

Crimes (Administration of Sentences) Regulation 2014 Submission by the NSW Ombudsman

We understand the Crimes (Administration of Sentences) Regulation 2008 is to be repealed and we have read the Regulatory Impact Statement (RIS) in respect of the proposed Crimes (Administration of Sentences) Regulation 2014.

We support Option 4, outlined at 4.4 of the RIS, for the existing Regulation to be remade with amendments to rectify the identified operational issues and outdated terminology in the existing Regulation.

We wish to make the following comments in relation to some existing provisions as well as about some proposed amendments. Our references to Parts, Divisions and Clauses are to those set out in the proposed 2014 Regulation.

Part 3, Division 1, Clause 11 – Placement of inmates

Placement of inmates involves a number of factors including access to programs and security classification and while these would have an over-riding priority, there is no reference to an inmate's ability to receive visits from family and friends in determining their centre of placement. Inmates who receive support from their family and friends while in custody are acknowledged as being more likely to successfully re-settle in the community upon their release. The RIS notes placement away from family could be considered a 'cost' to the families of inmates. For a large number of inmates, the need for family members to travel long distances substantially decreases the likelihood of them receiving visits. The resulting breakdown of family and community ties could hamper resettlement, at a cost to the entire community.

Part 3, Division 2, Clause 16 – Contents of case plans

Given the significant over-representation of Aboriginal people in custody, and particularly females, we believe there should be a reference in the Regulation to their particular needs. We are aware there was a reference to the recommendations arising from the Royal Commission into Aboriginal Deaths in the 2008 Regulation before it was amended in 2012. Specifically the provision of culturally appropriate programs, activities, and general issues in relation to day-to-day management should be considered in the development of case plans of Aboriginal inmates.

Division 3, Clause 29(3) – Variation of classification and designation of certain inmates

The proposed Regulation does not address this issue however our experience is that while the Commissioner must advise the Serious Offenders Review Council (SORC) if he does not accept their recommendations about a particular inmate, he is not required to give SORC reasons. There is also no requirement for the affected inmate to be given reasons for a decision made about them, which they may consider detrimental. Administrative best practice includes the giving of reasons for decisions that affect the rights or interests of an individual. We would suggest the inclusion of a requirement for the Commissioner to provide reasons for a decision not to accept a recommendation from the SORC and for those reasons to be made available to the affected inmate, unless there is an overriding security related reason not to, in

which case the reasons should be recorded and made available to any relevant external review or oversight body where necessary.

Part 4, Division 1, Clause 36 – Accommodation

We note the removal of a subclause from the 2008 Regulation (cl.33(2)) that inmates who have to share cells or dormitories are to be carefully selected. We suggest such a clause or sub-clause is included in the 2014 Regulation. There should be a risk assessment conducted prior to allocation of cell mates or roommates.

Part 4, Division 4, Clause 53 – Daily exercise

Current clause 50(3) makes an inmate’s entitlement to exercise subject to such practical limitations as may “from time to time” arise in connection with the administration of the correctional centre concerned. This is to cover administrative exigencies such as searching of centres, excessive numbers of staff on sick leave etc. The relevant clause in the 2014 Regulation (cl.53(3)) removes the limiting “from time to time” phrase and allows the potential for the removal of this entitlement to become standard. We do not support this and recommend the inclusion of the phrase “from time to time” or a similar form of words.

Part 5, Division 4, Clause 102 – Visits to be within sight of correctional officer

We recommend subclause 102(2) should include interviews or examinations by government officials on official visits, where requested by the official.

Part 7, Division 1, Clause 166(1)(d) – Complaints and Inquiries

We acknowledge the Inspector of Custodial Services may make separate submissions on the proposed 2014 Regulation but we suggest there should now be a reference to the role of the Inspector in co-ordinating the Official Visitors.

We also suggest that clause 166(1)(d) should not be included and there should be no requirement on an Official Visitor to send a record form of the complaints and inquiries they have dealt with to the Commissioner. These forms, used for statistical purposes, should now be directed to the Inspector of Custodial Services.