

**Report**  
**Full investigation - *Ombudsman Act 1972***

<b>Complainant</b>	<b>Justice Action</b>
<b>Agency</b>	<b>Department for Correctional Services</b>
<b>Ombudsman reference</b>	<b>2016/01525</b>
<b>Date complaint received</b>	<b>18 February 2016</b>
<b>Issue</b>	<b>Whether Deputy Chief Executive Instruction 127-15v2 issued by the Department for Correctional Services on 27 January 2016 operated contrary to the <i>Correctional Services Act 1982</i></b>

### **Jurisdiction**

Section 15(1) of the *Ombudsman Act 1972* provides that:

(1) A complaint in respect of an administrative act may be made by any person or body of persons.

Justice Action is a not for profit entity providing advocacy services to prisoners and people affected by imprisonment. The complaint relates to the decision by the Department for Correctional Services (**the department**) to prohibit correspondence between prisoners and Justice Action.

An investigation by my Office is directed towards determining whether an agency has committed an administrative error. As held in a Supreme Court decision in 1990,<sup>1</sup> I do not have jurisdiction to investigate matters of policy.

In my view, the department's decision to prohibit correspondence from prisoners to Justice Action is a policy matter. Hence I can investigate only whether the process by which the department arrived at its decision and its application of the policy, involved administrative error.

In other words, to the extent that the complaint reflects dissatisfaction with the department's policy, it is beyond my jurisdiction.

Following the release of my provisional report to the parties the department informed me of the expiration of the *Correctional Services Regulations 2001* on 31 August 2016. The *Correctional Services Regulations 2016* came into effect on 1 September 2016.

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<sup>1</sup> *City of Salisbury v. Biganovsky (1990) 54 SASR 117*

## Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking a response from the department
- seeking more particulars from the complainant
- seeking clarification of some matters from the department
- considering the Correctional Services Act 1982, Correctional Services Regulations 2001, Correctional Services Regulations 2016, the department's Standard Operating Procedure 089 - Prisoner Mail (**SOP 089**), System Operating Procedure 17 - Media Access (**SOP 017**), Deputy Chief Executive Instruction 127-15 (**DCEI 127-15**) and Deputy Chief Executive Instruction 127-15v2 (**DCEI 127-15 v2**)
- providing the department and the complainant with my provisional report for comment, and considering their responses
- preparing this report.

## Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.<sup>2</sup> It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...<sup>3</sup>

## Response to my provisional report

In response to my provisional report the department submitted as follows:

- despite my provisional views that Justice Action is not a media outlet the department maintains that:
 

Given Justice Action has targeted (almost exclusively high profile) prisoners asking them to provide information about themselves specifically for publication on the internet, [the department maintains a view] that regardless of whether it is the main business of the Group, the publishing of prisoner profiles on the internet is media business.
- the public profiles of prisoners are of concern to the department and it was reasonable for the department to request that the profiles be removed. The department concluded that if Justice Action had removed the prisoner profiles and did not actively seek information from prisoners for that purpose it 'would not have appeared to be conducting media business, or represent that of a 'media outlet' to the Department'.
- there may be:
 

some differences in interpretation ...in relation to section 33(3) and section 51(1)(a) of the Correctional Services Act 1982 and when looking at section (sic) 12 of the Correctional Services Regulations 2001.

<sup>2</sup> This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

<sup>3</sup> *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

- the department would consider reviewing SOP 017 and SOP 089 to expressly reflect social media
- the prisoner profiles are in breach of regulation 11(2) of the Correctional Services Regulations 2016 which came into effect on 1 September 2016. In developing the regulations the department supported a proposal from the Commissioner for Victims' Rights to make a regulation prohibiting prisoners communicating with web based prisoner-public matching services.

The complainant stated it did not have any comment to make on the provisional report other than to provide the following information:

- it had issued guidelines to moderate content uploaded to prisoner profiles
- material which is deemed inappropriate or contentious or that may target or offend individuals will be omitted
- if a complaint is received concerning material on iExpress it will be removed immediately
- it will negotiate with a complainant and the publisher to respond to the complaint
- it would be prepared to have discussions with the department to 'avoid any future misunderstanding and assure them of our commitment to maintaining the safety and anonymity of third parties'.

