Review of the Discipline and Grievance Processes and Procedures of the NSW Department of Corrective Services

Brian Knox
October 2001
Inspector-General: ongoing review of human resource practices

by Lindsay Le Compte

During the course of my visits to correctional centres and other areas of the Department, staff have asked me to let them know what my Office is doing in relation to assessing the effectiveness and appropriateness of a range of human resource practices within the Department.

When I commenced operations in late 1999, the first few months were taken up in large part listening and considering concerns raised by members of staff in relation to the Department's human resource practices. You will recall that I referred to this issue in an article in the Bulletin last year and I indicated that, following my report and recommendations in the area, the Commissioner retained a consultant to review a range of human resource practices.

That review, which has been commonly called "the Knox Review", has now been completed and is with the Department for the purpose of discussion with employee representatives in the context of its implementation.

Separately, my Office has embarked on a process of monitoring and reviewing operational arrangements in a range of human resource areas. We have had a significant input into revised policies in the areas of grievance handling, protected disclosures and recruitment and selection. We have commenced an audit process in a range of those areas and we will be reviewing the Department's compliance with its procedures for the balance of this financial year.

Some of the particular areas we will be examining include recruitment files to assess selection panel composition, calling methodology, transparency and accountability of decision making processes, conflicts of interest and referee checks.

Should you wish to discuss the Department's performance in this area, the effectiveness of any enhancements that may be introduced or other issues with me, please contact my Office on (02) 8204 6300 or e-mail the Inspector-General at inspector-general@igs.nsw.gov.au.
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Overview of the Report

Executive Summary

The NSW Department of Corrective Services in 2001 is a vastly different organisation to what it was a decade or even five years ago. The private sector has entered the corrections market, the monopoly which the Department always enjoyed has eroded, whilst at the same time, the Department's core business has broadened. Inmate numbers have increased significantly; there are many more groups within the corrections system with special needs than previously, and the number is growing; public sector reform is demanding greater accountability, transparency and both organisational and individual performance. All of these changes have impacted on the organisation and its culture.

It is clear that the Department is responding to these pressures and is also committed to being a good employer. This is evidenced by a significant number of achievements progressively initiated over the past few recent years.

One area, however, where the Department still has to make progress relates to the handling of its complaints and disciplinary processes. It is important that these areas are addressed as a matter of urgency because they are currently impacting adversely on the organisation's culture, the morale and motivation of its staff, and its overall productivity. Until the Department adopts a new, more contemporary and 'people friendly' approach to handling the majority of its grievance and disciplinary matters, its culture will remain largely moribund and individual and organisational performance will be impeded.

The problematic nature of the Department's 'organisational culture' was a constantly recurring theme echoed in the focus groups consulted as part of this review. One of the simplest and best descriptions of organisational culture is 'the way we do business around here'. It encompasses formal practices, policies and procedures, as well as informal ones. It is about the way that people think and behave - it is about values, judgements, prejudices, practices and attitudes and ultimately, the 'health of the organisation'.

In the context of the discussions about the disciplinary system, the prevailing view regarding the Department's culture seemed to be one of 'the way they do us around here'. The system was seen by some staff as too legalistic and punitive, focussed on 'getting' individuals over relatively minor matters, not focussed on remedying situations or organisational improvement, and essentially unaccountable in any meaningful sense.

What emerged from many of the consultations undertaken as part of this review was that the Departmental disciplinary policies and practices and the structure within which they operate are reflective of the old culture, core business and management ethos of the Department. Most participants accepted that the Department was trying to change in many important respects and there was a substantial degree of goodwill towards the Department in trying to 'turn the ship around' in very difficult circumstances. However, the view was strongly, and often, put that the current grievance and disciplinary system is out of step with the current objectives of the organization, and was not reflective of contemporary Human Resource Management practices.

In other areas, however, the Department has progressively initiated a range of organisational changes and improvements to its human resource management policies and practices, which were regarded well. For example, it has developed a Good Working Relationships Program.
established a Career Development Program, developed a new Grievance Handling Policy, expanded the range of in-house training courses, and introduced a range of improvements to the recruitment process. These initiatives have had a significant degree of success. In addition, the Department has also initiated a range of major changes regarding the way inmates are managed and significant successes have been achieved in creating a more humanised environment in correctional facilities.

Many in the focus groups, however, were of the view that the Department (by which they invariably meant management) seemed to care more about the needs and 'rights' of inmates than it did about 'its own people'.

It should also be noted, that the problems associated with 'grievance and discipline' were often used to mask other problems associated with organizational change. For instance, many of the changes which have occurred as a result of changed core business, new styles of inmate management, and public sector reform (to identify just a few) have produced sizable challenges and tensions for the Department. It was evident, from discussions within the focus groups and elsewhere, that many people, and particularly those from the custodial areas, often found great difficulty in abandoning some of the ways that had held them in good stead for many years and in adjusting to new ways of doing business. The tensions that ensued often led to personal, as well as organizational stresses which, unsurprisingly, were reflected in grievance and disciplinary problems and, on occasions, related industrial agitation.

It was quickly evident, that it was impossible to undertake this review in any way which looked at the Department's current approaches to handling its grievance and disciplinary matters in isolation, because the problem was much broader and of a more holistic nature than 'grievance and discipline'. It was a cultural issue and as such was germane to the fabric of the organization. How the Department handled its grievance and disciplinary issues was central to its credibility with its workforce. Nowhere were words like fairness, honesty, integrity, reasonableness going to be tested more thoroughly by people than in the areas of grievance and discipline, because that was where those concepts became relevant, in a real sense, to themselves and their colleagues.

For these reasons, the recommendations proposed in this Report, should be seen in two contexts.

The first addresses specific issues concerning tangible policies and practices which are intended to significantly improve the operational and management aspects of the handling of grievance and disciplinary matters.

The second, focuses on dramatically improving the culture and 'spirit' of the organization, so that all employees can be confident that the Department will handle all future grievance and disciplinary matters fairly and openly; that there will be systems in place to ensure this occurs in a transparent way and is maintained over time; that supervisors and others will manage with confidence and courage; that the unions and industrial associations will be in a position to work constructively with management to achieve mutual goals; and, that all staff will be able to work together collaboratively, fulfill their potential and achieve the professional status and community respect they aspire to and deserve.
Summary of recommendations

The Report makes a number of recommendations for improvement to the disciplinary system and to the way grievances are dealt with by the Department. In summary, these recommendations are:

Objectives of the new disciplinary system

Recommendation 1: That objectives 1 to 11 setting out the minimum standards for an effective disciplinary system be adopted and implemented in relation to the grievance and disciplinary system.

Functions of the Investigations review Committee (IRC)

Recommendation 2: That the functions of the IRC be expanded to include:

(a) input into performance assessment and improvement;
(b) ensuring managers deal directly with minor discipline matters; and
(c) providing regular reports on outcomes and strategies utilized to deal with commonly recurring problems so that an organization-wide consistency can be promoted and departmental objectives achieved.

Renaming the Investigations Review Committee

Recommendation 3: That the Investigations Review Committee be renamed to reflect its new role and function.

Membership of the revised Investigations Review Committee

Recommendation 4: That the membership of the revised Investigations Review Committee be reconstituted to comprise the Director Frugality and Performance Management Branch (chair), the Commander Security Investigations Branch and a Regional Commander (appointed on a three monthly rotational basis), Commander Corrective Services Investigations Unit (from the NSW Police Service)

Recording of names on Investigations Review Committee database

Recommendation 5: That no individual’s name be maintained on the Investigations Review Committee database other than where there has been a formal investigation commenced or charges laid and or upheld.

Recommendation 6: That any officer whose name has been included on the Investigations Review Committee database should be notified to that effect within 7 days of that entry being made unless the Commissioner agrees in writing to details of the name being suppressed and the individual not being notified. In such cases, the Commissioner must notify the Inspector-General that he has agreed that the officer’s name be suppressed and the reasons for suppression.

Recommendation 7: To maintain the integrity of the process, no databases, other than the IRC database is to be maintained where a formal investigation has commenced.
Review of Investigations Review Committee operations by Inspector-General

**Recommendation 8:** That the Inspector-General undertake a review of the operation and effectiveness of the new Investigations Review Committee once it has been operating for 12 months.

**Review of delays**

**Recommendation 9:** That the officer in charge of any investigation which extends beyond six months report the reasons for the delay in writing to the Commissioner and the Inspector-General.

**Referral of review in the case of extensive delays**

**Recommendation 10:** The IRC or the Inspector-General may require an officer conducting an investigation to:

- a) consider further evidence
- b) to discontinue the investigation, or
- c) after consultation with the Commissioner to refer an investigation to an external body or agency (not the Inspector-General) in the event that it exceeds, or is not completed within six months.

**Surveillance protocols**

**Recommendation 11:** That there be a protocol approved by the Commissioner, setting out the steps needing to be taken for the authorisation of surveillance operations, including the officers authorised to direct that surveillance be commenced, continued or discontinued.

**Recommendation 12:** That the Commander of Security and Investigations review and provide a report to the Commissioner, each six months regarding decisions taken for surveillance of officers of the Department, the justification for the continuation of that surveillance and the resources allocated to that surveillance, where surveillance is to continue for a period of longer than six months then the matter should be referred to the Inspector-General.

**Non-reviewable decisions**

**Recommendation 13:** That minor infractions be dealt with directly by management without referring the matter to the IRC, without right of appeal other than where there has been a breach of procedures amounting to a breach of the rules of natural justice or a decision which the IRC considers outside the normal range of sanctions.

**Letters of warning and reprimand**

**Recommendation 14:** That no letters of warning or reprimand for an officer be retained in a file other than the officer’s Personal file and archived after three years of their date of issue.

**Recommendation 15:** That names of officers retained on the Investigations Review Committee database be removed after three years unless otherwise directed in writing by the Commissioner after consultation with the Inspector-General.
Documentation of disciplinary matters

Recommendation 16: That managers ensure that disciplinary matters are properly documented and that the appropriate forms and/or letters are provided to employees involved in disciplinary processes.

Department staff records and databases

Recommendation 17: That a policy be developed on the storage of personnel information on the Department’s records and databases addressing access, storage and duration of records, with a view to minimizing access to Governor level and above, providing the affected officer with a copy of the record and the archiving of entries after three years if no further related matters have arisen in relation to the officer concerned.

Recommendation 18: That the IRC database be accessible to affected officers, via their Governor, so that they can view, or receive a printout of the status of any departmental investigation concerning them at anytime.

Recommendation 19: This database should also be available to the Inspector-General, the Executive Director, Human Resource Management and Regional Commanders.

Time limits: Non-reviewable complaints

Recommendation 20: That the proposed time limits identified in this Report in relation non-reviewable complaints be adopted as a matter of policy.

Time limits: Reviewable complaints

Recommendation 21: That the proposed time limits identified in this Report in relation to reviewable complaints be adopted and enforced as a matter of policy.

Recommendation 22: Where time limits have not been observed with the schedules specified in the report and the delays have been caused by the officer conducting the review then the officer should be removed from the enquiry. Where the Department has not concluded the matter within six months the matter must be reported to the Inspector-General and the Commissioner.

Training Issues

Recommendation 23: That all managers must complete approved and assessable training on change management, people management, grievance handling and dispute and conflict resolution.

Recommendation 24: That an officer should not be considered for appointment or promotion to a managerial position unless he/she has completed an assessable Departmental training course or equivalent in disciplinary processes. Duty statements for relevant managerial positions should be amended to reflect this requirement as an essential criterion for appointment.
Preliminary Investigations procedures

Recommendation 25: That the Department institute on a regular basis training in disciplinary investigations techniques based on a careful analysis of which categories of staff need to be trained in this area.

Training for all stakeholders

Recommendation 26: That the Department conduct regular training sessions for managers and union delegates/officials in the department's disciplinary policies and procedures, including organisational cultural aspects of disciplinary issues.

Recommendation 27: That lateral entry recruitment policies that have been introduced and pursued within the Department be broadened to all areas and applicable to all positions.

Risk assessment and complaint analysis

Recommendation 28: That risk assessment and complaints analysis be incorporated into disciplinary system training.

Recommendation 29: That a part of each manager's performance review should include an assessment of their knowledge and capacity to apply the variety of human resource management policies and options available to them arising from workplace incidents, and their capacity to monitor improvements in the performance of officers.

Monitoring of categories of those involved in the processes

Recommendation 30: That after the new disciplinary and complaint handling processes have been in operation for about 12 months, the cases involving individuals who have been the subject of complaint or who have complained against the Department be examined by the Executive Director of Human Resource Management to see what, if any, common issues there are in the incidents or the individuals involved and whether, in relation to serial complaints that turn out to have no foundation, the psychological profiling tests of the Department need to be re-assessed or other management options considered.

Grievance handling policy procedures development

Recommendation 31: That the Department provide additional Grievance Policy training across all categories of relevant staff.

Systems solutions approach to dispute resolution

Recommendation 32: That the Department adopt a systems solutions approach to resolving more long-standing, more serious or systemic grievances and support this approach through appropriate levels of staff training and senior management commitment.

Policy and training in relation to workplace bullying

Recommendation 33: That the procedures to deal with bullying in the workplace continue to be implemented through staff training and taking disciplinary action against offenders.
Legislative changes

**Recommendation 34**: That the Department recommend to the Minister that legislative changes be made to give effect to recommendations – 10, 15 and 17.

Report structure

The Report is structured into six parts:

1. **Terms of Reference**

   The terms of reference for this review were broad based and revised and extended as the review progressed.

2. **The Department in 2001**

   This section summarizes many of the initiatives and significant changes to core business that have occurred in the Department over recent years which have impacted on the way the Department now does its business.

3. **Background to the current disciplinary system**

   This section provides an overview to the current disciplinary system within the context of the department’s organisational culture and the changing external environment the department operates in. A range of achievements of the department are also outlined.

4. **Analysis of the current disciplinary system**

   This section identifies and discusses the specific problems the review identified with the disciplinary system as it currently operates in the Department.

5. **Towards a new effective disciplinary system**

   This section sets out a range of principles and objectives for an effective disciplinary system. A series of recommendations are made to establish this system, based on the principles of fairness, transparency and consistency.

6. **Implementing effective grievance policies**

   While assessment of grievance policies was a smaller part of the review, it is an important area for the successful resolution of disputes and the maintenance of staff morale. This section provides a brief overview of some identified problems with the current grievance handling mechanism, current work in progress in this area, and provides a range of recommendations to improve grievance handling within the department.
Part 1: Terms of reference

The Terms of Reference for this review were deliberately broad based and revised and extended as the review progressed.

Initially, the Terms of Reference called for a "review of the core human resource management policies of the Department including personnel practices as well as other policies, procedures and practices including those relating to dealing with grievances and disciplinary matters".

It was agreed that the review would, as part of the terms of reference, focus initially on:
- the complexity of the grievance and disciplinary processes and procedures;
- the coordination of the processes and procedures;
- the people involved in the various processes;
- how information was protected;
- how people under investigation were informed of the progress of any investigation and its outcomes; and
- the clarification of responsibilities for individual parties in the grievance and discipline process.

As the Review progressed, other areas were identified by the Department and the Review Steering Committee for further consideration. These included:
- succession planning;
- protected disclosures;
- recruitment;
- professional development; and
- a review of the Investigation Review Committee.

This was one area which was thought to require immediate consideration. An examination of the IRC resulted in various changes being made during the progress of this review. Those changes are referred to elsewhere in this report.

These have been or are being dealt with independently of this review.

Methodology

The methodology adopted for this review consisted primarily of collecting and analyzing information through the conduct of discussions in relation to the matters set out in the terms of reference among focus groups made up of a broad range of Departmental officers, representative of all areas of the Department and its geographical locations. The unions were also actively involved in the review.

At the outset of the review, the Steering Committee took the decision that the consultant would conduct discussions in relation to the matters set out in the terms of reference among focus groups made up of Departmental officers and report back on those discussions.
Composition of focus groups

Every attempt was made to ensure that those who were involved in the focus groups, and the viewpoints and information obtained from the focus group discussions, would be representative of:

(i) all occupational, professional groups and levels within the Department (including managerial and supervisory levels);

(ii) staff from the various geographical areas where correctional centres were located, the head office of the Department, from the regional offices as well as urban and rural correctional centers;

(iii) staff from the differing kinds of correctional centres including maximum and minimum security, women's centres and remand centres; and

(iv) staff from outlying offices including various Probation and Parole branch offices.

Accordingly, the focus groups contained a selection of:

- Executive, senior managerial and head office staff
- Governors, Deputy Governors
- commissioned and non-commissioned correctional staff;
- members and office holders at various levels of the Prison Officers Vocational Branch ('POVB') and the Commissioned Officers Vocational Branch ('COVB')
- Probation and Parole staff ('P and P staff') at managerial and operational levels
- Inmate Development Staff ('IDS staff')
- Alcohol and Drug counsellors ('AOD staff')
- Welfare workers, teachers
- Administrative and support staff

Members of the Steering Committee and representatives of the POVB and the COVB were asked to submit a list of names of individuals who could usefully participate in the discussions. Some participants were deliberately selected who were perceived to have had negative experiences with various human resource management policies as well as the disciplinary and grievance processes.

Focus groups - location

Focus group discussions were conducted at:

- Mulawa on 15 November, 2000
- Grafton on 23 November, 2000
- Goulburn on 5 December, 2000 (including officers from Bathurst and Berrima centres),
- Central Office (with a contingent of officers from Long Bay Correctional Centre) on 11 December, and

There was an additional session conducted at Roden Cutler House on 8 September, 2000 primarily to vet the draft case studies initially to be used to prompt discussion for the conduct
of focus groups for the review. This group consisted of about 20 officers from a variety of centres and other areas of the Department including Governors, representatives of both unions and professional associations and members of the correctional and professional staff.

Following the presentation of the Interim Report, a decision was taken that the focus groups be expanded and that the review also take into account the views of those participating in the Corrective Service Industries of the Department as well as therapeutic programs the Department had devised and pursued.

Further consultation sessions were then undertaken during June and July 2001 with more senior officers and those from a different cross-section of the Department's workforce as well as with the unions and professional associations having industrial coverage of the Department's personnel.

In addition, following discussions with the Inspector-General of Corrective Services in relation to the range of complaints received by his office, a submission was made to the review in relation to various aspects of the disciplinary process.

