

## Trevor Dillon

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**From:** HAWGOOD, David  
**Sent:** Wednesday, 25 November 2015 3:47 PM  
**To:** ZHOUAND, Samay; O'Neill, Samantha  
**Cc:** BALES, David ; MEAKINS, Nicole  
**Subject:** RE: brief re iep

Sam, Important Document for attachment one, can you D/L the pdf and save as an attachment to the memo.

<http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwij7vir76rJAhVmPKYKH56BcUQFggcMAA&url=http%3A%2F%2Fwww.prisonreformtrust.org.uk%2FPortals%2F0%2FDocuments%2Fpunishment%2520without%2520purpose%2520FINAL2941007.pdf&usg=AFQjCNG5DDTbu3SGG8eeNkC24wMoxRxqXg>

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**From:** ZHOUAND, Samay  
**Sent:** Wednesday, 25 November 2015 3:42 PM  
**To:** HAWGOOD, David; O'Neill, Samantha  
**Cc:** BALES, David ; MEAKINS, Nicole  
**Subject:** RE: brief re iep

Can you send it again (this time to Sam and cc me) as I cannot find it.



**Samay Zhouand**  
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Department of Justice and Attorney-General | [Queensland Government](#)



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**From:** HAWGOOD, David  
**Sent:** Wednesday, 25 November 2015 3:39 PM  
**To:** ZHOUAND, Samay; O'Neill, Samantha  
**Cc:** BALES, David ; MEAKINS, Nicole  
**Subject:** RE: brief re iep

Samay, the "Punishment without purpose" document should also be included. Dave

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**From:** ZHOUAND, Samay  
**Sent:** Wednesday, 25 November 2015 2:45 PM  
**To:** O'Neill, Samantha  
**Cc:** HAWGOOD, David; BALES, David ; MEAKINS, Nicole  
**Subject:** brief re iep

Please progress – Dave Hawgood will send you attachment 1.



## OFFICE OF THE CHIEF INSPECTOR

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Department of Justice and Attorney-General | Queensland Government





# DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL

## BRIEF FOR APPROVAL/NOTING

**TO:** Mark Rallings, Commissioner, Queensland Corrective Services  
**FROM:** Chief Inspector  
**SUBJECT:** Incentives and Earned Privileges Scheme  
**DATE:**

### PURPOSE

That you **note** the information in this brief regarding the proposed management standards and the incentives and earned privileges scheme.

### BACKGROUND

Board of Management is considering a set of proposed prisoner management standards to complement the existing incentives and earned privileges scheme. However, a consolidated viewpoint in relation to the proposed management standards and the incentives and earned privileges has not been communicated to date. This requires remedial action and, as such, this paper provides an outline of the chief inspectorate's view about those issues. Importantly, it is acknowledged that the chief inspectorate viewpoint is but one element among the diverse, complex and challenging issues relating to the proposed prisoner management standards and incentives and earned privileges scheme.

### ISSUES

Decency is but one consideration among many competing and important considerations relating to the prisoner management standards and the incentives and earned privileges scheme, all of which may have merit in them. Relevantly, these considerations in order of importance to the operational arm of Queensland Corrective Services seem to be as follows:

1. The nature and level of the control is legal.
2. There are sufficient levels of control within a correctional centre so as to ensure continued effectiveness in operations.
3. The nature and level of control is fair and humane (including consistent) so as to ensure continued stakeholder confidence in the treatment of prisoners.
4. Prisoners are rehabilitated.
5. Community and stakeholder confidence in the effectiveness and fairness of the correctional system.

Briefing Officer	Name	Approved by	Name
	Position		Deputy Commissioner/Director/ED
	Unit		Queensland Corrective Services
Telephone	(07)	Date	

