Submission to the Senate Legal and Constitutional Affairs Legislation Committee on the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020

Refugee Legal:

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Refugee Legal

Refugee Legal (formerly the Refugee and Immigration Legal Centre) is a specialist community legal centre and the largest provider of free legal assistance to asylum-seekers and disadvantaged migrants in Australia. Since its inception over 32 years ago, Refugee Legal and its predecessors have assisted many thousands of asylum seekers and migrants in the community and in detention.

Refugee Legal specialises in all aspects of refugee and immigration law, policy and practice. Our model involves direct client work, including with many people detained in immigration facilities, strategic work for change and education and training. In the last financial year, we assisted over 14,285 vulnerable asylum seekers, refugees and migrants. With key partners, we have succeeded for clients in 10 out of 10 High Court cases with the benefits flowing to many thousands of other people seeking asylum. We are also one of the leading providers in Australia of education and training in all aspects of Australia's refugee and immigration program. Refugee Legal has substantial casework experience and is a regular contributor to the public policy debate on refugee and general migration matters.

1. Overview of submission

1.1. We welcome the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee (**the Committee**) in relation to the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) (**the Bill**). The focus of our submission and recommendation reflect our experience and expertise as briefly outlined above.

1.2. Refugee Legal recommends that the *Migration Act 1958* (Cth) (**the Act**) not be amended as the Bill proposes. Whilst we acknowledge the importance of safety and stability in immigration detention facilities, we contend that the proposed amendments are not reasonable, necessary or proportionate to achieve this outcome.

1.3. In our submission, the current provisions of the Act, provide more than adequate safeguards to ensure "the safety, security and good order" of immigration detention. In this regard, we also refer to the purposes of detention, as administrative and not punitive in nature.

1.4. Refugee Legal is particularly concerned with the effect of several amendments proposed by the Bill, including:

i) The Bill reflects an increasing and continuing trend in the implementation of securitisation measures in immigration detention and, in our submission, the purported policy justifications for this expansion are not proportionate to their impact or necessary to achieve the stated aims.

ii) The Bill would allow the Minister for Home Affairs (**the Minister**) an unjustifiably broad personal power to determine what is classified as a "prohibited thing".

iii) The ability of the Minister to prohibit items such as mobile phones and SIM cards is a disproportionate measure, given the significant and detrimental impact such a power would cause to detainees' freedom of communication, including to obtain legal advice and contact their legal representatives, family and support networks.

iv) The extension of the search powers proposed by the Bill lacks adequate justification, fails to recognise the different circumstances of detainees and has concerning implications for the treatment of people in detention.

1.5. This submission is not intended to be an exhaustive discussion of the proposed amendments; instead it focusses on some of the key areas of concern, drawing particularly on our experience with assisting people detained.

2. Lack of necessity and proportionality

2.1. In our submission, the policy rationale for the measures in the Bill is inadequate, and fails to acknowledge the range in circumstances of people held in immigration detention, as well as the nature of the existing framework.

2.2. The Explanatory Memorandum to the Bill states that the amendments:

> *… seek to strengthen the Department of Home Affairs' ability to regulate the possession of particular items in immigration detention facilities in order to ensure that the Department can provide a safe and secure environment for staff, detainees and visitors in an immigration detention facility*.[1]

2.3. The Explanatory Memorandum further states that "[i]mmigration detention facilities now accommodate an increasing number of higher risk detainees awaiting removal… including members of outlaw motorcycle gangs and other organised crime groups."[2]

[1] Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) 2.
[2] Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) 2.

2.4. We acknowledge that there exist potential risks which must be managed in detention centres to ensure safety and security, and that the detention centre population may include higher numbers of people with a criminal history. However, there are a significant number of people who are in detention for reasons unrelated to criminal histories or security concerns. In this regard, we note that the most recent Immigration Detention Statistics Summary contains that less than half of detainees are held as a result of s 501 visa cancellations.[3]

2.5. Further, we note that not all people in the s 501 cancellation cohort have committed serious offences or present a risk to security or safety given the definition of "substantial criminal record" under the Act.[4] We also note that all people in immigration detention after s 501 cancellations have been transferred there only after completing their term of imprisonment, of the duration determined to be appropriate by the criminal justice system.

