

Briefing note

Mobile Phone Ban Bill

On 21 November 2024 the Albanese Government introduced the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2024 (**Bill**) to Parliament. The Bill would give the Minister sweeping powers to ban almost any item, including everyday items like mobile phones, and give officers virtually unchecked powers to conduct searches with no basis.

The Bill would cut people off from their loved ones, interrupt access to crucial supports and limit their ability to hold the government accountable for their treatment in detention.

Previous governments have tried and failed to pass similar laws. In 2021, the Australian Labor Party opposed them. The Albanese Government claims that this Bill has safeguards that were missing from the Coalition's version. But the differences are superficial and, in practice, all of the same risks remain. Now more than ever, after the High Court has found that our government has been detaining people unlawfully, it is critical for people in detention to be able to freely communicate and hold government to account for their treatment.

While the Albanese Government now claims the laws are necessary, powers to search for and seize illegal or dangerous items already exist. No person in the Australian community could have their phone taken away simply because a politician decides it – and there is no reason that people in detention should be subjected to harsher treatment simply because of their visa status.

What would the Bill do?

- **Allow the Minister to determine that almost any item is a “prohibited item”:** this includes things that are already illegal, but also any item the Minister thinks might be a risk to the health, safety or security of people in the detention facility, or to the “order of the facility”.¹ The Bill specifically contemplates that this could include mobile phones.
- **Give officers broad new powers to search people in detention:**² officers could search or screen someone (for example, with a metal detector) for a prohibited item, even without any suspicion that the person possesses a prohibited item. The only requirement for conducting a personal search or screening procedure is for an officer to reasonably believe that the search is necessary to reduce a risk to health, safety, security or order in the detention facility.³
- **Expand the basis for invasive strip searches:**⁴ people in detention could be subjected to invasive and degrading strip searches if an officer suspects they have a prohibited item in their possession.
- **Give broad new powers for officers to conduct area searches:**⁵ officers could search people's rooms, their personal affects, common areas and even medical examination areas for prohibited items, even without any suspicion that there is a prohibited item anywhere in the detention facility. Officers are able to use force to conduct area searches, and could bring dogs⁶ or other external people⁷ to assist them.

¹ *Migration Act 1958* (Cth) (**Migration Act**), proposed s 251A.

² *Migration Act* proposed ss 252(2), 252AA(1).

³ *Migration Act* proposed s 251AA(2).

⁴ *Migration Act* proposed s 252A(1).

⁵ *Migration Act* proposed s 252BA.

⁶ *Migration Act* proposed s 252BA(4).

⁷ *Migration Act* proposed s 252BB.

- **Permit officers to confiscate items that have been banned:**⁸ officers may take “prohibited items” from people that are found during searches. It does not matter whether a person has actually misused their phone in the past or engaged in any conduct that has put others at risk. The only threshold to seizing items is for an officer to reasonably believe that it is necessary to reduce a risk to health, safety, security or order in the detention facility.⁹
- **Allow the Minister to issue blanket directions about the exercise of search and seizure powers:** the Minister could direct officers to seize particular items from groups of people (or all people), or people in certain locations.¹⁰ For example, the Minister could issue a direction to seize mobile phones from all people in detention, or all people in one detention centre. These directions are not subject to disallowance by Parliament.

What would be the impacts?

The Bill will considerably expand the powers available to detention authorities. It will allow them to disrupt communication, interfere with detainees’ privacy and bodily integrity through searches and create a more coercive detention environment. The prohibition and seizure powers are so broad that there is nothing to prevent them from being used by detention authorities punitively and arbitrarily, simply to single people out and to punish them.

Mobile phones are a lifeline for people in detention. They keep people connected with their family and friends on the outside. People are being detained for extremely long periods – the current average is [513 days](#), or nearly one and a half years. People are often detained in remote locations, far removed from friends and family. Banning mobile phones or internet-enabled devices will mean that people are kept isolated from their loved ones for months or years – it will mean that people will not be able to hear their partner’s voice, or see their child’s face as they grow up. It will make it impossible for people to contact their family overseas, to make sure they are alive and safe. It will make the months and years spent in detention intolerably isolated and painful.

Mobile phones are also critical to people’s liberty. They allow people to communicate with lawyers, to advance their case to be free from detention, or to prevent illegal conduct from occurring. Abuse thrives behind closed doors, and mobile phones and internet access have been crucial for people in shining a light on their mistreatment in Australian immigration detention centres. Without them, people may not be able to collect evidence of their mistreatment or communicate quickly with journalists, lawyers or independent detention watch-dogs.

A mobile phone ban would also slow down people’s access to legal support while in detention. When people are up against tight legal deadlines, sometimes as short as three days, or are facing imminent removal from Australia, they do not have time to pre-book appointments with lawyers or rely on faxes or the post to transmit documents.

