

**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**

REPORT TO:  
Chief Executive  
Department of Corrections

By

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Inspector  
(7 December 2006)

Inspectorate  
Department of Corrections  
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**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**

**EXECUTIVE SUMMARY**

**INTRODUCTION**

1. The death of Liam Ashley was a tragic event. It has attracted a great deal of public attention, and rightly so. It is important now to analyse what happened, why and what might reasonably be done to ensure that such a thing will not happen again.
2. This Investigation, as with all investigations of this nature, has been commissioned in order to establish the facts around Liam's management while he was in the Department of Corrections' custody. It will determine whether Liam's management was reasonable, whether it was in line with the applicable legal, contractual and procedural requirements and whether anything more could have or should have been done to ensure his safety.

**BACKGROUND**

3. Liam John Ashley, a 17 year old New Zealand Caucasian accused prisoner died at Auckland Public Hospital on 25 August 2006. He had sustained life threatening injuries while being escorted in Chubb prisoner transportation vehicle CAN05 on 24 August 2006. The escort was under the supervision of two Chubb Base Escort Officers (CBEOS) from North Shore District Court to Auckland Central Remand Prison (ACRP).
4. At approximately 1810 hours on 24 August 2006 during the unloading of prisoners from the Chubb vehicle (CAN05), a Chubb Officer unlocked the front compartment. Two prisoners disembarked however the third prisoner, being Liam, was found unconscious.
5. The CBO removed Liam from the vehicle. He was unresponsive and the CBO commenced CPR with the assistance of another Chubb Officer. CPR was continuously applied by Chubb staff, ACRP custodial staff and ACRP medical staff until the arrival of the paramedics.
6. Liam Ashley was taken by ambulance to Auckland Public Hospital at approximately 1850 hours on 24 August 2006. Liam died the following day after being removed from life support.

## **FINDINGS**

### **Key Finding**

7. The death of Liam Ashley following his being assaulted while under escort from North Shore District Court to Auckland Central Remand Prison on 24 August 2006 could have been avoided by a more rigorous application of Corrections Regulation (2005) 179 (1) (b), which states that all prisoners under the age of 18 years must, when outside a prison, be kept separate from prisoners who are 18 years or over, where practicable. The process by which the prisoners were allocated to the various compartments within the escort vehicle had developed over time and had become an established practice accepted by both Chubb and the Department of Corrections. The practice was deficient in that it placed insufficient emphasis on the separation of youth from adult prisoners.

### **Specific Findings**

8. The decision to place Liam in the front compartment of Chubb vehicle CAN05 with two adult prisoners was the decision of CBEO (A). This officer went to some lengths to make an appropriate decision. This decision was based on his training and understanding of the balance of priorities between security and safety. This included the weight that was placed on the requirement to keep youths separate where practicable as opposed to recommended accommodation limits for each vehicle compartment, or the security risks involved in moving prisoners around the vehicle during the various stops along the escort route.
9. There were other options available for configuring the escort that would have enabled Liam to be separated from adult prisoners for all but one section of the journey from ACRP to North Shore District Court on the morning of 24 August 2006, and for the entire return journey that evening.
10. The information provided to Chubb about Liam was not complete. Liam's active alert entered on IOMS (as a result of the Prison Youth Vulnerability Scale (PYVS) assessment) indicated that he was a vulnerable youth. This was not brought to the attention of Chubb by ACRP. In the Investigation's opinion the alert was relevant for Chubb's consideration, and may have influenced Chubb's decision in relation to their application in Liam's case of Regulation 179.
11. The written information provided by ACRP to Chubb on prisoner George Charlie Baker was partially inaccurate. It omitted relevant documentation (observation form) that would have alerted Chubb to the fact that Baker was on 15 minute observations and therefore required to be separated as an 'At Risk Prisoner in accordance with the

contract, Schedule 2, Service Description 6.1.9 – Separation of Groups of Prisoners.

12. The contributing factors to the inaccurate and omitted information provided by ACRP to Chubb staff for Baker are as follows;
  - A Voluntary Protective Segregation alert was not deactivated by Auckland Prison upon his transfer to ACRP.
  - The Escorting an At Risk Prisoner form (C.02.01.F1) was completed by an inexperienced staff member on Night Watch who entered the incorrect type of segregation from the alert information.
  - The ACRP Receiving Officer who completed the handover process was not advised that Baker was on 15 minute observations, therefore he did not verbally pass this information on to the Chubb escorting officers.
  - ACRP Receiving Office staff did not carry out 15 minute observations on Baker while waiting in the Receiving Office on the morning of 24 August 2006 in accordance with National requirements PPM B.14 – Prisoners At Risk to Themselves.
  - The ACRP Court list did not record Baker's status and security type as remand & unclassified.
13. Liam qualified for the group 'Prisoner At Risk' in accordance with the contract, Schedule 2, Service Description, 6.1.9 – Separation of Groups of Prisoners as defined in the Standards & Practices - A.03 as a 'Youth under 20 years of age'. He therefore should have been separated from all other groups of prisoners in terms of that specific contract requirement.
14. The non separation of Baker as a 'Prisoner At Risk' in accordance with the Contract requirements (Schedule 2, Service Description 6.1.9 – Separation of Groups of Prisoners) provided the ability for Liam and Baker to communicate during transportation both to and from Court on 24 August 2006.
15. CBEO (A) & (B) did not observe Liam, Baker and Prisoner E in the front compartment from Henderson Police Station to ACRP on the afternoon escort on 24 August 2006.
16. The Investigation is of the view that the route travelled and the times taken were appropriate for the needs of the escort.

**General Findings in Relation to the Contract between the Department of Corrections and Chubb New Zealand Limited.**

**These findings are not directly related to the incident under investigation but are drawn to the Department's attention for consideration and corrective action were required.**

17. The contract between the Department of Corrections and Chubb New Zealand Limited for Prisoner Escort and Courtroom Custodial Services was not updated in a comprehensive manner to account for the changes required by the Corrections Act 2004 and the Corrections Regulations 2005.
18. The Investigation is of the opinion that a significant contributing factor in this was the split of responsibilities, initially between PPS and Corporate Management, and then later between PPS Corporate Development and PPS Operations. This resulted in confusion as to the areas of responsibility for drafting, and maintaining the contract document on one hand, and the operational management of it on the other.
19. The changes to the Service Description on the Department's computer system (Corrnet) were implemented by Planning Standards & Monitoring (Corporate Management) in order to update the document with the current legislation. However, the changes only replaced the references to the repealed legislation with references to the current legislation and did not include any specific operational changes (e.g. changing the age of "Youth" from 20 years to 18 years).
20. There is an anomaly in the current contract in that youths are defined as a matter of course as at risk prisoners. It would appear, in order for Chubb to comply with A.03 Managing Prisoners At Risk, that they should be provided with an Escorting an At Risk Prisoner form (C.02.01.F1) upon handover for every youth (under 20 years of age), subsequently resulting in separation of those youths as per Service Description 6.1.9 where 'At Risk Prisoners' must be separated unless agreed with by Department of Corrections.
21. However, the common practice by Chubb in separating those prisoners deemed 'At Risk' is only;
  - when there is a C.02.01.F1 form and the prisoner's status has been brought to their attention verbally by the prison.  
or;
  - when Chubb deem the prisoner is at risk from their own assessment of the prisoner upon physically sighting and talking with the Prisoner.
22. The change to the contract in respect of the requirement to segregate under 18 year olds 'where practicable', though not documented in

accordance with the Contract Standard Terms and Conditions, 17.3 – Changes to the Agreement is nonetheless legal. The Department initiated the change in that the legislation applicable at the time the contract was signed was repealed and replaced with the Corrections Act 2004 & Corrections Regulations 2005. Chubb New Zealand Limited via Chubb Protective Services accepted this change to the contract by way of operational practices and reporting.

23. The Investigation is of the view, however, that the new provisions were not clearly expressed by way of specific amendment to the contract.
24. The contract specification defining all under 20 years of age as 'At Risk' prisoners and therefore requiring mandatory segregation is at odds with both the International Agreements (which state 18 years of age) and the current legislation (which states "where practicable" only).
25. The Investigation is of the opinion that the application of the term "where practicable" in relation to Regulation 179 is compliant with New Zealand's international human right instruments obligations and reservations only if all reasonable effort has been made in considering the non-separation of a youth.

#### **General Findings in Relation to the Handover of Prisoners between the Agencies Involved.**

**These findings are not directly related to the incident under investigation but are drawn to the Department's attention for consideration and corrective action were required.**

26. The handover from Chubb staff on the morning of 24 August 2006 to the Police at North Shore District Court was not complete. As Chubb staff were unaware of Baker being on 15 minute observations, this was not passed verbally on to the Police. However the Police did receive a copy of the Escorting an At Risk Prisoner form (C.02.01.F1).
27. The Police deem prisoners under the age of 17 to be youths in accordance with Children's Young Persons & Their Families Act 1989 and the Criminal Justice Act 1985, Section 142. This varies from the Department of Corrections' application for youths, which is 'under 18 years of age'. Therefore the following variations apply to prisoners who are 17 years of age;
  - In prison – kept separate at all times from prisoners over 18 years of age (unless approved to associate with adults in accordance with Regulation 180).
  - Outside prison (e.g. Court escorts) – kept separate 'where practicable' in accordance with Regulation 179.
  - Police custody – associate with adults

28. Liam and Baker were placed in the same cell while at North Shore District Court during the day on 24 August 2006 as Liam was deemed an adult by the Police.

**General Findings in relation to the Configuration of the Escort (Separation of Prisoners)**

**These findings are not directly related to the incident under investigation but are drawn to the Department's attention for consideration and corrective action were required.**

29. Chubb staff take the transportation requirements of all prisoners (safety, security & humanity) into consideration when configuring the vehicle alongside that of the prisoners who MUST be separated, (males, females, segregation, at risk). It appears that the application of 'where practicable' is below the priority of security risk and to an extent the comfort of prisoners. The Investigation is unable to provide evidence that this occurs as unfortunately the reasons for non-separation of youths was not documented.
30. It would appear from the actual configuration and CBEO (A)'s statement that it is common practice for sections of the journey for a compartment to be empty to accommodate prisoners for collection enroute (i.e. Henderson Police/Court). In the Investigation's opinion, it is unacceptable to have an empty compartment for a portion of the journey when there is a youth associating in another compartment with adult(s). It is also the Investigation's opinion that the security issue needs to be more carefully weighed against the legislative requirements.
31. It would appear from the actual configuration that consideration was given to prisoners going to the same prison. In the opinion of the Investigation, the security issue of moving prisoners between compartments is reduced upon the vehicle being secured within prisons walls. Therefore the placement of prisoners due to their destination would be at the lowest level of consideration.
32. It is apparent to the Investigation that the consideration of separating youths from adult prisoners is canvassed fully at the time, however it is not documented to the full extent that would ensure that the Department can be satisfied that "all reasonable efforts have been made" in terms of the legislation and the UN requirements.
33. The vehicle complied with the standards outlined in the contract and also the PPS vehicle standards as per draft circular 2004/25 with the exception of the seat covering which was unable to be sourced in New Zealand. There are no communications or surveillance devices fitted into any Chubb prisoner transportation vehicles. On the morning of 24 August 2006 both CBEOs were unable to observe the behaviour and

interactions of Liam and any other prisoners in the rear and middle compartments.

### **Other General Findings not Specifically Related to the Incident**

34. The Investigation could find no evidence of a written response from the Department of Corrections to correspondence sent by the Department's PECCS Security Monitor on behalf of Chubb. Chubb had advised their concerns in relation to the current 8 Isuzu vehicles not having the capability to communicate with the prisoners while in transit. Chubb's view was that this posed a risk during a medical emergency or prisoner assault prisoner that was unacceptable.
35. Chubb staff and Acting PECCS Monitor were compliant with the requirements for Incident Reporting with the following exception;
  - The Chubb staff involved (being CBEO (A) & (B) and first responding staff) did not provide written statements, however the Chubb PECCS Operation Manager decided the staff did not need to provide written statements as they had already provided statements to the Police on the night of the 24 August 2006. These had been provided to Chubb and subsequently provided to the Department's PECCS Security Monitor.
36. ACRP staff met the performance standards contained in the Policy and Procedure Manual B.08 Managing an Inmates Death, in that every effort was made by Custodial and Medical staff to maintain Liam Ashley's life. Liam was considered to be alive upon leaving ACRP at approximately 1850 hours on 24 August 2006 with the exceptions that;
  - The incident area (Chubb prison vehicle CAN05) was secured in that no person was observed entering compartment A pending Police investigation. However, there was a delay in isolating prisoners from CAN05 from other prisoners by approximately 20 minutes.
  - The Visiting Justice was not notified in accordance with National Policy 1.5.
37. All performance standards for PPM E.08 Responding to Incidents had been met in respect to the death in custody of Liam John Ashley.
38. The Chubb's operations manual, procedure number GD – Meeting Prisoners Special Needs/Handling Requirements in reference to 'Youths under 20 to be segregated' had been changed to 'Youths under 18 to be segregated' by the Chubb PECCS Operations Manager with the oversight of the Department's PECCS Security Monitor, but without the written approval of the Department of Corrections.

39. A robust reporting system was in place by Chubb Protective Services and the Department's PECCS Security Monitor. All instances where under 18 year olds were not separated were reported and the reasons investigated by the PECCS Security Monitor.
40. Independent legal advice received by the Investigation identified that the Corrections Act 2004 and Corrections Regulation 2005 workbook and workshop designed and facilitated by PPS, in their legal opinion constitutes the 'agreement' of the Department of Corrections referred to in the Contract, Service Descriptions 6.1.9 – Separation of groups of Prisoners – '*Unless otherwise agreed with the Department of Corrections, each of the following groups of Prisoner must be kept separate from all other Prisoners ...*'
41. The Chubb staff training modules that every Chubb PECCS Officer is to complete and pass were designed by PPS. The 'Escort' module does not go into any detail on the type of prisoners to be separated, other than the regulation requirements of males/females and of youths 'where practicable'. There are references to Chubb's Operations Manual, however the modules appear not to include any of the requirements from the Contracts Service Description, Standards & Practices.
42. The investigation found that certain alert types in IOMS had not been reviewed to reflect current legislation. For example, the application of a youth alert automatically results in the type 'Youth under 20'.
43. There is a heavy reliance on the PPS IOMS alert system as a means of communicating information by prisons to Chubb, however that degree of reliance varies considerably between prisons and Chubb. Chubb have a legitimate expectation that the alerts will be current and accurate as they are not in a position to investigate the information received. They do not have access to the PPS computer, whereas the prisons have access to an individual's electronic file and manual file in order to confirm the accuracy and relevance of any alert.
44. The Investigation found that ACRP had complied with National Policy and Procedures in relation to the placement and management of Liam as a youth prisoner in accordance PPM D.02 – Young Prisoners.
45. The Inspector found that ACRP complied with the Policy and Procedures in relation to the reception requirements in accordance with the National and Local systems, PPM B.14 – Prisoners At Risk to Themselves.
46. The Investigation found that ACRP health staff complied with relevant procedures in accordance with PPM B.06 - Prisoner Health Services Assessment (National Procedure) in regards to completing Liam's assessment and primary follow up care.

47. However, the electronic records (Medtech) for the Initial Health Screen Assessment were not saved at the time of entry. The Investigation was unable to retrieve the original data as an audit check provided the latest update entries only.

## **OPTIONS FOR THE DEPARTMENT OF CORRECTIONS**

48. The Department of Corrections should issue specific guidelines to ensure that a higher priority is given to the separation of youth prisoners from adults during Court escorts in particular, and other escort situations where direct oversight by staff is not available. Such guidelines should emphasise that the requirement of Corrections Regulation 179 (1) (b) (2005) that youths under the age of 18 years should be separated from those 18 years and over where practicable, means that all reasonable options need to be canvassed in order to achieve compliance. (The Investigation notes that in the meantime in accordance with the Minister of Corrections' direction all youths under 18 years of age will be separated).
49. Where it has not been possible to segregate youths in accordance with Regulation 179, the reasons why the breakdown of prisoners did not allow separation for all or part of the escort need to be clearly documented.
50. The Contract between the Department of Corrections and Chubb New Zealand Limited for Prisoner Escort and Court Custodial Services needs to be updated in a comprehensive manner to ensure that the changes required by the Corrections Act 2004 and the Corrections Regulations 2005 are fully included.
51. The need to eliminate divided responsibilities for contract development and management should be drawn to the attention of the Review of the Department of Corrections head office services that is currently being undertaken.
52. The Department of Corrections should issue specific guidelines regarding the process for handing over prisoners on escort. The guidelines should cover handover both within the Department and between agencies, and should place particular emphasis on the need for prisoner information to be clear, complete and accurate. This applies particularly to the training modules provided by the Public Prisons Service for completion by Chubb escorting staff.
53. Given the number of forms involved and the complexity of the issues that need to be considered during escort, it may be timely for the PPS to review the requirements on a National basis.
54. The investigation has noted that there are differences in the interpretation and application of youth status across Government,

which results in different management practices and requirements by the various agencies. It would be helpful if there were common definitions across Government relating to children, young persons and youths.

## **OPTIONS FOR NORTHERN REGIONAL PRISON MANAGEMENT**

55. ACRP Prison Management needs to take the necessary steps to ensure that the Receiving Office staff record any observations required in accordance with PPM B.14 – Prisoners At Risk to Themselves.
56. Regional Management should consider reviewing the IOMS alert system to ensure that all active alerts are current for all prisons within the region.
57. That the training requirements of ACRP custodial staff be reviewed regarding the completion of IOMS form - Escorting an At Risk Prisoner (C.02.01.F1).
58. That the training requirements of ACRP health staff be reviewed regarding the saving of inputted data on Medtech.
59. ACRP Prison Management need to take the necessary steps to ensure that the Visiting Justice is advised of any prisoner's death in accordance with the National System, Managing the Death of Prisoners and the Deaths of Prisoner's Family Members.
60. The Investigation recommends that the professional response by responding officers (Chubb/ACRP custodial and health) who attempted to revive Liam should be acknowledged.

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**INTRODUCTION**

1. The death of Liam Ashley was a tragic event. It has attracted a great deal of public attention, and rightly so. It is important now to analyse what happened, why and what might reasonably be done to ensure that such a thing will not happen again.
2. This Investigation, as with all investigations of this nature, has been commissioned in order to establish the facts around Liam's management while he was in the Department of Corrections' custody. It will determine whether Liam's management was reasonable, whether it was in line with the applicable legal, contractual and procedural requirements and whether anything more could have or should have been done to ensure his safety.

**BACKGROUND**

3. Liam John Ashley, a 17 year old New Zealand Caucasian accused prisoner died at Auckland Public Hospital on 25 August 2006. He had sustained life threatening injuries while being escorted in Chubb prisoner transportation vehicle CAN05 on 24 August 2006. The escort was under the supervision of two Chubb Base Escort Officers (CBEOS) from North Shore District Court to Auckland Central Remand Prison (ACRP).
4. At approximately 1810 hours on 24 August 2006 during the unloading of prisoners from the Chubb vehicle (CAN05), a Chubb Officer unlocked the front compartment. Two prisoners disembarked however the third prisoner, being Liam, was found unconscious.
5. The CBEO removed Liam from the vehicle. He was unresponsive and the CBEO commenced CPR with the assistance of another Chubb Officer. CPR was continuously applied by Chubb staff, ACRP custodial staff and ACRP medical staff until the arrival of the paramedics.
6. Liam Ashley was taken by ambulance to Auckland Public Hospital at approximately 1850 hours on 24 August 2006. Liam died the following day after being removed from life support.

