

Total Control

Ending the routine strip
searching of women in
Victoria's prisons



Human Rights Law Centre

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Executive summary

“I think the evidence speaks for itself. There are very few items of contraband found...There’s no evidence base for strip-searching women. What earthly purpose does it serve apart from to degrade and humiliate and assert control over our bodies, our naked bodies?” VICKIE

Each year thousands of strip searches are conducted on women in Victoria’s prisons. Strip searches are invasive, humiliating and, in many cases, re-traumatising. They require women to strip naked in front of two prison officers.

Strip searches are conducted on women who have experienced disproportionately high rates of sexual abuse and family violence and who, in the vast majority of cases, are awaiting trial or sentence, or are serving short sentences for non-violent crimes.

The rationale given for the current routine use of strip searches is that they are necessary to maintain safety and security in prisons. However, evidence shows that routine strip searches are not a reasonable nor proportionate response to achieving this aim, particularly in light of the serious harm they cause women. Overseas, courts have said that strip searches will constitute inhuman or degrading treatment and violate the right to bodily integrity unless they are absolutely necessary and required for good reason, such as a serious suspicion that a person is hiding contraband.

The Human Rights Law Centre reviewed six months of recent Victorian strip search register entries obtained through freedom of information laws from the two women’s prisons in Victoria. In over 6,200 strip searches, only six items were discovered: four tobacco or nicotine products, a “small quantity of gum” and one unidentified object. One further search was recorded as “inconclusive” – a foil

packet was “sighted” but contraband was unconfirmed. Extrapolating from this data, each year prison guards conduct around 12,400 strip searches on women and detect just 14 items, the majority of which are tobacco-related. No weapons, drugs or other items that could be said to constitute a significant threat to safety and security were recorded in the register records provided.

There is a vital need to stop drugs and weapons entering prisons. Prisons do not need to routinely strip search women to achieve this objective. It can be achieved using alternative search methods and technologies that are far less invasive. The results of a 2003-4 Corrections Victoria pilot confirm this. The program reduced the number of strip searches on women from around 21,000 to 14,000. At the same time, the number of positive urine test results, contraband seizures and behavioural incidents all dropped, showing it is possible to reduce strip searches without compromising, and in fact benefiting, prison safety.¹

Less intrusive alternatives to strip searching exist and are being successfully implemented in other jurisdictions, including the ACT and the UK, where laws and policies now prevent the routine use of strip searches. Less invasive safe scanning technologies and risk-based practice approaches are being utilised and are reported as being effective in maintaining the security of prisons, while reducing the harm associated with humiliating body searches.

Routine strip searches violate rights to privacy, humane treatment in detention and freedom from cruel, inhuman and degrading treatment, all of which are protected by the Victorian *Charter of Human Rights and Responsibilities Act 2006*. The Charter allows for reasonable and proportionate limitations on these rights, but routine strip searches are neither a reasonable nor proportionate response to the aim of maintaining a safe prison environment.

Routine strip searching is an archaic practice that causes harm, particularly to survivors of sexual and family violence. At a time of state-wide emphasis on reducing violence against women, it is inconceivable

that the Victorian Government would continue to condone the routine use of a practice that so closely replicates the power and control dynamics of family violence, particularly when it is known that so many imprisoned women have experienced family violence.

The Victorian Government must bring the degrading practice of routine strip searches in women's prisons to an end. There are modern and less intrusive alternatives available that can be implemented without compromising prison safety.

Strip searching should only be used as a measure of absolute necessity, based on intelligence about the concealment of contraband, and as a last resort, after less invasive search alternatives have been exhausted. Alternative search policies and practices need to be carefully framed and justified in terms of their frequency and application.

Prison is harmful, not only for the women imprisoned, but for the children and families left behind. While ceasing routine strip searches would reduce an acutely harmful aspect of prison, this is only part of the picture. The Victorian

Government should also commit to urgently reducing the growing number of women entering Victorian prisons including the escalating numbers in prison on remand.

The Human Rights Law Centre calls on the Victorian Government to:

- 1. Immediately end the practice of routinely strip searching women in prison.**
- 2. Enact laws that prohibit strip searches except in circumstances of absolute necessity, based on intelligence of contraband, and as a measure of last resort.**
- 3. Replace strip searches with effective and non-degrading search practices and technologies.**
- 4. Ensure that urine tests are conducted privately and not while women are still naked following a strip search.**
- 5. Commit to a plan of action to reduce the number of women entering Victoria's prisons. ❖**

I see strip searches as a form of power game, like a punishment.

MARIE

“I was strip searched numerous times and found it really traumatic. One of the most traumatic things, the one that really tore me apart... I never used to speak about it, but one of the most awful things... was having to do a urine sample in front of an officer. So that involved a strip search. And I had to piss into a plastic container, but on this particular occasion I had my period. I was brought up in a European family and I was very sheltered... always taught.. that you never let anyone know you've got your period...It was horrifying for me, not only to be strip searched but then to have to piss in front of someone and then to have my period as well and for them to see that. I was mortified. That left a huge impression on me. I never used to talk about it or think about it.” MARIE

“I have been through so many situations where I have had the officers say, “I will get you stripped, if you don't do what I say” ... at the end of the day I know that they might feel that that's the power and control of their job. It's not everyone and I am not saying it's personal; it's structural - the power and control.” ANONYMOUS

“The first strip search I had was not the way it was meant to happen. There were always meant to be two officers, and apparently you were supposed to be given the option of putting your top back on. But because I hadn't experienced anything different I thought that's what everyone went through. And I didn't say anything because I was too scared.” ANONYMOUS

1. Department of Justice, “Piloting a Way Forward: The Women's Prisons Region Strip Search Pilot – An Evaluation of the First 12 Months” (July 2004). Copy on file with author.

Methodology

The findings in this report are based on:

- a literature review, focusing on Australian and overseas literature on the use of strip searching;
- the results of a series of Freedom of Information requests made to the Department of Justice and Regulation during 2015 and 2016;
- a series of seven semi-structured interviews with women with lived prison experience, which were conducted to gather personal and testimonial information about the practice, experience and impact of strip searches; and
- consultation with government and with individuals and organisations involved in the criminal justice system.

Where possible, we have included comments and quotes directly, rather than seeking to paraphrase women's experiences. Some quotes are attributed, while other interviewees preferred to remain anonymous. All interviewees gave permission to have their stories published and approved the text included in this report.

A focus on women

The report deliberately focuses on women in Victorian prisons. The exceptionally high rates of sexual and family violence against women and girls in society means that the re-traumatising impact of strip searching is particularly acute for women and girls. Men detained in prisons and children detained in youth justice centres are also exposed to the degrading practice of routine strip searches. While this report is focused on the impact of strip searches on women, the Human Rights Law Centre advocates for an end to routine strip searches across all places of detention, especially youth detention facilities.

Victoria, as one of only two Australian jurisdictions with a human rights act, has legal obligations to eliminate the practice. ❖

Background

Women's prisons in Victoria

There are currently two women's prisons in Victoria, the Dame Phyllis Frost Centre and the Tarrengower Prison. Corrections Victoria, a business unit of the Department of Justice and Regulation, is responsible for the management of both prisons.

Dame Phyllis Frost Centre is a maximum-security prison, and also has medium security and specialist accommodation for remanded and sentenced women prisoners. It has an operational capacity of 482 prisoners (as at 30 June 2017), with accommodation made up of single cells (maximum security) and shared units (medium and minimum security), and two special cell blocks designed for "protection prisoners", prisoners with psychosocial disability and "prisoners with a history of poor behaviour". The facility can also accommodate a small number of children of women detained at the prison.²

Tarrengower Prison is a minimum-security prison in Maldon, 136 kilometres north of Melbourne. It was opened in January 1988, and has an operational capacity of 60 prisoners (at 30 June 2017). It consists of self-contained units with single accommodation and shared kitchen and living areas, and also provides accommodation for children.³

In June 2017, there were on average 507 women across both prisons each day.⁴ Routine strip searches of women occur across both prison sites.

The over-imprisonment of women

The practice and impact of strip searches on women in prison occur in the context of the rising imprisonment of women in Victoria and must be understood in light of women's particular experiences, both inside and outside prison. Significantly, the majority of women in prison are serving time for non-violent offences — for example drug offences, fraud and property offences — and are serving short sentences.⁵

Imprisonment rates for women in Victoria have surged dramatically over the last decade, significantly exceeding general population growth.⁶ From 2005 to 2016, the total number of prisoners grew by 67 per cent, with the number of female prisoners increasing by 75 per cent.⁷ Further, around a quarter of the population of women in prison in Victoria are on remand — that is, detained waiting for their trial or sentence.⁸ Imprisonment rates have grown far faster than increases in recorded crime.⁹ The major drivers of the increase in imprisonment include parole reforms, sentencing reforms and changes to the bail process.¹⁰

The number of women in prison in Victoria is set to increase even further. In May 2015, the Victorian Government announced \$119 million in funding over four years to expand the women's prison system, including 114 new beds at the Dame Phyllis Frost Centre.¹¹

While it is beyond the scope of this report to detail steps that need to be taken to curb the growing numbers of women entering prison, the Victorian Government should be guided by evidence that indicates a need to prioritise gender-sensitive and culturally responsive prevention, early intervention and diversion initiatives and alternatives to prison sentences.

