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**Submission to the  
Scrutiny of Acts and Regulations Committee**

**Justice Legislation Amendment Bill 2007 (Vic)**

**14 September 2007**



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#### **About the Human Rights Law Resource Centre**

The Human Rights Law Resource Centre (**HRLRC**) is an independent community legal centre that is a joint initiative of the Public Interest Law Clearing House (Vic) Inc and the Victorian Council for Civil Liberties Inc.

The HRLRC provides and supports human rights litigation, education, training, research and advocacy services to:

- (a) contribute to the harmonisation of law, policy and practice in Victoria and Australia with international human rights norms and standards;
- (b) support and enhance the capacity of the legal profession, judiciary, government and community sector to develop Australian law and policy consistently with international human rights standards; and
- (c) empower people who are disadvantaged or living in poverty by operating within a human rights framework.

The four 'thematic priorities' for the work of the HRLRC are:

- (a) the content, implementation, operation and review of the Victorian Charter of Human Rights and Responsibilities;
- (b) the treatment and conditions of detained persons, including asylum-seekers, prisoners and involuntary patients;
- (c) the importance, interdependence, indivisibility and justiciability of economic, social and cultural rights; and
- (d) equality rights, particularly the right to non-discrimination, including on the grounds of race, religion, ethnicity, disability, gender, age and poverty.

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## **1. Introduction**

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1. This submission is made by the Human Rights Law Resource Centre Ltd (**HRLRC**). The HRLRC is a specialist community legal service and aims to promote and protect human rights in Australia through case work, litigation, policy analysis and development, and legal education.
2. The submission examines and discusses the Justice Legislation Amendment Bill 2007 (Vic), particularly those provisions pertaining to:
  - (a) the interception or censorship of correspondence sent by prisoners; and
  - (b) the use of firearms by prison officers when prisoners are attempting to escape.

## **2. Summary of recommendations**

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### **2.1 Intercepting and censoring correspondence**

3. The HRLRC considers that the following amendments to the Bill should be made:
  - (a) The restriction in clause 17 should not apply to correspondence sent to a prisoner which may be regarded as distressing or traumatic by the victim.
  - (b) The relevant formulation in clause 17 should be rephrased as follows:

'written or pictorial matter that may reasonably be regarded by a victim as distressing or traumatic, having regard to the personal circumstances of the victim and their connection with the prisoner'.
  - (c) The prison Governor (or delegate) should be required to assess each case on its merits, and be prohibited from intercepting correspondence in accordance with set or default guidelines.
  - (d) Avenues of redress should be set out for improper interception of prisoner correspondence, and prisoners should be notified of all such interceptions or censorship.

## **2.2 Use of firearms against escaping prisoners**

4. The HRLRC considers that the Bill should be amended to provide that regulations only allow the use of firearms:
  - (a) where escape presents an imminent and grave threat to life or likelihood of serious injury;
  - (b) as a last resort; and
  - (c) where it is proportionate to the risk or threat posed by the escape of the prisoner.

## **3. Intercepting and censoring correspondence**

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### **3.1 Proposed amendment**

5. Clause 17 of the Bill proposes to amend section 47D(1)(d) of the *Corrections Act 1986* (Vic), to enable a prison Governor to intercept or censor any letter sent by a prisoner, or sent to a prisoner by any person (except for those persons listed in section 47(1)(m) of that Act), containing written or pictorial matter that may be regarded by a victim as distressing or traumatic.
6. The proposed amendment engages:
  - (a) section 13 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**), which provides that 'a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with'; and
  - (b) section 15 of the Charter, which provides that 'every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds ... whether orally, or in writing'.

### **3.2 The right to freedom from unlawful or arbitrary interference with privacy, family, home or correspondence**

7. Section 13 of the Charter is modeled on article 17 of the *International Covenant on Civil and Political Rights (ICCPR)*<sup>1</sup> and relevantly prohibits both 'unlawful' and 'arbitrary' 'interference' with 'correspondence'.

