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31 December 2014

Victorian Ombudsman - Prison Consultation  
Level 1, North Tower  
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Dear Sir or Madam

**LIBERTY VICTORIA'S SUBMISSION TO THE VICTORIAN OMBUDSMAN'S  
INVESTIGATION INTO THE REHABILITATION AND REINTEGRATION OF  
PRISONERS IN VICTORIA**

1. Liberty Victoria is grateful for the opportunity to make this submission to the Victorian Ombudsman's Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria.
2. Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. It is concerned with the protection and promotion of civil liberties throughout Australia. As such, Liberty Victoria is actively involved in the development of Australia's laws and systems of government. Further information may be found at [www.libertyvictoria.org.au](http://www.libertyvictoria.org.au).
3. Liberty Victoria acknowledges the work of Louis Andrews, Amy Frew and Anna Saunders who have assisted to prepare this submission as part of Young Liberty for Law Reform, a program that gives young professional and student volunteers the opportunity to engage in law reform and advocacy projects under the mentorship of Liberty Victoria members.

## I INTRODUCTION

4. Liberty Victoria welcomes the Ombudsman's decision to investigate rehabilitation and reintegration of prisoners in Victoria. Given one of the greatest determinants of criminal behaviour is previous incarceration, this review is very timely.
5. The pressure on Victoria's justice system has been well documented, particularly with regard to prison capacity. As at 30 June 2014, Victoria's rate of imprisonment was the highest in a decade.<sup>1</sup> The effects of recent sentencing reforms – for example, the completion of the staggered abolition of suspended sentences, reforms to parole laws and the pending commencement of the State's new baseline sentencing regime – will have significant consequences for Victoria's prison population.
6. Within the current rhetoric of the 'law and order' agenda favoured by governments across Australia, what is often left unsaid is that the great majority of offenders sentenced to imprisonment will one day be released back into the community. The community has a great interest in the rehabilitation and reintegration of prisoners. As President Maxwell of the Victorian Court of Appeal has observed, 'the prospect of an offender being rehabilitated represents the best hope for the community that the person will never again engage in violent behaviour.'<sup>2</sup>
7. This submission will first consider how the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the 'Charter') is relevant to the provision of rehabilitation and reintegration programs for prisoners. As Corrections Victoria is a public authority, it is accountable pursuant to s 38(1) of the *Charter*, with the consequence that it is unlawful for it or its officers 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.
8. The submission will then broadly respond to the questions raised in the discussion paper through considering:

- (1) The effect of security regimes, such as solitary confinement, on the rehabilitation and reintegration of prisoners;

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<sup>1</sup> Australian Bureau of Statistics, *Prisoners in Australia, 2014* (ABS Catalogue No 4517.0, Australian Bureau of Statistics, 2014) ('ABS 2014').

<sup>2</sup> *DPP v Malikovski* [2010] VSCA 130 [51].

- (2) The problems facing prisoner rehabilitation programs, particularly with regard to short-term and remand prisoners;
- (3) The vital role of education programs, including the need for prisoners to have access to the internet;
- (4) The need for better resourcing of transition services and lower-security prisons;
- (5) The challenges faced by Aboriginal and Torres Strait Island prisoners;
- (6) The difficulties faced by women prisoners; and
- (7) The need for prisoners' privacy to be respected and for specialist corrections staff to undertake the case management of prisoners.

## **II HUMAN RIGHTS OF PRISONERS TO REHABILITATION AND REINTEGRATION PROGRAMS**

9. Neither the *Charter* nor s 47 of the *Corrections Act 1986* (Vic) (The '*Corrections Act*') contain an express right to rehabilitation or reintegration programs. However, such a right may be inferred from s 22 of the *Charter*, read together with the *Standard Guidelines for Corrections in Australia* (the '*Guidelines*').<sup>3</sup>
10. Section 22 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.'<sup>4</sup> The right is modelled on Art 10(1) of the *International Covenant on Civil and Political Rights 1966* ('*ICCPR*').<sup>5</sup> The European Court of Human Rights has held that Art 10(1)

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<sup>3</sup> *Standard Guidelines for Corrections in Australia 2012*, <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/standard+guidelines+for+corrections+in+australia>>.

<sup>4</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 22.

<sup>5</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 10(1) ('*ICCPR*'). Article 10(3) of the *ICCPR* also states 'the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation'. This express recognition of prisoner rehabilitation finds no equivalent in the Victorian *Charter*. Article 10(3) was deemed 'not an appropriate provision for inclusion because the prison system may have other aims...and this was a matter for debate': Victorian Government, Submission No 324 to Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Review of the Charter of Human Rights and Responsibilities Act 2006*, 70 [295].

of the ICCPR imposes a positive obligation on prison authorities to recognise and respond to prisoners' 'special vulnerability.'<sup>6</sup>

11. The precise content of the *Charter's* 'dignity right' has received limited judicial attention in Victoria.<sup>7</sup> However, in the landmark Supreme Court decision of *Castles v Secretary of the Department of Justice*,<sup>8</sup> Emerton J gave some indication as to its breadth.
12. Justice Emerton observed that the starting point for giving content to s 22 of the *Charter* 'should be that prisoners not be subjected to hardship or constraint other than the hardship or constraint that results from the deprivation of liberty'.<sup>9</sup>
13. In attempting to 'give content to broadly defined rights purporting to enshrine universal principles', her Honour referred to the *Standard Guidelines for Corrections in Australia* mentioned above.<sup>10</sup>
14. The *Guidelines* themselves are not a set of absolute standards or laws.<sup>11</sup> They were originally based on the *United Nations Standard Minimum Rules for the Treatment of Prisoners*.<sup>12</sup> However, on Emerton J's approach in *Castles* they may be significant in informing the content of *Charter* rights.<sup>13</sup>
15. The *Guidelines* provide:

Prisoners should be provided with access to programmes and services, including education, vocational training (and employment), that enable them to develop

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<sup>6</sup> *Taunoa v Attorney-General* [2008] 1 NZLR 429 [78] (Elias CJ). See also Human Rights Committee, *General Comment No 21: Human Treatment of Persons Deprived of their Liberty*, 44<sup>th</sup> sess, UN Doc CCPR/GEC/4731 (13 March 1993) [3].

<sup>7</sup> See, eg, *Castles v Secretary of the Department of Justice* (2010) 28 VR 141; *Rogers v Chief Commissioner of Police* [2009] VCAT 2526; *Re Percy* [2010] VSC 179; *Horrocks v Department of Justice* [2012] VCAT 241; *DPP v JPH* (No 2) [2014] VSC 177; *DPP v Tiba* [2013] VCC 1075.

<sup>8</sup> (2010) 28 VR 141.