Women's experiences of family violence and sexual violence

The majority of women in prison are survivors of family violence and/or sexual violence. Research puts the proportion of women in prison who have histories of victimisation — including childhood sexual abuse, intimate partner or family violence, and violence from non-intimates and carers — at between 57% and 90%.¹² In one study, 45% of women in prison reported that a partner or spouse had engaged in at least one form of abuse or control in the year preceding their incarceration.¹³ Women's Health Victoria has reported that “more women than men experience sexual, physical and psychological abuse and these experiences appear to contribute to women's criminality and shape their patterns of offending.”¹⁴

The recent Royal Commission into Family Violence considered the particular needs and experiences of women in prison who have experienced family violence:¹⁵

Evidence presented to the Commission suggests that family violence looms large in the childhood and early years of many of these women [in prison] and might disproportionately affect them in their adult life. Some women in prison might have committed offences as a result of a history of childhood violence or other trauma; some might have committed offences because they were pressured to do so by a violent partner; some might be pursued by a violent partner while they are in prison or might be at risk of violence when they leave prison. Women in these situations need support while they are in prison, to help them overcome the effects of past trauma and avoid re-offending. They might also need risk assessment and management to protect them from violence after their release. In addition, many women in prison face challenges in obtaining support before, during and after family violence. This can have serious consequences for their health and wellbeing, can impede their recovery from violence, and can lead to further criminalisation.

The significant over-representation of women survivors of family violence and sexual assault in prisons in Victoria is relevant both to the growing imprisonment rate of women, and to the specific re-traumatising effects of routine strip searches. ❖

2. Government of Victoria, *Dame Phyllis Frost Centre* (17 February 2017) Victorian Government Directory; Department of Justice and Regulation, Government of Victoria, Dame Phyllis Frost Centre (7 August 2017) Corrections, Prisons and Parole, <<http://www.corrections.vic.gov.au/home/prison/tarrengower+prison.shtml>>.
3. Department of Justice and Regulation, Government of Victoria, Tarrengower Prison (7 August 2017) Corrections, Prisons and Parole, <<http://www.corrections.vic.gov.au/home/prison/tarrengower+prison.shtml>>.
4. Australian Bureau of Statistics, Corrective Services, Australia, June Quarter 2017 (7 September 2017).]
5. Australian Bureau of Statistics, Prisoners in Australia 2016: Sex, 8 December 2016.
6. Sentencing Advisory Council, Government of Victoria, 'Victoria's Prison Population 2005 to 2016' (Report, November 2016) ix.
7. Ibid, 11-12.
8. Australian Bureau of Statistics, Prisoners in Australia, 2015: Victoria Snapshot (11 December 2015).
9. Victorian Ombudsman, Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria (2015) 4.
10. Ibid, 18-24.
11. Department of Justice and Regulation, Government of Victoria, '\$333 Million to Ease the Strain on our Corrections System' (Media Release, 5 May 2015).
12. Australian Institute of Family Studies, *Addressing Women's Victimisation Histories in Custodial Settings* (Commonwealth Government, 2012); K P Moloney et al, 'Women in Prison: The Central issue of Gender Characteristics and Trauma History' (2009) 123 *Public Health* 426; Holly Johnson, 'Drugs and Crime: A Study of Incarcerated Female Offenders' (Research and Public Policy Series No 63, Australian Institute of Criminology, 2004).
13. This was within a sample of 199 women, see Devon Indig et al, '2009 NSW Inmate Health Survey: Key Findings Report' (Justice Health, Department of Health, Government of New South Wales, 2010) 70.
14. Karolyne Quinn, 'Women and Corrections' (Gender Impact Assessment No 3, Women's Health Victoria, 2008).
15. Victoria, Royal Commission into Family Violence, *Report and Recommendations* (2016) vol 5, 237.

Flawed rationale for strip searches



“In the women’s system I don’t think they are effective whatsoever. In order to find contraband, if that’s their purpose, I don’t think that’s the purpose for which they are used.” ANONYMOUS

Routine strip searches are said to be necessary to manage security risks in prisons, and particularly as a contraband control tactic¹⁶ — primarily to detect and deter illicit drugs, dangerous articles and contraband that women, or their visitors, might hide in clothing or body cavities.¹⁷

The Victorian Ombudsman described the dangers associated with contraband in prison in a 2008 report:¹⁸

Contraband is a source of significant concern in a prison because of the harm that it can cause. Illicit drugs, in particular, carry a substantial health risk through the transmission of blood-borne viral diseases such as HIV, hepatitis B and hepatitis C. There is also the possibility of drug overdoses and risky actions to obtain the illicit drugs within the prison. Furthermore, when contraband can be readily obtained in a custodial facility, the potential for violence among prisoners increases, as well as bullying, standover tactics and conflict over debts. It also increases the risk and creates opportunities for misconduct or corruption among staff.

Strip searches are also sometimes justified on the grounds that they prevent access to items that might be used for self-harm or suicide.¹⁹ Under the 2015 *Correctional Suicide Prevention Framework*, requirements for strip searches may form part of an individualised “searching plan”, together with cell and property searches. It is noted that consideration will be given to, “the prisoner’s mental state

and the potential impact of intrusive strip searches on their level of distress, balanced with the need to preserve the prisoner’s safety”.²⁰

Stopping dangerous contraband from entering or moving about prisons, and reducing risks of self-harm and suicide, are clearly legitimate aims for prison administrators. This report shows however, that there are more effective and less intrusive ways to achieve these aims than relying on the archaic and degrading practice of routine strip searches.

The Victorian Government’s own evidence confirms this. In 2003, in a positive development, Corrections Victoria commenced a pilot program, which saw a sustained reduction in the number of strip searches conducted in women’s prisons. The number of strip searches decreased from 21,000 to 14,000 over two years. The program involved other changes such as using random or more targeted searches in favour of routine searches, and increasing “dynamic” searching, which is based on improving relationships between prisoners and prison staff and prison staff paying closer attention to what is happening in the prison.

Corrections Victoria found that, not only was there no increase in the amount of positive drug tests or contraband seized, there was actually a 40% reduction in positive urine tests in the 12 months following the commencement of the pilot and over 50% reduction in contraband seizures.²¹

Despite growing numbers of women in prison, the reduction in strip searches correlated with a decline in behavioural incidents (such as self-harm and assaults), with most incidents relating to women with mental health issues.²²

Reforms in the United Kingdom (UK) are also instructive. An 18 month pilot across five women’s prisons in the UK demonstrated that it is not unsafe to reduce the number of strip searches, whilst having clearly positive benefits for imprisoned women, including reducing distress (see further page 24).

Law, policy and practice

These findings contradict the claim that regular or routine strip searching is necessary for the safety and security of the prison environment. Instead, they indicate that strip-searching may actually exacerbate the levels of violence and unrest in women's prisons. According to former prisoner and prisoner rights activist, Debbie Kilroy:²³

"It [the strip search] can only exacerbate depression, thoughts of suicide, incidents of self-harm, and ironically return women to the need for drugs to avoid the mental anguish inflicted by the abusive treatment."

Despite the positive findings from the Corrections Victoria pilot and reforms in the UK, and developments in more modern, effective and less intrusive alternative search methods, routine strip searches of women in prison are still an everyday experience in Victoria. ❖

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16. Victorian Auditor-General, 'Prevention and Management of Drug Use in Prisons' (Report, Victorian Auditor-General's Office, 2013).
17. Victoria Ombudsman, *Investigation into Contraband Entering a Prison and Related Issues* (2008).
18. Ibid, 8.
19. Justice Health, 'Correctional Suicide Prevention Framework: Working to Prevent Prisoner and Offender Suicides in Victorian Correctional Setting' (Report, Department of Justice and Regulation, 2015) 28.
20. Ibid.
21. Department of Justice, above n 1.
22. Jude McCulloch and Amanda George, 'Naked Power: Strip Searching in Women's Prisons' in Phil Scraton and Jude McCulloch (eds), *The Violence of Incarceration* (Routledge, 2009), 107-123.
23. Cited in McCulloch and George, *ibid*, 120.