## THE INVESTIGATION

7. In accordance with the Protocol between the Department of Corrections and the Office of the Ombudsman, the Investigation was conducted by Louise MacDonald, Inspector of Corrections, under Terms of Reference approved by the Chief Executive on 25 August 2006, a copy of which is attached as Appendix 'A'.
8. John Couch-Lewis, Ombudsmen's Investigating Officer was present for the majority of the interviews and also attended the Investigation in a monitoring capacity in accordance with the Protocol between the Department of Corrections and the Office of the Ombudsmen under Section 160 of the Corrections Act 2004.
9. The Investigation needs to acknowledge at this point that the Office of the Ombudsmen is conducting a comprehensive Own Motion Review of prisoner transport. The Investigation has therefore not made any recommendations regarding the ultimate shape of prisoner transport requirements for the future but has confined itself to addressing the specific risks arising out of this incident.
10. The investigation methodology involved:
  - interviewing Chubb PECCS staff
  - interviewing ACRP staff and prisoners
  - interviewing Mount Eden Men's Prison (MEMP) prisoners
  - interviewing Community Probation Service (CPS) staff
  - interviewing Forensic Court Liaison Nurse – North Shore District Court
  - interviewing Department of Corrections – Contract management staff
  - reviewing the staff incident reports and management reports pertaining to the incident
  - examining Liam's remand file and medical records and IOMS (electronic) data
  - examining Liam's assailant remand file, previous sentence file, At Risk files, Medical records and IOMS data.
  - examining the relevant Departmental Policy and Procedures Manual Instructions (PPM), Operating Systems and National Systems
  - examining the relevant contract between Chubb New Zealand Limited and Department of Corrections
  - examining the relevant Memoranda of Understanding between Department of Corrections and Chubb's New Zealand Limited, Department of Corrections and Police, Chubb New Zealand Limited and Police
  - examining relevant unit log books and electronic records.
  - examining relevant Chubb PECCS documentation

- examining relevant Prison escort documentation
  - viewing security camera footage of ACRP Sally port area 24 August 2006
  - obtaining independent legal opinion and advice relevant to legislation and contractual matters.
  - obtaining legal information from the Policy Development Group, Department of Corrections relevant to Regulation 179 of the Corrections Regulation 2005.
11. Contact was also maintained with Liam's family (via their lawyer) throughout the Investigation.
- ### CIRCUMSTANCES OF IMPRISONMENT
12. The investigation found that Liam Ashley had not been held in the custody of the Department of Corrections prior to 1 July 2006.
13. Records examined by the Investigation confirmed that Liam was arrested by Police on 30 June 2006 and appeared at the North Shore District Court on 1 July 2006 where he was remanded in custody by way of a Warrant of Commitment on Adjournment dated 1 July 2006 at North Shore District Court until 3 July 2006 for the following charges;
- Wilful Trespass
  - Burgles (other prop) (under \$500) by day
  - Possess knife in Public Place
14. He appeared in the North Shore District Court on 3 July 2006 where he was bailed. On 26 July 2006 he appeared again in the North Shore District Court and was further remanded in custody until the following day on the above three charges and additional charges of;
- Unlawfully in enclosed Yard or Area
  - Unlicensed driver failed to comply with prohibition
  - Failure to answer Police bail
  - Wilful Trespass
15. He appeared in the North Shore District Court on 27 July 2006 where he was bailed. On 18 August 2006 he appeared again in the North Shore District Court and was further remanded in custody until 21 August 2006 on the above seven charges and additional charges of;
- Burglary
  - Unlawfully in Motor vehicle
  - Possession pipe
16. He next appeared on 24 August 2006 for the following charges;
- Wilful Trespass
  - Burgles (other prop)(under \$500) by day
  - Possess knife in public place
  - Unlawfully in enclosed yard or area
  - Unlicensed driver failed to comply with prohibition

- Failure to answer Police bail
  - Burgles (other prop)(under \$500) by night
  - Unlawful takes motor vehicle
  - Poss needle/syringe etc for cannabis
17. Because of his further offending while on bail Liam was remanded in custody until 8 September 2006 on a Warrant of Commitment on Adjournment.

### **PRISONER'S PROFILE - Events Prior to 24 August 2006**

#### **LIAM ASHLEY**

18. The original information/documentation received by Chubb New Zealand Limited escort staff for Liam from the Police on 1 July 2006 was a Warrant of Commitment for Adjournment dated 1 July 2006 and the Police Receipt for Person & Property form (Pol 48). The Police Receipt for Person & Property form contained the following information on Liam;
- Schizophrenia
  - Medication – Ritalin (daily)
  - Stopped taking or changed prescription medicine
  - Previous attempts or threats to commit suicide - NO
  - Psychiatric History
  - Not in need of specific care
19. The investigation found that Liam was transported by Chubb New Zealand Limited on the following dates and had not been separated from adult prisoners (age 18 years and over) on three occasions;

Date	From	To	Reason	Separated from adults (<18)	Reason Youth not separated
01.07.06	NSDC	ACRP	RIC	Yes	N/A
03.07.06	ACRP	NSDC	Court (bailed)	Yes	N/A
26.07.06	NSDC	ACRP	RIC	Yes	N/A
27.07.06	ACRP	NSDC	Court (bailed)	Yes	N/A
18.8.06	NSDC	ACRP	RIC	Yes	N/A
21.8.06	ACRP	NSDC	Court	No	Due to breakdown
	NSDC	ACRP	RIC	Yes	N/A
24.8.06	ACRP	NSDC	Court	No	Due to breakdown
	NSDC	ACRP	RIC	No	Due to breakdown

Note: RIC (Remanded In Custody)

20. The term 'due to breakdown' is specifically for youth prisoners who have not been separated due to the Chubb Base Escort Officer's (CBEQ) consideration of the number of vehicle compartments and the type of prisoners (i.e. the breakdown of males, females, segregation and At Risk prisoners) for that particular escort run.

21. On 18 August 2006 prisoner George Baker appeared at the North Shore District Court under the supervision of Chubb PECCS staff. He was reported to have been at the Court for approximately 65 minutes and there is no evidence to suggest that Liam and Baker associated either directly or indirectly on that day.

#### **PPM D.02 Young Prisoners (National Policy)**

22. On all occasions (with the exception of travelling to and from North Shore District Court to prison under the supervision of Chubb Escort staff) Liam was held in the custody of Department of Corrections at ACRP in the designated youth section of the Management Unit. He was assigned a single cell throughout his imprisonment at ACRP.
23. Each cell in the Management Unit contains a small sally port entry area, accommodation / ablutions area and a small separate yard area measuring approximately 2.5 metres by 2.5 metres. All cells and yards contain cameras for monitoring purposes.
24. Accused prisoners under the age of 18 who are not deemed to be at risk to themselves, are accommodated in the Management Unit. All youth prisoners are kept separate from all other prisoners. They are unlocked and managed separately. A structured day is in place where the youth prisoners are given access to Visits, Education and Physical Training Sessions with a qualified fitness instructor. Under Corrections Officer supervision youth prisoners are taken to the large recreation yards to enable them to take part in basketball, volleyball, touch rugby or other recreation activities.
25. Management Unit staff reported that Liam was quiet and kept to himself the first few times he was in custody, not wanting to mix with any of the other youths. However on the weekend of 19/20 August 2006, Liam asked to go to Church with the other prisoners and commenced associating with the other youths. He is reported to have assisted a staff member with issuing of breakfast and was given an institution TV to use in his cell.
26. There are no reported incidents during Liam's period of imprisonment. He had regular phone contact with his family as per Unit phone records. There are no records on the Integrated Offender Management System (IOMS) of him receiving any visitors.
27. On 20 August 2006, Liam had a Prison Youth Vulnerability Scale (PYVS) assessment conducted by a trained Corrections Officer assessor. The result of the PYVS assessment showed a score of 25 points. This total was calculated from the three sections below;
- |  |  |    |                   |   |                   |   |                   |
|--|--|----|-------------------|---|-------------------|---|-------------------|
| <ul style="list-style-type: none"><li>• Vulnerability to Victimisation</li><li>• Well being</li><li>• Vulnerability to Suicide / Self harm</li></ul> | <table border="0"><tr><td style="width: 30%;">17</td><td>(max points = 24)</td></tr><tr><td>2</td><td>(max points = 38)</td></tr><tr><td>6</td><td>(max points = 22)</td></tr></table> | 17 | (max points = 24) | 2 | (max points = 38) | 6 | (max points = 22) |
| 17   | (max points = 24)  |    |                   |   |                   |   |                   |
| 2  | (max points = 38)  |    |                   |   |                   |   |                   |
| 6  | (max points = 22)  |    |                   |   |                   |   |                   |

The score of 25 points is considered high in relation to his 'vulnerability' while in custody. The Officer completed the PYVS and entered on IOMS the alert type 'Vulnerable Youth' with the remark that his 'PYVS was 25'.

28. There was no record that Liam had requested voluntary protective segregation in accordance with PPM B.20. As the youth prisoners are held in the youth section of the management Unit and are therefore kept separate from all other prisoners as per unit protocol and Corrections Regulations 2005, Regulation 179 (1)(a), a separate segregation order is not required.
29. The Investigation found that ACRP had complied with National Policy and Procedures in relation to the placement and management of Liam as a youth prisoner in accordance PPM D.02 – Young Prisoners.

#### **PPM B.14 – Prisoners At Risk to Themselves (National System and specific ACRP)**

30. On 12 July 2005 ACRP was handed over as a privately owned and managed prison by GEO Group Australia Limited (GEO) to the Public Prisons Service (PPS). Prior to the management change, the Department agreed that the PPS National PPM B.14 system – Prisoners At Risk to Themselves, would operate in accordance with the comprehensive systems that were in place under GEO management.
31. The local PPM B.14 system for ACRP varies from the PPS National PPM B.14 system in that;
  - Prisoners upon reception have a New Arrival Assessment (NARA) completed by specialised non-custodial staff who have qualifications in areas of mental health. The assessment includes an additional local form, Vulnerability Assessment (B.14.ACRP.F2)
  - ACRP includes a specialist High Risk Assessment Team (HRAT), that manage prisoners deemed to be at risk of self harm.
32. Upon admission to ACRP on 1 July 2006, Liam was assessed using a NARA as per PPM B.14 – Prisoners At Risk to Themselves. He was automatically alerted as potentially 'At Risk' due to his responses that;
  - It was his first time in prison
  - He stated he had schizophrenia and was currently on Ritalin
  - He had attempted suicide in 1999 by hanging and injecting
33. In addition to the NARA assessment, Liam undertook a Vulnerability Assessment (B.14.ACRP.F2). Liam is reported to have answered 'yes' to the following questions;
  - Section 2: Psychiatric Vulnerability
    - Are your thoughts racing now so you cannot concentrate?
  - Section 3: Potential for Self-Harm/Suicide

- Have you ever felt like killing yourself?  
(Comment recorded is that Liam attempted suicide in 1999 by hanging.)
  - Section 4: Youth Only
    - Is this your first time in prison or any other secure institution?
    - Have you ever been bullied or abused by people your own age?
34. There are no further comments made by the assessor. The outcome of the Vulnerability Assessment identifies that;
1. Liam did not request segregation
  2. Liam was not considered to be 'At Risk' (of self-harm)
  3. He was considered psychiatrically 'vulnerable' and referred for an assessment by a Psychiatric Nurse.
  4. Liam was considered a 'vulnerable' prisoner and referred for an assessment by a Psychologist.
35. The Assessor made the decision that Liam was not at risk to himself. He was escorted to the youth section of the Management Unit where he resided during his period of imprisonment until his next Court appearance.
36. All the subsequent admissions for Liam resulted in a NARA and Vulnerability Assessment being completed. On each occasion while Liam was initially identified as at risk (due to 2 or more 'yes' answers) and vulnerable, the Assessor deemed Liam was not at risk to himself.
37. The Inspector could find no evidence that Liam had attempted any form of self-harm while in custody at ACRP or under the supervision of Chubb New Zealand Limited.
38. The Inspector found that ACRP complied with the Policy and Procedures in relation to the reception requirements in accordance with the National and Local systems, PPM B.14 – Prisoners At Risk to Themselves.
- PPM B.06    Prisoner Health Services**
39. Liam was assessed by health staff in accordance with PPM B.06.01 – Undertaking Reception and Initial Prisoner Health Assessment on 1 July 2006 at 1322 hours.
40. Liam signed the Consent to Receive Health Care form (B.06.01.F4) and the Reception Health Screen (B.06.01.F1) was completed noting the following;
- Liam had twisted his right ankle the day before, but that it was "OK" now.
  - He had schizophrenia and ADHD
  - He denied any suicidal ideation

- He was not a current substance abuser, nor was he withdrawing from any substance.
  - Liam's current medication was Ritalin 20mg mane and 10 mg nocte, and that he did not have any medication in his possession upon reception at ACRP.
  - He was made aware that a health assessment would be completed and that he was booked to attend the Medical Officer's clinic to assess his medication requirements.
41. The Initial Prisoner Health Assessment (B.06.01.F2) is required to be completed within 24 hours of a prisoners' reception. Liam's was completed on 1 July 2006. The assessment is comprehensive and requires the prisoner to answer personal and historical medical information.
42. The Investigation found that the Initial Prisoner Health Assessment form completed 1 July 2006 had no data recorded electronically, other than the date and the name of the nurse who completed the assessment. When the Investigation questioned the nurse concerned, she appeared genuinely surprised that the data was missing and could not offer any reason as to why. Further explanation by the Health Team Leader is that unless the electronic form is saved immediately upon being completed (prior to completing the next form) the data is not saved.
43. The health file notes recorded on the electronic health database (Medtech) note that Liam asked for pamol on 1 July 2006 at 2310 hours. It is recorded that upon arriving at his cell to administer the pamol to Liam the nurse found him to have been asleep. He did not get out of bed when being called several times, therefore, the pamol was not administered.
44. Liam reported to health staff that he had not taken Ritalin for his ADHD condition for "a few years". His medical notes on Medtech state that he refused to give details of his mother, as he didn't want the nurse to organise his Ritalin (18.8.06). On 22.8.06 the nurse entered on Medtech that the request to fax Liam's GP regarding his medication was not completed due to insufficient information and to obtain further information from Liam.
45. Liam's medical file was prepared for his pending transfer to the youth unit at Waikeria Prison on 25 August 2006. The Investigation found that ACRP health staff complied with relevant procedures in accordance with PPM B.06 - Prisoner Health Services Assessment (National Procedure) in regards to completing Liam's assessment and primary follow up care. However, the electronic records (Medtech) for the Initial Health Screen Assessment were not saved at the time of entry. The Investigation was unable to retrieve the original data as an audit check provided the latest update entries only.

## **PRISONER'S PROFILE - Events Prior to 24 August 2006**

### **GEORGE BAKER**

46. Baker's sentence expired on Sunday, 27 August 2006. However his release date was brought forward to the nearest preceding release day (Monday, Tuesday or Wednesday) being Wednesday 23 August 2006 in accordance with Part 1, Section 4 (1) of the Parole Act 2002. Therefore, on 23 August 2006 he was released from his current sentence and reverted to remand status in respect to other charges. He was transferred to ACRP that day as he was no longer a sentenced prisoner with specific management needs (e.g. placement in the Special Needs Unit).
47. Baker was received at ACRP as an Accused Prisoner at approximately 1230 hours on 23 August 2006. In accordance with PPM B.14 – Prisoners At Risk to Themselves, Baker had an at risk assessment completed while in the Receiving Office by an Assessment Officer. He was deemed at risk to himself due to an extensive history of self harm and a more recent serious attempt of self harm while at Auckland Prison where he required hospitalisation. Baker was placed in the Special Needs Unit on 15 minute observations.
48. Baker was well known to staff and management at Auckland Prison where he served the majority of his previous sentence. He was not known to ACRP staff and had been at ACRP less than 24 hours before being handed over to Chubb for escort to North Shore District Court on 24 August 2006.
49. Baker was known to be a difficult and occasionally manipulative prisoner. He was best known however, as a prolific self-harmer who despite his offences had no recent history of violence towards others while in prison. On the contrary and in Chubb's recent experience he had voluntarily handed a homemade knife over to staff while in the court cells. The origin of the knife was never able to be established.
50. In December 2003, Baker was referred to the Psychological Services of the Department of Corrections (PS) for the purpose of providing consultation to the custodial staff in assisting them in managing his behaviour while in the Special Needs Unit at Auckland Prison. This report was not completed until 19 August 2004, after Baker was released to the Mason Clinic.
51. The report noted that;
- "Review of Mr Baker's history suggests that he is most likely to engage in burgling or robbing homes to obtain money for daily activities or for alcohol or drugs. If his efforts are in some way frustrated, it is likely that Mr Baker would resort to the use of*

*violence and weapons to further his ends. Thus, there is a probability of violence being associated with offences in which Mr Baker more frequently engages. In consideration of Mr Baker's references to potentially competing with other criminals for notoriety, there is some possibility that he may resort to extreme violence in order to obtain fame. In this scenario, Mr Baker would, in a heightened emotional state though while in possession of his faculties, attempt to injure, wound or kill as many victims as possible. Victims would be arbitrarily selected or be representative of a class of authorities who Mr Baker regards as being deserving of retribution."*

52. Baker appeared before the New Zealand Parole Board (NZPB) on 16 September 2005. He was declined early release and was due to appear again 1 February 2006. The comment documented from the Board was;

*"George Baker appears before the Board for consideration of Parole. He is serving an 8 year sentence which began in 1999. He was earlier released but was recalled on 14 January 2005 because of further offending of burglary. He was given an 18 month sentence to be served concurrently with his earlier sentence.*

*He has now reached 1/3<sup>rd</sup> of that 18 month sentence. He is supported by his partner ..... The prison staff speak highly of Mr Baker which is something of a surprise because Mr Baker has been a difficult and volatile prisoner in the past. We are, like the prison service, pleasantly surprised by his calmness and his demeanour before the Board. There is certainly a dramatic change in Mr Baker. He has not had any involvement with forensics since his release for the Mason Clinic in 2004."*

53. Baker was declined parole pending further forensic assessment and also an updated pre-release report. He appeared before the NZPB on 15 February 2006 and given a release date on the basis of continued positive progress. The Board acknowledged his ongoing risk due to his Borderline Personality Disorder, but considered that this was manageable and imposed a number of conditions to achieve this. These conditions include the need to keep any appointments with forensics as directed by his Probation Officer.

#### **SUMMARY OF EVENTS - 24 August 2006 (pre incident)**

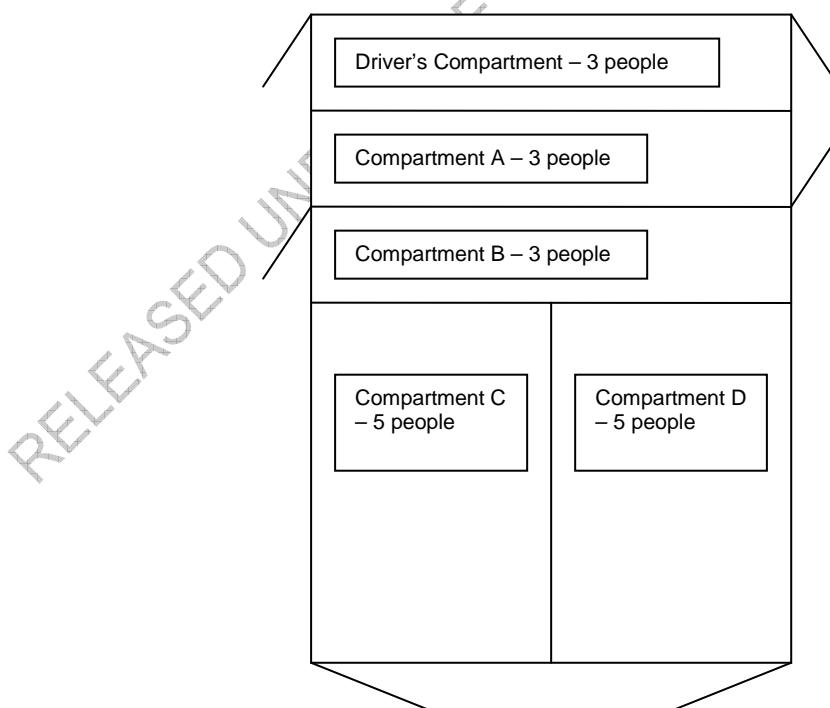
54. The following is an account of the events that took place from the time Liam was taken to the ACRP receiving office prior to the Court escort on the morning of 24 August 2006, to the time when his body was found at the end of the return journey to ACRP that evening. References to the various forms used are clarified in subsequent report sections examining the applicable standards.