## Background

1. Division 6 of Part 4 of the Correctional Services Act prescribes *inter alia* the manner in which prisoner mail is to be managed.
2. On 13 February 2015 the department ratified SOP 089. Its stated purpose is to:
 

prescribe the procedure for the process, control, administration and management of all incoming and outgoing prisoner mail.
3. The department's current SOP 017 seeks to:
 

provide procedures and conditions for media access to prisons, Community Correctional Centres, programs and individuals in the custody of or under the supervision of the Department.
4. Justice Action<sup>4</sup> developed a media platform named iExpress describing it as:
 

the world's first webpage and interactive email system aimed at empowering people in prisons and forensic hospitals and bringing them into the digital world, reducing the divide and social exclusion that currently exists. They will now have the opportunity to access an exciting, new channel of self-expression and communication, free of charge.
5. On 25 June 2015 the department wrote to Justice Action requesting that it remove the profiles of South Australian prisoners from the iExpress web site. The department also raised its concerns about the possible detrimental effects such publications could have on victims of crime.
6. On 30 June 2015 Justice Action responded to the department. In acknowledging the department's concerns Justice Action submitted that iExpress was an important tool in delivering restorative justice and that it provided an opportunity for offenders to 'face-up' to victims and society for their actions. Justice Action further stated that it 'actively

<sup>4</sup> [http://www.justiceaction.org.au/index.php?option=com\\_content&view=article&id=159:iexpress-launch&catid=43:campaigns&Itemid=1207](http://www.justiceaction.org.au/index.php?option=com_content&view=article&id=159:iexpress-launch&catid=43:campaigns&Itemid=1207)

controls prisoner profiles, ensuring what is placed online is positive and adheres to community standards’.

7. On 15 July 2015 the department wrote to Justice Action and again requested that the prisoner profiles be removed.
8. On 10 August 2015 the department promulgated DCEI 127-15 for the purpose of instructing departmental staff to identify correspondence sent by prisoners to Justice Action for the purpose of inclusion on the iExpress web site and to withhold that mail from being sent. DCEI 127-15 stated *inter alia*:

In accordance with Standard Operating Procedure (SOP) 089 Prisoner Mail, 3.5 Management of Outgoing Mail:

3.5.5 A prisoner may not send a letter to any media outlet (newspaper, magazine, radio or television) without the written approval of the Chief Executive / delegate this includes commenting for the purposes of talk back radio etc.

There have been recent media reports on prisoners from South Australia writing conventional letters to an Australian based website iExpress (Justice Action Group) which then posts the material on the website.

All mail addressed to iExpress (Justice Action Group) must be opened and screened by an authorised person prior to the mail being sent. Any mail identified, which appears to be sent to the website for publication on the iExpress (Justice Action Group) website must be intercepted and placed into the prisoners (sic) property until the prisoner is released from custody.

...

9. On 27 January 2016 the department promulgated DCEI 127-15v2 for the purpose of prohibiting prisoners corresponding with Justice Action for any purpose. DCEI 127-15v2 states *inter alia*:

This revised instruction is issued in accordance with Standard Operating Procedure (SOP) 089 Prisoner Mail section 3.5 Management of Outgoing Mail, which states;

A prisoner may not send a letter to any media outlet (newspaper, magazine, radio or television) without the written approval of the Chief Executive / delegate this includes commenting for the purposes of talk back radio etc.

Over the past year there have been reports of prisoners writing to Justice Action Group (iExpress) for the purpose of publication on the internet.

Requests have been forwarded to Justice Action Group asking they cease publication of prisoner material on iExpress accounts; however the agency continues to liaise with high profile offenders inviting them to provide material for their iExpress account.

Noting the impact upon the wider community and in respect to the victims of prisoner offending, effective immediately, prisoner correspondence is no longer permitted with Justice Action Group (iExpress).

Letters which are intercepted must be receipted as per normal process and then placed into the prisoner’s property. These letters can then be provided to the prisoner upon their release.

...

10. Following an approach to my Office by a prisoner in relation to the effect of DCEI 127-15v2, Justice Action made a complaint about the department.

11. On 7 June 2016 Justice Action approached the department and provided a draft of the publication JUST US Election Special with a view to making the publication accessible to prisoners.
12. On 14 June 2016 the department communicated to Justice Action that:
 

...no mail will be sent to, or received from, Justice Action until compliance is demonstrated with the Chief Executive's request that Justice Action cease posting prisoner profiles on the internet.

