Our Ref: CrimJErG:1041370

30 July 2015

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

Dear Sir/Madam,

Consultation Draft Children (Detention Centres) Regulation 2015

I write to you on behalf of the Juvenile Justice Committee of the Law Society of NSW (the “Committee”). The Committee represents the Law Society on juvenile justice issues as they relate to the legal needs of children and young people in NSW and includes experts drawn from the ranks of the Law Society’s membership.

The Committee appreciates the opportunity to comment on the consultation draft Children (Detention Centres) Regulation 2015 (the "Regulation").

The Committee notes that some of the proposed changes are positive, such as allowing the Inspector of Custodial Services to visit a detainee at any time (proposed clause 28(c)). The Committee’s main concerns are with proposed amendments relating to:

1. inspection of mail/parcels, including confiscation or copying; and
2. random breath testing,

and the effect these provisions may have on bail, sentencing, granting of parole and potential additional charges.

1. Inspection of mail/parcels, including confiscation or copying

The current clause 40(2) allows the centre manager to confiscate 'items which adversely affect the security, safety or good order of the centre'. The proposed clause 40(1) allows the centre manager or an authorised juvenile justice officer to confiscate 'prohibited goods'. However, there is no definition of 'prohibited goods' in the proposed regulations, which creates uncertainty about how the new clause would apply. The Committee submits that the existing term 'items which adversely affect the security, safety or good order of the centre' should continue to be used, and the term 'prohibited goods' is unnecessary and should not be added.

The current clause 40(1) allows for a letter or parcel to or from a detainee to be opened and inspected by the centre where, in the opinion of the centre manager or an authorised juvenile justice officer, the 'security, safety or good order of the detention centre is likely to be adversely affected'.

This does not refer to, or impose, a requirement for reasonable suspicion or even suspicion, and is already a very low standard for deciding to open and inspect. The proposed clause 40(1) removes the requirement for the centre manager or juvenile justice officer to form such an opinion and would amount to a random open and inspect, even though it is being referred
to as 'targeted' searches in the Regulatory Impact Statement. The Committee submits that the existing standards for opening mail should be retained.

The proposed clause 40(2) provides that detainees are to be advised of confiscation, and clause 40(5) states that 'if the centre manager takes possession of a letter or a parcel or its contents, the centre manager must ensure that the detainee to whom the letter or parcel is addressed is notified of that fact'. It is not clear whether this applies to the situation where a letter or item is copied. It is very important that a detainee be advised about anything that is copied, in order that they may raise any concerns about the access, use and retention of that material, and receive legal advice about, Juvenile Justice's compliance with privacy legislation including the Privacy and Personal Information Protection Act 1998. The information sharing protocols between agencies mean a potentially more serious impact for young people where Juvenile Justice are holding copies of documents.

However, even without possible disclosure issues outside Juvenile Justice, there are problems with the use of these confiscated and copied documents within Juvenile Justice. These confiscated and copied documents could become the basis of disciplinary proceedings within the Juvenile Justice Centre, which could in turn lead to negative comments on parole reports, and background reports.

The Committee submits that the Regulation should contain specific restrictions about use of this confiscated and copied material, including:

- Documents should be kept in a secure location.
- Documents should be destroyed at the end of the period of detention.
- Detainees should have the opportunity to provide an explanation and/or context to the material.

2. Random breath testing

The equivalent adult provision is clause 157 of the Crimes (Administration of Sentences) Regulation 2014, which states at clause 157(1) that 'on forming a suspicion that an inmate has recently consumed or is under the influence of alcohol or any other intoxicating substance' a correctional centre officer can require an inmate to undergo a breath test. The proposed clause 67 requires no such suspicion and allows for blanket random testing. There is no basis for this distinction between adults and juveniles, and puts juveniles in a much worse position. The Regulatory Impact Statement appears to suggest that the requirement for suspicion is restrictive because 'some detainees would likely be able to mask the effects of alcohol enough so as not to arouse suspicion'. This suggests that children can 'mask the effects' but adults cannot. Children should not be treated more harshly than adults, and the inclusion of this new clause would do so. The Committee submits that the clause 67 should require the juvenile justice officer to form a suspicion before requiring a detainee to undergo a breath test.

I trust these comments are of assistance. Any questions can be directed to Rachel Geare, policy lawyer for the Committees at rachel.geare@lawsociety.com.au or (02) 9926 0310.

Yours sincerely,

[Signature]

Michael Tidball
Chief Executive Officer