The submission was the subject of discussion at two focus groups, at a meeting of peak union officers and with various individuals. At the conclusion of each of those sessions, parts of the submission were amended to take into account aspects of those discussions and to incorporate suggestions made. The final version of the submission appears as Appendix C to this report.

Perspective of those in consultation groups

The groups consulted early in the review included many people who had been involved in the disciplinary process either as individuals who had been responsible for administering aspects of the process or those who had been the subject of inquiries, preliminary investigations or charges. Those consulted in the latter part of the review were from a much wider group within the Department, many of whom had a much more positive attitude to the Department, its policies and its human resource management practices than was the case with the earlier groups interviewed. The groups and individuals consulted as part of this stage of the review often demonstrated a much more sophisticated capacity to analyze the problems facing the Department and to see why the disciplinary process was viewed in the way it was at many levels of the organization.

There were many considered and even-handed comments which reflected an appreciation of why the Department had acted in the way it had and why the departmental processes worked the way they did. At the same time, there was an acknowledgement of the tremendous diversion of resources, time and energy which the operation of the current disciplinary processes and structure represented - often without any lasting benefit to the organization. Few had been given any feedback - nor had they heard of anyone who had received feedback - following involvement in any aspect of the disciplinary system as to matters which might improve the performance or behaviour of those involved.

Impressions and recurring themes

What was significant, however, was that almost all those who were consulted had a story to tell about individuals who they knew or with whom they had worked, who had been the subject of at least one aspect of the disciplinary process. Many considered that both the individuals and the overall organization had been affected, sometimes permanently, by the way the disciplinary process had been applied in many cases.
A secondary but similarly important theme was that many felt that the fairness of the Department's disciplinary process was one of the most important hallmarks of how good an organisation the Department was to work for and within. In this area, there was thought to be a wide gulf between the way the Department professed messages such as that 'people are our greatest asset' and 'put people first' and the way it treated people caught up in the disciplinary process. For a significant minority, the desirability of working for an employer which did not act in an arbitrary, capricious or harsh manner was almost as important as aspects of the remuneration and other industrial considerations.
Part 2: The Department in 2001

The NSW Department of Corrective Services in 2001 is a vastly different organisation to what it was a decade or even five years ago. The environment within which the Department operates has changed; public sector reform has demanded greater accountability, transparency and both organisational and individual performance; there is greater external scrutiny; inmate numbers have increased significantly; there are many more groups within the corrections system with special needs; and the monopoly which the Department traditionally enjoyed has been eroded by the arrival and threat of privatisation. All of these changes have impacted on the organisation and its culture.

In line with its commitment to being a good employer, the Department has progressively initiated a range of organisational changes and improvements to its human resource management policies and practices over the last few years. These initiatives have had a significant degree of success. However, one area where the Department has been somewhat slower to pursue its new managerial initiatives or accept the implications of its change of focus and the changing environment in which it operates, has been in the area of its disciplinary and complaint handling processes. While some positive changes have been implemented, this area still requires further work.

A constantly recurring theme in the focus groups consulted as part of the review regarding the operation of the disciplinary system was the culture of the Department. One of the simplest and best descriptions of organisational culture is 'the way we do business around here'. It encompasses formal practices, policies and procedures, as well as informal ones. It is about the way people think and behave, it is also about values, judgements, prejudices, practices and attitudes.

In the context of the discussions about the disciplinary system, the prevailing view of the Department's culture seemed to be one of 'the way they do us around here'. The system was seen by some staff as punitive, focused on 'getting' individuals over relatively minor matters, not focused on remedying situations or organisational improvement, and essentially unaccountable in any meaningful sense.

What emerged from many of the consultations undertaken as part of this review was that the Departmental disciplinary policies and practices and the structure within which they operate are reflective of the old culture, core business, and management ethos of the Department. Most participants accepted that the Department was trying to change in many important respects and there was a substantial degree of goodwill towards the Department in trying to 'turn the ship around' in very difficult circumstances. However, the disciplinary system is not perceived as being in line with or fostering the current objectives of the organization.

This has led to a perception of a difference between the way the Department professes to look after its most important asset - its people - and the way it operates in practice. For this reason the overriding recommendation of this review is that just as the management approach and core business of the Department has changed dramatically, and the culture of the organization is changing, so also the Departmental disciplinary policies and practices need to change and adapt to the new environment in which the Department operates. To address this, it is necessary not only to make specific changes to the disciplinary system but to understand the organisational culture of the Department and, where possible, encourage and foster positive change.
The changes which have occurred and the challenges and tensions they necessarily involve have not been without great difficulty in both human and organizational terms. It has required different ways of doing the Department's business. In turn, this has meant that there are a number of people who are unable to cope with the new demands being placed on them. This has led to a number of stresses which, unsurprisingly, have been reflected in disciplinary problems and, on occasions, related industrial agitation.

Departmental Achievements

The Department has progressively initiated a range of organizational changes and improvements to its operational and human resource management policies and practices over the last few years which are innovative and highly regarded by many staff members.

This section has been included in this report because many members (at both management and operational levels) repeatedly raised the issue of the demands of new or changed business practices and the organisation's culture as central to how the organisation dealt with its people and handled its grievance and disciplinary processes.

Another reason for including this section is to recognize, acknowledge and place on the record, many of the changes that have occurred, or are occurring, within the Department.

Case management

Case Management is now fully implemented within the Department, although there is still room for improvement of the process in some Correctional Centres. The process was achieved when the unions gave a commitment to undertake case management in return for an increase in salary. Most custodial staff are now involved in case management.

A Report from the ICAC on case management provided guidance and assistance for the Department in implementing this model of inmate management.

Increase in Special Needs Groups

In recent years, the inmate population has increased by approximately 15% per annum. This has also meant an increase in all the groups of inmates with special needs. The duty of care for special needs inmates is demanding and requires a 24hr a day obligation. Special Needs Groups include:

a. The mentally ill

In the next twelve months, the Department expects over 1000 new receptions who will require some form of mental health treatment. 7% will be severely mentally ill.

The Department is currently building Mental Health Assessment Units at the Metropolitan Reception and Remand Centres for men and Mulawee for women.

Diversion from custody models are also being trialed and staff training has now been introduced in this area.

b. Indigenous inmates
The current rate of incarceration for indigenous inmates is around 14% compared to a population proportion of 3% for the general community.

The Department has a number of Diversion Programs which are in place, as well as a number of dedicated aboriginal programs for women and men. It has also introduced structured cross cultural training to ensure staff are aware of aboriginal culture and have a clear understanding of the special needs applicable to indigenous people.

c. Women

All staff who manage female inmates undertake a specific training course on the special needs for women. The Department is building a new Correctional Centre comprising 200 beds specially for women. This centre will comprise three building designs and programs for high to medium, medium and low need inmates. Women are usually high need, low risk inmates.

d. Suicide and self-harm

The Department has purpose built Crisis Support Units in each region. Clinical psychologists manage therapeutic programs and are supported by medical and custodial staff.

This working arrangement represents a major shift from the traditional model where custodial officers had overall control.

Staff in all disciplines are now involved in a detailed way in screening all new receptions and referrals to the appropriate service providers for follow-up action.

e. Drugs, gangs and related violence

The dramatic increase in tension between the different racial groups in custody has major implications for the smooth operations of some Correctional Centres, especially those providing maximum security.

The Department has recently opened the High Risk Management Unit at Goulburn to deal with inmates diagnosed or identified as: psychopaths; the severely paranoid; impulsively violent men; those where violence is part of the psychosocial response to trauma; and, for covert gang leaders or those who commission others to carry out violent acts.

Staff working in this unit undertake a specific and intense training program of two weeks duration. Staff, including custodial staff, are now involved in the referral, assessment and delivery of the care programs for these inmates. In addition, a number of other strategies have been put in place to manage gang members, including a specific training program designed by the Academy for inclusion in the recruit training program.

The impact of privatisation

The Department currently has 750 beds under private contract. Privatisation has not been welcomed by many within the Department with a number claiming that “more privatisation
would erode community confidence in the public system", and, "that privatization is not really cost effective because 'privatised' goals only deal with the least problematic inmates".

On the other hand, the Department has entered the 'private market' in terms of contracting for services. It now has casual employees working in Court Security and permanent part-time employees working in the Periodic Detention Program. In this regard, privatization has had a positive impact on the public system.

**Pressure on financial management**

It is now clearly understood that all managers must work smarter to stay within their budgets. The unions are currently involved in negotiating local agreements at all Correctional Centres on the management of overtime, whilst also ensuring staff safety.

**Staff safety**

The criticisms made of the departmental disciplinary practices contrasted with the praise the Department received on many workplace safety issues where the Department is seen to be active in its duty of care for staff. It was widely reported, by both management and staff members, that staff safety in the workplace is paramount. It was also reported that this is achieved by having a good working relationship with the unions – the sort that now exists in the organisation on most issues.

The need for a safe and stable workplace was emphasised in a number of contexts. First, when linked to financial management there needs to be agreement and confidence in the process of negotiation between the unions and the Department, and secondly, this was demonstrated by the low attrition rate in the Department (reported as averaging 9 custodial staff per month).

**External scrutiny**

It was generally recognised, that the Department has benefited greatly from external scrutiny, in particular, reports from the ICAC, the Ombudsman's Office and the Inspector-General. By dealing with these agencies openly, the Department believes it is better meeting the expectations of public sector management in that it is more accountable and transparent.

**Probity and performance**

Since the Review began, the Department has created a Probity and Performance Branch to enhance ethical and related values across the Department. The Director of the Branch has the responsibility to monitor operational performance and potential corruption indicators and to identify policy issues which will ensure corruption prevention action is undertaken in accordance with Departmental guidelines.

**Training**

The Department's training program is competency based and developed to meet the National Competency Standards Training Guidelines.

All training programs are designed to facilitate and promote professionalism and its corporate values at all levels.

The Department is focusing particularly on 'leadership development' and linking its leadership programs to its succession planning. It has introduced a Development Centre to identify and
better target the professional development needs of individuals. The major focus of all training is twofold - integrity, fairness and professionalism; and, a deliberate attempt to "move away from the old way of 'doing business'" (yesterday's management style).

**Human Resource Management Initiatives**

The Department has progressively initiated a range of organisational changes and improvements to its human resource management policies and practices over the last few years.

It has developed a *Good Working Relationships Program* to foster positive working relationships amongst all levels of staff, instituted a comprehensive *Career Development Program* to address the succession planning needs of employees and the Department, developed a new *Grievance Handling Policy*, expanded the range of training courses available through the Corrective Services Academy, and introduced a range of improvements to the recruitment process. These initiatives have had a significant degree of success in contributing to changing the culture of the Department.

In addition, a range of major changes have been initiated in the way inmates are managed and significant success has been obtained in creating a more humanised environment in correctional facilities. However, that was often coupled with a view that the achievements of the Department were not being successfully or effectively promoted. In some cases there was also a recognition that community attitudes to inmates were such that there was unlikely to be a widespread acceptance of the need for, or value of, effective inmate management or development policies.

It is not part of the function of this review to look, in depth, at the programs or initiatives of the Department other than to observe those areas where there are issues generating problems with the disciplinary or complaint system. Suffice it to say that there seemed to be a correlation between relatively low levels of complaints and those areas of the Department where the staff were busy and committed to the planning, implementation of their own initiatives or Departmental policies which they respected.

For example, there was a marked difference in one centre between the attitude of overseers, correctional officers and others involved in various Corrective Services Industries to the disciplinary process, and those 'over the wall', in the custodial ranks of the correctional wings. The former group, including those who had been the subject of charges and inquiries, generally regarded the process as something which was a little annoying and had to be endured although with a sense of confidence that the system was fair. They seemed to be anxious to get the issues behind them and get on with the job. Not more than 200 metres (and an apparently whole different world away 'over the wall') there was a solid phalanx of dissatisfied officers awash with stories of how bad the system was.

**Successes in changing the custodial environment**

The Department has developed a number of initiatives towards 'humanising' the environment of its centres. With the greater understanding of inmates' needs and problems flowing from case management, the environment is seen as influencing the way inmates react and people manage. It is acknowledged that there are many areas of the Department which are now open to these ideas. For example, inmate management approaches have changed with the recognition of the need to soften the environment without lessening the security e.g., using
plants, muted colours and other features and eliminating or minimising noise, heat and jarring
harsh environments. There is an attempt to stop isolation - to draw people out of their cells and
into a community involvement. There is also, for example, an awareness of a need to practise
dynamic security and case management rather than defensive, reactive static security practices.

Other positive initiatives
The Department has been able to develop its initiatives with indigenous inmates by the
operation of the Brewarrina centre where the resources of the community are able to be used to
support the rehabilitation of offenders. Similarly in areas of the treatment of inmates with
mental health problems, the Department has been able to maintain a relatively substantial
number of mental health beds to deal with the growing number of inmates so affected.

It has been remarkable that DNA testing has proceeded smoothly within New South Wales
centres, particularly by comparison with a lot of the problems which have occurred in other
States. This seems to have followed on directly from the fact that individual officers within the
centres have managed the process of DNA testing, and have involved the inmates and the
inmate culture. Apparently, it has been better for the inmates to work with the correctional
officers rather than having the testing carried out on them forcibly by the police.

Much of the success was attributed to the fact that officers with commitment to, and
experience with, proper case management systems had been able to talk to the inmates
concerned and pre-empt problems which otherwise would have occurred. Many areas of the
Department concerned with programmes seemed to operate with enthusiastic autonomy.
Officers concerned felt autonomous, in particular, when they had strong local leadership and
the capacity and competence to pursue their own judgement and professional expertise.

The Department has been relatively successful - particularly compared with other correctional
institutions and systems - in stopping the spread of HIV and Hepatitis C and particularly in
stopping those viruses from spreading into the community from inmates. The Department also
has detailed policies in place for the management of high risk offenders, particularly in dealing
with inmates to minimise opportunities and flashpoints for aggression, as well as therapeutic
training. The new policies of the Department have been designed to emphasise each centre
being held accountable for various aspects of inmate treatment and management.

These examples highlight the positive recent achievements of the Department. Other examples
could be cited, although that is not the purpose of this report.

Facing the challenges of a changing environment

Impact of changing core business
The focus of the Department's core business has changed dramatically in recent years,
especially from one of inmate containment to inmate management. The Department has
prepared much of the groundwork for the implementation of 'through care' policies to ensure
as far as possible that inmates do not return to the responsibility of the Department. These
changes have required fundamental shifts in the way the Department does its work.

The changes have been made against a background of a much more complex and difficult
inmate environment with different departmental structures and objectives than was the case
when the existing disciplinary system was established. Now, there is an increasing and
changing inmate population, much greater drug and mental health problems, and much greater
challenges to the authority of individual officers and departmental practices than was the case previously.

Changing managerial environment

Similarly, there is a much more complex set of governmental, financial, legal and industrial parameters within which the Department must operate. These parameters dictate both the direction and pace of change for the Department. There has been a hardening of some community and political attitudes - often at odds with an approach which requires consideration of the totality of an inmate’s environment and background in the delivery of Departmental programs. There have also been profound managerial changes arising from internal departmental initiatives and external government directives. There have been a series of innovative policies and programs devised, established, and made to work by the commitment and enthusiasm of a variety of officers from all areas of the Department, both custodial and non-custodial.

Impediments to effective change and organizational performance

The aforementioned organizational changes and initiatives have often been made in the face of determined and systemic opposition based on an old, reactive and obstructive culture which, particularly in the custodial areas, was both pervasive and powerful.

There are still 'pockets of negativity' which impede change and organizational performance and frustrate management. They are well known within the organization and often referred to in terms such as 'the dead wood' or 'the tea room orators'. They are the keepers of the old culture and either don’t want to, or can’t change, and can be influential in shaping the values and practices of new members. These people present a particular challenge to middle and senior management, some of whom often either lack the courage to be managers, or can’t come to grips with the need to balance old loyalties with their current responsibilities. It was evident, during discussion with a wide variety of people, that the traditional command and control model of management did not imbue many with the understanding that modern managers must be courageous and learn to manage up as well as down.

Against this background however, the Department deserves congratulations, in my view, for achieving the changes it has, particularly as those changes have been internally driven and not, as with other organizations, in response to the pressures of a Royal Commission.

Organisational culture within the Department

The need to understand culture

An understanding of the culture of an organisation is the starting point to an understanding of how policies and practices either work or are frustrated within the organisation. No change process will succeed unless the organisational culture is both understood and dealt with. The Department is not the one culture - it is a myriad of cultures which are often in competition. There are often invisible barriers between groups within centres and between centres and other centres.

As in other organisations that are undergoing considerable change, middle management (and frequently some members of the unions representing the older elements of the organisation - in this case the custodial officers) are the most resistant to change, and represent the greatest challenge for management in securing organisational commitment to the change agenda. They
also have tremendous influence on the views, attitudes, and ultimately, the behaviours, of the newest members of the organisation.

The focus groups produced mixed feelings about the Department's reform agenda. On the one hand, some members represented a workforce which manifests cynicism of the motives behind departmental policies and a distrustfulness of the Department's willingness or capacity to change its management practices. On the other hand, many participants thought that what the Department should be doing is trying to target the "blockers of change" and those who refuse to accept new approaches to policies and programmes.

These views are important because the culture of the Department permeates all aspects of organisational and individual behaviour. This culture arises from the core business of the Department which, over the years, has been historically and consistently defined as being that of inmate containment. Some of the tensions in the organisation can be attributed to attempts to modify that centrality of purpose with, for example, the introduction of case management.

Perceptions of the disciplinary system

A focal point of concern for many focus group participants, and for many in the professional associations, is the way the Department deals with, and exercises power, over individuals. Participants reported the absence of consistency, or worse, discrimination, in the way human resources policies are implemented, in particular those related to disciplinary procedures. Of major concern was the lack of observable benchmarks / guidelines for the operation of the disciplinary system for which managers and the Department could be held accountable.

Involvement of managers in the disciplinary process

There was little confidence in many managers' knowledge of what options they have in dealing with an incident, what the varying kinds of investigations were, and what part in the process should be. Some participants (who were managers) acknowledged these deficits and believed that any actions they may take would not be supported by senior management. The absence of formal management systems, together with limited skills development, has contributed to management by direction and control as discussed in the next sub-section.

