



Children's Court of New South Wales

29 July 2015

Director, Offender Strategy
Justice Strategy and Policy Branch
Department of Justice
GPO Box 31
SYDNEY NSW 2001

To the Director,

Re: *Children (Detention Centres) Regulation 2015*

Thank you for providing the Children's Court of New South Wales with the opportunity to comment on the proposed amendments to the *Children (Detention Centres) Regulation 2015*.

The Children's Court is generally supportive of the recommendations for reform contained within the Regulatory Impact Statement (RIS). The Children's Court supports the rationale for remaking the Regulation with amendments. The Court is particularly supportive of the following statement:

*"The Government has a 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. As the Act relies on the Regulation to provide specific detail on the procedures, obligations and rights in relation to detention centres, the absence of the Regulation would require juvenile justice staff to use their discretion. This could lead to inequity for young people in custody as 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."*¹

The Children's Court does not seek to provide comment on each of the proposals contained in the RIS. The Court will make comment in relation to the following:

4.3.6 Inspection of mail and parcels

The Children's Court does not oppose the amendment to Clause 40. However, the Court is of the opinion that not enough information has been provided to sufficiently explain such a significant departure from the threshold test.

¹ NSW Department of Justice, Regulatory Impact Statement: *Children (Detention Centres) Regulation 2015*, July 2015 at p.5.

The current test in Clause 40(1) is that “*if, in the opinion of the centre manager, the security, safety or good order of the detention centre is likely to be adversely affected...*” It is proposed that the centre manager is no longer required to meet this test in order to open and inspect a letter or parcel.

It is unclear why a lesser standard, such as a reasonable suspicion test that “*if, in the opinion of the centre manager, the security, safety or good order of the detention centre may be adversely affected*”, has not been proposed.

“The proposed amendment will enable authorised juvenile justice staff to conduct targeted searches of mail whether 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.”²

While the Children’s Court accepts that this may be a response to a systemic issue regarding the entry of contraband into detention centres, there is not enough information in the RIS to explain a complete departure from the application of any threshold test.

If the letter or parcel contains ‘prohibited goods’ the centre manager could confiscate the letter or parcel. It is unclear from the RIS whether ‘prohibited goods’ assumes the same definition as contraband under the Regulation. Further it is unclear whether the safeguard in clause 40 (3) remains.

A further amendment proposed by the RIS is that a centre manager will be allowed “*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.*”³

The RIS does not make clear what the purpose of this is, only that it can 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.*”⁴

It is unclear whether the purpose of copying correspondence is to gather evidence or if this proposal is a response to some identifiable issue.

4.3.8 Use of dogs to assist in drug detection

The RIS proposes an amendment to Clause 64 to allow a juvenile justice officer to use a dog to assist in the detection of drugs in a detention centre. It is proposed to change the reference to ‘drugs’ to ‘contraband’ as “*there was confusion as to whether the term ‘drugs’ only referred to illegal drugs or could also extend to legal drugs, such as tobacco.*”⁵

The Children’s Court questions the necessity of using drug dogs to assist in the detection of tobacco.

² Ibid at p.11

³ Ibid at p.8

⁴ Ibid

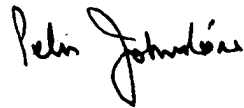
⁵ Ibid at p.9

4.3.9 Testing for alcohol or drugs

The RIS proposes to amend Clause 67 to direct a detainee to submit to a breath test *“for the purpose of testing for the presence of alcohol or another intoxicating substance.”* This provision removes the requirement that the juvenile justice officer form a suspicion prior to requiring the detainee to undergo a breath test.

While the Children’s Court accepts that this amendment may be proposed as a response to a systemic issue with regards to alcohol or drug use in detention centres, the RIS has not provided a satisfactory explanation for this proposal. The only identifiable explanation is that the amendment *“will act as a significant deterrent for detainees consuming alcohol or other intoxicating substances.”*⁶

Yours faithfully,

A handwritten signature in black ink that reads "Peter Johnstone". The signature is written in a cursive, slightly slanted style.

Judge Peter Johnstone
President of the Children’s Court of NSW

⁶ Ibid at p.11