

2013-2014-2015

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

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

No. , 2015

(Immigration and Border Protection)

**A Bill for an Act to amend the *Migration Act 1958*,
and for related purposes**

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Schedule 1—Amendments

Migration Act 1958

1 Subsection 5(1) (note at the end of the definition of *authorised officer*)

Omit “Note”, substitute “Note 1”.

2 Subsection 5(1) (at the end of the definition of *authorised officer*)

Add:

Note 2: An officer must not be authorised for the purposes of section 197BA unless the officer satisfies the training and qualification requirements determined under subsection 197BA(7): see subsection 197BA(6).

3 Subsection 5(1)

Insert:

immigration detention facility has the meaning given by subsection 197BA(3).

4 At the end of Part 1

Add:

12A Use of force provisions do not limit or affect each other

The provisions of this Act and the regulations that authorise (whether expressly or otherwise) the use of force:

- (a) operate independently of each other; and
- (b) do not limit, or in any way otherwise affect, each other.

5 After Division 7A of Part 2

Insert:

Division 7B—Immigration detention facilities

197BA Maintaining the good order etc. of immigration detention facilities

- (1) An authorised officer may use such reasonable force against any person or thing, as the authorised officer reasonably believes is necessary, to:
- (a) protect the life, health or safety of any person (including the authorised officer) in an immigration detention facility; or
 - (b) maintain the good order, peace or security of an immigration detention facility.
- (2) Without limiting subsection (1), an authorised officer may use such reasonable force as the authorised officer reasonably believes is necessary under that subsection:
- (a) to protect a person (including the authorised officer) in an immigration detention facility from harm or a threat of harm; or
 - (b) to protect a detainee in an immigration detention facility from self-harm or a threat of self-harm; or
 - (c) to prevent the escape of a detainee from an immigration detention facility; or
 - (d) to prevent a person from damaging, destroying or interfering with property in an immigration detention facility; or
 - (e) to move a detainee within an immigration detention facility; or
 - (f) to prevent action in an immigration detention facility by any person that:
 - (i) endangers the life, health or safety of any person (including the authorised officer) in the facility; or
 - (ii) disturbs the good order, peace or security of the facility.

Immigration detention facility

- (3) An *immigration detention facility* is:
- (a) a detention centre established under this Act; or
 - (b) a place approved by the Minister under subparagraph (b)(v) of the definition of *immigration detention* in subsection 5(1).

Limitations on the exercise of power

- (4) An authorised officer must not exercise the power under subsection (1) to give nourishment or fluids to a detainee in an immigration detention facility.
- (5) In exercising the power under subsection (1), an authorised officer must not:
- (a) subject a person to greater indignity than the authorised officer reasonably believes is necessary in the circumstances; or
 - (b) do anything likely to cause a person grievous bodily harm unless the authorised officer reasonably believes that doing the thing is necessary to protect the life of, or to prevent serious injury to, another person (including the authorised officer).

Training and qualification requirements

- (6) An officer must not be authorised for the purposes of this section unless the officer satisfies the training and qualification requirements determined under subsection (7).
- Note: For the authorisation of officers see the definition of ***authorised officer*** in subsection 5(1).
- (7) The Minister must determine, in writing, training and qualification requirements for the purposes of this section.
- (8) A determination under subsection (7) is not a legislative instrument.

Effect of this section

- (9) This section does not limit subsection 273(2).
- Note: Subsection 273(2) allows regulations to be made in relation to the operation and regulation of detention centres.

197BB Complaints

- (1) A person may complain to the Secretary about an authorised officer's exercise of power under section 197BA.
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- 1 (2) A complaint must:
2 (a) be in writing; and
3 (b) be signed by the complainant; and
4 (c) describe the matter complained about.
- 5 (3) The Secretary must provide appropriate assistance to a person who:
6 (a) wishes to make a complaint; and
7 (b) requires assistance to formulate the complaint.
- 8 (4) The Secretary must notify the complainant in writing of the receipt
9 of the complaint.

10 **197BC Investigation of complaints**

- 11 (1) Subject to sections 197BD and 197BE, the Secretary must
12 investigate a complaint made under section 197BB.
- 13 (2) The investigation is to be conducted in any way the Secretary
14 thinks appropriate.
- 15 (3) If, after completing the investigation, the Secretary is satisfied that
16 it is appropriate to refer the complaint to the Ombudsman, the
17 Secretary must:
18 (a) refer the complaint to the Ombudsman; and
19 (b) notify the complainant in writing that the complaint has been
20 so referred; and
21 (c) give the Ombudsman any information or documents that
22 relate to the complaint and that are in the Secretary's
23 possession or under the Secretary's control.
- 24 (4) A complaint referred to the Ombudsman under subsection (3) is
25 taken to be a complaint to the Ombudsman under the *Ombudsman*
26 *Act 1976*.

27 **197BD Secretary may decide not to investigate a complaint**

- 28 (1) The Secretary may decide not to investigate, or not to investigate
29 further, a complaint made under section 197BB, if the Secretary is
30 satisfied that:

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- 1 (a) the complainant has previously made the same, or a
 2 substantially similar, complaint to the Secretary and the
 3 Secretary:
 4 (i) has dealt, or is dealing, adequately, with the complaint;
 5 or
 6 (ii) has not yet had an adequate opportunity to deal with the
 7 complaint; or
 8 (b) the complaint is frivolous, vexatious, misconceived, lacking
 9 in substance or is not made in good faith; or
 10 (c) the complainant does not have sufficient interest in the
 11 subject matter of the complaint; or
 12 (d) the investigation, or any further investigation, is not justified
 13 in all the circumstances.
- 14 (2) The Secretary must notify the complainant in writing if the
 15 Secretary decides not to investigate the complaint, or not to
 16 investigate it further. The notice must include the reasons for the
 17 decision.

18 **197BE Transfer of complaint**

- 19 (1) If the Secretary is satisfied that a complaint could be more
 20 conveniently or effectively dealt with by any of the following
 21 persons (the *transferee*):
 22 (a) the Ombudsman;
 23 (b) the Commissioner of the Australian Federal Police;
 24 (c) the Commissioner or head (however described) of the police
 25 force of a State or Territory;
 26 the Secretary may decide not to investigate the complaint, or not to
 27 investigate it further.
- 28 (2) If the Secretary decides as mentioned in subsection (1), the
 29 Secretary must:
 30 (a) transfer the complaint to the transferee; and
 31 (b) notify the complainant in writing that the complaint has been
 32 so transferred; and
 33 (c) give the transferee any information or documents that relate
 34 to the complaint and that are in the Secretary's possession or
 35 under the Secretary's control.
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- 1 (3) A complaint transferred to the Ombudsman under subsection (2) is
2 taken to be a complaint to the Ombudsman under the *Ombudsman*
3 *Act 1976*.

4 **197BF Bar on proceedings relating to immigration detention**
5 **facilities**

- 6 (1) No proceedings may be instituted or continued in any court against
7 the Commonwealth in relation to an exercise of power under
8 section 197BA if the power was exercised in good faith.
- 9 (2) This section has effect despite anything else in this Act or any
10 other law.
- 11 (3) Nothing in this section is intended to affect the jurisdiction of the
12 High Court under section 75 of the Constitution.
- 13 (4) In this section:
- 14 *Commonwealth* includes:
- 15 (a) an officer of the Commonwealth; and
16 (b) any other person acting on behalf of the Commonwealth.

17 **197BG Saving of other laws**

- 18 This Division is not intended to exclude or limit the operation of
19 any other law of the Commonwealth or any law of a State or
20 Territory that is capable of operating concurrently with this
21 Division.