Therefore, the JUST US publication will not be approved for entry and distribution.
13. On 1 September 2016 the Correctional Services Regulations 2016 commenced.

### Relevant law

14. Section 33 of the Correctional Services Act provides *inter alia*:
  - (1) Subject to this section—
    - (a) prisoners are entitled to receive and send letters; and
    - (b) letters sent to prisoners must be handed to them as soon as reasonably practicable after delivery to the institution; and
    - (c) letters sent by prisoners must be forwarded as soon as reasonably practicable.
  - (3) A letter sent to or by a prisoner contravenes this section if it contains—
    - (a) a threat of a criminal act; or
    - (b) a proposal or plan to commit a criminal act, or to do anything towards the commission of a criminal act; or
    - (c) an unlawful threat or demand; or
    - (d) an incitement to violence, or material likely to inflame violence; or
    - (e) plans for any activity prohibited by the regulations; or
    - (f) an item prohibited by the regulations; or
    - (g) a sum of money, whether in cash or otherwise, or a request for any such sum, where the prior permission of the CE has not been obtained in respect of that sum or request; or
    - (h) a request for any goods, without the prior permission of the CE; or
    - (i) a statement that is in code; or
    - (j) material relating to, or that constitutes, work by the prisoner that the prisoner is not authorised to perform.
  - (4) The CE may cause all letters sent to or by prisoners to be opened and examined by an authorised officer for the purpose of determining whether any letter contravenes this section.
 

...
  - (10) Where a letter sent to a prisoner is found to contravene this section, the CE may—
    - (a) in the case of a letter—
      - (i) hand it over to the prisoner; or
      - (ii) retain it and hand it over to the prisoner on discharge from prison; or
      - (iii) furnish a copy of it to the prisoner with any material that contravenes this section deleted from the copy, provided that the letter is handed over to the prisoner on discharge from prison; or

- (iv) retain it as evidence of an offence, provided that a copy of it, or an expurgated copy of it, is handed over to the prisoner as soon as reasonably practicable, or on discharge from prison;

(11) Where a letter sent by a prisoner is found to contravene this section, the CE may—

- (a) in the case of a letter—
  - (i) return it to the prisoner; or
  - (ii) retain it as evidence of an offence, provided that a copy is furnished to the prisoner at some time prior to any hearing in respect of the offence;

...

15. Section 35A of the Correctional Services Act provides:

- (1) Subject to this section, the CE may monitor or record a communication between a prisoner and another person.
- (2) The parties to a communication that may be monitored or recorded must, at the commencement of the communication, be informed of that fact.

...

(6) In this section—

communication includes conversation and a message, and any part of a conversation or message, whether—

- (a) in the form of—
  - (i) speech, music or other sounds; or
  - (ii) data; or
  - (iii) text; or
  - (iv) visual images, whether or not animated; or
  - (v) signals; or
- (b) in any other form or in any combination of forms.

16. Section 51 of the Correctional Services Act provides:

(1) A person who—

- (a) communicates with a prisoner in a manner prohibited by the regulations; or
- (b) delivers to a prisoner, or introduces into a correctional institution without the permission of the CE, any item prohibited by the regulations; or
- (c) loiters outside a correctional institution for any unlawful purpose, is guilty of an offence.

Maximum penalty:

- (a) in the case of an offence against paragraph (b) of this subsection where the prohibited item is—
  - (i) a controlled drug within the meaning of the *Controlled Substances Act 1984*; or
  - (ii) an item of a kind prescribed by the regulations for the purposes of this subparagraph—
 imprisonment for 5 years;
- (b) in any other case—imprisonment for 6 months.

17. Regulation 12 of the expired Correctional Services Regulations provided that:
- (1) For the purposes of section 51(1)(a) of the Act, all manners of communication between a prisoner and a person (other than a person who is lawfully in the same place as the prisoner) are prohibited except communications—
    - (a) at a lawful visit; or
    - (b) by an authorised telephone call; or
    - (c) by a letter lawfully sent to a prisoner.
18. Regulation 11 of the current Correctional Services Regulations provides that:
- (1) For the purposes of section 51(1)(a) of the Act, all manners of communication between a prisoner and a person (other than a person who is lawfully in the same place as the prisoner) are prohibited except communications—
    - (a) at a lawful visit; or
    - (b) by an authorised telephone call; or
    - (c) by a letter lawfully sent to a prisoner.
  - (2) Without limiting subsection (1), for the purposes of section 51(1)(a) of the Act, all manners of communication between a prisoner and a person or organisation engaged in the provision of a service for the purposes of facilitating relationships between prisoners and persons who are not prisoners are prohibited.
  - (3) In this regulation—
 

