

PRISONERS' RIGHT TO ORIGINAL LETTERS, ENVELOPES AND ATTACHMENTS

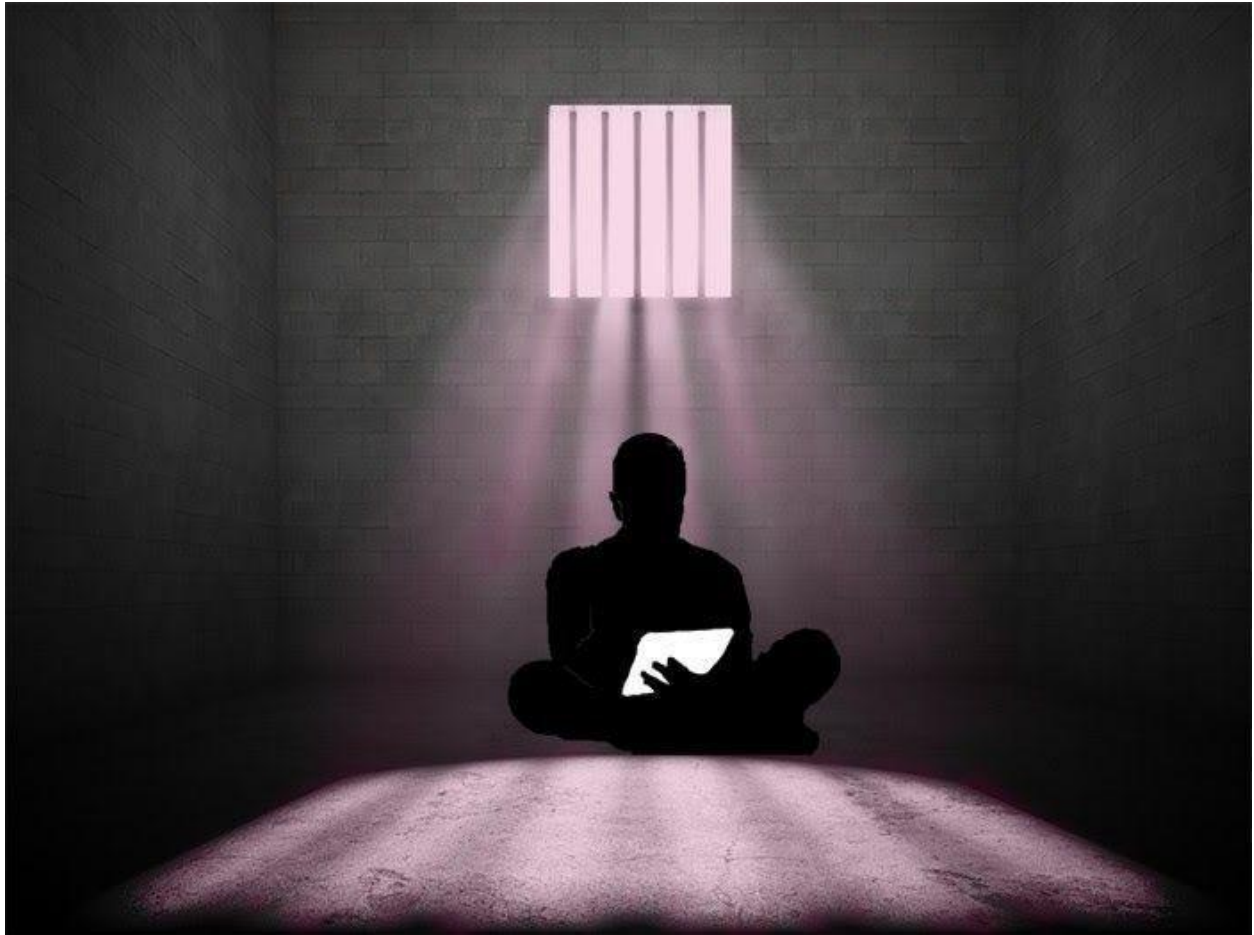


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Executive Summary

Prisoners have received original letters from their loved ones since the establishment of Australia as a penal colony in 1788. However, the *Crimes (Administration of Sentences) Amendment (Inmate Mail) Regulation 2020* (NSW) now prevents prisoners from receiving original letters and envelopes.

Justice Action has received reports from prisoners regarding the photocopying of letters, often incomplete so that in many letters, only the right-hand side is readable. It has also been noted that in some instances, the entirety of the letter is unreadable due to the blur from photocopying or obscuration by other objects on the photocopier and sometimes pages or entire letters are missing. The improper photocopying of letters and destruction of the original is an unprecedented deprivation of a prisoner's basic entitlement to receive the original letters and envelopes addressed to them.