There was a belief that nothing gets done unless it is directed and that management is based on personality and personal approaches rather than following departmental systems. A widely held view was that little, if any, discretion was given to local managers to manage properly, that the requirement for approval for even minor decisions was both cumbersome and ridiculous leading to excessive micro-management of both individuals and units. This flows from the apparent refusal to delegate or refusal to trust those down the line. In part it seems to flow from an attitude of "we are the only ones who can do it".

Disempowerment

There is a feeling of disempowerment amongst some middle to senior managers. Some feel that they are nothing more than high level delivery officers. They do not believe, or are fearful to exercise their 'theoretical discretionary powers' to carry out management tasks particularly on personnel and disciplinary matters. Even though the Department operates on a paramilitary basis, it seems that there is, in fact, in terms of the staff policies, very little power vested in management to direct personnel.
It was clear from dealing with many of the managers who were managing their work units and programmes very effectively, that the competent managers are already dealing with local personnel and management incidents and complaints very effectively and expeditiously. The key to the successful management approaches seemed to be one of proactive awareness by individuals to potentially problem situations.

Factors influencing culture: professionalism as a force for change

Organisational culture is not a static phenomenon. The fact that the Department is changing, provides a solid basis for positive change. Evolutionary change occurs slowly and in its own time. Few officers seemed to appreciate the fact that it is the role of management is to speed up evolutionary change so as to position the organisation competitively in a rapidly changing environment.

The general feeling expressed by many participants was that the culture in the various departmental centres significantly reflected the management style of the superintendent and the senior management concerned. A surprising number of participants referred to the common experience that changes can occur within six months of the departure or arrival of a superintendent.

In this regard, staff in the Department are particularly acute on picking up on the professionalism and competence of the superintendent of the particular centre. This is particularly the case with those managers who encourage innovation and attempt to ensure the proper delivery of the Department's various policies. The whole concept of professionalism in management is antipathetical to what many managers seem to want which is a prescriptive approach – management by the rule book. Professionalism requires a different approach to discipline. Part of being a professional is adherence to a key set of values and standards which guides rather than prescribes behaviour. To this end, there needs to be a greater emphasis in the training and selection of managers on this aspect of professionalism.

Industrial culture

Relevance to disciplinary problems

Many views were expressed in relation to the union hierarchy that were similar to the views expressed in relation to the departmental hierarchy. As with many members of the departmental hierarchy, union officials were often under extreme stress concerning their part in the disciplinary process. Sometimes they were subject to a variety of totally inappropriate pressures from their members (even to the point of receiving death threats). They were often forced into positions of having to mediate fundamentally impossible positions.

What was of particular concern was the fact that disputes between the unions spilled over into the way various officers had to do their jobs and the implementation of departmental policies. These flashpoints for discontent were particularly evident in matters involving the disciplinary process. Many senior executives in the unions accept that the industrial and professional associations must be relevant to the future. However, it seems that they have major difficulties in persuading their rank and file of this need and the need for a disciplinary system which is respected as a vehicle for organisational improvement.
Different staffing backgrounds impacting on attitudes

The correctional areas are essentially closed areas. There is one entry point for recruitment. It is at base level. With the professional staff there is very frequently lateral recruitment at higher levels and this has led to a much more open culture where people are prepared to accept and implement new ideas. There was a real feeling of pessimism about changes occurring unless there was an opening up of the ranks of the senior correctional staff to outside recruitment. It was acknowledged (with great pessimism by some) that the unions covering the custodial officers had stopped that policy ‘dead in its tracks’ very successfully and that until that changed, there were unlikely to be any changes in departmental administration.

The feeling on the subject of lateral entry was strongly expressed by many participants. The need for lateral entry was also thought to be so central to the Department’s reform process to enable effective changes in Departmental human resource management policies (including disciplinary processes) that it is the subject of a separate recommendation (Recommendation 27).

Training: Senior Managers and Governors

Many of the governors feel that they are not trained in either the awards operating within the Department or their powers under those awards and agreements. They do not feel confident in their industrial dealings with particularly the unions covering the correctional staff. Many of those involved with the unions feel that people with strategic skills are neither attracted to, nor involved in, the union movement. This makes it very difficult to re-focus the unions towards being involved in what the Department’s future ought to be.

Opportunity for management and the unions/industrial associations in the future

Considerable scope exits for the Department’s unions and professional associations to model themselves on other modern, articulate and relevant unions and industrial / professional associations to work collaboratively with management to achieve mutually desirable goals.
Part 3  Background to the current disciplinary system

The disciplinary system and organizational practices and culture

Morale and motivation of staff: personnel policies

Disciplinary policies do not operate in a vacuum and cannot be viewed in isolation from organizational practices or its culture. They are essentially adjuncts to the human resource management policies and practices of the organisation. Accordingly, they must be assessed in terms of how they contribute to meeting the overall goals of the organization. If they do not assist in meeting those goals, or the way they operate does not reflect the values and aspirations of the organization, they need to be changed.

The approach to disciplinary issues and grievance handling procedures is one of the best demonstrations of the management ethos and attitudes to personnel operating in any organization. Moreover, while only one contributor amongst a range of factors, a positive approach in this regard is also important for developing good morale and motivation among staff. Indeed, the indicators which give most insight into an organisation's well-being and ability to perform at high levels relate to the morale and motivation of its people. Human resource policies and organizational values and standards, particularly those relating to transparency, accountability, fairness, consistency and equity shape the culture and are central to the success of high performance organizations. Currently the morale and motivation of a substantial proportion of people in the organization is impaired by the organisational culture.

Organizations, particularly those that have long histories and strong cultures developed over time in environments very different to that which exists today, often have considerable difficulty in accepting the need for change, in redefining their core business, developing new ways of doing their business, accepting the need for and acquiring new behaviours and attitudes as well as the acquisition of new skills essential to survival in a new environment. All organizations are in a state of transition, as they change from yesterday's organizations into entities that reflect community, government and stakeholder expectations of today and prepare for further changes for the future.

Responsibility for organizational change

In this regard, the morale and motivation of the Department are not the sole responsibility of management. The best organizations are those where that responsibility is viewed and accepted collaboratively between the workforce and management. In the case of the Department, significant opportunities exist for the unions and professional associations to work collaboratively with management to create the sort of organization and working environment which best meets the needs of all stakeholders.

Escalation of minor matters

In this regard, analysis of issues referred to the Department's Investigations Review Committee over two years prior to this review, and matters of concern raised by the various vocational branches of the PSA, indicate that over time a culture had developed which encouraged matters to be escalated beyond the local level for resolution. Many incidents which commenced as relatively minor matters of under-performance or interpersonal conflict were often not being addressed as such.
Consequently, inappropriate levels of investigation were occurring considering the original nature of the allegations. The result was a lack of confidence by staff in the grievance management process and considerable cost to individuals through lost wages and to the Department in workers' compensation. Of particular concern to the Department and to the unions and professional associations was the adverse impact on staff morale.

Having identified difficulties in the area, the Department began to make changes in 1999 by devolving much responsibility for disciplinary investigations to governors and regional commanders.

**Categories of referral to IRC**

Issues referred to the Investigations Review Committee were divided into three categories:

- **Category 1** includes matters to be dealt with at the local level. These are allegations of minor breaches of discipline which, if found to be true, are expected to result in counselling, a warning or some other local action which does not require formal disciplinary action.

- **Category 2** matters are those which, if found to be true, warrant the institution of formal disciplinary action resulting in punishment no greater than a caution or reprimand. These matters may be referred to an investigative unit for full investigation or to the relevant regional commander/director with the recommendation that a preliminary inquiry be instituted.

- **Category 3** matters are those which, if found to be true, are expected to result in a fine, demotion, direction to resign or dismissal. These matters may be referred to an investigative unit for full investigation or the Senior Assistant Commissioner Inmate and Custodial Services or Assistant Commissioner Probation and Parole Service with a recommendation that a preliminary inquiry be instituted.

**Training and evaluation**

Training for managers in the new procedures and a pilot program of accredited training in dealing with workplace conflict began in March 2000.

To strengthen this work, the Executive Director, Human Resources Management, recommended the development of a strategic plan under the guidance of a steering committee to ensure progress milestones and evaluation mechanisms were established and implemented. The retention of an independent expert to provide advice and facilitate the review process was also proposed.

This proposal was supported by the Commissioner and the Inspector-General. An *Interim Report* was delivered by the consultant to the Department in January 2001. This report builds on the earlier work and subsequent review work undertaken since that date addressing the following terms of reference.
Part 4: Analysis of the current system

This part of the report analyses the comments received during the consultation process relevant to the disciplinary and complaint handling structures and procedures of the Department, focusing in particular on the Investigations Review Committee (since restructured). Objectives and recommendations concerning the disciplinary system and process are set out in Part 5.

Culture and core business

As discussed earlier, what became very clear during the consultation process was that many considered that the disciplinary system and the relevant policies and procedures were simply an adjunct of, or a manifestation of, the human resource management practices and procedures of the Department. Further, the disciplinary system could not be looked at in isolation but was a very clear manifestation of the Department’s managerial ethos. There was seen as being a divergence between the new managerial initiatives the Department had introduced and the adherence to the old disciplinary system.

Accordingly, the report must be viewed against the comments made in relation to matters such as changes to the core business and culture of the Department, the managerial attitudes and approaches of the Department and related human resource management policies and issues which have often been the flashpoint causing the invocation of the disciplinary system.

Culture and industrial relations

This review was in part brought about by union pressure following industrial discontent and consequent agitation about the disciplinary system. This was unsurprising given the union’s role in ‘picking up the pieces’ for those who had been the subject of the disciplinary process and the consequential insights they had into the operation of the system as well as the enormous pressure many union delegates had been placed under in attempting to mediate the demands of their members.

In this regard, there were a lot of comments made during the course of the consultation about the role of the unions in relation to the existing culture of the Department and the role that might be adopted in changing that culture. Probably no disciplinary system will work, let alone be accepted, where it is at odds with the prevailing culture of the organization, particularly where, at least in some of the custodial areas, the culture is powerful, pervasive and resistant to change.

Characteristics of complainants

What is striking when the actual investigations which seem to have caused many of the endemic and sustained disciplinary problems are examined is that they have arisen out of relatively small and petty incidents involving comments or behaviour which then rapidly escalate to become completely disproportionate. In many cases these over-reactions reflect the insecurity that staff have in that they will react to anything which undermines their confidence and position in the organisation. Some of the characteristics of some complainants which the disciplinary system has to deal with are described more fully in Part 6 on grievance handling as well as in Appendix C.

Perceived problems of the current disciplinary system

The main problem or issues associated with the disciplinary system found by this review were:
- Absence of articulated goals or analysis of the workload
- Absence of accountability and benchmarks
- Underlying adversarial approaches which were punitive in their emphasis rather than being focused on organizational improvement
- Absence of organizational commitment
- Normal local management actions subject to review
- Investigations Review Committee (as previously constituted and operating)

These issues are discussed in more detail below, particularly the role and operation of the Investigations Review Committee, as previously constituted.

Absence of articulated goals or analysis of the workload

The goals of the disciplinary system have not been clearly articulated, particularly to those at middle management level, by those implementing the system.

There has been little critical analysis of the kind of matters which have commonly been the largest part of the disciplinary system (namely, work related grievances) and whether they could or should be dealt with more appropriately and expeditiously by other means and by other personnel, preferably at a lower, local management level.

What is also striking is the extent to which the majority of matters coming into the disciplinary system have arisen from essentially minor, and organizationally irrelevant, events. There appears to have been little organizational commitment to divert those incidents away from the disciplinary process towards a simple, complaint handling or grievance process without the full panoply of a quasi-prosecutorial inquiry.

Absence of accountability and benchmarks

There are ill-defined performance indicators for the system and few benchmarks according to which the effectiveness of the system can be assessed either from the perspective of the Department or those who are part of the process. This has been particularly the case in the areas of the delays which have occurred at the various stages of an inquiry or investigation.

The absence of any real benchmarks, or clearly stated objectives, has been regarded as demonstrating a lack of accountability within, and supervision of, the system. Even more seriously, those who are seen as the custodians of the system were often seen by some members of the focus groups as pursuing their own agendas and an outdated approach to personnel and organizational management based on fear and 'getting people' rather than having the objective of achieving individual and organizational behaviour modification. Whatever the accuracy of this perception, it is able to gain currency because of the lack of transparency of the current system.

Underlying adversarial approach

The disciplinary practices are seen to be based on an adversarial approach to finding guilt on the part of individuals rather than using the opportunity to develop and improve the person the subject of the complaint as well as the relevant management and relevant human resource processes and systems. There has been little organized attempt to learn from incidents which have been the subject of a disciplinary process of one sort or another to see if systems and processes can be improved let alone communicating those results to the wider organisation.
In addition, there was a perception that the discipline systems are weighted in favour of the complainants and against those complained against. In this regard, a number of participants said that there is a widespread feeling that people were constrained in their fear of complaining by their fear of the system. Even some Governors were afraid to use the system as they had seen what it had done to others both their peers and below.

Related to this was a perception that human resource management policies were being used improperly for disciplinary ends – particularly the transfer system. Conversely, it was also considered that the disciplinary system also had unforeseen impacts on the working conditions and entitlements of officers. For example, someone who is the subject of an investigation cannot be considered for transfer. A person who is the subject of an investigation and being considered for promotion cannot be permanently appointed to a position until the investigation is completed. The implementation and observance of timeframes and limits in which action must be taken may help to ameliorate some of the impact of delays on entitlements.

Absence of organizational commitment

There has not been an organizational commitment to training of those who could, and should, deal with workplace grievance issues thereby freeing up those personnel and other resources otherwise involved to deal with the more serious disciplinary problems with organizational implications. What details I have been given of the relatively few serious cases there are involving corruption, maladministration or the abuse of inmates and departmental personnel seem to indicate that those cases are dealt with appropriately in conjunction with the police or the variety of oversight bodies which have jurisdiction over the Department.

Removing minor and workplace related incidents from the disciplinary system

While there are benchmarks which, in my view, should be adopted for those cases to ensure that time periods are observed and individuals are notified of outcomes, the main area which should be the Department’s focus are the minor and workplace related incidents which should be dealt with expeditiously and at a local management level.

Organisational commitment to speedy resolution of disputes

There has not been a sufficiently thorough organizational commitment to ensuring that anyone involved in administering the system, for example, in conducting an interview, an inquiry or an investigation is properly trained, resourced and monitored in ensuring the process is carried out fairly, and expeditiously. One of the ways of demonstrating organizational commitment would be for the Department to relieve officers involved in conducting disciplinary investigations of their normal duties until the investigation is completed.

In addition, there has been little attention given to ensuring consistency of process nor of outcomes. That would seem to be the proper, and primary, responsibility of the Investigations Review Committee.

Normal local management actions subject to review

The competent trained managers within the Department – and there are many – deal with such issues quickly, fairly, firmly and consistently. The disciplinary system in some respects seems to have operated to further undermine the under-confident, ill-equipped or poorly trained managers by imposing a remote and arbitrary system, removing any vestige of real managerial empowerment, authority and accountability. To address this problem, a system of non-
reviewable actions which should be dealt with by local managers according to specified benchmarks be implemented, subject to a system of monitoring and supervision to ensure the system’s objectives are met.

The Investigations Review Committee

The Investigations Review Committee (IRC) was substantially reconstituted during the currency of this review. While this followed many discussions with relevant senior officers in relation to the comments made in my interim report, the re-constituted IRC was a departmental initiative which, in my view, was both appropriate and long overdue.

Criticisms of IRC as previously constituted.

In the event that the previous model or functions are thought to be appropriate, I set out below some of the comments and analysis of participants which might be considered by future decision makers in this area.

Workload of the IRC

The common perception was that more than two thirds of the cases coming before the IRC involved minor or trivial matters which not only wasted the time of senior officers but also should have been dealt with at local levels. Certainly the caseload analysis would suggest that about 75% of matters coming before the IRC resulted in a ‘No further action’ decision.

While that outcome is not necessarily consistent with the fact that those matters should be regarded as minor or trivial, a number of those spoken to suggested that the apparent preoccupation with relatively minor matters distracted the Department and its senior management and diverted resources away from dealing properly with corruption, criminality and gross incompetence.

Lack of delegation

Many thought it was a significant indication of the Department’s priorities that many senior people were not prepared to turn over control of investigations to properly trained and delegated officers but had to keep control over those functions themselves. Few matters which had come before the IRC had been returned to local management for local action. This was regarded as indicative of a lack of trust of local management and/or a lack of preparedness to involve local management in organizational improvement.

Further, that there had been very little importance placed on, nor funding allocated to, training locally appointed officers at an appropriate level to deal with the incidents of a workplace relations nature which formed the vast bulk of the workload of the IRC.

Absence of analysis

It was also suggested that the IRC operated on a very reactive basis in that it did not carry out an appropriate risk analysis or complaint assessment of the cases before the IRC before ‘using a sledgehammer to crack a nut.’ The ‘nut’ was invariably found to be an individual rather than an organizational procedure, system or policy. Some thought this was indicative of the wider departmental tendency to see all incidents in black and white, ‘guilty and not guilty’ terms rather than being seen as opportunities for personnel and organizational development and improvement.
The three category system of rating matters (serious allegation, less serious allegation and minor matters), which was the subject of a considerable amount of criticism was thought to be arbitrary, subjective, not based on any organizational needs or implications, introduced without any attempt at consultation, and not understood by many who had had to operate within its guidelines.

Databases maintained by the IRC

The maintenance of the IRC database by the EALB was the subject of a great deal of mistrust. A surprising number of those spoken to simply did not accept that the information stored on individuals was used for the stated purpose of identifying complaint trends and areas which might require strategic management action. A common response was that there had been very little strategic management action taken as a result of IRC initiatives or outcomes.

There was also a comment made by a limited number of participants that the corporate memory of many of those involved in the IRC was very long: further, that it would be very difficult for anyone who had been viewed as being ‘against the system’ or as having made, or being regarded as having made, frivolous or vexatious complaints in the past, to ever have a complaint taken seriously again.

Proposals for improving the disciplinary system are set out in the next part of the Report.
Part 5: Towards a new grievance and disciplinary system

Characteristics of an effective grievance and disciplinary system

Building an effective grievance and disciplinary system will not be an easy undertaking for the Department and will require significant commitment of resources, time and energy. As discussed earlier in this Report, one of the most important elements/features impacting on how a grievance and disciplinary system, and indeed, all human resource management policies and practices operates, is the prevailing culture of the organisation. It is the goal of all good organisations to develop a corporate culture which is strong, healthy, innovative and open to new ideas. This is not the current situation in the Department.