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<sup>1</sup> Opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

8. The term 'correspondence' includes communication via letter, telephone, email and facsimile. The term 'interference' refers to any 'withholding, censorship, inspection of (or listening to) or publication of private correspondence'.<sup>2</sup>
9. For a limitation of a right to be 'lawful' within the meaning of article 17 of the ICCPR, it is not sufficient for that limitation to be set out in a law: the law itself must satisfy certain criteria, including that it be consistent with the ICCPR,<sup>3</sup> and that it not be arbitrary or unreasonable.<sup>4</sup> For example, the UN Human Rights Committee (**HRC**) has stated in relation to article 17 that 'even with regard to interferences that conform to the [ICCPR], relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted' in order for that interference to be lawful.<sup>5</sup>
10. The reference to 'arbitrariness' imposes a distinct limitation on permissible interference with a person's correspondence, even where that interference is permitted by law. The HRC has observed that 'arbitrariness is not to be equated with 'against the law' but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability'.<sup>6</sup>
11. Further, in *A v Australia*,<sup>7</sup> the HRC considered that an action would be arbitrary if it was 'not necessary in all the circumstances of the case' and if it was not a proportionate means of achieving a legitimate aim.
12. The right to freedom from unlawful or arbitrary interference with correspondence is recognised under both international and comparative human rights law as being of particular importance to prisoners.<sup>8</sup>

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<sup>2</sup> Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2<sup>nd</sup> ed, 2005) 401.

<sup>3</sup> UN Economic and Social Council, *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, UN Doc E/CN.4/1985/4, Annex (1985), para 15 (**Siracusa Principles**).

<sup>4</sup> *Siracusa Principles*, para 16.

<sup>5</sup> Human Rights Committee, *General Comment 16: The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation* (1988), para 8.

<sup>6</sup> In *Van Alphen v The Netherlands*, Human Rights Committee, Communication No. 305/88.

<sup>7</sup> Human Rights Committee, Communication No. 560/93.

<sup>8</sup> See, eg, *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532; *Campbell v United Kingdom* (1992) 15 EHRR 137; *Re Porter* [2007] ScotCS CSOH 56 (20 March 2007). See also *Pinkey v Canada*, Human Rights Committee, Communication No. 27/81; *Labita v Italy*, [2000] ECHR 160 (6 April 2000); *Ciapas v Lithuania* (European Court of Human Rights, 16 November 2006), *Silver*

### 3.3 The right to freedom of expression

13. Section 15 of the Charter is modeled on article 19 of the ICCPR and includes the freedom to *receive* and *impart* information and ideas of all kinds, whether orally, in writing, in print, through art or another medium.
14. Section 15(3) of the Charter provides that the right may be subject to lawful restrictions reasonably necessary:
  - (a) to respect the rights and reputation of other persons; or
  - (b) for the protection of national security, public order, public health or public morality.

### 3.4 Permitted limitations in accordance with the Charter

15. It is also important to consider section 7(2) of the Charter, which prescribes the requirements to be met and factors to be considered for a limitation on human rights to be permissible. Relevantly, these factors include:
  - (a) the nature and importance of the right to be limited;
  - (b) the aim and importance of the limitation (the aim should be 'legitimate' and 'pressing');<sup>9</sup>
  - (c) the nature and extent of the limitation (the limitation should be proportionate, rational and evidence-based);<sup>10</sup> and
  - (d) whether any less restrictive means are reasonably available to achieve the purpose that the limitation seeks to achieve (the limitation should be the minimal impairment possible).<sup>11</sup>

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*v United Kingdom* (1981) 3 EHRR 475; *Golder v United Kingdom* (1975) 1 EHRR 524; *Petra v Romania* (2001) 33 EHRR 5.

<sup>9</sup> See, eg, *Derbyshire County Council v Times Newspapers* [1993] AC 534, 550; *Handyside v UK* (1976) 1 EHRR 737. See also *R v Oakes* (1986) 1 SCR 103, in which the Supreme Court of Canada stated that the aim must be 'of sufficient importance to warrant overriding a constitutionally protected right or freedom', which required that it must 'relate to concerns which are pressing and substantial'.

<sup>10</sup> See, eg, *R v Oakes* (1986) 1 SCR 103, 139.

