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## ***High Court challenge to secrecy laws welcomed by lawyers***

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**The *Australian Border Force Act 2015* (Cth) undermines our constitutional freedoms. The Australian Lawyers Alliance supports Doctors for Refugees and Fitzroy Legal Service bringing this problem to the High Court.**

Fitzroy Legal Service and Doctors for Refugees will today launched a High Court challenge seeking to protect one of Australia's few constitutional rights. The *Australian Border Force Act 2015* (Cth) (ABF Act) breaches the protection of freedom of political communication and is therefore unconstitutional, they argue.

"This is an important case to bring to Australia's highest court", said ALA spokesperson Greg Barns.

"These secrecy provisions stop doctors and nurses advocating on behalf of their patients, which is fundamental to their ability to do their job and fulfil their professional obligations.

"It appears clear that the secrecy provisions of this Act infringe a right that is foundational to our democracy. The freedom of political communication ensures that we are able to discuss political issues, explore facts and understand what is done in our name. All Australians have an interest in knowing what happens in immigration detention. To place a blanket ban on discussing these issues shows contempt for the Australian people," Mr Barns said.

Freedom of political communication is required to give effect to a number of key provisions under the Constitution. This freedom is supported by substantial case law. [Lange v ABC](#) established a two-part test to determine whether the freedom has been infringed.

"There is no doubt that the ABF Act meets the first question posed in Lange. It 'effectively burden[s] freedom of communication about government or political matters' by preventing 'entrusted persons' from recording or disclosing 'protected information'", Mr Barns explained.

People working in immigration detention facilities cannot talk about what they see at work, or they are at risk of a two-year prison sentence, according to section 42 of the ABF Act.

“Treatment of refugees and asylum seekers in immigration detention is one of the most fraught political matters that we confront today, and the ABF Act threatening doctors and nurses working in immigration detention with two years’ prison for advocating on behalf of their patients appears to grossly impinge on constitutional rights”, said Mr Barns.

If the first part of the test is satisfied, the restriction must be shown to be “reasonably appropriate and adapted to serve a legitimate end”. If this cannot be demonstrated, the restriction is unconstitutional.

Assessing whether the restriction is permitted under the second part of the test requires clarity about why this law is considered necessary.

“It is not clear why the secrecy provisions were considered so important in the ABF Act to begin with. The [Explanatory Memorandum](#) states that the secrecy laws in the ABF Act are not new, that they already existed in the now-repealed *Customs Administration Act*, but that Act never applied in immigration detention facilities, so did not have this impact on peoples’ health. I am yet to see how the government argues that this significant restriction of freedom of political communication is ‘reasonably adapted and appropriate to serve a legitimate end’. What is the legitimate end being served?

“The Minister has [said](#) it is to protect ‘operationally sensitive information’, although what this means is not clear. The [Statement of Compatibility with Human Rights](#) appeared to link the provisions to privacy and protection of reputation. Whose reputation is the Department is most concerned about?

“It is hard to see how two years in prison is reasonably adapted and appropriate, especially in the face of significant public interest in this topic”, said Mr Barns.

“Asylum seeker issues, including what is happening in both onshore and offshore detention facilities, is a matter of great importance to many people. We all have a right to know what is being done in our name. If secrecy is the presumption, there is no way that the public can engage with government openly on this issue. These concerns go well beyond direct concern for the wellbeing of asylum seekers and refugees, although that is certainly important. Taxpayer dollars are being spent on these facilities and it’s entirely reasonable that we are able to access information regarding how that money is being spent”, said Mr Barns.

The ALA raised concerns regarding this legislation in our recent report, [Untold Damage](#).

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