The Amending Regulation was tabled in the New South Wales Parliament on July 28th 2020 in the midst of the COVID-19 pandemic. Relevantly, letters became the primary form of physical communication between prisoners and their loved ones as in-person visitations were restricted during the pandemic. No motion to disallow the Amending Regulation was made as no affected people were consulted.

The explanatory note for *Crimes (Administration of Sentences) Amendment (Inmate Mail) Regulation 2020* ('Amending Regulation') merely states "[t]he object of this Regulation is to provide that a letter or parcel sent to an inmate may be copied and the copy provided to the inmate instead of the original".¹ Peter Severin, the Commissioner, informed us by letter on January 20th, 2021 that "[t]he destruction of mail is an operational decision in line with the current regulations, which is directed at measures aligned with safe management of a correctional centre".

Whilst it is unclear what the exact motivation for this amendment was, it appears to be in response to prohibited goods and drug-related security concerns. This has always been an issue that prisons have been required to deal with and there is no justification for suddenly restricting prisoners' rights as a response to this.

¹ *Crimes (Administration of Sentences) Amendment (Inmate Mail) Regulation 2020* (NSW) 1.

There are a number of issues with this. First, the regulation strips a prisoner's right to possession of letters and envelopes sent to them. Some prisons are also withholding attachments to letters such as material downloaded from the internet. There was no consultation with any key stakeholders, nor a discussion of alternative approaches to improving "safe management" without stripping prisoners' rights. Second, the improper photocopying of letters constitutes censorship which is a direct breach of the *Crimes (Administration of Sentences) Regulation 2014*(NSW).² Thirdly, photocopies of letters cannot capture details such as the scent of perfume or smudge of lipstick, which add irreplaceable sentimental value. Finally, the admissibility of copies of documents in court is a further issue, especially when the copy has been unlawfully edited or photocopied poorly, resulting in incomplete or unreadable information. Photocopying procedures are unnecessary and jeopardise the legal utility of letters. Ultimately, the 2020 Amendment impinges on prisoners' rights beyond what is reasonable to maintain the "safe management" of prisons.

² *Crimes (Administration of Sentences) Regulation 2014* (NSW) s110(1)(b).

Importance of communication and letters

Regular communication between prisoners and loved ones has been demonstrated to have numerous positive impacts including:

- Improvements to mental health
- Reduced violence in prison
- Reduced rates of recidivism

Social connectedness promotes adaptive post-release functioning as these relationships can provide the prisoner with social and economic support, impose social obligations, provide informal supervision of the prisoner upon release and enable the prisoner to maintain optimism about life after release.³ The vast majority of prisoners will be released back into society. A priority should thus be placed on ensuring post-release conditions are conducive to rehabilitation and reintegration.

Regular contact through visits and letters has been shown to improve post-release father-child involvement and employment outcomes, reduce post-incarceration drug use, increase compliance with supervision conditions and reduce recidivism.⁴ There are significant connections between pre-release family support and improved post-release mental health outcomes which is enabled through regular family contact (in-person visits, phone calls and letters).⁵

Letters are a primary means of communication due to their accessibility and low-cost. There are restrictions on in-person visits and phone calls with significant costs and barriers involved. Prisoners are often housed hundreds of kilometres away from their families with restricted visiting times and a maximum of 2 hourly visits per week. Phone calls are 24c/minute and can only be accessed during limited hours during the day when family members are usually at work or school. Calls can only be made for between 6-10 minutes with no call back facilities for families. Letters have historically been the most accessible way for family and friends to reach out to prisoners, boost morale and offer support.

Facilitating familial relationships is a cost-effective way of positively impacting behaviour post-incarceration with letter writing contributing significantly to this goal.

³ Johanna B. Folk, et al. 'Behind bars but connected to family: Evidence for the benefits of family contact during incarceration.' (2019) 33(4) *Journal of family psychology : JFP : journal of the Division of Family Psychology of the American Psychological Association (Division 43)*, 453, 1-23.

⁴ Visher CA, Bakken NW, & Gunter WD (2013). Fatherhood, community reintegration, and successful outcomes. *Journal of Offender Rehabilitation*, 52, 451–469. doi: 10.1080/10509674.2013.829899

⁵ Johanna B. Folk, et al. (n 1) 1-23.

Intrinsic sentimental value of an original letter

The withholding of original correspondence is emotionally devastating to prisoners and their family members. Photocopies of letters simply cannot capture the sentimental value of the original, which has been held and touched by their loved ones. One of the objectives of the *Crimes (Administration of Sentences) Act 1999* is “to ensure that those offenders... [are]... placed in a safe, secure and humane environment”.⁶ The 2020 amendment of the regulation unjustly takes away a key element of the prisoners’ ‘humane’ environment.

