|  |
| --- |
| **Prisoner Communications** |
| **Section** | 1. Security and Control |
| **CR Number** | 1.4.5 | **Current Issue Date** | February 2021 |
| **Legislation & Policy**  | Corrections Act 1986Charter of Human Rights and Responsibilities Act 2006Privacy and Data Protection Act 2014Terrorism (Community Protection) Act 2003Corrections Regulations 2019 |
| **Standard** | Prisoner Administration Services - Prisoner Communications |
| **Attachments** | Nil |
| **Forms** | Nil |

1. **PURPOSE**

To provide guidelines to staff managing prisoner mail, including correspondence classified as ‘exempt’ mail and to inform prisoners of mail processes.

1. **REQUIREMENT**
	1. Prisoners are encouraged to maintain contact with family and friends and professionals by mail, prison email systems, visits, including via video and telephone.
	2. Staff are to refer to Commissioner’s Requirement – Prisoner Telephone System, for information on prisoner telephone calls.
2. **GUIDING PRINCIPLE**
	1. Section 47 of the *Corrections Act* 1986 refers to letters and parcels between prisoners and certain entities being exempt from being opened by prison staff – subject to limitations outlined in section 47A and 47B (relating to suspected dangerous items and unauthorised articles or substance).
	2. Inspection of exempt mail may only be carried out in accordance with section 47B of the Act and regulation 19 of the Corrections Regulations 2019.
	3. As required by s38(1) of the *Charter of Human Rights and Responsibilities Act* 2006 (the Charter), staff are to properly consider an individual’s rights when making decisions, which includes decisions concerning prisoner communications.
	4. There are several rights under the Charter, which guide the way that staff will respond to prisoner communications, including the right to privacy and reputation (s13). Prisoners have the right to receive and send exempt correspondence unopened. If there is reasonable evidence to suspect that a letter or parcel may contain contraband however, staff have the power to search letters and parcels, noting the process for exempt communications below. Letters and parcels containing contraband, engage the right to life (s9) and as such, searching to detect hidden contraband, particularly drugs and weapons, which may have lethal potential, such as a fatal overdose or can cause harm or death to all prisons in prisons, is necessary to preserve the right to life.
3. **CONTEXT**

Prisoners are encouraged to correspond with family, friends and professional persons and bodies and staff must respect and promote the human rights of prisoners, including the right to privacy and confidentiality during these communications.

1. **INSTRUCTION**
	1. **Protocol**
		1. Prisoner mail sent to or received from the following is exempt and will be forwarded unopened:
* Minister for Corrections;
* Secretary Department of Justice & Community Safety;
* Commissioner, Corrections Victoria;
* A member of Parliament;
* The Victorian Ombudsman’s Office (and all other corresponding equivalent bodies across Australia);
* Independent Prison Visitors (IPVs);
* Health Complaints Commissioner or person acting on the Commissioner’s behalf;
* Mental Health Complaints Commissioner or person acting on the Commissioner’s behalf;
* Justice Health;
* Victorian Equal Opportunity and Human Rights Commission or a person acting on the Commissioner’s behalf;
* Australian Human Rights Commission;
* Office of the Victorian Information Commissioner (OVIC and all other corresponding equivalent bodies across Australia);
* Independent Broad-based Anti-corruption Commission (IBAC);
* Victorian Inspectorate (oversight body in Victoria’s integrity system);
* A legal practitioner representing the prisoner, or from whom the prisoner is seeking legal advice;
* Diplomatic or Consular Staff;
* Freedom of Information;
* Victorian Civil and Administrative Tribunal (VCAT);
* Royal Commissions, including support bodies assigned to Royal Commissions;
* Law enforcement agencies in Australia, including Victoria Police, Australian Federal Police and the Australian Crime Commission.
	+ 1. If satisfied that a prisoner’s mail or telephone communication with an external agency other than those listed above should be treated confidentially, a General Manager may direct that any communication between that prisoner and the particular agency also be considered as exempt.
		2. If an email or facsimile is identified to be from an exempt person or body, the email or facsimile must be managed as exempt correspondence and care should be taken to limit the number of staff handling/viewing the facsimile/email. Staff should deliver a copy of the email or facsimile to the prisoner as soon as practicable and record it as exempt mail.
	1. **Inspection of Exempt Mail**
		1. The General Manager or delegate may authorise the examination of exempt mail (with the exception of mail to or from the Victorian Ombudsman’s Office, IBAC or the Victorian Inspectorate) if a staff member reasonably suspects that the exempt mail contains contraband.
		2. Prisoners should not routinely be requested to open their exempt mail in the presence of staff. Prisoners may be requested to open exempt mail in the presence of staff where staff reasonably suspect that the exempt mail contains contraband.
		3. If the letter/parcel is to, or from:
* a legal practitioner;
* the Health Complaints Commissioner;
* the Mental Health Complaints Commissioner;
* the Office of the Victorian Information Commissioner;
* the Human Rights and Equal Opportunity Commissioner;
* any person authorised to act on behalf of the Commissioners;
* a law enforcement agency; or
* a Royal Commission

the General Manager:

