



**Own Motion Investigation  
into the Department of Corrective Services'  
Prisoner Grievance Process**

**May 2006**

## Contents

<b>I. OVERVIEW .....</b>	<b>3</b>
KEY FINDINGS .....	4
RECOMMENDATIONS .....	5
THE DEPARTMENT'S RESPONSE .....	6
<b>II. BACKGROUND.....</b>	<b>7</b>
THE OMBUDSMAN'S ROLE .....	7
THIS INVESTIGATION.....	7
WHAT DID WE DO? .....	9
<b>III. THE ORIGINS OF THE DEPARTMENT'S PRISONER GRIEVANCE PROCESS .....</b>	<b>10</b>
<b>IV. THE PRISONER GRIEVANCE PROCESS .....</b>	<b>13</b>
DIRECTOR GENERAL'S RULE 5.....	16
<b>V. RECORDED COMPLAINTS.....</b>	<b>17</b>
ENQUIRIES AND COMPLAINTS TO THE OMBUDSMAN.....	17
GRIEVANCES REGISTERED ON TOMS .....	18
COMPARISONS AND FINDINGS .....	19
<i>Referrals back to the Prisoner Grievance Process.....</i>	<i>21</i>
<b>VI. ASSESSMENT OF CURRENT PROCESS AGAINST RELEVANT STANDARDS.....</b>	<b>22</b>
AUSTRALIAN STANDARD ON COMPLAINTS HANDLING .....	22
STANDARD GUIDELINES FOR CORRECTIONS IN AUSTRALIA.....	22
<b>VII. ASSESSMENT OF THE PRISONER GRIEVANCE PROCESS .....</b>	<b>24</b>
1. ACCESSIBILITY .....	24
<i>The Process .....</i>	<i>24</i>
<i>The Issues – Availability of information.....</i>	<i>25</i>
<i>The issues - Appropriateness of information.....</i>	<i>26</i>
2. FAIRNESS .....	28
<i>The Process .....</i>	<i>28</i>
<i>The Issues - Confidence in the Prisoner Grievance Process.....</i>	<i>29</i>
<i>The Issues - Difficulties when complaint involves an officer.....</i>	<i>30</i>
<i>Options .....</i>	<i>31</i>
3. EFFICIENCY .....	34
<i>The Process .....</i>	<i>34</i>
<i>The Issues - Handling grievances efficiently.....</i>	<i>34</i>
<i>The Issues – Staff training .....</i>	<i>36</i>
4. ACCOUNTABILITY .....	37
<i>The Process .....</i>	<i>37</i>
<i>The Issues – Prisoners' lack of confidence in confidential access to external agencies .....</i>	<i>39</i>
CONCLUSION.....	41
APPENDIX 1: NUMBER OF COMPLAINTS BY PRISON AND SYSTEM 2004-2005.....	42
APPENDIX 2: THE PRISONER GRIEVANCE PROCESS BOOKLET .....	43
APPENDIX 3: COMPLAINTS RECEIVED ABOUT THE GRIEVANCE SYSTEM.....	48
APPENDIX 4: REFERENCES .....	49

# I. Overview

1. In July 2005, having been concerned for some time about the scheme implemented by the then Department of Justice<sup>1</sup> to address prisoner complaints (the 'Prisoner Grievance Process'), I initiated an own motion investigation under Section 16(1) of the *Parliamentary Commissioner Act 1971* ('the Act'). The purpose of this investigation was to establish the extent to which the current Prisoner Grievance Process was consistent with the *Australian Standard on Complaints Handling*,<sup>2</sup> the relevant Director General's Rules and other relevant benchmarks and, where necessary, to make recommendations for improvement.<sup>3</sup>
2. At the time I started my investigation the scheme was the responsibility of the Department of Justice. On 1 February 2006 it became the responsibility of the newly established Department of Corrective Services. For simplicity this report uses the term 'the Department' to cover both organisations.
3. My decision to initiate this 'own motion' investigation was made taking into account the terms of reference of the *Inquiry into the Management of Offenders in Custody* ('the Mahoney Inquiry') which had been announced by the Premier on 5 April 2005. In my view this report complements the Inquiry's recommendations which were tabled in the Parliament on 23 November 2005.
4. Across all the agencies in my jurisdiction, I emphasise that a good complaint handling system can and should deliver two key benefits:
  - i. it provides information which can lead to improvements in service delivery; and
  - ii. where complaints are handled properly, a good system can improve the reputation of an organisation.
5. While acknowledging the strengths of the present Prisoner Grievance Process, as formulated in the Department's policy and procedure, I have formed the view that in practice the Department's process has shortcomings in the key elements of a good complaint handling system, that is, in the areas of accessibility, efficiency, fairness and accountability.
6. My investigation identified a number of deficiencies in the current approach to handling prisoner complaints which related to the links between the current Prisoner Grievance Process and Unit Management,<sup>4</sup> and the way in which both of these initiatives were implemented. Shortcomings were also identified in assessing the Prisoner Grievance Process against the requirements of the *Australian Standard on Complaints Handling*<sup>5</sup> and the *Standard Guidelines for Corrections in Australia (2004)*<sup>6</sup>. My findings are based on the available data on prisoner complaints from both the Ombudsman's and the Department's systems, information from a recent

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<sup>1</sup> Until 2001 the Department of Justice was known as the Ministry of Justice.

<sup>2</sup> Standards Australia, (1995). *Australian Standard on Complaints Handling*, AS 4269 - 1995

<sup>3</sup> At the time of initiating the investigation I stated that it was my intention to undertake a further review of the complaints handling process at a regional prison with a high level of Indigenous prisoners some time after the initial investigation was complete. This review will take place in 2006. It will be separate to the follow-up monitoring of actions taken by the Department to address the recommendations made in this report.

<sup>4</sup> See para 35 for a definition of Unit Management.

<sup>5</sup> Above n 2.

<sup>6</sup> *Standard Guidelines for Corrections in Australia (2004)*.

inspection of Bandyup Women's Prison, and a number of specific cases that have come to my attention.

7. The extensive planning for the existing Prisoner Grievance Process and the efforts of key people within the Department to monitor, implement, and improve the process are acknowledged, with the recent review of the process leading to a number of valuable changes. Nevertheless its implementation, in my view, has not achieved the desired objectives.
8. As a result, the existing Prisoner Grievance Process does not appear to provide sufficient basis for the public or for prisoners themselves to have confidence in the system for complaint handling. In some respects it has been, like other Departmental initiatives identified in the Mahoney Inquiry,<sup>7</sup> a good idea which has been let down in the implementation.

## ***Key Findings***

9. The existing Prisoner Grievance Process has shortcomings in four key elements of good complaint handling:

### **Accessibility**

- Indigenous prisoners are less likely than others to access the Prisoner Grievance Process and all other prisoner complaint handling processes;
- the different processes for handling various internal Departmental reviews, appeals and complaints is extremely complex;
- the term 'Prisoner Grievance Process' is of itself confusing for some prisoners;
- prisoners do not appear to be consistently aware of, or to understand, the Prisoner Grievance Process;
- the Prisoner Grievance Process relies upon filling out forms, but for many prisoners this may not be culturally appropriate or may be difficult due to their literacy skills.

### **Efficiency**

- prison staff are not appropriately trained to resolve prisoner complaints;
- there is a lack of clearly defined responsibility for an efficient complaints handling system at every prison;
- the Prisoner Grievance Process relies on good information technology systems but staff do not appear to be adequately trained to use these systems.

### **Fairness**

- prisoners appear to have little confidence in the Prisoner Grievance Process as being a fair process;
- suitable mechanisms for direct access to a responsive process are lacking.

### **Accountability**

- the confidential mail process for contacting external complaints agencies should be strengthened to increase prisoner confidence in the integrity of that system.

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<sup>7</sup> *Inquiry into the Management of Offenders in Custody*, Transcript of Proceedings (Submissions of Counsel Assisting) 10 October 2005, p. 2129.

## ***Recommendations***

10. In order to assist the Department improve its complaints handling process, I recommend that:

To enhance **accessibility**:

- i. The Department should provide clear, simple information for prisoners about where to take each of the different types of complaint.
- ii. Information on the Prisoner Grievance Process should be provided in ways appropriate to both the culture and literacy level of prisoners. This information, together with grievance forms, should be freely available throughout each prison and not simply by request; and ideally it should be developed in consultation with prisoners.

To enhance **fairness**:

- iii. Prisoners should be provided with appropriate mechanisms for lodging a complaint where the existing process is unsuitable because of cultural differences, a lack of written English skills on the part of the prisoner, or the nature of the complaint.

To that end, the Department should consider options for providing direct access to a complaints handling process such as:

- establishing a telephone contact line modelled on the NSW Corrective Services Support Line; and / or
- establishing alternative pathways outside the immediate Unit Management framework for complaints about the conduct of prison officers.

To enhance **efficiency**:

- iv. In support of its commitment to improve the overall Prisoner Grievance Process, the Department should formalise the responsibility for an effective complaints handling process at each prison site.
- v. The Department should improve the level of training provided to prison officers and other staff involved in the resolution of disputes, and in the skills required to register the complaints in the Department's offender database (TOMS).

To enhance **accountability**:

- vi. Processes promoting confidence in confidential access to outside agencies involved in the complaint handling process should be improved. Opportunities to do this include the following:
  - providing numbered confidential mail envelopes; informing prisoners of the need to keep a record of the number; and registering the numbers of those envelopes when despatched; and
  - implementing an expanded recording process for the collection and mailing of confidential mail items, as trialled at Acacia Prison.

To ensure that these recommendations are successfully implemented, and to provide feedback to the Department to help continuously improve its complaints handling process, my office will monitor the Department's progress towards implementing these recommendations on a six monthly basis; seek feedback on the Department's internal complaints handling processes from prisoners telephoning my office with a prison enquiry or complaint; and conduct a detailed review of the complaints handling process at a regional prison with a high level of Indigenous prisoners in 2006.

## *The Department's Response*

11. A draft copy of this report was provided to the Department in December 2005. It was provided to enable the Department to advise me whether I had correctly understood the facts of the matter, and to give the Department the opportunity to provide further information, or to make a further submission in response.
12. In the Department's response, received on 15 February 2006, the Department acknowledged that '*there are systemic and operational issues that need to be addressed for prisoners to have absolute confidence in the Grievance process.*'
13. The Department also indicated that it believed '*the six recommendations made ... are appropriate and agrees in principle to their implementation into the State's prison systems, however consideration must also be given to the recommendations of the Mahoney Inquiry and the significant undetermined structural changes the Department of Corrective Services is currently subject to.*'
14. I believe the Department's willingness to acknowledge deficiencies in the Prisoner Grievance Process and its agreement, in principle, to implement my six recommendations promises well for the future.

## II. Background

### *The Ombudsman's Role*

15. My role, under the *Parliamentary Commissioner Act 1971* (the Act), is to investigate written complaints regarding any decision, recommendation, or act done or omitted, which relates to a matter of government administration personally affecting the complainant, subject to the provisions of that Act.
16. The Act contains specific provisions under Section 17A which entitle a prisoner to facilities for preparing a complaint, and for that complaint to be posted to the Ombudsman in a sealed envelope without undue delay.
17. Without limiting my statutory obligations to investigate complaints from prisoners, it is the general practice of my office, as it is with other Ombudsman offices, to operate as an office 'of last resort'. That is, where appropriate, I expect the prisoner to have attempted to resolve his or her complaint directly with the Department before approaching my office.
18. It is vital that when my office refers complaints back to a prison for resolution I have confidence in the prison's complaint handling process. To merit confidence, the complaint process must fulfil three general conditions:
  - there must be a commitment from all levels of the Department to the value of the system;
  - the system should be demonstrably fair to both prisoners and staff, meaning it must be visible, accessible and responsive; and
  - staff responsible for complaints handling involved should be appropriately selected and trained.
19. These general conditions represent good practice standards and the Department embraced aspects of these within its Director General's Rule 5 and in the Request for Proposal (RFP) Standards Framework that it issued when contracting a private company to provide custodial services for Acacia Prison.
20. However, advice from prisoners, either verbally, in writing, or through the reports of Independent Prison Visitors, indicates that the practice may not always reflect the theory. Prisoners claim that in some prisons they are discouraged from registering grievances and that inadequate responses to grievances increase stress and frustration. Over a number of years prison inspections by the Office of the Inspector of Custodial Services and visits to prisons by my officers have given rise to concerns about the effectiveness of the Prisoner Grievance Process, with a number of prisoners saying they are either unaware that the system exists or claiming that they feel inhibited in using it.<sup>8</sup>

### *This investigation*

21. The necessity of providing a transparent and efficient process that facilitates the resolution of prisoner complaints has long been recognised. As early as 1991 the Royal Commission into Aboriginal Deaths in Custody<sup>9</sup> ('the Royal Commission') recommended that consideration should be given to the establishment for each

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<sup>8</sup> See paras 84-105 below.

<sup>9</sup> *Report of the Royal Commission into Aboriginal Deaths in Custody*, AGPS, Canberra, (1991).

prison of an independent Complaints Officer whose functions included, among other things, the settling of complaints.

