

Discussion Paper

Corrections Regulations 2019

Corrections Victoria

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1 Introduction

1.1 Purpose

This Discussion Paper has been prepared to facilitate public consultation on the proposed Corrections Regulations 2019 (Proposed Regulations).

A copy of the Proposed Regulations is provided as **Attachment 1** to this document. A copy of this document and the Proposed Regulations are also available on the Engage Victoria website at engage.vic.gov.au/corrections-regulations-2019.

The purpose of this document is to explain the objectives of the Proposed Regulations, identify and evaluate alternatives for meeting those objectives, and compare the costs and benefits of the Proposed Regulations and the alternatives.

1.2 Written submissions

Written submissions from the public are invited on the Proposed Regulations in response to the information provided in this document. Unless otherwise requested in the submission, all submissions will be treated as public documents and will be available to other stakeholders by being posted on the Engage Victoria website at engage.vic.gov.au/corrections-regulations-2019. The closing date for submissions is 13 March 2019. You can provide written submissions through Engage Victoria or direct them to:

Correction Regulations 2019 Submissions
Legal Policy Branch
Strategic Policy and Planning Division
Corrections Victoria
Department of Justice and Community Safety
GPO Box 4356
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2 Background

The criminal justice system in Victoria includes the detection and investigation of criminal activity by the police, the prosecution of accused persons by the Office of Public Prosecutions, the trial of accused persons and sentencing of offenders by the courts, and the management of court imposed sentences by Corrections Victoria.

The main roles of Corrections Victoria within the criminal justice system are to:

- ◆ build and manage a sustainable corrections system, including prisons and community correctional services, that allows Victoria to respond and adapt to changing priorities and trends in Victoria's growing prisoner and offender population
- ◆ manage risk and enhance community safety, while upholding human rights obligations, and
- ◆ reduce reoffending by rehabilitating offenders, providing case management and delivering programs that engage prisoners and offenders in positive behavioural change and social participation.

The *Corrections Act 1986* (Corrections Act) provides the legislative basis for the delivery of correctional services by Corrections Victoria. While the Corrections Act sets out most of the framework for how correctional services are regulated, the Corrections Regulations 2009 (Current Regulations) prescribe key matters under the Corrections Act that enable the effective operation of the framework.

In Victoria, regulations automatically expire after 10 years. This process is referred to as 'sunsetting'. The process provides an opportunity to revisit existing regulations and examine whether they are still required, and if so, whether there are ways to improve them.

The Current Regulations are due to sunset on 28 April 2019. A new set of regulations are required to replace them. This Discussion Paper explains the objectives of the new set of regulations, identifies and evaluates alternatives for meeting those objectives, and compares the costs and benefits of the Proposed Regulations and the alternatives.

3 Institutional framework of correctional services in Victoria

Corrections Victoria operates in a complex environment and is required to respond to community expectations about crime and deterrence, community safety, uphold offenders' and prisoners' human rights, and promote the rehabilitation of offenders and prisoners. These requirements are fulfilled through an interconnected framework of legislation, subordinate legislation, policies and administrative arrangements.

On the legislation level, the Corrections Act sets out the overall legal framework for the corrections system in Victoria. In addition, the *Charter of Human Rights and Responsibilities Act 2006* (Charter) and the *Public Administration Act 2004* impose additional obligations on public authorities, including correctional staff. The Charter provides for the human rights responsibilities of the public sector and the Public Administration Act provides a framework of governance in public administration. Certain matters of the regulatory framework are not specified in the Corrections Act and are instead specified in the Current Regulations.

In all Australian jurisdictions, the Standard Guidelines for Corrections in Australia (Guidelines) constitute outcomes or goals to be achieved by correctional services. The Guidelines have been developed and published collaboratively by the correctional authorities from each Australian jurisdiction. The guiding principles set out in the Guidelines provide for the goals that are expected from each jurisdiction in the areas of community corrections and management of prisoners and prisons. While each Australian jurisdiction has its own regulatory regime for the provision of correctional services, the differences between these regimes are often matters of detail or legislative drafting style, rather than representing a different approach.

Alongside the Guidelines, each jurisdiction develops its own range of relevant legislative, policy and performance standards that are amended from time to time to reflect best practice and community demands.

3.1 Legislative basis

The Corrections Act sets out the broad legal framework for the delivery of correctional services in Victoria. The main purposes of the Corrections Act are to provide for:

- ◆ the establishment, management and security of prisons and the welfare of prisoners
- ◆ the administration of services related to community-based corrections and the welfare of offenders, and
- ◆ other correctional services.¹

To achieve these purposes, the Corrections Act:

- ◆ establishes the legal custody of a person
- ◆ provides for the administration of the corrections system
- ◆ enables the engagement of contractors to provide correctional services
- ◆ establishes the legal basis of prisons, police gaols and transition centres and other correctional facilities, and provides for the management and administration of prisons and police gaols
- ◆ allows the employment of prison officers and other officers working in prisons and community correctional services, and sets out the powers and functions of these officers
- ◆ establishes the parole system
- ◆ provides for the transport of prisoners
- ◆ establishes the community corrections system
- ◆ provides for various corrections programs provided to offenders and prisoners, and
- ◆ authorises the use or disclosure of information regarding prisoners or offenders.

Alongside the Corrections Act, the Charter sets out the basic rights, freedoms and responsibilities of all people in Victoria, including prisoners and offenders. The Charter requires public authorities, such as Corrections Victoria, to act compatibly with the human rights protected by the Charter, and to properly consider human rights when developing policies, making laws, delivering services and making decisions. Courts are required to interpret provisions in an Act or subordinate instrument in a way that is compatible with human rights, so far as it is possible to do so consistently with the purpose of the relevant provision.²

Many of the rights protected under the Charter are relevant in the context of providing correctional services, as prisoners' and offenders' rights are often affected. These rights include:

- ◆ recognition and equity before the law
- ◆ right to life
- ◆ protection from torture, inhuman or degrading treatment
- ◆ freedom from forced work

¹ *Corrections Act 1986 (Vic)* s1.

² *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s32.

- ◆ freedom of movement
- ◆ privacy and reputation
- ◆ freedom of thought, conscience, religion and belief
- ◆ freedom of expression
- ◆ peaceful assembly and freedom of association
- ◆ protection of families and children
- ◆ right to take part in public life
- ◆ cultural rights
- ◆ property rights
- ◆ right to liberty and security of person
- ◆ right to humane treatment when deprived of liberty
- ◆ right to a fair hearing
- ◆ rights in criminal proceedings, and
- ◆ right not to be tried or punished more than once.³

Section 38 of the Charter provides that it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

The human rights protected by the Charter are not absolute, as there is a need to balance the rights against one another and other social outcomes. The Charter recognises this and provides that human rights may be subject to such reasonable limits under law as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including:

- ◆ the nature of the right
- ◆ the importance of the purpose of the limitation
- ◆ the nature and extent of the limitation
- ◆ the relationship between the limitation and its purpose, and
- ◆ any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.⁴

3.2 Current Regulations

While the Corrections Act sets out the overarching framework for the regulation of corrections related matters, the Current Regulations outline specific details in relation to elements of the Corrections Act. The Current Regulations are made under the regulation making powers set out in sections 112 and 112A of the Corrections Act.

The Current Regulations are included as **Attachment 2** to this document.

The main objectives of the Current Regulations are to:

- ◆ provide for the management, administration and security of prisons and locations

³ *Charter of Human Rights and Responsibilities Act 2006 (Vic)* ss 8-27.

⁴ *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 7.

- ◆ provide for the welfare of prisoners and offenders, and
- ◆ prescribe various forms and procedures and other matters authorised by the Corrections Act.⁵

The Current Regulations cover a wide range of matters relevant to the delivery of correctional services. The key matters regulated by the Current Regulations are summarised below:

Table 1: Summary of Current Regulations

Current Regulations	Matter	Details
Part 2	Officers	The Current Regulations establish a code of conduct for officers. The Current Regulations also enable psychiatrists, medical practitioners, dentists, nurses and health workers, whether or not employed by the Government or a government agency, to work in a prison or a community corrections location as health services workers.
Part 3	Management and Security	The Current Regulations set out key matters in relation to prison management and security and include regulations in relation to: <ul style="list-style-type: none"> ▪ non-lethal firearms at prison locations ▪ approved dogs ▪ instruments of restraints and their manner of use ▪ movement and control of letters and parcels within prison locations ▪ the process of removal of prisoners to attend court hearings ▪ the process of determining the security classification and placement of prisoners ▪ distribution, account keeping and prisoner's monies and savings ▪ the specifics of work, remuneration and paid employment schemes for prisoners ▪ storage, disposal and management of prisoners' property ▪ prisoner privileges ▪ placement of children of prisoners within prisons, and ▪ prescribed persons that are permitted to operate remotely piloted aircraft or helicopters within the vicinity of prisons.
Part 4	Prison discipline	Under the Corrections Act, prisoners that are found guilty of a prison offence can be disciplined by a reprimand, a fine not exceeding 1 penalty unit, or the withdrawal of privileges up to 14 days for each prison offence and up to 30 days in total. ⁶ The list of prison offences is provided and the processes of disciplinary hearings are set out in the Current Regulations.
Part 5	Access to prisoners	The Current Regulations set out the specific procedures of prison visits by non-prisoners, including times and conditions of prison visits.
Part 6	Search, seizure and testing	The Current Regulations set out the requirements of various types of searches, seizures and testing procedures in prison environments to support the Corrections Act.
Part 7	Emergency management days	The Current Regulations set out the calculation and the number of emergency management days available in the circumstances covered by the Corrections Act. Emergency management days can be used by the Secretary to reduce the sentence of a prisoner on account of good behaviour in some

⁵ *Corrections Regulations 2009* (Vic) reg 1.

⁶ *Corrections Act 1986* (Vic) s53(4).

Current Regulations	Matter	Details
		circumstances that the prisoner is adversely affected, such as a prison emergency.
Part 8	Release from prison	<p>The Current Regulations set out the procedures and forms used by the Adult Parole Board, as well as the specific terms and conditions of parole orders and the processes of changing or cancelling these orders. The Current Regulations also provide for arrest and detention orders when there is a breach of parole.</p> <p>The processes of returning prisoners unlawfully released are also provided under the Current Regulations.</p> <p>The Current Regulations set out 'prescribed terms and conditions' of parole within the meaning of the Corrections Act. Breaching a prescribed term or condition of parole is an offence.</p>
Part 9	Community based corrections	<p>Part 9 of the Current Regulations set out various matters in relation to community based corrections to support the operation of the Corrections Act. The Current Regulations provide a list of offences in relation to offenders participating in community corrections programs. The penalty for these offences is a fine of up to 10 penalty units, which is \$1,611.90 from 1 July 2018 to June 2019.</p> <p>In addition, the Current Regulations provide that an offender's contravention of the Corrections Act, the Current Regulations or a direction of the Secretary, a Regional Manager or an officer is an act of misconduct for the purposes of the Corrections Act. The Corrections Act provides that the Regional Manager may investigate and deal with acts of misconduct.</p> <p>The Current Regulations also set out the procedures of recording and managing seized articles or substances from offenders.</p>
Part 9A	Prisoner compensation quarantine fund	Part 9C of the Corrections Act establishes the prisoner compensation quarantine fund for the purpose of awarding damages to a prisoner in respect of a claim made by or on behalf of the prisoner against the State for a civil wrong. The Current Regulations set out forms that are used by a prisoner to notify the Secretary to the Department of Justice and Community Safety (DJCS) of a claim or the determination of a claim.
Part 9B	Use or disclosure of information	Section 104ZY(2)(dj) of the Corrections Act allows a relevant person to use or disclose personal or confidential information to a person or body prescribed by the regulations. The Current Regulations list a number of State and Commonwealth Agencies for this purpose.

