

**INVESTIGATION  
BY CHIEF OMBUDSMAN BEVERLEY WAKEM  
OF THE DEPARTMENT OF CORRECTIONS  
IN RELATION TO  
THE COMPLAINT PROCEDURES  
OF  
CORRECTIONS INMATE EMPLOYMENT**

**1 April 2011**

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**ABBREVIATIONS**

CIE	Corrections Inmate Employment
Department	Department of Corrections
IOMS	Integrated Offender Management System
ITC	Initial Training Course
PPM	Policy and Procedures Manual
PSOM	Prison Services Operations Manual

**INVESTIGATION OF THE DEPARTMENT OF CORRECTIONS**  
**IN RELATION TO THE COMPLAINT PROCEDURES**  
**OF**  
**CORRECTIONS INMATE EMPLOYMENT**

**EXECUTIVE SUMMARY**

1. Corrections Inmate Employment (CIE) is a branch of the Department of Corrections' (the Department) Rehabilitation and Re-integration Services group. It operates various industries at the prisons, which afford prisoners employment while they are in prison.
2. Following the receipt of complaints from prisoners employed by CIE, concern was expressed about how CIE was handling prisoners' complaints. I was uncertain whether this concern was justified.
3. I decided it was appropriate on my own motion to undertake an investigation into the efficiency and effectiveness of the complaint procedures by which prisoners employed by CIE may complain to the Department about CIE and its staff.
4. CIE uses the same complaints system as the Prison Services group, which is a separate branch of the Department.
5. From my investigation, the principal opinions that I have formed are:

*Complaint procedures in Prison Services Operations Manual*

CIE staff's roles and responsibilities in the complaints system are unclear in that:

- The Prison Services Operations Manual states that the "CIE site manager" is the person to whom Prison Services' prison staff will refer prisoners' formal complaints about CIE. However, there is no designation of "CIE site manager" in the CIE personnel structure.
- There is no stated CIE designate to whom informal complaints about CIE can be referred by Prison Services' prison staff.
- There is no clear statement that the Prison Services Operations Manual applies to CIE staff.

Raising awareness of the Complaints System

- CIE provides little information to prisoners that it employs on how it deals with complaints.
- Not all CIE instructors have an accurate knowledge of complaints system procedures.

Procedures for dismissal from CIE employment programme

CIE provides CIE employed prisoners with incomplete information on the procedures that will be followed when a prisoner is dismissed from employment, and how to make a complaint in that respect.

6. As a result of forming these opinions, I recommend that the Department:

Complaint procedures in Prison Services Operations Manual

- States in the Prison Services Operations Manual the correct CIE designate to whom formal complaints about CIE should be referred.
- Includes in the Prison Services Operations Manual a procedure for informal complaints about CIE.
- States clearly in the Prison Services Operations Manual or in a CIE specific manual or instruction that CIE staff are responsible for ensuring that prisoners' complaints about CIE are addressed.

Raising awareness of the complaints system

- Includes information on how CIE will deal with a prisoner's complaint in all CIE worksite handbooks.
- Displays posters outlining how CIE will deal with a prisoner's complaint on all CIE worksite notice boards.
- Provides all CIE instructors with training on the complaints process.

Procedures for dismissal from CIE employment programme

- Provides in all CIE worksite handbooks, in addition to the information on the types of misconducts and sanctions, information on:
  - the process that will occur when the merits of an alleged misconduct is yet to be determined,
  - the designate who will determine whether a prisoner is dismissed from CIE employment,
  - how the decision will be communicated to the prisoner and what information will be provided to the prisoner regarding the decision.
  - the complaints process.

- Utilises in all CIE worksite handbooks the information on the types of misconducts and sanctions set out in the CIE worksite handbook in Annex 3.
- Clarifies or deletes from the handbook in Annex 3 the statement on the serious misconduct when a prisoner is absent from work due to “locked report, hearing of misconducts and cell confinement”.
- Utilises the warning system set out in Annex 4 at all CIE worksites.
- Includes in all CIE worksite handbooks the prisoner’s entitlements set out in section 81 of the Corrections Act 2004.

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**REPORT**

1. Background

**1.1 Context**

Under the Ombudsmen Act 1975, it is the function of the Ombudsmen to investigate complaints relating to matters of administration affecting persons in their personal capacity against various state sector agencies, including the Department of Corrections (Department). Pursuant to Section 13 of this Act, the Ombudsmen have power to investigate complaints by prisoners about their detention by the Department. Section 13(3) allows Ombudsmen to conduct investigations of their own motion.

From time to time, the Ombudsmen have received complaints and enquiries from prisoners raising issues related to Corrections Inmate Employment (CIE).

CIE is a branch of the Rehabilitation and Reintegration Services group, which is one of the seven groups that constitute the Department. CIE's purpose is to provide work experience and industry training opportunities to prisoners through CIE prison-based operations (such as the prisons' internal kitchens, dairy farms and nurseries), external work parties and the Release to Work programme.

For ease of description, I have used in my report the words "work", "CIE employed prisoner", and "CIE employment", in discussing prisoners who are participating on the CIE employment programme. The use of these terms does not mean that the prisoners are CIE or Department employees.

On commencing employment at a CIE prison-based operation, prisoners are not joining CIE as employees. Rather the prisoners are undertaking a CIE employment programme to gain work experience, good work habits, and industry qualifications. Advice given to me is that as such, they do not meet the definition of an "employee" under employment legislation. Nevertheless, section 6 of the Corrections Act 2004 provides that one of the guiding principles of the corrections system is the fair treatment of prisoners by:

- i. Providing them with information about the rules, obligations and entitlements that affect them.
- ii. Ensuring that the decisions about them are taken in a fair and reasonable way and that they have access to an effective complaints procedure.

In the early part of 2009, a prisoner complained about being dismissed from a position that he held with a CIE dairy farm. As a result of this he was also removed from a self-care residential Unit to more secure accommodation. Although the complaint to me was eventually resolved, it highlighted that from a prisoner's point of view, that dismissal from CIE employment can appear summary in nature.

A significant number of prisoners are employed by CIE. As at the month June 2009, the Department reported that an average of 2529 prisoners were employed in CIE prison-based operations. Consequently, I considered it appropriate for me to examine the procedures on the dismissal of a prisoner from CIE employment.

An inquiry limited to dismissal procedures alone did not, however, seem to suffice. Just as it is for an employed person in the community, it is important for a CIE employed prisoner to have an effective means by which the prisoner may raise any concerns regarding his or her dismissal from CIE employment. In the prison context, this avenue should be provided by the internal complaints system.

Accordingly, pursuant to section 13(3) of the Ombudsmen Act, I decided to undertake an investigation of my own motion of the efficiency and effectiveness of the complaint procedures by which CIE employed prisoners may complain to the Department about CIE and its staff.

The Department advised that CIE uses the complaints system that is in place for Prison Services, which is a separate group from Rehabilitation and Reintegration Services. The Prison Services group manages the Department's 20 prisons.

I do not have concerns in principle with CIE using the same complaints system as the Prison Services group. A prisoner employed at a CIE worksite interacts with both CIE and Prison Services staff during the course of their CIE employment. Indeed, I consider it to be sensible for there to be a single complaints system.

However, I decided that the focus of my investigation would remain on CIE's role, not that of Prison Services, in the complaints system as the decision regarding the CIE employment of a prisoner lies solely with CIE. Accordingly, my investigation does not concern the overall efficiency and effectiveness of the Prison Services' complaints system.

## 1.2 Investigation Process

On 29 April 2009, I notified the Department's Chief Executive of my investigation. I requested information on complaints about CIE that prisoners had lodged during the period 1 July 2008 to 31 March 2009 in order to gain an overview of the types of complaints that employed prisoners made against CIE, and how those complaints were handled.

The relevant legislation and policies set out in the Department's policy manuals were considered.

I also arranged for my investigator to visit a number of sample prisons (8) throughout the country – both urban and rural, men's and women's.

Several worksites were visited at each location. CIE prisoner handbooks were obtained and assessed. Interviews were conducted with CIE managers, and instructors. Some prison managers and unit managers were also consulted. Prisoners in CIE employment, selected mainly on a random basis, were also interviewed.

Both staff and prisoners were interviewed on the basis that their personal views would not be attributed to them, although the essence of what they said might be used in the preparation of this report.

## 2. CIE's role in the Complaints System

### 2.1 Elements of an effective and efficient complaints system

It is generally accepted that an efficient and effective complaints system is an essential administrative tool. It not only provides the opportunity to rectify any unfairness for an individual, but at the same time alerts management to systemic problems.

