



Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Act 2024

No. 106, 2024

**An Act to amend the *Migration Act 1958*, and for
related purposes**

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Contents

1	Short title.....	1
2	Commencement	2
3	Schedules	2
Schedule 1—Amendments		3
	<i>Migration Act 1958</i>	<i>3</i>



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No. 106, 2024

**An Act to amend the *Migration Act 1958*, and for
related purposes**

[Assented to 4 December 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Migration Amendment (Prohibiting Items in
Immigration Detention Facilities) Act 2024*.

No. 106, 2024	<i>Migration Amendment (Prohibiting Items in Immigration Detention Facilities) Act 2024</i>	<i>1</i>
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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Migration Act 1958

1 Subsection 5(1)

Insert:

immigration detention facility: see section 251A.

immigration detention facility risk: see section 251A.

prohibited thing: see section 251A.

relevant seizure power: see section 251B.

weapon or escape aid: see section 252.

2 After section 251

Insert:

251A Searches of detainees etc.—prohibited things

- (1) A thing is a *prohibited thing* in relation to a person in detention (whether or not the person is detained in an immigration detention facility), or in relation to an immigration detention facility, if:
 - (a) both:
 - (i) possession of the thing is unlawful because of a law of the Commonwealth, or a law of the State or Territory in which the person is detained or in which the facility is located; and
 - (ii) the thing is determined under paragraph (2)(a); or
 - (b) the thing is determined under paragraph (2)(b).

Example 1: A thing may be a *prohibited thing* in relation to an immigration detention facility for the purposes of a search of such a facility under section 252BA and the seizure of prohibited things in the course of such a search under section 252C or 252CA.

Example 2: A mobile phone may, if determined under paragraph (2)(b), be a *prohibited thing* in relation to a person in detention even if the person is not detained in an immigration detention facility.

- (2) The Minister may, by legislative instrument, determine a thing for the purposes of subsection (1) if the Minister is satisfied that:
- (a) possession of the thing is prohibited by law in a place or places in Australia; or
 - (b) possession or use of the thing in an immigration detention facility might be a risk (an ***immigration detention facility risk***) to the health, safety or security of persons in the facility, or to the order of the facility.

Examples: The following things may be determined to be ***prohibited things*** if the Minister is satisfied that they pose a risk mentioned in paragraph (b):

- (a) mobile phones;
 - (b) SIM cards;
 - (c) computers and other electronic devices designed to be capable of being connected to the internet.
- (3) However, if a medication or health care supplement is determined under paragraph (2)(b), the medication or supplement is not a ***prohibited thing*** in relation to a particular person detained in an immigration detention facility if the medication or supplement has been prescribed or supplied for the person's individual use by a health service provider authorised for the purpose by the person in charge of the facility.
- (4) Despite any regulations made for the purposes of paragraph 44(2)(b) of the *Legislation Act 2003*, section 42 of that Act (disallowance of legislative instruments) applies to a legislative instrument made under subsection (2) of this section.
- (5) An ***immigration detention facility*** is:
- (a) a detention centre established under this Act (see section 273); or
 - (b) another place approved by the Minister in writing for the purposes of subparagraph (b)(v) of the definition of ***immigration detention*** in subsection 5(1).

251AA Searches of detainees etc.—exercise of powers relating to prohibited things determined under paragraph 251A(2)(b)

Purpose and belief relating to immigration detention facility risks

- (1) The exercise of a power covered by subsection (7) is authorised only if the purpose of exercising the power is to prevent or lessen an immigration detention facility risk.
- (2) The exercise by a person of a power covered by paragraph (7)(b) is authorised only if the person believes on reasonable grounds that exercising the power is necessary to prevent or lessen an immigration detention facility risk.
- (3) The exercise by a person of a power covered by paragraph (7)(c) or (d) to seize or request a thing, on the basis that the thing is a prohibited thing determined under paragraph 251A(2)(b), is authorised only if the person believes on reasonable grounds that:
 - (a) the thing is such a prohibited thing; and
 - (b) exercising the power is necessary to prevent or lessen an immigration detention facility risk.

