



The Corrections Chief and the Minister (A)

On 20 February 2009, the New Zealand Department of Corrections chief executive Barry Matthews told media that he would not resign over an Auditor-General's report¹ criticising systemic failures in the management of offenders on parole, despite his new Minister's refusal to express her confidence in him. He felt certain that a pending review by the State Services Commission would endorse his management of the department. In his four years as head of Corrections, his "first priority had been dealing with overcrowded prisons", but he said there had been a continuing focus on sentence and probation compliance, authority for which was delegated to the general manager of probation, Katrina Casey.²

The audit report investigated the implementation of improvements promised after offender Graeme Burton shot an innocent citizen in January 2007, while flouting the provisions of his parole. "Tremendous" changes had subsequently been made, Mr Matthews said.³

However the Auditor-General, Kevin Brady, discovered that many of the loopholes exploited by Burton remained in the system. His report examined 100 parole cases selected from four of Corrections' 12 regions⁴ between 1 May 2007 and 4 May 2008. These included 52 where the parolees were registered on the Offender Warning System (OWS) because of their potential danger to the public. The report found "gaps and omissions" at every stage in every phase of parole management.

This case was written by Janet Tyson, Australia and New Zealand School of Government for Dr Richard Norman as a basis for class discussion rather than to illustrate either effective or ineffective handling of a managerial situation. It has been prepared from published materials.

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¹ 'Department of Corrections: Managing Offenders on Parole', Controller and Auditor-General, Performance Audit report, February 2009. Hereafter 'Audit Report'.

²Kay, M. 'I won't step down, vows Matthews', *Dominion Post* 21-02-09 downloaded from <http://www.stuff.co.nz/stuff/4854527a11.html>.

³ Ibid.

⁴ These were Taitokerau (the far north), Auckland, Wairiki (the Bay of Plenty/Rotorua area) and Christchurch, selected to give an urban/rural, high risk/low risk balance.

“Mr Matthews accepted there were problems in parole, but Corrections had been moving to deal with them throughout the audit period,” the *Dominion Post* reported. “He took ultimate responsibility, but said accountability flowed through the department, then he turned to under-funding.

“ ‘We are trying to deliver in essence a best-practice service with a level of funding that is based on...an adequate or satisfactory [service] level.’”

“Culture change was the main factor in improving parole management, but took time he said. ‘We have some staff that still believe the role of a probation officer is like a social worker and that sentence compliance should take a second step. We’ve been emphasising...sentence compliance is the No 1 issue in terms of public safety.’”⁵

“Public Safety” was a prominent element of the new *Corrections Act 2004*, which took effect from 1 June 2005, and was identified as the “central objective” of the department in its 2008 Statement of Intent. “Putting Public Safety First” was a prominent theme in the campaign which brought a National-led government to power after nine years in opposition, in November 2008.

While the new Minister of Corrections, Judith Collins, had refused to express confidence in Mr Matthews, calling for him to take accountability for the department’s problems ahead of the review by the State Services Commissioner Iain Rennie, other commentators had suggested that removing the chief executive would not resolve Corrections’ problems and might create others.

Professor Jonathan Boston, director of Victoria University’s Institute of Policy Studies, said Corrections dealt with difficult people, whose numbers were growing. It had a difficult culture within the prison service, and in some areas, poor facilities. “These are difficult tasks where it is very difficult to please people...it’s not a job you would imagine everyone would want.”⁶

The Community Probation and Psychological Service

Two distinct cultures existed within Corrections: Prison Services which operated 20 prisons around the country, and the Community Probation and Psychological Service (CPPS), which worked from 150 centres nationwide. Prison Services employed around 4070 FTE staff while CPPS⁷ employed 1645 FTE, including approximately 900 probation officers, 310 community work supervisors, 100 psychologists, 90 rehabilitation programme facilitators, as well as regional managers, area managers, assistant area managers, and administrative staff.