Law and policy

The power for prison officers to conduct strip searches of women in Victorian prisons is conferred by the *Corrections Act 1986* (Vic) ('the Act'). Section 45 of the Act states that the Governor of a prison may, for the security or good order of the prison or prisoners, at any time order a prison officer to search and examine any person in the prison.

The *Corrections Regulations 2009* (Vic) ('the Regulations') prohibit strip searches on a random sample of prisoners.²⁴ Random strip searches were eliminated because they did not comply with the Charter.²⁵

The Regulations specify that strip searches are only permitted in circumstances where the Governor (or an authorised officer) reasonably believes that a strip search is necessary for the security or good order of the prison or prisoners in the following situations:

- a. when a prisoner enters or leaves prison
- b. before or after completing a contact visiting program or residential visiting program
- c. prior to the testing of substances which have been seized from the possession of a prisoner by prison staff and which are believed to be drugs or alcohol.

The Regulations also provide that the Governor (or an authorised officer) may direct a prison officer to conduct a strip search:

- a. at any other time if they reasonably believe that a strip search is necessary for the security or good order of the prison or prisoners
- b. if they reasonably believe the prisoner is concealing an unauthorised article or substance that might be used to threaten another person, commit an offence or that otherwise poses a risk to safety or prison security.²⁶

In practice, strip searches are *routinely* conducted, for example when a person first enters prison, attends court,



is transferred between prisons, attends off-site medical appointments, has contact visits with family and in other circumstances. An assessment of the individual circumstances of a prisoner is not typically undertaken as part of determining whether it is reasonable to believe that a strip search is required in accordance with the law.

The Regulations also set out parameters for how the strip search should be conducted and provide that:

- a. strip searches must be conducted as expeditiously as possible to minimise the impact on the prisoner's dignity and self-respect, avoiding any unnecessary force²⁷
- b. strip searches must be conducted in a private place or an area that provides reasonable privacy for the prisoner being searched²⁸
- c. prisoners must be allowed to dress in private immediately after the search is completed²⁹
- d. the Governor must keep a register containing information on strip searches, including the reason for the search and any items seized³⁰
- e. the strip search should not be conducted by officers of the opposite sex unless the search is being conducted urgently, and an officer of the same sex is unavailable.³¹

How strip searches are conducted

“You are supposed to take off your socks, shake them out, put them down for them. Take off your shoes, hand them over so that they can look inside them. Take off your pants, shake them out, hand them over so that they can feel them. Your underwear, shake them out, put them down. Then your top, shake that out and hand it over so they can feel around that. Then your bra or crop top, take that off shake that out and hand that over. And then you stand there [arms out], then you turn around and [lift one leg], you've got to wriggle your toes — which is fun when you've got a bad back or someone has a broken leg. Then they brought in the bend and part as well. You have to stand there and wait for them, follow any directions, and then they will tell you to get dressed. Sometimes they will ask you to bend and part again, until they are satisfied. Sometimes turn around again, wiggle your toes again, things like that...” ANONYMOUS

“[It takes] however long they want it to take...Because I know it inside out I could do it pretty quickly. But then they have got paperwork to do. So you will get the new ones or people that are just mean that will spend ages doing paperwork before they tell you to get dressed....A lot of it is power.” ANONYMOUS

“Most people actually said no don’t worry about it [the optional ‘top and tail’ search] because it took a lot longer than doing the full strip. And you might as well just do the full strip and get it over and done with.” ANONYMOUS

The procedure for a strip search is set out in the Local Operating Procedures for Tarrengower Prison and Dame Phyllis Frost Centre. The Local Operating Procedures state that the type, frequency and purpose of strip searches will differ between the two prisons in light of the different security classifications of the prisons, however no detail of the differential approach is provided. Strip search register records reveal that more strip searches occur at Dame Phyllis Frost, which has a far greater number of prisoners than Tarrengower. However, strip searching is still very much a reality in Tarrengower.

The standard strip search method set out in the Local Operating Procedures provides that the woman being searched is:

- informed of the searching officer’s authority to conduct the search and the nature, process and reasons for the search
- asked if she is in possession of any articles or substances threatening the good order or security of the prison and if so, to produce such articles
- instructed to stand facing the first officer. The second officer must remain at a reasonable distance to the side or at the rear of the first officer
- directed to surrender any item carried or in pockets for examination
- directed to remove footwear and all clothing, one piece at a time (including underwear and socks, where applicable)
- directed to hand each article of footwear and clothing to the officer who will examine and search each item individually, including underwear and socks
- directed to remove any sanitary pads from her underwear and dispose of them
- directed to open her mouth and to remove her denture plate if one is worn. The officer will visually examine the mouth, instructing her to lift her tongue
- directed to remove any hair accessories and have any long hair loose, bend forward and with a vigorous combing action run fingers through her hair
- directed to turn her head to the left and right clearing hair from the region of the ears to enable a visual

examination of the ear cavities and the area behind the ears

- directed to raise her arms up in the air and check the armpits, then directed to lower her arms horizontal to the ground and turn her hands over, palms facing upwards. The officer will then conduct a visual examination and check for any fresh signs of intravenous drug use, new tattoos or signs of self harm
- directed to fully extend and separate her fingers to also check for any contraband or intravenous drug use at this time and asked to turn her palms over so the backs of the hands can be examined
- directed to lift her breasts
- directed to turn around facing away from the officer and lift one foot at a time from the ground, then wriggle her toes
- directed to dress and leave the area.

In a “targeted” strip search, which must be authorised, the woman being searched is directed to bend over at the waist until her hands are about 30 centimetres from the ground and to part the cheeks of her buttocks with her hands. Officers will then visually examine her.

The Local Operating Procedures also provide for an alternative strip search method which involves the search being split into two sections, first the top half of the body is searched and then the lower half (a ‘top and tail’ search). Women are permitted to choose whether they will undergo a normal or top and tail strip search.

The Act, Regulations and Local Operating Procedures are supplemented by requirements set out in the 2014 *Standards for the Management of Women Prisoners in Victoria*, which provide that the Prison General Manager will ensure that:

- a. strip searches are conducted by staff members of the same sex where possible, in the least intrusive manner possible, and within facilities that ensure the dignity and privacy of the prisoners being searched
- b. where relevant, prisoners being strip searched are given the option to choose between authorised types of search
- c. officers conducting a strip search should be responsive to the individual prisoner, particularly in relation to issues of culture and previous life experience
- d. strip searches of prisoners and visitors do not include body cavity searches or the removal of tampons.

24. *Corrections Regulations 2009* (Vic) reg 70.

25. Department of Justice, Government of Victoria, ‘Corrections Regulations 2009: Regulatory

Impact Statement’ (January 2009) 96.

26. *Corrections Regulations 2009* (Vic) reg 69.

27. *Ibid* reg 69(6)(a).

Prevalence of strip searches and rates of contraband detection

“I have been here for 5 ½ years. Usually it [strip searches] happens to me when we are urined and around visits. So once a week to once a fortnight.”

ANONYMOUS

“You do get stripped for transfers, you get stripped for hospital escorts, for visits, for random, for urines, for community work.”

ANONYMOUS

“I would have had dozens upon dozens of strip searches. I have lost count of the number of strip searches I have undergone.” MARIE

I generally average a visit about once a fortnight, so that’s a strip search each fortnight.

CORAL

The Human Rights Law Centre made requests under the *Freedom of Information Act 1982* (‘FOI Act’) for the registers of strip searches conducted at both the Dame Phyllis Frost Centre and Tarrengower Prisons for the three-month period between 1 January 2014 and 31 March 2014 and the three-month period between 1 November 2015 and 31 January 2016. The request also included all documents relating to policies on the use of strip searches at the two prisons (or at Victorian prisons generally).

The 2014 strip search register extracts revealed that 2,768 strip searches of women were conducted across the two prisons during the three-month period from January to March (approximately 923 strip searches per month). Just one item of contraband was found, detailed as “tobacco (trafficked)”.³² During that same time, there were 404 women in prison across Victoria on an average day.³³

During the three months from November 2015 to January 2016, the registers show that 3,465 strip searches were carried out on women (approximately 1155 per month). There were around 424 women on average in prison each day during the same period.³⁴ Of these searches, just five log entries indicate that contraband was detected. In three of these incidences the contraband was tobacco-related, including cigarettes, tobacco and nicotine patches. The fourth record noted the detection of a “small quantity of chewing gum”. The fifth record indicted a “foreign object in the vaginal area”, but did not provide identification of the object. An additional search entry was made for an inconclusive search, noting that a foil packet was “sighted in the vaginal area”, but the contraband was unconfirmed by the search and denied by the woman.³⁵

Extrapolating from the above data, we estimate that each year prison guards conduct around 12,400 searches, the

majority at Dame Phyllis Frost Centre, and detect just 14 items, the majority of which are tobacco-related.

