GOVERNMENT INQUIRY

INTO MATTERS CONCERNING THE ESCAPE OF PHILLIP JOHN SMITH/TRAYNOR

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PREFACE

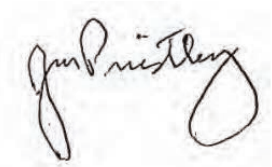
On 9 December 2014, a Government Inquiry was established to investigate aspects of the escape to Brazil of a serving prisoner, Phillip John Smith, while he was on a temporary release from Spring Hill Corrections Facility.

Our Terms of Reference cover several issues that are examined in the various chapters of this report. There was clearly a level of public and governmental concern about the adequacy of monitoring prisoners and their movements. Some prisoners pose public safety risks. Such risks need to be mitigated. The public interest is not served if offenders, particularly high-risk offenders, can use identities to which law enforcement agencies are oblivious; nor is it in the public interest for people subject to the criminal justice system to leave New Zealand without the appropriate permission.

Over a period of six months the Inquiry interviewed some 116 people. By far the greatest number were Department of Corrections staff. The Inquiry is grateful for the high degree of cooperation and candour apparent throughout all its interviews.

Managing New Zealand's prisons, which contain thousands of prisoners, and additionally managing people serving community-based sentences can be stressful and dangerous work. Sometimes, as with Mr Smith, mistakes are made. Mistakes during any phase of the criminal justice system can lead to alarm and criticism. The Inquiry hopes that its conclusions and recommendations will result in fewer errors, better criminal justice information sharing, and an overall improvement in the administration of penal policy.

The Inquiry expresses its gratitude for the hard work and valuable help given to it by Simon Mount, Counsel to Assist; Kelley Reeve, Executive Director; Adam Levy, Principal Advisor; and Tracey Thornton and Neil McCloat, Inquiry Administrators. The Inquiry is also grateful for the editorial functions performed by Belinda Hill and the design work of Jacqui Spragg. Finally, the Inquiry thanks the staff at the State Services Commission for administrative support.



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25 August 2015

ABBREVIATIONS AND ACRONYMS

AA	New Zealand Automobile Association
AFIS	Automated Fingerprint Integrated System
AMS	Applicant Management System
ASRS	Automated Sexual Recidivism Scale
CMS	Case Management System
Corrections	Department of Corrections
CoSA	Circle of Support and Accountability
Customs	New Zealand Customs Service
Immigration	Immigration New Zealand
INCIS	Integrated National Crime Information System
Inquiry	Government Inquiry into Matters Concerning the Escape of Phillip John Smith/Traynor
Internal Affairs	Department of Internal Affairs
IOMS	Integrated Offender Management System
Miki Inquiry	Ministerial Inquiry into the Employment of a Convicted Sex Offender in the Education Sector
Multi-Agency Report	Multi Agency Review of Phillip Smith Traynor (aka Phillip Smith) Incident
NIA	National Intelligence Application
NZTA	New Zealand Transport Agency
Paremoremo	Auckland Prison
Police	New Zealand Police
PRN	person record number
Report	Report of the Government Inquiry into Matters Concerning the Escape of Phillip John Smith/Traynor
RoC*RoI	Risk of Conviction times Risk of Imprisonment
SDAC-21	Structured Dynamic Assessment Case Management
Spring Hill	Spring Hill Corrections Facility
Te Piriti	Unit 9 at Auckland Prison (which provides treatment for child sex offenders)

EXECUTIVE SUMMARY

Why a Government Inquiry?

On 6 November 2014, Phillip John Smith left New Zealand on a LAN Chile flight for Santiago in South America. He had a ticket for onward travel to Rio de Janeiro in Brazil. Mr Smith passed unimpeded through immigration and security checks at Auckland International Airport. He carried a New Zealand passport that had been issued some 16 months earlier in his birth name, Phillip John Traynor.

Mr Smith was no ordinary traveller. He was a serving prisoner. In 1996, he had been sentenced to a period of life imprisonment (with a non-parole period of 13 years) for murder. He was also sentenced for child sex offending (his victim being the son of the man he murdered), extortion and kidnapping.

Although Mr Smith had been a prisoner for over 18 years, he had not been paroled. His chances of gaining parole had not been helped by fraudulent offending committed between 2006 and 2010 while in prison. For this, he was sentenced in 2012.

On the morning of 6 November 2014, some eight hours before he boarded the aircraft bound for Chile, Mr Smith had been released from Spring Hill Corrections Facility (Spring Hill) on a temporary release of 74 hours' duration. He was meant to be supervised by sponsors and to stay at a designated address in Auckland for the three nights involved. Mr Smith had been granted previous temporary releases, both from Auckland Prison (Paremoremo) and from Spring Hill. These temporary releases were in the nature of reintegrative releases to help him prepare for life in the community and to satisfy the New Zealand Parole Board that he posed no undue risk to the community.

Mr Smith did not return to Spring Hill as planned at 9.30 am on 9 November 2014. Not until the next day was it known that Mr Smith had left New Zealand. His whereabouts for the previous four days were unknown.

The unauthorised departure of a prisoner from New Zealand while on temporary release understandably created anxiety and a high degree of media and political attention. [redacted] Fair trial [redacted]. This was no unremarkable escape or short-term absence. Mr Smith for his part contacted New Zealand media while he was in Brazil. His subsequent arrest by Brazilian police in Rio de Janeiro and deportation to New Zealand maintained media and public interest.

In the wake of Mr Smith's deportation several government departments and agencies investigated how and why Mr Smith had been able to leave New Zealand. It was, however, thought that an independent inquiry was justified. In early December 2014, the Government Inquiry into Matters Concerning the Escape of Phillip John Smith/Traynor was set up under the Inquiries Act 2013.

Despite the various constraints around their preparation, the reports of departments and agencies were helpful resources for the Inquiry. Our investigations, in some areas, have confirmed the conclusions of those reports. However, we have in other areas reached different conclusions and emphases.

Containment and reintegration: no easy balance

This Inquiry found shortcomings, detailed below, in various agencies' systems and processes. However, we acknowledge the difficulties these agencies face in allocating resources and balancing priorities. In particular we acknowledge the Department of Corrections (Corrections) must manage a very difficult segment of the population, including more than 8,500 prisoners. In doing so, it is asked

to strike a balance between the public interest in containing prisoners and the public interest in preparing those prisoners for release. Without effective containment and monitoring, the community is at risk from those who breach the terms of their sentence. Without rehabilitative and reintegrative programmes, the community is at risk from released prisoners who have no preparation for life "outside". It is most difficult to strike the right balance every time.

The Inquiry acknowledges the efforts of committed Corrections staff who daily confront these challenges. However, where deficiencies in systems and processes are identified, it is in the public interest that sensible consideration is given to remedial steps.

Mr Smith's escape should not be seen as a sign that the systems and practices of relevant agencies were broken in a fundamental way. But they do have vulnerabilities, some of which were understood, and others that were underestimated. Our recommendations are designed to address these vulnerabilities.

Findings

Our main findings are set out below. These were the principal causes and deficiencies that failed to prevent Mr Smith's escape, effectively links in a chain. Had one link been absent, then the escape almost certainly would not have occurred. There were also a number of conditioning and influencing factors, contributing to Mr Smith's escape that essentially made the primary causes and deficiencies possible.

Corrections did not adequately assess or mitigate Mr Smith's risk

Fair trial Mr Smith's Fair trial ability to acquire money) and his running of a business with the permission of the prison authorities (which additionally gave Mr Smith access to money) should have been better investigated and assessed. Fair trial . This in turn affected the risk mitigation applied to his management.

The surveillance and monitoring of Mr Smith's activities were inadequate Fair trial Fair trial . Taking these things into account, Mr Smith should have been subject to higher levels of vigilance by custodial staff, intelligence staff, staff members generally responsible for assessing the risk of prisoners, and at national office level. Experienced corrections officers expressed strong misgivings about Mr Smith. These misgivings were not always shared or objectively assessed, so were not influential.

Fair trial

Fair trial

[redacted] ***design shortcomings in temporary release procedures and performance inadequacies in temporary release administration***

There were inadequacies in the way Corrections administered temporary releases. These included, among other things, deficiencies in the vetting of temporary release sponsors to assess their suitability, briefing and debriefing sponsors, gaining express agreement from sponsors to the release and proposed activities ("itinerary"), and verifying compliance. There was also no comprehensive incident management procedure to be activated in the event of concerns about or departures from a prisoner's temporary release programme.

This is not to say that Mr Smith should not have been granted temporary releases. Instead, greater care should have been taken in approving his sponsors, considering the purpose of the number of hours for which he was released, and requiring regular monitoring and checks. Fine tuning of this nature did not take place, which compounded the risks inherent in existing inadequacies of the temporary release programme.

As a result of these holes in the regime, there was sufficient head room for Mr Smith, with his attributes, to plan his departure from New Zealand while on temporary release. Critically, had the nominated sponsor been contacted by Spring Hill staff before the day of the release to confirm that Mr Smith was expected to stay with him overnight, then Mr Smith's planned escape would have been thwarted before it even began. The "sponsor" in fact knew nothing of the release, and would certainly have said so if asked.

Corrections did not apply its risk management processes to the temporary release regime

Temporary removals and releases, especially for work, are a standard element of sentence management and are important for Corrections' overall approach to reducing reoffending. Reintegrative releases of extended duration, for which Mr Smith became eligible, were a less-tested instrument in terms of administrative practices and controls, but nonetheless more such releases were being granted, especially for life and preventive detention prisoners approaching parole. Deficiencies existed in the recognition, assessment and management of risk in temporary release programmes. These were not picked up in Corrections audit and risk assurance processes. [redacted]

Mr Smith was able to obtain a New Zealand passport; the Department of Internal Affairs, the passport issuer, was unaware Mr Smith was a serving prisoner

In July 2013, Mr Smith was able to obtain a New Zealand passport (to which section 3 of the Passports Act 1992 gave him a presumptive right). This passport was issued to him some 16 months before he absconded to Brazil. The passport was legitimately issued to Mr Smith in his birth name Traynor. Having obtained the passport, Mr Smith was able to store it outside the prisons in which he was held.

No comprehensive systems were in place whereby the Department of Internal Affairs (Internal Affairs) was supplied with information about New Zealand citizens who, because of restraints imposed by the criminal justice system, were not permitted to leave New Zealand. Therefore, Internal Affairs was unaware that Mr Smith's passport application had come from a serving prisoner. The fact the passport application stipulated the name "Traynor" rather than the name "Smith" has no relevance, because Internal Affairs held no information about Mr Smith's status as a prisoner under any name.

The system to monitor offenders while at large, including the border alerts system, was inadequate to prevent offenders subject to the criminal justice system leaving New Zealand

The New Zealand Customs Service (Customs) operates a border alert system, which is effective in producing alerts for those people entered into it who should not be permitted to leave New Zealand. Customs is reliant on other agencies providing it with the information necessary to load such an alert. As at 6 November 2014, people in the category of Mr Smith and others subject to the criminal justice system were not routinely loaded in the system. Thus, when Mr Smith presented his passport before boarding the flight to Chile there was no alert for him under any name.

Information sharing within the justice sector and between the justice and related sectors is in need of a step change

The Inquiry has identified a series of gaps in the way that information, particularly identity information, is shared and managed in the justice and related sectors. In many cases, agencies have grappled with these gaps for years. The Inquiry has concluded a step change is needed to address the risks comprehensively, in particular those that can lead to confusion about criminal identities. Mr Smith's escape has provided a timely example of the potential consequences of these gaps.

Victim liaison was inadequate

While not a link in the chain leading to Mr Smith's escape (because it occurred after the escape), liaison with Mr Smith's victims was not adequate. The Inquiry has made a series of recommendations designed to ensure victims receive the timely, accurate information and protection they need in situations such as this.

Consequences of the findings

Each finding gives rise to issues of practice, performance and system design, which are examined in much greater detail in the report.

- It is plain that without a passport Mr Smith could not have left New Zealand.
- It is unarguable that had the sponsor with whom he was to stay on the night of 6 November 2014 been informed about Mr Smith's pending temporary release, Mr Smith's plan to escape would have been thwarted.
- There can be no dispute that had the temporary release regime been better assessed for risk or had the specific risks posed by Mr Smith when granted temporary release been scrutinised, the escape would not have occurred.
- Had Internal Affairs and Customs known that Mr Smith was a serving prisoner his passport might not have been issued and he certainly could not have left the country.

In chapter 6 we highlight what might have been the last possible opportunity to prevent Mr Smith's escape. That possibility would have depended on a police officer ascertaining approximately four hours before Mr Smith's flight that Mr Smith's listed sponsor knew nothing of the temporary release. The possibility opens up the wider issue of better cooperation between Corrections and Police in the management of temporary releases, which we explore in greater depth in chapter 6.

Concluding observations

This Executive Summary is the only appropriate place for the Inquiry to make some observations that, although not conclusions and recommendations, can sensibly be drawn from the overall narrative and the detail of the report's chapters. An independent Inquiry such as this should not become enmeshed in detail to the exclusion of common sense.

Most of our observations, set out below, are in the form of propositions. These propositions may provide perspective to the Inquiry's findings. They may guide policy decisions and priorities flowing from Mr Smith's November 2014 escape.

1. The escape of a serving prisoner to an overseas destination is a rare event, although the phenomenon of fugitives from the criminal justice system departing for overseas is not unknown.
2. Spectacular though Mr Smith's departure for Brazil may have been, in the 10-year period ending in 2014 the reported number of breaches of temporary release conditions by prisoners was extremely small, even miniscule.
3. People whose status in the criminal justice system precludes them from leaving New Zealand without permission should not be issued with passports.

4. As a matter of common sense and policy, criminal justice and associated agencies should be able to establish the correct identities of high-risk offenders, whatever name or identity they may use, so the public safety risks posed by such offenders are minimised.
5. The ability of criminal justice sector agencies to share information about serious offenders should not be constrained in ways that adversely affect public safety and penal policy. It is not in the public interest that such constraints be tolerated.
6. There are gaps, with attendant risks, in the ability of criminal justice sector agencies to hold comprehensive information about the names and identities of people who are subject to the criminal justice system. There can be improvements in this area.
7. People who are subject to the criminal justice system, particularly serious and high-risk offenders, exhibit a variety of risks that can imperil public safety. Such risks have to be carefully assessed and mitigated by a process that involves bringing to bear an intelligent and well-informed mind. While good systems are essential to support good decision making, the need for experienced competent decision makers cannot be overlooked.
8. Running prisons is difficult and dangerous work. While Corrections' main focus will properly be on avoiding attacks (on other prisoners and staff), preventing riots and damage, and preventing escapes, it should assess all risks carefully. These should include the risks that arise "outside the wire".

[redacted] Fair trial [redacted].

10. The "outside the wire" elements of offender rehabilitation and reintegration are central to current criminal justice sector policies. They are, by definition, higher risk to the community than the prison-based elements. The risks they present are not constant, but variable depending on individuals, circumstances and other pressures. A well-designed system of controls with appropriate levels of vigilance is always needed in such risk environments. The system must be tested regularly at governance and operational levels to ensure it remains fit for purpose.
11. Temporary releases (including releases to work and reintegrative releases) are valuable mechanisms that strengthen the rehabilitative efforts of many prisoners. To exclude certain categories of prisoner as being unsuitable per se rather than assessing the risks and benefits of temporary release for individual prisoners could be seen as a retrograde step and inconsistent with current government policy.
12. While the allocation of resources and the extent to which extra resources might need to be allocated are decisions for the Government and responsible Ministers, there are areas of the penal system and the control environment surrounding high-risk offenders that appear to warrant some added investment, in both information systems and human capability.
13. When things go wrong, as they inevitably do, and a high-risk offender still subject to the criminal justice system is responsible for a tragedy, the understandable reaction of victims' families, the media and the public, can be unforgiving. This reaction causes political and reputational damage. A focus on apportioning blame when things go wrong or shifting blame to others are understandable human reactions but can sometimes be counterproductive. There will never be an answer to these dynamics. The best that can be achieved is to strive for a sensible and economic balance between society's interests in rehabilitating prisoners and minimising the risk of reoffending on the one hand, and being constantly alert to the risks posed by recidivist high-risk offenders on the other. The road forward is one marked by constant vigilance, closing gaps and the exercise of sound judgement.
14. When a high-risk prisoner escapes or evades a monitoring regime, preservation of public safety requires a speedy response by law enforcement agencies. Such a speedy response should not be impeded by resource limitations or demarcation concerns about which agency has "ownership" of the escapee.

These observations are consistent with our conclusions and recommendations, which are consolidated in the next section.

CONSOLIDATED CONCLUSIONS AND RECOMMENDATIONS

Introduction

This section consolidates the Inquiry's conclusions and recommendations from throughout the report.

Conclusions: Assessment of Mr Smith's Risk and Sentence Management

Assessment and risk profile

1. The psychological reports presented to the New Zealand Parole Board in 2013 and 2014 identified several risks, and the Inquiry has no basis to disagree with or criticise those reports.
2. If information known to Department of Corrections staff had been properly integrated and taken into account in assessing and managing Mr Smith's risks, this may have led to Mr Smith's temporary releases being curtailed or declined or, at the very least, better management of his risks while on release.
3. The profiling of Mr Smith and the concerns about him known to intelligence staff at Auckland Prison at Paremoremo and transmitted to Spring Hill Corrections Facility in July 2014, did not lead to any greater degree of surveillance or risk assessment.

[redacted] Fair trial [redacted]

5. Department of Corrections staff and the Parole Board did not know Mr Smith had the means to leave New Zealand. [redacted] Fair trial [redacted]

Case management and offender plans

6. The role and influence of case managers is yet to develop as intended under the Integrated Practice Framework, and many case managers appear to carry too heavy a caseload. The information available to the Inquiry suggests that offender plans are not yet fulfilling their intended central place in the management of prisoners.
7. Mr Smith's offender plan did not have the appearance of a carefully thought-out document. It appeared to have lost its central place to determine sentence management when Mr Smith began the specialist child sex offender programme at Te Piriti.

Consequences of risk assessment for temporary release

8. Decision making on Mr Smith's eligibility and suitability for temporary release was influenced by several factors, including strategic policy settings for reducing reoffending and practice changes from Department of Corrections internal reform programmes. Contrary to the central conclusion of the chief custodial officer, the decision making was not driven by Parole Board prescription or by therapy staff.
9. It was the failure of Department of Corrections staff to assess adequately the particular risks Mr Smith might pose while on temporary release and to put systems in place to check his activities, both before and during temporary release, that failed to prevent his absconding and departure.

Relationship between Department of Corrections and New Zealand Parole Board

10. The Department of Corrections and Parole Board may perceive one body encroaching on an area of the other's responsibilities. The statutory objectives of both parties point to a common goal and thus a symbiotic relationship. Given this, better and more consistent dialogue between them is encouraged.
11. Communication of this type is particularly valuable at the interface between the Department of Corrections and the Parole Board over temporary releases, which are properly regarded by the Parole Board as a useful test, while remaining an aspect of sentence management determined by the Department of Corrections.

Recommendations

1. The Department of Corrections should continue to invest in risk-assessment capability and tools, including best practice intelligence approaches that enable it to better identify complex high-risk prisoners who are eligible for "outside the wire" activities.
2. The Department of Corrections should ensure the planning of each prisoner's pathway through his or her sentence is documented, reviewed regularly, and developed in a risk-based and multidisciplinary way.
3. There should be a continuing constructive dialogue between the New Zealand Parole Board and the Department of Corrections.
4. [redacted] Fair trial

Conclusions: Temporary release from prisons in general and Mr Smith's temporary releases in particular

Mr Smith's temporary releases

1. Mr Smith was granted temporary releases without an adequate risk assessment to determine his suitability.
2. There was no assessment of the type of risk (with particular reference to intelligence information and his offending history) that Mr Smith might pose while on temporary release. Risks that should have been identified were not mitigated by appropriately crafted conditions.
3. Inadequate attention was paid to the purpose of and the risks posed by temporary releases of varying duration and what the benefits and risks were of Mr Smith's progressively longer periods of temporary release.
4. The New Zealand Police and Department of Corrections had not specifically agreed how to coordinate the monitoring of temporary releases. There was no real distinction between monitoring an address and monitoring a person's activities, and there were unresolved demarcation issues between the two bodies.
5. The Department of Corrections monitoring of Mr Smith's compliance with temporary release conditions was not sufficiently vigilant. Staff did not seek necessary and relevant information from his sponsors. [redacted] Fair trial
6. [redacted] Fair trial

7. Spring Hill staff failed to notify one of the sponsors of the proposed 6 November 2014 release, and did not seek confirmation from the sponsors that they would monitor compliance with the imposed temporary release conditions.
8. There was no focused procedure or debriefing process to obtain feedback from sponsors.

Benefits and background of temporary release

9. Temporary removals and temporary releases are a long-standing instrument of penal policy and have value. Reintegrative releases are a valuable mechanism to rehabilitate and reintegrate prisoners and, in particular, to test a prisoner's ability to function in society without causing harm.
10. The number of breaches of temporary release conditions is very small.
11. A combination of demographic changes and policy settings resulted in the Department of Corrections making greater use of temporary removals and releases, including for long-serving prisoners. This was organic rather than planned, and it was not the subject of any close risk analysis.
12. Department of Corrections policy emphasises rehabilitation and reintegration as steps on one pathway, the effect of which supports reintegrative releases for the purposes of testing rehabilitation gains and preparing prisoners for eventual release.
13. The Parole Board, which had endorsed the use of reintegrative releases in principle (describing such releases as a useful test), referred more frequently to reintegrative releases in its decisions about readiness for parole.

Administration of temporary release before Mr Smith's escape

14. The design, implementation and auditing of temporary release procedures were inadequate. In particular, no apparent thought had been given to reassessing risks in the light of the increased number of prisoners serving indeterminate sentences being granted temporary release. Reintegrative releases in particular were not the subject of programmatic risk assessment.
15. The Department of Corrections' practices for administration of temporary removals and releases, which were in general long established, were not a high priority for audit or risk assurance. Closer audit attention could have been paid to the design, implementation and supervision arrangements for temporary releases.
16. The Circle of Support and Accountability (CoSA) programme, introduced at Te Piriti as part of a pre-release pathway for long-serving prisoners who had completed treatment, was not effectively supported, resourced or monitored. There was no formal risk assessment for this initiative. The initiative, however, has merit and the Department of Corrections should consider how to give it best effect.
17. The national memorandum of understanding between the Department of Corrections and Police calls for local-level coordination arrangements to be agreed between the relevant senior managers. We consider the Police and Department of Corrections should address the content and currency of these arrangements as a priority.

Future of temporary release

18. The Department of Corrections' interim measures imposed after this incident were intentionally restrictive and provided an opportunity to identify ways to reduce the risks to public safety arising from temporary release. They have, however, had other costs for penal policy and administrative interests. The removal of some of the restrictions will reduce these costs.

Recommendations

1. Temporary release is a valuable rehabilitative and reintegrative tool. With focused and effective risk assessment and management, the interim restrictions on eligibility for temporary release should be lifted.
2. When the Department of Corrections completes its current review of temporary release, it should thoroughly assess programmatic risk.
3. In any temporary release programme, the suitability and specific risks posed by each prisoner (particularly high risk prisoners) must be individually assessed against a structured framework and specially designed tools to balance benefits, risks and risk mitigations.
4. The Department of Corrections' reform programmes aimed at multidisciplinary decision making and integrated practice, should include the administration of temporary releases, and be given appropriate priority.
5. The Department of Corrections should not approve a reintegrative temporary release unless:
   (a) each proposed sponsor has been carefully scrutinised for suitability and reliability
   (b) systems for providing advice and support are in place
   (c) all sponsors (including co-sponsors) have agreed to the conditions and itinerary of the release.
6. Approval for temporary releases of high-risk prisoners should be determined by a senior decision maker, who should consider the individual risks posed by the particular prisoner, the suitability of the conditions imposed, and the purposes and nature of the planned release.
7. The Department of Corrections should improve the monitoring of temporary releases, including by:
   (a) considering the greater use of community probation officers
   (b) debriefing and seeking feedback from sponsors after each release.
8. The Department of Corrections should regularly use its internal audit regime to test frontline practice and performance in implementing the temporary release programme.
9. The Corrections Regulations 2005 should be reviewed to ensure they accurately reflect the purposes for which temporary releases are granted, in particular the full range of reintegrative releases.

Conclusions: Response to Mr Smith's escape

Response of Spring Hill Corrections Facility

1. By 7.30 pm on 8 November 2014, both sponsors listed on the temporary release licence for 6–9 November 2014 had informed a staff member at Spring Hill that Mr Smith was not with them. [redacted]
2. There was no established procedure or incident plan to guide Department of Corrections staff in the event of a breach of a temporary release condition, [redacted].
3. Nonetheless, Spring Hill staff should have initiated incident management procedures from at least 7.30 pm on 8 November 2014.
4. Spring Hill senior managers who knew that Mr Smith's whereabouts could not be ascertained should have conferred on the evening of 8 November 2014. [redacted].
5. Had Spring Hill better managed the available information, a more urgent response could have been taken on the evening of 8 November. This would have included informing the Police that a prisoner with a very serious offending history had escaped and ensuring registered victims were notified and supported.

6. In the various interactions with the Police, Spring Hill did not give effect to the information sharing envisaged in the memorandum of understanding between the agencies.
7. When serious offenders, especially high-risk offenders, abscond or escape from custodial or community control, a sense of precaution is called for: contingency steps should be implemented promptly and efficiently. The response by Spring Hill was lacking in precaution and consequently in urgency.

Response by New Zealand Police

8. The New Zealand Police interactions with Spring Hill on 8 and 9 November 2014, lacked the clarity and cohesion envisaged in the memorandum of understanding between the agencies.
9. After the Department of Corrections confirmed that Mr Smith was at large, the overall Police incident response was properly conducted.
10. The Police correctly identified the risks posed by Mr Smith and expressed an initial concern for victim notification.
11. The Police should have engaged the crime squad earlier than 2 pm on 9 November 2014, despite other commitments.
12. The processes undertaken by the Police to trigger a border alert, and to establish definitively that Mr Smith had fled New Zealand, were somewhat cumbersome, in part because of resource limitations.
13. Despite the constraints of the wording on the New Zealand Police border alert request form, an urgent request to Interpol should have been made.

Communications with victims

14. Although the Department of Corrections and New Zealand Police saw the need to communicate with the registered victims, their efforts to communicate could have been earlier, clearer and better coordinated between the agencies.
15. The delays in the Department of Corrections determining that Mr Smith was “at large” meant victims were not contacted as early as they might have been. This potentially created risk for them that the Department of Corrections appears not to have expressly considered.
16. The information the Department of Corrections conveyed to the victims, that Mr Smith could not be located but had not escaped, did not give them a clear or accurate picture of the situation.
17. Difficult issues may arise where a victim has nominated a representative, which could prevent timely notification of the inability to locate an offender.
18. Police protective support for the victims was slower than desirable.

Recommendations

1. The Department of Corrections should revise the national memorandum of understanding with the Police and its application in the local service-level agreements addressing failure to return from temporary release, breach of conditions of temporary release and prisoner escape from “outside the wire” activity. This should include specific consideration of the risks posed by serious offenders.
2. The Department of Corrections should develop scalable incident management procedures to address actual and potential breaches of temporary release conditions. These should be based, in part, on a wider risk appreciation of “outside the wire” activities, particularly for serious offenders.
3. The Police should engage with and take account of the work undertaken by the Department of Corrections in response to recommendations 1 and 2.

4. The Department of Corrections should not rely passively on registered victims to notify them of changes of circumstance, but should take positive steps, at regular intervals, to confirm contact details and whether victims wish to make other changes, for example, whether victims wish to receive direct notifications or to be notified through an authorised representative or to be removed from the register.
5. Measures to contact registered victims when the whereabouts of a serious offender cannot be ascertained should be reviewed. This review should include consideration of section 41 of the Victims' Rights Act 2002 and whether all victims should be contacted including those with nominated representatives.
6. The Department of Corrections, when the victim notification register coordinator is not on duty, should have a senior staff member on duty who is trained in communication with victims and, when calls to victims are required, makes the calls.
7. The Police should review current border alert processes to:
   (a) achieve greater speed and efficiency – the processes (including forms) must be readily understandable and operable for frontline staff
   (b) ensure after-hours requests are acted on promptly.
8. The Police should plan for the early involvement of Interpol when a prisoner's whereabouts cannot be ascertained (including a prisoner on temporary removal or temporary release).
9. When the Department of Corrections notifies the Police that the whereabouts of a prisoner cannot be ascertained, it should also provide Police with the most recent contact details for any registered victims, so the Police can contact them and assess whether protection or additional support is required. Depending on the risk as assessed by both the Department of Corrections and New Zealand Police, some situations may warrant a high degree of urgency in responding to victims' protection.

Conclusions: Information sharing, identity and passports

1. In their current state, justice sector information management systems and practices do not facilitate interoperability sufficiently to support the administration of justice and protect the public against risks, particularly those arising from confusion about criminal identities.
2. The future direction of government policies for reducing reoffending requires a higher intensity of information exchange for both policy development and the design of effective operational programmes and interventions.
3. Rectifying these weaknesses could be approached incrementally, but we lean more towards undertaking it in a comprehensive and strategic way, because step-change, rather than incrementalism, appears necessary.
4. The future state of sector-wide information management is a challenging public policy proposition because it entails technical complexities as well as financial and privacy risks and trade-offs.
5. High-level options for change of this kind are under development, but have yet to receive the close attention of senior officials or to be raised with Ministers.

The Inquiry **supports** the following.

- A step change to the next evolutionary stage of justice sector information sharing. This should be a comprehensive and strategic approach to proposals for new system architecture to achieve full interoperability within and across sectors.
- Steps to improve access to reliable and comprehensive identity information, and interoperability among criminal justice sector information systems.
- The development of more effective processes to confirm and authenticate official identity at the first point of charging by prosecuting agencies and, additionally, to link this official identity with all other names used by the person entering or in the criminal justice system.

- Steps to address shortcomings in the use and management of PRNs by criminal justice sector agencies (including those identified by the Tenzing Report).
- A strategic focus among all government agencies on biometric identity information.
- Facilitating common methods and standards of biometric identity verification, including fingerprinting and facial recognition photographs, among criminal justice sector agencies.
- Reviewing the Justice Sector Unique Identifier Code 1998 and, where necessary, developing new common protocols to control identity management practices by justice sector agencies.
- Enabling more effective and efficient exchanges of identity information among justice, identity and border sector agencies.

Recommendations

1. The New Zealand Police, Department of Internal Affairs and Immigration New Zealand should develop systems to provide real-time access to the birth, citizenship, passport and immigration databases to validate official identities for people charged. Consideration should be given to preparing an Approved Information Sharing Agreement or Agreements, in consultation with the Privacy Commissioner, and to amending the Identity Confirmation Act 2012 to allow access by charging agencies (particularly the Police) without consent.
2. Once those systems are in place, the New Zealand Police should be required to establish an official identity for all people charged with an offence.
3. In principle, the same requirement should apply to prosecutions by any agency, and officials should prioritise work to facilitate this.
4. The New Zealand Police, Ministry of Justice, Department of Corrections and Department of Internal Affairs should develop systems to ensure the Registrar of Births, Deaths and Marriages notifies criminal justice agencies and NZTA of all name changes for those with convictions for category 3 or 4 offences under the Criminal Procedure Act 2011 (those with a maximum penalty of two years' imprisonment or more).
5. The Parole Act 2002 should be amended to make it a standard condition of parole that the individual not leave New Zealand without permission of a probation officer.
6. There should be a legislative restriction on people subject to extended supervision orders, released on conditions, serving home detention sentences, or subject to intensive supervision or community detention leaving New Zealand without permission of a probation officer.
7. There should be a legislative restriction on special patients leaving New Zealand without prior permission of the appropriate official under mental health legislation.
8. The Department of Corrections, the Ministry of Health and district health boards should have legislative authority to take photographs and other biometric details of offenders and special patients without their consent.
9. Section 200 of the Land Transport Act 1998 should be amended to permit photographs of drivers held by NZTA to be shared with law enforcement agencies for law enforcement purposes.
10. The following recommendations should apply to "serious offenders", that is: prisoners, people subject to indeterminate sentences, people subject to extended supervision orders or public protection orders, parolees, people serving sentences of home detention, people on electronically monitored bail, and special patients.
    (a) Serious offenders who are subject to the criminal justice system should not be permitted to hold, seek to obtain or renew, or use a passport without permission from the court, New Zealand Police, Department of Corrections, the Parole Board or the Director of Mental Health as appropriate.

(b) Department of Corrections and New Zealand Customs Service should be enabled to streamline border alert processes for serious offenders. Any expansion beyond the current categories of people subject to border alerts will need to balance technical and operational requirements with the level of risk to public safety.

(c) Internal Affairs' systems should be improved and expanded to ensure there is a more comprehensive administrative process to exercise the discretion to refuse a passport in respect of serious offenders.

(d) Officials should review the practicality of deactivating passports for serious offenders, whether by Department of Corrections seizing them or Internal Affairs cancelling them.

11. There should be a requirement for passport applicants to declare whether they fall within any of the categories in section 4(3)(b) of the Passports Act 1992.
12. The Minister of Internal Affairs should have a discretion to cancel the passport of a person who falls within any of the categories in section 4(3)(b) of the Passports Act 1992.
13. The Department of Corrections should obtain passport and citizenship information of all serious offenders (particularly non–New Zealand citizens) in custody or subject to community-based sentences. If necessary, there should be legislative change to give effect to this.
14. The Justice Sector Information Strategy Governance Group should oversee ongoing work to identify and progressively close any gaps that remain, including flight by those on bail.

INTRODUCTION

Focus of the Inquiry

The Terms of Reference for the Government Inquiry into Matters Concerning the Escape of Phillip John Smith/Traynor are set out in Appendix 1. Many of the issues they raise require a focus on Mr Smith's escape. Other issues are focused more broadly, including identity management, use of names and aliases, the temporary release regime, how various agencies responded to Mr Smith's escape, and matters of that type. Importantly, the Terms of Reference require scrutiny of the adequacy of information sharing and matching by relevant state agencies.

The Inquiry has paid particular attention to:

- the deficiencies that led to Mr Smith's escape
- whether there is adequate oversight of people, particularly high-risk offenders, who are subject to the criminal justice system, and whether such oversight is adequate to ensure the public is protected from these offenders committing further serious crimes cloaked in a new identity
- whether the facts surrounding Mr Smith's escape reveal inadequacies in the policies, practices and resource use of relevant agencies
- whether there was adequate information sharing by criminal justice and related agencies and, in particular, whether the current information-sharing practices left various gaps that Mr Smith was able to exploit
- whether, in respect of Mr Smith's victims, adequate steps were taken to protect them from risk.

Structure of this Report

This report is divided into three parts.

Part One sets the context for this report. It deals with the establishment of this Inquiry and its process (chapter 1) and then the legislative, policy and practice backdrop that lay behind these events (chapter 2). A detailed narrative relating to Mr Smith, his sentence management, and his escape follows (chapter 3).

Part Two comprises three chapters:

- Chapter 4: Assessment of Mr Smith's risk and sentence management
- Chapter 5: Temporary release from prisons in general and of Mr Smith's temporary releases in particular
- Chapter 6: Response to Mr Smith's escape.

Part Three is entitled Information Sharing, Identity and Passports. These issues were inextricably linked and, in respect of them, the clauses in our Terms of Reference overlap. The part, comprising a single chapter 7, which deals with information sharing by relevant government agencies, identity issues, and passport use by people subject to the criminal justice system.

Structure of each chapter

The more substantive chapters (4–7) have similar structures. They start with a narrative that, depending on the topic, deals with matters relating to Mr Smith or with relevant policy and practice issues. From that narrative, we then draw various conclusions towards the end of each chapter, both focused on Mr Smith's case and more generally. Finally, arising out of our conclusions, we make, where necessary, recommendations.

A more detailed description of the topics covered in the chapters now follows.

Chapter 2: Legislative, policy, and practice backdrop

Government agencies do not operate in a vacuum. They are expected to be responsive to changing government policies (which may or may not be reflected in legislation). Those policies must be implemented in a timely fashion. Policies need to be disseminated from the high levels of a government agency to frontline staff. Practices and policy settings need to be consistent with high-level policies and reviewed accordingly. Senior departmental officials are accountable to their Ministers for the operational performance of their agencies and must provide institutional leadership.

Chapter 2 describes the background. Legislation and parole decisions have changed the composition of prison demographics. Policies directed at justice sector agencies have emphasised reduction in reoffending. Since the decommissioning of the Wanganui Computer, various incremental steps have been taken towards establishing integrated systems for information sharing among criminal justice agencies. The chapter explores these matters in greater detail.

Chapter 3: Narrative of events

Chapter 3 is a detailed narrative of relevant events, including the background details of Mr Smith's offending, his escape, and the response of agencies to that escape.

Chapter 4: Assessment of Mr Smith's risk and sentence management

As required by clause (b)(1) of our Terms of Reference, we look, in chapter 4, at various issues relating to Mr Smith, including his suitability for temporary release, his risk profile, the various assessments and classifications of him by the Department of Corrections (Corrections).
The chapter also examines Mr Smith's sentence management by Corrections and assesses sentence management generally.

The chapter considers the various assessment tools used by Corrections. It describes security classification. It examines assessments of Mr Smith as he approached parole eligibility and the reports that were presented to the Parole Board in 2013 and 2014.

We look, critically and objectively, at various conclusions reached by the chief custodial officer in his 24 November 2014 review (being the first official report by a government agency to inquire into the circumstances surrounding Mr Smith's escape). We examine matters of risk assessment, particularly those relating to high-risk prisoners.

We examine in depth the important relationship between the New Zealand Parole Board, which is an independent statutory authority charged with the difficult and complex task of assessing whether prisoners should be released on parole, and Corrections, which has the sole statutory responsibility for managing prisoners' sentences.

[redacted] Fair trial

Chapter 5: Temporary release from prisons in general and Mr Smith's temporary releases in particular

When Mr Smith escaped in November 2014 he was one of many hundreds of prisoners granted the privilege of temporary release. Temporary releases (which must be distinguished from temporary removals, when a prisoner is accompanied by a corrections officer) serve several purposes.
Two broad subclassifications are temporary release for work, where a prisoner is employed outside a prison, and reintegrative temporary releases.

We describe temporary releases and set out important statistical data on temporary releases over the past decade. We look at how temporary releases in general and the suitability of prisoners for temporary release in particular were assessed for risk and point to various shortcomings.
We explain the statutory basis for temporary releases and point to a possible legal difficulty.
We describe what occurred, before, during and after Mr Smith's temporary release from Spring Hill

Corrections Facility (Spring Hill) on 6 November 2014. We describe the procedures contained in the *Prison Operations Manual* and various omissions that occurred. We also examine problems in monitoring prisoners on temporary release, the responsibility for such monitoring, and the systems in place for assessing the suitability of temporary release sponsors.

We also describe the more restrictive temporary release regime introduced by Corrections immediately after Mr Smith's escape and still under review.

Chapter 6: Response to Mr Smith's escape

Chapter 6 contains a detailed narrative of what occurred once Corrections staff were aware that Mr Smith was not where he was meant to be. Spring Hill staff were unaware that Mr Smith might not be staying at the Auckland home of his listed sponsor until the evening of Saturday, 8 November 2014 – over 48 hours after he had departed for Santiago.

The chapter examines the various steps Spring Hill staff took. It points to inadequacies in the way the incident was managed. We also narrate and examine the relationship and communications between Corrections and New Zealand Police (Police).

The chapter describes the Police response. It was not until mid-morning on Monday, 10 November 2014 (almost four full days after Mr Smith's departure) that Police and Corrections became aware that Mr Smith had left New Zealand.

We received helpful and detailed statements from members of the family of Mr Smith's victims. Lawyers helped them with the preparation of submissions. We examine the speed with which the victims were given information about Mr Smith's escape and the timeliness of Police protection, which they wanted.

Although the response to Mr Smith's escape by both Corrections and Police could not have altered the fact he had already left the country, our conclusions and recommendations remain pertinent and valid. [redacted] Fair trial [redacted].

The response of Corrections to Mr Smith's escape in scaling back and restricting temporary releases is discussed in chapter 5.

Chapter 7: Information sharing, identity and passports

Chapter 7 examines overlapping issues in considerable detail. We are alert to the increased pace of change in data and information storage, electronic communications, photographic surveillance, biometric data, and identity information.

To give body to our Terms of Reference, we detail the various categories of people who are subject to the criminal justice system. We describe information systems currently used by the Ministry of Justice, Police, and Corrections. We describe how people are recorded in those systems and, in particular, examine the difficulties that occur and the gaps that are created by the use of name variants and aliases.

We explore the concept of official and anchor identity and how, for a variety of legitimate reasons, people may choose to use variants of their names or change their names. We refer to the 2012 Ministerial Inquiry into the Employment of a Convicted Sex Offender in the Education Sector (Miki Inquiry), which followed a serious case of multiple identity manipulation and confusion. We explore and describe how identity can be or is established when a person enters the criminal justice system and the use of person record numbers. We describe when and how Mr Smith's birth name of Traynor became known to criminal justice agencies and was stored as part of his information.

We scrutinise the Passports Act 1992 and the discretion conferred by Parliament on the Minister of Internal Affairs to refuse to issue a New Zealand passport to various categories of people who are subject to the criminal justice system. We narrate how it was that Mr Smith obtained his passport. We point to identity difficulties that can flow from foreign passport holders, foreigners who subsequently attain New Zealand citizenship, and the many thousands of New Zealanders who legitimately are entitled to hold and use foreign passports.

We describe how passports are used at the border and the use of border alerts to detect the entry and exit of people of interest to various agencies, including law enforcement agencies. We look at the various gaps apparent in the systems of passport issuing, border control, and identity generally. We examine the use of driver licences in New Zealand as a form of de facto identity card and the legislation that limits the use of driver licence photographs.

Special Patients under Mental Health Legislation

Most, but not all, special patients being treated under various provisions in New Zealand's mental health legislation have entered the criminal justice system. However, instead of being held in prisons, they are being treated in hospitals. This may flow from verdicts of insanity at trial, unfitness to plead, development of mental illnesses while imprisoned, and a variety of other causes. Although our Terms of Reference did not specifically refer to special patients, several people who made submissions to us saw the risk of special patients (some of whom are released on short leaves or long leaves) as analogous to risks of the type posed by high-risk offenders. When relevant, therefore, our narrative, conclusions and recommendations extend to special patients whom we consider should not be able to leave New Zealand without permission.

Terms of Art and Definitions

We refer briefly to important definitional matters that apply throughout the report.

Identity and information sharing in the criminal justice system

There have long been, and always will be in a liberal democracy valuing individual human rights, concerns over unfettered surveillance and information sharing by governments and law enforcement agencies. In more recent times, these concerns have extended to corporate entities. Privacy concerns are also engaged. Our Terms of Reference, which have led to our various conclusions and recommendations, concentrate on Mr Smith and those people who have entered the criminal justice system or have particular status in it. Similarly, when the Inquiry deals with identity information and the exchange of information by criminal justice and related agencies, our focus is on those within the criminal justice system.

High-risk and serious offenders

Both clauses (a) and (c) of the Terms of Reference make no distinction between categories of offenders or alleged offenders. Clause (a) (which focuses on alternative names and aliases) refers to *people* in their interactions with the criminal justice system. Similarly, clause (c) refers to information disclosure, sharing or matching between agencies that apply to those *persons* who might be expected to remain in New Zealand by virtue of their status in the criminal justice system. Understandably, however, there is a particular focus on serious offenders in many areas of this report.

Throughout this report, terms such as "serious offenders" and "high-risk offenders" have been used interchangeably. Those terms can pose definitional problems. Crimes that carry lengthy terms of imprisonment as a maximum sentence are clearly regarded by Parliament as "serious". Many people in prison for such crimes are undoubtedly high-risk offenders, but some such prisoners may never reoffend. Killing a person as a result of driving a motor vehicle carelessly (which carries a five-year

maximum term of imprisonment) would undoubtedly be regarded as “serious”. But if death resulted from momentary inattention on the part of a driver with no previous criminal record, few would categorise such a driver as “high risk”. The term “high-risk offender” refers much more to conclusions about the characteristics and redemptive potential of the offender involved rather than to the seriousness of the crimes he or she has committed. People who repeatedly commit serious offences and spend large portions of their life in prison, as a result, can legitimately be regarded as high risk.

Inquiries such as ours must be conscious of the dangers of failing to ensure that recommended remedies to problems are proportionate to the problems. We are clear that it is a particular subset of all serious offenders that we wish our measures primarily to address. The terms “serious offenders” and “high-risk offenders” are, in most instances, being used generically. In some of our recommendations we have resorted to various definitions, borrowing from the various categories used in the Criminal Procedure Act 2011 and the Passports Act 1992.

The term “high risk” is one we have also used generically. We are aware that various criminal justice sector agencies, for operational and policy purposes, use the designation for types of offender who trigger higher levels of vigilance. The categorisation of Mr Smith is an issue we examine in greater detail in the relevant chapters of this report.