3.3 Policies and administrative arrangements

The policies and administrative arrangements for correctional services in Victoria are comprised of a range of standards, policy guidelines, procedures and manuals that apply across the state, and Local Operating Procedures that apply to prisons, depending on the circumstances of the particular prison. These documents supplement the Corrections Act and the Regulations and include matters that range from the day to day security and operation of prisons and community correctional services, as well as matters that are constantly evolving. These policy documents must comply with the requirements of the Corrections Act and the Regulations.

The key types of policy documents are explained in table 2.

Table 2: Policy documents

Type of policy documents	Purpose
Correctional Management Standards	<p>The Correctional Management Standards are published by Corrections Victoria. These policy documents establish minimum standards for the management of various aspects of Victoria's correctional services, including management for men's and women's prisons, community correctional services and post-sentence supervision and detention of serious offenders.</p> <p>These policy documents provide a reference point for Corrections Victoria staff and serve as a benchmark against which the system can be monitored. They provide the support for ensuring accountability and a consistent level of service delivery across the system.</p>
Commissioner's Requirements	<p>Commissioner's Requirements are policy documents that set out high level requirements in respect of operational matters. They are issued when specificity is required to ensure consistency of correctional practice across the whole prison system.</p>
Deputy Commissioner's Instructions	<p>Deputy Commissioner's Instructions set out specific requirements and day-to-day procedures in respect of operational matters at prisons. They are provided to prison operators and are observed to ensure consistency in delivering correctional services.</p>
Local Operating Procedures	<p>Local Operating Procedures are developed by each prison location to support the implementation of legislative and administrative requirements, taking into account the individual circumstances of the prison, such as size, security level and facilities. These operating procedures must comply with the requirements of the Corrections Act, the regulations, the Commissioner's Requirements and the Deputy Commissioner's Instructions.</p>

4 Issues to be addressed

4.1 Why do the Regulations need to be remade?

As previously noted in this document, the Current Regulations are due to sunset on 28 April 2019. The Current Regulations provide critical support to the legal framework for the provision of correctional services. The corrections system would function without the Regulations, but it would create major operational challenges, as a number of key elements of the framework would be left ambiguous.

To examine the full impact of the sunseting regulations, a qualitative assessment of the impact of allowing the regulations to expire (zero regulation) is shown in the Appendix. The assessment demonstrates that the option of no regulation is not viable in the correctional services context, as it will create significant disruption to the overall correctional system in Victoria.

In the unique case of correctional services, matters set out in the Current Regulations are critical to the operation of the overall regulatory framework of providing correctional services in Victoria. Key elements of the Corrections Act rely on the existence of the regulations, and there are unacceptable individual and social risks to prisoners, prison staff and the State if these key elements of correctional services are not regulated.

4.2 Issues to be addressed by the Proposed Regulations

Correctional services must be provided in a manner that ensures the safety, security and wellbeing of all individuals involved within that system and the general community, and in a manner that is compatible with the obligations outlined in the Charter. In the unique case of correctional services, formal measures are often required to ensure the safety, security and good order of prisons and the safety and security of the general community. It is important that these measures are balanced with the human rights of prisoners, offenders, prison staff and visitors to prisons.

Similar to the Current Regulations, the Proposed Regulations need to fill important gaps in the regulatory framework. It is also necessary to consider whether the measures included in the Current Regulations are the overall better options as compared to other alternatives.

The key issues that need to be addressed by the Proposed Regulations are summarised below.

4.2.1 Health, safety and security of prisoners

It is necessary for Corrections Victoria to ensure the safety and wellbeing of prisoners. In particular, the State needs to take positive steps to safeguard the wellbeing of vulnerable prisoners in the prison system.

4.2.2 Safety, security and wellbeing of other members of the prison community

The safety and welfare of correctional officers, prison staff, visitors and other persons within prisons and the general public need to be ensured. It is important that prisons are managed in a manner that safeguards the wellbeing of all persons in prisons.

4.2.3 Standard of conduct of prison staff, prisoners and visitors

It is important for prison staff, prisoners and visitors to be informed about acceptable conduct or behaviour within prisons, as well as the consequences of breaching the required standard of behaviour, to properly ensure the wellbeing of all persons in prisons and to reduce the risk of misconduct.

4.2.4 Control of dangerous articles and substances

A key aspect of ensuring the safety and good order of prisons is to ensure that dangerous articles or substances are prohibited in prisons. Measures to identify these articles or substances and prevent them from being accessed by prisoners need to be implemented.

4.2.5 Effective operation of community based corrections

Corrections Victoria needs to facilitate the effective operation of the Adult Parole Board (APB) and ensure court orders and APB orders are enforced. Corrections Victoria also needs to enable various community based programs in the Corrections Act to provide opportunities for offenders to make reparation to the community, facilitating access to appropriate programs and services to reduce the risk of re-offending and to rehabilitate and reintegrate offenders back into the community.

4.2.6 Managing risks to the community

Corrections Victoria needs to minimise the risk of prisoner escape and attempted escape, both of which can lead to serious injuries of prisoners, correctional officers and members of the general community.

Nationally in 2016-17, the rate of prisoner escapes was 0.38 per 100 prisoners and 0.03 per 100 prisoners held in secure custody, as compared to 0.22 and 0.02 in Victoria.⁷ The high risk of serious injury for offenders, accomplices, corrections staff or the general community in the event of an escape or attempted escape from custody favours a continuation of the effective prisoner management measures currently in place in Victoria.

For community based corrections, Corrections Victoria needs to manage the risk of offenders defaulting on their community based orders. Offenders engaging in dangerous behaviour and defaulting from orders can pose safety risks to the general public and correctional staff, as well as damaging the public's confidence in the criminal justice system.

4.2.7 Human rights

The Charter is particularly relevant in the context of correctional services, as the nature of correctional environments means that certain rights will inevitably be subject to limitations, for example, the right to liberty (section 21) and to freedom of movement (section 12). The provision of correctional services must be undertaken compatibly with the Charter, with prisoners' and offenders' rights only being subject to such reasonable limits as can be demonstrably justified in a free and democratic society, based on human dignity, equality and freedom, and taking into account all relevant factors including the nature of the rights, the importance of the purposes of the limitation, the relationship between the limitation and its purpose, and whether any other less restrictive means are reasonably available to achieve the purpose of the limitation.

4.2.8 Transparency and accountability

The Proposed Regulations need to be transparent and accountable. To the extent that it is practicable, the Proposed Regulations should clearly set out processes, powers and obligations in the correctional services context to safeguard prisoners' and offenders' rights, as well as protect the integrity of the criminal justice system.

4.2.9 Financial cost of providing correctional services

The costs of providing correctional services are significant. The total output cost of providing prisoner supervision and support in the financial year 2017-18 was \$1.32 billion, and the total output cost of providing community based offender supervision in the same financial year was \$229.2 million. Public resources are not infinite and, for this reason, the delivery of correctional services needs to be both effective and efficient. The Proposed Regulations should facilitate the sound management of public resources.

⁷ Productivity Commission, *Report on Government Services 2018* (February 2018), Table 8.3.

4.2.10 Impact on competition

Victoria is a party to the Competition Principles Agreement, which requires any new legislative or regulatory proposal to be assessed to ensure that it does not restrict competition, unless it can be demonstrated that the objectives of the proposal can only be achieved by restricting competition, and the benefits of the restriction, as a whole, outweigh the costs.

The implementation of formal regulatory requirements as set out in the Current Regulations or the Proposed Regulations will not restrict competition.

5 The Proposed Regulations

The Proposed Regulations are substantially a rewrite of the Current Regulations and include technical changes and language updates. This section sets out the Proposed Regulations' overall content and structure, the specific changes as compared to the Current Regulations, and explains the reasons that the measures included in the Proposed Regulations are the preferred regulatory options.

5.1 Overview of structure

The Proposed Regulations cover the same matters as the Current Regulations. However, the structure has been updated to improve its overall readability and accessibility. Minor language and technical updates have also been included throughout the Proposed Regulations. The changes in the Proposed Regulations are summarised below:

Table 3: Summary of Proposed Regulations

Proposed Regulation Parts	Changes as compared to the Current Regulations
Part 1 – Preliminary	The structure of this Part is largely similar to the Current Regulations. The definitions have been updated to include the definitions of 'unauthorised substance or article' and 'controlled article or substance', which are currently found under regulation 33 of the Current Regulations.
Part 2 – Officers	This Part of the Proposed Regulations has not received substantial changes.
Part 3 – Management and security	The provisions in relation to instruments of restraint have been updated. In particular, spitter protective hoods have been included as an instrument of restraint and the manner of use for these instruments has been updated. The Proposed Regulations also allow a tailoring of privilege for an individual prisoner and for a category or classification of prisoner, in addition to privileges for a prison generally.
Part 4 – Prisoner's money	Provisions in relation to prisoner's money have been grouped into Part 4 of the Proposed Regulations. In the Current Regulations, they are scattered across multiple Parts.
Part 5 – Prisoner's property	Similar to Part 4, provisions in relation to prisoner's property have been grouped together. Provisions have been included to allow the Governor of a prison to store unclaimed prisoner property for more than 3 months. The provisions are discussed in detail in section 5.2 of this document.
Part 6 – Prison discipline	Part 6 of the Proposed Regulations inherits the structure of Part 4 of the Current Regulations. The list of prison offences has been updated to include family violence and certain communication that undermines the safety, security or good order of a prison or the safety or welfare of prisoners or any person.
Part 7 – Access to prisoners	The provisions in Part 7 of the Proposed Regulations are by and large similar to Part 5 of the Current Regulations. Some of the provisions have been updated to specifically refer to the relevant sections of the Corrections Act under which they are made. Information that must be provided by a visitor under the Proposed Regulations has been updated to clarify the types of identity documents that can be provided to a prison officer.
Part 8 – Search, seizure and testing	The Proposed Regulations include language updates and restructuring of certain provisions to improve overall structure and transparency. Some provisions that are currently scattered across different Parts have been consolidated. Amendments have been made to strip search provisions to improve safeguards for trans and gender diverse people, as well as clarifying the circumstances in which strip searches are permitted on prisoners and visitors.
Part 9 – Emergency management days	Part 9 of the Proposed Regulations follows the same structure as Part 7 of the Current Regulations. The provisions' language has been updated to provide improved clarity.