22. In spite of the 1995 response by the Department to the Royal Commission, that '*adequate provisions exist*',<sup>10</sup> in 2000 my predecessor, Mr Murray Allen, found it necessary to recommend in his *Report on Deaths in Prison* that the implementation of a new Prisoner Grievance Process be finalised as quickly as possible. Mr Allen also specifically highlighted the need for adequate training for prison officers and others involved in the Prisoner Grievance Process.<sup>11</sup> The Prisoner Grievance Process was finally introduced into all WA prisons by June 2002.
23. The Department has recently re-stated its commitment to a Prisoner Grievance Process that enables more efficient internal resolution of complaints and grievances, to:

*'provide in the first instance a formal process where 'interaction' between prison support staff and the prisoner can take place to discuss issues related to a prisoner's complaint or grievance about the prison system. The objective and desired outcome [is that] ... grievances are resolved at the lowest level of grievance escalation to the satisfaction of the prisoner'*.<sup>12</sup>
24. It is important to note, however, that the Prisoner Grievance Process is itself only one component of the overall Department's prisons' complaint handling system. Grievances on behalf of another prisoner, case conference decisions, statutory disciplinary decisions, complaints about legislation, Director General's Rules or criminal offences, are all excluded from the Prisoner Grievance Process and are each subject to separate appeal and review processes.
25. It is now three years since the present Prisoner Grievance Process was fully implemented throughout the WA prison system. During that time, the original objective of the Prisoner Grievance Process appears to have been expanded by the Department beyond the original aim of merely avoiding '*complaints of a trivial nature being referred to the Ombudsman*',<sup>13</sup> to one in which the purpose of the prisoner grievance review panel has been referred to as adjudicating '*any grievances that cannot be resolved at prison level*' [emphasis added].<sup>14</sup> The implication here is that all prisoner grievances, irrespective of their seriousness or nature, should be addressed at the first instance through the Prisoner Grievance Process.
26. Nevertheless, it is important to note that prisoners retain the right to access my office in accordance with the *Parliamentary Commissioner Act 1971*, although in practice my office essentially operates as an 'office of last resort'.
27. It is also worth noting that the greatest number of allegations received by my office in 2004/05 were about the Department and Australian Integration Management Services Corporation ('AIMS'), which is the private corporation contracted to operate Acacia Prison, court custody and transport services. In total, complaints about prisons represented 32.8 per cent of all allegations we received. As mentioned earlier, operating as an office of last resort, it is essential that as

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<sup>10</sup> The 1995 *Government Implementation Report* quoted in Ombudsman Western Australia, *Report on an inquiry into Deaths in Prison in Western Australia*, (2000), p 391.

<sup>11</sup> Ombudsman Western Australia, *Report of an Inquiry into Deaths in Prison in Western Australia*, (2000), p 392.

<sup>12</sup> Department of Justice, *Review of Prisoner Grievance Process*, (2005), p 5.

<sup>13</sup> Department of Justice, *Annual Report 2001/2002*, p 24; and see the Department's Annual Report 2000/2001, p 20, which refers to the intent of the system being '*to reduce the number of minor complaints being received by the Ombudsman*'.

<sup>14</sup> Department of Justice, *Annual Report 2002/2003*, p 48.



Ombudsman I have confidence in the capacity of the Prisoner Grievance Process to appropriately address prisoner complaints - hence my decision to undertake a review of the effectiveness of the system.

### *What Did We Do?*

28. To evaluate the existing Prisoner Grievance Process we:

- researched the origins of the current Prisoner Grievance Process;
- conducted a desk-top review of the current system, taking into account examples of complaints we have received from prisoners as indicators of either perceived or actual shortcomings in the system. This review involved an analysis of data from the following sources:
  - a) OSCAR (Ombudsman's Statistics and Complaints Automated Register) - the Ombudsman's database of written complaints,
  - b) Felix- the Ombudsman's database of telephone enquiries,
  - c) TOMS (Total Offender Management System) - the Department's database of offender information, including the Prisoner Grievance Tracking System;
- identified, researched, and collated 'better practice' principles for the handling of complaints, and specifically prisoner grievances;
- took account of the 2005 internal review of the Department's Prisoner Grievance Process;
- reviewed information gained from the prison inspections conducted by the Inspector of Custodial Services between 2001 and 2005, including a recent inspection of Bandyup Women's Prison undertaken in late May 2005. In that inspection, the Inspector's team was accompanied by an officer from the Ombudsman's Office. Apart from taking individual complaints, my officer gathered data and perceptions about Bandyup's internal complaint handling process; and
- analysed complaints we had received about the current system.

### III. The Origins of the Department's Prisoner Grievance Process

29. The Department's current Prisoner Grievance Process had a long genesis, and my office played an integral role in its development.
30. Discussions around a number of issues relating to the management of prisoner complaints commenced between the Ombudsman and the Department in 1997. Key points raised by the Ombudsman at that time included the need for:
  - the establishment of an internal complaints procedure by the Department;
  - telephone access for prisoners to the Ombudsman's office;
  - procedures for how prisoner complaints to the Ombudsman's Office were to be handled, including distinguishing between minor and more serious complaints;
  - notification to the Ombudsman of serious prison incidents; and
  - visits to prisons by Ombudsman staff.
31. During 1998, my predecessor identified four '*essential ingredients*' for what had come to be referred to as a '*prisoner grievance process*'. These were:
  - the process should be clearly articulated in an appropriate document which was accessible to all;
  - the process should attempt to deal with grievances within the organisation, at a local level, with capacity to escalate if necessary;
  - at some point independent oversight was essential; and
  - comprehensive statistics should be kept to identify recurring issues.
32. In 1999, external contractors reviewed the Department's procedures for prisoner grievance, discipline and punishment. The review, conducted by Guy Hall and Catherine Larkin, was completed in May 1999.<sup>15</sup> Subsequently, tenders were called for consultancy services for the implementation of a '*best practice prisoner grievance procedure for all Western Australian prisons*', based upon the endorsed recommendations of the Hall and Larkin review.<sup>16</sup> In correspondence dated 9 April 2000, the Department advised that the model of grievance procedures '*will be consolidated after extensive consultations with external and internal stakeholders*'.<sup>17</sup> A pilot program was to commence in May 2000 and following further evaluation, the Prisoner Grievance Process was to be implemented in all prisons by December 2000.<sup>18</sup> However the pilot program did not commence until late 2000 (at Bunbury Regional Prison and Wooroloo Prison Farm), and the evaluation by external consultants engaged by the Department was not completed until April 2001.<sup>19</sup>

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<sup>15</sup> G Hall & C Larkin, *Review of Prisoner Grievance, Discipline and Punishment Procedures*, (May 1999).

<sup>16</sup> Request for Tender 313/99 for the *Provision of a Best Practice Prisoner Grievance Procedure for all Western Australian Prisons*, (closing 17 January 2000).

<sup>17</sup> Letter from the Executive Director Offender Services to the Ombudsman WA, 9 April 2000.

<sup>18</sup> Ibid.

<sup>19</sup> Social Systems & Evaluation, *Review of the Prisoner Grievance Procedures Pilot Project for the Ministry of Justice*, (April 2001).

33. The new Prisoner Grievance Process, finally implemented in all prisons by June 2002, incorporated some significant changes to the regime previously established under Director General's Rule 2G '*Requests and Complaints by Prisoners*'. Significantly, Director General's Rule 2G had prescribed a hierarchy of consideration of requests and complaints by unit officers, other authorised persons, the Superintendent, the Director, Prison Management, the Executive Director and then an unspecified higher authority if a prisoner remained dissatisfied after exhausting the identified avenues. The changes to the previous regime initiated by the new Prisoner Grievance Process can be summarised by reference to three of the four '*essential ingredients*' identified by Mr Allen, being:
- the documentation and promotion of the grievance process;
  - the incorporation of independent oversight; and
  - the retention of comprehensive statistics for analysis and review.
34. In one key aspect, however, the new Prisoner Grievance Process mirrored that which previously applied, being primarily based upon prisoners approaching unit staff, and as such relied upon the effectiveness of the 'Unit Management' system in its prisons.
35. Unit Management, in the prisons context, is a system for '*devolving management at the operational level to a relatively small group of custodial officers in charge of inmates*'.<sup>20</sup> Unit Management was introduced throughout WA prisons during the 1980s. In the ideal, it involves constructive interaction between prison officers and prisoners, with the intention of providing a more normal living and working environment for both groups. Under Unit Management, units of prisoners are managed by a unit manager and a team of officers for an assigned period within a framework of delegated decision-making power and authority.<sup>21</sup> Unit Management was to be the vehicle by which prisoners' day to day welfare and other needs were met. Its effectiveness has been linked by the Department with '*reducing grievances and improving living conditions for all*'.<sup>22</sup>
36. In its 1995 *Government Implementation Report*, the Department responded to a number of the welfare-oriented recommendations of the Royal Commission into Aboriginal Deaths in Custody by citing the principles of Unit Management as the means by which the welfare needs of prisoners would be met. Specifically in responding to the Royal Commission's two recommendations relating to prisoner requests and complaints,<sup>23</sup> the Department stated that both recommendations had been implemented, relying upon the '*Unit Management Principles*' then applicable to offender management and citing the existing provisions under the *Prisons Act 1981*, Director General's Rule 2 and the existence of the Aboriginal Visitors Scheme.
37. Unit Management was described in 2000 by my predecessor Mr Allen as '*an abject failure*' in all but one WA prison.<sup>24</sup> Factors contributing to this failure cited by Mr

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<sup>20</sup> Ombudsman Tasmania, *Report on an Inquiry into Risdon Prison*, (2001), Vol 2, p 61.

<sup>21</sup> Ombudsman Western Australia, *Deaths in Prisons* (2000), p 382.

<sup>22</sup> Ministry of Justice, *Integrated Prison Regime*, (2001), p 2.

<sup>23</sup> Recommendation 176 of the Royal Commission recommended the establishment of a 'Complaints Officer' who would regularly attend the prison to hear, and attempt to settle, any complaint. The position was to be responsible to the Ombudsman, Attorney General or Minister for Justice; and recommendation 179 recommended that officers should deal with prisoners' requests as simply and quickly as possible.

<sup>24</sup> Above n 21, p 383.

Allen included a lack of training of prison officers, as well as the introduction of the 12 hour shift.<sup>25</sup>

38. Subsequent to Mr Allen's findings, the Department undertook to implement a new regime, the '*Integrated Prison Regime*' (IPR) which was to have been implemented in three to five years from 2001. According to the Department, IPR was to be a regime in which the roles and skills of the prison officer were a focus and Unit Management was '*to provide the principal vehicle in this refocused, revitalised and integrated management approach*'.<sup>26</sup>

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<sup>25</sup> Ibid.

<sup>26</sup> Ministry of Justice, above n 23.