Mail correspondence is the primary means through which prisoners maintain relationships with their loved ones, particularly during the COVID-19 pandemic. This amendment is not humane because it deprives prisoners of the physical sentimentality of a handwritten letter from a loved one. This is an unnecessary measure which further strips prisoners of their basic rights. Additionally, it has been held that prisoners are ordinarily entitled to “have the same rights as all other persons before this court. They have lost their liberty whilst they are in prison. However, so far as I am concerned, they have not lost their human dignity or their right to equality before the law.”⁷

Letters physically contain the affection of partners and children that prisoners can see, smell and feel through the paper. The perfume left on the paper, a children’s drawing, the smudged ink of handwritten messages and those Sealed With A Loving Kiss (S.W.A.L.K) are all indispensable constituents of a letter. Prisoners have a right to experience the physical sentimentality of family members who they often have not seen for many years. Instead, prisoners now receive only poorly photocopied letters from correctional officers, which is undoubtedly distressing to those isolated within prisons. The process of photocopying removes the intrinsic value of the original as not all sentimental aspects of a letter can be captured through this protocol. Original letters and photographs were the only tangible physical connection between prisoners, their family, friends and the outside world. Photocopied letters further reinforce institutionalisation and disconnection from society. Letters are now sanitised to become another visual reminder of the prisoner’s disenfranchisement and loss of freedom.

The recent amendments to the Regulation do not provide instruction for handling of the envelope, and therefore the correctional facilities officers do not have discretion to dispose of or destroy the prisoners’ envelopes. The deprivation of these physical reminders of the outside

⁶ *Crimes (Administration of Sentences) Act* (NSW) 1999 s 2A.

⁷ *Muir v The Queen* (2004) 206 ALR 189, 195 [25] (Kirby J).

world is a fundamental breach of a prisoner's right to communication which is outlined in the United Nations Body of Principles for the Protection of all Persons Under Any form of Detention or Imprisonment.⁸

⁸ UN Principles on Detention or Imprisonment, principle 19; SMR, rules 37 and 79.

Right to possession of letters/ envelopes

Inmates are “taken to be in the custody of the governor of the correctional centre”.⁹ However, property of an inmate may only be confiscated if it is “unlawfully in the possession of an inmate”.¹⁰ Therefore, there is no power in which prison officials have the right to possession of these letters. There is no right to confiscate the letter because it is lawfully the prisoner’s. Prisoners have a right to possession of the letter/envelope as it was intended for them.

Moreover, family members purchase a postage stamp with the expectation that inmates will receive the exact copy of the letter, as it was intended to be received by the inmate. The postal service must fulfil their community service obligations to carry mail within Australia and places outside of Australia and to a standard that reasonably meets the needs of the community.¹¹ It is therefore within the legal duties of Australia Post to ensure that any letters sent by inmates’ families to inmates are carried and received to a suitable standard. In the event that Australia Post’s contractual obligations end once it is delivered to the prison, then the prison authority would be required to ensure this legal duty is fulfilled.

Tampering with mail is a criminal offence in Australia.¹² Tampering includes both intentionally opening mail that isn’t theirs and editing or destroying this mail.¹³ Therefore, it appears that unlawful tampering of mail is occurring.

We would also like to express our concern regarding the treatment of envelopes.

Correspondence from the Long Bay Correctional Facility and feedback from Goulburn Correctional Centre, Silverwater Correctional Complex and Parklea Correctional Centre has highlighted that all letters and envelopes are disposed of after they are photocopied. Under section 471.6, It is an offence to “damage or destroy...

- (i) a mail-receptacle; or
- (ii) an article in the course of post (including an article that appears to have been lost or wrongly delivered by or on behalf of Australia Post or lost in the course of delivery to Australia Post); or
- (iii) a postal message.”¹⁴

⁹ *Crimes (Administration of Sentences) Act 1999* (NSW) s 72.

¹⁰ *Crimes (Administration of Sentences) Act 1999* (NSW) s 75(1).

¹¹ *Australian Postal Corporation Act 1989* (Cth) s 27(2).

¹² *Criminal Code Act 1995* (Cth) div 471.

¹³ *Criminal Code Act 1995* (Cth) ss 471.1, 471.3, 471.6.

¹⁴ *Criminal Code Act 1995* (Cth) s 471.6.

Furthermore, the regulation only allows for the photocopying of the front and back of the envelope, and does not provide for the photocopying of the inside of the envelope. The recent amendments to the Regulation do not provide for handling of the envelope, and therefore the correctional facilities officers do not have discretion to dispose of or destroy the inmates' envelopes.