* may hold the letter/parcel and notify the prisoner and the legal practitioner, or the relevant Commissioner, of their concerns; and
* may open and inspect the letter/parcel:
	+ in the presence of the prisoner and a representative of the legal practitioner or relevant Commissioner; or
	+ in accordance with any alternative arrangement agreed with the legal practitioner or relevant Commissioner but must not read or censor the letter.
		1. If the letter/parcel is:
* to, or from the Minister;
* a member of Parliament, the Secretary;
* the Correctional Services Commissioner;
* or an Independent Prison Visitor;

the General Manager:

* + may require the prisoner to open the letter/parcel to enable it to be inspected.
	+ If a prisoner refuses a request to open it, the General Manager may open the letter/parcel and may inspect the envelope, and any associated packet, container or wrapper; but must not read or censor the letter.
	1. **Exempt Mail to and From the Victorian Ombudsman or IBAC**
		1. In the event a staff member reasonably suspects that a letter or parcel to/from the Ombudsman’s office, IBAC or the Victorian Inspectorate may contain contraband, the staff member must notify the General Manager who will contact the Ombudsman’s office, IBAC or the Victorian Inspectorate to make arrangements for opening the mail.
		2. In the event that mail received from the Ombudsman’s office, IBAC or the Victorian Inspectorate or sent to the Ombudsman’s office, IBAC or the Victorian Inspectorate is opened in error, the Ombudsman’s office, IBAC or the Victorian Inspectorate must be notified immediately.
		3. Mail to and from the Victorian Ombudsman and IBAC must be immediately forwarded unopened. Staff who prevent, or hinder the forwarding of unopened mail from the Victorian Ombudsman or IBAC, can be liable for criminal charges. Penalties for opening IBAC mail may be a fine of 120 penalty units, 12 months imprisonment, or both.
	2. **Inspection of non-exempt Mail**
		1. Non-exempt mail sent to, or received by a prisoner, may be opened, inspected and read to determine whether or not the contents of the letter/parcel may jeopardise the safety and security of the prison, the safe custody and welfare of any prisoner or the safety of the community.
		2. Non-exempt mail will be routinely inspected for contraband by staff authorised by the General Manager.
	3. **Stopping Mail**
		1. While a prisoner has right to hold an opinion and freedom of expression (s15 of the Charter), consideration must be given to the protection of others.
		2. Section 47D of the *Corrections Act* allows the General Manager to stop or censor a letter sent by a prisoner, or to a prisoner by any person, not listed in 47(1)(m) (exempt persons and bodies), where the General Manager reasonably believes that the letter:
* is a threat to prison security; or
* may be a threat to the good order, management or security; or
* may be of a threatening or harassing nature; or
* may be used to further an unlawful activity or purpose; or
* contains indecent, abusive, threatening or offensive material (written or pictorial); or
* may be regarded by a victim as distressing or traumatic (written or pictorial), or an indecent or an offensive article or substance; or
* would contravene the restriction on change of name applications, without approval in section 47H of the *Corrections Act*.
	+ 1. A person may advise the General Manager that they wish for mail to be stopped from being sent to them from a prisoner.
		2. The prisoner must be informed and an information report generated and a mail flag raised in the Prisoner Information Management System (PIMS).
		3. Where a prisoner continues to forward mail to a person who has made such a request, a PIMS incident will be entered, the prisoner may be charged with a prison offence and/or the matter referred to police.
		4. If a prisoner corresponds or attempts to correspond with a person/s on an Intervention or Family Violence Order prohibiting the prisoner to contact the person/s, the incident MUST be referred to police.
		5. If mail is seized under the *Corrections Act*, a prisoner can be requested to rewrite their letter. Alternatively, sections can be censored and the letter dispatched under s47(2)(b) of the *Corrections Act*. If a letter or article is seized, the letter is to be recorded in the appropriate register. Details of any mail stopped and seized must be recorded in PIMS and where appropriate, incident and information reports will be generated.
	1. **Letters accompanying parcels**
		1. Where a letter is received with a parcel (property), it is to be managed in the same manner, as if it was not with the parcel and if non-exempt correspondence, it may be searched and censored or seized if necessary.
		2. The parcel is not considered to be a letter, although if accompanying a letter, consideration must be given to its appropriateness to be provided to the prisoner, or if not appropriate, for the prisoner to be informed and a decision made about whether the item/s is placed in the prisoner’s stored property or returned to the sender. E\*Justice property records are to be updated in all events.
	2. **Copying non-exempt mail**
		1. From 1 March 2021, non-exempt mail to prisoners, may be photocopied and the original mail destroyed.
