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9th June 2020

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

By email to:
legcon.sen@aph.gov.au
seniorclerk.committees.sen@aph.gov.au

Dear Secretary,

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

Humanists Victoria thank the Committee for this opportunity to make a submission.

We uphold the *Universal Declaration of Human Rights* and other international statutes which place responsibilities upon governments to protect the human rights of all people. We ask that all Australian legislation conforms to these world-class standards.

Humanists Victoria oppose this Bill in its current form, and we call for its rejection.

We express the following concerns:

1. The Bill prohibits varied items, both specified and unspecified, in regard to detention facilities.
 - There is insufficient definition within this Bill to clarify exactly what constitutes a harmful item.
 - Prohibition of random or discretionary items is a violation of the privacy and personal integrity of detainees.
 - This proposed legislation grants extraordinary powers to detention facility staff. For instance it would allow an officer to strip search a detainee for a thing even if the officer has no suspicion that the detainee was in possession of the thing.
 - In the case of suspected criminal activity or intent, existing police and judiciary powers should be used rather than attempting to turn detention facility staff into unofficial police.

2. The Bill may be used to confiscate personal mobile phones, SIM cards and computers.
 - These items do not constitute harm within the context of a detention facility unless they are being used for criminal intent.
 - Confiscation of a such items effectively places detainees in solitary confinement, with limited communication possible with family, friends, doctors, or legal advisors. Detainees are not in prison serving sentences and should not be treated as though they are.
 - There is a risk of effective solitary confinement which may violate the UN Convention Against Torture.
 - Confiscation of communication devices may place an arbitrary ban upon freedom of speech



and association for detainees who have committed no crime.

- This may create situations wherein detention facilities and their staff lack transparency and accountability.

3. The Bill grants the Minister discretionary power but:

- There are no details on what standards or procedures the Minister must use to make determinations.
- There is no clarification of process for Ministerial transparency and accountability.
- It appears that a Minister could direct officers to search for and confiscate all mobile phones, for instance, from all detainees, without any room for discretion from officers "on the ground". This would allow such Ministerial directions, or the threat of such directions, to be used as a supposed deterrent against seeking asylum in Australia, as indefinite detention is currently used. Such directions should be subject to judicial approval and oversight as they would be in the case of people not in a detention facility.

4. The Bill provides for a broad scope of search and seize powers in relation to "class" of people. We see this as inconsistent with the Universal Declaration of Human Rights and other international human rights conventions.

We respectfully suggest that this Bill needs be rewritten to ensure the following:

1. **Human Rights Protections for Detainees:** It is the responsibility of the Australian Government to protect the lives, health, safety, legal rights, dignity and welfare of all detainees.
2. **Human Rights and Training Standards:** All detention centres should be operated under optimal standards of staff training, duty of care, and accountability.

We understand that this Bill targets people who have served prison sentences and are now detained pending deportation. We object to this approach in principle, but especially for people who came to Australia as children and/or who have established a family here. People who have established a life in Australia and committed crimes in Australia should be dealt with under Australian law and Australian cultural norms, and it is irresponsible to dump problem people raised in Australia on another country that may be unequipped to deal with them.

We also note that many detainees have been held indefinitely in off-shore facilities, or on-shore under former Medevac legislation, without access to adequate medical care. We ask that these people be released immediately and that their health be protected as befits Australia's national responsibilities.

We ask the Australian Government to ensure world-class standards of human rights and to embody those standards in a Bill or Charter of Human Rights.

Yours most respectfully,

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Humanists Victoria (Humanist Society of Victoria Inc. Reg. No. A0020272M)

Humanists Victoria strives for a society in which all individuals can attain their full potential through promoting an ethical, reasoned and compassionate approach to life.