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

3 August 2015

Dear Sir/Madam

RE: Submission – proposed Children (Detention Centres) Regulation 2015

The Youth Justice Coalition (YJC) thanks the Department of Justice (Department) for the opportunity to comment on the impact of the proposed Children (Detention Centres) Regulation 2015 (the Regulations) on young people in detention in NSW.

About the Youth Justice Coalition

The YJC is a network of youth workers, children’s lawyers, policy workers and academics working to promote the rights of children and young people in NSW.

The YJC aims to promote the rights of children and young people, to promote appropriate and effective initiatives in areas of law affecting children and young people, and to ensure that children’s and young people’s views, interests and rights are taken into account in law reform and policy debate.

Background to the submission – human rights framework

The Australian government should ensure that the interests and vulnerabilities of children and young people are protected and promoted, as articulated in the Convention of the Rights of the Child (CRC), which Australia ratified in 1991.¹

Core CRC principles relevant to the proposed CDC Regulations 2015 are:

¹ Other rights to be protected and promoted also include the United Nation rules and guidelines that relate to children and young people, particularly in the areas of juvenile justice, including the: Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules); Standard Minimum Rules for Non-Custodial Measures 1990 (Tokyo Rules); Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines); and Rules for the Protection of Juveniles Deprived of Their Liberty 1990.
1. Best interests of the child are the primary consideration: art 3(1)
2. No child shall be subjected to arbitrary interference with his or her privacy, family or correspondence, and a child has the right to protection of the law against such interference or acts: art 16
3. Every child deprived of liberty shall be treated with humanity and respect and in a manner which takes into account their needs and age: art 37(c)

**Proposed amendments to the Regulation**

The Youth Justice Coalition has concerns about the proposed amendments to the Regulations, specifically the inspection of mail and parcels, the testing for alcohol and drugs and the changes to access to programs.

**Inspection of mail and parcels and testing for alcohol or drugs**

The proposed amendments remove the requirement of a subjective jurisdictional fact prior to the exercise of powers to inspect mail and conduct drug tests. These amendments are more in tune with an adult prison and not a model that establishes trust and confidence between juvenile justice staff and young people. The proposed amendments shift the paramount consideration of young people in detention away from welfare and wellbeing to instead on order and control, which we submit does not further the goal of successful release and reintegration of a young person back into society.

The current regulation imposes a low threshold of suspicion for these powers to be exercised with no requirement of reasonable suspicion. The relevant officer need only hold the requisite suspicion or opinion. If there is a basis for introducing random breath testing and random mail inspection, there should be a restriction on how often these kinds of activities can occur in the absence of a suspicion.

4.3.6 *Inspection of mail and parcels*

As stated in the Regulatory Impact Statement, the inspection of mail and parcels amendment is based on current practice in adult correctional centres. We submit that this practice was not designed for a juvenile justice setting and it is not appropriate in this regard.

The rights of a young person to privacy, which is a core principal to the CRC, would be violated with this proposed amendment. Despite protections in the Privacy Act, there is a danger of inadvertent disclosure of personal private information with the opening of mail and parcels by juvenile justice staff, such as disclosing a young person’s sexual orientation. A young person’s right to privacy is essential and violation of this right could cause detrimental effects to a young person’s mental and emotional health whilst in detention.

We have further concerns about the subjective nature of the amendment, which would allow juvenile justice staff to copy written, or pictorial matter contained in the letter a mail or parcel that in their opinion is threatening, offensive or abusive. We submit this subjective assessment is not appropriate and would need to be regulated with guidelines and/or policies for juvenile justice staff to follow.
4.3.9 Testing for alcohol or drugs

The Regulatory Impact Statement asserts that random breath and drug testing of detainees will be ‘a significant deterrent for detainees ingesting alcohol or other intoxicating substances.’ This relies on deterrence theory that a person will rationally weigh up the risks of being detected by a drug test and its sanctions versus the rewards before deciding whether or not to engage in prohibited behaviour. However, perceptions of deterrence differ according to age and gender with young males least likely to believe that they will get caught by random drug tests. Moreover, there is evidence that random drug testing may not reduce drug use by young people. Rather, random drug testing may force the problem underground and reflect a breakdown in trust and communication between the young person and authority.

There are no safeguards in the Regulations that would prevent the misuse or abuse of the provisions for random breath testing for alcohol (cl 67) or random drug testing whether or not drug use is suspected (cl 70). Potential safeguards should include a system of oversight by the centre manager to ensure that a detainee is not inappropriately targeted for random testing and there should be restrictions on how often these kinds of activities can occur in the absence of suspicion.

Access to programs

There is a proposed change to clause 19(2) regarding access to programs. The Regulatory Impact Statement states that the change is only intended to “ensure that each centre is operating the same incentive scheme” issued by the Secretary. However, on the face of the new clause, there is no obligation on either the Secretary or the centre manager to establish such a scheme. This is a consequence of the proposal that has not been identified in the Regulatory Impact Statement.

The proposed change is:

<table>
<thead>
<tr>
<th>Current clause 19:</th>
<th>Proposed clause 19:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) The Director-General may provide the following programs in detention centres: [...]</td>
<td>(1) The Secretary may provide the following programs in detention centres: [...]</td>
</tr>
<tr>
<td>(2) The centre manager of a detention centre is to ensure that an incentive scheme is established and implemented in the centre that will encourage detainees to participate in any programs so provided.</td>
<td>(2) If the Secretary establishes an incentive scheme to encourage detainees to participate in the programs provided, the centre manager of a detention centre is to ensure that an incentive scheme is established and implemented in the centre that will encourage detainees to participate in any programs so provided.</td>
</tr>
</tbody>
</table>

We submit that it is important that detainees are encouraged to participate in programs provided in order to facilitate rehabilitation and for general well being. It is also particularly important in circumstances where the Children (Detention Centre)...

---

2 At page 9.


Act 1987 (NSW) provides that one factor the Serious Young Offenders Review Panel must consider to the extent relevant, in exercising its powers is “the person’s commitment to address offending behaviour, including the person’s willingness to participate in rehabilitation programs and the success or otherwise of any such participation”: s 37Q(1)(g).

The Serious Young Offenders Review Panel’s role includes providing advice and recommendations to the Secretary with respect to any matter relating to a detainee (including but not limited to a serious young offender) that it referred to it: s 37P(1)(b)(i).

The Youth Justice Coalition is concerned that the proposed change may lead to incentive schemes not being offered at individual detention centres, which would be detrimental a young people ability to rehabilitate.

Thank you for considering this submission. The YJC would welcome the opportunity to be involved in any further consultation regarding the review into the Children (Detention Centres) Regulation 2015. If you require further information please contact the Youth Justice Coalition on (02) 9559 2899, or at yjc@clc.net.au.

Yours faithfully,

Kate Duffy

Convenor, Youth Justice Coalition
C/o Marrickville Legal Centre
338 Illawarra Road
Marrickville NSW 2204