

COMMUNITY LEGAL CENTRES TASMANIA

1 September 2020

Senator Jacqui Lambie
Shop 4, 22 Mount Street
Burnie
TAS 7320

via email: senator.lambie@aph.gov.au

Dear Jacqui,

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

Community Legal Centres Tasmania (CLC Tas) is writing to urge you **not** to support the *Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020* ('the Bill').

We strongly believe that the proposed powers to apply and enforce blanket restrictions on everyday items cannot be justified, particularly in a setting that is not a prison. We also believe that the proposed search and seizure powers are not necessary given the powers already available to authorities.

Broad powers to ban 'prohibited thing'

If passed, section 251A of the *Migration Act 1958* (Cth) will enable the Minister to determine any item a 'prohibited thing' where the Minister is satisfied that the possession or use of the thing 'might be a risk to the health, safety or security of persons in the facility, or to the order of the facility'. We strongly believe that detainees should not have the same restrictions placed on them as prisoners. Expressed in another way, detainees are not prisoners and should not be treated as such.

In our opinion the powers proposed in section 251A of the Bill would grant the relevant Minister similar powers to those found in a prison context. A good example is the proposed prohibition on mobile phones which would result in detainees being restricted from communicating with friends, family and social networks. Importantly, a ban on mobile phones is also likely to have a significant impact on a detainees right to access to justice with legal advice severely curtailed.

As well, the proposed powers would provide the Minister with sweeping powers that could result in the imposition of broad, blanket bans on innocuous everyday items such as pens and paper in order to stamp out peaceful demonstrations within the detention centre.

Search and Seizure Powers

We also strongly believe that the proposed prohibition, search and seizure powers are not necessary given the powers already available to authorities.

- *Searches of Detainees*

Currently, section 252 of the *Migration Act 1958* (Cth) ('the Act') permits authorised officers to undertake searches, without a warrant, of persons detained in Australia to find and confiscate certain items. Under subsections 252(1) and 252(2), a search of a detainee, detainee's clothing, and any property under the immediate control of the detainee, may be conducted for the purposes of finding out whether there is hidden on the person, their clothing or in their property 'a weapon or other thing capable of being used to inflict bodily injury or to help the person to escape from immigration detention'. Subsection 252(8) authorises the use of such force as 'is reasonably necessary to conduct the search'. Importantly, the searches noted above can be conducted without a warrant and at any time provided that they are conducted for the specified purposes.

- *Screening procedures and strip searches of detainees*

Similarly, the Bill proposes to significantly expand powers to search detainees. However, sections 252AA and 252A of the Act already provide authorised officers with powers to conduct, without a warrant, screening procedures and strip searches of persons.

Subsection 252AA(1) of the Act provides that a screening procedure of a detainee or a detainee's clothing or possessions may be undertaken to find out whether a potential weapon or escape aid is hidden on the detainee, or in their clothing or in their possession. These screening procedure powers does not require a warrant or any specified threshold of belief or suspicion on the part of the authorised officer and may be exercised at any time while a person is held in immigration detention.

Under subsection 252A(1), a strip search of a detainee, including an examination of the detainee's body, clothing and possessions, may be undertaken to find out whether a potential weapon or escape aid is hidden on the detainee, in their clothing or a thing in their possession. Again, no warrant is required.

- *Screening Visitors*

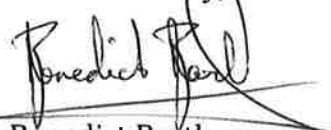
Finally, section 252G of the Act provides authorised officers with the power to screen and inspect persons about to enter a detention centre, including visitors, and temporarily confiscate things. The power can be applied if the authorised officer suspects on reasonable grounds, that a person possesses a thing that might endanger the safety of the detainees, staff or other persons at the detention centre, or disrupt the order or security arrangements at the detention centre.

In our opinion, there is a lack of oversight contained in the proposed Bill. If passed, the Bill will significantly expand the power to conduct searches, screening procedures and strip searches so that they can be used to find a 'prohibited thing'. We are extremely concerned that strip searches in particular may become common place.

In summary, we do not believe the Bill should be passed. The Bill will have a significant impact on access to justice with persons unable to contact their legal representatives. It will also result in disproportionate and unnecessary searches including strip searches which should only be carried out in exceptional circumstances.

If you have any queries, please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Benedict Bartl", written over a horizontal line.

Benedict Bartl
Policy Officer

Community Legal Centres Tasmania