The practical implications of envelope photocopy practices means that prisoners' letters are delivered loose leaf which raises privacy concerns. Prisoners at Parklea Correctional Centre have reported letters being delivered with some pages and photographs missing and it is not known at what stage of the process these went missing and they could now potentially be in the possession of another prisoner. This raises significant concerns for the privacy of prisoners and those writing to them.

Given that prisoners have a legal entitlement to receive uncensored letters,¹⁵ it would also appear that this implies that they have a right to possession of such letters. Additionally, prisoner officers do not have a right under the *Crimes (Administration of Sentences) Regulation 2014* (NSW) to destroy the original letter.

¹⁵ *Crimes (Administration of Sentences) Regulation 2014* (NSW) ss 110, 112.

Right to uncensored letters

Family members may send letters or parcels to prisoners, and “prisoners may receive a letter or parcel from any other person”.¹⁶ The letter or parcel is “not to be censored”.¹⁷ Censorship is not defined in the act. Censorship ordinarily means the suppression of information for various different reasons, often because the information is objectionable, harmful, sensitive or inconvenient. Prisoners have a right to receive ‘letters’ which are defined as “any card, telegram, document or other similar form of written communication, whether or not contained in a parcel, and includes an envelope containing any of those things, but does not include a fax transmission”.¹⁸

The new procedure to photocopy and destroy original copies of letters is clearly invasive, and with the absence of sufficient safeguards we are concerned that inmate mail is being censored beyond what is reasonably required to maintain order. It has been discovered that inmates at Long Bay Correctional Centre, Goulburn Correctional Centre, Silverwater Correctional Complex and Parklea Correctional Centre receive incomplete photocopies of letters, so that in many letters only the right-hand side is readable such that no full sentence can be read. It has also been noted that in some instances, the entirety of the letter is too blurry to be read. There have been reports of streaked printing from ink running out and photocopies even containing objects obscuring the writing such as the hand of the person who scanned it. Therefore, information from the letter is clearly being unlawfully suppressed.

While in some instances nominated officers from correctional centres can open, copy and deliver letters and parcels of inmates, this does not extend to the improper copying and censoring of such documents.¹⁹ If the inadequate and aberrant photocopying is done deliberately to suppress objectionable material, then we believe that constitutes censorship because it prevents the inmates from receiving the full content of mail. Improper photocopying is therefore in breach of s 110(1)(b).²⁰ Unless there is a reason to censor material in letters, a full photocopy of the original letter must be made and given to the prisoner.

Whilst we are strongly advocating that the original letter is received based on all our other arguments, in the event this is not possible, there must be stricter requirements regarding the

¹⁶ *Crimes (Administration of Sentences) Regulation 2014 (NSW)* s 110(1)(a).

¹⁷ *Crimes (Administration of Sentences) Regulation 2014 (NSW)* s 110(1)(b).

¹⁸ *Crimes (Administration of Sentences) Regulation 2014 (NSW)* s 3.

¹⁹ *Crimes (Administration of Sentences) Regulation 2014 (NSW)* s 112.

²⁰ *Crimes (Administration of Sentences) Regulation 2014 (NSW)*.

copying of the original matter as current requirements resulting in inmates receiving often incomplete copies. If prisoners are only to receive copied versions of letters, such copies should be produced in a proper manner that does not amount to censorship. There must be a mechanism in place that ensures accountability and transparency. Currently there are no sufficient safeguards to prevent either improper photocopying or censorship.

The NSW Correctional Services guidelines introduced under the legislation, the Custodial Operations Policy and Procedures (COPP), requires copies of prisoner mail to be photocopied in colour and include any attachments, as well as a copy of the front and back of the envelope.²¹ If the physical copy of the letter is destroyed, there is no method to hold officers accountable for this requirement nor is there any way to ensure prisoner's rights to access improperly photocopied or uncensored letters is satisfied. The procedure for processing and reading incoming inmate mail would be improved by preserving the original letter until the prisoner receives the photocopy and acknowledges the complete letter is readable. This maintains prisoners' rights to possession of their complete letters.

²¹ Custodial Operations Policy and Procedures (NSW) s 8.1.4.

Right to attachments to letters

In the recent past letters have been delivered to prisoners but the attachments have not, or the entire parcel has been returned to the sender. In particular this refers to information downloaded from the internet such as educational materials and emails addressed to the prisoner. Prisoners have a right to receive self-directed educational resources including personal, health, research and legal interest. It is fundamental to prisoners' rights to receive correspondence.