<sup>11</sup> Overall, the section 7(2) limitations should be interpreted consistently with international human rights law, particularly the HRC's *General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), which states that where limitations or restrictions are made on human rights, States must only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of ICCPR rights.

### **3.5 Need for effective remedies**

16. Adequate safeguards and effective remedies must be provided by law against illegal or abusive imposition or application of any limitations on human rights.<sup>12</sup>

### **3.6 Analysis of the proposed limitation of these rights**

17. The HRLRC considers that clause 17 of the Bill:
- (a) cannot be properly described as lawful, because it:
    - (i) is drafted in overly broad terms, and does not display the necessary precision required to ensure it constitutes the least-restrictive means reasonably available to effect the intended limitation; and
    - (ii) does not provide for clear avenues of redress in the case of improper or wrongful application;
  - (b) is arbitrary for the following reasons:
    - (i) it does not stipulate how the Governor must exercise his or her discretion to intercept or censor, or require the Governor to balance the restriction on the prisoner with the potential harm to victims (lack of proportionality);
    - (ii) the restrictions imposed on letters sent to prisoners which 'may be regarded by a victim as distressing or traumatic' is unnecessary and inappropriate, and not required to protect the community (inappropriateness); and
    - (iii) it is uncertain whether the proposed test set out in section 47D(1)(d) involving 'written or pictorial matter that may be regarded by a victim as distressing or traumatic' is a subjective or an objective test (lack of predictability).
18. Consequently, there is also a lack of predictability attaching to the offence in the new section 47DA, which also mentions subject matter 'that may be distressing or traumatic to the victim or any other victim who might reasonably receive it'.
19. Each of the deficiencies set out above is discussed in further detail below.

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<sup>12</sup> *Siracusa Principles*, para 18. There is a general obligation under human rights law to provide 'effective remedies' in relation to breaches or violations of human rights: see, eg, article 2(3) of the ICCPR.

***Clause 17 is drafted in overly broad terms***

20. The language of clause 17, which allows for interception or censorship of material that 'may be regarded by a victim as distressing or traumatic', is so broad and imprecise as to permit censorship of correspondence by a prisoner to *any* victim, and that victim's family members, regardless of their connection with the relevant prisoner or the type of crime committed by that prisoner.
21. Moreover, the breadth of the provisions potentially operates to preclude certain *beneficial* prisoner-victim correspondence (for example, to which a particular victim may consent), which has been recognised as a socially useful part of the restorative justice process.

***No avenues for redress or notification mechanisms are provided***

22. The HRLRC further considers that clause 17 fails to satisfy the requirements of a 'lawful' limitation, because:
- (a) it fails to provide for avenues of redress for prisoners, following a prison Governor's improper or erroneous decision to censor or stop correspondence; and
  - (b) there is a lack of an effective notification mechanism in the proposed amendments to inform prisoners that letters to or from them have been censored, or stopped altogether.
23. The current scheme under section 47E of the *Corrections Act 1986* (Vic) establishes a register for stopped or censored correspondence. However, there is no express requirement in the current Act or proposed amendments requiring prisoners to be informed of censorship measures affecting them, or that any redress be afforded a prisoner whose correspondence is improperly intercepted or censored.
24. Particularly in light of the proposed expanded scope of the ability of the Governor to intercept or censor, these deficiencies become more significant.

***No guidance as to proportionate application of limitation***

25. The broad discretion given to a Governor in relation to interception and censorship carries an inherent risk that it may be arbitrarily applied, and does not, as claimed in the Statement of Compatibility, 'ensure interferences will only occur on a case-by-case basis in accordance with the merits of the particular case'.