Temporary return of seized things

- (4) If a prohibited thing determined under paragraph 251A(2)(b) has been seized under a power covered by paragraph (7)(c) of this section, the person who owns the thing, or who last controlled it before its seizure, may make a request to an authorised officer for its return for a particular period.
- (5) On a request by a person under subsection (4), an authorised officer must:
 - (a) return the thing to the person for the period requested; or
 - (b) if the authorised officer believes on reasonable grounds that it is necessary to do so to prevent or lessen an immigration detention facility risk:
 - (i) return the thing to the person for a specified period shorter than that requested; or
 - (ii) refuse to return the thing to the person.

Note: The return of a thing under this subsection for a period does not prevent the further exercise of a power covered by subsection (7) in relation to the thing during that period, subject to this section (see subsection (9)).

Return of seized things if no longer necessary for them to be retained

- (6) If a prohibited thing determined under paragraph 251A(2)(b) has been seized under a power covered by paragraph (7)(c) of this section, an authorised officer must take all reasonable steps to return the thing to the person who owns the thing, or last controlled it before its seizure, if the officer no longer believes, on reasonable grounds, that it is necessary to retain the thing to prevent or lessen an immigration detention facility risk.

Note 1: For the return or forfeiture of such prohibited things when the owner or controller ceases to be in detention, see subsections 252(4A), (4D) and (4E) and section 252CB.

Note 2: The return of a thing as a result of this subsection does not prevent the further exercise of a power covered by subsection (7) in relation to the thing, subject to this section (see subsection (9)).

Powers covered

- (7) This subsection covers the following powers:
- (a) the power of the Minister to make a direction under subsection 251B(6) in relation to the seizure of a prohibited thing determined under paragraph 251A(2)(b);
 - (b) the power of an authorised officer, or an authorised officer's assistant, to conduct a search or a screening procedure in relation to any prohibited thing determined under paragraph 251A(2)(b), under the following provisions:
 - (i) section 252 (searches of detainees etc.—general powers of personal search and seizure);
 - (ii) section 252AA (searches of detainees—screening procedures);
 - (iii) section 252A (searches of detainees—strip searches);
 - (iv) section 252BA (searches of certain immigration detention facilities—general);
 - (v) section 252BB (searches of certain immigration detention facilities—authorised officers' assistants);

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- (c) the power of an authorised officer to seize a prohibited thing determined under paragraph 251A(2)(b), under the following provisions:
 - (i) paragraph 252(4A)(a) (seizure during searches under section 252);
 - (ii) subsection 252CA(2) (seizure during screening and strip searches of detainees and searches of facilities);
 - (d) the following powers of an authorised officer, in relation to an immigration detention facility:
 - (i) the power, under paragraph 252G(4)(e), to request that a person leave a prohibited thing determined under paragraph 251A(2)(b) in a specified place;
 - (ii) the power, under subsection 252G(7), to refuse entry to the facility to a person who does not comply with such a request.
- (8) In this section, a reference to the exercise of a power under a provision of this Act includes a reference to:
- (a) the exercise of any particular aspect of the power under any particular part of that provision, and of any related power (or any particular aspect of such a related power); and
 - (b) the exercise of the power (or a related power mentioned in paragraph (a)) in any particular way.
- Example: A reference in this section to the exercise of a power of the Minister to make a direction under subsection 251B(6) in relation to a prohibited thing determined under paragraph 251A(2)(b) includes a reference to the exercise of that power by the Minister in relation to the following, as specified in the direction:
- (a) any particular relevant seizure power (or all such powers);
 - (b) any particular class of persons, things or immigration detention facilities (or all such persons, things or facilities);
 - (c) any particular circumstances.
- (9) To avoid doubt, but subject to this section:
- (a) the return of a thing to a person under subsection (5) for a period does not prevent the further exercise of a power covered by subsection (7) in relation to the thing during that period; and
 - (b) the return of a thing to a person after taking all reasonable steps under subsection (6) for its return does not prevent the
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further exercise of a power covered by subsection (7) in relation to the thing.