The reason for this denial is not always clear but has occurred at multiple locations including Lithgow Correctional Centre and Goulburn Correctional Centre. In one case, the then Acting Commissioner, Kevin Corcoran, told Justice Action (JA) that a letter and enclosed documents were returned to JA, rather than delivered to the prisoner, because prior approval to send them had not been sought and obtained from the prison. He also said, "At Goulburn there are restrictions on the quantity of documents to address operational and security requirements of the centre." (Letter from Mr Corcoran to JA, 9 August 2021 (copy enclosed))

Mr Corcoran's letter indicates documents are being withheld from prisoners pursuant to policies, published and unpublished, which may vary from jail to jail, despite the general instructions in the "inmate mail" policy. In this context he refers to prison Governors' powers under the *Crimes (Administration of Sentences) Regulation* in relation to inmate property.

A requirement to seek approval before sending internet downloads is, we suggest, not only unworkable but unlawful. The same applies to any purported withholding of approval. It is also bad in its effects, as it is a structural block preventing inmates receiving important information and education, undermining their rights to communication and education.

The Commissioner must give direction to governors to treat mailed documents in accordance with the provisions of the Regulation about "Inmate mail" and in accordance with COPP "8.1 Inmate"---i.e., deliver all that are not prohibited goods—without a requirement of prior approval. An identification of CSNSW's authority to withhold attachments should also be provided. Finally, we ask that CSNSW applies and publishes clear and consistent policies, rather than making arbitrary decisions. Ideally, the Custodial Operations Policy and Procedures (COPP) would be changed accordingly. When mailed documents have been withheld, prisoners and senders should also be notified and given a reason for CSNSW's actions.

NSW legislation does not prohibit material because it has been downloaded from the internet. The rejection of such material is in direct conflict with s 110 of the *Crimes (Administration of Sentences) Regulation 2014*, which establishes that an inmate may receive correspondence without censure.

After making a complaint to CSNSW, we received a letter from Acting Commissioner Kevin Corcoran, on the 9th of August 2021. He stated:

“The *Crimes (Administration of Sentences) Regulation 2014* provides discretion to the Governor of a correctional centre to determine the items of property that may or may not be retained at the Centre. Under the Custodial Operations Policies and Procedures, before requesting any property be delivered by post or by a common carrier to any correctional centre, inmates must first obtain approval from the correctional centre. The Governor of Goulburn Correctional Centre has advised that the covering letter and scanned photographs sent to inmate Grant Davies were returned to Justice Action on the basis that approval has not been given to send them.”

That appears to be a reference to clause 124 of the *Crimes (Administration of Sentences) Regulation* (“**the Regulation**”), which in turn applies cl 9 of the Regulation to “property sent to an inmate, or delivered to the governor of a correctional centre to be given to an inmate”.

Our first response to that is, that that is a misreading of the Regulation, and the approach suggested is unlawful.

Cl 110(1) of the Regulation is unambiguous:

110 Correspondence generally

- (1) Subject to this Division—
 - (a) an inmate may send letters or parcels to, and receive letters or parcels from, any other person, and
 - (b) a letter or parcel sent to or by an inmate is not to be censored.

It is clear from the definition of “letter” in cl 3(1) of the Regulation that the envelope **and enclosed documents** are part of what the Regulation means by “letter”:

letter includes any card, telegram, document or other similar form of written communication, whether or not contained in a parcel, and includes an envelope containing any of those things, but does not include a fax transmission.

Thus, inmates have the right to “receive letters or parcels from any other person”, including envelopes and enclosed documents, subject only to “this Division” – that is, subject only to Part 5 Division 6 of the Regulation, “Written communication with inmates”. It is not subject to Part 5 Division 8 (which contains cl 124).

COPP policies and procedures cannot override the right given by the Regulation. Even if it could, we suggest that the relevant COPP provisions are those in “8.1 Inmate mail”, rather than those relating to “Inmate property” generally. Withholding any part of inmates’ mail, for reasons not contained in Part 6 Div 6 of the Regulation, is unlawful.

In addition to that unlawfulness, the policies are unreasonable and unworkable. Correspondance with correctional centres does not identify what constitutes “internet downloaded materials” for the purpose of the (unpublished) policy, nor how long approval for materials would take, nor what criteria inform the decision to grant or withhold approval. No legislative support has been offered that would allow an approval system for internet downloads as documents included in inmate mail. We understand that approval must be sought for an inmate to access certain items. But the information provided from internet downloads for personal development whilst in corrections is a means of assisting inmates once they are released, and should be provided to them as soon as possible. Inmates have the right to education under the law, thus, requiring a (possibly lengthy) process of approval for internet downloads or photocopied material sent for educational purposes impedes the inmate’s right to education.

Negative impact on mental health and family relationships

NSW Correctional facilities are chronically understaffed.²² The volume of correspondence received at correctional facilities means that photocopying is inherently a labour-intensive administrative task. The lack of additional staffing to oversee the implementation of this policy has caused significant delay in the delivery of mail from loved ones to prisoners. This gap is unlikely to be ever addressed based on historic staffing shortfalls and significant problems occurring for now over three years of this policy implementation. For example, families and prisoners at Parklea Correctional Centre report delays of over one month in delivery of mail.