55. On 24 August 2006 at approximately 0638 hours, Baker was escorted from the Special Needs Unit (SNU), ACRP by a Unit Corrections Officer to the Receiving Office. The Corrections Officer handed Baker over to a Receiving Officer verbally advising that he had, “*one from the SNU on 15 minute obs*” and left Baker’s documentation being his ACRP ID card, At Risk file (including observation sheet) and Escorting an At Risk Prisoner form (C.02.01.F1) on the Receiving Office main desk.
56. Upon the Receiving Office staff completing a routine strip search of Baker he changed into civilian clothing and was then placed in Holding Cell 5 by himself (as per Prison protocol for prisoners housed in the Special Needs Unit).
57. A Receiving Officer confirmed that there was an Observation Sheet with Baker’s documentation, however there were no written observations completed by the Receiving Office staff. Two of the Receiving Office staff advised this is normal practice. Any prisoner on observations is visually observed by placing him in a holding cell on his own, close to them. However, they do not complete written observations in accordance with national requirements (PPM B.14 – Prisoners At Risk to Themselves). The reason given to the Investigation is that they are under pressure to complete the tasks required (i.e. strip searching, movements, breakfast parade, and documentation) to ensure all prisoners going to Court are ready by the required time.
58. As Baker was being placed in the holding cell he was advised by the Receiving staff that he was not permitted to take his hat. Baker became argumentative (swearing) as he wanted to keep his hat. As stated by both Receiving Officers, Baker handed the hat over after a few seconds of arguing and was then locked up. Both staff said that Baker was quiet after he had been locked up. One Receiving Officer stated that Baker had “*just been trying it on*” and had “*accepted the situation*”.
59. The Investigation was informed that the reason the Receiving Officers did not complete any written incident reports were that they thought the incident was in fact a non-event. Such exchanges are commonplace in the Receiving Office/Court escort situation when prisoners are told they cannot take certain articles with them to Court.
60. At approximately 0710 hours, Liam and another youth were escorted from the Management Unit by a Unit Corrections Officer to the Receiving Office where he is reported to have placed on Receiving Office desk Liam’s ACRP ID card and verbally said “*a youth*”. Liam is reported to have been escorted to the strip area, where he was strip searched. He then dressed in his civilian clothes.

61. The Investigation was advised that Liam was then placed in Holding Cell 4 designated for youths. This holding cell is opposite Holding Cell 5 that held Baker. Receiving Office staff advised that they did not recall any interaction between Liam and Baker while in the Holding Cells.
62. Liam and Baker were given breakfast separately. All the staff rostered in the Receiving Office on the morning of 24 August 2006 told the Investigation that nothing out of the usual occurred that morning.
63. At approximately 0742 hours the Chubb Base Escort and Chubb Auckland District Court vehicles arrived at ACRP. Both vehicles entered the Receiving Office sally port. This is an enclosed concreted area with a desk outside two entry and egress doors leading to and from the Receiving Office and two other doors with access to a Holding Cell and an office.
64. Baker was the first prisoner through the Receiving Office door into the sally port area. The investigation viewed by way of security camera footage Baker offering his hand to CBEO (A). They shook hands. CBEO (A) then proceeded to conduct a rub down search of Baker.
65. There was some discussion and passing backwards and forwards of papers that Baker had on his person during the search. Upon completion of the rub down search and receiving his papers back, Baker was instructed by the CBEO (A) to stand next to the assisting Chubb Escort Officer from the second vehicle.
66. Baker waited while CBEO (A) had a brief discussion with a person out of camera range in the direction of the access door. CBEO (A) was seen then to indicate by the movement of his arm for the next person to come out. That person was Liam Ashley.
67. Liam placed his hands against the wall and CBEO (A) conducted a rubdown search. Upon the search being completed CBEO (A) instructed Liam to stand next to Baker. The assisting Chubb Escort Officer was then observed handcuffing both Baker and Liam together. The Investigation was advised that the decision to handcuff Baker and Liam together was made by CBEO (A).
68. At the direction of CBEO (A), Liam and Baker walked to the rear of the front vehicle (CAN05). Both prisoners disappeared from camera view. CBEO (B) later confirmed to the Investigation that he placed the prisoners in the rear compartment, checking their names off against the documentation.
69. Four other prisoners identified by the Investigation as mainstream adult prisoners emerged one at a time into the sally port area. They were subjected to rub down searches by CBEO (A), handcuffed in pairs by

an attending Chubb Officer and then walked to the back of the front vehicle where they were out of camera range.

70. CBEO (B) was observed at the Receiving Office desk dealing with paper work and writing on documentation handed to him by the Receiving Officer. He was also observed walking towards the back of the front vehicle prior to Liam and Baker walking behind the back of the front vehicle.
71. Receiving Office staff and Chubb staff were aware that Liam was a youth aged 17 years, however CBEO (A) stated that he understood and had been trained that youths are to be kept separate from other prisoners only 'where practicable' in accordance with Corrections Regulations 2005, Regulation 179.
72. The practice of separating youths where practicable was supported in that the PECCS Escort Route Sheet (PECCS01 form) has a box to identify 'Youths not seg'd due to breakdown'. This box was added by Chubb PECCS Operations Manager with the agreement of the Department's PECCS Security Monitor in order to comply with the requirements of Corrections Regulations 2005, Regulation 179. "Breakdown" in this sense means the allocation of prisoner to the various compartments in the Chubb vehicle according to their particular needs or categories.
73. The following diagram shows the layout of Chubb vehicle CAN05.



74. All youths that have not been separated from adult prisoners (aged 18 years of age and over) are individually reported by the Chubb PECCS Operations Manager to the Department of Corrections via PECCS

Security Monitor and Contract Manager, PPS on a monthly basis. These non-separated youths are reviewed by the PECCS Security Monitor quarterly to confirm for monitoring purposes that the configuration of the vehicle was such that the youth could not be separated for that escort.

75. The configuration of the Chubb Base Escort for the morning of 24 August 2005 was as follows;
  - Two voluntary protective segregated prisoners (prisoners B & C) from Mount Eden Men's Prison were placed in the middle compartment (B) destined for North Shore District Court.
  - Rear compartment (D) held three adult mainstream prisoners (prisoners D, E & F) from Mount Eden Men's Prison destined for North Shore District Court.
  - One prisoner (prisoner G) from Mason Clinic Forensics' Unit destined to Henderson Court accompanied by a nurse was placed in the front compartment (A). The nurse rode in the driver's cab.
  - Rear compartment (C) held four mainstream adult prisoners from ACRP (two destined for Henderson Court (prisoners H & I) and two for North Shore District Court (prisoners J & K)).
  - Baker stated he was a mainstream prisoner, not on voluntary protective segregation, therefore he was placed with the mainstream in rear compartment (C) and not with the two Voluntary Protective Segregated prisoners placed in the middle compartment (B).
  - Liam as a mainstream youth (not on Voluntary Protective Segregation) was placed in rear compartment (C) with five adult mainstream prisoners including Baker.
  - Two mainstream adult prisoners from Auckland Prison (prisoners L & M) destined for North Shore District Court were placed in the front compartment (A) as the Mason Clinic prisoner had by then been dropped off.
76. CBEO (A) stated that due to the compartment allocation outlined above he was unable to segregate Liam as a youth. As he was not aware of any other special requirements for Liam, he was placed with the mainstream adult prisoners from ACRP destined for North Shore District Court.
77. CBEO (A) stated that he could not remember placing the 6 prisoners from ACRP into the rear compartment, however that it is possible as he can exceed the recommended maximum capacity of 5 depending on the size of the prisoners. Prisoners H, I & K stated that there were a total of 6 prisoners in their compartment (C) when it left ACRP on 24 August 2006.
78. CBEO (A)'s decision to handcuff Liam and Baker together was based on the following reasons;

- CBEO (A) previously had numerous interactions with Baker as a sentenced prisoner from Auckland Prison. His historical knowledge of Baker was that he had a history of serious self-harm, had not demonstrated any violence towards any other persons while under the supervision of CBEO (A) and in fact he had previously been on Voluntary Protective Segregation while at Auckland Prison.
  - Baker was not listed as a segregated prisoner on the Chubb's Prisoner Escort Route Sheet. Baker said he was a mainstream prisoner when questioned by CBEO (A).
  - The Offender Detail Report prepared by ACRP noted Liam as a youth only, with no additional risks identified and therefore requiring to be segregated only where practicable.
79. Upon delivering the Mason Clinic prisoner to the Henderson Court, CBEO (A) decided to leave Liam with the other mainstream prisoners as they 'appeared OK' upon him checking (by sight and verbally) at the Henderson Court.
80. The Investigation was informed by both Chubb Base Escort staff that the morning escort from ACRP via Mason Clinic, Henderson Court and Auckland Prison to North Shore District Court occurred without incident.
81. Both Chubb staff advised the Investigation that upon unloading at North Shore District Court, the prisoners were placed in Holding Cells by the Police staff. Both Liam and Baker were placed in the same holding cell with Prisoners J & K, with whom they had travelled in the same compartment from ACRP.
82. The Investigation found that the Police deem prisoners under the age of 17 as youths in accordance with Children's Young Persons & Their Families Act 1989, definition of a Young person being "boy or girl of or over age of 14 but under 17..." and the Criminal Justice Act 1985, Section 142. Therefore 17 year olds are considered and managed as adults by Police.

### **Segregation**

83. The Department of Corrections, National System for Segregation of Prisoners (issued 1 August 2006) states the following;
- '*Voluntary Protective Segregation is when a prisoner requests that his opportunity to associate with other prisoners be restricted or denied and the manager considers, having regards to any information supplied by the prisoner or otherwise available to the manager, this it is in the best interests of the prisoner to give that direction under Corrections Act 2004, Section 59(1)(a)*'.

- ‘Voluntary Protective Segregation under Section 59 (1)(a) requires the prisoner to give written consent to that direction. Unless the written consent is given, no prisoner is to be segregated into voluntary protective segregation. The direction is to be immediately revoked if the prisoner withdraws his consent either in writing or verbally. Should the withdrawal be verbal, then the withdrawal is to be documented’.
  - ‘Segregation for Purpose of Security, Good Order or Safety is directed under the Corrections Act 2004, Section 58 when the Prison Manager is of the opinion after considering evidence-based information that;
    - a) the security or good order of the prison would otherwise be endangered or prejudiced or
    - b) the safety of another prisoner or another person would otherwise be endangered’.
84. Prior to 23 August 2005 as a sentenced prisoner at Auckland Prison, Baker had requested in writing that he be managed as a Voluntary Protective Segregated prisoner due to the nature of his offending. The request was approved by the Acting Manager Custodial Systems until such time as Baker revoked the request or his sentence expired.
85. An alert entered on IOMS was activated to indicate Baker was on segregation. The alert was entered on 18 August 2005 by his Unit PCO and noted he was a ‘Vol Seg Prisoner’. The review date entered was his sentence expiry date being 27 August 2006. Upon Baker being released on parole from Auckland Prison on 1 March 2006, his active alert was not deactivated by the Unit PCO where he resided at the time of his release in accordance with the National System – Segregation of Prisoners.
86. Baker returned to custody on 18 April 2006. He was placed on electronic muster, thus activating any current alerts (and any previous alerts for voluntary segregation). The alert remained active between his transfer from MEMP to Auckland Prison on 24 May 2006. The following day Baker requested Voluntary Protective Segregation due to his charges. His request was approved by the Manager Custodial Services on 31 May 2006 noting that Baker feared for his safety.
87. Upon Baker’s release from Auckland Prison on 23 August 2006, his active alert was not deactivated by the Unit PCO where he resided at the time of his release. Therefore, upon his admittance to ACRP later that day, his segregation alert was still showing as an active alert as ‘Vol Seg Prisoner’.
88. Baker had not been on any form of segregation (Voluntary Protective Segregation or Segregation for the Purpose of Security, Good Order or

Safety) while at ACRP in accordance with the National System – Segregation of Prisoners and PPM B.20.

### **PECCS, CHUBB PROTECTIVE SERVICES TO POLICE – Delivery and Handover of Prisoners - 24 August 2006**

89. The following documentation was signed by the Police on 24 August 2006 therefore accepting legal custody of the prisoners in relation to their status while at Court.
  - PECCS Escort Route Sheets identified as 85762 – Auckland Central Remand Prison to North Shore District Court for prisoners Liam Ashley, Baker, and prisoners J & K.
  - PECCS Escort Route Sheet identified as 85764 – Auckland Central Remand Prison to Henderson District Court for prisoners H & I.
  - PECCS Escort Route Sheet identified as 85779 – Mason Clinic Forensic Unit to Henderson District Court for prisoner G.
  - PECCS Escort Route Sheet identified as 85775 – Auckland Regional Prison to North Shore District Court for prisoner L.
  - PECCS Escort Route Sheet identified as 85768 – Mount Eden Men's Prison to North Shore District Court for prisoners C, D E & F.
90. As sentenced prisoners, Prisoners B & M legally remained in the custody of the Department of Corrections, therefore Court supervision of these two prisoners was conducted by CBEO (A) & (B) who remained at the North Shore District Court for the day. The Chubb staff share resources including holding cells and staff room with the Police when conducting Court Supervision under contract to the Department of Corrections.
91. CBEO (A) advised the Investigation that he assisted the Police that day by doing the ‘running around’. This was in reference to answering calls from prisoners, giving them cups of tea and escorting them upstairs for their Court appearances. This is not formally part of the Chubb Officers’ role however the Investigation was advised it is common practice at North Shore District Court and indeed other locations where the Court cell facilities are shared.
92. CBEO (A) stated that he was not aware of any conflict between Baker and Liam during the day. On the contrary, he stated that he observed Baker show consideration towards Liam upon returning from his Court appearance upset. He stated Baker placed his arm around Liam’s shoulder and was ‘consoling’ him. However this is in conflict to Prisoners J & K’s description of Baker’s behaviour towards Liam.

93. Both prisoners advised the Investigation that the three of them (Liam and Prisoners J & K) while in the cell, played chess and talked. They stated that Baker didn't play chess. He sat talking about himself and in their opinion was trying to 'big note' by talking about what he was 'in' for, which they both say they didn't believe. Both prisoners stated that Baker was 'teasing' Liam throughout the day, however they did not think Liam was at risk of being harmed by Baker. They informed the Investigation that neither Chubb staff nor Police were aware of any conversations or tension in the cell during the day. This was confirmed by CBEO (A).
94. Prisoner J told the Investigation, prior to Liam going to Court that Baker asked Liam where he lived and Liam replied "*Rangitira Road*". Baker told Liam that he had "*two narks that live down that road*". Liam didn't reply. Upon Liam's return from Court, Prisoner J stated that Baker carried on by asking Liam where he stayed. Liam changed his address, at first the street numbers and then the street name to *Kia Ora Road*. This was confirmed by Prisoner K.
95. Prisoner J told the Investigation that while Prisoner K was out of the cell he observed Baker placed Liam in a 'sleeper hold'. Baker was playing around and asked Liam if he wanted to see a sleeper hold. He told Liam that he would not hurt him. Prisoner J said he observed Liam standing on his tip toes and start to go red/purple. At that point Prisoner J stood up and Baker immediately released Liam. Liam sat down in the corner of the cell, coughing. Prisoner J stated that there were no further incidents and he thought everything was OK between Liam and Baker.
96. Prisoner J stated that during the day Liam appeared at times to be scared of Baker, however most of the time he seemed OK. He said that Liam was a "*bit of a cheeky bugger – could be a pain in the arse*". However during the day of 24 August 2006 while at North Shore District Court, Prisoner J stated Liam was "*sweet to Police and Chubb, giving respect*".
97. The Investigation was informed by prison staff and Prisoners J & K that Liam was expecting to be bailed on 24 August 2006. He appeared in Court before Judge B A Morris. Present were his lawyer, the Crown Prosecutor, a Police Sergeant, a Probation Officer, Trainee Probation Officer (TPO) and members of the public, including Liam's two sisters.
98. Liam pleaded guilty to some charges and not guilty to others. His placement in custody was discussed in relation to his age and the fact that he had breached bail on 6, 21, 26 & 27 July 2006 resulting in a final warning. Because of his further offending while on bail, Liam was remanded in custody for two weeks, until 8 September 2006, to enable CPS to complete a pre-sentence assessment report.

99. The TPO interviewed Liam in the Police Cells interview booths soon after his Court appearance to commence his pre-sentence assessment. She stated Liam was extremely upset and was 'sobbing'. Liam asked to see his lawyer and then his sisters. The TPO stated she would see about that, but Liam said "*Don't bother; they'll have probably left anyway*"
100. During the assessment Liam identified that he had;
- A bad back for which an ACC claim had been lodged
  - He had ADHD and took Ritalin for it
  - That he had abstained from alcohol for the past 6 months since he had completed a community A & D course.
  - That he used illegal drugs approximately 3 times a week – marijuana.
  - Had made an attempt of his life in 1999 by trying to hang himself
  - He had not made any attempt of his life over the last four weeks
  - He had been under the care of Marinoto Child, Adolescent & Family Service between ages of 5-10 years.
101. The TPO was present in Court when Liam's lawyer stated "*my concern is that this 17 year old is in custody. He's not finding it an easy process. He's been picked on.*" She asked Liam during the assessment whether he had been threatened or beaten up. Liam is reported to have replied that he had been threatened but refused to elaborate as to where or by whom.
102. Due to the TPO's concern for Liam's well being in relation to risk of self harm, the Forensic Court Liaison Nurse (FCLN) who is based at North Shore District Court was contacted and asked to assess Liam.
103. The Forensic Court Liaison Nurse interviewed Liam at approximately midday 24 August 2006 in the Police Cells interview booth. He stated the reasons given for the interview were because he had been told that Liam
  - Was tearful in Court that morning
  - Had a history of self harm
  - Had made reference to being bullied while remanded in custody
104. Liam was reported as initially guarded and suspicious, not wanting to engage in the interview unless his lawyer was present. He was apprehensive of the implication of the assessment in that he stated further on in the interview that he was comfortable in the management unit and did not want to be placed in isolation (in reference to being deemed 'At Risk to himself' and therefore being housed in the At Risk Unit.)
105. Liam became more forthcoming and relaxed after his lawyer had spoken with him and reinforced that the assessment was appropriate. He explained his recent tearfulness was at seeing his sisters in Court as he didn't expect to see them.

106. He spoke about his history of ADHD and implied bitterness and resentment at the isolation from his family that this leads to. He identified his experience of Marinoto Child, Adolescent & Family Service and being placed in boarding school as factors contributing to feelings of being isolated from his family
107. The FCLN decided due to Liam's complexity of issues he would not do a risk assessment but a more in-depth assessment that includes risk.
108. Liam stated that he had been maintained on Ritalin but had not taken it for a number of years as he believed he didn't need it. He is reported to have stated that he preferred marijuana to self medicate. The FCLN reported that Liam had an extensive history of polydrug abuse for his age. Liam explained that he had completed the 10 step programme through Community Alcohol and Drugs Services 6 months prior and had abstained from alcohol since. FCLN notes that Liam was 'quite proud' of this achievement. However, he is also reported to have been proud of the extensive list of drugs he had tried. The FCLN stated his interpretations of the drug use were questionable, suspecting Liam was enhancing his experience with drugs to improve his image.
109. The FCLN's interpretations of Liam were that he was vulnerable, had a history of being bullied throughout his childhood. He appeared to have a lower than normal IQ but was streetwise for his age.
110. Liam reported that he attempted to overdose when he was 12 years old but had made no attempt since. He was quite vehement about denying any current or recent despondency.
111. As noted above Liam is reported to have had a history of being bullied throughout his life. The FCLN questioned him about his comment that he had been bullied in remand. Liam is reported not to have given any specific incidents and the FCLN's perception of the conversation was that it was more a 'fear' than actual event(s) due to Liam's history of being bullied in the past. The FCLN associated Liam's self-reported recent gang affiliations to a form of self preservation.
112. The findings of Liam's assessment by the FCLN was that he saw no need for further action from Forensics and that he would not be making any recommendation to the Prison. The reason for his findings were that;
- Liam had not taken his medication for ADHD for a number of years
  - His last attempt on his life was over 5 years ago (in 1999) and Liam had expressed strong incentive to stay alive.
  - He was unable to provide any specifics in relation to the allegation of being bullied in prison and was in fact dismissive of this.

113. Liam is reported to have remained in the North Shore District Court Police cell throughout the day on 24 August 2006 except for the periods where he appeared in Court and was interviewed by his lawyer, the TPO and FCLN. All these interviews took place in the Police cell interview booths.
114. The FCLN stated that Baker had appeared in Court at approx 1130 hours 24 August 2006 where the Judge had accepted the mental health assessment report. Baker's lawyer is said to have requested bail on the charges of cannabis for supply. The FCLN stated the Judge wouldn't address this and saw no point as Baker was facing more serious charges that had been referred to the High Court.
115. The FCLN stated that he attempted to interview Baker after the Court hearing but the manner in which he was greeted by Baker was indicative that he was unhappy with the FCLN. He was abrupt, dismissive and terse. Baker is reported to have wanted to get to the Mason Clinic and that his plan had not worked.
116. At approximately 1551 hours CBEOs (A) & (B) escorted prisoners M (Sentenced Prisoner) and L (Accused Prisoner) back to Auckland Prison as they had finished their Court appearances. Prisoner B remained with CBEOs (A) & (B) as he was under their legal supervision as a sentenced prisoner.
117. CBEOs (A) & (B), and prisoner B returned to North Shore District Court at approximately 1620 hours. CBEO (B) stated that the Police advised him that all the paper work was ready (in reference to warrants of commitment) so he proceeded to check the paper work with one of the Police Officers in the staff office while CBEO (A) and another Police Officer loaded the prisoners destined for MEMP and ACRP into the Chubb vehicle.