Nonetheless, with sufficient commitment from management, staff and the unions this is not an impossible undertaking. The feedback received during the consultation is that there is a significant commitment to changing the Department for the better. The Department needs to tap into this commitment and goodwill amongst staff and actively start to build the sort of organisational culture which will suit it best in the future.

In this context, the hallmarks of a new disciplinary system would recognise that:

(i) There needs to be a change of focus for the Department to become more supportive of organisational and individual change and improvement, rather than having as its primary focus an inquisitorial process leading to a legalistic / adversarial system designed to determine guilt or innocence. The focus on all workplace complaints and inquiries should be on altering behaviour and, where relevant, systems;

(ii) the Department needs to rigorously ensure that its resources and energies are not diverted by serial complainants nor by vexatious or frivolous complaints nor by those unwilling to accept the proper prerogatives of managers to operate fairly to get the job done;

(iii) managers would have an employment contract underpinned by a comprehensive performance agreement that addresses how effectively they deal with staff grievances;

(iv) the monitoring of the disciplinary system should be carried out externally to the Department;

(v) there would need to be reassurance about the processes and open communication about them; and

(v) people who are both the subject of accusations or those making the complaints should be able to talk to the person in charge of the investigation on a relatively frequent basis. This should be publicised as part of the disciplinary enquiry process.

A primary objective of the reformed disciplinary system should be to keep people motivated and working within the Department and not leaving because they feel significantly aggrieved, undervalued or not trusted.

The adoption and vigorous implementation of a range of positive objectives will assist in achieving this goal.
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The adoption and vigorous implementation of a range of positive objectives will assist in achieving this goal.
Objectives of the new disciplinary system

A recurring concern identified from those consulted during the review was that the objectives of the reformed disciplinary system need to be adopted, publicized and pursued at all stages of the system. In my view, the objectives should include at least the following:

1. The disciplinary process needs to be fair, transparent and consistent;

2. Clear guidelines setting out the time for action and the completion of stages of inquiry, investigation, action and report should be established, monitored and enforced. The principal, specific area of criticism of most of those surveyed was the delays which commonly occurred. It appears that an analysis of the statistics for the year 2000 showed that there were average delays of between 8 and 9 months in disposing of matters and that 10% - 15% of matters involved delays of over 2 years. Suggested maximum times for various stages of the process are set later in this section;

3. Sanctions should be established such that if the relevant time periods are not met by the Department or those the subject of the system that either the inquiry is dismissed or, in the event that the employee is in default, that the matter moves onto the next stage. In the event that the Department has not met the responsibility of observing the relevant timetable, the Commissioner must be notified by the officer in charge of the investigation so that he/she can notify the Inspector-General so that he/she can monitor the progress of the investigation. If the matter is determined by the Commissioner or Inspector-General to be of a serious nature he/she could refer the matter to an external agency or investigator with the view to taking carriage of the particular investigation or enquiry;

4. The Department should make every effort to ensure that wherever possible incidents do not fall into or become part of the disciplinary process. Only the more serious matters and matters having organizational implications should be dealt with as part of the formal disciplinary processes of the Department.

There were about four hundred complaints dealt with through the previous departmental processes, including the old IRC. Of these, 200 were immediately written off or no further action taken. Formal disciplinary action was taken on only about 30 matters;

5. Workplace related, non-reviewable, non-serious employee/ employee grievance issues need to be dealt with as closely as possible to the particular workplace where the precipitating incident occurred and by the relevant local management;

6. The relatively few matters coming within the purview of the disciplinary processes should be dealt with as a priority by properly trained and resourced departmental officers. The Department recognize that priority by ensuring that departmental officers so appointed should be released of their other duties until their particular responsibility at the relevant stage of the disciplinary system is discharged;

7. Processes and outcomes need to be consistent and penalties need to be both just and proportionate;
8. The entire process in particular, penalties and outcomes, need to be monitored by 'someone with clout' who is not part of the Department's chain of command and is, and is seen to be, independent. In my view, this should be a function performed by the Inspector-General;

9. The Department should be seen to be giving proper commitment to the process by:
   (i) establishing and funding proper training programs for complaint handling officers, for those conducting investigations and inquiries and for those monitoring the process;
   (ii) ensuring that those programs should be ongoing, i.e., not simply 'one-off', and be an integral part of the training of all officers at middle management level and above;
   (iii) ensuring that included in those training programs should be an outline of the options available to managers at the various levels for the kind of incidents likely to be of relevance to them, the skills necessary to analyze the nature of the particular problem or precipitating incident, the individuals involved and the organizational implications;
   (iv) ensuring that officers undergoing such training should be assessed as to their knowledge, skills and capacity in carrying out the relevant aspects of the disciplinary system and process. In other words, the training involved should not be simply a short course where only attendance (if that) is monitored;
   (v) ensuring that no officer be considered for promotion to a position having significant human resource management responsibilities unless he or she has successfully completed such a training program;

10. Those affected by any inquiry, either as a complainant or as a person the subject of a complaint, must be informed on a regular basis of the stage of the inquiry. This report recommends that that reporting be done on a three month basis in relation to matters which are the subject of a routine investigation or Preliminary Inquiry;

11. That officers in the various disciplinary and related areas (for example, the Security and Investigations Branch) should be rotated on a relatively frequent basis. This needs to be done to ensure that trained officers are brought into management positions, and that those in management positions realize that they will have to have the experience and acquire the skills to deal with complaint handling and disciplinary matters as an essential part of their duties. This may help to overcome the perception that those officers (and the system) are not an integral part of the Department's business. This experience should be part of an officer's development plan and integral to his/her career development plan and organizational succession planning process.

Recommendation 1: That objectives 1 to 11 setting out the minimum standards for an effective disciplinary system be adopted and implemented in relation to the grievance and disciplinary system.

Functions of the Investigations Review Committee (IRC)

There does seem to be a substantial role for a body such as the IRC to ensure consistency in procedures and, to the extent possible, with outcomes in relation to matters dealt with at the
local level. The IRC needs to have a watching brief on both matters with the obligation to report to an outside body, such as ICAC which it currently does on a monthly schedule.

It would also be appropriate for the IRC to be involved in the training program and for the dissemination of material to managers, especially to articulate what they can and cannot do and to seek for the local manager’s views on what the incident indicated to them in terms of overall departmental policies and objectives.

For example, if there are continual allegations or incidents of low level harassment or minor neglect of duties or non-observance of operational procedures, then there may need to be training programs or other managerial initiatives undertaken.

The IRC should have a substantial input into questions of organizational and individual assessment improvement.

The IRC needs to have the function of ensuring that local managers, in association with their immediate supervisors, attend to matters within their own province and do not remit matters to Head Office or anywhere else.

The IRC should be required to present a report to each Governor’s conference on outcomes and strategies utilized to deal with commonly recurring problems so that an organization-wide consistency can be promoted and departmental objectives achieved.

Recommendation 2: That the functions of the IRC be expanded to include:

(a) input into performance assessment and improvement;
(b) ensuring managers deal directly with minor discipline matters; and
(c) providing regular reports on outcomes and strategies utilized to deal with commonly recurring problems so that an organization-wide consistency can be promoted and departmental objectives achieved.

Renaming the IRC

The IRC was a body, which (when operating in accordance with its previous format) had attracted enormous hostility and distrust from across the organization. There was considerable skepticism about the way the Committee ran its affairs. There was a frequently expressed view that there were preliminary meetings of some of the IRC membership to predetermine outcomes. This was thought to be symptomatic of the lack of transparency in many of the Department’s disciplinary processes. Further comments have been set out at previously in this report under the heading ‘The Investigations Review Committee’.

At most focus groups there was considerable discussion about the IRC and whether it represented a new way of carrying out the disciplinary process of the Department. A considerable number had no real idea of what the committee did but were never-the-less suspicious, particularly about the motivation for the committee maintaining records of the matters/incidents where there had been no finding against an officer. There was a common view that the former IRC was a ‘star chamber’.

In order that the Department can achieve its goals in respect of transparency, consistency and accountability in its dealings with internal investigations, it is proposed that the IRC should be
renamed to reflect its revised role. A possible name could be the Internal Review and Assessment Board.

**Recommendation 3:** That the Investigations Review Committee be renamed to reflect its new role and function.

**Membership of the revised IRC**

The structure and membership of the IRC also drew considerable adverse comment, particularly as to the priority the Department had accorded to the investigation and scrutiny of relatively low level matters. A recurring criticism was that there were too many senior officers meeting on a disproportionately frequent basis with such (apparently) little organizational impact or feedback.

As mentioned previously, the IRC has only recently been reconstituted. Against this background, my only preliminary comment, from the standpoint of organizational analysis would be that peak disciplinary review and control bodies of this nature need to ensure a degree of independence from the departmental security assessment and disciplinary decision-making processes. This is particularly the case where there is a long history of mistrust of the IRC amongst many in the organization – especially amongst many within the unions.

I would also question whether it is appropriate to have as members of the IRC, two officers from the one unit, one having direct line responsibility to the other. It may also be appropriate for the Regional Commanders to be involved at this level to ensure organization wide consistency. This may also help to avoid the suggestion that the Regional Investigations Units can be, in a frequently made remark, ‘apt to go off on a frolic of their own’.

**Recommendation 4:** That the membership of the revised Investigations Review Committee be reconstituted to comprise the Director Probity and Performance Management Branch (chair), the Commander Security Investigations Branch and a Regional Commander (appointed on a three monthly rotational basis), Commander Corrective Services Investigations Unit (from the NSW Police Service).

**Recording of names on IRC database**

Names of individuals should not be maintained on the IRC database other than where there has been a formal investigation commenced or charges laid and upheld. Any officer whose name has been included on the IRC database should be notified to that effect within 7 days of that entry being made unless the Commissioner agrees in writing to details of the name being suppressed and the individual not being notified. In such cases, the Commissioner must notify the Inspector-General that he has agreed that the officer’s name be suppressed and the reasons for suppression.

**Recommendation 5:** That no individual’s name be maintained on the Investigations Review Committee database other than where there has been a formal investigation commenced or charges laid and or upheld.

**Recommendation 6:** That any officer whose name has been included on the Investigations Review Committee database should be notified to that effect within 7 days of that entry being made unless the Commissioner agrees in writing to details of the name being suppressed and the individual not being notified. In such cases, the Commissioner must notify the Inspector-General.
General that he has agreed that the officer's name be suppressed and the reasons for suppression.

**Recommendation 7:** To maintain the integrity of the process, no databases, other than the IRC database is to be maintained where a formal investigation has commenced.

**Review of IRC operations by Inspector-General**

It would be appropriate that there be a review after a twelve month period of the way the IRC is operating against the background of the proposed new complaint handling and disciplinary system. There should be an analysis of the workload and outcomes of the IRC over that period to see what organizational implications there are in terms of:

(i) the areas from which complaints and disciplinary issues arise analyzed against:

   (a) categories of personnel involved (custodial, non-custodial, Probation and Parole, AOD workers etc.);
   (b) centres and parts of centres, other areas, court transport etc.;
   (c) incidents;

(ii) outcomes (along similar lines to the present) i.e., no further action, reprimand warning, counseling, departmental charges, criminal charges. I suggest that those matters which had resulted in a finding of 'no further action' should be analyzed further to see whether they could be dealt with at a local management level;

(iii) local management action taken, whether trends are evident, whether departmental goals were being met as well as the objectives of consistency, fairness and proportionality and what implications there were for organizational matters such as training.

**Recommendation 8:** That the Inspector-General undertake a review of the operation and effectiveness of the new Investigations Review Committee once it has been operating for 12 months.

**Independent review of disciplinary process**

There was a strong call by those who were part of the process of consultation for systems of accountability to be introduced and maintained over the disciplinary process. In my view, there needs to be accountability to an independent body, particularly as to the process and the observance of objectives and guidelines.

The question of 'who guards the guardians' is one of particular relevance to this Department. In my view, the system needs to have the checks and balances appropriate to any disciplinary system operating in an administrative environment. I do not suggest that there should be another appeal process to replace, amplify or supplement that of the Industrial Relations Commission or of GREAT nor of any review or appeal against individual outcomes.

It would be naïve to suggest that a court or tribunal would be an appropriate, or even expert, body to test such allegations or that any of the individual officers of the Department would have the resources to mount a challenge with all the preliminary or interlocutory work which would need to be done as part of any such proceedings.
Need for informed and independent scrutiny

However, my limited inquiries in relation to those matters raised, suggested that it would take a person with substantial familiarity with the Department, its environment and processes to have the expertise to know where to look, and to know who to talk to, before any inquiry would be warranted or even effective. This is a problem which has bedevilled supervisory agencies such as the Ombudsman and ICAC in the valuable work they do on discovering, let alone analyzing the causes of systemic, organizational corruption.

What is needed is the capacity for an authority which has the expertise, to carry out a speedy and effective examination of the processes which have been followed to ensure that the objectives of the system are being pursued and that the principles of natural justice are being observed.

For example, a common complaint was that officers associated with the old disciplinary system pursued vendettas against individuals or limited inquiries and investigations to achieve a certain end or, for example, to ensure that a relatively low level officer was the subject of an investigation and that those higher up in the supervisory ranks were not the subject of inquiry. The revised and reconstituted IRC should enable the Department to demonstrate its commitment to a more transparent, speedier and fairer system.

Another complaint was that surveillance was authorized and used without any independent monitoring of the justification or the resource usage involved. Few substantive details were ever provided to substantiate those allegations and, given the terms of reference and limited timeframes of this review, it was not possible to investigate those assertions.

The Inspector-General is in a unique position to provide such insights based on his particular knowledge of the Department and its operation.

In my view, the Inspector-General is ideally placed to carry out such speedy and expert inquiries as to the processes involved and to re-direct inquiries without the usage of wider government resources. Questions of resource usage and the justification for surveillance are properly matters for the internal departmental administration and accordingly this would seem an appropriate role for the IRC.

The Role of the Inspector-General

The role and functions of the Inspector-General has been defined in the Crimes (Administration of Sentences) Act 1999.

The principal functions of the Inspector-General include, as a primary function, the investigations of the 'Department's operations and the conduct of the Department's officers'. They do not extend to carrying out those operations. That is the role, function and responsibility of the Commissioner.

The Department is already subject to external scrutiny by both the ICAC and the Ombudsman.

There is always the potential for tension in any organisation between the CEO's role and that of any entity, internal or external, scrutinising the operation of the organisation and the conduct of its officers. The extent and nature of the tension is often a reflection of the personalities involved and the way they perceive their respective roles.
It is impossible to be too prescriptive of the limits or extensions of the respective roles in the absence of specific examples. In terms of this Department this is particularly the case given the organisational, inmate and environmental dynamics in which the Department operates.

In order to minimise this tension and maximise the value of both roles and perspectives it is critical that clear parameters are developed to define respective roles, functions and responsibilities.

It is not the intent, nor within the terms of reference, of this report to look in detail at the roles and functions of either the Commissioner or the Inspector-General. These are currently defined elsewhere.

This report does not envisage any extension of the powers of the Inspector-General in an operational sense.

The role of the Inspector-General has been defined in other jurisdictions and organisational contexts as providing advice to the Commissioner and the Department on a range of matters intended to improve the operational or resource usage of the Department.

The issue of the Department's approach to surveillance (as an aspect of, or precursor to, disciplinary action) provides an example of the respective functions. The Department is responsible for all surveillance operations. Only in the event that a surveillance operation is to continue for a period longer than six months should the Inspector-General be consulted and, even in those circumstances, it would not, in my view, be appropriate, for the Inspector-General to be involved in any aspect of the surveillance itself.

The Inspector-General's responsibility is to ensure standards are followed and proper protocols are developed and observed.

Review of delays

While it can be expected that there would be delays in matters where there were police investigations or court cases where delays were essentially outside the hands of the Department, there was a commonly expressed view that, in relation to serious matters, any delays over 6 months must be reported to the Commissioner and, if no effective action is taken in that time, to the Inspector-General.

The Regional Commander for the area concerned should be responsible for monitoring the outcomes and assessments of local Governor-Managers (ideally on a three monthly basis) and should report on any matters in which there are concerns to the Commissioner. That process should be subject to the annual review by the independent review body and monitored by the Inspector-General.

I also suggest that the Inspector-General should make recommendations as to whether, for example, the investigation consider further evidence, be discontinued or, as a last resort, that an external agency or body should take over the inquiry / investigation completely in the event that there were any delays over 6 months.

The IRC should make recommendations as to whether, for example, the investigation seek further evidence, be discontinued or in the event that there were any delays over 6 months then
the matter be referred to the Inspector-General to determine whether an outside agency (not the Inspector-General) should take over the inquiry/investigation.

Recommendation 9: That the officer in charge of any investigation which extends beyond six months report the reasons for the delay in writing to the Commissioner and the Inspector-General.

Referral of review in the case of extensive delays

All inquiries or investigations are conducted through Departmental channels, or in conjunction with the police or bodies such as ICAC and the Ombudsman. However, from time to time, information may come to the attention of either the IRC or the Inspector-General that an officer conducting an investigation has not considered certain matters or appropriate evidence or that he or she is pursuing an inquiry that is not warranted (for example, either because the matter might be too minor or it is felt that the particular officer might be too closely involved).

Again, it may be that the responsible officer is delaying the process or incapable of dealing with obstruction or stalling of an investigation in an appropriate way.

As noted elsewhere in this report, many delays are caused by the officer, the subject of the complaint, either intentionally, or for reasons beyond his or her control, not complying with the timetables set out in this report. For example, it may be that a complainant or a vital witness goes on long term sick leave.

In such circumstances, there needs to be a facility to ensure the rights of others involved, as well as the Department (with its overall responsibility for the maintenance of staff motivation and welfare) are not affected.

In such circumstances it is appropriate for both the IRC and the Inspector-General to consult with the other to ascertain the reasons for delay and to ensure the processes are not being manipulated. They may then determine that there is a need to consider further evidence, to discontinue an investigation or have the matter referred to an external body or agency – other than the Inspector-General – to conduct or complete the inquiry.

Recommendation 10: The IRC or the Inspector-General may require an officer conducting an investigation to:

a) consider further evidence
b) to discontinue the investigation, or
c) after consultation with the Commissioner to refer an investigation to an external body or agency (not the Inspector-General) in the event that it exceeds, or is not completed within six months.

