



Blue Mountains Refugee Support Group Inc

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Chair: Joy Connor
Secretary: Jane McQueen

**MIGRATION AMENDMENT (Prohibiting Items in Immigration
Detention Facilities) BILL 2020:**

**SUBMISSION TO THE SENATE LEGAL & CONSTITUTIONAL AFFAIRS
LEGISLATION COMMITTEE INQUIRY
FROM BLUE MOUNTAINS REFUGEE SUPPORT GROUP Inc**

Blue Mountains Refugee Support Group, formed in 2001, is a diverse group of ordinary Australians, all volunteers, who are united in a vision of an open-hearted Australia where people seeking our protection, refuge and asylum are treated with justice and compassion and in accordance with the UN Conventions on Human Rights and Refugees.

We have around 400 members and enjoy wide support in our community; our core work is refugee support, by bringing comfort, hope and friendship. We visit refugees in the community and in detention so have first-hand knowledge and understanding of what the foreshadowed changes will mean to these people's lives. We are deeply concerned that the passing of the Bill into law has the potential to destroy the lives of these already vulnerable and traumatised people, who have had to flee their homelands and have been in detention in some cases for as long as 10 years.

BMRSRG objects to a number of issues in the Bill:

- The unfettered power given to the Minister in determining what is a "prohibited thing" in detention centres;
- The emphasis on removing mobile phones, which are not only a lifeline for those in detention and an important way of ensuring that authorities are accountable for their actions, but are crucial if the government is serious about the benefits of the COVID-19 contact app;
- The lack of clarity in the discretionary powers given to 'authorised officers';

Patron: Dorothy Hoddinott AO

Blue Mountains Refugee Support Group endorses The Uluru Statement From The Heart

**FROM BLUE MOUNTAINS REFUGEE SUPPORT GROUP Inc SUBMISSION TO THE SENATE INQUIRY (Prohibiting Items in
Immigration Detention Facilities) BILL 2020**

- The ability to search and strip search without a warrant;
- The broadening of the scope of the Bill to those non-citizens outside detention centres.

Below we look at some of the problematic sections of the Bill. Unfortunately no terms of reference have been supplied.

1.) To enable the minister to determine, by legislative instrument, prohibited things in relation to immigration detention facilities and detainees;

251A Searches of detainees etc.—prohibited things

b) The thing is determined under paragraph (2)(b).

*Example 1: A thing may be a **prohibited thing** in relation to an immigration detention facility for the purposes of a search of such a facility under section 252BA and the seizure of prohibited things in the course of such a search under section 252C or 252CA.*

*Example 2: A mobile phone may, if determined under paragraph (2)(b), be a **prohibited thing** in relation to a person in detention even if the person is not detained in an immigration detention facility.*

(2) *The Minister may, by legislative instrument, determine a thing for the purposes of subsection (1) if the Minister is satisfied that:*

- (a) possession of the thing is prohibited by law in a place or places in Australia; or*
- (b) possession or use of the thing in an immigration detention facility might be a risk to the health, safety or security of persons in the facility, or to the order of the facility.*

*Examples: The following things may be determined to be **prohibited things** if the Minister is satisfied that they pose a risk mentioned in paragraph (b):*

- (a) mobile phones;*
- (b) SIM cards;*
- (c) computers and other electronic devices designed to be capable of being connected to the internet.*

The unfettered power given to the minister to determine what is a prohibited thing and the lack of any day to day oversight of his actions in these matters is deeply concerning from a legal rights perspective and requires examination from a constitutional law perspective. It is at the core of our concerns for the effect it will have for those we know in detention.

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2.) To enable authorised officers and assistants to search Commonwealth immigration detention facilities without a warrant;

251B Searches of detainees etc.—exercise of powers generally

The Bill will give ‘authorised officers’ the power to search without a warrant and to remove ‘prohibited things’ from detainees.

The coercive powers that this Bill intends to implement are normally applied only to criminals who are serving gaol time. Many refugees we know have been traumatised by torture, strip searches and dogs in the countries from which they have fled. Facing this in detention is an added cruelty.

