

8 July 2026

Gary Maas MP
Chairperson Scrutiny of Acts and Regulations Committee
Parliament House, Spring Street
East Melbourne VIC 3002

By email: gary.maas@parliament.vic.gov.au; sarc@parliament.vic.gov.au

Dear Mr Maas

Corrections Amendment Bill 2026 – Concerns regarding limitation on human rights and proposed override of Charter of Human Rights and Responsibilities 2006

The Victorian Equal Opportunity and Human Rights Commission (**the Commission**) writes to the Scrutiny of Acts and Regulations Committee (**Committee**) to raise concerns regarding the proposed amendments in the *Corrections Amendment Bill 2026* (**Amendment Bill**) and the override declaration under section 31 of the *Charter of Human Rights and Responsibilities Act 2006* (**Charter**). The purpose of the Amendment Bill is to amend section 47(1)(a) of the *Corrections Act 1986* so that a prisoner's right to be in the open air for at least an hour a day is subject to operational considerations.¹

The Commission is concerned that the proposed amendments will seriously impact the human rights of people in custody in Victoria. Under the proposed amendments, the right to be in the open air will be at the discretion of prison authorities. It will be limited to when it's reasonably practicable, having regard to operational considerations² including the management, good order and security of the prison, and the safe custody and welfare of the prisoner or other prisoners.³

Critically, under the proposed amendments the right to be in open air can be limited on an ongoing basis and for extended periods of time,⁴ with no recourse under the Charter. This will significantly limit the rights of people in custody, in particular their right to humane treatment when deprived of liberty and, in certain circumstances, it may also amount to a limit to their right to protection from inhuman, cruel and degrading treatment.⁵ This is likely to have a significant detrimental impact on the health and well-being of people in custody, including a disproportionate impact on First Peoples, and people in long-term and solitary confinement.

The reasons for limiting the Charter rights, namely operational considerations in prison management, and minimising the State's financial exposure to litigation claims⁶ following the recent *Marrogi v*

¹ *Corrections Amendment Bill 2026* (Vic) (*Amendment Bill*) cl 1.

² *Amendment Bill*, (n 1) cl 3 "For section 47(1)(a) of the Corrections Act 1986 substitute— "(a) if not ordinarily engaged in outdoor work, the right to be in the open air for at least an hour each day if— (i) reasonably practicable having regard to one or more operational considerations; and Note See also section 47AAA. (ii) the weather permits;".

³ *Amendment Bill*, (n 1), cl 4.

⁴ See *Corrections Amendment Bill Explanatory Memorandum 2026* (*Amendment Bill Memorandum*), cl 3 "New section 47(1)(a)(i) is intended to enable the right to be in open air to be limited in one-off, unexpected or non-routine circumstances, and on an ongoing basis or for extended periods of time, based upon operational considerations."

⁵ *Charter of Human Rights and Responsibilities Act 2006* (Vic) (*Charter*), s 22 (1) and s 10(b).

⁶ Statement of Charter Compatibility for the Corrections Amendment Bill, tabled in Parliament by the Minister for Local Government, Minister for Youth Justice, Minister for Corrections, Legislative Assembly Bills Hansard, Parliament of Victoria, Thursday 18 June 2026 (*Statement of Charter Compatibility*), 2577.

*Secretary DJCS (Marrogi)*⁷ decision are not reasonable or justified. This is particularly so when other less restrictive means are available.

The Commission is particularly concerned that Parliament is making a declaration in clause 4 (2) of the Amendment Bill to override the Charter.

An override declaration should only be used in exceptional circumstances and for as limited a time as possible. However, the circumstances the Amendment Bill seeks to address do not constitute the exceptional circumstances intended by Parliament, and the override is not time limited and instead operates indefinitely.⁸

In the Charter compatibility assessment, the Minister for Corrections (**Minister**) concedes that the proposed amendments may in certain circumstances limit a person's rights to humane treatment when deprived of liberty and the right to protection from cruel, inhuman or degrading treatment.⁹ The Minister also concedes that where the limitation on the right to be in the open air continues over a longer period of time, due to certain operational considerations, the limitations of rights are unable to be justified in accordance with section 7(2) of the Charter.