Proposed Regulation Parts	Changes as compared to the Current Regulations
Part 10 – Release from prison	Part 10 of the Proposed Regulations includes the discharge procedures covered in Divisions 1 and 4, Part 8 of the Current Regulations. There have been no substantial changes to these provisions.
Part 11 – Parole	In the Proposed Regulations, provisions in relation to parole have been grouped together into Part 11. The provisions continue to provide for the procedures of the Adult Parole Board and parole conditions. Some specific changes have been made to parole conditions. These are discussed in detail in section 5.2 of this document.
Part 12 – Community based corrections	Part 12 of the Proposed Regulations covers the same matters as Part 9 of the Current Regulations. The structure of some of these provisions has been rearranged to improve readability. Amendments have been made to the process of providing a written copy of a parole revocation order or a cancellation order to a prisoner.
Part 13 – Other matters	Provisions in relation to the forms for the prisoner compensation quarantine fund, disclosure of information and exemptions for emergencies have been grouped into Part 13 of the Proposed Regulations. In addition, a new provision in relation to the purchase of a prisoner's artwork has been included.
Schedules	Schedules 2 to 14 of the Current Regulations prescribe forms for a number of purposes under the Corrections Act. These Schedules have been consolidated into a single Schedule in the Proposed Regulations.

5.2 Specific issues and preferred options

The provision of correctional services involves the management of prisoners, offenders, and persons placed on remand. As noted previously in this document, there is an evident need to regulate the behaviour of prisoners, offenders and prison operations by formal regulations.

Viable options are options that can be delivered within the legal bounds set by the Corrections Act and the Charter. The content and approach of the Proposed Regulations are directly referable to the provisions of the Corrections Act, and must be supported by the Corrections Act or other legislation, as well as the Standard Guidelines for Corrections in Australia.

In finalising the exposure draft of the Proposed Regulations as the preferred option, Corrections Victoria has reviewed the costs and benefits of the options discussed in this section. Of the specific issues of correctional services analysed, the options that deliver the greatest net public benefit are incorporated into the Proposed Regulations. The cost-benefit analysis demonstrates that adopting the measures in the Proposed Regulations will deliver a set of more transparent regulations and a greater net benefit as compared to the Current Regulations.

5.2.1 Instruments of restraint

The use of instruments of restraint needs to be regulated within a prison to ensure the safety and good order of a prison is balanced against the individual human rights of prisoners. The Current Regulations regulate the circumstances in which officers can use instruments of restraint to control prisoners, as well as setting out the instruments of restraint that are used in prisons.

While the use of any instrument of restraint necessarily impedes the personal freedom of a prisoner, instruments of restraint are used in the Victorian corrections system only where this is appropriate for security or safety reasons. The main purpose of instruments of restraint is to prevent escape attempts and to prevent injuries of prisoners or prison officers, as well as significantly reducing the risk of a firearm being used by prison officers.

The following human rights in the Charter are relevant to the use of instruments of restraint in prisons:

- ◆ the right to freedom of movement (section 12)

- ◆ the protection from cruel, inhuman or degrading treatment or punishment (section 10(b)), and
- ◆ the right to humane treatment when deprived of liberty (section 22(1)).

Section 10(b) of the Charter provides that a person must not be ‘treated or punished in a cruel, inhuman or degrading way’. Ill-treatment must meet a minimum standard, or threshold, of severity before it can amount to cruel, inhuman or degrading treatment. The minimum standard depends on all the circumstances of the case, including the duration of the treatment, its physical and mental impact to the affected persons, and the sex, age and state of health of the persons affected.

The right under section 10(b) will be engaged if the use of restraint is disproportionate to the purposes it seeks to achieve and results in physical or psychological pain and suffering beyond the minimum threshold of severity. The preferred options in relation to instruments of restraint and their manner of use must be proportionate to the safety and security risks posed by a prisoner.

Section 22(1) of the Charter provides that all persons deprived of liberty ‘must be treated with humanity and with respect for the inherent dignity of the human person’. It applies when a person is deprived of liberty, whether convicted of a crime or otherwise.

Manner of use

Similar to the Current Regulations, the Proposed Regulations regulate the circumstances in which prison officers and escort officers can use instruments of restraint to control prisoners. The Current Regulations provide that an instrument of restraint can be applied to a prisoner by a prison officer or an escort officer if:

- ◆ the Governor of a prison believes on reasonable grounds that the use of an instrument of restraint is necessary, or
- ◆ the immediate safety of a prisoner or the security of the prison is threatened, and the officer believes on reasonable grounds that the use of an instrument of restraint is necessary.

The threshold to use instruments of restraint has been clarified in the Proposed Regulations. The Proposed Regulations provide that a prison officer or an escort officer may apply an instrument of restraint if:

- ◆ the Governor of a prison believes on reasonable grounds that the use of an instrument of restraint is necessary *for the safety of a prisoner or any other person, or the security or good order of the prison, or*
- ◆ the immediate safety of a prisoner *or any other person within the prison, or the security or good order of the prison* is threatened, and the officer believes on reasonable grounds that the use of an instrument of restraint is necessary *to protect the safety of the prisoner or the other person or the security or good order of the prison.*⁸

Options analysis

The options to regulate the manner of use of instruments of restraint have been considered. These include:

- ◆ retaining the current level of regulation (Option 1)
- ◆ including a higher level of detail in relation to the threshold of using instruments of restraint (Option 2) (preferred option)

⁸ Proposed Regulations, reg 14.

Option 1

There are no specific prison resourcing costs in relation to Option 1, as retaining the current form of regulations would not incur any specific administration and monitoring cost. However, retaining the current level of regulation means that the Proposed Regulations may not be as transparent as possible in light of the requirements of the Charter. This may lead to a higher risk of legal challenges.

If the current form of the regulations is retained, the regulations would not expressly state the additional requirements that a Governor must consider before instruments of restraint are used. Without these requirements expressly stated in the regulations, it would be more difficult for Corrections Victoria to ensure the transparency and integrity of the use of coercive force in prisons. These impacts cannot be quantitatively measured.

It is possible that the current form of regulations provides for a higher degree of discretion for the decision maker, as instruments of restraint can be used when the decision maker considers that it is necessary. However, this may ultimately lead to higher social and financial costs due to the scope of the discretionary powers in the current form of regulations being too broad to invite legal challenges.

Option 2 (preferred option)

Corrections Victoria considers that there is no additional administration costs for providing a higher level of detail in Option 2. Option 2 reflects current administrative and operational practices in Corrections Victoria.

The increased transparency can improve accountability and may enhance decision making due to the scope of the discretionary power being more certain. The clearly defined threshold of using instruments of restraint can also reduce the risk of legal challenges.

Improving the transparency of the Proposed Regulations can improve public confidence in a sound and accountable correctional services system.

The amendments in Option 2 also enhance the protection of rights in the Charter, in particular, the protection from cruel, inhuman or degrading treatment, and humane treatment when deprived of liberty. The amendments prevent instruments of restraint from being used in a manner that is not necessary for the security or good order of the prison, or for the safety of a prisoner or any other person within the prison and strengthen the policy that these instruments are only used as a proportional response to safety threats in prisons.

Conclusion

Option 2 provides more public benefits as compared to Option 1, and can be achieved at minimal cost. These amendments improve the transparency and accountability of the use of restraints, as well as requiring the decision maker to take the safety of a person other than a prisoner, such as a visitor or a non-custodial prison staff, into account. For these reasons, the Proposed Regulations adopt the approach of Option 2.

Spitter protective hoods

Spitter protective hoods are designed to protect staff by preventing prisoners from being able to spit blood or saliva or bite staff and to prevent infection.

Currently, spitter protective hoods are used in prison units and accommodation areas under certain circumstances. They are applied to a prisoner who has a history of spitting or biting to prevent biting or infection risks, following a risk assessment of the prisoner's situation. Officers may not use any other item over a prisoner's mouth or head for this purpose.

Similar to other instruments of restraint, the use of spitter protective hoods is subject to the requirements of Corrections Victoria's Deputy Commissioner's Instructions and the requirements of the Charter. However, spitter protective hoods are not instruments of restraint under the Current Regulations. The use of the hoods is therefore not subject to the requirements of the Current Regulations. However, in

practice, the policies of Corrections Victoria provide for the same level of oversight and reporting requirements for the use of spitter protective hoods as other types of instruments of restraint.

The Proposed Regulations include spitter protective hoods as an instrument of restraint, thereby putting the use of the hoods under the same restrictions and reporting requirements as other instruments of restraint under the Proposed Regulations.⁹ A notification requirement is included in the Proposed Regulations for the use of a spitter protective hood if the use exceeds a continuous period of more than 15 minutes.

Options analysis

Three options have been considered in relation to the regulation of spitter protective hoods:

- ◆ retaining the same list of instruments of restraint (Option 1)
- ◆ including spitter protective hoods as an instrument of restraint (Option 2) (preferred option)
- ◆ abandoning the use of spitter protective hoods (Option 3)

Option 1

Option 1 retains the same list of instruments of restraint and regulates the use of spitter protective hoods through Deputy Commissioner's Instructions, subject to the requirements of the Charter.

Corrections Victoria considers that option 1 has no specific resourcing or administration costs. However, under this option, use of spitter protective hoods will not be subject to the same safeguards as other instruments of restraint in the Proposed Regulations.

The transparency of Option 1 is not as robust as compared to Option 2. Although in practice the use of spitter protective hoods are subject to the same level of oversight and reporting requirements as other instruments of restraint through the Deputy Commissioner's Instructions, the Deputy Commissioner's Instructions are not as readily available to the public as compared to the regulations. This may have a negative impact on the public perception of the transparency and accountability of the correctional services system. The reduced transparency of Option 1 may also increase the risk of challenges to prison operators in light of the requirements of the Charter.

Option 1 offers greater flexibility in the use of spitter protective hoods as compared to the other options, as any change in practice can be readily implemented by changes to the Deputy Commissioner's Instructions without the need to amend the regulations.

Option 2 (preferred option)

Corrections Victoria considers that there is no additional administrative or monitoring costs if spitter protective hoods are included as an instrument of restraint in the Proposed Regulations. Spitter protective hoods are currently used in prisons, and in practice, the use of the hoods is subject to the same level of oversight and reporting requirements as the use of other prescribed instruments of restraint.

The amendments improve the transparency and accountability of the use of spitter protective hoods, as they place the use of the hoods under the same legal requirement as other instruments of restraint.

Option 3

Option 3 retains the same list of instruments of restraint, but abandons the use of spitter protective hoods entirely. There are no additional administrative costs for this option.

Under this option, spitter protective hoods would not be available to prisons. Bite risks and spitting risks would be managed by other means, such as instructing surgical masks and eye shields to be worn by

⁹ Proposed Regulations, reg 13(e).

prison staff when necessary. Although these items can reduce the risk of spitting, they are ineffective in preventing bite risks.

Conclusion

Option 2 provides the greatest net public benefit as compared to the other options. It increases transparency and accountability of the use of spitter protective hoods at minimal cost. Although Option 1 potentially offers more administrative flexibility, the cost of reduced transparency of the option outweighs such benefit and Option 3 is considered ineffective in preventing bite risks. The approach of Option 2 is adopted in the Proposed Regulations.