2.6. We are also aware of cases where people have been detained on the basis of charges against them, where those charges are subsequently dropped, yet the person remains in immigration detention.[5]

2.7. Those who are in immigration detention include asylum seekers and refugees with backgrounds of torture and trauma.[6] These include people who have been transferred from Nauru or Papua New Guinea to Australia, under the previous Medevac laws, in order to receive appropriate medical and/or psychiatric assessment and/or treatment. We are gravely concerned about the impact of the proposed amendments on this already vulnerable cohort.

2.8. In our submission, it is not justifiable to impose restrictive measures on all people in immigration detention, such as could be determined by the Minister, without an objective assessment of the risk they present.

2.9. In his second reading speech, the Honourable Minister Tudge stated that:

> *Officers of the Australian Border Force (ABF) cannot fully maintain the safety, security and good order of immigration detention facilities, because legislation does not support them to remove illegal or dangerous items from detention facilities.*[7]

2.10. We contend that the existing search and seizure powers in the Act are sufficient to maintain the "safety, security and good order" as they allow officers authorised by the Minister wide ranging powers to search, without a warrant, and screen detainees to find out whether they have "a weapon or other thing capable of being used to inflict bodily injury or to help the person to escape from immigration detention." [8] This also includes the power under s 252A to strip search a detainee.

2.11. Further, detainees are subject to existing State and Federal laws regarding items which are illegal and law enforcement bodies can be contacted to manage illegal items and other alleged unlawful conduct if and when reasonably necessary.

2.12. As such, we submit that the law as it currently stands is appropriate and sufficient to ensure safe and secure immigration detention facilities. To expand the existing powers in this regard would involve the development of further punitive measures which would be likely to cause substantial harm to a significant number of detainees.

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[3] Australian Government, Department of Home Affairs, *Immigration Detention and Community Statistics Summary* (31 March 2020) 7, available at: https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-march-2020.pdf.
[4] s 501(6) and s 501(7)(c)-(d).
[5] *Migration Act 1958* (Cth) s 116.
[6] Australian Government, Department of Home Affairs, *Immigration Detention and Community Statistics Summary* (31 March 2020) 7, available at: https://www.homeaffairs.gov.au/research-and-stats/files/immigration-detention-statistics-31-march-2020.pdf.
[7] Commonwealth Government of Australia, *Parliamentary Debates*, House of Representatives, 14 May 2020, 3441 (Alan Tudge MP) https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2Fdf9bb27b-ec32-4383-84c6-058df197388f%2F0017%22.
[8] See ss 252-252G.

3. Excessively broad Ministerial power

3.1. Section 251A(2)(b) of the Bill proposes to allow the Minister to, by legislative instrument, determine a thing is a ***prohibited thing*** if the Minister is satisfied that:

> *… 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.*

3.2. We note that the proposed amendments, in contrast to those proposed in 2017, include an exception under s 251A(3) in regards to medication or supplements prescribed or supplied for an individual by an authorised health service provider. Similarly, we note with approval that the Bill in its current form ensures that the Minister's legislative instrument is disallowable.[9]

3.3. However, even in its current form, it proposes unjustifiably broad personal powers for the Minister to prohibit items. The Minister need only be satisfied that the thing "might be a risk to the health, safety or security of persons in the facility, or to the order of the facility" – a very low threshold. In effect this risks creating a power that can be arbitrarily and ineffectively exercised, in a largely unfettered manner that lacks constraints against unnecessary and disproportionate application. Further, the inclusion of risk "to the order of the facility" is a vague and ill-defined criterion. The provision as drafted lacks sufficiently clear connection to the stated purpose of the avoidance of risks to safety and security. Accordingly, it goes well beyond its purported justification.

3.4. We are further concerned that the proposed amendments would provide the Minister with further personal powers affecting the rights and interests of people seeking asylum, refugees and migrants, including people recognised as refugees who have been transferred to Australia under the previous Medevac laws. The new power would allow for already restrictive conditions in immigration detention to be further restricted on the personal decision of the Minister of the day, with limited oversight. Further items beyond those noted in the Bill could be prohibited on the Minister's personal discretion. The proposed provision allows the scope for entirely innocuous personal items to be determined personally by the Minister as prohibited. The determination of "prohibited items" then founds the power for searches, including strip searches, which are significantly invasive.

