ACYP Comment on the Regulatory Impact Statement (RIS) – Children (Detention Centres) Regulation 2015 (the CDC Regulation)

1. OBJECTIVE OF THE REGULATION

The Regulatory Impact Statement notes that the Children (Detention Centres) Act 1987 (the Act) provides the framework for the administration of custodial sentences for juvenile offenders and provides for a broad range of matters to be dealt with by Regulation. The RIS further notes that the objective of the CDC Regulation is to provide for matters in relation to the management, control, administration, supervision and inspection of detention centres and detainees, which are not specified in the Act.

The RIS also states that ‘the major function of the Act is to deprive certain juvenile offenders of their liberty.’ It states the Department of Justice view that setting out obligations and procedures flowing from the Act under a Regulation ensures that everyone involved in the juvenile justice system can find and understand their obligations and provides a safeguard as a Regulation can be disallowed by Parliament.

Comment

ACYP agrees that clarity and transparency about obligations for everyone involved in juvenile justice is a key component of the Regulation. However, we note that the objects of the Act are broader than deprivation of liberty of certain juvenile offenders. The Objects of the Act set out requirements for:

- making available resources to enable persons on remand or subject to control to take their places in the community as soon as possible as persons who will observe the law;
- preservation or development of satisfactory relationships between persons on remand or subject to control and their families;
- giving paramount consideration to the welfare and interests of persons on remand or subject to control, and
- recognising that the punishment for an offence imposed by a court is the only punishment for that offence.

ACYP considers that any proposed amendments to the Regulation should be examined in the light of these important aims and principles enshrined in the Objects of the Act. Arrangements for management, control, administration, supervision and inspection of detention centres and detainees under the Regulation should not override the welfare and interests of young detainees,
impede satisfactory relationships with their families or impose additional punishment.

These considerations are particularly pertinent in relation to proposed amendments to allow:

- lesser standards than currently apply for a centre manager or authorised officer to open, read and inspect a letter or parcel from a detainee (allowing this to happen at any time without the need for the centre manager to be of the opinion that the security, safety or good order of the centre is likely to be compromised by dispatch), and
- random breath testing for drugs and alcohol without the need for suspicion that a detainee is under the influence.

2. OPTIONS TO ACHIEVE OBJECTIVE

The Regulatory Impact Statement examines three options relating to the remaking of the existing Regulation - allowing it to lapse, remaking it without amendment or remaking with amendments. The RIS argues for remaking with amendments, noting that a Regulation is required to allow the Government to fulfil its responsibility to young offenders to ensure that detention centres are administered in accordance with the Act, while considering the welfare and interests of a young person in custody.

**Comment**

ACYP notes and accepts the argument that it is preferable to have a Regulation on equity grounds than to allow juvenile justice staff to exercise discretion because provisions in the Act are not specific enough to ensure control and order is maintained in a consistent manner in each detention centre in the state.

In regard to the proposal for remaking of the Regulation, ACYP has some concerns about specific elements (see comments below.)

4.1.1 Segregation of detainees for protection

Clause 10(2)(b) requires that a centre manager ensures that segregation is carried out in accordance with a plan that is subject to monitoring by a psychologist. It is proposed to amend this provision to include the ‘Assistant Manager, Client Services’ because this position is the supervisor of psychologists and is also responsible for monitoring a plan.

Clause 10(2)(d) requires juvenile justice officers to check on a detainee at intervals of no more than 10 minutes if advised by a psychologist or Justice Health officer that the detainee is at risk of self-harm. It is proposed to clarify that a juvenile justice officer must check on a detainee more frequently than every ten minutes, for example every four minutes, if this is recommended by a psychologist or Justice Health officer.
Comment
ACYP considers these amendments sensible, provided that very frequent monitoring of a detainee (for example every four minutes) recommended by a psychologist or Justice Health Officer is demonstrably to support their safety and wellbeing. However, the need for such frequent monitoring raises questions about the mental health and need for care of a detainee who would otherwise be at risk of self-harm.

4.1.2 Access to programs
Clause 19(2) requires a centre manager to establish and implement an incentive scheme to encourage detainees to participate in programs that are offered at the centre. Clause 19(3) requires an incentive scheme to comply with any directions issued by the Director-General about incentive schemes.

It is proposed to amend this clause to require centre managers to implement the incentive scheme issued by the Secretary to ensure that each centre is operating the same incentive scheme.

Comment
ACYP supports measures to ensure equitable access to incentive schemes to encourage participation in programs. However, we would hope that this does not lead to an over-prescriptive approach such that ideas for new and effective incentives are not put forward.

4.1.3 Contents of case plan
Clause 22 provides that a detainee’s case plan may deal with any matter relating to the management of the detainee. This clause also provides some examples of matters that may be included in a case plan. The proposed amendment will add some legislative requirements to be included in a detainee’s case plan. A case plan will be required to set out:

- the proposed actions to be taken to address the needs of the detainee in relation to the detainee’s offending behaviour
- the time allocated to achieve the proposed actions
- the roles of those participating in the proposed actions.

