



Commissioner's Instruction

No: 01/2009

To: *Board of Management
Executive Directors
General Managers/Superintendents
Area/District Managers, Community Offender Services
Director Offender Policy
Director Corporate Strategy*

For the information of all staff

Subject: Contact with Offenders

PREAMBLE

This Instruction is issued in accordance with the provisions of section 235B of the *Crimes (Administration of Sentences) Act 1999*. Commissioner's Instructions amount to lawful orders and any staff member who intentionally disobeys or disregards this Instruction, or is found to be negligent in the performance of their duties, may be liable to disciplinary action under the *Public Sector Employment and Management Act 2002*.

INTRODUCTION

It is inevitable that some employees of the Department will from time to time have social or off-duty contact with offenders to whom they are related or with whom they are otherwise involved. While there is no absolute prohibition on any such proper relationship, and nor should there be, it is recognised that the moral choices of employees may be challenged by divided loyalties.

It is therefore important that personal relationships and/or significant social or off-duty contact with offender(s) are disclosed so that risks may be managed and false perceptions corrected.

To avoid negative perceptions or the risk of manipulation that arises from improper relations with offenders, it is important that all employees adopt and maintain professionalism in their everyday work in accordance with the Department's Guide to Conduct and Ethics.

This Instruction replaces Commissioner's Instruction 02/2008 and is intended to provide clear and relevant guidelines for employees who are personally involved with or related to offender(s) or who have significant social or off-duty contact with offender(s). It also provides guidance to enable supervisors to manage any conflict of interest that has arisen or may arise from any such relationship or social or off-duty contact.

Employees are therefore obliged to report all known relationships or significant social or off-duty contact with offenders. Failure to report or misrepresentation of the relationship may result in disciplinary action. Improper relationships of any kind will not be tolerated.

Who is regarded as an 'Offender'?

An offender is:

- Anyone who is currently serving any sentence of imprisonment, periodic detention or is under the supervision of Community Offender Services for any offence or is remanded in custody for any offence.
- Anyone who has served such a sentence or undergone such supervision and whose conviction is not spent (within the meaning of the Criminal Records Act 1991 Sect 7(1)), ie:
 - Anyone who has ever served a custodial sentence of more than six months
 - Anyone who has ever been convicted of a sexual offence
 - Any other person who in the past ten years has served any sentence of imprisonment or periodic detention or has been under the supervision of Community Offender Services for any offence

What is a 'relationship'?

A relationship exists if the offender is an employee's:

- Family member (parent, child, sibling, cousin, aunt, uncle)
- Partner or former partner (spouse, de facto, boyfriend, girlfriend - including same sex)
- Relation through marriage (eg, parent-in-law, brother-in-law, sister-in-law, step-child, step-brother, step-sister)

What does 'significant social or off-duty contact' mean?

Examples include:

- A friendship with someone you know to be an 'offender' – ie, you speak on the telephone, exchange e-mails or spend social time together, even though it may happen only occasionally.
- You are a member of the same club, team, organisation, or similar association as someone you know to be an offender and you closely interact with them.
- You interact closely with someone you know to be an 'offender' for a reason other than the purposes of your occupation.
- You have, or do some work for, a private business and have offenders as clients.

What kind of contact is not reportable?

You do not have to report casual, unintentional meetings with offenders. For example, there is obviously no need to report each time you see an offender in the local supermarket. Such contact may be a regular occurrence, particularly in country locations.

You are required to distinguish between 'casual' and 'significant' contact by using reasonable judgement and common sense, bearing in mind the need to avoid perceptions of 'improper association' and 'conflict of interest'. Where there is doubt, seek the advice of your supervisor.

You are also not obliged to report contact with people in the community who have been convicted of minor offences for which they did not receive a custodial sentence or community supervision, or whose convictions are 'spent'.

Obligations on employees to maintain a professional relationship with an offender

Employees who are working with offenders must be professional at all times and must not overstep boundaries established for the performance of their role.

Employees need to keep in mind the perception of improper conduct or existence of an improper relationship that can arise if routines, regulations and other protocols are not strictly followed, or if an association becomes too familiar. Staff need to be aware of the negative consequences that arise when such a perception is created in the mind of a colleague or offender.