251AB Searches of detainees etc.—access to alternative means of communication

- (1) Without limiting section 256 (person in immigration detention may have access to certain advice, facilities etc.), the Secretary must ensure that a detainee who is detained in an immigration detention facility is given access to an alternative means of communication, which meets the requirements under subsection (2) of this section, if:
 - (a) a prohibited thing determined under paragraph 251A(2)(b) has been seized from the detainee under:
 - (i) paragraph 252(4A)(a) (seizure during personal searches under section 252); or
 - (ii) subsection 252CA(2) (seizure during screening, strip search or facility search); and
 - (b) the thing is a device that a person may use to communicate with another person; and
 - (c) the thing has not been returned to the detainee.
- (2) The alternative means of communication must be reasonably sufficient to enable the detainee to:
 - (a) communicate with a member of the family unit of the detainee; or
 - (b) communicate with any person outside the immigration detention facility for the purposes of:
 - (i) obtaining legal advice; or
 - (ii) obtaining support of a prescribed kind; or
 - (iii) communicating governmental or political matters.

251AC Further limits on certain powers—implied freedom of political communication

Each of the following powers may not be exercised to the extent (if any) that the exercise of the power would infringe any constitutional doctrine of implied freedom of political communication:

- (a) the power under subsection 251A(2) (power to determine prohibited things);
- (b) a power covered by subsection 251AA(7) (powers relating to certain prohibited things).

251B Searches of detainees etc.—exercise of powers generally

Visibility or intentional concealment of things—search etc. powers

- (1) An authorised officer may exercise a power to search for a thing under section 252 or 252BA:
 - (a) whether or not the thing is visible to the authorised officer:
 - (i) in the case of a search under section 252—immediately before the start of the search; or
 - (ii) in the case of a search of an immigration detention facility under section 252BA—immediately before the start of the search of the facility, or of any area of the facility covered by the search; and
 - (b) if the thing is not visible to the authorised officer at that time—whether or not the thing had been intentionally concealed.

Note: Section 252 covers searches of detainees and certain non-citizens.
Section 252BA covers searches of immigration detention facilities.

- (2) An authorised officer may conduct a screening procedure for a thing under section 252AA, or a strip search for a thing under section 252A, whether or not the thing had been intentionally concealed before the screening procedure or strip search was conducted.

Note: Section 252AA covers screening procedures for detainees.
Section 252A covers strip searches of detainees. These sections authorise searches for things which are not visible immediately before the procedure or search starts to be conducted.

Visibility or intentional concealment of things—seizure powers

- (3) An authorised officer may seize a thing under section 252 in the course of a search under that section, or under section 252C or 252CA in the course of a search under section 252BA:
 - (a) whether or not the thing was visible to the authorised officer:

- (i) in the case of a search under section 252—immediately before the start of the search; or
 - (ii) in the case of a search of an immigration detention facility under section 252BA—immediately before the start of the search of the facility, or of any area of the facility covered by the search; and
 - (b) if the thing was not visible to the authorised officer at that time—whether or not the thing had been intentionally concealed.
- (4) An authorised officer may seize a thing under section 252C or 252CA, in the course of the conduct of a screening procedure under section 252AA or of a strip search under section 252A, whether or not the thing had been intentionally concealed before the screening procedure or strip search was conducted.

Powers do not limit each other

- (5) A power may be exercised under any of sections 252, 252AA, 252A, 252BA, 252C and 252CA in relation to a person, immigration detention facility or thing irrespective of whether any powers are exercised in relation to the person, immigration detention facility or thing under another of those sections.

Directions requiring seizure powers to be exercised

- (6) The Minister may, by legislative instrument, direct that an authorised officer (or an authorised officer in a specified class of relevant officers) must seize a thing by exercising one or more specified relevant seizure powers (or all relevant seizure powers) in relation to one or more of the following:
- (a) a person in a specified class of persons, or all persons, to whom the relevant seizure power relates;
- Example: All detainees in a specified immigration detention facility, or all detainees in such a facility other than those who are unauthorised maritime arrivals.
- (b) a specified thing, a thing in a specified class of things, or all things, to which the relevant seizure power relates;
 - (c) a specified immigration detention facility, an immigration detention facility in a specified class of such facilities, or all immigration detention facilities;

(d) any circumstances specified in the directions.

Example: A direction could specify a particular period during which the direction is to take effect, or the duration of a specified event.

Note 1: The Minister may give a direction under subsection (6) only to prevent or lessen an immigration detention facility risk: see subsection 251AA(1).