**communication** includes conversation and a message, and any part of a conversation or message, whether—

    - (a) in the form of—
      - (i) speech, music or other sounds; or
      - (ii) data; or
      - (iii) text; or
      - (iv) visual images, whether or not animated; or
      - (v) signals; or
    - (b) in any other form or in any combination of forms.
19. SOP 089 provides as follows:
- 3.5.5 A prisoner may not send a letter to any media outlet (newspaper, magazine, radio or television) without the written approval of the Chief Executive / delegate this includes commenting for the purposes of talk back radio etc.
20. SOP 017 provides as follows:
- ...
2. Rationale
 

The positive promotion of the Department for Correctional Services will serve to increase the public's knowledge of our business, whilst providing opportunities for offenders to be seen as members of the community who have the potential to change their behaviour and lead productive lives.
  3. Definitions
    - 3.1 "media" means - any organisation, group or body and its representatives, whose main business is publishing, televising or broadcasting matters of public interest.

At 4.8, SOP 017 provides that where media access is granted to an offender the conditions of access have to be established in advance. At 4.9, SOP 017 provides that

access will not normally be granted to the media where:

- ...
- it may potentially embarrass, injure or distress members of the community, victims and/or their families, Departmental staff, clients or other prisoners ...

**Whether Deputy Chief Executive Instruction 127-15v2 issued by the Department for Correctional Services on 27 January 2016 operated contrary to the Correctional Services Act 1982**

21. The Correctional Services Act authorises the exercise of control over prisoner mail in a range of circumstances. There is, however, a basic premise that prisoners should be able to receive and send letters to persons outside of the prison. In many cases this will be to and from family, friends and acquaintances.
22. The Correctional Services Act prescribes a range of situations whereby the department can decline to process a letter sent to or by a prisoner if the content of the letter offends one of the scenarios prescribed in section 33(3) of the Act.
23. In effect, the restriction of DCEI 127-15v2 only applies to prisoners within institutions. Those released into the community on bail, parole or home detention are free to engage with Justice Action. This would also not influence a scenario where a prisoner communicates with a friend or family member who in turn, communicates with Justice Action.
24. The department<sup>5</sup> relied on the provisions of section 35A of the Act and Regulation 12 of the Correctional Services Regulations to impose the communication ban. While section 35A creates a general power for the Chief Executive to monitor a communication as defined, there is a requirement under section 35A(2) that the parties be informed of that fact. This would be directed in particular, to telephone communications between a prisoner and another party. If, in monitoring the communication there is evidence of an offence, the Chief Executive must give the information to SA Police. If there is evidence of a breach of section 33(3) the Chief Executive can take appropriate action under section 33(10) or 33(11) as the case may be.
25. Regulation 12 was created for the purpose of section 51(1)(a) of the Act which created an offence if a person communicated with a prisoner in a manner prohibited by the regulations. Section 51 and regulation 12 can only apply to incoming mail and cannot be relied upon to prevent outgoing mail from a prisoner. In this matter the department sought to rely on that communication being a letter unlawfully sent by a prisoner to Justice Action.
26. In my view, the communications between Justice Action and a prisoner (assuming it did not offend section 33(3)) was a lawful letter and accordingly, was not caught by section 51(1)(a) of the Correctional Services Act.
27. The complaint raises the scenario of prisoners corresponding with an advocacy body and the department banning the continuation of that correspondence. I have not been provided with any evidence to show that the South Australian prisoners profiled on iExpress have breached the provisions of the Correctional Services Act. In my view, there was no basis for the department to impose the ban complained of for that reason. I now consider whether prior to 1 September 2016, a blanket ban of correspondence to and from Justice Action was reasonably open to the department to impose.

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<sup>5</sup> Email dated 21 June 2016 from the Director Governance and Executive Support to Ombudsman SA.