In order to prevent the unnecessary investigation of such allegations, staff should avoid any situation that may give rise to suspicion about the nature of a relationship. All dealings with offenders must be transparent and accountable.

Staff need to be aware that inappropriate contact with offenders can leave them open to exploitation and manipulation. Employees can be compromised by offenders if they break the rules, even in a minor way. Experience has shown that this may lead to threats and intimidation or pressure to traffic contraband into a correctional facility.

No member of staff should leave themselves vulnerable to negative perceptions or to exploitation and appropriate action will be taken against any employee who does so.

Staff who work in the community

Though it may sometimes be appropriate for staff who work in the community to maintain ongoing community contact with offenders, this may only be conducted within a regulated framework that is consistent with 'Throughcare', is recorded and is known to managers and supervisors.

All staff must be seen to be accountable, impartial and fair in their contact with offenders whether in custody or in a community setting. They must not act in any way that raises concern about the professional nature of their contact.

The Department recognises the difficulties arising for staff who work in rural and remote locations and for those from distinct cultural or indigenous communities as they are more likely to come into social or off-duty contact with offenders. Contact that has the potential to harm the reputation of the employee and/or the Department must be avoided. Whilst it will not be necessary to record casual contact, however frequently it may arise, 'significant contact' of the type identified in this Instruction must still be reported.

INSTRUCTION

If you are an employee of the Department and you have a 'relationship' or 'significant social or off-duty contact' with an 'offender' then **you need to report it**. A Declaration can be found on the Intranet at:

Organisation >> Probity and Staff Development >> Probity and Staff Development Forms >> Contact with Offenders Declaration.

Complete Part One of the Declaration and give it to your manager. The information will be treated as CONFIDENTIAL and will be disclosed only where necessary for the purpose of managing risk. Disciplinary action may be taken against any person who discloses CONFIDENTIAL information inappropriately.

A Pre-Employment Declaration of Contact with Offenders can also be found at the above Intranet site. This Pre-Employment Declaration must be included with all letters of offer of employment to successful applicants, completed and returned to the workplace prior to or on the day they enter on duty.

Managers are required to:

- Interview the employee and complete Part Two of the Declaration.
- Take appropriate management action to avoid a conflict of interest.
- Provide written advice/directions to the employee. A copy of Part Two of the Declaration may be given to the employee.
- Consider informing a more senior manager.
- Consider a referral to the Risk Assessment Committee.
- Fax Declaration to Corrections Intelligence Group (CIG) on 9748-0624.
- Retain original Declaration securely.
- Monitor.
- Review annually or more frequently if required and provide updates to CIG.

Further information about Conflicts of Interest can be found in the Department's Conflicts of Interest policy or on the ICAC website at www.icac.nsw.gov.au.

Advice about this Instruction or about any related issue can be obtained by contacting an Ethics Officer, Probity and Staff Development Division, telephone



RON WOODHAM
Commissioner

Date: 27/2/04





Commissioner's Instruction

No: 2/2009

To: Board of Management
Regional Executive Directors
General Managers/Superintendents
Area/District Managers, Community Offender Services
Director Offender Policy
Director Corporate Strategy

For the information of all staff

Subject: **Inmates of Interest to the Department of Immigration and Citizenship**

PREAMBLE

This instruction is issued in accordance with the provisions of section 235B of the *Crimes (Administration of Sentences) Act 1999*. Commissioner's Instructions amount to lawful orders and any staff member who intentionally disobeys or disregards this instruction, or is found to be negligent in the performance of their duties, may be liable to disciplinary action under the *Public Sector Employment & Management Act 2002*.

INSTRUCTION

This instruction replaces No 13/2006 and No 2006/38

In response to the need to streamline the exchange of information between this Department and Commonwealth Department of Immigration and Citizenship (DIAC) and to ensure that all inmates being considered for progression below C1/Category 3 are considered on their merits, the following procedures are to be implemented immediately.

Sentence Administration Branch will continue to provide DIAC with a weekly report of all offenders who are in custody. However the responsibility for liaising directly with DIAC in relation to individual inmates for the purpose of classification now lies with the Classification and Case Management Review Coordinator at each correctional centre.