Right to humane treatment when deprived of liberty – s 22 (1) of the Charter

Section 22(1) of the Charter requires that all persons deprived of liberty be treated with humanity and with respect for their inherent dignity. This right reflects article 10(1) of the ICCPR.¹⁰ The right acknowledges the vulnerability of people in detention and imposes a positive obligation on public authorities to ensure that people in custody are treated with dignity and humanity.¹¹

Currently, section 47(1)(a) of the *Corrections Act 1986* (Vic) provides that prisoners have the right to at least one hour of open air per day, weather permitting.¹² This reflects the well accepted United Nations Standard Minimum Rules for Treatment of Prisoners (**the Mandela Rules**), which states that: "Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits."¹³

However, the proposed amendments seek to make the right to be in the open air contingent on operational considerations and at the discretion of custodial authorities.

This is contrary to Australian and international jurisprudence¹⁴ which recognises that access to open air is a fundamental aspect of the right to humane treatment when deprived of liberty and has a direct impact on people's health and well-being. Noting that 'open air' in a prison context may include exposure to weather, 'access to the sun, rain, wind',¹⁵ and being able to 'look up and see the sky'.¹⁶

⁷ *Marrogi v Secretary, Department of Justice and Community Safety & Ors (No 1)* [2026] VSC 4 (*Marrogi*).

⁸ *Amendment Bill* (n 1) cl 4, see 47AAA(3) that states "Without limiting subsection (2), section 31(7) of the Charter of Human Rights and Responsibilities Act 2006 does not apply to section 47(1)(a)(i) or this section," noting that section 31(7) of the Charter is the provision that overrides can only last for up to 5 years.

⁹ *Statement of Charter Compatibility*, (n 6) 2580.

¹⁰ *International Covenant on Civil and Political Rights (ICCPR)*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 10(1).

¹¹ Human Rights Committee, *General Comment 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)*, HRI/GEN/1/Rev.9 (Vol I) (10 April 1992) [3] <<https://www.refworld.org/legal/general/hrc/1992/12211>>; *Castles v Secretary Department of Justice* [2010] VSC 310; 28VR 141 [100]; *Haigh v Ryan* [2018] VSC 474 [85].

¹² *Corrections Act 1986* (Vic) s 47(1)(a).

¹³ UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)*, GA Res 70/175, (8 January 2026, adopted 17 December 2015), rule 23.

¹⁴ See e.g. *Marrogi* (n 7), *Davidson v Director General, Justice and Community Safety Directorate (2022) 18 ACTLR 1* (*Davidson*) cited in *Marrogi* [60]-[62], *Whelan v Governor of Mountjoy Prison & anor* [2015] IEHC 273 (*Whelan*) cited in *Marrogi* [54] - [57].

¹⁵ *Marrogi* (n 7) [70].

¹⁶ *Whelan* (n 14) [9] as cited in *Marrogi* [57].

Relevantly, in *Marrogi*, Justice Harris found that the right to open air was plainly directed to support the welfare of a person in custody¹⁷ and recognised that “having a minimum amount of time in the open air furthers the physical and mental well-being of prisoners who may otherwise be confined for long periods to their cells.”¹⁸

Right to protection from cruel, inhuman and degrading treatment – s10 (b) of the Charter

Section 10(b) of the Charter provides that a person must not be treated or punished in a cruel, inhuman or degrading way. It is based on article 7 of the ICCPR,¹⁹ and is an absolute right under international law which means the government cannot lawfully limit or suspend it under any circumstances. While all rights in the Charter can be limited under section 7(2)²⁰, the nature of the right, as one that cannot be limited under international law, is a relevant consideration.

