

Submission
No 442

**INQUIRY INTO THE PRIVATISATION OF PRISONS AND
PRISON-RELATED SERVICES**

Organisation: NSW Police
Name: Commissioner Andrew Scipione
Position: Commissioner of Police
Date received: 24/03/2009



NSW Police Force
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OFFICE OF THE COMMISSIONER

The Hon Amanda Fazio MLC
Chair, General Purpose Standing Committee No 3
Parliament House,
Macquarie Street
SYDNEY NSW 2000

Dear Ms Fazio,

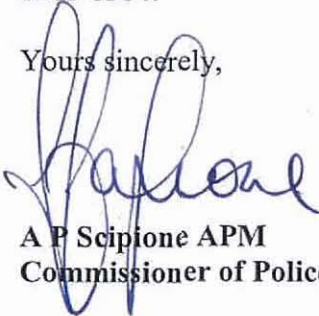
Re: Inquiry into the Privatisation of Prisons and Prison-related Services

I write in response to your letter dated 12 February 2009 seeking information from the NSW Police Force on the above Inquiry.

Please find attached a copy of the NSW Police Force submission to the Inquiry. I understand that Acting Deputy Commissioner Mennilli will attend the inquiry on 27th March 2009 (from 10.45am).

I trust that this information is of assistance to your Committee. If further information is required please contact Mr Feargus O'Connor, Manager, Executive Advisory Unit on (02) 8263 6364.

Yours sincerely,



A P Scipione APM
Commissioner of Police



INQUIRY INTO THE PRIVATISATION OF PRISONS AND PRISON-RELATED SERVICES

NSW POLICE FORCE SUBMISSION

Summary

The New South Wales Police Force (NSWPF), whilst in principle having no major objection to the privatisation of prisons and prison related facilities, has a number of concerns that would have to be adequately addressed before support could be provided. The two most significant issues to be addressed are, the risk of criminal penetration into those companies managing correctional facilities and the current issues around prisoner transportation services.

Of additional concern are issues relating to intelligence holdings and the exchange of intelligence; privately contracted officers working within Police premises and the need for the clarification of private contractor's powers, licensing and any related legislative changes required.

Whilst rehabilitation programmes provided during the course of a custodial sentence is not strictly an issue for the NSWPF, recidivism is. The NSWPF would oppose any changes that will increase recidivism rates or negatively impact on the mental or physical health of releasees.

It is for these reasons that the NSWPF requests that it be involved in any further consultation or development of this proposal.

Detailed response and examples

(1) NSWPF input into the level of restrictions and appropriate security clearances for privatised prison staff.

If prison privatisation occurs, an obvious risk is criminal penetration of the companies involved. To limit this NSWPF recommend contractual restrictions and security clearances be put in place. The current industry practice of security broking and sub contracting is susceptible to criminal exploitation due to the autonomy provided to brokers in awarding contracts. This autonomy provides opportunity for brokers to facilitate criminal infiltration through conflict of interest and bribery; however it may also subject brokers to intimidation such as extortion and blackmail by organised criminal groups seeking to infiltrate the industry. Any lack of transparency in the tender process would also be a concern. Consequently, the NSWPF recommends that any contract prevents the master licensee or major contractor from sub contracting work to other security providers.

The NSWPF would also recommend strong contractual obligations to be included in the tendering documentation regarding restrictions and checks on personnel working within the prison / prison transportation roles. Officers performing such duties would have access to inmates that are part of criminal networks, have committed or are suspected of a crime and may present as a risk to public safety.

Obviously, consideration would also need to be given to the level of risk of an offender and the decision as to who should transport offenders in certain high risk cases. Some states and international experience is that high risk offenders are still transported by Police and other cases are contracted. These matters would need to be discussed and agreed as part of further involvement by the NSWPF in the process of privatisation of the prisoner transportation function.

(2) Intelligence operations.

There is currently a good intelligence relationship between DCS and the NSWPF. This would need to be maintained under a privatised model, especially in relation to higher security facilities. Again, if the NSWPF concerns expressed above are not addressed, this will have a significant impact on the validity, security and safety of any intelligence holdings and exchange.

(3) Police requirements for an efficient, reliable and timely custody and transportation service.

