



INVESTIGATION

BY JOHN BELGRAVE, CHIEF OMBUDSMAN

AND

MEL SMITH, OMBUDSMAN

OF THE

DEPARTMENT OF CORRECTIONS

IN RELATION TO THE TRANSPORT OF PRISONERS

Presented to the House of Representatives pursuant to section 29 of the Ombudsmen Act 1975

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ABBREVIATIONS

Chubb	Chubb New Zealand Ltd
Department	Department of Corrections
GPS	Global Positioning System
ICCPR	International Convention on Civil and Political Rights
LTNZ	Land Transport New Zealand
PPM	Policy and Procedure Manual
PPS	Public Prisons Service (division of Department of Corrections)
Variation No. 3	Variation to Chubb security contract dated 28 April 2007
UNCRC	United Nations Convention on the Rights of the Child

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SUMMARY OF PRINCIPAL OPINIONS, AND RECOMMENDATIONS

By reference to the headings and associated discussion in the following sections of this Report, our conclusions and recommendations are as follows.

The “*Department*” is the Department of Corrections. “*Chubb*” is Chubb NZ Ltd, which is a “*security contractor*” as defined by the Corrections Act 2004.

2.0 PRELIMINARY COMMENT AND OBSERVATIONS

2.1.3 Best and Worst Equipped Vehicles

We consider the rear of the Department’s Toyota Hilux vehicle based at Rimutaka Prison as described under “*Old Departmental Vehicle*” is unsatisfactory for prisoner transport

We recommend that the use of the rear compartment of this vehicle for prisoners be discontinued.

3.0 ROAD TRANSPORT

3.2 Current Vehicle Fleet

3.2.2 Departmental Secure Vehicles

We consider the lack of national standards and consistency for prisoner transport vehicles is unsatisfactory.

We recommend that the Department proceed to set (achievable) national standards for prisoner transport vehicles, and formulate

national procedures for commissioning any new vehicles required.

3.2.3 Chubb Secure Vehicles

We recommend that the Department discuss with Chubb any national standards for prisoner transport vehicles that the Department considers necessary or desirable, and take all practicable steps to achieve compliance by Chubb.

3.3 Seat Belts

We consider the general absence of seat belts, air bags or other similar safety measures for prisoners is unsatisfactory, and represents a serious safety risk for prisoners.

We recommend that the Department seek expert advice with regard to measures that may minimise injury to prisoners in the event of road traffic accident. The advice should include a review of available modes of restraint (especially for prisoners considered not to be “at risk”), whether it is appropriate to have side-facing seats, and the feasibility of fitting moulded seats.

3.4 Seat Squabs (Padding)

We consider the Department’s approach to seat squabs has been unsatisfactory.

We recommend that the Department review its provision of seat squabs, and, in particular, provide squabs in cages of which staff have good observation unless there is special reason associated with the prisoners being transported.

3.5 Vehicle Servicing

We consider the lack of national policy on the servicing of departmental vehicles by prisoners (where this is possible on-site) is unsatisfactory. It is illogical that one prison should by local policy allow servicing of vehicles by prisoners, and at another prison forbid it.

We recommend that the Department determine a national policy on the servicing of departmental vehicles.

3.6 Surveillance and Communication

We consider staff opportunity to keep prisoners under surveillance is unsatisfactory due to the design of many prisoner transport vehicles.

We recommend that all prisoner transport vehicles be designed or adapted to ensure that escort staff may observe all prisoner cages, and that prisoners may communicate with escort staff. The Department should institute a programme for the replacement or refurbishment of existing vehicles that fail to meet these criteria.

3.7 Food, Water and Rest Breaks

We consider the provision of food and water, toilet breaks, and exercise to prisoners during road transport is inadequate, and the absence of national standards is unsatisfactory.

3.7.1 Food and Water

We recommend that the Department take steps to ascertain the differing practices of its various prisons, and implement national standards for the supply of food and water. The Department should note that prisoners often do not have sufficient water during journeys under the practices that currently exist, and should urgently remedy this deficiency.

3.7.2 Toilet Breaks

We recommend that the Department review prisoner access to toilet facilities en route. The Department should consider guidance to staff on stopping at specified secure areas, and take into account the existing communication difficulties within prisoner transport vehicles.

3.7.3 Exercise

We recommend that the Department provide for prisoners to exit prisoner transport vehicles for fresh air and to stretch their limbs at periods not exceeding three hours save in exceptional circumstances.

3.7.4 Summary

We recommend that the Department review all practices with regard to the provision of food and water, toilet breaks and exercise during road journeys, and seek medical advice on this. The medical advice should be given in the knowledge of actual conditions in typical prisoner transport vehicles.

3.8 Temperature

We consider it is unsatisfactory that not all prisoner transport vehicles are equipped with means to maintain reasonable temperatures in prisoner cages.

We consider the absence of any national standard for the provision of blankets to prisoners to combat cold is unsatisfactory, given that some prisons have concluded that blankets are a hazard and other prisons see blanket provision as reasonable.

We recommend that the Department equip all prisoner transport vehicles with temperature control mechanisms for prisoner cages, adequate for the conditions under which the vehicles will be used.

Where existing vehicles have no temperature control mechanisms and such equipment cannot reasonably be retro-fitted, we recommend that the Department ensure prisoners are given fresh air breaks during longer journeys where the problem is excess heat. Where the problem is excess cold, the Department should provide blankets unless there is reason to believe any given prisoner is “at risk”.

If measures recommended under the previous paragraph are likely to be insufficient to prevent inhumane conditions in any particular vehicle given seasonal temperatures, the Department should not use that vehicle.

3.9 Emergencies

3.9.9 Summary

We consider it unsatisfactory that there is no national policy and procedure with regard to:

- (i) Emergency evacuation drills and procedures for staff
- (ii) Key locking of cages
- (iii) Key locking of exterior doors
- (iv) Prisoner ability to open emergency exit hatches
- (v) Instruction to prisoners on emergency exit hatches and what to do in the event of emergency

Emergency procedures cannot be uniform given the wide variety of vehicles in use, but we regard the Department as having shown a passive attitude to potential problems.

We consider many emergency exit hatches would be too small for use by larger prisoners, or prisoners handcuffed together. It is unsatisfactory that certain emergency hatches did not open easily when a demonstration was requested.

We consider it is unacceptable that the rule against prisoners having the means of fire-raising in vehicles is not enforced effectively.

We were surprised that an incident occurred where a staff member was unable to use the emergency radio equipment.

We consider that escort staff discretion to stop prisoner transport vehicles should be reviewed.

We consider that the Department's instructions to its own staff should be consistent with those given by Chubb to its staff.

We consider that the Department's review of the merits of installing Global Positioning System (GPS) equipment should proceed.

We recommend that the Department:

- (a) undertake a full review of the emergency facilities in prisoner transport vehicles;**
- (b) formulate evacuation procedures, and ensure all escort staff are trained in, and have drills to practise those procedures;**
- (c) ensure that all cages can be opened without keys;**
- (d) ensure that all emergency hatches operate easily without keys;**
- (e) formulate a policy with regard to whether prisoners should be able themselves to operate emergency exit hatches;**
- (f) formulate a policy for the instruction of prisoners about what they should do in the event of road traffic emergency;**
- (g) enforce measures designed to prevent prisoners having the means to fire raise in vehicles;**
- (h) ensure all escort staff are competent to use all emergency equipment on board (including communications equipment), and undertake continuing competency checks;**
- (i) formulate national instructions to staff for response to perceived emergency situations and other incidents occurring during road transport. The policy should make clear that staff may confidently exercise reasonable judgment for the purpose of resolving incidents en route without fear of adverse employment consequences;**
- (j) take all practicable steps to ensure that instructions to its own staff and those provided by Chubb to its staff are fully consistent in respect of the matters discussed in this section;**
- (k) proceed with its consideration of whether GPS should be installed in its prisoner transport vehicles.**

3.10 Prisoner Restraints

We consider it is unsatisfactory that different usual practices on handcuffing exist between the Department and Chubb, and between the various prisons of the Department. We consider the practice of Chubb to handcuff all prisoners is wrong.

We recommend that the Department review the different usual practices of handcuffing in prisoner transport vehicles, and establish clear national guidelines that will ensure consistency of decision-making.

3.11 Speed

3.11.1 Speeding Infringements

We consider it is unsatisfactory that the Department maintains no complete record of speeding infringements committed by departmental drivers while transporting prisoners.

We recommend that the Department institute a policy of recording all traffic offences committed by its drivers when transporting prisoners.

3.13 Mixing of Prisoners

3.13.2 Young Prisoners

We consider it is undesirable that the Department treats young prisoners as adults from the age of 18 years, whereas the Police treat them as adults from the age of 17 years.

We recommend that the Department pursue consultations with the Police (and any other appropriate agencies) with a view to making consistent the age at which the Department and Police treat young prisoners as adult prisoners.

3.13.5 Court Facilities

We consider it is undesirable that segregation during transport may cease at court due to the lack of sufficient court cells to maintain it.

We recommend that the Department explore possible solutions with the Ministry of Justice.

3.14 “At-Risk” Prisoners

3.14.3 Information at Court

We consider it is unsatisfactory that there is no specific duty on court custodial staff to note statements by judges and lawyers at court that relate to the risk status of prisoners.

We recommend that the Department specifically require its courtroom custodial staff to record statements made at court by judges and lawyers where this is relevant to transport or other custodial risks, and require the courtroom custodial staff to liaise with escort staff who should seek additional transport instructions as appropriate.

3.15 Driver Hours

Chubb has admitted operating without heed to section 70B and section 70C of the Transport Act 1962. These provisions set out permitted driver hours, and require the maintenance of driver logbooks.

We consider this to be a significant breach of duty or misconduct within the meaning of section 18(6) of the Ombudsmen Act 1975, and shall report this to Land Transport New Zealand (LTNZ) in accordance with the section.

The Department and Chubb are entitled to seek exemptions from usual driver hours rules from the Director of Land Transport. Nevertheless, we consider that all drivers of prisoner transport vehicles should comply with usual permitted driver hours as set out in legislation in the interests of safety for the occupants of those vehicles, and other road users. We consider an exemption would only be appropriate for exceptional circumstances that could not reasonably be foreseen.

We recommend that the Department take all practicable steps to ensure that all prisoner transport vehicle drivers employed by itself and any security contractor comply with usual permitted driver hours set out in section 70B of the Transport Act 1962 and/or other legislation for the time being, subject to any exemption that may be obtained from the Director of Land Transport to cover exceptional circumstances that could not reasonably be foreseen.

3.17 Reporting

We consider there should be routine management scrutiny of all escort records, and that the records should contain greater detail than at present.

We recommend that:

- (a) the Department ensure all escort records are the subject of management scrutiny;**
- (b) the Department include in escort records:**
 - (i) the provision or non-provision of all facilities required for humane transport, including food, water and rest breaks; and**
 - (ii) the occurrence of any unreasonable conditions having, or liable to have, a deleterious effect on prisoners (such as extremes of temperature).**

4.0 AIR TRANSPORT

We identified no systemic problems with regard to prisoner transport by air, and have no recommendations.

5.0 CONCLUDING COMMENTS

5.1 Road Traffic

We consider the optimum design of vehicles for prisoner transport is not a straightforward matter. No single form of vehicle is likely to be cost effective for all prisoners, for all journeys, at all times.

We recommend that the Department undertake a full review of prisoner transport needs, and re-design its fleet of vehicles in order that suitable vehicles may be available in the future to meet the problems identified in this Report.

5.3 Department of Labour

We consider that the Department of Labour, which is familiar with risk management processes in the context of places of employment, may be able to assist the Department of Corrections in achieving safe and humane conditions of prisoner transport.

We recommend that the Department of Corrections liaise with the Department of Labour in reviewing what is required to achieve humane prisoner transport that is safe for prisoners, custodial staff and the public.

5.4 Recommendations and Chubb

We recommend that wherever our recommendations have implications for the conditions under which Chubb transports prisoners, the Department take all practicable steps to ensure that Chubb's prisoner transport vehicle facilities, and Chubb's policy and practice, conform to them.

5.5 Communication within Department

We consider that there is a lack of communication between National Office and front-line staff.

We recommend that National Office urgently take steps to better acquaint itself with all aspects of prisoner transport as implemented in the different prisons, with a view to determining best practice. That best practice should be put in place on a national basis.

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REPORT

1.0 BACKGROUND

1.1 Context

Under the Ombudsmen Act 1975, it is a function of the Ombudsmen to investigate complaints relating to matters of administration affecting persons in their personal capacity against various bodies, including the Department of Corrections (the Department). Pursuant to this Act, the Ombudsmen have power to investigate complaints by prisoners about all aspects of their detention by the Department.

On 25 August 2006, prisoner Liam Ashley died as a result of injuries sustained while being transported in a van with other prisoners. Liam was aged 17, and had been the subject of violence by a 25 year old prisoner who was subsequently convicted of Liam's murder.

The Corrections Act 2004 aims to ensure that *"custodial sentences and related orders ... are administered in a safe, secure, humane, and effective manner"*. It is a fundamental responsibility of the Department to achieve this.

Liam Ashley was not kept safe.

The principle that persons in custody should be kept safe is reflected in international Conventions. Both Article 3 of the United Nations Universal Declaration of Human Rights and Article 9(1) of the International Convention on Civil and Political Rights (ICCPR) state, *"Everyone has the right to ... security of person."*

Furthermore, duties of care by the State towards prisoners arise under New Zealand civil law (common law and statute), and under New Zealand criminal law insofar as

the necessities of life must be provided. Any failure to comply with these duties exposes the Department and the Crown to legal action by any prisoner who suffers as a result.

The tragedy of Liam Ashley aside, as Chief Ombudsman I had earlier become aware of certain complaints by prisoners in respect of road transport. These related to excess temperatures in prisoner transport vehicles, lack of adequate rest breaks, and other forms of discomfort that were said to be unreasonable in the context of sometimes lengthy journeys.

Conditions of discomfort could be sufficient to breach section 23(5) of the New Zealand Bill of Rights Act 1990 and Article 10(1) of the ICCPR, which state that all persons deprived of their liberty *"shall be treated with humanity and with respect for the inherent dignity of the person"*.

In all the circumstances, pursuant to section 13(3) of the Ombudsmen Act 1975, I decided to undertake an investigation of my own motion into prisoner transport by the Department. On 29 August 2006 I advised the Speaker of the House of Representatives, the Minister of Corrections, the Minister of Justice and the Department of my decision. A copy of the terms of reference is at **Annex 1**.

At an early stage of my investigation, former Ombudsman Mel Smith was re-appointed. In 2005, Mel Smith and I had jointly undertaken a general investigation of the Department, and provided to Parliament a Report entitled *"Ombudsmen's Investigation of the Department of Corrections in Relation to the Detention and Treatment of Prisoners"*. Our investigation had not included examination of the transport of prisoners, but had been limited to conditions within prisons. I invited Mel Smith to participate also in the present investigation, and he agreed to do so. This Report is thus made in our joint names.

We emphasise that our investigation has been directed at general transport conditions for prisoners, and matters of broad and systemic impact that affect day to day movements of prisoners. The death of Liam Ashley in part prompted the investigation, but we have not revisited the detail of that matter. The Department has examined that incident through an investigation by a Prison Inspector whose report has been issued publicly. The circumstances were also the subject of the criminal investigation by the Police that led to the conviction of Liam's murderer.

The Department has a project in train for addressing the issues raised directly and indirectly by the Liam Ashley report. This involves review of:

- (a) the processes and procedures relating to prisoner escorts;
- (b) the Prisoner Escort and Courtroom Custodial Services contract between the Department and Chubb; and
- (c) prisoner transportation – safety and security of the vehicle fleet.

As a result of the project, a number of the concerns that we identify in this Report are already under consideration, or are listed for future consideration, by the Department. At **Annex 2** we attach a list of issues being addressed by the Department as at 30 March 2007. Nevertheless, this attention by the Department does not in our view undermine the need for this Report. Indeed, we trust this Report will assist the Department and provide a platform for on-going action. We

have prepared it to reflect prisoner transport as it operated at the time of our inquiries - and without assuming the Department's future amendment of prisoner transport procedures as implied by Annex 2.

In commenting for the purpose of this Report, the Department has emphasised that safety in prisoner transport must have regard to three interest groups. Not only must the safety of the prisoners themselves be taken into account, but also that of the custodial staff who are at risk from violent prisoners, and that of the public who must be protected from harm that escaped prisoners might inflict.

We agree that safety is not something that should be considered only from prisoner viewpoints. However, there is no reason why safe and humane containment of prisoners should conflict with the safety of custodial staff and the public. We do not believe that the adoption of any recommendations that we have made will diminish the Department's ability to maintain secure and appropriate containment.

Legislation provides that it is "*the chief executive*" of the Department who is responsible for undertaking numerous functions customarily associated with the Department. For convenience, for the most part we refer below simply to "*the Department*".

The head office of the Public Prisons Service (PPS) division of the Department that issues general instructions to prisons is known as "*National Office*", and we use this term in our Report.

Under a contractual power included in the now repealed Penal Institutions Act 1954 and currently contained in section 166 of the Corrections Act 2004, the Department may enter into contracts for the provision of prisoner escort and courtroom custodial services. The provider is defined as a "*security contractor*".

Chubb New Zealand Ltd (Chubb) was appointed as a security contractor with effect from 1 October 1998, and has continued to be engaged by the Department. Its duties are (and were) to provide prisoner escort and courtroom custodial services in the Department's PPS Northland Region. The first contract was for five years, and this was extended by nine months pending tenders for a full new contract. A new five year contract was then awarded to Chubb with effect from 1 July 2004. The current contract includes delivery and collection of prisoners between courts, prisons, and forensic psychiatric facilities.

The contract commencing 1 July 2004 was agreed prior to the commencement of the Corrections Act 2004 and the Corrections Regulations 2005. By the latter stages of our investigation, steps were being taken to update the contract specifically to reflect present legislation. We understand that the trigger for this was Liam Ashley's death.

The services Chubb is required to provide are set out in detail in the security contract. However, the contract empowers the Department to change the terms of that service delivery (with a commensurate adjustment of fee to Chubb in the event of a change that substantially increases or reduces the burden of the contract on Chubb).

The initial preparation of this Report was undertaken on the basis of the security contract as it stood at the commencement of the investigation. We prepared a draft Report for comment by the Department and Chubb on 18 April 2007. However, on 28 April 2007 the Department and Chubb agreed a significant contractual variation by deleting a Schedule entitled "*Service Description*", and substituting a new Schedule "*Description and Scope of Services*" (also referred to as "*Scope and Description of Services*"). We were advised of the terms of this variation two days before the deadline that we had given to the Department and Chubb for responding to our draft Report. Two earlier contractual variations were already in place prior to our investigation, and in the text of this Report we refer to the new terms as "*Variation No.3*".

This Report does not analyse and compare the contractual terms before and after Variation No. 3. We did not consider that this would contribute significantly to our conclusions and recommendations, and we did not wish to delay presentation of this Report unnecessarily. Nevertheless, we do make a few references to the Variation where its terms seem particularly pertinent.

Chubb has considerable interaction with prisoners. It counts the "*tasks*" that it undertakes by its contract. A single journey for a prisoner is one task, as is any occasion when Chubb has custody of a prisoner during a court hearing. In the year ending 30 June 2006, Chubb undertook 46,813 tasks.

Liam Ashley was being transported by Chubb at the time he suffered his fatal injuries.

No other security contractor has ever been engaged by the Department.

By section 171 of the Corrections Act 2004, a security contractor must report regularly to the chief executive of the Department on various matters including the training of staff, complaints against the security contractor, disciplinary actions against staff, incidents of violence or self-harm by prisoners, use of force against prisoners and any other matter that the chief executive requests.

Furthermore, by section 172 of the Corrections Act 2004, the chief executive of the Department must appoint a "*security monitor*" for each security contractor. The duty of the security monitor is to assess and review the carrying out of the relevant security contract, and to report to the chief executive at regular intervals.

Section 175 of the Corrections Act 2004 states that security contractors (and their employees who are defined under the Act as "*security officers*") are treated as employees of the Department for the purposes of the Ombudsmen Act 1975. To that extent, Chubb and its escort staff are subject to an Ombudsman's jurisdiction.

Pursuant to section 11(1)(b) of the Corrections Act 2004, the Department employs staff who are entitled "*Corrections Officers*". These persons have wider responsibilities than "*security officers*", but their functions and powers are essentially the same in regard to the physical aspects of transporting prisoners.

By section 17 of the Corrections Act 2004, the Department may itself appoint "*security officers*" whose functions are restricted to courtroom and escort duties. No security officers have been employed directly by the Department.

In this Report, we use “*departmental staff*” to mean Corrections Officers and staff of the Department, and thus distinguish them from persons employed by Chubb.

1.2 Police

Persons are transported in custody by the Police, as well as by, or on behalf of, the Department. The Police hold in custody (and transport) persons they have arrested, as well as “*prisoners*”. “*Prisoners*” in this sense means persons remanded or sentenced to custody by a court.

The Police are not subject to the Ombudsmen’s investigative jurisdiction in relation to their transport of persons in custody. This arises from section 13(7)(d) of the Ombudsmen Act 1975, which limits an Ombudsman’s jurisdiction over the Police.

Remanded and sentenced prisoners are transported both by the Police and the Department by agreement between the two agencies.

Section 38 of the Corrections Act 2004 provides for the legal custody of prisoners as between the Police and the Department. In the context of transport, the responsibility for custody lies on the agency carrying the prisoner for the time being. Thus, if a prisoner is collected by the Police from a prison, legal custody passes to the Police. If a prisoner is transferred from one agency’s vehicle to a vehicle of the other (as sometimes occurs), legal custody of the prisoner is also transferred.

Chubb may transport persons in the custody of the Police who have not yet been remanded or sentenced by a court. However, it does so as part of its security contract with the Department, and any “*police*” prisoners become subject to the regime of the Department and the Corrections Act 2004.

Substantial prisoner transportation is undertaken by the Police, and the content of this Report may well be of interest to them. However, for the jurisdictional reason explained above, our investigation has been restricted to prisoner transport by the Department (and Chubb as a security contractor to the Department).

We intend to forward a copy of this Report to the Police and to the Police Complaints Authority, following its tabling in Parliament.

1.3 Investigative Process

Section 5(1) of the Corrections Act 2004 states, “*The purpose of the corrections system is to improve public safety and contribute to the maintenance of a just society*”.

The Act sets out means by which this shall be achieved, one of which is “*by ensuring that ... custodial sentences are administered in a safe, secure, humane, and effective manner*”. As a starting point, we considered that the conditions in which prisoners are transported should meet these criteria. “*Humane*” in a New Zealand context imports concepts of respect and decency for prisoners. We see no inconsistency between that and the principle in section 6(1)(a) of the Corrections Act

2004 that *“the maintenance of public safety is the paramount consideration in decisions about the management of persons under control or supervision”*.

We began by considering the legislation that was relevant, and also the policy of the Department as set out in its PPS Policy and Procedure Manual (PPM) and supplemented by formal PPS Circulars.

We then prepared a list of aspects of prisoner transport for detailed discussion with the Department. In doing this, we drew on the experience of our Office in dealing with prisoner complaints, and consulted various outside parties whom we knew to have an interest in prisoner issues and the corrections system. We also considered certain overseas studies. Additionally, we received a number of unsolicited submissions and representations from members of the public.

A large number of vehicles used for the transport of prisoners were inspected in the course of our investigation. The prisons visited for this purpose were Wanganui, New Plymouth, Waikeria, Rangipo, Hawkes Bay, Rimutaka, Invercargill, Dunedin, Christchurch (Men's), Christchurch Women's, Arohata and Mt Eden Prisons. Vehicles of Chubb were also inspected. The descriptions of vehicles that appear in this Report result from those inspections, and are not merely dependent on written comment from the Department. Transport issues were discussed with a range of departmental staff on these occasions, and on the occasion of other visits to prisons by staff of our Office.

Staff were interviewed on the basis that personal comments and opinions would not be attributed to them, although with the realisation that the practices they described would be used for the purpose of preparing this Report. It will be noted that we rely heavily on the statements of front-line staff for our conclusions. We consider this is appropriate. It is the front-line staff that in practice control transport conditions for prisoners.