Surveillance protocols

Another complaint was that surveillance was authorized and used without any independent monitoring of the justification or the resource usage involved. Few substantive details were ever provided to substantiate those allegations and, given the limited timeframes of this review, it was not possible to investigate those assertions.
It has to be emphasized that questions of resource usage and the justification for surveillance are properly matters for the internal departmental administration. Only where surveillance is to continue for extensive periods should there be a monitoring of the reasons for the continuance of such surveillance.

Recommendation 11: That there be a protocol approved by the Commissioner, setting out the steps needing to be taken for the authorisation of surveillance operations, including the officers authorised to direct that surveillance be commenced, continued or discontinued.

Recommendation 12: That the Commander of Security and Investigations review and provide a report to the Commissioner, each six months regarding decisions taken for surveillance of officers of the Department, the justification for the continuation of that surveillance and the resources allocated to that surveillance; where surveillance is to continue for a period of longer than six months then the matter should be referred to the Inspector-General.

Dealing with minor matters

This report recommends that there be a distinction drawn between workplace related matters and non-serious employee/employee grievance issues should be dealt with at all times. The submission from the Inspector-General (Appendix C) makes recommendations as to what matters should be regarded as appropriate to be dealt with locally and as part of a system of non-reviewable matters. I agree with those categories as a starting point for discussion in relevant programmes.

As is evident from earlier sections of this report, I agree with that part of the submission from the Inspector-General (Appendix C) that there should be a distinction drawn between workplace related matters and non-serious employee grievance issues.

Non-reviewable decisions

Non-reviewable matters are those which are within the preserve of local managers. A list of those has been set out in the submission from the Inspector-General's Office (page 13 - 'Non-reviewable actions'). Complaints in relation to or incidents involving only those matters should not be subject of appeal or referral to any higher body. Inquiries as to the circumstances surrounding such incidents, if needed, should be carried out locally within short time periods.

All disputes involving minor infractions should be dealt with in the employee management system. There should be no right of appeal against such decisions other than where there had been a breach of procedures amounting to a breach of the rules of natural justice or a decision which the IRC considered outside the normal range of sanctions.

Recommendation 13: That minor infractions be dealt with directly by management without referring the matter to the IRC, without right of appeal other than where there has been an alleged breach of procedures amounting to a breach of the rules of natural justice or a decision which the IRC considers outside the normal range of sanctions.

Records

Many focus group participants, including some managers, felt there were irregularities and inconsistencies in the way records were kept as part of the inquiry and investigation process.
Many managers were criticised for their failure to document processes and to give basic documents to the person the subject of the investigation.

**Removal of letters of reprimand**

Letters of warning/reprimand where resulting from local workplace relations complaints should also have a life span of three years unless there are good organisational or security reasons capable of objective justification for their maintenance.

**Recommendation 14:** That letters of warning or reprimand for an officer to be retained in a file other than the officer's Personal file and archived after three years of their date of issue.

**Recommendation 15:** That names of officers retained on the Investigations Review Committee database be removed after three years unless otherwise directed in writing by the Commissioner after consultation with the Inspector-General.

**Documentation of disciplinary matters**

It was widely suggested that many managers do not realize the necessity to document the process and to give that document to the person the subject of the investigation. There must be time limits stated with the documentation given to any person the subject of disciplinary proceedings. While it appears that this is often done at the Preliminary Investigation stage, it does not seem to be adhered to thereafter. It is important that all relevant training programs include reference to these issues.

Where an officer is the subject of an inquiry, the time limits for the various stages of the inquiry should be set out in the documentation given to the affected officer.

**Recommendation 16:** That managers ensure that disciplinary matters are properly documented and that the appropriate forms and/or letters are provided to employees involved in disciplinary processes.

**Department staff records and databases**

Part of the perceived problem of the lack of transparency of the system has been the maintenance of central databases (to which individuals have no access) and local data bases. There seems to be a lack of consistency as to how and when local data bases are maintained, what material is included on them and what happens to them when a particular Governor moves to another centre.

In my view, Departmental guidelines need to be issued on this subject to include the requirement that access to the IRC data base would be limited to the Governor at Correctional Centre level and his or her successors and that a hard copy of any incident report be given to the individual concerned or affected. Part of the problem currently is that the Department fails to document what it has done to modify the behaviour of an individual.

I do not include Governor’s Diaries or Logs in this category as I do not understand those documents are the vehicles for recording actions or incidents with human resource management implications. However, where any database contains material which will be utilised in decisions regarding an officer’s position and entitlements then the officer should have access to the information contained on that database. Thus, if there is action taken on a
non-reviewable decision, then the database should contain details of the complaint, the assessment of the risk, the decision taken, and the officer concerned informed of the entry.

Other than where there has been a repetition of incidents identical with or similar to the particular incident which gave rise to the entry in later periods, the entry on the IRC data base should ideally be deleted within 3 years. However, this would require amendment to both the Archives Act and the Public Sector Management Act and there are also service-wide regulations addressing this. The agitation by staff and the unions for this reform is widespread and understandable. As it is unlikely that these amendments can be achieved in the short term, I recommend that the Department retains these details in a separate file which can be archived after three years with no record being retained on an officer's Personal file.

Where the Department considers that the record be retained beyond that period, for example, where it is considered that the incident is part of an ongoing course of conduct or behaviour or there are wider organisational reasons why the records ought to be retained then that matter ought to be reported to the Commissioner for a final decision with a brief summary of the reasons why the decision should be retained being noted on the relevant file. Where the Commissioner considers that the name of an officer should be retained as such a record, he should consult with the Inspector-General as to the course to be adopted.

Recommendation 17: That a policy be developed on the storage of personnel information on the Department's records and databases addressing access, storage and duration of records, with a view to minimizing access to Governor level and above, providing the affected officer with a copy of the record and the archiving of entries after three years if no further related matters have arisen in relation to the officer concerned.

Recommendation 18: That the IRC database be accessible to affected officers, via their Governor, so that they can view, or receive a printout of the status of any departmental investigation concerning them at anytime.

Recommendation 19: This database should also be available to the Inspector-General, the Executive Director, Human Resource Management and Regional Commanders.

Time limits: Non-reviewable complaints

There seems to be the opportunity for substantial injustices arising out of delays in cases where the bulk of evidence is of infractions etc., is not documentary in nature but is made up of individual recollections of events. Those delays compound, and exacerbate, employee relationship difficulties when those put in the position of being witnesses or, worse, adversaries, are required to continue working together or in the same environment.

The following are offered as guidelines for the maximum time periods in which various stages of a non-reviewable complaint would be dealt with. It should be emphasised that these are maximum periods and that it would be expected that most stages would be dealt with more expeditiously. In the event that longer periods are taken, then the matter should be immediately referred to the IRC with the requirement to report back within seven (7) days with a program to meet the time requirement.

All documentation required to be given to officers who are subject to investigations and inquiries should set out the relevant time periods.
Review of the Discipline and Grievance Processes and Procedures of the NSW Department of Corrective Services

<table>
<thead>
<tr>
<th>From time of receiving complaint to notification of receipt</th>
<th>7 days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual requested to provide details of any matters which he or she considers relevant</td>
<td></td>
</tr>
<tr>
<td>From time of receiving complaint to obtaining/compiling incident report</td>
<td>14 days</td>
</tr>
<tr>
<td>Complaint assessment/risk analysis</td>
<td></td>
</tr>
<tr>
<td>From time of receiving complaint to first interview with individual named</td>
<td>21 days</td>
</tr>
<tr>
<td>From time of receiving complaint to decision</td>
<td>28 days</td>
</tr>
<tr>
<td>Notification to IRC with recommendations if any</td>
<td></td>
</tr>
</tbody>
</table>

Recommendation 20: That the proposed time limits identified in this Report in relation non-reviewable complaints be adopted as a matter of policy.

Time limits: Reviewable complaints

It is difficult to establish hard and fast time limits for the investigation of serious matters or those where other agencies (for example, the police and the DPP) are involved.

However, to the extent that those stages are within the preserve of the Department, and the person subject to the investigation meets Departmental requirements with regard to time frames, then the following time limits are suggested:

<table>
<thead>
<tr>
<th>From time of the IRC receiving notification of incident to notification of individual</th>
<th>7 days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual requested to provide details of any matters which he or she considers relevant</td>
<td></td>
</tr>
<tr>
<td>Departmental fact finding inquiry</td>
<td></td>
</tr>
<tr>
<td>Conduct of a Preliminary Investigation</td>
<td>60 days</td>
</tr>
<tr>
<td>Where 'no further action' decision taken, matter referred to Commander</td>
<td>7 days</td>
</tr>
<tr>
<td>Security and Investigation for final decision</td>
<td></td>
</tr>
<tr>
<td>Individual notified of outcome</td>
<td>7 days</td>
</tr>
<tr>
<td>Decision on matter other than where criminal investigation commenced</td>
<td>120 days</td>
</tr>
<tr>
<td>Completion of total disciplinary process including EALB review and final decision by decision-maker</td>
<td>180 days</td>
</tr>
</tbody>
</table>

Where there is a delay anticipated of up to one month beyond the time frame specified above, then the IRC should be notified. Where the delay period extends for more than one month the Inspector-General should be notified.

Where there are delays for more than three months then the officer concerned with the inquiry or investigation should be considered for removal from the task. If the Department has still not completed matters within its own province within six (6) months then the matter be referred to the Commissioner and the Inspector-General for decision as to whether an outside agency or authority should conduct the investigation or inquiry.
Recommendation 21: That the proposed time limits identified in this Report in relation to reviewable complaints be adopted and enforced as a matter of policy.

Recommendation 22: Where time limits have not been observed with the schedules specified in the report and the delays have been caused by the officer conducting the review then the officer should be removed from the enquiry. Where the Department has not concluded the matter within six months the matter must be reported to the Inspector-General and the Commissioner.

Training Issues

There is a real feeling that the middle management of the department does not have the courage, confidence, capacity, qualifications, experience or interest in handling dysfunctional or destructive people, particularly those who have been aggrieved and nurse and nurture their grievances for long periods of time.

This crucial area of training needs to be imbedded in all Departmental management development programmes rather than being pursued as one-off, short courses. The experience with many such courses (which have been non-assessable) is that they have often not been taken seriously by some participants, as competence in this area is not seen as an essential management tool.

Recommendation 23: That all managers must complete approved and assessable training on change management, people management, grievance handling and dispute and conflict resolution.

It needs to be a mandatory requirement for all managers not only to have the training in the grievance systems as well as the disciplinary processes which are appropriate for the department but also that unless an individual does have such skills they should not be considered for promotion. This will ensure that the department and management give the proper commitment to training in these areas.

Recommendation 24: That an officer should not be considered for appointment or promotion to a managerial position unless he/she has completed an assessable Departmental training course or equivalent in disciplinary processes. Duty statements for relevant managerial positions should be amended to reflect this requirement as an essential criterion for appointment.

Training in preliminary investigations procedures

Since the review has been in existence, there have been a number of initiatives introduced to training officers, especially at the Executive Officer level in investigations techniques. This has been carried out with the support of the unions. There have been some questioning, appropriate in my view, as to why such training has not be carried out on an integrated basis. Not only is this the stated focus of Departmental training objectives, but is essential if organization-wide investigations are to be carried out.

Recommendation 25: That the Department institute on a regular basis training in disciplinary investigations techniques based on a careful analysis of which categories of staff need to be trained in this area.
Training for all stakeholders

It is unsurprising that a flashpoint for discontent within the Department is those areas concerning the grievance system and, in particular, breaches of discipline and the hearing process. Many of the problems which have occurred are a reflection of the frustration of officers with the changes which have taken place. There is a need for training in the disciplinary processes, the need to add knowledge to skills.

There also needs to be a training program for unions to make sure that they understand the processes work. There are considerable benefits to the unions in that, if matters are dealt with quickly and expeditiously, they will not then have to defend or become involved in long-term investigations and processes. These are both expensive and exhaustive as far as the individual is concerned, and costly to the union and demanding for its attention.

Recommendation 26: That the Department conduct regular training sessions for managers and union delegates/officials in the department’s disciplinary policies and procedures, including organisational cultural aspects of disciplinary issues.

Recommendation 27: That lateral entry recruitment policies that have been introduced and pursued within the Department be broadened to all areas and applicable to all positions.

Organisational needs if training insufficient

In any organization there are some people who resist change because they do not understand it or they fear it. Training helps many people, but not all. There are others who actively sabotage management initiated change, despite all attempts to involve them in the processes of change. The organization simply cannot be expected to perform at the level expected by government and to meet its objectives if the organization is not in a position to remove people, particularly from key positions where they are hampering or deliberately resisting change. This issue was addressed in the reform process of a number of Australian police agencies and a provision was added to enable the police commissioners to “dismiss those people in whom he/she (the police commissioner) had lost confidence”. While such a recommendation would go beyond the terms of reference of this review and would have serious industrial and organisational implications, it should be a matter flagged for discussion with both government and the unions and professional associations.

Risk assessment and complaint analysis

There needs to be training for all managers to include matters such as the seriousness of the incident, particularly in terms of the impact on individuals, on the organization and on the delivery of organisational goals and policies, the level and nature of the evidence or allegations, the best method of behaviour modification and management and the history of the individual.

It should also be part of the performance review of all managers that they be assessed on:
(i) their knowledge and capacity to apply the variety of human resource management policies and options available to them arising from workplace incidents;
(ii) their capacity to monitor improvements in the performance of officers.
Recommendation 28: That risk assessment and complaints analysis be incorporated into disciplinary system training.

Recommendation 29: That a part of each manager's performance review should include an assessment of their knowledge and capacity to apply the variety of human resource management policies and options available to them arising from workplace incidents, and their capacity to monitor improvements in the performance of officers.
Part 6: Implementing effective grievance policies

Effective grievance handling policies, procedures and practices are essential for a healthy, accountable and dynamic organisation. Not effectively addressing genuine workplace grievances is unjust and fosters declining staff morale and decreasing staff productivity. However, for policies to be effective they have to not be only sound policies but actively supported by all staff, especially senior management, within the organisation.

Issues raised by the focus groups

While the Department's Grievance Resolution Policy was generally supported, some focus group participants questioned managers' ability to effectively uphold and apply the policy in the workplace. On the other hand, there was also a reservation that such a process was inappropriate for many situations in a quasi-militaristic environment, with the pursuit of grievances often being seen as part of the disciplinary process.

The thrust of grievance policies should be that the grievance handling, conciliation and ADR processes should all be designed to prevent matters going down the disciplinary pathway except as a last resort. As has been mentioned before in a different context, the existing system is seen as being modeled on a legalistic, adversarial system grafted on to an inquisitorial process rather than a remedial or behaviour-modification approach within a human resource management framework.

There should be consideration given to a change of terms to remove or lessen the 'heavily-handed sanction approach and expectation', for example, by training in 'complaint handling' rather than 'disciplinary training'. The problem is that many grievances sometimes are dealt with as part of the discipline policy and the incident becomes such that the matter becomes appropriate for the investigation processes to take place. In this regard, there needs to be greater definition of what a grievance is, essentially concerning minor matters, which do not have organization wide implications and which are capable of resolution in an expeditious way in the local management environment.

There was a widespread view that additional training was required for staff in implementing grievance handling procedures. There was a four day training module but there were difficulties in getting people out to the centres who had participated in that training module. A number of staff had been trained but in some cases considered by focus group participants that the Department incorrectly targeted the people who were doing grievance training. It was necessary (and it was intended) to train the managers first. However, those who attended were not usually at the requisite level of management who had to deal with the flashpoints for grievances or staff complaints. Some managers apparently thought that such training was 'beneath them' or were not prepared to make the time available to attend the relevant courses.

Observations on the nature of some complaints

While the majority of grievances are clearly genuine and needed to be addressed, what is striking is how so many of both the grievances and disciplinary matters investigated or the subject of comment arose from relatively trivial incidents. They often became, sometimes by virtue of the process itself, magnified to enormous and totally disproportionate levels. Many incidents which were described to me arose out of a workplace related issue or an
employee/employee relationship difficulties which clearly should have been better handled and (usually) handled more promptly.

Quite often there was a genuine core to the original grievance but the factors which led to the continuation of the complaint or issue arose out of the system or the way comments or allegations were made or individuals handled. Dealing with such continuation of the grievance or disciplinary matter requires a huge and disproportionate use of departmental and other resources in dealing with what is a relatively small number of officers.

The perception of those consulted was that few officers who had 'gone the distance' with a disciplinary inquiry ever made much of a contribution to the Department or their own careers thereafter. What was thought to be just as damaging was the impact of the behaviour of those around the aggrieved party.

One of the other organisational problems is in dealing with the widespread perception that the only way the Department can and will deal with the problem is by invoking and manipulating medical or psychological processes, having the officer assessed and examined with a view to discharging him or her on medical grounds as part of the 'desperate scramble to get rid of the problem'. This is inappropriate. The fact that proper grievance handling procedures are not followed is also a reflection of how many managers see the existing disciplinary system to be overly cumbersome and inadequate to deal with the 'human fallout' of the system.

On the other hand, the Department's core business and especially the changing nature of the inmate population detailed elsewhere in this report requires the employment of people who have been the subject of proper and detailed psychological assessment. The Department may need to consider the organisational implications, and the personality traits and behaviour, of those who become involved in serial and unsubstantiated complaints with particular reference to the Department's obligations to properly screen and assess its officers, not just at the time of initial recruitment but when there are obvious manifestations of stress.

In this regard, there should be an assessment of what resources of the Department are being taken up with grievances, complaints and disciplinary matters involving serial complainants or officers involved in serial offences of any category. The Department runs a quasi-military, command and control structure which in some areas needs to be capable of immediate implementation given the issues of inmate containment and management.

Similarly, the other officers the subjects of complaints and grievances have rights which need to be considered. At the present time, there is a widespread perception that those complained against by persons known to be serial or obsessional complainants are left to their own devices and have no rights to know the subject of allegations against them or the progress of any investigation.

It might be part of such a review for the Department to consider ways of strengthening its management options to deal with those who continue to make serial complaints (defined here as more than three in any two year period) and which are found to be without foundation. Such serial unfounded complaints interfere significantly in the fulfilment of their own and fellow employees' employment obligations and in the entitlement of management to get on with its main tasks.

As so many participants in the focus groups stated 'this job would be easy if it just involved dealing with the inmates. The biggest problem is dealing with other staff'.