5.2.2 Prison offences

The Standard Guidelines for Corrections in Australia provide that prisons should deal with the discipline of prisoners openly, expeditiously and fairly within a disciplinary code established under legislation. Any prison offences created under legislation should be made available to all prisoners and all punishments should be made known to the prisoners.¹⁰ The process of investigating an alleged prison offence and determining the penalties of a prison offence should reflect a prisoner's right to have a fair and impartial hearing.¹¹ The Proposed Regulations need to adhere to these requirements and the prisoner's human rights should only be limited to the extent that it is reasonably and demonstrably justifiable.

In Victoria, the Corrections Act provides that a 'prison offence is a contravention of the Corrections Act or the regulations made under the Corrections Act.'¹² The Corrections Act provides that a prisoner found guilty of a prison offence may receive any of the following penalties:

- ◆ a reprimand
- ◆ a maximum fine of 1 penalty unit¹³
- ◆ withdrawal of one or more of the prisoner's privileges for a period not exceeding 14 days for each prison offence committed, but not exceeding 30 days in total.

Prison offences deter a prisoner from engaging in undesirable behaviour that may threaten the safety and security of prisons or the safety or wellbeing of other persons. The penalties that can be imposed are discretionary and imposition is guided by Deputy Commissioner's Instructions and the penalty imposed should not interfere with a prisoner's participation in prison programs.

The Current Regulations prescribe a list of prison offences under regulation 50. These include:

- ◆ assaulting or threatening another person
- ◆ acting in a disruptive, abusive, offensive, racist, discriminatory or indecent manner, whether by language or conduct
- ◆ engaging in gambling
- ◆ trafficking an unauthorised article or substance into a prison
- ◆ possessing an article or substance that is not authorised by an officer, prescribed by a medical professional, or permitted under the Corrections Act or the regulations
- ◆ taking or using alcohol, a drug of dependence or possessing an unauthorised substance or article that has not been lawfully issued to the prisoner

¹⁰ Standard Guidelines for Corrections in Australia, 1.70.

¹¹ Standard Guidelines for Corrections in Australia 1.70-1.75.

¹² *Corrections Act 1986* (Vic) s48.

¹³ The value of a penalty unit is set annually by the Department of Treasury and Finance, and is updated on 1 July each year. As at 1 July 2018, the value of a penalty unit is \$161.19.

- ◆ taking or using alcohol or a drug of dependence that is lawfully issued, but in a manner that is not prescribed or authorised
- ◆ smoking or using tobacco product
- ◆ misusing telephones to threaten people receiving the calls or to speak to people not approved by the prison Governor
- ◆ using any communication device not approved by the prisoner Governor
- ◆ misusing a computer or other electronic equipment accessed by installing, using or possessing hardware, programs, software or other material which is not approved by the Commissioner
- ◆ sending or receiving a letter or parcel that may pose a threat to prison security, is of a threatening/indecent/offensive nature, contains an unauthorised article or substance, may be used to further an illegal purpose, or content that may be regarded as distressing or traumatic for a victim
- ◆ acting in a way which is detrimental to or threatens prison property
- ◆ being in a place where the prisoner is not authorised to be or leaving a place where the prisoner is required to be without the direction or permission of an officer
- ◆ engaging in work in a careless or negligent manner
- ◆ disobeying a lawful order, direction or instruction of an officer
- ◆ giving, selling or receiving any of a prisoner's property to another prisoner
- ◆ damaging another prisoner's property
- ◆ committing an act or omission that is contrary to the security of the prison or the safety of any other prisoner, and
- ◆ attempting any of the above prison offences.

The process for investigating and hearing an alleged prison offence is set out in Part 7 of the Corrections Act. In addition, Part 4, Division 2 of the Current Regulations provide additional requirements in these matters to improve the transparency and accountability of the process. The Current Regulations include matters such as materials and evidence that must be considered, the details of notice to be given to prisoners, and other procedural matters.

The Proposed Regulations adopt all of the prison offences and procedural matters included in the Current Regulations. In addition, the Proposed Regulations include additional prison offences in relation to family violence and certain communication and Internet use.¹⁴ These offences are prohibitions on the prisoner:

- ◆ committing or commissioning a third party to commit family violence on their behalf within the meaning of section 5 of the *Family Violence Protection Act 2008* (FVP Act)
- ◆ communicating, or causing to be communicated matters that the Governor is satisfied are contrary to the management, security or good order of the prison, or the safety or welfare of any prisoner or person (including the impact of the communication on a victim which may be distressing, traumatic or offensive)
- ◆ using or accessing the Internet; or

¹⁴ Proposed Regulations, regs 65(1)(m), (zd) and (ze).

- ◆ commissioning, arranging, enabling or allowing another person to use or access the Internet on the prisoner's behalf.

Family violence, as defined by section 5 of the FVP Act, is behaviour by a person towards a family member if that behaviour:

- ◆ is physically or sexually abusive
- ◆ is emotionally or psychologically abusive
- ◆ is economically abusive
- ◆ is threatening
- ◆ is coercive, or
- ◆ in any way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person.

The FVP Act also provides that causing a child to hear or witness family violence is regarded as family violence.

The inclusion of family violence as prison offences is intended to deter prisoners from committing family violence, or commissioning others to commit family violence, whilst in custody. Although a prisoner is not able to commit family violence of a physical nature whilst in custody, prisoners are able to commit other forms of family violence, such as emotional or psychological abuse, or engage in threatening or coercive behaviour through the use of telephone or other means of communication, or commissioning a person outside of prison to commit other forms of family violence.

This amendment enables prison operators to respond to family violence incidents directly and reduces the risk of families and children from being exposed to family violence and enhances the Proposed Regulations' compatibility with the Charter. In particular, section 17 of the Charter, which provides for the protection of families and children.

The purpose of the new prison offence in relation to certain communication is to prohibit a prisoner from communicating publicly in a way that undermines the management, security or good order of a prison, or the safety or welfare of any prisoner or person. The other purpose of the new prison offence is to prohibit a prisoner from using or accessing the Internet; or commissioning, arranging, enabling or allowing another person to use or access the Internet on the prisoner's behalf.

Prisoners do not have access to the Internet, as they are prohibited from possessing a device that is capable of connecting to the Internet.¹⁵ The Current Regulations prohibit a prisoner from misusing a telephone to threaten a person, or sending a letter or a parcel that threatens the security of the prison or may be used to further an unlawful activity. It is also an offence to possess or use a device capable of communication of any form without permission. However, the Current Regulations do not specifically ban Internet use or access and do not currently prevent a prisoner from commissioning a third party outside of prison to communicate publicly a message that may pose a risk to the management, security or good order of a prison, or the safety or welfare of any prisoner or person. This amendments assists prison operators to prevent the behaviour and reduce the risks to prison security, or the safety of prisoners and other persons.

Options analysis

Two options have been considered in relation to deterring prisoners from engaging in family violence:

- ◆ retaining the current level of regulation (Option 1)

¹⁵ *Corrections Act 1986* (Vic) s31A.

- ◆ regulate prisoners' behaviour by including family violence and specific communication and Internet use as prison offences in the regulations (Option 2) (preferred option)

Option 1

No new prison offences would be introduced if the Proposed Regulations retain the current level of regulation. No additional prison resourcing or administration costs are expected to be incurred for this option.

Retaining the same list of prison offences would limit the ability to deter prisoners from committing family violence and communicating publicly a message that may pose a risk to prison management, security or good order, or the safety or welfare of prisoners or other persons through the Proposed Regulations. Under the Current Regulations, misusing telephones to threaten people receiving the calls or to speak to people who are not approved by the prison Governor is a prison offence. Prison operators will have to continue to rely on this prison offence to deter prisoners from committing family violence or publicly communicating a message that may pose risks to prison security or safety or welfare of other person. This may be insufficient, as the prison offence is unlikely to cover all forms of family violence under the FVP Act, which include economic abuse, emotional abuse and psychological abuse. The prison offence is also unlikely to be able to deter prisoners from contacting and commissioning third parties to commit family violence or publishing a message that may pose a risk to prison security or safety or welfare of other person.

The associated social cost for this option is that family members of prisoners may be subject to a higher risk of family violence and the management, security or good order of prisons may be subject to a higher risk. The limited ability of prison operators to deal with prisoners engaging in family violence may compromise the safety and security of prisoners' families. The negative impact to the affected families are difficult to be quantified, but they are often significant.

Option 2 (preferred option)

This option introduces new prison offences in relation to family violence and specific communication and ban on Internet use in the Proposed Regulations. The new prison offences aim to deter prisoners from committing family violence, or commissioning a third party to commit family violence. Under this option, family members of prisoners will be subject to a lower risk of family violence and prisons will be subject to a lower security risk.

The prison offence in relation to specific communication and Internet use and access are relevant to the human right set out under sections 13, 15 and 18 of the Charter. The right to freedom of expression (s.15) states that every person has the right to hold an opinion without interference.¹⁶ The Charter provides that the rights to freedom of expression, privacy and right to take part in public life are not unlimited, and is subject to special duties and responsibilities. It may be subject to lawful restrictions if it is reasonably necessary:

- ◆ to respect the rights and reputation of other persons; or
- ◆ for the protection of national security, public order, public health or public morality.¹⁷

The prison offence banning Internet use and access and restrictions on communication relate to a risk to the management, security or good order of the prison system, or the safety or welfare of prisoners or other persons. The limitation introduced under the new prison offences are only applied as a proportional response to the risks to prison security, or the safety and rights of prisoners and other persons.

Prison resourcing costs will potentially be higher if the new prison offences are introduced. As prisoners can receive a fine or have privileges temporarily suspended for a prison offence, it is important that

¹⁶ Charter of Human Rights and Responsibilities Act 2006 (Vic) s15(1).

¹⁷ Charter of Human Rights and Responsibilities Act 2006 (Vic) s15(3).

prison operators exercise this power within the requirements of the Charter, the Corrections Act and the regulations.

The identifiable prison resourcing costs for Option 2 are training and information dissemination costs for prison operators in relation to the newly introduced prison offences. The costs are estimated in the table below.

Table 4: Estimated resourcing costs of Option 2

Item	Calculation	Estimated cost per annum
Trainer costs	1 FTE (VPS Grade 5) day for each prison <i>Assuming 5 training sessions of 30 minutes per prison</i>	\$758 ¹⁸
Training material		\$250 ¹⁹
Costs of attending training sessions	0.5 hours x 150 prison officers <i>Assuming an average of 150 prison officers per prison, and 0.5 hours of training required for each prison officer regarding the new prison offences</i>	\$4,550 ²⁰
Communication to prisoners		\$300 ²¹
TOTAL per prison		\$5,858
TOTAL for all prisons	\$5,858 x 15	\$87,868

As the processes and details of disciplinary hearings regarding prison offences are already well established in the Corrections Act and the regulations, the necessary training and information dissemination activities can be readily incorporated into the existing training programs for prison operators and they are not expected to incur substantial additional expenses.