Prisoners in both the North and South Islands were also interviewed. Their number included male, female, youth and segregated. They were specifically chosen as persons who had experience of transport conditions over different routes. Each individual was given an undertaking that he or she would not be identified as the source of any particular information.

We obtained a large quantity of information from the Department in response to numerous written questions that we posed. We record our appreciation for the diligence with which our queries were answered, but the time taken by the Department in the early stages has delayed our Report. Nevertheless, the passage of time has also enabled the Department to commence consideration of some concerns identified in this Report, and for us to record that fact.

We inquired into transport of prisoners by road and air. Train and ferry transport is available to the Department, but would be used only in the most exceptional circumstances. Use of train and/or ferry is so rare and unlikely that it has not been necessary for us to discuss it in this Report.

We were primarily concerned with the conditions under which prisoners are routinely conveyed, and not exceptional conditions of transport that might be applied to meet particular circumstances. Our Report makes some reference to the documentary

procedures that apply in relation to the carriage of prisoners, but we have not reviewed these in detail.

In accordance with usual practice, we provided a draft version of this Report to the Department and Chubb for their comment, and have had regard to their responses.

While awaiting the replies of the Department and Chubb to our draft Report, we became aware of an alleged assault on a prisoner in a Chubb prisoner transport vehicle that was said to have occurred on 19 April 2007. We asked the Department to keep us informed on that matter, but decided not to postpone finalisation of this Report pending the completion of any investigations by the Department and/or the Police. We have not commented on that incident in this Report as it would be premature to do so.

We record our appreciation for the assistance of Assistant Ombudsman Quentin Ford in the preparation of this Report.

1.4 Legislation

Corrections Act 2004 and Corrections Regulations 2005

Legislation relating to prisoners is set out in the Corrections Act 2004 and the Corrections Regulations 2005. Little of this applies specifically to prisoner transport, but the general provisions for the safety and security of prisoners apply equally whether prisoners are in transit or in prison.

Having said that, there is a big difference in practice between what is liable to occur on an open prison floor under direct supervision of Corrections Officers, and what may occur in the close confines of a prisoner transport vehicle.

The physical presence of Officers and overt supervision (directly and by camera) as occurs within prisons for the most part constitutes an effective deterrent against misbehaviour by prisoners. This is largely missing in prisoner transport vehicles. There is also a lack of any opportunity for prisoners to walk away from, or avoid, any confrontational situation or other risk.

Road and Air Transport Legislation

Some legislation regulating road and air transport is relevant to the carriage of prisoners. We have commented on this as necessary. However, for the most part, no special provisions (or exemptions) apply to vehicles and aircraft used for the movement of prisoners.

Health and Safety in Employment Act 1992

The Health and Safety in Employment Act 1992 applies to workplaces. Vehicles and aircraft being used for prisoner transport are within the scope of the Act, being workplaces in their own right.

We comment on this legislation in section 5.3 "*Department of Labour*".

1.5 Policy and Procedure Manual (PPM) of Department

The Department's PPM, as supplemented by formal PPS Circulars, sets out guidance and instructions for departmental staff. Parts of the PPM directly relate to prisoner transport.

The PPM reflects the law set out in the Corrections Act 2004 and the Corrections Regulations 2005, but the PPM is more detailed than legislation in certain respects.

At the time of Liam Ashley's death, section C.01 of the PPM provided:

"Policy Standard

- ? *Prisoners are safely, humanely and securely escorted with correct documentation and according to statutory requirements*

Performance Standards

1. *All escort staff must have a current and valid drivers licence for conducting any vehicular escort.*
2. *Prisoners on escort are safely and securely managed.*
3. *Prisoners on escort are supervised by authorised personnel at all times.*
4. *Prisoners are assessed for their risk of escape and a determination is made as to whether handcuffs are to be used. The direction to use handcuffs must be included on the escorted outing transit conditions on IOMS.*
5. *Women prisoners on escort to hospital to give birth must be accompanied by female staff only. Women who are escorted to hospital for any other purpose, including for antenatal, gynaecological, obstetric or postnatal examinations, must be accompanied by at least one female staff member.*
6. *For the purpose of escorting prisoner mothers and their babies, approved car seats are fitted to the vehicle and escort staff take all necessary care and precaution.*
7. *Prisoners on escort are not placed in unnecessary discomfort.*
8. *Correct documentation accompanies a prisoner on escort.*
9. *The correct prisoner is presented to the appropriate agency at the correct destination.*
10. *Escorts are undertaken via approved routes.*
11. *Where appropriate, relevant agencies are advised of an escort.*
12. *Only prison vehicles, air travel and approved private vehicles are used to transport a prisoner while on escort.*
13. *The escorting officer has an approved, completed and signed IOMS form identifying the conditions required for that escort.*

14. *A confidential protocol between affected managers identifies the arrangement for escorting prisoners between prisons or between a prison and other local government or private institutions.*
15. *No unauthorised stops are permitted (emergencies excepted).*
16. *At-risk prisoners must have a completed Risk Information Form.*
17. *A prisoner is entitled to request access to the information identifying him/her as at-risk."*

The procedure for escorts was amended immediately after Liam Ashley's death by PPS Circular 2006/19 dated 28 August 2006. The Circular stated, "...*In accordance with section 7(2) of the Corrections Act 2004 the Minister of Corrections has directed that, with immediate effect, no prisoner aged 17 years or under shall be transported in the same vehicle compartment as prisoners 18 years and older.*"

Regulation 179 of the Corrections Regulations 2005 states that all prisoners under the age of 18 years "*must... when outside a prison, be kept apart from prisoners who are 18 years or older, **where practicable***" [our emphasis]. The Minister's direction for absolute segregation requires the Department to follow a more stringent practice.

Section C.02, Performance Standard 7, states that prisoners on escort shall not be "*placed in unnecessary discomfort*". Whether or not the Department believes particular forms of discomfort are "*necessary*", we observe at the outset that forms of discomfort do exist that should not exist.

2.0 PRELIMINARY COMMENT AND OBSERVATIONS

2.1 Road Transport

2.1.1 General

Safe and humane confinement of prisoners carried by road includes consideration of:

- ? suitability of vehicles in terms of road safety
- ? reasonableness of vehicle environment
- ? basic human needs and decency
- ? protection of prisoners from each other
- ? prevention of self-harm by prisoners
- ? safety of escort staff and public

2.1.2 Frequency and Length of Journeys

Movement of prisoners is required regularly in all areas of the country. Routinely, prisoners must be transported between court and prison, transferred between prisons, and escorted to medical appointments or hospital.

The Department has estimated that 175,000 to 225,000 transports of individual prisoners by road are undertaken annually. The majority are the transports of prisoners to and from court, but there are included approximately 11,000 intra-prison transfers and 15,000 hospital attendance journeys. For this purpose, as at 22 December 2006, the Department employed a total of 122 vans and four buses for secure escort purposes (although two of the buses and one van were about to be made redundant).

The Department has estimated that about 6000 of these transports involve a road journey of over one hour.

Basic safety issues for prisoner transport are the same for both long and short journeys. However, the overall reasonableness of the transport environment must be judged by varying standards according to the length of travel. The longer the journey, the greater is the need for attention to temperatures inside vehicles, and to the provision of food, water and rest breaks.

We enquired about typical lengths of road journeys undertaken from individual prisons, and we refer to some of these in subsequent sections of this Report. However, the longest regular journeys for prisoner transport vehicles are:

- ? between Auckland and Rimutaka Prison, approximately 12 hours;
- ? between Nelson and Christchurch, approximately 7 hours;
- ? between Auckland and Hawkes Bay Prison, approximately 6 hours;
- ? between Auckland and Kaitia District Court, approximately 4½ hours.

Any problems and costs of transporting prisoners are multiplied according to the number of journeys. If the number of journeys were lessened, problems and costs would be reduced accordingly. For the purposes of this Report, we consider it is important to note that:

- (a) the number of journeys between prisons could be reduced if it were not necessary to move prisoners between prisons because of excess musters;
- (b) increased use of audio/video technology could reduce the need for attendance of prisoners at court hearings.

2.1.3 Best and Worst Equipped Vehicles

A variety of vehicles is used to transport prisoners.

Amongst their individual fleets, prisons typically have one or more normal mini-buses seating about 14 passengers. These are used primarily for staff transport, but also for moving minimum security prisoners locally for work parties. They are equipped with padded seats and seat belts for the passengers.

Some prisoners may require individual transport for medical or other reasons. Ordinary cars are often employed for these purposes. Where a car is used, the prisoner sits in the rear, handcuffed to a Corrections Officer.

It is unnecessary for us to comment on the foregoing vehicles, save to note the absence of the stringent security measures found in the majority of prisoner transport vehicles. Nevertheless, if “normal” vehicles are considered suitable for minimum security prisoners on work parties or hospital appointments, the question arises whether it is really necessary for **the same** prisoners to undergo the rigours of secure vehicles when being moved for other purposes. The reasons for our use of the word “*rigours*” will be evident from later parts of this Report.

Most of the secure vehicles used for the transport of prisoners are Ford Transits, or broadly equivalent models produced by other manufacturers. They have metal compartments inside, known as cages. Some of these cages are formed wholly of mesh, and some have sheet metal walls. Each cage has its own door. The majority of cages accommodate different numbers of prisoners from three to eight. Many have no real windows, but only permit outside glimpses through small grilles. Each prisoner has approximately 60cm of bench space. There is no room to stand up, or to stretch the legs. In cages where two benches face each other, prisoners ride with legs interlocked. It is these secure vehicles that are the subject of most of our comments.

Some prisoners said that the small and closed nature of the cages gave rise to “*freaking out*” or panic attacks.

“Cage” is a fitting word for prisoner compartments (both those of mesh and sheet metal wall design). “Compartment” might indicate a cubicle of relative comfort. In fact, many prisoners are transported in conditions that we regard as claustrophobic and unpleasant. Security requirements, and the predisposition of some prisoners to vandalise whatever they can, may well require austere conditions. However, that does not mean that one should shirk from describing the situation in realistic terms, or test whether there are means by which both safe and humane conditions may be achieved.

As a starting point, it may be useful to compare the extremes of secure prisoner transport vehicles that were inspected for the purposes of our investigation.

New Departmental Bus

In the course of our investigation, the Department brought into operation a new Volvo bus for prisoners. This will principally be used for moving prisoners between Auckland and Wellington prisons. It seats 34 prisoners.

Behind the driver, there is a seat for a Corrections Officer. Next to this across the aisle, there is a single seat cage for a segregated prisoner. To the rear there is the caged main body of the bus, equipped with double seats. These are padded, but are very basic. There are no headrests, armrests or seat belts.

In the rear section of the bus there is a further seat for a Corrections Officer, and a four seat cage for segregated prisoners. (At the time of our inspection of this vehicle there was a second three-seat segregation cage, but this was to be removed in order to provide baggage space.)

There is a toilet on board. The Corrections Officer at the rear has a control panel by which the cage doors can be opened remotely. Thus, individual prisoners may be given access to the toilet without breaching segregation requirements.

Cameras survey the prisoners, and video monitors are provided for the Corrections Officers at the front and rear of the bus. The cameras can be moved and focused. Aside from the cameras, Officers have good direct views into all prisoner cages.

The cage doors are not locked by key during transport, and are kept in place by a compressed air mechanism. This can be manually overridden in emergency by a Corrections Officer. The exterior doors of the vehicle (which are locked when in motion) can be opened in emergency from outside the vehicle by the pressing of a button.

The windows are tinted so that prisoners may look out, but others may not look in. The windows are barred.

There is a computer on board which allows a Global Positioning System (GPS) to be activated, and the cameras on board to be manipulated and viewed remotely from a prison base. These functions had not been activated at the time of the inspection, and we comment on this further below.

Prisoners who had ridden in this bus considered it “good”, although one prisoner complained that the seats were too small. This prisoner was large, but not exceptionally so.

New Police Van

In 2006 the Police commissioned a new prisoner transport van, intended for the Nelson - Christchurch carriage of prisoners. This is a journey of approximately 7 hours (including a 45 minute break en route). As at the end of March 2007, it was about to be brought into operation.

The van is designed to carry 15 prisoners in individual secure cells, and a guard in a separate secure cell in the rear section. There is a line of cells along each side of the vehicle. Transparent panels between cells, as supplemented by camera monitoring, give the guard views of every cell. In the event of a suspected problem or an obscuring of vision, the guard is able to leave his personal cell and walk along the central aisle to look into any prisoner cell. There is a toilet cubicle (which for modesty reasons is not monitored directly by camera) that is flushed remotely by the guard through a control panel in his or her cell. Individual prisoner cells may be unlocked remotely by the guard from the same control panel, as will be necessary in the event of a prisoner wishing to use the toilet.

Seat belts are not fitted due to the risk of self-harm by prisoners, but the seats are rear-facing to minimise injury in the event of traffic accident. The seats are metal without padding. It is considered that padding could be used for self-harm. Each cell has a small window to the exterior, which lessens the risk of travel sickness. The glass of the windows is coated so that persons outside cannot look in – although the van is sufficiently high that this would not ordinarily be possible.

Small ports in each individual cell enable food and water to be passed through, and for prisoners to produce their hands so that handcuffs may be locked and unlocked from outside the cell.

The van has temperature controls, and lighting.

A duplicate control panel and video monitors are in the driver's cab which is wholly separate from the prisoner compartment. The cab will normally carry a further guard in addition to the driver. There is an intercom between the guard in the prisoners' compartment and the driver's cab, and the van is connected to the Police radio network. There is a loudspeaker system by which guards may address prisoners or play music.

The vehicle is of sufficient size that a casual observer might describe it as a lorry. It would be unsuitable for routine prisoner transports to court as it is too large to enter most court reception areas.

Old Departmental Vehicle

The worst fitted departmental vehicle that was inspected was a Toyota Hilux based at Rimutaka Prison. We regard the rear area of this vehicle as wholly unsuitable for the carriage of people (although this should not be read as implying that we approve of all other prisoner transport vehicles and cages).

Due to its outmoded design, we understand that the vehicle is used almost entirely on-site at the prison, or for short journeys off-site. We consider that it is unsatisfactory for road journeys anywhere off-site.

Although the vehicle for practical purposes is largely obsolete, it demonstrates what is definitely not appropriate.

There is a transparent screen between the driver's cab and a three seat bench behind. To this extent the vehicle is similar to many others. However, physically separate there is a rear pod that comprises a metal box with low bench style seating. No other expression except "*metal box*" provides an adequate description.

There is no view from the driver's cab into the box, as there is sheet metal between the driver and the box. There is no view for the prisoners out of the box, except through small windows in the rear doors. Save in the case of exceptional noise, staff would be unaware of any problems in that box.

The rear door of the metal box is locked directly from the outside by key. There is no emergency exit hatch. If the key were unavailable, there is no way that prisoners could be released in an emergency without tools to break the lock, or to rip open the sides of the box.

We recommend that the use of the rear compartment of this vehicle for prisoners be discontinued.

2.1.4 Photographs

At **Annex 3** and **Annex 4** we attach photographs of two departmental prisoner transport vehicles, namely a Volkswagen TDI van and a Volkswagen Transporter van. The TDI van has cages with sheet metal walls, and the Transporter van cage is of mesh.

These are comparatively modern vehicles. The Volkswagen TDI van was first registered in 2004, and the Volkswagen Transporter van in 2006.

The Volkswagen TDI vehicle (**Annex 3**) has sheet metal walls. Escort staff are unable to see into the rear cage. Ventilation is by roof vent, and a grille in the top of the cage. The side vents shown on the vehicle are not accessible to prisoners, being on the far side of the solid cage walls.

The Volkswagen Transporter vehicle (**Annex 4**) has one rear communal cage only. The walls are of mesh, and this allows good visibility of prisoners by escort staff. It has air-conditioning from the driver's cab.

The photographs are attached to demonstrate typical prisoner transport conditions in vehicles of this size, but we stress that the precise fittings of prisoner transport vehicles differ considerably. In particular, seats available for extra escort officers behind the driver's cab are not present in most vehicles.

At **Annex 5**, we attach photographs of a standard Isuzu NPR 350 Light Truck as operated by Chubb. It was photographed as we found it on the day, and the cigarette debris shown in one picture is relevant to our comments in section 3.9.3 *"Fire Risk"*. Liam Ashley was being carried in the front cage of this type of vehicle on the occasion of the fatal assault on him.

By way of introduction to the detailed comments that we make in the later parts of this Report, we draw attention to:

- ? lack of visibility escort staff have into certain prisoner cages (by physical obstruction and darkness);
- ? limited space per prisoner in cages;
- ? lack of light in the cages with sheet metal walls;
- ? lack of ventilation in the cage of the Volkswagen TDI. (The Isuzu has mechanical fans);
- ? type of seating and lack of safety restraints for prisoners;
- ? nature, size and location of emergency exit hatches;
- ? cigarette debris in the Isuzu.

2.2 Air Transport

As is discussed in the later part of this Report, we identified no problems with regard to prisoner transport by air.

3.0 ROAD TRANSPORT

3.1 Prisoner Escort and Courtroom Custodial Services

Chubb has been engaged as a “security contractor” since 1998 under former and present legislation, and is the sole security contractor appointed by the Department.

Section 17 of the Corrections Act 2004 permits security contractors to employ “suitable” persons as “security officers”.

Section 167 of the Corrections Act 2004 provides that the terms of a security contract must provide for “*objectives and performance standards (which standards must not be any lower than any relevant standards applicable to employees of the department) for the security contractor in relation to -... the treatment of the persons in respect of whom escort duties or courtroom custodial duties are carried out under the contract*”. The section further provides that any contract must impose a duty to comply with the requirements of the Corrections Act 2004 and any regulations made under the Act, and take into account any guidelines issued by the chief executive of the Department under section 196 of the Act.

The financial advantages or disadvantages to the Crown by the use of security contractors as against staff employed directly by the Department of Corrections were not relevant to our investigation. Neither were we directly concerned whether all the terms of Chubb’s contract were being fulfilled. The issue is whether Chubb carries prisoners in humane conditions - irrespective of the terms of its contract.

Having said that, we were mindful that commercial considerations come into play in such contracts. It would not be acceptable for a security contract to minimise service delivery (and hence save money) to the point where prisoners’ safe, secure and humane containment would suffer.

3.1.1 Security Contract and Legislation

The Prison Inspector’s report on the death of Liam Ashley commented on the need to update the terms of Chubb’s contract in the light of the Corrections Act 2004. Variation No. 3 reflects the new legislation, but it is apposite to highlight certain contractual clauses that existed prior to that.

The main body of Chubb’s contract has a section headed “*Statutory compliance duties*”. This specifically requires compliance with the New Zealand Bill of Rights Act 1990 and the United Nations Standard Minimum Rules for the Treatment of Prisoners. It also includes a general provision requiring compliance with “*Any other laws and regulations relating to the provision of the Services...*”

Furthermore, an interpretation section in the contract reads:

“Statutes and Regulations: A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.”

In describing the services to be provided, the schedule to the contract, which has now been replaced by Variation No. 3, included a provision which read:

"This service must be provided in accordance with current legislation including:

- ? *The Penal Institutions Act 1954.*
- ? *The Penal Institutions Regulations 2000.*
- ? *Criminal Justice Act 1985.*
- ? *Mental Health (Compulsory Assessment and Treatment) Act 1992*

Note that the Penal Institutions Act and the Penal Institutions Regulations are planned to be superseded as a result of the Corrections Act 2004. [This "Note" is emphasised in the contract by being written in a different font.]

The service must also meet the requirements of all other relevant legislation ..."

In all the circumstances, we are satisfied that the contract, even before Variation No. 3, required legislation for the time being to be observed by Chubb.

3.1.2 Security Contract and Chubb Policy

Chubb has its own PPM for the prisoner escort and courtroom custodial services it provides. Consistent with the Department's PPM, its declared object is to ensure "a secure, fair, safe and humane service for prisoners". It is not a static document, but is updated or revised from time to time.

Items of particular interest for our investigation were requirements for Chubb staff to:

- ? observe prisoner behaviour and maintain order during transit
- ? observe prisoner behaviour throughout trip
- ? deliver prisoners in a fit state
- ? observe prisoner health in custody and initiate emergency response
- ? "listen to" delivery officer's assessment of prisoner's physical and mental state, and assess the prisoner's state independently
- ? ascertain requirements for segregation or other special handling
- ? assess security and other risks (including suicide risk)
- ? brief receiving officer on prisoners' physical and mental state, and risk assessment
- ? manage reported incidents during journeys
- ? follow set procedure in the event of traffic accident, with prime consideration being safety
- ? follow set procedure in the event of fire in a vehicle
- ? complete forms relating to security, segregation and special needs.

Overall, Chubb's PPM is not inconsistent with legislation or the Department's PPM. Nevertheless, this is not to say that all procedures as they operate in practice are satisfactory (any more than every practice of the Department is satisfactory), and our comments appear below.

3.2 Current Vehicle Fleet

3.2.1 Departmental Vehicles - General Comment

Except for the departmental buses, the vehicle fleet used for routine prisoner transport between prisons and courts consists of Ford Transits, or broadly equivalent models produced by other manufacturers. The interiors are fitted with secure cages in which prisoners ride.

Despite the ostensible similarities, the qualities of individual vehicles and interior layouts differ significantly. This arises from the differing basic vehicle shells, the ages of the vehicles, and because individual prisons have their own discretion for interior design.

The interior design discretion given to individual prisons may seem sensible, as different prisons tend to house different types of prisoner and typically undertake different lengths of journey. This, however, gives rise to its own problems. We were told that one prison was about to take delivery of a new vehicle, and the prison had been invited to fit the interior according to the prison's own design. We understand that local staff had little personal idea of how to go about this in terms of design and/or implementing that design.

The wide range of vehicles and designs shows an apparent lack of direction from National Office. This might not be a problem if all vehicles and designs met requirements for safe and humane transport. However, in our opinion they do not.

This is not to suggest that every vehicle should be the same. Vehicles are used for quite different types of journey, and facilities and fittings may quite properly differ.

For example, vehicles based at New Plymouth Prison are normally only used to transport prisoners to the local court and for local medical appointments – journeys of 5-10 minutes. Vehicles at Wanganui Prison are used for somewhat longer journeys – a typical longer journey being about 2 hours to New Plymouth prison. Transport from Hawkes Bay Prison to Auckland involves a journey of about 6 hours.

3.2.2 Departmental Secure Vehicles

Most prisoner transport vehicles are of a Ford Transit style, although vehicles from a variety of manufacturers are used including DAF, Mercedes, Toyota and Volkswagen.

The vehicles have a caged area in the rear divided into sections for prisoners. Most commonly, there is a cage behind the driver's cab that seats three persons on a front facing bench, and a communal rear cage seating eight. Some vehicles have further divisions, and a few vehicles have one or two single-seat cages. Outside the cages there is the normal exterior shell of the vehicle.

The cages are robust, and have sturdy mesh or sheet metal walls. The doors of the cages are usually secured by a lever operated from the outside. The mechanisms

are such as to prevent prisoners opening the cages for themselves. Some prisons padlock the securing mechanism as an additional form of security.

Some cages have ports, or chains so that the doors may be partly opened, sufficient for the placing or removal of handcuffs.

Prisoners in the front bench seat cage normally have outside views, either through a side window or to the front through the screen partitioning the driver's cab. Side windows are not fitted to all vehicles, and the extent of view depends on the particular design of vehicle. Prisoners in the rear cages are likely to have little or no outside view.

A general lack of windows results in many prisoners undertaking journeys in what amounts to a little box. Some prisoners are susceptible to travel sickness, and we were told that there are some cases of prisoners vomiting. Nevertheless, surprisingly perhaps, travel sickness of prisoners was not regarded as a major problem by staff or the majority of prisoners who were interviewed.

The opportunity for staff surveillance of cages differs hugely from vehicle to vehicle. Generally, in the Ford Transit style vehicles the cage immediately behind the driver's cab can be viewed by staff. In some, the cages further to the rear can be viewed by staff poorly or incompletely through various layers of mesh. In some, staff have no view at all of certain cages. The vehicles in respect of which there is an adequate view by escort staff of **all** cages are a small minority.