PART ONE

CONTEXT

1. Establishment of the Inquiry, Terms of Reference and Inquiry Procedure

1.1 Establishment

On 9 December 2014, the Minister of State Services, the Hon Paula Bennett (the Responsible Minister), established, pursuant to section 6(3) of the Inquiries Act 2013, the Government Inquiry into Matters Concerning the Escape of Phillip John Smith/Traynor. She appointed the Hon Dr John Priestley, CNZM, QC (chair) and Mr Simon Murdoch, CNZM (member) to the Inquiry. These appointments and the Inquiry's Terms of Reference were notified in the *New Zealand Gazette* on 11 December 2014.

1.2 Terms of Reference

The Terms of Reference of the Inquiry are set out in Appendix 1.

The Inquiry was authorised to begin hearing evidence from 15 December 2014 and was directed to report to the Responsible Minister in writing by 30 June 2015.

On 18 December, the Inquiry, on its public web page, sought expressions of interest to participate. Government agencies, non-government groups and individuals who had been identified as having an interest in the Terms of Reference were also approached. Seventeen responses were received by the formal response date of 21 January 2015.

Five government agencies were designated as core participants under section 17 of the Inquiries Act 2013: the Department of Corrections (Corrections), Ministry of Justice, New Zealand Customs Service (Customs), Department of Internal Affairs (Internal Affairs), and New Zealand Police (Police).

The core participants and those who responded to the request for expressions of interest were invited to provide submissions to the Inquiry. The agencies, organisations and individuals who participated in the Inquiry are listed in Appendix 2.

1.3 Procedures Adopted by the Inquiry

The Inquiry decided to receive evidence from witnesses without holding public hearings. In doing so it took into account the matters in section 15(2) of the Inquiries Act 2013, in particular the following.

- Much of the evidence addressed operational procedures within the corrections, criminal justice and border security systems. It would not have been in the interests of justice for specific details of those systems to be made public; nor was it practicable to separate out the sensitive aspects of the evidence in advance. The Inquiry's report ensures public transparency over those matters that can properly be made public.
- Several individuals face ongoing criminal prosecutions and/or employment investigations. There was a risk that public hearings could have prejudiced those legal proceedings.

- Public hearings would have undermined the privacy interests of several individuals, including the victims of Mr Smith's offending, some of those involved in Mr Smith's management, and volunteer members of the Circle of Support and Accountability.
- The Inquiry wished to encourage full and uninhibited evidence from all witnesses, and considered this would be best facilitated by hearings conducted in private.
- The Inquiry considered that the principles of open justice and the need for public confidence was met by the release of its report and by the careful process on which it embarked.

The Inquiry accordingly ordered, under section 15(1)(c) of the Inquiries Act 2013, that the information-gathering aspects of the Inquiry would be held in private. The Inquiry received written statements from witnesses in advance. The Inquiry went on to hear oral evidence from almost all those witnesses under oath or affirmation. This evidence was transcribed. The Inquiry also received high-level briefings from several organisations and officials. There was no need for those giving briefings to be sworn. With one exception, the Inquiry did not need to use its powers to compel the attendance of any witnesses.

1.4 Public Website

The Inquiry has a web page hosted by the State Services Commission.[1] It provides basic information about the subject matter and procedure of the Inquiry. It has been updated throughout the life of the Inquiry, and the intention is that it will remain as a permanent record.
As at 10 August 2015, the page had received more than a thousand views.

1.5 Phases of the Inquiry

The Inquiry proceeded in three broad phases, some of which overlapped.

Phase 1 consisted of a series of contextual briefings from relevant government agencies. These briefings gave the Inquiry background in terms of legislation, regulation, policy settings and operational practices (including information systems used by agencies).

During this phase, the Inquiry visited Spring Hill Corrections Facility (Spring Hill), Auckland Prison at Paremoremo (Paremoremo), the Corrections incident response centre, and viewed border operations at Wellington and Auckland International airports.

Phase 2 was a fact-finding phase. The Inquiry interviewed witnesses who had interacted with Mr Smith in prison or were involved in the events relating to his escape. The purpose of this phase was to determine the facts of his escape and the immediate response.

Phase 3 considered the policy aspects of the Inquiry and potential reforms. This phase proceeded largely by way of written submissions and oral briefings.

Inclusive of the three phases, 116 people attended the Inquiry, some more than once.

The Inquiry requested and received sworn evidence from Mr Smith. It was not necessary to interview him or others whom were prosecuted or investigated in relation to Mr Smith's escape.

1 The Inquiry's web page is at www.ssc.govt.nz/govt-inquiry-smith-traynor.

1.6 Victims

At the outset, the Inquiry contacted lawyers who were acting for the surviving widow and sons of Mr Smith's murder victim. The Inquiry was helped by statements from two of the victims, and written submissions on behalf of three of them.

1.7 Extension of Report Date

On 4 June 2015, the Responsible Minister extended the Inquiry's reporting date to 25 August 2015. The extension took into account the volume and timing of interviews of key witnesses, a prior commitment of an Inquiry member, and the need to ensure due process was followed.

1.8 Consultation

Draft sections of the Inquiry's report were provided to the agencies whose policies or operations were discussed. The content was provided to give those agencies an opportunity to identify any factual inaccuracies and to comment on any findings that might be adverse as required by section 14(3) of the Inquiries Act 2013. Individuals whom the Inquiry considered might be the subject of adverse comment in the report, were also given the opportunity to respond. The Inquiry carefully considered all such comments and responses, and made changes where it was considered appropriate.

1.9 Publication of Inquiry Evidence

The Inquiry proceeded in accordance with the principle of openness and gave priority to section 15(2)(a) of the Inquiries Act 2013. However, several factors justified and required care. As noted above, these included several ongoing criminal investigations and prosecutions and the fact much evidence traversed matters of border security, law enforcement and operational security in prisons. Some material provided (for example, from some of Mr Smith's victims) was of a sensitive or private nature, and some material was provided on the basis of confidentiality.

Accordingly, the Inquiry made orders under section 15 of the Inquiries Act restricting access to several categories of information. It is expected that redacted versions of transcripts of evidence and other documents will ultimately be available. Much of the material supplied to the Inquiry will in any event be available directly from the relevant government agencies under the Official Information Act 1982.

2 Legislative, Policy and Practice Backdrop

2.1 Introduction

Our Terms of Reference oblige us to examine the adequacy of current legislative frameworks, settings (taken to mean policy settings), practices or systems. These were the relevant backdrop to Mr Smith's absconding to Brazil. He was able to exploit, over approximately two years, a regime that was the product of legislative change, policy development, and evolving departmental and sector doctrines and practices.

This chapter briefly describes that backdrop to provide context for the narrative of events that follows in chapter 3. The more substantive consideration of policy, legislative and other such influences is in set out in Parts Two and Three.

2.2 Legislative Framework

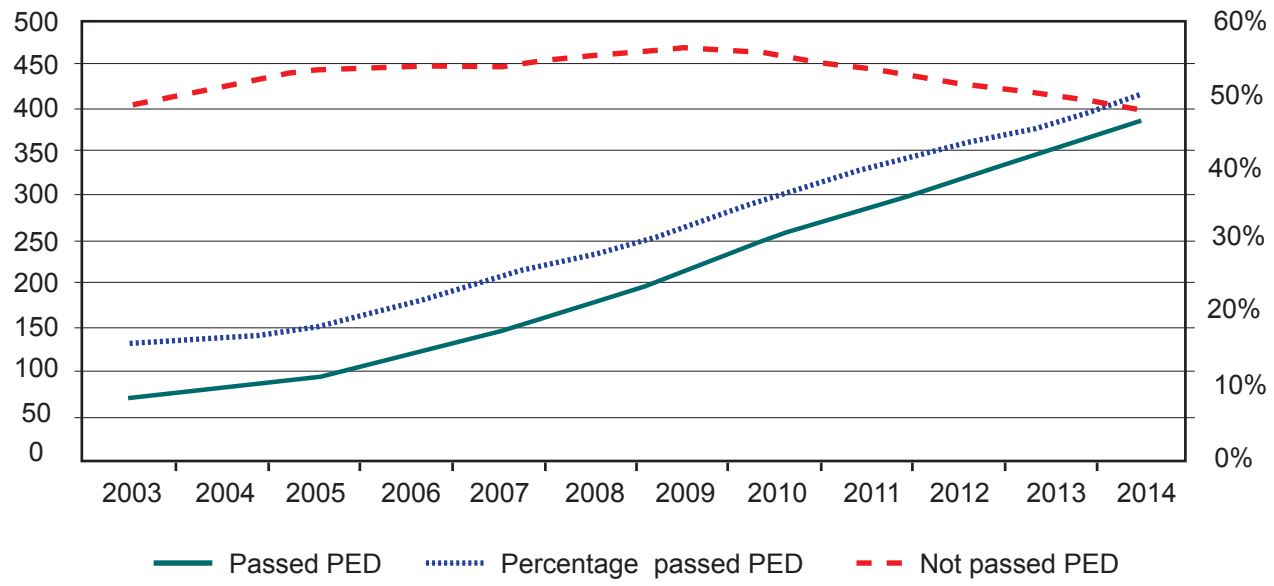
In subsequent chapters we address the legislation governing the many aspects of Mr Smith absconding to Brazil. The legislation includes the:

- Corrections Act 2004
- Policing Act 2008
- Passports Act 1992
- Parole Act 2002
- Victims' Rights Act 2002
- Privacy Act 2002
- Mental Health (Compulsory Assessment and Treatment) Act 1992
- Criminal Procedure (Mentally Impaired Persons) Act 2003
- Identity Information Confirmation Act 2012.

2.2.1. Changes to sentencing and parole laws

In 2014, Mr Smith was one of nearly 800 prisoners who had been sentenced to an indeterminate term of imprisonment (life imprisonment or preventive detention). Over the previous decade, there had been a steady increase in the number and proportion of indeterminate prisoners eligible for parole (the blue and green lines in Figure 2.1).

Figure 2.1: Indeterminately sentenced prisoners – number passed/not passed parole eligibility date (PED) and percentage passed PED, 2003–2014



We refer to this here and subsequently[2] as a demographic "bow wave".[3] Many of these prisoners are in need of rehabilitative programmes, particularly for child sex offending. A further factor contributing to the "pipeline" pressures was the fact that fewer prisoners were granted parole due to both legislative changes and a more conservative approach by the Parole Board over time.

2.2.2. Government priorities for the justice sector and Department of Corrections

The Inquiry considered at the outset the strategic goals and priorities mandated by the government for the justice sector. These are given effect by agencies over time through their joint and single activities in policy advice, system development, and operational plans, practices and procedures. Agencies are accountable for resource use and performance against these high policy aims and expectations.

Government strategy

The Government's strategic priorities for the public sector as a whole were set out in its Better Public Services initiative in March 2012. The relevant Better Public Services goal relevant to this Inquiry is "Improving public safety, by reducing crime and the harm it causes".

Under this goal, four shared qualitative objectives, each with quantitative targets, were established for the justice sector. The sector targets are overall crime reduction by 15 percent, violent crime by 20 percent and youth crime by 5 percent. The Department of Corrections (Corrections) was to lead its own target of reductions in criminal reoffending. The target is a 25 percent decrease in reoffending by 2017. The target is measured by the relevant statistical series, but is also defined in terms of a reduced flow of repeat offenders, specifically 600 fewer reimprisonments and 4,000 fewer reconvictions from community-sentenced offenders each year by 2017.

The Corrections chief executive, Mr Ray Smith, described the new qualitative goals and quantitative targets for Corrections — "Reducing Re-offending by 25%" (often referred to simply as RR25) — as being both world leading and ambitious. It was intended to be transformative at both strategic and organisation levels and at the operational or tactical level.

Department of Corrections programmes

RR25 was to be implemented by Corrections through two complex reform initiatives encompassing new doctrine and involving major changes to service delivery, organisational structure and professional practice. These were Unifying Our Effort and Creating Lasting Change, both introduced in 2011. The reforms were not specifically funded but instead were to be financed largely out of concurrent internal savings in Corrections operations and by reprioritising expenditure.

Corrections traditionally has had three service arms: prisons, rehabilitation and community probation (officially called Community Corrections). The first arm comprised custodial officers in prisons. The second arm included case managers, psychologists and those running the various treatment, employment and education programmes being offered to prisoners. The third arm related to all those charged with supervising people who are in the community and subject to community-based sentences and orders, being, in the main, probation officers.

The aim of Unifying Our Effort was to overcome the silo effects of this structure and better integrate offender management and treatment. Information and knowledge were to be shared, with all staff pointed in the same direction. The underpinning practice framework to enable such changes had been introduced to Community Corrections before 2012. The extension of this framework to prison and rehabilitative frontline staff was to follow; it was to be progressive and in stages, in some cases commencing only in late 2014.[4] Structural reorganisation involving consolidation of services and groups and devolution of accountabilities, delegations and decision rights was to underpin this.

2 See section 5.2.
3 The reasons for this bow wave are likely to be complex, but may include effects of the Sentencing Act 2002 and Parole Act 2002. Previously, under the Criminal Justice Act 1985, preventive detention carried a non-parole period of 10 years. Under the Sentencing Act 2002, the presumptive minimum non-parole period is 5 years, although it can be longer at the discretion of the court. After 2002, it appears more people received sentences of preventive detention, with generally lower non-parole periods.
4 See section 4.10.

Both Unifying Our Effort and Creating Lasting Change had at their core the concepts of more individually tailored treatment of offenders, better integrated practice and, in general, more proactive management across Corrections. An offender plan, prepared for each offender and administered in a structured and coherent way would schedule rehabilitation, educational and other intervention programmes, including work experience, leading to a lower probability of reoffending. In Corrections documentation and in interviews this was described as a pathway, a continuum of interventions that linked rehabilitative efforts in prison to reintegrative experiences of various kinds, together aimed at progressing a prisoner towards the end of their sentence or release by the Parole Board.

As part of its intent towards strategic mission change, Corrections extensively promulgated these policies to its frontline staff, encouraging them to link the policy objective with the approaches they would take in their daily work to offender management and determining offender specific "pathways" from rehabilitation to reintegration. As is inevitable in any large and complex organisation, the goals of those at the top of the hierarchy take time to implement and to translate consistently into practice. There would inevitably be resistance from staff preferring the old culture and ways.

2.3 Temporary Release

An enabler on the reintegration pathway was the temporary release of prisoners.[5] It is clear that in the three or four years before Mr Smith's absconding, the "bow wave" and pipeline pressures were affecting the number of prisoners serving indeterminate sentences who were granted temporary release. Besides increased release to work this was most evident in the increased volume of reintegrative releases. These releases might extend from a few hours to 72 hours and involve sponsors other than whānau or family (for example, faith-based prisoner supporters). They gave prisoners approaching parole an opportunity to gradually reacclimatise to society outside prison, which, for many, had not been experienced for a considerable number of years or even decades. A reintegrative release was also a form of "test" to ascertain whether the rehabilitative programmes a prisoner had undergone were effective. Reintegrative releases were seen as such and were supported by the Parole Board. Prisoners for their part saw temporary releases for work or reintegration as being an experience that would improve their chances of gaining parole.

2.4 Managing High-Risk Offenders

Corrections operates a risk management regime nationally that interfaces with risk registers maintained regionally and at local levels in prisons and the community. It also has various risk assurance systems and practices, including an active internal audit programme. The management of high-risk community offenders is one of Corrections' top 10 national risks. In prisons, however, the risk focus is mainly on preventing violence against staff and other prisoners, escapes, and the outbreak of disorder.

There is also a special regime for high-risk offenders in prison or on community-based sentences and orders. In this category, the nature of monitoring or related controls applying to offenders is intensified and decision making is escalated.

Since 2010, a national-level memorandum of understanding between Corrections and New Zealand Police (Police) has broadly committed the two agencies to close collaboration over high-risk offenders in the community. How they were to interoperate was to be determined and adjusted in light of local conditions through subsidiary service-level agreements under which Police and Corrections would share information and monitor offenders on community sentences and orders. It included provisions for temporary releases. The national-level memorandum of understanding had not been revised or reconsidered since 2010.[6]

5 See section 62 of the Corrections Act 2004 and regulation 27 of the Corrections Regulations 2005.
6 Both of these issues are discussed in chapter 6.

2.5 Information Sharing

The management of data by the various agencies involved in the criminal justice sector and, in particular, the policy and operational reasons that have governed information sharing for identity and related purposes, form an equally significant part of the backdrop. There has long been recognition of the need for more information sharing and operational cooperation among justice sector databases and between their databases and those of other relevant sectors, particularly the border and identity sectors. One central theme was to ascertain with accuracy the identity of people subject to the criminal justice system. For many years, in the wake of the final decommissioning of the Wanganui Computer in 2005, justice sector agencies, each with their own proprietary systems, have managed their various policy and operational interactions under formal strategies and other agreements (protocols) for information management.

As is further explained in chapter 7, technical problems relating to automated data sharing, the different priorities and objectives of agencies within the justice sector, privacy concerns, and cost all constrained progress. Improvements were discussed at length but never fully resolved. The data and information sharing that did occur was essential and legal, but in some cases occurred on an ad hoc or manual basis.

Any information management system affecting the criminal justice sector must rely on data matching between the three central databases: Police's National Intelligence Application (NIA), the Ministry of Justice's Case Management System (CMS) (with the Ministry serving the independent judiciary), and Corrections' Integrated Offender Management System (IOMS), which must manage all imposed sentences. The correct identity of an offender, for obvious reasons, needs a high degree of certainty, as does access to offenders' alternative identities and names. Development of information sharing in this area (quite apart from its slow pace) has been limited because of departmental and policy difficulties and the limited scope of arrangements permitting criminal justice agencies to check national identity repositories operated by the Department of Internal Affairs and Immigration New Zealand. The quality of justice sector information and the means of sharing it properly are also critical to the government strategy in general and RR25 in particular. Without excellent knowledge management, policy and operational achievements could be compromised.

Quite apart from Mr Smith, there have been examples of offenders being able to exploit gaps in the system and assume, quite legally, an identity or name to avoid capture or monitoring or to flee.

2.6 Temporary Release Breaches

When assessing what has occurred, the problems inherent in the policy and operational backdrop and Corrections' reaction since Mr Smith departed for Brazil, it is vital not to lose sight of the fact that escapes of prisoners from New Zealand prisons are rare. Fleeing the country is equally rare. Very few people, having escaped from prison, have remained successfully at large in New Zealand or overseas. Breaches of parole conditions and sentence conditions by people in the community are greater in number, unsurprisingly, given the number of people who are subject to the criminal justice system living in the community is much larger than the number of current prisoners.[7] As will be further clarified, monitoring technology (electronic bracelets for appropriate prisoners on release) does curtail risk. And importantly, as the statistics show,[8] most offenders granted reintegrative temporary release and external work programmes are compliant. Breaches are small in number.

The substantive chapters of this report address a chain of causation. The policy and operational factors summarised here were not the main drivers of Mr Smith's sentence management, nor of the controls to which he was subjected, particularly on his pathway from rehabilitation to temporary releases, or of his departure. But in various ways, which we explore, these factors affected the performance of agencies, institutions and staff who were managing Mr Smith's case and making decisions about the plans and programmes that had been drawn up for him. Gaps in data sharing and information management certainly enabled him to depart from New Zealand with relative ease.

7 In a calendar year Corrections manages between 80,000 and 100,000 people for some period of time on community sentences and orders, the majority of whom are serving a sentence of community work or supervision. On average there are 18,520 breach convictions per year, including multiple breaches. The majority result in outcomes such as conviction and discharge, or imposition of additional community work hours.

8 See Tables 5.3 and 5.4 in section 5.2.

3. Narrative of Events

3.1 Early Life and Offending (1974–1995)

Phillip John Smith was born Phillip John Traynor in Wellington in June 1974. Obligation of confidence Obligation of confidence When he was of pre-school age his mother moved with him to Carterton where she lived in a de facto relationship with Basil Smith. She married Basil Smith in 1988. They had a daughter, Joanne Smith. From early childhood Phillip was known as Phillip Smith, although his name was never officially changed.

His mother obtained a passport for him in 1983 in the name of Phillip John Traynor. The passport was extended in 1988 and expired in 1993.

In 1989, Mr Smith was issued with a learner driver licence in the name Phillip John Traynor. In 1994, the name on the licence was changed to Phillip John Smith. At that time it was possible to provide identification evidence such as a passport or birth certificate and, on a statutory declaration that one was known by another name, have one's driver licence issued in that other name. These events occurred before the establishment of the driver licence register now administered by the New Zealand Transport Agency, and there is no documentary record of how Mr Smith's licence name change was effected in 1994 nor of any identification document presented at the time of the change.

Mr Smith's criminal history record begins at the age of 15. He was convicted of dangerous driving in March 1990, disqualified from driving for six months and fined $300. Then followed a series of convictions including driving while disqualified, theft, presenting a firearm, assault, wilful damage, attempted arson, receiving stolen property, cultivating cannabis, and using a document for pecuniary advantage.

None of these convictions resulted in imprisonment. Mr Smith received community-based sentences or was disqualified from driving.

On each occasion, Mr Smith was convicted under the name Phillip John Smith. Nonetheless his birth name was known to law enforcement agencies. On an Information laid in 1990 by a traffic officer the typewritten name "Smith" was crossed out and "Traynor aka Smith" handwritten in. A 1991 Information for another driving offence was laid against "Mr Phillip John Traynor"; the name "Smith" nowhere appears. Both convictions, however, are recorded against the name Phillip John Smith.

In 1994, there was a noting on the Police intelligence system that a police officer had seen Phillip John Traynor talking to another person on the street in Carterton. No link was made to Phillip John Smith. It would not be until 2012 that the Police national intelligence system linked the two names.

In 1995, Mr Smith was charged with sexual offences against a child whose family he had befriended. The offending began in 1992 when the child was aged 11 and extended over three years. The police officers investigating the offending found that Mr Smith had used his birth name to book motel rooms.

Fair trial in December 1995, Mr Smith located the family home of the victim of his child sex offending. He entered the home at night and, while standing over his victim's bed with a knife, was confronted by the child's father, who he stabbed to death. He seriously assaulted other family members and held them captive.

Mr Smith was sentenced to life imprisonment with a non-parole period of 13 years. His life sentence began on 15 April 1996. He was also convicted and sentenced to finite sentences – now completed – in respect of the child sex offences, extortion and offences associated with the murder, including kidnapping.

3.2 First Decade of Imprisonment (1995–2004)

Fair trial

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Mr Smith undertook various short rehabilitative programmes such as courses on anger management, drugs and alcohol.

In 2003, Mr Smith requested a reduction to his security classification from maximum. Corrections considered a variety of information available, including a psychological assessment which, for privacy and confidentiality reasons, we cannot detail. Available information included Police assessment of escape potential, Mr Smith's overall demeanour, and his expressions of contrition. Mr Smith's security classification was not lowered. Mr Smith spent the first 8 years and 11 months of his sentence at maximum security classification.

3.3 Accumulation of Funds (2004–2009)

By the mid-2000s, Mr Smith was engaging in multiple activities, lawful and unlawful, to enrich himself financially.

Fair trial

In 2006, Mr Smith began making false Working for Families tax credit claims to the Inland Revenue Department using other prisoners' names.[10] The sentencing judge found that most of the prisoners were unaware he was using their names. From 2007 to 2010, he was found to have received over $40,000. For these offences he was, in 2012, sentenced on 12 counts of obtaining by deception, sentenced to imprisonment for one year and three months, and ordered to pay reparation of the money he had received at the rate of $50 per month. The Inquiry understands that $35,838.37 is yet to be repaid.

Fair trial

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It appears Mr Smith began trading on the share market around this time. Evidence provided by a supporter of Mr Smith to the Parole Board in 2011 was that Mr Smith paid $3,500 towards funeral costs when his mother died in 2005, "money he earned while trading shares on the share market in prison". Maintenance of the law

Fair trial

10 Judge Kiernan's sentencing notes state that, although the earliest charge laid against Mr Smith related to offending in 2007, Mr Smith had accepted the offending began in 2006.

11 Fair trial

These activities led Corrections intelligence officers to Mr Smith's dual names. It was reported that:

> in September 2007 a copy of his NZ Birth Certificate was located on which he is identified as Phillip John TRAYNOR, the surname being that of his mother and father, however it is not clear when or why he began using the surname SMITH.

Mr Smith and a former prisoner registered a company, WSE Marketing Ltd, with the Companies Office in September 2008. The enterprise sold electronic goods primarily online. Corrections staff were quickly aware of this, reporting in October 2008 that, "He … is starting up a business called WSE Marketing Ltd … he is selling GSM cellphone watches for $399". The early view of staff, later confirmed by Corrections national office, appears to have been that nothing about Mr Smith's involvement in the enterprise was unlawful or a breach of policy. His involvement was permitted to continue.

By the time of his parole eligibility date, then, Mr Smith had acquired funds through many avenues. He had also acquired academic qualifications, including a Bachelor of Accountancy from Massey University and a National Certificate in Computing. He added to this a Bachelor of Business Studies majoring in finance from Massey University in 2011.

3.4 Early Parole Hearings and Behavioural Treatment Proposals (2009–2010)

Mr Smith was first eligible for parole on 14 April 2009. A psychological assessment provided to the Parole Board included several actuarial measures used to assist in the prediction of an offender's risk of reconviction and likelihood of reimprisonment. The first was the RoC*RoI (Risk of Conviction times Risk of Imprisonment). This is a "static" predictor of risk based on criminal history; it rarely changes during the course of a sentence irrespective of treatment.[12] Fair trial Fair trial .

Of the other measures used, one was "static'" and the other two were "dynamic", meaning they measured factors that may be amenable to change with appropriate treatment. Fair trial Fair trial .

The psychologist recommended Mr Smith be assessed for the special treatment programme for child sex offenders at Auckland Prison (Paremoremo) and for a violence prevention programme at Rimutaka Prison. It does not appear that Mr Smith participated in any treatment programme specific to his offending behaviour before his parole eligibility date.[13]

The Parole Board declined parole, not being satisfied that Mr Smith posed no undue risk in terms of the statutory test for release on parole under the Parole Act 2002. The Parole Board wrote, however, that "after a fairly stormy period initially, his behaviour has improved over time". Fair trial

The Parole Board again considered parole in February 2010. In the months before the hearing Mr Smith had failed a drug test and his security classification was increased. Mr Smith provided a lengthy written submission to the Board that challenged the basis for the risk assessment provided to the Board for the 2009 hearing. However, the Board noted Mr Smith accepted he could not be released and that he acknowledged he needed to complete treatment programmes. The Board said that Mr Smith knew "the journey to release will be long and will involve a considerable amount of hard work on his part".

12 A RoC*RoI score may change if new sentences are imposed on the prisoner (see chapter 4 for further discussion).
13 Although, over the years, Mr Smith participated in several general courses and short programmes, the 2008 psychological assessment report stated, "Mr Smith has had no treatment from Psychological Service addressing his criminogenic needs".

3.5 Auckland Prison at Paremoremo, Unit 8 (Te Piriti) (2010–2012)

In October 2010, having been imprisoned for almost 15 years, Mr Smith transferred to unit 8 (Te Piriti) at Paremoremo. Te Piriti, like Kia Marama in Christchurch, is a facility separate from the main prison. Its treatment programme uses intensive cognitive-behavioural therapy to effect behavioural change in child sex offenders. Both Te Piriti and Kia Marama have a reputation for success in reducing reoffending. Mr Smith began "core treatment" in Te Piriti on 15 November 2010.

Mr Smith's third appearance before the Parole Board occurred in February 2011. The Board noted that his security had been lowered to low–medium and that he was drug-free, but that he was still in the early stages of treatment.

The Parole Board's view was:

> Clearly before there can be any possibility of Mr Smith being released on parole he needs not only to complete the Te Piriti Programme and possibly other intensive programmes but to demonstrate in a variety of contexts and over time that he no longer poses a risk to the safety of the community or any persons within it. He accepts that he cannot establish that at this stage and does not seek parole, which is declined accordingly.

The Parole Board noted as a matter of concern Mr Smith's:

> continuing use of different names. As well as the name Phillip Smith, he uses the surname Traynor, which he says is his birth name, for his university studies.

In May 2011, with fraud investigations under way and with other concerns about Mr Smith's behaviour in prison, the Parole Board ordered a two-year postponement of consideration for parole. Mr Smith consented to the postponement. At the same time his counsel argued:

> the last hearing was not fair because of pre-determination and the appearance of bias by the Board. Additionally, reliance on irrelevant considerations … and undue weight to victims' views is readily apparent.

The Parole Board's February 2011 decision referred to Mr Smith's "acknowledged involvement in running a mail order business from prison". This comment attracted media attention. The chief executive of Corrections made a public statement that there would be an independent review. He noted, however, nothing precluded a prisoner from continuing to run a business provided the activities were not criminal and fitted within the usual routine of the prison. He also said:

> We have been tracking this prisoner's activities for a number of years. This has included monitoring his telephone calls, direct staff observation and reporting to prison management, and monitoring of his prison trust account.

The review found Mr Smith's involvement in the business WSE Marketing Limited did not appear to pose any direct risk to public safety, was not in breach of legislation and was not breaching any prison rule or direction. In October 2011, the prison manager of Paremoremo gave permission for Mr Smith's business activities to continue.

While at Te Piriti, Mr Smith became the administrator of a computer suite set up for prisoner use. The computer suite was established before Mr Smith's transfer to the unit. The suite comprised stand-alone computers unconnected to any Corrections network or the internet. They were intended for educational use, for therapy course work, and for submissions to courts, lawyers and the Parole Board. The computers were not supplied by Corrections; they were acquired by individual Te Piriti staff through donation.

The day after the Parole Board's postponement order in May 2011, Obligation of confidence Obligation of confidence Mr Smith was told he would move into "maintenance", under which prisoners who have completed the intensive therapy programme continue residing in the unit to support maintenance of their progress. He was also told he would remain in maintenance for two to three months before being moved to begin a longer-term reintegration plan.

However, Mr Smith did not move out of Te Piriti for over a year. The delay was primarily attributable to the pending tax-related charges.

In March 2012, while Mr Smith was in the maintenance phase at Te Piriti, a recommendation was made to reduce his security classification from low–medium to minimum (skipping over low). To achieve this, prison management would have to override Mr Smith's security classification, a relatively common step. Mr Smith's offending history meant that his actuarial assessment would never be minimum security. Prison staff were aware that reintegrative steps for Mr Smith, such as moving to "self-care" units and temporary releases, could not occur under Corrections policy unless Mr Smith held a minimum security classification. The assessing officer wrote that Mr Smith's high security risk rating:

> will continue to impede progress towards the lowest level of risk assessment without intervention through override … this would disadvantage Prisoner Smith in view of his consistently good reviews and gradual reintegrative goals as recommended by the Parole Board.

However, the approving officer did not agree to the recommendation because Mr Smith's tax-related charges were still pending. He decided Mr Smith's classification should remain low–medium.

On 1 March 2012 Police entered Mr Smith's Traynor alias into their profile of Mr Smith on their intelligence system. This occurred at the time Mr Smith was being charged with his tax-related offending.

Following Mr Smith's sentencing for the tax-related offending, his parole eligibility date was recalculated to 9 April 2013. This had little practical effect given the two-year postponement of consideration for parole the Parole Board ordered in May 2011.

3.6 Auckland Prison at Paremoremo, Unit 9 (Te Mahinga) (2012–2014)

Mr Smith transferred to Te Mahinga on 14 September 2012. Te Mahinga had become an adjunct unit to Te Piriti in early 2012, holding child sex offenders most of whom were participating in the short intervention course for offenders considered at lower risk of reoffending. However, some places in the unit were reserved for prisoners on indeterminate sentences participating in weekly maintenance groups.

One week after transferring to Te Mahinga Mr Smith was reclassified from low–medium security to low. The assessing officer noted that the outstanding charges had now been resolved and that Mr Smith's behaviour was appropriate for a low security environment, and recommended a reduction to low security "as a gradual step towards the reintegrative phase of prisoner Smith's sentence". The approving officer agreed to a manual override of the actuarial security classification system so that Mr Smith could be classified low security.

Mr Smith began involvement in a preparation group for a Circle of Support and Accountability (CoSA). A CoSA is a group consisting of a prisoner with complex reintegrative needs serving an indeterminate sentence and typically five to seven volunteers from the community who are to support the prisoner on release and aim to keep him accountable for his actions. Potential CoSA members will meet with the prisoner before his release to establish the relationship of support and

accountability. CoSAs are supervised by therapeutic staff and members of community sector agencies contracted by Corrections. A CoSA is developed over time, generally with occasional changes of membership. Mr Smith began meeting with volunteers who might form part of a CoSA for him. These were volunteers with an interest in prisoner aid, particularly church-based volunteers and volunteers providing support for gay prisoners.

In early 2013, Mr Smith's involvement in WSE Marketing Ltd was reconsidered in the light of his convictions for tax-related offending. [redacted]

Maintenance of the law

[redacted]

In early February 2013, on the basis of Mr Smith's recent convictions for fraud-related activity, the prison manager revoked the approval for Mr Smith to participate in his business activities.

Fair trial

[redacted]

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On 8 March 2013, Mr Smith's security classification was reduced to minimum. The assessing officer wrote that "custodial and therapy staff are in agreement that prisoner Smith is ready to move into a re-integrative phase". The approving officer wrote, "Request to apply manual override supported to allow Mr Smith to start the re-integrative phase of his current term of imprisonment".

The day before Mr Smith's April 2013 Parole Board hearing, a meeting was held at which custody and therapy staff, along with some of the CoSA volunteers, discussed reintegrative proposals for Mr Smith to be put before the Parole Board. The Inquiry heard from staff who participated in the meeting that the reintegration plans for Mr Smith were from the outset discussed, agreed and progressed jointly by custody and therapy staff.

At the Parole Board hearing a Paremoremo unit manager (a custodial position) outlined the steps proposed for Mr Smith's reintegration phase with particular regard to temporary absences from prison. The manager talked about Mr Smith "getting out there in a slow, structured way" and said:

> we would be hoping for, Parole Board support for … a very careful programme of structured temporary removals with custodial staff … obviously leading into … the fours, the six, the eight hour temporary releases or home leaves.

Temporary removals are absences from prison accompanied by custodial staff. Temporary releases are absences from prison with a sponsor who is not a custodial officer.

The Parole Board declined parole, noting that Mr Smith:

> Fair trial
>
> [redacted]
>
> ...

> Much more work is required on his part to illustrate that he would be able to live and work in the community without posing undue risk. However, we support the proposition that there be very cautious and slow steps for reintegration into the community. They may involve temporary absences or escorted releases, as and when the Department of Corrections consider appropriate. That is a sentence management decision for the Department.

Shortly after the Parole Board hearing the same unit manager who outlined Mr Smith's reintegration plan to the Board asked another member of staff to organise a meeting "to get the temporary removal/release ball rolling". This meeting was held on 2 May 2013. Neither Mr Smith's case manager nor any members of the therapeutic staff were able to attend the meeting. It was attended by custodial staff, a member of the CoSA and Mr Smith. The meeting discussed the plan for Mr Smith to have a series of temporary removals from prison followed by temporary releases. Four days later Mr Smith's first temporary removal was approved.

On 10 May 2013, Mr Smith went "outside the wire" for his first temporary removal for reintegrative purposes. He was dressed in civilian clothes and was accompanied by a corrections officer who was also wearing civilian clothes. Mr Smith went to an optician and to AA Driver & Vehicle Licensing, where he sat and passed a theory test and was issued with a learner driver licence in the name of Phillip John Traynor. The Inquiry was advised it is not unusual for a prisoner at the reintegrative stage of their sentence to obtain a driver licence. As evidence of his name he produced a copy of his birth certificate.

Mr Smith had further temporary removals on 23 May and 6 June. Fair trial
Fair trial

On 24 June 2013, the Department of Internal Affairs (Internal Affairs) received a passport renewal application from Phillip John Traynor. Internal Affairs records show that the next day it received a call from the applicant, who wanted to correct the phone number of his referee, Christopher Clifton. Mr Clifton had first met Mr Smith in prison in 2008. On his release Mr Clifton went to live at Mr Smith's sister's house, and Mr Clifton sold products for Mr Smith's business.

On 1 July 2013, an Internal Affairs officer telephoned Mr Clifton, who described the passport applicant's physical appearance Fair trial
Fair trial Internal Affairs issued the passport the same day, Fair trial
Fair trial

Mr Smith's final temporary removal before his first temporary release was on 2 July 2013. This was accompanied by a different officer and included a visit to the address of a CoSA volunteer who it was proposed would sponsor Mr Smith on his first temporary release.

The first temporary release was proposed for 6 August. The release was supported by both psychological and custodial staff. The senior custodial officer recommending the release wrote:

> This is the first application for temporary release by prisoner Smith who has served a considerable amount of time incarcerated. As such it is important to have a carefully structured re-integrative plan in place. Staff have considered his case and initially agreed that Smith would benefit from a number of escorted outings before advancing to temporary release. After several successful outings under escort he is now ready to advance to the next step and has applied for 8 hours leave.

The prison manager approved the release but reduced it to six hours. The planned release did not go ahead because the sponsor was ill; it proceeded instead on 3 September. The release involved meeting with CoSA members and "shopping for another set of clothes and general familiarisation in a public setting". The Inquiry heard evidence that Mr Smith purchased a mobile phone on his first temporary release. The mobile phone was held by the sponsor when Mr Smith returned to prison.

On 12 September 2013, Corrections national office gave approval to the Paremoremo prison manager for Mr Smith to liquidate some investments to provide support to his family for their expenses, to a maximum of $5,000.

Mr Smith had three further temporary releases before his March 2014 Parole Board hearing on:

- 7 December 2013 (8 hours)
- 25 January 2014 (12 hours)
- 29 March 2014 (12 hours).

A different CoSA member sponsored the 7 December and 25 January releases. The sponsor of Mr Smith's first release had left New Zealand. The 29 March release had two sponsors, both of them CoSA members. Co-sponsoring accommodates sponsors who have other commitments, including work, particularly during the period of a long release; it means the prisoner can be supervised by one or the other sponsor.

Early in 2014, a USB stick, apparently containing movies, circulated among prisoners at Te Mahinga. Mr Smith admitted to possessing the USB stick, although he alleged he refused to use it and handed it back to the prisoner who gave it to him. Possession of a USB stick by a prisoner is a breach of prison rules. However, the matter was not handled by custodial staff. In the context of the therapeutic environment in Te Mahinga, the principal psychologist decided the consequences for the prisoners involved, without objection from custodial staff. For Mr Smith the consequence was no visitors or temporary releases for two months. The handling of the matter in this way meant the event was not recorded on the Corrections Integrated Offender Management System (IOMS). Although the incident and its resolution were known to some custodial staff, it was not known to the case manager writing the Parole Board assessment for Mr Smith's March 2014 Parole Board hearing. That assessment stated that Mr Smith "has not been noted in any misconducts or Incidents since his last appearance before the [Parole Board]". The principal psychologist did, however, describe the incident, in somewhat positive terms, in his report to the Parole Board.

Mr Smith's final Parole Board appearance before his departure from New Zealand occurred on 31 March 2014. Those invited to attend in support were members of the CoSA, as well as Mr Smith's family members and Mr Clifton. Te Piriti's principal psychologist also attended.

The Parole Board in its decision referred to a psychological assessment report prepared by the same principal psychologist. The Board noted that [redacted: Fair trial] . It also noted the psychologist's view that "in recent years there has been no evidence of the litigious and arrogant behaviour and attitudes, or the rule breaking incidents, evident earlier in his sentence".

The Parole Board said:

[redacted: Fair trial]

The Parole Board also rejected Mr Smith's reasons why he had not met his outstanding reparation obligation in excess of $37,000 “when he clearly now has significant funds available to do so”.

The Parole Board said:

> Mr Smith has been making good progress in terms of his temporary releases and engaging with his circle of support. However, the usual accepted and necessary pathway for an offender who has committed horrendous violent and serious crimes such as his, is to establish and prove himself through the necessary reintegrative steps. These, we consider, should include him working towards Self Care and, if available, Release to Work. As yet he is not pre-approved for that privilege. It is something to which he can work toward. We agree with the psychological report writer that he would also benefit from overnight temporary releases.
>
> In our view it would be premature to grant parole now, on the basis that he has had several temporary releases and a strong support group. His risk is, and has been, such that he needs to prove himself in [a] wider range of situations, and over time, in the community. If it is necessary for him to be transferred to another prison in order to further that progress, then we would support it.

The Parole Board declined parole and directed that an updated assessment report from another senior psychologist would be required for the next hearing in 12 months’ time.

When first moved to Te Mahinga, Mr Smith had been instrumental in the establishment and maintenance of a computer suite in unit 9 similar to that in unit 8. Mr Smith was regarded as helpful to other prisoners acquiring computer literacy that could assist them in reintegration on release. The Inquiry was advised the computers were on occasion checked to ensure there was no inappropriate use. [redacted] Fair trial [redacted]

[redacted] Fair trial [redacted] Maintenance of the law [redacted]

On 6 May 2014, Mr Smith contacted the Ministry of Justice. The Ministry’s COLLECT system for tracking repayment of fines had linked, since 2008, the names Phillip John Traynor and Phillip John Smith. Mr Smith said he had never been known as Traynor and asked for the names to be de-linked. A deputy registrar determined no link between the names could be established in any of the databases that were checked. The names were de-linked. (The names were re-linked following Mr Smith’s departure from New Zealand.)

Mr Smith had his first overnight release on 9 May 2014. [redacted] Fair trial [redacted] Fair trial [redacted]

Mr Smith's final temporary release from Paremoremo was from 30 June to 2 July 2014. The co-sponsors were a CoSA member and Mr Smith's sister, Joanne Smith. Ms Smith was approved as a sponsor so that she and her brother, with Basil Smith, could scatter the ashes of their grandmother. Although Mr Smith stayed at night with the CoSA sponsor, on the first and last day of the temporary release Ms Smith was the only sponsor with Mr Smith for most of the day.

[redacted] Fair trial [redacted]

During his time at Te Mahinga, Mr Smith was very active in organising events. He organised a carol service one year and a talent contest in another. These, particularly the latter, were impressive undertakings that drew admiration for Mr Smith's organising skills. One corrections officer told the Inquiry that Mr Smith had a natural ability to organise events. He was, the officer said "a model prisoner when he was in Unit 9".

3.7 Spring Hill Corrections Facility (2014)

In April 2014, there was discussion between staff at Paremoremo and Spring Hill about whether Mr Smith could transfer to self-care at Spring Hill. Self-care allows prisoners towards the end of their sentence to live in units where they have increased responsibility for their own living circumstances, including the purchase of food and preparation of meals. Paremoremo has no self-care units. The request was rejected because of concerns about Mr Smith's safety from other prisoners in self-care units given he was a convicted child sex offender.

A senior corrections officer at Paremoremo emailed a senior corrections officer at Spring Hill in June 2014 to ask again whether it was possible to "get Phil Smith to a self care as part of his [Parole Board] recommendations and his rehabilitation need". The Paremoremo principal psychologist also emailed support, in particular addressing concerns about Mr Smith's safety as a convicted child sex offender:

> Understand your concern … The fact that his main conviction is for murder and he is doing life, apparently makes a big difference to his status … At this stage going into a self care unit is his only chance to be released according to the [Parole Board]. You can be sure he will do everything to ensure that he doesn't get into strife with others or with staff. He should be good as gold.

The senior officer at Spring Hill approved the transfer, and Mr Smith transferred to Spring Hill on 4 July 2014.

Paremoremo's intelligence unit sent a detailed email to Spring Hill on the day of Mr Smith's transfer:

> The reason for his transfer is based upon a [Parole Board] request to move SMITH to the Internal Self Care Unit at [Spring Hill], to continue his Temporary Releases and Integration needs with a view to Release to Work in the future … Fair trial
>
> Fair trial

This email was circulated among several staff at Spring Hill, including staff working in the unit in which Mr Smith was to reside and a senior manager. This appears to have been an unusual instance of a detailed intelligence report being distributed among custodial staff in this way.

Mr Smith began regular temporary removals to purchase food for his self-care unit or to participate in prisoner work parties carrying out community projects.

On 6 August, Mr Smith obtained a criminal history report from the Ministry of Justice showing no criminal convictions recorded in respect of Phillip John Traynor.

Spring Hill staff approved a temporary release for Mr Smith for 16–19 September. Ms Smith was again named as a co-sponsor with a CoSA member. As part of the approval process, Auckland police were advised of the release, and a detective from the Sex Offender Monitoring Team was tasked with visiting Mr Smith during the release.

The CoSA member who was to collect Mr Smith and sponsor him for his temporary release told the Inquiry that he was telephoned the day before the release by a woman from Spring Hill who confirmed with him the details for collecting Mr Smith.

When the CoSA member arrived to collect Mr Smith, he signed, as usual, the prisoner's temporary release licence. He did not notice the licence (which contained 20 conditions) contained one condition that was not present in licences he had previously signed. The condition prohibited Mr Smith from texting or receiving texts, accessing the internet or making personal phone calls.

Fair trial

Fair trial

A detective from the Sex Offender Monitoring Team twice visited the address of the CoSA member on 18 September. The first time no one was home. The second time the CoSA member was home and advised the detective that Mr Smith was not there at the time as he was with his sister. He advised the detective that Mr Smith had been no problem on releases.