#### **POLICE TO PECCS, CHUBB PROTECTIVE SERVICES - Handover (Department of Corrections' legal custody)**

118. In accordance with the Memorandum of Understanding between NZ Police and Chubbs on the Operation of PECCS in the Auckland and Northland Regions, the Police complete a transportation request sheet (COR97/1A) for the tasking of prisoners from North Shore District Court to delivery location (i.e ACRP, Auckland Prison and MEMP) requiring the following fields to be completed;
  - Prisoners name & PRN
  - Sex (male/female)
  - Date of Birth
  - Security Classification
  - Segregated (Yes/No)
  - Property (Yes/No)
  - Special Needs Information

119. On the afternoon of 24 August 2006 the Police at North Shore District Court completed manually the COR97/1A form noting;
- Baker as unclassified, date of birth, no segregation required, no property, on ACRP muster and Remanded in Custody until 27 September 2006.
  - Liam's date of birth was listed as 17.5.89, unclassified, no segregation required, no property, ACRP and Remanded in Custody until 8 September 2006. (As previously mentioned the Police do not deem 17 year olds as youth).
  - Prisoner E as unclassified, no segregation required, no property, MEMP muster and Remanded in Custody until 13 September 2006.
120. The Investigation was informed that there was no further information handed over by the Police either verbally or documented, other than the above and the prisoners' relevant Warrants to hold them in custody.
121. CBEO (A) and (B) manually entered the data from the Police COR97/1A onto PECCS Escort Route Sheets, specifically in relation to Liam and Prisoners A & E as follows;
- Escort task ID 85870 – 24 August 2006 from North Shore District Court to MEMP.
    - Prisoner E
      - Male
      - Security classification – Unclassified
      - On muster
      - Segregation Required & Given
      - Prisoner type – Police
      - Additional information – to ACRP (not MEMP)
  - Escort task ID 85867 – 24 August 2006 from North Shore District Court to ACRP.
    - Baker
      - Male
      - security classification – Maximum
      - on muster
      - no segregation required nor given
      - prisoner type – Police
      - Comment box - date of birth entered
    - Liam Ashley
      - Male
      - Youth - identified by tick
      - security classification – unclassified
      - no segregation required nor given
      - prisoner type – Police
      - Comment box – date of birth entered (17.5.89)

The box title 'Youth not seg'd due to breakdown' was ticked in order to identify that Liam was not separated during the journey.

122. The entry of segregation required and given was entered incorrectly against Prisoner E's name and related to another prisoner listed on the form. This was confirmed as the other prisoner had been a Voluntary Segregated Prisoner who was segregated in compartment (B).
123. Prior to the escort commencing, Liam, Baker and prisoner E were identified as having handcuffs applied, rubdown and scanner searches completed.
124. CBEO (A) stated;

*'Again I am faced with this dilemma of going from North Shore to Waitakere and again I have got a decision to make whether we are going to take the risk of opening up the back and having prisoners come out, or not. I decided that they weren't going to and I didn't think it would be practical to open up a door or a side and put some more guys in, and then have the risk of the other guys in there coming out. So I left one of the back compartments available for the four which I was going to uplift from Henderson and during the day I noticed that, or my partner brought to my attention that Baker was at risk of self harm and I said that I knew that already from the last time. So I would rather him sit right behind me so I can see him. In the morning I couldn't do that because I had a Mason Clinic patient that I had to leave that compartment for. But in the afternoon that was where I could decide to monitor Baker and that was the reason why I put him up front. Ashley, I put him up front there because I didn't want him going with the others that afternoon. I didn't mind him being with Baker because they were both together in the same cell and there was no indication to me that there was going to be a problem. Baker showed genuine concern when Liam came downstairs from Court again that just confirmed the fact that what I was deciding to do was the right thing"*

125. Prisoner E advised the Investigation that he first met Liam while standing outside their respective cells waiting to be loaded into the Chubb vehicle on the afternoon of 24 August 2006. They were the only prisoners waiting to be loaded into the vehicle. He stated that CBEO A handcuffed him (steel link cuffs) with his hands in front. CBEO (A) confirmed he handcuffed Liam and prisoners A & E individually with their hands in front.
126. Prisoner E stated that when CBEO (A) opened compartment A, Baker stepped out. Prisoner E stepped in first followed by Liam, and then Baker sat next to the door. CBEO (A) handed Baker his lunch and then proceeded to lock the compartment doors.

127. Baker is a 25 year old accused prisoner who appeared at the North Shore District Court on 24 August 2006 on an Order that a Health Assessor Prepare an Assessment Report (Remanded in Custody) under Section 38(1) & (2)(b) or (c), Criminal Procedure (Mentally Impaired Person) Act 2003 in relation to outstanding charges for Possess for Supply Cannabis Plant.
128. He was subsequently remanded in custody on a Warrants of Commitment on Adjournment for Unlawfully Converts Motor Vehicle until 16 October 2006 and Possess for Supply Cannabis Plant until 27 September 2006. Baker had attended North Shore District Court as a prisoner 'On Muster' as he had a current Warrant of Commitment of Defendant Committed for Trial or Sentence dated 4 August 2006.
129. Prisoner E is a 22 year old accused prisoner who appeared at the North Shore District Court on an Order to Produce on the charge of Burgles (other prop)(under \$500) by day. He was further remanded in custody on a Warrant of Commitment for Adjournment from 24 August 2006 to 13 September 2006.
130. The CBEO (A) informed the Investigation that once the prisoners had been loaded aboard the van he got in the driver's seat and turned and looked through the window into Compartment A and gave Liam, prisoner Baker and prisoner E the 'thumbs up'. All three prisoners are reported to have given the 'thumbs up' in reply indicating that they were OK. However, Prisoner E stated that he did not give the 'thumbs up' at any time during the escort. The CBEO (A) decided to travel to Henderson Police Station via Paremoremo to avoid peak hour traffic.
131. The Investigation confirmed by way of GPS activity report that the route taken by CAN05 on 24 August 2006 was from North Shore District Court where they left at approximately 1648 hours, along SH 17 and The Avenue (Albany), Paremoremo Road (Paremoremo), Brookdale Road, Wake Road (Coatesville), Coatesville-Riverhead Highway, SH 16 (Whenuapai, Massey North, Massey East, Massey West) Lincoln Road, (Henderson) arriving at Henderson Police Station at 1715 hours.
132. The Investigation is of the view that the route travelled and the times taken were appropriate for the needs of the escort.

#### **INCIDENT DETAIL – According to Prisoner E (the sole witness)**

133. Once locked in compartment A, Liam is reported to have cried and when asked why by Prisoner E, he stated that it was because he hadn't seen his niece.
134. Baker is reported to have said he was the president of the King Cobra gang and that he had shot someone. Prisoner E stated he thought that it must be true as not many people would say that in prison if it was not true as they would be found out.

135. Prisoner E stated that at times Liam looked scared, however he was also brave in that he defended himself by talking back to Baker.
136. Prisoner E stated that Baker shared his lunch with him and Liam. After they had finished eating, Prisoner E asked Liam why he was in prison and Baker answered for Liam, giving Prisoner E the impression that they had known each other for a while.
137. Prisoner E described Liam as "... pretty hyped up without saying anything. He was bouncing around, looking side to side, at his handcuffs, fidgeting but he was quiet".
138. Baker is reported to have asked Prisoner E if he wanted to escape with him through the emergency hatch in the compartment roof. Prisoner E said that he declined as he was facing only minor charges.
139. Baker then asked Liam if he wanted to escape. Liam is reported to have said yes, stating that his grandmother lived nearby and that he and Baker could go to her place, pick up his cash flow card that had \$2000.00 dollars and catch a plane to Wellington.
140. Liam attempted to slip his hands through his handcuffs while Baker assisted by pushing the handcuffs. Liam stated that his wrist hurt, which resulted in Baker calling him a sissy and to try harder or he would get a hiding.
141. Liam is then reported to lie on his back with his feet touching the emergency hatch door. He then proceeded to push against the emergency hatch door with his feet. Baker was encouraging Liam by saying "try harder".
142. CBEO (A) stated that while he was stationary at an intersection just out of Riverhead, he turned to look at the prisoners in Compartment A to see if they were OK. He stated that he observed Baker was now sitting in the middle, between Liam and Prisoner E. CBEO (A) thought that the move was so Baker could have a clearer view of the road.
143. Baker and Liam are reported to have swapped positions taking turns trying to push the emergency hatch door with their feet from the time they passed Auckland Prison (Paremoremo Road) to arriving at Henderson Police station.
144. CBEO (A) stated that the vehicle was backed into the sally port at the Henderson Police Station where the vehicle was secured. He then got out of the drivers cab and opened the outer door of Compartment (A) directly behind him. He tapped on the inner door. It was difficult to see clearly in the compartment as there are no lights in the compartment and it was on dusk. He stated he asked the prisoners if they were

alright and all three replied that they were OK. He stated Baker then asked for a cigarette, which CBEO (A) declined.

145. CBEO (A) then proceeded to unlock the back compartment outer door for the compartment that held prisoners, in order to check them and provide fresh air. He then unlocked the inner door of the empty compartment in preparation of receiving the four prisoners destined for ACRP.
146. While waiting at Henderson Police station, Baker is reported to have talked about other means of escape. He decided that Liam was to fake a blackout. Liam said he would do that as he used to get seizures so it should be easy for him to fake it. The plan was to wait until they left Henderson Police station and then bang on the window to get the Chubb staff attention stating that Liam was dying.
147. CBEO (A) placed the two prisoners from Henderson Police station in the rear compartment along with the two new prisoners that had just arrived from the Henderson Court (via Police escort). All four prisoners were locked in the compartment. The truck was secured by CBEOs (A) & (B). CBEO (A) stated that immediately before locking the outer door on Compartment A he asked the three prisoners if they were OK and received the response that they were.
148. CBEO (A) stated that before he started the truck he observed all three prisoners leaning forward, with their faces close to the window. He described the three prisoners as "eager to go and see where they are going". He stated that this was the last time he looked at the three prisoners.
149. The route taken by CAN05 as confirmed by GPS activity task record indicate the escort left Henderson Police Station at approximately 1744 hours, travelled along Sel Peacock Drive, Edmonton Road, Jaemont Avenue, Te Atatu Road, Patiki Road exit onto SH16 (Avondale, Waterview, Morningside, Western Springs, Newton), off Newton Road Exit along Newton Road arriving at ACRP at approximately 1805 hours.
150. Approximately five minutes after leaving Henderson Police station, Baker told Liam to start faking a seizure. Liam said that he didn't want to do it now. Baker is then reported to have told Liam he could not pull out now. Baker then said he could put Liam in a sleeper hold. He told Liam to turn his back to him and placed his arms over Liam's head and moved his arm into position around Liam's neck.
151. Prisoner E stated he was relaxed and thought "*another stunt from the idiots*". He stated that he believed that Liam did not feel threatened by Baker during this process as he was not struggling.

152. Baker held Liam in what appeared to be a 'sleeper hold' for approximately five minutes and then released him. Liam was wheezing stating he needed his asthma pump. Baker then told Liam to get back into position, which Prisoner E said Liam complied voluntarily. Baker is reported to have placed his arms over Liam and place his arm around his neck, without using any force.
153. Prisoner E said that approximately 20 minutes later, he saw the motorway before 'spaghetti junction'. Baker then started to squeeze Liam's neck, while sitting, telling Liam to "relax" and "not to worry". Prisoner E stated that Baker looked at him and mouthed "kill him". Prisoner E stated he shook his head as to say no.
154. Baker is reported to have then tightened his hold and then Liam started to struggle by kicking the side of the vehicle. Prisoner E described the kicking as light and that it did not produce a high level of noise. Both CBEO (A) & (B) stated that they didn't hear any kicking or banging. There was no indication whatsoever that there was a problem.
155. Prisoner E stated that Baker "just snapped". Baker started saying that he was hired to kill Liam because he was a nark. Baker then tried to snap Liam's neck (by jerking his neck from side to side). Liam grabbed hold of Baker's arm and started to pull down on his arm and was kicking the panel.
156. Prisoner E reported that Baker said he was going to kill Liam. Baker was telling Liam not to kick the wall and that he had a knife on him and he would kill him by slitting his throat if he kicks. Prisoner E stated that Baker looked at him and said, "If I said anything or made a noise he would kill me".
157. Baker is then reported to have said to Liam "*You're that fucking nark, you're the reason I'm in this shit hole*". He then talked to Prisoner E explaining what he was doing. He kept saying to Liam that he was going to die, that he was going to kill him and that Liam should "*be a man, die, be a man*".
158. At this stage, Baker is reported to have stood up (stooped) and pushed Liam in towards the corner of the compartment towards Prisoner E. Baker still had his arm around Liam's neck, trying to break it while Liam struggled. Prisoner E slipped past them and sat in the corner, closest to the door. Baker said to Prisoner E "*Don't worry, I'm hired to do this.*" He said that Liam was a nark and he was a gangster and that he was used to this as he had done it before.
159. Prisoner E stated that he thought, "*This guy is going to kill me, after he has killed Liam, he is going to kill me*". He stated that he didn't get the Chubb staff's attention because he believed Baker had a knife and that he had killed before.

160. At this point Liam is reported to appear lifeless, he had stopped kicking and there was no movement from him. Baker changed his arm position by removing his arms from around Liam's neck. He placed his handcuffed hands around Liam's throat and started to choke him.
161. Liam was lying on his back on the seat with Baker holding his throat and banging Liam's head against the solid steel seat saying, "*Fucking die, fucking die*". Baker told prisoner E that "*This guy is taking ages to die, he's breathing*". Prisoner E said that he could not see Liam breathing.
162. Baker asked Prisoner E, "*How far away are we?*". He replied that he could see Mount Eden Men's Prison walls. At that point, Baker applied more pressure to Liam saying "*Oh shit. Fuck*".
163. Prisoner E stated that as they pulled into ACRP, Baker still had Liam by the throat. He then released Liam who flopped to the floor of the compartment. Baker then proceeded to kick Liam in the head repeatedly until the door was opened. Prisoner E stated he saw blood on Liam's face.
164. CBEO (A) stated that upon arriving at ACRP they entered the sally port area there was a slight delay as they waited for another Chubb vehicle to enter the sally port. Upon the sally port area being secured he proceeded to unloaded the back compartments first, then compartment A holding Liam, Prisoner E and Baker. The prisoners in Compartment B were Voluntary Protective Segregated prisoners destined for MEMP.
165. Prisoner E got out of the vehicle as did Baker. Prisoner E heard Baker say, "*Get that fella out, I killed him*". CBEO (A) stated that when Baker hopped out of the vehicle he said "*Uso, you better pull that guy out I just killed him. He isn't breathing*". CBEO (A) explained to the Investigation that 'Uso' is Samoan for 'brother'.
166. Baker is reported to have been approximately six metres away from the vehicle (walking towards the Holding Cell area) when he yelled out, "*That's what you get for being a nark*". Prisoner E said that he walked towards the prison staff and got them to remove his handcuffs and then turned to face Baker as he didn't want to turn his back on him as he still thought he had a knife.

## **POST INCIDENT ACTIONS**

167. The Investigation has reviewed the relevant surveillance camera footage and incident reports. These indicate that Liam was removed from the compartment by CBEO (A) and was laid on the floor area outside the vehicle. Liam's handcuffs were removed and CPR commenced by CBEO (A) and a Chubb Officer from another vehicle. CPR was conducted continuously with Chubb staff and Custodial staff taking turns.

168. A nurse who had arrived at the scene upon being requested (via telephone by Master Control) observed staff conducting CPR. The nurse returned to the medical unit to obtain her emergency bag. It is recorded that the nurse returned to the scene approximately three minutes later with the emergency bag and another nurse present.
169. One nurse connected the oxygen and changed the tubing. The other nurse started the breathing with the Ambu Bag, regularly checking Liam's pulse, while the Corrections Officer continued with chest compressions. The first nurse inserted a Guedal airway into Liam's mouth.
170. Liam was reported to have fresh blood smudges around his mouth, cheek and nose. His eyes were fully open and partly rolled back. The colouring in his face was still pink. The nurse stated that she did not notice any bruising at that stage as she was busy trying to get him to breathe.
171. The second nurse returned to the medical unit to obtain the defibrillator. She returned and connected the defibrillator which indicated CPR was to continue.
172. At approximately 1830 hours the paramedics arrived and proceeded to render emergency care to Liam. Liam was transferred via ambulance under the care of paramedics and custody of two ACRP custodial officers to hospital at approximately 1850 hours.
173. The mainstream prisoners from CAN05 (prisoners J, K and the four from Henderson Police and Court) were originally placed in a Holding Cell with other prisoners. At approximately 1830, the CAN05 prisoners were removed and placed in a separate holding cell to await Police interviews.
174. Baker is reported to have been placed in a separate holding cell on his own, still handcuffed, where he remained pending Police interview and scene examination. The Investigation was unable to substantiate whether this was immediately upon Baker disembarking the vehicle.
175. After Liam had left for Auckland Public Hospital, the remaining two prisoners in the rear compartment and three prisoners in compartment B, destined for MEMP were relocated to another vehicle and escorted to MEMP.
176. The Critical Incident Log was documented and notes that the initial response call to Custodial Staff, Medical and PCO was completed at 1821 hours.
- 1824 hours - Ambulance called
  - 1825 hours - On Call Officer called

- 1829 hours - Ambulance on site
- 1839 hours - Police called
- 1845 hours - On Call Officer on site
- 1854 hours - Police on site
- 1855 hours - Ambulance leaves site to hospital
- 1912 hours - Scene sealed by Police & Custodial staff
- 1920 hours - Police detectives on site
- 1928 hours - Chubb van (scene) evacuated and prisoners placed individually in holding cells.

177. The incident log documents that the notification process was completed, and the prisoners' property and Chubb documentation was secured. Several unsuccessful attempts were made by the Prison to contact the family. Contact was eventually made by the Police.
178. The Police investigation commenced immediately. Prisoners were interviewed and the scene secured and examined.

#### **LEGISLATION FOR THE PROVISION OF PRISONER ESCORT AND COURTROOM CUSTODIAL SERVICES (PECCS)**

179. On 9 August 1995 the Penal Institutions Act 1954 was amended. Included in the amendment was the addition of Escort Services and Courtroom Custodial Services. Section 36G provided for the Secretary for Justice, on behalf of the Crown to enter into any contract with any other person for escort services and/or courtroom custodial services.
180. At the time of the current contract's signing and implementation, the Penal Institutions Act 1954, with the latest amendment dated 4 February 1998, was the applicable legislation. There had been no change to the original amendment for PECCS dated 9 August 1995.
181. On 1 July 2005, the Penal Institutions Act 1954 was repealed and replaced by Corrections Act 2004. Previous Sections 36G to 36ZJ referring to the provision of Escort Services and Courtroom Custodial Services were replaced with Section 166 to 174 of the Corrections Act 2004 with no substantial changes.

#### **AGREEMENT FOR THE PROVISION OF PRISONER ESCORT AND COURTROOM CUSTODIAL SERVICES WITH CHUBB NEW ZEALAND LIMITED AND DEPARTMENT OF CORRECTIONS – (Contract)**

182. In June 1998, the Department of Corrections contracted with Chubb New Zealand Limited to provide prisoner escort services between prisons, Courts and regional forensic psychiatric facilities. The contract also provided for the custodial supervision of prisoners appearing at Court following their committal for jury trial. The contracted area covered Auckland and Northland and included escorts within the contracted area that were previously undertaken by Police as well as

escorts and Court custody previously provided by Public Prison Services Custodial Officers.