Note 2: Despite any direction given under subsection (6), a thing cannot be seized if the seizure is not authorised under subsection 251AA(3) (which relates to preventing or lessening immigration detention facility risks).

(7) A **relevant seizure power** is a power to seize a thing under any of the following provisions:

- (a) paragraph 252(4)(a) or (4A)(a) (searches of detainees etc.—general powers of personal search and seizure);
- (b) subsection 252C(1) (screening and strip searches of detainees and searches of facilities—seizure (general));
- (c) subsection 252CA(2) (screening and strip searches of detainees and searches of facilities—seizure of certain prohibited things).

(8) Subsection (6) does not empower the Minister to give directions that would be inconsistent with this Act or the regulations.

3 Section 252 (heading)

Repeal the heading, substitute:

252 Searches of detainees etc.—general powers of personal search and seizure

4 Subsections 252(1) and (2)

Repeal the subsections, substitute:

Scope

(1) This section applies in relation to the following persons:

- (a) a detainee;
- (b) a person who is a non-citizen, if:
 - (i) the person has not been immigration cleared; and

- (ii) an authorised officer has reasonable grounds for suspecting there are reasonable grounds for cancelling the person's visa; and
- (iii) the person is not in detention.

Powers of authorised officers

- (2) An authorised officer may, without warrant, search a person, the person's clothing and any property under the immediate control of the person for any thing that may be seized from the person under paragraph (4)(a) or (4A)(a), whether or not the officer has any suspicion that the person has such a thing on the person's body, in the person's clothing or in any such property.

5 Subsection 252(4)

Repeal the subsection, substitute:

Seizure

- (4) Subject to subsection (4C), an authorised officer:
 - (a) may, in the course of a search under this section, seize any of the following:
 - (i) a weapon or other thing capable of being used to inflict bodily injury or to help any detainee to escape from immigration detention (a ***weapon or escape aid***);
 - (ii) a document or other thing that is, or may be, evidence for grounds for cancelling the visa of the person who is being searched (***visa cancellation evidence*** in relation to the person);
 - (iii) a prohibited thing determined under paragraph 251A(2)(a) (other than a prohibited thing that is also a weapon or escape aid, or visa cancellation evidence); and
 - (b) may retain the thing for such time as the authorised officer thinks necessary for the purposes of this Act.

Note 1: Paragraph 251A(2)(a) covers things the possession of which is unlawful.

Note 2: Subparagraph (a)(iii) of this subsection does not apply in relation to certain detainees and non-citizens (see subsection (4B)).

(4A) Subject to subsection (4C), an authorised officer:

- (a) may, in the course of a search under this section, seize a prohibited thing determined under paragraph 251A(2)(b) (other than a prohibited thing that is also a weapon or escape aid, or visa cancellation evidence); and
- (b) must, if it appears that the prohibited thing is owned or was controlled by a detainee, take all reasonable steps, when that detainee ceases to be in detention, to return it to that detainee; and
- (c) must, if it appears that the prohibited thing is owned or was controlled by a person other than a detainee, take all reasonable steps to return it to that person.

Note 1: Paragraph 251A(2)(b) covers the determination of a thing as a prohibited thing if the Minister is satisfied that its possession or use in an immigration detention facility might be a risk to the health, safety or security of persons in the facility, or to the order of the facility.

Note 2: Paragraph (a) of this subsection does not apply in relation to certain detainees and non-citizens (see subsection (4B)).

Note 3: A prohibited thing that is seized under paragraph (a) of this subsection may be returned to a detainee, temporarily or indefinitely, before the detainee ceases to be in detention (see subsections 251AA(4), (5) and (6)).

(4B) The seizure of a prohibited thing under subparagraph (4)(a)(iii) or paragraph (4A)(a) is not authorised if the seizure is from:

- (a) a detainee covered by a residence determination who is residing at the place specified in the determination; or
- (b) a non-citizen covered by paragraph (1)(b).

Note: However, if a prohibited thing is also a weapon or escape aid, or visa cancellation evidence, it can be seized from such a person under subparagraph (4)(a)(i) or (ii).

(4C) If an authorised officer has the power to seize a thing under paragraph (4)(a) or (4A)(a), the officer must seize the thing if a direction under subsection 251B(6) has the effect of requiring the officer to seize the thing.

