

10 June 2020

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

I am making a submission in my personal capacity as a member of SASS (Supporting Asylum Seekers Sydney) since 2016. We are a group of Australians of all ages and from all walks of life, who pre-COVID-19 were visiting asylum seekers in the Villawood Immigration Detention Centre each week, providing support when possible.

I made a submission regarding the previous version of this Migration Amendment in 2017, but unfortunately, the latest incarnation of this Bill does not resolve all my concerns, hence my need to write another submission.

While waiting for permission for the resumption of our visits to detention post-COVID-19, we have remained in constant contact with detained asylum seekers and refugees via text message and apps such as Zoom, which they have been able to download on their mobile phones. I remain highly concerned that under the new Bill, such interactions, no matter how innocent and supportive of these vulnerable detainees, would completely cease.

In the Government's stated need for the Bill, as explained by Minister Tudge, there seems to be some confusion between two different populations of detainees: vulnerable, mostly long-term detained asylum seekers and refugees, on the one hand, who remain cause for our concern, and convicted criminals awaiting deportation, on the other. Indeed, as the Government duly notes, the number of the latter group has been increasing, "often having entered immigration detention directly from a correctional facility, including members of outlaw motorcycle gangs and other organised crime groups". But what about the former group, which includes those asylum seekers whose protection status has not as yet been resolved, or whose visa may have been revoked either for a breach of the Code of Behaviour, which sets a much higher standard than that expected of Australian citizens and permanent residents, or, more controversially, for lesser criminal charges still to be heard in court or in the process of appeal, or those confined to indefinite detention?

In its stated concern to provide a "safe and secure environment for staff, detainees and visitors in an immigration detention facility", I fear that the Government is taking a sledge-hammer approach, which would give even more unfettered power to the Minister of Home Affairs and, in turn, to ABF officials and their assistants. Minister Tudge assures us that "while not introducing a blanket ban on mobile phones in detention", it will "allow the Minister to direct officers to seize mobile phones from **certain categories of people** [my emphasis], while providing officers with the discretion to search and seize for mobile phones in other circumstances. **So people who are not using their mobile phones for criminal activities or activities that affect the health, safety and security of staff, detainees and the facility will still be able to retain their mobile phones.**"

But that assurance is completely missing from the Bill in question. If the proposed legislation was to make it clear that ABF officers and their assistants were only to be given the power to remove phones from, to quote Minister Tudge, "unlawful non-

citizens who have criminal histories” and who have been proven to have misused their phones as “illegal or dangerous items” to “coordinate and facilitate escape efforts ... the movement of drugs and other contraband ..., to access child exploitation material and to organise criminal activity”, then I would not have an issue.

However, what about more vulnerable asylum seekers and refugees who are forced to reside in close contact with such criminals under our government’s current detention system? Used properly, a phone is not an “illegal or dangerous” item nor does it “present an unacceptable risk”. What about all those asylum seekers and refugees who use their phones solely to connect with family, whom they often tragically haven’t seen for years, lawyers, psychologists or supportive community groups, such as SASS? Imagine if in the current COVID-19 lockdown, these vulnerable people, already deprived of visitors, would not even have had access to their phones? Surely this would have led to even more serious mental health problems as well as a denial of fundamental human rights.

Indeed, the proposed legislation appears to contemplate the confiscation of all such equipment, the Government, in its Statement of Compatibility with Human Rights, noting that “Although mobile phones SIM cards and internet-capable devices may be determined to be ‘prohibited things’, a number of alternative communication avenues will remain available to detainees”.

Such “alternative communication avenues” are listed as including landline phones and internet access. This so-called “reasonable access”, however, does not include the ability to see or speak to anyone on-line, even with an officer monitoring, -- unless a special teleconference or audiovisual link is arranged with a legal representative or counsellor. Hence, such contact with family or friends via landline phones or internet would be at a far inferior and reduced level than with a mobile phone.

Moreover, while Minister Tudge maintains that phones have been used to film detention staff, “with this material then transmitted to associates outside of detention facilities via social media”, this is often done not, as he alleges, to “intimidate and threaten the safety and welfare of staff”, but rather as a lifeline to alert family and friends to concerning conditions, including abuses of power, within detention, which would otherwise continue unchecked. Without his phone, how would Behrooz Boochani have written “Go Tell it to the Mountain” and how would Pria and Nades have told their supporters what was happening to them in Melbourne detention and then on Christmas Island?

As for the increased powers given to the Minister, ABF officers and their assistants under this proposed legislation to conduct searches, and notably strip searches, without warrant: The Government already has extensive search powers under s252 and 252A of the Migration Act. By arguing for even more authority so as to be able “to respond quickly and flexibly to emerging threats”, the Government seems to be pointing to alleged deficiencies within our current democratic social order, dependent on police and the rule of law. If our current system has been found to be wanting to such a degree, surely we should be working to improve it, rather than creating more exceptions to the rule by enhancing the control of an already too powerful Minister and officials, leading to the further deterioration of Australian democracy.

While Minister Tudge maintains that the current Bill includes amendments so as not to “trespass on personal rights and liberties of detainees”, I would argue that by not clearly specifying, and limiting, the precise conditions in which a phone or sim card can become a “prohibited thing” or in which a search, notably including a strip search, can be conducted without warrant, the human rights of asylum seekers and refugees in detention remain at unacceptable risk.

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