

30 July 2014



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

By email: justice.policy@agd.nsw.gov.au

Dear Director

Crimes (Administration of Sentences) Regulation 2014 and Regulatory Impact Statement

Thank you for inviting the Public Interest Advocacy Centre (PIAC) to make a submission on the proposed *Crimes (Administration of Sentences) Regulation 2014* (NSW) (the proposed Regulation), and its accompanying Regulation Impact Statement (RIS).

As you may be aware, PIAC is an independent, non-profit law and policy organisation that works for a fair, just and democratic society. PIAC empowers citizens, consumers and communities by taking strategic action on public interest issues.

PIAC generally supports the two stated objectives of the proposed Regulation, namely to replace the existing Regulation relating to the administration of sentences and to make laws on matters of detail relating to the administration of sentences.

PIAC regularly represents persons in civil proceedings who raise complaints and concerns about detention conditions. We are principally concerned with appropriate, competent and timely:

- a. classification of inmates;
- b. admission procedures particularly as far as those procedures relate to the detection and referral of medical issues;
- c. case-management services; and
- d. complaint procedures for an inmate to raise grievances as well as an accompanying investigative and review process.

For example, PIAC currently represents a client who is diagnosed with chronic schizophrenia. In 2010, while in custody, he threw himself from a landing at Parklea Correctional Centre. Our client was not provided with his mental health medication from the time of his arrival in custody until the date of the incident, a period of approximately three weeks. As a result of the incident, our client suffered a number of injuries, including brain injuries.

Clear regulation of detention practices minimises instances of mistreatment of persons in custody and where instances of mistreatment arise, provides parameters for when redress is available.

Level 7, 173-175 Phillip St,
Sydney NSW 2000
DX 643 Sydney
Phone: +61 2 8898 6500
Fax: +61 2 8898 6555
www.piac.asn.au
ABN 77 002 773 524

The 2008 Regulation and the proposed Regulation regulate a wide variety of issues that impact on the day-to-day life of a person in custody and both versions of the regulations provide a level of regulatory protection for inmates who are at risk of mistreatment in custody.

Generally, PIAC is supportive of the proposed Regulation. However, PIAC remains concerned about the substance of some of the provisions of the *Crimes (Administration of Sentences) Regulation 2008* (NSW) (2008 Regulation) and the proposed Regulation.

For example, reg 95 of the proposed Regulation (currently reg 90 in the 2008 Regulation) establishes procedures for conducting searches of visitors to a correctional centre. The proposed Regulation does not expressly indicate whether those procedures cover children and infants who routinely accompany family members at visits. PIAC submits that the language of this provision is too wide and that it should be amended to balance the need for correctional staff to maintain a safe and secure environment with the rights of children, infants and family members to privacy and dignity. Such an approach is also necessary to give effect to the state's obligations under the *Convention on the Rights of the Child*.

By way of further example, we are concerned about the drafting of reg 160 of the proposed Regulation (currently reg 150 in the 2008 Regulation) regarding what appears to be an unfettered power conferred on correctional staff to require that an inmate supply a drug test sample *even when* drug use is not suspected. This provision confers too wide a power on correctional staff particularly because the regulation provides no guidance on what circumstances might give rise to an officer requesting that an inmate supply such a drug test sample.

Nevertheless, PIAC understands that the scope of this consultation process is intended to focus comment on the four options presented regarding the operation and status of the 2008 Regulation. To that end, of the four options considered in the RIS, PIAC submits that the most preferable option would be for the 2008 Regulation to be re-made before it lapses on 1 September 2014 with amendments as per the proposed Regulation.

Further, PIAC notes that there is no change in the drafting between the 2008 Regulation and the proposed Regulation regarding the cost of telephone calls and faxes (reg 111 and reg 120 respectively). However, we understand that these costs are considered in the RIS because the Department of Justice must specify all costs incurred by the proposed Regulation, including costs that remain unchanged from the 2008 Regulation.

As to the costs of telephone calls and faxes, PIAC submits that these costs must be affordable and consistent across correctional centres. Making prison phone calls more affordable helps rehabilitate inmates by making it easier for them to stay in touch with their families and support networks. As such, an inmate making regular phone contact with the community may reduce recidivism, which benefits public safety and cuts taxpayers' costs for prisons and jails.

PIAC hopes this feedback will be of assistance and would appreciate the opportunity to review any future revisions of the proposed Regulation.

Yours faithfully



Edward Santow
Chief Executive Officer
Public Interest Advocacy Centre



Jane Leibowitz
Senior Solicitor
Public Interest Advocacy Centre

Direct phone: +61 2 8898 6508
E-mail: esantow@piac.asn.au

Direct phone: +61 2 8898 6510
E-mail: jleibowitz@piac.asn.au