The Corrections Act 2004 requires every prison to have an internal complaints system. The Corrections Act and Corrections Regulations 2005 set out the requirements of the internal complaints system. These include the provision of advice to prisoners about the complaints system, assistance to make a complaint, complaints to be handled fairly and in a timely manner, and frequent monitoring and auditing of the complaints system.

Section 152 of the Corrections Act states:

***“Objectives and monitoring of corrections complaints system”***

*(1) The corrections complaints system has the following objectives:*

*(a) to enable complaints by persons who are or were under control or supervision to be dealt with internally on a formal basis:*

- (b) *to ensure that all persons under control or supervision are aware of the complaints system and are able to make a complaint if and when they choose to do so, without fear of adverse consequences:*
  - (c) *to ensure that complaints are investigated in a fair, timely, and effective manner:*
  - (d) *to ensure that, if possible in the circumstances, complaints are dealt with reasonably promptly:*
  - (e) *to ensure that, if possible in the circumstances, complaints are dealt with at the lowest and most informal level:*
  - (f) *to ensure that all reasonable steps are taken to investigate complaints:*
  - (g) *to ensure that complainants are advised of the progress in investigating their complaints:*
  - (h) *to ensure that complaints are, to the extent possible, investigated in a culturally sensitive manner:*
  - (i) *to ensure that the identities of complainants are disclosed only to the extent that it is necessary to assist in the investigation of complaints.*
- (2) *The complaints system must be monitored frequently and audited to ensure the effectiveness of that system.”*

Section 152 is supported by additional provisions in Part 12 of the Corrections Regulations. It seems to me that the legislation captures the essential elements that constitute an effective and efficient complaints system.

## **2.2 Procedures of the Complaints System**

The Department advised that the procedures of the complaints system used by CIE were outlined in Section B.10 of the Prison Services' Policy and Procedures Manual (PPM). The procedures are now outlined in the "Prisoner complaints" section of the Prison Services Operations Manual (PSOM), which has been in effect since 3 May 2010.

### *2.2.1 Complaint procedures in Policy and Procedure Manual's B.10*

The PPM's Section B.10 (**Annex 1**) outlined that prisoners may raise complaints informally with a Prison Services' prison officer (usually orally), and formally upon submission of a completed B.10 complaint form. It incorporated the legislative requirements, and detailed the timeframes for responding to a prisoner's complaint. The roles and responsibilities of Prison Services' staff (prison officers, Unit Managers and Prison Managers) in the complaints process were defined. For

example, if a Prison Manager refused to investigate a prisoner's complaint because he or she considered it to be frivolous or vexatious, he or she must consult the Prison Service's Assistant General Manager of Operations before making the decision.

In contrast the PPM's Section B.10 did not define the roles and responsibilities of CIE staff in the complaints process so that:

- CIE staff appeared disconnected from the complaints system. The complaints system seemed to be solely the responsibility and function of Prison Services' prison staff.
- There appeared to be no clear line of accountability within CIE for dealing with complaints about CIE. The PPM did not outline procedures for elevating a prisoner's complaint within CIE in cases where the complaint is against a CIE staff member or where the complainant is not satisfied with CIE's initial response.
- It was not clear for Prison Services staff as to whom to refer prisoners' informal and formal complaints about CIE. In practice, there was a degree of randomness as to whom at CIE a prisoner's complaint was referred by the Prison Services staff who received the complaint. Complaints were referred to the local CIE worksite instructor, the Principal worksite instructor, the Activity Manager, and the Area Operations Manager. It depended on the choice of the particular Prison Services staff member who may or may not have been familiar with CIE's structure or personnel.

I consider that as a separate branch from Prison Services, only CIE staff can respond fully to a prisoner's complaint against CIE. The extent of Prison Services staff's role in relation to prisoner's complaints against CIE can only be administrative. In practice, when a CIE employed prisoner raised informally a complaint against CIE with Prison Services' staff, that staff member contacted CIE regarding the prisoner's complaint, and then informed the complainant of CIE's response. If the prisoner was not satisfied with CIE's response or if a prisoner's initial preference was to make a formal complaint, I understand the practice was for the Prison Services' staff member to log the prisoner's completed B.10 complaint form on the Department's IOMS computer database. The Prison Services' staff member then forwarded the complaint to a CIE staff member of his or her choice. On receiving CIE's response, the Prison Services' staff member informed the prisoner of the response and logged it on IOMS. This illustrates that CIE inevitably has an important role to play in the efficient and effective operation of the complaints system. The complaints system cannot be seen as solely the responsibility and function of Prison Services' staff as it appeared in the PPM.

Complaint procedures that require CIE to take ownership and responsibility for complaints about it, will not only lead to prisoners

complaints about CIE being addressed fully in a timely manner. It also provides the opportunity for CIE management to establish whether CIE's practices and procedures are working well.

### 2.2.2 Complaint procedures in Prison Services Operations Manual

Late in my investigation, the Department advised that it had completed the process of simplifying the Prison Services' PPM, which is now called the Prison Services Operations Manual (PSOM). This process was already underway, and was not prompted by my investigation.

In PSOM's "Prisoner Complaints" section (**Annex 2**), although the name of the form used for formal complaints has changed from B.10 to PC.01, the mechanics or procedures of the complaints system have not changed. I understand that Prison Services' prison staff still attempt to resolve a prisoner's complaint informally before a prisoner lodges a formal complaint form. Prison Services staff also load onto IOMS a prisoner's formal complaint, and the responses or actions taken to address the complaint. Therefore, the advent of PSOM did not cause me to alter my approach in the investigation in any fundamental way.

In relation to CIE complaints, PSOM states Prison Service's staff must forward a complaint about CIE to the "CIE site manager" once the prisoner has completed the formal complaint form and staff have completed the receipt section of the form. My comments regarding the PSOM procedures for CIE complaints are:

- In the CIE personnel structure, there is no designation of "CIE site manager". "CIE site manager" may refer to a Sector Manager, who manages a particular CIE industry across several prisons or an Activity Manager, who reports to the Sector Manager and manages a particular CIE activity at a prison. The Activity Manager or the Sector Manager would be an appropriate level to receive and decide how a prisoner's complaint against CIE should be addressed. It should be clarified as to which manager will hold this responsibility.
- The procedure for CIE complaints in PSOM concerns only formal complaints. PSOM does not provide an equivalent procedure for an informal complaint about CIE that is raised either with CIE directly or with a Prison Services' prison staff member, and which the relevant staff member has to attempt to resolve before the prisoner lodges a formal complaint form.
- There is no clear statement that PSOM applies to CIE. The stated purpose of PSOM "is to provide instructions to Prison Services employees on the day-to-day activities relating to managing a prison." This implies that CIE staff are not accountable for the complaints procedures in PSOM. It

therefore appears that Prison Services' prison staff remain solely accountable for ensuring that a prisoner's complaint against CIE is addressed.

**I recommend that the Department:**

- i. States in the Prison Services Operations Manual the correct CIE designate to whom formal complaints about CIE should be referred.**
- ii. Includes in the Prison Services Operations Manual a procedure for informal complaints about CIE.**
- iii. States clearly in the Prison Services Operations Manual or in a CIE specific manual or instruction that CIE staff are responsible for ensuring that a prisoners' complaints about CIE are addressed and the process for elevating complaints within CIE.**

## **2.3 Raising Awareness of the Complaints System**

The Act and regulations require that information on the complaints system is provided to prisoners within 24 hours of their being received into prison, and that notices explaining the processes should also be "prominently displayed" within each prison unit. These requirements are undertaken by the Department's Prison Services group.

The impression gained from prisoners who were interviewed is that information on the complaints system was explained to them within 24 hours of their initial reception at a prison. Notices of the complaints system were sighted on noticeboards of the Prison Services' residential Units that were visited. The notices provided a Prison Services focused description of the complaints system as they then were.

Raising awareness of the complaints system amongst prisoners does not rest solely with Prison Services. As they also have a stake in the efficient and effective operation of the complaints system, CIE has a role in raising awareness in particular amongst prisoners on the CIE employment programme and its staff on how it would handle a prisoner's complaint.

### **2.3.1 Prisoner Awareness**

When prisoners are engaged in CIE employment, the opportunity arises for CIE to inform prisoners on how it specifically would deal with a prisoner's complaint.