One older departmental bus is known colloquially as "*the Green Bus*". This has small segregated cages at the front and rear, with the main prisoner compartment that seats 20 persons in-between. In addition to the driver, escorting Corrections Officers sit front and rear. The prisoner cages and compartments are divided by metal mesh, covered by a window of transparent plastic. One would expect the escort staff to have a good view of all prisoner cages. In fact, the plastic screens are so faded that, taken with the mesh, visibility is limited. Indeed, there is one rear segregation cage which it would be virtually impossible for staff to observe – both because of intervening mesh and prisoners seated in the main compartment.

The Department has said that "*at-risk*" prisoners are always carried in cars or uncaged vans, or otherwise in cages that can be, and are, observed by escort staff.

Departmental vehicles (unlike those of Chubb) are not fitted with a global positioning system (GPS), and we comment on this in section 3.9.8 "*Global Positioning System (GPS)*".

Prior to our investigation, various specifications for prisoner transport vehicles were set out in PPS Circular 2004/25 dated 26 March 2004. Most were expressed as being specifications that "*should*" be applied, thus envisaging the possibility that they might not be. However, this policy was revoked by PPS Circular 2006/16 dated 23 August 2006 because "*it has been established that some of the specifications outlined... cannot be sourced within New Zealand*". Until PPS Circular 2004/25 there had been no national standards.

We were concerned that standards had been prescribed in 2004 which were impossible to attain, and that apparently it took two years for the Department to realise the fact. In response, the Department said:

“... only after the promulgation of the circular did it become apparent that some of the specifications could not be sourced within New Zealand. A decision was made circa February 2005 to withdraw the circular but, regrettably, this decision was not promulgated to field staff until 23 August 2006... The delay was simply an administrative oversight.”

We discovered that a draft withdrawal had been prepared for circulation in June 2005, but was evidently forgotten.

We regard the foregoing “oversight” as unacceptable. As is recorded elsewhere in this Report, individual prisons are responsible for designing and fitting their own vehicles. They could have undertaken any new design work only by ignoring the Circular to the extent its requirements were impossible to meet.

The standards which it was not possible to attain were not merely cosmetic. Fire-retardant padded seats with rip-stop covers and modular cage systems could not be sourced within New Zealand or elsewhere in a cost effective manner. Additional ventilation, air-conditioning and heating requirements could not be retrofitted.

The oversight to withdraw the Circular is even more regrettable given concerns previously raised by us, and the impression previously given to us by the Department. As a result of the Department’s statements, our Annual Report for the year ending 2004 contained the following passage:

“... following our representations the Department agreed that it had a responsibility to provide safe, secure, and humane conditions for the transfer of inmates. As a result we are pleased to report that the Department has developed and formalised minimum standards including ventilation and temperature control for all escort vehicles.”

In the Annual Report for the year ending 2005, we said:

“In last year’s annual report we noted that the Corrections Department had a responsibility to provide safe, secure and humane conditions for the transfer of prisoners... In March 2004 the Department of Corrections’ Assurance Board approved new standards in regard to heating, ventilation, and seating, for prison vehicles. Since August 2004 all new vehicles have been fitted with the appropriate heating and ventilation systems so that they meet the required standard. As vehicles are currently being replaced every five to six years it is expected that the majority of prison escort vehicles will meet the required standards by 2010.”

We have been most disturbed to discover that our expectations were not met, and have still not been met.

We consider the lack of national standards and consistency for prisoner transport vehicles is unsatisfactory.

We recommend that the Department proceed to set (achievable) national standards for prisoner transport vehicles, and formulate national procedures for commissioning any new vehicles required.

3.2.3 Chubb Secure Vehicles

Chubb currently uses a variety of caged prisoner transport vehicles, namely, Ford Transit vans, Fiat Ducato vans and Isuzu NPR 350 Light Trucks (Isuzus).

The Fiat Ducatos are long wheel based vehicles. The cab area is divided from the prisoner section. Access to the prisoner section is by side and rear doors. There is one three-person cage and a single-person cage at the front of each vehicle, and a rear six-person cage.

The foremost three-person cage can be seen through the driver's cab window. However, visibility is diminished because the cage has sheet metal walls and is dark. Staff have no view into the remaining cages.

The layout of the Ford Transits is similar to that of the Fiats.

The Isuzu vehicles have the largest capacity. The drivers' cab is physically separate from the rear pod housing the prisoners.

The prisoners' pod has two three seat front cages accessed by doors on either side of the vehicle, and two rear cages each seating five persons. The rear cages are accessed from two rear doors. The walls of the cages are sheet metal.

There is a poor view from the driver's cab, across air space into the front prisoner cage, but no view into the remaining cages.

The design of the Isuzus would render the hearing of noise made by prisoners nigh on impossible when in motion – even those in the foremost cage.

There are vents in the side and roof of all vehicles for ventilation, and also fans. Chubb said that the fans originally installed in the Isuzu vehicles were insufficient in warm weather to deal with the heat, but new fans had resolved the problem. Interviewed prisoners did not give the new fans universal praise, but the majority said that they were adequate. The Ford Transits and Fiat Ducatos have air-conditioning in the driver's cabs that Chubb says assists "*marginally*" with temperatures in the prisoner cages.

The cages are secured by lever mechanisms and none are locked by key.

All Chubb's prisoner transport vehicles are fitted with GPS and panic buttons for staff. Chubb staff can instantly alert their base to any emergency, and the vehicle's location is automatically transmitted.

Chubb is able to retrieve data from the GPS system for two years. If there is any complaint that a vehicle has deviated from a proper route, made any unauthorised stops or travelled at excess speed, the GPS record will confirm or refute the truth of the allegation.

Prior to Variation No. 3, Chubb's contract (reflected in Chubb's PPM) provided that Chubb should:

"Regularly observe Prisoner Behaviour and interactions en route".

Given that it is not possible for staff to see into all cages, it was equally not possible for this requirement to be met (unless the vehicle was to stop and escort staff open the exterior doors). Journeys are frequently of significant duration between stops, and by our interpretation, *"regularly... en route"* requires repeated checking of cages while the vehicle is in motion.

Variation No. 3 does not contain the same requirement to *"Regularly observe prisoner behaviour..."*. Nevertheless, Chubb's PPM still contains a similar requirement for escort staff to *"Observe prisoner behaviour throughout trip"*.

It is of particular concern that *"at-risk"* prisoners may be carried in cages that cannot be overseen by staff.

In an effort to deal with *"at-risk"* prisoners appropriately, Chubb normally carries them only in the front cages of vehicles. The front cages do offer some opportunity for observation. However, we are only able to say *"some opportunity"* as we are not persuaded visibility is fully adequate in all Chubb vehicles even for front cages. Yet again, we must refer to the case of Liam Ashley to illustrate the point.

At the start of our investigation, the frequency of Chubb's actual observation was said to be *"dictated by the information on the 'Escort an At Risk Prisoner' form, or based on the degree of risk that is advised to Chubb..."*. That practice did not protect Liam Ashley, and it has since changed. As from 11 December 2006, the Department and Chubb agreed that Chubb would carry out observations of prisoners in front compartments every 15 minutes, whether or not an *at-risk* prisoner was being carried.

Variation No. 3 contains a provision requiring Chubb to place prisoners in vehicles *"with the object to minimise risk for prisoners"*.

Prisoners' inability to communicate with staff in Chubb's Isuzus was raised by Chubb with the Department by letter dated 26 September 2005. Chubb expressed concern about the consequences in the event of medical emergency or assault. Chubb noted that the Department's guidelines for the necessary attributes of prisoner transport vehicles did not refer to the need for communication between prisoners and escort staff. It asked for advice on the Department's policy.

Chubb's query was recorded by the Security Monitor in reports to the Department in October and November 2005.

Nevertheless, as at the beginning of December 2006, we were advised that the substance of the concern remained unanswered despite reminders by Chubb to the Department. The Prison Inspector's report on the death of Liam Ashley comments that *"the issue remains on hold"* pending the outcome of that investigation and this investigation. The Department has pointed only to an oral response to Chubb by which the Department indicated that the installation of *"listening devices"* gave rise to

“legal issues”. We understand that the legal issues relate to privacy. Our view is that mere ability to communicate by staff and prisoners does not necessarily involve *“listening devices”*, which in common parlance suggest an element of covert spying.

We regard the lack of action between the time the concern was first raised in September 2005 and the death of Liam Ashley at the end of August 2006 as highly unsatisfactory. An apparently valid anxiety was raised by a security contractor with direct implication for prisoner safety.

We were told that Chubb initially had in mind to commission a fleet of larger vehicles that would have single prisoner compartments, and to supplement this with secure cars and small vans. However, the larger vehicles would have been very expensive, and practical economics would have meant that Chubb's tender price would have become too great for acceptance by the Department.

We recommend that the Department discuss with Chubb any national standards for prisoner transport vehicles that the Department considers necessary or desirable, and take all practicable steps to achieve compliance by Chubb.

3.3 Seat Belts

Seat belts may prevent or minimise serious injury in the event of road traffic accident. Legislation requires seat belts only for front seating positions in the case of vehicles used by or on behalf of the Police or corrections services for transporting detained persons (rule 3.5 Land Transport Rule: Seatbelt and Seatbelt Anchorages 2002). Seat belts are not required for other seats where (in practice) prisoners are placed.

Road traffic accident is an ever present risk. Indeed, in March 2007 we noted a newspaper report that stated a police vehicle transporting a prisoner had *“flipped”* and fallen down a bank.

No caged prisoner transport vehicles are equipped with seat belts for prisoners.

It is said that normal seat belts are not practicable as a standard fitting because they may be used for self-harm or harm to others. Knowing the determination of some prisoners to harm themselves, we accept that seat belts present a risk. Nevertheless, most prisoners will not be motivated to harm themselves (or others) by misuse of standard seatbelts.

The views of front-line staff on the risks to prisoners from seat belts differed.

Some departmental senior staff considered that prisoners assessed to be *“not at-risk”* could safely be provided with seat belts. This assumed that the prisoners had been in the corrections system sufficiently long to permit reliable assessment. Some of these staff observed that clothing could just as easily be used for self-harm, and noted that prisoners travelling to court were allowed their own clothing which could include belts. Other staff disagreed, commenting that they had seen too many instances of prisoners unexpectedly attempting self-harm or attacking others.

The majority of staff considered that seat belts would pose an unacceptable risk.

Where seat belts are fitted in passenger vehicles for rear seats, the law requires that passengers wear them. However, whatever their personal views on the safety issue, it was the general feeling of staff that many prisoners would be disinclined to use seat belts and enforcement would not be practicable.

Prisoners themselves, almost without exception, said that they would wear seat belts. They expressed much anxiety about what would happen in prisoners' cages in the event of road traffic accident. If the Department is of the view that a significant proportion of prisoners are not majorly concerned for their own safety in caged vehicles, we take this opportunity to disabuse it.

Ordinary buses are not generally fitted with seatbelts. However, the environment for public passengers is very different to that for prisoners. The typical Ford Transit type of prisoner transport vehicle is fitted with cages inside the shell of the vehicle. The prisoners can be facing front, side, or rear, and usually have little or no view outside the vehicle. Many prisoner cages are no more than metal boxes. The bench seats are generally slippery metal. There is minimal leg room. In cages with multiple occupation, this is likely to require the interlocking of legs with the prisoner opposite. The lack of windows means that prisoners are not able to see any dangerous road situation developing, and brace themselves for any likely collision. Any crash will occur without any warning and prisoners will tumble.

Aside from serious injury flowing from traffic accident, without seat belts or other restraints, prisoners will be thrown around if road conditions are poor or the driver makes a sudden manoeuvre. This goes beyond mere discomfort or minor injury. We have been told that if prisoners are thrown against one another, the occurrence can result in confrontation and assault. Grab handles are not provided, and neither is there shape to the bench seats impeding the passengers from sliding around. Prisoners can only jam themselves against walls or each other to cope with the constant movement. We were told that journeys are particularly wearing for those handcuffed to another prisoner.

Side-facing benches provide little stability, and by our understanding are less safe in an accident than rear-facing seats. In response, the Department has commented that if all benches were designed to be front or rear-facing, there would be difficulties in access, and/or the carrying capacity of vehicles would be diminished.

Not all vehicles used for the carriage of prisoners are of the caged variety. One prison uses a largely normal vehicle with seat belts for secure transport of minimum security prisoners. The only difference is that there are grilles over the windows, and between the prisoner compartment and the driver's cab. Furthermore, it is common at all prisons for minimum security prisoners on work parties to be carried in normal Ford Transit style passenger vehicles with seat belts.

We were not made aware of any problems occurring in these "*normal*" vehicles by reason of the presence of seat belts. In the circumstances, it seems wrong to conclude that seat belts are uniformly dangerous for all prisoners at all times.

At the end of the day, we have difficulty in the proposition that it is necessary or acceptable for prisoners universally to be placed at risk of injury through lack of seat

belts. Prisoners are in great danger of serious injury in the event of road traffic accident. We consider that prisoners who are not considered to be at risk should be given the option of some form of safety restraint – either of usual seat belt design or other form.

Whether it would be feasible to install special safety restraints or air bags for prisoners to provide protection, while also avoiding the risk of self-harm and vandalism, is for engineering debate elsewhere. Nevertheless, we would be very slow to form the view that this would be impracticable for design reasons. One only has to think of the safety harnesses automatically fitted on roller coasters at amusement parks. Seatbelts may be designed to give audible warning if disconnected.

Seat belts or other restraints that cannot be released by prisoners themselves are effectively prohibited by rule 7, Schedule 5 of the Corrections Regulations 2005, which states, *“a prisoner may not be handcuffed or restrained to... any part of a vehicle used for transportation”*.

We comment repeatedly in this Report that if vehicles offered opportunity for proper surveillance of prisoners by staff, possible problems would be minimised. This applies to seat belt problems also.

We consider the general absence of seat belts, air bags or other similar safety measures for prisoners is unsatisfactory, and represents a serious safety risk for prisoners.

We recommend that the Department seek expert advice with regard to measures that may minimise injury to prisoners in the event of road traffic accident. The advice should include a review of available modes of restraint (especially for prisoners considered not to be “at risk”), whether it is appropriate to have side-facing seats, and the feasibility of fitting moulded seats.

3.4 Seat Squabs (Padding)

At the outset of our investigation, it was the practice of a number of prisons to provide seat squabs (padding) for some prisoner transport vehicles – albeit only for the front bench compartment. For the most part, seating was plain metal or wooden benches. While an unpadded seat may not be unreasonable for a short journey, it may result in considerable discomfort on a journey of several hours. One of our investigators has ridden in a vehicle with a metal seat, and even on his brief journey of 15 minutes found it uncomfortable.

Unsurprisingly, prisoners confirmed our assessment of unpadded seats, using words such as *“numb”* and *“sore”* to describe their buttocks. In explaining the discomfort, one described the vehicle motion as *“bouncing”*, which we can accept.

Another common complaint was that the metal seats were very cold.

Prisoners said that in cages which were not full, they would lie on the floor, possibly with clothing bundled underneath, to avoid the discomfort of the seats.

Chubb was initially required by vehicle specifications to provide fire-retardant rip-stop squabs for prisoners for journeys over 150 kilometres. However, it was unable to find a manufacturer. Unsurprisingly, Chubb consulted the Department, but was told that the Department itself had not been able to source suitable squabs. The specification was then changed to state that seats should be of metal.

It has been argued that seat squabs of the quality currently available are liable to be vandalised or used for self-harm. The Department has said:

“Covers are neither fire proof nor rip proof. Incidents have been noted where covers have been torn permitting ribbons of cloth to be available for self-harm or to harm others. The Department is not prepared to accept the risk of harm by allowing squabs to be used.”

Contrary to this view, staff at one prison that used to provide seat squabs in departmental vehicles said prisoners much appreciated them, and as a result the squabs were not vandalised.

The risk of squabs being set on fire is directly relevant to the quality of searching of prisoners that is uniformly performed before the prisoners board a vehicle, and intended to remove items such as cigarettes, matches and cigarette lighters. We are not impressed by an argument that relies on the Department accepting that such searches are ineffective. Nevertheless, in this respect we refer to our remarks in section 3.9.3 *“Fire Risk”*, and note our conclusion that prisoners regularly carry the means of fire-raising inside vehicles.

The Department said that in the past, strips have been torn from seat squabs, but did not point us to any instance where a prisoner in its care had actually used such fabric for self-harm. Furthermore, clothing can be set on fire or torn into strips as easily as a seat squab. If a prisoner is attending court, he or she is allowed to wear normal clothes that may include a belt. It seems to us that it is misguided to attribute special risks to seat squabs.

During our investigation, National Office issued an instruction to the effect that existing seat squabs were no longer to be used by prisons. Merits of the instruction aside, this was very belated. It appears that squabs regarded by National Office as dangerous had been used for a significant period of time.

Elsewhere in this report, we express our view that good surveillance of prisoner cages is crucial to safety. We believe that good surveillance of prisoners would minimise the opportunity for, and likelihood of, misuse of squabs.

All in all, we consider the Department's approach to seat squabs has been unsatisfactory.

We recommend that the Department review its provision of seat squabs, and, in particular, provide squabs in cages of which staff have good observation unless there is special reason associated with the prisoners being carried.

3.5 Vehicle Servicing

Prisoner transport vehicles have warrants or certificates of fitness depending on the particular vehicle, and are regularly serviced.

The Department follows manufacturers' recommendations for servicing vehicles. Normal weekly checks are carried out (e.g. oil and water), and each driver is required to undertake a basic check of his or her vehicle and its equipment before commencing an escort. At the time of our investigation, local prisons had developed their own regimes, but the Department was considering whether national standards should be set.

Chubb has similar maintenance procedures.

A few prisons have workshops sufficient to enable in-house repair and servicing of departmental vehicles.

At two of these prisons, prisoners undertake general vehicle maintenance under qualified supervision in the prison workshops.

At the third prison, the prison workshop run by Corrections Inmate Employment (part of the Department) possesses the necessary skills and equipment, but prisoner maintenance of vehicles is viewed as an unacceptable safety risk. Astonishingly, we were also told that Corrections Inmate Employment would charge more to the prison for this work than the local commercial garage. In any event, therefore, the prison considers it would be uneconomic for the work to be done by prisoners.

We consider the lack of national policy on the servicing of departmental vehicles by prisoners (where this is possible on-site) is unsatisfactory. It is illogical that one prison should by local policy permit servicing of vehicles by prisoners, and another prison forbid it.

We recommend that the Department determine a national policy on the servicing of departmental vehicles.

3.6 Surveillance and Communication

The Department's PPM includes a "*performance standard*" that requires prisoners on escort to be "*supervised...at all times*", and sets out a duty on the escorting officer in charge to "*maintain constant supervision*". By our interpretation, "*constant supervision*" of a prisoner does not necessarily involve constant surveillance, but does involve regular observation of the prisoner.

Very few caged vehicles offer a good view by staff into all cages.

The need for satisfactory surveillance is exemplified by the assault on Liam Ashley, which went unnoticed by Chubb staff. An ex-prisoner provided his own account to us of being assaulted some years ago in a departmental vehicle. He spent a further two hours in his cage completing the journey before the vehicle was opened, and his injuries were discovered by staff.

Surveillance is not just required in case of prisoner disorder. A prisoner may unexpectedly be taken ill. A heart attack that goes unattended may result in death, whereas timely assistance may save the person. One prisoner told of an occasion where a fellow prisoner appeared to be mentally disordered and vomited, and the other occupants of the cage attempted unsuccessfully to gain the attention of staff. Choking on vomit (which may be the result of simple travel sickness) is a risk.

Exceptional incidents aside, the general maintenance of safety and humane conditions is impossible if escort staff are unable to observe prisoner cages and monitor prisoners' reasonable needs - whether those needs relate to life-threatening safety, or mere discomfort.

Adequate surveillance, in the sense of staff being able to understand what is happening in prisoner cages, does not only require vision. Verbal communication is also necessary if prisoners are to explain problems, and receive staff guidance or instruction. If a prisoner has become ill, vision alone will not necessarily alert staff until severe distress has become evident.

Prisoners in a front cage may be able to communicate directly with staff in the driver's cab. Those in the rear cages may be able to attract staff attention by shouting and banging on the sides of the vehicle, but staff will not necessarily know whether this reflects a genuine problem or if the prisoners are just being disruptive. Prisoners claimed that staff showed no heed to such noise from rear cages, indicating that their efforts to communicate were either unnoticed or ignored. From prisoner accounts, most attempts to contact staff arise from prisoners needing to visit a toilet.

Surveillance does not merely enable action to be taken in response to disorder or emergency. The mere knowledge by prisoners that they are under watch is liable to discourage misbehaviour.

It has been suggested that cameras should be placed in all prisoner cages. This would not be a straightforward exercise. The Department has said:

- ? Cameras would be susceptible to vandalism
- ? Monitoring would distract staff
- ? Multiple cameras would need to be installed to cover all parts of every compartment
- ? Lighting would need to be installed
- ? A recording function would need to be incorporated, together with a storage system for the records
- ? Considerable cost would be incurred.

We comment on the points as follows:

- ? Cameras would be susceptible to vandalism

Preventing vandalism is not just a case of ensuring cameras are not torn down. Some prisoners are transported in handcuffs. From past experience, staff said that prisoners are liable to use these to scratch camera lenses (and any plastic protective covers), and render the cameras useless in a short period of time.

- ? Monitoring would distract staff

We do not consider that video monitoring would be a “*distraction*”, it being implicit that this monitoring would be undertaken by a person other than the driver. Indeed, one would expect monitoring to be the prime function of any passenger escort officer.

- ? Multiple cameras would need to be installed to cover all parts of every compartment

Multiple cameras would be required for each vehicle, and possibly in individual compartments. It would be easy for prisoners to obscure particular cameras.

- ? Lighting would need to be installed

Lighting would be required as some prisoner compartments are dark, and some transport occurs outside of daylight hours. The only other option would be to employ some form of infra-red or other technology.

- ? Considerable cost would be incurred

It appears the cost would be very substantial. A rough costing exercise by Chubb resulted in an estimate of \$25,000-\$30,000 per vehicle.

We conclude that the installation of cameras in every vehicle would not be a useful or practicable exercise. We consider that effective surveillance demands that staff are able to obtain a direct view into prisoner cages.

Having said that, we do not discount that cameras may be helpful adjuncts in some vehicles – typically large vehicles – where staff already have direct vision of prisoners. We have already noted that cameras have been installed in the new departmental bus and the new Police vehicle.

Surveillance of prisoner cages is crucial to safety. It is unacceptable for prisoners in communal cages to be at the mercy of one another without any hope of assistance from staff. It is equally unacceptable for a prisoner to be at risk of sudden illness or physical distress without any prospect of help from staff. Single cages could remove the risk of assault by fellow prisoners, but not the problem of illness or physical distress.

The achievement of surveillance would mean the redesign of most prisoner transport vehicles. We are not insensible to the financial implications of this, but the alternative would be to condone the present situation. In the context of our functions, we are unable to do this.

We consider staff opportunity to keep prisoners under surveillance is unsatisfactory due to the design of many prisoner transport vehicles.

We recommend that all prisoner transport vehicles be designed or adapted to ensure that escort staff may observe all prisoner cages, and that prisoners may communicate with escort staff. The Department should institute a programme for the replacement or refurbishment of existing vehicles that fail to meet these criteria.

3.6.1 Emergency Alarms for Prisoners

Problems from lack of surveillance are exacerbated by the lack of alarm buttons for prisoners. The consequence of a lack of any reliable method of alarm is illustrated by the Liam Ashley case. The Prison Inspector's report records that a third prisoner in Liam's cage stated that he was threatened by Liam's attacker to prevent his intervention. Without any reliable method of alarm to draw attention to the situation, any threat by a powerful prisoner against a weaker one has great force.

Various objections to alarm buttons were raised by front-line staff and the Department itself. It was said that some prisoners would constantly operate alarms for trivial reasons or to irritate staff. It was also said that if prisoners were able to cause a vehicle to stop by activating an alarm, this would facilitate planned escapes.