These findings are consistent with earlier research that suggests that despite the high number of strip searches routinely conducted, it is very rare that contraband is actually discovered and seized from the search. During a 12 month period from 2001 to 2002, 18,889 strip searches were conducted on a prison population of 203 at the Dame Phyllis Frost Centre.³⁶ Only one item of contraband was recorded as found during that time.³⁷

The extremely low rates of contraband detection and the low risk nature of the items seized emphasise the flawed rationale and effectiveness of routine strip searches — particularly when weighed against the harm caused to women by strip searches.

As noted above, there is a lack of evidence that strip searches can be justified by their deterrent effect. The Corrections Victoria pilot program to reduce the number of strip searches correlated with a reduction in positive drug tests, behavioural incidents and contraband found in the prison.³⁸ ❖

28. Ibid reg 69(6)(b).

29. Ibid reg 69(6)(d).

30. Ibid reg 69(7).

31. Ibid reg 69(6)(f).

32. Department of Justice and Regulation, ‘Strip Search Register’ (Dame Phyllis Frost Centre and Tarrengower Prison, internal documents). Copy on file with author.

33. Australian Bureau of Statistics, ‘Corrective Services, Australia, March Quarter 2014’ (12 June 2014).

34. Australian Bureau of Statistics, ‘Corrective Services, Australia,

December Quarter 2015’ (17 March 2016).

35. Department of Justice and Regulation, ‘Strip Search Register’ (Dame Phyllis Frost Centre and Tarrengower Prison, internal documents). Copy on file with author. Significantly, these results correspond with the period when the Government trialled and implemented a smoking ban in prisons.

36. McCulloch and George, above n 22, 107, 118.

37. Ibid.

38. Ibid, 118 -119.

Harm caused by strip searches



Strip searches are degrading, humiliating and traumatising

“I think at the start it just made me switch off. And I think I still am to this day, about it...I think it would be an easy thing for me to strip in the middle of the city. Totally desensitised.” ANONYMOUS

“If you don’t make eye contact, it helps... I tend to talk to take my mind off it. Over time I have developed a technique where I talk and distract myself.” ANONYMOUS

“
I imagine myself somewhere else.

ANONYMOUS

“The vulnerability of it. You’re totally vulnerable. You’re naked and there’s two screws standing there totally suited up, with their utility belts... And even though you sort of dissociate as it’s happening, you still walk through the compound and see that screw who’s had a look at all your wobbly bits.” VICKIE

“Something happened to me a few weeks ago when I was strip searched. It used to be that your clothes would come back through with you. In this incident they held on to them and said that I couldn’t have them back until they finished the search. It was just another degree of indignity. You have to stand there naked. I hope it was just a one-off... anything that makes it longer, prolongs it, you don’t want. It’s demeaning.” CORAL

“You can never get used to stripping naked in front of people, no matter what age you are. I’m 74 next month, and to me it’s still another world... I never really undressed even in front of my husband.” ANONYMOUS

In its inquiry into women in prison in 2006, Queensland's Anti-Discrimination Commission found that strip searches are demeaning and humiliating, and impact negatively upon relationships between guards and prisoners:³⁹

Being compulsorily required to strip-search in front of prison officers is a demeaning and humiliating experience for any human being, male or female. Even if a strip-search is conducted in a totally professional

and impersonal manner, the humiliation is compounded by the fact that prisoners then have to be supervised and relate on a daily basis with prison officers who have observed them in a naked and vulnerable state...where public nakedness is far removed from the accepted norm, this immediately reduces the dignity of any relationship between the prison guard and prisoner.

Impacts on women's physical and mental health and wellbeing

“It does change your relationship with the guards. When you see them around the compound you think, ‘they’ve seen me naked’... You still worry about what they think of you, especially if you’ve got body issues. And a lot of girls in here have anorexia or weight issues. The focus on the body all the time isn’t helping you.” ANONYMOUS

“Because I was so sick I was vomiting daily and I couldn’t eat the food... my doctors’ think that the reflux is caused by stress. The trauma [of prison and strip searches] continues to impact my health over and over...” MARIE

**You feel violated.
It’s horrible.**

ANONYMOUS

“A lot of stuff that happened to me in prison, like strip searches, I have blanked out, and just got on with trying to survive... My experience has changed me. Certainly the strip searches changed me.” MARIE

Evidence detailing the experience of women strip searched in prison consistently describes impacts including diminished self-esteem, and feelings of vulnerability and anxiety as a result of the searches.⁴⁰ Research demonstrates that strip-searches can damage women's self-esteem, psychological well-being and sexuality.⁴¹ In interviews for this report, women described feeling stressed, anxious, humiliated and upset as a result of strip searches, and dissociating while the strip searches were occurring. Women detailed long-term mental health impacts and consequential physical health issues — in some cases extending many years post-release.

Re-traumatisation: compounding harm caused by past experiences of violence

“What it really boils down to is it’s a demonstration of our powerlessness. It’s like domestic violence — it’s a constant demonstration of how much more powerful they are than you. And how even your body is under their control.” ANONYMOUS

“Well how many domestic violence relationships does the man actually strip you before he starts smashing you around? It’s happened to me. Because it makes you more vulnerable, it makes you more exposed, it makes their control over you ultimate. And the state uses it in a similar way.” VICKIE

“You’re asked questions about vulnerable issues and also being asked to strip search ...I wouldn’t answer the questions... You do hope that the person who is your case worker or is your boss or something isn’t the one doing the strip.” ANONYMOUS

Being strip searched, I absolutely felt that I was being violated sexually. MARIE

Strip searching is particularly degrading and re-traumatising for imprisoned women given the prevalence of gendered violence and the notably high rates of victimisation and sexual abuse amongst imprisoned women. Women describe strip searches as replicating the power, control, submission and humiliation that is characteristic of violent and abusive behaviour in the family.⁴²

For women who have experienced sexual abuse, strip searching can be triggering and re-traumatising – compounding the existing trauma of childhood or adult sexual abuse. Accounts from incarcerated women who have undergone strip searches describe feelings of humiliation, violation, powerlessness, fear and of having been abused, similar to that experienced as a result of sexual violence and abuse.⁴³

In a time of state-wide emphasis on tackling high rates of violence against women, the same lens must be turned on the dynamics, characteristics and impacts of routine strip searching of women in prison.

In response to the epidemic rates of violence against women in the community, Corrections Victoria have provided training to staff about inquiring into and responding to disclosures of family violence, and conducting risk assessments using the Victorian Common Risk Assessment Framework (CRAF) for family violence. This training is ongoing.⁴⁴

At a fundamental level, the dynamics of power, control and surveillance that characterise family violence also

pervade and underpin the prison environment. Consequently, prisons cannot operate effectively as sites of safety and support for women experiencing family violence.

In its submission to the Royal Commission into Family Violence, Flat Out explained that:⁴⁵

The prison environment is saturated by a simmering fear and threat of force. It is often a site of re-traumatisation for women. As such, there is little that can be achieved in a prison environment to support women who have a history of family violence. Prison is not and cannot be a therapeutic community, as prisons are built on an ethos of power, surveillance and control, yet trauma sufferers require safety in order to begin healing. The prison therefore cannot serve both punitive and therapeutic purposes because these goals are antithetical.

Prison-based initiatives to respond to women experiencing family violence cannot replace the provision of specialist family violence responses and access to therapeutic interventions, counselling and support programs that are independent of the corrections system.

While the prison environment can never offer the safety, security and support that women recovering from violence need, the ongoing practice of routine strip searching runs directly counter to efforts to create a safer and more supportive environment where women can disclose family violence. On the one hand, staff are being asked

to build rapport and inquire into women's experiences of interpersonal violence, but the same staff are also required to conduct routine strip searches of women – a practice that replicates and reminds women of past experiences of humiliation and control.

Impact on family relationships and visitation

“I know that some women in the prison, if they are given a choice between a box visit and a contact visit, they will choose a box visit to avoid the strip search. ...a box visit is where you are seated and there is a counter on either side and a plastic screen between you. Usually there is a phone there and you talk through the phone... sometimes you can talk loudly enough to be heard through it. Whereas a contact visit, you can actually hug the person. It's more normal, like a chat, and I craved the contact visits. Some women didn't want to go through the strip search, so they would turn down contact visits just to avoid the strip search. A contact visit is nicer and better yet they didn't want that because the trauma and distress of strip searches wasn't worth it for them.” **MARIE**

“I would ask for a box visit instead... and a lot of women did the same thing — especially women with kids. I was in a unit with a woman who had a kid with her and he was still in nappies, and they used to strip him. She'd have to take his nappy off.” **VICKIE**

I say, 'I'll just have box visits'.