In contrast to the strongly unionised Prison Services, where males predominated, with a relatively high proportion of Māori and Pacific peoples, the typical CPPS staff member was more likely to be female and a recent psychology graduate. Forty-eight

⁵ Kay, M, *ibid*.

⁶ Taylor, P, ‘Déjà vu for besieged chief of Corrections,’ *New Zealand Herald*, 21-02-2009. downloaded from http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10557868&pnum=2

⁷ Department of Corrections Ara Poutama Aotearoa, Briefing for the Incoming Minister, November 2008, p7, (Hereafter BIM)

percent of probation officers had less than two years' service, as did 56 percent of their frontline managers.⁸

CPPS was responsible for the management of all non-custodial sentences and orders, including offenders released from prison early on parole.⁹ On any given day in 2007/2008, CPPS managed 34,383 offenders, 1802 of them on parole, while the rest were serving community sentences or orders. Each supervising probation officer would, on average, be responsible for at least 40 others either on parole or serving community sentences. Over the course of the year, CPPS managed 86,672 orders and sentences, of which 55,667 were new. Year on year, these were increasing dramatically. (*Exhibit A*)

Changes to the criminal justice system, initiated by the Labour-led governments from 1999 to 2008, and incorporating legislative amendments to bail, sentencing, parole, and the role of the Corrections Department itself, all increased the compliance focus of probation officer activities. The parole system came under intense scrutiny in 2001, after William Bell, released early on parole, viciously murdered three people at a Returned Services Club.

The *Corrections Act 2004* "emphasises that public safety is of central importance and now requires that the Department has to consider victims' interests when managing offenders."¹⁰ Ombudsman Mel Smith, in his 2007 report on the Criminal Justice Sector, identified that this posed a "significant cultural shift for some staff that cannot be underestimated. Some staff saw the compliance focus as a move to a mechanistic management control model, away from a practice focus on the redevelopment of offenders."¹¹

A department-wide culture survey conducted in early 2008 showed that probation staff "had received the message that sentence compliance was important to senior management. They considered that management overemphasised sentence compliance at the expense of rehabilitation and reintegration of offenders. These results demonstrate that while staff know what the emphasis is, they either don't understand why or don't agree with it. This may help explain why certain aspects of procedures as they relate particularly to taking timely enforcement action do not always receive the attention they should."¹²

The range and complexity of probation officer duties had substantially increased from 1 October 2007, when a new range of community-based sentences, designed to ease

⁸ Department of Corrections, Community Probation and Psychological Services: Plan to Improve Compliance with Procedures for Managing Parole Orders 2008-2009, p4 (Hereafter Compliance Plan)

⁹ Parole is the conditional release of offenders who have served more than two years in prison. While on parole, offenders are supervised and expected to comply with conditions to guide their behaviour in the community. Audit Report, p 3.

¹⁰ Corrections Act 2004, downloaded from <http://www.corrections.govt.nz/policy-and-legislation/corrections-act-2005.html> downloaded 13-03-2009

¹¹ Report of Mel Smith, Ombudsman, Following a Reference by the Prime Minister under Section (13(5) of the Ombudsman Act 1975, for an Investigation into Issues Involving the Criminal Justice System, p 84. (Ombudsman). Cited in Report to the Hon Judith Collins, Minister of Corrections, 9 March 2009., p11.

¹² Compliance Plan, p 10.

the pressure on rapidly-filling prisons, came into force. They were a centrepiece of “Effective Interventions” approved by the then government to reduce the use of imprisonment by: “Tilting the balance earlier to prevent crime; using alternatives to prison where this is appropriate, and adopting smarter uses of prison resources.”¹³

The *Sentencing Amendment Act 2007* provided for the establishment of a Sentencing Council to issue sentencing and parole guidelines.¹⁴ It introduced a hierarchy of sentences which included three new non-custodial ones: Home detention, community detention (with an electronically-monitored curfew), and the rehabilitation-focused intensive supervision. Home detention, as an option for completing sentences, had proved effective in reducing re-offending. Under the new legislation it ranked second to imprisonment, and could be applied from the start of the sentence, while intensive supervision and community detention also involved greater restrictions than the existing community-based supervision and community work sentences.