From past experience of alarms in cells and prison yards, the Department commented that alarms are frequently activated to annoy staff, and are the targets of vandalism. It observed that alarms would have to be installed in every compartment in every vehicle if the system was to be generally available to prisoners. With regard to vandalism, it said that at one stage music speakers and roof fans were installed in certain Chubb vehicles – both intended for the comfort of prisoners – and yet it only took days for the equipment to be destroyed by prisoners.

We consider that the arguments for not installing alarms have some merit. However, this is not to say that they have sufficient merit to deny alarms to prisoners or to regard the present situation as acceptable. If, of course, there were adequate surveillance of prisoner cages, and adequate means of communication to supplement that surveillance as recommended in section 3.6 above, provision of alarms would become unnecessary.

3.7 Food, Water and Rest Breaks

In the text below, our descriptions of the varying practices of prisons are primarily founded on discussions with front-line staff. Where the Department as an institution has offered a different perspective, we have recorded this.

3.7.1 Food and Water

Two hour journeys are common. While this is not a long time, there remains considerable scope for personal discomfort. There is commonly no food or water supplied. While a two hour period without such amenities is unlikely to be life threatening, it is debatable whether the lack of water in particular is reasonable.

A journey of about 6 hours from Hawkes Bay to Auckland is more arduous. We were told that, when travelling from Hawkes Bay Prison prisoners, are given wrapped food and a paper cup of water. If the water is spilled (as must happen frequently) it is gone.

Much of what the Department told us in its formal written responses to our inquiries was supported by front-line staff and prisoners. However, this was not completely so. In particular, we received accounts that differed from the Department's statements that:

- (a) in its PPS South Island Region *"each individual prisoner is provided with a bottle of water"* for long journeys (2½ -3 hours plus);
- (b) from Mt Eden (Men's) Prison, prisoners *"may"* carry water bottles *"if they choose"*.

Our inquiries of front-line staff and prisoners adduced the following information for particular prisons where transport is by the Department (as opposed to Chubb):

- ? Invercargill Prison may or may not provide prisoners with water for a journey. On a journey to Christchurch they are given a packed lunch, but there are no management instructions for water. Accordingly, escort staff might or might not allow water. In practice, this might mean a prisoner arriving at the transport vehicle carrying his own milk carton containing water, and the prisoner might or might not be permitted to take it on board.
- ? Dunedin Prison prisoners en route to Christchurch are given food, but are denied water. A drink is only possible at Timaru or Oamaru (approximately 2-2½ hours and 3-3½ hours from Christchurch respectively) which are the available choices for stops.
- ? Christchurch (Men's) Prison provides prisoners with a packed lunch and water where the journey stretches over a formal meal break.
- ? Waikeria Prison provides water to prisoners on the weekly journeys of just under 2 hours to Rotorua and Tauranga (and longer journeys), although not for the shorter daily run of about 45 minutes to Hamilton Court. There are no stops on a run of less than about 2 hours, but scheduled stops are arranged for the occasional longer journey.
- ? Auckland Region Women's Corrections Facility provides water on long journeys.
- ? Arohata (Women's) Prison vehicles stop *"whenever necessary"*. It was pointed out that a number of women prisoners are pregnant and require frequent toilet stops. Water is offered at the stops. However, no water bottles are provided as the prison fears the bottles would be appropriated by prisoners, and subsequently adapted for smoking drugs or other unlawful purposes.

- ? Mt Eden Prison provides prisoners with a bottle of water at the discretion of the escort staff on long journeys. Front-line staff did not suggest that prisoners had a free choice of whether to carry a water bottle, and interviewed prisoners indicated that water was generally not supplied in the vehicles. Water is available at any scheduled stops en route.

The longest journey for Chubb vehicles is from Auckland to Kaitaia District Court. This takes about 4½ hours, depending on any collection or delivery of prisoners en route. Chubb staff said that water bottles are not provided to prisoners unless *“it is a very hot summer day”*, and then water is at the discretion of Chubb escort staff. Generally, water bottles are not permitted.

En route to Kaitaia, a rest stop is normally taken at Whangarei, about 2½ hours from Auckland. There is a further suitable rest stop at the Northland Region Corrections Facility at Kaikohe, about 1¼ hours beyond Whangarei. Nevertheless, stops are only made *“time permitting”*. This is not Chubb’s timetable as such, but is that of the courts. We were told that some judges become annoyed if prisoners are late. Sometimes, therefore, prisoners have no break in this lengthy trip. If a prisoner is to arrive at Kaitaia from Auckland by say 9.30 am, the van will have to leave Auckland by about 5.00 am. We consider it is unreasonable for prisoners to have to start so early, and then be deprived of water en route for fear of the court’s reaction in the event of lateness.

With regard to Kaitaia, we take this opportunity of expressing our further concern that a prisoner could have to face a full court day immediately after a journey that could of itself have amounted to a significant ordeal.

The Northland Region Corrections Facility could in theory provide convenient overnight accommodation for prisoners to be taken north of Whangarei. The prison is approximately 1¼ hours from both Kaitaia and Whangarei. However, the prison is not able to accommodate female or youth prisoners, or the totality of remand prisoners. During the course of our investigation, we were told the prison had also ceased to accommodate segregated prisoners. Efforts are made to house prisoners in Police cells near to the relevant courts, but cells are not always available. A morning journey from Auckland is sometimes unavoidable.

The fundamental problem is outside the scope of this investigation, but it seems clear to us that there should be discussion between the relevant court administrators and the Department to canvass possible solutions for Kaitaia. We are of the view that it is unreasonable for a prisoner to be conveyed in the discomfort of a caged vehicle for 45 hours, and denied any water simply because a court sitting may be delayed. In its response to our inquiries for this investigation, the Department has said that it is aware of the problem and intends to raise the matter with those responsible for court administration.

We have set out the differing practices of prisons with regard to food and water, but it appears these are not set in stone. We were told of instances where staff have stopped en route and purchased food or soft drink for prisoners. A senior departmental staff member of one prison said that this was not forbidden unless escort instructions expressly prohibited it. Staff were entitled to claim for these expenses, but few did. We note that this practice may be humane and reasonable,

but it does not seem consistent with the Department's PPM that states, "No unauthorised stops are permitted (emergencies excepted)".

Most prisoners complained about the lack of water on long journeys. Some also said that the times between food and water breaks were likely to be significantly greater in practice than the mere travel period, due to the time taken to process prisoners on arrival. Lack of water must be seen in the context of often high temperatures in vehicles during summer as discussed in section 3.8 "Temperature".

Adequate supply of food and water is essential for humane treatment.

The Department has said:

"There is no formal national policy on the provision of food, water and rest breaks or for providing opportunities for prisoners to 'stretch their legs'. Given the many different variables that make up a prisoner transport (distance, regional variations, number of prisoners, type of vehicle, location, weather, traffic delays etc) policy cannot be made to cover every eventuality.

However, professional judgement exercised by escorting officers, along with their experience in similar situations, covers this aspect of prisoner transport. Most prisoner transport will consist of relatively short journeys and would not necessitate the need for rest breaks, or for food and water."

We regard the Department's approach as unsatisfactory. We consider it is unreasonable that for the long journey from Hawkes Bay to Auckland prisoners are given a cup of water in a paper cup that they must hold on their knees. It seems wrong that the provision of water bottles should be regarded as an unacceptable security risk at Arohata prison, but not at other prisons. All in all, we consider it is wholly wrong that prisoners in similar situations should be given or denied water and food on what seems to amount to little more than the personal whims of staff in certain locations.

We recommend that the Department take steps to ascertain the differing practices of its various prisons, and implement national standards for the supply of food and water. The Department should note that prisoners often do not have sufficient water during journeys under the practices that currently exist, and should urgently remedy this deficiency.

3.7.2 Toilet Breaks

A need to visit a toilet is a basic human need. Deprivation leads at best to discomfort, and at worst to humiliation and loss of dignity. Some prisoners habitually need to visit a toilet more frequently than others. Not all prisoners are young. Female prisoners may be pregnant. Any human being is liable to suffer some sort of stomach upset unexpectedly. Nervousness at a forthcoming trial or sentence may play a part.

At the outset of our investigation, it was alleged that prisoners urinate in vans because they are unable to contain themselves on longer journeys. The Department and Chubb said this was rare, and front-line staff agreed. Prisoners with experience

of longer routes were of the view that urination in vehicles happens with somewhat greater frequency than “rare”, although it does not appear to be a common occurrence. Nevertheless, there was general prisoner agreement that individuals often have great difficulty “*holding on*” to the point of physical pain.

Aside from the scheduled breaks in journeys illustrated in section 3.7.1 “*Food and Water*” (and on the departmental buses with on-board toilets), prisoners obtain a toilet break only if they create enough noise to draw attention to their plight. At the discretion of the escort staff, the vehicle may stop at a police station or prison. The view of prisoners was that staff rarely exercise that discretion.

On the departmental buses, any maximum security prisoners are not permitted access to the on-board toilet. They are only released from their cages at secure areas. Accordingly, there may be a very long interval for a maximum security prisoner without the opportunity for a toilet visit.

It has been suggested that all prisoner escort vehicles should have toilets on board. We would not regard this as practicable or necessary for the majority of vehicles. Reasonable access to toilet facilities must be given, but reasonableness may be met by utilising the secure stopping points of police stations and prisons en route.

Reliance on prisoners banging and shouting in the back of prisoner escort vehicles (which staff may easily misinterpret) is plainly an unsatisfactory method of dealing with prisoners’ urgent needs for the toilet. The fundamental problem is the same as that raised elsewhere in this Report, namely that in many vehicles prisoners have no effective way of communicating with staff. We reiterate that the question of communication should be addressed as a matter of importance.

We inquired about the special needs of women prisoners and the need to use or change sanitary pads. Staff said that in practice no significant problems have arisen. The Department observed that female prisoners tend to undertake only short journeys by road, and longer journeys are undertaken by air. Nevertheless, one female prisoner did say that the lack of changing facilities could be embarrassing.

We recommend that the Department review prisoner access to toilet facilities en route. The Department should consider guidance to staff on stopping at specified secure areas, and take into account the existing communication difficulties within prisoner transport vehicles.

3.7.3 Exercise

On longer journeys, the opportunity for prisoners to stretch their limbs and obtain some fresh air is essential for humane treatment. It cannot be regarded simply as a luxury or a privilege. The cages restrict prisoners to cramped seated positions on hard wooden or metal surfaces, without any opportunity for significant movement. Many prisoners have no proper exterior view, and, as discussed elsewhere in this Report, there may well be inadequate controls for temperature. Prisoners may be handcuffed.

The problem is exacerbated where the transport is to and from court, as opposed to prison. Courts have insufficient facilities to offer exercise for prisoners, and there is

no possibility of exercise on arrival. Prisoners may be placed in a holding cell first thing in the morning, and their cases not heard by the court until the end of the day. They then undergo the return journey to prison.

The bus journey from Auckland to Wellington is approximately 12 hours. A lunch break is taken at Rangipo Prison. However, the prisoners are not allowed off the bus for exercise (save for any maximum security prisoner being taken to a toilet). In the case of other types of prisoner transport vehicle passing through Rangipo Prison, only low security prisoners are allowed off.

We find it unsatisfactory that a prisoner can be confined in a cramped vehicle cage for a long time without any firm rules for exercise breaks.

While a bus may not be as cramped as a secure van, we further find it unsatisfactory that prisoners are not able to disembark during a 12 hour journey even though the bus has stopped at a prison. It may be inconvenient for the Department to offer prisoners an opportunity to stretch their legs, but administrative convenience is less important than humane treatment.

The facilities at courts are beyond the powers of the Department to control, but the Department may play a part in easing the overall conditions on long journeys – whether the prisoner's destination is a prison or court.

We recommend that the Department provide for prisoners to exit prisoner transport vehicles for fresh air and to stretch their limbs at periods not exceeding three hours save in exceptional circumstances.

3.7.4 Summary

We are concerned that there are no national standards for providing food, water and rest breaks to prisoners. The conditions of transport vary according to the practice of the despatching prison and the charity of individual escorting staff, and to that extent is a matter of luck for the prisoners.

We were told that no medical advice has been sought by the Department with regard to the foregoing matters. We consider that the Department, as a first step, should do so.

We recommend that the Department review all practices with regard to the provision of food and water, toilet breaks and exercise during road journeys, and seek medical advice on this. The medical advice should be given in the knowledge of actual conditions in typical prisoner transport vehicles.

3.8 Temperature

Complaints have been made to us about high temperatures and lack of ventilation in the cages of prisoner transport vehicles.

The metal shells of the vehicles and the metal cages transmit heat from the sun. The cages' small sizes result in further increases of temperature through body heat. They have been described to us as "sweat boxes".

Vehicles typically have one or two small vents or flaps in each side which can be pushed open or closed by prisoners in the adjacent cages. This is a very modest provision, and we accept accounts that the atmosphere in the cages – particularly the rear cages - can become very hot and oppressive.

We were told that high temperatures lead to tempers fraying, and render it more liable for prisoners to lash out at each other and staff. Taken with the other conditions of transport, we find this entirely understandable.

Save in the newest departmental vehicles, there is no air-conditioning except for that in the drivers' cabs – which may or may not flow through to prisoner cages depending on the design of vehicle.

We were surprised to find, however, that even new vehicles are not always fitted with air-conditioning. Towards the end of 2006, Arohata Prison took delivery of a caged vehicle provided through the PPS Wellington Region. There are no external side or roof vents. Accordingly, the rear of the vehicle is completely closed in, and the only air circulation is provided by the (non air-conditioned) driver's cab fans or by the opening of the driver's cab windows.

Chubb's Isuzu vehicles have fans installed with adjustable settings. Certain Chubb vehicles have been met by a member of our investigating staff both after local Auckland journeys and a long journey (February 2007). The prisoners did not express undue concern about the heat. As previously noted, during our general prisoner interviews, prisoners mostly described the fans in the Isuzu vehicles as adequate.

One of our investigating staff has previously ridden in a prisoner cage of an Isuzu for a 15 minute journey. He considered it warm, but (certainly for a short journey) not unreasonably so.

Cold is also a problem where winter temperatures are low. Where the sole heating provision is in the driver's cab, this does not provide any real warmth in the rear of the vehicle even where there is a through-flow. Air temperatures aside, many prisoners complained of cold being transmitted through the bare metal seats.

Means of heating, cooling and ventilating vehicles are required to achieve reasonable conditions for prisoners.

The Department has said:

"Public Prisons Service escort staff use their experience regarding conditions inside escort vehicles. Factors taken into account would include:

- ? *Where practical, observations made of the prisoner's physical condition and their actions.*
- ? *Comments of the escorted prisoners (e.g. whether they feel hot/ cold).*
- ? *The length of the escort.*

....

Public Prisons Service escort staff check the conditions of the vehicle prior to and on completion of an escort, and communicate where possible with prisoners as to their comfortableness during transit. As the temperature cannot be automatically regulated during transit, and if the vehicle is fitted with temperature controls, changes will take place once the vehicle has proceeded to the nearest secure facility.”

The Department's response does not amount to a reasonable reply in our view. Adequate observation of prisoners is not possible in many vehicles; adequate communication of problems is not possible in many vehicles; and lack of temperature control equipment will often render remedial action not possible. Certainly a vehicle could stop at a secure location for a brief respite from unacceptable conditions (if staff somehow became aware of them), but the conditions would presumably re-emerge as soon as the vehicle recommenced its journey.

Chubb has said that its staff cannot judge the temperatures inside prisoner cages en route, but its staff do open the outside doors of the vehicles at secure stops for fresh air to enter. This does not put any gloss on the situation, and is a reasonable acknowledgment of the problems.

Some prisons provide blankets in cold weather. Other prisons regarded blankets as a security risk and would not provide them. Their argument is that a blanket may be thrown over another prisoner to aid assault, or used for self-harm.

It is unsatisfactory that there is no national standard for the provision of blankets to prisoners to combat cold, given that some prisons have concluded that blankets are a hazard, and other prisons see blanket provision as reasonable.

It appears that in caged vehicles prisoners regularly experience unreasonable extremes of heat and cold. This should not occur. We consider that all prisoner transport vehicles should have means of ensuring reasonable temperatures – bearing in mind that what is reasonable depends on the length of journey and season of the year.

We recommend that the Department equip all prisoner transport vehicles with temperature control mechanisms for prisoner cages, adequate for the conditions under which the vehicles will be used.

Where existing vehicles have no temperature control mechanisms and such equipment cannot reasonably be retro-fitted, we recommend that the Department ensure prisoners are given fresh air breaks during longer journeys where the problem is excess heat. Where the problem is excess cold, the Department should provide blankets unless there is reason to believe any given prisoner is “at risk”.

If measures recommended under the previous paragraph are likely to be insufficient to prevent inhumane conditions in any particular vehicle given seasonal temperatures, the Department should not use that vehicle.

3.9 Emergencies

Emergencies are liable to occur from time to time without fault or foreseeability. Mechanical breakdown, traffic accident or sudden medical problem may happen.

By way of general comment, the Department has said:

"It is expected that Corrections Officers will deal with the circumstances of an accident or other emergency with professionalism and common sense."

This statement reflects what should actually occur, but there are no formal instructions to staff of general application. We consider that this is unsatisfactory.

Furthermore, we are not satisfied with basic safety measures, and neither are we satisfied that the Department permits Corrections Officers sufficient discretion to deal with incidents that may occur.

3.9.1 Evacuation

Road traffic accident is the obvious emergency that is liable to occur, very possibly for reasons wholly outside the control of the driver. This may require the swift evacuation of a prisoner transport vehicle to save lives or minimise injury. We have previously referred to a newspaper report in March 2007 recording that a Police van with a prisoner on board "flipped" and fell down a bank.

Evacuation will also be required in a variety of other situations. This would occur, for example, if a fire were to break out in the vehicle, or in the event of mechanical breakdown on a hazardous stretch of road with risk of collision from passing traffic.

Legislation provides that most passenger service vehicles must have emergency doors and exits that can be operated internally. For obvious reasons, rule 1.6(d) Land Transport Rule: Passenger Service Vehicles 1999 provides an exception for "motor vehicles designed or modified for lawfully-detained persons".

Emergency drills are practised at prisons to cope with a variety of situations. The Department advised:

"Practice evacuations from vehicles without using prisoners are included in prison emergency plans."

Contrary to the above, most prisons visited for the purpose of our investigation stated that they did not hold evacuation drills.

We were further advised that Chubb practises no evacuation drills.

The Department has said:

"Due to the varying types of prisoner escort vehicles, the constant need to maintain security, the necessity of managing prisoners (many of whom are not compliant), the inability to simulate emergency conditions using prisoners,

and the straightforward nature of vehicle egress in Department of Corrections vehicles, the value of conducting staff evacuation drills for escort vehicles that contain prisoners is limited.”

An evacuation drill does not involve the participation of prisoners whose co-operation could not be guaranteed. The important factor is the speed with which exterior doors, cages and/or internal emergency exit hatches can be opened.

In the event of accident, the driver may be incapacitated and/or the driver's keys essential for unlocking exterior doors and cages may be inaccessible. How is a staff member supposed to deal with such a situation? What are the priorities for the staff member? In which order should prisoner cages be evacuated?

Given the number of road journeys and the relative frequency of road accidents (albeit not involving prison vehicles), we regard the lack of emergency drills as unsatisfactory. It is particularly unsatisfactory given the range and limited efficiency of vehicle emergency exit hatches as described in section 3.9.2 *“Emergency Exit Hatches”*.

It is essential that evacuation of any prisoner transport vehicle can be achieved quickly by staff. This involves training and familiarity by staff with the particular design of the vehicle.

We were surprised that the Department felt able to refer to *“the straightforward nature of vehicle egress in Department of Corrections vehicles”*. Egress is not straightforward at all in many vehicles. Locking mechanisms of vehicles, and local policies on locking, differ.

The cages in which the prisoners are confined are of robust metal which it would not be possible to force open without special equipment. There are a variety of securing mechanisms. In broad terms, these involve a metal latch or lever (of considerable strength) fixed in place with a chain or pin. The designs are such that it is impossible for prisoners to open them. Each cage has its own door, and usually there are two to four cages to be opened individually before the vehicle can be completely emptied of its occupants.

For the most part, the cages are not locked by key.

Some prisons, however, do padlock their cages. The drivers carry the only keys. The cages on *“the Green Bus”* are also padlocked, and the (identical) keys are held by the vehicle's two escort Corrections Officers – one of whom sits at the front of the bus, and one at the rear. Locked cages present a significant obstacle to swift evacuation in that Corrections Officers would have to manipulate small keys in what, by necessary implication, would be a difficult and dangerous situation.

Beyond the cages, there are the external vehicle doors. These are usually locked, and we comment further on this practice below. Some vehicles have central or remote locking/unlocking, but many require manual unlock with a key. There is normally a locked side sliding door, and locked rear double doors to be opened before staff can get access to the cages. Save for the departmental buses for which there are emergency unlock buttons on the outside of the vehicles, the drivers have the only keys.

Some vehicles have a central locking system operated by the driver and/or an automatic unlock of all doors when the driver's door is opened or the ignition is turned off. These features would seem desirable for all prisoner transport vehicles. We regard vehicles where the exterior doors can be opened only by a key in the possession of the driver as presenting a safety risk for prisoners.

At one prison there is a policy against the locking of exterior doors in order to allow easy rescue in the event of emergency. The exterior doors have the means of opening from the inside removed so prisoners cannot escape, but the result is that any person can simply open the door from the outside.

In one type of vehicle at this prison, the prisoners in the front bench seat are not confined by a closed cage door, but only the exterior sliding door of the vehicle. Accordingly, any person may open the sliding door from the outside and achieve immediate release of the prisoners. This may be a safety feature in the event of emergency, but equally it facilitates escape at any time when the vehicle comes to a halt. Accomplices could engineer some form of traffic incident that would cause the vehicle to stop, and enable them to wrench open the door before staff could take any preventive action.

One prison locks all exterior vehicle doors, except where the vehicle has central locking from the drivers' cabs.

The lack of national policy on locking is unsatisfactory. There is considerable risk to prisoners from key-locked exterior doors and cages. The one set of keys in the possession of the driver may be inaccessible following an accident or lost in the confusion of the moment. Staff may be incapacitated or trapped. The fact of one set of keys means that only one door or cage can be opened at a time, and the (usual) two escort officers cannot attend to different doors or cages at the same time. One option may be to provide duplicate keys to passenger escort staff.

3.9.2 Emergency Exit Hatches

Evacuation may require the utilisation of emergency exit hatches.

Emergency exit hatches are not required by law for prisoner transport vehicles. Indeed, a prisoner activated exit would enable escape. However, it is the general practice for cages to have hatches by which a prisoner may move from one cage to another in the event that the prisoner's usual exit door becomes inoperable.

Many vehicles have a further hatch from the front prisoner cage into the driver's cab, thus providing an avenue of egress through the cab front doors.

For the most part, there are no emergency exit hatches fitted to the single-occupancy cages of the few vehicles having them.

Many of the hatches are very small, and only suitable in our view for slim and reasonably agile prisoners. We believe that many larger prisoners (including those whom we would not regard as obese) would be unable to use them. Handcuffed prisoners would have particular difficulty. We fail to see how prisoners who are

handcuffed together (as invariably occurs in Chubb vehicles) could get through most hatches swiftly or at all in an emergency.

A number of points arise with regard to the operation of the hatches.

We comment first on departmental vehicles.

At one prison, vehicles have a “kick-out” panel in the rear cage by which rear prisoners may get into the front prisoner cage.

Prisoners are not advised of these kick-out panels. If prisoners knew of a kick-out panel, they could open the panel as a form of vandalism or to attack anyone in the neighbouring cage. Prisoners are often placed in different cages for the specific reason of preventing the latter occurrence. Nevertheless, if prisoners are kept in ignorance of the panel, they could remain needlessly trapped in an emergency and suffer harm.

At another prison, the staff member showing a vehicle for inspection concluded that the emergency exit hatch was a kick-out type. In fact, subsequent inspection of other similar vehicles at another prison showed that it was operated by a release lever outside the cage. The lack of ease in identification of the release mechanism does not give confidence.