3.5. We also draw the Committee's attention to proposed s 251B(6), which was not included in the previous iteration of this Bill as introduced in 2017. This proposed section seeks to allow the Minister to, by legislative instrument, direct that an authorised officer "must seize a thing by exercising one or more specified relevant seizure powers" in relation to:

> *(a) a person in a specified class of persons, or all persons, to whom the relevant seizure power relates;*
>
> *Example: All detainees in a specified immigration detention facility, or all detainees in such a facility other than those who are unauthorised maritime arrivals.*
>
> *(b) a specified thing, a thing in a specified class of things, or all things, to which the relevant seizure power relates;*
>
> *(c) a specified immigration detention facility, an immigration detention facility in a specified class of such facilities, or all immigration detention facilities;*
>
> *(d) any circumstances specified in the directions.*
>
> *Example: A direction could specify a particular period during which the direction is to take effect, or the duration of a specified event.*

3.6. This would provide the Minister with a broad, largely unchecked personal power to direct authorised officers to exercise the relevant search and seizure powers in specific

[9] See proposed s 251A(4).

circumstances. The specific circumstances which would justify the issuing of a direction are unclear. The Explanatory Memorandum describes, for example, the Minister may issue such a direction, to allow "a targeted, intelligence-led, risk-based approach"…"based on risk assessments and operational security."[10] No further information is provided regarding risk assessments and operational security processes. Further, there is no provision following s 251B(6) to ensure any such legislative instrument could be disallowed, thus any direction made under this section would go unchecked. We contend that such broad, sweeping personal powers are completely inappropriate and unwarranted and are not necessary in the circumstances.

3.7. We submit that the proposed personal power afforded to the Minister to determine what is classified as a ***prohibited thing*** is excessively broad, as is the power afforded under proposed s 251B(6). While we acknowledge s 251A(3) and 251A(4), the proposed amendments remain an unwarranted and inappropriate expansion of the personal powers of the Minister, and in our submission, constitute a threat to accountable governance and the rule of law.

4. Essential communication for detainees: mobile phones

4.1. The Bill provides for an explanatory note to proposed s 251A(2)(b), stating that "the following things may be determined to be ***prohibited things*** if the Minister is satisfied that they pose a risk" to include mobile phones, SIM cards, computers and other electronic devices designed to be capable of being connected to the internet. The Explanatory Memorandum also explains that a primary focus of the Bill is to prohibit the possession of mobile phones by people in immigration detention.[11] It states that "mobile phones are enabling criminal activity within the immigration detention network" and cites examples of activities aided by mobile phones which include:

> *drug distribution, maintenance of criminal enterprises in and out of detention facilities, commodity of exchange or currency, owners of mobile phones being subjected to intimidation tactics (including theft of the phone) threats and/or assaults between detainees including an attempted contract killing*.[12]

4.2. Refugee Legal submits that a prohibition on the use of mobile phones in immigration detention is not necessary or justified. No compelling case has been made to warrant such a serious restriction which would have grave consequences for the rights, health and wellbeing of many people detained. Although we note there is a reference in the second reading speech that this is not a "blanket ban on mobile phones in detention" and the proposal is "to allow the minister to direct officers to seize mobile phones from certain categories of people" the discretion remains with the Minister (our concerns in this regard are referred to in Section 3 above) and we are unaware of how such categories would be determined or whether any individual assessment would occur.[13]

4.3. We submit that, in addition to being crucial to the health and wellbeing of detainees, access to mobile phones is critical to enabling those in immigration detention to access legal representatives, in turn, to ensure that people are able to effectively engage with Government decision making bodies and the Courts in relation to legal processes relevant to their visa application.

4.4. We are also concerned about the reference in proposed s 251A(1) that a ***prohibited thing*** in relation to a person in detention includes "whether or not the person is detained in an immigration detention facility." We submit that the intended scope of this provision

[10] Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) 13 [61].
[11] Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) 3, 13 [61].
[12] Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) 37.
[13] Commonwealth Government of Australia, *Parliamentary Debates*, House of Representatives, 14 May 2020, 3442 (Alan Tudge MP) https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2Fdf9bb27b-ec32-4383-84c6-058df197388f%2F0017%22.

is unclear, and additionally we object to the extent it may purport to or intends to apply to people held in community detention subject to residence determinations.