This amendment aims to ensure a consistent approach to the rehabilitation of detainees across the state.

Comment
Clarity on roles, responsibility and timeframes within a case plan in the interests of rehabilitation seems a sensible addition. However, this is with the proviso that the focus on addressing the detainees’ offending behaviour does not overshadow the provision of services and programs to address their broader needs for improved health and wellbeing. This may be assured by the existing Clause 21 3b) which states that the case plan must have regard to [not only] the sentencing court’s comments but any assessment of the detainee’s physical or mental health and history.
4.1.4 Inspection of mail and parcels

The proposed amendment is based on current practice in adult correctional centres and is based on clause 112 of the Crimes (Administration of Sentences) Regulation 2014.

It is to allow a centre manager or authorised officer to open, inspect and read a letter or parcel sent to or from a detainee at any time. A centre manager would not have to be of the opinion that the security, safety or good order of the detention centre is likely to be adversely affected by the delivery or dispatch or the letter or parcel. If the letter or parcel contained prohibited goods, the centre manager could confiscate the letter and its contents and deal with them in accordance with any directions from the Secretary.

It would allow a centre manager to direct that any written or pictorial matter contained in a letter or parcel that has been opened be copied before the letter/parcel is sent to the addressee. This could only occur if the centre manager or a juvenile justice officer is of the opinion that the matter to be copied contains anything likely to prejudice the good order and security of the centre, or is threatening, offensive, indecent, obscene or abusive. It would not apply to letters to or from an exempt body.

The proposed amendment would enable juvenile justice staff to conduct targeted searches of mail where there is a suspicion that mail may contain a prohibited item, but where that suspicion would not necessarily meet the standards that are currently in place to allow the opening of mail. It would also allow random searches of incoming and outgoing mail to be undertaken. A high standard of suspicion would still be required to enable written or pictorial matters to be copied before being sent to the addressee.

Comment

ACYP notes the context for the proposed amendment set out by Department of Justice in the RIS, namely the challenge of keeping contraband, including drugs, alcohol and weapons smuggled through the post out of detention centres and preventing sending of offensive material, for example pornography, or harassing victims of crime. The Department of Justice believes an efficient searching regime should lead to a reduction in contraband being introduced to detention centres through the post and would improve the safety and wellbeing of detainees and staff.

The Department notes potential arguments that the amendment impinges on the privacy of a detainee where a letter may include personal subject matter that the detainee would not otherwise divulge to a juvenile justice officer. The Department notes that the Privacy and Personal Information Protection Act 1998 will prevent the unlawful collection or disclosure of any personal information.
The RIS does not provide evidence of the ineffectiveness of existing provisions which require that the centre manager or an authorised officer must be of the opinion that the security, safety or good order of the detention centre is likely to be adversely affected by the delivery or dispatch of the letter or parcel to open or inspect it.

The proposed change has potential to increase the level of intrusion and surveillance experienced by juvenile detainees. Without the existing requirement to justify this intrusion into correspondence that may include personal subject matter targeted or random opening of mail or parcels is likely to increase. Targeted or random opening of personal mail and parcels without strong justification would be likely to result in detainees experiencing increased surveillance and intrusion into their communication about personal matters. Where this correspondence is with family members, this could be viewed as out of keeping with the spirit of the Act as regards preservation or development of satisfactory relationships between persons on remand or subject to control and their families.

4.3.8 Testing for alcohol or drugs

Currently an officer or other person must suspect that a detainee is under the influence of alcohol or an intoxicating substance before a breath test is permitted.

It is proposed to amend Clause 67 to allow a juvenile justice officer, or another person having supervision of a detainee, to direct a detainee to undergo a breath test for the purpose of testing for the presence of alcohol or another intoxicating substance. Suspicion that a detainee is under the influence of alcohol will not be required.

The aim is to provide a significant deterrent for detainees ingesting alcohol or other intoxicating substances and to allow more effective monitoring of detainees who have been found to be under the influence of alcohol previously.

Comment

Department of Justice notes that it could be argued that this amendment removes a safeguard that prevents the abuse of the authority to breath test detainees. However, they also suggest a benefit through an increase in detection [that] would likely lead to a decrease in offending behaviour, improve the health and safety of detainees, and aid in rehabilitation while in detention. Other benefits suggested include benefits to:

- young offenders in custody by ensuring their welfare, protecting their rights and clarifying their duties;
- the community, by maintaining an efficient and appropriate mechanism for the management of young offenders;
- the government, by assisting it to fulfil its social responsibilities to young offenders, their families/carers and the broader community.
ACYP is of the view that safeguards to prevent abuse of authority in relation to breath testing are important. The proposed amendment expressly seeks to detect consumption where intoxication or use is not apparent from observation. ACYP would recommend that the advice of specialists in drug and alcohol rehabilitation be sought about the role of testing in the context of a rehabilitation program for those who have problematic use of alcohol or drugs and, if appropriate, this could be part of a case plan.