At two prisons the emergency exit hatches between cages in certain vehicles are released by levers that are accessible from the prisoner front cage. This means that escort staff in the driver's compartment can open their hatch into the front cage, and lean across to open the emergency exit hatch into the rear cage. However, it also means that prisoners in the front cage can open the emergency exit hatch between themselves and the rear cage. This facility is extraordinary. It not only provides opportunity for disruption by prisoners, but the undermining of segregation.

At another prison, there was a vehicle where the secure bar for the hatch was accessible to prisoners in the front cage, but could be released only by twiddling a little slot head screw designed for a screwdriver. Operating that screw would likely be impossible for a panicking prisoner (particularly one that was handcuffed), even if the prisoner understood the mechanism.

In certain new vehicles, the emergency exit hatches can be operated only from outside the cages by turning purposely designed handles. They cannot be operated by prisoners. These appeared efficient from the mechanical viewpoint. Nevertheless, the mechanisms were far from obvious, and members of the public who might need to assist in rescue would likely not identify them.

A number of emergency exit hatches were designed to be operated from outside the cage by pulling a release bar. Demonstrations were requested at two prisons. The bars proved stiff and difficult to operate.

In most designs, if the vehicle were lying on the same side as the front cage door, access to the emergency exit hatch release mechanism would be impossible. The prisoners would remain trapped as neither door nor emergency exit hatch would be available.

Chubb's Ford Transits and Fiat Ducatos have similar emergency exit hatches in their cages that ultimately provide a way out via the driver's cab. These are operated by the pulling of cables from the driver's cab. When a demonstration was requested, the mechanism proved simple and easy.

Chubb's Isuzu vehicles are different. They have emergency exit hatches in the vehicle roofs above each cage by which prisoners may gain access to the outside. These are not merely closed by levers inaccessible to prisoners, but padlocked shut.

There are three hatches for the four prisoner cages in each Isuzu. The double hatch is secured by two bars with two padlocks each, and the hatch itself is secured by two further padlocks, making six in total. The single hatches are each secured by one bar with two padlocks, and the hatch itself by one further padlock, making three in total. One key unlocks all padlocks.

The practice of locking the hatches resulted from an incident some time ago when prisoners managed to escape out of one. For evacuation by this route, staff would have to climb onto the vehicle roof with a key to open the various padlocks for each hatch for each cage. Prisoners, who under present practice are handcuffed together, would then have to climb out. We anticipate that swift evacuation in an emergency by this avenue would be most difficult to achieve. As a concession to the obvious risk from padlocking, Chubb said that the padlocks are deliberately of modest size in order that the Fire Service could easily open them with bolt cutters. We are not persuaded that this is an adequate solution. The real problem by our assessment is that the basic roof hatch design is insufficiently secure to contain prisoners.

A significant proportion of interviewed prisoners were ignorant of the existence of emergency exit hatches, and we conclude that this lack of awareness is common among the prisoner populace. Only Mt Eden Prison had emergency exit hatches clearly marked (painted red). Some basic instruction for prisoners seems desirable.

3.9.3 Fire Risk

The risk of fire in a prisoner transport vehicle due to mechanical problem or collision is real, but small by our understanding.

Smoking in prisoner transport vehicles is officially prohibited. During obligatory pre-transport searches, cigarettes, matches and cigarette lighters should be removed from prisoners by staff. Accordingly, fire-raising by prisoners should not occur at all. Nevertheless, we were told by various unconnected sources that smoking by prisoners in their cages is common practice. This results in the possibility of clothing being set on fire deliberately or by accident.

Prisoners addicted to tobacco find a long journey without cigarettes arduous. It is not surprising that they attempt to smuggle cigarettes and means of lighting them on board, but their success appears frequent.

We were told that some staff connive at smoking by prisoners and facilitate it. Tobacco addicted prisoners are liable to become fractious and difficult when deprived of it, and allowance of smoking is likely to result in a quieter journey.

Accounts of connivance were provided by both prisoners and departmental staff. Even some supervisory and management staff conceded that certain of their more junior staff turned a blind eye to prisoner possession of tobacco and smoking, and that they themselves ignored it. Staff concern about prisoner disorder was the motivating factor. The accounts that we received to this effect came from all PPS Regions of the country (although not every prison).

We were told that smoking is a cause of friction in prisoners' cages because non-smokers object. One non-smoking prisoner commented that it was nevertheless better to make no protest because the smokers otherwise became aggressive.

It appeared that prisoners sometimes supply each other with cigarettes through the dividing mesh of cages. One of the prisoners who claimed to have received cigarettes in this way was segregated, which raises particular concerns for those segregated for fear of self-harm.

In the course of our investigation, we became aware of a complaint by a prisoner that other prisoners in his vehicle had been smoking tobacco and cannabis. A letter from the Department signed at a senior level to the prisoner included the passage:

"....Prisoners are not allowed to carry tobacco or lighters into vehicles in order to avoid possible 'standovers', vandalism and the health dangers of second-hand smoke.

Matches, tobacco or cannabis would not be detected by a rubdown search if deliberately hidden internally or in underclothing and as they do not contain metal, they would not trigger a scanner alarm. A cigarette lighter would be detected by a scanner search if hidden in clothing.

Corrections staff who notice prisoners smoking in vehicles report this and seek approval to strip search prisoners whenever there are reasonable grounds to suspect they are carrying contraband...."

The foregoing letter seems to indicate that pre-transport searching is ineffective as regards cigarettes and matches. The apparent requirement that staff should report prisoners smoking in vehicles seems largely ignored by accounts that we received from departmental staff and prisoners.

It would be impracticable for escort staff while en route to halt smoking by prisoners. They would have to stop the vehicle, and open both external and cage doors to enforce any ban. This could not sensibly be done, given the likelihood of prisoner disorder and escape.

Taking everything into account, it appears that the rule against prisoner smoking has been brought into disrepute. The regular breaching of the prohibition would seem to place any front-line staff who attempt to enforce the official ban in an impossible position, and in our view can only amount to pressure on staff to ignore their duty.

That departmental management has *"lived with"* the foregoing situation is worrying.

Prisoner sources said that smoking is similarly not uncommon in Chubb vehicles. Nevertheless, they also made plain that Chubb staff were generally vigilant in

attempting to prevent it, and *“fairly rigorous”* in their searching. Once on the road, Chubb staff (as departmental staff) can take no practical action to stop smoking.

Chubb was advised of our proposed remarks above. It said, *“...it is common practice for prisoners to conceal cigarettes, lighters and matches in areas of their body where they are difficult to locate such as the crotch area”*. Chubb also noted that its escort staff do not normally have sufficient grounds under legislation to strip search a prisoner, and, *“[Chubb escort staff] therefore rely on prison staff to search the prisoners to ensure they are presented for escort with only authorised items”*.

It is not our function to police the Department, and we did not routinely question all staff on smoking practices. Our inquiries were made in the context only of discovering the conditions inside vehicles. Nevertheless, we are satisfied that we should draw the situation to attention.

3.9.4 Safety Equipment

Prisoner transport vehicles carry certain safety equipment, including first-aid kits and fire-extinguishers. Staff have radios and/or cell phones by which they may summon help or seek instructions.

During our investigation, we became aware of a transport problem that arose during a journey from Wellington District Court to Rimutaka Prison. The escort staff tried to contact Rimutaka Prison for instructions. The attempt was unsuccessful because the passenger Corrections Officer did not know how to use the vehicle radio. In the circumstances, the journey was simply continued to the prison.

Until this incident came to our notice, we confess it had not occurred to us that escort staff might be unable to use emergency communication equipment. That type of process failure should never occur.

Material sent to us by the Department includes *“an example of a local Desk File, including the vehicle check list for drivers”*. One entry is *“undertake communications check”*. This check is of little value if not all escort staff can use the communications.

In response to the incident, the PPS Wellington Region of the Department took *“remedial actions ... concerning the use of radios through the comprehensive provision of instructions and checks on escort staff competence”*. Wellington Region also required, *“All escort staff in the Region to check in via radio before departing the site (proof that they know how to operate), at least hourly during the course of any escort and when they reach their destination”*. This action was appropriate.

The Department has said that *“there is no indication that familiarity with equipment is a concern in other regions”*. However, it intends to consider the need for a standard procedure for verifying familiarity with radios in the course of its general review of prisoner transport.

We consider the competency of all escort staff to use emergency communications equipment is an issue that permits no complacency, and should be checked by the Department with urgency.

3.9.5 Instructions to Departmental Escort Staff

False emergencies may be engineered by prisoners plotting escape. If, for example, prisoners knew that the occurrence of a fight in the rear of a vehicle would result in the vehicle stopping, such incident could be arranged at a set location with accomplices waiting. We do not consider these risks are fanciful.

With this in mind, the Department's PPM states, "*No unauthorised stops are permitted (emergencies excepted)*". There is also specific responsibility for senior officers to issue "*written escort instructions in writing, including any special conditions*". The escort instructions may deal with particular security issues.

The definition of "*emergencies*" in the rule against stopping is left open. This is inevitable. No policy can envisage every eventuality, and we consider that it is necessary for staff to have discretion to determine what may constitute an emergency.

The Department distinguishes "*emergencies*" from mere "*incidents*" in prisoner compartments. The Department's PPM contains a lengthy description of what constitutes an "*incident*". Without attempting to provide a full list, "*incident*" includes assault by or on a prisoner, breach of security, self-harm by a prisoner, criminal offence by a prisoner, prisoner disorder and any matter requiring the call-out of emergency services. All "*incidents*" must be formally reported by staff to the Department.

In the case of an "*incident*" during transport, staff are required "*to inform the despatching prison's control centre and Police of the situation and proceed to the nearest secure facility*".

An "*incident*" does not need to have (or be likely to have) serious consequences to be brought within the definition, and may be relatively minor. Accordingly, an "*incident*" in the Department's vocabulary quite rightly does not necessarily amount to an "*emergency*".

It is in knowing what the Department would consider an "*emergency*" that practical difficulties lie for escort staff.

If a prisoner has suffered a suspected heart attack, escort staff may be the only persons present with the skill to provide first aid. Opening a multiple prisoner compartment facilitates escape, but the only alternative may be to risk the prisoner's death by doing nothing. We are aware of actions by Corrections Officers that have saved lives in prison by first aid.

If an escort staff member were to open a prisoner cage and administer first aid thus saving life, we anticipate the staff member would be praised for his or her actions. On the other hand, if the staff member had been duped, or the situation was not as serious as he or she anticipated, that person would be at risk of losing his or her job.

Escort staff have both radios and cell phones by which they may seek instructions from senior Corrections Officers and seek back-up, and/or call the emergency Police, Fire or Ambulance Services.

In a potential emergency situation, contact with a senior departmental officer is undoubtedly desirable, and may be helpful to escort staff at the scene. Nevertheless, the requirement that staff use radio or cell phone to seek instructions means remedial action must be delayed, and the opportunity to resolve a moderate problem before it becomes life-threatening may be lost. Furthermore, New Zealand does not have total radio and cell phone transmission coverage, and staff may have to drive on if reception is to be obtained. Ultimately, it is difficult to see how a senior officer would have a basis for refusing to accept any assessment of staff at the scene.

Most incidents will not involve obvious threat to life or serious injury, and may be hoaxes intended to facilitate escape. The true situation will often be uncertain. Assault by one prisoner on another may ostensibly be one that will result only in minor injury, but it may escalate to serious harm.

One colloquial description of minor prisoner on prisoner assault is “*a slapping around*”. Is this an “*emergency*”? If not, should escort staff be required to allow it to continue, and ignore any cries of the victim for help while they consult senior officers or drive to a secure Police station or prison? Is a continuing assault something that the Department should tolerate in respect of prisoners in its care?

Any reliable assessment of an incident turns on the escort staff being able to see what is happening. Surveillance of prisoner compartments by staff is often impossible from the driver’s cab, and no assessment of a situation can be undertaken unless staff halt the vehicle and open the exterior doors. If staff are forbidden to do that, they are prevented from doing anything meaningful.

In the course of our investigation a hypothetical situation was put to a selection of front-line escort staff, namely an assault in a cage where one prisoner appeared about to break another’s arm. Some staff would regard the matter as an “*emergency*” and stop the vehicle to intervene. Others would proceed to a secure area, and let the assault continue in the interim for fear of adverse employment consequences.

Staff expressed differing views about the position of escort staff. One view (particularly prevalent among senior staff) was that there would always be at least one experienced officer in the escort. Staff regularly had to make decisions on whether to open a cell in an emergency or await back-up, and a prison vehicle was no different. Providing that a staff member took a reasonable decision in good faith under the overarching duty of care to keep prisoners safe, management would support that staff member and no adverse consequences would follow.

Other staff took a different view. They considered departmental guidance and instructions were inadequate to protect both prisoners and staff. We report that there was a body of opinion which referred to a blame culture within the Department that would not support front-line staff if, in hindsight, it was shown they departed from basic instructions, and (albeit in good faith) made a wrong call.

We regard the present state of affairs as unsatisfactory. Simply to forbid vehicles stopping en route “*except in an emergency*” without leave of senior officers is not

sufficient guidance. Any uncertainty of staff leading to hesitation renders the safety of prisoners equally uncertain.

Senior front line staff have suggested that to grant escort staff greater discretion to stop vehicles and assess problems would be to create a security risk. We do not regard that as an adequate justification for the current regime. If current escort staff are not competent to deal with difficult situations (and we are not suggesting this), the answer is to employ better trained and more senior staff on escort duties.

To permit use of discretion by escort staff is to accept the risk that the staff may make an incorrect judgment. However, providing the judgment is honest and reasonable, we feel that risk is preferable to the situation that pertains at present.

3.9.6 Instructions to Chubb Escort Staff

Chubb's PPM in relation to escorts states:

"The aim is to transport the prisoners securely and safely to the designated delivery point. While the prevention of escape is the primary goal, the safety of the general public, the prisoners and security officers is of paramount importance. Safety assumes precedence at all times."

There is an instruction forbidding escort staff to stop and divert from the scheduled route without authority. However, the instructions also envisage continuation of journeys being prevented or precluded in a variety of situations, and endeavour to give comprehensive guidance to staff. We use the word "*endeavour*" as we would regard it as impossible to envisage every possible situation and give exhaustive directions.

We were told that if Chubb staff consider that they "*must*" stop, they may do so – albeit while also being under an obligation to call the Police and to keep their base informed. Chubb staff have an advantage over departmental staff in that their vehicles are fitted with GPS panic buttons that can immediately alert their base to their location.

We formed the view that Chubb escort staff are in a happier position than departmental staff with regard to possible employment disciplinary proceedings, and that prisoners are better safeguarded thereby. Having said that, we would not discourage Chubb from amending its PPM to make clearer the discretion of staff to stop during escorts.

Variation No. 3 states:

"Responding to emergencies and incidents

Escorting staff must take all reasonable steps to ensure the health and safety of staff, prisoners and the general public.

In the event of an emergency (e.g. fire or accident requiring the immediate evacuation of the escort vehicle) escorting officers must take all reasonable

and practicable steps to preserve life and prevent escapes, in accordance with the provisions of the Operations Manual [Chubb PPM].

....

Emergencies/Incidents in Transit

In the event that the Service Provider's [Chubb's] staff become aware of an incident or emergency during the escort (where they are concerned about the life, physical wellbeing or security of a prisoner)), the escorting officers must follow the procedures detailed in the Operations Manual to take all reasonable steps to ensure the safety and security of the prisoner, subject to the imperative to maintain the safety and security of the Service Provider's staff and the public."

3.9.7 Departmental and Chubb Escort Staff Instructions

We have remarked separately on staff instructions issued by the Department and Chubb in the context of emergencies, as the PPMs of the two organisations are different. Those differences are illogical when both the Department and Chubb are focussed on the same objectives of secure confinement and safety.

We consider the staff instructions should be the same, and that the Department should be the leader in formulating any unified policy. The Department is the contracting authority with the statutory responsibility for prisoners.

3.9.8 Global Positioning System (GPS)

We have referred previously to GPS.

In section 3.2.3 "*Chubb Secure Vehicles*" we recorded that Chubb vehicles are equipped with GPS with panic buttons for staff, and that a full record of each journey is retained through the GPS system.

We were told that during 2006, a prison elected to equip "*the Green Bus*" with a basic GPS and alert system. It remained in place for a few months, but then National Office instructed that it be removed. The staff to whom we spoke were unaware of the reasons for the instruction, but regretted the GPS removal.

When asked the reasons, the Department stated that the purchase of GPS "*went ahead despite National Office indications that this should not happen. National Office did not want to encourage ad hoc use of GPS tracking and alert systems ahead of a policy being developed and specifications agreed*".

We regard the Department's approach as curious. Local initiative had installed a GPS system, presumably in ignorance of the "*indications*" from National Office that this should not happen. Once installed, however, the GPS removal was hardly likely to improve operational safety. Indeed, the reverse is the position. Whether or not the particular type of GPS was ideal equipment, it had worked for several months and had received the approbation of at least some front-line staff.

The new departmental Volvo bus is equipped with a facility for GPS and remote monitoring of the vehicle. This was not activated as at the time of our inspection – again, it would appear, as a result of National Office policy.

The Department has said that it intends to consider the installation of GPS in departmental vehicles at the conclusion of our investigation.

We consider there are benefits that could be gained from the installation of GPS in prisoner transport vehicles, although we accept that on certain routes these would be minimal.

3.9.9 Summary

We consider it unsatisfactory that there is no national policy and procedure with regard to:

- (i) Emergency evacuation drills and procedures for staff
- (ii) Key locking of cages
- (iii) Key locking of exterior doors
- (iv) Prisoner ability to open emergency exit hatches
- (v) Instruction to prisoners on emergency exit hatches and what to do in the event of emergency

Emergency procedures cannot be uniform given the wide variety of vehicles in use, but we regard the Department as having shown a passive attitude to potential problems.

We consider many emergency exit hatches would be too small for use by larger prisoners, or prisoners handcuffed together. It is unsatisfactory that certain emergency hatches did not open easily when a demonstration was requested.

We consider it is unacceptable that the rule against prisoners having the means of fire-raising in vehicles is not enforced effectively.

We were surprised that an incident occurred where a staff member was unable to use the emergency radio equipment.

We consider that escort staff discretion to stop prisoner transport vehicles should be reviewed.

We consider that the Department's instructions to its own staff should be consistent with those given by Chubb to its staff.

We consider that the Department's review of the merits of installing GPS equipment should proceed.

We recommend that the Department:

- (a) undertake a full review of the emergency facilities in prisoner transport vehicles;**

- (b) formulate evacuation procedures, and ensure all escort staff are trained in, and have drills to practise those procedures;
- (c) ensure that all cages can be opened without keys;
- (d) ensure that all emergency hatches operate easily without keys;
- (e) formulate a policy with regard to whether prisoners should be able themselves to operate emergency exit hatches;
- (f) formulate a policy for the instruction of prisoners about what they should do in the event of road traffic emergency;
- (g) enforce measures designed to prevent prisoners having the means to fire raise in vehicles;
- (h) ensure all escort staff are competent to use all emergency equipment on board (including communications equipment), and undertake continuing competency checks;
- (i) formulate national instructions to staff for response to perceived emergency situations and other incidents occurring during road transport. The policy should make clear that staff may confidently exercise reasonable judgment for the purpose of resolving incidents en route without fear of adverse employment consequences;
- (j) take all practicable steps to ensure that instructions to its own staff and those provided by Chubb to its staff are fully consistent in respect of the matters discussed in this section;
- (k) proceed with its consideration of whether GPS should be installed in its prisoner transport vehicles.

3.10 Prisoner Restraints

Regulation 125 of the Corrections Regulations 2005 states:

“125 Prescribed circumstances for use of handcuffs

Handcuffs may be applied on a prisoner –

- (a) *by an officer for the purpose of escorting a prisoner outside of a prison...*

The use of the word “*may*” implies a discretion that should be exercised reasonably. Consistent with this, the Department’s PPM performance standards state:

“ ...

4. Prisoners are assessed for their risk of escape and a determination is made as to whether handcuffs are to be used. The direction to use handcuffs must be included on the escorted outing transit conditions ...

7. Prisoners on escort are not placed in unnecessary discomfort”.

Similarly, prior to Variation No. 3, Chubb’s contract stated:

*“Prisoners **must not** be placed under mechanical restraint unless to do so is necessary in the interest of safety and security [our emphasis].”*

In accordance with the Department’s PPM, Corrections Officers handcuff particular prisoners during escort according to the discretion and direction of the relevant senior staff at individual prisons. The decision on handcuffing is taken before the escort is commenced, and set out in formal written instructions to escorting staff.

If there is a decision to handcuff, there are choices as to the manner. Usually, the prisoner will be handcuffed with hands in front. However, prisoners may be handcuffed to each other or (for special reason) with hands behind the back. In an uncaged vehicle, a prisoner requiring handcuffs will likely be handcuffed to a Corrections Officer.

Differing local practices have emerged. From discussions with front-line staff, we were told that at three prisons prisoners are “never” handcuffed during journeys in caged vehicles, except for particular reasons. The reasoning is that the cage itself provides sufficient security. Other prisons seemed to use handcuffing frequently. Practices also varied with regard to the manner of handcuffing.

The initial response of the Department to our written questions stated that all prisons used active discretion in deciding whether or not to handcuff during transport, and the manner of that handcuffing. The use of active discretion accords with the legislation and the Department’s PPM. Nevertheless, on further examination of the issue, the Department acknowledged that differing regional tendencies had developed. The Department accepted that some prisons normally handcuff prisoners whereas others do not. It agreed that some prisons favour handcuffing with hands in front, and a smaller number favour handcuffing prisoner to prisoner.

Chubb handcuffs all prisoners without exception (subject to medical conditions). This automatic handcuffing concerns us.

In accordance with the legislation quoted above, Chubb’s PPM requires escort staff to:

“Determine when use of restraints required on escort task”

Contrary to the straightforward implications of the legislation and Chubb’s PPM, Chubb’s actual practice involves no exercise of discretion. While noting this is “a Chubb decision”, the Department has explained this by saying:

“Following a number of escapes from Chubb Custody in 1999 and 2000 a directive was issued in conjunction with the Security Monitor Ash Edwards

*that any prisoner escorted by Chubb Officers **must** be handcuffed unless a medical condition or such prevented it[our emphasis].*

...

The Chubb policy is due to the predominantly High/Medium security status of the remand and unclassified prisoners Chubb transports and the need to maintain security of prisoners whilst being transported through built up, and slower traffic areas of Auckland."

The Department also carries prisoners of High/Medium security classification, and operates in urban areas. Nevertheless, the Department does not handcuff all prisoners. This is consistent with the discretion envisaged by the Corrections Regulations 2005.

If the Department is concerned that Chubb is unable to carry prisoners as safely and securely as itself, the remedy is to deal with the cause of that. The remedy is not to penalise all prisoners by handcuffing, irrespective of whether individual prisoners merit it or not.

The handcuffing of all prisoners in vehicles should not be an automatic practice. Handcuffing is uncomfortable for the prisoner, and diminishes safety in the event of traffic accident. Handcuffs should only be used if, following the exercise of active discretion, it is considered there is good reason in the case of that particular prisoner.

Chubb's usual practice on the manner of handcuffing also differs from that of the Department. Chubb normally handcuffs prisoners together. It considers that handcuffing one prisoner to another prisoner renders escape more difficult, than simply handcuffing each prisoner with hands in front.

The Corrections Regulations 2005 prohibit prisoners being handcuffed to any part of a vehicle itself.

Whatever the history, different practices have now emerged between the different prisons of the Department, and between the Department and Chubb, both with regard to the frequency of handcuffing and the manner. This should not be the case. With particular reference to Chubb, if a security contractor, its staff and equipment are assessed as able to deliver the same standards of reliability as the Department, practices should be the same.

It would be dangerous for any handcuffed prisoner to be in the same cage as a non-handcuffed prisoner due to the risk of fighting in which the handcuffed prisoner would be at grave disadvantage. However, we were advised of no circumstances where staff would consider it appropriate to mix handcuffed and non-handcuffed prisoners. One comment was that if a single prisoner merited handcuffing in a caged vehicle, he or she would probably also merit segregation from others. While no actual problem may have emerged to date, the Department may wish to consider whether a formal policy should be implemented against mixing handcuffed and non-handcuffed prisoners in the same cage.