183. The contract was implemented on 1 October 1998 for a term of 5 years ending 30 September 2003. This term was extended by the Department of Corrections for 12 months to allow for the re-tendering process.
184. Following the re-tendering process the Department of Corrections accepted Chubb New Zealand Limited tender and a new Agreement for the Provision of Prisoner Escort and Courtroom Custodial Services with Chubb New Zealand Limited and Department of Corrections was signed 11 June 2004 for implementation date of 1 July 2004.
185. The Investigation found that there had been two variations to the Contract as at 24 August 2006 being;
  - Variation 1 – effective as from 1 August 2005 in relation to;
    - Addition of new facility - Northland Regional Corrections Facility
  - Variation 2 – effective as from 1 August 2006 in relation to;
    - Replacement of Mount Eden Women's Prison with Auckland Regional Women's Corrections Facility
    - Remand prisoners being escorted to Court when appearing as witness
    - Permit emergency escorts outside the contract area
    - Permit Inter-prison transfer between Northland Regional Correction Facility and other Auckland Prisons
    - Purchase Price for inter-prison escorts

### **Contract – Part A, Standard Terms and Conditions**

186. In order to understand the terminology of the Contract that will be referred to throughout this report, the Investigation notes the following Standard Terms and Conditions from the current Contract.
187. *'1.1 Interpreting this Agreement – In this Agreement we have used "we" for the Department of Corrections, "you" for you the contractor (including your staff and agents), "Services" for the Prisoner Escort and Courtroom Custodial Services described in Schedule 2 (Service Descriptions) and Appendix 2 (Standards and Practices and National System – Incident Reporting for PECCS Providers) you agree to provide, "Act" for the Penal Institutions Act 1954 and its regulations, and a number of other defined terms.'*

#### **'4 Providing the Services**

##### **'4.2 The Services you are to provide –**

- 4.2.1 You must provide the Services from the Implementation Date, and in doing so, must meet the performance measures and standards relating to them. The performance measures and standards are set out in **Schedule 2: Service Description and**

**Appendix 2: Standards and Practices and National System  
– Incident Reporting for PECCS Providers’.**

**LEGISLATION – Separation of Youth Prisoners**

188. Upon the signing and implementation of the current Contract between the Department of Corrections and Chubb New Zealand Limited in July 2004, the legislation governing the management of youth prisoners on escort was covered under the Penal Institutions Regulations 2000, Regulation 132 that stated;
- 'Minor and adult inmates to be kept apart –  
So far as practicable, but subject to regulation 133, an inmate under 20 years, whether or not he or she is a remand inmate, must be kept apart from inmates who are 20 years or older'*
189. On 1 July 2005, the Penal Institutions Regulations were repealed and replaced with the Corrections Regulations 2005, Regulation 179 that stated;
- 'Young Prisoners –  
(1) All prisoners, including accused prisoners, under the age of 18 years, must –  
(a) when inside a prison, be kept apart from prisoners who are 18 years or older; and  
(b) when outside a prison, be kept apart from prisoners who are 18 years or older, where practicable.'*
190. The differences between Penal Institution Regulation 2000, Regulation 132 and Corrections Regulations 2005, Regulation 179 were that;
- The youth age was reduced from under 20 years of age to under 18 years of age.
  - The term ‘so far as practicable’ had changed to ‘where practicable’ and now only applied to those under 18 years of age who are outside the prison. (i.e. escorts/court supervision).
191. In accordance with the contract 4.8 - Statutory compliance duties –  
*'When providing the Services you must comply with the requirements of:  
4.8.1 The Act and any security operation standards issued under the Act insofar as those requirements apply to the Service; ...'*
192. The Investigation found that Chubb Protective Services were applying the separation of youths under the age of 18 years in accordance with Corrections Regulations 179. However, this varied from the age of 20 years as stated in the contract.

**DEPARTMENTS' CONTRACTUAL AND OPERATIONAL MANAGEMENT OF CONTRACT**

193. The Department of Corrections. PECCS Security Monitor based in Auckland was originally appointed in 1998 at the commencement of the contract in accordance with Penal Institutions Act 1954, amendment dated 9 August 1995, Section 36ZD to 36ZF.
194. At the commencement of the Contract in 1998, the Contract Manager of the Service Purchase and Monitoring Group(SPM) (now known as the Corporate Management Group) for the Department of Corrections managed the operational and contractual requirements. The PECCS Security Monitor reported to the Manager Corporate Services in regards to the legislation requirements under Sections 36ZD to 36ZF.
195. On 1 July 2001 the Chief Executive transferred the operational management of the contract from SPM to PPS. This transfer also resulted in the PECCS Security Monitor reporting to PPS.
196. SPM retained management of the contractual requirements. This included the re-tendering process, drawing up of the current contract and any variations.
197. The Investigation was advised that the Assistant General Manager, PPS Corporate Development and the Manager Corporate Services, Corporate Management agreed to transfer the contractual responsibilities over to PPS Business Development in response to concern regarding the split responsibilities in managing the Contract between the two services.
198. The Contract was handed over to PPS from Corporate Management in September 2005. The Contract was from that point on managed by two separate divisions within PPS. The operational requirements by Manager National Security & Systems and the contractual requirements by Assistant General Manager, Corporate Development.
199. The Investigation is of the opinion that the split responsibilities between PPS and Corporate Management, and then later between PPS Business Development and Operations resulted in an element of confusion in certain areas of responsibility regarding the operational and contractual requirements.
200. The Investigation found that prior to the change in legislation from the Penal Institutions Act 1954 to the Corrections Act 2004, the contract was not reviewed in order to ascertain any changes that would require variation to the contract. This oversight was confirmed by the Contract Manager, Corporate Management who managed the contractual requirements at the time of the change in legislation.
201. The Service Description for PECCS is documented on the Department of Corrections computer system (Corrnet). The Service Description is a copy of the Service Description in the Contract signed on 11 June 2004, with the following exception;

- Section 1.3 Authority -  
Corrections Act 2004, S166  
Corrections Regulation 2005  
Criminal Justice Act 1985  
Mental Health (Compulsory Assessment & Treatment) Act 1992

and

- Section 6.1.9 Separation of Groups of Prisoners there is reference to prisoners under the age of **20(2)**. Note (2) – Corrections Regulations 2005, Regulations 179 & 180.

202. The Investigation found that the changes were implemented by Planning, Standards & Monitoring (a division of the Corporate Management Group) in order to update the Service Description with the current legislation. The changes only replaced the references to the repealed legislation with the current legislation and did not include any specific operational changes (e.g. changing the age of 20 years to 18 years). It is the view of the investigation that this oversight had no implications for Liam in that he was 17 years of age and therefore covered by both clauses.
203. The Investigation is of the opinion that the above finding is a result of not having the contract reviewed before the Penal Institutions Act 1954 and Penal Institutions Regulations 2000 were repealed and replaced by Corrections Act 2004 and the Corrections Regulations 2005. It has clearly resulted in some areas of confusion regarding the application of the contract to the current legislation.
204. The Contract states under Standard Terms and Conditions, Section 17 - Changing the Agreement;  
  
*'17.1 We may make changes to the Schedules and Appendices – You acknowledge that it may be desirable or necessary for us to change the Schedules and Appendices to this Agreement from time to time. We may change them as long as we give at least thirty (30) days' notice of any intended change. If the effect of the change is to substantially reduce the benefit or substantially increase the burden of the Agreement to either or both of us, the Purchase Price may be revised, by agreement. If together we cannot agree on a new Purchase Price within a reasonable period, the matter will be resolved in accordance with clause 11 (Resolving Disputes).*  
  
*17.2 Exclusion from clause 17.1*  
*17.2.2 Both of us acknowledge that you may make changes to your operations manual set out in Appendix 4, but only in accordance with clause 4.10.3 of this agreement.*

- 17.3 *Other changes – No other change to this Agreement will be effective unless the change is recorded in writing and signed by both of us*
205. Due to the fact that the changes in operational practices regarding youth prisoners and that Schedule 2, Service Description 6.1.9 – Separation of groups of Prisoners were not changed in writing (in accordance with 17.3 of the contract), the Investigation sought independent legal opinion. The legal opinion given is that the change to the contract, (to now segregate youth under 18 years of age on escort where practicable) though not documented in accordance with 17.3 (refer above) is still legal in that one party (being the Department) initiated the change with the repealing of the legislation that was current at the time the contract was signed being replaced with Corrections Act 2004 & Corrections Regulations 2005. The other party (Chubb New Zealand Limited) accepted this change to the contract by way of operational practices and reporting.
206. The Investigation is of the view however that the new provisions were not clearly expressed by way of amendment to the contract.

#### **EXAMINATION OF CONTRACT - Transportation Vehicles and specifications requirements.**

207. In accordance with the Contract, Appendix 2 – Standards and Practices & National System, Standard and Practices A.01 – Transportation of Prisoners, Standards for Transportation Vehicles specifically states;
- '6        Standards for Transportation Vehicles -
- 6.1      *Vehicles used for the transportation of prisoners must comply with all relevant road safety legislation and regulations pertaining to the transportation of persons;*
- 6.2      *Vehicles must provide for the segregation of various groups of prisoners;*
- 6.3      *Vehicles must provide for prisoners with disabilities;*
- 6.4      *Vehicles must be designed so that prisoners are not able to be identified from the outside;*
- 6.5      *Vehicles must be free of all advertising but will be required to have an agreed form of marking to enable identification the event of emergency situations;*
- 6.6      *Vehicles must be designed so that all prisoner property is kept separate from all prisoners during transportation;*
- 6.7      *A vehicle log/manifest is to be maintained for each vehicle which records its basic details and operating status.*
208. On 2 August 2004, PPS provided a permanent instruction dated 26 March 2004 (PPS Circular 2004/25) to all prisons in regards to Escort Vehicle Specifications. The circular outlined specifications for all escort

vehicles including short haul, long haul and escort bus services and covered escort vehicles operated by PPS and any contractor acting on behalf of PPS (Chubb).

209. Prior to this PPS Circular 2004/25, there had been no national standard for escort vehicles' design and construction.
210. The Land Transport Safety Authority (LTSA) monitors passenger service vehicles' design and construction standards under the Land Transport Rule: Passenger Service Vehicles (1999). However PPS escort vehicles (and those of any contractor acting on behalf of PPS) are exempt from complying with the rule.
211. Isolated concerns have been raised from time to time by prisoners with the Office of the Ombudsmen specifically in relation to ventilation, air condition and heating within the vehicle compartments. Despite the exemption PPS acknowledged they had a responsibility to provide safe, secure, and humane conditions and as a result of these considerations, Public Prisons Circular 2004/25 was authorised by General Manager PPS to resolve the concerns.
212. The circular stated that;  
*'best practice in overseas jurisdictions and by private Escort providers involved the use of a modular pod system, being a construction that can be mounted in an escort vehicle and is bolted to the chassis utilising the strongest points of the vehicle by attaching brackets and braces. The system can be unbolted and slid out of the vehicle and is easily converted back to its original state should it be required.'*  
*The modular pod system should be manufactured from steel or aluminium, giving consideration to ensuring there are no 'hanging points' in the design.*  
*A feature of the modular Pod system is they contain a number of cell compartments, ensuring sufficient leg and headroom, thus allowing for flexibility of vehicle configuration to reflect the operation needs of PPS escorts. All vehicles should be fitted with a modular pod system'.*
213. The circular continued to cover the requirements for;
  - Locks on external doors
  - Ventilation, air conditioning, and heating requirements
  - Provision of seatbelts
  - Provision of seat padding
  - Provision of emergency release hatches
  - Windows
  - Seating capacity
  - Communications (fleet link radios)
  - Fire Extinguishers

- Safety Triangle kits
  - First Aid kits
  - At Risk prisoners
214. Specifically in relation to at risk prisoners the requirement was that a secure compartment in the cell compartment construction must be provided for the purposes of escorting at risk prisoners.
215. The circular proceeded to outline the transition and financial costs, with a final paragraph stating;
- 'cameras – the provision of cameras would assist staff in monitoring inmates during escorts. This is subject to additional work.'*
216. Chubb advise that at the time of the re-tendering process, they based their prisoners transportation vehicles design and construction on the vehicle specifications outlined in a draft copy of the PPS Circular 2004/25.
217. On 26 September 2005 the Chubb PECCS Operations Manager wrote to the PECCS Security Monitor, Department of Corrections advising that Chubb had purchased a further 8 Isuzu NPR 350 prisoner escort vehicles that had been fitted with purpose built pods designed to hold up to 20 prisoners in four different compartments mounted on the rear chassis.
218. The letter states;
- 'On a number of occasions we have been asked to show these new vehicles to different people within the Department of Corrections. We have received positive feedback on all occasions; however the only negative comment made has been the lack of communication between the prisoners and the escorting officers whilst the vehicle is in transit. This has been raised as a concern as in the event of a medical emergency or assault whilst in transit the officers would not be aware of the event until they reached their destination.'*
219. The letter concludes with a request of the Department of Corrections to advise Chubb New Zealand whether an official policy in relation to communications between prisoners and staff exists and if so, what is it and what system does the Department of Corrections have installed in their escort vehicles?
220. On 3 October 2005 the PECCS Security Monitor wrote to the Manager National Systems & Security, PPS (MNSS), to draw to her attention Chubb's concern regarding the communication issue with prisoners while in transit. The MNSS states that she advised the PECCS Security Monitor that communication devices were not fitted in PPS vehicles and did not form part of the National standards. The MNSS then requested the PECCS Security Monitor refer the request to the

PPS Operations Systems co-ordinator so that the issue could be considered as part of the pending review. This was done on 7 November 2005. This project currently remains on hold pending the outcome of this Investigation and the Ombudsman's Own Motion Review of prisoner transport.

221. On 23 August 2006, PPS Circular 2004/25 was revoked by the General Manager, PPS. The reason for the revocation was that circular 2004/25 identified a number of desirable specifications for all escort vehicles operated by PPS and any contracting agency acting on their behalf (Chubb), however it had been established that some of the specifications outlined in circular 2004/25 could not be met. These were the rip proof and flame proof seat covering and forced air ventilation fresh air provisions. The revocation was in order so that the specification for escort vehicles could be reviewed.
222. On examining the Contract, Schedule 2, Service Description -  
6.2.2 Transporting and supervising Prisoners en-route -  
The Investigation found that all deliverable standards in relation to transporting and supervising Prisoners en-route were complied with by Chubb staff on 24 August 2006, with the exception of the following;
  - *Regularly observe Prisoner behaviour and interactions en-route'*
223. There are no communications or surveillance devices fitted into any Chubb prisoner transportation vehicles. On the morning of 24 August 2005 both CBEO's were unable to observe the behaviour and interactions of Liam and any other prisoners in the rear and middle compartments.
224. The front compartment has a small window where the Chubb staff in the driver's cab and the prisoner(s) in the front compartment can sight each other. On the afternoon escort, Liam was placed with Baker and Prisoner E in the front compartment for the purpose that the CBEO (A) could observe them, however as reported by CBEO (A) he did not sight the prisoners in compartment A from Henderson Police station to ACRP that afternoon.
225. The vehicle complied with the standards outlined in the contract and also the PPS vehicle standards as per draft circular 2004/25 with the exception of the seat covering which was unable to be sourced in New Zealand.

## **PRISONS TO PECCS, CHUBB PROTECTIVE SERVICES – HANDOVER PROCEDURE**

226. The Memorandum of Understanding for the Operation of Prisoner Escort and Court Custody Services (PECCS) in the Auckland and Northland Regions between Public Prisons Service (PPS) and Chubb

describes the procedure for tasking and handover of prisoners from PPS to Chubb. The following process outlines the requirement for tasking and handover from prisons to Chubb as it relates to the CAN05 Base Escort run for the morning of 24 August 2006.

227. ACRP tasks Chubb to undertake escorts from prison to Court by way of faxing to Chubb the day and evening before, an 'IOMS Court List' (Department of Corrections electronic report) and a 'transportation request' (COR97/1A) form for late or additional escort requirements. It is common practice for the prisons to also fax Chubb the morning of the escort in case there have been late changes.
228. The 'tasking' information (IOMS Court List and COR97/1A) will provide the following details for each prisoner;
  - full name
  - date of birth
  - muster details
  - segregation requirement
  - risk status
229. The IOMS Court List when printed provides the prisoner's full name, PRN or Driver' Licence Number, Unit Placement, Legal Status (i.e. remand/sentenced), Next Court location, Security Classification (i.e. Unclassified, Minimum, Low Medium, High Medium or Maximum) and all active alerts on IOMS for that prisoner. The Investigation noted that ACRP circles significant alerts to draw them to Chubb's attention.
230. The IOMS Court Lists, Transportation Request and additional Court List Request faxed by ACRP, Mount Eden Men's Prison (MEMP), Auckland Prison and Mason Clinic to Chubb for Court escorts on 24 August 2006 were as follows;
  - 21.08.06 at 2005 hours - Mason Clinic fax Chubb the Transportation Request (COR97/1A form) for their prisoner to appear at Waitakere District Court.
  - 23.08.06 at 0816 hours - ACRP fax Chubb the IOMS Court List Report specifically noting;
    - Liam's alerts as 'Under 20' and 'Vulnerable Youth'. The alert for 'Under 20' is circled. The alert for 'Vulnerable Youth' is not.
  - 23.08.06 at 2217 hours - ACRP fax Chubb the ACRP Court List (spread sheet) specifically noting;
    - Liam as a 'Youth'
    - Baker as 'On Muster', Protective Segregation and Special Needs.

And a spread sheet titled 'additional Court List' which included Baker (Liam was not listed);

- Baker as 'On Muster' and from Special Needs Unit
- 23.08.06 at 0934 hours - MEMP fax Chubb the IOMS Court List noting;
  - one sentenced segregated prisoner
  - one remand segregated prisoner
  - two remand mainstream prisoners.
- 23.08.06 at 0647 hours - Auckland Prison fax Chubb the IOMS Court List noting;
  - one remand mainstream prisoner whose alert noted that he was at risk from others, however the word 'off' was manually written next to the alert and circled. This indicated that the prisoner had been removed from 'At Risk' status and the alert was no longer active.
  - one Maximum security sentenced prisoner whose alerts noted he had a history of staff assault, aggression and CPS High Risk offender.
  - Baker, was listed as he was currently on muster at Auckland prison at the time the Court list was printed, however his name had been removed by the placing of a line through it. His security classification indicated he was Maximum security and alerts indicated he was a CPS High Risk Offender, Health, Risk of Escape and Segregated.
- 23.08.06 at 2009 hours - Auckland Prison fax Chubb the IOMS final Court List. There were no changes to the prisoners previously identified, destined to appear at North Shore District Court for the 24 August 2006. Baker was no longer listed on this report as he had been removed from Auckland Prison's muster.
- 24.08.06 at 0612 hours – ACRP fax Chubb the ACRP Court List spread sheet that was a duplicate of the Court list faxed 23.08.06 at 2217 hours.
- 24.08.06 at 0727 hours - ACRP fax Chubb the final ACRP Court List. There were no changes to the prisoners previously identified, destined to appear at Waitakere District Court (also referred to as Henderson District Court) and North Shore District Court.
- 24.08.06 at 0613 hours - MEMP fax Chubb the final IOMS Court List noting;
  - an additional prisoner was listed who had an alert noting he was Under 20. His date of birth manually entered indicated that the prisoner was 17 years of age, however IOMS identified him as 18. The handwritten date of birth on the IOMS Court List was incorrect. The prisoner was 18 years of age.

231. The Chubb PECCS Operations Manager and administration staff member enter the data received from the IOMS Court Lists, additional lists and Transportation Requests into an electronic database. This inputted data produces a PECCS Escort Route Sheet (PECCS01 form) that will have the following fields identified;
- Escort task ID (registration number)
  - Date of escort
  - Pickup location & delivery location
  - Prisoners name and PRN
  - Sex (male/female)
  - Youth (under 18 years of age) (automatically calculated from date of birth entry and identified by a tick on the Escort Route Sheet)
  - Security Classification (unclassified, minimum, low medium, high medium or maximum)
  - Sentenced (identified by a tick)
  - Muster (identified by a tick)
  - Segregation Required (identified by a tick)
232. The PECCS Escort Route Sheet completed for 24 August 2006 contained the following information specific to Liam and Baker;
- Liam              Youth              ('segregation required' was not identified)
  - Baker              Maximum              ('segregation required' was not identified)
233. The Segregation Required section of the form was not ticked for Liam to identify that he was required to be segregated. The explanation provided by the PECCS Operations Manager is that as a youth he was identified in the 'Youth' box and therefore there was no requirement to tick the Segregation Required section as youths automatically qualify for segregation from other types of prisoners. If any youth is unable to be segregated, then the staff note this on the Escort Route Sheet. Baker's information was based on the ACRP additional Court List sent on 23.08.06 at 2217 hours that advised he was not a protective segregated prisoner.
234. The following fields are completed by the Chubb Escorting Staff during the process of accepting the prisoners from Prison, Police, and Chubb Court Officers;
- latest pick up time & actual pick up time
  - any property and/or medication received
  - escort task activity log
  - escort officers name and ID
  - latest delivery time & actual delivery time
  - Handcuffs used – to be indicated by ticking the box for that prisoner
  - Segregation Given – to be indicated by ticking the box for that prisoner

- Prisoner Type (Police or Prison custody – indicated by either a P or C)
  - Comments
  - Searches conducted – Rub down, Scanner, Strip (indicated by a tick under the relevant type of search for that prisoner)
235. In addition to the PECCS Escort Route Sheet information requirement as identified in the Contract, a box noting 'Youth's not seg'd due to breakdown' was added to comply with Corrections Regulations 2005, Regulations 179 that under 18 year olds are to be separated 'where practicable'.
236. The Prison staff (Receiving Officers) are required to provide Chubb Escorting Staff during handover the following documentation and a verbal brief on the prisoners needs and security risk;
- Electronic report – 'Offender Detail Report' (ODR) containing basic prisoner data and photograph of prisoner
  - An 'Escorting an At Risk Prisoner' form (C.02.01.F1) where relevant, detailing special care needs and;
  - Relevant warrants (e.g. copies of Warrants of Commitment on Adjournment)
237. The Chubb staff are to complete the following process in order to complete 'handover' from the Prison staff;
- Compare documentation (received from Prison staff as above with PECCS Escort Route Sheet)
    - If any errors, discrepancies – resolve with Prison staff there and then.
  - Identify prisoner (as per photo on ODR)
  - Check warrants are valid
  - Confirm any special care and/or segregation needs
  - Receive property and/or medication
  - Search Prisoner (rubdown or scanner)
  - Sign prison documentation (Court List & Escorting an At Risk Prisoner) held by Receiving Officer in charge.
238. Statements taken from the Receiving Office staff do not recall any Chubb staff verbally questioning the status of either Liam or Baker. However, Chubb staff state that they questioned the Receiving Office staff in relation to the segregation status of Baker. He was known to the CBEO (A) to be on protective segregation while at Auckland Prison and his Escorting an At Risk Prisoner form identified him as segregated for good order and discipline rather than voluntary protective segregation. CBEO (A) stated that when he asked Baker whether he was on segregation, Baker responded that he was a mainstream prisoner.