Fair trial

. Later that day, the CoSA member returned Mr Smith to Spring Hill and provided (to the principal psychologist at Te Piriti, who was the only Corrections contact the CoSA member was familiar with) the usual sponsor's report on the temporary release.

3.8 Temporary Release of 6 November 2014

On 20 October, Spring Hill approved a temporary release for Mr Smith from 7.30 am on 6 November to 9.30 am on 9 November 2014. Both Ms Smith and a CoSA member were approved as co-sponsors. For the first time, Ms Smith was to collect Mr Smith from the prison rather than the CoSA member. As with previous releases, letters were sent to notify the registered victims of Mr Smith's offending who were recorded on the Victim Notification Register.

Auckland City police were informed by Spring Hill of the release and on 28 October the Auckland City police "Daily Assessment" contained information about Mr Smith's release, including his curfew hours from 10 pm to 7 am. However, the CoSA member's address – where Mr Smith was to reside during the curfew period – although correctly supplied by Spring Hill, was incorrectly entered in the Daily Assessment. The address entered does not exist.

The Sex Offender Monitoring Team was again tasked with monitoring Mr Smith over the temporary release period. On this occasion the team was informed of the curfew. It had received no curfew information for the previous release. The team was provided with the non-existent address from the Daily Assessment.

Fair trial

On the morning of 6 November 2014, the CoSA member listed as the co-sponsor for the temporary release, and at whose house Mr Smith was supposed to stay during the release, still knew nothing about it. Fair trial . He had not received any contact about it from Spring Hill. Fair trial

[redacted]
Fair trial

At 7.30 am Ms Smith collected her brother from Spring Hill. She was accompanied by a male who was an approved visitor to certain high-profile prisoners but not Mr Smith. The male appears to have acted simply as a driver for Ms Smith, who was staying at a motel in Auckland and did not drive. The male drove Mr Smith and Ms Smith back to the motel and then departed.

[redacted]
Fair trial

Around 1.30 pm a detective from the Sex Offender Monitoring Team, making the routine check he had previously been tasked with, attempted to visit the address of the CoSA member listed as Mr Smith's sponsor for the temporary release. However, he found the address he had received when he was tasked to carry out the visit was non-existent. He assumed he had written the address down incorrectly. He emailed the Crime Squad asking it to check the sponsor's address during the overnight curfew.

Around 3 pm Mr Smith passed through customs at Auckland International Airport. He was carrying his passport in the name of Phillip John Traynor. He declared he was carrying cash to a value of just over NZ$10,000, with the source of funds being given as "savings/earnings" and the purpose of the funds as "spending money – holiday (3 months)".

Agencies with law enforcement responsibilities may provide the New Zealand Customs Service with alerts in respect of people they want intercepted should they attempt to cross the border. These alerts appear on the computer screens of Customs officers at the border should the individual present before them. There was no alert at the border about Mr Smith under the name Phillip John Smith, Phillip John Traynor, or any other name.

At 4.15 pm Mr Smith departed on LAN Chile flight 800 to Santiago.

At 6 pm Ms Smith checked out of her motel.

In the very early hours of Saturday, 8 November, Crime Squad members attempted to make the routine visit to the CoSA member's address that the Sex Offender Monitoring Team detective had on 6 November requested them to make. They failed, as they too went to the place wrongly entered into the Daily Assessment on 28 October.

3.9 Response to Mr Smith's Breach of his Temporary Release Licence

At 5.30 pm on 8 November, a senior corrections officer in Mr Smith's unit at Spring Hill noted that Mr Smith's temporary release licence included the sponsors' phone numbers, so that monitoring calls could be made. The officer called the CoSA member, who did not answer. The officer called [redacted]
Fair trial
. The officer called the CoSA member back and left a message asking

him to call back. The officer then advised the Spring Hill on-call manager for that weekend. The on-call manager attempted to call both sponsors but got no response. The on-call manager advised the deputy prison manager that Mr Smith could not be contacted.

The deputy prison manager advised the on-call manager that until the prisoner failed to return by 9.30 am on 9 November, he was not technically in breach of his licence. The deputy prison manager also attempted to call the sponsors without success and then drove to the CoSA member's address, which was near the manager's own home, but no one was there.

At 7.22 pm the CoSA member returned the call of the senior corrections officer in Mr Smith's unit at Spring Hill and told the officer that Mr Smith was not with him and he was not aware Mr Smith was having a temporary release that weekend. The officer called the on-call manager who advised that Mr Smith was not considered in breach until he failed to return on 9 November.

The prison manager told the Inquiry about being contacted by the on-call manager around this time. The on-call manager told the prison manager [redacted] that the other sponsor could not be contacted.

The on-call manager was advised by either or both the prison manager and deputy prison manager to give a "heads up" to Police and the Corrections Incident Line. This was solely to let them know that Mr Smith could not be contacted. Around 8 pm the on-call manager contacted the Police Communications Centre and told it a prisoner on temporary release was not where he was supposed to be. No action was requested of Police.

The Communications Centre passed on the advice to the District Command Centre who contacted the on-call manager asking for a current photo of Mr Smith.

Later in the evening, the CoSA member contacted the deputy prison manager to say he did not know of the temporary release. He suggested Mr Smith might be at the motel where his sister usually stays.

Spring Hill management took no further action that night.

On the morning of 9 November, although Spring Hill had advised Police there was no action to be taken until Mr Smith failed to return from his temporary release, a senior sergeant at the Auckland District Command Centre identified the seriousness of Mr Smith's offending history and tasked a team member to contact Spring Hill. The team member first did so at 8.45 am.

During the morning, as the time for Mr Smith's return from temporary release came and went, contact between Spring Hill staff and Police increased, though it has been difficult for the Inquiry to ascertain the precise sequence of contact because there was little log keeping.

The Spring Hill on-call manager phoned Mr Smith's murder victim's widow, who was also recorded on the Victim Notification Register as the authorised representative for her two children. The widow told the Inquiry that Corrections informed her that Mr Smith could not be contacted or located, but Corrections was not calling it an escape. She was also told Mr Smith was not GPS (Global Positioning System) tracked. She contacted her son, the victim of Mr Smith's child sex abuse [redacted] to pass on the message.

The Spring Hill on-call manager also called the murder victim's sister, but there was no reply and no facility to leave a message. Police made contact with her later in the afternoon. The Spring Hill staff member was able to leave a voice message for the murder victim's other child, [redacted]

On the afternoon of 9 November, Police submitted to Interpol a border alert in respect of Mr Smith. If approved by Interpol, an alert would be placed with Customs. Although Mr Smith's Traynor alias was part of his profile on the Police intelligence system, it was not mentioned in the alert request. Because the alert was requested on a weekend and was not requested urgently, no action was taken on it until the next day.

At 2.41 pm Police Northern Communications advised police in the town where the murder victim's widow lived of Mr Smith's escape and to treat any call from her address as urgent. The local police were not asked to visit her address nor did they choose to do so of their own accord.

Police in the late afternoon decided Mr Smith's victims should be visited and offered alternative accommodation. However, it was not until 7.45 pm that the murder victim's widow, who was terrified and had been requesting police protection for some hours, was finally visited. She was moved to alternative accommodation, [redacted] Fair trial [redacted]

On the morning of 10 November, an Interpol officer saw the requested border alert. He could not find a record of a passport under the name Phillip John Smith that matched the particulars he had been given. He checked the Police intelligence system to see whether Mr Smith had any aliases, found the Traynor name, and quickly discovered that Mr Smith had departed for Santiago on 6 November.

Police contacted Mr Smith's victims to inform them he had flown to Chile.

On 12 November, Mr Smith was arrested in Rio de Janeiro, Brazil. He was returned to New Zealand on 29 November and has since been charged with escape. His sister, Ms Smith, has been charged with assisting his escape. Both have pleaded not guilty. Mr Clifton pleaded guilty on 20 January 2015 to making false statements in a passport application.

PART TWO

RISK, TEMPORARY RELEASE, AND RESPONSE

4. Assessment of Mr Smith's Risk and Sentence Management

4.1. Introduction

Our Terms of Reference, clause (b)(i), require us to examine the assessment of Mr Smith "as suitable for temporary release" against his risk profile for possible reoffending.

"Risk profile" requires a focus on the specific risks Mr Smith posed.[14] These risks were assessed at various stages of his imprisonment by assessment tools used by the Department of Corrections (Corrections). We examine these briefly. The influence these assessments had on Mr Smith's sentence management is a key factor for this Inquiry. The assessments of Mr Smith that were central to his appearances before the New Zealand Parole Board in 2013 and 2014 are also described. There needs to be scrutiny of the extent to which those assessments correctly identified the risks he posed.

The assessments provided to the Parole Board in 2013 and 2014 gave the Inquiry a cumulative picture of Mr Smith as a prisoner progressing through Corrections' systems towards release. They were the most comprehensive assessments of risk that we saw.

4.2 Risk Assessments of Mr Smith as a Prisoner and Risk Assessment Tools Generally

During the almost 19 years Mr Smith had been imprisoned, a number of risk assessments, particularly as he approached parole hearings, had been carried out. We set out below a brief description of these risk assessment tools. We do this because our Terms of Reference refer specifically to Mr Smith's risk profile.

4.3 Risk Assessment Tools – Predicting Future Offending

Corrections has an evidence-based set of assessment tools that help predict an individual's likelihood of future offending and those factors that can increase or decrease this risk.[15] A person serving a sentence in prison may be subject to a number of these assessments.

The primary assessment tool to measure the risk of general reoffending is the RoC*RoI (Risk of Conviction times Risk of Imprisonment). This tool is computer generated and based on criminal history information. The factors that make up this assessment such as age at first conviction, gender and number of previous prison sentences cannot be changed. The tool produces a statistical probability of reoffending (scores ranging from 0.0 to 1.0) representing a 0 percent probability to a 100 percent probability of recidivism over a period.

[redacted] That score was derived from his age at first conviction, the large number of his previous convictions and his current sentence being life. Decisions about release on parole must weigh the predictions of reoffending based on past behaviours against assessments that can measure changing circumstances.

14 "Risk" has several layers. It refers to the risks Mr Smith posed whilst a prisoner (escape, assaults and matters of that kind), the risks he might pose if granted temporary release, which we examine elsewhere, and, importantly, the risks of reoffending he might pose to the community if released on parole.

15 Corrections uses a large variety of assessment tools not referenced here. For example, tools to assess the potential for self-harm or determine the suitability of two prisoners who may share a cell.

The SDAC-21 (Structured Dynamic Assessment Case Management) is a relatively new tool introduced from September 2013. Probation officers have been using a similar tool with community-based offenders since March 2010. The SDAC-21 looks at 21 different variables that could contribute to new offending or help a person avoid new offending. For example, variables could be continued gang association, sense of entitlement or substance use, as opposed to stable employment, healthy relationships and being responsive to advice. The benefit of such a tool is that it helps describe dynamic "risk scenarios" and factors that could trigger new offending. This assists both the prisoner and people making decisions about them to manage individual risk situations.

Mr Smith's case manager at Spring Hill Corrections Facility (Spring Hill) had begun an SDAC-21 assessment of him in November 2014. This assessment was undertaken immediately before the escape [redacted]

Fair trial [redacted]

Fair trial [redacted] This assessment was not completed until after Mr Smith's escape.

The ASRS (Automated Sexual Recidivism Scale) and STABLE 2007 are assessment tools specifically for sexual offenders. The ASRS is based on static factors. STABLE 2007 is a dynamic tool. Psychologists combine these scores and produce a risk rating on a five-category scale ranging from low to very high of likelihood of future sexual offending against adults or children.

Mr Smith was assessed in 2013 for his psychological report to the Parole Board. [redacted]

Fair trial [redacted]

For serious violent offenders, the Department uses the Violence Risk Scale (VRS) and Psychopathy Checklist: Screening Version (PCL:SV). The VRS creates a "checklist" of risk factors associated with an offender that contribute to a high risk of violent reoffending (such as violent lifestyle and emotional control). The PCL:SV provides a probability of the risk of serious violent reoffending. The tool predicts the chance of serious violence and the likely speed of new offending.

Fair trial [redacted]

Fair trial [redacted]

The risk assessment tools we have described are, on the evidence we have heard, consistent with best international practice. However, as will be apparent in other sections of our report, the deployment of a tool is not a substitute for focused risk assessment and risk management. Mr Smith presented particular challenges because of the nature of his past offending and his

personality. It may well be that the current risk assessment tools can be expanded to deal with [redacted] or even a discrete tool developed for prisoners of that type.[16]

For complex and high-risk offenders, risk assessment and management require a full range of tools, integrated intelligence and multidisciplinary assessment to facilitate enhanced vigilance. We also observe there should be an additional layer of risk assessment and risk management for prisoners whose sentence management could involve reintegrative experiences outside the wire.

4.4 Security Classification

A prisoner's security classification is not a predictor of future offending, although it is a risk identification and management tool. Corrections uses a computer-generated tool that assigns a security classification to a prisoner across five levels: maximum, high, low–medium, low and minimum. The score is based on dynamic and static factors and is influenced by the passage of time and behaviour.

The classification is an assessment of risk, both inside the prison environment and externally in the community. Prison accommodation is assigned based on the classification, and the score determines what kind of programmes the prisoner may be eligible for, for example, release to work. The classification also determines the measures that need to be taken if the prisoner is taken outside the prison, such as the numbers of staff present if attending court. It is a points-based score, and the original (index) conviction can be highly influential along with the length of sentence imposed and any prior attempts to escape. The classification is reviewed every six months, and the Corrections Regulations 2005 require that a prisoner is managed at the lowest level that can ensure safety and security of prisoners, staff and the public.

An assigned security classification may be overridden by prison management both up and down – if staff make a good case for it to be overridden. A person's classification could be increased if they posed a credible threat to a specified individual or decreased if the unchanging factors (such as index offence) are unfairly restrictive. For example, based on points, a person serving a life sentence like Mr Smith will not attain minimum security, meaning they will never be eligible for temporary release. However, such a prisoner may have long passed their parole eligibility date and completed rehabilitation programmes, and the Parole Board may be supportive of testing law-abiding behaviour by slowly increasing freedoms. It is proper, and quite common, for an officer to approve a manual override and thereby lower a prisoner's classification to enable the prisoner to progress along a rehabilitation pathway.

On 9 March 2012, the principal psychologist told staff at Paremoremo he was planning to start a Circle of Support and Accountability (CoSA) for Mr Smith, but had been "advised by the Parole Board that it would be preferable for Mr Smith first to be transferred to a self-care unit and to later return to Te Piriti [a unit at Paremoremo that provides a treatment programme for child sex offenders] to start a Circle". Given a prisoner must be classified minimum security to attend self-care, the principal psychologist recommended to custody staff that consideration be given to reducing Mr Smith's security classification from low–medium to minimum (skipping over low). A recommendation was put forward by custodial staff but was rejected by a custodial systems manager given Mr Smith was facing charges for tax-related offending.

Once Mr Smith had been sentenced for the tax-related offending in September 2012 custodial staff recommended a reduction to low security "as a gradual step towards the reintegrative phase of prisoner Smith's sentence". A manual override was approved to reduce his classification to low.

16 In this paragraph we are not suggesting that current Corrections tools are inadequate or not being used for high-risk and complex prisoners. What we point to is an evaluation of those tools, including scrutiny of international models to determine whether existing approaches can become more comprehensive (eg, a United Kingdom intelligence model commonly referred to as 'prominent nominal' may be one).

In March 2013, custodial staff recommended Mr Smith's classification be reduced to minimum, saying, "Both custodial and therapy staff are in agreement that prisoner Smith is ready to move into a re-integrative phase". The approving custodial manager agreed to a manual override "to allow Smith to start the re-integrative phase of his current term of imprisonment".

4.5 Risk Assessments Presented to the New Zealand Parole Board

Mr Smith appeared before the Parole Board in April 2013 and again in March 2014. In accordance with normal practice, the Board was provided, on each occasion, with a parole assessment report prepared by a Corrections case manager jointly with a probation officer and a psychological report prepared by a registered psychologist employed by Corrections.[17] The parole assessment reports refer in general terms to the RoC*RoI tool (described above) and Mr Smith's security classification. There are no references, however, to other actuarial tools or professional assessments of reoffending risks. These were, however, addressed in the psychological reports before the Board.

All four reports gave a detailed description of Mr Smith's background, treatment and recent performance. Both psychological reports, however, referred specifically to risk. The report considered by the Parole Board in April 2014 (which was prepared some time in February 2014) built to a significant extent on the 2013 psychological report. The 2014 report, under the heading "Potential to reoffend", said this:

> The report of 15 March 2013 … indicated that, based on actuarial and clinical predictors of risk, Fair trial The risk indicators used in arriving at the above estimates were reviewed for the purposes of this report and found to still be applicable. While Mr Smith remains in prison these mainly static indicators are unlikely to change significantly.
>
> Fair trial

The report considered some of the circumstances surrounding Mr Smith's "index murder offence", suggesting that the homicide occurred in a situation where Mr Smith felt extremely vulnerable and trapped. The Parole Board roundly rejected that assessment, as it had in 2013. There was nothing in the reports before the Board, however, to suggest that Mr Smith had retained any significant propensity for violence; nor was there evidence of violent behaviour by Mr Smith in recent times. The report then mentioned Mr Smith's tax fraud offences and the reparation ordered by the court.

Turning to Mr Smith's sexual offending, the report stated:

> As far as his sexual offending is concerned, Mr Smith had one child victim and there is no indication of any other sexual victims, prior to or while in prison. Treatment notes reveal that the satisfaction he derived from the relationship with his victim was based on the emotional and controlling aspects thereof, rather than sexual gratification per se. He also appears to socialise comfortably with other adult gay males.

The report then concluded:

> In summary, Fair trial . He has clearly matured and made pro-social choices since the time he committed his index violent and sexual offences. He has shown willingness to submit to the advice of his therapist in (for him) difficult decisions and has shown similar confidence in his circle of support. He has also demonstrated an ability to maintain pro-social behaviour in a variety of contexts over a longer period of time. Given that

17 We do not have the expertise to assess the validity of the conclusions expressed in the psychological reports; nor have we had the reports independently critiqued. However, we have not heard any evidence suggesting the psychological assessments of Mr Smith were flawed. Thus, there is no basis on which we can criticise or disagree with those reports.

his highest risk area is fraud, it has been recommended that he make use of a business mentor should he be released. Mr Smith is very receptive to the idea. Such a relationship could in fact be started before Mr Smith is released.

There is nothing in the 2013 psychologist's report to add to or detract from that summary; nor, with the exception of its rejection of Mr Smith's feeling vulnerable and trapped at the time of the murder almost 19 years previously, is there any hint that the Parole Board had reservations about or rejected the risk assessment of Mr Smith. The Board did, however, direct that there should be a psychological report prepared for his 2015 hearing from a different senior psychologist.

Mr Smith had completed the child sex offender programme at Te Piriti at Auckland Prison (commonly called Paremoremo), which appears to have addressed his historic sexual offending.[18] Almost 19 years had passed since the murder and his previous sexual offending. Fair trial

Fair trial

Fair trial

The Inquiry has no basis to criticise the risk assessments that led to the 2013 and 2014 Parole Board reports. They appear also to have been reasonable from the overall perspective of offender management and current policies. What was lacking, however, was a risk assessment that included Mr Smith's complex personal characteristics, some of which had been highlighted by his offending while in prison and some of which had been observed by several Corrections staff.

Our conclusion is that there is no magic in any of the various classifications of Mr Smith as a prisoner or the results of various risk assessment tools being applied to him. The 2013 and 2014 psychological reports presented to the Parole Board were specific about the three types of risk posed by Mr Smith. There is no basis for us to disagree with those reports. The Board, for its part, clearly assessed undue risk and was satisfied Mr Smith was not yet ready for parole.

In respect of his serious and worrying offending (a murder, extortion and child sex offending), there is no reason to suggest that, for those reasons, he constituted an elevated risk or an increased danger to public safety beyond any other imprisoned murderer or child sex offender. Fair trial

Fair trial

. These characteristics of Mr Smith should have been given greater weight when assessing his risk, particularly the risks he personally posed if released on a temporary basis

18 Published study of released prisoners who completed Te Piriti showed a 5.47 percent sexual reconviction rate compared with 21 percent for the untreated group: L Nathan, N Wilson and D Hillman (2003) *Te Whakakotahitangi: An evaluation of the Te Piriti Special Treatment Programme for child sex offenders in New Zealand.* Wellington: Department of Corrections. www.corrections.govt.nz/resources/te-whakakotahitanga-an-evaluation-of-the-te-piriti-special-treatment-programme.html.

19 There was a reference in the 2014 psychological report presented to the Parole Board about the USB stick incident, but it cast Mr Smith's knowledge in a positive light and referred to apologies he made. (See also section 3.6.)

into the community. Because there was no assessment of the individual risks he posed, insufficient thought was given to such obvious matters as the length of his release, the specific purpose that (for him) temporary releases were serving, and the type of monitoring or risk mitigation (by imposed conditions) that might be needed.

4.6 Intelligence Contribution to Risk Assessment

When Mr Smith was transferred from Paremoremo to Spring Hill in July 2014, an intelligence officer at Paremoremo sent an email to his counterpart at Spring Hill. We need not set out the lengthy email in full but, after an accurate description of Mr Smith's biographical and offending history, it made the following comments.

- He was a high profile prisoner.
- He had no current active charges.
- He had completed university degrees in business and financial studies Fair trial Fair trial
- He was very intelligent Fair trial .
- .
- He had shown "exceptional organisational skills" in the Paremoremo computer suites.
- He retained a sophisticated knowledge of computer systems.
- He would require close monitoring.
- Fair trial .
- If he was unhappy with a response to a request to a staff member, he would approach another staff member with the same request
- It was recommended to Spring Hill that the above tendency be advised, and that Mr Smith's case officer and unit principal corrections officer "be the only point of contact".
- He had been approved for temporary release with approved sponsors and "continually asks to be able to re-enter with food items".

Maintenance of the law Corrections properly guards intelligence information generally. But it is apparent this email from Paremoremo was widely circulated to Spring Hill prison management and some internal self-care staff.

The reaction of the Spring Hill prison senior management to whom the email was copied was:

> Here's a prisoner who arrives today from Auckland prison who poses a number of security threats to [Spring Hill]. Let's all remain awake to him.

And further:

> Let's stay on this one's case, monitor and watch him around less experienced staff. He needs to understand the rules straight away.

These intelligence observations about Mr Smith appeared not to have significantly influenced his risk assessment for temporary releases while at Paremoremo, particularly in the areas of frequency and duration of temporary removals and releases; neither did they influence the assessment by Spring Hill prison staff of his continuing suitability for temporary release. No steps were taken to assess the risks (access to money and fraud being but two) or to consider how those risks might be mitigated.

Fair trial

Whether, given Mr Smith's conduct in prison since 2013, such intelligence observations would have made any difference to his security classification is uncertain.

4.7 Mr Smith as a "High-Risk, High-Profile" Prisoner

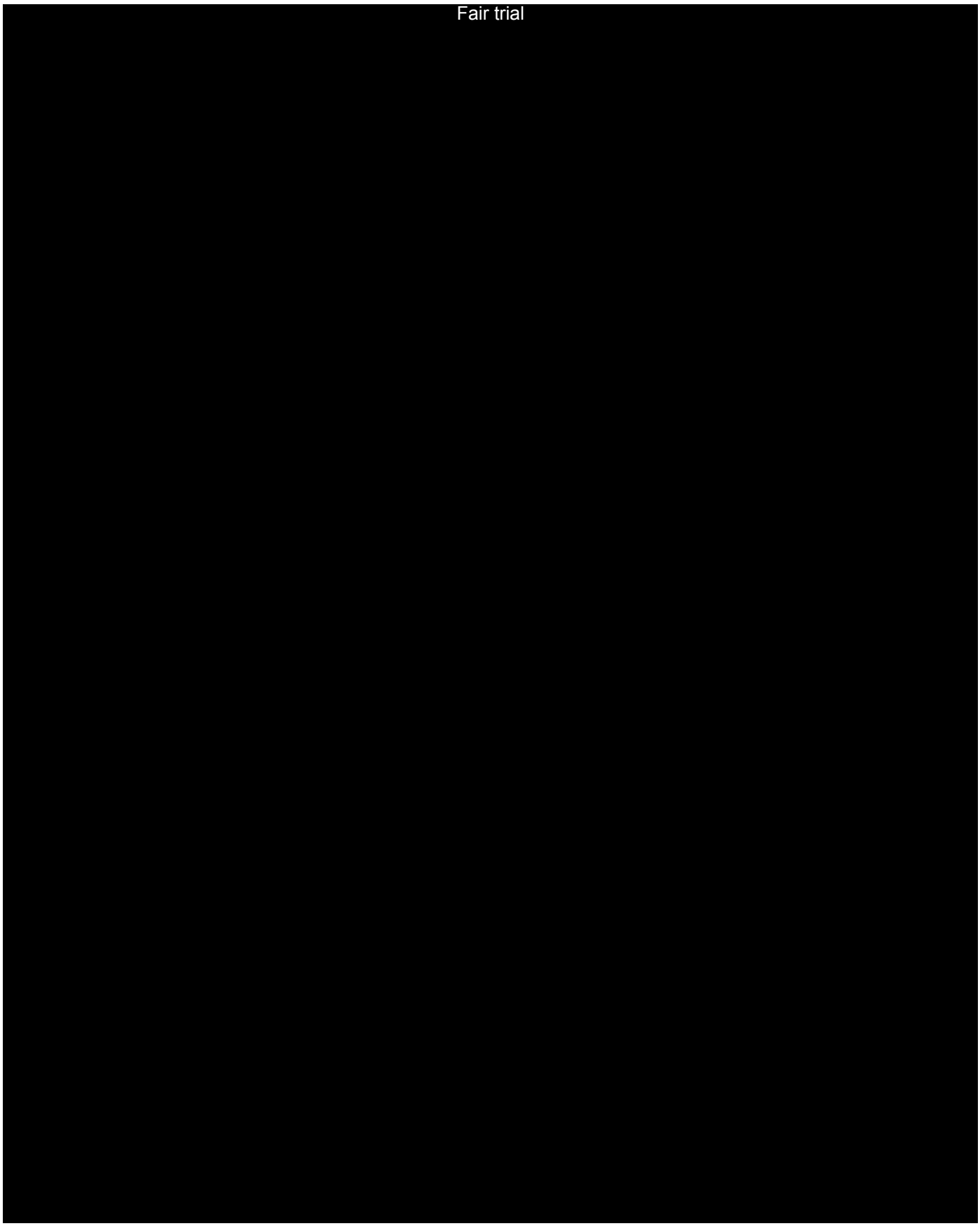
In some of the written statements we received, Mr Smith was described as a high-risk or high-profile prisoner. (He was so described in the email from Paremoremo referred to above.) It appears to describe prisoners who may fall under the oversight of several Corrections groups or committees. When a prisoner is placed in this category he or she then becomes the subject of regular scrutiny and monitoring. Three levels of groups or committees are charged with monitoring high-risk (and high-profile) offenders, being national, regional and local. We set out in Appendix 3 what these committees are and their functions.

Had Mr Smith been considered a high-risk prisoner there undoubtedly would have been greater vigilance of the risks he posed, particularly temporary release risks. There is a slight irony in the fact that when, two or three years previously, Mr Smith excited public attention because he was operating a business from inside Paremoremo, he was not placed under these groups or committees. Two years later, the permission to operate his business was withdrawn.

Spring Hill did not refer Mr Smith to a high-risk or high-profile group at either national or regional level. Fair trial

Since his return from Brazil, Mr Smith has been placed under the watch of the High and Complex Needs Steering Group.

Fair trial



4.10 Mr Smith's Case Management and Offender Plan

The various systemic flaws and omissions inherent in the way in which Spring Hill administered the temporary release programme, particularly programmes for Mr Smith, are discussed in chapter 5. So too are the means whereby Mr Smith departed for Brazil on 6 November 2014. However, some brief examination of Mr Smith's sentence management is required here.

Every sentenced prisoner has an offender plan. These plans are created and overseen by Corrections case management specialists and are intended to reflect the various statistical and professional assessments, individual risks and needs. The purpose of the plan is to drive the activities offenders participate in to address the underlying causes of their offending. For example, addressing alcohol use, sense of entitlement and lack of vocational skills. The Creating Lasting Change strategy intends offender plans to be central to the rehabilitation and reintegration "pathway".

The Chief Custodial Officer's Review found the operative "plan" to manage Mr Smith had "little correlation [with] prisoner Smith's offender plan compiled by the case manager". In fact, temporary release (other than for release to work) "is not specified in the offender plan". (This review is discussed further in section 4.11.)

During 2013 and 2014, Mr Smith had four different case managers. Mr Smith's offender plan was updated in January 2013, just before his 2013 parole hearing. A different case manager discussed with Mr Smith his understanding of the parole hearing outcome, and a third case manager prepared a new assessment report for the 2014 hearing, updating his offender plan at the same time. This case manager advised the Inquiry that the update was "minimal ... [b]ecause there was very little information to update the plan with".

It was explained to the Inquiry that separate case management processes are followed for prisoners undergoing special treatment programmes. It appears no one in Te Piriti or Te Mahinga (a unit housing child sex offenders in the maintenance phase, and those undergoing a short treatment programme) took responsibility for documenting a clear offender plan that was available to all staff (case management, custodial and treatment). And when Mr Smith completed the treatment programme and moved to a maintenance phase and then progressed to reintegration activities, no specialist staff coordinated the prescribed assessments or transitioned responsibilities back to case management.

The evidence we heard points to Mr Smith's case managers at Paremoremo not being involved in follow-up discussions after the 2013–2014 Parole Board decisions; nor did the case managers read the Board decisions. Following the 2014 Parole Board hearing, there was an ad hoc meeting of Corrections staff to discuss a plan of temporary removals and releases for Mr Smith, but it was called at such short notice the case manager could not attend. This communication failure undermines the objectives of integrated case management. Case managers prepared the reports for the Board but did not appear to follow up the decisions. Instead, the outcomes were obtained by custodial or psychological staff discussions and less reliably from Mr Smith himself.

Mr Smith's offender plan was not updated immediately following a Parole Board decision; nor did it reflect any risks or mitigations relating to his changed circumstances, intelligence holdings or external feedback from sponsors.

The Inquiry interviewed the Spring Hill case manager assigned to Mr Smith who reviewed the file information, met with Mr Smith, and began a new risk assessment (SDAC-21) just before Mr Smith's escape. However, Mr Smith's offender plan was not updated while he was at Spring Hill.

In short, an outdated 11-page offender plan existed for Mr Smith that was divorced from its intended purpose. While not a causative factor in Mr Smith's absconding, the lack of an authoritative plan reflecting all available information can be seen as a contributing factor.

Case managers were left out of Mr Smith's planning and decision making related to his sentence management and, in particular, his reintegrative phase, including temporary releases. The question is why?

Case management in prisons was introduced in 2011. Before this there was a role for sentence planners, which had a similar function although not end-to-end case management. From the Inquiry's interviews it was clear that while the expanded and dedicated role was a progressive step, staff were not well trained and managed caseloads of up to 60 prisoners at any one time. There was a constant churn of staff. Certainly, case managers did not have the influence of the other frontline roles when it came to sentence management. These are organisational matters indicative of the overall pace of reform in Corrections and, in particular, the problems that large organisations can encounter in transforming actual frontline practice to accord with the high-level goals of a change programme.

In this context, Corrections has acknowledged case management was "on a journey" in terms of consolidating the roles and responsibilities in the prison environment. The recently introduced Integrated Practice Framework (July 2014) is intended to support the wider change programme. From our observation, it is still bedding in and may require resourcing support of the kind given to the framework when it was introduced to Corrections community-based operations in 2009. In addition, a more recent department restructure has attempted to redress the concern of insufficient case management influence by ensuring case managers have equal place with other frontline roles – directly under the prison manager's control.

4.11 Mr Smith's Case Management as seen by the Chief Custodial Officer's Review

The Chief Custodial Officer's Review (the Review) described its central and first finding as follows:[22]

> The central finding of this review is that the plan to manage prisoner Smith was overly ambitious and misinformed. The plan established during Smith's treatment at Te Piriti, Auckland Prison, started a reintegration pathway including temporary releases without clarity that the Parole Board was likely to release him in the foreseeable future. This premature plan was then continued on his transfer to [Spring Hill] without any review or reassessment as to its intention and end goal.

22 *Chief Custodial Officer Review,* 24 November 2014, p 3. The review was completed under considerable time pressure and could not be comprehensive. The Inquiry interviewed the chief custodial officer. Despite the passage of time and the availability of new information, he was not, on this issue, disposed to make significant changes to his view.

…

> At play here was what is often referred to as an "exaggerated hierarchy" of professional judgement. The overly ambitious assessment of prisoner Smith by the Te Piriti Principal Psychologist coupled with what appeared to be supportive comments by the Parole Board, determined a path of events towards reintegration which was not challenged by [Spring Hill] case management or custodial staff. A new psychologist should have been allocated at the point of prisoner Smith's transfer to [Spring Hill] to inform an updated [multidisciplinary team] approach. In the absence of this, the Te Piriti assessment assumed prominence as the guiding practice authority in the case … [footnote omitted]
>
> Compounding this was also the mistaken belief by staff that prisoner Smith's "minimum" security classification status entitled him to a pathway to release given the implied endorsement by the Principal Psychologist and the Parole Board. This security classification is assessed on both internal and external risks posed by the prisoner, but clearly in this case the external risks have been underestimated and his classification misconstrued as a positive factor on the way to reintegration.

The overall impression we have of the chief custodial officer's findings is that Fair trial Fair trial

4.11.1. Excessive custodial deference to therapeutic staff

The Review also stated that Mr Smith's "complex risk profile was underestimated by staff and that the appropriate offender management plan did not substantially address these issues".[23] We agree. However, the staff who underestimated the risk profile were not solely the therapy staff or the principal psychologist, but included the custodial staff responsible for monitoring known risks arising out of Mr Smith's fraudulent and deceptive history. Additionally, some custodial staff at Paremoremo, who were vocationally committed to Creating Lasting Change, were totally involved in creating a pathway to release for Mr Smith. Indeed, when, in April 2013, a plan was formulated to manage Mr Smith's progression (which was presented to the Parole Board the next day), it was both the custodial staff and the therapy staff at Paremoremo who created it, providing for staged temporary removals leading to temporary releases. Custodial staff also actively supported Mr Smith's application to the Board, and were responsible for the necessary reduction of his security classification at units 8 and 9.

The Review further stated:[24]

> This meant that nuanced indicators about his behaviour were not collated and analysed in a comprehensive way. Fair trial . The lack of reconciliation about these factors meant that key pieces of information were not shared and analysed by staff into patterns of risky behaviour.

We agree with this insight. However, we would link this to systemic shortcomings we consider are far more central than the "overly ambitious and misinformed" management plan highlighted by the chief custodial officer.

The Review saw as a compounding factor the "mistaken belief" by Corrections staff that Mr Smith's minimum security classification "entitled him" to a pathway to release. The Review then said this mistaken belief had the "implied endorsement" of the principal psychologist and the Parole Board. The minimum security classification certainly made him eligible for temporary release (which is not

23 *Chief Custodial Officer Review,* 24 November 2014, p 3.
24 Ibid, p 4.

the same as entitlement). In fact, in March 2013 when the decision was made to lower his security classification, it was proposed and led by custodial staff.[25]

Overall, Mr Smith's eligibility for temporary release should have led to a careful consideration of the risks he might pose (critical to a judgement about his suitability). This consideration was not the responsibility of either the Parole Board or the principal psychologist.

In the Inquiry's view, the risks Mr Smith posed both before his transfer to Spring Hill and at Spring Hill were inadequately assessed. They were not countered. Fair trial Fair trial

He may well have been a minimum security prisoner, but he had a recent history of fraudulent offending from within prison. Individual corrections officers who had been close to Mr Smith over the years and intelligence officers clearly had reservations. Reservations were conveyed to the Spring Hill staff by a Paremoremo intelligence officer. What was missing in Mr Smith's management (and offender plan) was a realisation that as he approached release on parole, travelling along a traditional and unexceptional pathway, a prisoner of his type was presented with increased opportunities to offend. New risks were posed that were unrecognised, unassessed and unmonitored. The various flaws in the way Spring Hill managed its temporary release programmes gave Mr Smith new opportunities Fair trial .

4.11.2. Reintegration pathway directed by Parole Board

We now turn to the chief custodial officer's comments about the Parole Board decisions. In its 8 April 2013 decision, the Board acknowledged that Mr Smith had demonstrated "a very encouraging and significant change of attitude towards authority since completion of the Te Piriti programme".[26] But the Parole Board went on to say:

> Mr Smith is intelligent. Fair trial . Clearly he obtained financial benefit. His actions have shown that he was able to carefully plan crimes whilst in prison. Likewise his planning as it also related to his index offending.

Having stated it considered Mr Smith remained a high risk posing a serious danger to the community, the Parole Board went on:

> Much more work is required on his part to illustrate that he would be able to live and work in the community without posing undue risk. However we support the proposition that there be very cautious and slow steps for reintegration into the community. They may involve temporary absences or escorted releases, as and when the Department of Corrections consider appropriate. This is a sentence management decision for the Department.

A year later (31 March 2014), at his next appearance, by which stage Mr Smith had been allowed a number of temporary removals and releases. The Parole Board, referring to this, said:

> Mr Smith has been making good progress in terms of his temporary releases and in engaging with his circle of support. However, the usual accepted and necessary pathway for an offender who has committed horrendous violent and serious crimes such as his, is to establish and prove himself through the necessary reintegrative steps. These, we consider, should include him working towards Self-Care and, if available, Release to Work. As yet he is not pre-approved for

25 See section 3.6.
26 Decision of New Zealand Parole Board, 8 April 2013, para 8.

> that privilege. It is something to which he can work toward. We agree with the psychological report writer that he would also benefit from overnight temporary releases.
>
> In our view it would be premature to grant parole now on the basis that he has had several temporary releases and a strong support group. His risk is, and has been, such that he needs to prove himself in a wider range of situations over time in the community. If it is necessary for him to be transferred to another prison in order to further that progress, then we would support it.

The impression the Inquiry has is that the chief custodial officer considered that custodial judgement was also overshadowed by the apparent support of the Parole Board for particular elements of his pathway plan. This was interpreted as amounting to a prescription for his sentence management.

The chief custodial officer's observations are correct to describe the Parole Board comments as supportive of Mr Smith's temporary removals and temporary releases and the prospects of self-care and work parties. But as we have indicated already the initiators of the pathway for Mr Smith were Corrections staff. The remarks by the Board cannot properly be described as prescribing to Corrections a requirement for Mr Smith to be approved for temporary releases.

The Inquiry has had the benefit of significant amount of information and time to formulate its view. We have reached the conclusion that Corrections' decisions were not prescribed or exclusively driven by either the principal psychologist or the Parole Board. Instead, the decisions were co-driven by custodial and treatment staff.

4.12 Responsibilities of the Parole Board and Department of Corrections

The Inquiry has given anxious thought to the respective roles of the Parole Board and Corrections, in particular, because of the views expressed in the chief custodial officer's report[27] that undue deference might have been accorded the 2013 and 2014 Board decisions by Corrections staff. The Inquiry has received other information about the underlying tension between the two institutions regarding the boundaries between their respective roles and responsibilities.

The relevant legislation, referred to below, draws clear and unambiguous distinctions between the responsibilities of the Parole Board and the basis on which it must make its decisions and the responsibilities of Corrections, particularly in the area of sentence management.

Additionally, as we have commented elsewhere,[28] there have been clear policy pressures directed towards rehabilitating and reintegrating larger numbers of prisoners. The two discrete functions of Corrections and the Parole Board need to be clearly understood, and the risks of miscommunication minimised. Hence this section.

The Sentencing Act 2002 prescribes a hierarchy of sentences that courts are empowered to impose on offenders. Imprisonment sits at the top of the hierarchy. The purposes and principles of the Sentencing Act require sentencing judges to weigh a large number of factors in the exercise of the sentencing discretion.[29]

Alongside the Sentencing Act sits the Parole Act 2002. The Parole Act establishes the New Zealand Parole Board,[30] which has the sole responsibility of releasing prisoners on parole.

In general terms, judges lean against imposing terms of imprisonment for (a loose description) "run of the mill" offending. Community-based sentences such as home detention are an option in situations where, before the Sentencing Act, "short" sentences of two years or less would have been imposed. Terms of imprisonment will usually be imposed on repeat offenders who have failed to respond to more lenient sentences. The Court of Appeal has, over the years, delivered several "tariff" judgments,

27 *Chief Custodial Officer Review,* 24 November 2014.
28 See sections 2.2.2 and 5.2.
29 Sections 7–8 of the Sentencing Act 2002.
30 Sections 108–110 of the Parole Act 2002.

binding on the High Court and the District Court, that prescribe bands of imprisonment for certain types of offending.[31] Statutes sometimes direct a term of imprisonment as the norm,[32] and, in respect of some offences, the imposition of a life term is the maximum or is mandatory. A conviction for murder presumptively leads to a life sentence, with the imposition of a prescribed minimum non-parole period.[33] Judges also have a discretion to impose minimum terms of imprisonment (colloquially described as non-parole periods) for determinate sentences greater than two years, if standard parole eligibility (normally one-third of the imposed sentence) would not adequately reflect relevant Sentencing Act provisions.[34]

Parole eligibility after serving one-third of an imposed sentence is a reflection of New Zealand's fairly liberal penal policy. Despite the terminology of a "life" sentence, very few prisoners sentenced to life imprisonment are still in prison after serving 20 years. The costs of incarceration per prisoner are considerable; recidivism rates for murder, the most serious crime in the criminal calendar, are low. All that said, the fact remains that prison populations in New Zealand contain some very dangerous criminals, some of whom if released would constitute a high risk to the community and are likely to reoffend. This is the dilemma faced jointly by Corrections and the Parole Board.

The management of a prisoner's sentence is the statutory responsibility of Corrections. Various courses and programmes may be available to prisoners. Such programmes, including acquiring work skills, are consistent, at a high policy level, with the Corrections RR25 goal – Reducing Reoffending by 25%.[35] The Parole Board plays no part in sentence management. Its principal statutory function is to decide whether and when to release a prisoner on parole.[36]

We have gained the impression from some of the briefings we have received and the inquiries we have made that, on occasions, Corrections and the Parole Board may perceive that one body is encroaching on an area of the other's responsibilities. The perception has the potential to create tensions. These perceptions can occur in the areas of whether a prisoner is suitable for parole or how a prisoner's sentence should be managed. Tensions of this type are regrettable because the statutory objectives of both parties point to a common goal, the rehabilitation of prisoners. That common goal almost suggests a symbiotic relationship between the two parties that is highly desirable in the wider interests of the administration of justice and the public interest.

Temporary releases, for reintegrative purposes, are authorised by section 62 of the Corrections Act 2004 and the regulations made under the Act. Section 62(2)(a)(i) specifies very clear objectives for temporary release. They are the rehabilitation of a prisoner and the prisoner's successful reintegration into the community, "whether through release to work (including self-employment), to attend programmes, or otherwise". There can be no argument that, as a statutory policy, temporary releases are seen by Parliament as a reintegration tool.[37]

Section 28 of the Parole Act provides clear guidance to the Parole Board in the exercise of its discretion. The first jurisdictional hurdle before a prisoner can be granted parole is to satisfy the Parole Board that release on parole will not pose an undue risk to the safety of the community (or people or classes of people within it). This test mirrors one of the factors that must be weighed when considering a prisoner for temporary release (section 63(3)(a) Corrections Act 2004). Additionally, the Parole Board must, before releasing a prisoner on parole, consider the very important penal policy factor enshrined in section 28(2)(b) of the public interest in reintegrating offenders into a law-abiding society.

The evidence we have heard satisfies us that these statutory provisions, governing both the reintegrative mechanism of temporary release and the statutory power to parole, cause problems.

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31 For example, cases such as *R v Mako* [2000] 2 NZLR 170 (CA); *R v Fatu* [2006] 2 NZLR 72 (CA).
32 Section 6(4) of the Misuse of Drugs Act 1975.
33 Sections 102 and 103 of the Sentencing Act 2002.
34 Section 86 of the Sentencing Act 2002.
35 RR25 is discussed in section 2.2.2.
36 Section 109 of the Parole Act 2002.
37 We discussed in section 5.5 the weighing exercise under section 62(3), which must include undue risk to the safety of the community and the benefits to the prisoner and the community of facilitating reintegration.

This is regrettable, since the statutory provisions we have outlined are important pillars of New Zealand's penal policy. When a prisoner approaches parole eligibility, Corrections personnel, in particular case managers, spend much time and effort preparing reports (including psychological reports) to assist the Parole Board at a forthcoming hearing.

The extent to which prisoners may have participated in rehabilitative programmes before reaching parole eligibility is problematic. Resources may limit the extent to which programmes are available. Not all programmes will be available in all prisons. Places on programmes may be limited. The Parole Board, rightly, is interested in the rehabilitative progress of prisoners seeking parole and, in particular, whether an eligible prisoner has participated in a special treatment unit rehabilitation programme. These include programmes for adult and child sex offenders, drug and alcohol treatment and violence prevention.[38] The benefit of such programmes will vary depending on the circumstances and disposition of the prisoners attending them. In respect of some programmes maintenance courses are considered desirable.