The types of restraints that may be used are set out in the Corrections Regulations 2005. The Department is currently researching the question of whether better forms of restraint may be devised.

The Department has said that it is now developing national guidelines for the use of handcuffs, for both itself and Chubb.

Variation No. 3 now states:

“The Service Provider [Chubb] is to assess the risk posed by each prisoner and to make a decision whether to use mechanical restraints based on the information available.”

We consider it is unsatisfactory that different usual practices on handcuffing exist between the Department and Chubb, and between the various prisons of the Department. We consider the practice of Chubb to handcuff all prisoners is wrong.

We recommend that the Department review the different usual practices of handcuffing in prisoner transport vehicles, and establish clear national guidelines that will ensure consistency of decision-making.

3.11 Speed

Complaints have been made about prison vehicles travelling at excess speed, and we commented under section 3.3 “Seat Belts” about the problem of prisoners being thrown around in their cages.

3.11.1 Speeding Infringements

We asked the Department for the number of speeding infringements by departmental drivers while on prisoner escort duty. We were surprised to find that there is no national instruction for PPS Regions to record these. Some Regions record the information, and some do not. Any offending Corrections Officer pays his or her own fines. From what we were told, however, speeding infringements appear extremely rare.

It is unsatisfactory that the Department maintains no complete record of speeding infringements committed by departmental drivers while transporting prisoners. Breaking a speed limit is an offence, and multiple infringements would indicate the driver is unfit to be employed in that capacity.

Chubb does keep full records of all allegations of speeding. Its GPS systems enable it to check the validity of any alleged speeding infringement, and also to investigate any general allegation of excess speed made by a prisoner, or by a member of the public observing a Chubb vehicle.

As at 19 January 2007, five different Chubb drivers had been given speeding infringement tickets (by speed camera) since 1 July 2005. None had repeated the offence. While there should be no speeding infringements, we regard the number of infringements as insignificant given the number of escort journeys.

With regard to other allegations of excess speed, once the GPS systems had been checked, Chubb found no disciplinary action was warranted.

Chubb’s practice appears satisfactory.

We recommend that the Department institute a policy of recording all traffic offences committed by its drivers when transporting prisoners.

3.11.2 Speed as a Subjective Measure

The Department imposes no special speed restrictions on its drivers by policy. It has (entirely reasonably) commented that both its drivers and those of Chubb *“are expected to exercise sound judgment with respect to the speed they proceed at”*.

We consider that for present purposes speed should be regarded as a subjective measure. The effect of poor or winding roads will appear magnified for those in prisoner cages due to the absence of windows and general environment, and will tend to give the impression of excessive speed. The actual speed of a vehicle may be well within legal speed limits and not unsafe in terms of road-holding, but still produce significant discomfort for prisoners.

On a metal bench, it takes very little to cause a prisoner to slide when the vehicle takes a bend. In the absence of seat belts, grab handles or armrests, prisoners are likely to collide with one another or the sides of the cages. Thus, although legal speed limits may only rarely be exceeded, that does not mean there is no problem at all with speed. Prisoners are entitled to be carried in a reasonable fashion having regard to the conditions in their cages.

The Department has said, *“Drivers are aware that accidental contact between prisoners can cause friction and accordingly drive carefully to avoid prisoners being thrown about in escort vehicles”*. From comments received from prisoners, we are inclined to regard this as a departmental hope, rather than an invariable practice.

Virtually all prisoners said that they were thrown around in rear cages. We were told that this becomes very tiring on long journeys, and prisoners become irritable with each other as a result. Prisoners considered some drivers *“better”* than others, and the identity of the driver could make a significant difference to the quality of journey.

We would encourage all drivers of vehicles carrying prisoners to drive with care bearing in mind the conditions in the cages. However, we do not consider that we can usefully make any recommendation.

3.12 Duties Preliminary to Transport

The Department's PPM requires prisoners to have their needs assessed in respect of segregation and other matters before placement in a prisoner transport vehicle. Written escort instructions are prepared by the Custodial Services Unit of the prison, and instructions given to the escort staff (both Chubb and departmental). These instructions may cover any aspect of the particular transport assignment, and will include any requirements for segregation and handcuffing. We comment further on this decision-making in section 3.13.6 *“Level of Decision-making”*.

Sometimes, a prisoner will be fearful of being placed in the same cage as another prisoner for reasons not previously known, and it is not infrequent for a prisoner to

voice his or her concerns to escort staff just as he or she is being placed in a vehicle. Indeed, a prisoner who does not know which other prisoners are to be carried may have had no earlier cause to express any worries. We were advised that escort staff in such circumstances seek further management instructions. The problem will not simply be ignored.

Where a prisoner is transferred from Police custody to that of the Department (or Chubb as the Department's security contractor) or *vice versa*, any information relevant to safety and security risks should be given on transfer.

The foregoing procedure is straightforward, and should be sufficient to protect prisoners. For this reason, we have not found it necessary to review the documentary system in depth as part of this investigation. Nevertheless, that is not to say the process is fail-safe as was shown by the death of Liam Ashley, and we consider the current review of procedures by the Department is prudent.

All prisoners are searched immediately before transport. All personal property should be removed from them, including pens, cigarettes and means of lighting them, and other items which could be used as weapons or for self-harm. In this respect, we are obliged to refer back to our comments in section 3.9.3 "*Fire Risk*" which suggest that this searching in practice is deficient.

The vehicles are also searched in case previous occupants have concealed anything. However, the bare nature of the metal cages minimises the opportunity for that.

3.13 Mixing of Prisoners

3.13.1 General

There are circumstances in which it is necessary or desirable for certain prisoners to be detained separately from other prisoners.

The Corrections Regulations 2005 contain provisions requiring:

- ? male and female prisoners to be kept in separate quarters;
- ? young prisoners under the age of 18 normally to be separated from older prisoners;
- ? accused prisoners who have not yet been convicted (including detainees under the Immigration Act 1987) normally to be kept apart from those who have been convicted;
- ? co-accused awaiting trial and committed in the same case "*as far as practicable*" not to be permitted to communicate with each other.

Other reasons why a prisoner should be held separately include:

- ? likelihood of bullying by other prisoners (for example, child sex offenders);

- ? gang affiliation requiring separation from rival gang affiliates;
- ? mental illness or risk of self-harm.

A need for separation in prison does not cease during transport. A prisoner transport vehicle is essentially a prison in microcosm.

Specific segregation policies cannot provide for every conceivable scenario, and novel circumstances will occur from time to time. It is essential that relevant staff have discretion to deal with each case on an individual basis, and actively exercise that discretion to prevent dangerous or unsafe situations.

Despite the death of Liam Ashley, and the recent allegation of prisoner assault on 19 April 2007, the history of reported incidents indicates that major assaults in prisoner cages are extremely rare (see section 3.19 *“Previous Incidents / Complaints”*). To this extent, the evidence shows that the system for separation works reasonably satisfactorily as a safeguard against serious harm occurring during transport.

We qualify our remarks by *“reasonably satisfactorily... against serious harm”* as from anecdotal accounts it seems that minor incidents of assault and intimidation occur regularly in the rear of prison vehicles. Minor incidents between prisoners are unfortunately part of prison life.

3.13.2 Young Prisoners

The fact that Liam Ashley as a young prisoner was being transported together with adults has been seen as contributing directly to the circumstances which allowed the fatal assault on him. Although it is an inescapable conclusion that Liam would not have died if he had been transported separately, a difference of age does not itself provide a reason for an adult prisoner to assault any younger prisoner with whom he or she comes in contact. Certainly the young are particularly vulnerable to intimidation and assault, but not every adult prisoner will be motivated to behave in such a manner.

With regard to young persons held in custody, article 37(c) of the United Nations Convention on the Rights of the Child (UNCRC) states:

“Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so....”

“Child” is defined in article 1 as *“every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”*. The Age of Majority Act 1970 sets the age of majority in New Zealand as 20 years.

Similarly, article 10(2)(b) and article 10(3) of the ICCPR state:

“10(2)(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication....

(3) ... Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

New Zealand is a signatory to the above Conventions but has entered a reservation to each, saying:

- (i) in respect of the UNCRC, *“The Government of New Zealand reserves the right not to apply article 37(c) in circumstances where the shortage of suitable facilities makes the mixing of juveniles and adults unavoidable; and further reserves the right not to apply article 37(c) where the interests of other juveniles in an establishment require the removal of a particular juvenile offender or where mixing is considered to be of benefit to the persons concerned.”*,
- (ii) in respect of the ICCPR, *“The Government of New Zealand reserves the right not to apply article 10(2)(b) or article 10(3) in circumstances where the shortage of suitable facilities makes the mixing of juveniles and adults unavoidable; and further reserves the right not to apply article 10(3) where the interests of other juveniles in an establishment require the removal of a particular juvenile offender or where mixing is considered to be of benefit to the persons concerned.”*

With regard to the mixing of young and adult prisoners, an unsatisfactory difference exists in the procedures of the Police and the Department. The Police regard *“young prisoners”* as those aged 16 and under, and they treat prisoners aged 17 and over as adults. The Department’s age for distinction is one year older. Thus, a person aged 17 in the custody of the Department is still regarded as a *“young prisoner”*. The Police approach is consistent with the Children, Young Persons, and Their Families Act 1989, which defines a *“young person”* as a person over the age of 14 years but under 17 years unless the person is, or has been, married or in a civil union. (A younger person is defined as *“a child”*.)

The result is that segregation of a 17 year old prisoner while in the Department’s custody will cease if the person passes into the custody of the Police. Equally, a 17 year old prisoner who has been held with adults while in the custody of the Police will immediately be segregated if passed into the custody of the Department. We were told that the latter can present problems for the youth. Fellow prisoners may wrongly assume that the youth has suddenly been segregated because he or she has become an informer, or for some other reason that would earn the disapprobation of mainstream prisoners.

Regulation 179(1)(b) of the Corrections Regulations 2005 provides that prisoners under the age of 18 *“must... when outside a prison, be kept apart from prisoners who are 18 years or older, where practicable”*.

By direction of the Minister of Corrections the foregoing requirement for separation was made mandatory for both the Department and Chubb following the death of Liam Ashley, and the exception of *“where practicable”* was to be disregarded. It is

nevertheless appropriate to record how the system operated in practice before that direction.

What was “*practicable*” in any given circumstances depended on the discretion of staff.

If segregation during transport could not be achieved within the cages of one vehicle, the question arose whether to employ a second vehicle or to mix young and adult prisoners in the one cage. All prisons that were consulted in areas where escorts are undertaken by departmental staff (as opposed to Chubb) advised that a second vehicle was invariably arranged.

Chubb’s approach differed. Traffic problems in Auckland can result in considerable hold-ups for vehicles, and Chubb vehicles operate over long distances on certain routes. Although Chubb would be aware of the number and mix of prisoners to be transported to court, the final tally (and ages) of prisoners to be transported from court could not be known until the end of the court day. Chubb considered that time factors often rendered it not “*practicable*” to despatch a second vehicle.

“*Practicable*” also had to be considered by Chubb in the light of regulation 20 of the Corrections Regulations 2005, which provides that, save by special arrangement or “*in exceptional circumstances*”, prisoners may not be received in, or discharged from, a prison before 7.00 am or after 8.00 pm.

To put the foregoing in context, 16% of youths were not segregated during transport by Chubb during the financial year 2005-2006. This represented a monthly average of 12 youths out of 75.

Prior to Variation No. 3, under its security contract Chubb was to regard any prisoner under the age of 20 years as “*at risk*” and manage the prisoner accordingly. Furthermore, “*unless otherwise agreed*” with the Department, Chubb was required to keep separate prisoners under the age of 20 years from other prisoners. Variation No. 3 now requires Chubb to keep separate prisoners under the age of 18 years from those aged 18 years and over.

In all the circumstances, no further mixing of prisoners under and over the age of 18 years should occur where prisoners are being transported by the Department or Chubb, and thus we make no recommendations in this respect.

Nevertheless, we consider the age distinctions for adult and young prisoners should be consistent as between the Department and the Police.

We recommend that the Department pursue consultations with the Police (and any other appropriate agencies) with a view to making consistent the age at which the Department and Police treat young prisoners as adult prisoners.

3.13.3 Male and Female Prisoners

Male and female prisoners are held and transported physically separated from each other. However, even if physically separated, the reality is that female prisoners are

at risk of taunting from male prisoners if carried in the same vehicle and if in visual and/or audible contact.

An issue also arises with regard to the gender of escorting staff.

Departmental Practice

Male and female prisoners may be carried in the same departmental vehicle, although long transports of female prisoners are mostly undertaken by air.

Basic human requirements make it desirable that at least one member of the escort staff is of the same gender as prisoners being carried to assist with any special prisoner difficulties associated with gender. One female prisoner said that she was very nervous of being carried only by male staff through rural New Zealand because she felt intimidated as a lone female.

The general local practice of prisons is to assign escorting staff corresponding with the gender of the prisoners being carried. However, the Department has no national policy, save for women prisoners being escorted to hospital. If the purpose of the hospital journey is to give birth, only female escorting staff are used. In the case of other reasons for hospital transport, at least one staff member must be female. Hospital transport is normally undertaken in a normal passenger car or other uncaged vehicle in which there is never any joint carriage of male and female prisoners.

Chubb Practice

Prior to Variation No. 3, Chubb's security contract required it to:

"Ensure that where possible, when women Prisoners are being escorted, a female Security Officer is present throughout. (Mandatory for collections from women's prisons and, where practicable, for all other situations)."

Variation No. 3 substantially repeats the provision.

Chubb has provided a dedicated vehicle for the new Auckland Region Women's Corrections Facility. At least one female escorting officer is always on board.

For Chubb transports from court, the presence of a female prisoner is not always known in advance as the tally of custodial orders cannot be known until the end of the court day. The court may be in a relatively remote area, rendering the supply of a second vehicle impracticable. In these circumstances it may be necessary to put female and male prisoners in the same vehicle. This appears unavoidable. Nevertheless, the design of Chubb vehicles allows male and female prisoners to be separated physically and visually.

Where the need to carry a female prisoner is not known in advance, a female escort officer may similarly not be present. This again seems unavoidable. Chubb has a limited number of female escort officers.

Conclusion

In all the circumstances, it appears that current arrangements are reasonably satisfactory with regard to carriage of males and females, given the inevitable element of uncertainty about what custodial orders will be made by courts on any particular day.

3.13.4 Immigration Act Detainees

By regulation 184 of the Corrections Regulations 2005, persons detained under the Immigration Act 1987 (immigration detainees) are treated as remand prisoners. It has been suggested that immigration detainees should not be transported in the same vehicles as persons accused or convicted of crime.

We were advised that the large number of immigration detainees requiring transport, when considered in conjunction with ordinary prisoner movement, renders it impossible for the Department to achieve separate transportation. Extra transport funding would be required.

We record the foregoing for the sake of completeness, but have no recommendations. The extent to which it may be desirable for immigration detainees to be kept separate from the remainder of the prison populace is outside the scope of this investigation.

3.13.5 Court Facilities

Segregation during transport may be of limited effect because it is liable to cease at court due to the lack of enough court cells to maintain it. (We except separation of male and female prisoners for which arrangements are always contrived.) This lack of cells is beyond the power of the Department to address.

The problem may be unavoidable due to court architecture, but it renders continuing segregation a matter of chance once the confines of a prison are left for court hearings. Non-segregation in court cells is less likely to result in problems than non-segregation in prisoner transport vehicles as court staff have greater opportunity to observe prisoners, and to intervene in any developing situation as necessary. Nevertheless, the position is undesirable.

We recommend that the Department explore possible solutions with the Ministry of Justice.

3.13.6 Level of Decision-making

A Unit Manager (a senior Corrections Officer) or “*delegated officer*” issues the final instructions to escort staff for transport from prisons. In practice, a wide range of staff makes the relevant decisions due to the breadth of delegations.

As a first step, the needs of each prisoner requiring transport (and hence the conditions under which the prisoner should be transported) are set out in a form specific to that prisoner. The form is normally completed by the prisoner’s own Unit

Manager or another “*delegated officer*” from the prisoner’s unit. We consider this is a desirable practice. Personal knowledge of the prisoner by the responsible officer contributes to good decision-making.

When a number of prisoners are to be transported in the one vehicle, the forms are collated and final transport instructions prepared for the escort staff. Depending on the delegations at the particular prison, that task may be undertaken by the Manager of Custodial Services, a Corrections Officer (the most junior level) in the Receiving Office, or at any level in between.

Some differences in the seniority of officers who formulate escort instructions are to be expected. Some prisons are very much larger than others, making it sensible to delegate downwards. Indeed, in a large prison with numerous transports, if one senior officer had to take all transport decisions, we suspect the person would have no time to do any other work.

Provided always that specific transport instructions are followed, the decision to place particular prisoners in particular cages is that of the escort officer in charge of the escort. In the case of departmental staff, the person is likely to be a Corrections Officer, Senior Corrections Officer or Principal Corrections Officer. The same applies for Chubb transports, save where Chubb is advised of special problems in which case Chubb’s escort officer in charge will seek the direction of Chubb’s Operations Manager or Operations Controller.

We have been made aware of no difficulties that could be said to arise from the different levels of decision-makers in the various prisons.

3.14 “At-Risk” Prisoners

Some prisoners are especially at risk during transport due to likely antagonism from other prisoners, tendencies to self-harm or other reasons. Safe transport requires any risks to be properly identified insofar as this is reasonably possible. The Department’s PPM states:

“Careful consideration must be given to the appropriateness of placing an at-risk prisoner on escort to another prison. Where such an escort is necessary and adjudged safe, the at-risk file and all relevant advice and information must be provided to escorting staff.”

This is appropriate policy, but human error on the part of staff, and unpredictability on the part of prisoners, mean no policy can guarantee safety absolutely.

Short of conveying all prisoners in secure individual cages, risk of harm inflicted by other prisoners cannot be eradicated. Neither can the possibility of self-harm be altogether eliminated for those determined to do so. Persons wishing to self-harm sometimes demonstrate an horrific ingenuity. Nevertheless, good prisoner management can minimise these risks.

Good management of an “at risk” prisoner depends first on the prisoner’s identification as such. We have previously referred to standard forms that are completed in an endeavour to achieve this. Additionally, staff can (and do) review

risk status at any time if circumstances render this desirable, and the assessment of risk status is a continuing process.

The Police are similarly required to assess (and continue to monitor) the risk status of all prisoners in their care.

An agreed protocol has been signed by the Department, the Police, the (then) Department of Child Youth and Family Services (since made part of the Ministry of Social Development), and the Ministry of Justice to the effect that information indicating an increased risk to any person in custody must be passed on when custody is transferred from one agency to another. There is a further Memorandum of Understanding between the Department and the Police setting out circumstances in which information on a variety of matters should be shared. This includes information relevant to prisoners' health, safety and secure custody. We approve of these arrangements and processes.

The procedures appear satisfactory in theory, but we are obliged to reiterate our comment in section 3.9.3 *"Fire Risk"*.

"It appeared that prisoners sometimes supply each other with cigarettes through the dividing mesh of cages. One of the prisoners who claimed to have received cigarettes in this way was segregated, which raises particular concerns for those segregated for fear of self-harm."

As regards the actual mode of carriage of "at risk" prisoners, we repeat our comments in section 3.2.2 *"Departmental Secure Vehicles"* and section 3.2.3 *"Chubb Secure Vehicles"*.

"The Department has said that 'at-risk' prisoners are always carried in cars or uncaged vans, or otherwise in cages that can be, and are, observed by escort staff."

...

In an effort to deal with 'at-risk' prisoners appropriately, Chubb normally carries them only in the front cages of vehicles. The front cages do offer some opportunity for observation. However, we are only able to say 'some opportunity' as we are not persuaded visibility is fully adequate in all Chubb vehicles even for front cages. Yet again, we must refer to the case of Liam Ashley to illustrate the point."

At the start of our investigation, the frequency of Chubb's actual observation was said to be 'dictated by the information on the "Escort an At Risk Prisoner" form, or based on the degree of risk that is advised to Chubb...' That practice did not protect Liam Ashley, and it has since changed. As from 11 December 2006, the Department and Chubb agreed that Chubb would carry out observations of prisoners in front compartments every 15 minutes, whether or not an at-risk prisoner was being carried."

Variation No. 3 contains a provision requiring Chubb to place prisoners in vehicles 'with the object to minimise risk for prisoners'."

3.14.1 Medical Conditions

Personal medication is not carried by prisoners during transport in a caged vehicle, with the exception of asthma and angina medication. If a prisoner may require medication urgently, the person is carried in a car or other vehicle where an escorting officer may hold the medication and be immediately on hand to administer it. Ambulances may be used.

3.14.2 Mentally Ill Prisoners

Prisoners may be mentally ill. The degree of this may vary substantially. The condition may require treatment at general practitioner level (e.g. for minor depression) or compulsory treatment under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

With regard to mental health, the Department's PPM provides:

"If the Medical Officer of the prison has reason to believe the mental health of a prisoner has been or is likely to be injuriously affected by continued detention or by any conditions of detention, the Medical Officer must promptly notify the Prison Manager in writing, with any recommendations the Medical Officer thinks fit."

Departmental staff assess the most suitable method and conditions for the transport of a mentally ill prisoner, as for any prisoner suffering a health problem. In an ordinary caged vehicle, a mentally ill person may be vulnerable to taunts from other prisoners, and may find the environment particularly claustrophobic and upsetting. Other prisoners may be upset by the person. Accordingly, it is the practice of prisons to transport individually any prisoner suffering a significant mental illness or disorder.

Where a prisoner is considered sufficiently mentally ill to merit hospital treatment, the Department arranges conditions of transport from prison to hospital in consultation with the relevant mental health professionals. Thereafter, if the person is compulsorily detained at hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992, the responsibility for future movements related to the person's treatment passes from the Department to the hospital.

If a prisoner patient subject to compulsory detention in hospital is required at court, the Department (or Police) will undertake that transport in accordance with the direction of the court.

Chubb may transport a prisoner to or from a mental health unit or forensic psychiatric unit. Under the terms of its contract, Chubb may only move one such prisoner in any one vehicle.

Furthermore, Chubb and the Mason Clinic Regional Forensic Psychiatry Services have agreed a Memorandum of Understanding on procedures to be followed when Chubb collects prisoners from, and delivers prisoners to, the Mason Clinic. The declared object is:

"...to facilitate the provision of effective and efficient escort and custody services by:

- a) *Documenting the procedures to be followed by officers of both parties, and*
- b) *Clearly defining the responsibilities of each party.”*

We consider that the Department has appropriate policy and procedure in place with regard to the transport of mentally ill prisoners.

Nevertheless, we record that a doctor specialising in mental health has expressed concern about prisoner patients removed from hospital for the purpose of court hearings. A patient may be forced to undergo a long journey, and possibly be incarcerated in a police cell overnight near the court. The doctor was concerned that such transport sometimes results in great distress for the patient, despite any best endeavours by custodial staff to provide care. A medical certificate may be issued to the effect that a patient is unfit to attend court, but there will always be instances where the condition does not quite meet that threshold. The doctor suggested that court hearings for mentally ill in-patients should be transferable to venues near their hospitals.

3.14.3 Information at Court

The Department has substantial information about prisoners who have previously spent significant time in custody (whether on remand or as sentenced prisoners) for the purposes of assessing their segregation and other needs. However, the Department (and Chubb) may have little or no information about a prisoner at the time the prisoner is first subject to a custodial order. A lack of knowledge makes it difficult or impossible to make any reliable decision with regard to the prisoner's needs.

Risks may sometimes become apparent in the course of the court proceedings that result in a custodial order. For example, a lawyer may state that his or her client is being bullied or has a particular health problem, or a judge may comment on the desirability for special security steps. Unless courtroom custodial staff record and action these remarks, relevant precautions may not be in place for the prisoner's transport away from court or for the prisoner's initial period of detention.

A court may direct that a written note be placed on a prisoner's warrant detailing any special needs, but this will not necessarily occur for every concern raised.

Departmental or Chubb staff may act as courtroom custodial officers. There is a general duty on them to keep the risk status of each prisoner under review, but there is no specific requirement for them to ensure comments at court related to a prisoner's safety or well-being are recorded and actioned.