239. Documentation handed to CBEO (B) from the Receiving Office staff included;
- Escorting an At Risk Prisoner (C.02.01.F1) for Baker noting that he was on 15 minute observations and the following risk categories;
    - Self Mutilation
    - Potential Escapee
    - Segregation – a) Section 58 For Security, Good Order or Safety
  - Offender Detail Report for Baker noting that he was 'On Muster'.
  - Offender Detail Report for Liam noting that he was a youth.
240. The observation sheet handed over from Unit Corrections Officer to Receiving Office staff, so that those staff supervising Baker (Receiving Officers and Chubb) could document their 15 minute observations, was not handed over by ACRP Receiving staff to CBEO (B). The CBEO (B) acknowledged the handover of all prisoners destined for North Shore District Court and Waitakere District Court for the morning of 24 August 2006 by way of initialling the ACRP Court List dated 24 August 2006 and initialling the Escorting an At Risk Prisoner form for Prisoner.

### **Examination of the Contract - PECCS Service Description**

241. Schedule 2 - Service Description  
*'Escort Services and Custodial Supervision in Courts'*
1. Service Authority
- 1.3.1 Authority -  
*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 & Treatment) Act 2004*

*Note that the Penal Institutions Act and Penal Institutions Regulations are planned to be superseded as a result of the Corrections Act 2004.*

*The service must also meet the requirements of all other relevant legislation, regulations, relevant Department of Corrections' policies, standards and practices, National Systems, Service Level Agreements between government agencies operating in the criminal justice sector and such other instructions as may be issued by the Chief Executive from time to time'.*

- '3 Service Statement
- 3.1 Service Outcome -  
*The outcome of this service is deemed to be successful when:*

- *Prisoners are transported safely*
- *Prisoners are segregated where appropriate*
- *Prisoner movement does not disrupt Court services*
- *Prisoner, staff and public safety is maintained*
- *It is provided in accordance with the requirements in this service description, legislation, National Systems and any subsequent or associated performance measures and volumes, which have been agreed with the service provider.*
- *All service delivery standards are met*

## '6 Service Delivery Components

### 6.1 Generic components

#### '6.1.1 Fitness and health visual checks -

*The service provider must ensure:*

- *Through a visual check, that all Prisoners are sufficiently fit and healthy to be accepted into the service provider's custody.*
- *That they have the correct documentation, property and any prescribed medication for the relevant prisoner.*
- *That they are aware of any recommendations relating to the management of a prisoner from the provider/authorities from who the Prisoner is received, including whether the Prisoner:*
  - *Is at risk to themselves*
  - *Is at risk to others and from others*
  - *Is a potential escapee*
  - *Is under the age of twenty years*
  - *Is of different gender*
  - *Requires segregation'*

242. In addition to the list of alerts relevant to Liam that were provided on IOMS Court List, ACRP further advised Chubb by way of circling the alert 'Youth under 20' that Liam was a youth. However, Liam's other active alert 'Vulnerable Youth' was not circled. In line with the practice that had developed this indicated to Chubb that the 'Vulnerable Youth' alert was not relevant. In the Investigation's opinion, should a prisoner be identified as a 'Vulnerable Youth' as the result of a PYVS assessment and the possibility that during transportation he may be associating with adults under Regulation 179, it is relevant that this is brought to Chubb's attention as a significant alert by the prison.
243. The Investigation found that the C.02.01.F1 form was completed by a Unit Corrections Officer rostered on Night watch (1800 – 0600) who was based in the SNU on the 23/24 August 2006 for the first time. As the Corrections Officer had not completed a C.02.01.F1 form before,

he sought and received assistance from a fellow Corrections Officer. The segregation being identified as 'purpose of security, good order and safety' was ticked in error. The Unit Officer completing the form was not aware that there were different types of segregation.

244. The entries are electronically inputted by the Officer from information received off the IOMS active alerts for that prisoner. In regards to Baker, his active alerts identified that he was segregated. It did not elaborate on what type of segregation. As previously identified, Baker transferred from Auckland Prison to ACRP, where his status had changed from sentenced prisoner to accused prisoner, therefore he was no longer on voluntary protective segregation. However, the alert was not deactivated upon his release by Auckland Prison, nor was this picked up by ACRP upon his admission.
245. Chubb staff were aware by way of the Escorting an At Risk Prisoner form (C.02.01.F1) that Baker had a history of self mutilation, health issues and risk of escape.
246. The Investigation found that Chubb Base Escort staff complied with the above requirement (paragraph 241) in that immediately prior to the morning and afternoon escort on 24 August 2006, Liam and Baker had been visually checked as fit and healthy and from the written documentation received from ACRP and Police there was no indication of anything unusual with any of the prisoners being escorted that day by the Chubb Base Escort staff.
247. ACRP did not hand over the observation sheet for Baker's 15 minute observations, however the C.02.01.F1 form identified Baker as being on 15 minutes observation and this was initialled by CBEO (B). All staff interviewed did not know that the entry was there until brought to their attention by the Investigation. It was suggested that this could be partially due to the layout of the form.
248. In addition, common practice is that a verbal briefing during the handover is also given by ACRP for any prisoner deemed at risk. As this did not occur CBEO (A) & (B) could have assumed that Baker was not presently deemed at risk (and therefore on 15 minute observations). His Escorting an At Risk Prisoner form (C.02.01.F1) as information only identified historical risk factors which the Chubb staff understood to be purely background information.
249. **'6.1.4 Reporting -**  
*The service provider must report in writing to any other service provider receiving the Prisoner into their care if the Prisoner is regarded to be:*
  - **At risk to themselves,**
  - **At risk to others and/or from others**
  - **Potential escapees'**

250. Baker was identified (in regards to the above requirement) on the Escorting an At Risk Prisoner (C.02.01.F1) provided by ACRP to Chubb as;
- At risk to himself (self mutilator) and on 15 minute observations
  - History of escapes
251. Baker was not deemed as a risk to others or from others.
252. The CBEO (B) stated that he handed a copy of the C.02.01.F1 (provided in duplicate by ACRP) to the police during the handover process at North Shore District Court on the morning of 24 August 2006.
253. *'6.1.9 Separation of groups of Prisoners - Unless otherwise agreed with the Department of Corrections, each of the following groups of Prisoner must be kept separate from all other Prisoners:*
- Females (physical and visual separation is required)
  - **Prisoners at risk**
  - Segregated prisoners
  - **Under the age of 20(4)**
  - Transsexuals
  - If necessary, Prisoners with different gang affiliations

*Note: - (4) reference to Penal Institutions Regulations 2000, Regulation 132.*

254. Further to the above requirement, the definition of the term 'Prisoners at risk' is described in the Contract under Appendix 2, Standards and Practices - A.03 – Managing Prisoners At Risk.

## *'2 Definitions*

*"Prisoners at risk" means those prisoners who are considered to be:*

- At risk to themselves (suicidal or self harm)
- At risk to others and from others
- Under the age of 20 years
- Under the influence of alcohol or drugs/or going through withdrawal
- Suffering from illness or other disability'

255. The Investigation found that Baker should have been separated from all other types of prisoners in accordance with the required standards of the Contract, Service Delivery 6.1.9 – Separation of Groups of Prisoners. This was because he had been deemed by ACRP to be an 'At Risk' prisoner and was on 15 minute observations.
256. In accordance with the contract, Liam qualified for two types of separation under Service Description 6.1.9 above. The first was that

he **must** be separated as a Prisoner At Risk. The second was that he must be separated '**where practicable**' as a prisoner Under the age of 20.

257. There is an anomaly in the current contract in that youths are by definition Prisoners At Risk. It would appear, in order for Chubb to comply with A.03 Managing Prisoners At Risk, that Chubb should be provided with an Escorting an At Risk Prisoner form (C.02.01.F1) upon handover for every youth (under 20 years of age). This would result in separation of those youths as per Service Description 6.1.9 where 'Prisoners At Risk' must be separated unless agreed with by Department of Corrections.
258. However, the common practice by Chubb in separating those prisoners deemed 'At Risk' is only:
  - when there is a C.02.01.F1 form and the prisoner's status has been brought to Chubb's attention verbally by the prison.  
or;
  - when Chubb deem the prisoner is at risk from their own assessment of the prisoner upon physically sighting and talking with the prisoner.
259. The Investigation found that ACRP complete the Escorting an At Risk Prisoner form (C.02.01.F1) for those prisoners who resided in the Special Needs Unit as a matter of course. Youths per se are not listed on the form nor are they deemed automatically at risk by PPS simply by virtue of being a youth. Therefore, the Escorting an At Risk Prisoner form (C.02.01.F1) is not completed for a prisoner if the sole reason is that he/she is a youth.
260. The Investigation was advised by Chubb PECCS Operations Manager that Chubb had never separated any youth under the category 'Prisoners At Risk' for the sole reason that they are a youth under the age of 20 years as per the definition of 'Prisoners At Risk' under clause A.03 of appendix 2 of the Contract.
261. As Liam was only identified as a youth on his Offender Detail Report, he was managed in accordance with Regulation 179. The common practice by Chubb when escorting youths (under 18 year olds) is that the youth is separated 'where practicable'. The considerations made to establish whether the separation is practicable are;
  - Number of MUST separate prisoners (i.e protective segregation, mason clinic)
  - Available compartments
  - Security – minimise risk of reshuffling prisoners during scheduled stops at less secure areas (i.e. Henderson Court & Mason Clinic)
  - Humane – not exceeding the recommended seating capacity per compartment of 5 for rear compartments and 3 for the front two compartments.

262. When considering the placement of both Liam and Baker in terms of risks to themselves the Investigation found that CBEO (A) decision to place them together on the morning of 24 August 2006 was understandable.

### **Conclusions in relation to Handover**

263. Liam's status as a 'Youth under 20' was advised to Chubb by ACRP by way of the IOMS Court lists, however, his status as a 'Vulnerable Youth' was not conveyed verbally to Chubb by ACRP. Chubb were therefore unable to take this into consideration when working out the configuration of the escort.
264. Baker's 'At Risk' status including 15 minute observations was advised to Chubb by ACRP by way of the Escorting an At Risk Prisoner form (C.02.01.F1). However, this was not confirmed verbally by the ACRP Receiving Officer which is usually the practice at the time of handover. As a result the CBEOs assumed this information was historical and not significant for the configuration of the escort.
265. The Investigation is also of the view that while the specific entry for Baker of '15 minute observations' on form C.02.01.F1 might easily have been overlooked due to the layout of the form, this should not have happened. The purpose of the form is to advise the level of risk and escorting staff should read this form carefully. Common practice has clearly compromised this by placing undue reliance on the verbally advice of the prison staff at handover.
266. There is an anomaly in the current contract in that in the section Standards and Practices, A.03 – Managing At Risk prisoners, youths are by definition at risk prisoners and if this section were to be strictly adhered to would be separated as a matter of course. However the contract also says that prisoners 'Under the age of 20' also qualify for separation under clause 6.1.9. Clause 6.1.9 refers specifically to the legislation which states that youths are to be separated 'where practicable'.

### **EXAMINATION OF DEPARTMENTAL STANDARDS & CONTRACT in relation to:**

#### **Incident Reporting for PECCS Providers (National System)**

267. The Investigation found that the CBEOs initially became aware of the serious assault on Liam when CBEO (A) opened Compartment A of CAN 05 vehicle in the ACRP Receiving Office sally port. CPR was commenced immediately and continuously until paramedics arrived and Liam was taken to Auckland Public Hospital. From reports received by witnesses it would appear that Liam was not breathing on his own when he left in the ambulance. The assault was very serious

with the possibility that Liam could die, therefore the incident reporting completed by PECCS was subsequently managed and reported in accordance with requirements for a Death in Custody (refer 6.1 below).

268. '6 *Responding specifically to a prisoner death in custody*

6.1 *Responding to a prisoner death –*

*The following steps outline the procedures to be followed if security officers have to deal with a prisoner death:*

1. *Every effort to revive and/or maintain life must be continued until the prisoner is pronounced dead by qualified medical personnel.*
2.
  - i. *Police must be notified immediately*
  - ii. *The most senior security officer available must assume overall control until the Police arrive.*
  - iii. *The immediate area must be cleared of all persons (including other inmates) except for those who are assisting with resuscitation efforts.*
3. *Where there is a suspicion that a crime has been committed;*
  - i. *All prisoners who had access to the incident scene must be kept separate pending further investigation.*
  - ii. *Any officer, or any other person must not touch, handle or remove any property or article from the scene.*
  - iii. *Officers must record any observations that may be required for further investigation or any relevant voluntary statement made by any person (including inmates) present. However, such person must not be questioned.*
4. *The Security Monitor must be notified by the senior officer as soon as possible.*
5. *Upon the death of an inmate, the deceased's property must be safeguarded. If the death is a sudden death by natural cause, the deceased's personal property must be collected, documented and handed to the attending Police.*
6. *Every detail of an inmate's death must be fully documented by;*
  - i. *The incident being recorded in the daily logbook*
  - ii. *The staff involved providing a detailed written account of the incident.*
  - iii. *Any other report as required by the Security Monitor*

269. As Liam was found seriously assaulted and unconscious in a PECCS, Chubb Protective Service's vehicle that was on Public Prisons property and inside ACRP, the response and reporting was completed by both Chubb PECCS staff and ACRP.
270. The Investigation found that Chubb staff and Acting PECCS Security Monitor were compliant with the requirements for Incident Reporting with the following exceptions;
271. The Chubb staff involved (being CBEO (A) & (B) and first responding staff) did not provide written statements, however the Chubb PECCS Operation Manager decided the staff did not need to provide written statements as they had already provided statements to the Police on the night of the 24 August 2006 that had been provided to Chubb and subsequently provided to the Department's PECCS Security Monitor.

**EXAMINATION OF DEPARTMENTAL STANDARDS & CONTRACT in relation to:**

**Managing an Inmates Death – National System & PPM B.08 (National Policy)**

272. National System 2.1 requires:

*"Every effort must be made to maintain life prior to confirmation by a registered nurse, doctor or attending ambulance staff that an inmate is dead unless there are obvious signs that the inmate has been dead for some time and that attempts to resuscitate would be futile."*

National System 2.1 continues:

*"The incident area must be secured pending police investigation to prevent any interference with any material (forensic evidence, and unauthorised access to the incident scene.)."*

National System 1.5 requires;

- Department of Corrections is responsible for:

*"Notifying the Police, a Visiting Justice, the Coroner, Ombudsmen's Office, Inspector of Corrections, Prison Chaplain and a Cultural Adviser immediately following confirmation of the death of a prisoner by a registered medical practitioner."*

273. The investigation found that ACRP staff met the performance standards contained in the Policy and Procedure Manual B.08 Managing an Inmates Death, in that every effort was made by Custodial and Medical staff to maintain Liam Ashley's life. Liam was

considered to be alive upon leaving ACRP at approximately 1850 hours on 24 August 2006.

274. The investigation found by way of surveillance camera footage that the incident area (Chubb prison vehicle CAN05) was secured in that no person was observed entering compartment A pending the Police investigation. However, there was a delay of approximately 20 minutes in isolating prisoners from CAN05 from other prisoners.
275. The investigation also found that the Visiting Justice was not notified in accordance with National Policy 1.5.

**EXAMINATION OF DEPARTMENTAL STANDARDS & CONTRACT in relation to:**

**Responding to Incidents - PPM E.08 (National Policy)**

276. The Policy and Procedure Manual E.08 policy standard requires that:
  - *'Incidents shall be reported in accordance with the requirements of the National System – Incident Reporting in Prisons and this PPM System'.*
  - *'Incidents are recorded, analyzed and necessary action taken to either reduce the risk of further harm to people, property or systems, serious embarrassment to the service and/or remove underlying causes of incidents and the appropriate people informed'.*
277. The Investigation found that all performance standards for PPM E.08 Responding to Incidents had been met in respect to the death in custody of Liam John Ashley.

**ADDITIONAL INFORMATION**

**International Obligations/Reservations and National Legislation**

278. The Investigation received legal advice dated 1 September 2006 in relation to the obligations of the Department of Corrections under international human rights instruments and any reservations by the New Zealand Government to those instruments. Relevant extracts from that advice are as follows;
  279. Current legislation governing the detention of people under 18 years of age is set out in Regulation 179 (1) of the Corrections Regulations 2005, which provides that:  
*"All prisoners, including accused prisoners, under the age of 18 years, must –*
- (a) *when inside a prison, be kept apart from prisoners who are 18 years or older; and*

- (b) *when outside a prison, be kept apart from prisoners who are 18 years or older, where practicable”*
280. In addition to the exception for practicability in Regulation 179(1)(b), Regulation 180 also permits the Chief Executive to authorise the mixing of such prisoners with others:
- “If the Chief Executive is satisfied that it is in the best interest of the prisoners concerned, the Chief Executive may, in respect of a prison, approve the mixing of a prisoner or class of prisoners-*
- (a) *who are under 18 years with a prisoner or class of prisoners who are 18 years or older;*
- (b) *who are between 18 years and 20 years with a prisoner or class of prisoners who are under 18 years.”*
281. *“The separation of juvenile detainees from adults is addressed under both the International Covenant on Civil and Political Rights (“ICCPR”) and the Convention on the rights of the Child (“UNCRC”), both of which have been ratified by New Zealand.*
- Article 10(2)(b) ICCPR provides:*
- Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.”*
- Article 37(c) UNCRC provides that;*
- 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 and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*
282. *“The term “child” is in turn defined by article 2 ICCPR;*
- For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”*
283. New Zealand has entered reservations to both articles 10(2)(b) ICCPR and 37 (c) UNCRC. The effect of such reservations is to remove, to the extent of each reservation, New Zealand’s obligation to comply with these provisions. While these reservations are periodically reviewed and their withdrawal has been considered, they currently remain in effect. These reservations are;

The reservation to Article 10(2)(b) and Article 37 (c) provide:

*“The Government of New Zealand reserves the right not to apply (the articles) in circumstances where the shortage of suitable*

*facilities makes the mixing of juveniles and adults unavoidable; and further reserves the right not to apply (the articles) where the interest 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”*

284. The Investigation received information from the Department's legal section, Policy Development in relation to the history and reason why the term “where practicable” was included in the current regulations, specifically regulation 179. The reason for including the term was that the members of the Department's Corrections Act Implementation Committee considered that;

*“It may not always be practicable for prisoners aged under 18 to be kept separate from prisoners over that age when being escorted to and from Court or being transferred between prisons. This could be because the vehicle used for the escort may not have suitable compartments or that the length of the trip meant it would not be feasible to travel over the same distance twice to ensure separation”.*

*“Parliamentary Counsel were therefore instructed to maintain the same standard as that in the former regulation 132 of the Penal Institutions Regulations in respect of prisoners outside the prisons and only to require separation in circumstances where this is practicable”.*

*“The reason given in paragraph 418 of the August 2004 drafting instructions was that it may be impracticable for prisoners aged under 18 to be kept separate from prisoners over that age when being escorted to Court, or being transferred to other prisons”.*

*“The intention was that all reasonable efforts should be made to keep prisoners aged under 18 separate from those aged over 18 when outside a prison, but that there may be circumstances where this could not be done”.*

*“The age distinguishing young prisoners from adult prisoners was reduced from 20 to 18 in the Corrections Act and Regulations to align with United Nations Convention on the Rights of the Child (UNCRC)”.*

285. The Investigation was advised that elsewhere in the Corrections Act and Regulations, particularly in section 6 of the Act, which sets out principles guiding the corrections system, there are references to “where practicable”. These were included as it was considered important to acknowledge that the Department of Corrections operates within limited resources.
286. Therefore, the Investigation is of the opinion that the application of the term “where practicable” in relation to Regulation 179 is compliant with

New Zealand's international human right instruments obligations and reservations if all reasonable effort has been made in considering the non-separation of a youth.

