



## **The Corrections Chief and the Minister (B)**

“I have concluded, after assessing the performance of the Department [of Corrections] in relation to the findings of the Auditor-General as to non-compliance, that the dismissal of the chief executive would not be justified.”<sup>1</sup> On 9 March 2009, State Services Commissioner Iain Rennie advised that, despite the numerous issues raised in the report, consideration of the wider context in which the Department was operating, including improved performance against its own measures, indicated that Corrections Chief Executive Barry Matthews should retain his job.

He would, however, be required to demonstrate further improvements and point to performance indicators to show the Community Probation and Psychological Services (CPPS) was working effectively, with external quality assurance for the implementation of planned improvements.

“Increasing public confidence is closely linked with Ministerial confidence in the Department. I expect the chief executive to work with the Minister to secure the Minister’s confidence. I will be closely assessing the chief executive’s performance in this respect also,” Iain Rennie wrote.

Although the report did not formally consider issues of funding, the Commissioner suggested that Ministers would have to seriously consider some additional funding. “Implementation of this report’s recommendations should provide Ministers with greater confidence that such funding would be used to good effect.”<sup>2</sup>

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This case was written by Janet Tyson, Australia and New Zealand School of Government for Dr Richard Norman. It is designed for teaching purposes to accompany the case 2009-96.1. The use of teaching materials is restricted to authorised persons.

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<sup>1</sup> Rennie, I, Report to the Hon Judith Collins, Minister of Corrections, On accountability for the findings in the Auditor-General’s report, *Department of Corrections: Managing Offenders on Parole*, and what should be done to restore public confidence. State Services Commission, Wellington, 9 March 2009, p5. (Hereafter SSC Report)

<sup>2</sup> Ibid, p6.

As requested by the Minister, the report considered both issues of accountability (*Exhibit A*) for the problems identified in the CPPS, and what should be done to restore public confidence. Those consulted during the preparation of the 21-page report included representatives of the wider justice sector as well as independent experts.

The report underlined the State Services Commission's role as employer of chief executives, pointing out that performance against expectations is annually reviewed through a process that was currently under way for Barry Matthews.

While Section 32 of the State Sector Act 1988 outlined the general responsibilities of a chief executive to his or her Minister, "the business processes and systems that facilitate the provision of services are the responsibility of the chief executive. The accountability of a department's staff is to the chief executive alone." Further:

"A chief executive is accountable for the performance of his or her department. However, this does not mean that employment consequences must flow every time a department experiences a performance deficiency."<sup>3</sup>

In considering issues of accountability, the context included the Corrections Department's preparations for the impact of new community sentencing, such as the introduction of regular risk reviews, and the extensive internal review of the management of high-risk offenders that CPPS had undertaken since the January 2007 shooting of Karl Kuchenbecker.

Implementing most recommendations depended on compliance with procedures. CPPS was already aware that staff non-compliance with procedures was an issue and was implementing disciplinary measures as well as training. Internal quality assurance showed an increasing compliance with parole management procedures (*Exhibit B*), although the target was 85 percent rather than the 100 percent of the Auditor-General's report. Since the report, CPPS had prepared a comprehensive "Plan to improve compliance with procedures for managing parole orders 2008-2009."

"Many positive comments have been conveyed to me from those working in the justice sector about the Department's chief executive and staff, their professionalism, and their commitment and successes in effecting improvements in performance seen to date," Iain Rennie said.

"...Under the incumbent chief executive, the Department of Corrections has made considerable progress in working effectively within the justice and social sectors...the Department has a level of co-operation and support throughout the justice sector not experienced in recent years.

"The chief executive must be able to carry forward the confidence the Department has achieved within the justice sector to the broader public arena."<sup>4</sup>

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<sup>3</sup> SSC Report, p10

<sup>4</sup> Ibid, p18-19

For CPPS, this must be assuring the public that it operates with high levels of compliance, the Commissioner said. To achieve this clearer performance measures must be instigated, with good decision support tools, and the involvement of independent experts.

Once again, the chief executive must work with the Minister to establish this public confidence, and to “provide a measure of assurance to the Minister that her priorities and expectations for this exercise are being taken into account.”<sup>5</sup>

In its “Plan to improve compliance” CPPS had summarised the Auditor-General’s findings as primarily an issue of “timeliness –staff not completing procedures in the timeframes specified. There were, however, also some instances of procedures not being completed at all.”<sup>6</sup> A significant proportion of the tasks set in response to the Auditor-General’s report, such as ensuring that staff complied with existing procedures for the preparation of offender management plans, and regular home visits, would be completed by March 2009. A redesigned operations manual should be available in September 2009, while training for an improved IOMS system was to be completed by December 2009.

On Monday 9 March, Corrections Minister Judith Collins made it clear she intended to maintain the pressure on Barry Matthews.

“Collins says she must accept the Commissioner’s findings, but is sending a clear signal she will be watching the Department closely to ensure it restores public confidence in its abilities,” TVNZ reported.<sup>7</sup>

“She says she expects Matthews to work hard to gain that confidence and says she will be holding him to very high standards.”