The new prison offence is unlikely to incur additional enforcement and monitoring costs, as the costs can be readily incorporated into the existing enforcement activities in relation to the prison offence of misusing telephones to threaten people or speaking to people who are not approved by the prison Governor.²²

Option 2 provides increased social benefits as compared to Option 1, as it reduces the risks of a prisoner committing family violence against the prisoner's family members, or commissioning a third party to do so. Option 2 also reduces the security risks to prisons.

Conclusion

Option 2 is the preferred option in the Proposed Regulations. Although training and information dissemination costs may be incurred, Corrections Victoria considers that the majority of the identified

¹⁸ The figure includes the salary and on-costs and is current as at 1 July 2018. For the purposes of calculating the total wage costs, the multiplier of 1.75 has been used. For the purposes of calculating daily rates, a work year of 220 work days and an 8 hour work day has been used.

¹⁹ Assuming a printing cost of \$0.15 per page of material.

²⁰ The figure includes the salary and on-costs and is current as at 1 July 2018. A typical mid-range correctional officer salary is approximately \$61,000 per annum.

²¹ Assuming a printing cost of \$0.15 per page of material.

²² *Corrections Regulations 2009*, reg 50(1)(h).

costs can be readily absorbed into the existing training and information dissemination expenses in relation to other prison offences. As a result, the prison resourcing costs are likely to be minimal.

The preferred option enhances Corrections Victoria's compliance with human rights obligations under the Charter, as it offers better protection to vulnerable families and children. Although the social benefit is difficult to quantify, Corrections Victoria considers the minimal prison resourcing costs, improvement to Charter compliance, and improvement to the management, security or good order of prisons justifies the decision to adopt Option 2.

5.2.3 Prisoner property

The Current Regulations provide for the manner of dealing with prisoners' belongings.²³

Prisoners arrive at prisons with personal belongings and are allowed to keep some of them in prison cells. Each prisoner has a cell property allowance that is calculated with a points system. Excess items of authorised property may be stored for the prisoner in prison storage. All items are recorded with as much identifying detail as possible including the condition of items and any make, model or serial numbers.

Managing the large number of prisoner belongings stored in prisons is a significant task for Corrections Victoria. Any restrictions imposed by the regulations should balance prisoners' property rights with the management and security of prisons.

In relation to prisoners' property rights, section 20 of the Charter is relevant. It provides that a person must not be deprived of his or her property other than in accordance with law. The right is expressed as a negative obligation, however, the right may give rise to positive obligations for public authorities to take steps to prevent the unlawful deprivation of property.²⁴

Corrections Victoria has reviewed the procedures in relation to prisoner belongings in the Current Regulations and considers most of the provisions provide a good balance between prisoners' property rights, the resourcing costs of managing prisoner property items, and the security and good order of prison operations. The Proposed Regulations adopt most of the provisions in the Current Regulations.

The Proposed Regulations change the period of time that a prisoner's belongings can be stored when the prisoner is released from prison. The Current Regulations provide that any of a prisoner's property that is left unclaimed by the prisoner 3 months after the prisoner's release must be disposed of by the prison according to law.²⁵ Prisons do not have discretion to store a prisoner's belongings beyond the 3 month period. This restriction is considered unfair in some circumstances, as there are occasions when discharged prisoners are unable to retrieve their belongings within the specified time period.

To address this issue, the Proposed Regulations remove the requirement to dispose of a prisoner's unclaimed property 3 months after a prisoner's release. Instead, it provides a discretion for prisons to store a prisoner's unclaimed property after the 3 month period. This discretion can be exercised if there is storage capacity within the prison. The Proposed Regulations also allow a prisoner to apply to a prison that the prisoner's property not be disposed of, if the prisoner gives a reasonable explanation that the property is unable to be collected within the 3 month period.

Options analysis

Two options have been considered in relation to disposal of a released prisoner's belongings:

- ◆ retaining the current level of regulation (Option 1)

²³ *Corrections Act 1986* (Vic) s112(d).

²⁴ Pound and Evans, *An Annotated Guide to Victorian Charter of Human Rights and Responsibilities* (Pyrmont, 2008) 145-146.

²⁵ *Corrections Regulations 2009*, reg 80(2).

- ♦ allowing prisons to store prisoner belongings beyond 3 months after a prisoner's release and allow a prisoner to apply to a prison to store the belongings beyond the 3 month period (Option 2) (preferred option)

Option 1

Option 1 adopts the Current Regulations and does not make any changes to the disposal of prisoner property. Prison governors are required to dispose of a prisoner's unclaimed property after 3 months. As Option 1 retains the current level of regulation, there are no prison resourcing or administrative costs.

The social cost for this option is the adverse impact on prisoners' property rights. Although prisoners' property items are disposed of according to law, if a prisoner is unable to collect property items after 3 months of release, the relevant prison does not have any discretion to extend the storage period and must dispose of the property. In some cases, this approach can be regarded as unfair on prisoners and may also have a negative impact on the public's confidence in the fairness of the correctional services system. These social costs are difficult to quantify.

Option 2 (preferred option)

Option 2 allows prisons to store a prisoner's property items beyond the 3 month period and allows the prisoner to apply to the prison to not have the property items disposed of, if the prisoner has reasonable explanations that the property items are unable to be collected within the time period.

The prison resourcing costs for this option are minimal. The power to store prisoner property items beyond the 3 month period is discretionary and a prison is able to dispose of unclaimed prisoner property items after 3 months if its capacity is unable to accommodate the storage of these items. In general, prisoners are usually able to retrieve all of their belongings when being released from a prison. It is anticipated that only a very small amount of property items would be unclaimed by a prisoner after 3 months.

Option 2 carries a social benefit of enhancing the property rights of prisoners, as well as reducing the number of potentially unfair incidents where a prison is forced to dispose of a prisoner's unclaimed items, even if the prisoner has a reasonable explanation that the property items are unable to be collected within the time period.

Conclusion

Option 2 is adopted as the preferred option in the Proposed Regulations, as it enhances fairness and prisoners' property rights with minimal resourcing costs.

5.2.4 Prisoner privileges

The Current Regulations provide for the manner of dealing with prisoner privileges. Pursuant to regulation 42 of the Corrections Regulations 2009, the Secretary may approve an annual list of prisoner privileges which are submitted by the Commissioner. Under the Current Regulations the privileges "operate in the prisons for all prisoners on general or special classifications".

The Proposed Regulations make reforms to prisoner privileges by allowing a tailoring of privileges for an individual prisoner and for a category or classification of prisoner, in addition to privileges for a prison generally. The Proposed Regulations give the Secretary a new power, from a list submitted by the Commissioner, to, at any time, approve, refuse to approve and vary a list of privileges for an individual prisoner in any prison.

Options analysis

Two options have been considered in relation to prisoner privileges:

- ♦ retaining the current level of regulation (Option 1); or

- ♦ including new powers to grant or restrict prisoner privileges for individual prisoners or category of prisoners (Option 2) (preferred option).

Option 1 adopts the Current Regulations and does not make any changes to the rules governing prisoner privileges. As Option 1 retains the current level of regulation, there are no prison resourcing or administrative costs.

The social cost for this option is the potential inefficient administration of prisoners' privileges. Although prisoners' privileges can apply in a prison, it does not take into account the importance of particular arrangements for a category of prisoner or an individual prisoner including considerations of the management, security and good order (such as security classifications) of the prison. In some cases, this approach can be regarded as unsafe to the administration of prisons because privileges could not take into account particular considerations of management, security and good order of the prisons. In some cases, this approach may also be unfair to prisoners because it does not take into account their individual circumstances where relevant and appropriate and may also have a negative impact on the public's confidence in the fairness of the correctional services system. These social costs are difficult to quantify.

Option 2 (preferred option)

Option 2 allows a tailoring of privileges for an individual prisoner and for a category or classification of prisoner, in addition to privileges for a prison generally.

The prison resourcing costs for this option are minimal. The power to determine individual prisoner privileges or by category may assist. In general as per the Current Regulations, prisoner privileges will still be determined annually, including by reference to their prison security classification. It is anticipated that only a small number of prisoners will have their privileges approved, refused to be approved or privileges varied based on considerations of their individual circumstances and due to their category or classification of prisoner, including considerations of management, security and good order of the prison.

Option 2 carries a social benefit of enhancing, and specifically accounting for, individual considerations of prisoners, while still ensuring prisoner privileges apply in prisons generally after consideration of the management, security and good order (such as security classifications) of the prison.

Conclusion

Option 2 is adopted as the preferred option in the Proposed Regulations, as it considers individual circumstances, fairness and takes proper account of the management, security and good order of a prison with minimal resourcing costs.

5.2.5 Parole conditions

Parole is an important process in the criminal justice system, as it facilitates a prisoner's transition back into the general community in the later stage of the prisoner's sentence and allows the prisoner to re-engage with society under supervision and various conditions. In Victoria, regulations are required to facilitate and support the parole process. In particular, parole conditions are prescribed by the regulations under section 112(n) of the Corrections Act.

Parole conditions impose restrictions on prisoners and are necessary for the safety of the general community and the rehabilitation of prisoners. There are parole conditions that apply to all parole orders (mandatory conditions), as well as additional parole conditions that are imposed on prisoners by the Adult Parole Board on a case-by-case basis (other conditions). The mandatory conditions prohibit a prisoner from breaking any laws, as well as imposing regular reporting requirements and restricting the prisoner from leaving Victoria.²⁶ The other conditions are imposed according to the circumstances of the prisoner, for example, when there is a particular risk of the prisoner engaging in certain activities, or

²⁶ *Corrections Regulations 2009*, reg 83A.

when it is beneficial for the prisoner to participate in programs or training that address the prisoner's offending behaviour.²⁷ Breaching a parole condition can be an offence and can result in a prisoner's parole order being cancelled and the prisoner being arrested by police and returned to prison.

Parole conditions affect a person's right to freedom of movement under section 12 of the Charter, which provides that every person lawfully within Victoria has the right to move freely within Victoria and to enter and leave it and has the freedom to choose where to live. Similar to other human rights specified in the Charter, the right to freedom of movement is not absolute and can be subject to reasonable limits, including legitimate regulations made in the public interest, or those made to protect the rights of others.²⁸

The conditions in the Current Regulations are considered appropriate and balanced to address the safety of the public, as well as assisting the rehabilitation and transition of prisoners into the general community. Although the right to freedom of movement of prisoners is necessarily restricted by parole conditions, the conditions are imposed to the extent that they are necessary and can be justified in a free and democratic society.

The Proposed Regulations adopt all parole conditions in the Current Regulations. In addition, the Proposed Regulations introduce three additional conditions that can be imposed by the Adult Parole Board on a case-by-case basis.²⁹ These new conditions are outlined in the following table.

