



Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

8 June 2020

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

Doctors for Refugees (D4R) is an organisation, registered with the Office of Fair Trading New South Wales, whose members are Australian doctors, medical students, and other health professionals. D4R works to improve access to medical advice and treatment for refugees and asylum seekers in Australian immigration detention centres, the offshore regional processing system, and other places of detention. We share the assertion of the Australian Medical Association and the Public Health Association of Australia that refugees seeking asylum in Australia have the same rights to health care as the broader Australian community. D4R advocates for the immediate end to indefinite offshore detention and the institution of a transparent, timely and accountable procedure for asylum seeker processing, regardless of their mode of arrival to Australia.

INTRODUCTION

The following concerns and recommendations pertain to the *Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020*. D4R would like to address the proposal that mobile phones, Subscriber Identity Module (SIM) cards, and internet-capable devices should be able to be considered ‘prohibited things’ (PCA, 2020) by officers and the statutory power should be provided to ‘search facilities operated by or on behalf of the Commonwealth’ (PCA, 2020).

The Australian Government’s Offshore Detention Centre system has been considered ‘arbitrary’ by the United Nations Working Group on Arbitrary Detention (UNWGAD, 2018). Given this, it is unnecessary and inhumane to conduct searches and remove mobile phone and SIM cards in a manner that suggests people in offshore detention are all convicted criminals. Despite this, the proposed Bill will allow ‘screening’ (PCA, 2020, Section 251 B) to occur and will permit searches to be done ‘whether or not the officer has any suspicion that the person has such a thing on the person’s body’ (PCA, 2020). We are concerned that the proposed changes will reduce transparency surrounding offshore detention centre proceedings and will have devastating impacts on the persons detained there.

RECOMMENDATIONS

CONNECTIVITY

The importance of connectivity for refugees is immeasurable, particularly during the current global pandemic. The Global System for Mobile Communications has found that,

“So important were mobile phones that, on arrival, many refugees asked for Wi-Fi or charging services ahead of food, water, or shelter” (GSMC, 2017).

Furthermore, the United Nations High Commissioner for Refugees (UNHCR) has stated that,

“In all discussions between refugees and UNHCR staff, communication with friends and family was identified as the most important need from connectivity. Arguably, this need is greater for refugees than for the general population because displacement often separates refugees from their loved ones and can leave them isolated. Knowing where friends and family are and knowing that they are safe is of paramount importance to refugees” (Vernin, A et al. 2016).

Refugees are a vulnerable population who have been displaced from their home and separated from their community. This, compounded with the requirement for physical distancing of persons during the current Covid-19 pandemic means that refugees are at grave risk deterioration in mental health secondary to isolation. The current global epidemic means that people in offshore detention can no longer rely on social supports in physical proximity to them – and they require digital communication to stay connected to people both in detention and overseas.

SEARCH PROCESS AND DIGNITY

The International Covenant on Civil and Political Rights (ICCPR) has been ratified by the Australian Government, however the Australian Government’s treatment of individuals in offshore detention fails to abide by key aspects of this treaty. Article 7 states that “No one should be subjected to cruel, inhuman or degrading treatment or punishment” (OHCHR, 1966). Searching people ‘whether or not the officer has any suspicion’ (PCA, 2020) with the use of ‘detector dogs’ (PCA, 2020) and ‘strip search’ (PCA, 2020) can be considered cruel, inhumane, degrading and punitive. Search tactics such as this, conducted ‘without a warrant’ (PCA, 2020) would perpetuate the severe trauma already experienced by many refugees. We are not only concerned for the mental and physical health of refugees; we are concerned about the Australian Government’s ability to adhere to its international treaties.

TRANSPARENCY AND ACCESS TO SERVICES

The United Nations have repeatedly criticised the Australian Government’s offshore detention policy (Commonwealth of Australia, 2012 and AHRC 2017). The Australian Government has attempted, on multiple occasions, to reduce public and professional access to vulnerable groups in detention. D4R are therefore concerned that limiting access to mobile phones will limit the transparency required to ensure that detention remains necessary, proportional, and lawful.

