

Chapter 2

The Legislation

Introduction

2.1 In introducing the Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005 the Minister for Agriculture, Fisheries and Forestry spoke of illegal fishing in Australian waters, particularly the northern waters, as a growing problem. The problem is growing not only in terms of the number of illegal foreign vessels apprehended but also the catches those vessels are taking.

2.2 In the past two calendar years, 299 vessels have been apprehended in Australia's northern waters and 18 vessels suspected of illegal fishing had been detained in the first 2 months of 2005¹. The vessels apprehended can be found to have "large freezer storage facilities on board"² and are targeting large quantities of reef fish and shark fins. The three vessels apprehended on 26 February 2005, with a total of 4000 kilograms of fish on board, and a vessel apprehended on 3 March 2005 with 176 shark fins, provide an indication of the growing problem³.

2.3 The illegal foreign fishing vessels originate in Indonesia. Under a 1974 agreement with Indonesia, Australia does permit some Indonesian fishing in the Australian Fisheries Zone (AFZ). The areas are those that have been traditionally fished by the Indonesians and the arrangements provide for the fishing of specific species.⁴ However, the increases in both the number of vessels and the size of the catches may have an impact on the sustainability of Australia's fish stocks.⁵

2.4 The Committee acknowledges that the problem of illegal foreign fishing in Australian waters cannot be ignored and notes that the legislation forms part of a government program which includes other measures, including the provision of

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- 1 Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005, Second reading speech, p 1
 - 2 Department of Parliamentary Services, Bills Digest no 121, 2004-05, 9 March 2005. Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005, p 3
 - 3 Department of Parliamentary Services, Bills Digest no 121, 2004-05, 9 March 2005. Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005, p 3
 - 4 Department of Parliamentary Services, Bills Digest no 121, 2004-05, 9 March 2005. Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005, p 2
 - 5 Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005, Second reading speech, p 1

additional resources to both the Australian Fisheries Management Authority (AFMA) and the Australian Quarantine and Inspection Service (AQIS).⁶

2.5 The Committee did not receive any evidence during the inquiry to suggest that there was not general support for the principles of the legislation. However, the inquiry provided an opportunity for the Committee to tease out a number of issues, including the proposed new powers provided under the act and the accountability mechanisms included.

Issues

Training Requirements

2.6 During the inquiry the Committee explored the responsibilities and duties of a new class of officers proposed by the legislation.

2.7 The current legislation⁷ provides for AFMA or the Minister to appoint officers, including those who are members of the Australian Federal Police or a state or territory force, the Defence Force or the Customs Service. There is no proposed change to these existing appointment arrangements. Under the amendments proposed in the bill, officers appointed under the *Torres Strait Fisheries Act 1984* (Torres Strait Act) will have their powers extended to include the power to detain. Officers appointed under the *Fisheries Management Act 1991* (Fisheries Act) currently have this power.⁸

2.8 However, there are also two classes of officers defined in the legislation:

- detention officers;
- authorised officers.

2.9 Under the proposed amendments to both the Fisheries Act and the Torres Strait Act, detention officers are appointed by the Minister and may include contract employees.⁹ While detention officers will not have the power to detain a person, they are responsible for the detainees continuing detention, as well as moving the detainees if required.¹⁰

6 Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005, Second reading speech, p 1

7 either the *Fisheries Management Act 1991* or the *Torres Strait Fisheries Act 1984*.

8 Submission 2, Joint Submission From Department of Agriculture, Fisheries and Forestry, Department of Immigration and Multicultural and Indigenous Affairs, and Australian Fisheries Management Authority, p 2

9 Submission 2, Joint Submission From Department of Agriculture, Fisheries and Forestry, Department of Immigration and Multicultural and Indigenous Affairs, and Australian Fisheries Management Authority, p 2

10 Department of Agriculture, Fisheries and Forestry, *Transcript of Evidence*, 17 March 2005, Canberra, p 5

2.10 Both detention officers and fisheries officers can be authorised by AMFA. Those that are 'authorised' become authorised officers and, depending on the authorisation, can conduct "searches, screening, identification tests and those sorts of activities."¹¹ Authorisation can be made by employment classification providing the necessary training protocols are met, with the exception of authorisations for strip searches. Authorisations for strip searches are made for individual officers.¹²

2.11 The Committee notes the link made between training and authorisation. It was highlighted by the Minister when introducing the bill:

An important part of the authorisation process, will see any prospective officers receive comprehensive training in the effective and responsible use of these powers under the relevant Acts.¹³

2.12 However, during the hearings, when the Committee sought to establish the legislative provision for the training requirements that would be provided prior to authorisation, the Committee was advised:

There is no requirement in the bill for that [training]. It is part of the discretion of AFMA when authorising those officers.¹⁴

2.13 This evidence would seem at odds with the Minister's advice to the House. In the ensuing discussion it became clear that AFMA's intention was to replicate the training arrangements that already exist under the current immigration regime.¹⁵

2.14 In its submission, the Community and Public Sector Union (CPSU) indicated that it:

...believes that minimum training requirements should be inserted into the bill...¹⁶

2.15 The CPSU argued that the requirement under the Australian Public Service (APS) *Code of Conduct* and Values for sensitivity to the diversity of the Australian public:

11 Department of Agriculture, Fisheries and Forestry, *Transcript of Evidence*, 17 March 2005, Canberra, p 6

12 Department of Agriculture, Fisheries and Forestry, *Transcript of Evidence*, 17 March 2005, Canberra, p 7

13 Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005, Second reading speech, p 6

14 Department of Agriculture, Fisheries and Forestry, *Transcript of Evidence*, 17 March 2005, Canberra, p 6

15 Department of Agriculture, Fisheries and Forestry, *Transcript of Evidence*, 17 March 2005, Canberra, p 6

16 Submission 1, CPSU, p 8

should be equally applicable to the conduct of all Commonwealth employees, including private sector contractors, to illegal foreign fishers with regard to language and cultural differences.¹⁷

2.16 The powers that can be exercised by authorised officers are significant. The bill proposes that authorised officers will also be granted the power to carry out identification tests, by force if necessary and if authorised.¹⁸

2.17 Furthermore, searches, including strip searches, can be conducted without a warrant. Strip searches, however, will be subject to the approval of the Managing Director of AFMA, or the Secretary or a Deputy Secretary of Department of Agriculture, Fisheries and Forestry (DAFF).¹⁹ The legislation also provides that the detainee may request an independent person to be present during the strip search, provided that the independent person is readily available.²⁰

2.18 Although the Committee accepts the advice from DAFF that AFMA will largely put in place the training currently required by the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), it continues to be concerned that the gravity of the powers provided to authorised officers under the proposed amendments will not be met with commensurate training. The Committee notes the advice provided in the joint submission from DAFF, DIMIA and AFMA; under current Migration Series Instruction 347 Strip Searches of Immigration Detainees, the training is mandatory. It advises that:

The strip search training includes:

Civil rights and liberties

Cultural awareness

The grounds for conducting a strip search

The pre-conditions for a strip search

The role of officers involved in conducting a strip search

The procedure for conducting a strip search

The procedures relating to items retained during a search

17 Submission 1, CPSU, p 8

18 Department of Agriculture, Fisheries and Forestry, *Transcript of Evidence*, 17 March 2005, Canberra, p 13 and p 19

19 *Transcript of Evidence*, 17 March 2005, Canberra, p 11

20 Department of Immigration and Multicultural and Indigenous Affairs, *Transcript of Evidence*, 17 March 2005, Canberra, p 14

Record keeping
Reporting requirements.²¹

2.19 The Committee is of the view that strip searches are, by their nature an intimidating experience for those that are subject to them. As such, the requirement for training that is linked with these powers in particular, should be explicit in the legislation and subject to parliamentary scrutiny. Given that DIMIA has already detailed the training provisions for those "who are to be authorised to search, screen or strip search a detainee"²² the Committee believes that the legislation would benefit by the inclusion of a specific requirement for training. Accordingly, the Committee makes the following recommendation:

Recommendation 1

2.20 The Committee recommends that the bill be amended to insert a requirement that officers, prior to becoming authorised officers, undertake the training prescribed in a disallowable instrument to be made under the Act.

Contract employees

2.21 The bill provides for the employment of contract staff. These employees are subject to the same authorisation processes as other officers and will therefore undertake the duties of either detention officers or authorised officers. In its submission, the CPSU raised a number of inter-related concerns over the employment of contract staff, particularly given the "serious law enforcement style powers...".²³ These concerns include adherence to the *APS Code of Conduct*; accountability and the protection of employees.