Attendance at a programme, however, will not necessarily guarantee a rapid grant of parole. Attending programmes in a controlled prison environment does not ensure that a prisoner released on parole will not reoffend. Additionally, particularly for prisoners who have served lengthy terms, reintegration into society and the ability to avoid or control the many temptations outside prison, such as alcohol, drugs and former associates, including gang associates (to name but some), may for some prisoners be too hard and lead to rapid reoffending.

Against that backdrop, the mechanisms of release for work and temporary releases are useful tools to test the resolve of a prisoner and his or her ultimate suitability for release. The statutory scheme imposed on the Parole Board requires it to be satisfied, as best it can, that release on parole will not imperil public safety. In particular, this is the case with violent offenders, sexual offenders and prisoners who have particularly alarming criminal histories. Successful completion of programmes will help, but a prisoner seeking parole must clear the additional hurdle of satisfying the Board that he or she can cope with life outside prison and will not revert to serious offending.

In making its decisions declining parole in respect of Mr Smith in 2013 and 2014, the Parole Board signalled precisely that hurdle. In its 8 April 2013 decision, the Parole Board referred to Mr Smith's conviction history, his fraudulent activities (for which he was convicted) while in prison, and his completion of the child sex offender programme at Te Piriti. As noted above, the Board concluded he did not meet the criteria for release, but supported cautious and slow steps to reintegration.

When Mr Smith appeared before the Parole Board in March 2014, he was able to point to strong support from his Circle of Support and Accountability (CoSA). He had by that stage experienced several temporary releases. The Parole Board, however, was still unconvinced that Mr Smith, if released on parole, would not pose an undue risk to the community. Having referred to his failure to discharge his reparation obligation (in respect of the fraud offending), as quoted above the Parole Board noted the progress Mr Smith was making with temporary releases but concluded it would be premature to release him. The Board supported transfer to another prison for further reintegrative releases, and overnight temporary releases.

The chief custodial officer, in his 24 November 2014 review, commented on both the Parole Board's decisions and Mr Smith's suitability for temporary release. These comments, in summary form, were as follows.

- The reintegration pathway chosen for Mr Smith, including temporary releases, was adopted by Corrections "without clarity that the Parole Board was likely to release him in the foreseeable future".

38 Other programmes are available that we need not itemise.

- The “supportive comments” by the Parole Board “determined a path of events towards reintegration” that was unchallenged by Corrections staff.
- There was a “mistaken belief” by Corrections staff that Mr Smith’s minimum security classification entitled him to a pathway to release, given the “implied endorsement” of the Parole Board, which led to an underestimation of external risks.

These comments, in our view, underline some of the difficulties inherent in clear communication between Corrections and the Parole Board and possibly confuse the respective roles of the Parole Board and prison staff. Corrections is under a statutory obligation to encourage the rehabilitation and reintegration of prisoners[39] and certainly that is the thrust of RR25. The Parole Board for its part is an independently constituted body charged with the responsibility of granting or refusing parole applications. But these two functions are intertwined. Programmes to assist a prisoner’s rehabilitation and reintegration are essential prerequisites if a prisoner is to be released on parole before the end date of a sentence or, for the indeterminate sentences of life imprisonment and preventive detention, at all. The Parole Board cannot operate in a vacuum. A prisoner’s progress on programmes and his or her conduct when in prison are highly relevant. But, for the reasons we have stated, assessing the risk of reoffending and risks to public safety will, on a prisoner-by-prisoner basis, require more than that.

The Parole Board made it abundantly clear in 2013 and 2014 in respect of Mr Smith that more was required so that Mr Smith could prove himself. For many prisoners, some form of monitored test is required. Release to work (giving the opportunity to apply various trade skills learned inside prison) and reintegrative temporary releases are ideal tools. The psychological profile, circumstances, strengths and weaknesses of each prisoner trialled on temporary releases differ. The type of monitoring involved should certainly differ. One size cannot possibly fit all. Both the Parole Board and Corrections, from time to time, will make mistakes. Fortunately, (and the statistics relating to temporary releases over the past decade bear this out), breaches of temporary release conditions have been extremely rare. Penal policy inevitably entails a degree of risk. The policy objective of reducing reoffending is laudable, but with some prisoners it will fail.

Reputational risk and public relations considerations must not be allowed to trump the benefit that temporary releases can bring to many prisoners. The scaling back of reintegrative temporary releases and work releases in the wake of Mr Smith’s absconding will undoubtedly have delayed or impaired the reintegration of many prisoners. The benefit of rehabilitative programmes they had completed will have been undermined. Some elements of New Zealand society and the media can be unforgiving of mistakes. And, as was demonstrated by the failings found in the Graeme William Burton case,[40] mistakes can be catastrophic, inflicting life-long trauma on victims and their families. The mature approach is to learn from mistakes, rather than react in a hasty manner.

Returning to the issue of the Parole Board’s function, we do not consider it is either feasible or wise for the Parole Board to signal or declare significantly in advance that parole will be granted at some future date. There are too many variables and imponderables for this to be a sensible suggestion. Crucial to the granting of parole will be a carefully constructed and comprehensive release plan. Where will the parolee live? Is work available? Is a suitable family one of the supports? Can obvious risks of reoffending be curtailed? The Parole Board is not unreasonable in its expectation that reintegrative releases and various other tests should be prerequisites to release on parole and the finalisation of release plans. Corrections for its part should not be beguiled by perceptions (accurate or inaccurate) that parole is imminent. The risks and suitability of each prisoner for temporary release need to be assessed. Ideally, community probation officers who have central responsibility for monitoring parolees and the conditions imposed on them should be available to monitor in a much more comprehensive way the outcomes of reintegrative releases, the suitability of sponsors and the feedback available from them.

39 Sections 5(1)(c) and 6(1)(c)(i) of the Corrections Act 2004.

40 Mr Burton used a firearm to murder Karl Kuchenbecker and to shoot at other members of the public while released on parole in January 2007. He was subsequently shot in the leg by police officers. The Coroner’s report on Mr Kuchenbecker’s death and the report by the Independent Police Conduct Authority on the shooting of Mr Burton, contained criticisms of the way Mr Burton’s parole and breaches of his parole conditions were managed.

We are satisfied that there are good and proper reasons for the Parole Board to retain its statutory independence. It is not a part, nor should it be, of Corrections. We are satisfied too that sentence management (both before and after parole) is properly the responsibility of Corrections. But there needs to be a better dialogue, coupled with effective and transparent communication, so that both have a clear understanding of their respective roles and responsibilities and, importantly, are productive partners in achieving the goals of reintegrating and rehabilitating prisoners and minimising reoffending. Preparation by Corrections for a Board hearing should involve much more than psychological assessments and assessment of prisoner release proposals. Thought should be given to programmes and reintegrative experiences that will better prepare a prisoner for eventual release. The public safety risks must be accurately identified. Fairness to each prisoner should produce some overall coherence, which ideally should start with carefully thought out offender management plans constructed shortly after imprisonment and modified on a regular basis. The Board's expectations and comments should not be construed as directions or indications; rather, they should constitute a clear statement to both the prisoner and Corrections of what further hurdles need to be cleared.

Problems of communication between Corrections and the Parole Board are not a new phenomenon. It was clearly signalled in the March 2007 review by Judge R J Johnson and Professor J R P Ogloff in the wake of the release on parole of Mr Burton. In a very different context, the report writers found no evidence that Corrections had communicated to the Board a clear understanding that Mr Burton's security classification made him ineligible for the temporary releases the Board had kept requesting. Inadequate communication between the Board and Corrections about Mr Burton's alleged misconduct while in prison was a further finding in the report.

A further consequence of the Burton incident was the passage of the Parole Amendment Act 2007. Key elements of the amendment Act were as follows.

- Parole was stated to be a privilege not a right.
- Police (in addition to Corrections) were given the ability to apply for the recall of an offender on parole on the ground that he or she posed an undue risk to the safety of the community.
- The Parole Board, in exceptional circumstances, could receive confidential information (not disclosed to the offender) from Police and Corrections, where any person's safety would likely be endangered if the information were disclosed or if disclosure would prejudice the maintenance of the law.
- The Board could monitor, for a maximum period of 12 months, an offender's compliance with release conditions. Monitoring included asking Corrections for a progress report on compliance and requiring the offender to attend a hearing.
- New residential restrictions could be imposed as a special parole condition similar to the home detention regime.

A recent amendment Act, important to the relationship between Corrections and the Parole Board, is the Parole Amendment Act 2015, effective from 2 September 2015. This lengthens the potential period of a postponement order from three to five years. It also allows the Board to specify activities or programmes it expects to occur during the period of a postponement (during which no parole hearings will take place). A relevant activity is defined as an activity or a programme for the rehabilitation or reintegration of offenders. The explanatory note in the Bill stated that, "This gives the Board the ability to align future hearings … with the completion of core components of offender plans". If a prison manager considers an offender has completed specified activities ahead of time, the prison manager may recommend to the Board that it holds its next hearing earlier than scheduled.

During the second reading speech in Parliament on 6 November 2014, the Minister of Justice stated:

> The Bill also gives the [Parole] Board the power to identify any relevant activities relating to the risk the offender poses to the safety of the community that it expects to be achieved before the next hearing. Offenders, as well as the Department of Corrections, can notify the Board where there has been a significant change in the offender's circumstances relating to release on parole. There will be provision for a scheduled hearing to be brought forward when all of the relevant activities that the Board has identified as necessary to make the offender suitable for parole have been completed earlier than expected.

In short, the amendment has two purposes. First, it gives prisoners (and Corrections in terms of sentence management) an incentive to complete various programmes before the postponement date. Secondly, it gives Corrections the ability to accelerate a Parole Board hearing when programme completion suggests parole suitability might have been attained.

The recent amendment, as is apparent from both its language and the parliamentary explanation given by the Minister, points to a focused dialogue between the Parole Board and Corrections on specific prisoners. If a prisoner undertakes "relevant activities" that the Board indicates, then Corrections, for its part, may apply for an earlier hearing than the original postponement order.

Communication of a more nuanced variety is needed so that Corrections, for its part, informs the Parole Board in a comprehensive way how it is discharging its obligations to prepare prisoners for release and the Board, for its part, makes it very clear to the prisoner and Corrections what future sentence management should address.

4.13 Conclusions

From the above narrative we find the following on the topics of the overall assessment of Mr Smith's risk, his risk profile, and the management by Corrections of his sentence.

4.13.1. Assessment and risk profile

1. The psychological reports presented to the New Zealand Parole Board in 2013 and 2014 identified several risks, and the Inquiry has no basis to disagree with or criticise those reports.
2. If information known to Department of Corrections staff had been properly integrated and taken into account in assessing and managing Mr Smith's risks, this may have led to Mr Smith's temporary releases being curtailed or declined or, at the very least, better management of his risks while on release.
3. The profiling of Mr Smith and the concerns about him known to intelligence staff at Auckland Prison at Paremoremo and transmitted to Spring Hill Corrections Facility in July 2014, did not lead to any greater degree of surveillance or risk assessment.

[redacted] Fair trial

5. Department of Corrections staff and the Parole Board did not know Mr Smith had the means to leave New Zealand. [redacted] Fair trial [redacted]

4.13.2. Case management and offender plans

6. The role and influence of case managers is yet to develop as intended under the Integrated Practice Framework, and many case managers appear to carry too heavy a caseload. The information available to the Inquiry suggests that offender plans are not yet fulfilling their intended central place in the management of prisoners.

7. Mr Smith's offender plan did not have the appearance of a carefully thought-out document. It appeared to have lost its central place to determine sentence management when Mr Smith began the specialist child sex offender programme at Te Piriti.

4.13.3. Consequences of risk assessment for temporary release

8. Decision making on Mr Smith's eligibility and suitability for temporary release was influenced by several factors, including strategic policy settings for reducing reoffending and practice changes from Department of Corrections internal reform programmes. Contrary to the central conclusion of the chief custodial officer, the decision making was not driven by Parole Board prescription or by therapy staff.
9. It was the failure of Department of Corrections staff to assess adequately the particular risks Mr Smith might pose while on temporary release and to put systems in place to check his activities, both before and during temporary release, that failed to prevent his absconding and departure.

4.13.4. Relationship between the Department of Corrections and New Zealand Parole Board

10. The Department of Corrections and Parole Board may perceive one body encroaching on an area of the other's responsibilities. The statutory objectives of both parties point to a common goal and thus a symbiotic relationship. Given this, better and more consistent dialogue between them is encouraged.
11. Communication of this type is particularly valuable at the interface between the Department of Corrections and the Parole Board over temporary releases, which are properly regarded by the Parole Board as a useful test, while remaining an aspect of sentence management determined by the Department of Corrections.

4.14 Recommendations

1. The Department of Corrections should continue to invest in risk-assessment capability and tools, including best practice intelligence approaches that enable it to better identify complex high-risk prisoners who are eligible for "outside the wire" activities.
2. The Department of Corrections should ensure the planning of each prisoner's pathway through his or her sentence is documented, reviewed regularly, and developed in a risk-based and multidisciplinary way.
3. There should be a continuing constructive dialogue between the New Zealand Parole Board and the Department of Corrections.

5. Temporary Release from Prisons in General and Mr Smith's Temporary Releases in Particular

5.1 Introduction

Temporary removals and temporary releases are valuable transitional mechanisms for those who are being considered for or approaching release from prison.[41] The evidence we reviewed, and the briefings we received both support this proposition.[42]

It is trite to observe that there is a stark contrast between life in the enclosed and controlled environment of a prison and the life a prisoner will experience when released into the community. Temporary removals and temporary releases allow prisoners to experience, for short and tightly controlled periods, the outside world. For prisoners who have served lengthy terms, temporary removals and temporary releases allow them to observe and adjust to the many, sometimes bewildering, changes that have occurred since their imprisonment.

Temporary removals and temporary releases by definition entail a degree of risk. They go beyond the idea that prisons are for containment. But they have a clear purpose in terms of contemporary penal legislation and policy in New Zealand and internationally. They require strong risk management. For some prisoners the temporary release mechanism may be totally unsuitable. But certainly, for long-term prisoners approaching parole or release, temporary releases smooth the pathway from rehabilitation to reintegration.

Temporary releases in general, and reintegrative releases in particular, were seen by many Department of Corrections (Corrections) staff and, in particular, by the independent New Zealand Parole Board as a useful "test" for assessing suitability for parole. Life outside a prison, the chance to associate with family, whānau and people who were not prisoners, and the many potential temptations for prisoners in an open environment could be useful pointers when assessing a prisoner's suitability for parole.

A particularly valuable form of temporary release is temporary release to work, which entails prisoners working in businesses outside the prison. Many of these releases result in prisoners acquiring valuable work skills that may help in finding employment on release.

A temporary removal is when a prisoner, for a short period, leaves the prison accompanied by a corrections officer who usually does not wear his or her uniform. Temporary removals may occur for specific purposes such as medical appointments, attending a funeral or opening a bank account. Some prisoners will find the experience of walking amongst crowds of people (such as in a shopping mall) disorientating, bewildering and even threatening.

Temporary releases involve releasing a prisoner for a defined period of hours, or sometimes overnight, into the care of a sponsor. This enables a prisoner to experience a gradual reintroduction to civil or domestic life that is unavailable inside a prison, such as re-establishing parenting responsibilities, forming positive community networks (for example, marae or sports associations), or engaging with local services providers (addiction services or accommodation providers).

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41 Temporary releases and temporary removals have had statutory recognition for the last 61 years (Penal Institutions Act 1954).

42 Several experts in penal policy supported the benefits of temporary release. The Inquiry also refers to the following research sources, which suggest that temporary releases can produce reductions in recidivism, without increasing risks to the public: Correctional Services of Canada, Unescorted temporary releases. http://publications.gc.ca/collections/collection_2014/scc-csc/PS82-2-13-2-eng.pdf; EP Baumer, I O'Donnell and N Hughes (2009) The porous prison: A note on the rehabilitative potential of visits home. *The Prison Journal*, 89, 119–126; LK Cheliotis (2008) Reconsidering the effectiveness of temporary release: A systematic review. *Aggression and Violent Behavior* 13, 153–168; BA Grant and M Gal (1998) *Case Management Preparation for Release and Day Parole Outcome*. Ottawa: Research Branch, Correctional Services Canada; SL Johnson and BA Grant (2001) Using temporary absence in the gradual reintegration process. *Forum on Corrections Research* 13, 86–88; DP LeClair and S Guarino-Ghezzi (1991) Does incapacitation guarantee public safety? Lessons from the Massachusetts furlough and pre-release program. *Justice Quarterly* 8, 9–36; LL Motiuk and RL Belcourt (1996). Prison work programs and post-release outcome: A preliminary investigation. R-43. Ottawa, Ontario: Correctional Service of Canada; NJ Pepino, L Pépin and RJ Stewart (1992) *Report of the Panel Appointed to Review the Temporary Absence Program for Penitentiary Inmates.* Ottawa, Canada: Ministry Secretariat (Solicitor General of Canada).

5.2 Statistical Information about Temporary Releases

Figures supplied by Corrections show that the number of temporary releases in any one year is a low proportion of the total number of sentenced prisoners.[43] However, in recent years the number has steadily increased, possibly as a result of a combination of factors, including the increasing number of prisoners who have passed their parole eligibility date, the declining number of prisoners granted parole,[44] and the implementation of the Reducing Reoffending by 25% goal. We refer elsewhere to the fact that from approximately 2005 there were many more prisoners eligible for parole while subject to indeterminate sentences.[45] This we call the "bow wave". In terms of prison population management, Corrections has encountered significant prisoner volume pressures over the past decade. As is apparent from the third column of Table 5.2, the number of prisoners serving indeterminate sentences granted temporary releases has steadily increased in line with the bow wave. But the number of all temporary release breaches, and certainly absconding, while on temporary release has remained very small.

Table 5.1 shows the number of sentenced prisoners with a breakdown of prisoners who, like Mr Smith, were serving the indeterminate sentences of life imprisonment or preventive detention.[46]

Table 5.1: Prisoners serving indeterminate sentences of life imprisonment or preventive detention, 2005–2014

Year	All prisoners	Total indeterminate sentences	Life imprisonment	Preventive detention
2005	5,786	534	347	199
2006	6,127	560	365	207
2007	6,447	591	382	224
2008	6,116	633	410	238
2009	6,512	679	440	257
2010	6,908	713	462	268
2011	6,782	729	476	270
2012	6,762	744	484	277
2013	6,950	764	503	278
2014	6,754	783	521	279

The total number of prisoners released on temporary release[47] during 2005–2014 is shown in Table 5.2.

Table 5.2: Prisoners released on temporary release, 2005–2014

Year	All prisoners	Total indeterminate sentences	Life imprisonment	Preventative detention
2005	435	30	29	1
2006	493	44	42	2
2007	744	46	41	5
2008	816	59	53	6
2009	689	66	47	19
2010	559	67	50	17
2011	460	73	54	20
2012	629	92	65	29
2013	711	105	71	35
2014	791	122	88	35

43 Figures supplied 23 January 2015 and 3 February 2015, response to Inquiry request.
44 In 2002/03, 48.6 percent of those appearing before the Parole Board were granted parole. In 2013/14, the percentage granted parole had decreased to 26 percent. Figures sourced from the New Zealand Parole Board.
45 See section 2.2.1.
46 Some prisoners are sentenced to both life imprisonment and preventive detention.
47 A prisoner can be released on temporary release more than once in a year. The figures in the tables have counted each prisoner only once.

Table 5.3 sets out the number of recorded breaches of temporary release conditions (figures are unavailable for 2005–2007). The breaches relate mainly to consumption of drugs or alcohol or associating with non-approved people.

Table 5.3: Recorded breaches of temporary release conditions, 2008–2004

Year	All prisoners
2008	5
2009	4
2010	4
2011	2
2012	3
2013	10
2014	12

The figures relating to prisoners who failed to return from temporary release (Table 5.4), thus being deemed to have escaped, indicate that Mr Smith's escape was of a rare type.

Table 5.4: Prisoners who have failed to return from temporary release by indeterminate sentence type, 2007/08–2014/15

Year	All prisoners	Total indeterminate sentences	Life imprisonment	Preventive detention
2007/08	13	3	3	
2008/09	1			
2009/10	3			
2010/11	0			
2011/12	0			
2012/13	0			
2013/14	0			
2014/15	1	1	1	

Since 2007, only four prisoners serving indeterminate sentences have failed to return, one being Mr Smith. Of the 13 escapees in 2007/08, seven were on paid employment in the community and six were being held off-site undergoing intensive programmes with external providers.

Many prisoners receive temporary release to permit paid employment outside the prison.

This mechanism has undoubted benefits for both the prisoner and society on the prisoner's eventual release. The number of releases to paid employment are shown in Table 5.5.

Table 5.5: Temporary releases to paid employment by indeterminate sentence type, 2005–2014

Year	All temporary releases	Total indeterminate sentences	Life imprisonment	Preventive detention
2005	325	85	84	1
2006	726	120	109	11
2007	3,454	237	226	11
2008	4,299	451	446	5
2009	3,634	494	450	44
2010	3,056	473	400	73
2011	2,465	522	437	85
2012	3,390	597	453	146
2013	3,193	597	471	134
2014	3,445	651	489	171

Note: This is not the number of prisoners; one prisoner may be released multiple times.

Fewer prisoners receive temporary release for reintegration purposes (as shown in Table 5.6).

Table 5.6: Temporary releases for reintegration purposes by indeterminate sentence type, 2005–2014

Year	All prisoners	Total indeterminate sentences	Life imprisonment	Preventive detention
2005	184	18	18	
2006	236	37	37	
2007	203	32	31	1
2008	220	41	36	5
2009	154	46	31	15
2010	147	48	33	15
2011	156	57	42	16
2012	204	67	44	25
2013	291	79	54	26
2014	321	86	61	26

One specific category of temporary release is termed "reintegrative release" (sometimes referred to as home leave). Such releases are in contradistinction to releases to work at various work places outside a prison or to attend programmes. Reintegrative releases, as the name suggests, have the benefits and purposes outlined in the introductory paragraphs to this chapter. Thus, in 2014, the year of Mr Smith's escape, some 321 prisoners had experienced temporary release for reintegration purposes, of whom 86 (including Mr Smith) were serving indeterminate sentences. The total number of temporary releases, rather than the number of prisoners temporarily released for reintegrative purposes, in 2012, 2013 and 2014 were 876, 1,350 and 1,111 respectively.

Reintegrative temporary releases have been used in recent years to introduce some prisoners to volunteers who may make up their Circle of Support and Accountability (CoSA) on release.

5.3 Circle of Support and Accountability

Some time after Mr Smith completed the programme at Te Piriti at Paremoremo he moved to unit 9, known as Te Mahinga. This is where the maintenance component of the programme is provided. Both the treatment staff and the custodial staff responsible for Mr Smith while he was in Te Mahinga supported the idea that he should have a CoSA. Indeed, he was allocated to a CoSA.

The CoSA concept was introduced at Paremoremo in 2009. But it had operated successfully in the United Kingdom and Canada.[48] As the full name suggests, the idea was to provide for prisoners a circle of people who would support them once they were released into the community. The CoSA would also try to keep the prisoner accountable for his or her actions. Ideally, when a prisoner is released into the community, support networks are in place. Obvious supports can be found in accommodation, employment and family. However, many prisoners, as they approach parole eligibility or release, have no such supports. Without such supports, a prisoner's release on parole is likely to be delayed. The risks of a prisoner re-entering the community after a long period of incarceration with no accommodation, no family support and no employment prospects are considerable.

Child sex offenders, such as those being treated in Te Piriti, are a class of prisoner conspicuously lacking in support. Many serve lengthy sentences (some preventive detention). The nature of offending frequently ruptures family support networks. The prospect of further child sex offending is an obvious barrier in the way of community support.

The concept of CoSA as it had evolved overseas was to assign a network of volunteers to give wrap-around support to help offenders who would risk being isolated or shunned on release and thus more likely to reoffend. CoSA began as a three-year pilot in 2009 delivered by Corrections. Child sex offenders serving the indeterminate sentence of preventive detention who had successfully completed the treatment programme and who were approaching a parole hearing were targeted. In 2012, the director of Corrections Psychological Services decided to extend CoSA. This decision appears to have been taken without any programmatic risk assessment. It was essentially managed (often after-hours) by the principal psychologist of Te Piriti, assisted by a part-time programme support officer. There was no dedicated funding. Private philanthropic organisations provided a degree of interim financial support.

By 2013, nine prisoners had fully formed CoSAs allocated to them. Three of these CoSAs were involved in reintegrative temporary releases. In early 2014, Corrections entered into two contracts for CoSA services with community organisations in Auckland and Hamilton. These contracts have been extended until December 2015.[49] A tender process for a CoSA service in Christchurch was withdrawn a few days after Mr Smith's escape to Brazil.

Although the New Zealand CoSA concept was still being developed at the time of Mr Smith's escape, we consider it was sound. Indeed, one staff member at Paremoremo specifically joined Corrections because of the benefits that flowed from CoSA the officer had seen when in professional contact with prisoners in the United Kingdom. However, the core function of the members of CoSA is to provide support for a prisoner once released into the community. In Mr Smith's situation that core function lay ahead. Yet, following his 2013 and 2014 parole hearings, individual members of Mr Smith's CoSA (its membership varied over a two-year period) were engaged as sponsors for temporary releases. This was part of a process to strengthen and test the bond between the prisoner and his CoSA (focused on support and accountability).

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48 See, for example, R Wilson, J Picheca and M Prinzo (2005) *Circles of Support & Accountability: An evaluation of the pilot project in South-central Ontario*. Ontario: Correctional Service of Canada; S Armstrong, Y Chistyakova, S Mackenzie and M Malloch (2008) *Circles of Support and Accountability: Consideration of the feasibility of pilots in Scotland*. Glasgow: Scottish Centre for Crime and Justice Research; C Wilson and S Harvey (2011) The beginning of the circle: The history of Circles of Support and Accountability. In S Harvey, T Philpot and C Wilson (eds), *A Community-Based Approach to the Reduction of Sexual Reoffending*. London: Jessica Kingsley.

49 Existing contracts were extended to ensure prisoners with current CoSA arrangements could revise their reintegration plans and supports.

The Inquiry interviewed three members of Mr Smith's CoSA. All were volunteers. All were highly qualified in their respective professional fields and committed to the philanthropic goal of assisting with the rehabilitation of prisoners. They had met Mr Smith while he was a prisoner at Paremoremo. All had been part of a briefing where Mr Smith disclosed his full offending history in the presence of treatment staff. They had also been briefed on his general future offending risks.

Two of the three had been sponsors for Mr Smith while on temporary release. While the main role of a CoSA was to provide support following release, from time to time CoSA members were asked to act as temporary release sponsors. This no doubt assisted to strengthen the links between the CoSA members and the prisoner prior to release. However, at no stage were CoSA members (or certainly those acting as sponsors) given any focused briefing about the specific risks that Mr Smith might pose when on temporary release.

[redacted] Fair trial [redacted]. The principal psychologist did not report this to custodial staff. While Mr Smith's temporary release conditions did not at that time specifically prohibit such a purchase, had this information been shared there could well have been a reassessment of the particular risks Mr Smith might pose in future temporary releases.

The Inquiry found no evidence that custodial staff (and particularly decision makers) sought feedback from CoSA members about Mr Smith's temporary releases.

Finally, in this overview of CoSA, we note that the Parole Board is supportive of CoSAs being put in place for prisoners.

Given that rehabilitation of prisoners is sound public policy, we support the CoSA concept and see merit in its being expanded and properly supported. We note from the international examples that CoSAs are a community-based initiative, not run from within prisons. They have multi-agency and probation service leadership.

5.4 Risk Assessment of Temporary Releases

Given that temporary removals and releases have been longstanding instruments of penal policy and, if anything, are even more central to rehabilitation and reintegration under Corrections' recent strategic priorities, the Inquiry explored how they had been treated by Corrections internal audit and risk assurance programmes. Taking a programmatic approach it would be normal to test the regime in whole or in part, from several perspectives. These could include the way it was designed in terms of controls; the way its rules were framed; where authorising or decision rights should lie; whether performance standards for line managers and frontline staff were clear and able to be consistently applied; whether removals and releases were achieving qualitative goals; whether levels of non-compliance or abuse of conditions were a problem; and whether the intended security controls were appropriate to different kinds of releases and were working.

We learned that no risk assessment of the regime as a whole had been carried out in recent years (if at all); nor had there been assessments of its parts such as the reintegrative releases. In 2010, the internal audit programme examined compliance with eligibility – one element of temporary removal and release performance.[50] The audit focused on whether applications met legislative requirements and followed departmental procedures. After a review of 193 cases, it was concluded that temporary releases and temporary removals were being well managed in accordance with legislative requirements and departmental procedures, and so too was the "risk to the Department" for such releases and removals. The risk of such releases being considered for ineligible prisoners or

50 Corrections planned to review temporary releases as part of its 2014/15 internal audit work programme. This had not commenced by the time Mr Smith escaped.

unauthorised purposes was rated as low. The review made no attempt, however, to audit the suitability of prisoners approved for temporary release; nor was there an overview of temporary release security and control mechanisms as a whole, which would start from the recognition that temporary releases take offenders into a middle ground where the custodial controls are relaxed and there is no professional Community Corrections presence. Police (as will be discussed in section 5.7.2) also lacked clarity about the extent of their role and function. Seen in this way, temporary releases by their very nature were a point of systemic vulnerability.

The Inquiry requested that Corrections undertake a retrospective audit of reintegrative temporary release applications by prisoners serving indeterminate sentences. Ten cases were sampled from the two prisons where Mr Smith had been approved for such releases (Paremoremo and Spring Hill Corrections Facility (Spring Hill)). Because of the small sample, the results are not statistically significant or able to be generalised across New Zealand's prisons. This audit confirmed the 2010 findings that prisoners approved for reintegrative releases met the eligibility criteria (all prisoners were minimum security and had reached their parole eligibility date, and the decision maker held the appropriate delegation to approve the application). Nonetheless, the results are consistent with the issues identified following Mr Smith's escape. The audit also found the following.

- The requirement for temporary release sponsors to receive and return a signed letter before the day of release detailing the period of leave and conditions was mostly not adhered to.
- In general, recording or retaining information relating to temporary release in Corrections' Integrated Offender Management System (IOMS) was poor.
- The sponsor is required to sign a copy of the prisoner's temporary release licence when they receive the prisoner. This was not able to be evidenced from the hard copy file in more than half the cases.
- Letters were consistently sent to registered victims.
- There was no evidence that staff were following the prescribed procedures to notify the Police of the temporary release because there is no requirement to retain a record of this action. It is possible Police were notified using methods other than the prescribed form (that is, email to local police). Evidence of inconsistency was also present in Mr Smith's case.
- Offender plan templates do not permit temporary releases to be added as an activity (they can be added as free text or in offender notes).

The results of this audit confirm our view that reintegrative activities were not clearly planned and determined as part of prisoner case management. The information also reinforces the concern that sponsors were not being well supported to assist the prisoner and Corrections to exercise their responsibilities.

Some witnesses, when asked to address the programmatic vulnerabilities of temporary releases, responded that the system had been exploited or "attacked" by Mr Smith, suggesting this was a rare and unavoidable event. The Inquiry, as will be apparent, does not fully share this view.

Corrections believes (and we accept in general) that its risk assurance and internal audit systems are best practice. However, we are not convinced they were deployed appropriately in regard to dynamic changes, both quantitative and qualitative, in the temporary release regime. These changes, as with any such organisational system, can mean that flaws of design or gaps in practice can open up. Risk assessors and internal auditors, properly directed, should be testing for such emergent vulnerabilities.

5.4.1. A comparator – United Kingdom review of temporary releases

In January 2014, HM Inspectorate of Prisons produced a review into recent failures of temporary releases.[51] Temporary release for prisoners serving indeterminate sentences in the United Kingdom had grown rapidly between 2008 and 2012, both in absolute terms and as a proportion of all releases. Although overall failure (breach) numbers were low (only 5 arrests per 100,000 temporary releases), those serving indeterminate sentences were disproportionately likely to fail (not necessarily committing a further offence). The reasons for this were not clear, but these prisoners accounted for 19 percent of the total failures.

The review found that temporary release was "an important and cost effective part of preparing prisoners for release".[52] However, the system for approving and managing these releases had not kept pace with the increase in volume or with the increased risk of the type of prisoners involved. Many staff had not received sufficient training to be competent in their roles; they were not able to understand the nature of risk, especially risk presented by a complex offender. In one of the three cases investigated, after the United Kingdom Parole Board had formally commended the prisoner's readiness for transition to self-care and temporary releases, the custodial staff involved began acting on a presumption that temporary releases were to be granted. This drove a kind of "cramming" behaviour. Staff were trying to get a volume of temporary releases completed before the next parole review. They began to see temporary releases as a prisoner entitlement. They failed to see temporary releases as a conditional decision based on an assessment of risk (especially risk of harm to others), behaviours and previous offending.

Comparable pressures and problems became apparent from this review to those that appear to have surfaced in the New Zealand system.

5.5 Statutory Basis for Temporary Releases

Temporary releases (and temporary removals) are authorised by section 62 of the Corrections Act 2004. Section 62(2)(a) states:

> (2) The chief executive may give authority for the temporary release from custody or temporary removal from prison of a prisoner to whom this section applies—
>
> (a) for any purpose specified in regulations made under this Act that the chief executive considers will facilitate the achievement of 1 or more of the following objectives:
>
> (i) the rehabilitation of the prisoner and his or her successful reintegration into the community (whether through release to work (including self-employment), to attend programmes, or otherwise):
>
> (ii) the compassionate or humane treatment of the prisoner or his or her family:
>
> (iii) furthering the interests of justice.

Thus, reintegrative temporary releases fall inside the section 62(2)(a)(i) purpose. However, when exercising the temporary release power there must be a balancing exercise. Section 62(3) provides:

> (3) In exercising the powers conferred by subsection (2), the chief executive must consider—
>
> (a) whether the release or removal of the prisoner might pose an undue risk to the safety of the community while the prisoner is outside the prison:
>
> (b) the extent to which the prisoner should be supervised or monitored while outside the prison:

51 HM's Inspectorate of Prisons. 2015. *Release on Temporary Licence (ROTL) Failures: Review by HM Inspectorate of Prisons (redacted) – January 2014*. London: Her Majesty's Inspectorate of Prisons. http://socialwelfare.bl.uk/subject-areas/services-client-groups/adult-offenders/hminspectorateofprisons/release15.aspx.

52 Ibid, p 4.

(c) the benefits to the prisoner and the community of removal or release in facilitating the reintegration of the prisoner into the community:

(d) whether removal or release would undermine the integrity of any sentence being served by the prisoner.

The above provision makes it clear that the officer (exercising delegated power) must turn his or her mind to the issues of undue risk to community safety, the extent to which the prisoner should be supervised or monitored, and the reintegration benefits. This balancing exercise requires an individual judgement on a prisoner-by-prisoner basis. Such judgement will not necessarily be carried out by repetitive form-filling or box-ticking. The chief executive of Corrections delegated the authority to custodial systems managers to make decisions relating to temporary releases, even though the standard forms used in some cases suggested that decision-making powers rested with officers higher in the hierarchy, including prison managers.

That said, given the numbers set out above of temporary releases involving prisoners of all types (including prisoners serving indeterminate sentences), the screening of prisoners for temporary release suitability and the section 62(3) balancing exercise appear to have worked well.

Nonetheless, vigilance is needed. In the wake of Mr Smith's departure, his victims were certainly apprehensive, as were some other people who (outside Corrections) had a degree of oversight of his sentence management. Section 62(3) requires close scrutiny and vigilance as part of a temporary release decision in the area of risk that a prisoner might pose to victims, former associates, and people against whom, for a variety of reasons, the prisoner holds a grudge.

We set out the regulation applicable to temporary releases:[53]

> A prisoner who is eligible to be temporarily released under section 62 may be temporarily released for any of the following purposes that the chief executive considers will facilitate 1 or more of the objectives specified in section 62(2)(a) of the Act:
>
> (a) to visit the prisoner's family:
>
> (b) to undertake paid employment (including self-employment):
>
> (c) to seek employment (whether directly with a prospective employer or through an agency) or to receive vocational or other training:
>
> (d) to attend any agency for assessment or treatment of the prisoner's rehabilitative or reintegrative needs:
>
> (e) if the prisoner's release is imminent, to visit a department of State or other agency to make arrangements for the prisoner's release:
>
> (f) to visit a community facility for educational, cultural, or recreational purposes:
>
> (g) to visit a member of the prisoner's family, or a close friend who is—
>
> (i) seriously ill; or
>
> (ii) incapacitated:
>
> (ga) to accompany a seriously ill member of the prisoner's family to medical treatment, and support the family member at the treatment:

53 Regulation 27 of the Corrections Regulations 2005.

(h) to attend the funeral, tangi, or subsequent ceremonial commemoration of the death (for example, the unveiling of a headstone) of a family member or close friend:

(i) to attend a religious service or a religious activity:

(j) to attend a restorative justice conference:

(k) to attend a family group conference:

(l) to obtain, whether by appointment or otherwise, medical, surgical, or dental assessment or treatment that is not available in the prison:

(m) to be admitted to hospital for treatment:

(n) to have a tattoo removed (including any pre-procedure assessments and post-procedure checks):

(o) to enable the prisoner to give birth to a child, or attend the birth of the prisoner's own child, or visit the prisoner's own new-born child:

(p) if the prisoner's release is imminent, to obtain from family or friends personal property where this cannot be done by other means and the property is reasonably required before the prisoner's release:

(q) if the prisoner's release is imminent, to purchase clothing which is reasonably required before the prisoner's release:

(r) to be involved in a community project or other reintegrative activity in association with staff or members of service clubs, religious or cultural groups, or other community organisations:

(s) to participate in an outdoor pursuit activity:

(t) to participate in a sports team, or play sport as a member of a club or team participating in a local competition, or attend a sporting event as a spectator:

(u) to assist the Police in relation to the prevention, investigation, and detection of offences:

(v) to enable the Police to exercise powers under section 32 or 33 of the Policing Act 2008.

These 23 regulatory objectives clearly permit temporary releases of suitable prisoners for a variety of activities. However, this large list of temporary release activities and purposes does not include a generic release for reintegrative purposes of the broad type Mr Smith was granted. Because section 62(2)(a) makes specific reference to "any purpose specified in regulations", we recommend that the regulations be revised and expanded to prevent any challenge to temporary release schemes or suggestions that temporary releases of certain types might be *ultra vires*.[54]

5.6 Mr Smith's Temporary Releases

Our analysis of how it was that Mr Smith was able to use the 6 November 2014 temporary release from Spring Hill to depart for Brazil points to several errors on the part of Spring Hill staff. Errors too are apparent in the Spring Hill response once staff became aware, on the evening of 8 November, that Mr Smith's whereabouts was unknown. It is not this Inquiry's function to minimise or excuse those errors. However, readers of our report should not be blind to the challenges faced by Corrections staff.

54 *Ultra vires* means beyond one's legal power or authority.

We were impressed overall by the professionalism and dedication evident on the part of the Corrections staff we interviewed. Running prisons is hazardous, often dangerous, work. Many prisoners are violent and unpredictable. Assaults (sometimes lethal) by prisoners on other prisoners or corrections officers is a constant risk and recurs. Weapons, drugs, alcohol and mobile phones must be intercepted and detected constantly. Riots and escapes must be thwarted. Corruption of staff must be detected and rooted out. Prison rules must be enforced. The errors that occurred in respect of Mr Smith's escape, although all avoidable, must be seen against the background of many other risks, some of which we have just outlined.

5.6.1. Spring Hill Corrections Facility

Spring Hill had in recent times coped with several challenges. The six-monthly national rankings by Corrections on overall prison performance rated Spring Hill, in June 2014, as requiring improvement overall for its "internal procedures". But similar comments were made about other prisons. Spring Hill is one of New Zealand's largest prisons. It holds over 1,000 prisoners. When it was opened in 2007 it was designated as suitable to hold a wide variety of prisoners from minimum security to high security. Many of its staff were recruited from overseas. It was the last of four new regional prisons to open, situated in essentially a rural area.

Spring Hill is the site of several unique programmes, including New Zealand's only dedicated programme for Pacific Island prisoners, a special treatment programme for violent offenders, and internal and external self-care units.[55] The prison also provides employment to enable prisoners to acquire work skills. Spring Hill has a contract with Housing New Zealand to refurbish housing stock in a construction yard outside the prison. Prisoners, both inside and outside, were working and gaining skills in electrical, plumbing, painting, and construction trades.

However, Spring Hill had experienced two significant events: a prisoner killing a corrections officer in 2010 and, in June 2013, a riot that destroyed two units by fire. Although Spring Hill was originally planned as a destination for prisoners undergoing rehabilitation, national volume pressures had led to its prison population growing rapidly. There had been increased pressure on the security regime that would otherwise be suitable for rehabilitation prisons. It was decided, for reasons not relevant to this Inquiry, to place Spring Hill under experienced management charged with implementing a stabilisation and recovery plan. The new prison manager, who is highly regarded, saw his role as to stabilise the prison. One key feature of stabilisation was clear delegation and "working to role" by senior staff. Other senior managers said this was to empower frontline managers to lead a "practice recovery" to restore a level of professionalism and "jailcraft", which the review of the riot had found lacking. As part of this, the prison manager was operating intentionally at a strategic level, rather than being drawn into operational or tactical issues. Hence, he told the Chief Custodial Officer's Review that he did not know Mr Smith; and he told the Inquiry he was not directly engaged in dealings with Police under the Police and Corrections memorandum of understanding (a similar comment was made by his deputy).

5.6.2. Temporary release procedures

We turn now to the performance of Corrections in approving and monitoring Mr Smith's temporary release from Spring Hill on 6 November 2014. The narrative describes the administrative procedures for temporary release that were in place, errors that were made in applying those procedures, inadequate design of the systems, and how Mr Smith was able to take advantage of these errors and omissions.

55 An internal self-care unit is inside the prison perimeter. The external self-care unit at Spring Hill was a new, iwi-run unit called Whare Oranga Ake, located just outside the prison.

The administrative procedures required for processing temporary release applications and monitoring such releases are in the *Prisons Operations Manual* (the Manual), section M.04.06. Significant parts of the Manual are available to be read and scrutinised by prisoners. Access by an intelligent prisoner might provide an opportunity to identify operational weakness or test the system. Whether Mr Smith subjected the Manual to such scrutiny is unknown.

The Manual is available to Corrections staff through the Corrections intranet (Corrnet). It was through Corrnet that a recently appointed custodial systems manager at Spring Hill was able to obtain details of the necessary forms and seek general guidance for temporary release applications (including the two applications by Mr Smith). This custodial systems manager had received no formal training or briefing in the area.

Section M.04.06 in the Manual sets out such matters as temporary release eligibility, applications and approvals. Portions relevant to this Inquiry are set out in Appendix 4.

The application for temporary release is made by a prisoner. The prisoner is expected to attach an "itinerary". For the three nights in question, Mr Smith in his itinerary indicated he would be staying with a sponsor at an address in Auckland. Mr Smith had stayed with that sponsor during a previous temporary release.

5.6.3. Sponsor and sponsor address approval

The Manual has a series of requirements for the vetting and approval of sponsors. These include a requirement that a senior Corrections official approve each sponsor and that a community probation officer provide a report on:

- the suitability of the proposed sponsor
- the proposed address
- the impact the release is likely to have on any other people, including any victims
- any other relevant issues, including protection or restraining orders.

The evidence received by the Inquiry suggests the sponsor vetting process has been applied variably. Some checks appear to have been thorough; others less so. Sponsor vetting, as an objective, must strike a balance. A past association or familial connection with a prisoner needs to be scrutinised but might not preclude a sponsor who in all other respects would be reliable, keep a close eye on a released prisoner, and provide sensible feedback.

The success of any temporary release programme depends in large part on suitable and adequately briefed sponsors. The Inquiry supports steps to increase the robustness and integrity of the vetting process.

We also strongly support probation officers being tasked with monitoring prisoners while on temporary release, as developed further below.[56]

The Manual gave guidance (before November 2014) in the form of a checklist under the heading "Other considerations" of matters to be considered. That checklist (section M.04.06.RES.03) is in Appendix 4. Importantly, the checklist includes:

> Information provided by the prisoner in their application, as well as discussions held with the proposed sponsor in regard to any proposed conditions of the prisoner's temporary release.

56 See section 5.7.2.

Section M.04.06.09 in the Manual lists sponsor responsibilities. Two sponsors were involved for the 6 November 2014 release. One was Mr Z, in whose home Mr Smith proposed he would stay for the three nights. The other sponsor was Mr Smith's sister, Joanne Smith, who was to collect him from Spring Hill on 6 November. There could be no challenge to the suitability of Mr Z as a sponsor.

