

Australian Greens Dissenting Report

Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2017 [Provisions]

1.1 The Australian Greens believe that the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2017 [Provisions] further erodes the human rights of detainees in Australia's immigration detention centres.

1.2 The bill inserts a new section 251A to enable the Minister to determine, by legislative instrument, prohibited things in relation to immigration detention facilities. Further new sections relate to search and seizure powers.¹

1.3 The Australian Greens have concerns that the provisions contained in this bill are more applicable to a prison environment than immigration detention. Persons held in immigration detention have committed no offence. A person needs only to fall within the statutory description of 'an unlawful non-citizen' to be detained.

1.4 In his second reading speech, the minister stated:

...more than half of the detainee population consists of high-risk cohorts. These cohorts have significant criminal histories, like child sex offences or links to criminal gangs, such as outlaw motorcycle gangs and other organised crime groups, or represent an unacceptable risk to the Australian community otherwise.²

1.5 While policy decisions made by the government have led to an increase in the number of persons with criminal histories in immigration detention there are a significant number of people with no criminal record who are currently detained. People in Australia's immigration detention centres are incredibly diverse, in both background and personal circumstances. Many detainees are 'low risk', thus providing no genuine basis for punitive measures to be implemented.

1.6 Mr Prince, in evidence stated:

...this cohort also includes a significant number of people with no criminal record who are, firstly, refugee applicants, for instance; a percentage of people who have come by boat many, many years ago and have been living in their community for a very long time, quite appropriately and safely, but now for various reasons find themselves in detention. That cohort is also brought up in this bill, and to treat them in a way because of, "There is a murderer in detention" is completely inappropriate.³

1 Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2017, p. 3.

2 The Hon. Peter Dutton MP, Minister for Immigration and Border Protection, *House of Representatives Hansard*, 13 September 2017, p. 10180.

3 Mr David Prince, Law Council of Australia, *Committee Hansard*, 27 October 2017, p. 4.

1.7 The Australian Greens share the view of the Human Rights Commission that a 'blanket application of restrictive measures' by the designation of 'prohibited items' by the Minister 'to all people in detention, regardless of their individual circumstances, may not be a necessary, reasonable or proportionate response to the identified risks.'⁴

1.8 This bill is indicative of an alarming trend to increase the discretionary powers of the Immigration Minister. The Refugee Advice & Casework Service and Asylum Seeker Resource Centre submitted:

It is significant that legislative instruments made by the Minister for the purposes of determining new prohibited things would not be disallowable by the Senate. This limit on parliamentary oversight of the Minister's open-ended power to ban and confiscate classes of objects should be of concern to the Committee.⁵

...Minister's already broad discretionary powers are proposed to be expanded in such a broad and vague manner.⁶

1.9 Many submitters are concerned that this bill will result in a blanket prohibition on mobile phones and sim cards in immigration detention centres. The Explanatory Memorandum suggests that landlines could be used by detainees in the place of mobile phones. However, the evidence provided by a majority of submitters makes it clear landlines are not a satisfactory substitute for mobile phones.

1.10 The Refugee Advice and Casework Service submitted their ability to provide legal advice to detainees was frustrated when those detainees did not have mobile phones, they noted that:

- Access to communication facilities is inconsistent and often subject to interruptions and delays.
- Landline phones available to people in detention are often located in public areas, undermining the privacy of communications.
- Access to facilities for sending copies of forms or other documents to legal representative (such as fax machines or scanners) is inconsistent.
- Detention facility staff are at times indifferent to facilitating access to legal services or communication facilities.
- Access to computer facilities and internet is used as a behavioural control and is subject to time restrictions in some facilities.⁷

1.11 The Law Council of Australia noted that there are inadequate protections in place for detainees in relation to the bill's expansion of search powers.

4 Australian Human Rights Commission, *Submission 11*, p. 7.

5 Refugee Advice and Casework Service, *Submission 50*, p. 1.

6 Asylum Seeker Resource Centre, *Submission 80*, p. 6.

7 Refugee Advice and Casework Service, *Submission 50*, p. 2.

There is no requirement for a warrant, nor is there a requirement for the authorised officer to hold a reasonable suspicion that a detainee might be harbouring a prohibited thing. The Bill contains no limitations on how searches are to be carried out, including in respect of how often they are conducted, what time of day they can be carried out, or how many times individuals can be searched.⁸

1.12 The Australian Greens agree with the Combined Refugee Action Group's submission that:

Refugees, and people who are seeking asylum, held currently in Australia's immigration detention centres should be treated with dignity and respect, rather than as dangerous criminals.⁹

Conclusion:

1.13 The amendments proposed by this bill are disproportionate and may be contrary to Australia's international human rights obligations.

Recommendation 1

1.14 **The Australian Greens recommend that this bill be opposed by the Senate.**

Senator Nick McKim
Australian Greens

8 Law Council of Australia, *Submission 64*, p. 14.

9 Combined Refugee Action Group, *Submission 30*, p. 1.