Table 5: New parole conditions

New parole conditions	Details and rationale
Restriction on accessing the Internet	<p>One of the optional conditions in the Current Regulations (regulation 83A(h)) provides that the prisoner must not use or access the Internet. This condition may be imposed on prisoners that have a particularly high risk of using the Internet to re-offend, for example.</p> <p>The Current Regulations do not provide discretion for the Adult Parole Board to allow a prisoner to access the Internet for limited purposes. In some circumstances, it may be desirable to allow a prisoner to access the Internet for specific purposes, such as education or to access Internet banking. The Proposed Regulations allow these exemptions to be included as part of the parole condition.</p>
Disclosure of financial affairs	<p>The Proposed Regulations include a new optional condition to require a prisoner to provide information pertaining to the prisoner's financial affairs. It provides that the prisoner must provide the relevant information as directed by the Adult Parole Board. The main purpose of this condition is to enhance the enforcement of parole orders.</p> <p>Currently, regulation 83A of the Current Regulations provides that it is a core condition that a prisoner must not break any laws. From time to time, the Adult Parole Board may have a reasonable suspicion on the financial position and income of prisoners, which may suggest unlawful activities. The amendments provide an option for the Adult Parole Board to acquire the necessary information when there is a reasonable suspicion.</p>
Auditing of electronic devices	<p>The Proposed Regulations include a new optional condition to require a prisoner to submit to the auditing of data held in computers and any other devices in the possession or under the control of the prisoner, as directed by the Adult Parole Board. As a matter of current practice, Corrections Victoria conducts audits of electronic devices of prisoners based on risks to the community, but it is not a formal condition for a prisoner to submit to auditing of devices.</p> <p>Similar to the new optional condition to disclose financial affairs, the main purpose of this amendment is to enhance the enforcement of parole orders.</p>

²⁷ *Corrections Regulations 2009*, reg 83B.

²⁸ *DPP v Kaba* (2014) 44 VR 526; [2014] VSC 52 [100].

²⁹ Proposed Regulations, reg 112(1)(g), (n) and (o).

There are a number of Charter rights that may be limited by new parole condition one, including:

- ◆ the right to freedom of expression (section 15), which includes the right to seek, receive and impart information
- ◆ the right to protection of families and children (section 17), to the extent that it may restrict prisoners' ability to communicate electronically with family members.

This is considered to be a reasonable limit on a prisoner's rights. As an optional condition, it allows the Adult Parole Board to assess, on a case-by-case basis, whether to impose this condition, informed by the level of risk of the prisoner using the Internet to re-offend, as well as other factors such as the prisoner's reliance on electronic devices to communicate with family members.

The right to privacy (section 13) may be limited by new parole conditions two and three. However, this is seen to be a reasonable limit as it is proportionate to the purpose of monitoring and enhancing compliance with parole orders, and protecting the broader community. Further, the Adult Parole Board will consider including this optional condition on a case-by-case basis.

Options analysis

Two options have been considered in relation to parole conditions:

- ◆ retaining the current level of regulation (Option 1)
- ◆ including new parole conditions in relation to restrictions on accessing the Internet, disclosure of financial affairs and auditing of electronic devices (Option 2) (preferred option)

Option 1

Option 1 retains the current level of regulation. No new parole conditions will be introduced by the Proposed Regulations. There are no resourcing or administration costs identified.

Although the social costs for this option are difficult to quantify, Corrections Victoria considers that this option may limit the ability of certain prisoners to engage in reasonable daily activities and reduce the enforceability and compliance of parole orders in some cases. Under this option, prisoners that are subject to the condition of no access to the Internet would not receive exemptions, including reasonable use of Internet to access Internet banking, education or healthcare.

The Adult Parole Board will have to rely on regulation 83A(j) of the Current Regulations to request access to financial information or electronic devices to ensure the compliance of parole orders.³⁰ The inability for the Adult Parole Board to impose conditions to specifically require financial information from prisoners and audit electronic devices may reduce the enforceability of parole orders, and may increase the risk of non-compliance of parole orders. This poses a risk to community safety.

Option 2 (preferred option)

Option 2 introduces new parole conditions as specified earlier in this document. The main benefits of this option are the improved enforceability and reduced risks of non-compliance for some parole orders. This option also allows some prisoners to access the Internet for purposes specified by the Adult Parole Board, rather than a complete restriction if the relevant condition is imposed.

The resourcing and administration costs for this option are mainly in relation to the additional work required for the auditing of electronic devices. It is anticipated that the optional condition will only be imposed on a very small number of prisoners, and Corrections Victoria has well established processes

³⁰ Regulation 83A(j) of the Current Regulations provides a general power for the Board, a community corrections officer, or the regional manager to require a prisoner to comply with directions that are necessary to ensure the compliance of the relevant parole order.

and resources in place for auditing electronic devices of prisoners. As a result, it is expected that any additional costs can be readily absorbed into the existing resources dedicated to these activities.

Conclusion

Option 2 is the adopted approach in the Proposed Regulations, as it incurs minimal resourcing costs and provides social benefits by providing a more reasonable restriction on access to the Internet for some prisoners, and enhances the enforceability of parole orders by enabling the Board to impose conditions to obtain financial information of prisoners or require prisoners to submit to an audit of electronic devices. These can help the Adult Parole Board to identify breaches of parole and risk patterns, reducing the risk to community safety. On balance, Corrections Victoria considers that the social benefits of Option 2 outweigh the resourcing costs of auditing.

5.2.6 Community corrections

Under the Standard Guidelines for Corrections in Australia, community corrections programs and facilities should be designed and managed in a way that acknowledges the needs, rights and responsibilities of offenders, while also factoring in the rights and needs of victims and ensuring that public safety and crime prevention objectives are met. The Proposed Regulations support the operation of the Corrections Act by providing various forms and processes used by the Adult Parole Board and Community Correctional Services in Corrections Victoria.

The Proposed Regulations adopt the overall structure and measures of the Current Regulations in relation to the community corrections provisions.

In Victoria, prisoners on parole (parolees) may be required to report to Community Corrections Centres as a condition of a parole order. Changes have been made in the Proposed Regulations regarding the process of proving a copy of a revocation order or cancellation order to a parolee, if the parolee's parole order has been revoked or cancelled by the Adult Parole Board.

Under the Current Regulations, after the Adult Parole Board cancels or revokes a parolee's parole order, the Board must, within 7 days, give notice of the cancellation or the revocation to:

- ◆ the relevant regional manager if the person is not held in custody in prison, or
- ◆ the relevant prison Governor if the person is held in custody in prison.

In each of these cases, the regional manager or the prison Governor must provide a copy of the cancellation order or the revocation order to the prisoner as soon as possible.

The Proposed Regulations remove the requirement of the regional manager to provide a copy of a cancellation order or revocation order to the parolee as soon as possible. The requirement is considered not feasible in practice, as the only way of providing a written copy of an order is by sending a copy of the order to the parolee's address, or providing a copy of the order when the parolee visits a community corrections centre.

In practice, when the Adult Parole Board makes a revocation order or a cancellation order in relation to a parole order, and the parolee is already released into the community, the Adult Parole Board will issue a warrant for the apprehension and return to prison of the prisoner to the Chief Commissioner of Police under section 77B(1)(a) of the Corrections Act. Community Correctional Services will instruct the parolee to visit a Community Corrections Centre, but the parolee is not informed of the reasons to attend a Community Corrections Centre at this stage. Police will then attend the relevant Community Corrections Centre to execute the relevant warrant, inform the parolee that their parole order has been cancelled or revoked, and take the parolee back into custody.

The requirement that the regional manager must provide a written copy of the revocation order or cancellation order to the parolee as soon as possible is considered not feasible in practice, as it provides advanced notice to the parolee that the parolee is about to be arrested by police. It also creates safety

risks for staff and members of the public at the relevant Community Corrections Centre, as the parolee may become agitated or aggressive.

Options analysis

Three options have been considered in relation to providing a copy of a revocation order or cancellation order to a person:

- ◆ retaining the current level of regulation (Option 1)
- ◆ retaining the current level of regulation and providing full-time security at Community Correction Centres (Option 2)
- ◆ removing the requirement for the relevant regional manager to provide a copy of a revocation order or cancellation order to a person (Option 3) (preferred option)

Option 1

Option 1 retains the same level of regulation as the Current Regulations. There are no additional resourcing or administration costs for this option.

The social costs of this option include safety risks to staff and members of the public at Community Corrections Centres, as well as the safety threats to the public due to an increased risk of parolees escaping apprehension. An offender will be informed that their parole order is revoked or cancelled before they attend a Community Corrections Centre, and this approach significantly increases the risk of the parolee escaping into the community to avoid being apprehended by police at a Community Corrections Centre.

When being informed that the relevant parole order has been revoked or cancelled, it is also possible that a parolee may become agitated or violent, and may threaten or cause harm to staff members and members of the public at Community Corrections Centres.

Option 2

Option 2 retains the same level of regulation as the Current Regulations. Community Correctional Services are required to provide a copy of a revocation order or a cancellation order to a parolee as soon as possible under this option. To protect the safety of members of the public and staff members at Community Corrections Centres, this option includes providing full-time security at Community Corrections Centres.

The resourcing costs for this option are significant. As at 31 December 2018, there are 42 Community Corrections Centres in Victoria and security officers must be present at each location to provide security. The estimated costs are set out below:

Table 6: Estimated resourcing costs of Option 2

Item	Calculation	Estimated cost per annum
Costs for a single Community Corrections Centre	\$61,000 per security officer <i>Assuming 1 FTE security officer is required at each location</i>	\$61,000 ³¹
TOTAL for all Community Corrections Centres	\$61,000 x 42	\$2,562,000

³¹ The figure includes the salary and on-costs and is current as at 1 July 2018. A typical mid-range security officer salary is approximately \$61,000 per annum, similar to a mid-range correctional officer.

Although this option can reduce the risk of agitated or violent parolees posing harm to staff members or members of the public when attending a Community Corrections Centre, Corrections Victoria considers that the risk of parolees not attending Community Corrections Centre is still present. This social cost is difficult to quantify, but it is considered significant.

Option 3 (preferred option)

Options 3 removes the requirement for the regional manager to provide a written copy of a cancellation order or revocation order to a parolee. There are no additional resourcing or administration costs for this option.

The social benefits for this option are the reduced risk of parolees not attending a Community Corrections Centre, and the reduced risk of harm to Community Correctional Services staff, as they will not be required to provide a written copy of a revocation order or cancellation order to parolees at Community Corrections Centres. Instead, police will inform the parolees of the cancellation or revocation at the relevant Community Corrections Centres when the arrest warrant is executed, and the written copy of the relevant order will be provided to the parolee by the prison Governor when they arrive at a prison.

Conclusion

Option 3 is the adopted option in the Proposed Regulations. The purposes of the amendments are to remove a process that is not feasible in practice and to enhance the safety of staff and members of the public at Community Corrections Centres.

Although a parolee will not be provided with a written copy of the revocation order or a cancellation order by Community Correctional Services as soon as possible when the parolee's parole order is being revoked or cancelled by the Board, this approach significantly reduces the risk of a parolee attempting to escape apprehension, which poses a significant risk to public safety.

The parolees' right to be informed is retained by the requirement that police officers are required to inform the parolee being arrested that the police officers are executing a warrant due to parole cancellation. Police officers are also well-equipped to inform and manage parolees that may become agitated or violent, as compared to Community Correctional Services staff.