Prior to starting work, prisoners are required to receive a full briefing or induction as to what is required of them while on the worksite, including health and safety requirements, machine operating rules and

expected conduct. As part of this process they receive a handbook which contains this information, and/or sign a form which acknowledges their having been informed of the information contained in the handbook. Of the several handbooks I sighted, only one made mention of complaint procedures and this was just a brief reference, “*formal complaint procedure – see your case officer [a Prison Services’ staff member]*”. None made reference to any informal complaint procedure whereby a prisoner may raise a complaint orally with an instructor.

Although many worksites may fairly be described as common prisoner areas, neither Prison Services’ standard notices of the complaints system nor notices on how CIE would deal specifically with a prisoner’s complaint were found to be displayed in CIE worksites. This is not due to the lack of appropriate space at the worksites. Even in more remote worksites, such as farms, there will usually be central areas where (for example) health and safety notices are displayed.

It is important that CIE provides its employed prisoners with information on how it will deal informally and formally with complaints that may arise. This is currently not the case. I consider that it should not fall solely to Prison Services’ staff to explain to CIE employed prisoners how CIE will deal with a complaint.

**I recommend that the Department:**

- i. Includes information on how CIE will deal with a prisoner’s complaint in all CIE worksite handbooks.**
- ii. Displays posters outlining how CIE will deal with a prisoner’s complaint on all CIE worksite notice boards.**

2.3.2 CIE Instructor Awareness

All new Prison Services’ Corrections Officers are required to attend a national Initial Training Course (ITC). Newly appointed CIE instructors are also required to attend as part of their induction training. A component of this course covers the complaints system.

It was noticeable that those instructors who have attended the course had a reasonable understanding of the system. However several of the instructors interviewed were employed prior to the introduction of this training programme. It was evident that most of these instructors had only limited understanding of the system. In general, the shorter the service of the instructors, the better understanding they had of the system, presumably because the training course was fresher in their minds.

It is to state the obvious that for the complaints system to operate effectively, CIE instructors must have good knowledge of the process.

**I recommend that the Department provides all CIE instructors with training on the complaints process.**

## **2.4 Accessibility of the Complaints System**

### 2.4.1 Informal Phase

Complaints are normally regarded as “informal” until such time as the prisoner completes a complaint form. The “informal” process is rightly encouraged and usually means in practice in the CIE context that the prisoner will simply speak to an instructor at work, who will attempt to resolve the complaint. However, it is not a requirement that a prisoner takes this step before a formal complaint can be lodged. The availability of the “informal” option in the complaints process is obviously in the interests of both parties in that it should usually lead to speedier resolutions of complaints.

The general impression gained from the prisoners, who were interviewed is that if they have a complaint, they are more inclined to raise it informally with an instructor than through the “formal” complaints process.

One reason seems to be that instructors, from my understanding, tend to work alongside prisoners in their role, and as such are in a good position to resolve complaints informally when it is possible. The other reason appears to relate to prisoners’ perception of the formal phase of the complaints system, which is discussed below.

### 2.4.2 Formal Phase

If a prisoner’s complaint is not resolved at the informal stage or the prisoner does not wish to raise their complaint informally, the CIE instructor advises the prisoner to request a complaint form from Prison Services’ staff once they are back in their residential unit. The CIE instructors do not enter the complaint onto IOMS and complaint forms are not held by CIE at worksites.

There was a perception among several prisoners interviewed, that should a matter not be able to be resolved informally, the complainant might be victimised if he/she were to formalise it through the complaints process. A typical comment from these prisoners was that *“staff don’t like paperwork”*.

The afore-mentioned perception has particular consequences in the context of CIE work related complaints. Employment is much sought after by prisoners as it helps time pass more quickly, and gives the opportunity to earn more of the prison allowance each week. By seeking to formalise any complaint these prisoners felt it could jeopardise their chances of continued employment, or getting better paid employment if available. I have not been able to ascertain whether this perception is justified in fact. However, whether or not the

perception is correct, the result is to diminish the effectiveness of the complaint process by discouraging reasonable recourse to it.

This perception by prisoners of the formal phase in the complaints process is undesirable. The way to change it is for the complaints system to be seen to work effectively by CIE staff taking ownership of CIE complaints, and CIE management being actively involved through the review of actions taken by CIE staff to address complaints, and the identification and reporting of systemic issues that complaints may have raised.

## **2.5 Timeliness**

Timeliness is one of the most important aspects of an effective complaints system. Justice delayed is justice denied. Delays in having complaints considered can compound the underlying dissatisfaction of a complainant. In a prison setting, where many prisoners have a history of not managing their anger, this can lead to volatile incidents. Any undue delay can also be the basis of a further complaint.

From viewing data of formal complaints about CIE that the Department provided, in many cases it was difficult to ascertain the extent of delays occurring. Often dates were not recorded when comments were made in sections "B. Action Taken" and "C. Further action taken" of the complaint form. These sections are used to record the actions taken by the staff to resolve the complaint and whether the prisoner is satisfied that his/her complaint is resolved. When dates were recorded, they were generally within the timeframes set out in the former PPM and present PSOM.

When a recorded delay did occur in the formal complaints process, it tended to be at the stage of referral to CIE. The uncertainty as to whom in CIE complaints should be referred seemed to play a part in this.

## **2.6 Monitoring and auditing of Complaints System**

Section 152(2) of the Act requires that the complaints system "must be monitored frequently and audited to ensure the effectiveness" of the system.

The Department advised that the overall complaints system is monitored and audited by Prison Services and the Inspectors of Corrections.

Prison Services monitoring and auditing of the complaints system is twofold.

1. Every four months at each prison, Prison Services' Quality Assurance Coordinators select a random sample of prisoners'

complaint forms, including those by CIE employed prisoners, to check that:

- i. the timeframes in PSOM have been complied with in relation to the loading of the initial complaint form onto IOMS, and the review of the complaint by a residential Unit's Principal Corrections Officer;
  - ii. the response or action taken that is recorded in response to the prisoner's complaint is specific to the complaint.
2. Every two years, Prison Services undertakes a broad performance review of each prison. This includes a review of the effectiveness of the management of prisoners' complaints at each prison. The review involves interviewing staff and prisoners, checking the process on IOMS and the analysis of any trends.

The Inspectors of Corrections, who have legislative functions to investigate complaints by prisoners, are located within the Department's Office of the Chief Executive. In relation to the review of the overall complaints system at a particular prison, the Department advised that an Inspector of Corrections randomly selects prisoner complaints that have been entered on IOMS over a 3 month period at the prison that is under review. An Inspector of Corrections' review involves checking that:

- i. prisoners' and staff's knowledge and understanding of the complaints process is sound;
- ii. complaint forms have been correctly entered onto IOMS;
- iii. responses to complaints were within the required timeframes;
- iv. the receipt portion of the original complaint form has been given to the prisoner and that all documentation is filed on the prison file;
- v. the resolution to the complaint is reasonable under the circumstances;
- vi. the complaints process is displayed for prisoners to see;
- vii. information kiosks are working; and
- viii. prisoners have free access to PC.01 forms

The Department advised that CIE is in the process of introducing additional monitoring of the complaints system in relation to complaints concerning CIE. CIE intends to include in the broad "assurance reviews of its activities" a review of the complaints against it. In addition, CIE Area Operations Managers will be responsible for checking on a two weekly basis all complaints entered on IOMS

involving CIE to ensure that specified timeframes were met and appropriate resolutions were gained and entered onto the system. These are good initiatives for CIE to undertake. These provide the mechanisms for systemic problems to be identified, reported on and ultimately addressed.

### 3. Procedures for dismissal from CIE employment programme

Complaints regarding dismissal from CIE employment have usually centred on whether serious misconduct occurred or the lack of any warnings. Whereas an efficient and effective complaints system ensures that a prisoner's concern about their dismissal from CIE employment will be heard, clear and correct application of dismissal procedures may reduce a prisoner's feeling of unfairness and therefore the need to lodge a complaint.

When prisoners start CIE employment, I consider that they should be advised of the procedures for dismissal from CIE. None of the CIE worksite induction handbooks that were assessed provide information on the complete procedures that will be followed when a prisoner is dismissed from CIE employment. One CIE worksite's induction handbook briefly states:

*"Dismissal Procedures*

*Dismissal from CIE is carried put [sic] in one of two way [sic]. As the result of repeated behaviours or due to a significant act. These are lesser and serious breach.*

*(instructor to provide an example of what might be considered a serious breach)*

*Once dismissed you may be considered unemployable however it is unlikely. You will be given another opportunity within another activity."*

I consider that information on the procedures for dismissal from CIE employment should state the types of misconduct and the sanctions for them, who has the authority to make the decision to dismiss a prisoner from CIE employment, whether an inquiry will be conducted to establish an alleged misconduct, whether there is a stand-down period while an inquiry is conducted, how the dismissal decision is communicated to the prisoner and steps the prisoner may take to complain about the decision.