26. Of particular concern is that clause 17 does not prevent a Governor from adopting internal guidelines or default rules which will apply to correspondence of a particular person or class of persons, nor does it expressly require the Governor or a delegate to actively consider each individual piece of correspondence.
27. In light of comments of the HRC that interference 'should be, in any event, reasonable in the particular circumstances', there is a real risk that decisions by a Governor of this kind, which might have the practical effect of imposing a 'blanket' ban on correspondence to or from a particular person, will be made:
- (a) without due consideration of the particular circumstances, on a case-by-case basis;  
or
  - (b) without a proper balancing of the impact of the limitation on the prisoner with the potential harm which may be suffered by the victim.
28. The HRLRC considers that in the discussion of 'arbitrariness' in the Statement of Compatibility, insufficient consideration is given to the principle of proportionate interference.
- The limitation on correspondence to prisoners is inappropriate***
29. The HRLRC is concerned at the justification for the provisions relating to intercepting or censoring correspondence sent to prisoners.
30. In this regard, the HRLRC notes the inconsistency with the HRC's views that the 'integrity and confidentiality of correspondence should be guaranteed de jure and de facto', and further, that correspondence 'should be delivered to the addressee without interception and without otherwise being read.'<sup>13</sup>
31. It is not adequately explained in the Statement of Compatibility why it is 'in accordance with the interests of justice that correspondence to prisoners be stopped or censored if it would be regarded by a victim as traumatic or distressing'. Further, it is unclear on what basis harm to the victim is prevented by such interception.
32. The HRLRC also considers that insufficient consideration has been given to whether the proposed amendments represent the least-restrictive interference with the rights to respect for private life and correspondence, and freedom of expression.

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<sup>13</sup> Human Rights Committee, *General Comment 16*, para 8.

33. Particularly in the context of restrictions on *incoming* prisoner correspondence that 'may be regarded by a victim as distressing or traumatic', there are numerous 'less restrictive' ways in which the purpose could be achieved. Notably, there should be two different, and expressly-stated, balancing exercises built into the legislation to deal with the unique issues raised by outgoing prisoner correspondence on the one hand, and incoming correspondence on the other.
34. The HRC has observed that 'when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself'.<sup>14</sup> Further, in no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right. In the HRLRC's opinion, the proposed amendments jeopardise the freedom secured by section 15(2) of the Charter.

***Unclear nature of the test for interception or censorship***

35. Based on the proposed wording of clause 17, it is unclear if the test as to whether a prison Governor may act to intercept or censor correspondence is a subjective or an objective test, in that the provision does not indicate whether the distress or trauma which may be suffered by a victim must be reasonable. This aspect of reasonableness is a separate matter from the existing requirement that the Governor must have a reasonable belief that the correspondence would have that effect. For example, it may not be reasonable for the Governor to stop a letter being sent by a prisoner without viewing the letter, even if it would be reasonable for a victim to consider a letter distressing or traumatic.
36. As a result, the HRLRC does not consider the Statement of Compatibility is accurate in stating that the amendments 'clearly define' the basis on which a Governor may exercise his or her discretion to intercept or censor prisoner correspondence, and that 'as such, the nature of the interference is reasonably 'predictable'".

**3.7 Conclusion**

37. In the HRLRC's opinion, the proposed amendments should be reformulated to ensure that the ends sought by the Bill are achieved in the least rights-restrictive manner. At a minimum, the SARC should urge the Minister to redraft or explain the key deficiencies in the Statement of Compatibility that we have highlighted in section 3.6 of our submission.

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<sup>14</sup> Human Rights Committee, *General Comment 10: Freedom of Expression* (1983).

38. In particular, the HRLRC believes that the following amendments to the Bill should be made:
- (a) The restriction in clause 17 should not apply to correspondence sent to a prisoner which may be regarded as distressing or traumatic by the victim.
  - (b) The relevant formulation in clause 17 should be rephrased as follows:

'written or pictorial matter that may reasonably be regarded by a victim as distressing or traumatic, having regard to the personal circumstances of the victim and their connection with the prisoner'.
  - (c) The Governor (or delegate) should be required to assess each case on its merits, and be prohibited from intercepting correspondence in accordance with set or default guidelines.
  - (d) Avenues of redress should be set out for improper interception of prisoner correspondence, and prisoners should be notified of all such interceptions or censorship.

