



Submission on the proposed Migration Amendment, Prohibiting Items in Immigration Detention

This Submission is made by:

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CARAD

CARAD is a volunteer organization based in Western Australia, providing support for refugees and asylum seekers. We are active campaigners for social justice and a respected voice for the rights of asylum seekers, refugees and detainees. We provide essential services, ensuring that all people seeking safety in Australia are able to live with dignity.

We have an extensive volunteer program of visiting people in immigration detention. We visit at Perth Immigration Centre (PIDC) and, since it opened in 2012, have regularly visited people at Yongah Hill Immigration Detention at Northam. We provide friendship and support to people and advocate on their behalf on matters of health and wellbeing. We do not provide legal advice. We only visit and advocate for refugees and people seeking asylum. This includes people who have been found to be refugees but who have had protection visas cancelled for various reasons including under s501 of the Migration Act. We do not assist people who are not of refugee or asylum seeker backgrounds.

Summary of CARAD's position on the proposed amendments

While we have no objection to the proposals regarding prescription and controlled drugs, we do oppose the proposed Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 for the following reasons:

- We oppose the removal of mobile phones, SIM cards or means of using the Internet from people seeking asylum and refugees in immigration detention. These items provide an invaluable link to family and friends and reduce the sense of isolation and helplessness felt by people in detention. The removal of mobile phones from vulnerable people is predicted to lead to increased levels of mental illness and possible incidents of self-harm and suicide.
- We oppose any increased powers to search detention facilities to enforce existing and new prohibitions. There are already extensive powers for searches in place, which in our view have been open to abuse. The proposed increased powers are not well defined with the very real potential for abuse.





Submission Details

Based on the accompanying Explanatory Memorandum, the amendments are aimed at the cohort of people in immigration detention who 'are awaiting removal often having entered immigration detention directly from a correctional facility, including members of outlaw motorcycle gangs and other organized crime groups.' This is the group colloquially known as the "501 detainees"

For our purposes we have extracted figures from the Department of Home Affairs document *Immigration Detention and Community Statistics Summary* [31 March 2020].

- The 'target' group of s501 detainees comprises 623 people.
- CARAD interest group of IMAs comprises 512 people.
- There are approximately 240 people in detention for various other reasons.
- It is noted too that more than 25% of the population has been detained for more than 2 years.

Since people classified as "Illegal Maritime Arrivals" can generally be taken to be asylum seekers or refugees, this clearly demonstrates that many of the people in detention are not members of motorcycle gangs or organized crime groups. To this can be added visa overstayers and other smaller groups of detainees.

Also, it is highly likely that of those who have had their visas cancelled under s501, the majority are not members of outlaw motorcycle gangs or organized crime groups and do not abuse the use of mobile phones.

Of the people we visit, some have had protection visas cancelled under s501 and are now in indefinite detention. They have been previously recognized to trigger our protection obligations. We understand that deportation in such cases would constitute refoulement. From our observations, this group is highly vulnerable to mental health issues. To some extent this can be reduced through phone and internet access that enables them to communicate with friends, family and supporters.

There is no indication in the Explanatory Memorandum that consideration has been given to the people in immigration detention who do not abuse the use of mobile phones and internet access. As a result, people seeking asylum or people who have been found to be refugees and are now s501 detainees will be unfairly penalized by the implementation of this amendment.

The 2019 Report from the Human Rights Commission, *Risk management in immigration detention*, addresses the issue of mobile phone access.¹ The report summarised the history of mobile phone access in immigration detention and found that:

'Overall, the Commission considers that the reintroduction of mobile phones in immigration detention facilities is a net positive, given its significant benefits for the wellbeing of people in detention and their capacity to maintain contact with people outside detention.'

The Commission addressed the issue of inappropriate use of phones and found that this could be addressed through internal policies and that:

¹ Human Rights Commission, *Risk management in immigration detention*, 2019, pp. 57-59.





‘A more appropriate response would be to ensure proper accountability for misuse of phones among the individuals involved’.

Mobile phones and internet access are an essential means of communication for people in detention to communicate with friends, family, lawyers and for members of support organisations, such as CARAD, who need to contact and be contacted by clients.

Since the Federal Court ruling that lifted restrictions on mobile phones for people who arrived by boat in June 2018, CARAD has provided a number of phones to people in detention, donated by our members and supporters. As a result we observed an improvement in people’s mental health and wellbeing as they had a means of contacting the outside world. This also enabled us to contact people when we needed to. In addition, when an interpreter service is used it is usual to book this using a personal phone number. It is almost impossible to organise this through the detention facility.

Due to current restrictions on visiting during the Covid19 pandemic, we have maintained mobile phone contact with our clients, often providing a much needed link with someone in the community. Without the opportunity of face-to-face visits, this form of communication should be available as and when needed.

The Explanatory Memorandum states that ‘Detainees will continue to have reasonable access to landline telephones, facsimile, the internet, postal services and visits in order to maintain contact with their support networks and legal representatives. Family, friends, legal representatives and advocates can also contact detainees directly via the immigration detention facility.’

Landline telephones, fax machines and the postal service, are forms of communication that are fast becoming obsolete. The majority of people, organisations and professional services do not use these means of communication. The use of Apps for communication with friends and family is now commonplace and has replaced the use of landline phones, fax and postal services, the majority of which are sporadic to non-existent in the places many of our clients come from. Our experience of contacting clients via the immigration detention facility has always been difficult if not impossible due to the amount of work already carried out by facility staff.

The additional search and seizure powers proposed by the amendment; including searching immigration facilities and accommodation areas, medical examination areas and storage areas are in our view unnecessary. To propose such powers without a warrant, and with the use of detector dogs to conduct these searches suggests overreach and the very real potential for abuse of power. It is possible a claim could be made that these proposals constitute breaches of human rights.

Our clients are very vulnerable people, many of whom have experienced trauma and torture in their previous lives and continue to suffer the consequences. They tell us that their rooms are searched regularly in any case. From our observations, the living environment for people in immigration detention is already extremely harsh. We do not support any moves that are likely to further brutalise this environment and potentially lead to increased distress, hopelessness, mental health issues, self-harm and possible suicide.

Conclusion

The proposed ‘Migration Amendment, Prohibiting Items in Immigration Detention’, is directed at a small cohort of the immigration detention population but has the potential to have a seriously detrimental effect on all detainees including many vulnerable asylum seekers and refugees.





The main problem, as we see it, is the indefinite detention of people seeking asylum and refugees. This is being carried out in centers that are mandated to facilitate “administrative detention” but are increasingly punitive in the way they are operated. Furthermore, vulnerable people seeking asylum and refugees have been housed together with people with criminal backgrounds since 2014, despite the safety risks, and harsh increases in security measures this has caused.

Recommendations

1. It is not fair or reasonable to remove mobile phones from everyone, particularly vulnerable asylum seekers who rely on these and the internet for essential contact with the outside world including family and friends overseas who cannot be contacted using landlines or postal services.
2. One means of resolving the problems inherent in the accommodation of cohorts of people detained for different reasons is to separate those cohorts to ensure that vulnerable people seeking asylum and refugees and people with criminal backgrounds are not housed together. [CARAD has previously requested that this be done] Then appropriate management strategies could be implemented for each group as assessed.
3. CARAD claims that these amendments have no place and are unnecessary.

Signed,

Joanna Josephs
General Manager
June 4th 2020

