



Australian Government  
Department of Home Affairs

**Submission**

For decision

PDMS Ref. Number: MS24-001753

Date of Clearance: 11/09/2024

**To** Minister for Home Affairs, Minister for Immigration and Multicultural Affairs, Minister for Cyber Security

**Subject** Policy Approval – Reintroduction of Migration Amendment (Prohibiting Items in Immigration Detention) Bill

**Timing** As soon as possible, as requested by s. 22(1)(a)(ii), to expedite reintroduction.

**Recommendations**

That you:

1. **sign** the letter to the Prime Minister seeking policy authority to reintroduce the Prohibiting Items in Immigration Detention Bill (Attachment A).

*signed/ not signed/  
please discuss*

2.

S. 47C(1)

3.

Minister for Immigration, Citizenship and Multicultural Affairs

Signature.....

Date: 12/9/2024

Minister's Comments

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## Key Issues

1. s. 47C(1)
2. On 25 July 2024 former Minister Giles sought policy approval for the related Safer Immigration Detention Facilities legislative reforms, s. 47C(1)  
(Attachment A). s. 47C(1)  
, policy  
authority must again be sought from the Prime Minister.
3. s. 47C(1)
4. A letter to the Prime Minister seeking policy authority to reintroduce the Prohibiting Items in Immigration Detention Bill is at Attachment B for your signature.

## Background

5. s. 37(2)(b), s. 37(2)(c), s. 47C(1)
6. s. 37(2)(b), s. 37(2)(c), s. 42(1), s. 47C(1)  
s. 37(2)(b), s. 37(2)(c), s. 47C(1)
7. s. 37(2)(b), s. 37(2)(c), s. 47C(1)

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

8. The Migration Act currently contains a number of search and seizure provisions that may be exercised in specific circumstances and for specific purposes. These provisions enable:
- a. a search, without warrant, of a detainee, their clothing (without removal) and property under their immediate control to find out whether there is hidden (intentionally concealed) a weapon or other thing capable of being used to inflict bodily injury or used as an escape aid (section 252);
  - b. conduct of, without warrant, a screening procedure (metal detector, screening equipment, hand held wand, etc.) of a detainee or a thing in their possession to find out whether there is hidden (intentionally concealed) a weapon or other thing capable of being used to inflict bodily injury or used as an escape aid (section 252AA); and
  - c. on reasonable suspicion that there is hidden on the detainee, in their clothing or in a thing in their possession a weapon or other thing capable of being used to inflict bodily injury or used as an escape aid, and on reasonable grounds it is necessary to conduct a strip search to recover that weapon or other thing, conduct an authorised strip search of a detainee (without warrant), their clothing and property (but not a cavity search) (section 252A).
9. Subsection 273(1) of the Migration Act provides that the Minister may, on behalf of the Commonwealth, cause detention centres to be established and maintained. Further, sections 273(2) and (3) provide that regulations may be made in relation to the operation and regulation (management) of detention centres, including to deal with the conduct and supervision of detainees and the powers of officers performing functions in connection with the supervision of detainees.

10. s. 37(2)(b)

11. s. 47C(1)

12.

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**Consultation – internal/external**

13. Internal – Legal Group, Character Cancellation and Case Resolution Division, Immigration Compliance Operations Division, and ABF Onshore Detention Division.
14. External stakeholders have not yet been consulted on the proposed reintroduction of the legislative reforms outlined in this submission.

**Consultation – Secretary / Associate Secretary / ABF Commissioner**

15. The Secretary was not consulted on this submission.
16. The Associate Secretary was not consulted on this submission.
17. The Commissioner was not consulted on this submission.

**Client service implications**

18. The proposed legislative reforms aim to minimise the risk of harm to detainees and people working in immigration detention facilities s. 37(2)(b)

**Risks and Sensitivities**

19. s. 47C(1)
- 20.

**Financial/systems/legal/deregulation/media implications**

21. There are no financial or deregulation implications identified.
22. s. 37(2)(b), s. 37(2)(c), s. 47C(1)
- 23.
24. 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.

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**Attachments**

**Attachment A** Letter to the Prime Minister

**Attachment B** MC24-106818 - s. 47C(1), dated 20 August 2024

| Authorising Officer                                                       |
|---------------------------------------------------------------------------|
| Cleared by:                                                               |
| Michael Burke<br>First Assistant Secretary<br>Immigration Policy Division |
| Date: 11/09/2024<br>Mob: s. 22(1)(a)(ii)                                  |

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

**CC**

- Secretary
- Associate Secretary Immigration
- Group Manager Legal
- Group Manager Immigration Compliance
- Chief Finance Officer
- FAS Executive Coordination
- Assistant Secretary Legislation
- Assistant Secretary, Migration and Citizenship Law

  

- ABF Commissioner
- ABF Deputy Commissioner, Regional Operations
- ABF Assistant Commissioner, Onshore Detention

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**The Hon Tony Burke MP**  
Minister for Home Affairs  
Minister for Immigration and Multicultural Affairs  
Minister for Cyber Security  
Minister for the Arts  
Leader of the House

Ref No: MS24-001753

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

Dear Prime Minister

A handwritten signature in blue ink, appearing to read 'Anthony', written over the 'Dear Prime Minister' text.

I am writing to seek policy authority to amend the *Migration Act 1958* (Migration Act),  
**s. 47C(1)**, to enhance the  
safety of people in immigration detention facilities.

Former Minister for Immigration, Citizenship and Multicultural Affairs Giles recently  
sought **s. 37(2)(b), s. 37(2)(c), s. 47C(1)** policy authority to amend the Migration Act **s. 37(2)(b), s. 37(2)(c), s. 47C(1)**

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

Subject to your agreement, I therefore propose reintroducing the Migration Amendment  
(Prohibiting Items in Immigration Detention) Bill, last considered by the Parliament in

2020. s. 37(2)(b), s. 37(2)(c), s. 47C(1)

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

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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



TONY BURKE

12 / 9 / 2024