Barry Matthews, welcoming the report as “a very fair one” with clear expectations that he intends to act on, acknowledged the importance of regaining both the Minister’s confidence and the public’s trust.

“I remain committed to improving public safety. It is what I came into the Department to do. SSC’s report showed a number of improvements have already been made to the department’s performance. However, it is a work in progress and clearly more needs to be done,” he said.<sup>8</sup>

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<sup>5</sup> SSC Report p20

<sup>6</sup> Department of Corrections, Community Probation and Psychological Services, Plan to Improve Compliance with Procedures for Managing Parole Orders, 2008-2009, p 3.

<sup>7</sup> TVNZ: ‘Collins maintaining pressure on Matthews’, 9 March 2009, downloaded from <http://tvnz.co.nz/politics-news/Collins-maintaining-pressure-matthews-2527609> downloaded 15-06-2009

<sup>8</sup> Ibid.

## **Exhibit A: Accountability**

### ***Public Service accountability arrangements***

28 The first part of my report is to establish who in the Department is to be held accountable for the findings in the Auditor-General's report.

29 The State Services Commissioner (the Commissioner) is responsible for the appointment and removal from office of a public service chief executive, in accordance with the State Sector Act 1988 (the Act). The Commissioner sets out his expectations of the chief executive at the time of appointment and updates these expectations from time to time, usually annually. The Act confers on the chief executive the powers necessary to carry out the functions, responsibilities and duties imposed on the chief executive under the Act or any other relevant legislation.

30 In all dealings with a chief executive the Commissioner is required to act as a "good employer" (as that term is defined in the Act) and may only remove a chief executive from office with the agreement of the Governor-General in Council for just cause or excuse.

31 The Commissioner has expectations as to the performance of every chief executive, including: displaying strong and effective departmental leadership; to improve his or her department in all areas; to display the highest levels of personal integrity and conduct in every aspect of his or her role and to work in the collective interest of government.

32 In addition, to the chief executive's accountability to the Commissioner, he or she is also responsible to the Minister under section 32 of the Act as follows:

#### **32 Principal responsibilities**

The chief executive of a Department shall be responsible to the appropriate Minister for -

(a) the carrying out of the functions and duties of the Department (including those imposed by Act or by the policies of the Government); and

(b) the tendering of advice to the appropriate Minister and other Ministers of the Crown; and

(c) the general conduct of the Department; and

(d) the efficient, effective, and economical management of the activities of the Department.

33 While the chief executive is responsible to the Minister for the matters set out in section 32 and for the agreed operating intentions (as set out in the Department's Statement of Forecast Service Performance and the Statement of Intent), the business

processes and systems that facilitate the provision of services are the responsibility of the chief executive.

34 The accountability of a department's staff is to the chief executive alone. Section 33 of the Act provides that in matters relating to decisions on individual employees, whether appointment, promotion, demotion, disciplining, or the cessation of employment of any employee or other matters, the chief executive is not responsible to the Minister but must act independently. Thus, departmental employees are accountable to their chief executive for the areas of work for which they are responsible.

35 A chief executive routinely delegates functions and powers to his or her senior managers. However, the delegation does not remove the responsibility of the chief executive for the actions (or inactions) of any person acting under a delegation. The chief executive remains accountable.

36 How well a chief executive fulfils his or her duties and responsibilities is a matter that the Commissioner assesses when making employment decisions relating to a chief executive and when undertaking performance reviews of the chief executive. Specific information pertaining to a chief executive's or a department's performance, such as the matters addressed in the Auditor-General's report, are considered by the Commissioner when reviewing a chief executive's performance and accountability.

37 In sum, a chief executive is accountable for the performance of his or her department. However, this does not mean that employment consequences must flow every time a department experiences a performance deficiency. The performance of a department, including that of a chief executive and staff responsible for departmental functions and duties, must be fairly and proportionately assessed.

38 In this particular case, the general approach to accountability (outlined above) means that I need to consider the context within which the Department was operating, and given this context the management response. This includes the extent to which the Department performed in relation to the expectations set by the government of the day as well as its own internal performance standards.

*Source: Rennie, I, Report to the Hon Judith Collins, Minister of Corrections, On accountability for the findings in the Auditor-General's report, Department of Corrections: Managing Offenders on Parole, and what should be done to restore public confidence. State Services Commission, Wellington, 9 March 2009, p9-10.*

**Exhibit B: Department of Corrections externally-focussed performance measures for 2007-2008**

Performance Measures for community-based Sentences and Orders 2007-2008		
	Forecast	Achieved
Home detention orders completed and offenders who abscond to be no more than	80%	88%
	2%	2%
Home detention sentences completed	80%	74%
Community detention sentences completed	65%	89%
Intensive supervision sentences completed	65%	No actuals available: too early to measure completion date
Supervision sentences completed	65%	73%
Community Work sentences completed	70%	64%
Parole orders completed	65%	65%
Orders for Post-release conditions completed	65%	64%
Orders for post-detention conditions completed	65%	No actuals available – too early to measure completion date
Offenders serving Extended Supervision orders have a plan being managed to agreed standards	100%	100%

*Source: Summarised from Department of Corrections, Annual Report 2008, Statement of Service Performance, Output Class 2: Community-based sentencing.*