The NSWPF has had longstanding concerns in relation to prisoner transportation services and prison guard services. These services are not considered police core business and yet consume significant police time and resources when no other options are available. The NSWPF would recommend that the privatisation review allow opportunities to improve the efficiency and reliability of the transportation service and to reduce the resource burden on Police.

Consideration needs to be given to the time and resource impact and the diversion from core policing created by non-core transportation and guarding of prisoners. This is especially prevalent in rural and regional areas. This has been a long standing issue with unclear responsibilities between NSWPF and DCS. In the absence of any alternative the responsibility falls to the local police. Alternative arrangements need to be identified for the handling of prisoners once processed by police.

Predominately from a NSWPF perspective the custody issues are as follows:

- the guarding of prisoners at court;
- transport of prisoners to and from courts and their return to corrections facilities;
- the transport of prisoners to hospitals for court ordered mental health assessments;
- hospital guards.

The core duties of the NSWPF can be summarised as:

- preventing, detecting and investigating crime;
- monitoring and promoting road safety;
- maintaining social order, including coordination of counter-terrorist preparedness;
- performing and coordinating emergency and rescue operations.

The custody issues outlined above hamper the NSWPF ability to deliver some of the core policing activities.

Examples are at **Attachment 1**.

The greatest impacts are to Local Area Commands (LACs) from Northern, Western and Southern Regions. These Commands are required to travel long distances in order to undertake a prisoner escort. This includes guarding prisoners at court, escorting bail refused prisoners to Gaols and taking prisoners to and from court.

There are also compelling international and Australian models of service delivery that are more efficient, effective, reliable and timely with less impost on police resources. These are detailed in **Attachment 2**.

If the proposal to use private security firms for prisoner escorts were implemented in NSW it should achieve significant time savings for police. The proposal also has the potential to deliver increased job satisfaction for police and over the long term prove to be more cost effective than current arrangements.

Another benefit would be that prisoners tend to view security staff as more neutral than police, which can result in prisoners becoming calmer when handed over by police to security guards¹. However, outsourcing would have financial implications for Government in the short term. At the moment cost savings by DCS in some regional and rural areas has resulted in cost shifting to NSWPF.

(4) Time and human resources currently consumed by NSWPF delivering prison transportation and guarding services that are non-core police functions and take local police away from their communities.

There is a lack of clarity in terms of responsibilities for prisoners under various circumstances. In the absence of any available alternative responsibility currently falls to the local Police.

Examples are:

- Security of prisoners at bedside court hearings;
- Hospital guarding, which frequently runs over many days;
- Prisoners who are sent by the Court for psychiatric assessment under s33 of the *Mental Health Act 2007*. It is then incumbent on the NSWPF to attend the court, pick up the prisoner and take them to a hospital for assessment. Police are required to remain with the prisoner until seen by a suitably qualified medical doctor. Police are then required to return the prisoner to the court. If however, the court has closed for the evening under current legislation police must retain custody of the prisoner and place them back before the court the following day.

All these scenarios are time consuming and costly and often police are drawn from first response duties to complete this task.

¹ Office of the Inspector Custodial Services (2007) *Thematic Review of Custodial Transport Services in Western Australia*

(5) NSWPF should be consulted in the development of a privatised model.

Any privatisation in relation to court security and prisoner escorts or any prison facility would benefit from the input by NSWPF. This may assist in identifying the most suitable locations and how this process would be implemented in terms of the interaction between NSWPF and the private provider and in terms of any identified risk to the public safety.

NSWPF is not aware of any significant issues relating specifically to the internal management of the State's only privately run prison at Junee.

However there are several aspects of Junee which could be improved and which should be addressed in any broader privatisation, for example:

- NSWPF does not have direct access to data on inmates at the Junee Prison, unlike all other DCS facilities.
- NSWPF and DCS conduct all inmate transport to and from this facility.

(6) Legal powers of privatised prison staff, especially in relation to preventing or responding to an escape.

Any privatised model would need to provide for appropriate security measures to guard against or respond to escapes, including during transportation of prisoners.

Private guards may need some legal capacity to stop and detain escapees. There are no powers created for such guards under the *Law Enforcement (Powers and Responsibilities) Act 2002* or the *Crimes (Administration of Sentences) Act 1999*.

(7) Security licensing.

The NSWPF would require prison guards to be security license holders.

The current security license categories do not cover the range of tasks such guards would need to perform and so a new license category, with training standards and competencies, would be required.

