



Australian Government
Department of Home Affairs

Submission

For decision

PDMS Ref. Number: MS23-002105

Date of Clearance: 15/11/2023

To Minister for Immigration, Citizenship and Multicultural Affairs

Subject Policy Approval - Safer Immigration Detention Facilities legislative reforms

Timing *For consideration as soon as possible in order to allow time for the provision of drafting instructions to the Office of Parliamentary Counsel no later than 24 November 2023.*

Recommendations

That you:

1. **agree** to seek the Prime Minister's, the Hon Anthony Albanese MP, authority on a package of legislative reforms to enhance the safety of people in immigration detention centres, s. 47C(1)

s. 47C(1)

2.

s. 47C(1)

s. 47C(1)

3. **sign** the letter to the Prime Minister seeking policy authority for the proposed package of legislative reforms which reflects your decision at recommendation 2 (Attachment A or Attachment B).

signed/not signed
please discuss

Minister for Immigration, Citizenship and Multicultural Affairs

Signature

Date 25/7/2024

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Minister's Comments

ABF to provide briefing on training strategy and support measures to be provided to staff ahead of implementation.

Key Issues

1. We seek your agreement to write to the Prime Minister seeking authority for a package of legislative reforms to enhance the safety of people in immigration detention centres.
2. The Commonwealth has a non-delegable duty of care for the safety and welfare of immigration detainees and people working in immigration detention facilities. Maintaining safety and good order in these facilities supports the performance of this duty.

3.

s. 37(2)(b)

4. In the Annual Report *Monitoring Commonwealth Places of Detention (1 July 2021 – 30 June 2022)*, the Commonwealth Ombudsman noted that “*drug infiltration is an ongoing problem throughout the immigration detention network and negatively impacts on the wellbeing of people in detention*”. In this report, the Ombudsman further recommended that the government consider implementing reforms that will give officers powers to detect and address criminal activity of this nature.

5.

s. 37(2)(b), s. 47C(1)

6. In line with the Ombudsman's recommendations, the Department of Home Affairs (the Department) is seeking to introduce legislative reforms s. 37(2)(b), s. 47C(1)

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7.

s. 47C(1), s. 37(2)(b)

8.

s. 37(2)(b)

9.

s. 47C(1)

Limitations of current legislative framework

10.

s. 42(1), s. 47C(1), s. 37(2)(b)

11.

12.

13.

14. Search and seizure powers are necessarily subject to significant scrutiny through parliamentary processes, and as such, there is an imperative to limit the scope of amendments to confer only the barest necessary powers. s. 42(1), s. 47C(1), s. 37(2)(b)

20.

s. 42(1), s. 47C(1)

21.

22.

23. Pending your agreement to this proposal (Recommendation 1), a letter to the Prime Minister seeking policy authority is at **Attachment A** for your signature.

24.

s. 47C(1), s. 42(1)

25. Pending your agreement to this alternative proposal (Recommendation 2), an alternative letter to the Prime Minister is at **Attachment B** for your signature.

Background

26.

s. 47C(1)

27.

s. 37(2)(b), s. 47C(1)

28.

s. 47C(1)

29.

- Submissions to the Senate and Legal Constitutional Affairs Legislation Committee (the Committee) regarding the *Migration Amendment (Maintaining the Good Order of Detention Facilities) Bill 2015* (lapsed), which expressed concern that the Bill sought to introduce broader coercive powers for officers in immigration detention facilities that were not adequately tied to a specific set of circumstances or conditions in which they could be applied objectively and proportionately. Additional concerns were raised that the Bill lacked sufficient safeguards for ensuring powers are exercised responsibly and in accordance with basic human rights standards.
- The highly contested *Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Bills 2017 and 2020* (both lapsed), which sought to prohibit a range of items, including mobile phones, in immigration detention facilities, by empowering the Minister to specify an item as a 'prohibited thing' by legislative instrument. Submissions to the Committee argued that the proposed measures were unnecessary and disproportionate in relation to the security risks posed in immigration detention facilities. A common concern among NGOs included that prohibiting mobile phones in immigration detention unreasonably limits detainees' rights to privacy, freedom of expression, political communication and contact with family members and legal representatives. Another submission to the Committee also expressed concern regarding the potential use of strip searches for prohibited things which are not otherwise unlawful to possess.