<sup>9</sup> *Castles v Secretary of the Department of Justice* (2010) 28 VR 141, 169 [108].

<sup>10</sup> *Guidelines*, above n 4, 3.

<sup>11</sup> *Guidelines*, above n 4, 3.

<sup>12</sup> OHCHR, *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1955), art 31 <http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf> ('*Standard Minimum Rules*').

<sup>13</sup> It should be noted that Emerton J acknowledged the right to reasonable medical care and treatment in s 47(1)(f) of the *Corrections Act 1986* meant her Honour would have reached the same conclusion without reference to the *Charter*; s 22 'served to confirm the interpretation that had been arrived at in any event': *Castles v Secretary of the Department of Justice* (2010) 28 VR 141, 146 [4].

appropriate skills and abilities to support reduced re-offending when they return to the community.<sup>14</sup>

16. Offence and offender-specific programs should also be ‘best practice’ models, and based on solid evidence as to their efficacy.<sup>15</sup>
17. There are, of course, limitations to the programs and services that may be accessed by prisoners. Justice Emerton observed that prisoners’ rights and freedoms will ‘necessarily be compromised by the fact that they have been deprived of their liberty’.<sup>16</sup> The United Nations Human Rights Committee similarly acknowledges that prisoners’ rights are ‘subject to the restrictions that are unavoidable in a closed environment’.<sup>17</sup>
18. Liberty Victoria submits that providing properly resourced rehabilitation and reintegration programs has a vital role in ensuring that persons deprived of liberty are treated with humanity and with respect for the inherent dignity of the human person.

#### ***A. Security Regimes***

19. Security regimes in prisons, such as solitary confinement, have a significant adverse effect on the rehabilitation and reintegration of prisoners.
20. Where prisoners are placed in solitary confinement, or ‘lockdown’, they are unable to participate in the rehabilitation programs. This means that the rehabilitative element of their incarceration is delayed or deferred and further, may adversely impact prospects for such prisoners being granted supervision on parole.
21. Solitary confinement also limits the amount of interaction a prisoner can have with their family and friends. As will be discussed in more detail later, it is these relationships which are one of the more beneficial protective factors in assisting former prisoners not to reoffend.
22. It is difficult for the public to access reliable data on the frequency and location of lockdowns. Anecdotally, however, prisoners have in recent years been subject to

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<sup>14</sup> *Guidelines*, above n 4, 30 [3.6].

<sup>15</sup> *Ibid* [3.10].

<sup>16</sup> *Castles v Secretary of the Department of Justice* (2010) 28 VR 141, 169 [109].

<sup>17</sup> Human Rights Committee, *General Comment No 21: Humane Treatment of Persons Deprived of their Liberty*, 44<sup>th</sup> sess, UN Doc CCPR/GEC/4731 (13 March 1993) [3].

increased security measures, including lockdowns, as a result of correctional policy.<sup>18</sup> In addition, there appears to be an increase in the number of prisoners subjected to maximum security conditions. This will only be exacerbated with plans for an additional high security unit south of Barwon Prison.<sup>19</sup>

23. The case of *DPP v Tiba*<sup>20</sup> illustrates the serious human rights concerns surrounding maximum-security units in the Victorian prison system. Mr Mohammed Tiba had been housed in the Acacia Unit at Barwon prison, the conditions of which were described by his Honour Judge Dean as extremely onerous.<sup>21</sup> Notably, Mr Tiba was not at that time a convicted prisoner, but yet was placed in solitary confinement and prevented from participating in educational programs.<sup>22</sup> Judge Dean, in examining the circumstances of detention to which the prisoner had been subjected, remarked that there was a ‘real question’ as to whether they were compliant with s 22 of the *Charter*.<sup>23</sup> His Honour also accepted that the circumstances of his imprisonment had caused Mr Tiba a high level of psychological disturbance resulting in clinical depression.<sup>24</sup>

24. His Honour further observed:

You have been in custody since your arrest on 5 July 2011. Virtually the entirety of that time you have been housed in the Acacia unit at Barwon Prison or the Charlotte high-security unit at Port Phillip Prison. The regime in those units, in my opinion, may properly be described as extremely onerous. Furthermore, it must be borne steadily in mind that whilst you were housed in those units you were not a convicted prisoner. Whilst housed in those units you are confined to your cell alone for 22 hours each day. You have access to a television, but no other facilities in the cell other than a shower and a toilet. You are permitted one contact visit per month, and two non-contact visits per week. Each day you are allowed to spend one hour outside your cell in a yard. However, you are alone at this time. Food is delivered to you through a trapdoor in your cell door, and you have no cooking facilities of your own.

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<sup>18</sup> Steve Butcher, ‘Victorian Judge Calls for Changes to Custody Lock-Down Rules’, *The Age* (online), January 31 2014.

<sup>19</sup> Department of Justice, ‘Public Notice: Proposal for the HM Barwon Prison New High Security Unit, Victoria’, EPBC Act Referral 2014/7274.

<sup>20</sup> [2013] VCC 1075.

<sup>21</sup> *DPP v Tiba* [2013] VCC 1075 [30].

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, [31].

<sup>24</sup> *Ibid.*

Because of the conditions of your incarceration, you are not permitted to undertake work or any courses of study. For that reason your prison income is limited to \$5 per week, which is insufficient to purchase a newspaper each day. Library facilities are not provided to you.<sup>25</sup>

25. The case of *Tiba* not only demonstrates the problems faced by prisoners in isolation, but also the difficulties faced by prisoners who are on remand and have not been found guilty of any offence.

26. Research into heightened security conditions and prolonged isolation shows that:

[i]nmates in isolation, whether for the purpose of protective custody or punishment, suffer from numerous psychological and physical symptoms, such as perceptual changes, affective disturbances (notably depression), difficulties in thinking, concentration and memory problems, and problems with impulse control ...<sup>26</sup>

27. These concerns have been echoed by members of the Victorian judiciary. In *Raad v DPP*<sup>27</sup>, Bongiorno J (as his Honour then was) observed:

...conditions in Acacia Unit in Barwon Prison are such as to pose a risk to the psychiatric health of even the most psychologically robust individual. Close confinement, shackling, strip searching and other privations to which the inmates are subject all add to the psychological stress.<sup>28</sup>

28. Coupled with prisoners' limited access to mental health care, as well as the lack of adequate mental health referrals upon release (as evidenced by the circumstances of the recent case of *Aggelidis v DPP*<sup>29</sup>) these conditions present a significant barrier to the proper rehabilitation and reintegration of prisoners<sup>30</sup>. Given the current state of the Victorian prison system, these conditions are likely to persist.

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<sup>25</sup> Ibid, [30] (emphasis added).