At international law, the right encompasses a positive duty on custodial authorities to prevent and protect against cruel, inhuman or degrading treatment.²¹ Conduct may be cruel, inhuman or degrading treatment if it causes physical pain, mental suffering, humiliation or loss of dignity.²²

To fall within section 10(b), the treatment must reach a minimum level of severity or intensity – the threshold will depend on the circumstances, including the person’s health, Aboriginality, age, vulnerability and the duration and cumulative effect of the treatment.²³ Depending on the individual circumstances, it is possible that the restriction of the right to access open air may amount to cruel, inhuman or degrading treatment.

The proposed amendments could permit custodial authorities to place further restrictions on people in custody in long-term or solitary confinement,²⁴ for whom the importance of the right to be in open air for an hour a day cannot be underestimated²⁵ as it may constitute the only daily time outside of their cell. Noting that prolonged periods of solitary confinement, other than in exceptional circumstances, is inconsistent with the prohibition of torture and cruel, inhuman or degrading treatment.²⁶

Disproportionate Impact on First Peoples

The Commission is particularly concerned that the override and limitation on human rights protections imposed by the Amendment Bill is likely to disproportionately impact First Peoples, recognising that First Peoples are significantly overrepresented in Victorian prisons.²⁷ The Minister also acknowledges this. Specifically, that the proposed amendments limiting the right to open air may result in the unequal

¹⁷ *Marrogi* (n 7) [66].

¹⁸ *Marrogi* (n 7) [66].

¹⁹ ICCPR (n 10), art 7.

²⁰ *Charter* (n 5), s 7(2) “A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including— (a) the nature of the right; and (b) the importance of the purpose of the limitation; and (c) the nature and extent of the limitation; and (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.”

²¹ United Nations Human Rights Committee, *General Comment 20: Article 7 (Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment)* (‘General Comment 20: Article 7’), CCPR/C/21/Rev.1/Add.3 (10 March 1992) [2] [8].

²² General Comment 20: Article 7 (n 21), [5]; *Kracke v Mental Health Review Board* (2009) 29 VAR 1 [561] (‘*Kracke v Mental Health Review Board*’); *Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children* [2016] VSC 796 (‘*Certain Children (No 1)*’) [160]; *Certain Children v Minister for Families and Children (No 2)* (2017) 52 VR 441 (‘*Certain Children (No 2)*’), [250].

²³ *Kracke v Mental Health Review Board* [559]–[560], [574] citing *Ireland v United Kingdom* (1978) 2 EHRR 25; *Ciorap v Moldova* [2007] ECHR 502 [63]; *Certain Children (No 2)* [2017] VSC 251, [250].

²⁴ *The Mandela Rules* (n 13), rule 44 states that ‘solitary confinement’ means the confinement of a person in prison for 22 hours or more a day without any meaningful human contact.

²⁵ See New Zealand Supreme Court decision *Taunoa and Ors v The Attorney General and Anor* [2007] NZSC 70 SC 6/2006 (*Taunoa*) at [51] “it should not be underestimated how important such an entitlement would be to someone confined for 22 or 23 hours per day in a cell” as cited in *Davidson* [217].

²⁶ See UN Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee (Denmark)*, CCPR/CO/70/DNK, (15 November 2000) 3 [12].

²⁷ See Yoorrook Justice Commission, ‘Yoorrook for Justice Report: into Victoria’s Child Protection and Criminal Justice Systems’ (August 2023), 21, <https://www.yoorrook.org.au/reports-and-recommendations/reports/yoorrook-for-justice-report> p. 253-262.

enjoyment of human rights and fundamental freedoms of First Peoples, including rights under sections 10(b) and 22(1) of the Charter and under article 7 of the United Nations Declaration of Indigenous Peoples (the right to life, physical and mental integrity, liberty and security of person).²⁸

Limitation on rights is not reasonable and justified – s 7 (2) of the Charter

Under section 7(2) of the Charter, any limitations of a right must be reasonable and justified.