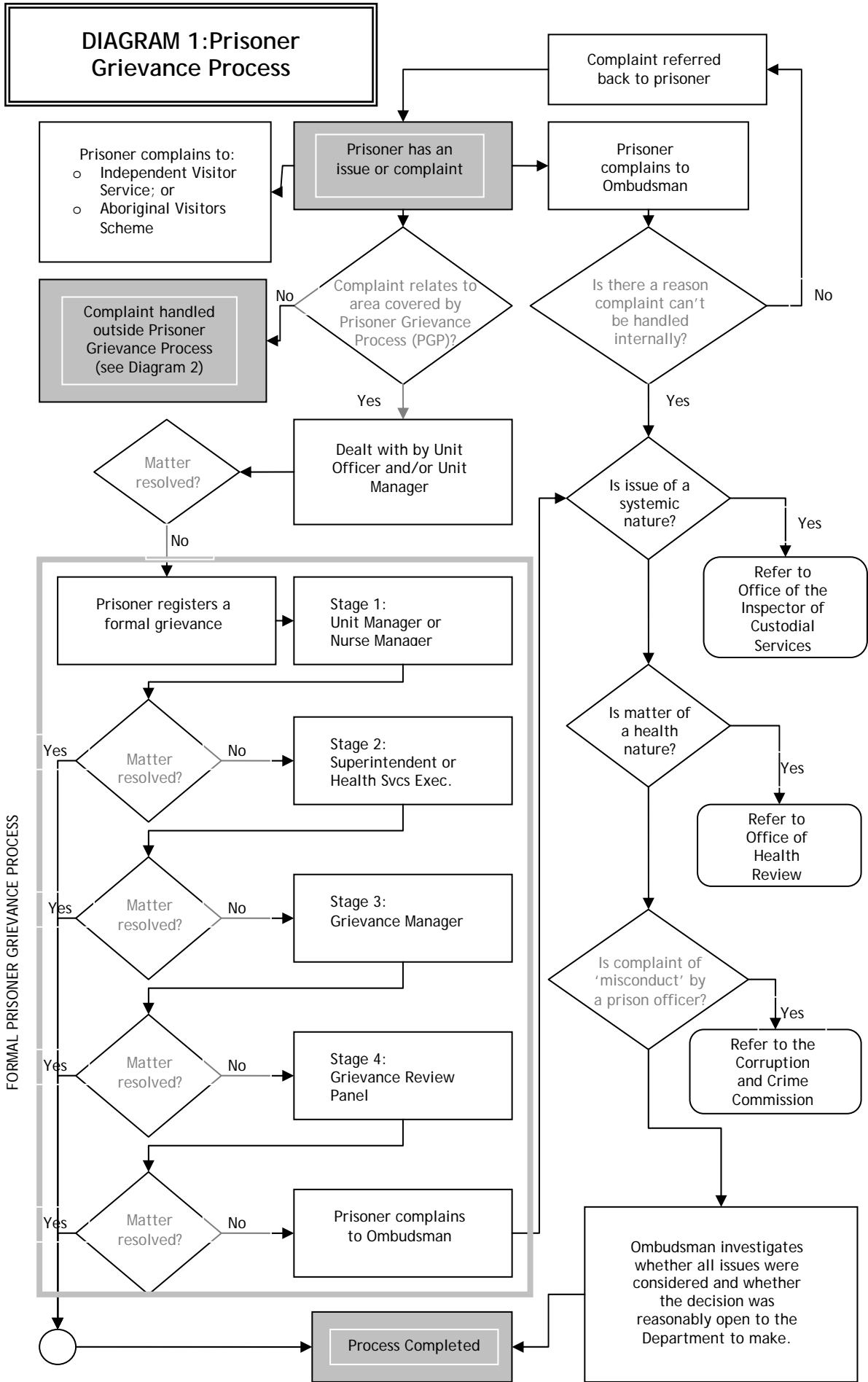
## IV. The Prisoner Grievance Process

39. The current Prisoner Grievance Process is only available for certain prisoner complaints and consists of a tiered escalation of grievance resolution within the prison. As indicated previously, grievances on behalf of another prisoner, case conference decisions, statutory disciplinary decisions, complaints about legislation, Director General's Rules or criminal offences are all excluded from the Prisoner Grievance Process, and are each subject to separate appeal and review processes. All of these grievance, appeal and review processes also exist in the context of a range of options for prisoners to access external agencies to seek resolution of their complaints.
40. The following two flowcharts illustrate the Prisoner Grievance Process and the process for those complaints that fall outside the Prisoner Grievance Process.
41. These two flowcharts highlight the complexity of the existing processes, which I consider unduly difficult for prisoners to access without full and clear information about the processes and what complaints to take where. I am therefore recommending:

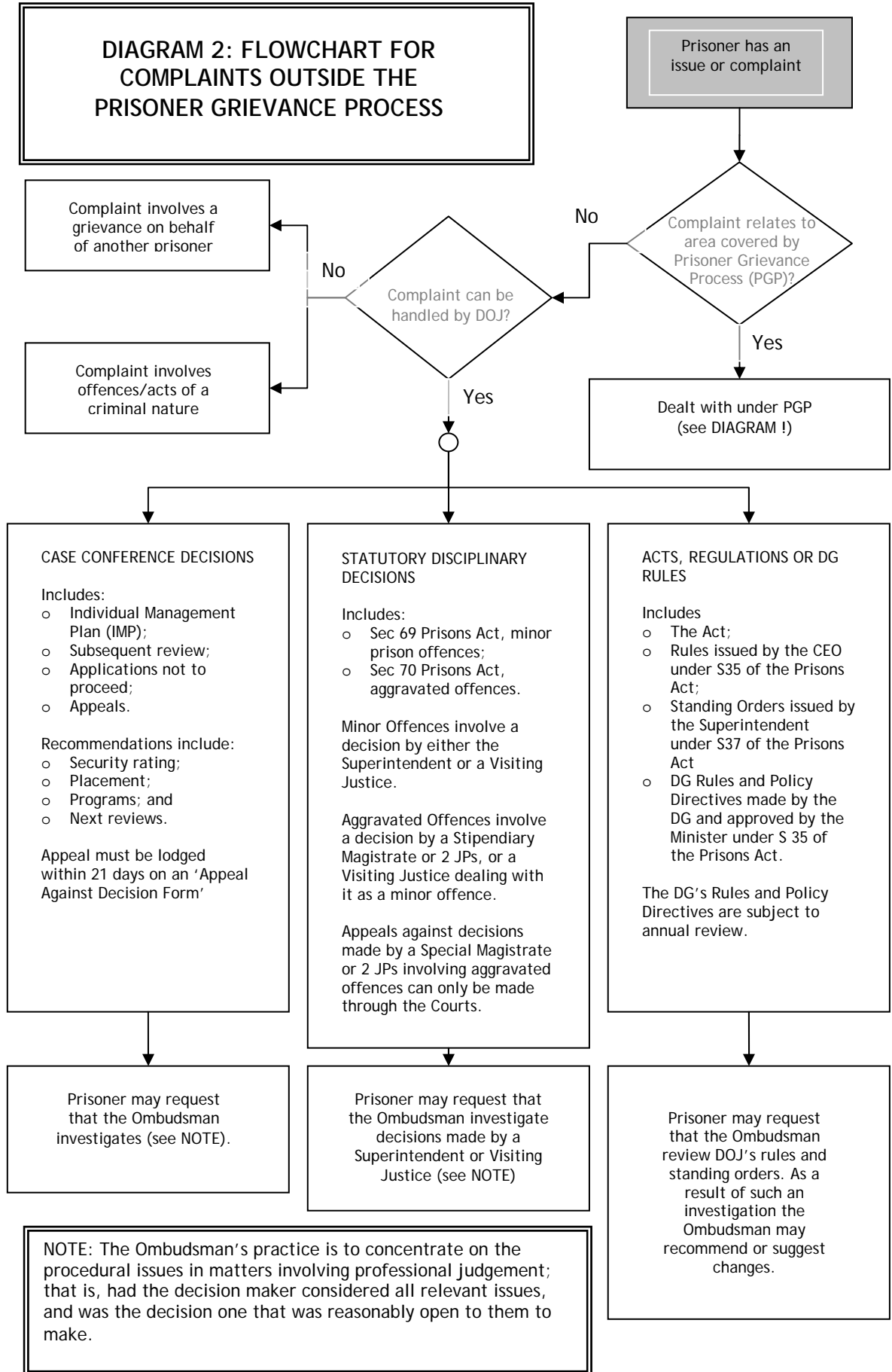
### Recommendation 1

The Department should provide clear, simple information for prisoners about where to take each of the different types of complaint.

42. In its response to my Draft Report the Department recognised that:  
*'confusion can arise when prisoners are unsure of the type and category of complaint and where to lodge it for appropriate action'*  
and agreed to examine Director General's Rules 5 and 18 to identify possible amendments which could result in a simpler and fairer process.



**DIAGRAM 2: FLOWCHART FOR COMPLAINTS OUTSIDE THE PRISONER GRIEVANCE PROCESS**



## *Director General's Rule 5*

43. The policy basis for the current Prisoner Grievance Process can be found in Director General's Rule 5. Director General's Rules are made by the Director General of the Department with approval from the Minister. They form part of the overall system of prisons and prisoner management that is derived from Section 35 of the *Prisons Act 1981* but do not, in themselves, have legislative effect. The rules are required to be reviewed annually by the Prisons Division of the Department.<sup>27</sup> Director General's Rule 5 is due for review in September 2006.
44. Director General's Rule 5 covers the areas of Requests and Complaints, the Withdrawal of Complaints, the Prisoner Grievance Procedure, and Alleged Assault by a prisoner or an officer. The prisoner grievance and complaints procedure outlines the process aggrieved parties should follow with the expectation that the complaint or grievance be resolved at the lowest level of authority possible. Rule 5 also has a footnote specifying that '*This Rule does not affect any rights a prisoner may have to communicate in writing to the persons specified in section 67 of the Prisons Act, or in Policy Directive 36 (Mail and telephones)*'.
45. Acacia Prison is Western Australia's only privately managed prison, and, while subject to Director General's Rules, also has additional contractual obligations imposed on it by the terms of its agreement with the State. These obligations arose from amendments to the *Prisons Act* enacted in December 1999 which gave the Chief Executive Officer of the Department extensive authority including '*an obligation to establish minimum standards for prison services*'.<sup>28</sup>
46. The Acacia Prisons Services Agreement, signed by the Department's Chief Executive Officer and Corrections Corporation of Australia Pty Ltd (the contractor, subsequently AIMS) on 21 December 1999, required the contractor to establish and manage a system for the prompt and fair handling of prisoner complaints. The system was required to include the:
- establishment of written procedures;
  - preparation of a booklet in simple English and in languages predominant within the prison population to explain the procedures for prisoners;
  - provision of an orientation program for prisoners to explain the complaints and appeals procedures; and
  - preparation of written procedures to facilitate external complaints handling.
- I note that these requirements are all consistent with a 'best practice' complaints handling process.
47. The Agreement also provided that a 12 per cent performance linked fee is paid where the percentage of prisoners' complaints to my office found to be sustained or substantiated is five per cent or less. This offered a financial incentive to the managing agent for Acacia<sup>29</sup>, to resolve prisoner complaints at the prison level.

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<sup>27</sup> Prison Rules and Regulations, [http://www.justice.wa.gov.au/ Adult Offenders > Prison Rules and Regulations](http://www.justice.wa.gov.au/Adult_Offenders%20Prison_Rules_and_Regulations)

<sup>28</sup> Office of the Inspector of Custodial Services, Report No 19 (2003), p 6.

<sup>29</sup> On 27 March 2006 the Minister for Justice (the Hon John D'Orazio MLA) announced that Serco Australia has been selected as the preferred tenderer for the new contract to manage Western Australia's Acacia Prison, replacing AIMS Corporation, the current contract holder.



## V. Recorded Complaints

48. The databases used by the Department and my office to record complaints provide important data about the issues affecting prisoners in Western Australian prisons. These databases also provide information on how prisoners use the various options available to them to have their complaints heard and resolved.
49. This section analyses data from the following three systems:
  - a. Felix - the Ombudsman's database of telephone enquiries;
  - b. OSCAR - the Ombudsman's database of written complaints; and
  - c. TOMS - the Department's database of offender information, including the Prisoner Grievance Tracking System.

### *Enquiries and Complaints to the Ombudsman*

50. Unlike some other Ombudsman legislation, my Act does not provide for the receipt of oral complaints. However, my office handles many telephone enquiries each year, details of which are entered onto our Felix database.
51. Between 11 October 2004 and 30 June 2005, 2,748 oral enquiries were received. Of these, 743 (27.0 %) related to the then Department of Justice (including its non-prisons divisions), with 652 of these relating to specific prisons (87.8%), of which 190 (25.6%) related to Acacia Prison.
52. Electronic details on all written complaints and allegations received by the Ombudsman since 1 July 2000 are held in OSCAR.
53. Over the course of the last financial year, 1,584 allegations were received concerning public sector agencies. Of these, 519 (32.8%) concerned allegations relating to offender management. Of these 519 allegations:
  - 492 (94.8%) related to prisons (107 (21.7%) to Acacia Prison and 387 (78.7%) to Departmental prisons);
  - ten (1.9%) related to prison services or administration;
  - 15 (2.9%) related to prison transport and court security services provided by AIMS; and
  - two (0.4%) were by prison officers.
54. Of the 492 allegations that related to prisons, 330 (67.1%) allegations were covered by the Department's Prisoner Grievance Process, and 162 (32.9%) were not. The following tables provide further information on the number and nature of complaints received.

**TABLE 1: Allegations received covered by grievance process 2004-2005**

	<i>Number</i>	<i>Percentage</i>
Prison officer conduct (incl. failure to assist, harassment, or rudeness)	70	21.2
Health services	45	13.6
Facilities and conditions	36	10.9
Communication - telephones	36	10.9
Prisoner's property	34	10.3
Visits	24	7.3
Prisoner grievance procedures	23	7.0
Prisoner employment	16	4.8
Canteen/spends issues	15	4.5
Food and diet	12	3.6
Education courses and facilities	10	3.0
Rehabilitation programs	9	2.7
<b>TOTAL</b>	<b>330</b>	<b>100.0</b>

**TABLE 2: Allegations received NOT covered by grievance process 2004-2005**

	<i>Number</i>	<i>Percentage</i>
Placement	49	30.2
Discipline (incl. loss of privileges/prison charges)	18	11.1
Assault (by prison officer or AIMS officer)	18	11.1
Sentencing/parole issues	14	8.6
Security classification	11	6.8
Individual Management Plan	7	4.3
Protection	5	3.1
Authorised absences/funerals	4	2.5
Drug detection (prisoners)	4	2.5
Separate confinement	2	1.2
Other	30	18.5
<b>TOTAL</b>	<b>162</b>	<b>100.0</b>

### *Grievances Registered on TOMS*

55. In 2004-2005, 361 prisoner grievances were received and registered into TOMS, the Department's computerised Total Offender Management Solutions system. Of these, 166 (46%) were from Acacia.
56. Information on the number and nature of complaints received by the Department is provided in the following table:

**TABLE 3: Classification of Grievances on TOMS: 2004-2005**

	<i>Number</i>	<i>Percentage</i>
Discipline	35	9.7
Employment and Programs	31	8.6
Health	56	15.5
Management	39	10.8
Property	65	18.0
Staff	69	19.1
Visits/Personal	50	13.9
Other	16	4.4
<b>TOTAL</b>	<b>361</b>	<b>100.0</b>

57. Information provided by the Department indicates that while Aboriginal prisoners made up 39.9 per cent of the daily average count in prisons during 2004/05, only 15.0 per cent (54) of the 361 grievances logged on TOMS for 2004/05 were from Aboriginal prisoners.
58. I note that the number of grievances per prisoner registered in TOMS is at its lowest level since implementation of the Prisoner Grievance Process in June 2002<sup>30</sup>.