(8) Privately contracted officers working within a Police premises and with prisoners.

Currently there are a number of cells within police premises that are manned and operated by DCS staff. This facilitates the exchange of prisoners from police custody into the care of DCS. In these cases DCS staff have access to the cells via Police premises and utilise police facilities eg meal room, toilet and basic building facilities. There would be strict security clearance requirements should these personnel be contractors operating within Police premises.

Attachment 1: Impact on policing services whilst performing non core transportation and guarding services

The key point in all of the following case studies is that transportation is not core police business and should not be conducted by police officers in many of the cases that are cited.

Case studies and supporting data

In 2006/07 the Western Region found that police travelled an estimated 395,230 kilometres to complete prisoner transports, amounting to 9,460 rostered hours and 216 recalled hours in the Western Region alone (one of six Regions affected).

In Southern Region the same issues arise. The following is an example provided by police on the impact of a single court sitting in Deniliquin in July 2007, which resulted in the sentencing of ten prisoners.

Police were advised that Albury Gaol would not accept any more prisoners, consequently police from Deniliquin transported three of the prisoners to Wagga Wagga cells (a 6 hour round trip) and took the remaining seven to Junee Gaol (a 1 ½ hour round trip). This exercise required three police vehicles and six police officers.

These are common themes throughout the rural communities of NSW. The problem is particularly acute where there are multiple courts within one Local Area Command.

Case Study 1, Cootamundra LAC, Impact of multiple courts within the LAC boundary
No corrective service function is provided to this LAC and in the absence of any alternative this falls to the local Police. Cootamundra LAC has five local courts Tumut, Young, Cootamundra, Gundagai, and Grenfell. These courts sit for about 12 days total each month including hearing and list days, the bulk at Tumut, Cootamundra and Young. All courts, except Gundagai, form part of the Cootamundra/Cowra circuit which includes Cowra, Temora, & West Wyalong.

In the 2008 calendar year the command transported 174 prisoners for court which amounts to a total of 353 policing hours spent transporting prisoners to and from court. These escorts range from 100 to 300 kilometers round trips, taking from 2 to 4 hours each escort with handover time. Escorts occur twice a day, to court, then return to gaol. To date in 2009 police have transported 41 prisoners taking over 120 policing hours to complete.

When this figure is extrapolated this equates to a total of 80 single shifts. As it requires 2 officers to carry out the escorts this means that a total of 160 shifts are lost in these towns due to prisoner escorts. This is only reflective of time on the road and does not include the additional hours required to have an officer perform custody duties, whilst the prisoner is in Police custody awaiting court appearance. Again with no designated custody officers assigned to these three main centres there is additional diversion of staff away from core duties.

The following examples have occurred within the past 3 months in Nyngan and highlight the potential impact on the community when police are conducting prisoner escorts.

Case Study 2: Impact of police transportation on local policing response

Nyngan Police regularly have to transport prisoners to and from the custody of Corrective Services in Dubbo. This is a return journey of 330km and usually takes about 4 hours when allowing for prisoner handling in Dubbo. Police are mindful during such transportation that the impost upon resources affects the local service levels and timeliness of policing services to the local community. Local police do their very best to limit this impact.

Example 1 – Fatal plane crash

On Monday the 29th of December 2008 Nyngan Police were required to transport a prisoner to the custody of Corrective Services at Dubbo. Police left Nyngan about 10am and arrived in Dubbo about 11.50am. At midday a light plane crashed on a property within the Nyngan sector. Ambulance and Fire Brigade responded, however Nyngan Police were in Dubbo with a prisoner. Police from neighbouring sectors were required to attend but the extra distance involved and lack of local knowledge meant the first officer arrived more than an hour and a half after the call was received.

Example 2 – Check bona fides - stealing

On Thursday the 26th of February 2009 Nyngan Police were directed by the court to collect a prisoner from the custody of the Department of Corrective Services in Dubbo to enable his appearance before Nyngan Local Court. Police left Nyngan at 6.15am, arrived in Dubbo about 8am, and commenced the return journey about 8.20am. At 9.40am a resident called Police stating that there were two males at a house on Cobar St loading property into a trailer. The resident knew that the occupants of the house were out of town so police were called. At that point Police were 40kms out of town transporting the prisoner. Police had to return to the Police station and secure the prisoner before responding.