Timely delivery of mail is important for prisoners to maintain contact with family and friends, to receive time sensitive information, to plan and prepare for release and to maintain their mental health. Incarceration can cause context-dependent paranoia and anxiety associated with living in a violent and controlled setting while suffering separation from loved ones.²³ Delays and denial of access to original letters can cause significant harm to mental health with some prisoners reporting that they fear their loved ones have abandoned them when letters haven't arrived.

Delays, censorship and the improper handling of letters resulting from this policy may negatively impact the motivation of loved ones to write to prisoners. These issues are well-known to both prisoners and their families with numerous complaints received on this issue. Frequency of letters increases social connectedness, likely improving familial connections and post-release functioning.²⁴ Reduced letter writing due to photocopying procedures, knowledge that the original will be destroyed and lack of faith that mail will reach the prisoner could have a significant long-term negative impact on mental health and the recidivism rates of NSW prisoners.

Prisoners who are and who feel supported by family have lower rates of recidivism and improved outcomes post-release including better employment outcomes. It is thus imperative to facilitate communication and relationships between prisoners and their support network outside of prison. The long-term effects of disrupting communication in this way are not yet known and have not been adequately considered.

²² Kenji Sato. 'Inmates in lockdown, prisons closed due to chronic correctional officer staff shortages', *ABC Western Plains* (online, 14 June 2023)

<https://www.abc.net.au/news/2023-06-14/inmates-in-lockdown-amid-chronic-prison-staff-shortages/10245421>

²³ Joshua A. Tiegreen and Dennis R Combs, 'An Examination of Sub-Clinical Paranoia in a Correctional Setting' (2017) 8(3) *Journal of Experimental Psychopathology* 320, 1-12.

²⁴ Johanna B. Folk, et al. (n 1) 1-23.

Logistical and Environmental Concerns

Enacting this policy is presumably a laborious task for correctional officers, as evidenced in the widespread improper photocopying practices across multiple correctional facilities and delay in mail delivery. The additional workload would have necessitated increased staffing which raises two points of concern; were additional staff employed to enact this policy and what is the cost to taxpayers?

Furthermore, ink and toner cartridges contribute significantly to waste and pollution, contain toxic ingredients and are often unable to be recycled. One tonne of paper requires 50 trees, 90,000 litres of water and 1.5 tonnes of greenhouse gases.

The Australian Government Department of Finance acknowledges the significant environmental and financial cost of printing.²⁵ Their Better Printing Guide (2019) recommends reduced print volumes as a key way to reduce environmental impacts with estimated cost savings of \$5 million annually to the Australian government, not including the savings from paper.

A mandatory photocopying policy with unproven benefit undermines Australian Government recommendations surrounding print policy and contributes significantly and unnecessarily to pollution, landfill and wastage of taxpayer funds.

²⁵ <https://www.finance.gov.au/sites/default/files/2019-11/better-printing-guide.pdf>

Legal importance of original copy

It is important to consider the future utility of the letters sent to inmates, as original copies of documents are often required for legal purposes, such as the presentation of these letters in court. The contents of a document, such as a copy of the original document, can be admitted in court in certain incidents.²⁶ However, it is unclear whether or not such copies of letters would be admissible under these sections. Even if they were admissible, a significant amount of information from the letter would currently be missing or unreadable. Due to the barrier of letting the document admitted in court and also the risk that key information from the original has been destroyed, it is paramount for potential future legal proceedings that inmates receive the original letter.

Additionally, original copies of letters are important for rehabilitative purposes, as original copies of documents may be needed for securing a loan or finalising an agreement with real estate agents. By infringing on the access of inmates to their own original documents, this may further limit their access to housing and potential for future rehabilitation.

²⁶ *Evidence Act (NSW) 1995* ss 48, 69.

International Law

UNDHR Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Additionally, the 'Right to Freedom of Expression', outlined in the International Covenant on Civil and Political Rights, protects an individual's right to 'seek, receive and impart information and ideas of all kinds, regardless of frontiers'.²⁷

The United Nations Human Rights Committee has made it clear that prisoners enjoy all the rights in the International Covenant on Civil and Political Rights (ICCPR), subject to 'restrictions that are unavoidable in a closed environment'.²⁸

One right of special importance to prisoners is the right to be treated with humanity, dignity and respect while in detention. This human right is set out in articles 7 and 10 of the ICCPR, article 37 of the Convention on the Rights of the Child (CRC) and in the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

A United Nations principle is that prisoners "shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations".²⁹

The United Nations Basic Principles for the Treatment of Prisoners sets out in article 10 that "With the participation and help of the community... favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions."³⁰ The amendment causes considerable and unnecessary mental anguish for prisoners, disrupts family communication and relationships and disrupts a prisoner's ability to plan for release. The amendment is thus not compatible with any element of this principle.