**TABLE 4: Grievances Registered Over Time**

	<i>Daily Av Prison Count</i>	<i>Grievances</i>	<i>Grievances per Prisoner</i>
2002/03	2,843	533	0.19
2003/04	3,006	548	0.18
2004/05	3,372	361	0.11

## *Comparisons and Findings*

59. Data contained in the three systems indicates that 743 telephone enquiries/complaints were made to my office about prisons between 11 October 2004 and 30 June 2005 (equating to approximately 1,030 enquiries for the full year), compared to 494 written allegations, and 361 grievances recorded through the Prisoner Grievance Process. These figures indicate that three times as many contacts were made with my office by phone as formal grievances were made using the Prisoner Grievance Process. This leads me to query whether the Prisoner Grievance Process is achieving one of its aims of having prisoners use the internal process rather than going direct to the Ombudsman.
60. The following table compares complaints registered by prisoners in each of the three systems. To facilitate analysis of the data, prisons have been grouped by the following types: Private, Metropolitan male maximum security, Women's, Aboriginal<sup>31</sup>, Male minimum security, and Other<sup>32</sup>. (See Appendix 1 for further detail).

<sup>30</sup> Data indicating the trend in prisoner complaints to the Ombudsman over the same timeframe are not available due to variations in how allegations were recorded.

<sup>31</sup> Prisons where Aboriginal prisoners make up more than 80 per cent of the daily average count.

**TABLE 5: Complaints per Prisoner by Prison: 2004-2005<sup>33</sup>**

	<i>Ombudsman's Telephone Complaints (Felix)</i>	<i>Ombudsman's Written Complaints (OSCAR)</i>	<i>Prisoner Grievance Process Complaints (TOMS)</i>
Private (Acacia)	0.26	0.17	0.23
Metropolitan male maximum security (Casuarina and Hakea)	0.25	0.18	0.08
Women's (Bandyup and Boronia)	0.10	0.15	0.20
Aboriginal (Broome, Eastern Goldfields, Greenough, and Roebourne)	0.16	0.07	0.06
Male minimum security (Karnet and Woorloo)	0.09	0.04	0.02
Other (Albany and Bunbury)	0.09	0.07	0.05
<b>All Prisons</b>	<b>0.21</b>	<b>0.14</b>	<b>0.10</b>

61. Data used to produce this table (see Appendix 1) indicate that, although Acacia held only 21.6 per cent of prison numbers during the year, 46.0 per cent of complaints registered through the Prisoner Grievance Process were from Acacia. This could be due to a number of factors. For example, it could be because there is a greater cause for dissatisfaction among prisoners at Acacia, or because complaints at Acacia are less likely to be resolved informally. However, the data may also indicate that prisoners are simply more willing to use the internal Prisoner Grievance Process at Acacia, which in my view is probable given that the level of complaints from them to my office, both by telephone and in writing, more closely reflects their actual prison numbers (25.6% of telephone contacts and 25.3% of written complaints).
62. The data also indicate clear differences in the way prisoners at different prisons use the three systems. For instance, while prisoners at Acacia, Casuarina, and Hakea are equally as likely to contact us regarding a complaint or enquiry, prisoners at Acacia are almost three times as likely to use the internal Prisoner Grievance Process. Acacia management believes this is indicative of the effective implementation of the Prisoner Grievance Process within that prison. I note, however, that the Inspector of Custodial Services has previously suggested that the high number of grievances lodged at Acacia could be "attributed to the lack of action and decision-making at the informal level leading to complaint escalation."<sup>34</sup>
63. The data also shows that female prisoners at Bandyup and Boronia are more likely to use the Prisoner Grievance Process than other prisoners.<sup>35 36</sup>

<sup>32</sup> Although also secure male facilities, both Albany and Bunbury Regional Prisons appeared to have effective complaints handling systems in place.

<sup>33</sup> Data from Felix covers the period 11 October 2004 - 30 June 2005.

<sup>34</sup> Office of the Inspector of Custodial Services, Report No. 32 (2006), p 13.

<sup>35</sup> The Inspector has also reported that although female prisoners expressed dissatisfaction with the formal complaint and grievance process at Bandyup, they appeared to be far more likely to utilise these processes than male prisoners (Office of the Inspector of Custodial Services, Report No.13 (2003), p 17).

64. It is of note too that prisons with a high proportion of Aboriginal prisoners record a higher use of the telephone than of written complaints.

### Referrals back to the Prisoner Grievance Process

65. One of the questions this investigation sought to address was how prisoners are using the three systems. For example, we sought to understand what happens to a written complaint we receive that we return to the prisoner to address through the Department's Prisoner Grievance Process, and whether the prisoner then actually seeks to use the internal process.
66. To enable us to answer this question, data matching was undertaken between the three systems, with analysis being carried out of all cases where a prisoner had a complaint recorded on multiple systems. Matching indicated 64 instances where, after making an initial enquiry or complaint, the matter was then pursued using an alternative approach.
67. In only 41 cases of an enquiry being registered in our telephone enquiry database were we able to identify that the prisoner subsequently made a formal complaint, in 26 cases to the Ombudsman, and in 15 cases to the Prisoner Grievance Process.
68. In only five cases (out of 330) where a written complaint had been made to my office were we able to identify the complaint subsequently being taken up via the Prisoner Grievance Process.
69. In 18 cases (out of 361) a complaint initially made through the Prisoner Grievance Process resulted in a further written complaint to my office. The following table summarises this information.

**TABLE 6: COMPLAINTS RAISED USING MULTIPLE SYSTEMS**

Original Complaint	Subsequent Complaint Made To		Total
	Ombudsman written	Department	
Ombudsman phone	26	15	41
Ombudsman written	n.a.	5	5
Department	18	n.a.	18
<b>Total</b>	<b>44</b>	<b>20</b>	<b>64</b>

70. Closer analysis was then undertaken of written complaints to my office and registered on our database between 1 January 2004 and 8 August 2005 to determine what happened when we referred a complaint back to the prisoner to take up via the Prisoner Grievance Process. This period was selected to permit a larger sample of cases. The analysis found that out of 93 cases referred back to prisoners, and which we could have expected to reappear on TOMS, only eight (5.8 %) were subsequently so recorded.
71. I therefore introduced a new procedure in December 2005 of including a copy of the prisoner's original complaint when writing back to them, to assist them in making their complaint through the internal process.
72. Of the eight cases recorded on TOMS, four were recorded as '*outcome achieved*' and four were not achieved.

<sup>36</sup> Little weight can be attached to the figures which indicate that prisoners at Bandyup and Boronia were only half as likely to contact my office by telephone as the State average, because of the difficulty prisoners at Bandyup experienced during this period in being able to contact my office by telephone.

## VI. Assessment of current process against relevant Standards

73. One objective of this investigation was to establish the extent to which the current Prisoner Grievance Process is consistent with relevant national and international standards. The most relevant standards for this purpose are the *Australian Standard on Complaints Handling*<sup>37</sup> and the *Standard Guidelines for Corrections in Australia (2004)*<sup>38</sup>.

### *Australian Standard on Complaints Handling*

74. The *Australian Standard on Complaints Handling*<sup>39</sup> is a valuable guide to best practice complaints handling. Under the Standard an effective complaints handling system has the following characteristics:
- it provides the complainant with a simple, visible and open process;
  - it enhances the ability for the organisation to address complaints in a consistent, systematic, prompt and fair manner, to the satisfaction of all parties;
  - it enhances the ability of the organisation to identify trends and eliminate many of the root causes of complaints, often with significant savings of time, money or effort; and
  - it provides a basis for the ongoing review of how the organisation deals with and resolves complaints, so that improvement through analysing the volume and nature of complaints and their outcome becomes ingrained in the organisation.
75. At the simplest level, a good complaint handling system should be accessible, efficient, fair and accountable. These elements have been used to guide this analysis of the operation of the Department's Prisoner Grievance Process.

### *Standard Guidelines for Corrections in Australia*

76. There are also national guidelines available which have been developed specifically for the prisons environment. These are the *Standard Guidelines for Corrections in Australia* which are intended to:
- 'constitute outcomes or goals to be achieved by correctional services rather than a set of absolute standards or laws to be enforced. They represent a statement of national intent...that can be expected to be amended from time to time to reflect "best practice"'*.<sup>40</sup>
77. First published as the *Minimum Standard Guidelines for Australian Prisons* in 1978, these guidelines and accompanying principles are based upon the United Nations Standard Minimum Rules for the Treatment of Prisoners,<sup>41</sup> and the Council of

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<sup>37</sup> Above n 2.

<sup>38</sup> Above n 6.

<sup>39</sup> Above n 2.

<sup>40</sup> Above n 6.

<sup>41</sup> Universal Standard Minimum Rules for the Treatment of Prisoners were endorsed by the League of Nations in 1934. After revising the rules, the United Nations Congress adopted the Rules in July 1957.

Europe Standard Minimum Rules. The Guidelines were reviewed in 1986 at the Correctional Administrators Conference in Melbourne to incorporate community-based corrections. Following the Royal Commission Into Aboriginal Deaths In Custody the Guidelines were further revised in 1992 to reflect the recommendations of the Royal Commission.

78. The current *Standard Guidelines for Corrections in Australia* were last revised in 2004. These Standard Guidelines are recognised and adopted nationally by all Corrections Services in Australia, including in Western Australia. A national Corrections standards body, comprising Ministers responsible for Corrections throughout Australia and New Zealand, is the authority established to regularly review these Guidelines.
79. The Guidelines set requirements for prison complaint and grievance resolution processes; specifically that:
- prisoners should be informed of the procedures for making complaints at the prison and through external grievance resolution authorities;
  - requests and complaints by prisoners are able to be made at any time and shall be handled promptly and effectively by the prison; and
  - prisoner complaints or grievances that are not resolved by the prison should be submitted to an authority external to the prison for an independent assessment and determination. Prisoners should be informed about these external resolution processes in the prisoner's own language where practicable, and provided with the means for making complaints to an external authority in a confidential manner.<sup>42</sup>
80. Essentially these standards provide the basis for a prison-based complaints handling system that will be:
1. accessible;
  2. efficient;
  3. fair; and
  4. accountable.

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<sup>42</sup> Above n 6, p 14: 1.22-1.24.

## VII. Assessment of the Prisoner Grievance Process

81. The data examined in Section V above indicate that more prisoners contact my office than use the formal Prisoner Grievance Process. The data also indicate, as has been experienced by other complaints handling processes, that a percentage of prisoners appear unlikely to use the Department's Prisoner Grievance Process after my office refers them back to it when they first telephone or write to complain.<sup>43</sup> This is of concern to me for the reasons previously outlined. It is also likely to be of concern to the Department and other agencies.
82. As the Inspector for Custodial Services noted in 2001, the failure of the systems for addressing prisoner requests and complaints can have potentially significant consequences for both prison staff and prisoners:
- 'There are strong issues of safety and respect raised by this Report and the Department should attend to these as a matter of priority. The Inspectorate has observed that a not-insignificant number of incidents at prisons logged on the Department's Daily Situation Reports, commenced with simple requests or complaints and frequently escalated into events where the use of force in controlling prisoners has been necessary in maintaining order'.*<sup>44</sup>
83. Below we identify some of the potential impediments to the effectiveness of the current Prisoner Grievance Process and put forward options for addressing the shortcomings we have identified.

### 1. Accessibility

#### The Process

84. The Department provides two booklets, one for prisoners and one for staff, which describe a grievance and outline the process to make a grievance. The booklet for prisoners advises them who can assist them in making a grievance, the process and stages of the grievance, and provides advice on what to do if there is no resolution to the grievance (see Appendix 2). At present the booklet is only available in English. The Department also includes reference to the grievance process in its orientation videos shown to prisoners on their reception into prison or shortly afterwards, although until the recent development of an Indigenous language video by Acacia, these also were only available in English.<sup>45</sup>

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<sup>43</sup> As indicated at para 70 above, only 5.8 per cent of prisoners were subsequently recorded on TOMS after being referred back to the Department after lodging a formal grievance with my office. While some instances may not be recorded because the grievances are resolved at an informal stage, this low proportion is of concern to me. Research by the Queensland Ombudsman shows that 53.2 per cent of complainants directed elsewhere after an initial approach did subsequently pursue their complaint, a proportion much higher than I have recorded here. (David Bevan, Presentation to APOR Conference, Wellington)

<sup>44</sup> Office of the Inspector of Custodial Services, Report No.11 (2001), p 41.

<sup>45</sup> The video was developed by the Prison and the Department's Contract Management in response to the Inspector for Custodial Services' 2002 inspection (Office of the Inspector of Custodial Services, Report No. 19 (2003)). Its development was one of the recommendations arising from a review of the prison's services for the large number of Indigenous prisoners displaced from the Eastern Goldfields. Currently Acacia is conducting trial induction sessions of this video with selective Indigenous prisoners at the prison. Feedback from those attending is gathered to gauge how effective and relevant the information contained in the video is from the prisoners' point of view. The findings will be reported to Acacia's Manager of Offender Services with a view to incorporating the video into the Acacia Prison Induction Programme. Broome Regional Prison had also developed an induction video with local Aboriginal prisoners.