CIE worksite induction handbooks provide varying degrees of information on the types of misconducts and the sanctions for them. Of the CIE worksite induction handbooks that were viewed, one in particular provided clear information in this regard. This handbook (**Annex 3**) outlines the types of serious misconduct (for example theft or use of drugs) that will result in instant dismissal and possibly prison disciplinary charges. It also sets out the types of less serious misconduct such as poor performance or inconsequential horseplay that is dealt with via a warning system whereby a prisoner receives a warning for two indiscretions before being dismissed upon the third indiscretion. It is my view that this handbook meets the need

to fully inform prisoners of the sanctions for the types of misconduct. Subject to the point in the following paragraph, it is a suitable example for other worksite induction handbooks.

A “serious” misconduct that is listed in the annexed handbook that I am concerned about is the: “Unauthorised absences from – locked report, hearing of misconducts or cell confinement”. The first page of the annexed handbook elaborates on the misconduct: “Absence from work for locked report, the hearing of misconducts and any cell confinement will be regarded as unlawful absences and may result in your work being terminated.”

I note that:

- The absences are not stipulated in the Corrections Act 2004 and Corrections Regulations 2005 as “unlawful”. The Corrections Act does allow for a prisoner to be charged with a disciplinary offence if he or she leaves or is absent from work “without permission or reasonable excuse”. However, whether the prisoner is guilty of the offence is determined by the hearing adjudicator or Visiting Justice at a misconduct hearing.
- The Corrections Regulations requires that a prisoner charged with a disciplinary offence is given sufficient time to prepare his or her defence of the charge and that a misconduct hearing is held in the presence of the charged prisoner. I consider it would be unreasonable to dismiss a prisoner, who does not attend work for either of these reasons.
- A procedure that allows for a prisoner to be stood-down without losing employment during a “locked report” or misconduct process is more appropriate.

All CIE worksites operate a warning system for less serious breaches of worksite rules. This system consists of a first warning, which is a verbal warning. On the event of a second less serious breach, the prisoner receives a second and final warning, which is written.

In practice, there is a variation between CIE worksites on what is considered to be a prisoner’s first verbal warning. Some CIE worksites consider the induction briefing to be a prisoner’s first verbal warning. In these cases, it is misleading to state that a prisoner has two warnings for a less serious breach of prison rules as a verbal warning will have been regarded as issued when no breach has occurred. It is understandable how this can give rise to a complaint from a prisoner.

One CIE worksite has a form (**Annex 4**) that is completed when a warning is issued to a prisoner for a less serious breach of prison rules. On being issued the final written warning, the prisoner is asked to sign the form acknowledging that a further breach of prison rules will result in his or her employment being cancelled. This CIE worksite’s form is a suitable example for all CIE worksites on how the warning system should operate.

Equally as important for a prisoner to know (but not provided in any of the CIE induction handbooks) is information on whether an inquiry will be conducted to establish the alleged misconduct, whether there is a stand-down period while an inquiry is conducted, who makes the decision to dismiss a prisoner from CIE employment, how the dismissal decision will be communicated and steps the prisoner may take to complain about or challenge the decision. These elements give a sense of due process to dismissal procedures that is currently absent when dismissal from CIE employment is simply put as a misconduct and sanction affair. I make the following observations:

i. Whether an inquiry will be conducted and whether there is a stand-down period while an inquiry is conducted – Occasions do arise where an alleged misconduct against a prisoner is serious, but where the merits of the allegation cannot be determined immediately. On one hand, allowing the prisoner to continue to work while the merits of the allegation are determined may not be appropriate. However, on the other hand dismissing a prisoner without an inquiry of the allegation is to fail due process. A procedure allowing for a prisoner to be stood-down from CIE employment would be a reasonable course of action.

ii. Who makes the decision – The level of authority at which the decision to dismiss a prisoner is made is important. Often entwined in the dismissal of a prisoner from employment at a CIE worksite is the break-down in the working relationship or the loss of trust between the prisoner and instructor. The decision to dismiss a prisoner from CIE employment should be made at a level above the instructor level. The Area Operations Manager is an appropriate level. The Area Operations Managers do not deal on a day to day basis with employed prisoners, and may be seen to be sufficiently removed from the CIE worksite to provide an outside view on whether employment should continue.

iii. Communication of decision – Dismissal from CIE employment is a serious matter for a prisoner. Accordingly, a decision to dismiss a prisoner should be conveyed in a formal manner orally and in writing. Oral advice of the decision alone from a worksite instructor is inadequate. A letter that advises of the reasons for the decision and of rights to complain (for example to an Inspector of Corrections or the Office of the Ombudsmen) should be provided to the prisoner. The prisoner should also be provided with a copy of any relevant documentation on which the decision is based. For example, if the decision is made for less serious breaches of prison rules, a copy of the completed form in **Annex 4** should be provided to the prisoner.

For CIE to provide prisoners with the information outlined above is not unique in the prison context. PSOM for example requires Prison Services staff to provide this kind of information in the area of prisoner property claims.

Not all cases of dismissal from CIE employment result from misconduct. From the information that I received from the Department, I noted one particular case where a prisoner complained that he was dismissed for deciding on religious grounds that he could not work on a Sunday. According to the prisoner, he asked the instructor if working 7 days a week was mandatory. The instructor said no. However, when he told the instructor that he would not work on a Sunday, he was instantly dismissed. The prisoner lodged a complaint form regarding his dismissal. The CIE response recorded for this prisoner's complaint is that the matter was discussed with the prisoner and that "he understands the work targets of CIE and their need to have flexible workers."

This is a prima facie example where dismissal was summary in nature and the end decision was questionable on the basis of the papers before me. Section 81 of the Corrections Act 2004 states:

***"81 Working conditions***

*(1) Unless there is an emergency, no prisoner may be required to work on a certain day if working on that day would be inconsistent with the prisoner's genuine religious beliefs or practices.*

*(2) No prisoner may be required to work for more than 40 hours per week.*

*(3) Every prisoner is entitled to 1 day of rest in each week."*

I note that this information regarding a prisoner's entitlements is not provided in any of the CIE worksite handbooks. One of the principles in section 6 of the Corrections Act for the fair treatment of prisoners calls not only for prisoners to be informed of the rules and obligations that affect them, but also their entitlements.

**I recommend that the Department:**

- i. In addition to the types of misconducts and sanctions, provides in all CIE worksite handbooks information on:**
  - the process that will occur when the merits of the alleged misconduct is yet to be determined,
  - the designate who will determine whether a prisoner is dismissed from CIE employment
  - how the decision will be communicated to the prisoner and what information will be provided to the prisoner regarding the decision.
  - the complaints process.
- ii. Utilises in all CIE worksite handbooks the information on the types of misconducts and sanctions set out in the CIE worksite handbook in Annex 3.**
- iii. Clarifies or deletes from the handbook in Annex 3 the statement on the serious misconduct when a prisoner is absent from work**

**due to “locked report, hearing of misconducts and cell confinement”.**

- iv. Utilises the warning system set out in Annex 4 at all CIE worksites.**
- v. Includes in all CIE worksite handbooks the prisoner’s entitlements set out in section 81 of the Corrections Act 2004.**

#### **4. Conclusion**

The prison complaints system appeared to be the sole responsibility of the Prison Services group. This should not be the case. In the area of complaints by employed prisoners about CIE, the role of CIE is important if the complaints system is to address the complaints efficiently and effectively:

- The former PPM set out the roles and responsibilities of Prisons Services staff in the complaints system. However, it did not state the CIE designate, who was to manage prisoners’ formal complaints about CIE that were received from Prison Services staff.
- In practice, Prison Services staff randomly forwarded prisoners’ formal complaints about CIE to various CIE staff.
- The current PSOM states that the “CIE site manager” will be responsible for managing prisoners’ formal complaints about CIE that are received from Prison Services. However, there is no designation of “CIE site manager” in the CIE personnel structure.
- There is no procedure in PSOM for the referral of prisoners’ informal complaints about CIE by Prison Services’ prison staff to one CIE designate.
- CIE provides inadequate information to CIE employed prisoners on how it will deal with a prisoner’s complaint, and on the process for dismissing a prisoner from CIE employment.
- Some CIE instructors’ do not have an accurate knowledge of the complaints process.
- The Department’s initiative for CIE to monitor and audit the complaints system for CIE related complaints is commendable.

