

Youth Justice (Contact with Children) Amendment Regulation 2023

Explanatory notes for SL 2023 No 65

made under the
Youth Justice Act 1992

General Outline

Short Title

Youth Justice (Contact with Children) Amendment Regulation 2023

Authorising law

Section 314 of the *Youth Justice Act 1992*

Policy objectives and the reasons for them

The Inspector of Detention Services Bill 2021 was passed by the Legislative Assembly on 30 August 2022 and received assent on 7 September 2022.

The *Inspector of Detention Services Act 2022* (Inspector Act) gives effect to the Queensland Government's commitment to establish an independent inspectorate to promote and uphold the humane treatment and conditions of people detained in prisons, community corrections centres, work camps, youth detention centres and police watch-houses (places of detention).

The Inspector Act establishes the Inspector of Detention Services (Inspector). The purpose of the Inspector is to promote the improvement of detention services and places of detention with a focus on promoting and upholding the humane treatment of detainees, including the conditions of their detention, and preventing detainees being subjected to harm, including torture and cruel, inhuman or degrading treatment.

This will facilitate greater transparency in the way that places of detention, and the people detained within them, are managed by establishing a framework for the review of detention services and inspection of places of detention, and independent and transparent reporting, to support their improvement.

The Inspector has a broad power to do all things necessary or convenient for, or in connection with, the performance of the Inspector's functions and to fulfil its preventative, proactive and independent mandate.

The position of Inspector is held by the Queensland Ombudsman (Ombudsman). The Inspector is supported by the Office of the Ombudsman and will be able to delegate the exercise of the Inspector's functions and powers to appropriately qualified staff of the Office of the Ombudsman, although staff exercising the Inspector's functions will not exercise the functions of the Ombudsman.

Under section 7(1)(b) of the *Ombudsman Act 2001* (Ombudsman Act), the Ombudsman has a function to investigate administrative actions of public sector agencies, which includes the administration of youth justice services by the Department of Youth Justice, Employment, Small Business and Training.

The purpose of the *Youth Justice (Contact with Children) Amendment Regulation 2023* (the Regulation) is to make consequential amendments to the *Youth Justice Regulation 2016* (Youth Justice Regulation) to allow youth detention centre detainees to communicate via mail or telephone with the Inspector and the Ombudsman in their separate capacities confidentially and without interference.

The Regulation will:

- facilitate full and frank disclosure of information to the Inspector, supporting the Inspector's function to carry out inspections of places of detention, including youth detention centres, and reviews of detention services; and
- facilitate full and frank disclosure of information to the Ombudsman, supporting the Ombudsman's function to investigate administrative actions of public sector agencies.

The amendments are intended to protect communications between child detainees and the Inspector and Ombudsman in a similar manner to protections provided for adult detainees in the *Corrective Services Regulation 2017*.

Achievement of the Objectives

Telephone calls

Section 29(1) of the Youth Justice Regulation provides that a child detained in a detention centre has the right to make and receive telephone calls at all reasonable times.

Section 29(3) of the Youth Justice Regulation provides that if the Chief Executive reasonably believes a telephone conversation may disclose information that is, or is likely to be, detrimental to the good order and management of the centre, the Chief Executive may require a detention centre employee at the centre to listen to the conversation and terminate it on reasonable grounds.

Section 29(6) of the Youth Justice Regulation provides that section 29(3) does not apply to a telephone conversation between a child in detention and the public guardian, a community visitor (child), a child advocacy officer, or a legal practitioner representing the child.

Section 4 of the Regulation amends section 29(6) of the Youth Justice Regulation to include the Inspector and the Ombudsman in their separate capacities. This is intended to prevent the Chief Executive from listening to and terminating a telephone conversation between a child in detention and the Inspector or the Ombudsman.

Correspondence

Section 30(1) of the Youth Justice Regulation provides that a child in detention in a detention centre has the right to send and receive letters and other mail.

Section 30(2) of the Youth Justice Regulation provides that the Chief Executive may examine correspondence between the child and another person if the Chief Executive reasonably believes the correspondence may disclose information, or contain property, that is, or is likely to be, detrimental to the good order and management of the centre. If the Chief Executive is satisfied the correspondence discloses information that is, or is likely to be, detrimental to the good order and management of the centre, the Chief Executive may withhold the correspondence, delete the relevant information, or return the correspondence to the sender.

Section 30(5) of the Youth Justice Regulation provides that section 30(2) does not apply to correspondence between a child in detention and the public guardian, a community visitor (child), a child advocacy officer, or a legal practitioner representing the child.

Section 5 of the Regulation amends section 30(5) of the Youth Justice Regulation to include the Inspector and the Ombudsman. This is intended to prohibit the Chief Executive from examining and subsequently withholding or censoring correspondence between a child in detention and the Inspector or the Ombudsman.

Consistency with policy objectives of authorising law

The Regulation is consistent with the objectives of the *Youth Justice Act 1992*, including establishing the basis for the administration of juvenile justice.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives.

Benefits and costs of implementation

The benefit of implementation of the Regulation is to facilitate the efficient and effective performance of functions and powers by the Inspector and to allow it to fulfil its mandate under the Inspector Act. Similarly, implementation will support the functions of the Ombudsman in relation to investigating the administrative actions of public sector agencies.

No costs of implementation of the Regulation have been identified.

Consistency with Fundamental Legislative Principles

The Regulation is consistent with fundamental legislative principles as outlined in section 4 of the *Legislative Standards Act 1992*.

Consultation

The Inspector and Ombudsman (being the same person) was consulted on the Regulation and was supportive of the amendments. Key government and non-government stakeholders across a range of sectors that either have direct involvement with, or an interest in, the detention environment in Queensland were consulted in the development of the Inspector Act.

In accordance with the *Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was not consulted in relation to the Amendment Regulation. The Department of Youth Justice, Employment, Small Business and Training applied a self-assessed exclusion from further regulatory impact analysis as the Amendment Regulation relates to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services (self-assessed exclusion category j).