85. The booklet states that the Prisoner Grievance Process commences with a prisoner making an informal approach to unit staff to discuss his or her grievance. If the grievance is not resolved, the booklet advises prisoners to '*Get a grievance form and fill it out*'.

### The Issues – Availability of information

86. The *Standard Guidelines for Corrections in Australia* require that prisoners should be informed of the procedures for making complaints at the prison and through external grievance resolution authorities. However, there is anecdotal evidence that prisoners experience difficulty in accessing information about the grievance process and the relevant forms. This feedback comes from discussions between prisoners and my Enquiry Officers; has been provided to my staff when they have visited prisons; and has been provided to officers of the Inspector for Custodial Services in prison inspections.<sup>46</sup> At different times, prisoners have referred to both being unaware of the Prisoner Grievance Process, and also to not being able to access relevant information and forms, in some cases because of unhelpful or obstructive prison staff. The Department's recent Review of the Prisoner Grievance Process notes in particular that '*Retaliation and punishment from fellow prisoners and officers [was] seen as a real threat by Indigenous prisoners*'.<sup>47</sup>
87. One of my officers accompanied the Inspector of Custodial Services and his team on their inspection of Bandyup Women's Prison in late May 2005. Apart from taking individual complaints, my officer looked at prisoner grievances and the internal complaints handling process. The comments below were made by my officer.

#### *Bandyup Women's Prison - May 2005*

*As part of the inspection of Bandyup, a sample of 18 prisoners was asked about the internal Prisoner Grievance Process. Of these, 11 indicated they were aware of a grievance process within the prison and acknowledged they knew they could fill in a grievance form if they had a problem.*

*It was difficult to test the extent of prisoner knowledge or their understanding of the Prisoner Grievance Process because none of the sample had actually used the grievance process or knew anyone who had used it. This is unsurprising given that during 2004/05, TOMS shows that only 39 grievances had been registered at Bandyup.*

*The Department's Prisoner Grievance Process Manual asks prisoners to talk to a unit officer in the first instance to resolve their concern. However, a lack of understanding by prisoners in the sample about the actual steps in the Prisoner Grievance Process, in part, contributes to the belief that grievances can be stopped by unit officers. Two prisoners spoken to as part of this inspection believed that if the unit officer gave them a decision - it was final. Therefore, although there was an awareness of the word 'grievance', there appeared to be some confusion and a lack of awareness about the process.*

88. While anecdotal in nature, this feedback is indicative of what some prisoners perceive as the barriers to freely accessing materials and information without reliance on prison staff. This feedback has been corroborated by other sources.
89. My officer who participated in the Inspection of Bandyup Women's Prison also conducted an audit of the availability of information and forms relating to the Prisoner Grievance Process throughout the Prison. This revealed:

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<sup>46</sup> Office of the Inspector of Custodial Services, Report No.24 (2005), p 28; Office of the Inspector of Custodial Services, Report No.27 (2005), pp 53, 80.

<sup>47</sup> Department of Justice, *Review of the Prisoner Grievance Process*, (2005), p 7.

- *Visits area: There was no grievance poster or grievance forms in the visits area. There was a poster about visitors' right to complain, but little or no explanation about a prisoner's ability to complain to external agencies should they still be unhappy with the response to their complaint received from the prison.*
  - *Reception area: The prisoner reception area only had one small poster that explained talking to a unit officer, Peer Support Officer or supervisor if a person had a problem. It was not specific about the grievance process.*
  - *'A' Wing: Prisoners living in the unit confirmed that the availability of grievance forms in the common room was recent (approximately one month) and, previously, grievance forms were located in the pigeon holes in the office and had to be requested from officers.*
  - *'B' Wing: there were no grievance forms available in the common area but a grievance poster was on the wall.*
  - *Kitchen: there were no posters about the grievance process or grievance forms on display.*
  - *Education Centre: Grievance booklets were available.*
90. These observations from Bandyup corroborate anecdotal evidence from other prisoners about difficulties confronting them in accessing the Prisoner Grievance Process to the extent that it indicates inadequate 'advertising' of the Prisoner Grievance Process to prisoners, and the impediments to accessing relevant information and forms. In my view, if the relevant information and forms were readily available throughout prisons without request, this would to some extent address concerns expressed by prisoners that staff are perceived to hinder their access to the Prisoner Grievance Process.<sup>48</sup>

### The issues - Appropriateness of information

91. As indicated earlier in this report, at present the information on the Prisoner Grievance Process is generally in writing and almost solely available in English.
92. The Prisoner Grievance Process is also reliant upon a prisoner completing a written form unless a matter is resolved informally. This can pose a further impediment to accessing the system for prisoners with poor or non-existent written skills.<sup>49</sup> Such a paper-based approach has limited effectiveness for the more than one third of prisoners who have no, or only a primary level of, formal schooling.<sup>50</sup>
93. With Aboriginal people constituting approximately 40 per cent of the average prison population throughout 2004/05, a paper-based process may also be culturally inappropriate.<sup>51</sup> As the Department's latest review into the Prisoner Grievance

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<sup>48</sup> The British Prison Service implemented a requirement that 'complaint forms' be freely available after a major review in 1999/2000 (HM Prison Service, *Prisoner's Requests and Complaints Procedures*, Order No. 2510, (2002), paras 4,14,6.2.2.

<sup>49</sup> Although Officers and others are meant to assist prisoners who have difficulties with completing forms, this still serves as a barrier to access for some prisoners as they must seek assistance rather than being able to access the process themselves.

<sup>50</sup> Department of Justice, *Adult Offender Annual Statistical Report for Financial Year 2001/2002*, p 33.

<sup>51</sup> See para 94 below. The *Department's Prisons Division Strategic Plan for Aboriginal Services 2002-2005* (2002). At p 15, it is noted that 'oral interaction is how Aboriginal people often do business'. Relevantly the Department's '*Review of Prisoner Grievance Process*' (2005), at p.8, says that '*the typical response from Indigenous prisoners in discussions relating to grievance processes as it generally applies to them is as follows:*

...

2. *The extent and idea of the process is determined by written submission.*
3. *The extent and idea of the process is not focussed on needs of Indigenous prisoners.*

Process reports: *'participation rate in the Prisoner Grievance process by Indigenous prisoners specifically located in regional prisons has been poor, a fact known for some time and of concern to site administrators'*.<sup>52</sup>

94. This is further demonstrated by the fact that while Aboriginal prisoners made up approximately 40 per cent of the average prison population, only 15 per cent (54) of the 361 grievances logged on TOMS for 2004/05 were from Aboriginal prisoners. This trend is of particular concern with the proportion of Aboriginal prisoners in Western Australia increasing. The Australian Bureau of Statistics found that Western Australia not only had the highest rate of imprisonment for Aboriginal prisoners nationally, but the largest proportional increase in the rate of imprisonment of Aboriginal prisoners since the June 2004 quarter - 19 per cent.<sup>53</sup>
95. The Department's *Prison's Division Strategic Plan for Aboriginal Services 2002 - 2005* sets the standard for grievance procedures in prisons with Aboriginal prisoners. It stresses that, in order for grievance procedures to be used by Aboriginal prisoners, they should be:
- '... sensitive to culture and gender issues with an ethos based on the removing of a barrier rather than the provision of a privilege. Recognition needs to be given that the filling in of a form may signal the start of a process but that for Aboriginal people there may be other means of proceeding through that process. For example, oral interaction is how Aboriginal people often do business'*.<sup>54</sup>
96. Language-based and illiteracy hurdles for many Aboriginal and foreign national prisoners are not addressed by a grievance system that offers forms to complete and materials that are written only in English.
97. An indication of the extent of difficulty confronting such prisoners in understanding these processes can be seen in the Inspector's Report on Broome Regional Prison, which reported that prisoners assumed that boxes which had been installed in the prison for the collection of grievance forms were for applications to attend funerals. One Aboriginal prisoner stated: *'Oh, that the sorrow box'*.<sup>55</sup> It would appear that the word 'grievance' is not commonly understood to refer to complaints and enquiries, and its adoption in the context of prisoner complaints and enquiries appears to me to unnecessarily obscure the purpose and nature of the process.
98. I therefore suggest to the Department that it give serious consideration to finding a different 'label' for the Prisoner Grievance Process that is readily understandable by all prisoners.
99. I have expressed concerns about the appropriateness of the Prisoner Grievance Process for regional prisons, and their predominately aboriginal population, in the past. For example, in a letter to the Director General of the Department on 24 June 2004, I expressed my concern about processes at both Broome and Roebourne Regional Prisons. My concerns were based on the suitability of such processes to populations who have a high level of illiteracy and/or multi language group users who prefer to make verbal complaints rather than fill in forms and use 'blue' boxes

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4. *The mechanism and structure of the process is all consuming and involves persons that Indigenous prisoners cannot form relationships and trust with.*

5. *Documentation, form compilation and compliance are skills that are not valued by Indigenous prisoners'.*

<sup>52</sup> Above n 47, p 7.

<sup>53</sup> Australian Bureau of Statistics, *Corrective Services*, 3412.0, Australia, (Issue September 2005).

<sup>54</sup> Department of Justice, *Prisons Division Strategic Plan for Aboriginal Services 2002-2005* (2002), p 15.

<sup>55</sup> Above n 47, Rep 27, p 54.

or 'yellow' confidential envelopes (the internal prison mailboxes and specially printed envelopes that are designed to be used for prisoners' confidential mail).

100. In response, the Department undertook to conduct an audit of the confidential mail process within each prison. The Department confirmed that the focus and outcome of the audit would include strategies that would contribute to increased Prisoner Grievance participation rates and enhance prisoner confidence in the system.

101. The recent review of the Prisoner Grievance Process by the Department indicated that an Indigenous Prisoner Grievance Process video is being developed to increase Indigenous prisoners' participation in the process. In its draft 'Indigenous Prisoner Grievance Management Proposal/Charter document' for this project, the Department notes that changes to the Prisoner Grievance Process need to be made to increase

*'participation rates by Indigenous persons in Prisoner Grievance processes and remove inequity and restore "fairness" to all prisoners wishing to access systems available to them that have been previously denied due to their levels of educational attainment, specifically literacy and expression when English is a second language'.<sup>56</sup>*

102. This is an important commitment. However, in my view this area needs significant attention. I am therefore recommending:

#### **Recommendation 2**

Information on the Prisoner Grievance Process should be provided in ways appropriate to both the culture and literacy levels of prisoners. This information, together with grievance forms, should be freely available throughout each prison and not simply by request; and ideally it should be developed in consultation with prisoners.

103. In the Department's response to my Draft Report it indicated that it was:

*'.. open to any suggestions that would improve the participation rate for prisoners who, for cultural or literacy reasons are reluctant or unable to engage with the existing Prisoner Grievance Process.'*

104. The Department also indicated that a strategy was being considered:

*'... to provide a telephone Prisoner Grievance 'support line' service with a direct link to the Prisoner Grievance Manager's office in Perth who has the authority to lodge a grievance on behalf of prisoners.'*

105. As I have indicated previously, it is my intention to further review the complaints handling process at a regional prison with a high level of Indigenous prisoners in 2006. My focus will particularly be on indicators of accessibility, as identified in this section.

## **2. Fairness**

### **The Process**

106. The Prisoner Grievance Process as outlined in the Department's booklet (see Appendix 2) requires that prisoners:

*'First, speak to your unit officer or manager.'*

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<sup>56</sup> Above n 47, p 3.

*If you have spoken to your unit officer or the unit manager and you are not satisfied with the outcome ... [give your] completed form to your unit manager...<sup>57</sup>.*

## The Issues - Confidence in the Prisoner Grievance Process

107. If prisoners are not confident in the Prisoner Grievance Process they are unlikely to use it. The high number of complaints I receive from prisoners is, I believe in part, due to a lack of confidence in the Prisoner Grievance Process. The latest review of the Prisoner Grievance Process by the Department accepts that '*there has been anecdotal evidence that prisoners at some sites have lost confidence in the Prisoner Grievance system*'.<sup>58</sup>
108. An indication of prisoners' confidence in the Prisoner Grievance Process was provided from the prisoners consulted during the recent Bandyup Prison inspection.

### *Bandyup Women's Prison - May 2005*

*At Bandyup, from the sample of 18 people interviewed, there did not appear to be a strong level of confidence in the Prisoner Grievance Process, with the majority of prisoners spoken to believing that prison officers discourage the lodging of formal grievances. There appears to be a specific lack of confidence in systems by prisoners relying on these processes to make a confidential complaint, or have a complaint considered or reviewed by an external decision maker.*

*Prisoners advised that grievance forms were only recently available in various common rooms. Previously, prisoners had to ask prison officers to provide a form.*

*Prisoners complained that they do not always know what is happening to their complaint or enquiry when they lodge unit interview forms.*

*There did not appear to be any form of adequate monitoring of complaints and outcomes. For example the prison has no audit process in place for a unit interview form that does not get approved. No record is kept of forms unless the prisoner's request, as outlined in the form, is approved by prison staff and, therefore, the action cannot always be independently reviewed or the line of responsibility tracked. unit interview forms are not maintained when prisoners' requests are disallowed.*

*Copies of the grievances get faxed to the Grievance Manager but prison administration do not audit their own hard copy grievance forms against data input on TOMS to check if the information from the form lodged by the inmate has been faithfully recorded, or even recorded at all.*

109. Feedback provided to my officers indicates that this lack of confidence is due to a number of factors, either actual or perceived, including:
- prisoners allegedly being bullied into not lodging a grievance or bullied because they have lodged a grievance. Prisoners also claim indirect retribution, such as having visits held up, mail not delivered or posted, or being removed from self-care if they make a grievance. Prisoners say they are told, or else believe, that lodging a grievance will '*just get them into trouble*'.<sup>59</sup>

<sup>57</sup> As indicated in the Prisoner Grievance Process Flowchart, at p13, to ensure prisoners' privacy there is a separate process for addressing health related grievances through medical staff. I have focused on non-health related grievances in this investigation.