APS Code of Conduct

2.22 Employees of the APS are bound by the *Code of Conduct* to a stated high standard of professionalism and ethics. The CPSU "believes that this high standard of professional conduct...has no equivalence in the private sector."²⁴ They argue that:

The flexibility and responsiveness of the modern APS means that there is no arguable reason why these positions cannot be fulfilled by APS employees.²⁵

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- 21 Submission 2, Joint Submission From Department of Agriculture, Fisheries and Forestry, Department of Immigration and Multicultural and Indigenous Affairs, and Australian Fisheries Management Authority, p 5
- 22 Submission 2, Joint Submission From Department of Agriculture, Fisheries and Forestry, Department of Immigration and Multicultural and Indigenous Affairs, and Australian Fisheries Management Authority, p 4
- 23 Submission 1, CPSU, p 5
- 24 Submission 1, CPSU, p 5
- 25 Submission 1, CPSU, p 5

2.23 The Committee itself has reservations about the use of contract employees to undertake the duties that include the use of significant powers. During the hearings it sought assurances regarding the selection process of these employees. It was informed that the proposal was similar to that which DIMIA operated and that the contract with the employer imposed certain requirements:

The provisions of the contract outline the nature of the employees. That is not just a security clearance: it is also a character assessment. There are some other criteria within the contract which apply to employees. So it goes beyond just the security clearance.

...

There is also a requirement in the contract for the police checks which are done prior to a contract employee being engaged in a centre. There is also a requirement for an annual police check thereafter, so that we have ongoing review of, at least, the criminal aspect.²⁶

2.24 The Committee also sought information about any code of conduct that relates to detention officers. DIMIA informed the Committee that GSL Australia, which is contracted by DIMIA, has such a code:

...it is important to have a code of conduct for detention officers and for that to be adhered to. GSL Australia have a code of conduct for their officers and they very vigorously apply that code of conduct. Our experience is that when an issue arises they pursue that issue.²⁷

2.25 The Committee notes that GSL Australia's code of conduct requires the staff to "perform their duties professionally and ethically, at all times. (14.1.8)."²⁸

2.26 The joint submission provides a comparative analysis of GSL Australia's code of conduct and the APS Code. It identifies 7 of 13 obligations imposed on a public servant under the APS Code of Conduct as being equivalent to those imposed by GSL Australia's code of conduct.²⁹

2.27 The joint submission further identifies the APS Code of Conduct obligations that do not have direct equivalents under the GSL Australia code as the following:

- (a) act with honesty and integrity;

26 Department of Immigration and Multicultural and Indigenous Affairs, *Transcript of Evidence*, 17 March 2005, Canberra, p 4

27 Department of Immigration and Multicultural and Indigenous Affairs, *Transcript of Evidence*, 17 March 2005, Canberra, p 8

28 Submission 2, Joint Submission From Department of Agriculture, Fisheries and Forestry, Department of Immigration and Multicultural and Indigenous Affairs, and Australian Fisheries Management Authority, Attachment F

29 Submission 2, Joint Submission From Department of Agriculture, Fisheries and Forestry, Department of Immigration and Multicultural and Indigenous Affairs, and Australian Fisheries Management Authority, Attachment G

- (b) act with care and diligence;
- (c) act in accordance with APS values;
- (d) not to make improper use of Commonwealth resources; and
- (e) not to disclose information which could be prejudicial to the effective working of government.³⁰

2.28 The joint submission continues by suggesting that the obligations are either encompassed in another set of obligations (honesty and integrity and care and diligence), dealt with elsewhere (use of resources or disclosure), or not strictly relevant (APS Values).³¹

2.29 The Committee does not accept that the code of conduct operated by DIMIA's contractors sufficiently incorporates all the necessary obligations stated in the APS *Code of Conduct*. The argument put forwarded that those obligations that do not have equivalents in the GSL code of conduct are implied by other obligations is not substantiated. While obligations 1, 3, 4, 12 and 14 in the GSL code, for example, are important obligations relating to how the contract employees conduct their duties and present themselves, these obligations do not require honesty.

2.30 The Committee regards honesty and integrity and a requirement to conduct duties with care and diligence as essential in the environment that these contractors will be employed in. Although it could be argued that these values are so fundamental anyone meeting the other obligations would also have those characteristics, the Committee is of the view that these values should be required by an explicit statement, just as the GSL code of conduct places a requirement on the staff to act professionally and ethically at all times.