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**Recommendation 30:** That after the new disciplinary and complaint handling processes have been in operation for about 12 months, the cases involving individuals who have been the subject of complaint or who have complained against the Department be examined by the Executive Director of Human Resource Management to see what, if any, common issues there are in the incidents or the individuals involved and whether, in relation to serial complaints that turn out to have no foundation, the psychological profiling tests of the Department need to be re-assessed or other management options considered.

**Recent work undertaken by the Department**

The Department has recognised grievance handling and related matters as a significant area of human resource management requiring urgent attention and significant work is in progress to address. This work includes developing new grievance handling procedures, developing a systems solutions approach to dispute resolution and dealing with bullying in the workplace.

**Grievance handling policy procedures development**

Since the review commenced, the Department has in consultation with the unions, staff and other key players developed a new draft Grievance Handling Policy and Procedures. The new policy represents a significant advance in good staff management practice, but only through comprehensive implementation and senior staff commitment will it be successful. For this reason it is recommended that training in the new procedures be given urgent priority.

**Recommendation 31:** That the Department provide additional Grievance Policy training across all categories of relevant staff.

**Systems solutions approach to dispute resolution**

To deal with more long-standing, more serious or systemic grievances that may require a more intensive commitment of staff and resources for successful resolution, the Department has commissioned the development of a policy based on using a systems solutions approach to dispute resolution.

A systems solutions approach attempts to not only address the grievance in isolation, but considers the context and environment in which the grievance or dispute has occurred. That is, if there are contributing factors that are a consequence of organisational structure, systems, management and culture, these are also addressed in resolving the grievance or dispute. So, for example, this approach would also be structured to deal with issues of senior staff collusion or obstruction, where it occurs, to the successful resolution of grievances.

In this manner, the underlying systemic issues are also addressed in addition to dealing with the particular complaint. Ideally, the outcome is that staff involved have the opportunity to change and develop and the Department takes responsibility for functioning on a productive basis in resolving the dispute or grievance. The approach has much to commend it, but again it will only function effectively if there is both sufficient staff training and senior management commitment to the process.

**Recommendation 32:** That the Department adopt a systems solutions approach to resolving more long-standing, more serious or systemic grievances and support this approach through appropriate levels of staff training and senior management commitment.
Policy and training in relation to workplace bullying

In the early focus groups there was considerable scepticism about the implementation of the bullying policy and an impression that middle management and senior management would not be familiar with the policy and would not take on the responsibility or training to develop it nor pursue the policies that had been devised and promulgated to meet the Department's legal obligations.

Since then, the policy has been revised and a range of implementation workshops have been conducted. As workplace bullying leads directly both to grievances by those affected and disciplinary charges for the offenders, further implementation of the policy must be a department priority. Only in this manner will the Department send out the clear signal that bullying in the workplace will not under any circumstances be tolerated.

Recommendation 33: That the procedures to deal with bullying in the workplace continue to be implemented through staff training and taking disciplinary action against offenders.

Legislative changes

As acknowledged in the report, many of the changes recommended, particularly regarding the deletion of names of staff members from official records and the powers of the Inspector-General would require amendment to a number of Acts beyond those specific to the Department of Corrective Services.

However, given government directions and policy and the commitment to improvement of employee relations, this step would represent critical endorsement of the change to many of the negative aspects of the Department's current organisational culture.

Legislative changes would be necessary to properly implement recommendations 10, 15 and 17 of this Report.

Recommendation 34: That the Department recommend to the Minister that legislative changes be made to give effect to recommendations – 10, 15 and 17.
Acknowledgements

I wish to thank Michelle O’Heffernan for her valued assistance in organizing many of the consultation sessions which preceded my interim report and Marilyn Myers for the same function in relation to the consultation sessions which preceded the final report. In addition to their organizational skills and assistance, both officers had keen and valuable insights into the way the Department has operated and were able to point me in various directions where further inquiries were made which were valuable in verifying or challenging some of the comments made in the focus groups.

I am also grateful to those who participated in the focus groups and to the large number of officers who spoke to me privately and in their own time with various insights about the way the Department and the disciplinary system operated.

In particular, I should acknowledge the participation of members of the unions and various professional associations for the insights and involvement in many aspects of this review.

I wish to acknowledge the assistance of Steve Griffith, Investigations Manager with the Office of the Inspector-General’s Office for his assistance in the preparation of the original submission and its adaption after his involvement in the consultation sessions associated with this review.

I also wish to acknowledge the invaluable assistance of Professor Timothy Rohl in assisting with various focus group discussions, the analysis of the comments made and the finalization of this report.

Finally, I should also place on record the time and assistance given by a number of Departmental officers in participating in the processes of this review. I hope that the recommendations of this report will assist them in their work in improving the Department and the services it performs.

Brian Knox
Edmund Barton Chambers
22 October, 2001
Appendix A: Overview of other personnel issues

While this Review has focused on disciplinary processes and grievance policies, these cannot be seen in isolation from the other personnel practices of the Department. This Appendix presents some preliminary observations on a number of issues that were identified as problematic by participants in the Focus Groups. It is not intend here to propose solutions to these issues but to identify them for further consideration, if warranted, by the Department. It should be noted that some of these issues are already in the process of being addressed.

Recruitment process

There was significant concern about the recruitment process and, in particular, the psychological testing of recruits. In this regard, there was little understanding of the psychological testing system and why it was introduced. It was believed that many good officers could not pass the test and those who resign would not be able to get back in. There was also criticism about the lack of consistency between interview panels. Some participants thought the Department was open to legal challenge on the basis of its recruitment policies and practices.

Related to this issue, was the issue of transfers, with some focus group participants seeing them as punitive in nature and with the merit principle not being systematically applied. In the light of these concerns, currently the Department is reviewing both its recruitment policy and transfer policy.

Female employees

There had been a feeling there had been a push towards the recruitment of more women within the Department on the basis that they were less confrontational and less able to be manipulated into the prevailing culture of machismo represented by inmates and some custodial staff. Many inmates who had problems with authority and, in particular, authority represented by male figures could deal more successfully if they were organised and services were provided to them by women. In 1983 there were mixed staffing quotas introduced and 21 percent of applicants for jobs within the Department are now women.

However, while there have been a number of studies carried out about how to keep women within the various areas of the Department, there is a much higher rate of attrition amongst women staff than there is for men. What is particularly evident is the dearth of women at the Assistant Superintendent level and above as well as in areas of union representation. There also appears to be a lack of dedicated mentoring and support for women or role models particularly for those in rural or country areas. There do not seem to be any real problems of a gender bias nature in areas of the transfer policy, the transfer lists or in the selection of those to participate in training courses.

Performance management systems

While there is a performance policy in place, it appears that actual performance appraisal does not occur as regularly as it ideally should. In this regard, the performance management system was implemented poorly. There is also need for a change element to be introduced into the performance management system. In addition, while everyone at middle management level
and above has the *Performance Management Manual*, there was a perception that the only time the principles set out in the *Manual* are applied is when something goes wrong.

There was some feeling that the professional development side of performance management systems was not sufficiently addressed. The result was that there was little enthusiasm to carry out the total performance management package as it reinforced the idea that it was simply a management tool to "get at" those who participated. One focus group participant remarked that, "one of the things we do poorly is not to manage good performance. It has been a lot more successful in the CSI areas on terms of quantifiable outcomes'.

Related to this area of criticism was that on an organisational level, there appeared to be no direct linkage of the outcomes of individual areas or centres with the Departmental policies and no reporting on the implementation of such policies. In this regard, the real difficulty the Department has is in identifying key performance indicators for the implementation of policies.

**Training**

Some Focus Group participants argued that there has not been a budget for staff development for some ten years and that training has become a football. "It is either pushed out to the centres and localized then it will come back to Head Office in then it will be a responsibility which is regionalised. Then it is a responsibility which is given to the governors, then the academy was established and the responsibility was given to the academy which in turn became a centralized focal point. Conversely, there was now a push for training programs to come from the academy and to be conducted in the centres".

It was considered by some focus group participants that there is a problem about the message being sent about decentralizing training because the implementing of training will then depend on the kind of managers in the various centres and their attitude to importance and need for training of their staff. In addition, training has also to be focused on the future with the changing and evolving nature of the various centres.

While there are different courses available, for example, the management development courses, and the academy is encouraging management development centres as well as the assessment centres, there is little incentive or encouragement for staff to participate in these courses. At the same time, it was recognized that there needs to be an acceptance of the idea that staff have a responsibility in conjunction with the Department for their own development and training.

Related to the issue of training, a constant theme amongst senior managers was: (1) the lack of adequate training; (2) the lack of feedback, both from supervisors and from peer; and (3) the lack of management support.
Appendix B: Characteristics of Complainants

The earlier consultation sessions and focus groups conducted prior to the interim report included a large number of officers who had been the subject of disciplinary proceedings. As has also been mentioned, virtually everyone who was consulted knew an officer who had been involved or affected by either the complaints or disciplinary system either as a complainant or a person the subject of a charge.

A large number had a story to tell about an individual known to them who had been treated poorly initially and who had gone on either to be destroyed by the complaint or to become obsessive in their consequent embroilment with the Department and their attacks on those involved. Many of those consulted had thought deeply about the impact the process had had on those involved and why those involved had reacted the way they had.

This section of the report is based on those comments and on my analysis of the files and cases shown to me from departmental and some union sources.

What is striking is how so many of both the grievances and disciplinary matters investigated or the subject of comment arose from relatively trivial incidents and became, often by virtue of the process itself, magnified to enormous and totally disproportionate levels. Many incidents which were described to me arose out of a workplace related issue or an employee/employee relationship difficulties which clearly should have been handled and (usually) handled more promptly. Quite often there was a genuine core to the grievance but the factors which led to the continuation of the complaint or issue arose out of the system or the way comments or allegations were made or individuals handled.

Many of those who were part of the early consultation processes of this review and who had been personally involved in an investigation or had been charged exhibited a degree of obsessiveness and a refusal to "let go" of their particular grievance against the Department or those who had been part and parcel of the process of investigation. A common feature of those described, and some of those who were consulted, was their obsessional focus on their grievance, a sense of overwhelming injustice, of being victimized by the organisation and its senior management and with a deep need to be totally vindicated. In some cases that need was combined with a desire for retribution. It was sometimes impossible to distract those individuals from raising their grievance to the exclusion of all other areas of discussion.

The histories of some of the complainants in pursuing, in an unrelenting and all-consuming way, their grievance through departmental channels, through outside agencies and against individuals who they perceive as having been responsible for the system and the impact of the system on them, demonstrate many characteristics of those associated with offences of stalking. Often the agitated and obsessional state of the individual seemed to be the product of that individuals running up against a complex system and what seems to be a Kafkaesque nightmare of regulation which they cannot understand, let alone manage or control. This can be a recipe for mutually disastrous and obsessional involvement with the Department – particularly for those who have the relevant personality traits.

Many of the traits of those who can become vexatious litigants or perpetual complainants were described by Professor Paul Mullen, Professor of Forensic Psychiatry at Monash University* as including "...combative, assertive, inflated self esteem, defiant, fanatical, hypersensitivity to criticism and distrustful." Some of those referred to in the consultation sessions clearly exhibited a substantial number of these traits. (Professor Paul Mullen "Address to the Federal Court of Australia" August 2000).
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PREFACE

Those who recognise that the Department's greatest asset is its staff, fully appreciate that motivated and committed staff are essential to the long-term success of the Department and its innovative and highly regarded inmate management and 'throughcare' policies.

It is widely acknowledged and accepted that staff need more than appropriate remuneration to maintain their motivation, and hence their commitment, to their employer's goals. Research has shown that other, 'hygiene' factors, which include the operation of a fair and equitable complaint handling and disciplinary system, have just as significant an impact upon the morale and motivation of staff as does remuneration. 'Equity Theory' research conducted by J Stacey Adams in the United States has conclusively shown that the motivation of staff is adversely affected when they believe that 'they have been inequitably treated in comparison to others'.

It is therefore clear that it is in everybody's interest to ensure that systems, which impact upon the morale of staff, such as complaint handling and discipline, are developed in a way that does not adversely affect and lessen their motivation and commitment to the Department and its objectives.

The process of handling and investigating complaints against employees now carries with it an expectation of fairness, justice, reasonableness and timeliness. Recent research into disciplinary systems and punishment suggest that,

"if punishment must be used, it is likely to be effective if:
  - there are recognised company policies governing the situation;
  - the punishment is given as soon as possible after the undesirable behaviour;
  - the punishment is moderate, rather than severe; and
  - it is applied consistently."

This document has been prepared by the Office of the Inspector-General of Corrective Services in recognition of the need to engender an acceptance and commitment of all stakeholders to looking seriously and fervently at opportunities for reform within the complaint handling and disciplinary systems currently utilised by the NSW Department of Corrective Services.

As outlined later in this paper, the Department has recently implemented changes to its complaint investigation and disciplinary system, such as the introduction of an Investigations Review Committee (IRC), investigator training and local complaint management training, with a view to streamlining the processes. These changes are commendable, however, further reform should now be considered to ensure that the highest possible standard of disciplinary system is achieved.

This paper will advance a model for complaint handling and discipline, the Complaint Management System (CMS). In summary, the model recommends a move away from a formal adversarial model to a managerial, remedial (developmental) model, which places responsibility on Governors and Managers at the local level to deal with complaints and effectively manage cases of misconduct and unsatisfactory performance.

The 'Employee Management System' (EMS) side of the model is substantially derived from the EMS model currently utilised by the NSW Police Service. The EMS model is predicated on three central themes;

(1) quick, local resolution of issues;
(2) behavioural modification; and
(3) decision making at the lowest possible level.

The theme of local management of complaints by Managers is advocated by the PSMO of the Premier’s Department within section 9-1.5 of the ‘Personnel Handbook’.  

It should be stated from the outset that the model advocated in this paper should be considered as ‘aspirational’. The model advocated would necessitate substantial changes to the current system and processes. As such, it should not be considered a ‘blue print’ for change, but rather a reference point or basis from which to work towards developing and refining the Department’s disciplinary system.  

More importantly, the model is intended to generate meaningful discussion that will hopefully progress and move the reform process forward and give it the attention and urgency that it requires.  

Finally, this paper and the model presented will be confined to the Department’s complaint handling mechanisms as they relate to complaints or allegations made against an officer or a group of officers. The paper will not explore the handling of ‘general issue’ complaints received by the Department. The handling and management of complaints of this type form part of another review currently being conducted by the Office of the Inspector-General.  

BACKGROUND  

Following continual approaches from staff and employee representatives regarding the impact of the Department’s disciplinary processes upon individual officers, the Inspector-General of Corrective Services recommended to the Department that it conduct a review of its Human Resources Management policies including Grievance Handling and Disciplinary practices.  

As a result of the Inspector-General’s recommendation the Department of Corrective Services established a ‘steering committee’ to oversight the review and commissioned, barrister Mr Brian Knox, to conduct the review and produce a report on his findings.  

In March 2001, Mr Brian Knox provided an interim report to the Commissioner of Corrective Services and the Steering Committee. The findings detailed in the interim report, particularly those in regard to the complaint handling and disciplinary processes, were consistent with the nature of the complaints being made by staff direct to the Inspector-General.  

In regard to complaint handling and discipline, the Knox report found that staff considered the Department’s current processes as:

- unfair, inconsistent and inflexible;
- punitive and harsh in relation to relatively minor issues;
- characterised by substantial delay;
- prone to leaks leading to rumours and the unnecessary defaming of a person’s character;
- producing anxiety and uncertainty during the long period of waiting for an investigation or disciplinary process to be finalised;
- focused on the individual, rather than the problem.
In addition to the findings of the Knox report, an examination and analysis of the Complaint Handling and Disciplinary system by the Office of the Inspector-General has found that the process was:

- insufficiently focused upon behaviour modification;
- lengthy and complex;
- unnecessarily resource intense and unproductive;
- counter productive because of its adversarial nature and its focus on punitive punishment, rather than remedial action;
- lacking sufficient 'up-front' complaint assessment and risk analysis;
- limited in its options available to Managers to correct errant behaviour;
- directed towards centralised command and control, rather than management of staff;
- prone to leaks, giving rise to opportunity for collaboration; and
- at a substantial cost to the Department and those affected by the system.

It was also clear from the analysis undertaken that there is no clear link between the complaints system and the supervisory responsibility of managers and, therefore, no managerial commitment to improving the performance of staff who were the subject of complaints. In effect, the current system actively discourages effective management practices and accountability.

It should be said at this juncture that these issues are not unique to the NSW Department of Corrective Services and are typically found in large, semi-militaristic, organisations. In recent times the Department has made some enhancements to its complaints handling and disciplinary processes, such as the introduction of an Investigations Review Committee (IRC), investigator training and local complaint management training. In summary, the IRC was instituted to safeguard against:

"...instances of relatively minor matters being referred for HU investigation or disciplinary action which could have been more appropriately dealt with at a local level by way of counselling and/or warning without the need for HU investigation or disciplinary action."

Notwithstanding the Department's introduction of the IRC, the Knox Report, analysis by the Office of the Inspector-General and complaints from staff indicates that these changes have not achieved their goals and further structural and systems reform is needed.

Now let us examine the current system in more detail.

**THE CURRENT SYSTEM**

A flowchart has been prepared which provides an overview of the current complaint handling and disciplinary investigation system (See Appendix A).

The current system requires complaints, save for those introduced at the IRC meeting or dealt with by Governors or Managers, to come through Region Commanders to the Department's Employee and Administrative Law Branch (EALB).

The complaints are then placed on the agenda for the next meeting of the IRC, which meets every second Tuesday. Agenda items are distributed to all the IRC members on the Thursday preceding the next meeting.

Decisions to commence the investigative processes in relation to more serious matters, in particular, where evidence may be lost if an investigation is delayed, are made by the Commander of Security.
Investigations in consultation with the EALB and the Senior Assistant Commissioner. In some instances the local Police are involved in conducting the investigation. These decisions are reviewed and ratified by a subsequent meeting of the IRC.

The IRC is comprised of seven members and is chaired by the Corporate Counsel. Also on the IRC are the Commander, Security and Investigations (S&I), Executive Director of Human Resources Management, Commander, Corrective Services Investigation Unit (CSIU), Superintendent, Security and Investigations, Director, Employment and Administrative Law Branch (EALB) and an independent person nominated by the Commissioner.