Fair trial

Obviously, it would have been desirable to liaise with Mr Z about the suitability or otherwise of Mr Smith's proposed itinerary. However, there was no such requirement in the Manual. There was a mandatory requirement in section M.04.06.09(9) that all sponsors must be notified in writing of the arrangements and conditions of the temporary release from custody. This notification was based on a template letter stored in IOMS. No such letter was generated or sent.[57]

Fair trial

By the time Spring Hill staff became aware that Fair trial Mr Smith was not residing with Mr Z (on the night of 8 November 2014), Mr Smith had been out of New Zealand for over 48 hours.

Had the Spring Hill authorities conferred with Mr Z about the itinerary that Mr Smith had prepared when applying for the 6 November temporary release, had the staff at both Paremoremo and Spring Hill been more assiduous and challenging in their assessment of Ms Smith's suitability as a sponsor, and had the mandatory letter and notification been sent to Mr Z, then it is improbable that Mr Smith would have escaped to Brazil on 6 November 2014.

5.7 Monitoring Temporary Releases (Including Mr Smith's)

5.7.1. Role of the Department of Corrections

Another deficiency in the temporary release procedures was the lack of a documented process to debrief sponsors. Section M.04.06.09 stressed that a prisoner's behaviour on temporary release was to be monitored. The monitoring responsibility was, when no prison staff are accompanying the prisoner, passed totally to the sponsor. An acknowledgement in writing was required so that the

57 We note that letters were not sent to any of the nominated sponsors for the much larger number of temporary releases granted to Mr Smith while he was a prisoner at Paremoremo. We regard this as a significant series of oversights.

sponsor assumes responsibility of overseeing the prisoner's behaviour and compliance with release conditions. That should not, however, mean that Corrections can wash its hands of responsibility for monitoring during a temporary release period. Clearly, there needs to be some specific questioning and debriefing of sponsors after the prisoner returns. Had this been carried out by Corrections staff following Mr Smith's temporary releases from Paremoremo, it would have been discovered that, during his temporary releases (when his relevant sponsors were a Mr Y and Mr Z), Fair trial

Fair trial

5.7.2. Role of New Zealand Police

The Manual confers a discretion on the custodial systems manager to notify Police of the date of a temporary release and conditions.

Police received such notifications from Corrections relating to Mr Smith on:

- 27 August 2013 (for the first temporary release from Paremoremo on 3 September 2013 of 6 hours)
- 17 November 2013 (for the December 2013 release from Paremoremo of 8 hours)
- 1 September 2014 (for the September 2014 temporary release from Spring Hill of 72 hours)
- 25 October 2014 (for the November 2014 temporary release from which Mr Smith absconded).

For the temporary releases of 25 January 2014, 29 March 2014, 9 May 2014 (24 hours – the first overnight release) and 30 June 2014 (48 hours), all from Paremoremo, it appears Corrections did not notify Police.

The normal process used by Police's Auckland City District Intelligence Unit is that when Police receive information from Corrections relating to a temporary release, it is used to notify relevant area policing prevention managers. Such notifications include a current photograph. In Mr Smith's case Corrections supplied Police with photographs of Mr Smith both with and without the hair piece he had acquired, with approval, late in 2012. Temporary release notifications identifying the policing area where the prisoner will reside are included in intelligence assessments that are used as a "tasking document" at a daily 9 am meeting for high-level police area and district officers.

Police had been informed by Spring Hill of Mr Smith's temporary release (16–19 September 2014). A detective sergeant attached to the Auckland Sex Offender Monitoring Team was tasked to visit Mr Z's address. This was done during the temporary release at a time when Mr Smith was out with his co-sponsor, his sister. No problems were detected, and Mr Z's report to the police officer was favourable. The visit was, however, not noted by the Police into the National Intelligence Application (NIA).

A similar police tasking flowed when Spring Hill advised Police of the impending 6 November 2014 temporary release. As a result of keystroke error, however, a Police staff member transposed two digits in the address. The allocated officer planned a daylight visit to Mr Z's address on 6 November. The officer arrived shortly after 1.30 pm to the incorrect address, which was in the middle of a construction zone. A follow-up visit by another police officer, still to the incorrect location, took place shortly after midnight on 8 November, with the same result. As a result of the keystroke error, police visited the wrong address twice.

58 This may have been a critical oversight.

59 Treatment staff do not determine suitability for temporary release or conditions on release. Nonetheless, Fair trial

Fair trial

The visits were routinely recorded but no attempt was made by either of the visiting officers to ascertain the address to which Mr Smith was to be released.

Had the visit been made by the detective sergeant around 2 pm on 6 November, Mr Smith would not have been there; nor, necessarily, would Mr Z have been there. Had he been there, however, Mr Z would immediately have alerted Police to the fact he had no knowledge of a temporary release being monitored. This raises the possibility that Mr Smith may have been intercepted at Auckland or Santiago airports.

The reason the Sex Offender Monitoring Team in Auckland was tasked with the checks was undoubtedly because of Mr Smith's conviction for child sexual offending. In anticipation of new legislation introducing a child protection offender register, agencies have focused efforts on monitoring child sex offenders.

The memorandum of understanding between Police and Corrections lacks specificity about the respective roles of each agency in temporary releases. The national memorandum of understanding contemplates regional service-level agreements setting out the way Police and Corrections will collaborate in the local environment. However, the Inquiry heard no evidence of real engagement between the agencies on this topic, and the regional service-level agreements did not contain any customised arrangements. There appears to be some unease about the agreements becoming straitjackets affecting Police discretion and flexibility. Demarcation issues between Police and Corrections over responsibilities for monitoring prisoners on temporary release should be resolved.

Current operational practice seems to be that Police use their discretion whether and how to check on a prisoner on temporary release. In most cases, such checks seem to be spot checks, much the same as checks on alleged offenders released on bail subject to some form of curfew at a specified address. Checks of this nature are carried out when Police resources are available. It is clear that it is not, under present arrangements, Police's function to monitor the entire duration of a temporary release.

We conclude that the memorandum of understanding between Police and Corrections and the associated service level agreements should be reassessed with respect to temporary release. Clear policies need to be developed as to whether all prisoners on temporary release need to be monitored; if so, why; what is the purpose of such monitoring; whether the monitoring of high risk prisoners on temporary release requires better sharing of resources and responsibilities between Corrections and Police; and whether there should be greater monitoring involvement by community probation officers. Probation officers, in particular, have applicable skills and ought to have access to the progress and performance of prisoners throughout their sentences.

The Inquiry is mindful that prisoners approved for temporary releases may have very different risks from those on bail and may need a different kind of monitoring. Better collaboration for monitoring, targeted to those on temporary release who present specific risks (such as a wider range of sexual offenders and those convicted of violence like Mr Smith), could conceivably encourage prisoner compliance with release conditions and provide additional support for sponsors.

5.7.3. Administrative performance

We have described inadequacies in the way reintegrative temporary releases were administered. The advantages to a prisoner of a reintegrative temporary release and the risks a prisoner poses if granted temporary release will obviously vary from prisoner to prisoner. The decision to grant a prisoner temporary release should be based on good information, sound judgement, an assessment of any risks, and an examination of the extent to which such risks can be reduced or mitigated.

This careful preparation can be undone if temporary releases are not well administered and the fabric of intended controls around them becomes frayed or unwound. The fact that over the 10 years for which figures are available there have been so few breaches of temporary release conditions might justify a conclusion that the administration of temporary releases is adequate. But from what we have learned of the administration of Mr Smith's temporary releases we have a concern that at times the processing of temporary releases may have been seen as a form-filling and box-ticking exercise. The uneven administrative performance of well-defined procedures along with design flaws in the systems combined to enable an intelligent and manipulative prisoner, well aware of how the system operated, to exploit weaknesses for his personal advantage.

5.8 Inquiry Conclusions Relating to Mr Smith's Temporary Releases

We have been aware from an early stage of the Inquiry that a simultaneous internal Corrections review of temporary releases has been under way. Our Inquiry and findings have been independent of this internal review.[60] It is our hope that the following conclusions and recommendations will be of assistance to, or confirmatory of, that review.

The evidence we have heard leads us to the following conclusions so far as Mr Smith's temporary releases were concerned.

1. Mr Smith was granted temporary releases without an adequate risk assessment to determine his suitability.
2. There was no assessment of the type of risk (with particular reference to intelligence information and his offending history) that Mr Smith might pose while on temporary release. Risks that should have been identified were not mitigated by appropriately crafted conditions.
3. Inadequate attention was paid to the purpose of and the risks posed by temporary releases of varying duration and what the benefits and risks were of Mr Smith's progressively longer periods of temporary release.
4. The New Zealand Police and Department of Corrections had not specifically agreed how to coordinate the monitoring of temporary releases. There was no real distinction between monitoring an address and monitoring a person's activities, and there were unresolved demarcation issues between the two bodies.
5. The Department of Corrections monitoring of Mr Smith's compliance with temporary release conditions was not sufficiently vigilant. Staff did not seek necessary and relevant information from his sponsors. [redacted] Fair trial [redacted]
7. Spring Hill staff failed to notify one of the sponsors of the proposed 6 November 2014 release, and did not seek confirmation from the sponsors that they would monitor compliance with the imposed temporary release conditions.
8. There was no focused procedure or debriefing process to obtain feedback from sponsors.

60 See section 5.9.2.

5.9 Temporary Releases since November 2014

Corrections responded sweepingly to Mr Smith's escape by suspending all temporary releases for reintegrative purposes. The number of prisoners participating in outside work programmes was reduced significantly. Evidence we have heard is that this reaction by Corrections has had a significantly adverse effect on prisoner morale. Employers, community organisations and prisoner advocates have also made public comment on the adverse effect of the current restrictions. The progress of a considerable number of prisoners on reintegrative pathways, who were benefitting from temporary releases, has been delayed.

We accept that Corrections was initially justified in suspending the temporary release programme in the wake of Mr Smith's absconding. Scrutiny and reassessment of temporary release procedures were necessary.

However, we are unconvinced that all aspects of the restructuring of the temporary release programme that has occurred and the restrictions that have been placed on the type of prisoner eligible for reintegrative releases are entirely justified. Some witnesses have conveyed to us, directly or indirectly, an understandable fear on the part of officials of the reputational risk seen as inherent in having convicted murderers on release to work programmes or reintegrative releases generally. The extremely low number of breaches of temporary release conditions referred to above over a period of many years, coupled with the fact that Mr Smith was the only prisoner on temporary release able to flee from New Zealand, are important baselines. The long-term focus needs to be on risk management, not risk aversion.

The extended curtailment of the temporary release programme (for nine months thus far), particularly reintegrative releases, has been unfair to scores of prisoners, has (in respect of release to work programmes) caused disruption in various communities (the Christchurch rebuild and various projects in Northland being but two), has denied to the Parole Board for the time being a useful testing tool, and has almost certainly retarded the rehabilitation and reintegration of some prisoners approaching parole.

As one submitter stated to us:

> With the new threshold level set so high for temporary releases many prisoners previously considered suitable candidates …are now no longer considered suitable. The newly constituted Advisory Panel to consider temporary releases put in place since Smith's escape is a system where prisoners submit a very detailed and lengthy application to the panel for consideration of temporary releases. Few prisoners are reaching the threshold level for temporary releases, yet they would probably have been suitable for temporary release prior to the Advisory Panel being established.
>
> Large numbers of prisoners have been withdrawn from temporary release who were on release to work (despite already working anywhere from one-18 months or sometimes longer without incident), others have had 72 hours home leaves and leave to go shopping at the supermarket if in self-care units stopped. These prisoners are now kept inside the prison wire and removed from all reintegrative activities. Many have been removed from productive useful employment working 5-6 day a week in paid [release to work] employment, to now being placed in a phase of enforced idleness. By withdrawing a large proportion of prisoners from temporary releases greater numbers of prisoners are unable to fulfil the requirements of the Parole Board.

We have had similar evidence to like effect from several Corrections staff. Our conclusion is that reintegrative releases should be resumed, but with a much improved and focused assessment of the risks posed by individual prisoners.

5.9.1. Interim measures

The Chief Custodial Officer's Review recommended that:[61]

> all policies, procedures, instructions and instances of when prisoners are outside of the secure prison perimeter must be reviewed and updated as a priority. These instances must include Release to Work, Temporary release, Temporary removal, external self-care and external work parties.

The temporary release policy was changed with the introduction of interim instructions (these instructions currently remain in place).[62] On 12 November 2014, the chief executive of Corrections directed all temporary release of prisoners cease, pending a comprehensive review of the temporary release processes and policies. The only exceptions were for prisoners involved in release to work and for prisoners released to supervised programmes (such as residential treatment programmes), or when exceptional circumstances applied.

The exceptional circumstances criteria are that prisoners must:

- have a minimum security classification, and
- be serving a sentence of 24 months or less, or
- be serving a sentence of more than 24 months and the Parole Board has specified a release date.

The delegated authority to approve "exceptional circumstances" is restricted to the Corrections national commissioner and regional commissioners. The new provisions limited the absence to a maximum period of 12 hours, unless approved by the national commissioner. In all exceptional circumstances, Global Positioning System (GPS) monitoring is to be imposed as a condition, and the prisoner is required to surrender any current passport (including foreign passports) and other travel documents. The prisoner is also prohibited from applying for travel documentation or going within 500 metres of an airport.

Approval and expectations of community-based sponsors were also tightened.

Corrections also introduced new arrangements to assess prisoner suitability and improve decision making about temporary release applications. Multidisciplinary panels have been introduced in all New Zealand prisons to assess prisoner suitability for activities "outside the wire". The process for the prisoner to apply remains the same. However, on receipt of the application, the panel convenes to make an assessment. The membership of the panel includes Corrections intelligence staff, offender employment services, psychological services, Community Corrections district management, a member of Police, and one community representative. In attendance is the prisoner's case manager and principal corrections officer for the prisoner's unit. Depending on the individual prisoner, other external representatives may be invited to attend, for example, from Child, Youth and Family, from Work and Income New Zealand, an alcohol and drug counsellor, or from Community Mental Health. The decision maker is the prison manager who chairs the panel.

Corrections has acknowledged that the interim measures are very restrictive and that they have had impacts for prisoners, families, employers and community groups. In particular, restricting eligibility to the narrow classes of prisoners able to apply has severely limited numbers. However, Corrections considers that the restrictions it has imposed close off the risks that the Chief Custodial Officer's Review identified with the temporary release programmes. (As is apparent from previous chapters, we have identified some of these risks as well.)

The number of prisoners released to work decreased from 443 to 264 following Mr Smith's escape. The number of reintegrative releases decreased from 214 offenders in the six months before the

61 *Chief Custodial Officer Review*, 24 November 2014, p 14.
62 National circular 2014/02 effective as of 12 November 2014 and national circular 2014/02A effective as of 14 November 2014.

escape to none since 14 November 2014. While escorted temporary removals remained available for reintegrative activities, the number decreased by 170 offenders from the six-month period before Mr Smith's departure to Brazil.

5.9.2. New regime

The internal review has given rise to consultation about the development of a new policy regime. We were advised the new policy intends a more purposeful approach to pre-release planning and reintegrative activities, following the completion of rehabilitation programmes. Corrections proposes contracting with service providers to provide reintegrative experiences utilising external self-care accommodation. The intention is to reduce the risk to the community and Corrections while enabling prisoners to be safely "tested" outside a custodial setting.

Provided this new structure does not curtail temporary release as a rehabilitative and reintegration mechanism for suitable prisoners, we support the revision. In particular we would support the continuation of aspects of the interim measures such as GPS monitoring of high-risk prisoners, briefing sponsors, and conditions directed to border security.

Particularly with high-risk prisoners who might be granted temporary releases, we see merit in such prisoners being monitored by GPS. For GPS monitoring to be effective and to deter breaches a rapid response time is critical. Had the possible mitigations of Mr Smith's risk included his being fitted with a GPS bracelet, then it is a fair conclusion that authorities would have known earlier he had breached his conditions.

At a broader level, and looking at the statutory regime of temporary release in general and reintegrative releases in particular, the evidence we have heard overwhelmingly satisfies us that temporary releases (including reintegrative temporary releases) are a useful and important feature of penal policy. Overseas research points that way.[63] In New Zealand there have been very few breaches of temporary release conditions and a low failure rate. From both Corrections staff and those who have studied and researched penal policy, we received numerous anecdotal reports that point to temporary releases being a desirable and successful tool. The Parole Board, for its part, sees temporary releases as being an extremely useful test or experience against which to assess, in part, a prisoner's suitability for parole. Arguably, the current restrictions fetter the chief executive's discretion to grant a temporary release. We are also satisfied that the change in the temporary release regime has caused much distress to many prisoners and may have delayed both reintegration and parole. In our view, the time has come to reassess the original restrictions imposed.

5.10 Conclusions

From the above discussion, we find the following on the topics of the benefits and background of temporary release, the administration of temporary release before Mr Smith's escape, and the future of temporary releases.

5.10.1. Benefits and background of temporary release

1. Temporary removals and temporary releases are a long-standing instrument of penal policy and have value. Reintegrative releases are a valuable mechanism to rehabilitate and reintegrate prisoners and, in particular, to test a prisoner's ability to function in society without causing harm.
2. The number of breaches of temporary release conditions is very small.
3. A combination of demographic changes and policy settings resulted in the Department of Corrections making greater use of temporary removals and releases, including for long-serving prisoners. This was organic rather than planned, and it was not the subject of any close risk analysis.

63 EP Baumer, I O'Donnell and N Hughes (2009) The porous prison: A note on the rehabilitative potential of visits home. *The Prison Journal* 89, 119–126; BA Grant and M Gal (1998) *Case Management Preparation for Release and Day Parole Outcome*. Ottawa: Research Branch, Correctional Services Canada; DP LeClair and S Guarino-Ghezzi (1991) Does incapacitation guarantee public safety? Lessons from the Massachusetts furlough and pre-release program. *Justice Quarterly* 8, 9–36; LL Motiuk and RL Belcourt (1996) *Prison Work Programs and Post-Release Outcome: A preliminary investigation*. R-43. Ottawa, Ontario: Correctional Service of Canada.

4. Department of Corrections policy emphasises rehabilitation and reintegration as steps on one pathway, the effect of which supports reintegrative releases for the purposes of testing rehabilitation gains and preparing prisoners for eventual release.
5. The Parole Board, which had endorsed the use of reintegrative releases in principle (describing such releases as a useful test), referred more frequently to reintegrative releases in its decisions about readiness for parole.

5.10.2. Administration of temporary release before Mr Smith's escape

6. The design, implementation and auditing of temporary release procedures were inadequate. In particular, no apparent thought had been given to reassessing risks in the light of the increased number of prisoners serving indeterminate sentences being granted temporary release. Reintegrative releases in particular were not the subject of programmatic risk assessment.
7. The Department of Corrections' practices for administration of temporary removals and releases, which were in general long established, were not a high priority for audit or risk assurance. Closer audit attention could have been paid to the design, implementation and supervision arrangements for temporary releases.
8. The Circle of Support and Accountability (CoSA) programme, introduced at Te Piriti as part of a pre-release pathway for long-serving prisoners who had completed treatment, was not effectively supported, resourced or monitored. There was no formal risk assessment for this initiative. The initiative, however, has merit and the Department of Corrections should consider how to give it best effect.
9. The national memorandum of understanding between the Department of Corrections and Police calls for local-level coordination arrangements to be agreed between the relevant senior managers. We consider the Police and Department of Corrections should address the content and currency of these arrangements as a priority.

5.10.3. Future of temporary release

10. The Department of Corrections' interim measures imposed after this incident were intentionally restrictive and provided an opportunity to identify ways to reduce the risks to public safety arising from temporary release. They have, however, had other costs for penal policy and administrative interests. The removal of some of the restrictions will reduce these costs.

5.11 Recommendations

1. Temporary release is a valuable rehabilitative and reintegrative tool. With focused and effective risk assessment and management, the interim restrictions on eligibility for temporary release should be lifted.
2. When the Department of Corrections completes its current review of temporary release, it should thoroughly assess programmatic risk.
3. In any temporary release programme, the suitability and specific risks posed by each prisoner (particularly high risk prisoners) must be individually assessed against a structured framework and specially designed tools to balance benefits, risks and risk mitigations.
4. The Department of Corrections' reform programmes aimed at multidisciplinary decision making and integrated practice, should include the administration of temporary releases, and be given appropriate priority.
5. The Department of Corrections should not approve a reintegrative temporary release unless:
   (a) each proposed sponsor has been carefully scrutinised for suitability and reliability
   (b) systems for providing advice and support are in place
   (c) all sponsors (including co-sponsors) have agreed to the conditions and itinerary of the release.

6. Approval for temporary releases of high-risk prisoners should be determined by a senior decision maker, who should consider the individual risks posed by the particular prisoner, the suitability of the conditions imposed, and the purposes and nature of the planned release.
7. The Department of Corrections should improve the monitoring of temporary releases, including by:
   (a) considering the greater use of community probation officers
   (b) debriefing and seeking feedback from sponsors after each release.
8. The Department of Corrections should regularly use its internal audit regime to test frontline practice and performance in implementing the temporary release programme.
9. The Corrections Regulations 2005 should be reviewed to ensure they accurately reflect the purposes for which temporary releases are granted, in particular the full range of reintegrative releases.

6. Response to Mr Smith's Escape

6.1 Introduction

This chapter is divided into three main parts. The first deals with the response by the Department of Corrections (Corrections) to Mr Smith's escape (see sections 6.3 and 6.4). The second deals with the response by New Zealand Police (Police) (section 6.5 and 6.6). The third deals with communications with Mr Smith's victims once it became apparent that he had absconded (sections 6.7 and 6.8). Although all the actions discussed in this chapter occurred two days or more after Mr Smith had left New Zealand, various deficiencies apparent to us need to be scrutinised.

Our recommendations flowing from each of the three parts are at the conclusion of this chapter (section 6.9).

6.2 Preparedness

The response to Mr Smith's escape began with a simple phone call and developing confusion about Mr Smith's whereabouts on a Saturday evening, and within a short time escalated into an incident with international dimensions involving the Corrections, Police, Customs, the Department of Internal Affairs, Interpol, the Ministry of Foreign Affairs and Trade, and numerous other agencies in New Zealand and elsewhere. The incident attracted wide public, political and media interest. As set out below, we conclude Corrections was not adequately prepared for this event, particularly during the uncertain early stages, and there are lessons to be learned to strengthen incident management and coordination.

By way of background, a succession of government inquiries in recent years has emphasised the importance of incident management preparedness.[64] These have included inquiries into the Christchurch earthquakes,[65] the *Rena* incident,[66] the Pike River mine disaster,[67] and the Fonterra "botulism incident",[68] as well as several Coroner's inquests. The first three of these led the Department of the Prime Minister and Cabinet to carry out a review of the coordinated incident management system (CIMS) in early 2014.[69] Although most attention is understandably on large multi-agency incidents, the fundamental principles of incident management are scalable and apply equally during the early stages of a small-scale incident, which can involve just a handful of people.

The key principles of incident management include the common-sense elements of:

- clear leadership, roles and chains of responsibility
- integrated information management and communications
- documented incident logs and planning
- regular training, exercising and review.

The point of such systems is to prevent the pressures of an event causing a loss of order or lack of situational awareness through fragmented information and knowledge. Organisations not only activate

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64 See A Kibblewhite. 2014. "Foreword." In New Zealand Government. 2014. *The New Zealand Coordinated Incident Management System (CIMS)* (2nd ed). Wellington: Officials' Committee for Domestic and External Security Coordination, Department of the Prime Minister and Cabinet, p i. www.civildefence.govt.nz/resources/new-zealand-coordinated-incident-management-system-cims-2nd-edition.

65 Canterbury Earthquakes Royal Commission. 2012. *Final Report* (of the Royal Commission of Inquiry into Building Failure Caused by the Canterbury Earthquakes) (7 volumes). Christchurch: Canterbury Earthquakes Royal Commission. http://canterbury.royalcommission.govt.nz.

66 S Murdoch. 2014. *Independent Review of Maritime New Zealand's Response to the MV Rena Incident* on 5 October 2011. Wellington: Maritime New Zealand. www.maritimenz.govt.nz/Environmental/Responding-to-spills-and-pollution/Past-spill-responses/Rena-response.asp

67 *Royal Commission on the Pike River Coal Mine Tragedy*. 2012. Royal Commission on the Pike River Coal Mine Tragedy. Wellington. http://pikeriver.royalcommission.govt.nz/Final-Report

68 Government Inquiry into the Whey Protein Concentrate Contamination Incident. 2014. *The WPC80 Incident: Causes and responses.* Wellington. www.dia.govt.nz/Government-Inquiry-into-Whey-Protein-Concentrate-Contamination-Incident.

69 New Zealand Government. 2014. *The New Zealand Coordinated Incident Management System (CIMS)* (2nd ed). Wellington: Officials' Committee for Domestic and External Security Coordination, Department of the Prime Minister and Cabinet. www.civildefence.govt.nz/resources/new-zealand-coordinated-incident-management-system-cims-2nd-edition.

incident management protocols and procedures for actual events, but regularly test them through field or desktop exercises.

At an organisational level, Corrections has a well-developed incident management system that follows international best practice. This system includes specific plans for incidents including riots, fires, earthquakes, suspicious packages and hostage situations. Staff are trained and given quick-reference flip charts. Corrections reviews the performance of its systems after each event and has a programme of exercises.

However, Corrections' incident management planning had not addressed an escape from temporary release, as occurred here. While there were plans supported by quick-reference charts for incidents including "release to work – failure to return", "walkaway" and "escape" and for events such as power cuts, there were no specific plans for breach of temporary release; nor had Corrections' risk management processes highlighted this as a need, despite the release of high-risk individuals like Mr Smith. This would have been particularly appropriate given the changing demographic groups being granted temporary releases.

The result of this, in Mr Smith's case, was that the managers and staff in the first critical hours had not been trained or exercised in responding to such an event, and did not recognise it as an "incident" needing to be managed.[70] There were no quick-reference job cards to guide the response. It was not clear to them that there needed to be an identified incident controller or that someone needed to be in charge of collecting and integrating the known information. No log was kept, and no documented planning (which might have been as simple as a few bullet points) was carried out. In short, Corrections' overall preparedness for this type of incident was poor, and management and staff were left to operate on an instinctive and ad hoc basis to the rapidly developing events.

One aspect of the overall under-preparedness, developed in the next section, was that Corrections and Police did not have clear protocols to identify how the two organisations would respond to a suspected or actual escape from temporary release. Apart from a very high-level memorandum of understanding, there had been no direct engagement between Corrections and the Police to address this. There was no agreed escalation pathway, and there had been no coordinated planning for such critical elements as victim liaison.

Against that background, we turn to Corrections' performance in managing the incident as it developed.

6.3 Response by Spring Hill Corrections Facility[71]

Spring Hill staff were unaware anything was amiss until the evening of Saturday, 8 November 2014. By this stage, of course, the bird had well and truly flown. Mr Smith's flight for Chile had taken off over 48 hours previously. None of the actions that followed was causative of his escape or, if better performed, could have stopped Mr Smith's departure. However, if steps to check up on Mr Smith's release had happened earlier, a well-managed response could have ensured Mr Smith was re-captured swiftly. For example, Mr Smith did not arrive in Chile until around 3 am on Friday, 7 November (New Zealand time) and could have been arrested on arrival if inquiries had commenced before then.

70 This is despite the fact Corrections' own definition of "incident" includes at least three relevant clauses: an event that might lead to an inquiry by an inspector, auditor or ombudsman, attract media attention, or lead to public criticism of the Minister or department.

71 This section proceeds on the basis of timings the Inquiry has established through a combination of telephone records and sworn evidence. In the absence of an incident log, there were some obvious deficiencies in recall and reliability by individual officers. While it is likely some officers have omitted or conflated some matters of detail, we have not found it necessary to resolve any such conflicts or to level the criticism of inaccuracy against any particular individual.

6.3.1. Inability to locate Mr Smith

At approximately 5.30 pm on 8 November, a senior corrections officer (who supervised Mr Smith's case officer) decided to carry out a spot check on Mr Smith while on his temporary release.[72] At that time, Mr Smith was scheduled to be with Mr Z, one of his two sponsors. The senior corrections officer called Mr Z's home and mobile phone, but there was no answer. The officer then called Mr Smith's sister Joanne Smith. Fair trial . The inference was that Mr Smith was with Mr Z, although this could not be confirmed until someone spoke to Mr Z.

The senior corrections officer passed the information on to the on-call manager for Spring Hill, who was also the custodial systems manager who had approved Mr Smith's release. The on-call manager had been working at the prison until about 4.30 pm, arranging an urgent visit to attend Waikato Hospital for a prisoner whose young child had died in a house fire and whose partner was reportedly suffering from life-threatening injuries. The on-call manager was, at that stage, legitimately off-site at home several kilometres away. There was no Corrections laptop at hand and, although the on-call manager had been with Corrections for eight weeks, remote access to the Corrections computer system was still being actioned. The on-call manager had no relevant prisoner files or access to Corrections' incident management or other procedures.

The on-call manager, in turn, called the deputy prison manager, who was at home in Auckland. The deputy prison manager asked if there was a copy of the release licence. It was not available. The deputy said, technically, there was not yet enough information to conclude Mr Smith was in breach of his conditions, but that the deputy would personally follow up by trying to contact the sister and visiting Mr Z's address, which was not far from the deputy's home.

At that stage, the deputy prison manager's advice was technically correct: it was not possible to conclude Mr Smith was in breach of his release conditions until contact was made with Mr Z. Fair trial .

The deputy prison manager proceeded to make several calls to both sponsors, all without success. The deputy also visited Mr Z's home address, but no one was home. The deputy spoke to the on-call manager again, and suggested the prison manager be notified, along with the Incident Line and, "as a heads up" only, the Police. At this stage, still, there was no clear proof that Mr Smith was in breach of his licence.[73] There were by now, however, grounds for real concern.

6.3.2. Contact is made with Mr Z

At 7.22 pm (according to telephone records) Mr Z returned the senior corrections officer's call and said he had no idea Mr Smith was on temporary release.

At that point it was clear Mr Smith was in breach of his conditions.

Fair trial

The senior corrections officer updated the on-call manager at some point after that; the precise time is not clear.

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72 The senior corrections officer took the initiative with this check; there was no such requirement in Corrections procedures. Unlike at Auckland Prison (Paremoremo), the release licence at Spring Hill included a condition that facilitated such a spot check. Nothing in this report should be construed as a negative comment about the actions of the senior corrections officer on the evening of 6 November 2014.

73 Based on the information available to the on-call manager and deputy prison manager, who did not have a copy of the release licence.

74 Section M.04.06.07 of the *Prison Operations Manual*. Section 63 contains an exception where the person has a "reasonable excuse (the proof of which excuse lies on him or her)" for non-compliance. Fair trial Fair trial

6.3.3. Response to Mr Smith's escape

At approximately 7.30 pm on 8 November, therefore, at least one person at Corrections had information [redacted: Fair trial]. However, it was another 14 hours before Corrections confirmed to the Police that Mr Smith had escaped. For the rest of the evening there were calls to the Corrections Incident Line, the Police (specifically to say that Mr Smith had *not* escaped), and to Mr Smith's sponsors. Remarkably, however, it does not appear that any of the three most senior managers at Spring Hill (all at home but roughly 80 km apart) appreciated that Mr Smith had escaped. Actions which should follow an escape were not triggered.

We consider this was primarily a failure of incident management. Had Corrections invoked its incident procedures, it is fundamental that the known information would have been pulled together by someone with enough seniority and experience to act on it. This is the primary lesson to be learned, a point we return to below.

6.3.4. Notification to prison manager

The prison manager was first informed of the situation around 7.37 pm, and was told about the contact with Ms Smith, but told that efforts were still continuing to contact Mr Z. (In fact, contact *had* been made with Mr Z by that time confirming Mr Smith had escaped, but for whatever reason that information did not find its way to the prison manager.) As a result, like the deputy prison manager earlier, he did not think there was yet a basis to conclude Mr Smith was in breach of his conditions. He did, however, advise the on-call manager to contact Police and the Incident Line.

6.3.5. Notification to Incident Line

At the suggestion of either or both the prison manager and deputy prison manager, the on-call manager informed the Corrections Incident Line on the Saturday evening. This is a line staffed 24 hours a day. The purpose of informing the line is so senior management at Corrections are informed of matters that might be of concern. We have not received any evidence about who was informed of the notification or when. All we can conclude is that the notification does not seem to have resulted in any response in addition to the steps taken by Spring Hill staff on the morning of Sunday, 9 November.

6.3.6. First contact with New Zealand Police

Again at the suggestion of either or both the prison manager and deputy prison manager, the on-call manager called Police at around 8 pm on the Saturday night to give them a "heads up". Although that happened half an hour *after* at least one officer had enough information to conclude Mr Smith had escaped, the call told Police the opposite (see the emphasised passages below).

The Inquiry reviewed a transcript of that call and listened to a recording. The exchange between the on-call manager and Police was consistent with Corrections giving Police a "heads up" with no insistence or offer of any immediate action. In short, neither the on-call manager nor Police were treating the situation as an escape. Had the situation been described as an escape undoubtedly Police would have implemented procedures for a search.

COMMS: How can we help you?

CALLER: I think we've mispla – misplaced an inmate.

…

COMMS: Okay prisoner out on leave is…

CALLER: Unable to be…he's not where he's supposed to be.

COMMS: Okay.

CALLER: He's not with his sponsor.

…

CALLER: He was last seen getting into a cab at 12.30 …

…

CALLER: Fair trial

…

COMMS: So it's been since Thursday he's missing or gone.

CALLER: Well I'm assuming…yeah. I'm …that's what I'm thinking…

CALLER: So he's technically not, **from our point of view he's technically not at large**.

COMMS: Okay.

CALLER: **He is just unable to be .. located**.

COMMS: Okay.

CALLER: **He's not at large until, that licence um return time is** ...

COMMS: Okay.

CALLER: ... **past**. ...

After that call, the on-call manager updated the prison manager and said the prison manager would be updated if any further information became known.

6.3.7. Further contact with Mr Z

At around 10.23 pm on the Saturday night Mr Z returned the deputy prison manager's messages from earlier that evening. Mr Z told him, as he had told the senior corrections officer around 7.22 pm, that he had no idea about Mr Smith's temporary release. Fair trial Fair trial Fair trial At a minimum that underlines the obvious failing in Corrections' incident management structure with information management. There had been no triangulation or integration of the known information, and a further 11 hours passed before Corrections told Police Mr Smith had escaped.

75 By this time, it is apparent that the senior corrections officer had informed the on-call manager.

6.3.8. Assessment of Spring Hill's initial response

Despite the on-call manager's agitation (operating from home without the benefit of records, access to Corrections' Integrated Offender Management System (IOMS), or any other materials), and despite the deputy prison manager, being geographically close to Mr Z, driving to check the address, the overall response of Spring Hill collectively can be described as "passive".[76] A critical escalation point around 7.22 pm was missed, [redacted] critical information was not passed up the chain to the prison manager or deputy prison manager in clear terms, although by approximately 10.30 pm the two most senior managers between them had enough information to join the dots had they spoken to each other. They told the Inquiry they did not confer over the course of the evening. Neither chose to take charge of the situation or treat it as an incident that needed managing at a senior level.[77] Not until Mr Smith failed to return at his scheduled time of 9.30 am the next day did things swing into action.

A critical factor that does not seem to have influenced Spring Hill management on Saturday night was that, by that stage, Mr Smith had been released into the community for over two days but there was no reliable information about where he was or what he was doing.

A different approach by Spring Hill management that displayed a greater sense of precaution in light of the risks potentially posed by this prisoner being at large would have seen Mr Smith's disappearance being treated as a breach on the Saturday evening and a police search commenced then.

6.3.9. Structure of the Spring Hill response

As noted above, Corrections' response did not follow any incident management plan or procedure. As a consequence, the overall conduct of the response lacked the coherence and coordination that it could have had. The option of commencing incident management procedures should certainly have been considered, if not initially, then by soon after 7.22 pm when it was known by the senior corrections officer (through conversation with Mr Z) that [redacted] Mr Smith was at large. At the very least, incident management procedures should have commenced as soon as that information was passed to the on-call manager.

With the benefit of hindsight, giving evidence to the Inquiry the Spring Hill prison manager accepted that an incident management process should have been followed, and would be beneficial for future incidents. His thinking at the time was influenced by the fact Mr Smith was no longer on the prison property. But, obviously, if anything, the public interest in managing the incident was even greater given that Mr Smith was in the community.

Again with the benefit of hindsight, both the northern regional commissioner and manager of Auckland Prison (Paremoremo) agreed they would have used incident management structures for the present situation. For the reasons set out above, the Inquiry concludes Corrections should review its incident management processes to include the actual or potential breach of temporary release.

At a systemic level, we summarise the following shortcomings.

- There was no documented incident management plan for a breach of temporary release conditions; including quick-reference job cards.
- No management training had taken place to deal with this type of incident.
- There had never been any incident management exercises for failures to return from temporary release.
- There was no clear incident controller.

76 *Chief Custodial Officer Review*, 24 November 2014.

77 The prison manager at Paremoremo was of the firm view that, once the Spring Hill staff had ascertained Mr Smith's absence from his sponsor's address, the seriousness of the situation required managing as an incident by the prison manager. We agree.

- Communication was insufficient and possible role confusion occurred among the on-call manager, deputy manager and prison manager.
- No systematic attempt was made to collate and integrate the known information at any point on the evening of 8 November.
- No incident planning took place and no incident log was kept.
- The preliminary notification to Police was ineffective.
- No attempt was made to access or search for any intelligence information, and Spring Hill staff (had they wanted to) had no direct access to intelligence information.

6.4 Conclusions Relating to the Response of Spring Hill

1. By 7.30 pm on 8 November 2014, both sponsors listed on the temporary release licence for 6–9 November 2014 had informed a staff member at Spring Hill that Mr Smith was not with them. Fair trial .
2. There was no established procedure or incident plan to guide Department of Corrections staff in the event of a breach of a temporary release condition, Fair trial Fair trial .
3. Nonetheless, Spring Hill staff should have initiated incident management procedures from at least 7.30 pm on 8 November 2014.
4. Spring Hill senior managers who knew that Mr Smith's whereabouts could not be ascertained should have conferred on the evening of 8 November 2014. Fair trial Fair trial
5. Had Spring Hill better managed the available information, a more urgent response could have been taken on the evening of 8 November. This would have included informing the Police that a prisoner with a very serious offending history had escaped and ensuring registered victims were notified and supported.
6. In the various interactions with the Police, Spring Hill did not give effect to the information sharing envisaged in the memorandum of understanding between the agencies.
7. When serious offenders, especially high-risk offenders, abscond or escape from custodial or community control, a sense of precaution is called for: contingency steps should be implemented promptly and efficiently. The response by Spring Hill was lacking in precaution and consequently in urgency.

6.5 Response by New Zealand Police

6.5.1. Context of the New Zealand Police response

We discussed in chapter 5, the arrangements between Corrections and Police to monitor those on temporary release. We also discussed briefly the knowledge Police had of Mr Smith's temporary release on Thursday, 6 November, and the failure to check on Mr Z's address early that afternoon.[78] This was caused by a Police keystroke error, which was not rectified on either 7 or 8 November.

Police response from the evening of 8 November 2014

The 25 October 2014 notification by Corrections of Mr Smith's pending temporary release from Spring Hill on 6 November was referred to in the daily assessment at Auckland Central police station for 28 October. Unfortunately the Police briefing document contained a keystroke error, which resulted in the police officer who was tasked with visiting the address not being able to do so early on the afternoon of 6 November 2014.

78 Section 5.7.2.

The call to the Police Northern Communications Centre made by Spring Hill's on-call manager at approximately 8 pm on 8 November 2014 was logged by Police Communications as Mr Smith being "at large" until he failed to return to Spring Hill at 9.30 am on 9 November. Given that Spring Hill did not describe Mr Smith as having breached his conditions, Police took no further action that evening.

The next morning (9 November) a senior sergeant coming on duty in the Auckland City District Command Centre was briefed on (among other things) the telephone notification made to the Northern Communications Centre the previous evening. As is usual in the wake of a Saturday night in Auckland, the District Command Centre had many incidents in train. The clear impression conveyed to Police by Spring Hill staff the previous evening was that Mr Smith could not be treated as an escaped prisoner until such time as he failed to return to Spring Hill that morning. But the senior sergeant conducted checks on Mr Smith. She noticed the nature of his convictions and the seriousness of his offending and was of the view that some immediate follow up was necessary. Police officers were tasked to contact Spring Hill and, later in the morning, to contact and interview Mr Z.

Once Spring Hill confirmed that Mr Smith had failed to return to prison and was an escaped prisoner, the senior sergeant tasked various officers to liaise with Spring Hill and carry out inquiries with Mr Z. Checks were also made with Immigration New Zealand to see whether Mr Smith had left the country.

The Auckland City Crime Squad was not tasked to make inquiries until 2 pm that afternoon. Mr Z was visited at his home address and told police he suspected Mr Smith might have left the country, he having previously talked about having a passport and a large sum of money.

At 2.50 pm on 9 November 2014, police advised one of the registered victims of Mr. Smith's escape. This appears to have been the first time that victim was spoken to, as earlier Corrections' efforts to contact the registered victim had been unsuccessful.[79] Police later arranged for another victim's home to be visited by local police officers, and for the victim and one of the victim's children to be moved to alternative accommodation. The victims' experience of Mr. Smith's escape is discussed more fully below.

On the afternoon of 9 November, a police officer in Auckland forwarded to Interpol a request for a border alert in the name of Phillip John Smith. That request was forwarded at 2.48 pm on 9 November. The Interpol office in Wellington used to work on a 24 hours per day, 7 days per week, basis but night and weekend work had been reduced. At the relevant time, the form to request a border alert contained the following statement:

> Border Alerts are only entered between 0700 and 2215 hours Monday to Friday (not public holidays)
>
> Outside the hours above, if you consider your border alert request is immediately urgent please contact [number][80]
>
> Immediately urgent means the person is wanted for a serious crime AND you have credible information they are going to travel outside the times listed above.

In this case, no urgent request was made. As a result it was not actioned until Monday morning, 10 November. The experienced officer handling it was able to discover rapidly from the National Intelligence Application (NIA) that Mr Smith had as an alias his birth name Traynor and that a passport in the name of Traynor had been presented at the border on 6 November.

79 Corrections did speak to another registered victim earlier in the day.
80 Having an emergency number or on-call officer when an office is otherwise closed is a normal practice.

Issues of border security and the processing of alerts outside normal hours and during weekends are thus raised, as is the desirability of requests for border alerts containing all possible name variants of the person in question.

6.6 Conclusions Relating to the Response of New Zealand Police

1. The New Zealand Police interactions with Spring Hill on 8 and 9 November 2014, lacked the clarity and cohesion envisaged in the memorandum of understanding between the agencies.
2. After the Department of Corrections confirmed that Mr Smith was at large, the overall Police incident response was properly conducted.
3. The Police correctly identified the risks posed by Mr Smith and expressed an initial concern for victim notification.
4. The Police should have engaged the crime squad earlier than 2 pm on 9 November 2014, despite other commitments.
5. The processes undertaken by the Police to trigger a border alert, and to establish definitively that Mr Smith had fled New Zealand, were somewhat cumbersome, in part because of resource limitations.
6. Despite the constraints of the wording on the New Zealand Police border alert request form, an urgent request to Interpol should have been made.

6.7 Communications with Mr Smith's Victims

6.7.1. The 1995 victims of Mr Smith's offending

Four victims of Mr Smith's criminal offending in 1995 were listed on the Victim Notification Register operated by Corrections. The Inquiry was assisted by helpful submissions and statements prepared on some of the victims' behalf by Mr N Davidson QC (now Justice Davidson) and his instructing solicitors, Young Hunter.

The submissions and statements were comprehensive. There was no need for the Inquiry to interview the victims further. For obvious reasons, the identity and current whereabouts of the victims will not be disclosed.

There were, in fact, at least five victims of Mr Smith. One of those was murdered by Mr Smith in December 1995. The surviving victims, now all adult, are the deceased man's widow, his sister and his two sons. One son had been the victim of unlawful sexual assaults in the years before the murder. That victim was accosted in his bedroom, where in the early hours of the morning he found Mr Smith standing over him holding a knife. That victim was eventually able to flee. The boys' mother and the younger victim were forced to accompany Mr Smith outside, he being armed first with a knife and later with a rifle. On the arrival of police officers he fled.

6.7.2. Legislative and policy context

The position of victims is covered by the Victims' Rights Act 2002, which was not in force at the time of Mr Smith's 1995 offending. That Act confers on victims several rights (including a right of audience before sentencing courts and the Parole Board). Relevant to the circumstances surrounding Mr Smith's November 2014 absconding is section 35(1) of the Victims' Rights Act 2002, which provides:

> (1) The chief executive of the Department of Corrections must give a victim to whom this section applies—
>
> (a) reasonable prior notice of the offender's—

(i) impending temporary release from custody under section 62 of the Corrections Act 2004 (other than where the offender is to be accompanied throughout by 1 or more constables as a condition of the release):

(ii) sentence of imprisonment being cancelled and substituted with a sentence of home detention under section 80K of the Sentencing Act 2002:

(iii) impending release from prison detention if the offender does not have a parole eligibility date under section 20 of the Parole Act 2002 (because the offender has cumulative sentences of imprisonment of not more than 24 months):

(b) notice, as soon as practicable, of the accused or offender's—

(i) escape from prison detention, unless the accused or offender sooner returns, or is returned to, the place of prison detention:

(ii) death in prison:

Corrections appears to have fulfilled its obligation to inform the family of Mr Smith's various temporary releases as required by section 35(1)(a)(i). The victims' submissions to the Inquiry do not suggest otherwise.