<sup>58</sup> Above n 47, p 7.

<sup>59</sup> See also Office of the Inspector of Custodial Services, Report No 21 (2004), p 17; (Above Rep 24, n 46, p 29; Above Rep 27, n 46, p57, 79.

- prisoners who have asked for a 'review' of a decision often find the same decision-maker reviews the information;
  - prisoners express concerns with the way prison staff record data on the system, including the version of their grievance as recorded by the officer,<sup>60</sup> and whether it is actually 'resolved' when the grievance has not been resolved to the satisfaction of the prisoner;
  - unit interview forms are not traceable and have no time criterion for lodging on TOMS;
  - there are concerns by prisoners, particularly in regional prisons and also in minimum security prisons, that if they complain they will be '*shanghaied*' to another higher security prison or to a prison away from their region;<sup>61</sup> and
  - completed grievance forms have allegedly been torn up or shredded.<sup>62</sup>
110. During 2004/2005 I received 23 written allegations from prisoners about the Prisoner Grievance Process itself. Detailed analysis was undertaken on 15 of these 23 allegations, with more detailed information available at Appendix 3.
111. Currently only two of the 15 allegations about the Prisoner Grievance Process have been sustained. Three were about matters not covered by the Prisoner Grievance Process and the complaints were not sustained. Another complaint was referred to the Corruption and Crime Commission, while one could not be determined. The remaining seven are awaiting either assessment, investigation, or a report from the Department.
112. To better assess prisoners' confidence in the Department's complaints handling system, my staff will in future seek feedback from prisoners telephoning my office with a prisons enquiry or complaint, and review this feedback against the standards identified in this report.

### The Issues - Difficulties when complaint involves an officer

113. A particular issue that affects prisoners' confidence in the system is the more recent notion that the Prisoner Grievance Process should be a primary means of addressing all complaints.<sup>63</sup> This is a two-fold problem, firstly for unit staff in having to address and/or record complaints which may raise performance management issues about themselves or their colleagues.<sup>64</sup> This would be a difficult task for any non-supervising staff member, but in a prison environment where staff are especially reliant upon the support of their colleagues, any risk of withdrawal of such support is a serious issue.
114. Secondly there is the difficulty for prisoners in seeking to raise complaints regarding possible performance management issues about an officer or his or her

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<sup>60</sup> My office also has copies of grievances where the written complaint from the prisoner does not correspond to what has been recorded as the prisoner's grievance in TOMS (for example, GRIEVANCE No. G0001091).

<sup>61</sup> Above Rep 27, n 46, p57.

<sup>62</sup> See also Office of the Inspector of Custodial Services, Report No.16 (2003) p 45, where this was alleged in completed prisoner surveys but could not be confirmed in discussion with prisoners during the Inspection. Above n 44, p41. Confirms that prison officers have acknowledged destroying complaints but state that this has taken place when the prisoner has accepted the outcome.

<sup>63</sup> See the Department's comments at para 23 above.

<sup>64</sup> My office is aware of at least one instance where a staff member who had assisted a prisoner to record a complaint about the conduct of an officer through the grievance process was subsequently informed that the staff member could be subject to legal action as a result.

colleagues. The difficulty may consist simply of a prisoner having to confront an officer who is the subject of the proposed grievance in order to get a form. This can be compounded by a culture amongst officers that may view having a grievance registered as a 'black mark' against them, or their prison's ability to handle complaints. This difficulty raises the issue of whether the Department should consider providing direct access to a complaints handling process outside of Unit Management. Comments about this issue are provided for the Department's consideration below.

## Options

115. The investigation looked at two options - an external telephone support line and prison-based Complaints Officers, either of which would allow the prisoner to lodge a complaint inside of the Prisoner Grievance Process, but outside of the existing Unit Management framework.

### *The NSW Corrective Services Support Line*

116. New South Wales Corrective Services, in association with the NSW Ombudsman, has been trialling a Corrective Services Support Line (CSSL) since January 2003.<sup>65</sup> The CSSL works by establishing a means of receiving, recording and resolving telephone enquiries through a centralised telephone inquiry and complaints service which is limited to prisoner use.

117. The New South Wales Corrective Services basic model for addressing prisoner enquiries and complaints is for prisoners to:

- i. enquire or complain to the unit officer;
- ii. fill in a request form (if told to do this, the result may take up to two to three weeks);
- iii. if not satisfied with the initial response, ask the Area Manager (the equivalent of Western Australia's unit manager) to review the matter; and
- iv. if not resolved, call CSSL.

Point iv is the last step in the initial process. The basic model for the CSSL is:

- i. the prisoner makes a free call to CSSL;
- ii. the prisoner is questioned about their problem and details are recorded on a database;
- iii. CSSL gives the prisoner an event number;
- iv. CSSL e-mails the prisoner's call to the designated officer/officers at the correctional centre for action; and
- v. the correctional centre takes action and notifies CSSL and the prisoner of the outcome within a specified time frame.

118. CSSL is not generally envisaged as being the first point of call, although it can be, if requests or complaints are considered urgent, such as a threat or act of violence or other safety issue. Prisoners are generally told to try to resolve the issue at the prison prior to a matter being processed through the CSSL if there is time.

119. The NSW Ombudsman retains the discretion to take up a prisoner's complaint at any time, but similar to my own office also operates as an office of 'last resort'.

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<sup>65</sup> NSW Corrective Services, *Evaluation of the Pilot Program of the Corrective Services Support Line* March 2004.

### *Expansion of the NSW CSSL*

120. A recent review of the CSSL<sup>66</sup> recommended its expansion throughout the prison system of NSW, although there were a number of anticipated problems arising from the proposed expansion. Reasons given in support of its expansion included:
- prisoners' willingness to use the system;
  - support by Official Visitors and senior custodial staff;
  - positive feedback from stakeholders, including the NSW Ombudsman;
  - better recording practices for statistical purposes and data analysis on types of complaints, whether resolved or not, and at which level;<sup>67</sup>
  - ability to limit the time of the calls (for example to ten minutes); if not able to state the problem in that time then the problem is bigger than can be handled; and
  - prison 'Governors' (Superintendents) were provided with fortnightly data allowing high level supervision of prison-particular problems.
121. Perhaps most relevantly from my perspective was the claim that, with the introduction of the CSSL 'safety net', prison officers became more receptive to prisoner enquiries, requests and complaints and were trying to resolve the matters at that level.<sup>68</sup>

### *Potential benefits of a dedicated line*

122. Discussions between staff from my office and the NSW Ombudsman confirmed the benefits of CSSL. A valuable aspect of the CSSL identified was that the point of contact was external to the prison (although prisoners at times adversely commented on the CSSL still being run through the Department of Corrective Services). Additionally, the monitoring of all enquiries and complaints to the CSSL is through a co-ordinator located in the Department of Corrective Services Head Office, and answerable directly to the Executive Director, who in turn answers directly to the Commissioner of Corrective Services NSW.
123. The availability of a telephone enquiries and complaints line in Western Australia might assist those prisoners who cannot write; are unable to understand written English; or otherwise have difficulty using a formal type of complaint system such as the Department's current Prisoner Grievance Process. It is relevant to note here that in our experience, many 'complaints' are often simply 'enquiries' or 'requests for information' that have failed to be actioned in an appropriate or timely manner.
124. A telephone 'help-line' to specific Departmental personnel or areas could answer day-to-day questions about prison terms; Individual Management Plans; program start dates, availability and requirements; parole plan concerns and due dates; visits and the progress of intra-prison and inter-prison transfer type questions from prisoners. This access could take the pressure off prison unit staff answering questions not within their immediate expertise or knowledge, thereby preventing the type of delay and frustration that can cause questions to escalate into complaints.

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<sup>66</sup> Ibid.

<sup>67</sup> According to the Department, the recording of grievance data for statistical purposes in Western Australia is already of a very high standard.

<sup>68</sup> Above n 65, p 2.



125. A significant benefit of such a telephone line would be that it would provide a contact point for complaints about the conduct of prison officers that is external to the prison and is also clearly independent of the person about whom a complaint is being made.

*Designated Complaints Officers in each prison*

126. In the original proposal for the current Prisoner Grievance Process, the consultants engaged by the Department discussed the option of a designated '*Grievance Officer*' in each of the prisons.<sup>69</sup> The consultants indicated that such a position was strongly supported by prisoners, who envisaged it as having power to overturn prison based decisions. However, the position of staff was that any officer who might have responsibility for prisoner grievance resolution must report to the Superintendent. It appears that the consultants had considered a compromise position which had dual reporting requirements - to the Superintendent and to an independent office reporting directly to the Department's Director General.
127. In opposing this proposal, the Department first cited '*resource implications*'; and second the '*perception that a local Grievance Office might be contrary to the Unit Management concept*'.<sup>70</sup> The consultants, '*after further discussion and consideration*' with the Department, accepted '*that the Grievance Officer concept has serious problems (although still worthy of further consideration)*'. They concluded
- 'In an effort to find a workable outcome, we have recommended that Superintendents retain responsibility for grievance resolution*'.<sup>71</sup>
128. I acknowledge the Department's concerns about the proposal and am conscious of the need not to add further complexity to a grievance system that is already complex. Nevertheless I remain concerned about the problems that arise in circumstances where a prisoner who wishes to complain about an officer has to lodge their complaint with that officer or their colleagues. The Department may wish to consider options for providing alternative pathways for handling these complaints outside the direct Unit Management framework. These pathways could be either within or outside the prison.
129. It is relevant to note that the British Prison Service has designated officers located at each prison to ensure staff commitment to professional standards<sup>72</sup>. It may be useful for the Department to examine the use of a similar model to assist prisoners in lodging of certain complaints.

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<sup>69</sup> Above n 15, pp 21-23.

<sup>70</sup> Ibid.

<sup>71</sup> Above n 15, p 23.

<sup>72</sup> HM Prison Service, *Professional Standards: Preventing and Handling Wrongdoing*, Order No. 1215, (2003). See the specifications for local '*designated managers*' at 3.2.

### Recommendation 3

Prisoners should be provided with appropriate mechanisms for lodging a complaint where the existing process is unsuitable because of cultural differences, a lack of written English skills on the part of the prisoner, or the nature of the complaint.

To that end the Department should consider options for providing direct access to a complaints handling process such as:

- establishing a telephone contact line modelled on the NSW Corrective Services Support Line; and / or
- establishing alternative pathways outside the immediate Unit Management framework for complaints about the conduct of prison officers.

130. I welcome the Department's response to this recommendation indicating that it was:

*'considering various strategies that could be implemented into each prison and the overall organisational structure (i.e. services support line and a separate process for handling complaints regarding officer conduct). Both issues, in particular complaints by prisoners against officers and the process of procedural fairness, requires closer attention with the objective of establishing a formal process that 'supports' the prisoner making a complaint against an officer and also improves access by addressing prisoners' cultural differences or a lack of written English skills.'*

## 3. Efficiency

### The Process

131. The Prisoner Grievance Process booklet (see Appendix 2) advises the prisoner to attempt to resolve the matter with the unit officer or manager. Under this process the prisoner will receive a copy of the grievance within 24 hours and a response within seven days including any reasons if there is a delay.

### The Issues - Handling grievances efficiently

132. Information provided by the Department indicates that of the 361 grievances registered during 2004/05, 50 per cent were either not resolved or not escalated within the target seven day period. This was also identified by the latest Departmental Review into the Prisoner Grievance Process which noted that grievance escalation and resolution in many cases was not being achieved within set time frames, thus creating unnecessary delays. The Review attributed this to:
- poor communication between officers due to inadequate training about the Prisoner Grievance Process;
  - confusion as to who is the next 'owner' of the grievance;
  - events such as the officer changing roster or unit or taking leave before resolution of the grievance; and

- site superintendents unable to access data from Electronic Management System (EMS)<sup>73</sup> to establish the 'owner' of grievance and track its progress.<sup>74</sup>
133. The Review recommended a number of changes to both the process and the EMS to overcome these deficiencies including, for the first time:
- Superintendents being given EMS grievance summary sheets so that they can monitor the progress of grievances at the prisons they run; and
  - the Grievance Manager having access to 'resolved' grievances where these are not resolved in the timeframe and to the satisfaction of the prisoner.
134. I note that the role of the Grievance Manager within the Department is primarily to ensure the ongoing development of the Prisoner Grievance Process and to monitor quality assurance mechanisms at a systemic level.
135. I further note that apart from Acacia's Grievance Manager<sup>75</sup>, there are no positions with an express, identified responsibility for the management and monitoring of an effective grievance process within a prison.
136. The Departmental Review attributed the delays being experienced in resolving grievances to a number of factors, which together point to the need for clear oversight responsibility. The complexity of the process (identified in Part IV above) adds further weight to this.
137. It therefore appears to me that, given the Department's recognition that the Prisoner Grievance Process '*has helped in identifying prisoner issues and planning and improving services that will address those issues*'<sup>76</sup>, there would be a benefit in allocating, at a prison level, formal responsibility for the oversight and effective implementation of the grievance process. I therefore propose recommending:

#### Recommendation 4

In support of its commitment to improve the overall Prisoner Grievance Process, the Department should formalise the responsibility for an effective complaints handling process at each prison site.