4.5. Prohibiting mobile phones restricts the ability of people in immigration detention to access legal advice. The Explanatory Memorandum states that the Department "will ensure that communication avenues are maintained and enhanced" and "[d]etainees and legal representatives remain able to schedule telephone interviews ahead of time if they require access to a desk or private space."[14]

4.6. The Explanatory Memorandum also states, in regards to removals under s 198 of the Act, that requests for legal assistance, "will be facilitated until such time as it is no longer reasonably practicable to do so" and that this will "depend on the circumstances including what is happening operationally and whether facilities to access legal assistance are readily available having regard to the particular operational environment."[15] We are concerned that this proposed amendment is at fundamental odds with the right to access legal assistance, and s 256 of the Act.

4.7. The Statement of Compatibility with Human Rights attached to the Explanatory Memorandum contends that restricting mobile phone possession does not detract from the Government's positive duty to provide for detainees to meet their basic needs, including for communication and privacy, because the Department provides "a number of readily available means of communication that include landline telephones, internet access, access to facsimile machines and postal services" and these "facilities allow detainees appropriate and sufficient means of communication."[16]

4.8. It is Refugee Legal's experience that communication facilities are often not appropriate or sufficient and there can be significant barriers to timely and reliable communication with clients in immigration detention. This is particularly the case in the current environment where telephone and video conferencing bookings are being utilised more frequently as a result of court hearings and Tribunal hearings being held remotely and where in-person legal and professional visits are not proceeding.

4.9. The policies, procedures and accessibility of communication facilities, in the experience of Refugee Legal, vary between detention centres. Telephone appointments in a private area generally require a period of notice, eg 24 hours, which is not always possible with urgent matters. Timely contact between legal representatives and clients is often required to meet short statutory deadlines, which are particularly restricted for people in immigration detention. The time difference across states, which between Victoria and Western Australia can be up to three hours, is a further barrier. Telephones in public areas of the detention centre are not appropriate for discussing legal matters, frequently involving sensitive or personal subject matter.

4.10. People held in non-facility-based APODs do not have the same access to "readily available means of communication" as other detention facilities. In Refugee Legal's experience, clients in these situations have faced significantly restricted access to means of communication beyond mobile phones.

4.11. The alternative measures noted in the Explanatory Memorandum, of access to landline telephones, facsimile and the internet, are not adequate substitutes to mobile phone access. We submit that the following case studies[17] highlight the profound critical importance of detainees maintaining access to mobile phones and communication with their legal representatives, and the manifest, systematic and serious inadequacy of the facilities that the Department asserts are readily available and sufficient:

[14] Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) 8.
[15] Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) 8.
[16] Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) 40-41.
[17] To protect the identities of our clients, the case studies in this submission have been modified to ensure de-identification of any personal particulars.

> ***Case Study 1***
> *Ali arrived in Australia but was not immigration cleared, as ABF disputed whether he met the "genuine temporary entrant" requirement of his tourist visa. Ali was detained overnight, while arrangements were made for him to be deported to Iraq. Ali advised that he feared returning to Iraq and wished to seek asylum in Australia. Ali was able to use the mobile phone of a fellow detainee to contact Refugee Legal, who urgently helped him lodge an application for a protection visa. Ali was later found to be owed protection obligations and granted a protection visa.*

4.12. Refugee Legal is supporting many people held in detention facilities, who have been transferred to Australia under the previous Medevac laws, all of whom have acute mental health and/or physical health needs.

> ***Case Study 2***
> *Muhammad was evacuated to Australia from a regional processing country for urgent psychiatric medical treatment. Since the COVID-19 pandemic commenced and visits to detention centre facilities ceased, Refugee Legal was able to organise and facilitate an urgent videoconference with Muhammad and a treating medical practitioner, using his mobile phone. This would not have been possible without Muhammad's mobile phone and was imperative to his ongoing treatment and Refugee Legal's ability to advise him and progress his legal position.*

4.13. We submit that the seriousness of removing detainees' access to mobile phones cannot be overstated, as outlined in the following example.