Announcing the introduction of the new sentencing regime, Corrections Minister Damien O’Connor said that CPPS was “well through the process of recruiting 300 additional staff to implement the new sentences and to add extra support to its overall operations.” By the end of October 2007, around 6500 days of training would have been delivered.¹⁵

When briefing the incoming Minister in November 2008, Chief Executive Barry Matthews said that, to meet adequate standards of service to manage the existing unanticipated volumes, [CPPS] needed an additional 200 probation officers, 17 psychologists, and 50 management and administrative support staff. Costs of electronic monitoring had also increased, and the Department would be making a bid for increased resources in these areas in the 2009 Budget.¹⁶

Barry Matthews

Barry Matthews served 34 years in the New Zealand Police, taking early retirement as Deputy Commissioner in 1999 to move to the Western Australia Police Service to become its Commissioner. He was appointed by then Premier Richard Court on the recommendation of an independent appointment panel; he arrived at a time when the opposition, through its Police spokesperson Michelle Roberts, was calling for a Royal Commission to investigate corruption in the force.¹⁷

With the change of government in February 2001, Geoff Gallop became Premier, and Michelle Roberts Minister of Police. In December 2001, Premier Gallop announced the formation of what became known as the Kennedy Royal Commission. As Barry Matthews instigated a number of positive changes to the Western Australia Police

¹³ Hon Mark Burton, Minister of Justice, Building Safer Communities through Effective Interventions in Criminal Justice, 16 August 2006, downloaded from <http://www.beehive.govt.nz/speech/building+safer+communities+through+effective+intervention> downloaded 12-03-2009

¹⁴ Not introduced as at March 2009.

¹⁵ New Zealand Government, Press Release: Next Step in Effective Interventions – O’Connor, 1 October 2007.

¹⁶ BIM p 22

¹⁷ Taylor, P ‘The cop’s cop comes home’, *New Zealand Herald*, 6 June 2004.

Service, including increasing the proportion of women police, the Kennedy Commission was hearing chapter and verse of the service's past failings. The Commission found that most corruption had been cleaned up. As Matthews himself said, the 1000 page report mentioned him "16 times, never adversely".¹⁸ However, he told the *New Zealand Herald*, both the Premier and the Minister asked him, in private, to resign, clearing the way for a new Commissioner to implement the recommendations. As they could not in his view table any performance-related criticisms, Matthews did not resign, and completed the remaining months of his term before returning to New Zealand. "I stick by my commitments."¹⁹

In December 2004, he was named to replace the already resigned Mark Byers as head of Corrections. In early 2008, his contract was extended for three more years. Following the 2008 election, he could tell the incoming Minister, Judith Collins, that in the last five years Corrections had achieved continuing reductions in the number and rate of prisoner escapes from custody; improved detection of contraband, and increased numbers of prisoners in employment and in adult literacy programmes, as well as successfully introducing the major new community sentencing options.²⁰

He had not however managed to keep Corrections out of the media spotlight. The "improved prisoner transportation system that ensures greater safety and security of prisoners" had been developed following the death of teenager Liam Ashley in August 2006 while being transported to remand prison. The "improvements in information sharing and working with Police on the management of high risk parolees in the community" was at least in part linked to the January 2007 killing of Karl Kuchenbacher, and shooting of four other people, by Graeme Burton. Burton was on the run from Police seeking to arrest him for breach of parole and other offences.

Briefing the new Minister

In his Briefing for the Incoming Minister, Matthews pointed out that the growth in the community offender population resulted from the single biggest changes to community sentencing in New Zealand history, indicating that probation officers had achieved some significant improvements despite their workload pressures. As at 1 December 2008, the Department had 968 full time equivalent (FTE) probation officers, but estimated that to manage the numbers of offenders serving community-based sentences another 122 officers were needed.²¹ Matthews also alerted the Minister to the forthcoming report by the Auditor General and told her that work was being done to respond to its findings.