### SOP 089

28. The department has in place administrative processes to support and implement the statutory requirements. In my view, these processes should not operate contrary to the provisions of the Correctional Services Act or purport to create a power the Parliament did not intend the department to have.
29. I accept that the department seeks to rely on SOP 089 to facilitate the issuing of DCEI 127-15v2 as the authority for placing a blanket ban on prisoners corresponding with Justice Action.
30. SOP 089 seeks to limit a prisoner's contact with a 'media outlet'. It does not provide a clear definition of the term but gives examples such as a newspaper, magazine, radio or television.
31. By way of contrast, SOP 017 does provide a definition of the term 'media'. In my opinion, that definition complements the intent of SOP 089 and is a useful measure to determine if Justice Action is a 'media outlet' for the purpose of SOP 089.
32. In my view SOP 089 uses the term 'media' in the traditional sense i.e. print, radio and television and not for an advocacy service. Although conventional media entities can also have an online presence they are still in effect, a broadcaster of news and information to the public at large.
33. Justice Action is a multi-purpose organisation. As well as providing an advocacy service it also seeks to distribute information to and from prisoners on a range of issues. I am aware that Justice Action sought unsuccessfully to have the department approve it providing information to prisoners in advance of the recent Federal election. I do not think it can be said Justice Action's main business is the 'publishing, televising or broadcasting matters of public interest'.
34. The department has clearly stated its position that the posting of prisoner profiles on the internet is media business and accordingly, Justice Action is a media outlet.

### SOP 017

35. SOP 017 was issued on 8 March 1997. The rationale for the SOP includes recognition that offenders can change their behaviour and that the media can be an avenue to articulate that improved behaviour. It provides that media access to an offender can be conditional. However, access to the media will not be granted if there is potential for it to embarrass or distress *inter alia*, victims or their families.
36. Justice Action has informed my investigation that it moderates and takes responsibility for the web site. A primary concern for the department is the content of some of the current prisoner profiles on the iExpress website. I assume that this information would have passed though the department's mail censorship process on an earlier occasion.

Examples of some profiles include;

Robert James Andrews:

As I'm in prison, I feel that I have been totally let down by the 'Criminal Justice System', as there has been a 'Miscarriage of Justice' in my case and my trial was unfair.

Peter Copeland:

I was physically and sexually abused in my youth ... I began to rely on alcohol and drugs to forget my past...

Looking for pen pals, so if you feel a desire to contact, all mail will be answered. Write to PO Box 6 Port Augusta, SA, 5700

Paul Radford:

This page is a vital tool of rehabilitation and is here for my family, friends and anyone who may wish to communicate in a positive manner and for no other reason.

...

The South Australian system of retributive just works counter to the desired outcome which is rehabilitation...

At the time of writing of (February 2016) the Department of Corrections has not allowed me access to any rehabilitation programmes...

Prisoners very rarely choose to serve out their full sentence. They are simply ineligible for parole due to the withholding of course placements.

While these examples do not identify a particular victim they could be construed by some to be a claim of innocence, an excuse for offending and a criticism of the corrections system respectively, that could be offensive to some readers.

In the letters from the department to Justice Action in June and July 2015 they identify a lack of balanced perspective i.e. there is no victim's perspective, in the placement of profiles on iExpress. While this may be so, I do not consider them to be so outrageous that they would offend community standards.

37. I do accept, however, that without active monitoring of content there is a possibility that offensive material could be placed on the iExpress website. I acknowledge that the onus rests with Justice Action to facilitate this. Justice Action has submitted that it has filters in place to monitor the material put on iExpress. I make the observation that despite the concerns expressed by the department and acknowledged by Justice Action, there has been no effort to negotiate an outcome to its satisfaction, wherein the department would permit a level of communication between prisoners and Justice Action. I note that in its response to the provisional report Justice Action indicated it would discuss with the department its commitment to 'maintaining the safety and anonymity of third parties'. I welcome and encourage dialogue between the department and Justice Action.
38. It would seem that DCEI 127-15v2 when applied to certain communications, has the effect of banning communication between a prisoner and Justice Action when that communication does not offend the Correctional Services Act or the Correctional Services Regulations. I consider that an instrument in the form of DCEI 127-15 achieves the necessary balance.
39. While the iExpress web site may not be the sort of site that victims of crime would deliberately access and read, I note that the Declaration of Principles Governing Treatment of Victims<sup>6</sup> does not prohibit the disclosure of information in circumstances such as these.

