

EXPLAINER: THE MIGRATION AMENDMENT (PROHIBITED ITEMS IN IMMIGRATION DETENTION) ACT 2024 (CTH)

On 29 November 2024 the Government passed a suite of new laws that dramatically expand the Minister's powers to remove people from Australia, reverse protection findings for a larger cohort of people than currently allowed by law, seize "prohibited items" in immigration detention (including mobile phones) and designate whole countries as banned such that its citizens are prohibited citizens from applying to enter Australia with limited exceptions.

We understand that the new laws are extremely distressing and there is a lot of confusion in the community. Please obtain advice and information from reputable sources. As more information becomes available we will provide it to you.

This fact sheet **only** addresses the *Migration Amendment (Prohibited Items in Immigration Detention) Act 2024*. For information about the Migration Amendment Act 2024 or the Migration Amendment (Removals and Other Measures) Act 2024 please refer to our other factsheet.

WHAT DO THE NEW LAWS DO?

- Expands an authorised officer's power to **search, screen and seize prohibited things** in relation to immigration detention facilities and detainees without a warrant, if the person believes on reasonable grounds that doing so is reasonable and necessary to prevent or lessen risk to the health safety or security of persons in the facility, or to the order of the facility – this could include mobile phones, SIM cards, computers or other electronic devices as well as some medications (unless prescribed).
- In practice this means that if an authorised officer suspects that you are using your phone to conduct illegal activity, they can seize it from you.
- The Minister also has the power to define a "prohibited thing" by legislative instrument – 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]
- Expands the basis for strip searches if an officer suspects that they have a prohibited item on them.^[2]
- Expanded area searches - officers could search people's rooms, their personal belongings, common areas and even medical exam rooms for prohibited items.^[3] They are able to use force to do this and could bring dogs^[4] or external people to assist them.^[5]

- The new laws are not limited to those in detention – they can include if someone has been refused immigration clearance at the airport, for example, and is facing possible visa cancellation before entering Australia.

WHAT DOES THIS MEAN FOR ME?

- If you are in immigration detention, the Act stipulates that if your mobile phone is seized, you must be given access to alternative means of communication so that you can communicate with your legal representative and family.^[6] This is likely to mean access to a landline phone, post or email communications through a facility computer. Under the Migration Act, the Commonwealth is required to provide you with reasonable facilities to access legal representation.
- If your phone or other item is seized, you have the right to request it be returned for a temporary period.^[7] The officer is not required to return the item to you but may return it to you for the period requested or a shorter period.^[8] The office can also simply decline to return the item to you.
- If it is no longer necessary for an item to be seized the prohibited item must be returned to you. The item must be returned to you unless you cannot be located or are no longer in detention.^[9]
- You should consider writing down the details of your lawyer or providing them to a fellow detainee in the event that you lose access to your phone so that you can still communicate with your legal representatives. If your phone is taken you should request alternative means of communication immediately. You may also wish to request that your phone or other possession is returned to you for a temporary period (see above).

WHERE CAN I GET LEGAL HELP?

It is important that you get advice from ethical and reputable sources. You may contact the organisations below for free legal assistance, noting that you may need to wait until the new year to speak with a lawyer as organisations will have limited capacity at the end of December and start of January.

Organisation	Who can they assist?	Contact details
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Asylum Seeker Resource Centre	<p>If you:</p> <ul style="list-style-type: none"> ● are in immigration detention in Australia; OR ● live in the community in Victoria; OR <ul style="list-style-type: none"> ● were recently released from detention into the community in Queensland or Western Australia; AND ● fear harm on return to your country of birth. 	<p>Email: legal@asrc.org.au. Please note we will only respond to email requests from people who are in detention.</p> <p>Phone or drop-in:</p> <ul style="list-style-type: none"> ● Hours: Monday, Tuesday, Thursday and Friday from 10am – 12.30pm (closed on Wednesdays) ● ● Phone: (03) 9274 9889 ● Address: 214-218 Nicholson Street, Footscray VIC 3011
Refugee Advice Casework Service (RACS)	<p>If you:</p> <ul style="list-style-type: none"> ● live in the community in New South Wales or the Northern Territory; OR ● are detained at Yongah Hill Immigration Detention Centre. 	<p>Email: admin@racs.org.au</p>
Refugee Legal	<p>If you:</p> <ul style="list-style-type: none"> ● are in immigration detention; OR ● live in the community in Victoria, South Australia and the Northern Territory. 	<p>Email: admin@refugeelegal.org.au</p>

The Human Rights Law Program is a service provided by ASRC ABN 64 114 965 815
Incorporation Number: A0042918

Legal Aid NSW	<p>If you:</p> <ul style="list-style-type: none"> ● are in New South Wales (detention or in the community); OR ● are in detention and were living in New South Wales before being detained. 	<p>Phone: (02) 9219 5790</p>
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WHERE CAN I GET OTHER SUPPORT?

Government-funded service providers are providing limited support to people who have been recently released, including organising temporary housing and assisting them to apply for Medicare (to access healthcare) and Centrelink. You will also be eligible for short-term SRSS (Status Resolution Support Services).

You can contact the service providers below to find out what assistance they can provide.

If you already have a caseworker, it is recommended that you contact them directly on the contact details they have provided.

Organisation	Contact details
Life Without Barriers	Email: info@lwb.org.au Phone: <ul style="list-style-type: none">• Sunshine (VIC) office: (03) 9245 2701• Dandenong (VIC) office: (03) 8752 8500• After hours for emergencies (5pm to 9am): 1800 861 862
Settlement Services International (SSI)	Email: srss.intake@ssi.org.au Phone: <ul style="list-style-type: none">• Monday to Friday: (02) 9685 0100• After hours for emergencies (weekdays 5pm to 9am & weekends): (02) 1800 774 142

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

[2] *Migration Act 1958* (Cth), s 252A.

[3] *Migration Act 1958* (Cth), s 252BA.

[4] *Migration Act 1958* (Cth), s 252BA(4).

[5] *Migration Act 1958* (Cth), s 252BB.

[6] *Migration Act 1958* (Cth), s 251AB.

[7] *Migration Act 1958* (Cth), s 251AA(4).

[8] *Migration Act 1958* (Cth), s 251AA(5).

[9] *Migration Act 1958* (Cth), s 251AA(6).