> ***Case Study 3***
> *Laila also arrived in Australia, but was not immigration cleared, as ABF disputed whether she met the "genuine temporary entrant" requirement of her tourist visa. Laila's extended family were aware she had arrived in Australia but had been taken to immigration detention. Her family contacted Refugee Legal, who, with great difficulty, were able to speak to Laila through the landline at the detention centre. Refugee Legal gave Laila some advice about applying for a protection visa due to the harm she feared if returned to Afghanistan. Part way through providing this assistance, ABF interrupted the conversation and told Refugee Legal that Laila was no longer able to use the phone, but would be allowed to call back later. Refugee Legal was never able to contact Laila again and understands from her extended family that she was deported the next day.*

4.14. Mobile phones are also important for maintaining contact with family and other support people in the community. Access to mobile phones supports wellbeing for detainees who can privately access emotional supports at all hours; where times outside of business hours can be the most vulnerable. The Explanatory Memorandum acknowledges that regular contact with family and friends supports detainees' resilience and mental health, however this is not given appropriate weight, particularly in the context of people detained in remote facilities and the COVID-19 pandemic.

4.15. Refugee Legal is aware of the particular importance of phone contact for people detained in remote detention centres, such as Yongah Hill Immigration Detention

Centre, or for the many detainees (prior to the COVID-19 pandemic) who were forcibly transferred away from where their support networks and legal representatives were located.[18] There are many detainees in remote detention who have children or young family members in Australia. Flexible communication with children is an important issue, engaging consideration of the best interests of the child. Time differences can make communication difficult, and calls may need to be made at unusual times from a remote location.

4.16. In addition, in light of the current COVID-19 situation, the Australian Border Force (**ABF**) have ceased the visits program to immigration detention centres from 24 March 2020 onward. This is a time in which detainees are particularly reliant on access to mobile phones to contact support networks and legal representatives who are not allowed to visit. In fact, the Department's website states, as updated on 6 May 2020:

> *The ABF understands the important role visitors play in detainees' health and wellbeing and will provide each detainee with a $20 phone credit each week to support ongoing contact with family and community groups via their personal devices. This will continue until the measures are lifted for the visits program.*
>
> *All visitors are encouraged to continue engaging with detainees through alternate means, including through phone calls, skype or other audio visual tools. We appreciate visitors' support and cooperation during this period.*[19]

4.17. In this context, the ability to have ready access to the support of family and friends, and to be able to speak with them in private without navigating administrative or practical barriers, is of crucial importance for maintaining family relationships and mental health. There are also some refugees and asylum seekers who have been in immigration detention for a number of years and the ability to communicate with family in Australia and overseas, and support people, has been critical for their mental health and general wellbeing.

5. Securitisation measures: search and seizure powers

5.1. As outlined in Section 2 above, officers authorised by the Minister already hold wide ranging powers including to screen, search without a warrant and seize items. The Bill proposes to extend the existing search and seizure powers in the Act, to encompass prohibited items. We hold concern for the extension of the powers in such a way, where the power to determine prohibited items and engaging these powers is broad and unjustified.

5.2. We are particularly concerned by the proposed amendment to s 252B(1)(j), which seeks to allow a detainee to be strip searched so an officer can determine whether the detainee has a ***prohibited thing***, which may be a mobile phone or SIM card, or anything as determined by the Minister. Strip searching procedures are a serious invasion of privacy that interferes with fundamental human rights, and their use as a last resort only where necessary is well recognised internationally.[20] We submit that this power is far from proportionate and we hold concern that such a highly invasive procedure could be carried out in this context. It carries the potential for increasing and normalising the use of such searches, reflecting a further move to implement "securitisation" measures in

[18] The Conversation, Michelle Peterie, '*People are crying and begging': the human cost of forced relocations in immigration detention* (2 March 2020), available at: https://theconversation.com/people-are-crying-and-begging-the-human-cost-of-forced-relocations-in-immigration-detention-132193.

[19] Australian Government, Australian Border Force, *Immigration Detention in Australia – Visit Detention – COVID-19: Important information for visitors to an immigration detention facility* (6 May 2020), available at: https://www.abf.gov.au/about-us/what-we-do/border-protection/immigration-detention/visit-detention.

[20] See *International Covenant on Civil and Political Rights*, opened for signature 16 December 1996, 999 UNTS 171 (entered into force 23 March 1976) , Art 7, 17; *United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)*, GA Res A/RES/70/175, UN Doc A/RES/70/175 (8 January 2016, adopted 17 December 2015).

detention facilities. Strip searches carry the potential for abuse, particularly where there is inadequate oversight. The powers may be carried out by "authorised officers," however there is a lack of information in the Bill and Explanatory Memorandum regarding the standards in training and other safeguards including oversight and accountability measures in regards to the powers proposed to be delegated to privately contracted detention centre staff.