Once a parolee is returned to a prison, the relevant prison Governor is also required to provide a written copy of the revocation order or cancellation order as soon as possible under the Proposed Regulations.

On balance, Corrections Victoria considers that the minimal resourcing costs, reduced safety risks to staff and the public, and the slight delay of parolees receiving a written copy of revocation orders or cancellation orders justify the adoption of Option 3.

5.2.7 Search, seizure and testing

The regulation and control of prohibited substances such as tobacco, drugs, alcohol and other contraband items is important for the safety and security of prisons, as well as the security of prisoners and prison staff. To ensure that prohibited substances are not made available within prison environments, a robust system to detect and confiscate illicit substances is necessary. At the same time, the human rights of staff, prisoners and prison visitors need to be properly balanced under the Charter.

Part 6 of the Current Regulations sets out the rules for searching of prisoners and prison visitors, seizing of prohibited items, and testing and analysing procedures for prohibited substances.

The Proposed Regulations include language updates and improvements to overall structure and transparency. The specific proposed changes to the Current Regulations are discussed below.

Testing and analysis of samples

Under the Current Regulations, prison officers are permitted to take samples of any substance believed to be a drug of dependence or alcohol that is found unlawfully in a prisoner's possession, but must

adhere to certain procedural requirements. All samples must be delivered to the appropriate testing agency and be analysed by an analyst. The Current Regulations define an ‘analyst’ as a person employed by the Government of Victoria as an analyst, or a person approved for the time being as an analyst under the *Health Act 1958* for the analyses of food or drugs.³²

In practice, testing technology has been advanced and simplified over the last 10 years and prison officers and escort officers are now properly trained to use the appropriate testing equipment and procedures.

The Proposed Regulations expressly allow these officers to conduct tests on a sample.

Types of searches permitted

The Current Regulations define the four types of searches that are used in prisons in Victoria:

- ◆ strip search: a search of a person that requires the person to remove any or all of the person’s clothing and an examination of the person’s body and of that clothing, without the person conducting the search touching the person’s body
- ◆ pat-down search: a search of a person where the person’s clothed body is touched
- ◆ garment search: a search of any article of clothing worn by a person or in the person’s possession, where the article of clothing is touched or removed from the person’s body, and
- ◆ scanning search: a search of a person, or of the property of a person, using an electronic or other device, where the person is not touched.

Although the Current Regulations set out the types of searches in its definitions, they do not expressly provide that these types of searches are permitted. To avoid any doubt and to improve transparency, the Proposed Regulations expressly provide when a strip search, pat-down search, garment search and scanning search may be conducted on a prisoner or a visitor.

Strip searches

In relation to strip searches, the Current Regulations provide for a number of safeguards to balance the safety and security of prisons with the searched person’s right to privacy and protection from inhuman or degrading treatment. The Current Regulations include the following requirements:

- ◆ at least two officers may conduct a strip search, but the number of officers present must be kept to a minimum
- ◆ strip searches must be conducted as expeditiously as possible to minimise the impact on the searched person’s dignity and self-respect, avoiding any unnecessary force
- ◆ strip searches must be conducted in a private place or an area that can provide reasonable privacy, and only in the presence of any person necessary to ensure the safety of prison staff and the searched person
- ◆ searches must not involve the touching of the searched person’s body
- ◆ the prisoner is allowed to dress in private immediately after the search is completed, and must be provided with appropriate clothing if the prisoner’s clothing is seized during the search
- ◆ except where the search is urgent and a person of the same sex as the prisoner is unavailable, the person being searched must not be searched by a person of the opposite sex, and

³² *Corrections Regulations 2009*, regs 75-76.

- ◆ all strip searches must be recorded under a register kept by the Governor containing the name of the person searched, the reason for the search, the date and time of the search, the name of all officers present during the search, and the details of anything seized during the search.

The Proposed Regulations maintain the safeguards in the Current Regulations in relation to strip searches with two modifications. In contrast to the Current Regulations, the Proposed Regulations provide that, except when a search is urgently required or arrangements cannot be made, a person being searched must be searched by a person of the same gender as the gender the person identifies with, or a different gender if requested by the person, subject to some necessary safeguards. The Proposed Regulations also clarify that a prisoner may be required to undergo a strip search if a scanning search, garment search or pat-down search indicates that the prisoner is concealing an unauthorised substance or article.

The Proposed Regulations also amend the structure of the provisions to clarify the circumstances in which strip searches are permitted and provide additional requirements for strip searches when they are used on a person other than a prisoner.

Options analysis

Two options have been considered in relation to the search, seizure and testing provisions:

- ◆ retaining the current level of regulation (Option 1)
- ◆ updating search, seizure and testing provisions to provide improved transparency and improved safeguards for strip searches (Option 2) (preferred option)

Option 1

Option 1 retains the Current Regulations, without making any changes to the search, seizure and testing provisions. There are no prison resourcing and administrative costs involved in this option.

The transparency of Option 1 is not as robust as compared to the option adopted by the Proposed Regulations. Option 1 may have a negative impact in public confidence in the transparency and accountability of the correctional services system.

Option 1 also does not allow a person to be strip searched by a person of the same gender that the person being searched identifies with. This approach may adversely affect trans and gender diverse people and is relevant to section 10 of the Charter, which offers protection from cruel, inhuman or degrading treatment, section 13 which provides for the right to privacy and which includes bodily integrity, section 8 which provides for the right to be free from discrimination, and section 22 concerning the right to humane treatment when deprived of liberty.

In the context of strip searches, being forced to be searched by a person of a different gender to that which the searched person identifies with may amount to humiliating treatment, and may limit the Charter rights identified above.

Option 2 (preferred option)

There are no specific prison resourcing and administrative costs for Option 2, as the majority of the amendments are designed to improve transparency of the Proposed Regulations and do not have impact on prison operations. The amendments to the safeguards of strip searching do not incur financial costs for prisons.

Option 2 improves the transparency of the Proposed Regulations. This may lead to a reduced number of legal challenges regarding prison searches, as a result of greater clarity in the Proposed Regulations' provisions. The extent of the impact is difficult to anticipate, but is not anticipated to be significant.

Option 2 also enhances the Proposed Regulations' compliance with the Charter, in particular, the right to protection from cruel, inhuman or degrading treatment, the right to privacy, the right to be free from discrimination, and the right to humane treatment when deprived of liberty.

Conclusion

Option 2 is the preferred option. On balance, Corrections Victoria considers that the minimal resourcing costs, enhanced transparency and improved protection to human rights justifies the proposed amendments.

6 Implementation and evaluation

6.1 Implementation

The Proposed Regulations are planned to commence in April 2019, before the Current Regulations expire. The commencement of the Proposed Regulations will be communicated to stakeholders by updates to the Corrections Victoria website and direct communication to individual prisons and prison operators, Corrections Victoria head office operations staff, Community Correctional Services staff, the Adult Parole Board, courts, Victoria Police and relevant peak bodies.

By their nature, prisons and community correctional services are highly regulated environments and the principles of regulating these environments are already well-established and reflected in the Current Regulations and various policies and standards. The Proposed Regulations have been updated to include changes to improve the transparency and accountability of some of these operational practices.

No special transitional arrangements have been identified, as the Proposed Regulations substantially carry on the measures included in the Current Regulations, or only provide different arrangements that do not substantially affect the operations of correctional services in Victoria. It is anticipated that any changes to administrative or operational practices in the Proposed Regulations will be adopted through well-established information dissemination and training channels.

It is not anticipated that the changes in the Proposed Regulations will cause difficulties for prisoners or prison operators.

6.2 Evaluation

Evaluation activities are critical to ensure the effective and efficient ongoing operation of the Proposed Regulations and the overall regulatory scheme is effective in the delivery of correctional services in Victoria. Corrections Victoria regularly reviews its performance to determine whether it is delivering optimal outcomes for prisoners, offenders and the Victorian community. There are several ongoing mechanisms in place for the evaluation of the delivery of correctional services in Victoria.

On the whole-of-government level, delivery of correctional services is a highly scrutinised area. The performance of Corrections Victoria is subject to the oversight of the Ombudsman, the Office of the Victorian Information Commissioner and the Victorian Equal Opportunity and Human Rights Commission.

Internally, Corrections Victoria is implementing an evaluation framework to ensure rigorous and systematic evaluation of correctional programs in Victoria. The evaluation framework outlines the principles that guide evaluation activity and identifies the outcomes most relevant to evaluations of key program areas. These outcomes are:

- ◆ addressing dynamic risk factors to reduce reoffending
- ◆ delivering programs for the supervision of high-risk, high impact offenders to protect community safety
- ◆ improving the safety of staff and prisoners by minimising incidents and maintaining good order in prisons
- ◆ using best practice to manage parolees and offenders on community orders
- ◆ supporting the successful transition of prisoners back into the community to reduce the impact of prisoner reoffending on community safety
- ◆ reducing the costs associated with the correctional services system and the economic impact of reoffending
- ◆ increasing community confidence in the correctional services system.

Within the framework, performance indicators and key data are regularly measured and evaluated by Corrections Victoria. These include and are not limited to:

- ◆ assaults in custody
- ◆ prisoner wellbeing and health
- ◆ deaths in custody
- ◆ prisoners' employment and education
- ◆ costs per prisoner or offender.

In addition, performance of the system is also measured in the DJCS annual report, including prison operations data and community corrections performance. This information provides an indication of trends in key areas of prison management, prisoner welfare and risks to the community. It is also used to help identify the effectiveness of regulation and supporting policies.

7 Consultation and submissions

This document is published by Corrections Victoria to encourage further consideration of the Proposed Regulations and to provide an opportunity for the community to comment on the proposed changes. The public is encouraged to provide submissions to Corrections Victoria during the consultation period.