ANONYMOUS

“I don't have visits now. I'm not going through that. Lots of my friends, I've explained to them why... they understand.” **ANONYMOUS**

Most incarcerated women are primary caregivers, making their removal from family a particularly traumatic experience.⁴⁶ Figures put the number of women in prison who are the primary caregivers for dependent children at around two thirds of the total women in prison.⁴⁷

The Australian Human Rights Commission has reported:⁴⁸

Mothers that are prisoners experience difficulties in maintaining their relationship with their children and suffer disruptions to family life, which can lead to their children suffering from emotional and behavioural problems. Indigenous women prisoners, in particular, can suffer from disruptions to their cultural responsibilities and dislocation from their communities.

A report of the Anti-Discrimination Commission Queensland found that women were avoiding contact visits to avoid the associated strip searches. Magnifying the existing negative impact of prison on family relationships, women were forced to choose between maintaining relationships with family and avoiding the trauma of additional strip searches.⁴⁹

Interviews conducted for this report echoed that finding. When describing the numerous impacts of strip searches, women talked about electing to either refuse visits entirely, or seeking non-contact visits in order to avoid being strip-searched. They said that it is a choice that many women make, as the impacts of strip searches made contact visitation “not worth it”.

Discrimination and the harm of strip searches

Some communities and populations are disproportionately impacted by the growth in imprisonment in Victoria and are over-represented in prison. Marginalisation, violence, oppression and discrimination, and their cumulative and intersecting effects, in turn influence the experience and frequently exacerbate the harm of strip searches. Several examples of this are discussed below.

Aboriginal and Torres Strait Islander women

There is a disproportionately high number of Aboriginal and Torres Strait Islander women in Australian prisons, and Victoria is no exception to this. While Aboriginal and Torres Strait Islander people represent less than 1 per cent of the total population of Victoria, Aboriginal and Torres Strait Islander women make up 11 per cent of the female prison population.⁵⁰

There is also a strong correlation between the incarceration of Aboriginal and Torres Strait Islander women and experience of family violence.⁵¹ Aboriginal and Torres Strait Islander women experience disproportionately high rates and more severe forms of violence compared to non-Aboriginal women.⁵² Further, Aboriginal and Torres Strait Islander women are more likely to have had other traumatic experiences in their lives, including sexual assault and discrimination, and are more likely to experience intergenerational trauma.⁵³ The Victorian Equal Opportunity and Human Rights Commission's 2013 report, *Unfinished Business: Koori Women and the Justice System*, included the following statement from an interview with Shelley, a Koori woman who had left prison:⁵⁴

“Being held in a maximum-security facility subjects every woman in that facility, even if you have a low-risk classification, to extraordinarily high levels of surveillance, control, restriction and restraint. Loss of dignity is a given. There is no dignity in being forced to strip on command, or in providing a urine sample in front of two uniformed prison officers – or in being stripped before and after every visit from children, family or friends. For the 89 per cent of women who have been victims of sexual abuse and or domestic violence, learning to drop their clothes, or to drop their clothes and urinate on command can be an excruciating journey. For Aboriginal women in particular, the shame is intolerable.”

The intersection of over-representation of Aboriginal and Torres Strait Islander women in prison and disproportionate experiences of gendered violence in turn influences how strip searches are experienced and their impact on women — including their damaging and re-traumatising effects.

Women with mental illness

Women prisoners have been found to be 1.7 times more likely to have a mental illness than male prisoners.⁵⁵ The findings from one Victorian study indicated that 84% of women prisoners interviewed met the criteria for having a mental health problem.⁵⁶ Research by the Australian Institute of Health and Welfare on the health of Australia's prisoners in 2009 found that 37% of prison entrants reported having received a mental health diagnosis at some time.⁵⁷

The Anti-Discrimination Commission Queensland report states that:⁵⁸

prisons have an extremely limited ability to provide a therapeutic setting or treatment for prisoners with acute or chronic mental health problems. Repeated strip-searching of an ill or disturbed person is by no means best practice or optimal treatment for such prisoners.

An argument in favour of strip searching that is sometimes made is that it helps to prevent self-harm by women in prison. However, given the impacts described above, it is questionable as to whether this unsubstantiated benefit outweighs the demonstrated damaging impacts of strip searching, particularly in light of the mental health issues affecting many imprisoned women. Strip searching negatively impacts on a person's capacity to recover from a mental health crisis and is inconsistent with the conditions necessary to support effective mental health treatment. Indeed, studies have indicated that strip searching may contribute to women's self-harm in prison rather than helping to prevent it.⁵⁹

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39. Anti-Discrimination Commission Queensland, *Women in Prison* (Report, 2006).
 40. Anna Bogdanic, *Strip-Searching of Women in Queensland Prisons* (Report, 2007).
 41. S P Sashidharan, *Strip Searching: Personal Testimonies — An Enquiry into the Psychological Effects of Strip Searching* (United Campaign Against Strip-Searching, 1989); McCulloch and George, above n 22, 112.

Women with disabilities

“I can’t stand for any length of time... they did keyhole surgery and sucked out the broken bones, but I have had no repair work... I still have to do the strip searches. I just have to hold on to the walls. I am frightened of falling.” ANONYMOUS

Women with disabilities are over-represented in the prison population. Research indicates that around half of people in prison nationwide have disabilities. The 2007-2009 Corrections disability framework, *Addressing the Barriers*, focused on prisoners with cognitive impairment, including intellectual disability and acquired brain injury, mental illness, sensory disability and physical disability. It also provided for the new intensive support unit at the Dame Phyllis Frost Centre, to provide acute psychiatric care for women prisoners.⁶⁰ While a number of the training and access initiatives under the framework have been implemented, women with disabilities continue to be subject to strip searches.

For women with cognitive, intellectual and/or physical disabilities and health issues, strip searching may be more distressing, difficult, damaging or protracted.

Transgender, gender diverse and intersex people

Strip searching of transgender, gender diverse or intersex prisoners in women’s prisons involves a heightened risk of limiting a prisoner’s right to privacy and humane treatment.

Transgender men in women’s prisons who have experienced symptoms of gender dysphoria are likely

to experience improperly conducted strip searches as intensely invasive and humiliating. This is particularly the case in situations where:

- a. prison staff are unprepared for how the strip search should be conducted
- b. a transgender man’s preference of the gender of the prison staff who conduct the search is not taken into account
- c. there is a requirement to remove a prostheses during a search.

Strip searches also contribute to a transgender man in a woman’s prison being fearful of discrimination, stigma or social isolation.

In a welcome development, Corrections Victoria released new Commissioner’s Requirements on the *Management of Prisoners who are Trans, Gender Diverse and Intersex* in January 2017.⁶¹ This policy has been updated to ensure that prostheses are no longer routinely removed during a search⁶² and to establish procedures which allow for male and female prison officers to alternate during a search, in consultation with the person being searched.⁶³ The policy also recognises that intersex people may have a history of trauma associated with medical and surgical intervention and that trans, gender diverse and intersex people are vulnerable to sexual assault more broadly. The policy requires staff to be aware that strip searches may invoke traumatic experiences of physical and sexual violence.

However, these amendments do not indicate any move to reduce the frequency of strip searches, which will continue to have a significant psychological impact on transgender, gender diverse and intersex people in women’s prisons. ❖

42. Flat Out Inc, Submission No 980 to Victoria, *Royal Commission into Family Violence*, 29 May 2015, 10; see also Mental Health Legal Centre Inc, Inside Access and Centre for Innovative Justice, Submission No 648, to Victoria, *Royal Commission into Family Violence*, 29 May 2015, 13.

43. Bogdanic, above n 40, 12.

44. Victoria, Royal Commission into Family Violence, above n 15, vol 5, 238.

45. Flat Out Inc, Submission No 980 to Victoria, *Royal Commission into Family Violence*, 29 May 2015.

46. Alannah Burgess and Catherine Flynn, ‘Supporting Imprisoned Mothers and their Children: A Call for Evidence’ (2013) 60 *Probation Journal* 73.

47. *Ibid.*, 74.

48. Australian Human Rights Commission, ‘Human Rights and

Prisoners’ available at www.humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRA_prisoners.pdf

49. Anti-Discrimination Commission Queensland, above n 39, ch 7.

50. Australian Bureau of Statistics, ‘Prisoners in Australia, 2016’ (8 December 2016).

51. Victoria, Royal Commission into Family Violence, above n 15, vol 5, 240.

52. For instance, Aboriginal and Torres Strait Islander women are 34 times more likely to be hospitalised due to family violence related assaults than non-Indigenous women: Steering Committee for the Review of Government Service, Coalition of Australian Governments, *Framework for Reporting on Indigenous Disadvantage: Report on Consultations* (2006); Australian Law Reform Commission and

New South Wales Law Reform Commission, *Family Violence – A National Legal Response*, (ALRC Report No 114, NSWLRC Report No 128, 2010) [24.27].

