



Jeremy Wolter

Senior Policy Officer
Legislation and Policy Branch
Strategic and Financial Services
Corrections Victoria
PO Box 123A
Melbourne Vic 3001

23 February 2009

Review of Corrections Regulations 1998 (Vic)

Dear Mr Wolter

Thank you for the opportunity to comment on the proposed new Corrections Regulations 2009 ("Proposed Regulations").

The Federation of Community Legal Centres (Vic) Inc is the peak body for Victoria's 52 community legal centres.

The Federation supports the stated intention behind the changes embodied in the Proposed Regulations, and in particular the intention to:

- clarify aspects of correctional services;
- provide greater transparency;
- ensure compliance with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ("the Charter"); and
- improve transparency and accountability by including in the Proposed Regulations aspects of correctional services that are currently governed by administrative policy.

This last issue is particularly important in promoting consistency of standards throughout Victorian prisons given that privatised prisons operate according to different administrative policies from public prisons.

The Proposed Regulations improve on the Corrections Regulations 1998 in many respects. However, we are concerned that some aspects of the Proposed Regulations fall short of acceptable human rights compliant standards.

We have reviewed the submission of the Human Rights Law Resource Centre (HRLRC). We support the recommendations of that submission. We make the following additional comments below.

Strip searches (Part 6, Division 1)

It is our strong view that the practise of mandatory strip searching prisoners is incompatible with the Charter for the following reasons:

- strip searches are traumatising, humiliating and degrading, particularly for prisoners who have been victims of sexual abuse;

Suite 11, Level 1
54 Victoria Street
Carlton South
Victoria 3053

Tel: 03-9652 1500
Fax: 03-9654 5204
administration@fclc.org.au
www.communitylaw.org.au

Federation of
Community Legal Centres
(Vic) Incorporated
Registration A0013713H
ABN 30 036 539 902

- strip searches deter prisoner contact with family and friends;
- strip searches have limited effectiveness as a means of discovering drugs, weapons or other unauthorised items (see paragraph 138 of the HRLRC submission); and
- there are far less degrading and potentially far more effective means of discovering unauthorised items (eg: ion scanner, metal detector).

In our view, a strip search is only justified where the authorised prison officer holds a reasonable belief that:

- the prisoner is concealing an unauthorised item; and
- the strip search is a necessary and proportionate means of searching for the item (ie; there are no less intrusive means of searching available).

It is critical that the Proposed Subregulations be amended to reflect this.

In particular, Proposed Subregulations 69(2) and (3) should be amended to reflect this. The current drafting (“a reasonable belief that a strip search is necessary for the security and good order of the prison”) is unacceptably arbitrary.

Similarly, Proposed Subregulation 69(4) should be also be amended in this way. The subregulation currently relies only on the subjective belief of the officer (ie: it does not even require that this belief be reasonable). The language of subparagraph (b) is too broad and arbitrary.

Proposed Subregulation 69(6) is a significant improvement on the current Regulations. It could be further improved by mandating the “partial strip search” method which we understand is operating effectively at Dame Phyllis Frost Centre and Tarrengower Prison (ie: a strip search that does not involve total nudity at any one time - the prisoner removes their top, then puts it back on before removing their pants). This method of searching is less traumatising and degrading for prisoners but does not prejudice the effectiveness of the search.

Reporting

There are a range of reporting requirements in the Proposed Regulation and the *Corrections Act 1986* (Vic) (“the Act”) which safeguard against the abuse of particular powers granted to prison authorities which can have a severe impact of prisoner human rights and wellbeing.

Proposed Subregulation 69(7) requires a Governor to keep a register with details of strip searches. Proposed Regulation 27 requires that separation orders be made in writing. Proposed Regulation 16 requires prison officers to report the use of restraints to the Governor (other than handcuffs in certain circumstances). Section 23 of the Act mandates internal reporting of certain instances where force is used by prison officers against a prisoner.

These safeguards should be strengthened by mandating through the Proposed Regulations or the Act, annual public reporting by Corrections Victoria for each Victorian prison of:

- the number of use of force incidents and type of force used (eg; hand, baton, OC

- spray, firearm);
- the number of times, type and duration of use of restraints;
 - the number of strip searches and unauthorised items located through strip searches; and
 - the number and duration of separation orders.

Please let us know if you require any further information.

Sincerely

A handwritten signature in grey ink, appearing to read 'H de Kretser', with a horizontal line extending to the right.

Hugh de Kretser

Executive Officer