is taking to deal with our international neighbours in dire need. A shift towards social support, including educating Australians about asylum seekers' and refugees' legal status and need for assistance, together with a concerted effort to rebuild the mental health of highly stressed people, would be a far better use of your legislative powers. Increasing cruel and harmful institutional detention that exacerbates the already extremely difficult circumstances faced by asylum seekers and refugees is not the way forward for a mature and considerate nation.

Some specific steps that should be enshrined in legislation, instead of passing the proposed 'Maintaining the Good Order of Immigration Detention Centres Bill 2015' are:

1. Prohibiting the detention of children in closed facilities, including the return to likely danger of abuse on Nauru. Community-based support arrangements should be used instead of closed detention.
2. Setting a time limit on immigration detention. Australia could follow the far more humane approach of the UK Government in the 2014 legislation it introduced on this matter.
3. Establishing a system of regular judicial review of people in immigration detention.

The members of our congregation will follow the outcome of the debate on the proposed passage of this legislation with deep interest and concern.

Yours sincerely,

Dr Susan Pyke

On behalf of the Social Action Committee of Sophia's Spring, an eco-feminist community of the Uniting Church

c/o CERES, Corner of Roberts and Stewart Streets, Brunswick East 3055 Victoria.