Many of the cases D4R has been involved in since 2013 have involved the blockage of access to recommended medical care by the Australian Border Force and the Department of Immigration and

Border Protection (now Department of Home Affairs). Lack of transparency surrounding the healthcare providers for refugees is a barrier to accessing important patient medical information. We agree with the UNHCR's assertion that,

"Monitoring and reporting of the health of refugees can be improved through online systems, a benefit that would be of enormous impact in situations where medical services are not readily available" (Vernin, A et al. 2016).

This would be more easily facilitated if mobile connectivity was improved rather than restricted.

The Bill claims that 'legal representatives and advocates can...contact detainees directly via the immigration detention facility' (PCA, 2020). We are concerned that this claim cannot be met by the Australian Government, given that D4R is an advocacy group that has struggled for years to contact detainees for essential, often overdue medical care. The lack of transparency surrounding the healthcare services for refugees is an ongoing barrier to care of patients, especially in offshore detention. We are concerned that the proposed Bill will impact on people's access to healthcare and healthcare advocacy groups' access to vulnerable, often unwell, individuals.

MENTAL HEALTH

Refugees' pre-arrival experiences are compounded by their time in indefinite detention and lack of access to effective, culturally-appropriate services. This means that a disproportionate number of cases D4R are involved in have significant mental health components. UNHCR has reported that,

"the prolonged, arbitrary and indefinite nature of immigration detention in conjunction with a profound hopelessness in the context of no durable settlement options has corroded these individuals' resilience and rendered them vulnerable to alarming levels of mental illness" (AHRC 2017).

D4R's concern for the mental health of people in offshore detention is compounded by the negative impacts that screening searches, strip searches, use of dogs in searches and confiscation of digital connectivity devices.

EDUCATION, LANGUAGE AND SELF-RELIANCE

Access to education, language and recreational tools are essential for avoiding the negative impacts of arbitrary indefinite detention. The UNHCR has found that,

'connectivity has proven to be vital in empowering refugees to educate and entertain themselves, and for earning a livelihood in refugee sites' (Vernin, A et al. 2016).

They also found that connectivity can,

"Allow for the possibility of working remotely – particularly important in situations where there are constraints on the right to work or limited opportunities in the local economy" (Vernin, A et al. 2016).

Limiting access to education and language tools will exacerbate the punitive nature of detention, reduce individuals' self-reliance, and exacerbate boredom and tensions within offshore detention facilities.

CONCLUSION

Access to connection, education, legal aid, and language tools for people detained in offshore detention will be limited by the proposed changes. D4R are therefore concerned that the *Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020* will not assist the Australian Government in their aim to ‘provide a safe and secure environment for staff, detainees and visitors in an immigration detention facility’ (PCA, 2020). Given that other elements of policy around detention fail to address the impact of detention on refugee’s health, we are concerned that the ‘risk-based approach’ (PCA, 2020) will not be effective at promoting risk-minimisation for refugees. Use of screening searches, strip searches and dog-assisted searches to remove mobile phones and SIM cards from people in offshore detention centres reduces transparency and can be considered inhumane, unnecessary, and unsafe.

REFERENCES

Australian Human Rights Commission, *Asylum seekers, refugees and human rights. Snapshot Report (2nd Edition) 2017*, Australian Governments Open Access and Licensing Framework, 2017.

Commonwealth of Australia, *Joint Select Committee on Australia's Immigration Detention Network. Final report*, Canberra, Commonwealth of Australia, 2012.

Global System for Mobile Communications, *The Importance of Mobile for Refugees: A Landscape of New Services and Approaches*, UK Aid, 2017.

UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on deprivation of liberty of migrants*, 7 February 2018.

Office of the United Nations High Commissioner for Human Rights, *International Covenant on Civil and Political Rights*, 1966.

Parliament of the Commonwealth of Australia, *Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020*, 2020.

Vernin, A *et al.* *Connecting Refugees - How Internet and Mobile Connectivity can Improve Refugee Well-Being and Transform*, United Nations High Commissioner for Refugees, 2016.