The IRC considers and adjudicates upon all matters referred to it together with any matter brought before it by one of the IRC members. Each matter is discussed and given a category rating based upon the seriousness of the allegation. The category rating given to a matter determines at which level the investigation will be handled. The category ratings are as follows:

3. Serious allegation – to be handled at Senior Executive Level
2. Less serious allegation – to be handled at Regional Level
1. Minor Matter – to be handled locally

The IRC also categorises each matter in terms of the 'strength of the available evidence'. These categories are:

A. Strong Evidence
B. Equivocal at this time
C. Unable to evaluate
D. Complainant has been regarded as vexatious/frivolous in the past

By using the category system the IRC is able to make the following determinations in respect to matters brought before it:

- No Further Action;
- Return for further information;
- Return to Governor for local action;
- Criminal Investigation by CSIU;
- Investigation by SISG or RIS;
- Recommend to SAC that a Preliminary Inquiry be conducted; or
- Referral to ICAC.

No Further Action

Where the IRC determines that no further action is required the matter is given an 'Employee Management Reference' (EMR) number and placed on a database, which is maintained by EALB.

The information contained on the EMR database is not accessible to any other person outside EALB and is used primarily as background information to assist in the determination of future matters and identifying complaint trends that may require strategic management action, such as training or the issuing of an ACO to all staff.

About 25% of matters are assessed by the IRC as requiring no further action.
Return for Further Information

If the IRC is unable to make a determination due to the lack of information provided to it, the Governor or Manager is asked to provide further information on the matter before the next IRC meeting.

At this stage the matter is not given an EMR or IRC number until after the additional information requested has been received and a determination has been made by the IRC.

Return to Governor for Local Action

If a matter is given a category 1 rating (minor issue) that can be dealt with at the local level, it is given an (EMR) number and placed on a database maintained with EALB. The matter is then referred back to local level, via the Region Commander/Branch Head, for the issue of a warning or counselling. The Governor/Manager returns the file to EALB, the EMR database is updated with the action taken and the IRC is advised accordingly.

At the time of writing, approximately 10% of matters are dealt with in this way.

Criminal Investigation by CSIU;

Where the IRC determines that the matter requires criminal investigation the matter is referred to the CSIU. This Unit consists of several NSW Police Officers on secondment to the Department from the NSW Police Service.

When the matter is received by the CSIU it is reviewed and 'a preliminary view is given as to whether it is possible that criminal charges would result from any investigation.' This assessment is based upon the availability of evidence and, more often than not, the willingness of an inmate complainant to assist the Police and provide a statement.

If the investigation is assessed as having little or no likelihood of success in a criminal context, it is then referred to the Commander S&I for review to determine whether a departmental investigation is required to determine if a serious breach of discipline has occurred or no departmental investigation is required.

Alternatively, where a criminal investigation proceeds to its conclusion a brief is prepared outlining whether there is sufficient evidence to proceed criminally. If sufficient evidence does exit, the brief, in some circumstances may be reviewed by EALB/DPP prior to the issuing of a summons or the involved officer/s may be directly charged by Police.

Where an Officer has been charged with a criminal offence, which allegedly occurred in the workplace, 'the Commander CSIU will provide a copy of the Police report to the IRC via the Commander S&I and EALB with a comment as to whether he sees any difficulties in a disciplinary inquiry being conducted contemporaneously with the criminal proceedings.' The inquiry would be into an allegation of a breach of discipline not in relation to the criminal allegation.

Where there is insufficient evidence to proceed to a criminal prosecution the matter is 'reviewed by Commander S&I to determine if any Departmental investigation is warranted or recommend no departmental investigation.'
If no departmental investigation is warranted, the file is to be reviewed by EALB prior to any final determinations being made by the Senior Assistant Commissioner of Inmate and Custodial Services ("SACICS") or other decision maker.

Investigation by SISG or RIS;

In instances where the IRC has determined that a serious breach of discipline has occurred the matter may either be forwarded to the State Investigative & Security Group (SISG) or Regional Investigative Section (RIS) for a fact-finding investigation.

Where the fact finding investigation finds the complaint or allegation has some substance, the evidence gathered together with the investigators report is reviewed by the Commander S&I and forwarded to EALB to prepare a recommendation to the SACICS that a Preliminary Inquiry be conducted.

If an investigation fails to substantiate the complaint/allegation, "the file is reviewed by EALB prior to any final determinations being made by the SACICS."

Preliminary Inquiry

In circumstances where there is sufficient information before it, the IRC may refer a matter direct to the SACICS for a Preliminary Inquiry, pursuant to clause 20(1)(b) of the Public Sector Management (General) Regulation 1996.

The SACICS issues the terms of reference for the PI, which is usually allocated to a Governor or other Senior Officer. The outcome of the PI is reviewed by the respective Regional Commander and EALB prior to being provided to the SACICS for a decision.

Analysis of the effectiveness & Outcomes of the Investigative process.

An analysis of 180 investigations appearing on the Department's IRC schedule during the year 2000 was undertaken with a view to assessing the effectiveness and outcomes of the current processes.

The analysis disclosed that approximately 75% of investigations undertaken by the Department resulted in a "No Further Action" outcome.

The high proportion of NFA outcomes is not uncommon and is typical of a "reactive" investigative process. Reactive investigations that are characterised by delays in the process, which usually occur within an organisation's internal investigative processes, are inherently unproductive in terms of substantiating complaint and allegations against staff.
Whilst it is acknowledged that some of the complaints and allegations made against staff are simply baseless and untrue, most reactive investigations are likely to be unproductive due to the delay between the event alleged and the commencement of the investigation process. This gives rise to:

- loss or destruction of physical evidence in that time;
- the fading of memories/ the ability of witnesses to recall incidents in any detail several months after the event;
- the concoction of an alibi or defence;
- collaboration to devise a plausible story to fend off the allegation/s;

When the outcomes are analysed in this way, and in the context of the costs associated with obtaining these outcomes, the value and merit of pursuing matters down the reactive investigation process has to be questioned and thoroughly evaluated before that option is undertaken.

The CMS model that will be presented in the next section of the paper suggests that with a more comprehensive complaint assessment and risk analysis regime at the beginning of the process, more matters can be diverted away from the resource intense and costly investigative process and dealt with within the local management context.

As depicted in the pie chart above, approximately 15% of investigations culminated in what is effectively an 'employee management' outcome. That is, where the involved officer/s were either counselled or issued with a warning or reprimand.

The analysis also showed that it took, on average, 266 days (8 months) to finalise the investigative and disciplinary processes in respect to each of the matters appearing on the IRC schedule during 2000. Some matters took 2 to three years to finalise.

As stated earlier, at present approximately 10% of matters are being returned to Governors and Branch Managers for local management action, such as warning and counselling. The above analysis, which shows that 15% of investigations culminated in counselling and the issuing of a reprimand or warning, indicates that the current processes could be further developed and refined so as to divert these type of matters away from the formal disciplinary processes to a faster and more effective local management action.

The diversion of complaints and disciplinary matters away from the formal disciplinary process could take place within a local management arrangement commonly referred to as an 'Employee Management System', which would form one part of an overall disciplinary or complaints management system. Apart from its relationship to the disciplinary process, EMS is also useful as a medium for formally recognising, recording and rewarding an individual’s good performance within the workplace.

Within EMS, complaints of minor misconduct and unsatisfactory performance are dealt with quickly and effectively by an individual’s manager within a supporting environment. The model to be presented in the next section of this paper introduces the framework of an Employee Management System similar to that developed by the NSW Police Service in 1996 in consultation with the Police Association.

It is important to state at this juncture that the use of ‘grievance handling’ has a significant role to play within the EMS framework. The use of grievance handling procedures by managers is a most effective way of dealing with internal complaints that arise within the workplace amongst staff. One of the main benefits of utilising grievance handling as distinct from investigative processes is that a win-win outcome can be achieved, and in a much shorter time frame.
The pie chart opposite graphically illustrates the results of further analysis of the matters contained within the Department's IRC schedule during the year 2000. As indicated in the diagram approximately 42% of matters that appeared on the IRC schedule could possibly have been appropriately dealt with by way of EMS.

Our analysis did not include whether grievance-handling procedures were a viable alternative for resolving some of the complaints appearing on the schedule. It would be safe to conclude, however, that such an analysis would most certainly have added to 42% of matters that could have been dealt with without the need for a formal investigation. Now let's examine the model.

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**THE MODEL**

First and foremost, the model entails a change in focus within the complaint management process to a managerial approach that gives Governors/Managers accountability for managing unsatisfactory performance and misconduct within their Correctional Centres or departmental business units.

Under the model Governors/Managers, and their management teams, are accountable for the performance, competence, conduct and integrity of their staff. Governors/Managers, and their management teams, are also responsible and accountable for effective complaint management.

More generally, Governors and Managers will determine appropriate responses to each case of misconduct or unsatisfactory performance -- whether as a result of a complaint or observation, through the day-to-day management of their staff.

The principals underpinning the model are:

- effective management of (external/internal) complaints, unsatisfactory performance and misconduct is seen to be fair, consistent, open, flexible and responsive;
- organisational change from a low to high trust model;
- accountability for complaints management, staff performance, conduct and management decisions rests with the Governor/Manager;
- performance, conduct and ethical standards, as well as roles, responsibilities and accountabilities need to be clearly articulated;
- open communication between management and staff;
- effective supervision and remedial/developmental management is the focus, rather than punitive/punishment (Command/control) disciplinary action; and
- resources are free to more effectively deal with more serious corruption, criminality and gross incompetence issues.
Appendices 'B' and 'C' provide a graphical overview of the model. To assist in explaining important aspects of the model, it has been broken down into three components, (A) Complaint assessment and risk analysis (green); (B) The Employee Management System; and (C) the Investigation & Disciplinary Process (purple).

(A) COMPLAINT ASSESSMENT & RISK MANAGEMENT

One of the most important, if not the most important, aspects of any complaint handling and disciplinary system is complaint assessment and risk analysis. Appendix 'D' illustrates the complaint assessment and risk analysis component of the CMS model in more detail.

1. COMPLAINTS

Complaints come to the Department from many sources, which include: The Minister, members of Parliament, Ombudsman's Office, Inspector-General, Governors, staff, legal representatives, interest groups, inmate families and inmates themselves.

The complaints from these groups regarding officer misconduct/unsatisfactory performance are received either by the Department's Head Office or observed or received by Governors-Managers. In recognition of this, the model incorporates a dual system for complaint assessment and risk analysis, one where the assessment is carried out by head office (Appendix 'B') and the other where it is carried out, when possible, by the Governor/Manager (Appendix 'C'). The complaint assessment process in both instances is graphically illustrated in appendix 'D'.

The value of this dual approach is that the assessment and risk analysis takes place at the earliest opportunity possible, at the point of reception, with little time lost in initiating action, be it referral for investigation or local management action.

2. ASSESSMENT ETC. BY HEAD OFFICE, GOVERNOR/BRANCH MANAGERS

Head Office

Assessment of complaints about the conduct of staff received by Head Office is carried out by a Complaint Assessment and Risk Management Unit ("CARA"). Such a Unit would sit well within the Department's EALB or Chief Ethical Strategist Branch.

More importantly, this Unit would provide advice and guidance to Governors/Branch Managers to assist with their assessment and analysis of complaints. The Unit would also assist in providing advice regarding the options and remedies available to Governors for handling matters at the local level.

There are essentially four determinations that the Complaint Assessment and Risk Analysis Unit can make, (a) No Further Action; (b) Forward to Governor to be dealt with by way of EMS; (c) initiate investigation and forward to CSIU, SISG, RIS or the SACICS for a PI to be commenced; or (d) send to external investigative body such as ICAC or Inspector-General for investigation.

The assessment and risk analysis process by Head Office would ideally take place within 14 days of (a) the incident, giving rise to the complaint, or (b) receipt of the complaint.
2a. Advice & Assistance with Assessment & Risk Analysis

In assessing complaints, the Complaints Assessment and Risk Management Unit would seek advice and assistance from the Human Resources Branch, EALB and/or Corporate Counsel in regard to the appropriate action to be applied to handle the complaint. Over time officers within this Unit would become experienced specialists in complaint assessment and risk analysis.

2b. Independent Review - Inspector-General

For the instances where the risk assessment and analysis is carried out by head office, the Inspector-General or other independent review mechanism, would monitor the outcomes and report to the Commissioner any instances where there appears to be inconsistencies or unfairness in the process.

2c. Commissioner

The Commissioner would consider the Inspector-General's report and decide whether a review of the original method for dealing with the complaint/allegation is required.

Governors/Branch Managers

With the benefit of local knowledge and through knowing their staff, Governors/Branch Managers should be able to make a more critical and sound assessment and risk analysis of a complaint or allegation received by them.

There are essentially two determinations that Governors/Branch Managers can make, (a) Deal with the matter themselves by way of EMS or (b) forward to Head Office for further assessment as to whether an investigation or disciplinary action should be commenced.

Whilst not appearing in the diagram, a ‘No Further Action’ determination in relation to a complaint or allegation will be made by the Region Commander or Complaints Assessment and Risk Analysis Unit, upon receiving a submission from the Governor.

2a. Advice & Assistance with Assessment & Risk Analysis

To assist them with this process, as mentioned above, Governors/Branch Managers would be able to consult their Regional Commanders/Branch Heads, the Complaint Assessment & Risk Analysis Unit, Human Resources, EALB or Corporate Counsel to obtain advice and guidance to assist with their assessment and analysis of complaints.

2b. Serious Criminal Matters

As per current guidelines, Governors should continue to call for the immediate intercedence of local Police or CSIU to investigate serious criminal allegations where any delay could result in the possible loss of evidence and then immediately notify their Regional Commander and EALB of such action.

Discussion Paper - March 2001
Complaint Assessment and Risk Analysis Criteria

As outlined previously, the Department currently utilises a category rating system to assist in complaint assessment and risk analysis process. This system takes into account:

- seriousness of the conduct (type of misconduct/unsatisfactory performance); and
- the availability (actual and potential) of evidence to support the allegations being made.

Such a system is a good basis for complaint assessment and risk analysis, however, the CMS model suggests that the process should be augmented to include (not necessarily in order of importance) the following:

- the impact upon the victim of the conduct alleged;
- the impact upon the organisation and the public's perception of it;
- the type of disciplinary action most likely to ensue should the complaint be found to be sustained;
- the most effective way of modifying the officer's behaviour if the complaint/allegation were found to be true;
- regard to the officer's complaint and service history;
- any admission by the involved officer/s.

The inclusion of these additional criteria within the assessment and risk analysis process should provide decision makers with greater scope to recommend diverting the handling of many complaints/allegations that arise, down the EMS path rather than heavy reliance upon lengthy and resource intense investigative processes.

In a general sense, the model recommends that:

- allegations or complaints regarding misconduct or unsatisfactory performance that may result in a criminal charge or a 'reviewable action' should be investigated according to formal investigation procedures.\(^\text{14}\)
- allegations or complaints regarding misconduct or unsatisfactory performance that would only warrant management or 'non-reviewable action' are investigated by informal methods unless special circumstances apply.\(^\text{15}\)

Without wishing to limit the types of matters that could be included as being matters that are suitable for 'Non-reviewable action', a starting point for discussion include the following:

- Grooming/appearance;
- Absence from duty;
- Unsatisfactory sick report;
- Failure to commence or complete rostered shifts;
- Lateness;
- Misuse of departmental motor vehicles;
- Late submission of paperwork/files;
- Rudeness;
- Minor unprofessional conduct;
- Disobey or failure to comply with a direction of a senior officer;
- Minor instances of excessive use of force (i.e. no injury);

Discussion Paper - March 200/13
The types of matters to be included as suitable for possible local management action will no doubt be a topic requiring much discussion amongst stakeholders and there will inevitably be 'grey' areas where there is doubt over the most appropriate method for dealing with some types of complaint or allegations, particularly in regard to alleged assaults/excessive use of force issues.

The success of the model requires the types of matters, that can be dealt with by way of a 'non-reviewable' action at the local level, be developed and clearly articulated to all staff so that:

- Governors/Managers are confident that they dealing with matters appropriate for them to do so;
- Governors/Managers have an understanding that their decisions/actions will be supported by the Executive;
- Staff have an understanding of what is likely to happen to them as a result of a complaint/allegation made against them being dealt with by way of EMS;

In light of the above, it is clearly important that Governors/Managers and employee representatives be involved in the development of a list of matters that will fall within the scope of EMS.

As the assessment and risk analysis aspect of the model requires considerable attention to be paid to the possible 'outcomes' in making a determination, it is an opportune time to examine these in more detail.

OUTCOMES

There are two possible outcomes within the model:

(a) Reviewable Actions; and
(b) Non-reviewable Actions.

Within the context of these two options a decision can be easily made as to what level of investigative action should be undertaken.

As mentioned previously, generally, those matters which are most likely to result in a 'reviewable action' should attract a formal investigation and those that are likely to result in the use of a 'non-reviewable' action should only involve informal investigation, if required.

(A) Reviewable Actions (include):

1. a reduction in officers' rank or grade,
2. a deferral of the officer's salary increment,
3. dismissal.

As the name suggests, these decisions are reviewable through the Government & Related Employees Appeals Tribunal or the NSW Industrial Relations Commission.

Due to seriousness of the outcome for the involved officer/s and the possible involvement of a tribunal, as suggested previously, a formal investigation would be required in instances where a 'reviewable action' was foreshadowed.
Generally, these decisions will be made locally by Governors and Branch Managers and will only be recorded on the Governor's/Branch Manager's local EMS database for management purposes.

Non-reviewable actions are intended to provide Governors and Branch Managers, operating within EMS, with a wider range of remedial actions with which they can attempt to modify the behaviour of errant staff.

'Non-reviewable' outcomes under EMS are, as the name suggests, not reviewable. However, there is clearly the need for a review mechanism in a global context to ensure consistency across the system. In this context, individual matters will generally not be subjected to review. However, the prudential use of the EMS process by Governors/Managers will be monitored and reviewed by Regional Commanders/Branch Heads and the Inspector-General. This aspect of the process will be explained in more detail in the next section of the paper.

The actions undertaken by Governors/Managers to modify an officer's behaviour are not recorded on the individual's personnel or 'P' file. The issues regarding access, dissemination and retention of EMS information on local databases will also be discussed further in the next section of the paper.

Now let's examine the Employee Management System of the model in more detail.