²⁷ International Covenant on Civil and Political Rights, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 19 ('ICCPR').

²⁸ United Nations Human Rights Committee General Comment No.21

²⁹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, GA Res 43/173, UN Doc A/RES/43/173 (adopted 9 December 1988) principle 19.

³⁰ Basic Principles for the Treatment of Prisoners, GA Res 45/111, UN Doc A/RES/45/111 (adopted 14 December 1990) principle 10.

Security concerns with original letters

The justification, it seems, for the mass confiscation of every letter and parcel sent to prisoners is that they threaten the safe management of prisons. There is no doubt that some prisoners may receive mail containing concealed/illegal contents, such as drugs or dangerous goods. However, this minority of prisoners should not make a 'collective' impact on all mail received. This security issue has always been present within the prison system and it is ultimately an issue that prison officials must determine themselves. There is no justification for all of a sudden limiting a fundamental part of prisoners' rights in an attempt to address this issue that has always been around.

The fact that all mail received is being put through copiers and in the process of being tampered with, and originals being destroyed by prison staff without having a reasonable level of suspicion is unacceptable and goes against regulations overseeing incoming and outgoing mail.

We also question how the Amending Regulation further ensures "safe management" of prisons, especially noting additional sections, such as section 112A, which gives the Commissioner the discretionary power to prevent correspondence with "restricted associates". Additionally, section 115 enables, among other things, letters to be read and copied in regards to inmates who are "Category AA male inmates, Category 5 female inmates, extreme high risk restricted inmates and national security interest inmates". Given these sections, we question why there now needs to be an overarching provision that applies to prisoners as a whole.

Further, section 112(4A) of the *Crimes (Administration of Sentences) Regulation 2014* (NSW) enables a nominated officer to retain a "copy of the written or pictorial matter" if the "nominated officer is of the opinion that the written or pictorial matter contained in a letter or parcel opened, inspected or read under this clause (a) contains anything likely to prejudice the good order and security of any correctional centre, or (b) is threatening, offensive, indecent, obscene or abusive." We argue that there should be a similar level of suspicion to make general letters to be copied and the inmates to not receive the original. There is no justification for an unfettered discretion to copy all letters. This discretion must be exercised reasonably and a blanket rule disallowing any original letters from reaching prisoners is not reasonable. This is because it is unreasonable for a governor or a nominating officer to believe that every letter or document sent to prisoners contains illicit materials. In any case, confiscation of prohibited goods under section 112(2) of the *Crimes (Administration of Sentences) Regulation 2014* (NSW) can still occur even if the original copy is sent to the inmate. Nominated officers or the governor can inspect letters

and parcels for prohibited goods in order to ensure safe management but then still give physical copies of the letter to ensure sentimental value for inmates.

Concluding remarks

Written correspondence is a cost-effective way for NSW prisoners to keep in contact with family and friends during their incarceration. Maintaining and strengthening their social networks is a vital component of successful post-release reintegration and rehabilitation with numerous studies showing the importance of regular communication in reducing recidivism and improving overall outcomes for prisoners and society.

Post-amendment practices degrade the readability of letters, their probative value and sentimental value to prisoners and are incompatible with local laws and international human rights principles.

Annexures

NSW Regulation

Crimes (Administration of Sentences) Regulation 2014 (NSW).

110 Correspondence generally

- (1) Subject to this Division -
 - (a) an inmate may send letters or parcels to, and receive letters or parcels from, any other person, and
 - (b) a letter or parcel sent to or by an inmate is not to be censored
- (2) An inmate must not send or receive any letter or parcel otherwise than through the hands of a nominated officer.

Crimes (Administration of Sentences) Regulation 2014 (NSW). Section 112 stipulates that:

PRE-AMENDMENT:

112 Opening of letters and parcels generally

- (1) The governor of a correctional centre or a nominated officer may open, inspect and read a letter or parcel sent to or by an inmate and, if it contains prohibited goods, may confiscate the letter or parcel and its contents and deal with them in accordance with the directions of the Commissioner.
- (2) The inmate is to be informed of the confiscation of any letter, parcel or prohibited goods.
- (3) A nominated officer may direct that any written or pictorial matter contained in a letter or parcel opened, inspected or read under this clause be copied before the letter or parcel containing the matter is delivered to the addressee.
- (4) The direction may be given only if the nominated officer is of the opinion that the written or pictorial matter to be copied—
 - (a) contains anything likely to prejudice the good order and security of any correctional centre, or
 - (b) is threatening, offensive, indecent, obscene or abusive.