Key concerns

People in detention should not suffer harsher treatment because of visa status

There is no power for police to seize mobile phones from people in the community without any basis. It is inconceivable that Parliament would ever pass a law allowing mobile phones to be stripped from members of the public simply because it is possible for phones to be used improperly.

We should not have a different standard for people who are denied their liberty simply because of their visa status. Where police have a good reason to suspect that a person is using a mobile phone to commit an offence, they can get a warrant or make an arrest. Those powers apply equally to people in detention, and no harsher treatment is justified.

⁸ Migration Act proposed s 252(4A); 252CA.

⁹ Migration Act proposed s 251AA(3).

¹⁰ Migration Act proposed s 251B(6).

Threshold for banning, searching for and seizing items is too low

The Minister may ban any item that he thinks might be a risk to the order of a detention facility. This risk threshold is low, and the concept of order is vague. It should not be possible to ban otherwise safe items simply because they are capable of contributing to mild disruptions. This could include pens and paper, musical instruments or radios, or even certain books.

The fact that an officer only needs to satisfy the same threshold before conducting a search or deciding to seize an item leaves these powers open to misuse. An officer could confiscate an item even if a person has never previously done anything wrong. It could also enable detention staff to implement routine searches to exert power and control over people in detention.

Sufficient powers and law enforcement methods already exist

The Minister and officers already have search and seizure powers to deal with illegal and dangerous items in detention centres. Items such as illicit substances, child exploitation material and alcohol are prohibited in detention facilities and are already confiscated when they are found. This is authorised by the following:

- **the Migration Act:** the Act contains extensive search and seizure powers in relation to weapons and things that might be used to help a person escape from detention;
- **common law duty of care:** the Government has a duty to ensure the safety of people who are detained, as well as other people who work in or visit detention facilities. Where an illegal or dangerous item is found, an officer may retain the item and in the case of an illegal item, notify police;
- **working with police:** it is the role of the police, not ABF, Serco or the Department of Home Affairs, to investigate any suspected wrongdoing and to bring charges if misconduct is proven. Detention officers can and do work with police when incidents arise.

Strip searches are degrading practices which should not be expanded

Strip searches are invasive procedures that involve the removal of some or all of a person's clothing in front of one or more detention guards. They are degrading and dehumanising for any person. Many people in detention are survivors of torture and trauma, including sexual assault. It is unnecessary and entirely inappropriate to strip search a person for the kind of everyday objects that could be prohibited under the Bill. Rather than expanding these powers, they should be abolished.

How is this different to Morrison's failed Mobile Phone Ban Bill of 2021?

The Albanese Government has made some minor changes to the laws which the Morrison Government failed to pass in 2021. However, those changes will not change the operation of the Bill in practice, and do not provide justification for it. In short, they are window-dressing amendments.

- **Purpose for exercising powers:** under this Bill, before an officer can search for or seize an item, they must believe that it is necessary to prevent or lessen a risk to the health, safety or security of people in the immigration detention facility, or to the good order of the facility. As noted above, this is an extremely low threshold, and is insufficient to protect against misuse of these powers. It could be interpreted by an officer as justifying action to prevent a person from filming a detention guard using excessive force, or organising a protest.
- **Access to "alternative communication devices":** the Bill provides that if a person's mobile phone or other communication device has been seized, they must be given access to alternative means of communication.¹¹ The Government states that "contact will be provided via landline telephones, facsimile, internet access in compliance with the Conditions of Use of Internet agreement, postal services and visits." But it is well known that alternative communication methods are in short supply and high demand in detention networks: there is often one landline phone for use by hundreds of

¹¹ Migration Act proposed s 251AB(1). The alternative must be "reasonably sufficient" to enable the person to communicate with a member of their family unit, obtain legal or other support, or communicate about governmental or political matters – proposed s 251AB(2).

people. And landline phones will not allow people to videocall with their children. They will not allow people to make international calls to loved ones overseas. Landlines are located in common areas and will not allow people to have private conversations. They also do not have cameras to allow people to document their treatment in detention. Presumably, internet access will be via existing shared desktop computers, that are in extremely limited supply in detention centres, must be booked far in advance and are not private.

- **Requests for temporary return of items:** the Bill allows people to request that an item be returned to them for a temporary period.¹² However, an officer can simply decline such a request, if the same low risk threshold is met. Alternatively an officer can return the item for a shorter time period, creating a regime where detention guards could arbitrarily control and ration a person's ability to speak with their families.
- **Purported constitutional protections:** the Bill purports to limit the Minister and officers' powers so as not to infringe the constitutional doctrine of implied freedom of political communication.¹³ But breaches of this Constitutional right are inevitable when communication devices are confiscated with barely any pretext. There is nothing in the Bill that would require an officer exercising seizure powers to first consider the political purposes for which a person might use their phone – for instance, to organise a protest in detention, or make public posts objecting to their treatment. Exercise of the overbroad powers under the Bill are certain to conflict with the constitutional freedoms of people in detention.

¹² Migration Act proposed s 251AA(4).

¹³ Migration Act proposed 251AC.