53. Rowena Lawrie, ‘Speak Out Speak Strong: Rising Imprisonment Rates of Aboriginal Women’ (2003) 5(24) *Indigenous Law Bulletin* 5, 7; Judy Atkinson, ‘Trauma-Informed Services and Trauma-Specific Care for Indigenous Australian Children’ (Resource Sheet No 21, Closing the Gap Clearinghouse, Australian Institute of Family Studies, Australian Institute of Health and Welfare, 2013).

54. Victorian Equal Opportunity and Human Rights Commission, *Unfinished Business: Koori Women and the Justice System* (2013), 88.

55. Quinn, above n 14.

56. Christine S Tye and Paul E

Mullen, ‘Mental Disorders in Female Prisoners’ (2006) 40 *Australian and New Zealand Journal of Psychiatry* 266.

57. Australian Institute of Health and Welfare, ‘Health of Australia’s Prisoners 2009’ (Report, Commonwealth Government, 2010).

58. Anti-Discrimination Commission Queensland, above n 39, ch 7.

59. Bogdanic, above n 40, 10.

60. Department of Justice, Government of Victoria, ‘Addressing the Barriers: Corrections Victoria Disability Framework 2007-2009’ (June 2007).

61. Corrections Victoria Commissioner, *Commissioner’s Requirements: Management of Prisoners who are Trans, Gender Diverse or Intersex* (January 2017).

62. *Ibid.* [6.11.4].

63. *Ibid.* [6.11.2].

Human rights implications



The use of strip searching in women's prisons is inconsistent with human rights protected under international and domestic law. Relevant rights include:

- humane treatment in detention
- freedom from cruel, inhumane and degrading treatment or punishment
- non-interference with privacy, including bodily integrity
- protection of families and children
- equality.

International law

The above rights are protected in human rights treaties to which Australia is a party, including the *International Covenant on Civil and Political Rights* ('ICCPR'),⁶⁴ the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*,⁵ and the *Convention on the Elimination of All Forms of Discrimination Against Women*.⁶⁶

International law concerning the treatment of prisoners is informed by the United Nations *Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*.⁶⁷ The *Mandela Rules* set out international minimum standards for the treatment of prisoners. Rule 52 is particularly relevant and provides that:⁶⁸

Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.

In addition, the *UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules)* were adopted by the UN General Assembly in December 2010 and fill a long-standing gap in providing for the specific needs of women offenders and prisoners. The *Bangkok Rules* require measures to protect imprisoned women's dignity and respect during searches and the development of alternative screening measures to replace strip searches.⁶⁹

The Victorian Charter of Human Rights and Responsibilities

In Victoria, human rights are protected under the Charter. The human rights contained in the Charter are largely modelled on the civil and political human rights enshrined in the ICCPR.

The Charter requires public authorities, including Corrections Victoria and its officers, to act compatibly with human rights and to give proper consideration to human rights in any decision-making processes.⁷⁰ Failure to do so is unlawful and, in certain circumstances, can give rise to a claim for relief (but not compensation).

Courts and tribunals may have regard to relevant international human rights law and jurisprudence in the interpretation and application of Charter rights.⁷¹ Rights may be limited in circumstances which are "demonstrably justified in a free and democratic society based on human dignity, equality and freedom".⁷²

Relevant rights

Humane treatment in detention

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 person”.

The right to humane treatment in detention requires that prisoners retain all their human rights subject to those restrictions that are unavoidable in a closed environment.⁷³

The Victorian Supreme Court has found that section 22 requires prison authorities to treat people in detention with respect for their particular human needs.⁷⁴

In the case of *R Greenfield v Secretary of State for the Home Department* in the United Kingdom, the court commented that a strip search adversely affects the dignity of a prisoner and should not be required without good reason.⁷⁵ In *Frerot v France*, the European Court of Human Rights similarly held that strip searches must be limited to circumstances in which they are “absolutely necessary”.⁷⁶

Cruel, inhumane or degrading treatment or punishment

Section 10 of the Charter recognises a person’s right not to be treated or punished in a cruel, inhuman or degrading way. This section is modelled on article 7 of the ICCPR and complements the right to humane treatment in detention.

The purpose of the prohibition on cruel, inhumane or degrading treatment or punishment is to “protect both the physical and mental integrity... and the dignity of the individual.”⁷⁷ The right therefore prohibits “not only... acts that cause physical pain but also... acts that cause mental suffering”.⁷⁸

The European Court of Human Rights has stated:⁷⁹

Where treatment humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual’s moral and physical resistance, it may be characterised as degrading and also fall within the prohibition...

The European Court of Human Rights has held strip searching constitutes inhuman or degrading treatment in circumstances where such a measure is not “absolutely necessary” and where there are not serious reasons to suspect that the prisoner is hiding an object or substance on or in their body.⁸⁰

Right to privacy

Section 13(1) of the Charter states that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

The right to privacy is intended to secure respect for a person’s dignity, bodily integrity and autonomy.⁸¹ The European Court of Human Rights has found that the right to privacy encompasses the right not to be subject to strip searches unless they are strictly necessary and comply with safeguards and precautions to protect the dignity of those being searched.⁸²

Protection of families and children

Section 17(1) of the Charter states that families are the fundamental unit of society, and are entitled to protection by society and the state.⁸³ Section 17(2) of the Charter also establishes the right of the child, without discrimination, to protection in his or her best interests.

Strip searches threaten the protection of families and children when women feel forced to refuse contact visits from family members, particularly their children, because of the requirement to undergo routine strip searches.

Equality

The right to equality and freedom from discrimination is an integral component of the international human rights framework and is entrenched in both the ICCPR and the *International Covenant on Economic, Social and Cultural Rights* (‘ICESCR’).⁸⁴ Section 8 of the Charter reflects these international law protections and sets out a range of equality rights. Specifically, section 8 provides that every person:

- has the right to enjoy his or her human rights without discrimination;⁸⁵ and
- is equal before the law, is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.⁸⁶

The definition of discrimination in the Charter has the same meaning as provided in the *Equal Opportunity Act 1995* (Vic).⁸⁷ As discussed above, strip searches have a disproportionately harmful effect on women and may therefore constitute a violation of the right to equality in the Charter.

Routine strip searches unreasonably limit rights

As set out above, strip searches restrict a range of human rights. The Charter allows human rights to be limited only where the limitation is reasonable and can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, taking into account:

- a. the nature of the right;
- b. the importance of the purpose of the limitation;
- c. the nature and extent of the limitation;
- d. the relationship between the limitation and its purpose; and
- e. any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.⁸⁸

The purpose of strip searches is said to be to deter and detect dangerous contraband. While this is a legitimate aim, the use of routine strip searching does not meet the proportionality test set out in the Charter because:

- a. the nature and extent of the limitation on rights is severe, especially for women who have a history of physical and/or sexual violence;
- b. the relationship between the limitation on rights and its purpose is weak. Our evidence shows that over a six month period, of over 6,200 strip searches, no weapons or illicit drugs were found. Further, the Corrections Victoria pilot in 2003-04 that reduced the number of strip searches correlated with a *reduction* in positive drug tests, contraband seizures and behavioural incidents; and
- c. there are less rights-restrictive means of preventing contraband from entering prisons. These methods and technologies are outlined in the next section of this report.

Strip searches constitute a serious and unjustified limitation on the rights of women in prison, which are protected in international law and the Charter. As a result, not only is current Victorian strip searching practice harmful, it is also unlawful. ❖