2.31 In this context the Committee notes AFMA's stated intention to "as closely as possible, replicate the system that DIMIA are using."³² The Committee is of the view that AFMA need to improve on that system in relation to obligations required in the code of conduct developed by any contractor. It therefore makes the following recommendation.

Recommendation 2

2.32 The Committee recommends that AFMA, in negotiating a contract relating to services to be provided in fisheries detention centres, require that a code of conduct be developed for contract staff that includes the values of

30 Submission 2, Joint Submission From Department of Agriculture, Fisheries and Forestry, Department of Immigration and Multicultural and Indigenous Affairs, and Australian Fisheries Management Authority, Attachment G

31 Submission 2, Joint Submission From Department of Agriculture, Fisheries and Forestry, Department of Immigration and Multicultural and Indigenous Affairs, and Australian Fisheries Management Authority, Attachment G

32 Fisheries Management Authority, *Transcript of Evidence*, 17 March 2005, p 4

honesty and integrity and to act with care and diligence, in addition to those obligations that already exist in GSL's code of conduct.

Accountability

2.33 In its submission, the CPSU also raised the question of the accountability of contract officers in comparison with that of an APS officer. It argues that AFMA would be required "to sue the contractor for breach of contract in the courts"³³ if it wished to act upon breaches of the GSL Australia code of conduct by officers. The expense and time involved in taking matters to court would result in only the "most significant breaches"³⁴ being pursued.

2.34 It counters that any breaches of the APS *Code of Conduct* could be pursued by AFMA in the first instance or the Public Service Commissioner or the Merit Protection Commissioner without recourse to the courts.³⁵

2.35 In response to the Committee's questions, DAFF indicated that suing the contractor for breach of contract was indeed one option for ensuring that contract employees are accountable for their actions. However, the Committee was also informed that "a complaint could be made through the Ombudsman or to HREOC",³⁶ or "civil or criminal proceedings against them if they [the contractors] have operated beyond their powers."³⁷

2.36 In evidence, DIMIA provided the Committee with a snapshot of how it manages accountability with its contract employees. Its management focuses on monitoring the work performed by contracted staff on a day to day basis by on-site DIMIA staff and also through regular visits by Canberra based staff. Also, experts are engaged to "look at particular aspects of service delivery."³⁸ A further role is played by the Ombudsman and HEROC who make regular visits to the DIMIA facilities. Finally, DIMIA's policy on suggestions or allegations of a criminal nature is to refer the matter to the police immediately.³⁹

2.37 AFMA confirmed that a monitoring program would be set in place, in addition to a continuation of the existing complaints mechanism. This complaints

33 Submission 1, CPSU, pp 5 and 6

34 Submission 1, CPSU, p 6

35 Submission 1, CPSU, p 6

36 Department of Agriculture, Fisheries and Forestry, *Transcript of Evidence*, 17 March 2005, p 8

37 Department of Agriculture, Fisheries and Forestry, *Transcript of Evidence*, 17 March 2005, p 8

38 Department of Immigration and Multicultural and Indigenous Affairs, *Transcript of Evidence*, 17 March 2005, p 8

39 Department of Immigration and Multicultural and Indigenous Affairs, *Transcript of Evidence*, 17 March 2005, p 8

mechanism is open to anyone who is detained, complaints are investigated and AFMA "follow through on it and remedy the cause".⁴⁰

2.38 Furthermore, the Committee was informed that:

The power to detain and continue to detain as well as the powers and the manner in which searches, screens, strip searches and identification tests are conducted pursuant to the Bill, are all subject to review under the *Administrative Decisions (Judicial Review) Act 1997*. Decisions made by officers are also reviewable in some cases under section 75(v) of the Constitution or section 39B of the *Judiciary Act 1903*.⁴¹

2.39 The Committee accepts that the Government would be required to take a breach of contract through the courts. However, it is of the view that other action and processes would forestall such action. It notes that the monitoring process operated by DIMIA is regarded as successful and that DIMIA considers the contractors to be diligent in pursuing any matters arising out of the code of conduct.⁴²

2.40 AFMA proposes to apply a similar process, together with a complaints process.

Protection of employees

2.41 Finally, concerns were raised as to the protection afforded to contracted employees if they are called upon to perform duties which are outside the terms prescribed by the legislation.