<sup>26</sup> Jesenia Pizarro and Vanja M K Stenius, 'Supermax Prisons: Their Rise, Current Practices and Effect on Inmates' (2004) 84 *The Prison Journal* 248, 256. See also Sharon Shalev, 'Solitary Confinement and Supermax Prisons: A Human Rights and Ethical Analysis' (2011) 11 *Journal of Forensic Psychology Practice* 151.

<sup>27</sup> [2007] VSC 330.

<sup>28</sup> *Raad v Director of Public Prosecutions* [2007] VSC 330 [6].

<sup>29</sup> [2014] VSCA 6.

<sup>30</sup> See also Hugh de Kretser, 'State Criminal Justice Program is Already Failing', *The Age* (online), May 10 2014.

## ***B. Offender Rehabilitation Programs***

29. Liberty Victoria is particularly concerned by reports of increased demand and longer waiting lists for vital offender rehabilitation programs.<sup>31</sup> Anecdotally, the families of prisoners and advocacy groups have reported that overcrowding issues are denying prisoners access to drug and alcohol treatment.<sup>32</sup>
30. Liberty Victoria is also concerned that dedicated family violence prevention programs are not yet available throughout the State's prisons. Given the prevalence of these offences, it is deeply worrying that not all incarcerated perpetrators of family violence have the opportunity to address their offending behaviour through offence specific programs.
31. Treatment programs for offenders who have committed sexual offences present particular complexities. The available literature suggests that such programs are effective in reducing sexual recidivism<sup>33</sup>, and Corrections Victoria has long been committed to providing appropriate programs for offenders who have committed sexual offences. However, the lengthy duration of such programs (in 2009, between 120 and 180 hours<sup>34</sup>) means that offenders serving shorter sentences may be released back into the community without having participated in such programs.<sup>35</sup> Further, the waiting list to access such programs means that offenders serving shorter sentences will not have access to them.
32. The tension between the sentencing imperatives of community protection and rehabilitation have created something of a 'catch-22' for judges sentencing offenders for child pornography offences. In *DPP v Guest*, the sentencing judge was concerned that the appropriate gaol sentence she had in mind would mean, because of its relatively short length, that Mr Guest would be unable to access a prison-based sex offender program (because of the long waiting list to access the program). As a result, the judge

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<sup>31</sup> Victorian Ombudsman, 'Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria' (Discussion Paper, Victorian Ombudsman, October 2014) 18 ('*Ombudsman Discussion Paper*').

<sup>32</sup> Tammy Mills, 'Rehabilitation Shortfall in Victoria's Overcrowded Prisons', *The Age* (online), 4 September 2014 <<http://www.theage.com.au/victoria/rehabilitation-shortfall-in-victorias-overcrowded-prisons-20140904-10citb.html>>.

<sup>33</sup> Karen Gelb, 'Recidivism of Sex Offenders' (Research Paper, Sentencing Advisory Council, January 2007) 34.

<sup>34</sup> Karen Heseltine, Andrew Day and Rick Sarre, 'Prison-based Correctional Rehabilitation Programs: the 2009 National Picture in Australia' (Research and Public Policy Series 112, Australian Institute of Criminology, 2011) 16.

<sup>35</sup> See *DPP (Cth) v Guest* [2014] VSCA 29 [13].



instead sentenced Mr Guest to a non-custodial sentence because treatment outside of gaol was available and was most conducive to his rehabilitation, and would therefore best achieve the community protection purpose of Victoria's 'serious sex offender' regime under the *Sentencing Act* 1991.<sup>36</sup>

33. The Court of Appeal overturned the judge's decision, holding that the serious sex offender regime in the *Sentencing Act 1991* (Vic) was 'entirely punitive...[with] nothing to do with protection of the community through rehabilitation.'<sup>37</sup> Mr Guest was sentenced to a term of imprisonment. The case highlights the conundrum facing sentencing judges; how can the community be protected from the inevitable release of sexual offenders if the term of their incarceration puts vital treatment beyond their reach?
34. For offenders who have committed sexual offences, the lack of individualised treatment also creates problems for their successful rehabilitation. Although the Department of Justice has the capacity to provide individualised treatment in special cases,<sup>38</sup> prison-based sex offender programs are typically provided in a group environment.<sup>39</sup> In some cases, individualised treatment will be a preferable option, or indeed a necessary precursor to effective participation in group therapy.
35. In *DPP (Cth) v Zarb*<sup>40</sup>, for instance, the offender required three months of individual treatment before he could cope effectively with group therapy.<sup>41</sup> The sentencing judge concluded that a non-custodial disposition would allow one-on-one treatment to continue, and best protect the community.<sup>42</sup> A majority of the Court of Appeal disagreed, overturning her Honour's sentence and imposing a three-month term of imprisonment, coupled with a community correction order.<sup>43</sup>
36. The grave consequences of denying access to sex offender treatment programs were recently demonstrated in the case of *DPP v Chatterton*,<sup>44</sup> where the offender was

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<sup>36</sup> *DPP v Guest* (Unreported, County Court of Victoria, Judge Gaynor, 21 November 2013) [41]–[42].

<sup>37</sup> *DPP (Cth) v Guest* [2014] VSCA 29 [28] (Coghlan JA, Weinberg and Whelan JJA agreeing).

<sup>38</sup> *Re Percy* [2010] VSC 179.

<sup>39</sup> Karen Heseltine, Andrew Day and Rick Sarre, 'Prison-based Correctional Rehabilitation Programs: the 2009 National Picture in Australia' (Research and Public Policy Series 112, Australian Institute of Criminology, 2011) 15.

<sup>40</sup> [2014] VCC 1517.

<sup>41</sup> [2014] VCC 1517 [33] (Hogan J).

<sup>42</sup> *Ibid* [54].

<sup>43</sup> *DPP (Cth) v Zarb* [2014] VSCA 347 [51] (Neave and Kyrou JJA, Priest JA in dissent).

<sup>44</sup> [2014] VSCA 1.

ordered to participate in a specialist sex offender treatment program during his incarceration. However, Mr Chatterton was released into the community before he became eligible for a place in the program. Within four months of his release he was reoffending. A forensic psychologist later told the sentencing judge that Mr Chatterton's reoffending was '...brought about, in part, because of the failure of the authorities to make that program available to him.'<sup>45</sup>

37. Liberty Victoria welcomes the investment of an additional \$84.1 million towards offender treatment programs as announced in the 2014-15 budget.<sup>46</sup> However, we note that sum has been allocated to support the Callinan Review recommendations more broadly, including strengthening the management of parole orders and boosting the resources of the Adult Parole Board.<sup>47</sup> It is unclear how much of that money has been earmarked exclusively for offender treatment programs. Additionally, this investment needs to be seen in the context of the \$306.6 million allocated for new prison beds and infrastructure over the same period.<sup>48</sup>
38. It should also be noted that the former Government increased overall funding for pre-release and post-release programs from \$3.5 million to \$7.4 million per year.<sup>49</sup> However, with Victoria's prison population reaching a 10-year high,<sup>50</sup> and likely to climb higher still as the effects of punitive sentencing laws are felt, it appears there will still be significant numbers of prisoners who do not have access to such programs.
39. Liberty Victoria submits that it is imperative that the Victorian Government ensures investment in offender rehabilitation keeps pace with increasing prisoner numbers. The *Chatterton* case illustrates the grave consequences of failure.