Inmates of Interest to DIAC

These procedures apply only to those inmates who are deemed to be of interest to DIAC. Such inmates are:

- a) inmates who are not Australian citizens;
AND who are
- b) serving a total sentence of 12 months or more; OR

- c) serving a second or subsequent term of imprisonment so that their total time served on conviction in prison is 2 years or more;
- d) forensic patients; OR
- e) public interest inmates
- f) Serious Offenders

Inmates who are serving sentences of less than 12 months (or total terms of less than 2 years) or who are unsentenced are not of interest to DIAC. This Instruction does not apply to such inmates regardless of their citizenship status.

Process on Reception

If there is any doubt as to whether the inmate is an Australian citizen or not, the Classification and Case Management Review Coordinator is to seek advice from DIAC.

Inmates are to be informed by way of a written notice at the time of reception or at a subsequent classification review that DIAC will be informed of the inmate's incarceration and, where necessary, advice sought from DIAC as to whether the inmate is of interest. The inmate must be informed of the possible exchange of information in order to satisfy the requirements of both the NSW Privacy Act 1988 and the Commonwealth Privacy Act 1988.

Where applicable, the Classification and Case Management Review Co-ordinator is to place an alert on OIMS which identifies the inmate as being of possible interest to DIAC. The Classification and Case Management Review Coordinator is responsible for updating the Alerts for Immigration status and the 'Personal Description' screens on OIMS.

The mere fact of being of interest to DIAC does not mean that the inmate will necessarily be deported/removed at the expiration of his or her sentence. DIAC has undertaken to inform the Department as soon as possible after receiving notification of the inmate's incarceration whether the inmate is to be deported/removed. If the inmate is not to be deported/removed, he or she will be allowed to progress through the normal classification process.

Classification protocols

Prior to any consideration of progressing an inmate beyond C2D/Category 2D, the Classification and Case Management Review Coordinator at each centre is to check OIMS to establish whether the inmate is a person of interest to DIAC. If an alert is on OIMS, the Classification and Case Management Review Co-ordinator is to contact DIAC to ascertain the inmate's current immigration status.

An inmate who is a non-citizen but who is not of interest to DIAC is subject to the ordinary classification process.

If DIAC advises that the inmate is not to be deported/removed, the inmate is subject to the ordinary classification process.

Inmates who are non citizens and who remain of interest to DIAC and in that they are to be deported/removed or about whom DIAC has yet to make a decision are to be managed as follows.

i) Unlawful Non-Citizen

“Unlawful non citizen” refers to an inmate who had no valid visa at the time of his or her incarceration.

A recent decision by the Administrative Decisions Tribunal has determined that it is discriminatory to automatically exclude all unlawful non-citizens from progression below C1/Category 3 classification and from access to programs outside a correctional centre.

Accordingly, “Unlawful Non-Citizens” have been added to the ‘Public Interest Criteria’ for the purposes of considering an inmate’s progression to work or programs outside a correctional centre

Consequently, the Classification and Case Management Review Co-ordinator must refer all unlawful non citizen inmates to the Pre-Release Leave Committee (PRLC), a sub-committee of the Serious Offenders Review Council, for consideration of progress beyond C2D or Category 2D or for the issue of a section 6(2)/26 order. The PRLC will make a recommendation to the Commissioner for his determination. Inmates determined to be Serious Offenders will have their classification and the issuing of 6(2)/26 orders determined by the Commissioner after consideration of a recommendation by the Serious Offenders Review Council. Each case will be considered on its merits.

ii) Lawful Non-Citizen

“Lawful non citizen” refers to an inmate who has a valid visa but is not an Australian citizen.

The Classification and Case Management Review Co-ordinator must refer all lawful non citizens who are of interest to DIAC and who are not managed by SORC or any of its sub committees to the Director, Inmate Classification and Case Management for consideration of progress to C3 or Category 1. The Director will convene a ‘Directors Review Committee’ to make a final determination on the inmate’s suitability for progression. Each case will be considered on its merits.