#### **4. Use of firearms against escaping prisoners**

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##### **4.1 Proposed amendment**

39. Clause 20 of the Bill proposes to insert new sections into the *Corrections Act 1986* (Vic), to enable the Governor-in-Council to make regulations allowing, inter alia, prison officers to use firearms where they reasonably believe such use is 'the only practicable way to prevent the escape of a prisoner from custody'. Although the Statement of Compatibility speaks of the Bill in terms of 'restricting' the use of firearms, the Bill in fact positively authorises Regulations which allow such use in certain situations.
40. The proposed insertion engages section 9 of the Charter, which provides that '[e]very person has the right to life and has the right not to be arbitrarily deprived of life.'
41. Any limitation on the right to life imposed by the proposed insertion must be justifiable in light of factors such as the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, and whether any less-restrictive means are available to achieve the purpose the limitation seeks to achieve (as required by section 7(2) of the Charter). As the right includes reference to arbitrariness, a limitation on

the right to life must be considered in terms of 'elements of inappropriateness, injustice and lack of predictability'.<sup>15</sup>

#### 4.2 The right to life

42. The right to life has been described by the HRC as 'the supreme right' and as a right which 'should not be interpreted narrowly'.<sup>16</sup>
43. In various cases, the HRC has expressed the view that the prohibition on 'arbitrary' deprivation of life requires that State conduct (eg, in policing) cannot be unreasonable or disproportionate to the requirements of law enforcement in the circumstances.<sup>17</sup> Defence of self or others, the execution of an arrest, or the prevention of escape have been cited as exceptions to the right to life, and are expressly noted as such in article 2(2) of the *European Convention on Human Rights and Fundamental Freedoms*,<sup>18</sup> although it is important to note that any force used must be 'absolutely necessary'.<sup>19</sup>
44. Several international instruments specifically relevant to prisoners specify that the use of lethal force is only justified where it is a last resort. For example:
- (a) article 54 of the *UN Standard Minimum Rules for the Treatment of Prisoners*<sup>20</sup> states that prison officers 'shall not ... use force except in self-defence or in cases of attempted escape, or active or passive physical resistance ... . Officers who have recourse to force must use **no more than is strictly necessary**' [emphasis added]; and

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<sup>15</sup> *Van Alphen v The Netherlands*, Human Rights Committee, Communication No. 305/88.

<sup>16</sup> Human Rights Committee, *General Comment 6: The Right to Life* (1982), para 1.

<sup>17</sup> See for example *Suarez de Guerrero v Colombia*, Human Rights Committee, Communication No. 45/79.

<sup>18</sup> Opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 June 1952). See the consideration of article 2(2) in *McCann v United Kingdom* (1995) 21 EHRR 97; *Andronicou v Cyprus* (1997) 25 EHRR 491.

<sup>19</sup> See, eg, *McCann v United Kingdom* (1995) 21 EHRR 97, [148]; *Jordan v United Kingdom* (2003) 37 EHRR 52.

<sup>20</sup> ESC Res 663C, UN ESCOR, 1st Annex, Supp 1, 11, UN Doc E/3048 (1957), as amended by ESC Res 2076, UN ESCOR, Supp 1, 35, UN Doc E/5988 (1977).

- (b) the *UN Basic Principles of the Use of Force and Firearms by Law Enforcement Officials* make similar provision:
- (i) articles 4 and 5 require that law enforcement officials shall only use force and firearms where unavoidable and that where force is used, the officials must 'exercise restraint ... and act in proportion to the seriousness of the offence and the legitimate objective to be achieved ... [and] minimize damage and injury, and respect and preserve human life'; and
  - (ii) articles 9 and 16 relevantly require that officials only use firearms in the context of preventing escape if the prisoner presents an 'imminent threat of death or serious injury' or is likely to perpetrate a 'particularly serious crime involving grave threat to life' and, in both cases, 'only when less extreme means are insufficient to achieve these objectives'.

45. Article 9 further states that firearms should only be used 'when strictly unavoidable in order to protect life'.

46. In summary, the right to life can only be limited in the context anticipated by clause 20 of the Bill where it results from actions of last resort. Such actions cannot be arbitrary. Firearms must only be used where other less extreme measures are not available, and where their use is proportionate to the consequences of the prisoner conduct which they are intended to prevent (namely, where the escapee presents an imminent threat to the lives of others). Furthermore, where the use of firearms is necessary, they must be used in a way which minimises the likelihood of fatality.