Decision making criteria	Viewpoint		
Whether the nature and level of the control is legal.	<p>Despite the significant wisdom involved in introducing the prisoner management standards, there is and will continue to be reasonable doubt about the legality of removing privileges from prisoners without a mechanism such as a breach of discipline or legislative order (for example, safety order or a maximum security order) process. This issue would seem to be the 'white elephant in the room' regarding the incentives and earned privileges scheme. Consequently, there might be substantial organisational risk in terms of inadvertent legislative non-compliance impacting on individual legal rights if the incentives and earned privileges scheme in its current form is continued. Concurrently, there may be judicial or ombudsman findings to the same effect if the current practice of removing privileges without a breach of discipline or legislative order process remains in place. This is an unacceptable situation from the chief inspectorate viewpoint and, as such, another option (<b>Attachment 1</b>) is proposed. The proposed option ensures legislative compliance by requiring that the removal of privileges be through legislative mechanisms such as a breach of discipline process.</p>		
Whether there are sufficient levels of control within a correctional centre so as to ensure continued effectiveness in operations.	<p>It is acknowledged that control is very important in a correctional centre. Even more so at the present time of overcapacity and limited resources.</p> <p>At some point in recent history, the incentives and earned privileges scheme in Queensland morphed from an aspirational/rehabilitation tool to the primary – instead of the breach of discipline process – discipline tool. The attached (<b>Attachment 2</b>) research/publication from Alison Liebling and Prison Fellowship Trust highlight that at least in the United Kingdom context the utilisation of the incentives and earned privileges scheme as a control tool was counterproductive and harmful. It led prisoners to believe that the scheme was unfair/illegitimate. As a result, the prisoners were found to be less engaged and compliant. Importantly, the views expressed in the attached research/publication are also reflected in the views expressed by many prisoners during inspections conducted by the chief inspectorate in Queensland. Given the counterproductive risks linked to the utilisation of the incentives and earned privileges scheme as a control mechanism, the continued operation of the scheme as a discipline/control tool is not supported.</p> <p>Inevitably, control can be achieved in multiple ways, including through the legislative mechanisms afforded under the <i>Corrective Services Act 2006</i>. The discipline mechanisms available under the <i>Corrective Services Act</i> have been in operation for almost a decade and allowed the organisation to exercise sufficient control for much of that time. Indeed, Capricornia Correctional Centre recently scored the highest rating under the healthy prison test by having the breach of discipline process as its primary means of discipline – the centre did not have an incentives and privileges scheme in operation. In this regard, <b>Attachment 1</b> provides an option that ensures the incorporation/continuation of the prison management standards and an incentives and earned privileges scheme while also ensuring that control can be exercised in line with legislative obligations.</p>		
Whether the nature and level of control is fair and humane (including consistent) so as to ensure continued stakeholder	<p>A theme arising from inspections, investigations, official visitor reports and individual matter reviews is that the incentives and earned privileges scheme tends to be applied inconsistently, arbitrarily and with limited accountability. Relevantly, for example:</p> <ul style="list-style-type: none"> <li>• it is not uncommon for prisoners to be put on the Basic regime under the incentives and earned privileges scheme for minor or trivial infringements;</li> <li>• it is not uncommon for prisoners to be kept on the Basic regime for too long;</li> <li>• it is not uncommon for the Basic regime to be austere and unreasonable; and</li> </ul>		
Briefing Officer	Name	Approved by	Name
	Position		Deputy Commissioner/Director/ED
	Unit		Queensland Corrective Services
Telephone	(07)	Date	

confidence in the treatment of prisoners.	<ul style="list-style-type: none"> <li>• it is not uncommon for there to be inconsistent decision making about the application of the Basic regime between officers; and</li> <li>• it is not uncommon to see limited procedural fairness or due process followed in the application of the scheme.</li> </ul> <p>The inconsistent, arbitrary and unaccountable application of the incentives and earned privileges scheme is unacceptable from the chief inspectorate viewpoint. Again, the option in <b>Attachment 1</b> is proposed as it ensures consistency and accountability by way of requiring periodic but formal reviews and the removal of privileges through a breach of discipline process.</p>
Prisoners are rehabilitated	<p>The incentives and earned privileges scheme was intended to improve prisoner capability and motivation to rehabilitate as opposed to be used as a discipline tool. Refer to earlier points made in the table about research and commentary about the problems associated from moving from this framework to a control framework.</p> <p>In addition, it is important to note that the underlying assumptions of the incentives and earned privileges scheme are based on the concepts of reward and punishment and that that type of motivational scheme is but one approach to improving prisoner ability and motivation to rehabilitate. As such, it would be wrong to use the reward and punishment methodology as the only means by which to improve prisoner ability and motivation to rehabilitate under the incentives and earned privileges scheme. The scheme would benefit from being incorporated into a more holistic strategy for improving prisoner ability and motivation to rehabilitate – for example, an approach that encompasses tools such as counselling, coaching and value based decision making. In this regard, a draft prisoner misconduct management framework is being developed by the chief inspectorate in consultation with the Statewide Operations directorate.</p>
Community and stakeholder confidence in the effectiveness and fairness of the correctional system	<p>Non-action against the limitations of the incentives and earned privileges of scheme can at first blush suggest continued levels of control in Queensland prisons. However, the research and publications referred to earlier in this brief and the prisoner feedback to the chief inspectorate suggest that there may or likely to be widespread perceptions of unfairness/illegitimacy of control in respect of the incentives and earned privileges scheme. These perceptions in turn will create a challenge to maintaining (and risk to) order. As such, continued community and stakeholder confidence in the level of control exercised by Queensland corrections in prisons is not assured by non-action against the limitations of the incentives and earned privileges scheme highlighted in this brief. This is especially the case given that other prisons are able to exercise sufficient levels of control without a discipline or control orientated incentives and earned privileges scheme.</p> <p>Concurrently, it would not be unreasonable to conclude that the organisation will at some point in the near future be subject to significant criticism from relevant stakeholders such as the Ombudsman about the legality and fairness of the scheme. For these reasons, it would seem non-action might be a well-intended albeit incorrect position. Accordingly, it is proposed that consideration be given to other options (for example, refer to <b>Attachment 1</b>) as a way to advance the prisoner management standards and incentives and earned privileges scheme.</p>

Briefing Officer	Name Position Unit (07)	Approved by	Name Deputy Commissioner/Director/ED Queensland Corrective Services
Telephone		Date	

Ultimately, the existing incentives and earned privileges scheme framework in which the proposed prisoner management standards must operate is not supported from the chief inspectorate point of view. While the prisoner management standards seek in part to address some of the limitations of the incentives and earned privileges scheme, the standards do not in themselves remediate the significant shortcomings listed in this paper. These limitations relate to legality, the heavy control/punishment orientated nature of the scheme, and the recurrent failings in terms of the fair/humane/accountable application of the scheme.