Signed:

Dated:

## ANNEXES

### **ANNEX 1**

Policy and Procedure Manual's Section B.10 Prisoner Complaints

### B.10 Prisoner Complaints (National Policy)

#### **Authority for Policy**

Corrections Act 2004, sections 151-160

Corrections Regulations 2005, regulations 159-168

#### **Policy Standard**

Prisoner complaints are dealt with in a fair, timely and effective manner, at the lowest and most informal level.

#### **Objectives of the Complaints System (section 152 of the Corrections Act 2004)**

The Corrections Act 2004 defines the objectives of the complaints system. The objectives are:

- To enable complaints by prisoners (or former prisoners) to be dealt with internally on a formal basis.
- To ensure that prisoners are aware of the complaints system and are able to make a complaint if and when they want to, without fear of adverse consequences.
- To ensure that complaints are investigated in a fair, timely, and effective manner.
- To ensure that, if possible in the circumstances, complaints are dealt with reasonably promptly.
- To ensure that, if possible in the circumstances, complaints are dealt with at the lowest and most informal level.
- To ensure that all reasonable steps are taken to investigate complaints.
- To ensure that complainants are advised of the progress in the investigation of their complaints.
- To ensure that complaints are, to the extent possible, investigated in a culturally sensitive manner.
- To ensure that the identities of complainants are disclosed only to the extent necessary to assist in the investigation of complaints.

#### **Informal” versus “Formal” complaints processes**

1. Staff dealing with prisoner complaints should always attempt to resolve the complaint informally before it gets to the written” (and therefore “formal”) stage.

This will typically involve the staff member talking to the prisoner and as a result of this discussion agreeing to undertake some action that will result in the complaint being resolved to the prisoner's satisfaction.

2 However, if the complaint can not be resolved or is not resolved to the prisoner's satisfaction then the staff member who has been dealing with the prisoner's complaint informally should then ensure that the prisoner is made aware of the "formal" complaints process outlined in B.10.01 Prisoner Internal Complaints.

### **Performance Standards**

1. The complaints process is explained to all prisoners within 24 hours of being received, and this information must include:

- a description of the complaints system.
- contact details for the Office of the Ombudsmen and the Inspector of Corrections. This information must clearly indicate that a prisoner may make a complaint to the Ombudsmen or an Inspector of Corrections at any time (including the ability for a prisoner to make a complaint to an Inspector of Corrections after they have been released).

2. Notices explaining the complaints process are prominently displayed on unit notice boards and in other common prisoner areas.

Notices must provide information about how prisoners can obtain forms for making complaints / requesting for information, and the right for prisoners to request assistance, at any time, from Inspectors of Corrections or the Ombudsmen.

3. Complaints are documented, monitored, and entered on IOMS.

4. The Prison Manager must take all reasonable steps to ensure that the Prisoner Complaint Forms (B.10.01.F1) are readily available to prisoners as complaints must be received in writing.

5. Prisoners must be given assistance to make a complaint or verify any information provided (this can include assisting the prisoner to complete form B.10.01.F1).

6. Prisoners who have or appear to have:

- A communication difficulty in English, or
- Difficulties with oral or written communication,

are given every assistance (including an interpreter where necessary) to fill out any required documents and prepare and present their case. They are provided with the opportunity to have any information recorded on any form or document outlining the complaint verified.

7. Complaints are dealt with fairly and responded to within the specified timeframe.

8. Every effort is made to resolve the issue at the lowest possible level within the organisation and in a timeframe that reflects the urgency of the request for the complaint.

9. If prisoner concerns cannot be dealt with at one level the matter is formally referred to the next level.

10. A staff member's response to a prisoner's issue is honest, accurate and culturally sensitive.

11. The identity of complainants is disclosed only to the extent necessary to assist in the resolution of complaints.

12. A Prison Manager's decision to refuse to investigate a complaint because he or she considers it to be frivolous or vexatious is made in consultation with the PS Assistant General Manager Operations at National Office.

13. A register of frivolous or vexatious complaints is maintained (including evidence that this decision has been made in consultation with the PS Assistant General Manager Operations at National Office).

14. A prisoner may have a support person attend during an interview, as long as that support person is not the prisoner's legal adviser.

15. Notices of future visits by an Inspector of Corrections or the Office of the Ombudsmen must be prominently displayed in each unit at least 24 hours before the visit.

16. An Inspector of Corrections must be given access to any person in a prison at which the complainant is / was detained and have access to any records that are relevant to the complaint for the purpose of investigating a complaint.

17. An Inspector of Corrections may at any time enter a prison and have access to all parts of the prison (including any vehicle used for the transportation of any prisoner during the complainant's period of detention) and prisoners for the purpose of investigating a complaint.

18. The Prison Manager must ensure that all reasonable steps are taken to facilitate interviews between an Inspector of Corrections and a prisoner (e.g. make interview rooms available and ensure that prisoners are available to attend interviews).

## **B.10.01 Prisoner Internal Complaints (National Procedure)**

### **Related Links**

#### **Forms**

[B.10.01.F1 Prisoner Complaint Form](#)

### **Procedure Standard**

Internal prisoner complaints are dealt with at the lowest level possible, and referred through all internal levels of authority where necessary for resolution.

### **Requirements**

R1 Frivolous or Vexatious Complaints

### **Prisoner Complaint Requests**

1. Prisoners can request interviews with:

- Unit Manager
- Prison Manager
- Principal Corrections Officer
- Case Officer
- Inspector
- Ombudsman
- Other

**Note:** Some prisoner complaint requests will be just a request for information. The same process for complaints is followed but the category selected on IOMS under complaints will be 'Request for Information'.

## **Procedure**

When a prisoner asks an officer to give him or her a Prisoner Complaint Form (B.10.01 .F1) because they want to make an internal complaint, the officer should attempt to resolve the issue before it progresses to the written stage.

If the officer's attempt to resolve the issue with the prisoner is not to the prisoner's satisfaction, the prisoner is given a Prisoner Complaint Form (B.10.01.F1) and the following actions are taken:

1. The prisoner completes the hard-copy Prisoner Complaint Form and hands it to the officer, who completes the 'receipt' part of the Form and hands it to the prisoner. The officer should tell the prisoner that within 24 hours they will be given a IOMS complaint form (that is numbered) for their records.
2. The officer inputs data from the hard-copy Prisoner Complaint Form by creating a new IOMS Complaint form (under the 'Miscellaneous' section on the menu bar). This is done within 24 hours of the officer receiving the hard-copy form from the prisoner. The hard-copy form is retained on the prisoner's file.
3. The officer 'saves and prints' the IOMS form (which will be automatically numbered) and copies are given to:

- ° the prisoner
- ° the person who will interview the prisoner

This is done within 24 hours of the officer receiving the completed form (B.10.01.F1).

4. The interview takes place, after which the person who interviews the prisoner completes the 'action agreed' section on IOMS, then 'saves and prints' the form.
5. The prisoner receives a copy of the IOMS form with the 'action agreed' section completed.
  - a. Where the 'action agreed' is a referral to a person at the next level of delegated authority, the interviewing officer needs to ensure that this person is informed.
6. If there is no 'action agreed', or the prisoner is not happy with the outcome of the complaint, the Unit Manager advises the prisoner that they may seek assistance from external agencies through the external 'Complaints' process (including the contact details for these external agencies).

## **Complaint Response Times**

1. Action shall be taken to resolve any complaint made by a prisoner within three (3) working days of the receipt of the Prisoner Complaint Form.
2. Where follow-up action is required of a person other than the Unit Manager, the prisoner shall be interviewed by the Prison Manager or another person in the prison who is able to resolve the issue - within seven (7) working days of the Prison Manager or other person being advised of the complaint.
3. Where the complaint is ongoing, the Interviewer should ensure that in monthly intervals the prisoner is notified in writing (using an update on the IOMS form and

a copy given to the prisoner), and if practicable, orally, on the progress of the complaint.

### **'Action Agreed'**

1. The 'action agreed' should include any decisions made by the Department as a consequence of the complaint or any actions taken by the Department in response to the complaint. Where practicable, this outcome of the complaint should be explained orally to the prisoner.

### **Nature of Complaint**

1. Where a prisoner believes that the complaint concerns a person that the complaint will be forwarded to, and the prisoner writes the name of the person or persons who are the subject of the complaint on the form B.10.01.F1, the prisoner does not need to disclose the nature of the complaint and staff should not ask the prisoner about it.