## ***Recommendations***

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<sup>45</sup> Ibid [43].

<sup>46</sup> Corrections Minister Edward O'Donoghue, 'Coalition Government to Complete Implementation of Callinan Recommendations' (Media Release, 12 March 2014) <<http://edwardodonohue.com.au/coalition-government-to-complete-implementation-of-callinan-recommendations/#.VJABcmSUemE>>.

<sup>47</sup> Department of Treasury and Finance, *2014-15 Budget Paper No 3 – Service Delivery* (Department of Treasury and Finance, 2014) 36 <<http://www.dtf.vic.gov.au/State-Budget/2014-15-State-Budget/Service-Delivery>>.

<sup>48</sup> Ibid 35.

<sup>49</sup> Corrections Minister Edward O'Donoghue, 'Record \$26 Million Investment in Prison Programs to Build a Safer Community' (Media Release, 27 October 2014) <[http://edwardodonohue.com.au/record-26-million-investment-in-prison-programs-to-build-a-safer-community/#.VI\\_X2SUemE](http://edwardodonohue.com.au/record-26-million-investment-in-prison-programs-to-build-a-safer-community/#.VI_X2SUemE)>.

<sup>50</sup> *ABS 2014*, above n 1.

40. Liberty Victoria urges Corrections Victoria to ensure that low risk offenders and those serving short-term sentences have the opportunity to access offending behaviour programs. This is particularly important with respect to sexual offender programs, as the cases discussed above demonstrate. There may be a need for more short-term programs operating during the offender's incarceration and continuing after release. Individualised treatment programs should be provided whenever possible.
41. Liberty Victoria recommends the expansion of existing programs addressing family violence across the State's prison system. We note that the recently elected Labor Government campaigned heavily on the need to address family violence. Liberty Victoria submits that a renewed commitment to offence-specific treatment programs is consistent with that platform.

### ***C. Education programs***

42. Section 47(o) of the *Corrections Act* provides that prisoners have 'the right to take part in educational programmes in the prison'. However, the provision does not address the standard of educational programs that must be made available to prisoners. As outlined above, the *Guidelines* provide a minimum standard for educational programs available to prisoners.<sup>51</sup>
43. The *Guidelines* provide that prisoners should be given access to education and vocational training that will allow them to develop appropriate skills in order to reduce the risk of re-offending on release.<sup>52</sup> To support the provision of education, all programs should be regularly evaluated.<sup>53</sup> The *Guidelines* also provide that a further or extended period for assessment should be provided where practicable.<sup>54</sup>
44. To give further content to the obligation to treat all detained persons 'with humanity and with respect for the inherent dignity of the human person', we can look to the obligations imposed through other rights instruments or guidelines. The *Standard Minimum Rules* provide that educational programs should be made available for any

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<sup>51</sup> *Castles v Secretary of the Department of Justice* (2010) 28 VR 141, 169 [108].

<sup>52</sup> *Guidelines*, above n 4, 30 [3.6].

<sup>53</sup> *Ibid* 30 [3.11].

<sup>54</sup> *Ibid* 16 [1.6].

and all prisoners who might benefit from it.<sup>55</sup> This includes vocational training in useful trades.<sup>56</sup> Further, they provide that ‘(s)o far as practicable, the education of prisoners shall be integrated with the educational system of the country’ in order for prisoners to continue their education after release.<sup>57</sup>

45. In affirmation of the universal right to education, a right which is similarly founded on respect for human dignity,<sup>58</sup> the United Nations Economic and Social Council issued Resolution 1990/20 on the subject of prison education. In so doing, they recommended that prisons be adequately staffed with education personnel and for them to be provided with appropriate training.<sup>59</sup> The resolution further recommends that these programs be tailored to the needs of offenders;<sup>60</sup> that the necessary funds and equipment for these programs be made available;<sup>61</sup> and that, where education must take place inside a prison, the outside community ‘be involved as fully as possible’. Liberty Victoria considers that these recommendations are encompassed by the human right protected by s 22 of the *Charter* and that, wherever possible, they should be adhered to.

### ***Challenges to the Right to Education***

46. There is no question that Victorian prisoners, as a group, have a great need for access to education in prison, both vocational and otherwise. As at June 2011, 91 per cent of Victorian prisoners had not completed secondary schooling, and two-thirds were unemployed at the time of their imprisonment.<sup>62</sup> Liberty Victoria notes with concern the high levels of prisoners with literacy and numeracy levels requiring intensive support.<sup>63</sup>
47. As part of a 2011 service delivery innovation, Corrections Victoria proposed to implement a database where information on offender literacy, numeracy, and expected release dates would be collated. Liberty Victoria commends these efforts to improve the

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<sup>55</sup> *Standard Minimum Rules*, Art 77(1).

<sup>56</sup> *Ibid* art 71(5).

<sup>57</sup> *Ibid* art 77(2).

<sup>58</sup> *ICCPR*, art 13.

<sup>59</sup> *Prison Education*, ESC Res 20, ESCOR, 1st sess, 13th plen mtg, UN Doc E/Res/1990/20 (24 May 1990), paras 1(a)-(b).

<sup>60</sup> *Ibid* para 1(d).

<sup>61</sup> *Ibid* para 3(j).

<sup>62</sup> Jenny Roberts, ‘Innovation in Vocational Education and Training in Corrections Victoria’, 2011, <[www.acea.org.au/Pages/2011 Papers.htm](http://www.acea.org.au/Pages/2011%20Papers.htm)>, 3-4.