The Bill does not adhere to the Australian Human Rights Commission’s standards in relation to searches of detainees. The use of strip searches and detector dogs should be strictly monitored and regulated and it should be clear in the Bill, which it is not, that it only be used in exceptional and clearly defined circumstances and not only at the discretion of ‘authorised officers’.

Further, the discretionary powers given to ‘authorised officers’ is lacking in clarity, is too extensive and open to abuse and lack of accountability because of this.

This authorisation does not discriminate between refugees and asylum seekers and people previously convicted of criminal acts who have served their time and are currently awaiting deportation. They are all now housed in immigration detention. They are in the same facility for very different reasons and should not be considered as one under the Act.

Those prohibited items do not only include illegal items and substances such as drugs, but the term applies to mobile phones and internet-capable devices, a lifeline for refugees and asylum seekers.

Again, a minimum of suspicion does not have to be ascertained before the indiscriminate powers of the Bill are used.

Mobile Phones

BMMSG has members who visit Villawood Detention Centre weekly and understand only too well how vital mobile phones are to their friends in detention. If they were deprived of their contact with family, friends, legal and visa assistance, in effect they would lose all contact with the world outside the detention centre.

These detainees, all of whom have suffered major trauma in their home country on their journey to Australia and then in detention for very long periods of time will have their lives made infinitely harder.

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Several of the refugees we visit in detention have been on suicide watch after succumbing to despair after years of endless detention. Their mobile phones have kept them connected to their families and have been the difference between life and death. During the Covid epidemic our visitors have kept in touch with refugees inside detention through text and phone and have been able to help them avoid total despair. Phones are used for a wide variety of things, things we take for granted. Refugees look up recipes from home and remember what it tasted like when their Mum cooked the dish. They listen to music from their homeland and they use their phones to learn English.

In addition to this, there is presently a public health campaign urging all persons in Australia to download the COVID-19 contact app, so as to reduce the possibility of further coronavirus infection. It is essential, therefore, that all persons are able to carry a mobile phone.

Minister Tudge states in his second reading speech that

“While not introducing a blanket ban on mobile phones in detention, we are proposing to allow the minister to direct officers to seize mobile phones from certain categories of people, while providing officers with the discretion to search for and seize mobile phones in other circumstances. So people who are not using their mobile phone 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.”

This does not allay our concerns. Who is checking? What about refugees who have committed crimes? Who is protecting the rights of people in detention?

3.) Strengthen the search and seizure and screening powers of authorised officers; and enable the minister to issue binding written directions to authorised officers in relation to the exercise of their seizure powers.

252 Searches of detainees etc.—general powers of personal search and seizure

4 Subsections 252(1) and (2)

Repeal the subsections, substitute:

Scope

(1) This section applies in relation to the following persons:

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- (a) a detainee;
- (b) a person who is a noncitizen, if:
 - (i) the person has not been immigration cleared; and
 - (ii) an authorised officer has reasonable grounds for suspecting there are reasonable grounds for cancelling the person's visa; and
 - (iii) the person is not in detention.

Powers of authorised officers

- (2) *An authorised officer may, without warrant, search a person, the person's clothing and any property under the immediate control of the person for anything that may be seized from the person under paragraph (4)(a) or (4A)(a), whether or not the officer has any suspicion that the person has such a thing on the person's body, in the person's clothing or in any such property.*

Extending the powers of "authorised officers" over people who are "not in detention" is a further erosion of the protections Australia's legal system offers residents of this country. Already the people we know on temporary protection visas or awaiting clearance from immigration live in fear in the community. We know of one person who ended up in detention after a car accident, which they were not responsible for and were not released despite the fact they were cleared of charges. Another person was picked up while part of an after work party where all his workmates were let off with a warning and he ended up in detention for 5 years, was bashed by another detainee and now is severely disabled. The denial of legal rights to non-citizens is not part of the just and compassionate society we stand for.

BMRSRG believes that there is not sufficient justification or need for the changes proposed. They are wide-ranging and as stated earlier open to abuse. In fact, the Government has failed to provide evidence that these changes are necessary.

BMRSRG, therefore, strongly recommends that the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 be withdrawn.

Yours Sincerely,

Chairperson June 9th 2020
Blue Mountains Refugee Support Group Inc

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