Note 1: An authorised officer does not have the power to seize a prohibited thing under paragraph (4)(a) or (4A)(a) if subsection (4B) applies in relation to the thing.

Note 2: An authorised officer has the power to seize a prohibited thing under paragraph (4A)(a) only if the exercise of the power is authorised under

subsection 251AA(3) (which relates to preventing or lessening immigration detention facility risks).

Forfeiture of seized things

- (4D) A prohibited thing seized under paragraph (4A)(a) is forfeited to the Commonwealth if the authorised officer considers on reasonable grounds, after taking all reasonable steps to return the thing under paragraph (4A)(b) or (c), that:
- (a) its owner or the person who last controlled the thing cannot be identified; or
 - (b) the thing is abandoned; or
 - (c) if it appears that the thing is owned or was controlled by a detainee—the thing cannot be returned to that detainee when that detainee ceases to be in detention; or
 - (d) if it appears that the thing is owned or was controlled by a person other than a detainee—the thing cannot be returned to that person.
- (4E) If a prohibited thing is forfeited under subsection (4D), the authorised officer may dispose of it in any way the officer thinks appropriate.

Related matters

6 Subsection 252(9)

Repeal the subsection.

7 Section 252AA (heading)

Repeal the heading, substitute:

252AA Searches of detainees—screening procedures

8 Subsection 252AA(1)

Repeal the subsection, substitute:

- (1) An authorised officer may, without warrant, conduct a screening procedure in relation to a detainee, other than a detainee to whom section 252F applies, for any of the following things on the

detainee's body, in the detainee's clothing or in a thing in the detainee's possession:

- (a) a weapon or escape aid;
- (b) a prohibited thing.

- (1A) An authorised officer may conduct a screening procedure under subsection (1) in relation to a detainee for a thing mentioned in that subsection whether or not the officer has any suspicion that the detainee has such a thing on the detainee's body, in the detainee's clothing or in a thing in the detainee's possession.

9 Subsection 252AA(4)

Repeal the subsection.

10 Section 252A (heading)

Repeal the heading, substitute:

252A Searches of detainees—strip searches

11 Subsection 252A(1)

Repeal the subsection, substitute:

- (1) An authorised officer may, without warrant, conduct a strip search of a detainee, other than a detainee to whom section 252F applies, for any of the following things on the detainee's body, in the detainee's clothing, or in a thing in the detainee's possession:
- (a) a weapon or escape aid;
 - (b) a prohibited thing.

Note: Section 252B sets out rules for conducting a strip search under this section.

12 Subsection 252A(2)

Omit "of the detainee, of his or her clothing or of a thing in his or her possession", substitute "of the detainee's body or clothing or of a thing in the detainee's possession".

13 Paragraph 252A(2)(a)

Omit "his or her clothing", substitute "the detainee's clothing".

14 Paragraph 252A(3)(a)

Repeal the paragraph, substitute:

- (a) an officer suspects on reasonable grounds that there is on the detainee's body, in the detainee's clothing or in a thing in the detainee's possession any of the following things:
 - (i) a weapon or escape aid;
 - (ii) a prohibited thing; and

15 Subsection 252A(7)

Repeal the subsection.

16 Section 252B (heading)

Repeal the heading, substitute:

252B Searches of detainees—rules for conducting a strip search

17 Paragraph 252B(1)(j)

Repeal the paragraph, substitute:

- (j) must not involve the removal of more items of clothing, or more visual inspection, than the authorised officer conducting the search believes on reasonable grounds to be necessary to determine whether there is on the detainee, in the detainee's clothing or in a thing in the detainee's possession any of the following things:
 - (i) a weapon or escape aid;
 - (ii) a prohibited thing; and

18 Paragraph 252B(7)(b)

Repeal the paragraph, substitute:

- (b) seized under section 252C or 252CA.

