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

Combined Refugee Action Group welcomes the opportunity to make this submission to the Senate Legal and Constitutional Affairs Committee.

Combined Refugee Action Group (CRAG) is based in Geelong, Victoria. CRAG is a network for over 700 individuals and community groups across the Geelong, Bellarine Peninsula and Surf Coast region, all advocating for people seeking asylum to be treated with fairness and decency and to be given the opportunity to rebuild their lives in safety.

Our members are in regular contact with people who are held in situations of immigration detention. It is from this perspective that we raise the following concerns with the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020.

Mobile Phones

The proposed amendment to Section 251 of the Migration Act 1958 would allow the Minister and delegated persons to classify any mobile phone as a "prohibited thing" and confiscate it from any person held in immigration detention facilities.

The changing of the wording from “detention centre” to “an immigration detention facility” in Subsection 252G(7) means that this legislation will extend to the hotels and community detention settings where people are held after being transferred to Australia from offshore detention for medical care.

These people are merely seeking safety from persecution in their homelands and have been caught up in Australia’s current practice of indefinitely detaining people who have arrived, by sea, to do so. The Minister had the power to refuse the transfer of anyone who had a criminal history. Therefore, everyone who was transferred was given a security clearance by the Minister.

People held indefinitely in situations of detention have little to occupy their time and to provide relief from the monotony, especially now that activities and visits have been restricted or ceased altogether due to the current Covid-19 pandemic. Access to mobile phones is a lifeline that provides:

- Opportunity to maintain regular contact with, and receive photos and videos from, partners, children, and immediate and extended family members
- Opportunity to access the support of friends when it is needed
- Access to reading materials, music, videos, exercise apps and online educational materials
- Access to mental health support such as the phone and online chat services of Lifeline and Beyond Blue
- Ability to speak privately with lawyers to access the legal support needed for their cases
- Opportunity for the scrutiny of any inappropriate or abusive treatment detainees are subjected to (remembering that detainees were physically attacked, and one man killed, by security guards inside the Manus Island Regional Processing Centre)

The removal of mobile phones would therefore be detrimental to the mental health and wellbeing of detainees, and would likely trigger an increase in the instance of self-harm and suicide attempts.

Body Searches

Section 252A of the proposed legislation gives authorised officers the power to conduct strip searches for prohibited things whether or not items have been intentionally concealed by detainees.

The inclusion of the word 'body' in Subsection 252AA(1) allows for body cavity searches to be carried out.

The only qualification given is that "the search must not involve the removal of more items of clothing, or more visual inspection, ***than the authorised officer conducting the search believes on reasonable grounds to be necessary***" [italics and bold type added].

Further, Subsection 252AA(1) states that:

> (1A) An authorised officer may conduct a screening procedure under subsection (1) in relation to a detainee for a thing mentioned in that subsection ***whether or not the officer has any suspicion that the detainee has such a thing on the detainee's body,*** in the detainee's clothing or in a thing in the detainee's possession [italics and bold type added]

The legislation is severely lacking in guidance and accountability in regard to the power to conduct searches. It allows for an authorised officer to conduct a search with as much invasiveness as they alone decide is reasonable, and without the need to hold any suspicion at all that the detainee has a 'prohibited thing' in their possession or on their person. This leaves detainees open to state-sanctioned intimidation, physical abuse, sexual abuse and trauma.

Conclusion

The Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020 is an over-reach of power. CRAG understands that the Minister's rationale for introducing this bill is to prevent drugs and weapons from entering facilities used for immigration detention. CRAG asserts that if these items are entering the facilities, then they are doing so due to a failure of Home Affairs processes.

CRAG members have been unable to take so much as a plastic spatula (for the purpose of serving a birthday cake) into The Melbourne Immigration Transit Centre, and people visiting their friends in immigration detention hotels have been prevented from taking in pens and paper. Scanners are so sensitive in some detention centres that metal components of shoes and bras are detected, and certain types of perfume even register as drug residue. If drugs and weapons are making their way through the various layers of security screening, then the problem lies with the security staff who must be allowing their entry. Law-abiding refugees and people seeking asylum should not be punished for the corrupt and illegal actions of staff.

People who are refugees or seeking asylum need to use mobile phones to maintain contact with friends and family, maintain their mental health and have access to legal advice. They must not be constrained from doing so. This bill is a dangerous infringement of liberties which creates a health and safety risk to people who came to Australia to find a safe place to live free of persecution and trauma. It must not be passed.