Unless otherwise requested in the submission, all submissions will be treated as public documents and will be available to other stakeholders by being posted on the Engage Victoria website at engage.vic.gov.au/corrections-regulations-2019. The closing date for submissions is 13 March 2019. You can provide written submissions through Engage Victoria or direct them to:

Correction Regulations 2019 Submissions
Legal Policy Branch
Strategic Policy and Planning Division
Corrections Victoria
Department of Justice and Community Safety
GPO Box 4356
MELBOURNE VIC 3000
correctionsregulations@justice.vic.gov.au

Appendix – Impacts of zero regulation

Matters	No regulation scenario	Consequences
Conduct of officers	<ul style="list-style-type: none"> ▪ The requirement for officers to disclose any disclosable outcomes, for example a criminal record, to the Governor of a prison will no longer exist. ▪ The Secretary is no longer required to publish a code of conduct to regulate the conduct of officers. Prison officers are no longer required to comply with the existing code of conduct. ▪ Psychiatrists, medical practitioners, dentists, and nurses cannot carry out certain functions under the Corrections Act, for example giving general directions to offenders. 	Corrections Victoria will no longer be able to ensure that officers are fit and proper persons and impose professional and ethical standards using regulations. These matters will need to be covered by internal policies. Health services staff in prisons cannot perform functions and duties under the Corrections Act.
Non-lethal firearms and unauthorised removal of firearms	<ul style="list-style-type: none"> ▪ The Current Regulations prescribe the types of non-lethal firearms that can be used by prison officers under the Corrections Act. The Current Regulations prescribe tear gas and 'beanbag' rounds as non-lethal firearms for the purposes of the Corrections Act. Prison officers will no longer be able to use them. ▪ The penalty of 10 penalty units will no longer apply if an escort officer acting in the course of the officer's duty removes a firearm or ammunition from a prison without the authorisation of the relevant Governor. 	Prison officers will no longer be able to use tear gas and 'beanbag' rounds as non-lethal firearms to manage and control prisoners during an emergency, such as a prison riot. It will pose security risks for prisons. There will be reduced deterrence for an escort officer to take firearms and ammunition outside of a prison without approval.
Dogs in prisons	<ul style="list-style-type: none"> ▪ The Current Regulations prescribe approved dogs in prisoners. Prison officers will no longer be able to use dogs for searches, tracking, escorts, and security. 	Trained dogs have a critical role in tracking down and identifying prohibited substances within prisons. They also play an important role in prison searches. Without trained dogs, prison officers will face challenges in searches and identifying prohibited items in prisons.
Instruments of restraint	<ul style="list-style-type: none"> ▪ The Current Regulations prescribe the types of restraints that can be used in prisons for the purposes of the Corrections Act, and regulate the manner in which these instruments can be used. If the Current Regulations expire, the list of instruments of restraint will not be available. 	No instruments of restraint will be prescribed and it will be unclear which type of instrument of restraint can be used in prisons, creating security risks, including to staff and prisoners.
Control of letters and parcels	<ul style="list-style-type: none"> ▪ The Current Regulations allow the Governor of a prison to inspect letters and parcels to or from a prisoner under certain circumstances, for example if there is a reasonable belief that there are unauthorised articles or substances that could pose a threat to prison security. ▪ Section 47(1)(m)(xv) of the Corrections Act provides that a prisoner has the right to send and receive letters from a list of entities prescribed by the regulations, without those letters being opened by prison staff. The 	The Current Regulations support the Corrections Act by setting out means to prevent dangerous or prohibited substances from entering prisons. Without the regulations these matters will be regulated by the Act, which does not provide the same level of details as the regulations.

Matters	No regulation scenario	Consequences
<p>Leave of absence to attend court hearing</p>	<p>Current Regulations prescribe a number of public entitles and law enforcement agencies. Prisoners will lose this right if the Current Regulations expire.</p> <ul style="list-style-type: none"> ▪ The Current Regulations set out the process of removing a prisoner from a prison to attend a court hearing, and prescribe the form that must be used when a court makes such an order. ▪ The Current Regulations also require the Governor of a prison to ensure prisoners are permitted to wear non-prison clothing when attending a hearing. If the prisoner does not have suitable clothes, the Governor must ensure the prisoner is provided with civilian clothes during the appearance. 	<p>Without the regulations, the process of removing a prisoner from a prison to attend a court hearing will be regulated by the Act, which does not provide the same level of details. This will create uncertainty and potential for delays for courts and prison operations.</p> <p>The right of prisoners to wear non-prison clothing when attending a hearing will not be protected by the regulations and this can have a negative impact on a prisoner's right to a fair hearing.</p>
<p>Prisoner classification</p>	<ul style="list-style-type: none"> ▪ The Current Regulations set out the classifications that apply to prisoners, which include decisions about a prisoner's security rating, placement at a prison and sentence plan. If the Current Regulations expire, prisoner classification will have to be specified in policy documents, such as the Commissioner's Requirements or the Deputy Commissioner's Instructions. ▪ The Current Regulations set out the structure and processes of sentence management panels and case management review committees. The former establishes procedures for determining the security ratings of prisoners, and the latter oversees the management of prisoners, considers prisoners' access to programs and monitors their welfare. These two bodies will not be regulated if the Current Regulations expire. 	<p>Without the Regulations, prisoner classification will have to be specified in policy documents, reducing the transparency and accountability of the classification system.</p>
<p>Placement and separation of prisoners</p>	<ul style="list-style-type: none"> ▪ When determining or varying a prisoner's placement and developing a sentence plan, the Current Regulations provide a list of factors that may be taken into account. The sentence management panel or the Secretary will be left without guidance if the Current Regulations expire. ▪ The Current Regulations allow the Secretary to separate prisoners from the general prison community in order to ensure the safety and protection of prisoners or other persons. The Secretary will no longer have the specific power if the Current Regulations expire. 	<p>Confusion may arise when determining a prisoner's placement and the Secretary will have limited power to separate prisoners that are particularly violent or vulnerable. It will increase the risk to the safety and welfare of prisoners and staff, creating challenges for prison operation and security.</p>
<p>Prisoner's money and property</p>	<ul style="list-style-type: none"> ▪ The Current Regulations set out safeguards in respect of prisoner money and belongings for the protection of the prisoner and the good management of prisons. Belongings that are 	<p>There will be limited safeguards and transparency regarding the handling of prisoner's money and</p>

Matters	No regulation scenario	Consequences
	<p>prohibited in prisons, storage of belongings, and how a prisoner can spend the prisoner's trust account money are all regulated. These matters will be regulated by the Act only, which provides limited details.</p> <ul style="list-style-type: none"> ▪ The Current Regulations set out the processes in which prisoners receive remuneration for their trust account through work and the paid employment scheme. These matters will be regulated by the Act, which provides limited details. 	<p>property, creating risks of corruption.</p>
<p>Prisoner privileges</p>	<ul style="list-style-type: none"> ▪ The Current Regulations set out the process of determining prisoner privileges within the meaning of the Corrections Act. The Current Regulations provide that prisoner privileges are determined by the Commissioner with the approval of the Secretary. If the Current Regulations expire, there will be no clear process of establishing prisoner privileges. 	<p>There will be uncertainty regarding prisoner privileges and limiting privileges on disciplinary grounds or the management, security of the prison or prisoner. These privileges can include access to television, sporting and recreational activities. Prisoners may lose access to established privileges. This may pose a security risk for prisons.</p>
<p>Children living with a parent in a prison</p>	<ul style="list-style-type: none"> ▪ The Corrections Act enables a prisoner to request that their child live with them in prison. The Current Regulations set out the procedures for the Secretary to allow a prisoner's child to temporarily live with the prisoner pending a formal determination. The procedures will only be covered by internal policies if the Current Regulations expire. ▪ The Current Regulations set out record keeping, specific restrictions on children, and other procedural matters. These matters will need to be covered by internal policies if the Current Regulations expire. 	<p>There will be limited guidance on the processes of managing children in a prison. The requirement for the Governor to keep a record of all children living in the prison or to report accident or injury involving children will be covered by internal policies. This will reduce the transparency of the scheme and may put the safety of children at risk.</p>
<p>Custodial community permits</p>	<ul style="list-style-type: none"> ▪ Section 57 of the Corrections Act provides that the Secretary may issue custodial community permits to prisoners for a number of purposes, such as attending a tribunal, attending a funeral, or for rehabilitation purposes. The conditions of these permits are prescribed by the Current Regulations. These conditions can no longer apply if the Current Regulations expire. 	<p>Conditions of custodial community permits will be unclear.</p>
<p>Control of drones and helicopters</p>	<ul style="list-style-type: none"> ▪ The Current Regulations authorise certain persons to use drones or helicopters within or near a prison. Employees of the department are currently prescribed persons for the purposes of the Corrections Act. If the Current Regulations expire, a departmental employee will commit an offence under the Corrections Act if the employee operates a drone or a helicopter within or near a prison, even for official purposes. 	<p>Drones are sometimes deployed by employees of the department or persons authorised by the department in the vicinity of prisons for various official purposes. Prison operations and security may be compromised if these devices are no longer permitted. Although the Governor or a prison can authorise a person or a class of person to use drones or a</p>

Matters	No regulation scenario	Consequences
		<p>helicopter near the prison on a case-by-case basis, without a general exemption set out in the regulations, the practice will cause administrative delays and inefficiencies.</p>
<p>Prison discipline</p>	<ul style="list-style-type: none"> Prison offences and the processes of disciplinary hearings within the meaning of the Corrections Act are set out in the Current Regulations. Most of the prison offences will not be available. 	<p>The Corrections Act defines a prison offence as a contravention of the Corrections Act or the regulations. Without the regulations, only contravention of the Corrections Act will be regarded as a prison offence.</p> <p>The absence of the majority of prison offences will create challenges in regulating prisoners' behaviour. Without a proper process for a Governor's hearing, the transparency of disciplinary hearings will diminish.</p> <p>This creates a risk to the security and good order of prisons.</p>
<p>Prison visits</p>	<ul style="list-style-type: none"> The Current Regulations set out the processes and conditions of visits to prisons. These matters will no longer be set out in the regulations. 	<p>Access and visits to prisoners cannot be properly managed without proper processes and conditions. Record keeping requirements will diminish for prison visits. These will have a negative impact on prison security.</p>
<p>Emergency management days</p>	<ul style="list-style-type: none"> The Current Regulations set out the calculation and the number of emergency management days that can be granted under the circumstances covered by the Corrections Act. Emergency management days can be granted to a prisoner. No clear method will be available to determine the number of emergency management days. 	<p>If the Current Regulations expire, the sentence or non-parole period of prisoners cannot be reduced based on emergency management days.</p> <p>The purpose of granting emergency management days is to encourage good behaviour of prisoners to support the good order of a prison during emergencies or periods of disruption.</p> <p>Without emergency management days, the incentive for prisoners to engage in good behaviour during prison emergencies or periods of disruption will be reduced. It will have a negative impact on prison security during emergencies or disruptions.</p>
<p>Parole and community corrections</p>	<ul style="list-style-type: none"> The Current Regulations set out the various administrative processes of the Adult Parole Board, forms used by the Adult Parole Board and conditions of parole. These matters will be unregulated. 	<p>If the Current Regulations expire, significant matters in relation to parole will be unregulated. The administrative processes of the Adult Parole Board may be disrupted and creating challenges for its day to day. Mandatory</p>

Matters	No regulation scenario	Consequences
	<ul style="list-style-type: none"> ▪ The Current Regulations also set out various offences in relation to community based corrections. These offences will not be available. 	<p>conditions and other conditions of parole will no longer exist, creating challenges in managing and monitoring parolees.</p> <p>Offences in relation to parole and community based corrections will also expire, creating difficulties in managing the behaviour of offenders by Corrections Victoria and law enforcement by Victoria Police. These will pose safety risks for the Victorian community.</p>
<p>Use or disclosure of information</p>	<ul style="list-style-type: none"> ▪ A number of State and Commonwealth agencies will no longer be prescribed. 	<p>Personal or confidential information will no longer be able to be used by or disclosed to a number of law enforcement agencies and other government entities and independent oversight bodies, unless the prisoner consents to the disclosure. This will have an adverse impact on a number law enforcement agencies and oversight bodies and pose a risk to the administration of the law. The NDIS also relies on disclosure to support the determination for eligibility of offenders for the scheme.</p>

Attachments – Current and Proposed Regulations