19 After section 252B

Insert:

252BA Searches of certain immigration detention facilities—general*Search*

- (1) An authorised officer may, without warrant, conduct a search of an immigration detention facility operated by or on behalf of the Commonwealth, including, without limitation, a search covering any or all of the following:
 - (a) accommodation areas;
 - (b) administrative areas;
 - (c) common areas;
 - (d) detainees' personal effects;
 - (e) detainees' rooms;
 - (f) medical examination areas;
 - (g) storage areas.
- (2) An authorised officer may conduct a search of the facility for any of the following things:
 - (a) a weapon or escape aid;
 - (b) a prohibited thing.
- (3) An authorised officer may search the facility for a thing under subsection (2) whether or not the officer has any suspicion that there is such a thing at the facility.

Note: See also sections 252C and 252CA in relation to the seizure of things in the course of a search under this section.

Conduct of search

- (4) Without limiting subsections (1) and (2), an authorised officer may use a dog in conducting a search under this section.
- (5) If an authorised officer uses a dog in conducting a search under this section, the officer must:
 - (a) take all reasonable precautions to prevent the dog touching any person (other than the officer); and
 - (b) keep the dog under control while conducting the search.
- (6) If an authorised officer uses a dog in accordance with subsection (5) in conducting a search under this section, that use of

the dog is not unlawful only because of the behaviour of the dog (including the touching of any person by the dog).

- (7) An authorised officer who conducts a search under this section must not use more force against a person or property, or subject a person to greater indignity, than is reasonably necessary in order to conduct the search.

**252BB Searches of certain immigration detention facilities—
authorised officers’ assistants**

Authorised officers may be assisted by other persons

- (1) An authorised officer may be assisted by other persons in exercising powers or performing functions or duties in conducting a search under section 252BA (other than under subsection 252BA(4)), or under section 252C, 252CA or 252CB in relation to such a search, if that assistance is necessary and reasonable. A person giving such assistance is the authorised officer’s *assistant*.

Note: Subsection 252BA(4) provides for an authorised officer to use a dog to conduct a search of an immigration detention facility. Sections 252C, 252CA and 252CB deal with the seizure of things in the course of a search under section 252BA and their return in certain circumstances.

Powers of an authorised officer’s assistant

- (2) In connection with a search of an immigration detention facility under section 252BA, an authorised officer’s assistant:
- (a) may enter the facility; and
 - (b) may exercise any of the same powers, and perform any of the same functions and duties, as are conferred on the authorised officer in relation to the search under that section (other than under subsection 252BA(4)) and sections 252C, 252CA and 252CB; and
 - (c) must do so in accordance with any directions given to the assistant by the authorised officer.

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- (3) A power exercised by an authorised officer's assistant as mentioned in subsection (2) is taken for all purposes to have been exercised by the authorised officer.
 - (4) A function or duty performed by an authorised officer's assistant as mentioned in subsection (2) is taken for all purposes to have been performed by the authorised officer.
 - (5) Section 251B applies in relation to the exercise of a power, or the performance of a function or duty, by an authorised officer's assistant in the same way as it applies in relation to such an exercise or performance by the authorised officer.
 - (6) If a direction is given under paragraph (2)(c) in writing, the direction is not a legislative instrument.

20 Section 252C (heading)

Repeal the heading, substitute:

252C Screening and strip searches of detainees and searches of facilities—seizure (general)

21 Subsections 252C(1) and (2)

Repeal the subsections, substitute:

Seizure

- (1) Subject to subsection (2), in the course of the conduct of a screening procedure under section 252AA, or of a search under section 252A or 252BA, an authorised officer may seize a thing that:
 - (a) is a weapon or escape aid; or
 - (b) is a prohibited thing determined under paragraph 251A(2)(a); or
 - (c) is forfeitable to the Commonwealth (otherwise than under subsection (2A)); or
 - (d) in any other case—might provide evidence of the commission of an offence against this Act.

Note 1: Section 252AA deals with screening detainees, section 252A deals with strip searches of detainees and section 252BA deals with searches of certain immigration detention facilities.

Note 2: Paragraph 251A(2)(a) covers things the possession of which is unlawful.

- (2) If an authorised officer has the power to seize a thing under subsection (1), the officer must seize the thing if a direction under subsection 251B(6) has the effect of requiring the officer to seize the thing.

Forfeiture of seized things

- (2A) The following things are forfeited to the Commonwealth if seized under subsection (1):
- (a) a weapon or escape aid;
 - (b) a prohibited thing determined under paragraph 251A(2)(a).