2. If a complaint outlined in (1) above is received by a Corrections Officer / Senior Corrections Officer, the Corrections Officer / Senior Corrections Officer must refer this complaint to a Principal Corrections Officer (PCO) or Unit Manager for their action.

3. The PCO or Unit Manager that receives the complaint may require the prisoner to provide details of the complaint in writing, unless the complaint concerns that staff member. In this case, the complaint should be elevated to the next appropriate level e.g. Prison Manager who is not involved in the complaint. Where the complaint concerns the Prison Manager, the Prison Manager may refer the complaint to an inspector of Corrections for action.

### **Request for Information**

1. Where a prisoner is just requesting information, rather than making a complaint, the same process for making a complaint is followed. The category selected on IOMS for such a request is 'Request for Information'.

### **Key Roles and Responsibilities**

#### Prisoner

1. Attempt to resolve any complaint with Unit staff before lodging formal action.
2. Complete section A of the Prisoner Complaint Form (B.1 0.01 .F1).
3. Refer form to Unit staff / Case Officer.
4. Take part in the interview.

#### Support Person

1. Provides support to the prisoner rather than helping the prisoner present their concern.
2. Is not directly involved in presenting or responding to any legal issues or using any legal background.
3. Is able to act as an interpreter if necessary.

#### Unit Staff

1. Attempt to appropriately resolve any complaints raised during the informal contact with the prisoner.
2. If necessary, advises prisoner of the internal complaints process.
3. When required, provides assistance to the prisoner to make the complaint, including completing the Prisoner Complaint Form.
4. Where appropriate, ensures Prisoner Complaint Form, and IOMS information is actioned according to procedure.

#### Interviewer

1. Interviews the prisoner.
2. Promptly resolves prisoner concerns where possible.
3. Refers unresolved prisoner concerns to the next delegated level of authority.
4. Where the complaint is ongoing, ensures that at least monthly updates, in writing (and where practicable verbally), are provided to the prisoner.
5. Enters 'agreed action' information into IOMS, including any action that the Department has taken in response to the complaint or any decisions made as a consequence of the complaint.
6. Where appropriate, refers complaint to the next interviewer.

#### Unit Manager

1. Advises the prisoner that they may seek assistance from external agencies through the external 'Complaints' process (including the contact details for these external agencies) if there is no 'action agreed' on the complaint, or the prisoner is not happy with the outcome of the complaint.

#### Prison Manager

1. Takes action to resolve complaint where possible.
2. Investigates any unresolved complaint within 14 days of referral and ensures that the prisoner is kept informed of progress.
3. When required, updates IOMS.
4. Responsible for ensuring that all prisoners are given information about the complaints system within 24 hours of being received.
5. Ensures that the outcome of the complaint is notified to the prisoner in writing (a copy of the completed IOMS form), and where practicable, orally.
6. Ensures that if a prisoner is dissatisfied with the outcome of the complaint, that the prisoner is advised that they can make a complaint to the Office of the Ombudsmen or the Inspector of Corrections at any time and the contact details for these external agencies.
7. If considering refusing to investigate a complaint because it is frivolous or vexatious, consults with the Assistant General Manager Operations (AGM Ops) before making a decision.
8. Responsible for maintaining a register of all complaints not investigated because they are considered to be frivolous or vexatious (made up of completed IOMS forms B.10.01.F1 with evidence that this decision was made in consultation with the AGM Ops).
9. Ensures details of upcoming visits by an Inspector of Corrections or Office of the Ombudsmen's representative are prominently displayed.
10. Ensures prisoners are given at least 24 hours notice of the upcoming visits if

an Inspector of Corrections or Office of the Ombudsmen's representative wishes to interview prisoners.

11. If required, provides an oral briefing to the Inspector of Corrections or Office of the Ombudsmen's representative.

### **Support Person**

1. Provides support to the prisoner rather than helping the prisoner present their concern.
2. Is not directly involved in presenting or responding to any legal issues or using any legal background.
3. Is able to act as an interpreter if necessary.

## **B.1 0.02 Official Agency Prisoner Complaints (National Procedure)**

### **Related Links**

#### **Forms**

[B.10.01.F1 Prisoner Complaint Form](#)

#### **Procedure Standard**

Prisoners are aware of their right to seek assistance from official agencies for the purpose of resolving complaints.

#### **Complaint Investigation**

1. Prisoners are able to seek assistance from official agencies (Inspector of Corrections or the Office of the Ombudsmen's representative) for complaint resolution.
2. Prisoners also are able to contact other official agencies (e.g. the Human Rights Commission, the Commissioner for Children, the Police Complaints Authority, the Health and Disability Commissioner, or the Privacy Commissioner) for complaint resolution.
3. For serious complaints a suitably qualified and independent person investigates, in a way that enables a prompt resolution to the allegation.
4. The Inspector of Corrections will monitor the conduct and outcome of any such investigation.

#### **Official Agency Information**

1. Notices of impending visits by an Inspector of Corrections or the Office of the Ombudsmen's representative, for the purpose of hearing complaints, are prominently displayed in Units.
2. Prisoners should be given the opportunity to obtain support people where appropriate.

## **Prisoners Contact with Official Agencies**

1. Prisoners who wish to make a complaint to an Inspector of Corrections can make direct contact by calling the 0800 number or writing a letter. Prisoners who wish to have an interview with an Inspector can make this request by completing a 'Prisoner Complaint' form or ask for their name to be added to the list for an Inspector's upcoming visit.
2. Prisoners who wish to have an interview with an Inspector of Corrections do not have to tell any prison staff member why they want to have that interview.
3. Prisoners who wish to make a complaint to the Office of the Ombudsmen's representative can make direct contact by calling the 0800 number or writing a letter. Prisoners who wish to have an interview with the Office of the Ombudsmen's representative can ask the Prison Manager to pass on their request to the appropriate regional Ombudsmen's Office.

## **Timelines for referrals to Official Agencies**

Inspector of Corrections The Prison Manager records the names of prisoners who wish to have an interview with the Inspector of Corrections. The Inspector of Corrections must, if practicable, provide the Prison Manager with at least 48 hours notice of an impending visit.

## **Office of the Ombudsmen's Representative**

The Prison Manager sends names of prisoners seeking an interview to the appropriate regional Ombudsmen's Office (first week of each month).

## **Official Agency Recommendations**

Where an official agency makes recommendations as a result of a complaint, these recommendations will be responded to in an appropriate manner.

## **Key Roles and Responsibilities**

### **Prisoner**

1. Attempt to resolve any complaint with Unit staff before lodging formal action with official agency.
2. Initiate contact with official agency to make a complaint.
3. Negotiate their interview with the official agency.

### **Unit Staff**

1. Attempt to appropriately resolve any complaints raised during the informal contact with the prisoner.
2. Where required, advise prisoner of their ability to seek assistance from official agencies for the purpose of resolving a complaint.

### **Prison Manager**

1. Ensures details of upcoming visits by an Inspector of Corrections or Ombudsmen's representative are prominently displayed.

2. Ensures prisoners are given at least 24 hours notice of the upcoming visits if an Inspector of Corrections or Ombudsmen's representative wishes to interview prisoners.
3. Take reasonable steps to facilitate interviews with official agencies.
4. If required, provides an oral briefing to the Inspector of Corrections or Office of the Ombudsmen's representative.

## **Official Agency Complaint Definitions**

### **Complaint**

A complaint exists when a prisoner, or other person acting in the interests of a prisoner, formally draws attention, either orally or in writing, to any action or outcome relating to Sentence Management which the complainant wishes to have investigated or reviewed.

### **Complaint Resolution**

A complaint is resolved internally when:

1. All legal and reasonable steps have been taken to address the substance of the complaint; or
2. The complainant withdraws a complaint; or
3. It is referred on to an appropriate external complaint official agency; or
4. It is referred back to an appropriate lower level and 'agreed action' is taken.

### **Justified Complaint**

Where a complaint to an Inspector requires the Inspector's intervention in order to bring about the correct outcome, that complaint will be deemed to be justified. Any of the following conditions may apply:

1. The action or outcome being complained of did not comply with the applicable legislation, operating standards or lawful local instructions.
2. The action or outcome being complained of was not safe, fair or reasonable in the circumstances.
3. The matter was not dealt with in a timely fashion upon being drawn to attention in the first instance.

