COMMONWEALTH OF AUSTRALIA

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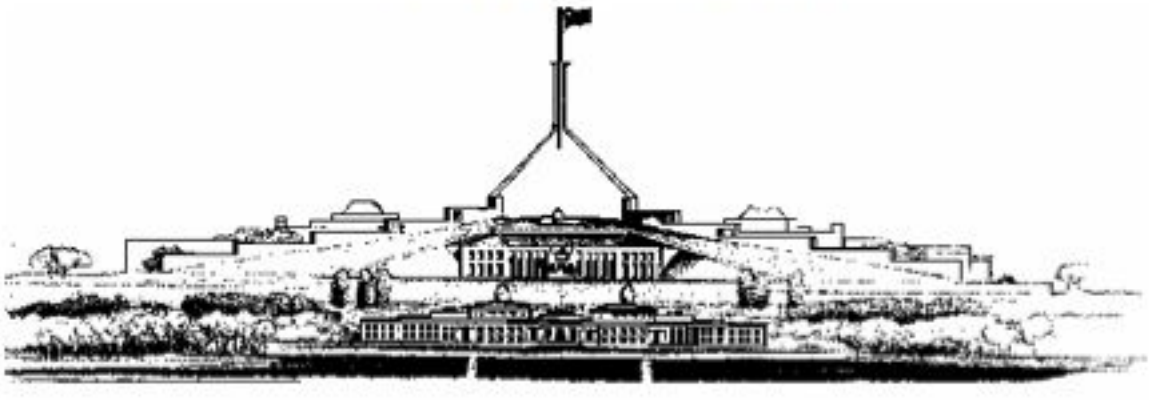

HOUSE OF REPRESENTATIVES

PROOF

BILLS

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

Second Reading

SPEECH

Wednesday, 2 September 2020

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date	Wednesday, 2 September 2020	**Source**	House
Page	35	**Proof**	Yes
Questioner		**Responder**	
Speaker	Steggall, Zali, MP	**Question No.**	

Ms STEGGALL (Warringah) (13:06): Today I rise to speak on the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2020, more easily known as the 'taking away the mobile phones bill'.

I stand with the 154,340 people who have signed the petition opposing this bill. The stated purpose of this bill is to grant additional powers to the Australian Border Force to confiscate items deemed prohibited by the minister from those in immigration detention centres. The bill specifically targets the banning of mobile phones, SIM cards and internet enabled devices to detainees. The justification provided by the government is that there is an increasing proportion of detainees in immigration detention who are criminals whose visas have been revoked and who are awaiting deportation. These criminals, the government claims, are using mobile devices to order drugs, download paedophilia and run organised crime operations.

However, there's limited evidence presented to demonstrate this alleged risk or these facts. There's also little evidence provided by the government of criminal activity being conducted inside the detention centres. The government has not sufficiently justified the need for Border Force to have these very significant expanded powers. Where the devices have been used to conduct an illegal activity, there's already a body that has search and seizure powers in relation to criminal activity, and that is the police. Whilst I support strong law and order, the extent of these measures must be balanced by the cost to individual rights.

I have four major concerns about the actions of the government in relation to this bill. Firstly, the lack of justification for the bill and the risk that the powers will be used to withhold access to legal advice to detainees—that is a significant breach of human rights. Secondly—the absence of due process in the Senate inquiry. Thirdly—the need to end offshore detention and accept New Zealand's offer to take those left on Manus Island and in Papua New Guinea. And fourthly—concerns about those remaining in alternative places of detention.

This bill grants significant discretionary powers to the minister. Accordingly, adequate protections from abuse of power are needed, but are absent. Despite the recommendations of the committee, it has not been sufficiently justified to me that this bill and the powers contained within it are necessary. The powers represent a significant overreach and an unnecessary conference of powers to authorise officers who could be Border Force or—and this is important—private security contractors. This raises enormous alarm bells of abuse for me, and it should for most members in this parliament. The minister's response to the Senate committee's request for further information and a justification for the need for the provisions has not been published. The committee was concerned at the lack of justification for this bill, and, given that the minister's response is not published, there has certainly been nothing on the public record that alleviates that concern. I remain unconvinced as to the case for these powers. The Law Council of Australia—an important body—strongly object to this bill. They do not often take the position that there is no justification for or element of a bill that should be passed. However, in this case, that is exactly what they have done.

This is resurrected legislation. It was rejected in 2017. Most significantly, the bill makes no attempt to distinguish between the rights of the types of detainees. By tarring all detainees with the same brush, the bill violates the rights of many who have never committed a crime. They do not intend to use their devices for nefarious purposes, but, instead, they actually need them to keep in touch with their families, supporters and legal teams. These are basic rights of a free and democratic nation.

We have heard assurances that these powers would only be used in relation to detainees where there are criminal records. But there is nothing in the bill that actually provides any protection for refugees that are currently in indefinite detention and have committed no crimes and need their mobile phones to be able to access legal advice. While the bill does not mandate that the same rules apply to all detainees, it makes no provisions for the differentiation of detainees. It's all left to the discretion—again, this is important—of the manager of the detention centre to determine who has access to devices once the minister has deemed them to be prohibited. This is a very dangerous power to put in the hands of the manager of a detention centre.

I have received many emails and calls in relation to this issue. As far as I can tell, the only groups that support this legislation are those that stand to benefit from it: the government, the Department of Home Affairs, and Serco, the private company that staff and manage the detention centres. These groups stand to benefit from the legislation as it makes their job easier. It reduces the risk of being held accountable if there are breaches. It further weakens the rights of refugees and asylum seekers once they're held indefinitely in detention centres. Of course, the important groups that oppose this legislation include the Law Council of Australia, Amnesty International, the Refugee Law Centre and many others.