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<sup>6</sup> Victims of Crime Act 2001 at Part 2

40. I note that the earlier document DCEI 127-15 did facilitate a level of communication between prisoners and Justice Action. It provided departmental officers with a discretion to assess the content of correspondence addressed to Justice Action. Nevertheless, if the correspondence related to posting on the iExpress website it was prohibited. As useful as the exercise of the discretion in favour of communicating with Justice Action on other matters was, the subsequent iteration removed this discretion.
41. In my view I consider it is arguable that Justice Action is not a media outlet in the manner contemplated by SOP 017. In its submission to me Justice Action describes itself as follows:

Justice Action is the prisoner movement, a community-based and organised advocacy group targeting abuse of authority. Focusing on the criminal justice and health systems, we assist those who are suffering because of it, which is the case in such a prohibition of communication. We provide prisoner, mental health and court support and engage in legal policy development. These activities seek to expose police and penal abuse, misconduct and corruption, promote social inclusion for all and advance meaningful change to the criminal justice and mental health systems. Our history, function and level of depth are integral to natural justice and this can be seen on our website. Labelling our organisation as a media outlet is thus ludicrous, neglecting those members of our community in need.

42. In my view, having regard to the chronology of events it would appear that DCEI 127-15 was introduced after Justice Action was requested by the department for a second time, to remove the South Australian prisoners' profiles from the website. I infer from the promulgation of DCEI 127-15v2 that this was in response to the failure by Justice Action to remove the profiles as the now expired regulations did not expressly prohibit it. My view is supported by the email from the department to Justice Action dated 14 June 2016 declining to distribute the JUST US publication unless Justice Action ceased publishing prisoner profiles.
43. In my view, communications from the department to Justice Action suggest the decision was not premised on Justice Action being a media outlet as the processing of mail was to be handled in a manner contrary to 3.5.5 of SOP 089. There was a punitive element to this decision.
44. I have also considered the reasonableness of the department imposing the communication ban with Justice Action. In my view, it is not reasonable for the department to impose a blanket ban on communications with Justice Action given that it is predominantly an advocacy organisation. In administrative law, 'unreasonableness is a conclusion which may be applied to a decision which lacks an evident and intelligible justification'.<sup>7</sup> The rationale for the department's action is the apparent refusal by Justice Action to remove the prisoner profiles from the iExpress website.
45. In my view, there was no authority or reasonable basis for the department to conclude that South Australian prisoners should be prevented from corresponding with Justice Action.
46. Effective from 1 September 2016, regulation 11 of the current regulations prohibits a communication between a prisoner and Justice Action if the communication was to facilitate relationships between the prisoner and a person who is not a prisoner. Section 4 of the Correctional Services Act defines a prisoner to be:

a person committed to a correctional institution pursuant to an order of a court or a warrant of commitment.

<sup>7</sup> See *Associated Provincial Picture Houses v Wednesbury Corporation* [1948] KB 223 and *Minister for Immigration and Citizenship v Li* [2013] HCA 18 at [76]

I do not consider that regulation 11 prohibits a communication for another purpose e.g. to make a comment on a particular issue impacting on a prisoner or prisoners. Some of the communications between prisoners and Justice Action would be contrary to regulation 11 and lend itself to a view that section 51(1)(a) is breached. Profiles similar to those of prisoners Peter Copeland and Paul Radford would be examples as they invite others to communicate with them.

47. In my view, DCEI 127-15v2 operated contrary to the Correctional Services Act in that it banned all letters from prisoners to Justice Action regardless of whether they contravened section 33 of the Correctional Services Act.

## Conclusion

In light of the above, I consider that in determining that prisoners should be prohibited from communicating with Justice Action by promulgating DCEI 127-15v2 the department acted in a manner that was unreasonable within the meaning of section 25(1) of the Ombudsman Act.

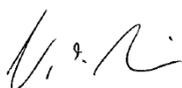
To remedy this error, I recommend under section 25(2) of the Ombudsman Act that the department amend DCEI 127-15v2 to ensure that it permits lawful communication between prisoners and Justice Action.

## Final comment

In accordance with section 25(4) of the Ombudsman Act the department (or council) should report to the Ombudsman by **9 December 2016** on what steps have been taken to give effect to the recommendations above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.



Wayne Lines  
SA OMBUDSMAN

1 November 2016