Inspector's Overview

There are gaps between policy and practice in the use of Section 46A

Section 46A of the *Prisons Act 1981* was introduced to protect prison officers who may be exposed to an infectious disease through contact with a prisoner's bodily fluids. It also places safeguards around the use of these powers and the handling of prisoners' medical information. Five years after the provision commenced, this Office was required to review how it was working in practice.

This is an important area of custodial practice. Prison officers work in challenging environments and can face a genuine risk of exposure to bodily fluids. Department of Justice data shows that recorded assaults against officers involving bodily fluids have increased considerably since the legislation was introduced.

Our review found the Department has suitable policies and procedures in place to support Section 46A. Access to prisoners' medical records was generally properly authorised, and most blood samples appeared to have been collected in an ethical and appropriate way.

However, practice was not always consistent. Staff had not received specific training in the use of Section 46A powers, incidents were not always categorised correctly, and important decisions and notifications were not always recorded. In some cases, the Department could not provide enough information to show that the requirements of the legislation had been followed.

It is important for staff to understand policy, apply it consistently and keep clear records of what has occurred. It is particularly important when the powers involved affect the health and wellbeing of staff, as well as the rights and medical privacy of people in custody.

The legislation also raises practical issues that needs further consideration. Health and custodial staff spoke about the tension between the power to use reasonable force to obtain a bodily fluid sample and the professional and ethical duties of medical practitioners around consent. While we found no cases where force had been used to obtain a sample, the Department should consider this issue further with relevant stakeholders.

The report makes five practical recommendations covering staff training, accurate incident reporting, record-keeping, making sure prisoners receive and understand test authorisation notices before a sample is taken, and recording when test results are shared and who is notified.

The Department has supported all five recommendations and, in their response, they outline several steps to improve practice, including a Deputy Commissioner Broadcast to reinforce the requirements of Section 46A, an updated test authorisation form, stronger recording requirements through critical incident briefings, a review of refresher training, and possible changes to the Total Offender Management Solution system to improve incident reporting and data quality. These are sensible steps that, if put into practice consistently, should address the main gaps identified in this review.

Overall, the foundations for the effective operation of Section 46A are in place. The focus must now be on putting these commitments into practice and making sure they are applied consistently across custodial facilities. This will better support prison officers following potential exposure, protect prisoners'

rights and medical information, and allow the Department to clearly show that it is complying with the legislation.

ACKNOWLEDGEMENTS

I would like to thank Dan Franks for conducting this review and drafting the report. I also thank the Department for its cooperation and for openly sharing its policies and practices with us throughout the review.

Jane Higgins

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