22 Subsections 252C(4) and (5)

Repeal the subsections, substitute:

Return of seized things

- (4) Section 252CB applies to any thing seized under paragraph (1)(d) after the earliest of the following events happens:
- (a) the end of the period of 60 days after the thing was seized, or at the end of a longer period ordered by a magistrate under section 252E, unless proceedings mentioned in paragraph (b) of this subsection are instituted before the end of that period (or that longer period);
 - (b) proceedings in respect of which the thing might provide evidence (including any appeal to a court in relation to those proceedings) are completed;
 - (c) it is decided that the thing is not to be used in evidence.

Note: Section 252CB provides for the return of things seized under paragraph (1)(d) of this section and section 252CA.

- (5) Despite subsection (4), section 252CB does not apply to a thing if an authorised officer is authorised (by a law, or an order of a court or a tribunal, of the Commonwealth or a State or Territory),

otherwise than under this section, to retain, destroy or dispose of the thing.

23 After section 252C

Insert:

252CA Screening and strip searches of detainees and searches of facilities—seizure of certain prohibited things

Scope—certain prohibited things

- (1) This section applies in relation to a prohibited thing determined under paragraph 251A(2)(b), unless subsection 252C(1) applies in relation to the prohibited thing.

Note 1: Paragraph 251A(2)(b) covers the determination of a thing as a prohibited thing if the Minister is satisfied that its possession or use in an immigration detention facility might be a risk to the health, safety or security of persons in the facility, or to the order of the facility.

Note 2: For the seizure of other things obtained by screening detainees, by a strip search of detainees or by a search of certain immigration detention facilities, see section 252C.

Seizure

- (2) Subject to subsection (4), in the course of the conduct of a screening procedure under section 252AA, or of a search under section 252A or 252BA, an authorised officer may seize a thing to which this section applies.
- (3) However, subsection (2) does not authorise the seizure of a medication or health care supplement in the course of a search under section 252BA if there are reasonable grounds for an authorised officer conducting the search to consider that:
- (a) the medication or supplement is possessed or controlled by a particular detainee; and
 - (b) the medication or supplement is not a prohibited thing in relation to the particular detainee because of subsection 251A(3).

Note: Section 252BA deals with searches of certain immigration detention facilities. Subsection 251A(3) deals with medications and health care

supplements that are prescribed or supplied for a person's individual use.

- (4) If an authorised officer has the power to seize a thing under subsection (2), the officer must seize the thing if a direction under subsection 251B(6) has the effect of requiring the officer to seize the thing.

Note 1: An authorised officer does not have the power to seize a medication or health care supplement under subsection (2) if subsection (3) applies in relation to the medication or supplement.

Note 2: An authorised officer has the power to seize a prohibited thing under subsection (2) only if the exercise of the power is authorised under subsection 251AA(3) (which relates to preventing or lessening immigration detention facility risks).

Note 3: A prohibited thing that is seized under subsection (2) may be returned to a detainee, temporarily or indefinitely, before the detainee ceases to be in detention (see subsections 251AA(4), (5) and (6)).

Return of seized things

- (5) Section 252CB applies to a thing that is seized under subsection (2) of this section.

Note: Section 252CB provides for the return of things seized under this section and of certain things seized under section 252C.

252CB Screening and strip searches of detainees and searches of facilities—return of seized things

Reasonable steps to return seized things

- (1) If this section applies, because of subsection 252C(4) or 252CA(5), in relation to a thing that has been seized under paragraph 252C(1)(d) or subsection 252CA(2), an authorised officer:
- (a) must, if it appears that the thing is owned or was controlled by a detainee, take all reasonable steps to return it to the detainee when that detainee ceases to be in detention; and
 - (b) must, if it appears that the thing is owned or was controlled by a person other than a detainee, take all reasonable steps to return it to the person.

- Note 1: This section applies to a thing seized under paragraph 252C(1)(d) because it might provide evidence of the commission of an offence under this Act. This section also applies to a prohibited thing determined under paragraph 251A(2)(b) that is seized under subsection 252CA(2).
- Note 2: A prohibited thing that is seized under subsection 252CA(2) may be returned to a detainee, temporarily or indefinitely, before the detainee ceases to be in detention (see subsections 251AA(4), (5) and (6)).