(B) THE EMPLOYEE MANAGEMENT SYSTEM (EMS)

Appendix 'E' provides a graphical overview of the employee management system (EMS) side of the model.

3. EMS – Suitable for local management action.

Following assessment and risk analysis by the Governor/Branch Manager, or having been referred from Head Office, the matter is determined suitable for a 'non-reviewable' (local) action.
4. INQUIRY BY GOVERNOR/BRANCH MANAGER

The Governor/Branch Manager may carry out their own inquiry into the complaint/allegation if they consider it necessary.

The conduct of an inquiry may also be necessary to assist the Governor/Branch Manager with his/her assessment and risk analysis of the complaint.

In any event, the inquiries made should be conducted with as little formality as possible.

4a. PROFESSIONAL STANDARDS COUNCILS (PSC's) (Optional)

The model includes the instituting of Professional Standards Councils (PSC's) that are designed to assist the Governor in the EMS process. It should be said from the outset that PSC's are optional.

PSC's consist of a small group of elected staff within the workplace who offer advice to the Governor on a number of issues. The role of the PSC includes:

- providing information to the Governor/Branch Manager on issues within their work area as they relate to complaints and corruption prevention issues;
- developing an 'expected standards of behaviour' document on behalf of staff;
- communicating the Governor's/Branch Manager's expectations to staff regarding the conduct of officers; and
- feedback on the appropriate remedial action to be imposed upon officers being dealt with within the EMS process;

The last function of a PSC listed provides assistance in circumstances were an officer being dealt with under EMS may feel that his/her past dealings with the Governor/Manager in question may unfairly influence the selection of the 'non-reviewable action' to be imposed. In these instances he/she could ask the Governor/Branch Manager to consult the PSC (who are a group of that officer's peers) on the appropriate type of 'non-reviewable Action' to be imposed.

If this request is made by an officer, the Governor/Branch Manager, should consult the PSC, however, he/she is not bound by the recommendation of the PSC and remains the ultimate decision maker as to the most appropriate form of 'Non-reviewable Action' taking into account all the circumstances.

In order to respect their privacy, Governors/Branch Managers should not confer with PSC's without the prior consent of the involved officer or officers.

4b. HUMAN RESOURCES MANAGEMENT

Within the range of 'Non-reviewable' sanctions that a Governor/Branch Manager can impose upon an officer there will be the need to consult HR in regard to:-

- the availability of training courses;
- the availability of welfare & assistance programs for staff;
- any current or past work related illnesses affecting the officer's performance;
- the composition of any performance agreement to be entered into; and
- non-disciplinary transfer arrangements.
This list is by no means exhaustive, however, it should be recognised that the model advocates considerable involvement of the Human Resources Management Branch in the resolving of complaints and modification of employee behaviour.

This aspect of the model makes intuitive sense in that many Governors or Managers may not be aware of illness and other welfare issues affecting their staff members due to the individual's reluctance 'to have anyone in the workplace know about their problems'.

5. ACTION

Governors/Branch Managers should deal with the involved officer/s personally in communicating to them the form of action that will occur as a result of their handling the complaint/allegation locally by way of a management or 'Non-reviewable Action'.

The involved officer/s should be handed a document that confirms the Governor's decision in respect to the matter. The officer should sign an acknowledgement of receipt of this document.

NB...

- This paper has discussed 'Reviewable' and 'Non-reviewable' actions at some length. However, Governors and Branch Managers should also take into consideration the use of 'conciliation' and 'grievance handling' to resolve complaints that are brought to their attention.

Conciliations are particularly useful in dealing with minor matters where an individual officer has not been identified by the complainant. In these instances the Governor/Branch Manager can simply issue an apology on behalf of the Correctional Centre or Branch where it is found that there may be some substance to the complaint.

The use of grievance handling protocols when dealing with complaints and allegations that arise between staff should be the first method considered by a Governor/Manager. Rather than apportioning blame, the grievance handling procedure can result in a win-win outcome where neither officer has a loss of face.

Finally, as far as practicable, the action in response to the complaint/allegation should be finalised within 14 days of the assessment of the issues being made.

6. RECORDING THE ACTION TAKEN

The recording of the action taken is an important aspect of the model. The recording of an outcome to a locally managed issue on a local database is only a minor change to the current practice of Governors of recording their actions within the Governor's Diary or Log.

As soon as a complaint issue is dealt with by a Governor/Manager by way of a 'Non-reviewable action' it should be recorded on the local EMS database accessible only by the Governor.

The database should contain the full description of the complaint/allegation, the assessment and risk analysis of the complaint, which led to it being included as an EMS matter and the form of 'Non-reviewable Action' imposed.

The information contained on the locally managed EMS database is for management purposes only.
Under no circumstances should any other person other than the individual's Governor/Manager, Regional Commander/Branch Head or Inspector-General view and use information contained on the database.

Further, it should be clearly articulated that any unlawful access of the information within the EMS database will be considered a serious matter and dealt with in terms of a possible breach of section 309 of the Crimes Act, 1900.

Arrangements should be made for officers to examine information within the EMS database, upon request, only in so far as it relates to them.

Arrangements also need to be made for circumstances where an officer transfers to another location. The model is predicated on keeping the process as informal as possible. Hence, the implementation of a system where an individual's local EMS records are physically transferred to their new location would not be in keeping with this theme. In these instances, if required, Governors/Managers can simply contact the individual's previous Governor/Manager to obtain the individual's EMS information.

Consideration should be given to limiting the retention time of the information on the EMS database (e.g. 5 years). Other 'Privacy & Personal Information Protection Act' considerations will also have to be taken into account.

6a. INSPECTOR-GENERAL

The Model makes provision for the Inspector-General or other independent overseeing body to conduct annual and random audits of the EMS databases to ensure:
- consistency and fairness; and
- the EMS system is being appropriately used.

6b. REGION COMMANDER/BRANCH HEAD

The Regional Commander or Branch Head will monitor the Governor's/Branch Manager's general performance in dealing with matters by way of EMS. There would be no need for the Regional Commander/Branch Head to review all cases dealt with by EMS, but on occasion randomly select a sample to ensure quality control.

The handling of complaints and issues by Governors/Branch Managers by way of EMS could be another performance indicator to be measured and monitored by Regional Commanders/Branch Heads as part of their performance feedback to their Governors/Managers.

- Whilst they both perform an overall monitoring function, it should be clear that neither the Inspector-General nor Region Commanders/Branch Heads provide a review mechanism of 'Non-reviewable Actions' imposed by Governors/Managers.

7. EMPLOYEE & ADMINISTRATIVE LAW BRANCH (Optional)

To assist with strategic decision-making by the Department's executive it is recognised that certain information regarding complaint and allegation trends needs to be communicated. In keeping with this, following finalising a local complaint, a Governor/Manager could fax or forward short
summary of the complaint/allegation and the outcome. Alternatively, a general overview of EMS
matters (ie. number of matters, types and actions imposed) could be included in Governor/Manager
monthly reports.

8. CONTINUED MONITORING OF OFFICER'S PERFORMANCE

This important aspect of dealing with complaints against staff is often overlooked or forgotten
about. The model recommends that the Governor/Manager continue to monitor the officer's
performance to ensure his/her behaviour has been modified as a result of the 'non-reviewable'
action.

8a. PERFORMANCE IMPROVES

Where the officer’s performance/conduct improves the Governor/Branch Manager is to provide
positive feedback to the officer and make a suitable notation on the EMS.

8b. NO IMPROVEMENT IN PERFORMANCE

In circumstances where the officer’s performance fails to improve or there is a continual course of
unsatisfactory conduct or misconduct, the Governor/Manager should consider invoking another
form of 'non-reviewable' action as a further attempt to modify the officer’s behaviour.

A continual course of misconduct or unsatisfactory conduct following attempts by the
Governor/Manager to modify the officer's behaviour should cause the Governor/Manager to
consider recommending a 'Reviewable' action based upon all the matters dealt with or the next
matter that comes to notice.

Whilst the continual monitoring of an officer’s performance could go on for some
time, the finalisation of all matters dealt with within the EMS context should take
place within 28 days of the incident taking place or it being brought to the attention
of the Governor/Manager or Department.

(C) THE DISCIPLINARY/INVESTIGATION PROCESS

In regard to the disciplinary and investigation processes, the CMS model does not suggest any
substantial changes, save for the level at which some decisions are made and time limitations, to the
current process. The model has taken into consideration the need for adherence to the investigative
and disciplinary guidelines and processes laid down by the Public Sector Management Act, 1988
and the Personnel Handbook.

Appendix ‘F’ provides a more detailed graphical illustration of this aspect of the model.
9. DISCIPLINARY INVESTIGATION PROCESS

Matters that fall into this category have been suitably assessed by the Complaint Assessment and Risk Analysis Unit or Governors/Managers as requiring investigation.

10. DETERMINATION/ REASSESSMENT BY CARA

The Complaints Assessment and Risk Analysis Unit would determine whether the matter required criminal investigation, departmental fact-finding investigation or needed to be referred to the SACICS for the commencement of a PI.

Matters referred to it by Governors/Managers would be re-assessed to determine whether they should continue along the investigative process. Any matter re-assessed as capable of being dealt with within the EMS context should be immediately referred back to the Governor/Manager concerned.

11. INVESTIGATIONS

Under the model, investigations would have strict time limitations attached. These being:
- 180 for a criminal investigation
- 90 days for a departmental fact finding
- 30 days for a PI

These time limitations need to be agreed upon, nevertheless, natural justice and fairness dictates that there must be time frames set for the completion of investigations. The model is unambiguous on this point.

The proper use of the EMS side of the model by Governors and Managers together with more rigorous complaint assessment and risk analysis, should in effect reduce the number of matters requiring formal investigation. The resultant reduction in the number of matters being investigated should allow for time limitations to be met.

It is understood that any time limits set on criminal investigations undertaken by the CSIU would require a ‘memorandum of understanding’ between the Department and the NSW Police Service, however this should be readily achieved.

Any request for an extension of time to complete an investigation of any kind should by forwarded to CARA or ELAB setting out:
- the investigation chronology up to that point;
- cogent reasons why the extension should be allowed; and
- when the investigation is likely to be finalised.

11a. MONITORING BY CARA

Following assessment or re-assessment and the setting of a deadline for the completion of the investigation, the matter is then forwarded to the appropriate investigation Unit.
The CARA will record these details on the investigations management database and monitor the investigations to ensure that time constraints are adhered to.

All matters within the investigative process would continue to be included in the Department's schedule to the ICAC.

11b. MONITORING BY THE INSPECTOR-GENERAL

The Inspector-General or other independent body would continue to monitor the investigative and disciplinary process. To fulfil this function his office would need access to the investigation data maintained by the CARA Unit.

The Inspector-General would be in a position to offer advice and information to officers involved in the processes in regard to the process itself.

12 & 12a CRIMINAL INVESTIGATIONS

Apart from the time limits being set on the investigations, the model suggests that the processes involved in dealing with 'sustained' work related criminal matters should continue as is currently defined by the Department's protocol's and policies.

Should a criminal investigation by the CSIU find that there is insufficient evidence to proceed with a criminal investigation, in circumstances where it will not jeopardise a subsequent departmental investigation, the involved officer/s should be immediately advised accordingly.

Matters that are found 'not sustained' criminally should continue to be forwarded to the Commander S&I for review as to the need to undertake a departmental investigation. However, should he find that 'No Further Action' is required, that decision should also be immediately related to the involved officer/s. No further review or delay in determination of the matter would be necessary as the model recognizes that the Commander S&I is the appropriate level for that decision to be made.

13. DEPARTMENTAL/DISCIPLINARY INVESTIGATIONS

In keeping with the requirements of the PSMA, the model recognizes that the SACICS, or other delegate of the Commissioner, is the 'decision maker' in terms of the conduct of PI's and the determination of disciplinary action arising from this process.

Other 'fact-finding' investigations conducted to establish whether a PI should be instituted would continue to be forwarded to S&I or RIS Units for allocation to investigators.

14. INVESTIGATION OUTCOME

Under the model, the results of Preliminary Inquiries will continue to be forwarded back through the Region Commander concerned to the SACICS for determination.
All 'fact-finding' investigations that substantiate the complaint/allegation alleged, upon review by the Commander S&I (in the future, Investigations Co-ordinator) would be forward to the EALB for recommendations to be made to the SACICS.

15. NO FURTHER ACTION

All 'fact-finding' investigations conducted that find the complaint/allegations 'not sustained' will be reviewed by the Commander S&I who is the final decision maker in respect of the NFA decision.

Upon being determined NFA, the Commander S&I would advise the CARA of his determination so that the investigations database could be updated and the investigation removed from the schedule. The involved officer/s should also be immediately advised, in writing, of the outcome.

This aspect of the model attempts to streamline the determination and finalisation of investigations by pushing the decision making process down to the lowest possible level.

16. SENIOR ASSISTANT COMMISSIONER OF INMATE AND CUSTODIAL SERVICES

Under the model, the PI and disciplinary system in so far as it relates to the SACICS, remains unchanged.

ADVANTAGE & DISADVANTAGES OF THE MODEL

(a) Advantages

- Empowerment of Governors/Branch Managers and real accountability;

- Replacement of a punitive model of complaint handling with a remedial model will encourage openness and a willingness to admit mistakes, rather than resort to the tradition of 'covering-up' matters;

- The opportunity of retaining and keeping an officer who might otherwise have been lost to the Department after a long drawn out and stressful disciplinary process;

- A substantial reduction in the cost and resources required to conduct the investigation process;

- Enable CSI, SISG, RIS investigators and EALB to focus their efforts on more serious criminal and misconduct matters thereby producing more effective outcomes;

- reduction in industrial problems associated with the formal processes;

- reduction in grievances regarding the system to unions and external bodies; and
as resources are 'freed-up' from the investigative side of the model they can be re-directed towards the establishment of the CARA Unit and the training of Governors and Managers, thereby making the changes revenue neutral.

(b) Disadvantages

- Significant degree of training of Governors/Branch Managers required;
- Additional personnel would be required to staff the CARA Unit; and
- Possible need for adjustment of Human Resource Management Branch Functions to provide additional support for EMS.

CONCLUDING COMMENTS

The CMS model in this paper is geared towards presenting a streamlined and equitable complaint management and disciplinary framework where corruption, criminality and gross incompetence are treated seriously.

This paper clearly challenges the need for central control and management of the complaint process. In some instances it replaces central control with local decisions of Governors and Branch Managers. It devolves decision making, where possible, down to the lowest acceptable levels. Consistent with this approach there would be little need to maintain the role of the IRC within the system advocated by the model.

The rationale behind the model is simple. Research and experience has shown that the most effective, efficient and timely method for dealing with the majority of complaints and allegations against staff is at the local level or alternatively at the lowest possible level within an organisation.

Apart from adhering to the requirements of the PSMA, there does not appear to be any real need for several layers of review within a process that has built into it the checks and balances that are included in this model.

Many aspects of the model are not new and some are purportedly already present, to a limited extent, within the current system. Many Governors and Managers relate that they are already practicing EMS methodology to some degree. Whilst this is encouraging, absent from the current process is the formalised structure together with the empowerment and support necessary for Governors and Managers to effectively and consistently apply EMS principles across the Department.
4. NSW Department of Corrective Services, Operations Procedures Manual, section 22.4.2.
5. Ibid, section 22.4.2.
6. Ibid.

References

5. NSW Department of Corrective Services, Protocol for review of allegations of Work Related Criminal Matters, 13 December, 2000.
CURRENT SYSTEM

GOVERNOR/BANCH MANAGER
- Minor Complaints dealt with via Policy/Quick Investigation

REGION COMMANDER/BRANCH HEAD
- Approve to have matter dealt with by way of counseling/mediation

GOVERNOR
- Matter returned for issue of machinery/Counseling, IRC edited沃内

EAL/BRC
- Advised as to the Complaint & Action

RETURNED SOCIAL WORKER
- Counselor/Adviser
- About 15-20% of files require help
- Given an EALR number

GOVERNOR
- Counselor/Adviser meeting to Branch Manager

EAL/B
- Governor's Counseling/meaning recorded on CRM database maintained by EAL/B
COMPLAINTS MANAGEMENT SYSTEM (CMS) MODEL

For complaints made to Head Office
COMPLAINTS MANAGEMENT SYSTEM (CMS) MODEL

1. JUDICIAL GOVERNOR
   (If Required)

2. HUMAN RESOURCES MANAGEMENT
   Governor can consult HR on advice, there is a non-reviewable action should be employed

3. EMS
   Suitable for Local Management Action

4. PROFESSIONAL STANDARDS COUNCIL (PSC)
   Can be called upon to assist/advise in determining the appropriate type of Non-Reviewable Action

5. INSPECTOR-GENERAL
   Conduct Annual & Random Audit to ensure compliance &/or failures

6. REGIONAL COMMANDER
   Monitor Governor's performance under EMS to ensure quality & control

7. SAB
   Governor to send 'Notification of Action' Form (1 page only for statistical purposes only) to SAB

8. MONITORING
   Governor to send Monitor's performance or officer's conduct report on EMS

9. OFFICER
   Return to Step 3 or
   Recommend 'Reviewable Action'

* For complaints made direct to Governor
EMPLOYEE MANAGEMENT SYSTEM (EMS)

INQUIRY BY GOVERNOR
(If Required)

PROFESSIONAL STANDARDS COUNCILS (PSCs)
Can be called upon to assist Governor in determining the appropriate form of 'Non-renewable Action'

HUMAN RESOURCE MANAGEMENT BRANCH
Governor can consult HR on what form of 'Non-renewable Action' should be employed

ACTION
(a) Non-Reviewable Action
(b) Coordination with Complaint
(c) Grievance Handling Procedure

RECORDING ACTION
Recorded Locally on EMS Data Base
(Information to be used for Management purposes only)

INSPECTOR-GENERAL
Conduct Annual & Random Audits
to ensure consistency & fairness

REGION COMMANDER
Monitor Governor's performance
under EMS to ensure quality & control

EALB
Governor to send 'Notification of Action'
Form (1 page tax for statistical purposes only)
to EALB

MONITORING
Governor to Monitor Performance of Officer
to ensure behaviour has modified

Officer performance Improves
Provide positive feedback
Record Improvement on EMS NFA

No improvement in Officer's performance or behaviour
Return to Step 5 or recommend consideration of 'Reviewable Action'

(Must be completed within 14 days of assessment being made)