Section 35(1)(b)(i) requires Corrections to notify victims if a prisoner escapes "from prison detention". Although the Victims' Rights Act 2002 requires Corrections to notify victims of a forthcoming temporary release, there is no statutory requirement to inform them of a failure to return from temporary release or, as in Mr Smith's case, if the offender's whereabouts cannot be ascertained.

However, Corrections policy requires in respect of an "offender in prison" immediate telephone notification of victims in the case of an escape or failure to return from temporary release. The victim notification register coordinator is responsible for advising registered victims of a prisoner escape (and other notifiable events). Should the event occur while the coordinator is not on duty, prison management has access to victim information and should make the required calls.

6.7.3. Victim notification and experience of Mr Smith's escape

On the morning of 9 November 2014, the Spring Hill on-call manager attempted to make contact with registered victims. The on-call manager phoned the widow, who was recorded as the authorised representative to receive notifications to which the sons were entitled under the Victims' Rights Act 2002. The on-call manager left a message for the New Zealand–based son, and tried unsuccessfully to contact a third victim.

The Spring Hill on-call manager was the Corrections point of contact through the day until approximately 7 pm when the national manager, victim information began making calls to victims.

No attempt was made by any agency to contact the son of the murder victim (who was also the victim of Mr Smith's child sex offending) living in Australia, until three days later.

The widow is not clear about how many notifications she received of Mr Smith's temporary releases. She does, however, remember receiving a letter informing her of his impending 6–9 November 2014

81 Mr Smith's High Court trial took place in Wellington in mid-1996.

release and thinking that this period (72 hours) was “a really long time”. In mid-February 2014 the widow had written to the Parole Board (as she was entitled to do). In that letter, she mentioned (as she had on previous occasions) Mr Smith’s unauthorised telephone contacts. She also urged the Parole Board to consider carefully its decision and to be “fully aware of how manipulative Mr Smith is”.

The widow recalls receiving a telephone call at approximately 10 am on 9 November from the on-call manager at Spring Hill and being informed “that Corrections could not make contact with Smith and he could not be located”. When the widow asked whether Mr Smith had escaped, she says she received a somewhat equivocal reply, “no, I’m not saying that he escaped”. The on-call manager assured the widow that when Corrections had found Mr Smith they would telephone her and that she was sure the Police would keep an eye on her. Approximately five hours later, the widow says she heard a television news item that Mr Smith had escaped and not been caught. The widow was immediately concerned for her security. She locked her house, armed herself with a knife, ascertained there were no police officers outside, and telephoned Spring Hill. After some delay she contacted the on-call manager who had telephoned her that morning and, so she says, was given the same explanation that Mr Smith had not escaped but Corrections did not know where he was at this point. The widow demanded protection. She called her sons and, by this time greatly distressed, telephoned Police at a regional centre. Approximately one and a half hours later police officers arrived. The widow gained the impression that there had been a “big mix up” so far as the police were concerned in relation to her home address. The widow’s perception is that she had been let down by both Police and Corrections, who were concerned about her safety only because she insisted on some form of protection. The anxiety she experienced appears to have re-traumatised her and she considers herself to be in much the same emotional place that she was in the wake of her husband’s murder over 19 years ago.

Protect privacy son, for whom a message was left by the on-call manager, also received a call from his mother that Spring Hill had “lost contact” with Mr Smith. In response to her distress, he immediately travelled to be with her. This victim’s partner telephoned the Police to request protection for family members.

The son who had been sexually abused by Mr Smith for three years from the age of 10 and who had also witnessed Mr Smith stabbing his father, told the Inquiry about the many subsequent negative effects of this offending on his life. Fair trial Some months before Mr Smith’s absconding the victim moved to another country to re-establish his life.

Initially, the victim was scared that Mr Smith Protect privacy to exact some form of revenge. Like some of his New Zealand family, he locked the doors and windows of his house and placed a knife under his bed. Later the victim received a telephone call from TV3’s *Campbell Live* team wanting to interview him and offering to put his family in a hotel for two nights. The victim moved to the hotel in the afternoon of Tuesday, 11 November. Two hours after the *Campbell Live* interview, the victim received a telephone call from Police in Auckland and calls from Corrections national manager, victim information and from the manager of Parole Board Support Services. As a result of the escape, the victim has been depressed, anxious, angry and embarrassed.

On the basis of the victims’ evidence provided to the Inquiry, we conclude the following from the stand point of the victims.

- All the victims were severely distressed by the knowledge that Mr Smith had failed to return to Spring Hill at the appointed time after his temporary release.
- The perception of the widow was that Spring Hill staff were determined not to use the word "escape".
- Two of the three victims feared (until such time they learned that Mr Smith had departed for South America) that he might well be motivated to seek them out and do them harm.
- The victims considered that the obligation to inform them of Mr Smith's escape imposed on Corrections by section 35(1)(b)(i) of the Victims' Rights Act 2002 was performed in a tardy fashion.
- The victims considered the response of Police was somewhat tardy and confused.

Victims' submissions to Inquiry

Counsel for the victims made comprehensive submissions on several issues raised by our Terms of Reference, which we have considered. It is unnecessary, given the breadth and scope of this report, for us to deal with those submissions individually. But they were helpful and temperate and have been considered.

We have chosen to set out the victims' narratives to the Inquiry in some detail. We consider they should be allowed a voice, which is certainly consistent with the purpose of the Victims' Rights Act 2002. Understandably, some of the dates and sequences might be at variance with the narratives given by other people we have interviewed. There is no useful purpose in our trying to resolve these conflicts. The effect of Mr Smith's escape on members of the family of the man he murdered 19 years previously was distressing and has undone some of the healing brought about by the passage of time.

The victims' submissions single out two issues of particular interest. The first is the judgement that Mr Smith was suitable for temporary release and, in particular, whether appropriate conditions should have been attached to his release for the protection of the victims' family compared with members of the public. The second area of interest is the steps that were taken or not taken to protect family members.

The Victims' Rights Act 2002 imposes a duty on the chief executive of Corrections, which is delegated, to give notice to victims "as soon as practicable" of an offender's escape from prison detention. This duty does not apply to escapes where an offender comes back or is returned to prison detention (section 35(1)(b)(i)). Corrections knew by late evening on 8 November 2014 that Mr Smith was not, in terms of his temporary release conditions, staying at the address he had stipulated. Fair trial . As has been noted by the chief custodial officer, Spring Hill staff's reaction in this phase was "passive". Fair trial

Fair trial

So far as some of the victims of Mr Smith were concerned, there was a designated representative. Difficult issues arise out of section 41 of the Victims' Rights Act 2002, which is cast in mandatory

Fair trial

terms. There will frequently be good reasons why some victims want no further information about offenders. There may be the risk of being re-traumatised. The offending may have occurred in early infancy. The situation that concerns us, however, is that a victim, where mandatory notification is not required, may be at risk. Our recommendation suggests this problem be examined in greater detail.

We accept Mr Davidson's submission that the notification to the victims of Mr Smith's escape came too late and was insufficient to reduce their distress and anxiety. As with other elements of the overall response the communications between Corrections and Police about the management of victims' interests were somewhat uncoordinated.

The chief custodial officer told the Inquiry he felt victims should have been first informed of the situation on the evening of 8 November rather than the following day once Mr Smith failed to return to prison.

The Police have accepted that their response was tardy and that there was confusion, in particular, about the address of one of the victims. Although a job was entered by Police Northern Communications at 2.41 pm on 9 November 2014 to advise police in the town where the victim lives of the escape, police first visited this address at 7.45 pm.

6.8 Conclusions in Respect of Communications with Victims

1. Although the Department of Corrections and New Zealand Police saw the need to communicate with the registered victims, their efforts to communicate could have been earlier, clearer and better coordinated between the agencies.
2. The delays in the Department of Corrections determining that Mr Smith was "at large" meant victims were not contacted as early as they might have been. This potentially created risk for them that the Department of Corrections appears not to have expressly considered.
3. The information the Department of Corrections conveyed to the victims, that Mr Smith could not be located but had not escaped, did not give them a clear or accurate picture of the situation.
4. Difficult issues may arise where a victim has nominated a representative, which could prevent timely notification of the inability to locate an offender.
5. Police protective support for the victims was slower than desirable.

6.9 Recommendations

1. The Department of Corrections should revise the national memorandum of understanding with the Police and its application in the local service-level agreements addressing failure to return from temporary release, breach of conditions of temporary release and prisoner escape from "outside the wire" activity. This should include specific consideration of the risks posed by serious offenders.
2. The Department of Corrections should develop scalable incident management procedures to address actual and potential breaches of temporary release conditions. These should be based, in part, on a wider risk appreciation of "outside the wire" activities, particularly for serious offenders.
3. The Police should engage with and take account of the work undertaken by the Department of Corrections in response to recommendations 1 and 2.
4. The Department of Corrections should not rely passively on registered victims to notify them of changes of circumstance, but should take positive steps, at regular intervals, to confirm contact details and whether victims wish to make other changes, for example, whether victims wish to receive direct notifications or to be notified through an authorised representative or to be removed from the register.

5. Measures to contact registered victims when the whereabouts of a serious offender cannot be ascertained should be reviewed. This review should include consideration of section 41 of the Victims' Rights Act 2002 and whether all victims should be contacted including those with nominated representatives.
6. The Department of Corrections, when the victim notification register coordinator is not on duty, should have a senior staff member on duty who is trained in communication with victims and, when calls to victims are required, makes the calls.
7. The Police should review current border alert processes to:
   (a) achieve greater speed and efficiency – the processes (including forms) must be readily understandable and operable for frontline staff
   (b) ensure after-hours requests are acted on promptly.
8. The Police should plan for the early involvement of Interpol when a prisoner's whereabouts cannot be ascertained (including a prisoner on temporary removal or temporary release).
9. When the Department of Corrections notifies the Police that the whereabouts of a prisoner cannot be ascertained, it should also provide Police with the most recent contact details for any registered victims, so the Police can contact them and assess whether protection or additional support is required. Depending on the risk as assessed by both the Department of Corrections and New Zealand Police, some situations may warrant a high degree of urgency in responding to victims' protection.

PART THREE

INFORMATION SHARING, IDENTITY AND PASSPORTS

7.1 Introduction

This section of the report addresses three related topics: information sharing, identity in the criminal justice system and passports. Having set out the current systems and processes, we identify various gaps in the systems and the interim measures recently put in place to try to close or narrow them. Finally, we describe how Mr Smith and others exploited the gaps, and make recommendations for change. There is one combined set of recommendations, recognising the interrelated nature of the topics.

The last 15 years have seen a tidal wave of change in the closely related areas of data and information storage, electronic communications, photographic surveillance and identity information. The topic has the potential to polarise public and political opinion. Global and domestic security concerns have led to the collection of much metadata relating to private communications. Outside the security area many governments in liberal democracies expect, and are entitled to, assurances that welfare and other services are reaching the people entitled to them. Riding with the highly sophisticated communications and data storage involved are concerns about privacy breaches where private and confidential information is accidentally disclosed (sometimes in bulk) to people not entitled to see it, or illegitimately accessed.

Our discussion of information sharing and identity verification recognises there is no simple resolution of these competing concerns. The Inquiry has identified gaps that the criminal justice system might be well served by narrowing or closing. We are not the first to wrestle with these issues. The Ministerial Inquiry into the Employment of a Convicted Sex Offender in the Education Sector (Miki Inquiry) addressed misuse of identity and information sharing between government agencies and made recommendations for change.[83] We build on the work of that inquiry.

7.2 People Subject to the Criminal Justice System

This Inquiry's Terms of Reference require us to focus on those who must remain in New Zealand because of their particular status in the criminal justice system. So what are the various categories of people subject to the criminal justice system? The categories below spring from the various phases of the criminal process. Alleged offending, which will result in a person entering the criminal justice system for the first time, will be almost infinitely various. Not many alleged first offenders will receive a sentence of life imprisonment but some might. The status of people we list below will inevitably include repeat offenders and multiple offenders. We have also, under each category, attempted to list some of the special features that information and data sharing by relevant state agencies would have to manage. The first two categories below relate to the pre-trial phase; the remaining categories relate to the post-conviction phase.

7.2.1. People arrested and summonsed

When people are arrested and summonsed the offending is only alleged. It has not been proved in a trial or court hearing. There is an important distinction between people who are arrested and people who are summonsed. A person who has been arrested must be produced before a court, where he or she will be remanded in custody or released on bail. A person who is summonsed for

83 M Smith and J Aitken. 2012. *Ministerial Inquiry into the Employment of a Convicted Sex Offender in the Education Sector*.

an offence will not appear before court until such time as the first call date stipulated in the summons. In respect of a person awaiting a court hearing who has been summonsed, there is no obligation to remain in New Zealand.

7.2.2. People on bail

The granting of bail involves the exercise of a discretion. The discretion must be exercised in terms of the various criteria contained in the Bail Act 2000. A variety of factors must be considered, including the core factors set out in section 8 of that Act. Essentially, the function of bail is to allow an alleged offender to remain at large in the community with appropriate conditions to minimise various types of risk. Reoffending while on bail and flight risk are clearly relevant. For minor offences, courts rarely will impose significant conditions. One condition invariably imposed, particularly in respect of serious alleged offences and offending by foreigners, will be to surrender a passport to the court registrar (or to the police officer in charge) and/or not to apply for a travel document.

A salient problem with information and data sharing in this area (between the Ministry of Justice and Department of Internal Affairs (Internal Affairs)) is that bail and its terms are not fixed in stone. Before trial, bail terms might be varied. It is not unknown for judges to permit an alleged offender, where the risk is assessed as being low, to travel overseas for a stipulated period for private or family purposes. Some alleged offenders have been permitted to live overseas pending trial. Bail in some cases may be continued pending sentence. If a person is acquitted, or is convicted and a sentence is imposed, then the bail order obviously ceases. The subtleties of these variations would, in any information-sharing process, need to be assessed. The collapse of a bail order on acquittal is clearly important. So too if a convicted offender is not sentenced to imprisonment or a community-based sentence.

That said, conditions of bail restricting passports (both New Zealand and foreign) are unlikely to have been imposed unless the prosecution seeks such a term and a judge considers its imposition appropriate. Breaches of bail are not uncommon. Fortunately, serious offending by a person on bail is rare, but when it occurs great distress results. Inevitably, there are critical media stories, public disquiet and victim outrage. It is never desirable, nor is it in the interests of justice, that serious offenders on bail awaiting trial should have the option of easily pushing open a door and leaving the country.

Quite apart from passport-related bail conditions, other conditions may be imposed, such as curfews, residential restrictions and regular reporting requirements to police stations. When public risk of further offending by people released on bail is controlled in this way, it is clearly not in the public interest that bailed alleged offenders should be able to leave New Zealand undetected.

The problems referred to elsewhere of alleged offenders who may hold solely a foreign passport or both a New Zealand passport and a foreign passport, need to be addressed. The Minister of Internal Affairs has no power to prevent a foreign state issuing or renewing passports to one of its nationals.

7.2.3. Supervision and intensive supervision

Supervision and intensive supervision are non-custodial sentences designed to assist offenders through varying degrees of probationary oversight while keeping them in the community. Family and other reasons may well make it appropriate for an offender subject to such a sentence to leave New Zealand for a period. However, the departure must have the approval of the probation officer. If, as a matter of policy, the Government considers people in these categories should require permission to leave New Zealand, then Internal Affairs and the New Zealand Customs Service (Customs) will need to be notified in every case when travel permission is granted.

7.2.4. Home detention and community detention

Home detention and community detention are court-imposed sentences restricting (without a probation officer's leave) the movements of an offender outside his or her home. Compliance is monitored electronically through a fitted ankle bracelet. People in this category should not be permitted to leave New Zealand during the course of their sentence.

7.2.5. Prisoners

Prisoners' international travel is obviously incompatible with a sentence of imprisonment.

7.2.6. Parolees

Many prisoners will be released on parole (or on release conditions the effect of which is similar to parole) at some stage between their parole eligibility date (usually at one-third of their sentence)[84] and the end of the sentence. [redacted] We see merit in the Parole Act 2002 being amended so that such a prohibition is a standard condition. Since parole is under the general supervision of a probation officer, it is not inconceivable that permission to leave for a short period or specific purpose might be granted.

7.2.7. Indeterminate sentences

People who are serving life sentences and the other indeterminate sentence of preventive detention are, in theory, never outside the reach of the criminal justice system because when released they remain on parole for life. Subsequent offending or breach of parole conditions can result in a recall to prison. It will not necessarily follow that such people should be prohibited from international travel or leaving New Zealand (although they may be subject to immigration restrictions imposed by another state). However, for consistency, life parolees should require the permission of a probation officer to obtain a passport or travel internationally.

7.2.8. Extended supervision orders

Extended supervision orders are generally imposed on child sexual offenders, who constitute an ongoing risk. In essence, the orders continue parole-like conditions after the expiry of parole. They currently last up to 10 years (with provision for renewal) and invariably contain tightly controlled residential conditions. Supervision of these offenders outside New Zealand would not be possible.

7.3 Justice Sector and Related Information Systems

7.3.1. Justice sector information systems

We turn now to information sharing among state agencies and the matching of data relating to people who should remain in New Zealand because of their status in the criminal justice system. We consider that changes are necessary to ensure certain people subject to the criminal justice system are effectively prevented from leaving New Zealand.

Until 2005, most justice sector information was stored in a single computer system, the National Law Enforcement System, commonly known as the Wanganui Computer. By the time the Wanganui Computer was decommissioned, its information had been transferred to the three main justice sector agencies: New Zealand Police (Police), the Ministry of Justice, and Corrections. As a result, justice

84 Section 84(1) of the Parole Act 2002.

sector information is now stored by separate agencies with different protocols, using different computer systems. This adds a layer of complexity to any attempt to improve the way agencies share information.

We briefly describe the current systems as follows.

New Zealand Police

The main Police database is the National Intelligence Application (NIA). NIA holds information on people who have interacted with Police as suspects, offenders, victims, or witnesses, among much other law enforcement information.

NIA information on offenders includes biographic and biometric data (such as a gender, height, physical description and a photograph), current charges, alerts (such as drug user status, escape risk, or threats by or against the offender), and alias names or nicknames.

Every person recorded in NIA is assigned a person identification number. If a person is charged with an offence, he or she will be assigned a person record number (PRN) if they do not have one from a previous charge. PRNs were the identification numbers used in the Wanganui Computer, and continue to be used by justice sector agencies to identify those charged with and convicted of offences. As of 17 April 2015, there were 4.6 million person identification numbers in NIA, of which 1.5 million had at least one PRN. As discussed below, an individual may have one "master" PRN, linked to one or more "alias" PRNs.[86]

Ministry of Justice

The Ministry of Justice operates the Case Management System (CMS),[87] as part of the Ministry's support for the constitutionally independent courts. This system is numerical – each charge is allocated a unique reference. It is not designed around a name or identity. CMS is also the repository of recorded convictions (listed against the name of the offender and his or her relevant PRN). Lists of criminal convictions play a vital part in bail and sentencing hearings and must be available to the court, prosecution and defence counsel. Frequently, but not always, a defendant appearing before the court will have his or her alias, "also known as …", appearing in the charging document. Similarly, aliases will frequently appear in criminal history records.

The Ministry of Justice also maintains a system that holds information on people owing fines or other financial penalties (such as criminal reparations). This system is called COLLECT and is operated to support court registrars and bailiffs to enforce fines and other financial penalties such as reparation.

Department of Corrections

Corrections stores information about offenders in the Integrated Offender Management System (IOMS). IOMS includes information about sentenced prisoners, remand prisoners and offenders subject to community-based sentences.

Different information is held on IOMS depending on the status of an offender. For example, IOMS generally holds more biometric information (such as photos and physical descriptions) on prisoners than it does on offenders on community-based sentences.

IOMS also stores a large amount of other non–identity-related information, including prisoners' sentence management information (for example, "outside the wire" activities such as temporary removals and temporary releases) and other information necessary for the running of the department and prisons, such as details of disciplinary breaches and prisoner incidents.

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86 See section 7.4.4.

87 The CMS also stores information relating to civil cases and other information, forms and data necessary for the operation of New Zealand's courts.

Corrections also has a separate database to store intelligence information. Maintenance of the law Maintenance of the law

Related systems

There are other relevant systems beyond the criminal justice sector.

The New Zealand Transport Agency (NZTA) maintains a driver licence register that includes the licence holder's full name, address, gender, date and place of birth, the licence number, the licence photograph, organ donor information and information about orders revoking, suspending or disqualifying the licence or its holder.

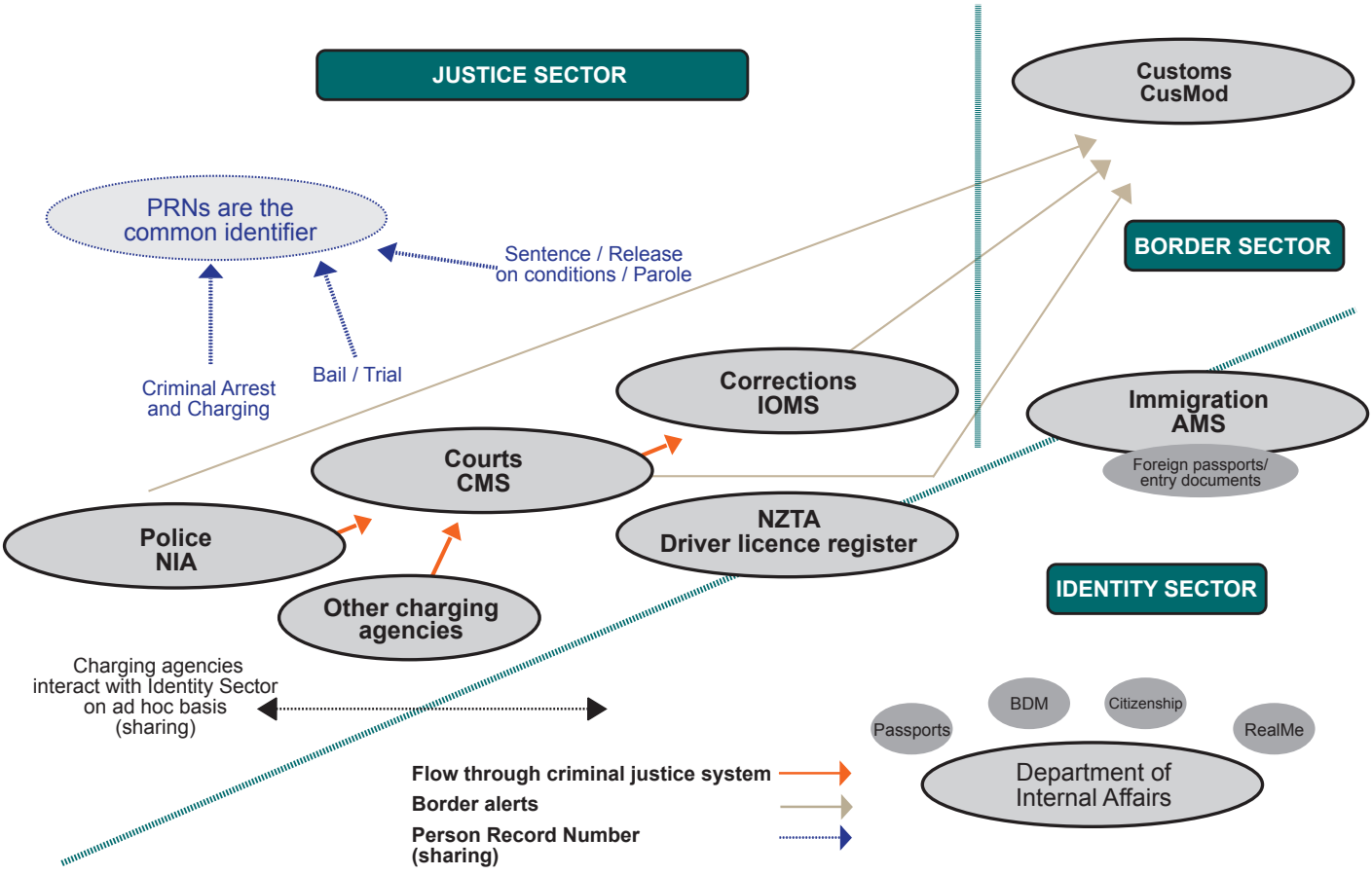
Some information about youth offenders is held by the Ministry of Social Development.

Information about special patients is held by various district health boards and the Ministry of Health.

In the border sector, Customs holds information about people crossing the New Zealand border in CusMod, and Immigration New Zealand (Immigration)[88] stores information about people who are not New Zealand citizens entering New Zealand in the Applicant Management System (AMS).

The various systems and the way the justice, border and identity sector agencies currently manage and exchange information are depicted in the chart below. The direct link from Corrections to Customs for border alerts commenced following Mr Smith's escape.

Figure 7.1: How the justice, border and identity sector agencies manage and exchange information



88 Immigration New Zealand is a service of the Ministry of Business, Innovation and Employment.

7.3.2. Justice Sector Information Strategy

In the last 20 years there have been four cross-agency strategy documents intended to coordinate the management of justice sector information. The first was in 1996, the work of a multi-agency committee. The intention of that document was to coordinate information initiatives and make sure agencies could access, share and manage information in a cost-effective and efficient way. Justice sector agencies would each maintain their own policies and systems but would ensure interoperability. Since 1996, the Justice Sector Information Strategy has had three updates, in 2003 (covering the period 2003–2006), 2006 (2006–2010) and 2013 (2013–2015).

In 1999, there were two significant failures of public sector information technology projects: Police's Integrated National Crime Information System (INCIS) and the Department for Courts' contract for new technology to modernise the collection of fines. This led to a State Services Commission inquiry, Information Technology Requirements for Police and Related Justice Sector Agencies.[89] This inquiry considered, among other things, the risks of agencies migrating their law enforcement system components to new platforms and the further risks of such systems lacking compatibility and interoperability. The inquiry's recommendation was that there should be a sector-wide "enterprise information store" that would permit information sharing and data exchange among justice sector agencies and also with other agencies, particularly the Children and Young Persons Service (now Child, Youth and Family in the Ministry of Social Development) and health, education and social welfare agencies. The re-absorption of the Department for Courts into the Ministry of Justice in 2003 probably impeded progress. The Ministry of Justice had lead responsibility for establishing the information store.

In 2003, the Ministry of Justice launched a justice sector "data warehouse", primarily to aggregate data for research, statistical and forecasting purposes. It was not an operational tool for agencies to share information on an individual or a day-to-day basis.

The goals of the Justice Sector Information Strategy for 2003–2006 were to "establish an authoritative base of justice information, increase information and knowledge sharing across the sector, make justice information available through a choice of channels … and provide efficient processes for managing information and information-related initiatives".

Between 2006 and 2010 the focus of the strategy was on "maintaining the quality and efficiency of information management … to meet rising standards for cross-agency data sharing".

The most recent (2013) iteration of the strategy followed what was described to the Inquiry as the "revitalisation" of the Justice Sector Information Committee with the creation of a new Justice Sector Information Strategy Governance Group.

The 2013 strategy takes into account the Better Public Services programme and e-government initiatives for whole-of-government policy. The former was seen as requiring innovations in policy and service delivery to deal with long-term problems that cut across agencies (eg, youth crime). The latter sought new flexibility – including earlier and more preventative interventions – through delivering information in real time to frontline operational staff.

This in turn has given rise to a new initiative – Intelligent Justice Sector – which the Ministry of Justice told us was intended "to strengthen the secure, timely and efficient sharing of critical information across the Justice sector to improve public safety, support decision makers, while enhancing the quality and efficiency of services and operations".

The goal of a joined-up and interoperable justice sector remains a work in progress, albeit that the progress has not been rapid. The development of these systems has been an evolutionary process of

89 State Services Commission. 1999. *Information Technology Requirements for New Zealand Police and the Related Justice Sector Agencies.* Wellington State Services Commission. www.ssc.govt.nz/police-justice-sector-it-requirements.

steps and stages arriving incrementally. We conclude that the end of the post–Wanganui Computer phase has been reached. Incremental developments may no longer suffice to meet operational needs.

7.4 Identity Management and Aliases in the Criminal Justice Sector

7.4.1. Identification, names and aliases in New Zealand

Identification is the process of associating identity-related attributes with a particular person.[90] The most commonly used identity attributes are a person's name and date of birth. According to guidance recently published by Internal Affairs, names can be divided into two categories: official and assumed names.[91]

"Official names" are those validated against an authoritative identity data source: birth certificates, citizenship certificates or passports. Internal Affairs holds this information for New Zealand citizens. Immigration New Zealand holds the information for non-citizens.[92]

"Assumed names" are all other names, except those used for deceit. These may include married names, preferred names and other informal names. Assumed names are very common and perfectly lawful.

The terms "anchor name" and "anchor identity" refer to the first official name established in New Zealand at:

- birth – when recorded by Internal Affairs on a birth certificate or citizenship by descent certificate
- first entry into New Zealand – when recorded by Immigration.

By definition, anchor names should not change, other than in very rare circumstances.

To use Mr Smith as an example:

- Phillip John Traynor is Mr Smith's official and anchor name (on his birth certificate and passport); he has never registered a change of name
- Phillip John Smith is an assumed name, which Mr Smith is lawfully entitled to use other than for deceit and under which he was prosecuted.

The other important category is that of "false names", which are used dishonestly for the purpose of crime or deception.

7.4.2. Proof of identity in New Zealand

Many countries choose to establish identity with a national identity card. However, New Zealand does not issue a national identity card; neither do Australia and the United Kingdom. The principal identity documents and systems in New Zealand are as follows.

Passports and RealMe

The New Zealand passport and the identity component of the RealMe Verified Account are two identity credentials in New Zealand that contain rigorously checked identity attributes and links to the individual. About 75 percent of New Zealanders hold a current passport. RealMe is a government-approved online form of identity verification that is relatively new to New Zealand. It was not considered in detail by the Inquiry. More information can be found on the RealMe website.[93]

Passports are considered in further detail in section 7.5.

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90 Department of Internal Affairs. 2009. *Evidence of Identity Standard* (version 2.0). Wellington: Department of Internal Affairs, p 34. www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Evidence-of-Identity-Standard-Index?OpenDocument.

91 Department of Internal Affairs. 2014. *Good Practice Guidance for the Recording and Use of Personal Names* (Version 2b Final, August). Wellington: Department of Internal Affairs, p 6. ww.dia.govt.nz/vwluResources/Guidance_recording_use_personal_names_pdf/$file/guide_recording_and_use_personal_names_pdf.pdf.

92 With the exception of non-citizens born in New Zealand, whose birth certificates are held by Internal Affairs. Internal Affairs administers the Births, Deaths, Marriages, and Relationships Registration Act 1995, Passports Act 1992, Citizenship Act 1977, Electronic Identity Verification Act 2012 and Identity Information Confirmation Act 2012.

93 RealMe website: www.realme.govt.nz.

Birth certificates and name change

Internal Affairs, through the Registrar of Births, Deaths and Marriages, is responsible for registering births in New Zealand. The Registrar also administers the process of *change* of official name in New Zealand (formerly referred to as change of name by "deed poll").

Registration of a name change is not a legal requirement. At common law in New Zealand, a person can lawfully use a new (assumed) name without registering it, so long as the new name is not used for fraudulent or improper purposes. The assumed name is established simply by using it and by repute, and the change comes into effect when the person starts using the name. Examples include married names, transliteration of Māori names, Anglicisation of names and changing the order of names.

Registered name changes are common, however. There are between 6,000 and 7,000 registered name changes in New Zealand each year. The issues in relation to identity-related offending and registered name changes were fully canvassed in the Miki Inquiry to which we now turn.

Miki Inquiry

As noted above, in 2012 there was a ministerial inquiry into the employment of a convicted sex offender in several schools.[94] The birth name of the offender was Henry Te Rito Miki, and we refer to the inquiry as the Miki Inquiry. It is not necessary to set out the facts of the case in any detail. In essence, through a combination of fraudulent use of documents, evading detection and various changes of name, Mr Miki was able to deceive school boards of trustees, school principals and the New Zealand Teachers Council, and evaded, for some years, probation officers and the consequences of an extended supervision order made in the High Court in 2010.

Part of Mr Miki's *modus operandi* involved registering two name changes under the Births, Deaths, Marriages and Relationships Registration Act 1995. The names used are subject to final suppression orders. Throughout his life Mr Miki had apparently used some 53 different names or name variants. The name changes involved (towards the end of his offending) a stolen identity and the issue of a passport in one of the names he had assumed to avoid detection.

The Registrar-General informed the Miki Inquiry that during the 12-year period from 2000 to 2011 the average annual number of applications filed was 7,375. The inquiry also noted that "anecdotal information" suggested that the change of name process was used to obtain a passport in a completely new name so that a person could leave New Zealand when they might otherwise be detained at the border for legal reasons or to obtain some other advantage.[95] The inquiry, commenting on identity theft, observed correctly that such a theft was of concern to the community and government and that the name change process "contains a significant identity-related risk".[96]

The Births, Deaths, Marriages, and Relationships Registration Amendment Act 2015, enacted in March 2015, addressed that risk by providing that the Registrar-General may require a person applying for registration of a name change to provide "any means of identification that is reasonably necessary to confirm [his or her] identity".[97]

The Miki Inquiry also recommended that urgent consideration be given to require the office of the Registrar-General to notify any registered name change to the Internal Affairs Passports Office, Customs and Immigration.

Schedule 1A of the Births, Deaths, Marriages and Relationships Registration Act 1995 sets out the agencies to be provided with name change information by the Registrar-General. Internal Affairs is

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94 M Smith and J Aitken. 2012. *Ministerial Inquiry into the Employment of a Convicted Sex Offender in the Education Sector* (Miki Inquiry).
95 Ibid, Part 3, section 2, paragraph 18.
96 Ibid, paragraphs 19 and 20.
97 Section 21A of the Births, Deaths, Marriages and Relationships Registration Act 1995.

one such agency, for the purposes of verifying whether a person is eligible to hold a New Zealand passport or for New Zealand citizenship. The Ministry of Business, Innovation and Employment is another such agency, for the purposes of verifying a person's citizenship status or entitlement to reside in New Zealand and to update and verify immigration records. Customs is not included, presumably because its records derive from passport information, so there is no added benefit in its being notified directly of name changes.

Maintenance of the law

The Ministry of Justice is authorised to receive marriage information and civil union information (but not name change information) "for the purpose of verifying a fine defaulter's name change".

As discussed further below, this Inquiry considers further reform may be necessary to avoid the potential for confusion about criminal identities in the criminal justice sector.[98]

Driver licences

Most New Zealand residents aged over 16 hold a driver licence.[99] It is illegal to drive a motor vehicle without one or outside the licence's terms. The underlying philosophy is that driving a motor vehicle is not a right but a privilege extended to drivers who have demonstrated to NZTA's satisfaction that they have the competence to drive safely and have a working knowledge of the applicable road rules. NZTA informed the Inquiry that as at June 2014, there were approximately 3.32 million current New Zealand driver licences, and during the preceding 12 months around 191,000 new licences were issued and 295,000 licences renewed.

Since 1999 New Zealand driver licences have included a photograph of the driver. This was a marked change from previous driver licences (many of which were issued for life). The previous format of a licence was transitionally replaced by the new photo identification licence.

Unsurprisingly, driver licences in New Zealand have become a form of identity card. They are a convenient size and are seen to have credibility as identity documents. This status has been specifically recognised in New Zealand legislation covering a variety of fields such as motor vehicle sales, real estate agents, maritime security and personal property security.

In many cases producing a driver licence to a police officer will constitute proof of identity at the point of entry into the criminal justice system when a driving offence is involved.

NZTA contracts out its responsibility for receiving and processing driver licence applications. The major contractors are the New Zealand Automobile Association (AA), Vehicle Testing New Zealand and Vehicle Inspection New Zealand. Over the years, the prerequisites for an applicant for a new licence to prove his or her identity have been tightened. Acceptable documents include a New Zealand passport, an overseas passport, a New Zealand firearms licence and a variety of secondary documents. One of the documents presented must include a photograph. Changes to the surname on driver licences can be effected by producing a marriage certificate or a name change registration from Internal Affairs.

Mr Smith obtained a photo driver licence on 10 May 2013 at AA Driver & Vehicle Licensing in Constellation Drive, Auckland (while on a temporary removal with a corrections officer from Paremoremo), in the name of Phillip John Traynor. He produced as evidence of identity his birth certificate and a Westpac Bank statement. Those were legitimate and acceptable forms of evidence of identity under the then operative Land Transport (Driver Licensing) Rule 1999. Hypothetically, had Mr Smith applied for a new driver licence after the 2014 amendment to the Rule came into force, he could still have obtained one in the name of Traynor by producing either his passport (photo identity) or some other form of photo identity. NZTA did not have the ability, either in 2013 or today, to link

98 See section 7.6.5.

99 The issue of driver licences and their format is governed by the Land Transport Act 1998 and Land Transport (Driver Licensing) Rule 1999.

any application by Mr Smith for a licence in the name of Traynor with the original licence issued in 1989, because it was issued before 1999.

Other identity documents

Other documents often accepted in New Zealand as proof of identity include firearms licences, student identification cards and 18+ cards, all of which carry the most common form of biometric information: a photograph. However, the student identification cards and 18+ cards are not verified to a sufficiently rigorous standard to be used for official purposes.

7.4.3. Establishing identity upon entry (and re-entry) to the criminal justice system

Police lay about 80 percent of all charges in New Zealand. Under the Policing Act 2008, police have the power to take "identifying particulars" of those in custody or suspected of committing an offence. Identifying particulars are:[100]

- the person's biographical details (for example, the person's name, address and date of birth):
- the person's photograph or visual image:
- impressions of the person's fingerprints, palm prints or footprints.

In practice, when a person is arrested or detained, police carry out a series of checks that in essence involve comparing the person arrested or detained against information held in NIA.[101] Initial checks can be carried out by using mobile devices carried by police on patrol, over the radio or by any Police computer. Fingerprinting can verify the identity of a person who has previously entered the criminal justice system and whose details are stored in NIA. Larger police stations also now have Livescan machines that electronically record fingerprints instead of inked prints. Livescan machines provide real-time identity information and quality control of the images captured. These images are transmitted to the Police Automated Fingerprint Integrated System (AFIS).

In general, ascertaining the identity of a person who has previously been arrested and charged and to whom a PRN has been assigned is a relatively routine and error-free procedure for Police. NIA holds biographical details, a photograph, criminal history details and fingerprint information of previous offenders.

Identity problems, however, may arise in situations where a person is stopped or arrested who has not previously entered the criminal justice system. In most cases the identity of such a person will be admitted, be verified and not give rise to any problems. But that is not always the case. Many people will enter the criminal justice system through traffic offences, particularly blood alcohol offences flowing from roadside checks and breath screening. In some cases, false identities may be given.

We are satisfied that police officers are generally thorough and do their best, with the available systems and procedures, to establish the identity of people who are apprehended. The systemic difficulty, however, is the lack of efficient access to information that would confirm official identity. This flows from the lack of interoperability between the systems in the justice and identity sectors. This is discussed further in section 7.6.2.

Moreover, there is no requirement for Police or any charging agency to confirm *official* identity at the point of charge. An alleged offender, whether arrested or summonsed, may be charged under an official or assumed name depending on the information available and the judgement of the charging officer. In many cases, an offender may be charged under an assumed name, for example:

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100 Section 32(5) of the Policing Act 2008.
101 We do not in the public interest intend to give a full narration of how these checks are carried out.

- an alias or informal name
- a name supported by a New Zealand driver licence that might not necessarily reflect that person's official name
- a name used by a foreign-born person that does not match the name in his or her passport.

Confirming official identity for such people can be challenging for Police. Internal Affairs has an Identity Information Confirmation Service providing real-time lookup facilities for authorised agencies to receive confirmation of birth, death, marriage, civil union, citizenship and passport information under the Identity Information Confirmation Act 2012. However, the Act requires the consent of the individual whose information is sought. If the individual does not consent, police officers requiring this information must make a manual request to Internal Affairs. This is normally responded to on the same business day, but there is no out-of-hours service. This has obvious limitations for 24-hour Police operations.

Also Police do not have immediate access to identity information for foreigners entering the criminal justice system for the first time.

Fingerprinting will identify those who re-enter the system by way of arrest, whatever name is used. But in the absence of such a link, there is a risk that people may be prosecuted in the justice system under one identity, but retain access to a "clean" alternative identity – whether lawful or otherwise.

7.4.4. Unique identifier for people charged with offences: person record numbers

As set out above, any person who enters the court system charged with an offence will be allocated a PRN. Most of the time, the PRN will be created by Police, but many other government departments, Crown entities and territorial authorities also prosecute criminal offences. In 2012, 96 percent of charges were filed by five agencies:

- 81% by Police
- 10% by Corrections[102]
- 2% by the Inland Revenue Department
- 2% by the Ministry of Social Development
- 1% by the Crown Law Office.

For most non-Police prosecutions, the Ministry of Justice creates PRNs directly through CMS, and these are shared with other agencies in the same way as Police PRNs.

A PRN series is allocated to Corrections. However, in practice when Corrections brings a charge and needs to create a PRN it asks Police to do so on its behalf.

The use of PRNs by agencies as an identifier is governed by the Justice Sector Unique Identifier Code 1998, which was issued by the Privacy Commissioner and has not been substantively revised since. The code applies to Police, the Ministry of Justice, Corrections, NZTA, the Registrar of Motor Vehicles, and the Ministry of Social Development. As discussed above, only the first three of these entities generate PRNs. The code also provides for NZTA to assign identifiers for the purposes of issuing driver licences.

Sometimes, through a person's use of different names and/or through a person being charged with offences by different agencies, a person can have multiple PRNs. Agencies may merge PRNs into a single PRN or may link different PRNs as a "master" PRN and one or more "alias" PRNs. Such merging or linking depends on a given agency's view that there is sufficient evidence that different

102 Corrections lays charges, among other things, for breach of community-based sentences such as supervision and community work.

PRNs apply to the same person, and depends on agencies' (differing) business rules for merging or linking.

In 2014, the Ministry of Justice led a pilot project entitled Single Client View, as a first step towards providing an integrated view of individuals in the justice sector. The work identified a number of problems with the current systems, in particular:

- multiple PRNs being created for the same offender
- differences in the way PRNs are merged among different agencies
- restrictions on linking or merging PRNs created by different agencies
- flaws in the way PRNs are communicated across different agencies.

The issues go beyond PRN management. For example, Police sometimes add to the NIA identity records "alias names" that a person may use. This information is not necessarily passed on to other agencies. Thus, when Police in March 2012 added to Mr Smith's NIA identity the alias name "Phillip John Traynor", that particular alias name was not visible to other agencies with access to Smith's PRN (and nor were any of his other aliases). Of course, some of those agencies had already identified that Mr Smith sometimes used his birth name of Traynor. (For example, Corrections became aware of a birth certificate in the name Phillip John Traynor in 2007.)

7.4.5. Identity issues relating to Mr Smith

It was not until after Mr Smith's escape that the Police created a Traynor PRN and linked it to the Smith master PRN. Corrections requested this to ensure the Traynor and Smith names were linked for PRN purposes.

It is interesting to note that Police, although aware Smith used the name Traynor, appear not to have known this was his birth name until after his escape. As one senior police officer told the Inquiry, from a Police perspective Mr Smith's registered birth name of Phillip John Traynor was an "alias" used by the offender known to them for almost two decades as Phillip John Smith.

It is not merely the linking of names but the de-linking of names that must be considered. In 2014 at Mr Smith's request a deputy registrar separated the linked names Phillip John Traynor and Phillip John Smith in COLLECT, the fines collection system. The deputy registrar made inquiries but found no linkage of the names in any of the databases checked. There were, however, databases that at that date had the names linked in their systems, including those of Police and the Ministry of Social Development.

In summary, at the time Mr Smith left New Zealand, all three criminal justice sector agencies (Police, Corrections and the Ministry of Justice) were aware or had at some point been aware that Phillip John Smith was also known as Phillip John Traynor. However, there was no consistent visibility of the linkage; no "single client view". Several agencies outside the criminal justice sector also knew that Smith and Traynor were the same person, but this knowledge was generally gained on an ad hoc basis at different times. The lack of a single client view across these agencies was an important factor in Mr Smith's escape.

LINKING OF THE SMITH AND TRAYNOR NAMES BY GOVERNMENT AGENCIES

These are the dates on which the specified government agencies linked in their databases the names Phillip John Smith and Phillip John Traynor.

Ministry of Social Development

Work and Income: 12 November 1991

StudyLink: 9 October 2002

Ministry of Justice (Courts)

Fines Management (COLLECT): 17 March 2008

The two names were de-linked at Mr Smith's request on 6 May 2014. They were relinked following his departure from New Zealand.

Case Management (CMS): 12 December 2014

This link was made using the Traynor PRN created by Police after Mr Smith's escape.

