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Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
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Dear Committee Secretary

### **The Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2017**

Thank you for the opportunity to provide a submission to the Legal and Constitutional Affairs Legislation Committee inquiry into the Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bill 2017.

The Bill amends the *Migration Act 1958* (Migration Act) to allow the Minister to determine a thing as a prohibited item. The Bill inserts a new section 215 which would mean that the Minister has the power to declare, via a legislative instrument, an item a prohibited "thing" in relation to a detainee or a detention facility. Of particular interest to Amnesty International is the possibility for mobile phones or SIM cards to be declared prohibited for people seeking asylum and refugees.

Amnesty International maintains that people seeking asylum and refugees in immigration detention facilities should maintain their have access to mobile phones and SIM cards (and any associated necessary goods such as phone chargers or batteries).

### **EXEMPTION FOR PEOPLE SEEKING ASYLUM & REFUGEES**

As the Bill is currently drafted, the removal of phones from asylum seekers is particularly difficult to justify as under the amendments they may be subject to treatment in the same way as higher risk detainees, referred to by the Minister as 'foreign nations who commit serious crimes'. The Explanatory Memorandum states:

"The profile of the detainee caseload across the immigration detention network has changed significantly over the past two years. Immigration detention facilities now accommodate an increasing number of higher risk detainees awaiting removal, often having entered immigration detention directly from a correctional facility, including child sex offenders and members of outlaw motorcycle gangs or other organised crime groups"<sup>1</sup>

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<sup>1</sup> Explanatory Memorandum, *Migration Amendment (Prohibition Items in Immigration Detention Facilities) Bill 2017* P2.

The Australian High Court has found that the mandatory detention of asylum seekers who arrive undocumented cannot be punitive, rather they can only lawfully be held for administrative purposes. The Bill's blanket approach that imposes restrictions on all detainees, in line with the high risk detainees identified in the Explanatory Memorandum, ignores not only the specific vulnerabilities of those seeking asylum but would also result in people seeking asylum being subjected to this punitive approach.<sup>2</sup>

Further, as well as asylum seekers, more recently recognised refugees returned from Manus and Nauru for medical reasons, are also being held in detention. On Manus and Nauru they were able to move relatively freely in the community (with certain restrictions for those still in the RPCs) and own mobile phones. The considerations outlined in the Explanatory Memorandum should not be applied to refugees as by definition a "refugee" does not include a person who has committed a "serious nonpolitical crime" outside his country of refuge. Article 1F of the 1951 Convention<sup>3</sup> includes a number of exclusion clauses:

"The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious nonpolitical crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

Amnesty does not accept the Minister's assurances that access to legal representation and visitors through alternative communication means. Mobile phones and SIM cards for people seeking asylum and refugees are irreplaceable necessities for the following reasons:

### **1. Access to Legal Representation**

For proper refugee status determinations to be made, it is crucial that lawyers have unfettered and confidential access to their clients.

The ability for people detained to seek and obtain advice and assistance when needed, as well as for legal representatives to get take instructions from clients detained at short notice - often in remote detention facilities - has been extremely difficult without access to mobile phones. Setting up times to speak, often across different time zones on limited landlines, has hampered applications to court and tribunal hearings, often when there are tight deadlines. The public nature of the landlines has also meant people are reluctant to talk about personal and sensitive issues—for example rape and torture—which are crucial pieces of evidence when articulating their fears of persecution.

We note that in its recent own motion investigation report on the situation of people who had their Bridging Visas cancelled, due to criminal charges, the Commonwealth Ombudsman highlighted the importance of access to

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<sup>2</sup> See for instance, *Chu Kheng Lim (Chu Kheng Lim v Minister for Immigration [1992] HCA 64)*. Lim's case asserted that mandatory immigration detention was a contravention of Ch III of the Constitution. However, the High Court found that the system came within the aliens power in section 51 (xix) and that Ch III of the constitution was not contravened because the system did not include an infliction of punishment by a non-court.

<sup>3</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html>

review rights<sup>4</sup>. The Ombudsman raises concerns about the number of cases in which people were unaware of their rights to lodge an appeal for the review of the decision to cancel their visas, or were made aware of their rights only when the statutory time of two days had lapsed. The Ombudsman highlights in the report the importance of having access to appropriate means of communications to ensure a person can request a review of the decision to cancel their visa within the statutory time frame.

Amnesty International's view is that mobile phones provide a much more reliable means of communication especially when the timeframe is short and consequences of missing the deadline are grave, resulting in prolonged detention and delays in the resolution of one's immigration status.

## 2. Alleviating the mental health decline of those in detention

There is now a large body of research which substantiates the proposition that immigration detention causes severe psychological harm to people in detention.<sup>5</sup> Research also shows that detained asylum seekers have much higher rates of depression and anxiety.<sup>6</sup> Men's and women's rates of suicidal tendencies in Australian immigration detention centres are respectively 41 and 26 times that of the nation average.<sup>7</sup>

Deterioration of mental health has also been positively correlated with length of detention in immigration centres. This is extremely troubling considering that over the past two decades detention of two years or more has been a prevalent phenomenon in Australian immigration.<sup>8</sup>

One key way to address these impacts is to ensure those detained have easy access to friends and family, who provide crucial emotional support. Again, talking about highly personal issues with loved ones is extremely difficult in open settings where landlines are kept. There are also usually queues forming directly behind a person speaking on the landline, creating tension among both those on the phones and those waiting. Those detained for character cancellation reasons will likely be making more local calls to family, while those seeking asylum will often be making international calls, hence cost and length of calls will be vastly different. In the past this has only heightened tension between individuals and different ethnic/national groups who rightly or wrongly believe one group is getting greater access than the other. If safety is indeed a key concern the provisions in the Bill which will further limit access to telecommunications, may in fact have a negative effect on the safety of detainees.