Discharge Process

The Sentence Administration Branch (SAB) is to run a weekly report from OIMS of all inmates with an immigration alert, that is, all inmates who are of interest to DIAC. The SAB will liaise with DIAC three months prior to the inmate’s release as to whether the inmate is to be deported/removed at the expiration of his or her sentence. If the inmate is to be deported/removed, SAB will co-ordinate the process with DIAC’s State Removal Team, enter an alert on OIMS and notify the Classification and Case Management Review Coordinator in the centre where the inmate is being held.

Managers of Sentence Administration /Inmate Records Units at correctional centres are to ensure that the inmate discharge process includes checking OIMS for the immigration alert. An inmate with such an alert is not to be released unless approved to do so by the Executive Director Statewide Administration of Sentences and Orders.



RON WOODHAM
Commissioner

Date: 23/3/09





Commissioner's Instruction

No: 3/2009

To: *Board of Management
Regional Executive Directors
General Managers/Superintendents
Directors, Area & District Managers Community Offender Services
Director Offender Policy
Director Corporate Strategy*

For the information of all staff

Subject: **RESPONSIBILITY TO REPORT CHILD-RELATED ALLEGATIONS
OR CONVICTIONS INVOLVING EMPLOYEES - POLICY**

PREAMBLE

This Instruction is issued in accordance with the provisions of section 235B of the *Crimes (Administration of Sentences) Act 1999*. Commissioner's Instructions amount to lawful orders and any staff member who intentionally disobeys or disregards this Instruction, or is found to be negligent in the performance of their duties, may be liable to disciplinary action under the *Public Sector Employment & Management Act 2002*.

INSTRUCTION

The Department's Responsibility to Report Child-Related Allegations or Convictions Involving Employees Policy is available on the intranet at:

- > *Policies & Procedures*
- > *Policy Directory*
- > *Probity and Staff Development Division*
- > *Responsibility to Report Child-Related Allegations or Convictions Involving Employees Policy.*

All employees must read the policy and ensure that they comply with their obligation to report any allegations or convictions of reportable conduct relating to them or their colleagues, regardless of whether it relates to their professional or private life. The Commissioner has a statutory obligation to report such matters to the Ombudsman.

Please ensure that all employees under your area of administration are aware of this Instruction, a copy of which has been placed on the Department's intranet.


RON WOODHAM

Date: 30/3/09





Commissioner's Instruction

No: 2009-4

To: *Board of Management
Regional Executive Directors
General Managers/Superintendents
Directors, Area & District Managers Community Offender Services
Director Offender Policy
Director Corporate Strategy*

For the information of all staff

Subject: **INMATE CORRESPONDENCE**

PREAMBLE

This Instruction is issued in accordance with the provisions of section 235B of the *Crimes (Administration of Sentences) Act 1999*. Commissioner's Instructions amount to lawful orders and any staff member who intentionally disobeys or disregards this Instruction, or is found to be negligent in the performance of their duties, may be liable to disciplinary action under the *Public Sector Employment & Management Act 2002*

INSTRUCTION

The Department has received a complaint from the NSW Ombudsman asserting that correspondence addressed to them was opened at a centre even though the envelope was marked "Privileged Communication". I am therefore reminding all staff of their legal obligations when handling inmate mail

Crimes (Administration of Sentences) Regulation 2008

107 Certain correspondence privileged

- (1) As soon as practicable after receiving from an inmate any letter or parcel addressed to an exempt body or exempt person, a nominated officer must post the letter or parcel to the addressee, without opening, inspecting or reading it.
- (7) In the case of a letter or parcel from an exempt person, a nominated officer may require the letter or parcel to be opened by the inmate in his or her presence if of the opinion that it may contain prohibited goods and, if it does

so, may confiscate the letter or parcel and its contents and deal with them in accordance with the directions of the Commissioner.

General Managers are to ensure that all staff will be reminded of this policy, particularly those staff involved in the processing of inmate's mail (refer to section 3.1 of the OPM).

Note: Inmates designated as AA, category 5, and Extreme High Risk Restricted, staff will refer to *Crimes (Administration of Sentences) Regulation 2008* Division 6, Section 108 when processing inmate correspondence.



RON WOODHAM
Commissioner

Date: *20/5/09*