138. In its response to my Draft Report the Department agreed that a '*designated prisoner grievance coordinator identified in the site organisational structure and located in the prison is a logical and appropriate grievance process system improvement.*'

<sup>73</sup> The component of TOMS used for tracking grievances.

<sup>74</sup> Above n 46, p 6.

<sup>75</sup> Office of the Inspector of Custodial Services, Report No 19 (2003), p 20. Acacia's Grievance Manager was created when the Inspector of Custodial Services identified a backlog of prisoner grievances. A new Grievance Manager was appointed shortly before the Inspector's first inspection of that Prison in 2003. The position exists within the current Prisoner Grievance Process structure, and has been expressly delegated the responsibility of the Superintendent (General Manager at Acacia) under the current Prisoner Grievance Process to seek to resolve prisoner grievances after these have escalated from the Unit, and prior to these being escalated to the Department's Grievance Manager and Grievance Review Panel.

<sup>76</sup> Department of Justice, *Annual Report 2002/2003* (2003), p 40.

## The Issues – Staff training

127. It is unlikely that the Prisoner Grievance Process will operate efficiently unless prison officers have adequate knowledge of the system and the skills to make it work.
139. All entry level prison officer recruits receive approximately a two and a half hour training session by the Department on the grievance process, the role of the Ombudsman, and other issues related to complaints. This includes a one hour session by one of my staff. The Department's training focuses to a considerable degree upon the process and tracking grievances through the TOMS database<sup>77</sup>. It does not include training in mediation or restorative justice principles, as recommended in the original proposal to establish the current Prisoner Grievance Process, referred to previously. Vocational Support Officers (previously Trade Instructors) are also provided with one hour's training on the grievance process and their role in assisting prisoners with it, but not in inputting grievances into the TOMS database.
140. There is no workplace assessment associated with this training to ensure that the skills taught are integrated into participants' workplace practices.
141. In 2003, some time after the current Prisoner Grievance Process package was introduced, the Department provided one-off training to senior officers (unit managers), and approximately 80 per cent were able to attend. Since then, training for those who, while employed, were not senior officers in 2003, or who did not attend the training, has apparently being left to individual prisons to request training when they have identified a need.
142. A more significant problem relates to the original Departmentally-acknowledged requirement that unit staff be trained in mediation, negotiation and in the principles of restorative justice in order to implement the Prisoner Grievance Process effectively.<sup>78</sup> I have not been able to find evidence that this training ever took place.
143. I understand that a Senior Officer Development Program is presently being developed which will include a component on the Prisoner Grievance Process. It is of concern that up until this time it appears there has been no training provided to officers<sup>79</sup> in resolving prisoner complaints through negotiation or restorative justice principles and practices.

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<sup>77</sup> Department of Justice (Prisons Training and Development Branch), *Prisoner Grievance Process Session Plan*, (2002).

<sup>78</sup> Recommendation 8. Originally formulated as recommending that staff managing the grievance process have training '*in alternative dispute resolution and restorative justice principles and practices*', the Department agreed to train staff '*in mediation and restorative justice principles and practices*'. (Departmental correspondence from Executive Director Policy and Legislation Division to Director General, 26 October 1999.)

<sup>79</sup> In response to the '*Review of Prisoner Grievance, Discipline and Punishment Procedures*' by Hall and Larkin, the Department accepted recommendations 9 and 10 that Unit Managers' position description highlight the need for '*resolution and negotiation and restorative justice principles and practices*' and that Unit Managers be trained in mediation and restorative justice principles and practices. (Departmental correspondence from Executive Director Policy and Legislation Division to Director General, 26 October 1999.)

144. A further significant concern is the level of prison-based staff's computing skills.<sup>80</sup> The existing Prisoner Grievance Process is dependent upon computer based records intended to ensure adequate record keeping and transparency but is used by a workforce which is not required to be skilled in computer based technology.<sup>81</sup> The emphasis for recruitment of prison officers is on a person's communication and management skills. Nevertheless it is the case that effective management at a system-wide level depends on the capacity of officers to use the on-line tools that underpin management processes.
145. I also note that the TOMS system itself is difficult to navigate. For example, with reference to locating the relevant screens to input a formal grievance, the drop down menu is under '*Miscellaneous*'. Reports on grievances at a facility are obtained by going to '*Report Tree*', '*Case Management*' then '*Grievances*'.
146. I understand that Training Academy staff sometimes provide remedial work with some recruits after hours to assist them with their computer skills and TOMS, although this is not a formal part of the training program. There remains a skills deficiency in this area which is persisting and there is a need for the Department to invest time and training<sup>82</sup> to rectify this shortcoming. I therefore recommend that:

#### Recommendation 5

The Department should improve the level of training provided to officers and other staff involved in the resolution of disputes, and in the skills required to register the complaints in the Department's offender database (TOMS).

147. The Department, in responding to my Draft Report, noted it had already agreed to implement recommendation 136 15.11 of the Mahoney Inquiry, ie that '*the Department should appoint a dedicated officer for each prison to facilitate a high standard of training for all staff*', and that this would provide '*opportunity for those site staff engaged in the Prisoner Grievance Process to receive formal training [including] Conflict Resolution, Mediation skills and Data Management.*'

## 4. *Accountability*

### The Process

148. The Prisoner Grievance Process booklet (Appendix 2) explains that if a Prisoner Grievance is not resolved within the Prison, the grievance can be escalated to the Grievance Manager and then the Review Panel. The Review Panel consists of two Departmental representatives (the Assistant General Manager Public Prisons and the Director Offender Services and Sentence Management) as well as an independent member from the community.

<sup>80</sup> The electronic recording of offender management data (on TOMS) was only implemented by the Department in late 2001. Office of the Inspector of Custodial Services, Rep No 12 (2002), pp 40, 41, 49. During this inspection, the Inspector recommended that Prison Officers should not be used for data entry given the immense amount of time this utilised, and particularly given their lack of computing skills. The recommendation by the Inspector was not adopted by the Department and there have been references to prison staff's ongoing concerns about inadequate training, particularly in computing/TOMS skills, in the Inspector's subsequent reports (e.g. Office of the Inspector of Custodial Service, Rep 17 (2003), p 9; Office of the Inspector of Custodial Services, Rep 26 (2005), p 39.).

<sup>81</sup> Refer to Prison Officer Job Description Form.

<sup>82</sup> Mahoney Inquiry: *Inquiry into the Management of Offenders in Custody Transcript of Proceedings*, 8 September 2005, pp 2060 - 2061.

149. The booklet also explains that the Department's Prisoner Grievance Process does not '*remove your rights to access external agencies like the Ombudsman.*'
150. In Western Australia, prisoners are provided with a legislative safeguard under the *Prisons Act 1981* to write confidentially to a number of external agencies, including the Ombudsman. Prisoners are also provided with unmonitored telephone access to the Ombudsman.

#### *Telephone System*

151. During the course of the investigation we sought information from the Department on how the confidentiality of telephone calls to the Ombudsman is addressed. Policy Directive 36 states these calls are not to be recorded or made within the hearing of an officer.
152. The Department indicated that the technology used was developed principally to provide for the provision of telephone calls from prisoners to their lawyers under legal privilege. The technology was developed as part of the specifications from the outset, and from an operator's point of view is a simple matter of assigning the particular approved numbers to the particular category. Legal calls come under the code of 'L' and, when assigned, this code ensures the call is confidential.
153. The telephone number for the Ombudsman is automatically input into the system as are a number of other numbers, such as the Office of Health Review, Crimestoppers, Samaritans, legal representatives, Aboriginal Legal Service and the Department's Aboriginal Visitors Scheme. These numbers are all automatically allocated the code 'L' and are confidential.

#### *Mail System*

154. The *Prisons Act 1981* allows for prisoners' incoming and outgoing mail to be opened and inspected. However, section 67(1) of that Act provides that:
- 'Any letter written by a prisoner and properly addressed to –*
- (a) the Minister;*
  - (b) the Chief Executive Officer;*
  - (c) the Parliamentary Commissioner for Administrative Investigations;*
  - (ca) the Inspector of Custodial Services; or*
  - (d) the Commonwealth Ombudsman,*
- shall be dispatched by the superintendent to the addressee, without being opened or read'.*
155. Section 68(1) of that Act provides for any letter addressed to a prisoner and written by a person referred to in section 67(1) to be delivered to the prisoner as soon as practicable after it is received at a prison without being opened or read.
156. The Department's Policy Directive 36 further extends the list of agencies with which prisoners may correspond confidentially to include:
- The Human Rights and Equal Opportunity Commission;
  - Commonwealth Attorney General (for offenders charged with or convicted of Federal offences);
  - Equal Opportunity Commission;
  - Corruption and Crime Commission;
  - Director, Office of Health Review; and
  - Public Interest Disclosures Officer (the Department).

157. To enable prisoners' confidential letters to be readily identified, these are placed in a specially marked yellow envelope with a tick-box address. Superintendents Circular 10/2003 requires these envelopes to be readily available to prisoners. It states that confidential mail is to be placed in the separate confidential mailboxes which are located throughout the prison and painted blue. These confidential mailboxes ('blue boxes') '*should be placed in areas away from unit and block control offices where they are not in direct observation from these offices*'. The Circular also requires that these boxes be cleared on a daily basis by a member of administration or senior officer specially assigned the task, and notes '*They are not to be cleared by unit prison officers under any circumstances*'.

#### **The Issues – Prisoners' lack of confidence in confidential access to external agencies**

158. Apart from the internal mechanisms for accountability, as highlighted by the *Standard Guidelines for Corrections in Australia*, it is essential that access to external agencies is provided to ensure confidence in the integrity of the internal mechanisms.
159. Prisoners frequently raise concerns about confidential mail. Rightly or wrongly, many believe that their letters are improperly opened, delayed, or lost altogether. This is illustrated by the sample obtained during the 2005 visit to Bandyup.

##### ***Bandyup Women's Prison - May 2005***

*A sample of 18 prisoners consulted believed that their problem cannot always be taken outside the unit to be considered or reviewed by someone else when the original decision-maker, or their supervisor believes their decision doesn't need to be questioned.*

*Prisoners expressed the view that the mail is not getting out. Some said the yellow confidential envelopes were, in some cases, put out in the common rooms and around the blue boxes the day before the inspection.*

*The general belief that the prison does not facilitate external complaints was compounded when prisoners could not contact the Ombudsman's office via the Prisoner Telephone System for a period of approximately one month.*

160. As part of the visit to Bandyup Women's Prison, my officer examined the processes for confidential mail and telephone access, and made the following comments:
- *Visits area: There were no yellow envelopes or 'blue boxes' in the visits area.*
  - *Reception area: There was no confidential mail box and no yellow envelopes available.*
  - *Crisis Care Unit: Several 'blue boxes' are in direct view of control rooms in most Units, specifically in the Crisis Care Unit. This placement is contrary to Superintendent's Circular 10/2003.*
  - *'A' Wing: In 'A' Wing, one long white box serves as a mail box for the 'Superintendent, Ombudsman and Director' (written on the side). There is nothing to indicate that this mailbox is now obsolete and the blue box in the common room should be used for confidential mail. The white mail box has three locks. The people living in the unit confirm that this mail box is still used. One inmate observed that one key opens all the locks and the mail is cleared by officers from the unit control room.*
  - *'B' Wing: There was a black box near the office with no lettering. The people living in the unit say 'it's for mail.' They did not indicate that the 'blue box' was used for mail.*
  - *The lack of a defined process, instruction and specific labelling of the mail boxes has led to people being confused over which mail can go in what box. It appears to*

lead to almost all mail being put in either the white box in 'A' Wing or the black box in 'B' Wing.