POST-AMENDMENT:

112 Opening of letters and parcels generally

- (1) The governor of a correctional centre or a nominated officer may open, inspect and read a letter or parcel sent to or by an inmate.

- (2) The governor of a correctional centre or a nominated officer may, if a letter or parcel opened, inspected or read under this clause contains prohibited goods, confiscate the letter or parcel and its contents and deal with them in accordance with the directions of the Commissioner.
- (3) The inmate is to be informed of the confiscation of any letter, parcel or prohibited goods under subclause (2).
- (4) The governor of a correctional centre or a nominated officer may—
- (a) copy any written or pictorial matter contained in a letter or parcel sent to an inmate that has been opened, inspected or read under this clause, and
- (b) deal with the original written or pictorial matter in accordance with the directions of the Commissioner, and
- (c) deliver a copy of the written or pictorial matter to the inmate instead of the original matter. (4A) Subclause (4B) applies if a nominated officer is of the opinion that the written or pictorial matter contained in a letter or parcel opened, inspected or read under this clause—
- (a) contains anything likely to prejudice the good order and security of any correctional centre, or
- (b) is threatening, offensive, indecent, obscene or abusive.
- (4B) The nominated officer may direct that—
- (a) if the letter or parcel has been sent by an inmate—a copy of the written or pictorial matter be made, and
- (b) in any case—a copy of the written or pictorial matter be retained.
- Destroying original letters and parcels that are otherwise not prohibited goods or to/from a restricted associate should be prohibited under law.

1. Custodial Operations Policy and Procedures (NSW)³¹

1.2 Processing incoming inmate mail

For all mail that is non-privileged and does not contain prohibited goods:

- Colour photocopy the mail including letter, front and back of envelope and attachments;
- Deliver the colour photocopy to the inmate;

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<https://correctiveservices.dcj.nsw.gov.au/csnew-home/correctional-centres/custodial-operations-policy-and-procedures-copp.html>

- Place the original mail in a secure bin or shred the mail if it is not suitable to be placed in a secure bin

The above applies to all mail items including children's drawings and any cards received.

Government issued documents such as identification, birth certificates, passports and certificates must be placed in an inmate's property, and must not be photocopied or shredded.

1.3 Reading incoming and outgoing inmate mail

All incoming non-privileged mail must be opened and inspected by a nominated officer.

Outgoing mail should be opened and inspected by a nominated officer at the discretion of the Governor.

If mail addressed to an inmate contains prohibited goods, the mail must be confiscated. An inmate must be informed of the confiscation of such mail. Follow the policy and procedures at Part [1.5] Confiscating mail containing prohibited goods and [1.6] Procedure for handling mail containing prohibited goods below.

CESC20/01910

20 January 2021

Mr Harry Schatz
Justice Action
jalettersteam@gmail.com

Dear Mr Schatz

I refer to your correspondence dated 3 December 2020, in relation to the handling of inmate mail.

As you are aware there was an amendment to the *Crimes Administration of Sentences Regulation 2014* (the CAS Regulation), to allow mail to inmates to be copied, inmates to receive the copy only, and the original to be destroyed by Corrective Services NSW (CSNSW).

I have considered the concerns raised in your correspondence, about the amendments to the CAS Regulation specifically at clause 122, alleging this to be collective punishment and that withholding original mail from inmates affects the future legal utility of the letter.

In accordance with the *Custodial Operations Policy and Procedures (COPP)* at section 8.1 *Inmate Mail*, the new process for handling mail is not in my view correctly characterised as collective punishment. The 'protocol additional to the Geneva convention of 12 August 1949 and relating to the protection of victims of non-international armed conflicts' has no application in this context. The destruction of mail is an operational decision in line with the current regulations, which is directed at measures aligned with safe management of a correctional centre.

The current policy provides adequate protection in relation to original documents that may be received in the mail system and that should be preserved.

Inmate mail is received into a correctional facility in compliance with Commonwealth legislative requirements. Once mail is delivered to a centre it is no longer the property of Australia Post. It is then dealt with in accordance with the appropriate legislative and policy framework. There is no apparent contravention of sections 85V or 85Z of the *Crimes Act 1914 (Cth)*.

The way in which original inmate mail is to be dealt with is at my direction by operation of Clause 112(4)(b) of the CAS Regulation. In accordance with the COPP at section 8.1, the Commissioner can direct that original correspondence (with exceptions) be disposed of, securely. There is provision that a Governor may permit the delivery of an original mail item, on an individual basis such as records, government forms and legal documents (unable to be sent as privileged mail).

I trust this information is of assistance.

Yours sincerely


PETER SEVERIN
COMMISSIONER