In the Charter compatibility assessment, the Minister acknowledges that the limitations on rights under section 10(b) and section 22(1) are unable to be justified and accordingly the amended section 47(1)(a)(i) and new section 47AAA inserted by the Bill are incompatible with human rights.²⁹

The Minister's justification for limiting rights and authorising the override of human rights is to minimise the State's financial exposure to claims following the Marrogi case and to ensure that Corrections Victoria can manage access to open air safely and lawfully, alongside operational considerations related to functioning of Victorian prisons.³⁰

However, the Commission notes that the allocation of resources of the State cannot provide a justification for limiting certain civil and political rights including the right to humane treatment when deprived of liberty.³¹

Further, the Commission is concerned by the nature and extent of the proposed limitation of rights and ongoing exclusion of the operation of the Charter in relation to the limitation on rights.

The Amendment Bill proposes to authorise decision makers to remove or limit the right to be in open air "on an ongoing basis and/or for extended periods of time based on operational reasons, as well as in one-off, unexpected or non-routine circumstances."³² It would extend to the thousands of people in custody across all Victorian prisons, irrespective of prison context or individual circumstance.³³ Such a broad and ongoing limitation on rights is unreasonable and unjustified. It is also a disproportionate response to the Marrogi case, when in the alternative, actions to improve Charter compatibility and to facilitate ongoing access to open air particularly in specific cells or locations where this may not currently be occurring could have the same effect of minimising future liability.

In considering whether a limitation of a right is reasonable and justified, section 7(2)(e) of the Charter requires consideration of any less restrictive means reasonably available to achieve the same purpose of the limitation. Even if it were accepted that the limitation was necessary and justified, the Commission notes that the Charter compatibility assessment lacks consideration of any less restrictive means that could facilitate continued access to open air for people in custody while balancing operational considerations. The Amendment Bill takes an extreme approach by enabling people in custody to be denied access to open air for extended periods of time. Prolonged confinement, including limiting access

²⁸ *Statement of Statewide Treaty Compatibility for Corrections Amendment Bill*, tabled in Parliament by Minister for Local Government, Minister for Youth Justice, Minister for Corrections, Legislative Assembly Bills Hansard, Parliament of Victoria, Tuesday 18 June 2026, 2558.

²⁹ *Statement of Charter Compatibility* (n 6), 2580.

³⁰ *Statement of Charter Compatibility*, (n 6) 2577.

³¹ Human Rights Committee, *General Comment 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty)*, HRI/GEN/1/Rev.9 (Vol I) (10 April 1992) [4]; The European Court of Human Rights, when considering limitations on the right to dignity for people in prison, held that a State must 'organise its penitentiary system ... to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties': *Gusev v Russia* (European Court of Human Rights, Chamber, Application No 67542/01, 15 May 2008) [58] and *Mamedova v Russia*, (European Court of Human Rights, Chamber, Application no. 7064/05 63, 1 June 2006) [63].

³² See *Amendment Bill Explanatory Memorandum* (n 3), cl 3 "New section 47(1)(a)(i) is intended to enable the right to be in open air to be limited in one-off, unexpected or non-routine circumstances, and on an ongoing basis or for extended periods of time, based upon operational considerations."

³³ Corrections Victoria, statistics dated 31 May 2026 state that there are 7,494 adults in custody in Victoria, including 1,094 Aboriginal and Torres Strait Islander people [Monthly time series prison and community corrections data | Corrections Victoria](#)

to open air, can impose a severe mental health burden on people in custody and their families, which can have profound and lasting detrimental impacts.³⁴

Use of the Override Clause – s 31 of the Charter

Under section 31 of the Charter Parliament may, in an Act, make a declaration to override the Charter but only in exceptional circumstances.

The override function is intended to occur when Parliament is introducing new legislation and when exceptional circumstances exist which require Parliament to depart from the Charter in a specific manner and for a fixed period of time.³⁵ Examples of exceptional circumstances noted in the explanatory memorandum to the Charter include threats to national security or a state of emergency which threatens the safety, security and welfare of the people of Victoria.³⁶

The justification for the Amendment Bill does not outline exceptional circumstances that would constitute a basis for an override declaration. Overrides were intended to be enacted only in extraordinary situations, rather than to sidestep the Charter framework established to balance rights and legitimate public purposes.