<sup>63</sup> *Ombudsman Discussion Paper*, above n 36, [81].

assessment and evaluation of education programs, as well as their individualised delivery.<sup>64</sup> However, given that assessment of literacy and numeracy skills upon reception is not compulsory, these evaluation mechanisms will necessarily be limited.<sup>65</sup>

48. Over the last decade, funding for education programs has failed to keep pace with the prison population, with dire consequences for their delivery. For example, prisoner participation in Vocational Education Training (VET) programs declined from 41% in 2002 to 33.2% in 2010.<sup>66</sup> Although an increase in funding was approved in 2010, unfortunately, more recent data is not publicly available at present. Given the unprecedented expansion in the Victorian prison population over the past five years, we strongly agree with the Ombudsman's observation that education programs will face unacceptable pressure unless resourcing is able to adequately keep pace.<sup>67</sup>
49. Liberty Victoria notes also that given the well-documented effect of prison education programs on reducing recidivism and improving public safety, such measures are clearly a cost-effective and sensible use of public funds,<sup>68</sup> as well as according with the Victorian Government's human rights obligations under the *Charter*.<sup>69</sup>

### ***Education and Access to the Internet***

50. Liberty Victoria notes that Victorian prisoners are not permitted to access the internet during their incarceration.<sup>70</sup> This imposes a dual limitation on those wanting to undertake distance education while in prison. First, information on what programs are available, and their content, is far more difficult to access offline. Secondly, meaningful

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<sup>64</sup> Roberts, above n 70, 5–6.

<sup>65</sup> *Ombudsman Discussion Paper*, above n 36 [83].

<sup>66</sup> Roberts, above n 70, 1–2.

<sup>67</sup> *Ombudsman Discussion Paper*, above n 36 [84]; Alison Savage, 'Victoria's 'Dangerous' Prisons Overcrowded, Underfunded : Ombudsman's Report', *The Age* (online), 26 Mar 2014.

<sup>68</sup> See, eg, John H. Esperian, 'Impact of Education Programs on Recidivism' (2010) 61 *Journal of Correctional Education* 316 ; Lois M. Davis et al, 'Evaluating the Effectiveness of Correctional Education' (RAND Corporation, 2013).

<sup>69</sup> *Charter* s 22.

<sup>70</sup> Corrections Victoria, 'Work, Education and Training', <[www.corrections.vic.gov.au/home/prison/going+to+prison/work+education+and+training/](http://www.corrections.vic.gov.au/home/prison/going+to+prison/work+education+and+training/)>.

participation in such education opportunities is made more difficult, if not altogether impossible.<sup>71</sup>

51. Liberty Victoria notes that the *Guidelines* provide that prisoners' education shall enable them to develop appropriate skills for use in employment upon release.<sup>72</sup> In a rapidly changing economy, online learning is a mechanism which allows students to 'develop important skills which better equip them for the modern workplace' than offline vocational training.<sup>73</sup> Further, the *Standard Minimum Rules* provide that education shall, wherever possible, be integrated with the education system of the country.<sup>74</sup> Liberty Victoria is concerned that preventing prisoners from developing this important aspect of literacy will have ramifications for their further education and employment prospects post-release.
52. Although there are understandable security concerns, Liberty Victoria submits that this could be addressed by monitoring and controlling internet usage of prisoners. The ACT human rights-compliant Maconochie Centre is a successful example of best practice in this area.<sup>75</sup> In this way, the limitations imposed on prisoners' rights to education through the use of the internet will be proportionate to the need for security, consistent with international human rights jurisprudence.<sup>76</sup>
53. The UN Special Rapporteur on the Right to Education, in a 2009 report, strongly emphasised that although education provides better outcomes for prisoners and the community upon release, it is also vital in its own right.<sup>77</sup> The right to education ought not disappear along with the right to liberty as a result of incarceration.<sup>78</sup> This fundamental principle is echoed in the decision of Emerton J in *Castles*, discussed above, that 'the starting point should be that prisoners not be subjected to hardship or

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<sup>71</sup> Lisa Harrison, 'Prisoners and Their Access to the Internet in Pursuit of Education' (2014) 39 *Alternative Law Journal* 159–61.

<sup>72</sup> *Standard Guidelines*, above n 4, 30 [3.6].

<sup>73</sup> Harrison, above n 79, 160.

<sup>74</sup> *Standard Minimum Rules*, art 77(2).

<sup>75</sup> Harrison, above n 79, 162.

<sup>76</sup> See, eg, *Velyo Velev v Bulgaria* (European Court of Human Rights, Fourth Section, Application No 16032/07, 27 May 2014) [30], where the court noted that any restrictions on prisoners' rights (except the right to liberty) required justification.

<sup>77</sup> Verner Munoz, Report of the Special Rapporteur on the Right to Education, *The Right to Education of Persons in Detention*, HRC 11th sess, Agenda Item 3, UN Doc A/HRC/11/8 (2 April 2009) [4].

<sup>78</sup> *Standard Minimum Rules*, art 5.

constraint other than the hardship or constraint that results from the deprivation of liberty.’<sup>79</sup>

54. Liberty Victoria recognises that education for prisoners, as in many other contexts, is subject to resource constraints. However, as a pathway to employment, education can be a ‘protective factor’ against recidivism and hence a critical part of rehabilitation and reintegration of prisoners.<sup>80</sup> Further, there is some evidence that post-secondary education is more effective in achieving this outcome than secondary education alone.<sup>81</sup>

### ***Recommendations***

55. Prison education programs must be fully supported and resourced. Liberty Victoria recommends that every prisoner, on reception, should be assessed for levels of literacy and numeracy and other education needs, subject to their consent. Such educational programs should be comprehensively monitored across the Victorian prison system. Periodic evaluation will also help ensure that vocational education and training best assists prisoners in gaining employment post-release and that programs do not become outdated. Liberty Victoria further supports information about the delivery of education programs being made available to the public in order to increase correctional transparency and accountability.
56. Liberty Victoria also encourages the Government to make adequate resources and technology available to prisoners to facilitate both secondary and post-secondary learning. Liberty Victoria considers that this includes appropriately supervised and monitored access to the internet and would support the introduction of a pilot program in Victoria to evaluate how this might best be implemented.

### ***D. Transition Services***

57. As with the provision of rehabilitation programs and education to prisoners, the right to transition services is not specifically provided for by the *Charter*. Neither is it directly

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<sup>79</sup> *Castles v Secretary of the Department of Justice* (2010) 28 VR 141, 169 [108].

<sup>80</sup> Roberts, above n 70, 3.

<sup>81</sup> Grant Duwe and Valerie Clarke, ‘The Effects of Prison-Based Educational Programming on Recidivism and Employment’ (2014) 94 *The Prison Journal* 454, 474–5.

addressed in the *Corrections Act*. However, as detailed above, prisoners' rights may be found in the *Guidelines*. Relevantly, the *Guidelines* provide that:

3.15 Prisoners, particularly longer-term prisoners should be provided with programmes and services that will assist them make a successful transition from custody to community life.

3.16 Such programmes and services should address such matters as housing, employment and community support and should be developed in conjunction with community corrections where appropriate.

