



PO Box A147
Sydney South
NSW 1235

www.alhr.org.au

31 August 2020

Senator

By email only:

Dear Senator

Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020

Australian Lawyers for Human Rights (**ALHR**) writes to ask you to oppose the *Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020*. The Bill seeks to expand the Minister's powers to determine items to be 'prohibited' and authorised officers' screening, search and seizure powers in a way that ALHR considers to be excessive, disproportionate and without sufficient justification.

The Bill seeks to confer on the Department of Home Affairs and its contractors powers which exceed the powers held by the police as part of their duty to protect the Australian community. However the Bill does not provide any proper accountability mechanisms, such as requiring any threshold of establishing a well-founded suspicion of wrong-doing. Further, it is not clear why it is necessary for such expansive search and seizure powers additionally need to be conferred on unspecified 'assistants' to Departmental officers and what training an assistant would undergo prior to receiving such powers.

In failing to specify that a well-founded suspicion of wrongdoing must be present in order to confiscate or ban personal devices, the proposed Bill represents an unacceptable attempt to criminalise people in immigration detention. ALHR notes that immigration detention is an administrative, rather than a punitive, measure. People are detained when they do not have a visa. It does not necessarily follow that they have a criminal history. According to the most recently published Immigration Detention and Community Statistics Summary, there are only 1,458 people in immigration detention and only 675 (i.e. less than half of the people in

detention) had their visa cancelled on 'character' grounds.¹ People who are in detention due to visa cancellations on character grounds may have a criminal history, but they have already been through the criminal law system, where judicial discretion has been exercised in considering the material facts of an offence and imposing a sentence which the person has served by the time they reach immigration detention. But for their immigration status, the people who are in detention due to visa cancellation on character grounds would be living in the community and would not be subject to similar proposed restrictions of items they may have in their possession, or such enhanced screening, search and seizure powers.

ALHR considers the scope of the Bill is unacceptably vague, so as to allow the proposed legislation to be interpreted in a way that supports a severe restriction of the rights of immigration detainees and the arbitrary seizure of certain items without adequate scrutiny or oversight. In particular, a ban on mobile phones and similar devices will exacerbate an already alarming lack of transparency in Australia's immigration detention practice at a time when Australia is ostensibly working towards the implementation of the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* and the transparency of processes relating to places where people are detained, including immigration detention. Without mobile phones, the ability of immigration detainees to contribute to public debate surrounding their treatment, as well as report human rights abuses will be unacceptably curtailed.

Mobile phones and other communication devices are also essential to the mental wellbeing of immigration detainees and the proposed Bill will have adverse psychological effects on people in detention. Mobile phones are one of the very few links detainees have to the outside world and the Bill does not provide for any substitute or replacement for this vital link.

The ability to communicate freely and with relative privacy is integral in ensuring that people in detention remain connected with family and wider support networks, as well as being able to exercise their legal rights. In response to the isolation of immigration detention, immigration detainees rely heavily on their family, friends and wider support networks both in Australia and overseas, as well as their counsellors and legal caseworkers. Mobile phones provide these necessary means of connection. The COVID-19 pandemic has demonstrated how Australians in the broader community rely upon mobile phones and other internet capable devices to cope with physical isolation. For people in detention, mobile phones and other internet capable devices represent an essential way of coping with mental health issues by remaining connected to supports outside of immigration detention.

The proposed Bill is an unnecessary, unreasonable and disproportionate attempt by the Australia Government to subject people in immigration detention to human rights violations by extending the punitive powers of immigration officials. ALHR is of the view that the Bill cannot be sufficiently amended to rectify these issues. There were over 100 submissions to the Senate inquiry in relation to this Bill. All, with the exception of Serco and the Department of Home Affairs, opposed the Bill.

¹ Department of Home Affairs, *Immigration Detention and Community Statistics Summary* (Report, 31 May 2020) 4.

ALHR urges you to oppose the Bill in its entirety and ensure that people under Australia's control are subject to transparent detention processes in line with Australia's international human rights obligations.

If you would like to discuss any aspect of this letter, please contact Kerry Weste, President of Australian Lawyers for Human Rights, by email at president@alhr.org.au

About ALHR

ALHR was established in 1993 and is a national association of more than 800 Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and Specialist National Thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'Kerry Weste', written over a light grey rectangular background.

Kerry Weste

President, ALHR

president@alhr.org.au