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30.

s. 37(2)(b)

31. The Commonwealth has a duty of care to reasonably mitigate risks to safety and welfare in immigration detention facilities. s. 37(2)(b)

32.

s. 47C(1)

Consultation – internal/external

33. Internal – Legal Group, Status Resolution and Visa Cancellation Division and ABF Detention and National Removals.
34. External stakeholders have not yet been consulted on the proposed legislative reforms outlined in this submission. The Department will work with your office on progressing a consultation process with external stakeholders.

Consultation – A/g Secretary / A/g Deputy Secretary Immigration / ABF Commissioner

35. A/g Secretary was consulted on the approach to the package of legislative reforms reflected in this submission in her former capacity as Associate Secretary.
36. The A/g Deputy Secretary Immigration was not consulted on this submission.
37. The ABF Commissioner was not consulted on this submission, however has been consulted on the approach to the package of legislative reforms.

Client service implications

38. The proposed legislative reforms aim to minimise the risk of harm to detainees and people working in immigration detention facilities from substance-related abuse and incidents.

Risks and Sensitivities

39.

s. 47C(1)

Financial/systems/legal/deregulation/media implications

40. There are no financial or deregulation implications identified.

41.

s. 47C(1)

42. The Legal Group has been consulted on the legal implications of the legislative reforms proposed in this submission.

43. We will work with the Department's Media Coordination team to respond to public comments about the proposed reforms, and we will keep your office updated on any significant issues.

Attachments

Attachment A Letter to the Prime Minister (Recommendation 1)

Attachment B Letter to the Prime Minister (Recommendation 2)

Attachment C s. 42(1) - s. 42(1)

Authorising Officer

Cleared by:

Tara Cavanagh
Group Manager
Immigration Policy Group

Date: 15/11/2023

Mob: s. 22(1)(a)(ii)

Contact Officer Chad Hodgins, Assistant Secretary, Detention Policy Branch, Ph: s. 22(1)(a)(ii)

CC A/g Secretary
A/g Deputy Secretary Immigration
DS Chief Operating Officer
DS Social Cohesion and Citizenship
DS Executive
Group Manager Legal
Chief Finance Officer
FAS Executive Coordination
Assistant Secretary Legislation
Assistant Secretary, Migration and Citizenship Law
ABF Commissioner
ABF Deputy Commissioner, National Operations North, West and Detention
ABF Assistant Commissioner, Detention and National Removals

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THE HON ANDREW GILES MP

MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS

Ref No: MS23-002105

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

I am writing to seek policy authority to [REDACTED] s. 47C(1)

[REDACTED]
enhance the safety of people in immigration detention centres.

The Commonwealth has a non-delegable duty of care for the safety and welfare of all detainees and people working in immigration detention centres. s. 37(2)(b), s. 47C(1)

[REDACTED]

[REDACTED]

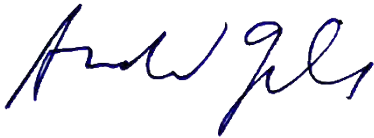
In the Annual Report *Monitoring Commonwealth Places of Detention (1 July 2021 – 30 June 2022)*, the Commonwealth Ombudsman noted that “drug infiltration is an ongoing problem throughout the immigration detention network and negatively impacts on the wellbeing of people in detention”. The Ombudsman further recommended in the same report that the government consider implementing reforms that will give officers relevant powers to detect and address criminal activity of this nature.

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s. 37(2)(b), s. 47C(1)

The contact officer in the Department of Home Affairs is Assistant Secretary Detention Policy, Chad Hodgins who can be contacted on s. 22(1)(a)(ii).

Yours sincerely



ANDREW GILES

25 / 7 / 2024

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THE HON ANDREW GILES MP

MINISTER FOR IMMIGRATION, CITIZENSHIP AND MULTICULTURAL AFFAIRS

Ref No: MS23-002105

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

I am writing to seek policy authority to [REDACTED] s. 47C(1) [REDACTED] enhance the safety of people in immigration detention centres.

The Commonwealth has a non-delegable duty of care for the safety and welfare of all detainees and people working in immigration detention centres. s. 47C(1), s. 37(2)(b)

[REDACTED]

[REDACTED]

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Yours sincerely

ANDREW GILES

/ / 2023

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