Example 3 – Check bona fides - heavy vehicle driving dangerously

On Wednesday the 25th of February 2009 Nyngan Police were directed by the court to collect three prisoners from the custody of the Department of Corrective Services in Dubbo to enable their attendance before Nyngan Local Court. This necessitated the use of two Police vehicles along with additional staff due to the Police vehicles only having room for two prisoners. The sole officer on duty at Warren was used to transport a prisoner in company with a Nyngan officer. At 10.14am Police received a phone call stating that a heavy vehicle carrying a chemical cylinder was "driving all over the road" between Nyngan and Warren. With all Police from Nyngan and Warren engaged in prisoner transports, no one was able to attend to the call for assistance.

Example 4 – Threatening behaviour

On Wednesday the 7th of January 2009 Police from Nyngan were required to transport a prisoner from Nyngan Police station to the custody of the Department of Corrective Services in Dubbo. Police left about 7pm. Whilst en route to Dubbo, Police received a phone call from the licensee of the Overlander Hotel stating that a known local man with a violent history was standing outside the Hotel yelling threats and challenging the licensee to come outside and fight. Due to Nyngan Police transporting the prisoner, the job could not be attended in a timely manner. The man was not apprehended until the following evening when he returned and repeated the offence.

Nyngan sector is limited in its staffing numbers. Numbers allow for a single officer on day shift and two officers to make up one afternoon shift crew. When prisoner transfers are required to and from court, an additional officer is rostered for day shift to collect the prisoners in the morning and the afternoon shift crew returns them in the evening. During these times there are no other local general duties Police to respond to calls for assistance from the public and police from another sector are required to cover urgent matters under these circumstances. This occurs on the court sitting days at least once a month, with court sitting twice a month every second month. When offenders are arrested and refused bail, the sole car crew is used to convey the prisoner to Dubbo, resulting in there being no local police officer able to respond to calls from the public for periods of up to four hours without relying on back up crew from outside the sector.

A similar scenario also applies within the Lachlan Local Area Command, again within the Western Region of NSW.

Case Study 3: Impact of police transportation on Public Safety

On the night of the 22nd March 2008, a football competition was held at Peak Hill. The Peak Hill vehicle was required to conduct a prisoner transport to Dubbo. Whilst away from this sector, a large brawl / riot erupted in the main street of Peak Hill, in excess of 100 persons were reported to be in the vicinity. Police from Parkes (45kms away) responded as did the Peak Hill vehicle from Dubbo (70kms away). Police attempted to move on the crowd. During this brawl, a number of Police were seriously assaulted, one male officer was knocked unconscious and a female officer punched in the face. After this brawl, a number of persons were charged with serious violence offences, however as outlined above, there was considerable delay in Police attending due to Police being out of the sector on an escort.

Lachlan Intelligence Officers have been recording data in regards to escorting of prisoners to and from Corrective Services. From the 1st January 2008 until 28th February 2009, the Lachlan LAC has:-

- Conducted 258 prisoner escorts
- Transported 381 prisoners during these escorts
- Spent 1674 hours involved in conducting escorts
- Travelled in excess of 67440 kilometres conducting escorts
- Cost the Lachlan Command 433 hours in overtime.

Of the escorts conducted, 167 were due to initial bail refused by Police and then the court (transport to gaol), 214 were corrective service inmates required to be before the court for charge matters.

Parkes and Forbes are the main sectors within the Lachlan LAC. Parkes is the only 24 hour station and responsible for the majority of bail court matters. When escorts are conducted from these sectors (Parkes or Forbes), staff are usually sent on overtime or assistance is obtained from other sectors within the LAC such as Peak Hill cluster, Crime Management Unit or Detectives. There is usually no gap in coverage in these major sections; but smaller sectors providing assistance are left without local police availability. However, if an escort is required by Police at Lake Cargelligo, Condobolin or Peak Hill areas, this results in the Police having the leave the sector for hours at a time. As outlined above, Condobolin is over 210kms from Wellington, Lake Cargelligo is over 310kms. This will leave these sectors without local Police and should any calls for assistance be made, there will be a significant

delay, with members of the public having to wait until Police return or other Police (if available) having to be recalled on overtime to attend.