New Zealand Police

NIA: 1 March 2012

Staff were aware at the operational level of the two names in the 1990s but the link was not made in Police intelligence systems until 2012.

New Zealand Transport Agency

Driver licence register: 14 November 2014

Department of Corrections

IOMS: 16 December 2014

This link was made using the Traynor PRN created by Police after Mr Smith's escape.

Department of Internal Affairs

Passports: Linkage made after Mr Smith departed New Zealand in 2014

Inland Revenue Department

Information could not be obtained because of secrecy provisions of Tax Administration Act 1994

The Inquiry's main conclusions, developed further below, are that:

- the justice sector does not have a single client view
- the justice and border sectors do not share information efficiently
- Police and other prosecuting agencies do not always confirm official identity at first charge
- Police are not informed regularly of registered name changes.

7.5 Passports and Border Control in New Zealand

7.5.1. Introduction

All three clauses in our Terms of Reference require us to focus on passports. Clause (a)(i) specified the means whereby people in the criminal justice system identified themselves, passports being one of the identifying documents specified.

Clause (b)(iii) asked us to inquire into Mr Smith's ability to obtain a passport (which gave him the potential ability to leave New Zealand). Clause (b)(iv) focused on Mr Smith's ability to leave New Zealand on a passport on 6 November 2014. Finally, clause (c)(ii), which raised the important topic of information disclosure and sharing between state agencies and its application to people whose status in the criminal justice system would require them to remain in New Zealand. This clause asked us to explore reasons for cancellation or refusal of a passport under the Passports Act 1992 and how this was dealt with operationally.

Without a passport, Mr Smith would almost certainly have been unable to leave the country. Possession, issue and retention of passports are highly relevant to minimising the risk of future departures from New Zealand by people subject to the criminal justice system in respect of whom sentences and orders require them to remain in New Zealand.

As is apparent from the next section, the issue of New Zealand passports to New Zealand citizens is controlled by New Zealand legislation. However, many New Zealand residents and citizens are entitled to passports issued by foreign states. New Zealand residents and citizens may also, as a result of foreign legislation, be entitled to hold foreign passports in addition to a New Zealand passport. New Zealand has no authority to legislate or control the manner in which a foreign state issues its passports.

7.5.2. Statutory overview

The Passports Act 1992 governs the issue, control and cancellation of New Zealand passports. Internal Affairs administers the Act. Various statutory powers conferred by the Act on the Minister of Internal Affairs are delegated to departmental officers.

Section 3 of the Passports Act, unless there is a statutory provision to the contrary, confers on all New Zealand citizens the right to a New Zealand passport. The provision provides:

> **3 Citizen's right to passport**
>
> Except as provided in this Act, every New Zealand citizen is entitled as of right to a New Zealand passport.

A related duty is imposed on the Minister of Internal Affairs to issue a New Zealand passport to all New Zealand citizens who apply for one (section 4):

> (1) Except as provided in this section and section 4A, the Minister shall issue a New Zealand passport to every New Zealand citizen who makes an application, or on whose behalf an application is made, for a New Zealand passport.

Section 4A relates to matters of national security.

A New Zealand passport is a document of considerable integrity. The checks that precede the issue of a passport are thorough and carried out to a high standard. There is no culture of corruption

surrounding the officials of Internal Affairs to whom the Minister has delegated authority to issue passports. The detail contained in chips embedded in New Zealand passports make changes or forgery extremely difficult. Finally, because of New Zealand's international reputation and bilateral arrangements, a New Zealand passport permits entry to a large number of nations without the need to obtain a visa. These advantages, of course, make New Zealand passports attractive to criminals and terrorists. It is self-evident that the use of a New Zealand passport to abscond from prison undermines the integrity of New Zealand passports.

Section 4(3), to which we shall return, provides:

> **4 Issue of passport**
>
> (3) The Minister may refuse to issue a New Zealand passport in any of the following cases:
>
> …
>
> (b) where—
>
> (i) there is in force a warrant issued in New Zealand for the arrest of the applicant; or
>
> (ii) the applicant is on bail or is subject to a community-based sentence under subpart 2 of Part 2 of the Sentencing Act 2002, or a sentence of home detention under subpart 2A of Part 2 of the Sentencing Act 2002, or is released under subpart 2 of Part 1 of the Parole Act 2002; or
>
> (iii) the applicant is required by an order made by a New Zealand court to refrain from obtaining a passport or to surrender a passport; or
>
> (iv) the applicant is subject to an order made by a New Zealand court that requires the applicant, or the effect of which requires the applicant, to remain in New Zealand; or
>
> (v) the applicant is subject to a sentence imposed by a New Zealand court, the effect of which requires the applicant to remain in New Zealand:

The administrative and legal consequences of this provision are of great importance to the Inquiry's passport-focused clauses in the Terms of Reference. Parliament has conferred on the Minister of Internal Affairs a discretion. That discretion is to refuse to issue a New Zealand passport in a number of cases (specified in section 4(3)). To exercise that discretion, the Minister must turn his or her mind to the issue. All but one of those provisions covers New Zealand citizens who are subject to the criminal justice system. The ministerial discretion to refuse to issue a New Zealand passport extends to:

- people awaiting trial whose bail conditions restrict the possession or issue of a passport
- people who are subject to custodial or community-based sentences, the effect of which requires them to remain in New Zealand
- New Zealanders subject to indeterminate sentences (life imprisonment or preventive detention)
- parolees, all of whom, when released into the community, will be subject to release conditions preventing them from leaving New Zealand without the permission of a probation officer.

7.5.3. Issue of a New Zealand passport to Mr Smith

Mr Smith was a New Zealand citizen by birth, entitled to a New Zealand passport by virtue of section 3 of the Passports Act 1992 in his official name Phillip John Traynor.

He first obtained a passport in that name in September 1983, when he was aged 9, and used it at least twice as a child to travel overseas.

On 19 June 2013, Mr Smith signed a passport application form. Such forms are easily (and properly) obtainable from a variety of sources, including printable versions online and from travel agents. When he signed the form, Mr Smith was a prisoner in Paremoremo.

The completed application form was received by Internal Affairs five days later on 24 June 2013. The application form was paid for by Visa "Prezzy" card to meet the Internal Affairs passport issue fee of $134.50.

The day after the application was received, on 25 June, Mr Smith telephoned the Internal Affairs call centre, gave the application form number, and changed the contact telephone number of his identity referee. This change was noted in handwriting on the passport application form.

An Internal Affairs officer duly processed Mr Smith's passport application. The Internal Affairs automated processing application is sophisticated and designed to trigger a large number of "alerts" in situations where an application contains information that points to further inquiries being prudent.

One aspect of Mr Smith's application led to further inquiry. Over a quarter of a century had passed since the extension of Mr Smith's previous passport. His original photograph (as a child) was thus insufficient as a check on his identity. The processing officer telephoned the identity referee, Christopher Clifton, whose contact details had been provided. Mr Clifton gave the passport officer false information about Mr Smith's residence and employment. Fair trial Fair trial In January 2015, Mr Clifton pleaded guilty to offences under the Passports Act 1992 in the Wanganui District Court and for that, and other offending, was imprisoned.

Mr Smith's passport, all legitimate inquiries by Internal Affairs having been concluded, was issued on 1 July 2013 Fair trial.

Fair trial

Fair trial

The conclusions we reach over the issue of a passport to Mr Smith in July 2013 are as follows.

1. Section 3 of the Passports Act 1992 entitled Mr Smith, as a New Zealand citizen, to a New Zealand passport.
2. Internal Affairs was unable to exercise the discretion to refuse Mr Smith's passport, because it had no information about prisoners to form a basis on which the discretion could be exercised.
3. The referee check on Mr Smith was subverted by the referee (who was convicted and sentenced for his conduct).

Fair trial

Given that he was a serving prisoner, Mr Smith fell within section 4(3)(b) of the Passports Act 1992. Internal Affairs has said it would have declined him a passport, had it known he was a prisoner.

7.5.4. Foreign passports

Possession of or entitlement to a foreign passport presents different problems and considerations for the objective of ensuring people who are subject to the criminal justice system do not leave New Zealand without permission. New Zealand passports must be issued as of right to New Zealand citizens. A person can be a New Zealand citizen by birth or a person of foreign origin who has obtained a grant of New Zealand citizenship under the Citizenship Act 1977.

A grant of New Zealand citizenship, however, and the subsequent issue of a New Zealand passport will not necessarily result in the loss of a citizen's entitlement to a foreign passport. Anecdotally (it not being possible in the absence of any data to fix on any precise figure), tens of thousands of New Zealanders hold more than one passport. The second passports for foreign-born New Zealanders will be the original or renewed foreign passport held at the time of a grant of New Zealand citizenship. There are additionally New Zealand-born citizens who, in terms of the citizenship and nationality laws of the country from which their parents or even grandparents originated, are entitled to a foreign passport.

There is, of course, nothing untoward about New Zealand citizens holding passports in addition to their New Zealand passport. Convenience for foreign travel and rights of residency and employment will make a foreign passport attractive. It follows, however, that a New Zealand passport might not be the sole document used to check the identity of people arriving at or departing from New Zealand borders. The only reliable stored information relating to foreign passports is held by Immigration. But that information is far from comprehensive. Any foreigner who requires a visa to visit, reside in or work in New Zealand must produce a valid foreign passport before a visa can be obtained. Should a visa holder subsequently apply for and be granted New Zealand citizenship, then Internal Affairs relies on Immigration, from passport information, to confirm the new citizen's identity. Once New Zealand citizenship has been granted, Immigration and Internal Affairs will not retain or obtain details about subsequent renewals of a foreign passport of a New Zealand citizen or the issue of foreign passports to that person's eligible children.

Internal Affairs has no control over the issue of foreign passports to people resident in New Zealand;[103] nor, given the integrity of foreign states and international comity, can any branch of New Zealand's government compel a foreign state to refuse to issue a foreign passport to an entitled person.

103 This topic is mentioned earlier in section 7.5.1.

These obvious facts create difficulties in the area of people who are subject to New Zealand's criminal justice system. A foreign passport may be evidence that the holder's identity has been established to the satisfaction of a foreign state, but the biographical details may not necessarily coincide with the identity (particularly with regard to names and their order) by which that person is known in New Zealand.

As mentioned earlier,[104] on international standards the care and accuracy taken over the detail of a New Zealand passport before it is issued is very high. The same cannot be said of the passports of all foreign states. In an age where millions of people have been dislocated, forced to flee from their homelands or seek for economic reasons a better life in other countries, passports can be fabricated, forged or falsely issued. False identities can be assumed. These factors may present the New Zealand criminal justice system with particular problems of identity verification and resolution.

Information about the number of people currently subject to the criminal justice system who are foreign and/or hold overseas passports is incomplete. The Inquiry sought information from Corrections and Immigration on this topic. Some of the information, recorded in IOMS, is self-reported by the prisoner and has not been verified. There is limited data matching between Corrections and Immigration to identify those with deportation orders or not entitled to remain in New Zealand. Subject to those caveats, as at 31 March 2015, of a total of 8,761 prisoners, 75 were reported as having dual citizenship; 280 were recorded as not having New Zealand citizenship; of those 280, 97 had New Zealand residency status. There is no information on the 75 prisoners who claimed dual citizenship as to whether they held foreign passports. The citizenship status of a further 604 prisoners was unknown.

If one excludes from the 31 March population those prisoners whose citizenship is unknown, then the proportion of prisoners with dual or foreign citizenship is 4.4 percent. There is no information on the citizenship and foreign passport entitlement of the people on bail, subject to community-based sentences or on parole.

So far as serious offenders are concerned who have not claimed New Zealand citizenship, it is probable that, subject only to a right of appeal to the Immigration and Protection Tribunal,[105] that category will be deported. In respect of foreigners, particularly those facing serious charges such as drug importation and drug manufacture, a remand on bail is unlikely. However, bail on relatively serious charges such as rape and serious assault is not unknown and may be granted appropriately by a court. In that situation, the possibility of flight overseas to avoid the costs and risks of a criminal trial is a real possibility.

The one firm determinant (subject to identity fraud and corruption when the foreign passport was obtained) of the identity of foreigners resident in New Zealand is that a visa or permit will not be issued to a foreigner by Immigration until passport information and photographs have been supplied. This information is stored. Paradoxically, when a foreigner applies for New Zealand citizenship, the identity information held by Immigration is the basis (extending to biographical information and photographs) on which a grant of New Zealand citizenship will be made and, in many cases, the basis for the consequential issue of a New Zealand passport.

The possibility of a foreign passport or dual nationality being used by people who are subject to the criminal justice system cannot be excluded. People who are serving sentences or on bail may well have an entitlement or access to a foreign passport, about which law enforcement agencies have no knowledge. This situation presents a variety of risks, not confined to flight.

104 See section 7.5.2.
105 Sections 201 and 206 of the Immigration Act 2009.

For example, had Mr Smith been the progeny of a United Kingdom-born parent, it would have been possible for him to have obtained a United Kingdom passport in the name of Traynor and to have left New Zealand on that passport. One way to minimise the risk of flight is to ensure border alerts are in place, based on accurate biographical and biometric information.

Immigration has supplied us with information about the various agencies with which it shares data. Missing links from Immigration's standpoint are full data matching with Police to enable identity to be confirmed and full data matching with Corrections, again to confirm identity. We recommend that those links be established.

7.5.5. Passports at the border

A passport serves multiple functions at the border, in addition to its function as an identity document. At a primary level, it is a document of identification issued by a state to its citizens to be presented to the border officials of another state that those citizens wish to enter. A secondary purpose of a passport for states such as New Zealand that do not permit unimpeded and unchecked movement across the border is a means of recording and checking the identities of people who enter or leave the state. Globalisation and the speed of travel have led, in recent decades, to the identity function of passports being used by states for wider national security purposes (to check the flows of drug traffickers, international criminals, terrorists and illegal migrants). Many states require air carriers to sight and/or record in advance passport and visa details of passengers.

Apart from a few rare exceptions, it is not possible to leave New Zealand through an airport without presenting a passport. By this means, Immigration (whose agent at the border is Customs) can record the numbers and details of citizens, permanent residents and visiting foreigners leaving the country. These border control functions are all performed with statutory authority. Although the primary purpose of border control was seen as the scrutiny of incoming people, goods and materials, in recent times monitoring outward movement has assumed significance.

For many years, it has been possible for alerts to be placed at the border so people subject to the criminal justice system who should not leave New Zealand are stopped. Such alerts are placed in Customs information system (CusMod). The alerts are usually transmitted to Customs by Police through its Interpol section in Wellington. One long-standing class of people subject to border alerts are children in respect of whom the Family Court has made orders under the Care of Children Act 2004 preventing their removal from New Zealand. Such orders, and the related border alerts, have been a potent check on child abduction and children being unlawfully removed by a parent from New Zealand.

It is not in the public interest that we detail in our report specifically how the CusMod alert system works and the categories of people whose movement across the border is impeded or monitored. Suffice to say that, as a result of Corrections' reaction to Mr Smith's departure to Brazil, the number of alerts placed in CusMod and the related work of Customs staff have increased significantly, as described further in section 7.6.3.

7.6 Gaps in the System, Interim Measures and Agency Proposals for Change

In this section we identify the principal gaps in the current systems, the measures that have already been taken to try to address those gaps and agency proposals for change. In doing so, we reflect in part on a report jointly written by the Ministry of Justice, Corrections, Police, Internal Affairs, Customs, Ministry of Business, Innovation and Employment (Immigration) and Ministry of Health. The report, dated 30 June 2015, is entitled *Multi Agency Review of Phillip Smith Traynor (aka Phillip Smith) Incident*, and we refer to it simply as the Multi-Agency Report. This followed an initial report in December 2014, and an update in March 2015.

7.6.1. The justice sector does not have a single client view

For at least two decades it has been recognised that benefits would flow from more robust information sharing and interoperability among justice sector information systems. Over that time agencies have repeatedly carried out reviews and produced reports acknowledging areas of deficiency. Despite a succession of initiatives over that period, the sector has been constrained by a variety of policy, legislative, technical and other considerations from achieving a high level of automated interoperability across systems. To cope within these constraints agencies have instituted ad hoc arrangements for necessary operational purposes. In 2012, the Miki Inquiry specifically warned about silo effects and excessively compartmentalised information within the justice sector and beyond, including the identity and border sectors and other parts of government.

The criminal justice sector information repositories today still have limited interoperability with each other, and it is a wider public policy issue as to whether and how to overcome this. The latest version of the Justice Sector Information Strategy (for 2013–2015) identified this issue, and listed the following problems with present systems.

- Information is not managed as a strategic asset. Discrete agencies build and enhance systems with minimal regard to whole-of-sector needs. Information received by one agency from another often has to be transformed in order for it to be used.
- Data quality is variable, and there is inadequate information to support good decision making. For example, each sector agency uses (slightly) different ethnicity codes, and unique identifiers cannot be relied on to accurately match 100 percent of offenders with aliases.
- Data and information are held in silos, making reuse of data difficult. We do not always know if the data we are using is from an authoritative source or what changes might have been made to it since it was first captured.
- We have variable business intelligence practices (the analysis, interpretation and reporting of information).
- A lack of geospatial data is limiting the sector's analytical capability.
- There is room for improvement in what and how the sector publishes for external audiences.

This analysis corresponds closely with the views the Inquiry heard about the relative significance of the risks and the cost–benefit of a further "evolutionary leap" to a higher intensity of data sharing to ensure "relevant, accurate and timely information is available to support the common business needs of all agencies in the justice sector and their customers" (as stated in the 1996 Justice Sector Information Strategy). This includes the concept of a "single client view". Such issues always engage strong views and competing values. Because of these factors and complex benefit–cost trade-offs financially, technically and otherwise, they usually create bureaucratic caution if not wariness.

It is not part of this Inquiry's function to review or critique the work of officials over the past 20 years in this area; nor does this Inquiry have the competence to comment on and assess the many technical issues and problems arising out of data collection and storage. However, consistent

with our Terms of Reference, we make the following observations based on the briefings and evidence we received during the course of the Inquiry.

- The development of optimal information sharing within the justice sector remains a work in progress. Different state agencies have different objectives and priorities.
- The agencies involved have displayed an understandable preference for improving their own information technology systems and capacities, rather than focusing on developing and designing a system that would benefit all agencies in the justice sector, particularly in light of budgetary limitations.
- Over the last 15 years there has perhaps been a lack of leadership and, certainly, so far as we can detect, any sense of urgency.
- The cost and failures of past computer systems (which were introduced with enthusiasm) have cast a long shadow and encouraged caution.
- Wider government policy interests, leading to departmental initiatives (such as tracking families at risk of domestic violence) have perhaps overshadowed some of the original objectives.

We do not know whether the failure to create a comprehensive system for sharing information and data by those agencies charged with administering the criminal justice system is the result of departmental caution, ministerial direction, resource limitations, governmental priorities or various combinations thereof.

It became clear to the Inquiry that staff of agencies proposing common information systems and information sharing felt constrained by privacy legislation. We do not express an opinion on whether those constraints were real or merely perceived. There certainly appeared to be an abundance of caution when it came to information sharing for fear of a breach of privacy legislation. For his part, the Privacy Commissioner indicated to the Inquiry he was very willing to engage with criminal justice sector agencies on options for information sharing provided by the Privacy Act 1993, including through Approved Information Sharing Agreements created in consultation with the Privacy Commissioner.[106]

7.6.2. Next stage of justice sector information sharing

Our Terms of Reference invited us to inquire about the current and possible future states of justice sector information management systems and architecture. Our broad view is that the time has arrived for a decisive and comprehensive evolutionary step beyond the post-Wanganui Computer phase. A future state is by definition a mix of the ideal and the possible. In Appendix 5 we address the ideal. In Appendix 6 we make the point that other jurisdictions are worth exploring to see whether the vision for the future state of justice sector information sharing is supported by comparable international best practice. North Carolina is the example we have chosen.

Mr Smith's case highlights the importance of having a reliable unique identifier that can be used across the justice sector so identity data on offenders can be matched accurately across different agencies. Currently, the unique identifier is the PRN, inherited from the Wanganui Computer days. There have been attempts in recent years to deal with the weaknesses acknowledged by all relevant agencies in the use of PRNs by agencies.

The most recent comprehensive report in the area was the 2014 internal report Justice Single Client View Pilot Project Findings, which we describe as the Tenzing Report.[107] The Ministry of Justice led the project with participation from Corrections, Police and Child, Youth and Family.

106 For Approved Information Sharing Agreements, see Schedule 2A of the Privacy Act 1993.
107 Tenzing is a consultancy the Ministry of Justice engaged to assist with the project.

The report found there is no integrated view across the justice and social development sectors of an individual's interactions with the care and protection, youth justice, criminal justice and benefit systems. Such an integrated view of these interactions is described as a "single client view".

The team carried out a pilot project to match agency-supplied data and see whether a comprehensive cross-agency view could be achieved. This confirmed what was already known, namely that there are problems achieving such a view.

The report reached eight key conclusions, which we summarise as follows.

1. Despite currently available information and tools, some form of human intervention is always required to create a new master PRN or an alias PRN.
2. As a result of different methods employed by Police, Corrections and the Ministry of Justice, the assignment of master PRNs may not only differ but Corrections may assign a master PRN or an alias PRN to an identity Police considers is a different person.
3. The merging of PRNs by Police based on fingerprints and DNA matching (and sometimes by photographs) might be improved by Police additionally using Internal Affairs' evidence of identity to establish and confirm the identities of individuals.
4. Merging of PRNs and identities in NIA, despite the fact one of two merged identities will be overwritten, does not result in a total loss of data.
5. Corrections no longer creates PRNs.
6. Neither the Ministry of Justice nor Police always has "visibility" of each other's PRNs.
7. A new charge laid by Police cannot be linked to an existing Ministry of Justice PRN.
8. Several technical problems are encountered when endeavouring to match data to obtain a single client view.

The Tenzing Report came up with recommendations, along with agencies' view of the benefits, costs and proposed next steps. The table of recommendations is in Appendix 7.

The recommendations appear sensible. They address well-known issues with current systems and propose improvements to systems and procedures to ensure they operate as intended: to give criminal justice agencies an ability to track criminal justice sector interactions with a given person.

Agencies have subsequently raised the possibility that a "single charging agency" could be established in New Zealand, which, of course, would address some of the complexities with PRNs. This would remove inconsistencies between agencies in the recording of identity information at the time a charge is laid, but would be a radical change and might give rise to greater questions in relation to criminal procedure in New Zealand. The Inquiry has not received any evidence on this topic.

7.6.3. Justice and border sectors do not share information efficiently

The subject of the efficient sharing of information by the justice and border sectors was canvassed in the Multi-Agency Report. It is helpful for us to discuss the Multi-Agency Report findings in a general way. The Multi-Agency Report identified gaps in information exchange between criminal justice and border agencies, highlighted by Mr Smith. Two points in particular are noted.

- Internal Affairs had no information that Mr Smith was serving a sentence of imprisonment when it assessed his passport renewal application in 2013. This meant consideration was not given to whether his application should be refused under section 4(3)(b)(v) of the Passports Act 1992.
- Similarly, Customs had no information that Mr Smith was a prisoner. If a border alert had been put in place he could have been prevented from departing and referred to the airport police.

We discuss each of these points in turn.

Lack of information provided to the Department of Internal Affairs when issuing passports

Internal Affairs does not receive comprehensive information about any category of offender or person subject to charges from the relevant law enforcement agencies. When Mr Smith applied for a passport under his birth name of Traynor, Internal Affairs held no information that he was a serving prisoner under any of his names. Had his birth name been Phillip John Smith, and had he applied for a passport under that name, even as a serving prisoner and with a long and serious criminal history, he still would have been issued a passport.

The Multi-Agency Report recommends no change to the status quo. The reasons given are as follows.

- Significant resources would be required. In most cases information supplied by the justice sector does not allow automated matching with passport applicants; significant manual work would be needed.
- Even once an apparent match is established, there is a time and resource impact deciding whether in the particular case a passport should or should not be issued.
- New Zealand cannot stop those eligible from getting passports from another country.
- Incorrectly refusing to issue a passport (or delaying the issuance of a passport) because of an apparent match of information with a person subject to sentence, could mean a person misses a critical life event such as a family member's funeral.
- Border alerts are a more efficient way to deal with the perceived gap.

Despite these points, this Inquiry considers that serious offenders subject to the criminal justice system should not be permitted to hold, obtain or renew a passport. We discuss this issue in greater detail and make recommendations below.

Border alerts for those subject to the criminal justice system

Other than for fine defaulters in respect of whom an arrest warrant has been issued, Customs has never received comprehensive information about people subject to the criminal justice system.[108] Border alerts have mostly been entered at the discretion of Police in particular cases, for example, those on bail thought to be a high flight risk.

Since Mr Smith's escape, the groups shaded green in Table 7.1 have been subject to border alerts. It is proposed to extend border alerts to those shaded blue.

Table 7.1: Groups subject to border alerts (green) and proposed to be subject (blue**)*

Sentence or order imposed	Snapshot at 30 November 2014[1]
Temporary release*	27[2]
Extended supervision order*	228
Parole*	2,335
Released on conditions*	2,666
Home detention*	1,632
Post-detention conditions (served after home detention)**	1,177
Intensive supervision**	2,427
Community detention**	1,454
Total	**11,946**

Notes: 1 Snapshot data shown: if an offender is serving more than one sentence or order, only the most serious is counted to avoid offenders being counted twice.
2 The figure given here is for 30 November 2014, a Sunday. Most temporarily released prisoners are released to work and are therefore not included in the total. On 28 November 2014, a business day, 207 prisoners were on temporary release.

108 Comprehensive information is received about orders relating to removal of children from New Zealand. The Internal Affairs view expressed to the Inquiry was preventing removal of children is a clear priority over preventing flight of offenders.

The Multi-Agency Report notes the major resource implications for Customs if the current levels of alert were expanded, and the lack of justification for expanding alerts to cover lower-level offenders.

The Multi-Agency Report does not recommend bulk transfer of information to Customs about all people subject to arrest warrants. Police has existing procedures and believe these work well. More broadly, Police considers there is no need to change the existing discretionary procedures relating to Police-requested border alerts. A move to transfer details of all approximately 14,000 warrants to arrest to Customs would place considerable strain on the existing Customs system and processes requiring significant additional investment.

Others who have left New Zealand when subject to orders requiring them to remain

We asked Police to provide us with details of cases similar to Mr Smith, where people subject to the criminal justice system had successfully fled from New Zealand by using passports in different names. Several examples follow. It is not suggested that these are exhaustive. They each demonstrate aspects of the overall deficiencies in information sharing and interoperability among justice, border and identity sector systems.[109]

A was released on electronically monitored bail in March 2012. His bail conditions included surrendering a passport. Four months after his release he married and legally changed his surname. While still on bail, he flew to Australia in January 2013 having obtained a New Zealand passport under his new name. He was subsequently found in Australia and extradited.

Kristopher Owen Glen Willoughby was released on conditions in September 2014. His release conditions included attending a programme and reporting to his probation officer. Three weeks after his release he flew to Australia using a fast-tracked New Zealand passport. No border alert was in place. He voluntarily returned to New Zealand when arrested for new offending in Queensland. (Of note the consequence for his breach of conditions – to report to a probation officer – was a new sentence of 40 hours' community work.)

B was sentenced in April 2014 to serve a period of home detention imposed for various dishonesty offences. In July 2014, Internal Affairs asked Police whether Mr B was on bail, in custody or of interest to Police because he had applied for a New Zealand passport. (This request demonstrates the value of some of the alerts that the Internal Affairs system will trigger in respect of passport requests.) Police informed Internal Affairs that Mr B was not in custody, on parole or under a warrant and was of no interest to it. Four days before his home detention sentence was due to expire, Mr B flew to Chile using his existing foreign passport. No border alerts were in place.

Another case demonstrating some of the problems arising from name changes was that of Abraham Koura, an Egyptian who obtained New Zealand citizenship in 1992 under the name Ebrahim Mohammed Ebrahim Aboukoura. Mr Koura was released on bail in Christchurch in May 2012. One bail condition was that he had to surrender any passport held. This information was not provided to Internal Affairs until 12 June 2012. Three days after his release on bail Mr Koura reported that his passport had been stolen. He registered his police report under the name Abraham Koura, although his passport was in the name Ebrahim Aboukoura. Two days later Mr Koura applied to Internal Affairs for the fast-track issuing of a passport as Sameer Abraham, a name change he registered in 2003. He disclosed on his passport application form that his birth name was Ebrahim Aboukoura. A passport was issued and Mr Koura departed for Australia on 13 May 2012. A border alert was in place at the time using the surnames Koura and Aboukoura, which was ineffective given the name on his passport was Sameer Abraham.

Brian James Curtis, a notorious, now deceased, offender escaped from Paremoremo in August 1993 while serving a 12-year term of imprisonment. How he left New Zealand is unknown. When he was

109 In three examples it is uncertain how the offenders left New Zealand. It is, therefore, not possible to be definitive about the role of information sharing in those cases.

arrested in the Philippines in 2001 and returned to New Zealand, he was found to be in possession of a stolen German passport.

Brandon Victor Pillay escaped from Tongariro Prison in August 2001, where he was serving a 15-month term of imprisonment. It is not known how he left New Zealand. For both him and Mr Curtis border alerts were in place. He was arrested in the United Kingdom in May 2013, having committed a murder there.

Paul Wayne Howard escaped from Tongariro Prison on the same date as Mr Pillay. He was serving a 2½ year term of imprisonment. He was arrested in Australia a few weeks later. A border alert was in place. He informed Police that he had stowed away on a container ship.

In January 2004, C was sentenced to four years' imprisonment for sexual offences against under-aged females. He was released on parole in March 2007, and an extended supervision order was to come into effect when his parole period ended in September that year. Mr C disappeared in August, resulting in an arrest warrant. Unbeknown to Corrections, Mr C had fled New Zealand for the Philippines, travelling on a false passport in the name of a person he had befriended. As with Mr Smith, there was no border alert in place for him under his own name; he would likely have been able to leave New Zealand under his own name. In July 2009, Mr C was arrested by the Philippines police following a domestic dispute, and it was discovered he was living in the country without a valid visa. He was deported to New Zealand in March 2010, charged with passport offences, breach of parole and extended supervision and sentenced to three years' imprisonment.

As a consequence of Mr C's case, Corrections and the then Minister considered whether to amend sentencing and parole legislation to limit overseas travel by offenders. The Minister agreed, on advice, that this step was not necessary – based on the ability of the Ministry of Justice, Corrections and Internal Affairs to match information when issuing passports. Given the detailed analysis we have given to these issues, we intend to recommend to the contrary.

One result of the post-C review was, however, the development of practice guidance for probation officers in 2011. Staff are required to inform Internal Affairs if they are concerned a particular offender is at risk of leaving New Zealand during a sentence or order. This guidance was updated in May 2014.

Biometric identifiers for border alerts

Approximately 10,000–11,000 alerts are active in CusMod at any given time. The border alert system uses "fuzzy logic", which in practice leads to false positives: an alert may trigger for a traveller whose biographic data has similarities with the data of a person for whom a border alert was placed. The more alerts loaded, the more false positives that can be expected, which can lead to significant operational and resource difficulties.

Once an alert is triggered, a customs officer must take steps to see whether the traveller is the person to whom the alert properly relates. In respect of Corrections border alerts, this checking procedure means an outbound passenger has to be stood to one side while, in a control room, a customs officer telephones a Corrections number, which is staffed 24 hours per day, to request details and a photograph of the person to whom the alert relates. This checking procedure can take anything from 5 to 30 minutes. The longer time frames may occur where confirmation is required from Community Corrections that an offender has approval to travel, or where airport police attend to cross-reference NIA identity and photograph information. Confirmation of the person is determined by the three agencies' agreement.

Customs is rightly concerned with the possibility of reputational damage should, as a result of a false positive, a passenger miss his or her outbound flight.

[redacted]
Maintenance of the law

In respect of some of the alerts triggered, permission to travel internationally had been given by probation officers but this permission needed to be verified.

[redacted]
Maintenance of the law

Current legislative authority for Corrections to photograph offenders is limited to photographing prisoners for the purpose of facilitating the management and security of a prison.

[redacted]
Maintenance of the law

Corrections also advises it would require legislative authority to take other biometric identifiers, such as fingerprints. The necessity to do this will depend on the nature of the automated system and Customs' information requirements. The Inquiry understands that the Ministry of Justice and Corrections will report to their Ministers on the most effective way to expand Corrections' photograph-taking (and, if necessary, other biometric information) authority for the purposes of sentence and parole management, including mitigating flight risk.

Agencies have raised the concern that any proposal to expand the gathering of biometric information about offenders could constitute a "search" for the purpose of section 21 of the New Zealand Bill of Rights Act 1990, which affirms the right to be free from unreasonable search and seizure. Legislative authorisation would remove any doubt in this area. The public interest reasons justifying photographing offenders are compelling.

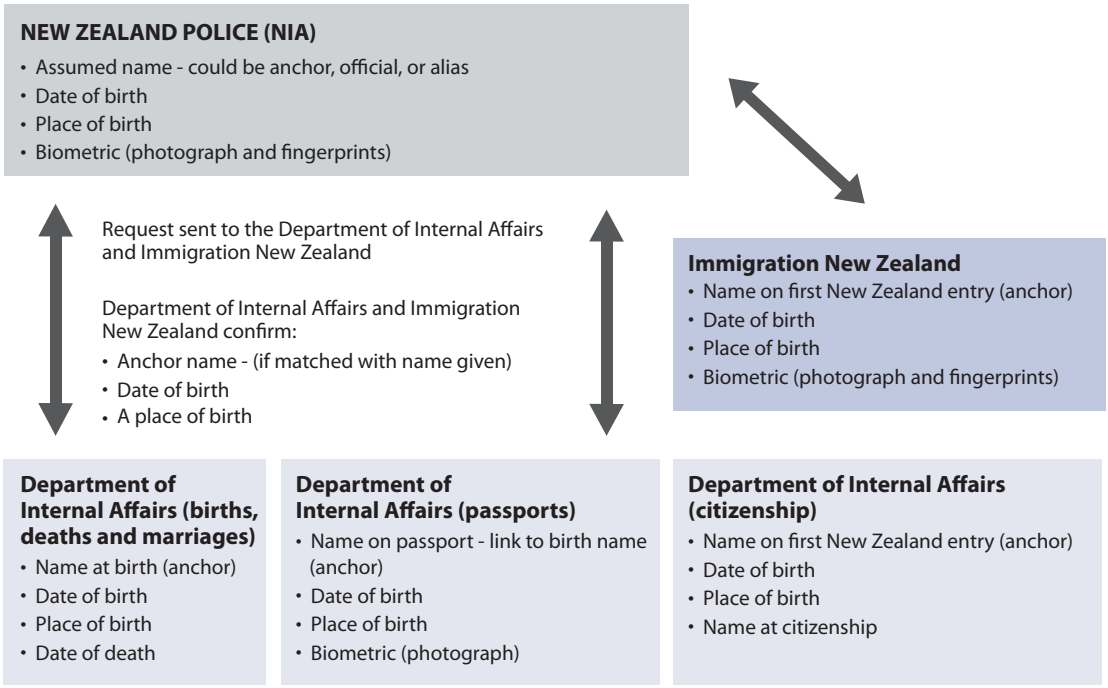
7.6.4. Police and other prosecuting agencies do not always confirm official identity at first charge

As noted above, Police do not consistently confirm an official identity at the point of charge. So far as the Inquiry is aware, nor do any other prosecuting agencies.

The Multi-Agency Report proposes an automated real-time system for Police requests to Internal Affairs or Immigration for identity information. This is not a priority for Police, who consider the existing process sufficient. But Figure 7.2 shows the way the system would work.

110 Email to the Inquiry from Customs dated 28 May 2015.
111 Alerts are placed in CusMod by other government agencies besides Corrections.

Figure 7.2: Proposed automated real-time system for New Zealand Police requests to the Department of Internal Affairs or Immigration New Zealand for identity information



Police considers that if the proposal is to work, an automated system providing real-time results is vital. For example, a member of Police might enter the person's details through a new NIA interface that queries Internal Affairs and Immigration databases and receive an instant and automatic response. To create a fully automated system capable of real-time responses several databases will need to be linked and the system will need to be able to cater for existing and new offenders. Agencies will need to investigate the feasibility of a unique identifier for each offender across all the participating agencies. Without some form of unique identifier, any identities with matching or similar details would be returned and the police officer would need to determine which, if any, of the identities returned was the correct one. Even if unique identifiers could be used, there will still need to be, on occasions, a level of human input to determine matched identities because of the number of duplicate identities across the sector already in existence.

The proposals apply to biographic data only. Below we discuss Police access to biometric data held by Internal Affairs and Immigration.

The Inquiry was told that over time, as Police improve their identity verification systems for people entering the criminal justice system, there should be less need for Corrections to access the identity information of Internal Affairs and Immigration.

Agencies also told the Inquiry that the above proposals are longer-term projects that require further scoping and analysis. In the interim, it was considered there was merit in taking steps to do a manual "cleanse" of *current* offender identity information held by justice sector agencies by carrying out a bulk data match of Corrections' identity information against information held by Internal Affairs and Immigration. This would reveal whether or not Corrections holds *official* identity information about current offenders.

This is a large exercise. As a starting point, Corrections piloted an information "cleanse" of offenders subject to extended supervision orders, with the aim of eventually expanding the matching of identity data to all existing long-term sentenced prisoners. The Inquiry was told that less than half of the names provided by Corrections to Internal Affairs returned an exact match with Internal Affairs' records. This suggests a large amount of manual work will be required to carry out a full reconciliation of offender identity information with Internal Affairs and Immigration records.

The Multi-Agency Report proposes that agencies "continue to explore the feasibility"[112] of automated systems to allow real-time verification of official identity. The Inquiry considers this is too tentative, and the necessary systems should be developed as a priority. We note there are tensions over which agency should pay for the costs involved. In our view, this is a sufficiently important proposal that it should not be delayed by lack of funding.

Further, if the criminal justice system overall is to benefit from a system where identity (however described) is more robustly established, there ought to be a requirement to establish the official identity of offenders, ideally from the point of first entry into the system.

In respect of Police, as New Zealand's major prosecuting agency, we consider this requirement should apply as soon as the necessary automated systems referred to above are developed.

There are also many other agencies who lay prosecutions, including Customs, the Serious Fraud Office and the Ministry of Social Development. In the Inquiry's view, it would be desirable for *all* such agencies to be required to establish official identity, but it is recognised that such a requirement may be hard to achieve.

The Multi-Agency Report refers to the possibility of a single charging agency. In a perfect world this would make sense. It would, however, be extremely difficult to achieve, be expensive and require extensive legislative change. But the raising of a single charging agency as a concept illustrates the difficulties we have touched on previously. We do not consider that we have sufficient information to make firm recommendations in this fraught area, but, responsibly, we need to point to the problem and recommend that further investigation and improvements are required.

7.6.5. Police are not regularly informed of registered name changes

Registered name changes are common (6,000–7,000 per year), but are not systematically reported to criminal justice agencies. In some cases, as agencies noted, offenders could change their name while on bail pending hearing or on release from custody.[113]

The December 2014 interim Multi-Agency Report stated that agencies planned to investigate "regular automated information matching between Police and [Internal Affairs] databases to identify offenders who have registered a formal name change". However, the final Multi-Agency Report does not recommend that. The core problem, it says, is criminal behaviour, not registered name changes; criminals misuse all parts of the identity system to carry out their offending and any initiative that focuses solely on registered name changes will, at best, be a partial solution. It recommends instead that establishing an official identity at the time of charge should be sufficient.

We disagree with this recommendation. We consider that it is important for Police and other criminal justice agencies to receive information about registered changes of name by those with convictions for serious offences. While we recognise that the threshold could be set at different levels, our recommendation is that convictions for category 3 and 4 offences under the Criminal Procedure Act 2011 (those with maximum penalties of more than two years' imprisonment) should qualify. Ideally, and to protect privacy concerns, the information should be transmitted by Internal Affairs, which is the agency responsible for registered name changes, rather than giving criminal justice agencies unconstrained access to the relevant databases.

112 Multi-Agency Report, para 29.
113 Multi-Agency Report, para 65.

7.6.6. Agencies could more systematically collect and use biometric information

One of the biggest long-term challenges, present across all jurisdictions, is linking biometric data (for example, photographs, fingerprints and iris scans) and biographic data (for example, verified names and dates of birth) so the person presenting as a valid identity can be linked to their biographic data automatically.

The greater use by Police and Corrections of biographic information held by Internal Affairs and Immigration will reduce the costs and risks associated with the use of false identities in the justice system.

However, there is a risk that false identities may not be detected. For example, an offender, on first contact with the justice system, could provide a name and date of birth that is not their own but that they know exists on the Register of Births. The deception would not be detected by comparing only name and date of birth data. Where there are doubts about the validity of information provided by an offender, additional identity processes, including the use of other biographical and/or biometric data may assist, although no system will ever be perfect.

The Multi-Agency Report notes Police would like to have access to biometric data held by Internal Affairs and Immigration for this purpose, including potentially Immigration fingerprint information. The report makes no formal proposal; there is clearly much work to be done both on technological capabilities for biometric data matching and in relation to the appropriate application of privacy principles.

Photographs, which, if recent, can result in a highly accurate but not infallible identity match, are accessible by Police through NIA, by Internal Affairs in respect of its citizenship and passport-issuing functions, and by Immigration, which collects and stores photographs for visa purposes. The Ministry of Justice's CMS system has no need to store photographs. Since 2006 Corrections has taken and stored photographs of prisoners at least every two years. Maintenance of the law Maintenance of the law There is a particular public interest in Corrections maintaining up-to-date photographs of serious offenders, including those on life parole. Corrections, however, does have access to certain specific NIA information. Fingerprint information relating to offenders is stored in NIA only.

Other relevant government agencies including Customs and Immigration lack the ability (without Police assistance) to match fingerprints. Fingerprints, as biometric data, are an extremely accurate way of confirming the identity of people who have entered the criminal justice system. There are strong reasons for criminal justice agencies being able to share fingerprint information with one another and with the border sector agencies.

Section 41(1) of the Corrections Act 2004 empowers a corrections officer to photograph, measure and fingerprint a prisoner. The taking of bodily samples is expressly excluded (section 41(2)). Section 41(3), however, might limit the power of a corrections officer to take photographs and, importantly, might limit Corrections' ability to share prisoner photographs with other government agencies. The provision is restrictively worded and states:

> (a) May be exercised only for the purpose of facilitating the management and security of the prison.

Since Mr Smith's escape, Corrections has been sharing photographs with Customs to facilitate border alerts. Maintenance of the law

[redacted] The identity of the former category of person ought to have relevance to border alerts and attempts to leave New Zealand. The identity of the latter group (parolees, including those who have been imprisoned on indeterminate sentences and are subsequently subject to release conditions in the community) may, with the passage of years, change their appearance, thus making fresh photographs desirable. We recommend that legislation clearly authorises Corrections to take and share photographs of all offenders for any lawful purpose, including to facilitate border alerts.

Section 41 is wide enough to cover prisoners (broadly defined in section 3 as any person in legal custody of either the chief executive[114] or the Commissioner of Police) in prison on remand. Section 41(5) makes it mandatory for the chief executive to destroy immediately photographs and fingerprints taken in respect of a person who is subsequently acquitted.

7.6.7. No efficient or comprehensive system to prevent serious offenders obtaining or using passports

Had the passport application submitted to Internal Affairs by Mr Smith triggered an alert to the effect that the applicant Traynor was the same person as the serving prisoner Phillip John Smith, then an appropriate officer in Internal Affairs would have been able to turn his or her mind to whether to exercise the discretion to refuse to issue a passport. No such alert was triggered.

The reason for this was simple. There was no system in place to provide Internal Affairs with information about serving prisoners; nor was there any adequate or comprehensive mechanism in place to ensure Internal Affairs had the necessary information to consider the discretion that Parliament had conferred on the Minister of Internal Affairs when it enacted section 4(3)(b) of the Passports Act 1992. Some of the information on some of the categories specified in section 4(3)(b) was supplied to Internal Affairs but it was far from comprehensive. In respect of some offenders, or alleged offenders, where bail conditions circumscribing passport possession had been imposed, Police and some criminal court registrars would transmit the information. Certainly, information relating to children whose removal from New Zealand was prohibited by a Family Court order was stored. There was no information available to Internal Affairs about prisoners, parolees, special patients or people serving community-based sentences such as home detention, unless (probably for an unrelated reason) Police chose to alert Internal Affairs.

From a stand point of ensuring that people of legitimate interest to the criminal justice system do not leave New Zealand on a New Zealand passport, this situation is unsatisfactory. In a hypothetical example, a New Zealand–born alleged offender (who may or may not hold a New Zealand passport) might be placed on bail to await trial on a serious charge under the Crimes Act 1961 or Misuse of Drugs Act 1975. The trial may be 12 to 24 months away. Orders are made requiring the alleged offender to surrender a passport (either to the court or Police) or, if there is no passport, not to obtain one. In either case, the alleged offender, being unenthusiastic about the prospect of facing trial, might subsequently apply to Internal Affairs for the issue of a New Zealand passport to which he or she, under section 3 of the Passports Act 1992, has a clear entitlement and in respect of whom the Minister must issue one under section 4(1). The discretion the Minister has to refuse to issue a passport in such a case cannot be exercised because the departmental officials to whom the Minister has delegated authority have no information about a relevant court order.

