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

Introduction

1. Liberty Victoria is committed to the defence and advancement of human rights and civil liberties. We seek to promote Australia's compliance with the rights recognised by international law and the *Charter of Human Rights and Responsibilities Act 2006* (Vic). We are a frequent contributor to federal and state committees of inquiry, and we campaign extensively for better protection of human rights in the community.

2. This submission concerns the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2017 (the **Bill**).
3. The Bill amends the *Migration Act 1958* (Cth) (the **Migration Act**) to empower the Minister for Immigration and Border Protection to ban mobile phones and other items in immigration detention centres. It also expands immigration officers' warrantless search and seizure powers, and authorises them to use dogs to search detainees and visitors.
4. Liberty Victoria strongly opposes these measures. The Bill will further isolate asylum seekers and refugees in detention. It continues the growing criminalisation of Australia's immigration laws, policies and institutions. Immigration detention centres are already characterised by daily lockdowns,¹ and regular use of force and physical restraints on detainees.² The Bill adds bans on harmless personal items, expanded search powers and the indiscriminate use of dogs to conduct searches of detainees and visitors. Immigration detention centres are not prisons, and people seeking asylum should not be treated like criminals.

Banning mobile phones

5. If the Bill is passed, new section 251A of the Migration Act will authorise the Minister to determine that a 'thing' is a 'prohibited thing' in an immigration detention facility. The Minister will be able to prohibit things if he is satisfied that:
 - a. possession of the thing is already unlawful 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'.

¹ Neelima Choahan, 'Military camp ethos prevails in a Maribyrnong detention centre run on fear', *The Age*, 29 February 2016.

² Nicole Hasham, Inga Ting, Sarah Muller, Bianca Hall, 'Australia's harshest detention centre', *The Sydney Morning Herald*, 21 January 2016; Michael Koziol, 'Use of force and restraints against immigration detainees doubles in nine months', *Brisbane Times*, 15 February 2017.

6. A new legislative note provides examples of things that may be prohibited under the second limb of the Minister's power, including mobile phones, SIM cards, computers and other electronic devices, and medications or health care supplements.
7. The Bill will also confer or amend a range of search and seizure powers, to authorise immigration officers to search detainees and visitors to find out whether they have a 'prohibited thing', and to seize, retain and dispose of such things if discovered.³
8. Mobile phones provide people in immigration detention with a vital connection to the outside world. The Federal Government already obstructs access to immigration detention centres through a range of legal and practical barriers: geographic isolation, statutory secrecy regimes, inconsistent, obstructive and unreliable rules governing visitation, and so on.
9. Mobile phones are essential for refugees and asylum seekers to obtain legal advice. Professional legal help is essential to navigate Australia's complex migration system. This system has a number of statutory time limits which make swift communication between refugees and lawyers critical.⁴ Michel Forst, the United Nations Special Rapporteur on the situation of human rights defenders, recently drew attention to the role of mobile phones in enabling access to legal advice in detention:

Lawyers and human rights advocates who assist refugees and asylum seekers in immigration detention in Australia face many barriers. They include situations when detainees are not allowed mobile phones; when telephone calls and visits are hard to arrange to detention centres (particularly Christmas Island Immigration Detention Centre); and detainees are frequently moved and without notice; interpreting services are limited and procedures are frequently changing.⁵

10. Mobile phones also enable people in detention to maintain relationships with friends and family in Australia and overseas. They provide some respite from the tedium, uncertainty, fear and anguish that characterise life in immigration detention.

³ See proposed new sections 252, 252AA, 252A, 252BA, 252CA of the Migration Act.

⁴ Refugee Council of Australia, *Unwelcome Visitors: Challenges faced by people visiting immigration detention* (August 2017), 8 (**Unwelcome Visitors**).

⁵ Michel Forst, *End of Mission Statement by the United Nations Special Rapporteur on the Situation of Human Rights Defenders: Visit to Australia* (18 October 2016).

11. The Government claims this measure is necessary because mobile phones are being used to facilitate criminal activity in immigration detention.⁶ This is unpersuasive:
- a. *First*, the Government has provided no evidence to support the assertion that mobile phones are being used on any systematic or consistent basis to facilitate criminal activity in detention; and
 - b. *Second*, the Minister recognises that any purported increase in criminal activity in detention is the direct consequence of the Minister's increased use of his broad discretion to cancel visas on character grounds (such as for committing a criminal offence).⁷ This has resulted in a growing proportion of so-called 'criminal deportees' in immigration detention. The real issue is not the use of phones in detention, but the fact that families and children seeking asylum are detained alongside, and treated in the same manner as, people with serious criminal records. This is unacceptable. Those in immigration detention must be treated in a way that is humane and appropriate given the risks that they pose to themselves or others. Even accepting the Government's assertion about crime in detention centres, the Bill is not tailored to achieve its object. It applies indiscriminately to all people in immigration detention, irrespective of whether they pose a real risk of engaging in criminal activity.

Search powers, including the use of dogs

12. The Bill significantly expands the search powers of immigration officers:
- a. It proposes to introduce new section 252BA, which will authorise immigration officers to conduct random, warrantless searches of any part of an immigration detention facility, including accommodation areas, detainees' personal effects and detainees' rooms.
 - b. It authorises officers to use dogs in conducting searches under new section 252BA, as well as searches under the existing powers in sections 252 and

⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 September 2017, 10.

⁷ Commonwealth, *Parliamentary Debates*, House of Representatives, 13 September 2017, 10.

252AA. There is no requirement that the dog be reasonably necessary to effect the purpose of the search.

13. Liberty Victoria is concerned about these expanded search powers:

- a. These powers further intrude on the personal privacy and autonomy of refugees and asylum seekers in immigration detention; and
- b. The power to use dogs to conduct searches is disproportionate and inappropriate. The indiscriminate use of dogs to conduct searches is likely to further intimidate and dehumanise already vulnerable refugees and asylum seekers. It will also impose another barrier to visitors seeking access to immigration detention centres. As a detention visitor commented to the Refugee Council of Australia: 'He [person in detention] is treated like a drug user and me like a drug smuggler every time I set foot in the place.'⁸

Conclusion

14. Liberty Victoria opposes the use of immigration detention to warehouse people seeking asylum, or those whose visas have been cancelled on character grounds.⁹

15. If detention nonetheless remains the lynchpin of our immigration system, it must be accompanied by appropriate safeguards. One of these safeguards is accessibility: people in detention must have ready access to their family, friends, advisors and lawyers; and the Australian community must be free to look into the dark corners of our places of detention.

16. Liberty Victoria opposes the Bill because it thwarts these objectives, and continues the criminalisation of Australia's immigration laws, policies and institutions.

17. Thank you for the opportunity to make this submission. If you have any questions regarding this submission, please do not hesitate to contact Liberty Victoria President

⁸ Refugee Council of Australia, *Unwelcome Visitors*, 8.

⁹ In our view, the Minister's powers to cancel visas on character grounds under section 501 of the Migration Act are often exercised punitively: to impose punishment for criminal offending beyond that meted out by the relevant court.

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