64. *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force on 23 March 1976).
65. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987).
66. *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).
67. *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), GA Res 70/175, 7th sess, Agenda Item 106, UN Doc A/res/70/175 (8 January 2016).
68. *Ibid.*
69. *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders* (the Bangkok Rules), GA Res 3/65, 65th sess, Agenda Item 105, UN Doc A/C.3/65/L.5 (6 October 2010), rules 19-20.
70. *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38(1).
71. *Ibid* s 32(2).
72. *Ibid* s 7(2).
73. Human Rights Committee, *General Comment No 21: Article 10 (Humane Treatment of Persons Deprived of their Liberty)*, 44th sess, UN Doc HRI/GEN/1/Rev.1 (1994); Mandela Rules, rule 5.
74. *Castles v Secretary of the Department of Justice* (2010) 28 VR 141.
75. *R (Greenfield) v Secretary of State for the Home Department* [2002] 1 WLR 545.
76. *Frerot v France* (European Court of Human Rights, Chamber, Application No 70204/01, 12 September 2007).
77. Human Rights Committee, *General Comment No. 20: Article 7 (Prohibition on Torture, or other Cruel, Inhuman or Degrading Treatment or Punishment)*, 44th sess, UN Doc HRI/GEN/1/Rev.1 (1992) [1]-[2].
78. *Ibid* [2].
79. *Pretty v United Kingdom* [2002] All ER (D) 286 (Apr) [52].
80. *Frerot v France* (European Court of Human Rights, Chamber, Application No 70204/01, 12 September 2007); *Wieser v Austria* (European Court of Human Rights, Chamber, Application No 2293/03, 22 February 2007).
81. Merris Amos, *Human Rights Law* (Hart Publishing, 2006), 345; Alistair Pound and Kylie Evans, *An Annotated Guide to the Victorian Charter of Human Rights and Responsibilities* (Thomson Lawbook Co, 2008), 111.
82. *Wainwright v United Kingdom* (European Court of Human Rights, Chamber, Application No 12350/04, 26 September 2006).
83. The right of families to protection is modelled on article 23 of the ICCPR.
84. Committee on Economic, Social and Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights*, 25th sess, UN Doc E/C.12/2001/10 (10 May 2001) 3; see also ICCPR arts 2(1), 26; ICESCR art 2(2).
85. Section 8(2) is modelled on article 2(1) of the ICCPR.
86. Section 8(3) is modelled on article 26 of the ICCPR. For authoritative interpretation of the right to non-discrimination and equality before the law, see Human Rights Committee, *General Comment No. 18: Non-Discrimination*, 37th sess, UN Doc HRI/GEN/1/Rev.1 (1989).
87. The accompanying note to the definition of discrimination in s 3(1) of the Charter notes that s 6 of the *Equal Opportunity Act 1995* (Vic) lists a number of attributes in respect of which discrimination is prohibited. Some of these attributes are listed in the note, however this list is not exhaustive. Therefore, it will be necessary to refer to the *Equal Opportunity Act 1995* (Vic) when interpreting the meaning of discrimination in the Charter.
88. *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 7(2).

Alternative approaches and best practice



I do honestly believe there are better ways if they are serious about dealing with drugs in prison. CORAL

“Doing strip searches is costly in staff time... It takes at least five minutes with two guards. Then there’s also the register and procedures... the paperwork and administration. There are better ways.” CORAL

There is a vital need to prevent contraband entering prisons because of the safety risks it poses to prisoners and staff. However, routine strip searching is not only harmful and inconsistent with human rights, it is an archaic approach to addressing security risks in prisons. In recent decades, technologies have advanced, and there are now a number of scanning devices, which, combined with alternative screening policies and practices, are effective in preventing contraband entering prisons. A number of these technologies are in use in some Victorian prisons.

Indeed, the *Bangkok Rules* require the development of alternative screening methods, such as scans, to replace strip searches, “in order to avoid the harmful psychological and possible physical impact of invasive body searches”.⁸⁹

The alternatives outlined in this section provide a way to address legitimate concerns about contraband but in a way that is not degrading, inhumane or inconsistent with rights to dignity and bodily integrity. That strip searches are humiliating and degrading should be sufficient justification for abolishing their routine use. An additional benefit however, is that modern scanning technologies are more efficient in screening prisoners than having two guards monitor each strip search. But the adoption of alternative screening methods should not correspond with increased screening of women. Alternative search policies need to be carefully framed and justified in terms of their frequency and application.

Practice changes

Searches based on reasonable suspicion

The practice of routine strip searches means that the entire prison population is subject to regular strip searches in defined circumstances, such as contact visits, regardless of information indicating risks of contraband on the person.

Rather than this routine approach, and its associated harms, a shift to a policy that only permits strip searches where absolutely necessary, based on a reasonable suspicion of contraband, would dramatically reduce the number of searches conducted of women in prison.

The reasonable suspicion might arise from intelligence, observed conduct or a positive detection of contraband following the use of alternative search technologies and devices (discussed below). A strip search in these circumstances might legitimately follow the reasonable suspicion but only if there are no less intrusive means of addressing the suspicion.

The *Corrections Victoria Alcohol and Drug Strategy 2015* notes that current measures to achieve the goal of reducing the supply of drugs into prisons include collection and analysis of intelligence, including phone and mail monitoring; and extensive drug testing.⁹⁰ These measures could form part of a search policy based on reasonable suspicion.

Pat down searches

Rather than removing clothing during body searches, pat down searches — where a search of a person is conducted by running or patting the hands along the outer garments to detect any concealed weapons or contraband — are frequently used for security screening. The effectiveness of pat down searches is improved when used in conjunction with screening devices, such as metal detectors or body scanners.

In its investigation into strip searches in prisons in Queensland, the Anti-Discrimination Commission noted the use of pat down searches, which can be used in conjunction with alternative search techniques and practices, as an alternative to routine strip searches.⁹¹

Overalls

The use of full body suits or overalls worn by women in prison during contact visits can also be used as a contraband control strategy.⁹² Prison visit overalls use cable ties to secure the zip at the back of the overalls, making it extremely difficult to receive and conceal any contraband from visitors.⁹³ Overalls were noted by the Anti-Discrimination Commission Queensland as an alternative to strip searches. While these are in use in women's prisons in Victoria, strip searches are still being routinely conducted following all contact visits. That is, full body suits are being used in addition to strip searches, rather than as an alternative.

Use of modern technology

Hand held scanners

Hand held scanning devices, similar to those regularly used at airports in conjunction with metal detectors, can also be utilised inside prisons as an alternative to strip searches.

As noted by the Australian Council for Civil Liberties as far back as 1999:⁹⁴

It is hard to see why hand held scanners of the type which have been in use at Australian airports for many years as well as, in recent times, being employed at some maximum security prisons, cannot be employed... as an alternative to strip searching.

The availability, speed, non-invasive nature, low-risk and demonstrated effective use of body-scanning devices in other jurisdictions renders these an important alternative to strip searches.

Full body scanners

"We are aware of the humiliating nature of a strip search; we are aware of the intrusiveness; we are aware of the psychological impact that it can have on a detainee who is regularly subjected to such a search. That is why we are seeking to put in place an alternative; that is why we are seeking to establish on a permanent basis the use of an X-ray body scanner as an alternative to strip searching in almost all circumstances. We treat the issue seriously, and we are moving to try and address it."

SIMON CORBELL, ATTORNEY-GENERAL,
MINISTER FOR POLICE & EMERGENCY SERVICES, ACT ⁹⁵

A full-body scanner is a device that detects objects on or inside a person's body, without making physical contact or requiring the removal of clothes. An image of the person's body, together with any items detected appears on a screen for the operator. Unlike metal detectors, full-body scanners can detect non-metal objects.

There are two distinct technologies in operation – millimetre wave scanners and back scatter x-ray machines.

This technology is in operation in a number of US prisons, where full body imaging machines produce a clear image of the body, including any items swallowed, inserted into or stored in the body in less than ten seconds using a 1mm radiation beam.⁹⁶

In the ACT, a SOTER RS X-Ray Body Scanner ('SOTER') has been used for several years to "remove or at least greatly lessen the need for the invasive process of strip-searching", with a view to strip-searches being used only in situations where contraband is located using the scanner.⁹⁷

Reports about the use of this technology indicate that effectiveness is improving as the technology develops. The images include a high level of detail, such as "something as minute as a filling in someone's tooth".⁹⁸ Contraband rates are reported to have been lowered in prisons where the full body scanners are in use, and in some instances items such as linen and mattresses are also passed through the scanner for contraband-detection.⁹⁹ Researchers have also pointed to the additional benefit of such technology being less susceptible to discretionary practice or abuse by prison staff.¹⁰⁰

Consideration of the health impacts of the radiation associated with body-imaging technology is vital. Information listed for the SecurePASS and associated body scanners indicates that the "absorbed dose per scan is negligible" and vastly lower than that for medical X-rays,¹⁰¹ rendering these very low risk for public use.

Metal detectors

Metal detectors, both full body and hand held, are routinely used to scan visitors to prisons in Victoria. These

devices detect any conductive material — anything that will conduct an electrical current, including metal objects.