2.42 The CPSU's submission argued that for contract employees there will "be no culture of protection to an individual who is under pressure to misuse his or her powers." It continued by inferring that such workers may worry about maintaining future employment contracts with the employers should they resist the pressure.⁴³

2.43 The Committee explored another aspect of this concern, which is the protection afforded to those who are "whistleblowers". It was advised that the provisions of the *Public Service Act 1999* which provide protection to staff of the APS who act as "whistleblowers" do not apply to contract officers. Instead:

If a detention officer who was a contractor had his or her appointment or authorisation revoked because he or she had acted as a whistleblower,

40 Australian Fisheries Management Authority, *Transcript of Evidence*, 17 March 2005, p 8

41 Submission 2, Joint Submission From Department of Agriculture, Fisheries and Forestry, Department of Immigration and Multicultural and Indigenous Affairs, and Australian Fisheries Management Authority, p 8

42 Department of Immigration and Multicultural and Indigenous Affairs, *Transcript of Evidence*, 17 March 2005, Canberra, p 8

43 Submission 1, CPSU, pp 6 and 7

review of that decision may be possible under the *Administrative Decisions (Judicial Review) Act 1997*.⁴⁴

2.44 The Committee notes that approval from senior officers within DAFF or AFMA is required prior to any authorised officer exercising a strip search. Authorisation from a senior authorising officer is also required prior to the use of force to conduct an identification test. The Committee believes that these requirements, together with the well developed monitoring program and complaints procedure (outlined in paragraph 2.36) will act to inhibit any demands for contract officers to inappropriately exercise any of the powers provided under the legislation.

2.45 However, the Committee remains concerned over the lack of consideration that appears to be given to the protection of any contract employee who may act as a "whistleblower". It urges the Government to give further consideration to this issue before the passage of the legislation.

Staff consultation

2.46 In its submission, the CPSU noted the lack of consultation that AFMA and DAFF had undertaken with current staff in relation to the changes proposed by the Bill. It called on these organisations "to engage in appropriate consultation with staff with regards to these issues".⁴⁵

2.47 In giving evidence to the Committee, AFMA admitted that consultation with its own officers had not been extensive. AFMA argued that, while the fisheries officers located in Canberra tended to be familiar with the provisions of the bill, those located outside Canberra were not. The reason for this was that most officers were state based and "work with state based agencies".⁴⁶

2.48 AFMA also informed the Committee that a training program was being developed:

... which will be released to the state based fisheries officers once we know exactly what the powers will be after the passage of the bill through parliament.⁴⁷

2.49 The Committee welcomes the attempt to properly inform officers about significant changes that will be made to the work they perform and the way in which they do it. However, it does not believe that informing the workers in the field after the passage of the legislation is the best way to manage the changes. The bill may well

44 Submission 2, Joint Submission From Department of Agriculture, Fisheries and Forestry, Department of Immigration and Multicultural and Indigenous Affairs, and Australian Fisheries Management Authority, p 6

45 Submission 1, CPSU, pp 8 and 9

46 Australian Fisheries Management Authority, *Transcript of Evidence*, 17 March 2005, p 8

47 Australian Fisheries Management Authority, *Transcript of Evidence*, 17 March 2005, p 8

have benefited from a consultation process with those officers undertaking the affected duties. The Committee considers it regrettable that no such consultation took place.

Detention

2.50 The Committee also considered the matter of the appropriateness and length of the detention of those suspected to be illegal foreign fishers.

2.51 At the outset of the hearing DAFF acknowledged that the current arrangements for the detention of illegal foreign fishers had originated on an ad hoc basis and were based on a small number of detainees. Officers also admitted that the arrangements are presently less than satisfactory. This, together with an increased number of foreigners detained for suspected illegal fishing, required the existing arrangements to be made "more modern".⁴⁸

2.52 Under existing arrangements, detainees can be held on their boats within a quarantine zone in the middle of Darwin Harbour. This practice has attracted some criticism, notably in the 1998 report by the Ombudsman,⁴⁹ and more recently in the Coroner's report on the death of Mansur La ibu. The Coroner, while noting that fisherman preferred to remain with their boats and there were few complaints, also stated:

Furthermore, the standard of such detention in the case of the deceased is also to be deprecated; to keep seven men on a vessel such as the 'Yamdena' for some weeks where their only shelter (and sleeping accommodation) is a small box...is unacceptable.⁵⁰