3.17 Where appropriate, pre-release programmes should include work release, day leave, weekend leave, education and family leave and where possible provide prisoners with opportunities to engage in sustained paid employment.<sup>82</sup>

58. The *Guidelines* further provide that prisoners shall be housed 'in the lowest level of security appropriate for their circumstances to ensure maximum opportunities for rehabilitation.'<sup>83</sup>
59. Liberty Victoria expresses concern that, due to the recent dramatic rise in the prison population and the corresponding overcrowding in the Victorian prison system, the risk of prisoners being imprisoned at a higher level of security than is appropriate is high.<sup>84</sup>
60. All Victorian prisoners should be offered access to the Transitional Assistance Program when they are nearing the end of their sentence. For prisoners who have more complex needs, there are Intensive Transitional Support Programs that provide both pre and post release case management support. There are three streams catering for the different needs of women, men, and Aboriginal and Torres Strait Islander people.
61. An important part of transition and reintegration into the community is ensuring that family and other relationships are maintained during periods of incarceration. Section 47(1)(k) of the *Corrections Act* provides that a prisoner is entitled to at least one visit from relatives or friends per week of a half an hour duration.<sup>85</sup> Further, the *Guidelines*

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<sup>82</sup> *Guidelines*, above n 4 [3.15]

<sup>83</sup> *Ibid* 19 [1.39].

<sup>84</sup> *Ombudsman Discussion Paper*, above n 36 [141].

<sup>85</sup> *Corrections Act 1986*, s 47(1)(k).



provide that prisoners should be encouraged to maintain family relationships through regular visits, and should be permitted a minimum of one visit per week.<sup>86</sup>

62. Liberty Victoria expresses concern about the effect of security regimes on prisoners' access to the outside world. The constraints on family visits and communication associated with high-security conditions is harmful to prisoners' prospects for rehabilitation and reintegration.<sup>87</sup>
63. As the recent changes to sentencing and parole laws begin to take effect on the rate of incarceration and release in Victoria, the pressure of delivering services in prisons will also increase. There is likely to be a corresponding increase in the number of people serving shorter sentences, who nonetheless will need transition support services. Shorter sentences interrupt or terminate employment and housing agreements, and add stress to family, relationship and parenting arrangements. However, as discussed above, short sentences can mean that there are reduced options for prisoners to engage with other support services, such as offender behaviour change programs.
64. Liberty Victoria expresses concern at the plans for additional beds in the Dame Phyllis Frost Centre. That Centre is a maximum security prison for women, but only half of all female prisoners are classified as maximum security, with three-quarters of women prisoners residing in a custodial environment that is more onerous than their minimum security rating. Increasing the capacity of the Dame Phyllis Frost Centre will not improve that situation. These resources should be spent on increasing the capacity of lower security prisons to facilitate female prisoners' successful transition back into the community.

### ***Recommendations***

65. Liberty Victoria recommends that greater resources be allocated to lower-security prisons and transition services.

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<sup>86</sup> *Guidelines*, above n 4 [3.23]-[3, 31].

<sup>87</sup> Michael Inman, 'Rehabilitation Hit by Reduced Jail Visitation: Prison Rights Group', *The Age* (online), 20 May 2014.

66. Wherever possible, prisoners should be placed in facilities in accordance with their security rating. It is deeply concerning, particularly with regard to transition, that prisoners are being held in higher security environments than is necessary.
67. Liberty Victoria supports enhanced evaluation and procedures of internal review for prisoners who may be eligible to transition to lower-security imprisonment. We recommend that this include a mechanism whereby prisoners are able to access the reasons for their security assessment and, where appropriate, to seek review of their conditions.
68. Liberty Victoria urges that, for prisoners who may be subject to ongoing lockdowns or housed in high-security facilities, they receive adequate mental health support whilst incarcerated, as well as referral to mental health professionals upon release. Further, that unless there is good reason in a particular case, they receive the same level of communication with friends and family that is enjoyed by lower security prisoners.

### **III. PRIORITY GROUPS**

#### ***A. Aboriginal and Torres Strait Islander Prisoners***

69. For the reasons already outlined, all offenders have a right to access rehabilitation programs. Further, Corrections Victoria has an obligation under the *Charter* to provide culturally appropriate programs for Aboriginal and Torres Strait Islander prisoners.
70. The *Charter* provides that Aboriginal Australians hold distinct rights to identity, culture, language and to maintain their connection to traditional land and waters.<sup>88</sup> As prisoners, they enjoy the same rights as they would in the wider community.<sup>89</sup> Additionally, the *Standard Guidelines for Corrections in Australia* states that programs provided to Aboriginal prisoners ‘should be established following close consultation with the appropriate community groups and experts.’<sup>90</sup>

#### ***Challenges to the rights of Aboriginal and Torres Strait Islander prisoners***

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<sup>88</sup> *Charter* s 19(2).

<sup>89</sup> *Corrections Act 1986* (Vic) s 46(2).

<sup>90</sup> *Guidelines*, above n 4, 31 [3.14].

71. The available information suggests that participants in culturally-specific cognitive programs provided in Victorian prisons – the Aboriginal Cultural Immersion Program and the Marumali Program – experienced positive personal outcomes.<sup>91</sup> It should be noted, however, that Corrections Victoria’s inadequate data system has so far prevented any meaningful analysis of these programs’ impact on recidivism rates.<sup>92</sup>
72. Liberty Victoria is deeply concerned by the erratic delivery of culturally appropriate programs for Aboriginal and Torres Strait Islander prisoners. We accept that resourcing constraints may be particularly problematic where programs are developed and delivered by external partners.<sup>93</sup> However, the fact remains that Aboriginal prisoners are being denied access to culturally appropriate programs.<sup>94</sup> Given the literature suggests that Aboriginal prisoners are less likely to participate in and benefit from mainstream rehabilitation programs,<sup>95</sup> this raises serious questions about whether Corrections Victoria is meeting its obligations under ss 19 and 22 of the *Charter*.
73. We also note with regret that the Koori Cognitive Skills program was due to be phased out in 2013 as part of a ‘wraparound’ approach aimed at increasing access to programs designed for Aboriginal offenders.<sup>96</sup> While Liberty Victoria recognises that resources are limited and difficult decisions must be made, the Koori Cognitive Skills Program had been positively received when first piloted in 2005.<sup>97</sup> More recently, a 2013 report prepared for the Commonwealth Attorney-General’s Department suggested that while data on its effectiveness was unavailable, the program’s cognitive behavioural therapy basis gave it the ‘direct potential to contribute to reduction in reoffending.’<sup>98</sup>

## ***Recommendations***

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<sup>91</sup> Cultural and Indigenous Research Centre Australia, ‘Evaluation of Indigenous Justice Programs Project B: Offender Support and Reintegration’ (Final Report, Attorney-General’s Department) 144.