Metal detectors are “considered a mature technology and can accurately detect the presence of most types of firearms and knives”.¹⁰² Furthermore they are not subject to the same health concerns as other search technologies, as they emit an extremely weak magnetic field (less than that of an electric hair dryer) and can be used safely with heart patients with pacemaker-type devices.¹⁰³

Body orifice scanners

Newer variations on full body and hand held metal detectors include body orifice scanners. An example is the B.O.S.S Body Orifice Security Scanner, which is a non-invasive oral and body cavity scanner chair that detects metal items via a metal detector on the seat and a series of audio and visual alarms that are activated when metal is carried into the magnetic field. It is used by a number of correctional services in the UK and North America.¹⁰⁴

Body orifice scanners can be used to detect small amounts of metal such as pins, staples and mobile phone simcards in a matter of seconds. These are in use in Queensland and Western Australia, and have recently been introduced into maximum and medium security prisons in New South Wales.¹⁰⁵

Ion scanners

Ion Mobility Spectrometry (IMS) devices (also referred to as ion scanners) are a type of trace detecting device that “measures the deflection of particles after they are exposed to an electric field. The speed at which the particles move helps to determine the substance of origin”.¹⁰⁶

In prisons, ion scanners are often used at front entrances or within mailrooms. Ion scanners detect minute traces of substances programmed into the unit. Samples are collected by wiping or vacuuming objects and then placing the samples into the unit, with results displayed up to six seconds later.¹⁰⁷

Ion scanners are already in use at the entry to some Victorian men’s maximum security prisons, including Barwon Prison, Melbourne Assessment Prison and the Metropolitan Remand Centre, and are used to detect explosive and drug particles.¹⁰⁸ The Dame Phyllis Frost Centre has a portable ion scanner that is used to scan some visitors.¹⁰⁹

The Corrections Victoria *Alcohol and Drug Strategy 2015* states that:¹¹⁰

Fixed ion or walk-through scanners are used at the entrance to some prisons to detect contraband. In addition, a number of portable scanners are employed at key locations. The scanners detect traces of drugs or

explosives. All positive scans must be reported to the prison General Manager or delegate who may require the visitor to undergo a strip search or body scan prior to determining whether a contact visit, a non-contact visit, or no visit be allowed.

Ion scanners can have issues with oversensitivity and associated “false positives”,¹¹¹ and their detection capability is varied for different types of drugs.¹¹² However, available international research indicates that “ion scanners successfully identified many of the drugs of concern for CSC [Correctional Service Canada] and were linked with a reduction in the introduction of drugs in institutions after implementation of the technology.”¹¹³

Expanded use of this detection technology inside the prison system, rather than limited to entrances and visitor searches, could greatly reduce physical searches of incarcerated people.

Emerging technologies

In addition to established technologies in operation in prison and airport security contexts, there are a number of emerging technologies that will potentially offer other alternative options to physically intrusive searches of people in prison. For instance, THz imaging and screening technology can detect explosives, drugs and non-metallic weapons and poses little demonstrated health hazard to humans.¹¹⁴ This and other technology under development, such as image fusion techniques, have ongoing potential as additional non-invasive screening options.¹¹⁵

The Corrections Victoria *Alcohol and Drug Strategy 2015* notes that prisons have improved methods for detecting drugs and that evidence nationally and internationally suggests that a number of alternative screening devices, including those listed in this report, offer ready alternatives to strip searches, without the associated harms.¹¹⁶

Best practice examples

Australian Capital Territory (ACT)

In 2007, the ACT Human Rights Commission’s *Human Rights Audit on the Operation of ACT Correctional Facilities* noted the degrading experience of strip searches. In response the practice of strip searching in the ACT was changed, and the number of strip searches of women on remand immediately reduced (while the audit was still at draft stage).¹¹⁷

Sections 113A-113C of the *Corrections Management Act 2007* (ACT) now provides that strip searches may only be conducted in two circumstances:

- the Director-General suspects on reasonable grounds that the detainee is concealing a seizeable item
- the Director-General believes on reasonable grounds that it is prudent to search the detainee for a seizeable item that may be concealed because the detainee has recently not been under the control or immediate supervision of a corrections officer and, during that period, may have had an opportunity to obtain a seizeable item (and where a scanning, frisk or ordinary search is not practical or available).

As far as practicable, officers are required to use the least intrusive kind of search that is reasonable and necessary in the circumstances (with alternative search options including frisk searches, searches of clothing and scanning searches).

Currently, all prisoners are strip searched on admission. However any subsequent strip search can only be authorised by the most senior officer operational available, and only where there are grounds to believe that a prisoner is concealing a seizeable item and those grounds are sufficient to satisfy another corrections officer that the prisoner may be concealing a seizeable item. The relevant policy provides examples of such grounds.¹¹⁸

A 2014 audit of detention conditions for women in the Alexander Maconochie Centre conducted by the ACT Human Rights and Discrimination Commissioner found:¹¹⁹

- there had been “a very significant reduction” in strip searching of women
- the ACT now leads practice in this area compared to other jurisdictions
- strip searching of women detainees occurs infrequently, and generally only on admission to the prison
- routine strip searches no longer occur before or after contact visits.

The audit recommended exploring the use of the SOTER scanner, rather than strip searches, on admission in some cases, based on individualised assessment.¹²⁰

United Kingdom

“There is one particular aspect of entrenched prison routine that I consider wholly unacceptable for women and which must be radically changed immediately in its present form. This is the regular, repetitive, unnecessary use of strip-searching. Strip-searching is humiliating, degrading and undignified for a woman and a dreadful invasion of privacy. For women who have suffered past abuse, particularly sexual abuse, it is an appalling introduction to prison life and an unwelcome reminder of previous victimisation. It is unpleasant for staff and works against building good

relationships with women, especially new receptions. I well understand that drugs and other contraband must be kept out of prison and that there may be a case for routine strip-searching on first reception into prison. But even this procedure is dubious for women given that drugs can be secreted internally, rendering strip-searching ineffective in any event.”¹²¹

BARONESS CORSTON, CORSTON REPORT

The 2007 *Corston Report: Review of Women with Particular Vulnerabilities in the Criminal Justice System*, responded to the need for a “radically different”, “proportionate” and “women-centred” approach to women in the criminal justice system in the UK.¹²² The report made 43 recommendations, gained cross-party support and was broadly endorsed by two different governments.¹²³

Recommendation 4 stated:¹²⁴

Strip-searching in women’s prisons should be reduced to the absolute minimum compatible with security; and the Prison Service should pilot ion scan machines in women’s prisons as a replacement for strip-searching women for drugs.

The implementation of this recommendation saw an end to strip searching as a routine practice, and reduced the number of strip searches of women in prisons. The results of an 18 month pilot across five different prison sites revealed that reducing the use of strip searches in women’s prisons was not unsafe, while having clearly positive benefits for the wellbeing of imprisoned women. There was no evidence of an increase in illicit items being smuggled into prisons during the pilots or since.¹²⁵

Prison instructions issued by the UK Government currently state that women prisoners may be subject to routine pat-down and hand-held metal detector searches. However, strip searches are only permitted ‘on intelligence or reasonable suspicion that an item is being concealed on the person which may be revealed by the search’. Even when a strip search is authorised, a woman cannot be required to remove her underwear unless there is ‘intelligence or suspicion that the woman has concealed an item in her underwear’ or if an illicit item has been found during the search.¹²⁶ ❖

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Recommendations



I hope that one day in the future people will look back and think ‘they did what to people’... that we get to a point where we realise that it’s so unacceptable and wrong, and that it never happens again. MARIE

The routine strip searching of women in Victorian prisons is degrading, harmful and a violation of the rights of incarcerated women, which are protected both by Victoria’s Human Rights Charter and international law.

The routine use of strip searches is not a proportionate nor necessary approach to the legitimate aim of preventing the entry of contraband into prisons. It causes trauma, distress and humiliation to women, many of whom are survivors of violence, with consequences for their health and rehabilitation and the wellbeing of their families.

Strip searching is also an outdated practice - there are alternative ways and new technologies that are reliable and effective and can be used to ensure that contraband does not enter prisons. These alternatives are more consistent with promoting the rights of women behind bars. Their use however, should not correspond with increased screening of women. Alternative search policies and practices need to be carefully framed and justified in terms of their frequency and application.

The ACT and the UK have led the way in respecting the rights and dignity of women behind bars by dramatically reducing the frequency of strip searching. It is time for Victoria to follow suit. Strip searching should only be used as a measure of absolute necessity, based on intelligence about the concealment of contraband, and as a last resort, where other search options are exhausted.

The Victorian Government must bring the degrading practice of routine strip searching in women’s prisons to an end.

Ceasing the practice of routine strip searches should form part of a broader commitment by the Victorian Government to reduce the harm that prison causes to women, their families and the community. At its core, this requires innovative measures to urgently reduce the growing number of women entering Victorian prisons, including on remand.



Based on the findings documented throughout this report, the Human Rights Law Centre calls on the Victorian Government to:

1. Immediately end the practice of routinely strip searching women in prison.
2. Enact laws that prohibit strip searches except in circumstances of absolute necessity, based on intelligence of contraband, and as a measure of last resort.
3. Replace strip searches with effective and non-degrading search practices and technologies.
4. Ensure that urine tests are conducted privately and not while women are still naked following a strip search.
5. Commit to a plan of action to reduce the number of women entering Victoria's prisons. ❖



Total Control

Ending the routine strip searching
of women in Victoria's prisons



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