## VEHICLE CONFIGURATION

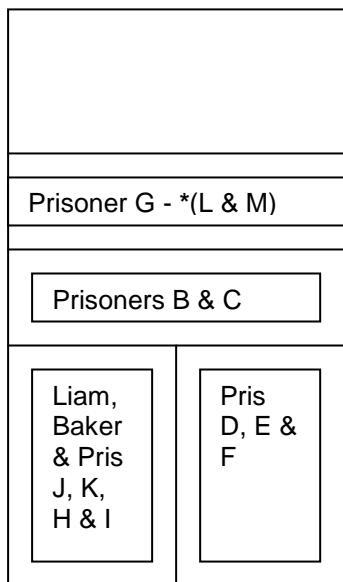
287. In accordance with the Contract, Appendix 2, Standards and Practices, A.01 – Transportation of Prisoners objectives, Chubb staff are required to provide safe, secure and humane custody of prisoners. This requirement is part of the consideration process when configuring the vehicle in ensuring 'all reasonable effort has been made' in applying the term 'where practicable' to the non separation of a youth.
288. To follow are examples specific to Chubb Base Escort for the consideration to ensure compliance with the transportation requirements of all prisoners;
- Safe - the safety issue is the configuration of different types of prisoners that are legally required to be separated and those prisoners who during the course of the escort/court supervision, the Chubb Officer becomes aware either by receiving new information or observation (i.e. comment from another prisoner, prisoners body language) that the Chubb Officer decides it would be in the prisoner's best interest to be separated from other prisoners.
  - Secure – the security of the escort is equally paramount in that the Chubb staff are to ensure that at all times when transporting prisoners the risk to the public via escape is minimised. Therefore, the option of relocating prisoners between compartments at Mason Clinic, Henderson Police and Henderson Courts has an element of risk in relation to the level of security and providing a possible opportunity to escape.
  - Humane – the Chubb vehicle compartments have a recommended maximum loading capacity of 5 people (being of average size) for the rear compartments and 3 people for compartments A & B. This is due to the seating capability available and that some escorts are for long durations (i.e. over an hour). Air vents have been included in Chubb transportation vehicles, however Chubb staff advised that in their experience the temperature can be uncomfortable if the recommended capacity is exceeded.
289. CBEO (A)'s information and understanding specifically in relation to Liam and Baker for the escort on 24.8.06 was as follows;
- Liam - Youth (under 18) to be separated 'where practicable'

- Baker - History of self harm  
History of escape
  - History of previous escorts – compliant (no incidents of standovers)  
History of Voluntary Protective Segregation
290. Written correspondence dated 20 May 2003 from LTSA advised Chubb that if there were any limits placed on the number of prisoners Chubb could carry, this would be noted in their P endorsement exemption letter. There is no number of prisoners noted in the exemption letter.
291. The vehicles' TARE weights are calculated by adding the weight of the vehicle plus the weight of the cage compartments plus the maximum capacity of person in the vehicle multiplied by 80kg's per person, which equal 4500 kgs. PECCS, Chubb Protective Services receives the finished product all ready TARE weighted and certified. Therefore, the consideration on the total number of people transported is calculated by weight and is not to exceed the TARE weight of 4500kgs.
292. On that basis and with consideration of the humane component for transportation of all prisoners, Chubb PECCS management provided guidance to their staff on the recommended maximum loading capacity for each vehicle compartment being;
- Compartment A 3 people
  - Compartment B 3 people
  - Compartment C 5 people
  - Compartment D 5 people
293. Therefore, it is fair to say that in terms of meeting the legislative requirements all “**reasonable effort**” could include the option of exceeding the maximum recommendation of people in the compartments to facilitate the separation of any person under the age of 18 from all persons 18 years of age and older.
294. The CBEO (A) stated that occasionally he has exceeded the capacity depending on the size of the prisoners. The investigation found that on the morning of 24 August 2006 the rear compartment that Liam was transported in, had 6 prisoners from ACRP to Henderson Court.

#### **Vehicle Configuration of Chubb Base Escort from Prison to Court – 24 August 2006**

295. From the transportation request and Court Lists received by Chubb from MEMP, ACRP, Auckland Prison and Mason Clinic the following is a description of the actual layout of the vehicle configuration during the journey from MEMP – ACRP – Mason Clinic – Henderson Court – Auckland Prison – NSDC. It shows the configuration as considered by

CBEO (A) in order to comply with Regulation 179 on the morning of 24 August 2006.



\* - Prisoner G was dropped off at Henderson Court and Prisoners L & M from Auckland Prison were placed in Compartment A from Auckland Prison to NSDC.

296. The configuration was based on CBEO (A)'s perspective as follows;

Prisoner G	Mason Clinic	to be kept separated - MOU
Prisoner B	MEMP	Sentenced – Voluntary
Prisoner C	MEMP	Protective Segregation
Prisoner D	MEMP	Remand – Voluntary
Prisoner E	MEMP	Protective Segregation
Prisoner F	MEMP	adult mainstream
Liam	ACRP	adult mainstream
Baker	ACRP	adult mainstream
Prisoner J	ACRP	adult mainstream – to be kept separate where practicable
Prisoner K	ACRP	adult mainstream (Escorting an At Risk Prisoner form – historical information)
Prisoner H	ACRP	adult mainstream
Prisoner I	ACRP	adult mainstream
Prisoner L	Auckland	adult mainstream to Henderson
Prisoner M	Auckland	adult mainstream
		adult mainstream - sentenced

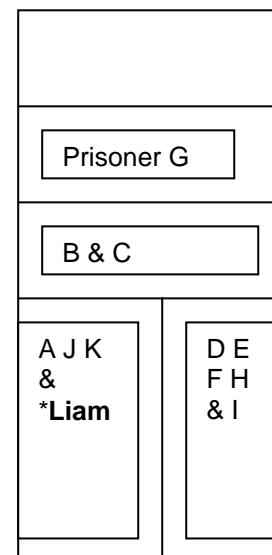
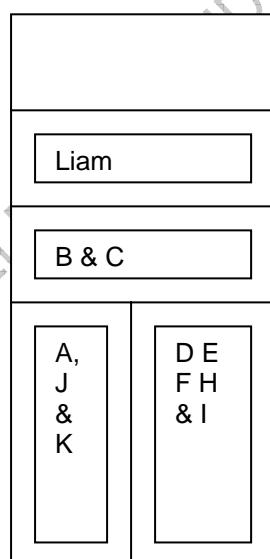
297. Therefore by CBEO (A)'s reasoning, Baker was a mainstream adult prisoner and did not require any specific segregation. CBEO (A) was not aware that Baker was on 15 minute observations and he stated he was not on Voluntary Protective Segregation. On that basis, Baker could have been placed with any adult mainstream.

1. Liam could have been placed in compartment A between ACRP – Mason Clinic. CBEO (A) explained that he did not do this as he was concerned with the required level of security at Mason Clinic should he have to open up one of the adult mainstream compartments to place Liam in there.
2. Based on the numbers and categories of the prisoners given above the Investigation could not reconfigure a layout that would have separated Liam from all other prisoners between Mason Clinic and Henderson Court.
3. From Henderson Court to Auckland Prison, Liam could have been placed in Compartment A by himself, as Prisoner G from the Mason Clinic had been dropped off.
4. From Auckland Prison to NSDC, Prisoners L & M could have been placed in either of the two rear compartments with the other adult mainstream prisoners.

Configuration options for the journey from Prison to Court on the morning of 24 August 2006 could have been as follows. Note – A stands for Baker.

ACRP to Mason

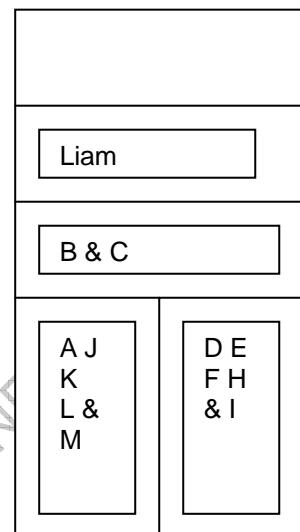
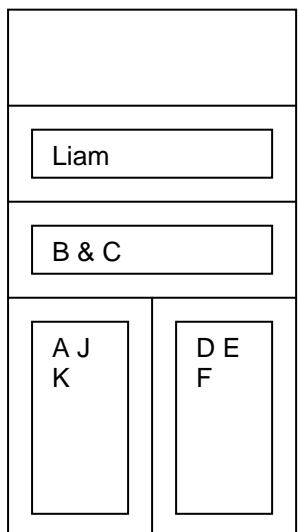
Mason to Henderson



\*Not able to separate Liam

Henderson to Auckland Prison

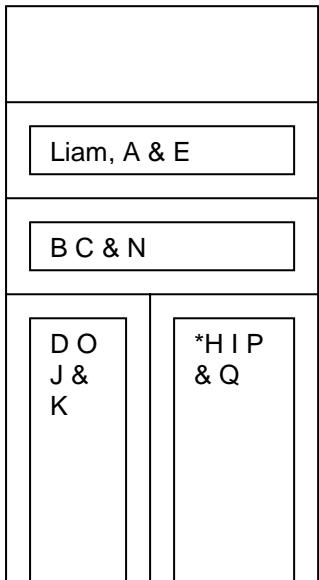
Auckland Prison to NSDC



298. Therefore, on the information provided to the CBEOs it would appear that it was possible to separate Liam for three of the four sections of the escort.

**Vehicle Configuration for Chubb Base Escort from Court to Prison on 24 August 2006**

299. From the transportation requests received by Chubb from the NSDC Police the following is a description of the actual layout of the vehicle configuration for the journey from NSDC - Henderson Police - ACRP – MEMP configuration as considered best by CBEO (A) in order to comply with Corrections Regulations 2005, Regulation 179, on the afternoon of 24 August 2006. The actual configuration used is as follows;



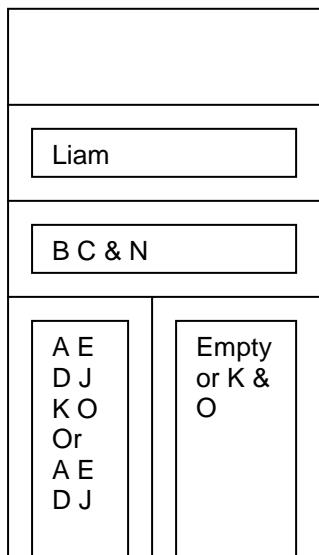
\* - Prisoners H, I, P & Q were picked up from Henderson Police Station

300. This configuration was based on the following information received by the CBEOs;

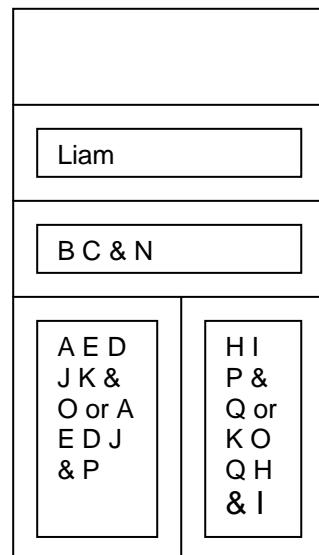
NAME	TO	CATEGORY
Liam	ACRP	mainstream adult
Baker	ACRP	mainstream adult
Prisoner B	MEMP	Voluntary Protective Segregated Adult
Prisoner C	MEMP	Voluntary Protective Segregated Adult
Prisoner D	MEMP	mainstream adult
Prisoner E	ACRP	mainstream adult
Prisoner H	ACRP	from Henderson – mainstream adult
Prisoner I	ACRP	from Henderson – mainstream adult
Prisoner J	ACRP	mainstream adult
Prisoner K	ACRP	mainstream adult
Prisoner N	MEMP	Voluntary Protective Segregated adult
Prisoner O	MEMP	mainstream adult
Prisoner P	ACRP	from Henderson – mainstream adult
Prisoner Q	ACRP	from Henderson – mainstream adult

301. Described below are possible options based on the information received from the Police by Chubb and Chubb's knowledge of the prisoners (i.e. Liam as a youth) required for transportation on the 24 August 2006 from NSDC to Henderson Police to ACRP to MEMP that would have enabled the separation of Liam as a youth;

NSDC to Henderson



Henderson to ACRP



302. Either one of these options would have enabled Liam to have been escorted separately from adult prisoners on the afternoon of 24 August 2006.
303. Those options either have a compartment exceed the recommended load of 5 persons or the need to consider the security risk in relation to the opening of a back compartment currently holding prisoners to accommodate the additional prisoners from Henderson Police/Court.
304. Neither option considered the separation of Baker in accordance with Service Description 6.1.9 – Separation of groups of Prisoners as an at risk prisoner as it is based on the information received by CBEO(A), being the person considering the configuration.
305. The matter of security en-route at the Mason Clinic, Henderson Police, and Henderson Court is a high priority. It is therefore understandable that the Escorting staff would be reluctant to 'shuffle' prisoners around at these points because of the increased risk of escape.
306. The Chubb PECCS Operations Manager advised that Chubb prefer not to re-arrange vehicle configurations during sections of the journey for the following reasons;
- The security of the escort - through their experience in the early days of the contract, Chubb staff did re-arrange prisoners however this resulted in a number of preventable incidents (e.g. hiding under the vehicle).
  - The safety of the prisoner - if a prisoner is separated at the beginning of a journey (prison/court) he needs to stay separated for the duration for it is possible that if you place him back into mainstream the other prisoners may not realise that he is separated

because he is a youth and may suspect he has been separated for other reasons (i.e. sex offender) and may harass or assault him.

307. The Chubb PECCS Operations Manager advised that the escort officers are expected to consider all options available to them before deciding on what they believe is the best course of action given the information they have been provided and based on Chubb procedures.
308. Chubb staff take the transportation requirements of all prisoners (safety, security & humanely) into consideration when configuring the vehicle alongside that of the prisoners who MUST be separated, (males/females/segregation/at risk). It appears that the application of 'where practicable' is below the priority of security risk and to an extent the comfort of prisoners. The Investigation is unable to provide evidence that this occurs as unfortunately the exact reasons for non-separation of youths are not documented at the time.
309. It would appear from the actual configuration and CBEO (A)'s statement that it is common practice for sections of the journey for a compartment to be empty to accommodate prisoners for collection enroute (i.e. Henderson Police/Court). In the Investigation's opinion, it is unacceptable to have an empty compartment for a portion of the journey when there is a youth associating in another compartment with adult(s). It is also the Investigation's opinion that the security issue needs to be carefully weighed up with the legislative requirements and the decision for non-separation of youths should always be recorded.
310. It would appear from the actual configuration that consideration was given to prisoners going to the same prison. In the opinion of the Investigation, the security issue of moving prisoners between compartments is reduced upon the vehicle being secured within prisons walls. Therefore the placement of prisoners due to their destination would be at the lowest level of consideration.
311. However, the Investigation is of the view that there is evidence to support that the Chubb Base Escort Officer's application of the provision "where practicable" was thorough and compliant with his training and with the common practice of the application of Regulation 179.
312. In addition, the Investigation is of the view that CBEO (A)'s decision was to some extent understandable given the information received from ACRP and Police, Liam's and Baker's behaviour observed throughout the day and CBEOs historical knowledge of Baker's compliant behaviour during numerous previous escorts.
313. It is apparent to the Investigation that the consideration of separating youths from adult prisoners is routinely canvassed fully at the time of each escort however it is not documented to the full extent that would ensure that the Department can be satisfied that "**all reasonable**

**efforts have been made**" in terms of the legislation and the UN requirements.

## **EXAMINATION OF CONTRACT – Part A: Standard Terms and Conditions - Providing the Service (continued)**

314. **'4.5 Working with us and other agencies –**
- 4.5.2 Prior to the Implementation Date you must enter into appropriate protocols with the Public Prisons Service, the New Zealand Police, the Ministry of Justice and any prison management contractor situated within the relevant locations set out in Schedule 1. These protocols must address the interfaces between you and these respective agencies to ensure that you provide the Services in an effective and co-operative manner.'**
315. The Investigation found that PECCS, Chubb Protective Services had current Memoranda of Understandings for the operation of Prisoner Escort and Court Custody Services (PECCS) in the Auckland and Northland Regions with the following;
- Public Prisons Service (Department of Corrections)
  - Mason Clinic Regional Forensic Psychiatry Services
  - New Zealand Police – Auckland City District, North Shore/Waitakere District, Counties/Manukau District and Northland District
  - Ministry of Justice represented by the 14 Courts in the Auckland and Northland Region
316. **'4.6 Your employment responsibilities –**
- 'You must employ sufficient suitable persons to carry out your statutory and contractual obligations under this Agreement. In particular you must fulfil your obligations relating to the appointment and training of Security Officers.'*
317. The Investigation found that the PECCS Individual Training Records that are held by both Chubb Protective Services and the Department of Corrections PECCS Monitor confirmed that both CBEO (A) & (B) had completed and passed the required training.
318. **'4.10 Administrative systems – You must:**
- 4.10.3 Maintain your operations manual set out in Appendix 4 (compliance with which will ensure that the Services are provided in accordance with this Agreement), and not make material changes to it without first obtaining our written approval, which will not be withheld unreasonably;**
319. The Investigation found that the operations manual, procedure number GD – Meeting Prisoners Special Needs/Handling Requirements in reference to 'Youths under 20 to be segregated' had been changed to 'Youths under 18 to be segregated' by the Chubb PECCS Operations

Manager with the oversight of the Department's PECCS Monitor. However this material change occurred without the written approval of the Department of Corrections.

320. **4.10.4 Have and maintain a proper and auditable information management system sufficient to meet our information and reporting requirements set out in Schedule 3 and Appendix 1.**

**Schedule 3 - Reporting**

**Monthly Reporting**

**3.1 Monthly PECCS Report**

*'Every month you will provide the Security Monitor and the Contract Manager with a written Monthly PECCS Report (using the template provided) containing performance data, staffing information, an activity narrative, and declarations and sign-off'.*

*'Segregation of Prisoners*

- o Non-segregation of female prisoners from male prisoners and specified prisoners from other prisoners'*

**3.2 Task Details**

*'Every month you will provide the Contract Manager with details of each task undertaken during the month. The details will be recorded in an Excel spreadsheet and submitted to us on a 3.5 inch diskette or by email'.*

*You will provide the following information about each prisoner you escort during the month:*

- o Youth*
- o Special notes (e.g. escape risk, protection, etc)*
- o Special segregation requirements*
- o Segregation provided (Y or N)*

321. The Investigation found a robust reporting system was in place by Chubb Protective Services and the Department's PECCS Monitor.
322. Every month a report is required by the Department of Corrections by the tenth working day of the month following the month being reported. Chubbs complete this reporting requirement in the form of an electronic database which is electronically sent to PPS, Contracts Manager and the PECCS Monitor. In addition to the electronic database, PECCS, Chubb Protective Services provides the PECCS Monitor with hardcopies of the relevant documentation.
323. The reporting of non-segregation of specified prisoners (includes prisoners under the age of 18 years of age) from other prisoners is part of the information data reported each month.

324. On 11 September 2006, Chubb PECCS Operations Manager forwarded to Public Prisons Service the Reporting documentation for the month of August 2006. There were a total of 12 escorts under the age of 18 years of age who were not separated from other prisoners 18 years of age or over. Liam is reported to have accounted for 3 of the 12 non-separation escorts.
325. **'4.10.6** *Have and maintain all necessary records to enable the Security Monitor to fulfil his or her statutory obligations.*
326. The Investigation found that PECCS, Chubb Protective Services had a robust system collating all PECCS Escort Route Sheets and updated database. It was also clear to the Investigation from the Department's PECCS Security Monitor's records that each instance of non-separation of prisoners under 18 years of age was reviewed after the fact for compliance with the requirements.
327. Documentation sourced from the Security Monitor's records indicated that for the period 1 July 2005 – 30 June 2006 a total of 37293 escorts were completed by PECCS, Chubb Protective Services. From the monthly reports for that period, there were a total of eleven reported incidents related to escorting of prisoners. Three of those incidents related to fighting and assaults in the compartment of a Chubb prisoner escort vehicle. It was clear to the Investigation that such incidents were extremely rare.