2.53 The Committee notes that under the new proposals there will still be some "boat based detention at Broome and Gove".⁵¹ Temporary accommodation facilities will be located at Horn Island. Detainees from the three locations will be transported to facilities in Darwin in "a matter of days; it is about getting an aircraft lined up to transport people".⁵² Coonawarra, the facility at Darwin, will predominately house

48 Department of Agriculture, Fisheries and Forestry, *Transcript of Evidence*, 17 March 2005, p 1

49 Administrative arrangements for Indonesian Fisherman detained in Australian Waters, Report under s35A of the Ombudsman Act 1976, July 1998
http://www.comb.gov.au/publications_information/Special_Reports/Indo.html accessed 16 March 2005

50 Inquest into the Death of Mansur La ibu [2004] NTMC 020
<http://www.nt.gov.au/justice/docs/courts/coroner/findings/2004/mansur.pdf> accessed 26 April 2005

51 Australian Fisheries Management Authority, *Transcript of Evidence*, 17 March 2005, p 3

52 Australian Fisheries Management Authority, *Transcript of Evidence*, 17 March 2005, p 3

detainees suspected of illegal fishing but may also include "a small number of air arrivals and compliance cases".⁵³

2.54 The Committee notes the concerns expressed about the accommodation of suspected illegal foreign fishers on their boats. It shares the Coroner's view that such accommodation is unacceptable, particularly for an extended period of time. The Committee is of the view that the proposal for a permanent accommodation facility in Darwin is a more satisfactory arrangement.

2.55 The Committee also examined the likely length of stay that a suspected illegal foreign fisher would have in Australia. The Explanatory Memorandum to the Bill indicates that the proposed regime will "facilitate the rapid repatriation of detainees to their home countries".⁵⁴ In his second reading speech the Minister indicated that an enforcement visa (under the Migration Act) is automatically issued to foreigners when detained by fisheries officers.

2.56 The enforcement visa enables fisheries officers to bring those suspected of illegal fishing into Australia's migration zone so that the suspected offence can be investigated. It ceases on the expiration of the fisheries detention and the fisher becomes a non-citizen. DIMIA has a responsibility to repatriate non citizens "as soon as reasonably practical",⁵⁵ which in the case of foreign fishers is a short period after their apprehension and prosecution.⁵⁶

2.57 During the hearing, the General Manager Operations of AFMA informed the Committee that:

... people are only in fisheries detention for a maximum of seven days, and often it is a lot less than that.⁵⁷

2.58 The Committee contrasts this statement with the figures provided in the 1998 Ombudsman's report that indicates the 1997 figures for the average number of days in detention were 26.58 for Broome and 26.86 for Darwin.⁵⁸ It acknowledges that, in addition to the maximum of 7 days described by AFMA, there are further days in

53 Department of Immigration and Multicultural and Indigenous Affairs, *Transcript of Evidence*, 17 March 2005, p 7

54 Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005, Explanatory memorandum, p 3

55 Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005, Second Reading Speech, p 4

56 Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005, Second Reading Speech, p 4

57 Australian Fisheries Management Authority, *Transcript of Evidence*, 17 March 2005, p 7

58 Administrative arrangements for Indonesian Fisherman detained in Australian Waters, Report under s35A of the Ombudsman Act 1976, July 1998
http://www.comb.gov.au/publications_information/Special_Reports/Indo.html accessed 16 March 2005

detention pending repatriation. The Committee understands the argument that the 1997 figures for days in detention should be reduced under the proposed new regime and looks forward to evidence of this.

Conclusion

2.59 The Committee has considered the provisions of the bill. It notes that the legislative bases for many of the provisions exist in other statutes, and the bill largely proposes the extension of many current practices. Nonetheless, the Committee is of the view that the bill could be improved and makes a recommendation that a requirement for appropriate training be inserted in the legislation.

2.60 The Committee has also made a recommendation relating to the terms of a code of conduct to be developed with any contractor working in fisheries detention centres. The Committee argues that such fundamental requirements as honesty and integrity and the need to act with care and diligence should be explicitly stated.

2.61 Subject to these recommendations the Committee makes the following recommendation.

Recommendation 3

2.62 The Committee recommends that, subject to recommendation 1, the Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill 2005 be passed.

Senator the Hon. Bill Heffernan
Chair