Prisoners' lawyers often take it upon themselves to advise court custodial staff and the Department of any risks associated with their clients. Beyond this, our impression is that the process relies on personal diligence by individual court custodial staff to take heed of what occurs during hearings. We consider this to be unsatisfactory. This is particularly so for those courts serviced by a security

contractor, whose employees (unlike Corrections Officers) cease their responsibilities at the prison gate.

It would be placing an unreasonable burden on staff to require them to take a close note of the entirety of court proceedings on the off-chance of a remark being made about a prisoner's safety. Nevertheless, if a judge orally or in writing expresses concern about the welfare of a prisoner, or the prosecution or defence lawyer does so, we are of the view that the courtroom custodial staff (departmental and Chubb) should take heed of this. We consider that the Department should provide formal guidance and instructions to departmental and Chubb courtroom custodial staff accordingly.

Our remarks are not intended to detract from any responsibility of the person having the concern to bring it specifically to the attention of courtroom custodial staff.

We recommend that the Department specifically require its courtroom custodial staff to record statements made at court by judges and lawyers where this is relevant to transport or other custodial risks, and require the courtroom custodial staff to liaise with escort staff who should seek additional transport instructions as appropriate.

3.15 Driver Hours

Escort staff may work long hours. Individual staff may be required to collect prisoners from a prison for court, spend a day at the court (including time guarding prisoners in the dock if separate staff are not employed at that location), and then drive back to the prison with the prisoners.

Length of duty for staff may have a direct bearing on safety. Tired drivers do not make good drivers.

Section 70B of the Transport Act 1962 sets out driver hours rules (which apply to drivers carrying passengers under a transport service licence). It reads:

"70B(1) No person shall drive any heavy motor vehicle or any vehicle that is being used under a transport service licence (other than a rental service licence) or in circumstances in which it ought to be being used under such a licence, or any 2 or more such vehicles, and no person shall operate any such vehicle or vehicles, in such a manner that any one person -

- (a) Drives any such vehicle for a continuous period exceeding 5½ hours; or*
- (b) In respect of any 24-hour period during which the person drives any such vehicle -*
 - (i) Spends more than a total of 11 hours in driving any such vehicle; or*
 - (ii) Works or is on duty for more than a total of 14 hours within that period; or*

(iii) *Does not have at least 9 consecutive hours off duty within that period (not being a 24-hour period that commences during the currency of any such 9-hour off duty period); or*

(c) *Does not have at least 24 consecutive hours off duty after driving for 66 hours or being on duty for 70 hours, whichever first occurs (which 66-hour or 70-hour periods shall be reckoned as from the close of the most recent 24 consecutive hours off duty and shall include all periods of driving or being on duty, as the case may be).*

...

(3) *The requirements of this section shall apply in respect of any vehicle referred to in subsection (1) of this section whether or not the vehicle is engaged in any transport service or is carrying any load or passengers at any time.*

(4) *The Director [of Land Transport] may grant partial or total written exemptions from some or all of the requirements of this section in respect of any driver or operator, any class of driver or operator, any service or occasion, any class of services or occasions, or any time spent on any activity or employment, and may impose conditions relating to the exemption and the records to be kept of driving or time spent in terms of the exemption.*

(5) *Any exemption granted under subsection (4) of this section may be amended or revoked at any time by the Director in writing. ..."*

Section 70C contains corresponding provisions to the effect that drivers subject to section 70B shall maintain logbooks of driving and duty hours. It is a criminal offence to contravene section 70B or section 70C of the Transport Act 1962.

The driver hours provisions in section 70B apply to departmental drivers, and standard instructions to staff include reminders of it.

In answer to our initial inquiries, the Department stated that Chubb (unlike itself) was not subject to driver hours rules in section 70B in respect of its Ford Transit, Fiat Ducato and Isuzu prisoner transport vehicles. It also appeared that Chubb drivers of these vehicles did not maintain logbooks in accordance with 70C of the Transport Act 1962.

At that time, in response to our concerns about possible excessive drivers' hours, Chubb said that it had an in-house policy to the effect that drivers should not work more than 60 hours per week, plus a half day on Saturdays approximately once every three months.

Given section 70B(4) of the Transport Act 1962, it was possible that Chubb had obtained an exemption from section 70B and section 70C by application to the Director of Land Transport. However, we were concerned about the basis for this and sought further details. Eventually it transpired that Chubb had no exemptions, and Chubb accepted the legislation applied to it. Accordingly, it was the position that Chubb had been operating outside the law regulating driver hours and logbooks.

As soon as this became clear, the Department issued formal instructions to Chubb that it should commence compliance with section 70B and section 70C of the Transport Act 1962. We were advised of this instruction by letter dated 13 April 2007.

Section 18(6) of the Ombudsmen Act 1975 provides:

"If, during or after any investigation, an Ombudsman is of opinion that there is substantial evidence of any significant breach of duty or misconduct on the part of any officer or employee of any Department or organisation, he shall refer the matter to the appropriate authority."

We consider that *"there is substantial evidence of any significant breach of duty or misconduct on the part of [Chubb]"*. For the purposes of the Ombudsmen Act 1975, Chubb and its employees are treated as employees of the Department. Accordingly, we shall refer the foregoing circumstances to Land Transport New Zealand (LTNZ) immediately following the making of this Report to Parliament.

We decided that it was not appropriate for us to investigate the circumstances that lay behind Chubb's lack of heed to section 70B and section 70C of the Transport Act 1962. We are of the view that is something for LTNZ to consider.

We do not consider that it is incumbent on the Department to check and confirm that Chubb is operating in accordance with every legislative provision that may relate to the service Chubb provides. Chubb is an independent contractor, and the Department may reasonably expect Chubb to adhere to the normal law of the land. Indeed, we refer to section 1.1 *"Security Contract and Legislation"* where we said, *"...we are satisfied that the contract, even before Variation No. 3, required legislation for the time being to be observed by Chubb"*.

In the circumstances, and noting that the Department has already taken action, we make no specific criticism of the Department in failing earlier to realise that Chubb was erroneously not heeding section 70B and section 70C of the Transport Act.

We see the issue of driver hours as important.

In section 7.1 *"Food and Water"*, we commented on the Auckland to Kaitia route. In order to arrive at Kaitia District Court by 9.30 am, we envisaged a prisoner leaving an Auckland prison at 5.00 am. A full court day may prevent the return journey starting until about 5.00 pm, resulting in arrival back at the prison at about 9.30 pm. 5.00 am to 9.30 pm gives a period outside the prison of 16½ hours. Additionally, Chubb staff will be on duty for the period of collection and delivery of the escort vehicle to and from their base that garages it.

Prisoner transports of such potential duration concern us. Assuming no change of shift, the day would be exhausting and Chubb escort staff would be on duty for more than the usual daily legal maximum of 14 hours.

The Department and Chubb are entitled to seek exemptions from the usual driver hours rules from the Director of Land Transport. Nevertheless, we consider that all drivers of prisoner transport vehicles should comply with usual permitted driver

hours as set out in legislation in the interests of safety for the occupants of those vehicles, and other road users.

Having said that, we accept that it may be prudent for an exception to apply where a prisoner transport vehicle may be prevented from adhering to its expected schedule by reason of unforeseen circumstances beyond the control of the driver. It would not be reasonable to expect a vehicle containing prisoners to be stopped and left unattended at the side of a road simply because the driver's permitted hours had expired. However, exceptional circumstances are to be distinguished from administrative convenience, and from excessive driver hours resulting from a known or foreseeable tight schedule. In our view, foreseeable excessive driver hours should be met by the allocation of a second escort crew.

We recommend that the Department take all practicable steps to ensure that all prisoner transport vehicle drivers employed by itself and any security contractor comply with usual permitted driver hours set out in section 70B of the Transport Act 1962 and/or other legislation for the time being, subject to any exemption that may be obtained from the Director of Land Transport to cover exceptional circumstances that could not reasonably be foreseen.

3.16 Summary of Prisoner Views

It is prisoners themselves who are directly affected by the conditions of transport. It is right that due respect should be given to their opinions. Prisoners do not cease to be human beings by virtue of judicial incarceration. The overall view of prisoners to lengthy road transport is captured in the following expressions used by them:

- ? Horrible
- ? At the end, I feel wrecked
- ? Chucked around like a piece of dirt
- ? Felt as if I had piles
- ? Disgusting
- ? Treated worse than animals
- ? Dread transfers
- ? Scary
- ? Be stuffed in an accident
- ? Easy to have panic attack

In the light of the transport conditions that we have found, we find no reason to believe that they were exaggerating their feelings.

3.17 Reporting

No legislation or policy will be fully effective unless measures are in place to ensure that those at the front line put the rules into practice according to the letter and spirit. Management scrutiny is essential.

We consider that proper management oversight demands a fuller record of each prisoner movement than is currently required. There should be routine scrutiny of each record by the immediate supervisor of escorting staff, and at a more senior

level in the event that a record shows something untoward occurred. Otherwise, management will not be in a position to know if incorrect practices or exercises of discretion are developing.

The Department and Chubb record basic information about prisoner transports in regard to itinerary, identity of prisoner, classification, and special transport conditions. Chubb's records are known as "*Escort Route Sheets*", and are reviewed on a monthly basis by the Security Monitor.

Neither departmental nor Chubb records show which prisoners are carried in particular cages. In the case of the Department, where a group of prisoners is being transported at one time in several vehicles, the identities of prisoners being carried in each particular vehicle are not noted. We regard this as information that should be recorded in order that management may easily check that particular prisoners were carried separately or otherwise appropriately.

The need for this is illustrated by one prisoner who mentioned that on one journey she had been placed in a rear cage that permitted no surveillance by staff, although the front cage immediately behind the driver's cab (which did permit surveillance) was vacant. We consider that discretion in allocating cages by escort staff should be exercised in favour of those cages permitting surveillance, and this is no more than common sense. However, at the moment, management is able to check neither whether direct instruction nor "*common sense*" is being followed.

The provision of food, water and rest breaks is not included in records, except in the context of general itinerary. We consider that provision or non-provision of all facilities that affect humane conditions of transport should be recorded as normal procedure.

In section 3.9.5 "*Instructions to Departmental Escort Staff*", we noted the definition of "*incident*" set out in the Department's PPM, and that all "*incidents*" must formally be reported. "*Incident reports*", however, are just that. They record special occurrences rather than general conditions inside vehicles. Prisoners may have become hot or thirsty to the point that conditions were unreasonable, but only in an extreme case would we expect an "*incident report*" to be submitted under the present system.

Chubb has a similar reporting procedure whereby Chubb escort staff report any incident to the Chubb Operations Manager. This Manager then notifies the Security Monitor who considers the matter and takes note of any follow-up action by Chubb. The relevant prison manager is also advised. Again, the system is directed to special events rather than the recording of routine or general conditions.

We recommend that:

- (a) the Department ensure all escort records are the subject of management scrutiny;**
- (b) the Department include in escort records:**

- (i) the provision or non-provision of all facilities required for humane transport, including food, water and rest breaks; and
- (ii) the occurrence of any unreasonable conditions having, or liable to have, a deleterious effect on prisoners (such as extremes of temperature).

3.18 Security Contractor Staff Training

Section 167(2)(c) of the Corrections Act 2004 provides that training of security officers employed by a security contractor must be:

- “(i) to the standard appropriate for the particular position; and*
- (ii) to a standard no lower than the standard of training received by any security officers employed by the chief executive [of the Department]”.*

At the time of our investigation, no security officers (as opposed to Corrections Officers) were employed directly by the Department, and the requirement of paragraph (ii) currently has no practical relevance.

We inquired about the training of Chubb’s escort and courtroom custodial staff, and were advised that this corresponds to training given to Corrections Officers to the extent that their functions are similar. (Corrections Officers have many more duties in prisons than security officers employed only for escort and courtroom custodial services.) The course was designed for Chubb by the Department using its own training module as a base. Chubb delivers the training, but that training is reviewed by the Security Monitor. The course lasts 60 days.

It has been suggested that Chubb staff are not sufficiently specialised, as individual employees may be transporting a prisoner one day, and guarding bank cash the next. We are advised that in fact Chubb’s prisoner escort and courtroom custodial staff are employed **solely** on those duties, and **do not** mix them with other functions. Accordingly, individual Chubb staff are in a position to acquire a considerable amount of personal expertise with regard to prisoners.

As at 19 January 2007, Chubb was in discussion with the Security Monitor with regard to a more comprehensive training package in respect of “*at risk*” prisoners.

We have not examined in detail the content of the training module delivered to Chubb staff. However, we have been given no reason to believe that this training is inadequate (subject to our concerns on emergency procedures summarised in section 3.9.9 “*Summary [of Emergency Procedures]*”).

3.19 Previous Incidents / Complaints

The case of Liam Ashley provided a stark example of what can occur in a prisoner transport vehicle. However, it appears few incidents of fighting or assault are formally reported by staff or prisoners. In terms of general safety of prisoners during

transport, even the death of Liam must in fairness to present and former staff of the Department, and of Chubb, be placed in context.

As at 22 December 2006, we were told that there had been six occurrences of fighting or assault since 1 July 2005 (aside from that involving Liam Ashley) which had come to the attention of the Prison Inspectorate. Of those, none involved serious injury, although one prisoner received a bloodied head and face and was taken to hospital for assessment. Two occurred in departmental vehicles, and four in Chubb vehicles. To that must now be added the alleged assault of 19 April 2007.

Otherwise, there was only one formal complaint to the Prison Inspectorate about transport issues. A pregnant female prisoner transported by Chubb complained of hot conditions.

Complaints relating to transport may be made by prisoners direct to their prisons or to National Office. Although any such complaints would be included among all other complaints recorded on the Department's computer system, the Department has said that it is not possible to identify transport complaints in particular by a computer search. A manual inspection of all records would be required. We accept the Department's statement that this would not be practicable. The Department has said that it intends to review its methods of information storage and collation to enable this type of data to be extracted in the future.

Although no total count of transport incidents or complaints can be given, inquiries were made during the prison visits that were undertaken for the purposes of our investigation. While the personal recollections of staff do not constitute a complete and reliable log, the memories of staff indicated that recorded incidents or formal complaints are very rare.

From an historical viewpoint, the Department stated that inquiries of its longest serving staff going back over 40 years showed no recollection of any death similar to Liam Ashley's having ever occurred.

Reported incidents and complaints aside, prisoners and staff said that minor violence and intimidatory behaviour by one prisoner of another in vehicles is common. A Corrections Officer commented that minor incidents out of sight of Corrections Officers occur regularly on the prison floor and go unreported by prisoners, and a prison vehicle is no different.

It is unsurprising that in unsupervised environments prisoners feel free to threaten one another. They can be reasonably confident that their actions are unlikely to come formally to the attention of the Department. The Department considers it would be naïve to believe that prisoners would report every incident to staff, and we agree. The reality is that most prisoners are reluctant to complain or give a formal statement against any other prisoner due to retribution that may be inflicted by the prisoner community. The Department cannot act against individual offending prisoners on the basis of unsupported prisoner hearsay or gossip.

We would not regard it as practicable for procedures to be developed - inside or outside the prisoner transport context - which would protect all prisoners at all times from verbal threats and harassment by fellow prisoners. Prisoners cannot be

gagged or placed in soundproof cages, and neither should they be lightly denied association.

Physical violence is in a somewhat different category. Measures may be put in place to prevent violence where there is a foreseeable risk, or to ensure that violence is controlled immediately in the event of an unexpected outbreak. Physical violence is also to be distinguished from verbal in that it may result in harm which cannot be undone. One of the purposes of this Report is to recommend re-design of prisoner transport vehicles to ensure that segregation and/or supervision of prisoners by staff is sufficient to prevent, deter or control violence in vehicles.

4.0 AIR TRANSPORT

4.1 General Comment

Transport of prisoners by air is common. In two sample 3 month periods for April–June in 2005 and 2006, there were 224 and 319 transports of prisoners by air. These figures exclude exceptional flights for compassionate reasons, or urgent court orders to produce prisoners.

Air transport is used to move prisoners between North and South Islands, and within the North and South Islands where time factors demand. Additionally, there are certain situations where air transport is more economical than road – as where a very small number of prisoners need to be transferred from Auckland to Wellington.

Where transport is by air, the Department endeavours to move together only similar classes of prisoner. Segregation on board an aircraft does not normally arise. If segregation is required, separate escorting officers are used for the prisoners concerned. Only Corrections Officers act as escorts (as opposed to security officers).

Both charter flights and scheduled public flights are utilised. Between 1 June 2005 (commencement of the Corrections Act 2004) and 16 October 2006, there were 69 charter flights.

The practices in respect of scheduled and charter flights necessarily differ in some respects, although the general legislation that regulates civil aviation applies to all flights.

The Department's PPM sets out procedures for scheduled flights, but there are no specific rules for charter flights. The Department has said that it expects to amend its PPM to cover charter flights in the course of 2007. We consider this is desirable.

Neither prisoners nor staff suggested that there were any reasons for concern about the conditions of air transport. It may nevertheless be useful for us briefly to describe the process.

4.1.1 Scheduled Public Flights

Save at Christchurch Airport, for scheduled public flights prisoners board the aircraft from the normal departure lounges and gates. Each is handcuffed to a Corrections

Officer until boarding is complete. On board, for minimum security prisoners there is usually one escorting Corrections Officer to two prisoners. Higher security prisoners are escorted by at least two Officers.

By prior arrangement with the airlines, prisoners tend to board first and are seated in the rear, having waited discreetly in a corner of the public area. Escorting Corrections Officers are not in uniform, and most passengers will be unaware that a prisoner is being transported. Correspondingly, prisoners usually disembark last.

Prisoners and escorting Corrections Officers go through security detection devices, as do ordinary passengers.

At Christchurch Airport, a modified procedure was introduced shortly before the finalisation of this Report. This allows prisoners to board and disembark at the tarmac loading area. It is designed to minimise security risks, and the extent to which prisoners are open to public view.

The number of prisoners carried on any one flight may vary according to the size of aircraft and total passenger seat capacity. However, normally not more than two prisoners are carried at one time.

4.1.2 Charter Flights

By arrangement with the airport, the Department brings the prisoner transport vehicle as close as possible to the aircraft boarding stairs.

Prisoners may or may not be handcuffed when being moved from the vehicle. This depends on their security classifications and risk assessments. Prisoners considered to be no risk may be simply walked the few feet from the vehicle and board the aircraft without handcuffs. Alternatively, prisoners may be handcuffed prisoner to prisoner, or prisoner to a Corrections Officer, until safely on board.

The usual escort ratio is 12 prisoners to 5 Corrections Officers, but more escorting Officers are carried if the risk factors associated with particular prisoners merit this. For example, if one of the 12 prisoners were of maximum security, two dedicated escort Officers would be allocated to that person.

4.1.3 Directions of Pilots

Persons on board aircraft are required to follow directions given by the pilot-in-command or on his behalf, and it is an offence not to do so.

Pilots are reluctant to have handcuffed persons on board, and prisoners are not handcuffed during the flight unless there is special reason. Historically agreement between Corrections Officers and pilots has always been reached without problem in respect to transport issues affecting prisoners.

4.2 Previous Incidents / Complaints

Few incidents occur during air transport, and we were given no reason to believe that any systemic problems exist.

Between 1 June 2005 and 19 January 2007 there were three cases of prisoners damaging windows or panels on aircraft, and one incident where a prisoner visited the on board toilet in contravention of a "*fasten seat belt*" sign.

There have been no complaints to the Prison Inspectorate about air transport, and the Department is not aware of any complaints made by other avenues.

5.0 CONCLUDING COMMENTS

5.1 Road Transport

This Report has considered safe, secure and humane conditions of transport from prisoners' standpoints. However, any re-design of prisoner transport vehicles must take into account the personal safety of escort staff and the public. Any prisoner, whether maximum or minimum security, may, without warning, attack staff or try to escape. Standard procedures must accommodate these ever-present risks, but no procedures will offer sufficient protection if the physical design of vehicles does not complement them.

Many of our concerns are associated with staff inability to keep prisoners under surveillance, and with mutual inability of staff and prisoners to communicate adequately within prisoner transport vehicles. If surveillance and communication could be achieved, this would accomplish much.

Determining the optimum design of vehicles for prisoner transport is not a straightforward exercise. No single form of vehicle is likely to be cost effective for all prisoners, for all journeys, at all times.

Vehicles could be equipped with many facilities to meet difficulties identified in this Report. However, in broad terms, the more facilities the larger the vehicle.

At every prison visited for the purposes of our investigation, it was said that vehicles taller than the present Ford Transits (or similar) would not be able to enter secure court areas. Indeed, we were told that Chubb had considered retro-fitting air-conditioning to its vehicles, but had to abandon this idea. The equipment would have had to be installed on the roofs of its vehicles, and the vehicles would then have become too high.

Chubb commented that the foregoing circumstance directly affected the type of vehicle that it was able to offer when tendering for its security contract.

We would regard it as unsatisfactory to have vehicles that could not enter court areas. Disembarking prisoners in the streets outside courts would be unacceptable for reasons of security, and because prisoners would be exposed to public view.

A review of court reception areas for prisoner transport vehicles is outside the scope of this investigation. Nevertheless, if there are difficulties of access to certain courts by larger vehicles, we would be slow to conclude that these would be insuperable.

It has been suggested that the current fleet of Ford Transit style caged vehicles should be modified so that all prisoners would be in single secure cages. By our assessment, any design that places prisoners in single cages, while also giving adequate surveillance by staff, would vastly reduce carrying capacity. Moreover, not only would the modifications be expensive, but many more vehicles would be required together with extra escort staff. There would be on-going increased costs in terms of maintenance and fuel.

In the circumstances, it is reasonable to ask whether it is necessary for all prisoners to be moved in single cages. We consider that it is not. Many prisoners are suitable to be carried in multiple compartments (assuming staff surveillance). It is already the position that “normal” vehicles customarily move minimum security prisoners on work parties and for hospital appointments, and numerous prisoners share the same main compartment in the departmental buses.

We consider the way forward in terms of vehicle design is for the Department to undertake a fundamental reassessment of needs, as it is now doing.

The first step should be to assess the likely prisoner carrying requirements for particular prisons and PPS Regions. New Plymouth Prison, for example, accommodates just over 100 prisoners, most serving one to two year sentences. Normal journeys are 5-10 minutes within the local city area. If a vehicle were unable to provide sufficient segregation, there would be little problem in making a second journey. By contrast, Rimutaka Prison accommodates some 750 prisoners, including young and maximum security prisoners, who may need to be moved long distances in segregation. The needs of New Plymouth Prison are quite different to those of Rimutaka.

Some thought should be given to the needs of disabled prisoners. Departmental staff observed that it is demeaning for a wheelchair-bound prisoner to be manhandled in and out of a prisoner transport vehicle that is not designed for it, and difficult for staff.

Once the requirements are defined, thought may be given to the range of vehicles that would be necessary to satisfy them. Some compromises may be unavoidable to achieve the best overall solutions to the various problems identified in this Report. What cannot be compromised are reasonable standards of safety and humanity for prisoners. We would reject any suggestion that need for secure confinement necessarily results in, or provides justification for, conditions that are not safe or not humane.

Safety demands:

- ? good risk assessment of prisoners before journeys begin. Decisions on the sharing of cages and the degree of security required must be informed decisions.

Comment: Reasonable processes are currently in place, although this does not exclude the Department identifying beneficial changes as a result of its present project for review of prisoner transport and this Report.

- ? vehicles are suitable for the purpose, taking into account likely risks that may arise – principally road traffic accident.

Comment: We are not satisfied that current vehicles are suitable. There is a general absence of seat belts (even for prisoners who present no realistic risk of self-harm), differing standards for locking vehicles, cages and emergency exit hatches, and an absence of evacuation procedures.

- ? staff are in a position to deal effectively with any emergency or other problem giving rise to danger.

Comment: At the moment departmental staff are not in this position. Guidance from the Department is liable to leave staff in the impossible position of having to allow problems to go unresolved while they drive to a secure area, or risk their jobs by stopping and taking direct action.

The staff dilemma is compounded by the fact that not all vehicles at all times have radio or cell phone coverage by which escort staff may seek instruction from senior officers.