5.3. We refer to the report published by the Government of Western Australia and the Office of the Inspector of Custodial Services last year on strip searching practices in WA prisons.[21] The Inspector concluded that strip searching was not only a "distressing, humiliating, and degrading experience" and even worse for people from traumatic backgrounds, it was "ineffective" in reducing the flow of contraband.[22]

5.4. The Bill also proposes to insert a new power to search an immigration detention facility (s 252BA). The provision would allow an authorised officer to conduct a search (without a warrant) of an immigration detention facility operated by or on behalf of the Commonwealth, including of accommodation areas, detainees' rooms and detainees' personal effects. A search may be conducted to find weapons or escape aids, or ***prohibited things***.

5.5. The proposed power is not conditioned on an officer having a reasonable suspicion of the presence of such an item.[23] A power to search to "find" a prohibited item at the facility is very broad. It should be noted that the power extends to searching detainees' rooms and personal effects, interfering with their privacy. The Explanatory Memorandum does not provide justification for this additional power, except to state that its purpose is to "enforce both the existing and new prohibitions" and that currently "[o]fficers must increasingly rely on common law as the basis for taking certain action designed to manage risks and keep control of immigration detention facilities."[24] There is nothing to explain the Department's current interpretation of the scope of these powers, or why they are believed to be insufficient and requiring a statutory response.

5.6. The proposed amendments would further provide for the use of detector dogs, in relation to searches of immigration detention facilities (s 252BA (4)). While we welcome the limits of the use of a detector dog in searching immigration detention facilities (and not detainees or goods in their possession)[25] and the limits to screening powers to people entering a facility-based APOD, and *not* a non-facility-based APOD,[26] we maintain that these amendments represent a further implementation of "securitisation" measures in detention facilities.

5.7. Such measures are not appropriate to immigration detention. We submit that the current powers available to officers are sufficient to ensure the health and safety of detainees and staff, and should not be expanded, particularly given they are already broad in nature. As we have noted above, the finding of the Inspector in the WA report[27] regarding those from trauma backgrounds is highly relevant given the breakdown of the cohort of immigration detainees and the large number of asylum seekers and refugees detained. We emphasise that there are a significant number of refugees and asylum

[21] Government of Western Australia, Office of the Inspector of Custodial Services, *Strip searching practices in Western Australian prisons* (18 April 2019), available at https://www.oics.wa.gov.au/wp-content/uploads/2019/04/Strip-Searches-Review.pdf.
[22] Government of Western Australia, Office of the Inspector of Custodial Services, *Strip searching practices in Western Australian prisons* (18 April 2019), iii, available at https://www.oics.wa.gov.au/wp-content/uploads/2019/04/Strip-Searches-Review.pdf.
[23] Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) 22 [140], and proposed s 252BA(3).
[24] Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) 2, 38.
[25] Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) 23.
[26] Explanatory Memorandum, Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 (Cth) 31 – 32, and proposed s 252G.
[27] Government of Western Australia, Office of the Inspector of Custodial Services, *Strip searching practices in Western Australian prisons* (18 April 2019), available at https://www.oics.wa.gov.au/wp-content/uploads/2019/04/Strip-Searches-Review.pdf.

seekers in immigration detention. Many have experienced past mistreatment and torture from the authorities or security officials in their home country. It is not difficult to foresee the particular fear and adverse impact that invasive measures in immigration detention, including searches of their room or person by officers, would have on this group of people. Our clients have not infrequently reported such treatment under the current detention regime, causing them acute distress. Furthermore, we submit that there is insufficient evidence that such amendments would be effective in achieving greater safety or stability within detention. These practices should not be further authorised and entrenched by the amendments proposed in the Bill.

6. Conclusions

6.1. We submit that the powers necessary to ensure the safety and security of immigration detention facilities already exist within the Act and would not be enhanced by the proposed amendments. These amendments amount to an unwarranted and inappropriate expansion of powers and will likely involve serious incursions and consequent harm to the rights and wellbeing of people detained.

6.2. For the above reasons, we submit that the Bill should not be passed.

Refugee Legal

12 June 2020

Defending the rights of refugees.

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