<sup>92</sup> Ibid 143. Liberty Victoria acknowledges that it appears Corrections Victoria’s data management systems with respect to program effectiveness and participation appears to have been upgraded and rolled out to all locations by June 2014. We welcome this development.

<sup>93</sup> Ibid 141.

<sup>94</sup> Ibid 143.

<sup>95</sup> See Karen Burgoyne and Graham Tyson, ‘An Evaluation of the Think First Program’ (2013) 46(1) *Australian and New Zealand Journal of Criminology* 88, 91; Cultural and Indigenous Research Centre Australia, ‘Evaluation of Indigenous Justice Programs Project B: Offender Support and Reintegration’ (Final Report, Attorney-General’s Department) 128.

<sup>96</sup> Ibid 141.

<sup>97</sup> Graham Atkinson and Robin Jones, ‘An Evaluation of the Koori Cognitive Skills Program Pilots’ (Final Report for Corrections Victoria, 2005).

<sup>98</sup> Cultural and Indigenous Research Centre Australia, ‘Evaluation of Indigenous Justice Programs Project B: Offender Support and Reintegration’ (Final Report, Attorney-General’s Department) 143.

74. Liberty Victoria doubts that Corrections Victoria is adequately resourced to ensure the delivery of rehabilitation programs is funded at a rate proportionate to the growing prison population. We submit that urgent steps should be taken to address the apparent resourcing crisis facing programs designed for indigenous offenders. It appears from the 2013 *Evaluation of Indigenous Justice Programs Project B: Offender Support and Reintegration* that Corrections Victoria is failing to meet its obligations to Aboriginal prisoners.

### **B. Women Prisoners**

75. Liberty Victoria notes with concern the rising rate of the female prison population, and the even higher rate of Aboriginal women in Victorian prisons. Between 2013 and 2014 the number of female prisoners rose from 376 to 406,<sup>99</sup> and Aboriginal female prisoners went from 28 to 38.<sup>100</sup>

76. While female prisoners comprise less than seven per cent of the total prison population,<sup>101</sup> they present an extremely different prisoner profile. Liberty Victoria is concerned that the rights of female prisoners in Victoria may be overlooked with respect to funding allocations, and in the design and implementation of rehabilitation and reintegration programs.

77. Liberty Victoria welcomes the Ombudsman's focus on the specific needs of female prisoners, particularly the recognition that their needs and vulnerabilities are distinct from those of male offenders. Female prisoners are also far more likely to have caring and family responsibilities than male prisoners,<sup>102</sup> and also are more likely to be victims of family violence and sexual abuse. As discussed above, the international community has set standards and guidelines as to the rights of all prisoners. Specific rights are also accorded to women, recognising their particular position in society.<sup>103</sup>

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<sup>99</sup> *ABS 2014*, above n 1.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> Lorena Bartels and Antonette Gaffney, *Good Practice in Women's Prisons: A Literature Review* (Australian Institute of Criminology 2011) xii.

<sup>103</sup> The foremost UN human rights convention regarding the special status of women is the *Convention for the Elimination of all forms of Discrimination Against Women* ('CEDAW'), which is incorporated into Australian law through the *Sex Discrimination Act 1984* (Cth).

78. Liberty Victoria notes that in 2005 the Federation of Community Legal Centres and the Victorian Council of Social Services (VCOSS) made a request to the then Equal Opportunity Commission of Victoria (EOCV), calling on them to initiate an investigation into discrimination against women prisoners by the State of Victoria.<sup>104</sup> EOCV decided not to formally investigate these claims, apparently primarily because in November 2005 Corrections Victoria released *Better Pathways*, their four-year strategy to address the increase in women's imprisonment in Victoria.<sup>105</sup>
79. EOCV also noted that discrimination law was not necessarily the most effective method of pursuing the rights of women prisoners and expressed the hope that the development of rights in the then newly incoming *Charter* would provide another avenue to uphold women's rights without the need of a comparator.<sup>106</sup>
80. *Better Pathways* included a suite of measures with two key objectives: to reduce the rate of imprisonment for women offenders and to reduce the number of women who re-offend.<sup>107</sup> Many of the strategies to reduce the rate of imprisonment were diversionary strategies, but some strategies were aimed at reducing the rate of imprisonment by lessening recidivism.<sup>108</sup>
81. When *Better Pathways* was assessed in 2009 it was found to have contributed to the reduction in the rate of imprisonment of women between 2003 and 2009.<sup>109</sup> As the rate of female prisoners in Victoria has risen considerably in the last few years, these strategies are either no longer effective, or have been abandoned.
82. The evaluation was inconclusive as to the reduction in the number of women who reoffend.<sup>110</sup> It does not appear there is any publicly available data as to the rate of recidivism after the 2009 evaluation.
83. Current ABS data shows that in 2014 approximately 40 per cent of non-indigenous female prisoners had previously been imprisoned.<sup>111</sup> For indigenous female prisoners

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<sup>104</sup> The Federation of Community Legal Centres and the Victorian Council of Social Services, *Request for a Systemic Review of Discrimination Against Women in Victorian Prisons*, (April 2005).

<sup>105</sup> Equal Opportunity Commission Victoria, *Women Prisoners in Victoria* (19 December 2006) 8.

<sup>106</sup> *Ibid* 7.

<sup>107</sup> Corrections Victoria, *Better Pathways: An Integrated Response to Women's Offending and Re-Offending* (Victorian Government Department of Justice, 2005)

<sup>108</sup> *Ibid*.

<sup>109</sup> PriceWaterhouseCoopers, *Evaluation of the Better Pathways Strategy, Corrections Victoria* (Corrections Victoria, April 2009).

<sup>110</sup> *Ibid*.

this rose to about 61 per cent.<sup>112</sup> This suggests that in Victoria recidivism rates for female prisoners are high, and extremely high for indigenous female prisoners.

84. However, the *Better Pathways* evaluation did conclude that the tailored community and transitional support programs kept women out of prison.<sup>113</sup> Offenders identified housing and family reunification as their highest priorities; initiatives which assisted women in these areas had the greatest impact.<sup>114</sup>
85. There are a number of other international instruments which consider the specific status of female prisoners and prescribe guidelines and best practice principles to safeguard the rights of incarcerated women. In 2011 the UN General Assembly adopted the *Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the 'Bangkok Rules')*.<sup>115</sup> The *Bangkok Rules* proceeded on the assumption that the *Standard Minimum Rules for the Treatment of Prisoners* did not 'draw sufficient attention to women's particular needs.' It reinforced the different offender profiles of incarcerated women worldwide. In particular, it focused on women's roles as primary carers in families.
86. The *Bangkok Rules* also drew attention to the dearth of information and research into women prisoners, including the particular characteristics of women prisoners and 'programmes designed to reduce reoffending by women.'<sup>116</sup>

### ***Recommendations***

87. Liberty Victoria is concerned that any progress towards reducing women's incarceration rate after the implementation of *Better Pathways* has been lost, and that women are being incarcerated at an increasing rate in Victoria. In particular, the rates of incarceration of Aboriginal and Torres Strait Islander women are of great concern.