I always ask myself these questions: Is this legislation ethical? Is it good law? This is not good legislation. As stated by the Law Council of Australia, this bill has been reintroduced to the Australian parliament, despite a previously unsuccessful attempt, at a time of public emergency and reduced scrutiny. Immigration detention facilities must operate in accordance with the rule of law. Measures imposed on detainees must be necessary, reasonable and proportionate. No evidence presented to this parliament has indicated that the measures contained in this bill are reasonable or proportionate or necessary.

Administrative detention must not be of punitive character. The Constitution vests Commonwealth judicial power only in the courts, recognised in chapter III. This bill is inappropriate, as a sizeable percentage of immigration detainees and asylum seekers have committed no crime. The bill would significantly expand the warrantless search and seizure powers in the Migration Act. Current law, section 252(2), already allows discretionary search and seizure power with respect to a person detained, without a warrant, for the purpose of finding out whether a person is hiding a weapon or other thing capable of being used to inflict bodily injury, or to help the person escape. The bill expands this already broad power to allow search and seizure of a prohibited thing. The definition of a 'prohibited thing' can include anything the minister is satisfied is a risk to the health, safety or security of persons in the facility, or to the order of the facility, and declares by legislative instrument. So the order of the facility is really what we are getting to, and that is not defined in this bill, which imparts significant discretion to the minister. So if those pesky detainees seek legal advice or actually try to convey to the outside world some of the conditions in which they are held, that would be sufficient to justify that there is a problem to the order of the facility.

The bill explicitly anticipates mobile phones, SIM cards and internet capable computers and devices as examples of a prohibited thing. It is not evident how mobile phones consist a risk to health, safety or security. These items are often crucial to providing timely and detailed legal advice to persons in detention. They are also critical to communication with family and friends. For so many Australians, these periods of lockdown have been incredibly challenging. Imagine being in a lockdown, isolated, for seven years with no access to a phone to actually stay in touch with family or understand what your rights are.

The broad discretion granted to the minister may amount to an inappropriate delegation of legislative power. Search-and-seizure powers in subsection 252(2) and 252AA(1)(a) allow authorised officers to search or conduct screening of a person whether or not the officer has any suspicion that the person has a prohibited thing. So we already have a situation where someone can be searched without there even having to be a reasonable suspicion that there is a prohibited thing hidden on their person. Surely reasonable suspicion should be a minimum requirement for a search, otherwise there is substantial risk of abuse of human rights occurring. This is concerning. It brings back really concerning images and allegations of times when society has absolutely failed to protect human rights, and it's quite shameful that that is happening in the name of Australia.

This proposed breadth of powers opens the power to potential misuse. The bill, of course, interestingly, follows the 2018 full Federal Court decision of ARJ17 v Minister for Immigration and Border Protection, which held that a blanket policy that immigration detainees were not permitted to possess mobile phones and SIM cards lacked statutory authority and was invalid. Clearly the introduction of this bill is an attempt to circumvent the outcome of that case. As I said, many people in Warringah and elsewhere in Australia have contacted me in opposition to this bill. It does raise a lot of the peripheral issues that we do need to speak to. We have seen repeated attempts to ram it through without sufficient alteration or justification. To me, that demonstrates a real failing to grasp the need to put in place good law that has proper justification. We need better integrity. When the government attempted to pass the legislation in 2017 it failed, and yet it is presented again without substantially addressing any of those concerns.

I urge this government to withdraw the legislation and, at a minimum, amend the legislation to define and restrict its application to persons with a relevant criminal record. I also urge the government that we need to deal with

this indefinite situation of detention of refugees. We know that there is an offer from New Zealand. I urge the government to expedite the acceptance of New Zealand's offer to welcome the 360-plus refugees who remain on Manus Island and in Papua New Guinea. These people have been waiting more than seven years. It is criminal. We hear people complaining about a few weeks of lockdown. Start imagining seven years! The US deal is almost done. I have been speaking with Amnesty International Australia, who recently met with the New Zealand High Commissioner to Australia, and she confirmed that the New Zealand deal to accept 150 refugees per year from Papua New Guinea and Manus Island is still on the table.

Why won't the government accept this offer?

They have said that the New Zealand deal would only be considered after the US deal was completed, but that deal is now almost done. Had the New Zealand offer been acted upon when it was made, a substantial number of refugees would already have been placed and moved to New Zealand. The other reason given, of course, is always that it's going to be music to the ears of people smugglers. I question the logic of why a New Zealand deal would be music where the US deal is not. The New Zealand offer was made in 2017, some three years ago, so 450 refugees could have been resettled there by now. There are around 360 refugees remaining in offshore detention. Therefore, all of the refugees remaining in PNG and Manus Island could have been in New Zealand by now.

The cost of holding refugees offshore—and this is relevant because Australia is in a recession, so we need to make sure public money is spent to the best effect for Australian people—is estimated at over $400,000 per person per year. That is ridiculous. Surely that is a cost we cannot afford in the current recession. I urge the government to consider releasing those refugees who remain in alternative places of detention and also in community detention. They were evacuated from offshore detention for medical reasons. They've been living without sufficient medical attention in hotels and confined living quarters. Surely the risk of releasing these people into appropriate community detention arrangements would be less costly and lead to better outcomes for all involved.

I would like to thank people in our community who are working so hard on behalf of refugees and trying to uphold Australia's reputation in the face of an onslaught and our failure to uphold basic human rights—people like Craig Foster, with his campaign of 'seven years too long'—hashtag #GameOver. This is a really important campaign, and I thank them and encourage them to continue until the job is done.