	Condobolin	Lake Cargelligo	Peak Hill
Escorts conducted	55	27	26
Prisoners conveyed	71	33	38
Kilometres travelled	13,835	10,440	8,255
Hours taken on escort	322	228	197
Hours of overtime	103	82	7

Lachlan LAC also provides examples of when decisions in terms of transportation by Police impact on the prisoner behaviour in custody which can expose police to issues of safety in the management of an aggressive prisoner. NSWPF exercises due care in terms of the safety of our Police Officers and in situations like this, safety is a consideration. This is illustrated in the case study below.

Case Study 4: Impact of police transportation on prisoner agitation and Police Officer safety

In Lachlan LAC, on the 23 April 2007, a male was in custody and transported from Dubbo Corrective Services to Parkes Police Station for District Court. Upon arrival at the Police Station, the male was informed that District Court had been cancelled and he was to be returned to Dubbo Corrective Services. This prisoner was placed in the rear of the Police truck where he became aggressive. Supervising Police smelt smoke coming from the back of the Police truck. The prisoner had started a small fire in the rear of the truck. The prisoner prevented the caged door being opened and the fire had to be put out with a fire extinguisher through a small opening. After some resistance, the prisoner calmed and the door to the caged truck was able to be opened. The prisoner produced two re-sealable bags from his pockets containing cigarette papers and match heads. The prisoner was agitated in the charge room area of the Police Station. The prisoner was then informed he was returning to the Police caged truck to be returned to Dubbo Corrective Services. He refused stating he was not going back to Dubbo. He resisted violently with Police and a number of Police were required to assist with the control of male. A violent struggle occurred between the prisoner and Police in an attempt to return him to the Police vehicle with the prisoner kicking and thrashing out at Police. The prisoner was eventually placed into the caged truck area and returned to Dubbo. A number of Police received minor injuries as a result of this incident.

Not all examples relate to the criminal jurisdiction. An example from Mudgee LAC indicates a case which was family law related diverted police transporting prisoners to and from Court.

Case Study 5: Impact of police transportation in circumstances not even related to criminal law matters

In January 09, Wellington Gaol contacted Police demanding a transport of a prisoner required at Mudgee Court for a Family Law Court matter. There was no alternative service available and Police performed the escort. This resulted in no policing services available in the area for 3.5 hours whilst the escort took place.

NSWPF are aware of a likely proposal to privatise the Cessnock Correctional Centre in the Northern part of NSW. Police currently experience significant issues in terms of prisoner related transportation and the constant drain on resources. Any privatisation decision in this regard should take into account alternatives besides Police for the transportation of prisoners.

Case Study 6: Cessnock Area and the need to address transportation options

The Hunter Valley LAC has experienced significant resourcing problems due to performing corrective services roles of collecting, transporting, guarding and then returning prisoners to corrective institutions. The Hunter Valley LAC has 3 sectors, Singleton, Muswellbrook and Scone which have courts. Corrective services provides virtually no service to local police who in the absence of any alternative are required to collect almost all prisoners for court appearances. This directly impacts by taking the only vehicle in the sector away from first response duties. Our limited staffing means that there is only ever 1 vehicle on duty per sector despite our best efforts to roster additional vehicles for court days.

To date in 2009, 57.7 hrs and 3755 kms have been spent by Hunter Valley Police transporting prisoners. Police are out of the Command anywhere from 3-4 hours at a time. This year there has been over 30 examples in which DCS could not transport prisoners which resulted in police guarding prisoners for several days in police cells. In February 2009, 3 prisoners were remanded in Muswellbrook police cells for nearly 4 days. DCS refused to take the prisoners due to no bed space at Cessnock prison. Police were forced to provide meals, purchase toothbrushes and sanitary items to allow the prisoners to wash.

NSWPF also escorts adult female prisoners by road and air transport to regional courts for DCS. Female prisoners are escorted by metropolitan based police who are rostered for a 12 hour shift when doing so. All females required to be moved from Mulawa Correctional Centre, in Silverwater, to any non-major metropolitan or regional centre are moved by police. When the distance to be transported is greater than 250km, these escorts are by air.

Key data: Female Prisoner Transportation

The NSW Police Force estimates it is spending \$479,000 a year on female prisoner air transport. During the 2006/07 financial year, 179 female prisoners were escorted around the State from Mulawa by 340 police officers.