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<sup>111</sup> *ABS 2014*, above n 1.

<sup>112</sup> *Ibid.*

<sup>113</sup> Price Waterhouse Coopers, above n 114.

<sup>114</sup> *Ibid.*

<sup>115</sup> *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, GA Res 65/229, UN GAOR, 65<sup>th</sup> sess, Agenda Item 105, UN Doc A/RES/65/229 ('*Bangkok Rules*').

<sup>116</sup> *Bangkok Rules*, rule 67.

88. The outcomes of *Better Pathways* should be assessed, with particular attention given to its impact on recidivism rates, which were unable to be assessed earlier given the length of time necessary to assess long-term impacts.
89. While recidivism rates of all women prisoners are high, these rates are especially concerning in Aboriginal and Torres Strait Islander women prisoners. Liberty Victoria recommends that programs should be tailored specifically to these women, and not just adapted from those developed for men.
90. Liberty Victoria submits that more resources should be devoted to diversionary programs for women when they enter the justice system, and rehabilitation and reintegration programs for women prisoners. Capacity should be increased in the system at the minimum security facility Tarrengower so that no women classified as minimum security should have to reside in maximum security facilities.
91. Liberty Victoria recommends that the collection and publication of data regarding women prisoners be undertaken. Current Australian Bureau of Statistics data is mostly not disaggregated by gender. This serves to hide the very different offender profile of women, and their corresponding different and specific needs.
92. Liberty Victoria calls for a thorough analysis of individual rehabilitation and reintegration programs for women prisoners in Victoria, with public access to these results. Lack of access to such data has meant that Victorian prisoners have not benefited from informed advocacy from the community and private sectors.

#### IV PRIVACY AND CASE MANAGEMENT

93. When dealing with issues of rehabilitation and reintegration, it is vital that the privacy of prisoners is respected and that information sharing does not result in personal information being shared without the consent of the prisoner.

3.1 The right to privacy is protected by s 13 of the *Charter*. In *Castles*,<sup>117</sup> Emerton J noted:

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<sup>117</sup> (2010) 28 VR 141, 162-163 [77]-[79] (citations omitted). In *J B v Melbourne Health & Anor* (*Patrick's case*) [2011] VSC 327, [85], Bell J held that:  
...the human right in s 13(a) [of the *Charter*] not to have your privacy, family, home or correspondence "arbitrarily" interfered with extends to interferences which, in the particular circumstances applying to

The nature of the privacy right was considered by Bell J (as President of VCAT) in *Kracke v Mental Health Review Board* and *Director of Housing v Sudi*. In *Kracke*, his Honour identified the purpose of the privacy right as follows:

The purpose of the right to privacy is to protect people from unjustified interference with their personal and social individuality and identity. It protects the individual's interest in the freedom of their personal and social sphere in the broad sense. This encompasses their right to individual identity (including sexual identity) and personal development, to establish and develop meaningful social relations and to physical and psychological integrity, including personal security and mental stability.

The fundamental values which the right to privacy expresses are the physical and psychological integrity, the individual and social identity and the autonomy and inherent dignity of the person.

In *Sudi*, the privacy right was more fully described in the following way:

The rights to privacy, family, home and correspondence in section 13(a) are of fundamental importance to the scheme of the Charter. Their purpose is to protect and enhance the liberty of the person — the existence, autonomy, security and wellbeing of every individual in their own private sphere. The rights ensure people can develop individually, socially and spiritually in that sphere, which provides the civil foundation for their effective participation in democratic society. They protect those attributes which are private to all individuals, that domain which may be called their home, the intimate relations which they have in their family and that capacity for communication (by whatever means) with others which is their correspondence, each of which is indispensable for their personal actuation, freedom of expression and social engagement.

It can be seen that the privacy right is a right of considerable amplitude.

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the individual, are capricious, unpredictable or unjust and also to interferences which, in those circumstances, are unreasonable in the sense of not being proportionate to a legitimate aim sought. Interference can be arbitrary although it is lawful.

See further *WBM v Chief Commissioner of Police* [2012] VSCA 159, [103] (Warren CJ).



94. The right to privacy is intended to protect the autonomy of the individual, and extends to aspects of social identity.<sup>118</sup>
95. Whilst a central information management system containing all prisoner case file information may be of considerable assistance in case management, it is vital that any such system have the strictest of protocols with regard to access, dissemination and the destruction of redundant records.
96. That applies with equal force to the provision of rehabilitative and education courses and transitional services. While case managers and service providers understandably wish to be provided with all relevant information, it is vital that prisoners are properly consulted with regard to how their personal information is disseminated. That is especially so when such information may involve details of offences and the prisoner's medical, psychiatric and/or psychological history. Prisoners should be consulted and provide consent before any personal information is provided to transition service providers.
97. With regard to the provision of case management, there is a clear need for prisoners to have continuity with regard to case management and for case managers to have specialised training. For that reason Liberty Victoria submits that case management should be provided by specialist corrections staff as opposed to prison officers, with each case manager assigned to a specific prisoner rather than to prison units in order to ensure continuity of support.

#### IV CONCLUSION

98. Prisoner rehabilitation not only benefits the individual – it makes the community a safer place. Striking the right balance between just punishment and rehabilitation is

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<sup>118</sup> In *Pretty v The United Kingdom* (2002) 35 EHRR 1, [61] the European Court of Human Rights held: As the Court has had previous occasion to remark, the concept of “private life” is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person... It can sometimes embrace aspects of an individual's physical and social identity... Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere protected by Article 8... Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world... Although no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees (citations omitted).

undeniably difficult. However, Liberty Victoria is concerned that the right balance has not been struck. Additionally, we fear increasingly punitive sentencing laws may be making the community less safe, particularly as prisoners do not have sufficient access to rehabilitative and transitional supports.

99. It is vital that resourcing for rehabilitation and reintegration services increases proportionately to the prison population. If an offender could potentially benefit from transition services, offence-specific rehabilitation programs or educational opportunities, any failure to provide those services is an indictment on the system. Additionally, regard must be had to the particular characteristics of vulnerable prisoners, notably women and Aboriginal and Torres Strait Islander prisoners.

100. Thank you for the opportunity to make this submission. If the panel has any questions with regard to this submission, or if we can provide any further information or assistance, please do not hesitate to contact George Georgiou SC, President of Liberty Victoria, or Michael Stanton, Vice-President of Liberty Victoria.