## 3. Access to visitors

Access to visitors plays an important role in maintaining the mental health of people in detention.

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<sup>4</sup> Recommendation 3, Commonwealth Ombudsman, Department of Immigration and Border Protection- the Administration of People who have had their Bridging Visas Cancelled due to Criminal Charges or Conviction and are Held in Immigration Detention, 2016, accessed 17 February 2017, [http://www.ombudsman.gov.au/\\_\\_data/assets/pdf\\_file/0026/42596/December-2016\\_Own-motion-investigation-into-people-who-have-their-Bridgingvisa-cancelled-following-criminal-charges.pdf](http://www.ombudsman.gov.au/__data/assets/pdf_file/0026/42596/December-2016_Own-motion-investigation-into-people-who-have-their-Bridgingvisa-cancelled-following-criminal-charges.pdf)

<sup>5</sup> Guy J. Coffey et al., "The meaning and mental health consequences of long-term immigration detention for people seeking asylum," *Social Science & Medicine*, 70 no. 12 (2010).

<sup>6</sup> Katy Robjant, Rita Hassan and Cornelius Katona, "Mental health implications of detaining asylum seekers: systematic review," *The British journal of psychiatry : the journal of mental science*, 194 no. 4 (2009)

<sup>7</sup> Michael Dudley, "Contradictory Australian national policies on self-harm and suicide: the case of asylum seekers in mandatory detention," *Australasian Psychiatry*, 11 (2003): 102

<sup>8</sup> Coffey et al., "The meaning and mental health consequences of long-term immigration detention for people seeking asylum," (2010).

Those arriving by boat are amongst the most isolated groups of people in detention. For instance, according to the latest publicly available statistics,<sup>9</sup> nearly thirty five percent of those held in Yongah Hill Immigration Detention Centre are boat arrivals but the ability for visitors to go and see them has been dramatically reduced. New measures across all detention network have limited both the time and number of people that can be seen during each visit. Having access to mobile phones not only alleviates the lack of visitors people see but also helps facilitate each meeting.

As an organisation which has visited detention centres over many years, Amnesty's experience has been that land lines and internet access have consistently proven to be inadequate in meeting the needs of people in detention, especially for people seeking asylum. Both the need for regular contact with lawyers as well as maintaining contact with family and friends have been impacted by the inadequate landline and internet access. The internet connection in remote facilities like Christmas Island is often unreliable. In many facilities access to computers and internet is based on rosters set by detention service providers, offering rigid time slots that do not consider the time difference with people's countries of origin. Landlines are, in particular, inadequate when families attempt to contact a person in detention from overseas.

Over years, we have received numerous reports of repeated failed attempts of family members overseas trying to contact loved ones in detention by contacting the switchboard, an issue that we believe will add to the stress and isolation of people in detention. These reports have increased in the past few months, after people who entered the detention network were denied the opportunity to have mobile phones and therefore needed to use the landlines. Family and friends of those detained continue to report that staff answering the switchboard refuse to put the call through to people in detention or for extended period of time the switchboard number is not contactable, creating undue stress especially when the matter is urgent. We are also concerned that having the limited communal phones and internet as the only methods of communication could increase the competition over their use and could exacerbate the tension within the detention network, leading to an increase in the feeling of a lack of safety people often report. These issues have been echoed by the Australian Human Rights Commission which has also consistently recommended greater access to mobile phones for asylum seekers in detention<sup>10</sup>.

## **BLANKET BANS**

The scope of this Bill treats all detainees in the same way as higher risk detainees. We note that one of the Government's key reasons for this legislation is to address the increased security risks as a result of the changing demographics within the detention network. Amnesty objects to imposing a blanket ban on mobile phones for anyone detained or the granting of that power to the Minister, whether they are seeking asylum, or of 'character' or security concern. Generally, any purported risk should be assessed on an individual case- by-case basis against defined criteria and thresholds which is clearly outlined in the legislation.

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<sup>9</sup> See,

<https://www.border.gov.au/ReportsandPublications/Documents/statistics/immigration-detention-statistics-31-august-2017.pdf>

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<sup>10</sup> See, for instance, 7 (f) Mobile Phones, p43, Australian Human Rights Commission, Community Arrangements for Asylum Seekers, Refugees and Stateless Persons, Australian Human Rights Commission, 2014, accessed 29 November 2016, [https://www.humanrights.gov.au/sites/default/files/content/human\\_rights/immigration/2012communityarrangements/community\\_based\\_arrangements.pdf](https://www.humanrights.gov.au/sites/default/files/content/human_rights/immigration/2012communityarrangements/community_based_arrangements.pdf)

## RECOMMENDATIONS

Amnesty International Australia recommends:

1. The Bill not be passed in its current form; and
2. That an exemption be inserted to ensure that refugees and people seeking asylum can access telecommunications devices such as mobile phones and SIM cards.

Please do not hesitate to contact our Advocacy and External Affairs Team via our Manager on [emma.bull@amnesty.org.au](mailto:emma.bull@amnesty.org.au) or 02 8396 7649 should the Committee require any further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P Thomson', with a long horizontal flourish extending to the right.

Peter Thomson  
Advocacy and External Affairs Adviser