Attachment 2 - International and national models of service delivery

A number of international and Australian jurisdictions use private security firms to transport prisoners. For example, South Australia, Victoria and Western Australia (WA) use private security firms under certain circumstances to transport and/or guard prisoners.

In South Australia, transporting of prisoners on remand is carried out by Group 4 Security. All other transport is undertaken by police.

In 2003, Victoria contracted out the transport of corrections prisoners, police detainees and juvenile detainees to Global Solutions Ltd (GSL)². Services include clearance from police lockups and other court related movements. However, high risk offenders are transported by Corrective Services.

In WA, prisoner transport has been contracted out since August 2000. GSL provides the current service.

New Zealand

Since 1998, Chubb Security has been providing prisoner escort and courtroom custodial services in certain regions in New Zealand. The current contract includes delivery and collection of prisoners between courts, prisons, and forensic psychiatric facilities.

England and Wales

In England and Wales, until the early 1990s, the Prisoner Service and the Police Service jointly shared responsibility for escorting prisoners to and from courts which led to duplication of effort and cost³. Currently three private companies are used to collect prisoners from prisons and police stations and escort them to court⁴. However, it is understood that police still escort very high risk offenders.

Scotland

In Scotland, prisoner escorts and custody services have been undertaken by a private company since 2005. A 2006 review of these arrangements found that outsourcing of prisoner transport freed up an estimated 100 police officers from escorting duties, who were redeployed to front line duties across Scotland⁵.

The review also found that around 200 prison officers were released from escort duties, many of which were given up as efficiency savings or to allow reinvestment for improvements to services. Both Police and the Scottish Prison Service reported reduced costs associated with maintaining the vehicle infrastructure necessary to deliver high volume prisoner escorts.

² Office of the Inspector Custodial Services (2007) *Thematic Review of Custodial Transport Services in Western Australia*

³ Christopher Cuthbert, Ghazala Scatter and Bridget Williams (2000) *Prison Escort and Custody Services: Prisoners' Experiences*

⁴ Her Majesty's Inspectorate of Prisons (2005) *The Joint Inspection of Prisoner Escort and Court Custody in England and Wales: Thematic Review*

⁵ Scottish Prison Service (2006) *Prisoner Escort and Court Custody Services Contract (PECCS): Post Implementation Review*.

The review found that the delivery of prisoner escort services by a single contractor improved accountability and removed duplication of effort between agencies. It resulted in savings, clarified reporting lines and promoted an improvement culture.

Safety during transportation

There have been some high profile cases in recent years of deaths during prisoner transportation in jurisdictions where prisoner escorts have been outsourced to the private sector. It should be noted there have also been cases of deaths during prisoner transportation when escorts have been undertaken by the public sector.

In 2007, the New Zealand Ombudsman released a report criticising the Department of Corrections which found their policy of transporting prisoners was "inhuman", and ordered a review of the prisoner transport system⁶. Since the death, the Department has amended its procedures to clarify that no prisoner aged 17 years or under shall be transported in the same compartment as prisoners 18 years or older.

The New Zealand Ombudsman's report found it unsatisfactory that:

- no caged prisoner transport vehicles were equipped with seat belts for prisoners;
- the design of most vehicles did not allow staff to observe prisoners while in motion;
- not all vehicles were equipped with the means to maintain reasonable temperature;
- the procedures in relation to the transportation of young people were insufficient;
- not enough food and water was provided;
- there were insufficient toilet and journey breaks; and
- prisoners had no means of communicating with the guards.

Similar concerns were highlighted in the 2007 Thematic Review of Custodial Transport Services in Western Australia, which made 42 recommendations for improvements to prisoner transportation.

If current police and corrective services' transportation were to be outsourced in NSW, the above issues would need to be addressed prior to commencement of services.

Audio visual technology

In June 2008, the Attorney General's Department completed a business case for the third phase of the Cross Justice Agency Video Conferencing Project. This extended the network of audio visual link (AVL) technology to an additional 40 installations in Legal Aid Commission offices as well as courts in rural and regional centres and police centres.

Such options reduce the need for prisoners to be transported and are a valuable innovation.

⁶ New Zealand Ombudsman (2007) Investigation by John Beigrave, Chief Ombudsman & Mel Smith, Ombudsman of the Department of Corrections in Relation to the Transport of Prisoners