#### **EXAMINATION OF CONTRACT – Part A: Standard Terms and Conditions – Appointment and Training of Security Officers**

328. **'5.3 Requirements for training Security Officers – You must at your own expense:**
- 5.3.1 *Provide your Security Officers with initial and regular ongoing training to the standard appropriate to their particular positions and which is no lower than the standard of training received by the Security Officers employed by us, as set out in Schedule 6;*
- 5.3.2 *Ensure that the training is provided by properly qualified instructors and complies with any instructions or guidelines set out in Schedule 6.*
- '5.4 We may provide training – At your request and expense, we may provide training courses for your Security Officers to assist you in meeting your training requirements under this Agreement, but we are not obliged to do so.**
329. The Investigation found that PPS developed in March 2005 a training workbook titled 'The PECCS Corrections Act 2004 & Corrections Regulations 2005'. The training based on this workbook was delivered

by PPS to the PECCS Security Monitor, Chubb Operations Controller and Senior Supervisors for Whangarei District Court, Auckland High Court, Auckland District Court and Manuaku District Court.

330. The course was designed and facilitated to instruct the Chubb Senior Officers of the relevant changes to legislation that pertain to PECCS operations, including reference to Regulation 179. The Chubb Senior Officers in turn conducted group sessions with their respective Court officers. The Chubb PECCS Operations Manager advised the Investigation that there were no records kept of these sessions.
331. Independent legal advice received by the Investigation identified that the above mentioned workbook and workshop designed and facilitated by PPS, constitutes the ‘agreement’ of the Department of Corrections referred to in the Contract, Service Descriptions 6.1.9 – Separation of groups of Prisoners – *‘Unless otherwise agreed with the Department of Corrections, each of the following groups of Prisoner must be kept separate from all other Prisoners ...’*
332. The Chubb staff training modules that every Chubb PECCS Officer is to complete and pass were designed by PPS. The Escort module does not go into any detail on the type of prisoners separated, other than the regulation requirements of males/females and of youths ‘where practicable’. There are references to Chubb’s Operations Manual, however the modules appear not to include any of the requirements from the Contracts Service Description, Standards & Practices.

#### **Additional Matters**

##### **PPS Computer (IOMS) - Alerts**

333. The Investigation was advised that common sources of PPS alerts are when Police/Court data is migrated onto IOMS as part of the Receiving process (i.e. drugs, assault, escape, weapons, risk to others), if the prisoner has 2 or more ‘yes’ answers during the New Arrival Risk Assessment process and when manually entered by senior custodial staff, managers and assessors.
334. The purpose of the alert system is to focus only on information relating to any risk that may impact on the management of a prisoner while in PPS custody.
335. There is no National Policy regarding the activation and deactivation of the alert system, however PPS does apply rules around authority level access and guidelines on the application of alerts.
336. The investigation found that certain alert types had not been reviewed to reflect current legislation. For example, the application of a youth alert automatically results in the type ‘Youth under 20’.

337. There is a heavy reliance on the PPS IOMS alert system as a means of communicating information by prisons to Chubb, however that degree of reliance varies considerably between prisons and Chubb. Chubb have an expectation that the alerts will be current and accurate as they are not in a position to investigate the information received. They do not have access to the PPS computer, whereas the prisons have access to an individual's electronic file and manual file in order to confirm the accuracy and relevance of any alert.

## FINDINGS

### Key Finding

338. The death of Liam Ashley following his being assaulted while under escort from North Shore District Court to Auckland Central Remand Prison on 24 August 2006 could have been avoided by a more rigorous application of Corrections Regulation (2005) 179 (1) (b), which states that all prisoners under the age of 18 years must, when outside a prison, be kept separate from prisoners who are 18 years or over, where practicable. The process by which the prisoners were allocated to the various compartments within the escort vehicle had developed over time and had become an established practice accepted by both Chubb and the Department of Corrections. The practice was deficient in that it placed insufficient emphasis on the separation of youth from adult prisoners.

### Specific Findings

339. The decision to place Liam in the front compartment of Chubb vehicle CAN05 with two adult prisoners was the decision of CBEO (A). This officer went to some lengths to make an appropriate decision. This decision was based on his training and understanding of the balance of priorities between security and safety. This included the weight that was placed on the requirement to keep youths separate where practicable as opposed to recommended accommodation limits for each vehicle compartment, or the security risks involved in moving prisoners around the vehicle during the various stops along the escort route.
340. There were other options available for configuring the escort that would have enabled Liam to be separated from adult prisoners for all but one section of the journey from ACRP to North Shore District Court on the morning of 24 August 2006, and for the entire return journey that evening.
341. The information provided to Chubb about Liam was not complete. Liam's active alert entered on IOMS (as a result of the Prison Youth Vulnerability Scale (PYVS) assessment) indicated that he was a vulnerable youth. This was not brought to the attention of Chubb by ACRP. In the Investigation's opinion the alert was relevant for Chubb's

consideration, and may have influenced Chubb's decision in relation to their application in Liam's case of Regulation 179.

342. The written information provided by ACRP to Chubb on Baker was partially inaccurate. It omitted relevant documentation (observation form) that would have alerted Chubb to the fact that Baker was on 15 minute observations and therefore required to be separated as an 'At Risk Prisoner in accordance with the contract, Schedule 2, Service Description 6.1.9 – Separation of Groups of Prisoners.
343. The contributing factors to the inaccurate and omitted information provided by ACRP to Chubb staff for Baker are as follows;
  - A Voluntary Protective Segregation alert was not deactivated by Auckland Prison upon his transfer to ACRP.
  - The Escorting an At Risk Prisoner form (C.02.01.F1) was completed by an inexperienced staff member on Night Watch who entered the incorrect type of segregation from the alert information.
  - The ACRP Receiving Officer who completed the handover process was not advised that Baker was on 15 minute observations, therefore he did not verbally pass this information on to the Chubb escorting officers.
  - ACRP Receiving Office staff did not carry out 15 minute observations on Baker while waiting in the Receiving Office on the morning of 24 August 2006 in accordance with National requirements PPM B.14 – Prisoners At Risk to Themselves.
  - The ACRP Court list did not record Baker's status and security type as remand & unclassified.
344. Liam qualified for the group 'Prisoner At Risk' in accordance with the contract, Schedule 2, Service Description, 6.1.9 – Separation of Groups of Prisoners as defined in the Standards & Practices - A.03 as a 'Youth under 20 years of age'. He therefore should have been separated from all other groups of prisoners in terms of that specific contract requirement.
345. The non separation of Baker as a 'Prisoner At Risk' in accordance with the Contract requirements (Schedule 2, Service Description 6.1.9 – Separation of Groups of Prisoners) provided the ability for Liam and Baker to communicate during transportation both to and from Court on 24 August 2006.
346. CBEO (A) & (B) did not observe Liam, Baker and Prisoner E in the front compartment from Henderson Police Station to ACRP on the afternoon escort on 24 August 2006.
347. The Investigation is of the view that the route travelled and the times taken were appropriate for the needs of the escort.

**General Findings in Relation to the Contract between the Department of Corrections and Chubb New Zealand Limited.**

**These findings are not directly related to the incident under investigation but are drawn to the Department's attention for consideration and corrective action were required.**

348. The contract between the Department of Corrections and Chubb New Zealand Limited for Prisoner Escort and Courtroom Custodial Services was not updated in a comprehensive manner to account for the changes required by the Corrections Act 2004 and the Corrections Regulations 2005.
349. The Investigation is of the opinion that a significant contributing factor in this was the split of responsibilities, initially between PPS and Corporate Management, and then later between PPS Corporate Development and PPS Operations. This resulted in confusion as to the areas of responsibility for drafting, and maintaining the contract document on one hand, and the operational management of it on the other.
350. The changes to the Service Description on the Department's computer system (Cornet) were implemented by Planning Standards & Monitoring (Corporate Management) in order to update the document with the current legislation. However, the changes only replaced the references to the repealed legislation with references to the current legislation and did not include any specific operational changes (e.g. changing the age of "Youth" from 20 years to 18 years).
351. There is an anomaly in the current contract in that youths are defined as a matter of course as at risk prisoners. It would appear, in order for Chubb to comply with A.03 Managing Prisoners At Risk, that they should be provided with an Escorting an At Risk Prisoner form (C.02.01.F1) upon handover for every youth (under 20 years of age), subsequently resulting in separation of those youths as per Service Description 6.1.9 where 'At Risk Prisoners' must be separated unless agreed with by Department of Corrections.
352. However, the common practice by Chubb in separating those prisoners deemed 'At Risk' is only;
  - when there is a C.02.01.F1 form and the prisoner's status has been brought to their attention verbally by the prison.  
or;
  - when Chubb deem the prisoner is at risk from their own assessment of the prisoner upon physically sighting and talking with the Prisoner.

353. The change to the contract in respect of the requirement to segregate under 18 year olds ‘where practicable’, though not documented in accordance with the Contract Standard Terms and Conditions, 17.3 – Changes to the Agreement is nonetheless legal. The Department initiated the change in that the legislation applicable at the time the contract was signed was repealed and replaced with the Corrections Act 2004 & Corrections Regulations 2005. Chubb New Zealand Limited via Chubb Protective Services accepted this change to the contract by way of operational practices and reporting.
354. The Investigation is of the view, however, that the new provisions were not clearly expressed by way of specific amendment to the contract.
355. The contract specification defining all under 20 years of age as ‘At Risk’ prisoners and therefore requiring mandatory segregation is at odds with both the International Agreements (which state 18 years of age) and the current legislation (which states “where practicable” only).
356. The Investigation is of the opinion that the application of the term “where practicable” in relation to Regulation 179 is compliant with New Zealand’s international human right instruments obligations and reservations only if all reasonable effort has been made in considering the non-separation of a youth.

**General Findings in Relation to the Handover of Prisoners between the Agencies Involved.**

**These findings are not directly related to the incident under investigation but are drawn to the Department’s attention for consideration and corrective action were required.**

357. The handover from Chubb staff on the morning of 24 August 2006 to the Police at North Shore District Court was not complete. As Chubb staff were unaware of Baker being on 15 minute observations, this was not passed verbally on to the Police. However the Police did receive a copy of the Escorting an At Risk Prisoner form (C.02.01.F1).
358. The Police deem prisoners under the age of 17 to be youths in accordance with Children’s Young Persons & Their Families Act 1989 and the Criminal Justice Act 1985, Section 142. This varies from the Department of Corrections’ application for youths, which is ‘under 18 years of age’. Therefore the following variations apply to prisoners who are 17 years of age;
- In prison – kept separate at all times from prisoners over 18 years of age (unless approved to associate with adults in accordance with Regulation 180).
  - Outside prison (e.g. Court escorts) – kept separate ‘where practicable’ in accordance with Regulation 179.
  - Police custody – associate with adults

359. Liam and Baker were placed in the same cell while at North Shore District Court during the day on 24 August 2006 as Liam was deemed an adult by the Police.

### **General Findings in relation to the Configuration of the Escort (Separation of Prisoners)**

**These findings are not directly related to the incident under investigation but are drawn to the Department's attention for consideration and corrective action were required.**

360. Chubb staff take the transportation requirements of all prisoners (safety, security & humanely) into consideration when configuring the vehicle alongside that of the prisoners who MUST be separated, (males, females, segregation, at risk). It appears that the application of 'where practicable' is below the priority of security risk and to an extent the comfort of prisoners. The Investigation is unable to provide evidence that this occurs as unfortunately the reasons for non-separation of youths was not documented.
361. It would appear from the actual configuration and CBEO (A)'s statement that it is common practice for sections of the journey for a compartment to be empty to accommodate prisoners for collection enroute (i.e. Henderson Police/Court). In the Investigation's opinion, it is unacceptable to have an empty compartment for a portion of the journey when there is a youth associating in another compartment with adult(s). It is also the Investigation's opinion that the security issue needs to be more carefully weighed against the legislative requirements.
362. It would appear from the actual configuration that consideration was given to prisoners going to the same prison. In the opinion of the Investigation, the security issue of moving prisoners between compartments is reduced upon the vehicle being secured within prisons walls. Therefore the placement of prisoners due to their destination would be at the lowest level of consideration.
363. It is apparent to the Investigation that the consideration of separating youths from adult prisoners is canvassed fully at the time, however it is not documented to the full extent that would ensure that the Department can be satisfied that "all reasonable efforts have been made" in terms of the legislation and the UN requirements.
364. The vehicle complied with the standards outlined in the contract and also the PPS vehicle standards as per draft circular 2004/25 with the exception of the seat covering which was unable to be sourced in New Zealand. There are no communications or surveillance devices fitted into any Chubb prisoner transportation vehicles. On the morning of 24 August 2006 both CBEOs were unable to observe the behaviour and

interactions of Liam and any other prisoners in the rear and middle compartments.

### **Other General Findings not Specifically Related to the Incident**

365. The Investigation could find no evidence of a written response from the Department of Corrections to correspondence sent by the Department's PECCS Security Monitor on behalf of Chubb. Chubb had advised their concerns in relation to the current 8 Isuzu vehicles not having the capability to communicate with the prisoners while in transit. Chubb's view was that this posed a risk during a medical emergency or prisoner assault prisoner that was unacceptable.
366. Chubb staff and Acting PECCS Monitor were compliant with the requirements for Incident Reporting with the following exception;
  - The Chubb staff involved (being CBEO (A) & (B) and first responding staff) did not provide written statements, however the Chubb PECCS Operation Manager decided the staff did not need to provide written statements as they had already provided statements to the Police on the night of the 24 August 2006. These had been provided to Chubb and subsequently provided to the Department's PECCS Security Monitor.
367. ACRP staff met the performance standards contained in the Policy and Procedure Manual B.08 Managing an Inmates Death, in that every effort was made by Custodial and Medical staff to maintain Liam Ashley's life. Liam was considered to be alive upon leaving ACRP at approximately 1850 hours on 24 August 2006 with the exceptions that;
  - The incident area (Chubb prison vehicle CAN05) was secured in that no person was observed entering compartment A pending Police investigation. However, there was a delay in isolating prisoners from CAN05 from other prisoners by approximately 20 minutes.
  - The Visiting Justice was not notified in accordance with National Policy 1.5.
368. All performance standards for PPM E.08 Responding to Incidents had been met in respect to the death in custody of Liam John Ashley.
369. The Chubb's operations manual, procedure number GD – Meeting Prisoners Special Needs/Handling Requirements in reference to 'Youths under 20 to be segregated' had been changed to 'Youths under 18 to be segregated' by the Chubb PECCS Operations Manager with the oversight of the Department's PECCS Security Monitor, but without the written approval of the Department of Corrections.

370. A robust reporting system was in place by Chubb Protective Services and the Department's PECCS Security Monitor. All instances where under 18 year olds were not separated were reported and the reasons investigated by the PECCS Security Monitor.
371. Independent legal advice received by the Investigation identified that the Corrections Act 2004 and Corrections Regulation 2005 workbook and workshop designed and facilitated by PPS, in their legal opinion constitutes the 'agreement' of the Department of Corrections referred to in the Contract, Service Descriptions 6.1.9 – Separation of groups of Prisoners – '*Unless otherwise agreed with the Department of Corrections, each of the following groups of Prisoner must be kept separate from all other Prisoners ...*'
372. The Chubb staff training modules that every Chubb PECCS Officer is to complete and pass were designed by PPS. The 'Escort' module does not go into any detail on the type of prisoners to be separated, other than the regulation requirements of males/females and of youths 'where practicable'. There are references to Chubb's Operations Manual, however the modules appear not to include any of the requirements from the Contracts Service Description, Standards & Practices.
373. The investigation found that certain alert types in IOMS had not been reviewed to reflect current legislation. For example, the application of a youth alert automatically results in the type 'Youth under 20'.
374. There is a heavy reliance on the PPS IOMS alert system as a means of communicating information by prisons to Chubb, however that degree of reliance varies considerably between prisons and Chubb. Chubb have a legitimate expectation that the alerts will be current and accurate as they are not in a position to investigate the information received. They do not have access to the PPS computer, whereas the prisons have access to an individual's electronic file and manual file in order to confirm the accuracy and relevance of any alert.
375. The Investigation found that ACRP had complied with National Policy and Procedures in relation to the placement and management of Liam as a youth prisoner in accordance PPM D.02 – Young Prisoners.
376. The Inspector found that ACRP complied with the Policy and Procedures in relation to the reception requirements in accordance with the National and Local systems, PPM B.14 – Prisoners At Risk to Themselves.
377. The Investigation found that ACRP health staff complied with relevant procedures in accordance with PPM B.06 - Prisoner Health Services Assessment (National Procedure) in regards to completing Liam's assessment and primary follow up care.

378. However, the electronic records (Medtech) for the Initial Health Screen Assessment were not saved at the time of entry. The Investigation was unable to retrieve the original data as an audit check provided the latest update entries only.

## **OPTIONS FOR THE DEPARTMENT OF CORRECTIONS**

379. The Department of Corrections should issue specific guidelines to ensure that a higher priority is given to the separation of youth prisoners from adults during Court escorts in particular, and other escort situations where direct oversight by staff is not available. Such guidelines should emphasise that the requirement of Corrections Regulation 179 (1) (b) (2005) that youths under the age of 18 years should be separated from those 18 years and over where practicable, means that all reasonable options need to be canvassed in order to achieve compliance. (The Investigation notes that in the meantime in accordance with the Minister of Corrections' direction all youths under 18 years of age will be separated).
380. Where it has not been possible to segregate youths in accordance with Regulation 179, the reasons why the breakdown of prisoners did not allow separation for all or part of the escort need to be clearly documented.
381. The Contract between the Department of Corrections and Chubb New Zealand Limited for Prisoner Escort and Court Custodial Services needs to be updated in a comprehensive manner to ensure that the changes required by the Corrections Act 2004 and the Corrections Regulations 2005 are fully included.
382. The need to eliminate divided responsibilities for contract development and management should be drawn to the attention of the Review of the Department of Corrections head office services that is currently being undertaken.
383. The Department of Corrections should issue specific guidelines regarding the process for handing over prisoners on escort. The guidelines should cover handover both within the Department and between agencies, and should place particular emphasis on the need for prisoner information to be clear, complete and accurate. This applies particularly to the training modules provided by the Public Prisons Service for completion by Chubb escorting staff.
384. Given the number of forms involved and the complexity of the issues that need to be considered during escort, it may be timely for the PPS to review the requirements on a National basis.
385. The investigation has noted that there are differences in the interpretation and application of youth status across Government, which results in different management practices and requirements by

the various agencies. It would be helpful if there were common definitions across Government relating to children, young persons and youths.

## **OPTIONS FOR NORTHERN REGIONAL PRISON MANAGEMENT**

386. ACRP Prison Management needs to take the necessary steps to ensure that the Receiving Office staff record any observations required in accordance with PPM B.14 – Prisoners At Risk to Themselves.
387. Regional Management should consider reviewing the IOMS alert system to ensure that all active alerts are current for all prisons within the region.
388. That the training requirements of ACRP custodial staff be reviewed regarding the completion of IOMS form - Escorting an At Risk Prisoner (C.02.01.F1).
389. That the training requirements of ACRP health staff be reviewed regarding the saving of inputted data on Medtech.
390. ACRP Prison Management need to take the necessary steps to ensure that the Visiting Justice is advised of any prisoner's death in accordance with the National System, Managing the Death of Prisoners and the Deaths of Prisoner's Family Members.
391. The Investigation recommends that the professional response by responding officers (Chubb/ACRP custodial and health) who attempted to revive Liam should be acknowledged.

## **ACKNOWLEDGEMENTS**

392. The Investigation acknowledges the co-operation and assistance afforded by the Management and staff of Auckland Central Remand Prison, the New Zealand Police and Chubb New Zealand Limited throughout the interview and investigation process.

## **CONSULTATION**

393. Draft copies of this report were forwarded to the Regional Manager and General Manager Public Prisons Service, General Manager Corporate Management, Chubb New Zealand Limited and the New Zealand Police for comment as to fact, finding and expression prior to finalisation. Their comments have been taken into account in the preparation of this report.

Louise MacDonald  
Inspector of Corrections

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