This issue was examined in some detail during 2006 and 2007 and reported in an Internal Affairs paper for its passports service management.[115] We set out below relevant portions of the document. It is clear Internal Affairs was alert to the difficulty some years ago:

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114 "Chief executive" means the chief executive of the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Corrections Act 2004.

115 Department of Internal Affairs. 2007. "Passport Redevelopment Programme IID 50 – consideration of statutory reasons and obligations regarding the refusal to issue passports" (internal report), p 17.

> Revision of the Department's current practice would ensure the Department more ably meets its obligations under the Passports Act 1992 … Currently the Department receives ad hoc information from courts throughout New Zealand. Court registrars fax through the relevant court order, or personal details, when they believe it is necessary. It is unclear whether the Department currently receives all the court orders on which basis the Minister could exercise the authority to refuse to issue a passport, though [this] appears unlikely.

A subsequent section of the paper points again to selectivity and identification of the risk where the discretion was not properly exercised:[116]

> The Department could determine that it does not wish to exercise the Minister's discretion in certain circumstances. The Department could create classes of information it wishes to receive.
>
> The Department could decide that it wishes to receive information only where the courts specifically state that an individual should refrain from obtaining and surrender their passport, and information on detainees released on home detention.
>
> If the Department selects this option, the Department would need to consider the possible consequences of issuing a passport where discretion to decline a passport could have been exercised, but was not considered. The Department will further need to ensure appropriate guidelines were developed for staff exercising the Minister's discretion, and records are kept that enable the Department to defend its decisions should any be contested.

Possible issues with parolees were identified (despite the specific reference in section 4(3)(b)(ii) of the Passports Act 1992):

> The Parole Act 2002 currently does not allow for the Department of Corrections to share information with the Department. The Act would need to be amended to allow for [Internal Affairs] access to parole-related records. A Memorandum of Understanding would need to be developed, and the Privacy Commissioner consulted [before information-sharing could occur electronically].[117]

The Internal Affairs paper highlighted a legitimate practical problem. The Department was concerned that, with the effluxion of time, information it received relevant to the section 4(3)(b) discretion would lose its relevance.

> The Courts rarely inform the Department when an order, bail condition, or warrant is no longer in place. The Department of Corrections never inform the Department when parole ends.
>
> There is no "expiry" function in the POI [Person of Interest] code system. As such, it is rare that a POI code is removed when a court order expires, or removed, unless the individual applies for a passport.[118]

Thus, in a hypothetical situation where a person who has awaited trial on bail is convicted and subsequently sentenced to imprisonment, there is no current mechanism for the Ministry of Justice to notify anybody that a bail condition has expired. Nonetheless, an offender in that situation (or where a non-custodial sentence such as home detention has been imposed) would still be subject to the Minister's discretion under other sub-provisions of section 4(3)(b). But if there were an acquittal, the bail orders would obviously cease automatically. Accountability for updating the section 4(3)(b) information for Internal Affairs poses problems.

The paper demonstrates Internal Affairs was alert to the problems of information sharing and the section 4(3)(b) discretion and took the initiative. Internal Affairs began to explore the possibility of real-time data matching with the Ministry of Justice in 2008/2009. We were told that in 2009 the Internal Affairs chief executive formally requested the Secretary of Justice to arrange for agencies

116 Ibid, p 21.

117 An Approved Information Sharing Agreement mechanism is now available to allow agencies to formalise, by way of Order in Council, automated data matching.

118 Department of Internal Affairs. 2007. Passport Redevelopment Programme IID 50 – consideration of statutory reasons and obligations regarding the refusal to issue passports (internal report), p 19.

to work on sharing information. There were, however, technical challenges relating to justice sector data and concerns over data quality. Ultimately, the initiative was discontinued for these reasons and because of concerns over returns on a substantial investment.

Problems posed by closing the gap

As is clear from the previous section, quite apart from the inability of Internal Affairs to exercise the ministerial discretion to refuse to issue a passport to Mr Smith in July 2013, it is not satisfactory that the Minister on whom the discretion has been conferred cannot exercise it in any meaningful or considered way because of an absence of information.

The section 4(3)(b) discretion gives rise to several policy issues that need to be addressed. The subsection refers to various categories of people subject to the criminal justice system. It will be for Ministers to decide which of these categories (all or some) should trigger the exercise of the discretion; whether the discretion should operate inside those categories or whether there should be a blanket refusal to issue a passport (probably such a blanket refusal would be illegal); what guidelines should inform the discretion; operational and resource challenges; and to what level of Internal Affairs the discretion should be delegated. The number of New Zealanders caught by section 4(3)(b) as a proportion of eligible New Zealand passport applicants might also be relevant.

The extent to which these issues should be strengthened by legislation and the degree of priority that should be given to them is not, ultimately, a matter for this Inquiry. There will always be gaps that might, even in the best designed system, allow people of interest to the criminal justice system leave New Zealand before trial, during sentence or while subject to post-sentence supervision.

The numbers involved, were the Ministry of Justice and Corrections to supply information to Internal Affairs about every person who falls under one of the section 4(3) categories, would be considerable. Internal Affairs currently receives an average of 410 bail order notifications and 1,210 court orders preventing the removal of a child from New Zealand per year. The addition of all people falling under the section 4(3) categories would increase this by over 20,000 notifications per year.

Possible narrowing of the gaps

It is clearly not in the public interest that certain categories of people subject to the criminal justice system should have access to passports or be able, without permission, to leave New Zealand.

We would recommend that “serious offenders” who are subject to the criminal justice system should not be permitted to hold, obtain, renew or use passports without permission. This recommendation casts the net somewhat more widely than the section 4(3)(b) discretion, which is limited to issuing and renewing passports. “Serious offenders” is a somewhat elastic term, difficult to define. The best we can do is to come up with a suggested class, which although it uses the section 4(3)(b) categories, extends more widely to people in the criminal justice system who may already hold a passport. This class should, in our view, include prisoners, people subject to indeterminate sentences (who might not necessarily be in prison), people subject to extended supervision orders, parolees (other than those on indeterminate sentences), people serving sentences of home detention, people on electronically monitored bail that is almost identical in terms of the restrictions imposed to home detention, and special patients.

For the discretion of the Minister of Internal Affairs to be fully exercised, as Parliament intended, the relevant systems will need to be expanded and improved. Importantly, steps need to be taken to ensure current information-sharing systems used by other agencies in the criminal justice sector are expanded and improved to ensure Internal Affairs is more comprehensively informed about the categories.

We appreciate that these recommendations do not comprehensively cover all the section 4(3)(b) categories where there is a discretion to refuse to issue a passport. We are not including all people on bail; nor are we extending the net to catch those whose bail conditions specifically refer to passports. The gap that is left open for people in these two categories, we consider, could be narrowed sufficiently or closed off by Police, in appropriate cases where flight is considered to be a risk, putting a border alert in place. Individual judgement is needed.

We stress that these proposed restrictions do not constitute a blanket denial of passports to the categories we have specified. There will undoubtedly be appropriate cases where permission to hold and use a passport will be granted by appropriate authority, be it the court, Police, Corrections, the Parole Board or the Director of Mental Health; nor would the restrictions continue once the person ceases to be subject to the criminal justice system.

Further sources of information and improvements

There are two further methods (which we support and recommend) whereby Internal Affairs can obtain information relevant to the section 4(3)(b) discretion. We accept that neither method would be foolproof, because, in large measure, the honesty of the people supplying information is critical. Not everyone who is subject to the criminal justice system will exhibit an honest character.

The first method is to amend the passport application form so it requires an applicant to tick a box "yes" or "no" as to whether the person falls within any of the section 4(3)(b) categories. The information thus gathered might, for honest respondents, be helpful. Posing the question might also act as a deterrent for people otherwise disposed to avoid travel restrictions that the criminal justice system might have imposed on them. Providing incorrect information, especially if deliberate or dishonest, would constitute an offence under the Passports Act.

The second method, would be to empower Corrections to obtain both passport and citizenship information from all those in prison or subject to community-based sentences. At present, the information Corrections collects is unreliable and incomplete, particularly for foreign citizens.

A further possibility, which can apply only to New Zealand passports, is to mirror the provisions of Canadian legislation whereby various offenders can have their passports revoked. The Canadian legislation specifies the categories of people who may be *refused* a passport,[119] and states the same group may have their passports *revoked*.[120] The categories include those charged with indictable offences, serving terms of imprisonment or on temporary release or parole. We see considerable merit in this.

Another possibility, which we have not explored in detail because of its technical aspects, would be the deactivation of current passports (rather than cancellation). This too would require legislation and dedicated administration.

7.6.8. Corrections does not systematically identify the passport or citizenship status of prisoners

The Inquiry asked Corrections what information it holds about offenders who hold foreign or multiple citizenship. We were concerned to understand more widely the justice sector's awareness of risk from serious offenders who do not have New Zealand citizenship and passports. Some will have rights to both New Zealand and foreign passports. Corrections does not verify information supplied voluntarily by prisoners about citizenship; nor does Corrections conduct full data matches with Immigration. For its part, Immigration matches data with Corrections only to identify sentenced prisoners liable for deportation and does not maintain records of the passport status of foreign national prisoners, whether they hold passports or what passports they are. Corrections may hold such information in IOMS, but it is not comprehensively gathered.

119 Section 9 of the Canadian Passport Order.
120 Section 10 of the Canadian Passport Order.

Although these constraints make any data unreliable, the Inquiry was informed (as a result of a specially commissioned match by Immigration to the Corrections database) that over the past decade 3,336 individuals who have been imprisoned in New Zealand are foreign nationals; 416 have been deported. The balance, therefore, may be in custody or in the community phase of sentences. Corrections' own population data for November 2014 indicates that 280 prisoners self-identified as non–New Zealand citizens. In its data match for the June 2014 year, Immigration found 480 sentenced prisoners who were foreign nationals, of whom 52 met the deportation liability threshold. Generally, there are 70–100 deportations every year.

It, therefore, appears that there may be upward of 200 prisoners about whose passport status there is no reliable information in the justice sector. This is relatively a higher risk cohort than New Zealand citizens or passport holders because the levels of verification operating in many foreign jurisdictions are significantly lower and the use of bio-identifiers much less comprehensive. Immigration observed a general rise in entrant demand from countries it considers high risk and, particularly, in the categories that do not involve prior screening, notably those with which New Zealand has visa-waiver arrangements for short-term travel. Immigration has proposals ("Vision 2015") to move to online processing of all visa applications, and this will be supported by biometric image matching and identity search technology.

7.6.9. Photographs from driver licences are not available to other agencies

When legislation was introduced changing the format of New Zealand driver licences to include a photograph, a degree of disquiet was expressed during the parliamentary process that the photo identification driver licence might become some form of national identity card or that the photograph might be used for improper purposes. Hence, the restrictive nature of section 200 of the Land Transport Act 1998, which prohibits NZTA from releasing the photograph it holds of a licence holder to an enforcement officer without a warrant under section 198 of the Summary Proceedings Act 1957, such warrant being limited to the purpose of traffic enforcement.[121]

We consider that section 200 is unduly restrictive and needs amendment. We shall recommend accordingly. Our central reason is that we consider the New Zealand driver licence a useful and legitimate document whereby the identity or the alias of a person who has entered the criminal justice system can be established. When section 200 was enacted, the social climate was very different from what it now is. Closed-circuit television cameras in streets, supermarkets, banks and intersections were thinly spread. Photographic images are now accepted by the public as a legitimate law enforcement tool. The purpose of an amendment would not be to permit Police to snoop inside NZTA's photograph database to establish the identities of people who might conceivably be of interest or for improper purposes (the faces in crowds legitimately protesting). Rather, the purpose would be to establish with accuracy whether a person subject to the criminal justice system was using an alternative name.

7.6.10. Measures to keep tabs on special patients could be improved

Special patients are detained for treatment by forensic mental health services by court order and require a ministerial decision for that legal status to cease. Special patients can be granted leave from the hospital for periods of up to seven days by the Director of Mental Health. Leave for longer periods can be granted by the Minister of Health (this function is delegated to the Associate Minister).

The Inquiry is generally satisfied that the Director of Mental Health and Minister apply sound risk management and have appropriate vigilance over special patients in the community. Inevitably, there have been cases where special patients have absconded, but we are satisfied the Director of Mental Health has rapidly and appropriately reviewed systems and practices.

121 Concern was expressed in Parliament during the passage of the legislation that a databank of driver photos could be accessed by Police for purposes of general surveillance (frequent reference was made to surveillance of protestors during the Springbok tour of 1981). The Minister responsible for the legislation assured Parliament there was no intention that photographs be generally available to agencies other than the NZTA.

In one case, in October 2014, a special patient left New Zealand and went to India while on leave from hospital. The individual was living in the community at the time, with a condition not to travel, and was noted missing after failing to arrive at work. Police investigated the incident and located the individual with family members in India, discovering that the individual had used an Indian passport to travel.

This is the first incident of a special patient travelling overseas without permission since the Mental Health (Compulsory Assessment and Treatment) Act 1992 came into force. There are around 400 special patients at any point in time, so this group is small.

Interim steps have been put in place to minimise the risk of unsanctioned overseas travel for special patients. These steps include alerts, an assessment of patient flight risks, special precautions where identified and travel restrictions in leave provisions. Sustainable operational solutions require an interface with other agencies such as Police, Customs and Internal Affairs. Hence, the Ministry of Health's involvement in the Multi-Agency Report so that, where possible, joint solutions can be of lower cost and complexity. The Inquiry was advised the Ministry of Health is also considering the vulnerabilities created by the current legislation and this may lead to recommended legislative changes.

The Multi-Agency Report deals lucidly and comprehensively with managing the risk of special patients departing from New Zealand without prior permission being granted by officers of the Ministry of Health. The Ministry proposes legislative changes expressly to prohibit special patients from travelling outside New Zealand without prior permission and to permit the taking of photographs and other future biometric data without the consent of special patients if necessary. Legislation is also sought to give clearer and more extensive powers to "retake" a special patient who breaches leave conditions. The Ministry also seeks a legislative amendment expressly providing that special patients cannot leave New Zealand without permission. We support those legislative changes.

Initiatives that the Ministry of Health is addressing include requesting special patients on long leave to surrender their travel documents, to develop a process with Police for when special patients are absent without leave, and to place border alerts in respect of all special patients on long leave. We support those initiatives.

7.7 Conclusions and Recommendations

Over almost 20 years, the justice sector agencies have coped with constraints on their ability to share knowledge, manage information and exchange data with one another. But the constraints created risks for them and other agencies and stakeholders. In many cases, the following shortcomings and gaps were known.

The **shortcomings and gaps** that we see as risks are as follows.

- The justice sector does not have a "single client view".
- The justice and border sectors do not efficiently share information.
- Police and other prosecuting agencies do not always confirm official identity at first charge.
- Police are not regularly informed of registered name changes.
- Agencies could collect and use biometric information more systematically.
- No efficient or comprehensive system prevents serious offenders obtaining passports.
- Corrections does not systematically identify the passport or citizenship status of prisoners.
- Photographs from driver licences are not available to other law enforcement agencies.
- Measures to keep tabs on special patients could be improved.

Against that background we have reached five **high-level conclusions** that we have drawn from our investigation into these areas.

1. In their current state, justice sector information management systems and practices do not facilitate interoperability sufficiently to support the administration of justice and protect the public against risks, particularly those arising from confusion about criminal identities.
2. The future direction of government policies for reducing reoffending requires a higher intensity of information exchange for both policy development and the design of effective operational programmes and interventions.
3. Rectifying these weaknesses could be approached incrementally, but we lean more towards undertaking it in a comprehensive and strategic way, because step-change, rather than incrementalism, appears necessary.
4. The future state of sector-wide information management is a challenging public policy proposition because it entails technical complexities as well as financial and privacy risks and trade-offs.
5. High-level options for change of this kind are under development, but have yet to receive the close attention of senior officials or to be raised with Ministers.

As we have already observed, this Inquiry does not have the expertise to design such a system; nor is it our function to formulate the policy necessary to create such a system. It is for governments to decide whether the various flaws and gaps that have been identified should be closed and the pace of improvements. With reference to our previous comments about the possible future state, we now set out broadly what this Inquiry supports by way of the generic elements of a future regime. This is followed by more detailed and issue-specific recommendations.

The Inquiry **supports** the following.

- A step change to the next evolutionary stage of justice sector information sharing. This should be a comprehensive and strategic approach to proposals for new system architecture to achieve full interoperability within and across sectors.
- Steps to improve access to reliable and comprehensive identity information, and interoperability among criminal justice sector information systems.
- The development of more effective processes to confirm and authenticate official identity at the first point of charging by prosecuting agencies and, additionally, to link this official identity with all other names used by the person entering or in the criminal justice system.
- Steps to address shortcomings in the use and management of PRNs by criminal justice sector agencies (including those identified by the Tenzing Report).
- A strategic focus among all government agencies on biometric identity information.
- Facilitating common methods and standards of biometric identity verification, including fingerprinting and facial recognition photographs, among criminal justice sector agencies.
- Reviewing the Justice Sector Unique Identifier Code 1998 and, where necessary, developing new common protocols to control identity management practices by justice sector agencies.
- Enabling more effective and efficient exchanges of identity information among justice, identity and border sector agencies.

The Inquiry **recommends** the following**.**

1. The New Zealand Police, Department of Internal Affairs and Immigration New Zealand should develop systems to provide real-time access to the birth, citizenship, passport and immigration databases to validate official identities for people charged. Consideration should be given to preparing an Approved Information Sharing Agreement or Agreements, in consultation with the Privacy Commissioner, and to amending the Identity Confirmation Act 2012 to allow access by charging agencies (particularly the Police) without consent.

2. Once those systems are in place, the New Zealand Police should be required to establish an official identity for all people charged with an offence.
3. In principle, the same requirement should apply to prosecutions by any agency, and officials should prioritise work to facilitate this.
4. The New Zealand Police, Ministry of Justice, Department of Corrections and Department of Internal Affairs should develop systems to ensure the Registrar of Births, Deaths and Marriages notifies criminal justice agencies and NZTA of all name changes for those with convictions for category 3 or 4 offences under the Criminal Procedure Act 2011 (those with a maximum penalty of two years imprisonment or more).
5. The Parole Act 2002 should be amended to make it a standard condition of parole that the individual not leave New Zealand without permission of a probation officer.
6. There should be a legislative restriction on people subject to extended supervision orders, released on conditions, serving home detention sentences, or subject to intensive supervision or community detention leaving New Zealand without permission of a probation officer.
7. There should be a legislative restriction on special patients leaving New Zealand without prior permission of the appropriate official under mental health legislation.
8. The Department of Corrections, the Ministry of Health and district health boards should have legislative authority to take photographs and other biometric details of offenders and special patients without their consent.
9. Section 200 of the Land Transport Act 1998 should be amended to permit photographs of drivers held by NZTA to be shared with law enforcement agencies for law enforcement purposes.
10. The following recommendations should apply to "serious offenders", that is: prisoners, people subject to indeterminate sentences, people subject to extended supervision orders or public protection orders, parolees, people serving sentences of home detention, people on electronically monitored bail, and special patients.

    (a) Serious offenders who are subject to the criminal justice system should not be permitted to hold, seek to obtain or renew, or use a passport without permission from the court, New Zealand Police, Department of Corrections, the Parole Board or the Director of Mental Health as appropriate.

    (b) Department of Corrections and New Zealand Customs Service should be enabled to streamline border alert processes for serious offenders. Any expansion beyond the current categories of people subject to border alerts will need to balance technical and operational requirements with the level of risk to public safety.

    (c) Internal Affairs' systems should be improved and expanded to ensure there is a more comprehensive administrative process to exercise the discretion to refuse a passport in respect of serious offenders.

    (d) Officials should review the practicality of deactivating passports for serious offenders, whether by Department of Corrections seizing them or Internal Affairs cancelling them.

11. There should be a requirement for passport applicants to declare whether they fall within any of the categories in section 4(3)(b) of the Passports Act 1992.
12. The Minister of Internal Affairs should have a discretion to cancel the passport of a person who falls within any of the categories in section 4(3)(b) of the Passports Act 1992.
13. The Department of Corrections should obtain passport and citizenship information of all serious offenders (particularly non–New Zealand citizens) in custody or subject to community-based sentences. If necessary, there should be legislative change to give effect to this.
14. The Justice Sector Information Strategy Governance Group should oversee ongoing work to identify and progressively close any gaps that remain, including flight by those on bail.

APPENDICES

APPENDIX 1

Establishment of the Government Inquiry into Matters Concerning the Escape of Phillip John Smith / Traynor

Pursuant to section 6(3) of the Inquiries Act 2013, I, The Honourable Paula Bennett, Minister of State Services, hereby establish the Government Inquiry into matters concerning the escape of Phillip John Smith / Traynor ("Inquiry").

Background

On 6 November 2014, Phillip John Smith / Traynor absconded while on temporary release from Spring Hill Prison. On the afternoon of 6 November, Mr Smith / Traynor left New Zealand by plane for Chile, on a passport previously obtained under his birth name (Phillip John Traynor). Mr Smith / Traynor subsequently travelled to Brazil, where he was apprehended by Brazilian Police.

At its meeting on 17 November 2014, Cabinet:

- agreed that a Government Inquiry be established under the Inquiries Act 2013 to inquire into matters concerning the escape of Phillip John Smith;
- agreed that the Minister of State Services be the appointing Minister for the Inquiry [CAB Min (14) 36/21 refers].

Membership

The Honourable Dr John Priestley CNZM QC and Mr Simon Murdoch CNZM, are appointed to and constitute the Inquiry. The Honourable Dr John Priestley has been appointed as Chair of the Inquiry.

Terms of Reference

Background

On 6 November 2014, Phillip John Smith / Traynor was released on temporary release from Spring Hill Prison. On the same day, he was able to depart from New Zealand on a passport obtained under the name of Phillip John Traynor. Given the public importance of the issue of Mr Smith / Traynor's departure from New Zealand while on temporary release, the Inquiry is established to look into the circumstances of these events, and to make recommendations arising from these matters.

Appointment and Terms of Reference

The Minister of State Services has appointed the Honourable Dr John Priestley CNZM QC, assisted by Mr Simon Murdoch CNZM, to inquire into the matters set out below.

Matters for the Inquiry

The Inquiry will inquire into, report upon, and make any recommendations relating to:

a. The use of alternative names (including aliases) by people in their interactions with the criminal justice system, from the point of charging onwards (such as during sentence management), including, by way of illustration (but not limited to):

   i. the means by which people may identify themselves or purport to do so, whether by passports, drivers' licences or other records or documentation;

   ii. particular identity issues at the point of charging Mr Smith / Traynor, including any subsequent charges;

   iii. the treatment of identity or name issues in the context of Mr Smith / Traynor's sentence management;

b. Mr Smith / Traynor's temporary release from Spring Hill Prison and departure from New Zealand. This will include:

   i. the assessment of Mr Smith / Traynor as suitable for temporary release relative to any risk profile as to possible re-offending;

   ii. the sentence management for Mr Smith / Traynor, including the monitoring of Mr Smith / Traynor while on temporary release and identification of Mr Smith / Traynor's departure from New Zealand;

   iii. Mr Smith / Traynor's ability to obtain a passport and to access any other means, whether in prison or otherwise, that would allow him to depart New Zealand;

   iv. Mr Smith / Traynor's ability to travel on that passport on 6 November 2014;

   v. the actions or inactions of any relevant State sector agencies relating to these events; and

   vi. the adequacy of the relevant legislative and regulatory settings and operational practices relating to these matters.

c. the adequacy of information disclosure, sharing or matching between State sector agencies (including border sector agencies) that apply to those persons who would be expected to remain in New Zealand by virtue of their particular status in the criminal justice system. This will include the adequacy of settings, practices or systems relating to:

   i. any breach of conditions of temporary release by prisoners;

   ii. the existence of reasons for refusal of a passport or its cancellation under the Passports Act 1992 and how this is dealt with operationally;

   iii. border controls to prevent prisoners from departing New Zealand.

d. any other matters relevant to the above matters, to the extent necessary to provide a complete report of these matters.

The Inquiry may be informed by any departmental or State services reviews that have been undertaken, including whether by specific public service departments or on a multi-agency basis.

Exclusions from Inquiry and Scope of Recommendations

In accordance with section 11 Inquiries Act 2013 this Inquiry will not determine the civil, criminal or disciplinary liability of any person. This Inquiry may, as provided in section 16 of the Inquiries Act, be postponed or temporarily suspended.

Reporting Sequence

The Inquiry is to report its findings and opinions to the appointing Minister in writing by 30 June 2015.

Consideration of Evidence

The Inquiry may begin considering evidence on 15 December 2014, after the Terms of Reference have been published in the Gazette.

Relevant Department

For the purposes of section 4 of the Inquiries Act, the State Services Commission is the relevant department for the Inquiry and responsible for administrative matters relating to the Inquiry.

Dated at Wellington this 9th day of December 2014.

HON PAULA BENNETT, Minister of State Services

APPENDIX 2

Government Agencies, Non-Government Organisations, Submitters, Witnesses and Specialists Who Participated in the Inquiry

Submissions

Department of Corrections

New Zealand Police

Ministry of Justice

Department of Internal Affairs

New Zealand Customs Service

Ministry of Business, Innovation and Employment (Immigration New Zealand)

Ministry of Health

Ministry of Social Development

Inland Revenue Department

New Zealand Transport Agency

Robson Hanan Trust – Rethinking Crime and Punishment

Registered victims represented by counsel

Circle of Support and Accountability members

Sensible Sentencing Trust

Phillip John Smith represented by counsel

I Robertson-Tyler

S Earl

Specialist agencies and individuals

Office of the Privacy Commissioner

Hon Justice J W Gendall QC CNZM, Chairperson New Zealand Parole Board

Hon Marion Frater Deputy-Chairperson New Zealand Parole Board

Dr Warren Young

Sir David Carruthers

Briefings and witnesses

Department of Corrections

Chief Executive

Deputy Chief Executive

Inquiry Programme Leader

National Commissioner Corrections Services

Deputy National Commissioner

Chief Information Officer

Chief Custodial Officer

Chief Policy Advisor

Chief Probation Officer

Chief Psychologist

Northern Regional Commissioner

Principal Advisor Psychological Research

Director Case Management

Director Intelligence and Tactical Operations

Director Research and Analysis

Department of Corrections cont...

Risk and Assurance Manager

Manager Information Technology

Manager Custodial Practice

Manager Operations Support

Principal Internal Auditor

Lead Strategic Intelligence Analyst

Programme Director (RR25)

Manager Support Services New Zealand Parole Board

Operations Advisor

Prison Managers

Deputy Prison Manager

Custodial Systems Managers

Residential Managers

Operational Support Manager (Acting)

Operations Manager Rehabilitation and Employment

Security Manager

Reception Movements Manager

Principal Corrections Officers

Senior Corrections Officers

Corrections Officers (Case Officers)

Case Managers

Principal Psychologist

Psychologists

Programme Facilitator

New Zealand Police

Deputy Commissioner Resource Development

Executive Director Information, Technology and Systems

National Manager Policy

Interpol

Manager Business Solutions

Detective Superintendent

Inspectors

Detective Inspector

Detective Senior Sergeant

Detective Sergeants

Detective Constable

Department of Internal Affairs

Deputy Chief Executive Service Delivery and Operations

General Manager Identity and Passport Services

Manager Investigations, Service Delivery and Operations Branch

Passport Officer (formerly)

New Zealand Customs Service

Deputy Comptroller

Group Manager Intelligence Investigations and Enforcement

Senior Operations Analyst

Senior Advisor

Manager Passenger Operations

Chief Legal Advisor

Customs Officers

Ministry of Justice

Deputy Chief Executive Sector

Manager Sector Information and Analysis

Manager Justice Sector Information Strategy (formerly)

Principal Advisor Information Management (formerly)

Manager, Systems Support, Information and Communication Technology

Ministry of Business, Innovation and Employment (Immigration New Zealand)

General Manager Compliance, Risk and Intelligence Services

Assistant General Manager Visa Services

Assistant General Manager Compliance and Border Operations

National Manager Border

Manager Identity Services

Senior Solicitor

Ministry of Health

Director of Mental Health and Chief Advisor

New Zealand Transport Agency

Group Manager Access and Use

Principal Advisor Driver Licensing

APPENDIX 3

Department of Corrections Organisational Structures for High-Risk and High-Profile Prisoners

The **High and Complex Needs Steering Group** at national office is an oversight group comprising senior Corrections management and specialists. It supports the behavioural and sentence management of offenders (in prison and the community) and was established in 2013.

The **High and Complex Needs Panel** meets monthly to discuss a small number of offenders (10–12) based on profiles developed by the intelligence team in consultation with the High Risk Response Team and feedback from panel members. The list comprises high-risk offenders, high-profile offenders and offenders with multiple and complex needs, including those with long sentences or security classifications that may preclude them from engaging in some rehabilitation activities. Each offender is discussed each month.

The **High Risk Response Team** was established in national office in 2010, although team members are dispersed throughout the regions. The team is responsible for assuring the Corrections executive that offenders identified as being of the highest risk of further reoffending, harm to others and/or of media interest have risk mitigation plans. Offenders are brought to the team's attention by referral from Corrections psychologists, custodial staff, case managers, Community Corrections staff, intelligence staff, New Zealand Police, and the Ministry of Social Development.

High-risk and high-profile forums were introduced in 2008 and operate at a regional level across Corrections. High-risk, high-profile forums include multiple agencies and focus on the safe release of prisoners who are nearing their lawful release date but continue to pose a high risk to the community and/or have a high profile.

A prisoner whose profile or activities may lead to reputational damage for Corrections would also be classified a high-profile prisoner.

APPENDIX 4

Extracts from the *Prisons Operations Manual* on Temporary Release at the Time of Mr Smith's Escape

M.04.06.02 Prisoner's eligibility

Prisoners, not being service prisoner (as defined in section 2(1) of the Armed Forces Discipline Act 1971) are eligible to be considered for temporary release from custody, if sentenced to:

Sentence / Purpose		Stage of Sentence	Security Classification	NZPB Direction
1	24 months or less. Reg 26 (1) (b)	NA	Minimum	NA
2	>24 months Reg 26 (1)(i) Includes Life and PD	Reached parole eligibility date	Minimum	NA
3	>24 months Reg 26 (1)(ii). Includes Life and PD	Reached parole eligibility date	Low Low Medium	Specified Release Date
4	Sentenced to serious violent offence prior to 01.07.02	Not eligible for release on parole but final release date within next 12 months	Minimum	NA
5	Release to Police under reg. 26(1)(d) (prisoner consent required) and reg. 26(1)(e)	NA	NA	NA

M.04.06.03 Applications can be processed in advance

1. A prisoner may apply for a temporary release at any time within the six weeks before he or she becomes eligible to be considered for temporary release.
2. The custodial systems manager (or other authorised delegate) should ensure so far as possible that a prisoner is aware of when they will become eligible to apply for a temporary release.
3. The six weeks allows time for any necessary background checks to be undertaken and advance approval to be obtained pending the prisoner's eligibility date. Any such approval may be revoked by the approving officer if necessary.
4. If an application is not approved, and the prisoner requests the application be reconsidered after the date they become eligible for temporary release, then the application should be reconsidered.

M.04.06.04 Application for temporary release

1. All requests for temporary releases are, in the first instance, completed on IOMS in the following order:
   a. complete the M.04.06.Form.06 Temporary Release Application Details (IOMS).
   b. complete the 'checklist' screen / tab on IOMS.
   c. complete the M.04.06.Form.04 Department of Corrections sponsorship verification. (CCSV IOMS).
   d. complete the special conditions tab on IOMS, and
   e. generate Licence for Temporary Release.
2. The above forms should be submitted to appropriate delegated staff well in advance of the proposed date for temporary release. This is in order for written advice to be sent to any registered victim(s) of the prisoner (should the application be approved) at least 10 working days prior to the temporary release date.
3. Temporary releases to the police for remand prisoners should not be entered on IOMS but completed in paper form only.

4. Sufficient and accurate information is provided on a prisoner's temporary release application to enable an accurate decision to be made on whether or not the application should be approved.
5. A prisoner's temporary release application must be responded to promptly and managed in a way that reflects the urgency of the application.

M.04.06.07 Duration of temporary release from custody and condition

1. A temporary release must be approved for a fixed period.
2. Conditions may be imposed on a temporary release, refer POM M.04.06.Res.04 Temporary release conditions, to view examples of conditions.
3. A custodial systems manager (or other authorised delegate) may at any time direct the return to a prison of a prisoner who is on temporary release from custody.

Note: Escape from temporary release: A prisoner is deemed to have escaped from lawful custody if he or she is at large without reasonable excuse (the proof of which excuse lies with him or her) after the expiry of the approved period for temporary release, or after a direction from the custodial systems manager (or other authorised delegate) to return to a prison, or after the person breaches any condition relating to a requirement for the prisoner to stay at any place or within any geographical area, or to stay with a particular person or group, or to attend a particular programme or course.

M.04.06.09 Sponsor responsibilities

1. A prisoner's behaviour on a temporary release must be monitored for compliance to the conditions imposed, either during the temporary release and / or upon the prisoner's return.
2. Temporary releases should only be undertaken in conjunction with a temporary release sponsor approved by the custodial systems manager (or other authorised delegate), unless otherwise specified in POM.
3. All sponsorship verifications will be dealt with by Corrections Services, unless otherwise stated.
4. Corrections staff must be satisfied that a sponsor:
   a. is law-abiding;
   b. has demonstrated responsibility; has maturity of judgment, and
   c. is able to fulfil the responsibilities and requirements outlined in POM.
5. If a sponsor is required, then a prison or probation officer, as appropriate, must provide the prison with a report on:
   a. the suitability of the proposed sponsor (e.g. if the proposed sponsor is a victim of the prisoner's original offence);
   b. the proposed address where the prisoner intends to reside during their temporary release (if the release involves an overnight stay);
   c. the impact the release is likely to have on any other persons including any victim(s); and
   d. whether there are protection or restraining order issues (e.g. if the proposed sponsor has, or has had, a protection or restraining order against the prisoner). If the proposed sponsor has a current protection or restraining order against the prisoner then temporary release should not be approved.
      Note: Such reports can be requested in advance of the prisoner's eligibility to undertake temporary release.
6. Prison or probation staff may request appropriate identification (e.g. photo ID) when checking the credentials of a prospective sponsor of a prisoner applying for temporary release from custody.
7. Prison staff may request appropriate identification (e.g. photo ID) when checking the credentials of an approved sponsor who has arrived at the prison to accompany a prisoner approved for temporary release from custody.

8. All prisoner sponsors must be notified in writing of any arrangements and conditions of the temporary release from custody and what action to take if the prisoner's behaviour gives cause for concern. M.04.06.Form.07 Temporary Release letter to sponsor (IOMS).
9. The approved sponsor of a prisoner on temporary release from custody must:
    a. acknowledge in writing that they understand the temporary release licence and the conditions contained in that licence as signed by the prisoner;
    b. oversee the prisoner's behaviour and compliance with his or her temporary release conditions, including their return to prison at the stipulated time;
    Note: Custodial systems manager (or other authorised delegate) should, in consultation with the sponsor monitor the prisoner's behaviour / compliance during the temporary release and, if there are concerns, the custodial systems manager (or other authorised delegate) should direct the prisoner to return to the prison)
    c. inform prison staff immediately, or as soon as practicable, if a prisoner breaches his or her temporary release conditions; or there are any behavioural or safety issues.

M.04.06.11 Notification of release Police / VNR

1. Under section 182 of the Corrections Act 2004 offender information may be disclosed by the Department to the Commissioner of Police.
    a. The disclosure must be in accordance with arrangements between the Commissioner of Police and the Chief Executive and
    b. The custodial systems manager (or other authorised delegate) may disclose the following information to the Police:
        i. the date of the temporary release and the place from which the person was released.
        ii. the conditions of the person's temporary release (whether imposed on release or imposed subsequently).
2. The information must be supplied using M.04.06.Form.01 Notification to the Police of a temporary release from prison custody.
3. Where a victim notification request (VNR) is active against a prisoner, the registered victim must be advised of any / all impending temporary releases in accordance with POM C.05.02 Victim Notification.

M.04.06.Res.03 Matters that must be considered when deciding temporary release

Statutory considerations

1. When making a decision on a prisoner's temporary release application consider the following matters:
    a. Whether the release of the prisoner might pose an undue risk to the safety of the community while the prisoner is outside of the prison.
    b. The extent to which the prisoner should be supervised or monitored outside the prison.
    c. The benefits to the prisoner and the community of release in facilitating the reintegration of the prisoner into the community.
    d. Whether removal or release would undermine the integrity of any sentence being served by the prisoner.

Note: A 1998 Crown Law opinion regarding temporary releases stated that "the phrase 'maintenance of the integrity of the sentence' is intended to turn the decision maker's mind to the effect of the temporary release of an offender on the sentence imposed on him or her, having regard to the length of sentence, its specific purpose and its general purposes, including a public perception of the sentence. The nature of the release sought must also be considered, both the specific release requested and the overall pattern of releases (if any) which have been granted to this offender".

Other considerations

1. The safety of the public, and of any person or any class of persons, including:
   a. registered victims on the Victims Notification Register (VNR) and any known unregistered victims, who may be affected by the temporary release of the prisoner; and / or
   b. whether the proposed sponsor or other person has, or has had, a protection or restraining order(s) against the prisoner and who may be in, or potentially come within, the vicinity of the prisoner during the proposed temporary release. If the proposed sponsor has a current protection or restraining order against the prisoner then temporary release should not be approved.
2. The likelihood of the prisoner committing further offences upon their temporary release.
3. The welfare of the prisoner and any change(s) in their attitude and / or behaviour during the sentence.
4. The assessed needs of the prisoner in accordance with the prisoner's sentence management plan and how much oversight is required.
5. The nature of the offence or offences for which the prisoner is currently imprisoned.
6. Any representations made by the prisoner, whether orally or in writing, and any written submissions made by any other person on the prisoner's behalf.
7. The value of the activity in which the prisoner proposes to engage if temporary release is granted in terms of building community relationships that support reintegration e.g. cultural, sport, crafts, community projects / activities / support groups, etc.
8. Where a prisoner has a history of escape convictions and / or escape attempts, the eligibility regarding the prisoner's application for temporary release will be inclusive of any corrections jurisdiction overseas or law enforcement agency within New Zealand or overseas so far as this is known; and be restricted to a timeframe for escape convictions and / or escape attempts of 7 years prior to the date of an application for temporary release.
9. Where an application from a prisoner who has a history of escape convictions and / or escape attempts is declined, no further applications for temporary release by the prisoner will be considered until a period of six months has elapsed from that decision to decline.
10. Information provided by the prisoner in their application, as well as discussions held with the proposed sponsor in regard to any proposed conditions of the prisoner's temporary release.
11. Sentence management plan.
12. Any gang affiliation. Those prisoners who have been identified or have identified themselves as gang members or associates should not be granted temporary release if there is a likelihood of any involvement with their gangs during their proposed temporary release. However where there are exceptional circumstances involving close family relationships and where a proposed activity does not involve any gang related activity, approval may be given for a temporary release if the approving officer is satisfied that any potential contact with gang members or associates can be minimized and / or managed. It must be noted that family relationships in this context do not include relationships based solely on gang affiliations.
13. The prisoner's IDU (Identified Drug User) status, bearing in mind health and safety legislation and the Chief Executive's responsibilities in terms of the rehabilitation of the prisoner.
14. Risks associated with the prisoner's behaviour that led to penalties being imposed under sections 133 or 137 of the Corrections Act 2004, or convictions as a result of prisoner misconduct or offending.
15. The potential for intense media interest that could jeopardise the purpose of the prisoner's temporary release by publication of the prisoner's whereabouts and other personal details.
16. If the prisoner is subject to a deportation order or removal order, then the Police and the New Zealand Immigration Service should be consulted about any application by that prisoner for temporary release.

APPENDIX 5

Ideal State of Justice Sector Information Management Systems and Architecture

Were cost no object, the implementation of new computer systems free from risk, and a "clean slate" approach possible, then a justice sector information system would probably have the following characteristics.

1. A central data warehouse would hold core information about people who have entered the criminal justice system.
2. Such core information would include biographical details, aliases and name variants, birth certificate information for those born in New Zealand, passport details (both New Zealand and foreign), driver licence details, a photograph, fingerprints and details of convictions.
3. Details of people who enter the criminal justice system for the first time in respect of an alleged offence and who are acquitted or where the charge does not proceed and is dismissed, would not be stored, nor would details of dismissed charges against a repeat offender.
4. If the warehouse were administered by the Ministry of Justice, for obvious constitutional reasons, the system would have to be totally separate from the Case Management System (CMS). It is the Ministry of Justice's function, so far as court administration is concerned, to service the independent judiciary. In that regard, the Ministry of Justice must be scrupulous. Much criminal justice data and information in CMS must not be shared with law enforcement agencies.
5. Data contributed to the warehouse would come from New Zealand Police, Ministry of Justice, the Department of Corrections, and the New Zealand Transport Agency. Data relating to foreigners resident in New Zealand would come from Immigration New Zealand. Data relating to citizenship, birth certificates, passports, identity evidence and registered changes of name would all come from the Department of Internal Affairs.
6. To avoid repetition of the problems identified in the Miki Inquiry, registered name changes, if they occurred, in respect of a person who is or was subject to the criminal justice system, would be updated, stored and readily accessible to criminal justice agencies.
7. To make the discretion vested in the Minister of Internal Affairs under section 4(3)(b) of the Passports Act 1992 meaningful and to ensure people who, because of their status in the criminal justice system, should not leave New Zealand, the information stored in the warehouse would be accessible by both the Department of Internal Affairs and the New Zealand Customs Service.
8. Access to the warehouse would be tightly controlled to avoid its purpose (tracking and identifying people in the criminal justice system) being contaminated or diluted by other agencies or offices for other purposes.

APPENDIX 6

International Best Practice in Information Sharing: Example of North Carolina

The following description is a summary of the Inquiry's understanding, based on information provided to the Inquiry and publicly available sources.

North Carolina criminal justice agencies, of which there are many, found their access to accurate data about people with criminal convictions was hampered by the ever growing volume of information, old systems that could not “talk” to one another and limited budgets.

The agencies wanted a comprehensive view of individuals convicted of criminal offences, in particular those who posed a risk to the public. They looked for an efficient, integrated criminal justice application to provide quick access to accurate offender information.

They have together invested in a new solution, namely the Criminal Justice Law Enforcement Automated Services (CJLEADS). CJLEADS is a secure web-based application that integrates law enforcement, courts and corrections data to provide a complete view of an offender. It provides a “single source” repository of critical information.

To achieve this integration, significant time was invested in marrying up records and data about individual offenders from the various systems. Data quality and common data identifiers were problems but not insurmountable. Time was also spent designing robust security measures to protect the data from inappropriate access.

The agencies and users of the new system include court clerks, community probation and prison staff, driver and vehicle licensing agencies, and police.

One of the main benefits from this new application was reducing the risk of overlooking critical offender–related data, including identity information and aliases. The previous disparate systems and information had meant offenders were “falling through the cracks” when it came to detection, law enforcement, monitoring and managing risk.

CJLEADS provides a search function and watch list for the highest risk offenders that enables changes in status to be available to authorised frontline staff – such as warrants, new charges, future court appearances and releases from custody.

APPENDIX 7

Recommendations of the Ministry of Justice's Single Client View Project

No.	Potential solution	Responsible agency
1	Improve data consistency by ensuring the same PRNs are linked across all agencies – including a standard for linking PRNs.	Police, Corrections and Justice
2	Update existing interfaces to share all identities for an entity for a transaction.	Corrections
3	Police send NIA Youth IDs to MSD as part of a maintenance transaction to allow multiple IDs belonging to the same individuals to be identified.	Police and MSD
4	Provide a cross-reference table for NIA ID to PRN for Justice to link youth criminal histories to the same person as an adult offender.	Police
5	Define and agree a standard for PRN creation – including the process to be followed and the data required.	Police and Justice
6	Investigate the ability of CMS to assign a PRN as a master PRN.	Justice
7	Develop the functionality to allow Courts to view the NIA database (e.g. having a Police terminal in courts).	Justice and Police
8	Establish a once-off project to link PRNs across the Justice sector.	Police and Justice
9	Ensure Justice has visibility of all Police PRNs created.	Police and Justice
10	Establish a process to check for and link common identities created in COLLECT with identities created in CMS to ensure this data is synchronised.	Justice
11	Create a central PRN register supported by a standardised process for PRN creation and maintenance.	Justice

Notes: PRN = person record number; CMS = Case Management System (of the Ministry of Justice); Corrections = Department of Corrections; ID = Identifier; Justice = Ministry of Justice; MSD = Ministry of Social Development; NIA = National Intelligence Application (of the New Zealand Police); Police = New Zealand Police.

Source: Tenzing. 2014. Justice Single Client View Pilot Project Findings. Ministry of Justice internal report.