		2. Section 47CA of the *Corrections Act* allows designated staff (custodial and non-custodial) to make a copy of any non-exempt letter or other item capable of being copied that is sent to a prisoner by, or from any person not listed as an exempt person or body and to dispose of the original letter or item in any manner the prison General Manager deems appropriate.
		3. Consideration is to be given to informing prisoners that their non-exempt mail was forfeited, photocopied and disposed of, unless immediate disclosure will compromise intelligence gathering or internal or external investigations.
		4. Staff must give proper consideration to the Charter, including the right to privacy (s13), the protection of families and children (s17) and property rights (s20) when making decisions.
		5. Where the original letter or item is in colour, the copy must be provided in colour, if it is reasonably practicable to do so. This is particularly important when copying children’s letters and drawings and anything that may be considered sentimental.
		6. Legal documents that accompany non-exempt correspondence, such as a birth certificate, should not be copied or destroyed and are to be placed in the prisoner’s valuable property.
		7. Items that may be sentimental in nature, such as a photograph, may need to be provided to the prisoner, unless a copy is made and the original returned to the prisoner’s stored property, or returned to sender.
		8. Prisoners will not be responsible for the cost of photocopying letters or items.
		9. Similar to emails sent via approved programs such as Email a Prisoner, mail that is photocopied, should still be managed as if the copy was an original. This means that non-exempt mail may be opened, inspected and read, censored or seized by custodial officers.
		10. Prison General Managers are to determine whose non-exempt mail is to be photocopied, following a risk assessment, which may take into consideration prisoners with an Identified Drug User (IDU) status and prisoners with a history of engaging in trafficking of contraband.
		11. Decisions to photocopy non-exempt mail, may also be made by General Managers, in response to specific cases, based on intelligence.
	3. **Pen Pals**
		1. Corrections Victoria recognises the importance of prisoners having contact with their social networks and for some prisoners, this may not be an option. Some prisoners may find it necessary to reach out to Pen Pals, to minimise their isolation.
		2. Given the risks however that may be associated with exploitation, prisoners will not be permitted to participate in a Pen Pal program without the prison General Manager’s approval.
		3. Letters may be stopped or censored in accordance with section 47D of the *Corrections Act* 1986.
		4. If a prisoner is identified to be corresponding with a Pen Pal (or someone who the prisoner is not known to know), the General Manager will assess the appropriateness of the correspondence, with due regard to the Pen Pal’s circumstances (where known) the prisoner’s history, behaviour, community supports and advice from Forensic Intervention Services or similar and to stop and seize such mail, if the prisoner or Pen Pal is assessed to be at risk.
		5. Where a Pen Pal is attempting to correspond with a prisoner, the letter may be read by staff, to determine that it is appropriate to provide to the prisoner (guided by section 47D).
		6. If a letter is intercepted and the decision is made that it should not be forwarded to a prisoner, consideration must be given to informing the prisoner that they have been sent a letter from a Pen Pal or program. The prisoner can be advised broadly of the letter’s contents. The letter can be returned to sender with a covering letter from the prison.
		7. The letter can also be censored and given to the prisoner.
		8. All decisions to censor or withhold a letter must be documented.
	4. **Registers**
		1. As per section 47E of the *Corrections Act*, all prisons must maintain a register of all letters and items seized, stopped, censored or disposed of and as per 47CA any letters or items copied and disposed of.
		2. Any letters and parcels provided to a police officer under section 13ZC of the *Terrorism (Community Protection) Act* 2003 must also be recorded.
		3. Where a letter or parcel between prisoners and an exempt person or body is opened, irrespective of whether this was in error or in response to reasonable belief that the letter or item contained contraband and as per section 5, this must be recorded in a register.

|  |
| --- |
|  |
| Larissa Strong**Acting Commissioner** |

**Information below this point is administrative supporting detail**

**only and not subject to Commissioner’s review or approval.**

|  |
| --- |
| **Acronyms** |
| IBAC | Independent Broad-based Anti-corruption Commission |
| IDU | Identified Drug User |
| IPV | Independent Prison Visitor |
| VCAT | Victorian Civil and Administrative Tribunal |
| VO  | Victorian Ombudsman |

|  |
| --- |
| **Definitions** |
|  | Nil |

|  |
| --- |
| **Associated Commissioner’s Requirements** |
| 1.3.1 - Incident Reporting1.4.6 - Media Access4.2.1 - Prisoner Telephone System |

|  |
| --- |
| **Document Detail** |
| Title: | Prisoner Communications |
| Owner: | Manager, Operations Directorate |

|  |
| --- |
| **Version Control** |
| Version | Date | Description |
| V7 | Feb-21 | Update  |
| V6 | Jul-16 | Update |
| V5 | Sep-15 | Update |
| V4 | May-15 | Update |
| V3 | Nov-14 | Update |
| V2 | Aug-14 | Update |
| V1 | Jun-14 | First Issue |