Further, if an override was deemed necessary, it should be as limited as possible and include an expiration date or sunset clause to allow for transparency and debate as to whether it should be re-enacted. Contrary to the intent within the Charter, there is no time limit for the override proposed under clause 4(2) of Amendment Bill. It does not expire after five years as required under section 31 (7) of the Charter and instead operates in perpetuity.³⁷

The Commission notes in the 20 years since the Charter came into effect, Victoria has enacted four override declarations.³⁸ None of these overrides involved circumstances intended by the Charter as they did not constitute a serious threat to national security or a state of emergency or comparable situation.

Further, overrides hinder the mechanisms for scrutiny and accountability and reduce transparent oversight of Parliament's laws. The Commission notes the 2015 review of the Charter recommended that the override provision be repealed,³⁹ and that comparative Australian and New Zealand human rights legislation⁴⁰ does not have an equivalent override provision to section 31 of the Charter.

Recommendations

We urge that the Committee give careful consideration to the human rights impacts of the Amendment Bill and to what actions can be taken to strengthen compatibility with rights under the Charter that would

³⁴ See e.g. Luigi M et al, "Shedding Light on "the Hole": A Systematic Review and Meta-Analysis on Adverse Psychological Effects and Mortality Following Solitary Confinement in Correctional Settings" (19 August 2020) *Front Psychiatry* 11:840 doi: 10.3389/fpsy.2020.00840, Wildeman C, Andersen L, "Solitary confinement placement and post-release mortality risk among formerly incarcerated individuals: a population-based study", (2 June 2020) 5(2) *The Lancet Public Health*, e107-e113, Victorian Ombudsman. (2019). "OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of children and young people", Final Report, [913], Mendez, J. Special Rapporteur, *Interim report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, A/66/268 (5 August 2011) 17 [62]-[63].

³⁵ *Charter of Human Rights and Responsibilities Explanatory Memorandum 2006 (Charter Explanatory Memorandum)*, cl 31.

³⁶ *Charter Explanatory Memorandum* (n 35), cl 31. Further, in its report related to the creation of the Charter, the Human Rights Consultative Committee referred to ICCPR article 4 that States "may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law."

³⁷ See *Amendment Bill Memorandum*, (n 4), cl 4 "Subsection (3) provides subsection (2) does not automatically expire under section 31(7) of the Charter of Human Rights and Responsibilities Act 2006 but operates indefinitely".

³⁸ See e.g. *Legal Profession Uniform Law Application Act 2014* (Vic) s 6, *Corrections Amendment (Parole) Act 2014* (Vic) cl 3(4), cl 3(5), *Corrections Amendment (Parole) Bill 2018* (Vic) cl 4(9), cl 4(10), *Corrections Amendment (Parole Reform) Act 2023* cl 7(4) and 7(5).

³⁹ Brett Young, M. (2015). *From Commitment to Culture: the 2015 Review of the Charter of Human Rights and Responsibilities Act 2006*, (Victorian Government Report), 198, recommended that "section 31 provision for an override declaration be repealed, because: it does not serve the policy purpose of acting as a brake on limitations of human rights; it is not necessary to preserve parliamentary sovereignty; and it fails to make clear to the public that Parliament can enact human rights incompatible legislation without an override declaration."

⁴⁰ *Human Rights Act 2024* (ACT), *New Zealand Bill of Rights Act 1990*.

allow people in custody to retain their right to be in the open air on a regular basis, while balancing operational considerations.

Any Bill containing an override provision should identify a legitimate exceptional circumstance, include a clear review mechanism and be as time limited as possible (such as within 12 months from the commencement of the Bill).

If we can provide any further information or if you would like to discuss the issues raised in this letter, please contact Aimee Cooper, Head of Legal on 1300 292 153 or legal@veohrc.vic.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ro Allen', is positioned above the printed name.

Ro Allen

Victorian Equal Opportunity and Human Rights Commissioner