A strong performer in opposition, outspoken on health and social welfare issues, Judith Collins was given both the Police and Corrections portfolio in the National-led government formed in November 2008, and immediately made her intentions clear. As Minister of Police, her promise to confiscate and crush cars used for illegal street races earned her the nickname "Crusher Collins." As Minister of Corrections, she was quick to order a far-reaching review of home detention, concerned that it was

¹⁸ Police Commissioner Barry Matthews takes the public's calls: ABC Western Australia, 3 March 2004. Downloaded from <http://www.abc.net.au/wa/stories/s1058172.htm> downloaded 12-03-2009

¹⁹ Taylor, P 'The cop's cop comes home', *New Zealand Herald*, 6 June 2004.

²⁰ BIM p4.

²¹ *ibid*, p 36

being offered to too many serious violent, sex and drug offenders who should be kept behind bars. She said the previous government “put lowering the prison population ahead of public safety.”²²

In the first weeks of 2009, Corrections was in the news for two prison escapes, one involving a prisoner regarded as high-risk in Australia but classified as low-risk in New Zealand. On 17 February, receiving the Auditor-General’s report on Corrections management of offenders on parole, Judith Collins said she was “deeply disappointed and concerned” by its finding. “I have today asked the State Services Commissioner to work with Corrections Chief Executive Barry Matthews to establish who is accountable for the deficiencies identified in the report and what should be done to restore public confidence.” She asked the Commissioner to report back in 10 days, the Minister said. Questioned by the media, she refused to express confidence in Barry Matthews.²³

The Auditor-General’s report

Auditor-General Kevin Brady was critical of every aspect of the parole process. His report could not find 100 percent compliance with any requirement at any stage in the management of parole. Problems began with preparations to release offenders on parole and included failure to assign a probation officer before release, and communication breakdowns between the Prison and Probation Services over travel arrangements. Supervision of offenders on parole was hampered by incomplete induction and re-integration processes, while home visits were not carried out in a timely manner, with the required frequency, or in some cases at all.

In the foreword to his report, Auditor-General Brady acknowledged that staffing levels had lagged behind the unexpected and exponential growth in community services sentences. But he said

“it was clear that staffing issues had a significant effect on the Department’s ability to manage offenders on parole. However, in my view, recruiting more probation officers will not fix all the problems my staff found. The Department also needs to identify and address the reasons for the recurring non-compliance with important requirements for managing offenders.”²⁴

The Department did not have reliable data from the justice sector to support its decisions and allow for future planning, the Auditor-General said. “Work to reduce the strain on the parole system needs to be underpinned by information about how effective different requirements are in reducing risks to the public’s safety.”²⁵

As well, staff needed better information to carry out their daily tasks. The report identified problems in accessing and comprehending information from the CPPS operations manual, with using the Integrated Offender Management System, and in

²² Grunwell, R. ‘Govt protects public from serious offenders’, *New Zealand Herald*, 21 December 2008, p 12.

²³ Hon Judith Collins, Press Release: Damning parole report: Minister demands accountability. <http://www.beehive.govt.nz/release/damning+parole+report+-+minister+demands+accountability> downloaded 12-03-2009.

²⁴ *ibid*, p 4

²⁵ *ibid* p5

completing pre-release information like the Offender Warning System, which listed prisoners likely to pose a public danger, or the Victim Notification Register.

The first of 20 report recommendations was “that the Department of Corrections continue to work with the New Zealand Parole Board to improve the clarity and consistency of information in parole assessment reports, and psychological assessment reports about an offender’s risk of reoffending.” One of five highlighted priority recommendations was that the Department should “always enquire into the proximity of registered victims to an offender’s proposed accommodation, and take appropriate mitigation action, before the offender is released from prison.”²⁶

“Most of the Department’s staff we spoke to experienced problems with accessing information in the Integrated Offender Management System,” the report noted.²⁷ IOMS is the department’s primary storage system for offender information. Instituted in 1999, and frequently amended since, limited training was offered, and most users found it frustrating and difficult. Information that was input was prone to “disappear.” The Audit Report recommended that the Department should provide probation officers with customised and specific training in using IOMS.²⁸ It also noted that the Department should “communicate regularly” with staff about any changes made to update the technology or support changes in legislation.