- ? staff have adequate surveillance of the prisoners in their care at all times.

Comment: The design of most vehicles prevents effective surveillance.

Humane treatment demands:

- ? proper estimation of the reasonable needs of prisoners as human beings for the length of journey being undertaken, and provision of those needs.

Comment: These needs are not being met. There is a lack of national standards for food, water and rest breaks. Some practices fall significantly short of meeting what we would consider reasonable standards.

- ? Reasonable physical conditions within vehicles.

Comment: This is not a matter of providing prisoners with luxury transport. Hard wood or metal benches for journeys of many hours in small cages without proper windows does not constitute a humane standard of transport.

Some prisoners may require to be transported in extreme security with a minimum of fittings to guard against escape or self-harm, but not all prisoners at all times.

- ? adequate monitoring of conditions in prisoner compartments in order that staff may identify unacceptable degrees of discomfort, and medical or other needs arising.

Comment: Vehicle designs for the most part prevent staff from undertaking effective monitoring.

In the absence of national standards, staff have insufficient guidance on what is, or is not, acceptable.

Staff have little or no ability to remedy any conditions of discomfort.

Chubb, with the benefit of its experience of prisoner transport, explained to us in some detail the facilities that it would consider desirable for prisoner transport vehicles. The Department is aware of this correspondence. We do not consider it would be appropriate to discuss the merits of Chubb's suggestions in this Report, lest we pre-judge the Department's current review. However, we trust that the Department will discuss the issues with Chubb.

We recommend that the Department undertake a full review of prisoner transport needs, and re-design its fleet of vehicles in order that suitable vehicles may be available in the future to meet the problems identified in this Report.

5.2 Air Transport

We have no observations.

5.3 Department of Labour

The Department of Labour presented a submission to us for the purposes of this investigation. It is familiar with risk management processes in the context of places of employment. Its responsibilities include educating, informing, influencing and persuading employers and others to achieve healthy and safe workplaces.

The Department of Labour has an interest in prison transport as a result of its regulatory functions under the Health and Safety in Employment Act 1992. Prisoner violence towards prison staff, and the safety of prisoners as a result of action or inaction by prison staff, are matters to be weighed in the context of the Act. Road vehicles and aircraft are covered by the Act, insofar as they are places of work when used for the escorted transport of prisoners.

The Department of Labour in its submission focussed on transport by road, and suggested various factors it would be appropriate to consider including:

- ? risk of prisoner assault on another prisoner or staff;
- ? desirability for staff to remain isolated from prisoners, while remaining able to view prisoner compartments;
- ? issues of safety associated with vehicle design, including passenger restraints (i.e. seat belts);
- ? need for proactive reporting of health and safety issues to management.

We recommend that the Department of Corrections liaise with the Department of Labour in reviewing what is required to achieve humane prisoner transport that is safe for prisoners, custodial staff and the public.

5.4 Recommendations and Chubb

We have noted that section 175 of the Corrections Act 2004 states that security contractors (and “security officers” employed by them as defined in the Act) are treated as employees of the Department for the purposes of the Ombudsmen Act 1975. Nevertheless, the recommendations that we make in this Report are necessarily directed towards the Department through Parliament, and not Chubb itself as a private sector entity. It is only the Department that we have power to investigate as an institution.

Many of the recommendations have implications for the conditions under which Chubb transports prisoners under its security contract. Where the Department accepts our recommendations, we consider the Department should endeavour to ensure that Chubb also complies. As previously noted, Chubb’s security contract empowers the Department to change the terms of service delivery by Chubb.

We recommend that wherever our recommendations have implications for the conditions under which Chubb transports prisoners, the Department take all practicable steps to ensure that Chubb’s prisoner transport vehicle facilities, and Chubb’s policy and practice, conform to them.

5.5 Communication within Department

Throughout this investigation, we were saddened to find a theme of lack of communication between National Office and front-line staff which has resulted in numerous different practices developing at the front line.

We find an echo of our remarks in the 2005 Report of our “*Investigation of the Department of Corrections in relation to the Detention and Treatment of Prisoners*” where we said:

“A major concern is the conflict between the understanding of National Office of the Department as to certain areas of difficulty, and the perceptions of the Department’s staff at the front line...”

...we [are] disturbed at the gulf that emerged between the understanding of the Department’s National Office and its staff in the prisons. We consider this is something that should be addressed and that there needs to be greater meaningful liaison between National Office and front-line staff.”

We regard the lack of communication as a major ground for criticism of central management.

We advised the Department of our proposed comment above. In reply, the Chief Executive stated:

"I do not agree that lack of communication between National Office and front-line staff is the reason why we have not developed national standards in the prisoner transportation area. The Department is a very large organisation employing over 5900 staff. In any organisation of this size there will be staff who hold a variety of views about how services should be and are being delivered. On occasions the views between field and Head Office staff may differ. In my view the work to establish clear national policies systems and guidelines for all aspects of prisoner transport will go a long way to remove any such differences of opinion and inconsistencies in practice."

We note the response of the Department, but consider our remarks fair and appropriate.

We recommend that National Office urgently take steps to better acquaint itself with all aspects of prisoner transport as implemented in the different prisons, with a view to determining best practice. That best practice should be put in place on a national basis.

5.6 Purpose of Report

Of necessity, this Report gives emphasis to areas where we consider prisoner transport has deficiencies, or does not provide safe and humane conditions for prisoners.

Nevertheless, it would be unfortunate if it were to be construed as voicing criticism for criticism's sake. No progress can be made in improving any system, unless flaws are described freely and frankly. At the risk of cliché, we hope that what we have recorded will be regarded not as a list of problems, but a list of opportunities to do things better.

In part, our recommendations involve no financial expenditure by the Department beyond that which is part of its present routine functions. In part, however, they do give rise to potential expenditure for which we understand the Department is not currently funded. Clearly, the Department may only achieve that which it is possible to achieve within its budget. We assume that the Department will address any shortfall through the normal budget process.

Signed:



John Belgrave
Chief Ombudsman



Mel Smith
Ombudsman

Dated: 12 June 2007

ANNEX 1

CHIEF OMBUDSMAN INVESTIGATION PRACTICES AND PROCEDURES FOR PRISON TRANSPORT (SECTION 13(3) OF THE OMBUDSMEN ACT 1975)

TERMS OF REFERENCE

Having noted the death on 25 August 2006 of prisoner Liam Ashley that apparently resulted from injuries occurring while he was being transported by, or on behalf of, the Department of Corrections, I have decided to commence an investigation into prisoner transport pursuant to section 13(3) of the Ombudsmen Act 1975.

My investigation will consider whether the Department transports prisoners in its custody in conditions that are humane, and safe for both prisoners and custodial staff, while also having regard to the need to maintain secure confinement of prisoners. The investigation will include consideration of any standards currently applied to prisoner transport.

Given that the Police are investigating Mr Ashley's death and that criminal proceedings have been commenced, I do not intend to investigate that issue specifically as part of this investigation. Nevertheless, I will take into account any implications that may emerge from the Police investigation or other internal investigation by the Department.

I shall invite various persons and bodies (including a selection of prisoners and custodial staff) to provide input to my investigation, as I may consider relevant.

On the conclusion of my investigation, I will submit a report to the House of Representatives and to the Minister of Corrections.

John Belgrave
Chief Ombudsman

Dated at Wellington this 29th day of August 2006

ANNEX 2

Schedule of Tasks Being Undertaken Within Department of Corrections (as of 30 March 2007)

1. The tasks outlined below are being planned, undertaken or have already been completed by the Department of Corrections to address issues which have been identified in the Inspector's report 'Investigation of the Circumstances Surrounding the Death at Auckland Public Hospital of Prisoner Liam John ASHLEY of Auckland Central Remand Prison on 25 August 2006'.
2. To undertake this work the Regional Manager, Public Prisons Service Southern Region (Mr Paul Monk) has been appointed as Programme Manager for the six work streams below. A dedicated project team, staffed by three full-time seconded staff members supplemented by advisers as required was formed in March 2007.

Work stream 1: Review of Prisoner Escorting Process

- ? A review of the policy, process and procedures for the transportation of prisoners is underway. An external agency has been contracted to assist in this task. This review includes:
 - ? Policy on separation requirements for prisoners being transported in PPS and Chubb prisoner escort vehicles, including allocating prisoners to compartments in escort vehicles.
 - ? Information provided to officers in charge of prisoner escorts.
 - ? Policy for vehicle evacuation due to a road traffic accident or major incident in a prisoner compartment.
 - ? Policy on handcuffing of prisoners during transport.
 - ? Policy on the gender of escorting staff.
 - ? Issuing specific instructions to ensure mandatory separation of youth prisoners from adults during Court escorts has been issued.
 - ? The requirement to observe 'At Risk' prisoners, and how this is to be carried out, is being reviewed.
 - ? Review how critical information indicating risk to a prisoner being obtained by Probation Officers during interviews can be passed on to PECCS and prison staff in a timely manner.

- ? Extend guidance in PPM to include use of Cook Strait ferry and chartered flights.
- ? PPS and Chubb training courses will be updated following changes to PPM resulting from the review of the policy, process and procedures for the transportation of prisoners.

Work stream 2: Review and Update of Chubb PECCS Contract

- ? The Chubb PECCS Contract is being updated to ensure it fully reflects the Corrections Act 2004 and Corrections Regulations 2005 terminology and requirements.
- ? The Chubb PECCS Contract has been amended to include a requirement for mandatory separation of youth prisoners from adults during Court escorts and has been issued. The provisions of the contract relating to the definition of youths have been completed.
- ? Control procedures for Chubb documents which require PPS approval is being reviewed.

Work stream 3: Review of Prisoner Escort Vehicles

- ? A project is underway to establish national standards for escort vehicles, consider acquisition of common vehicles, review escort vehicle fleet management and allocation, driver qualifications and training and consider escort vehicle purchasing and replacement policy. This project will consider:
 - o Review adoption of 'enhanced restraints' during prisoner escorts
 - o Use of security cameras and listening/communications devices.
 - o Review policy of how long journeys should be without a 'leg stretch' and access to toilets.
 - o Review policy on the provision of food, water and rest breaks or for providing the opportunity for prisoners to 'stretch their legs'.
 - o Use of GPS technology to monitor vehicle whereabouts, availability of alternate routes, position of nearest Police station/prison and if necessary to disable vehicles.
 - o Review policy and develop guidance on what vehicle support is required for disabled prisoners.
 - o Review policy for provision of sanitary items to female prisoners during long journeys.
 - o Review policy on standards of temperature and ventilation.
 - o Guidelines are to be developed for pre-journey vehicle checks.

Work stream 4: Review of Outsourcing PECCS Contract

- ? A review of the policy of outsourcing Prisoner Escort and Courtroom Custodial Services (PECCS) in the Auckland Region has been completed and reported to the Minister.

Work stream 5: Implementing Recommendations from Inspector's Report

- ? There are many minor deficiencies in process and procedures identified in the Inspector's report. If these are not addressed within work streams 1-4, they will be considered within this work stream.
- ? Changes required to align Corrections and NZ Police operating policy for the transport of youth prisoners will be reviewed by a Justice Sector inter-department team.
- ? Review PPM/IOMS alert types to reflect current legislation.
- ? Review policy regarding the activation and deactivation of the IOMS alert system, followed by a review of IOMS alerts to ensure all active alerts are current.
- ? Review operational policy and provide instructions to field staff on Corrections carriage of Police prisoners and vice versa.

Work stream 6: Ombudsman's Own Motion Investigation

- ? All information sought by the Office of the Ombudsmen has been provided.
- ? Recommendations of the Ombudsman's Report will be considered and implemented as appropriate.

ANNEX 3

Schedule of Photographs
Departmental Volkswagen TDI Van

1. Nearside side view
2. Rear view – Exterior doors open
3. Interior rear cage with person inside and emergency exit hatch closed
4. Interior rear cage with emergency exit hatch open

ANNEX 3

1. Nearside side view



2. Rear view – Exterior doors open



ANNEX 3

3. Interior rear cage with person inside and emergency exit hatch closed



ANNEX 3

4. Interior rear cage with emergency exit hatch open



ANNEX 4

Schedule of Photographs

Departmental Volkswagen Transporter Van

1. Nearside side view
2. Offside side view
3. Rear view – Exterior doors open
4. Interior cage
5. Interior cage with person inside
6. View into cage from passenger seats behind driver's cab

ANNEX 4

1. Nearside side view



2. Offside side view



ANNEX 4

3. Rear view – Exterior doors open



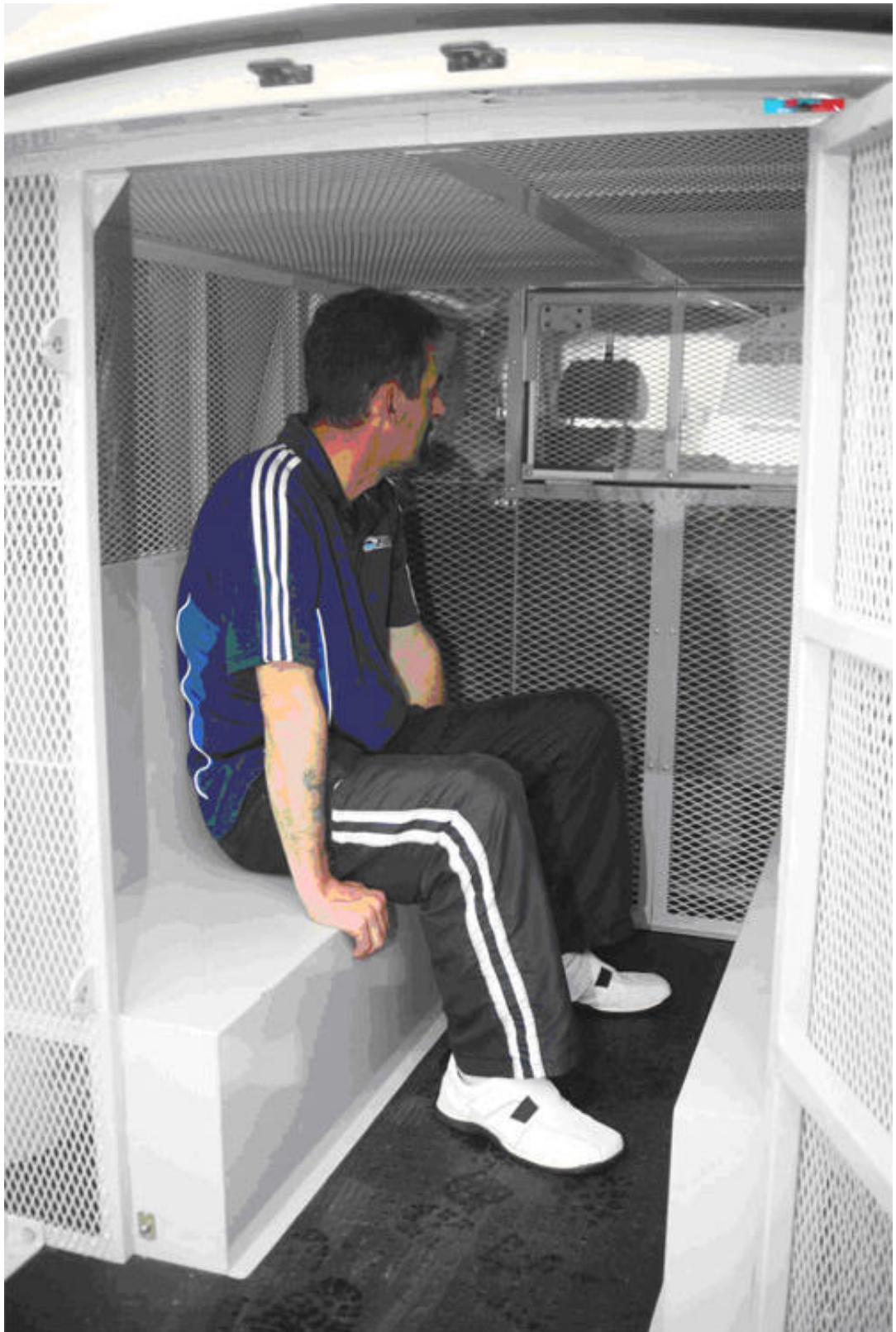
ANNEX 4

4. Interior cage



ANNEX 4

5. Interior cage with person inside



6. View into cage from passenger seats behind driver's cab



ANNEX 5

Schedule of Photographs

Chubb Isuzu NPR 350 Light Truck

1. Nearside side view
2. Driver's cab, showing window to rear prisoner pod
3. Nearside exterior door to front cage
4. Nearside front cage with ruler insert (3 person capacity)
5. Nearside front cage showing cigarette debris
6. Rear exterior view, focussing on nearside longitudinal cage
7. Nearside longitudinal cage interior with person inside (5 person capacity)
8. Nearside longitudinal cage interior with ruler insert

ANNEX 5

1. Nearside side view



2. Driver's cab, showing window to rear prisoner pod



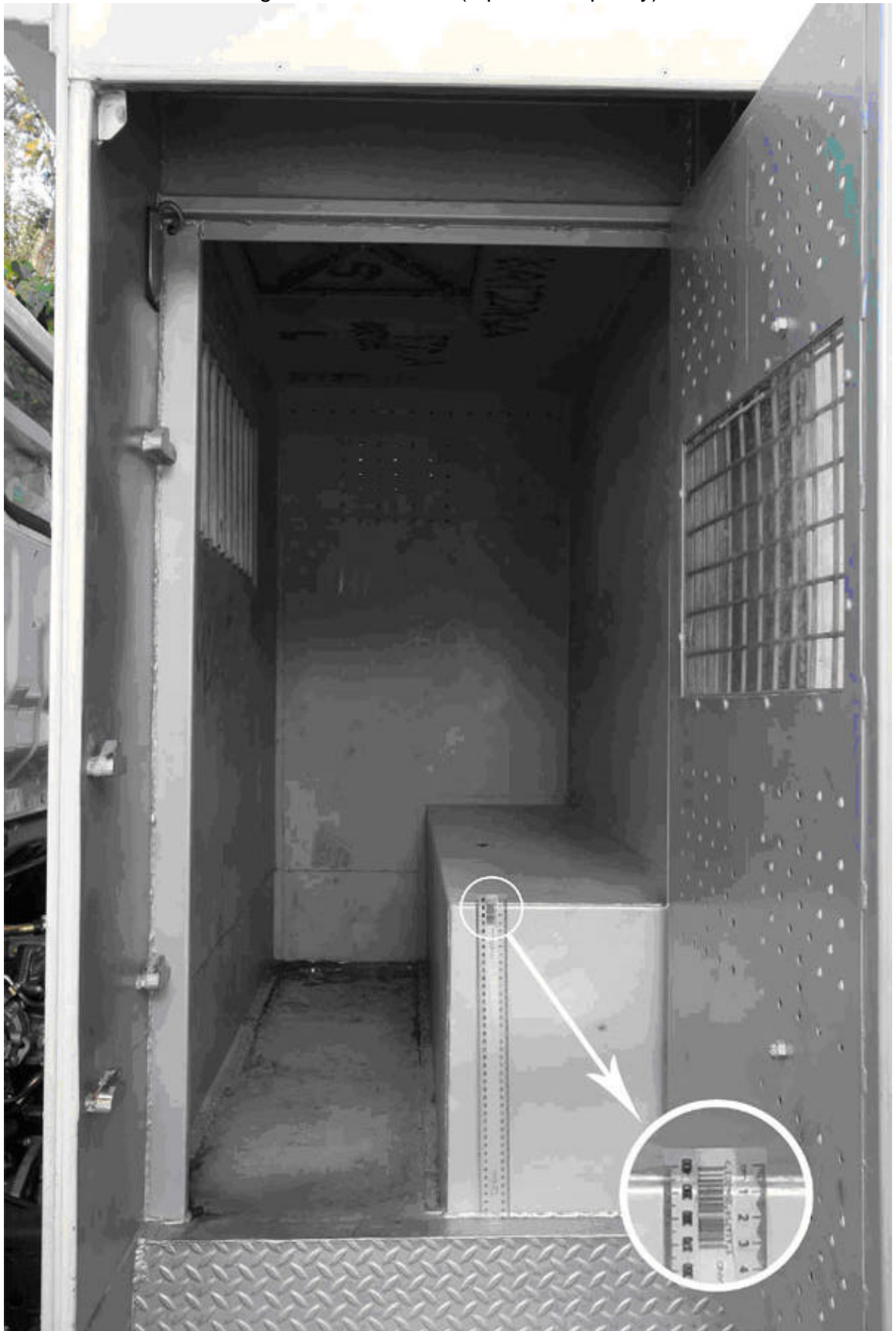
ANNEX 5

3. Nearside exterior door to front cage



ANNEX 5

4. Nearside front cage with ruler insert (3 person capacity)



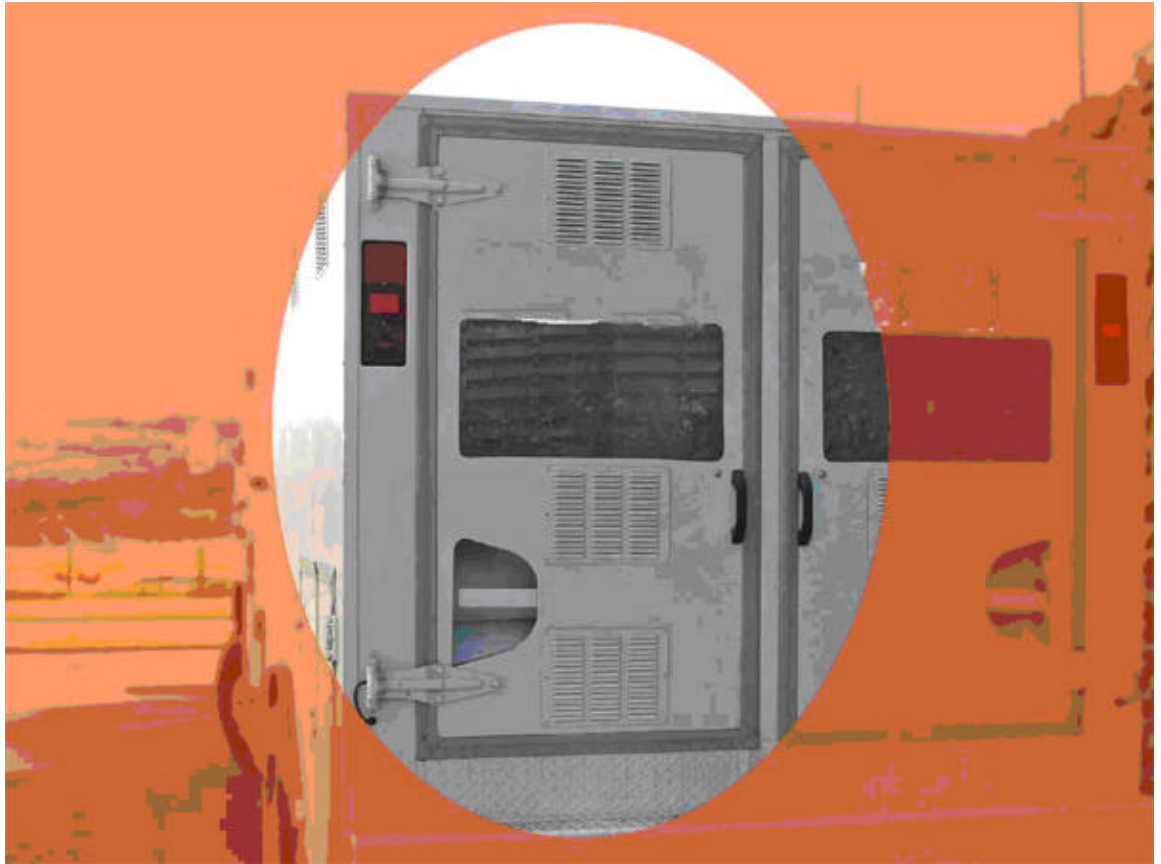
ANNEX 5

5. Nearside front cage showing cigarette debris



ANNEX 5

6. Rear exterior view, focussing on nearside longitudinal cage



ANNEX 5

7. Nearside longitudinal cage interior with person inside (5 person capacity)



8. Nearside longitudinal cage interior with ruler insert