### **Unjustified Complaint**

A complaint is unjustified if upon being referred back to a lower level from a higher level where it has been received in the first instance, the matter is acknowledged at the lower level and resolved without requiring intervention by an Inspector.

## **B.10.02.R1 Frivolous or Vexatious Complaints (National Requirement)**

### **Frivolous or Vexatious Complaint**

A frivolous or vexatious complaint includes a complaint that:

- Is an abuse of the complaint process
- Is not made in good faith
- Attempts to re-open an issue that has been properly resolved by raising the same issue again or a similar issue or issues.

### **Frivolous or Vexatious Complaints do not have to be Investigated**

1. The Prison Manager may refuse to investigate a complaint if he or she considers the complaint is frivolous or vexatious. All complaints thought to be frivolous or vexatious must be considered on a case by case basis.
2. If a Prison Manager is considering refusing to investigate a complaint because it is frivolous or vexatious, he or she must consult with the Assistant General Manager Operations at PPS National Office before making a decision.
3. If a complaint is not investigated because the Prison Manager decides that the complaint is frivolous or vexatious, the Prison Manager must ensure that the prisoner is promptly notified in writing (by completing the 'agreed action' section on the IOMS form and providing the prisoner with a copy of this form) and if practicable also advised orally, of the decision not to investigate the complaint.
4. If a complaint is not investigated because the Prison Manager decides that the complaint is frivolous or vexatious, the Prison Manager must ensure that the prisoner is told about their right to complain to an official agency (e.g. the Office of the Ombudsmen or an Inspector of Corrections).

### **Register of Frivolous or Vexatious Complaints**

1. A register of all complaints not investigated, because the Prison Manager considers them to be frivolous or vexatious, must be maintained.
2. This register should be made up of completed IOMS forms (B.10.01 .F1) where the 'agreed action' section of the form indicates that the complaint was not investigated because it was considered to be frivolous or vexatious. The register should also contain evidence that this decision was made in consultation with the Assistant General Manager Operations at PPS National Office.

## **ANNEX 2**

### Prison Services Operations Manual's Prisoner Complaints Section

## **Prisoner complaints**

### **Prison complaints criteria**

This process applies whenever a prisoner, or other person acting in the interests of a prisoner, formally draws attention, either orally or in writing, to any action which the complainant wishes to have investigated or reviewed.

#### **PC01.01 Initial notification of prisoner complaint**

1. On being advised of a prisoner's complaint, unit staff should immediately attempt to resolve the issue informally before the prisoner lodges a formal complaint.
2. If the prisoner's concerns cannot be addressed informally, unit staff must:
  - a. advise the prisoner of the internal complaint process
  - b. advise the prisoners that they have the right to seek assistance from official agencies (e.g. Inspector of Corrections or the Office of the Ombudsmen) for the purpose of resolving complaints, and that the prisoner:
    - i. can contact the Inspector of Corrections or the Office of the Ombudsmen directly using the 0800 number or writing a letter
    - ii. can request an interview with these agencies by completing PC.01.Form.01 Prisoner complaint or ask for their name to be added to the list for an Inspector's upcoming visit
    - iii. does not have to tell any prison staff member why they want to have an interview with an Inspector of Corrections.
  - c. advise the prisoner that they may have a support person who can:
    - i. assist in completing the complaint form
    - ii. act as an interpreter
    - iii. assist in responding and presenting the prisoner's complaint, but
    - iv. not act in any legal capacity or be legally qualified.

#### **PC.01.02 Internal complaint**

1. If the officer's attempt to resolve the issue with the prisoner is not to the prisoner's satisfaction, the prisoner is to be given a PC.01.Form.01 Prisoner complaint.
2. If the prisoner appears to have difficulties with oral or written communication, or has difficulty communicating in English, the officer should provide assistance with completing form.
3. The prisoner must return the completed form to the officer. The prisoner can record any information on the application outlining the complaint. Where a prisoner believes that the complaint concerns a person that the complaint will be forwarded to, and the prisoner writes the name of the person or persons who are the subject of the complaint on the form, the prisoner does not need to disclose the nature of the complaint, and staff should not ask the prisoner about it.
4. Upon receipt of the completed form, the officer must complete the "receipt" part of the form and hand it to the prisoner.

5. The interviewing officer must update IOMS and provide copies of the (numbered) IOMS generated complaint form within 24 hours from receiving the completed form to:
  - a. the prisoner, and
  - b. the person who will interview the prisoner.
6. Complaints regarding staff members must be referred to the prison manager, and all other complaints are to be referred to the PCO or unit manager. Where the complaint concerns the prison manager, the prison manager must forward the complaint to an Inspector of Corrections.
7. If the complaint relates to either CIE activities or CIE staff, the complaint must be forwarded to the CIE site manager, once the:
  - a. prisoner has completed PC.01.Form.01 Prisoner complaint, and
  - b. the PCO or unit manager has completed the receipt section of this section of this form.
8. For CIE complaints, instructions referring to prison manager (or other prison staff) are to be read as referring to CIE site manager, or other delegated staff.

### **PC.01.03 Complaint interview**

1. The interviewing officer may require the prisoner to provide details of the complaint in writing.
2. Interviews before a PCO, or unit manager, must occur within three working days of the receipt of the PC.01.Form.01 Prisoner complaint. Interviews by the prison manager or another person in the prison who is able to resolve the issue must occur within seven working days of the prison manager or other person being advised of the complaint.
3. At the interview, the prisoner may be accompanied by a support person as long as that support person is not the prisoner's legal adviser.
4. The interviewing officer should attempt to resolve prisoner concerns promptly where possible.

### **PC.01.04 Complaint resolution**

1. The interviewer is responsible for recording "agreed action" information into IOMS, including any action that the Department has taken in response to the complaint or any decisions made as a consequence of the complaint, and must provide a copy of the IOMS form to the prisoner.
2. Where the "action agreed" is a referral to a person at the next level of delegated authority, the interviewing officer needs to ensure that this person is informed.
3. The interviewer must refer unresolved prisoner complaints to the next delegated level of authority, who is responsible for investigating these unresolved complaints within 14 days of referral and ensuring that the prisoner is kept informed of progress.
4. If there is no "action agreed", or the prisoner is not happy with the outcome of the complaint, the interviewing officer must advise the prisoner that they may seek assistance from external agencies through the external "Complaints" process (including the contact details for external agencies).
5. Where the complaint is ongoing, the interviewer should ensure that at monthly intervals the prisoner is notified in writing (using an update on the IOMS form and a copy given to the prisoner), and if practicable, orally, on the progress of the complaint.

6. A complaint is resolved internally when any one of the following has occurred:
  - a. all legal and reasonable steps have been taken to address the substance of the complaint
  - b. the complainant withdraws a complaint
  - c. it is referred on to an appropriate external complaint official agency
  - d. it is referred back to an appropriate lower level and “agreed action” is taken.

#### **PC.01.05 Frivolous or vexatious complaints**

1. If the interviewing officer considers that the complaint is frivolous or vexatious, they must refer the matter to the prison manager. The prison manager must consider each complaint on a case by case basis, and determine if the complaint:
  - a. is an abuse of the complaint process
  - b. is not made in good faith
  - c. attempts to re-open an issue that has been properly resolved.
2. The prison manager must consult with the Assistant General Manager Operations (AGM Ops) before determining whether or not to investigate a frivolous or vexatious complaint.
3. If the prison manager decides that the complaint is frivolous or vexatious, the prison manager must ensure that the prisoner is promptly notified in writing (by completing the “agreed action” section on the IOMS form and providing the prisoner with a copy of this form) and, if practicable also orally, of the decision not to investigate the complaint.
4. The prison manager must advise the prisoner about their right to complain to an official agency (e.g. the Office of the Ombudsmen or Inspector of Corrections).
5. Prison managers are responsible for maintaining a register of all complaints not investigated because they are considered to be frivolous or vexatious (made up of completed IOMS forms (CP.Form 1) with evidence that this decision was made in consultation with the AGM Ops).

#### **PC.01.06 Complaints to official agencies**

1. Serious complaints must be referred to a suitably qualified and independent person to investigate, in a way that enables a prompt resolution to the allegation. An Inspector of Corrections will monitor the conduct and outcome of any such investigation.
2. Unit staff must update IOMS if the prisoner has filed a PC.01.Form.01 Prisoner complaint requesting an interview with an official agency, then forward the form to the prison manager.
3. The prison manager records the names of prisoners who wish to have an interview with an external agency and forwards the list of names to the appropriate regional Office of the Ombudsmen (first week of each month), or Inspector of Corrections.
4. The Ombudsman and Inspector of Corrections should, if practicable, provide the prison manager with at least 48 hours notice of an impending visit, and advise who they intend to interview.
5. Notices of upcoming visits by an Inspector of Corrections or Office of the Ombudsmen’s representative must be prominently displayed.
6. The prison manager must take reasonable steps to facilitate these interviews and ensure that the prisoner is given at least 24 hours notice of an upcoming interview.