Another problem was the lack of guidance for probation officers from more senior staff. While some senior probation officers had devised training programmes, others said they had not had time to provide coaching and support because of their own case loads, and high staff turnover (20.4 percent in the Auckland region, which had the “lowest” case load at 36.5 offenders per probation officer, compared to 54.7 offenders in Taitokerau, which had a 9.8 percent annual turnover.)²⁹

Turning to the question of monitoring offenders released on parole, the report again noted that “gaps and omissions occurred at each stage”. The Department’s service managers, charged with overseeing the day to day administration of the management of offenders, had only carried out the required weekly check of offender’s records for 6 out of 52 offenders on the Warning Register.³⁰ There were significant failures to take action for non-compliance, and in 18 instances there was no evidence of any enforcement. Advice to victims about non-compliance was also lacking.

In its response to the Auditor-General’s report, included as an appendix the Department said it had “fixed the case management deficiencies and prepared a plan to improve compliance with procedures for managing offenders on parole.” The four work streams within the plan focused on ensuring appropriate levels of resources to manage the volume of work, clearly understood and well communicated systems and procedures, appropriate support and training, and that “the Department has an organisation culture that supports compliance with procedures and accountability.”³¹

²⁶ Ibid p6

²⁷ Audit Report, p 31

²⁸ Ibid, p 34

²⁹ Ibid, p36

³⁰ Ibid, p 41

³¹ Ibid., p53

Exhibit A:

The increase in the number of offenders managed by CPPS, including those on parole, is set out in the following table.

	2006/07	2007/08	2008/09
Number of new sentences and orders	45,621 (all) 1,451 (parole)	55,667 (all) 1,602 (parole)	70,016 (all) (estimate) 1,936 (parole estimate)
Average number of offenders being managed at any one time	28,794 (all) 1,583 (parole)	34,383 (all) 1,802 (parole)	40,035 (all) (estimate) 1,915 at Feb 2009 (parole actual)
Throughput – total number of sentences and orders managed during the year	72,429 (all) 2,898 (parole)	86,672 (all) 3,815 (parole)	108,816 (estimate) 3,738 (parole estimate)

Source: Department of Corrections, 2008, Briefing to the Incoming Minister, p 21.

Exhibit B: Timeline

Date	Event
1995	
	Department of Corrections established in major restructure of the Justice sector; former Treasury official Mark Byers is first CE.
1999	
	Corrections installs computerised Integrated Offender Management System (IOMS)
November	General election brings in a Labour-Alliance coalition government. Citizens-initiated "Law and Order Referendum" held concurrently asks: "Should there be a reform of the justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them, and imposing minimum sentences and hard labour for all serious violent offences" gets 92 percent "yes" vote. Sensible Sentencing Trust and other lobby groups claim victory.
November	Phil Goff (Labour) Minister of Justice and Matt Robson (Alliance) Minister of Corrections
2000	
	<i>Bail Act 2000</i> introduces restrictions on bail for repeat offenders. Auckland Remand Prison (432 beds) opens. Development of new Corrections Bill begins.
2001	
December	(1 st) William Bell, on parole, murders three and critically injures another at an RSA where he had been on work release.
2002	
	<i>Sentencing Act 2002</i> aims to increase transparency and consistency of decisions. Longer sentences for serious offenders. Restructure of community-based sentences and abolition of those ineffective in reducing re-offending.
	<i>Parole Act 2002</i> establishes the New Zealand Parole Board, intended to improve quality and consistency of parole decision-making. Community safety to be paramount consideration in release decisions. Reduction in early releases as a result.
	<i>Victims Rights Act 2002</i> extends rights of victims, improves protections and opportunities to participate in justice system.
July	Labour government re-elected, forms minority coalition. No Alliance MPs.
August	(15 th) Mark Gosche (Labour) Minister of Corrections (to 12 May 2003).
2003	
March	<i>Corrections Bill</i> introduced to the House.
March	William Bell sentenced to 33 years without parole for RSA murders.
May	(19 th) Paul Swain (Labour) Minister of Corrections
2004	
June	(3 rd) <i>Corrections Act 2004</i> replaces Penal Institutions Act 1954. It emphasises that public safety is of central importance, and requires the Department to consider victims' interests when managing offenders.
	Moratorium on building new prisons once four under construction completed.
December	Barry Matthews named to head Corrections
2005	
	Northland Regional Corrections facility (366 beds) opened.
	Crime down 15% since 1996 but prison population up.
June	(1 st) <i>Corrections Act 2004</i> takes effect; also <i>Corrections Regulations 2004</i> .
October	Labour government re-elected, again with minority coalition. .
	(19 th) Mark Burton Minister of Justice, Damien O'Connor Minister of Corrections.
2006	
	Auckland Region Women's Correctional Facility opened (286 beds)
June	(June) Inmate numbers 7700 (up from 4530 in ten years). \$1 billion being spent on adding 2000 new beds to prison system.
July	(10 th) Parole Board releases Graeme Burton after serving 14 years for murder