- *Kitchen: no confidential mail box was sighted, and no yellow envelopes or grievance forms were on display.*
- *Self Care: While envelopes were available, prisoners there indicated that the envelopes are not always available and, previously, had to be requested from unit staff.*
- *Education Centre: Blue box, envelopes and grievance booklets are available in the Education Centre.*
- *Telephone: During the inspection, prisoners and Peer Support Officers said that prisoners could not contact the Ombudsman by telephone. To test this remark a prisoner was asked to dial the Ombudsman's number. The following recorded message was played: 'This number cannot be dialled it is only available through approved hours.' The call was made at 2.30 pm on a weekday. This matter was raised directly with the Superintendent and the problem quickly resolved.*

161. Since 1 July 2004 I have received five telephone enquiries about confidential mail being opened, lost, or delayed. In addition I have received seven complaints in writing (only one of which is by the same prisoner who made a telephone enquiry) alleging that confidential mail was being delayed or opened by prison officers. In addition I have received one written complaint about the confidential mail box not being secure and one complaint of confidential mail being shredded rather than being returned to the sender. In some instances there have been unexplained discrepancies between the date of the correspondence and the receipt of that correspondence by my office.
162. There are significant problems in substantiating such complaints. However, on 16 August 2005, two Inspections Officers from the Office of the Inspector of Custodial Services tested the confidential mail system at Bandyup Women's Prison. During the routine scheduled liaison visit, two yellow confidential mail envelopes were placed into a locked confidential mailbox located in the kitchen. The first yellow envelope was dropped into the mailbox without having any box ticked indicating where the letter was to be sent. The second envelope was marked to the '*Inspector of Custodial Services*'.
163. On 31 August 2005 the Inspector of Custodial Services received the first envelope, namely the envelope with no address checked. This envelope had initially gone to the Ombudsman's office, and had been returned to Bandyup before being correctly forwarded to the Inspector's office. The second envelope was never received.
164. It is suggested that to improve the transparency of access to outside agencies and to increase confidence in this process, the Department should trial within the prison system the numbering of confidential mail envelopes and the registering of those numbers when passing through the external mail system. Prisoners should also be informed of this change in process and advised to note the envelope number both on the letter and to retain a record for themselves.
165. Another option is for public prisons to consider implementing the processes recently trialled at Acacia. A number of complaints received about delays in confidential (and ordinary) mail going into and out of Acacia resulted in the Intelligence Manager instituting a new process to better track the collection and mailing of confidential correspondence. Briefly the process is as follows:
- (1) There are a total of 14 mailboxes located throughout the prison for the purpose of allowing prisoners to post '*Confidential Mail*'.
  - (2) All 14 mailboxes are checked for letters daily (Monday to Friday only) by the Intelligence Manager.



- (3) The confidential mail collected is then registered by the Intelligence Manager in the '*Outgoing Confidential Mail Register*'.
- (4) It is of interest to note that the register will show:
  - (a) the number of letters collected from any specific area or accommodation block (including '*zero*' when no items are collected);
  - (b) the date they were collected;
  - (c) the name of the person who collected them;
  - (d) the destination of each letter;
  - (e) the date this mail was given to the mail clerk for posting; and
  - (f) the signature of the mail clerk receiving the letters.
- (5) There is no record kept of the name of the prisoner sending the confidential mail.

166. Given prisoners' apparent lack of confidence in the confidential mail system I have decide to recommend that:

#### **Recommendation 6**

Processes promoting confidence in confidential access to outside agencies involved in the complaint handling process should be improved. Opportunities to do this include the following:

- providing numbered confidential mail envelopes; informing prisoners of the need to keep a record of the envelope number; and registering those numbers when the envelopes are despatched; and
- implementing an expanded recording process for the collection and mailing of confidential mail items, as trialled at Acacia Prison.

167. In its response to this recommendation the Department indicated that '*it will be possible to incorporate the numbering of confidential mail envelopes in the next print run, and the recording of the numbers by prison staff when mail items are collected could be implemented together with the expanded recording process based on the Acacia model*'.

## **Conclusion**

168. To ensure that my final recommendations are successfully implemented and to provide feedback to the Department to help continuously improve its complaints handling process, I propose to:
- monitor the Department's progress towards implementing these recommendations on a six monthly basis;
  - seek feedback on the Department's internal complaints handling processes from prisoners telephoning my office with a prison enquiry or complaint; and review this feedback against the standards identified in this report; and
  - conduct a detailed review of the complaints handling process at a regional prison with a high level of Indigenous prisoners in 2006. My focus will particularly be on indicators of accessibility.

## APPENDIX 1: Number of Complaints by Prison and System 2004-2005

**TABLE 7: Number of Complaints Received by Prison and System: 2004-2005<sup>83</sup>**

	Felix	OSCAR	TOMS	Daily Av Prison Count
Acacia	190	125	166	729.39
AIMS (Court & Transport Svcs)	7	0	0	n.a.
Albany	9	13	7	160.00
Bandyup	17	30	39	155.87
Boronia	4	0	2	50.17
Broome	4	2	3	125.04
Bunbury	24	13	12	190.36
Casuarina	89	105	50	451.91
Eastern Goldfields	12	19	8	112.26
Greenough	57	10	18	206.76
Hakea Prison	189	92	42	651.07
Karnet	16	9	2	157.01
Nyandi	0	5	0	n.a.
Rangeview Remand Centre	1	3	0	n.a.
Roebourne	23	9	8	163.04
Wooroloo	17	6	4	209.67
Not allocated to a prison	84	53	0	n.a.
<b>TOTAL</b>	<b>743</b>	<b>494</b>	<b>361</b>	<b>3371.55</b>

<sup>83</sup> Data from Felix only covers the period 11/10/04 - 30/6/05.

*APPENDIX 2: The Prisoner Grievance Process Booklet*



# Prisoner Grievance Process



A grievance is a complaint or concern which has not been resolved at Unit Officer level and which the prisoner wants to take further.

## WHAT IS A GRIEVANCE?

A grievance is a complaint or concern which has not been resolved at Unit Officer level and which the prisoner wants to take further.

### I've got a grievance, what can I do about it?



First, speak to your Unit Officer or Unit Manager.

If you have spoken to your Unit Officer or the Unit Manager and you are not satisfied with the outcome –

**Get a grievance form and fill it out.**

If you have a medical / health grievance use the same form and give it directly to your medical officer.

## NEED HELP?

The following people know about grievance procedures and will help you —

- Peer Support Prisoners
- Prison Support Officer
- Chaplains
- Aboriginal Visitors
- Official Prison Visitors
- Education Officers
- FCMT
- Community Correction Officers
- Prison Officers
- Case Officers



Give the completed grievance form to your Unit Manager and you will receive a copy within 24 hours.

Prisoners shall not be subject to retaliation or harassment for participating in the grievance procedure.

## What happens to my grievance now?



A copy of your form is faxed to the Grievance Manager.

The Unit Manager investigates the grievance and documents all actions.

The Unit Manager will discuss resolution actions with you and in most cases you will have a response within 7 days.

You will be advised if it is going to take more than 7 days and the reasons for the delays.

## What if I don't want to go on with my grievance?

You have the right to withdraw a grievance at any time.

## Can I still send my grievance to someone else?

These grievance procedures do not remove your rights to access external agencies like the Ombudsman.



## Can I put in a grievance for someone else?

No, each person must put in their own.

## What if I don't agree with the outcome?

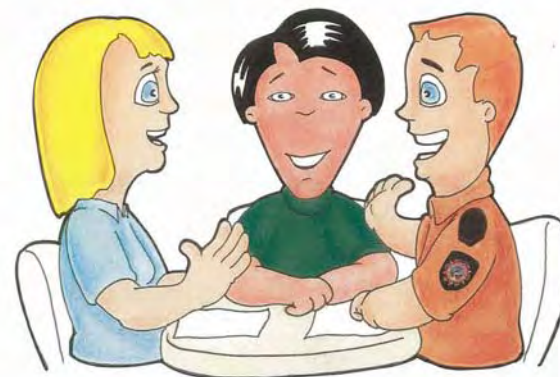
You can ask for your grievance to be reviewed at the next stage.

## How many stages are there?

There are four stages —

1. Unit Manager / Nurse Manager
2. Superintendent / Health Services Executive
3. Grievance Manager
4. Grievance Review Panel

This does not stop your right to have your complaint addressed by an external organisation.



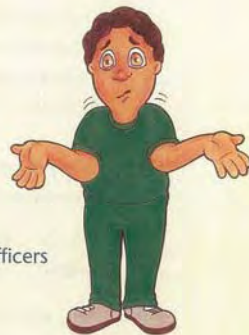
## FREQUENTLY ASKED QUESTIONS

### How, Why, When and Who —

#### Q. Can I get help with my grievance?

A. Yes, the following people will help with information about the grievance process, or if you need any help with filling out the forms:

- Peer Support Prisoners
- Prison Support Officer
- Chaplains
- Aboriginal Visitors
- Official Prison Visitors
- Education Officers
- FCMT
- Community Correction Officers
- Unit Staff
- Prison Officers
- Case Officers



#### Q. Can I still write to the Ombudsman and other outside agencies about my grievance?

A. Yes, the Prisoner Grievance Process does not remove or replace your right to contact external agencies.

However, by using this process your grievance will be dealt with quickly and you will be consulted during the process and about the outcome.

#### Q. Why do I give a health-related grievance to the medical officer?

A. Although the same procedures and forms apply for all grievances, it will be quicker if your health grievance is handled by those with medical knowledge.

#### Q. What can I do if I don't agree with the outcome of my grievance?

A. You can take your grievance to the next stage of Superintendent, Grievance Manager or Review Panel, in that order. The Grievance Review Panel's decision is final.

#### Q. How long does it take to get a response to my grievance?

A. Where possible, your grievance will be dealt with within 7 days during each stage.

You will be told at each stage when you can expect a response.

Where there is a delay you will be informed of the reasons and how much extra time is needed.

#### Q. If my grievance is against another person, will they be told?

A. Yes. All parties have a right to be informed and need to be involved in resolving your grievance.

Q. Can I lodge a grievance without putting my name on it?

A. No. The Unit Manager or Nurse Manager must know who you are so that the grievance can be discussed and investigated. You would also want to be advised of the outcome.

Q. Who is the Grievance Manager?

A. The Grievance Manager is based in the Ministry of Justice head office. The primary role is to facilitate the resolution of prisoners' grievances.

If the Grievance Manager is unable to resolve the problem and you want to take it further, recommendations will be made to the Grievance Review Panel.

Q. What is the Grievance Review Panel?

A. The Grievance Review Panel is a committee made up of the Director Metropolitan Prisons, the Director Regional Prisons and a suitably qualified person from the community.

The Review Panel is responsible for the final decision on your grievance.



# GOT A GRIEVANCE?

THEN USE THE GRIEVANCE PROCEDURES

Before you do anything else, see your Unit Officer or a support person.

Get a grievance form and fill it out.

If the answer you received is not what you expected you could ask that your grievance go to the next stage.

Get help-filling in form, if you need it from a support person.

You will receive a copy of your form back within 24 hours to show your grievance has been registered.

Complete a form and give it to your Unit Manager or Nurse Manager if it is a health issue.

<b>Stage 1</b> Unit Manager/ Health Nurse	<b>Stage 2</b> Superintendent/ Health Services Executive	<b>Stage 3</b> Grievance Manager	<b>Stage 4</b> Grievance Review Panel
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This does not stop your right to have your complaint addressed by an external organisation.

MINISTRY OF JUSTICE

## *APPENDIX 3: Complaints Received About the Grievance System*

### Assessment of complaints received *about* the grievance system: 1/1/2004 - 4/8/2005

Case	Allegation	Outcome / Present status
1	Grievance procedure was unfair and complainant was not allowed to respond to evidence against him.	Assessed as a matter of officer misconduct and referred to CCC.
2	Senior officer refused to accept grievance about complainant's dismissal from employment.	Complaint sustained. Officer counselled informally - was apparently not aware that unfair dismissal could be the subject of a grievance. Alternative employment was found for complainant.
3	Officer refused to accept grievance form and threatened to shred it.	Complaint investigated. Not sustained. Issue not covered by grievance system.
4	Prison management refused to accept grievance	Complaint withdrawn. Request was against current Departmental policy.
8	Wrong decision made about lodged grievance	Investigated. Not sustained. Disciplinary matter not covered by grievance process.
9	Failure to respond to grievance.	Investigated. Complaint sustained. Original decision reversed and apology given. Training and record-keeping issues identified.
12	Officer refused to action grievance.	Investigated. Not sustained. Disciplinary matter not covered by grievance process.
5	Complainant was not allowed to escalate grievance to Grievance Manager level.	Still being investigated.
6	No action taken in relation to grievance.	Still being investigated.
7	Complainant threatened with consequences for putting in a grievance.	Still being investigated.
10	Ineffective grievance process and lack of availability of grievance forms.	Still being investigated.
11	Unhappy with grievance process because reasons for decisions not adequately explained.	Still being assessed.
13	Intimidated into not making a grievance.	Still being assessed.
14	Denied access to grievance process.	Still being assessed.
15	Unreasonably punished for complaining.	Still being assessed.



## ***APPENDIX 4: References***

During the course of this investigation we consulted the following documents on grievance handling.

### *Australian Documents*

- Australian Standard- Complaints handling AS 4269-1995
- Standard Guidelines for Corrections in Australia- Revised 2004
- Department of Justice: Director General's Rules
- Department of Justice: Policy Directives
- Department of Justice: Operational Instructions
- Public Sector Practice Guidelines, Office of Auditor General

### *British Documents*

- HM Prison Service: Prison Service Order 2520, The Prison and Probation Ombudsman
- HM Prison Service: Prison Service Order 2510, Prisoner's Requests and Complaints Procedure

### *International Documents*

- Penal Reform International, Making Standards Work, and international handbook on good prison practice
- Office of the High Commissioner for Human Rights, Standard Minimum Rules for the Treatment of Prisoners
- International Covenant on Civil and Political Rights, Human Rights Commission