Admittedly, the viewpoint and option (**Attachment 1**) communicated in this brief is but one element among multiple, competing and challenging issues and priorities that must be balanced in the decision making process about the topic. Nonetheless, it would seem important to know all of the elements about the subject so as to ensure good decision making and community and stakeholder confidence in the effectiveness and fairness of the correctional system.

## RECOMMENDATION

It is recommended that you note the consolidated views of the chief inspectorate set out in this brief regarding the prisoner management standards and the incentives and earned privileges scheme.

<input checked="" type="checkbox"/> Noted	<input type="checkbox"/> Approved	<input type="checkbox"/> Not Approved
Signed: <u>MR</u>		
Mark Rallings Commissioner		
Date: <u>14/12/15</u>		

TO CHIEF INSPECTOR

FOR DISCUSSION PLEASE

MR  
14/12/15

Briefing Officer	Name Position Unit (07)	Approved by	Name Deputy Commissioner/Director/ED Queensland Corrective Services
Telephone		Date	



**DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL**  
**Queensland Corrective Services Briefing Note**



**TO:** Mark Rallings, Commissioner, Queensland Corrective Services  
**FROM:** Samay Zhouand, Chief Inspector, Office of the Chief Inspector  
**SUBJECT:** Incentives and Earned Privileges Scheme  
**DATE:** 14 December 2015

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**PURPOSE**

That you **note** the information in this brief regarding the proposed management standards and the incentives and earned privileges scheme.

**BACKGROUND**

Board of Management is considering a set of proposed prisoner management standards to complement the existing incentives and earned privileges scheme.

This brief provides the chief inspectorate's concerns about the incentives and earned privileges scheme.

It is acknowledged that the chief inspectorate viewpoint is but one element among the diverse, complex and challenging issues relating to the proposed prisoner management standards and incentives and earned privileges scheme.

**ISSUES**

The minimum prisoner management standards are a welcome step in managing the myriad of issues relating to the incentives and earned privileges scheme. However, these standards do not offset what would seem to be several key problems with the current scheme.

First, there is and will continue to be reasonable doubt about the legality of removing privileges under the incentives and earned privileges scheme from prisoners without a legislative mechanism such as a breach of discipline or segregation order (for example, safety order or a maximum security order) process. Correctional institutions must work within the bounds of the law which means that the continued practice of removing privileges without a legislative mechanism should be stopped.

Second, the minimum prisoner management standards will not in themselves end the inconsistent and unaccountable application of the scheme. Relevantly:

- it is not uncommon for prisoners to be put on the lowest level of the incentives and earned privileges scheme for minor or trivial infringements;
- it is not uncommon for prisoners to be kept on the lowest level of the incentives and earned privileges scheme for too long;

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Approved by Samay Zhouand  
Chief Inspector  
Queensland Corrective Services  
Date 14 December 2015

- it is not uncommon for the lowest level of the incentives and earned privileges scheme to be austere and unreasonable – this will be remedied to some extent by the prisoner management standards;
- it is not uncommon for there to be inconsistent decision making about the application of the incentives and earned privileges scheme between officers; and
- it is not uncommon to see limited procedural fairness or due process followed in the application of the scheme.

Failure to afford appropriate levels of due process and fairness to prisoners impacts on their perceptions of fairness and justice in the prison. There is no immediate solution to this issue other than ensuring legislative compliance, and higher levels of accountability and due process in relation to the incentives and earned privileges scheme.

The viewpoint communicated in this brief is but one element among multiple, competing and challenging issues and priorities that must be balanced in the decision making process about the topic. Nonetheless, it would seem important to know all of the elements about the subject so as to ensure good decision making and community and stakeholder confidence in the effectiveness and integrity of the correctional system.

## RECOMMENDATION

It is recommended that you **note** the views of the chief inspectorate set out in this brief regarding the prisoner management standards and the incentives and earned privileges scheme.



**Samay Zhouand**  
**Chief Inspector**  
**Queensland Corrective Services**  
**Date: 14/12/15**

<input type="checkbox"/> Noted	<input type="checkbox"/> Approved	<input type="checkbox"/> Not Approved
<b>Signed:</b> ..... Mark Rallings Commissioner		
<b>Date:</b> .....		

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Approved by    Samay Zhouand  
                            Chief Inspector  
                            Queensland Corrective Services  
Date                14 December 2015