To: the Senate Legal and Constitutional Affairs Legislation Committee 8 June 2020

I am a concerned Australian citizen who believes that the protection of the vulnerable within our human rights framework is a fundamental basis for our democracy and the legitimacy of the rule of law.

I would like to make a submission related to the **Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020** which was referred on 14 May 2020 to the Senate Legal and Constitutional Affairs Legislation Committee (report due 5 August 2020).

The summary of the bill reads:
"Amends the Migration Act 1958 to: enable the minister to determine, by legislative instrument, prohibited things in relation to immigration detention facilities and detainees; enable authorised officers and assistants to search Commonwealth immigration detention facilities without a warrant; 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."

I support the broad objective of maintaining safety and security within immigration detention centres.

But I do not support providing indiscriminate search and seizure powers for any item deemed prohibited by the minister without judicial oversight and reasonable grounds for exercising those powers.

According to the minister in his address to the House of Representatives on 14 May 2020, the amendments proposed are aimed at controlling illicit or criminal activities undertaken from within the immigration detention centres by detainees with a criminal record who are awaiting deportation.

But the amendments as worded in the proposed legislation do not stipulate which type of detainees they apply to, because they apply to all detainees, not just those with a criminal record awaiting deportation.

Unfortunately, due to the very draconian nature of immigration policy in Australia, a large number of peaceful and law-abiding refugees and asylum seekers are detained in immigration detention centres. These individuals who are indefinitely detained have committed no crime under Australian law as it is not illegal to seek asylum and protection. They are not subject to deportation orders as they are either awaiting determination on their case or awaiting a country of resettlement. Many of them are in Australian immigration detention centres for the explicit purpose of receiving medical treatment in Australia.

So the legislation as currently proposed would apply equally to anyone in immigration detention, regardless of their reason for being in detention and regardless of any suspicion about their activity within the centre. The legislation as currently worded would:

- Allow the minister to declare a mobile phone, a SIM card or an internet-capable device a prohibited item;
- Allow any authorised officer to search for and seize any personal mobile phone or personal computer, without warrant or direction from a court; and
- Make it mandatory for authorised officers to seize prohibited items as instructed by the minister, without the ability for the officers to apply judgement, for example based on the risks or threats posed by specific individuals in the centre.

Once enacted, these powers would be implemented without any judicial oversight.
Let us not forget that immigration detention centres are there for administrative detention only, and are not for the purpose of criminal detention as a result of a conviction for a crime committed under Australian law.

If in the usual course of implementing its administrative detention powers, the Government and the Immigration Department only detained individuals for very short periods of time (for example a small number of days to process and effect a deportation) then the amendments proposed would appear fair and balanced considering access to basic phone and internet services from within the detention centres.

But considering the entrenched policy of detaining individuals not only for very long periods of time (a number of years for many detainees) but with no limitation in the legislation (the Government and the Minister can legally detain anyone for the term of their natural life), these amendments allow the Minister and authorised officers in immigration detention centres to remove access to personal mobile phones and personal computers from detainees for life. This is a cruel and unjustifiable punishment in the case of refugees and asylum seekers who have committed no crime, and who have no end in sight to their predicament.

Furthermore, in its assessment of the compatibility of the amendments with Australia's Human Rights obligations, a number of significants points are missed:

- The Government believes that by providing access to landlines, detainees do not need a mobile phone. This is not true. Mobile phones are much more than a device to have a one on one call with another person. Without a mobile phone, one cannot engage with group messaging or group chat, send or receive text/SMS messages, engage with a multitude of applications (apps) such as mental health support groups, arts and creativity, education and much more;
- The Government believes that by providing supervised, monitored and restricted access to the internet, detainees do not need a personal computer. This is not true. Personal computers are much more than a device to access the internet. They provide access to software and services that are not available on a public computer provided by the immigration detention centre. Detainees may purchase and install specialised software to acquire or practice a skill (for example coding, digital creation), to further their education, to communicate privately with family and friends without fear of being listened to or disrupted (for example via video conference).

We must ensure that immigration detention centres (where people are detained for administrative purposes based on their migration status) do not become prisons (where people are detained and deprived of their liberty as a punishment for convicted crimes). Under international law, immigration detention is only meant to be used as a last resort and where it is necessary, reasonable, and proportionate to a legitimate government objective.

In summary, for a subset of law-abiding detainees in immigration detention centres, access to a personal mobile phone and a personal computer is the only way the detainees:

- experience a modicum of daily normality;
- are able to sustain themselves during periods of very extended and indefinite detention;
- have access to critical mental health and support services;
- further their education, prospects to reintegrate normal society or future wellbeing;
- maintain connection with the external environment; and
- maintain their right to privacy.

These items are critical to their long term mental wellbeing and are their basic human right.

I therefore urge the Committee to ensure that the amendments be changed to:

- limit the powers being granted to the minister and authorised officers to detainees who are reasonably suspected of undertaking illegal activities within immigration detention centres (for example members of outlaw bikie gangs awaiting deportation);
- enshrine these powers subject to a judicial order. The Minister or the representative of an authorised officer must apply to a judge (or equivalent appropriate judicial oversight mechanism) before being allowed to search for and seize prohibited items from a specified individual, ensuring the basis of the search and seizure is legitimate and grounded in evidence; and
- explicitly ban the search for and seizure of personal mobile phones, SIM cards and internet-enabled devices without adequate suspicion and judicial authorisation.

Failure to do so would further marginalise and penalise detainees who are simply being detained for no other reason than their human right to apply for asylum. It would also further damage Australia’s standing on the world stage with regards to its human rights record.

Thank you
Alain Rondot