Forfeiture and disposal of seized things if they cannot be returned

- (2) However, the thing is forfeited to the Commonwealth if, after taking all reasonable steps to return it under paragraph (1)(a) or (b) of this section, the authorised officer considers on reasonable grounds that:
- (a) its owner or the person who last controlled the thing cannot be identified; or
 - (b) the thing is abandoned; or
 - (c) if it appears that the thing is owned or was controlled by a detainee—the thing cannot be returned to the detainee when the detainee ceases to be in detention; or
 - (d) if it appears that the thing is owned or was controlled by a person other than a detainee—the thing cannot be returned to the person.
- (3) If a prohibited thing is forfeited under subsection (2), the authorised officer may dispose of it in any way the officer thinks appropriate.

24 Section 252D (heading)

Repeal the heading, substitute:

252D Retention of certain seized things for extended period— application for order by magistrate

25 Subsection 252D(1)

Omit “has taken possession of a thing referred to in subsection 252C(4)”, substitute “seized a thing under paragraph 252C(1)(d)”.

26 Paragraph 252D(1)(a)

Omit “takes possession of”, substitute “seizes”.

27 Section 252E (heading)

Repeal the heading, substitute:

252E Retention of certain seized things for extended period—order by magistrate

28 Section 252G (heading)

Repeal the heading, substitute:

252G Persons entering immigration detention facilities—screening powers

29 Subsection 252G(1)

Omit “a detention centre established under this Act”, substitute “an immigration detention facility operated by or on behalf of the Commonwealth”.

30 After subsection 252G(1)

Insert:

- (1A) An officer may make a request to a person under subsection (1) whether or not, before making the request, the officer has any suspicion that there is in the person’s possession a thing mentioned in subsection (3).

31 Subsection 252G(3)

Repeal the subsection, substitute:

- (3) An authorised officer may request that a person do something under subsection (4) if the person is about to enter an immigration detention facility operated by or on behalf of the Commonwealth, and the officer suspects on reasonable grounds that there is in the person’s possession:
- (a) a thing that:

- (i) might endanger the safety of the detainees, staff or other persons at the facility; or
- (ii) might disrupt the order or security arrangements at the facility; or
- (b) a prohibited thing.

(3A) A request may be made under subsection (4) that a person do something whether or not a request is also made under subsection (1) that the person do something.

32 Paragraph 252G(4)(e)

Repeal the paragraph, substitute:

- (e) leave a thing in the person's possession, or some or all of its contents, in a place specified by the authorised officer, if the officer suspects on reasonable grounds that the thing or anything in its contents:
 - (i) might endanger the safety of the detainees, staff or other persons at the immigration detention facility; or
 - (ii) might disrupt the order or security arrangements at the facility; or
 - (iii) is a prohibited thing.

33 Subsection 252G(5)

Omit "A person", substitute "Subject to subsections (6) and (6A), a person".

34 Subsection 252G(5)

Omit "detention centre", substitute "immigration detention facility".

35 Subsection 252G(6)

Omit "However, if", substitute "If".

36 Subsection 252G(6)

Omit "detention centre", substitute "immigration detention facility".

37 After subsection 252G(6)

Insert:

(6A) If a person leaves a prohibited thing determined under paragraph 251A(2)(b) in a place as mentioned in subsection (5) of this section, it is forfeited to the Commonwealth if an authorised officer considers on reasonable grounds, after taking all reasonable steps to return the thing to the person for the purposes of subsection (5), that:

- (a) its owner or a person who controls the thing cannot be identified; or
- (b) the thing is abandoned; or
- (c) the thing otherwise cannot be returned to the person.

Note: Paragraph 251A(2)(b) covers the determination of a thing as a prohibited thing if the Minister is satisfied that its possession or use in an immigration detention facility might be a risk to the health, safety or security of persons in the facility, or to the order of the facility.

(6B) If a prohibited thing is forfeited under subsection (6A), the authorised officer may dispose of it in any way the officer thinks appropriate.

38 Subsection 252G(7)

Omit “a detention centre established under this Act”, substitute “an immigration detention facility”.

*[Minister’s second reading speech made in—
House of Representatives on 21 November 2024
Senate on 27 November 2024]*

(155/24)