August	(16 th) <i>Effective Interventions</i> announced. Will rebalance proportion of sentences served in community and in prison and should cut predicted new beds needed. New hierarchy of sentences including home detention, electronic monitoring. More restorative justice processes. Proposed independent statutory Sentencing Council to issue sentencing and parole guidelines. Minimum sentence for murder 17 years. Changes to the <i>Parole Act</i> : inmates now not eligible for release until 2/3 of sentence served (previously 1/3). Focus of parole decision-making to be exclusively on risk to safety of community. Prisoners expected to serve average 80% of sentences (earlier 62 %).
August	(25 th) 17-year old Liam Ashley fatally assaulted by another inmate while being transported to jail; each should have been segregated as "at risk".
November / December	Police contact Corrections about parole breaches by Burton; delay in issuing arrest warrants; probation officer on leave.
2007	
January	(1 st) Police get warrant to recall Burton and begin search.
January	(6 th) Burton kills Karl Kuchenbecker and wounds four others while on the run in the Lower Hutt hills; two days earlier involved in home invasion and assault; armed police arrest him.
March	Corrections issues statements saying (6 th) "policies and procedures were followed" in the Burton case; (11 th) "no-one anticipated events" as Burton had previously been abiding by parole. Otago Regional Corrections Facility (335 beds) opened.
July	(24 th) <i>Criminal Justice Reform Bill</i> passed by parliament, including Sentencing Amendment Act 2007 ("Effective Interventions")
September	(10 th) Peak prison muster of 8457.
September	(25 th) Spring Hill Correctional Facility opens (650 beds). Total prison construction expenditure \$890 million spend.
October	(1 st) Effective Interventions introduced. Judges have been anticipating its introduction with increased community sentencing.
November	Annette King Minister of Justice, Phil Goff Corrections Minister
November	(30 th) Ombudsman Mel Smith report on the criminal justice sector notes changing public expectations and concern over rising prison muster.
2008	
February	State Services Commissioner Mark Prebble re-appoints Barry Matthews as CE for 3 more years.
July	(26 th) Home detention numbers up 60% since 2006: now 1442.
November	(8 th) National Government elected; Simon Power Minister of Justice (formerly opposition spokesperson on justice and corrections) and Judith Collins Minister of Corrections and Minister of Police (formerly opposition spokesperson on social welfare).
2009	
February	(2 nd) Police Minister Collins proposes crushing boy racer cars.
February	(12 th) Corrections Minister Collins demands answers over second inmate escape from a prison working party in three weeks.
February	(17 th) Auditor-General's Report released; Minister refuses to express confidence in Corrections CE Barry Matthews and calls for accountability report.