7. If required, the prison manager will provide an oral briefing to the Inspector of Corrections or Office of the Ombudsmen's representative.
8. An Inspector of Corrections must be given access to any person in a prison at which the complainant is / was detained and have access to any records that are relevant to the complaint for the purpose of investigating a complaint.
9. An Inspector of Corrections may at any time enter a prison and have access to all parts of the prison (including any vehicle used for the transportation of any prisoner during the complainant's period of detention) and any other prisoners for the purpose of investigating a complaint.

#### **PC.01.07 Official agencies recommendations**

1. The prison manager must ensure that the recommendations of the official agency are responded to in an appropriate manner,
2. Where a complaint to an Inspector of Corrections requires the Inspector's intervention in order to bring about the correct outcome, that complaint will be deemed to be justified. Any of the following conditions may apply:
  - a. The action or outcome being complained of did not comply with the applicable legislation, operating standards or lawful local instructions.
  - b. The action or outcome being complained of was not safe, fair or reasonable in the circumstances.
  - c. The matter was not dealt with in a timely fashion upon being drawn to attention in the first instance.
3. A complaint is unjustified if, upon being referred back to a lower level from a higher level where it has been received in the first instance, the matter is acknowledged at the lower level and resolved without requiring intervention by an Inspector of Corrections.

#### **PC.01.08 Request for information or to initiate specified application**

1. Prisoners may request a complaint interview from any member of staff for the purposes of obtaining information or when making the following applications:
  - a. F. 11.01 Application for special religious service
  - b. F. 14.01 Application for fundraising
  - c. F.07.01 Application for access to facilities to assist in litigation
  - d. F.08.01 Application for access to facilities for study
  - e. F.09.01 Application for wedding / civil union.
2. The same process for complaints is followed but the category selected on IOMS under complaints will be "Request for Information".

### **ANNEX 3**

Spring Hill Corrections Facility (SHCF) CIE Building Yard's prisoner induction handbook

## **SHCF BUILDING YARD – CIE**

### **WORK CONTRACT**

#### Hours of Work

Your usual hours of work are:

Approximate Start: 8.00 am

Approximate Finish: 3.30 pm

Available to work in any 7 day period.

Note: All work will be recorded and reviewed and if your performance or attitude proves to be unsatisfactory your training will be cancelled at any time.

#### Payments

Payment will be based on QUALITY as well as quantity and will be recorded and monitored on a regular basis.

**This is a salary position** and will be discussed at the interview by the instructor only. Your salary will be recorded in the office on a separate mark sheet.

#### Attendance

If you are unable to attend work you **MUST** let your **Unit** and **Instructor** know within thirty minutes of your normal starting time.

In all cases, a reason must be given and an expected time of when you will be returning to work.

All absences from work will be recorded and reviewed.

Absence from work for locked report, the hearing of misconducts and any cell confinement will be regarded as unlawful absences and may result in, your work being terminated.

If you have ideas of changing jobs, you must speak to your **instructor** first, as he is the only one who can **release** you from your **contract**.

#### Breaks

You will receive the following break periods:

Morning Tea: 10.00am to 10.15am

Lunch Time: 12.00pm to 12.30pm

In the afternoon there will be a 5 minute smoke break at 2.00pm.

## Health & Safety

### **General**

Spring Hill Corrections Facility want to provide you with a safe environment to work in and have safe working practices in place to help prevent accidents.

Safety is the responsibility of each and every one of us. To help prevent accidents please play your part by observing the safe practices in place and using tools and equipment as directed.

### **Work Accidents**

Report **all accidents to your instructor immediately** no matter how big or small.

Report immediately any situation you consider to be unsafe or any damaged or defective equipment or machinery to your instructor. It is your responsibility to identify and report any hazard in your work place.

### **First Aid Facilities**

During your induction you will be shown where first aid facilities are located and who you are to see if an accident happens

### **Emergency Procedures**

In the event of a serious emergency occurring (for example fire) while you are working, leave by the safest exist and assemble in your area which has been designated for such an emergency. During your induction emergency evacuation procedures will be explained to you.

### **Safety Equipment**

**ALL** protective clothing and equipment issued **MUST** be worn at all times. Failure to use any or all safety equipment will result in disciplinary action being taken.

### **Alcohol & Drugs**

Any person found with alcohol or drugs in their possession or under the influence of either while working will be removed from the work training programmes **permanently**.

**Random drug testing may be carried out at any time.**

### **Smoking**

Some industries have smoke free policies. There will be no smoking while work is in process; the only time you may have a smoke is in your break in the designated area set aside for smoking. This is a **HEALTH & SAFETY** issue.

## **Long Hair & Loose Clothing**

In some workshops, long hair and loose clothing can be dangerous and can cause accidents. All long hair is to be tied back or covered and loose garments either secured or removed.

Prisoners who put themselves or others at risk will be disciplined and may lose the opportunity of future employment.

## **Clothing**

All clothing including protective clothing is the property of the industries department and is on loan and must be returned when directed. Any loss of gear may be deducted from your earnings.

## House Rules

These rules have been made so you can work in a safe working environment.

**THESE RULES APPLY TO ALL PRISONERS** and fall into two areas:

- A/ Serious Misconduct.
- B/ Misconduct.

These lists are not exhaustive.

Note: While on your worksite you will be subject to general Prison rules and regulations.

### Serious Misconduct

This deals with types of misconduct where your work skill training will stop immediately.  
Warnings will not be given.

The following actions constitute serious misconduct:

A/ Assault, abusive behaviour or threatening violence against anyone.

B/ Any act of disobedience, negligence or incompetence which affects safety, quality or good conduct. This includes sleeping during working hours.

C/ Theft or removal of any property including that of another inmate. This also includes any dishonesty or intentional damage to any product or property, either belonging to the industry involved, prison staff or other inmates. Where intentional damage occurs to industry equipment or products, inmates may be held liable for restitution.

D/ The removal misuse or abuse of fire protection or safety equipment.

E/ Being in possession of or under the influence of drugs or alcohol.

C/ Disorderly conduct, practical jokes and horseplay which results or could result in an accident occurring.

F/ Leaving the job without permission.

H/ Refusal to perform any reasonable task.

I/ Unauthorised absences from — locked report, hearing of misconducts or cell confinement.

### House Rules – Continued.....

#### **Misconducts**

These are breaches of the rules on less serious misconduct. A breach of these rules will result in a warning being issued. Repeated breaches will result in your workskill training being cancelled.

A/ Using abusive language to another person while working.

B/ Disorderly conduct, practical jokes or horseplay.

C/ Intentional misuse of tools and equipment or defacing property.

B/ Failure to observe safety procedures.

E/ Failure to report an accident.

F/ Breaching smoking rules.

G/ Having clothing or hair in such a manner that could cause an accident.

### Warning System

#### **Serious Misconduct**

If you break these rules your placement in the work programme will be cancelled.

#### **Misconduct**

If you breach the rules more than twice your placement in the work programme may be cancelled.

**ANNEX 4**

Auckland Prison CIE Precast Yard's prisoner employment warning system form

CORRECTIONS INMATE EMPLOYMENT

**Asset Maintenance**

**WARNING SYSTEM**

1. SERIOUS BREACHES

If you break these rules your placement in the Program will be cancelled.

2. LESSER BREACHES

First Warning- A breach of these rules will result in a verbal warning

Second and Final Warning - A second breach of these rules will result in a written warning.

Cancellation - A further breach of these rules will result in your placement in the Program being cancelled.

**REPRIMAND RECORD**

Name of Prisoner: \_\_\_\_\_

**1. First Warning — (Verbal Warning)**

Date: \_\_\_\_\_

Reason:

Signature: \_\_\_\_\_

**2. Second and Final Warning — (Written Warning)**

Date: \_\_\_\_\_

Reason:

*Cancellation - A further breach of these rules will result in your placement in the Program being cancelled.*

Signature: \_\_\_\_\_

Inmate Signature: \_\_\_\_\_

**3. Cancellation**

Date: \_\_\_\_\_

Reason:

Signature: \_\_\_\_\_