Our reference: ADM/365

The Director
Justice Policy
NSW Department of Justice
GPO Box 31
SYDNEY NSW 2001

Dear Director

Children (Detention Centres) Regulation 2015

We refer to the Regulatory Impact Statement (RIS) and the Public consultation draft of the proposed Children (Detention Centres) Regulation 2015, to remake the Children (Detention Centres) Regulation 2010.

Attached are our comments in relation to the options set out in the RIS, as well as further submissions on specific provisions outlined in the draft 2015 Regulation.

If you have any questions or require further information about this document please contact Jennifer Agius, Manager, Custodial Services and Compliance on 9286 1067.

Yours sincerely

Chris Wheeler
Acting Ombudsman

30/7/2015
Children (Detention Centres) Regulation 2015
Submission by the NSW Ombudsman

The Children (Detention Centres) Regulation 2010 is to be repealed and we have read the Regulatory Impact Statement (RIS) in respect of the proposed Children (Detention Centres) Regulation 2015.

1. We support Option 3, outlined at 4.3 of the RIS, for the existing Regulation to be remade with the amendments specified to rectify the operational issues and outdated terminology identified in the existing Regulation.

   In relation to the proposals to introduce routine inspection of mail and parcels, and random testing for alcohol or drugs, we note that currently the Regulation provides Juvenile Justice with the ability undertake either with a relatively low level of suspicion. While our preference would be not to see the juvenile justice system mirror the adult correctional system in these ways, we do note the amendments to the Regulation provide more clarity about the use of these powers than currently exists with officers routinely stating they hold a suspicion. We are, however, unsure why it would be necessary for material which is considered to be threatening, offensive or abusive to be copied and the original passed on to the detainee. If such material is contained in any letter or parcel it should also be dealt with under the new clauses 40(1) and (2).

2. We also make the following submission in relation to other provisions of the Regulation. These comments are largely drawn from our ongoing work with Juvenile Justice and our day to day interaction with the juvenile justice system. Our references to Parts, Divisions and Clauses are to those set out in the proposed 2015 Regulation.

   Part 4, Division 3, Clause 43 – Telephone communications

   There is no reference in the current or proposed Regulation to family contact or maintaining the emotional well being of detainees. It is widely acknowledged detainees who receive support from their family and friends while in custody are more likely to successfully re-settle in the community upon their release. The potential breakdown of family and community ties potentially hampers resettlement, at a cost to the community. We note the Inspector of Custodial Services published a report in June 2015 highlighting the importance of providing family and community support to young people in custody.

   Currently detainee access to telephone calls to family and friends is provided by way Juvenile Justice’s policy which allows detainees up to seven calls a week of 10 minutes duration. Three additional calls can be earned via local incentive schemes depending on behaviour. We do not believe additional telephone contact should be dependent on an earned incentive scheme. We recommend a subclause be added into the Regulation to include a requirement for the centre manager to encourage and facilitate detainees to make or receive telephone calls from and to family and friends. We also believe limiting the number of weekly phone calls detainees are permitted to make is not in keeping with s.14(1)(a) of the Children (Detention Centres) Act 1987 which requires the Director-
General (now Secretary) to “maintain the physical, psychological and emotional well being of detainees.”

We also suggest the Regulation should provide for the use of other electronic communication such as email and video conferencing to facilitate detainee contact with family and friends.

**Part 7, Division 1, Clause 62 – Definition of Force**

We were advised previously by Juvenile Justice they would seek to change the definition of ‘force’ to remove the threat of force and the use of instruments of restraint. The definition contained in the 2010 Regulation was clearly written to provide safeguards for the protection of children in custody against unnecessary force, including the threat by staff to use force and instruments of restraint. Force must only be used against a child in certain specific circumstances specified in clause 65 of the Regulation. It is our experience handcuffs are routinely used on detainees not only when escorted outside of Juvenile Justice Centres but also during routine movements within Juvenile Justice Centres. It is clear to us that the threat of force must only be used as a last resort and only after other measures have been taken. We would strongly oppose any change which sought to reduce the protection of children provided by the 2010 Regulation, including by altering the definition of force.

**Part 7, Division 1, Clause 65 - Use of Force**

It is our view any child who has been subject to force should receive a medical assessment and any necessary treatment as soon as practicable following force used against them. The provision of medical assessment and treatment is currently covered by Juvenile Justice’s policy which states a medical assessment will be provided if a member of staff believes it is necessary, or if a detainee requests it. This policy does not provide children with sufficient protection against significant harm, either physical or psychological, following a use of force. It is reliant on staff to identify a need for medical assessment, or for a young person in a potentially vulnerable situation to request such assessment or treatment. The current policy provides a lesser protection to children in custody than is currently provided to adults.

To provide greater protection to children in juvenile justice we suggest this is removed from policy and instead included in the 2015 Regulation. Our preference would be for a clause to be included to require every child on who force is used to be medically assessed as soon as practicable after use of force incident. This will ensure all detainees receive the same standard of care and protection.

**Part 8, Division 1, Clause 73 – Punishments for misbehaviour**

In 2013 we conducted an investigation into the management, supervision and care of a detainee at Frank Baxter Juvenile Justice Centre. Our analysis of punishment statistics over a six month period during 2012-2013 indicated the most common punishment given to detainees at all Juvenile Justice Centre’s is confinement to a place. The average length
of confinement at each centre varied from 3 hours to 9 hours. Some centres reviewed the confinement before the approved duration of the punishment expired to see if it should continue, others did not.

We suggest a subclause be added to the Regulation to include the requirement for the centre manager to review each confinement at set points e.g. at the half way point, to determine if the confinement should continue.

Our investigation also identified the places where detainees are confined at each centre varied - sometimes a detainee is confined to their own room and sometimes they are taken to a holding room. The holding rooms are generally an isolated accommodation area and are generally less favourable than the detainee’s usual accommodation. The reason why a holding room is used instead of the detainee’s own room is not recorded.

We suggest a further sub clause is added to the Regulation to specify the centre manager record the reasons why a detainee is confined to a place such as a holding room instead of the detainee’s usual accommodation.

Part 8, Division 2, Clause 82 & 83 – Procedure after not guilty plea

Currently there is no requirement for a Centre Manager (or delegated officer/s) to remove themselves as decision maker in a misbehaviour inquiry where they have been directly involved in an incident. We suggest a subclause is added in these terms to avoid any potential conflict of interest.