#### **4.3 Analysis of the proposed limitation of the right**

47. According to the Bill's Explanatory Memorandum, clause 20 of the Bill was introduced to 'confirm the powers to issue and use firearms currently in the Corrections Regulations 1998 [(Vic)]'.<sup>21</sup> However, the new section 112A (inserted by clause 20 of the Bill) confers on the Governor-in-Council the power to make regulations which are much broader than those already in force. The Statement relies on the regulations in force at any particular time to maintain limitations on the use of force by prison officers.

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<sup>21</sup> This was considered necessary following comments made by Justice Cummins in *DPP v Federico* [2006] VSC 24, a case in which a prisoner was shot and killed by a prison officer while trying to escape.

48. Although the Statement of Compatibility recognises much of the above analysis regarding the right to life, the principles are not applied to the analysis of the actual limitation on the right contained in clause 20 of the Bill. Rather, it is stated that 'clause 20 of the Bill and policy informing this (sic) principles accords with these principles of international law'. The Statement also notes that prison officers are currently trained to appropriately assess risks and apply a proportionate level of risk.

***Other measures available to prevent escape***

49. The Bill confers power on the Governor-in-Council to make regulations authorising the use of firearms by escort officers (when acting as such) 'where the escort officer believes on reasonable grounds that the use of the firearm is the only practicable way to prevent the escape of a prisoner [or] ... to prevent death or serious injury being caused to [others]'.  
50. This power allows for regulations to be made permitting the use of firearms in broader circumstances than if it was limited to use where there are no 'less extreme means' available to prevent the escape of a prisoner. The wording of the Bill requires a prison officer to have regard to whether other, less extreme methods of preventing escape are considered practicable. If using the firearm is considered the 'only practicable way', then the officer is not required to even attempt any alternative methods of preventing escape. This is so regardless of the imminence and gravity of the threat to life that the escaping prisoner may pose.  
51. The power to make regulations for the use of firearms should be limited to cases where such use is a last resort and all other means have been exhausted.

***Circumstances in which force can be used***

52. The Bill makes no provision that the regulations made under the power are consistent with other aspects of the right to life. For example, there is no requirement that the use of the firearms be proportionate to the risk being countered.  
53. The Statement of Compatibility refers to the threat potentially posed by the escape of high and maximum security prisoners. The classification of a prisoner is not necessarily an accurate or appropriate assessment or indicia as to the risk they may pose on escape. For example, all unconvicted remand prisoners are classified, by default, to the maximum security rating. The escape of a prisoner *may* present a grave and imminent threat to another person's life which, in turn, *may* involve such a risk to the community that the use of firearms to prevent their escape is justified. However, the Bill does not limit the use of force to such circumstances. This is manifestly inconsistent with the principles articulated above under international human rights law and, by consequence, section 9 of the Charter.

***Circumstances in which force can be used***

54. The Statement of Compatibility refers to the existence of a 'hierarchy of force' under the regulations as evidence of there being no less-restrictive means of effecting the limitation, because the power will not be exercised except as a last resort *as a matter of practice*. However, the actual power to make regulations under the Bill is broader and does not limit the use of firearms to circumstances where it is the last resort in a 'hierarchy of force'.
55. Given the fundamental nature of the right to life as a human right, the provisions of the Bill as they stand are incompatible with section 9 of the Charter and cannot be justified under section 7(2).

**4.4 Conclusion**

56. The Bill cannot be justified by reliance on the regulations already in force (as claimed in the Statement of Compatibility), as the powers granted under the Bill could yield significantly broader regulations which impose unjustified limitations on the right to life. The restrictions on the limitation currently contained in the Regulations must be incorporated into the Bill in order to have any weight in assessing the actual amendment proposed by the Bill.
57. The power to make regulations for the use of firearms to prevent escape would arguably be a justifiable restriction on the right to life under section 7(2) of the Charter if there was a requirement that any regulations only allow the use of firearms:
- (a) where escape presents an imminent and grave threat to life or likelihood of serious injury;
  - (b) as a last resort; and
  - (c) where it is proportionate to the risk or threat posed by the escape of the prisoner.
58. The Bill should be amended accordingly.