



## **Chief Inspector's Report into the:**

**Circumstances surrounding organised prisoner on prisoner fighting (Fight Club) and access to cell phones and contraband at Mount Eden Corrections Facility (MECF)**

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## Introduction

Mount Eden Corrections Facility (**MECF**) is one of two prisons in New Zealand managed by private operators Serco New Zealand Ltd (**Serco**). Since August 2011, MECF has been the largest remand facility in the country, and is designed to hold up to 976 males of remand accused, remand convicted and sentenced status.

On 15 July 2015 the Department of Corrections (**Corrections**) became aware that a series of video clips showing organised fighting between prisoners at MECF had been uploaded to the website YouTube. The videos (the **YouTube Footage**) provide irrefutable evidence of the existence of a 'fight club' operating at MECF.

On 17 July 2015 TV3 News screened footage that had been uploaded to YouTube, showing a number of prisoners involved in organised fighting at MECF. Over the following days a number of prisoners, ex-prisoners and their families, came forth with accounts of organised fighting, prisoner on prisoner violence and inhumane treatment during their time at MECF.

The videos uploaded to YouTube had been filmed on contraband cell phones, which raised concerns over prisoner access to cell phones and other contraband on to the site.

An internal investigation is being completed by Serco, which holds the Prison Management Contract for MECF (the **Contract**). As at the date of this report (**Report**), Serco's internal report is yet to be provided to Corrections.

By Terms of Reference dated 27 August 2015 (the **Terms of Reference**)<sup>1</sup> I was instructed by the Chief Executive of Corrections (the **Chief Executive**) to conduct a full investigation (the **Investigation**) into:

- a) the possible existence of a 'fight club' at MECF; and
- b) access of prisoners to contraband, in particular cell phones, at MECF.

The Terms of Reference superseded an earlier terms of reference dated 19 July 2015 (the **Earlier Terms of Reference**), which instructed me to pay particular attention to the three months prior to that date. Therefore, the Investigation has a particular focus on, but is not limited to, the three months to the date of the Earlier Terms of Reference.

The Corrections Inspectorate (**Inspectorate**) operates under the Corrections Act 2004, the Corrections Regulations 2005, the mandate of the Chief Executive, and the policies established by the Department relating to the fair, safe, secure and humane treatment of prisoners and those detained within the corrections system.

This Report contains Phase One of the Investigation required by the Terms of Reference. Phase Two will consist of a review of the adequacy of controls designed to address prisoner violence and access to cell phones operating in other New Zealand prisons, and an investigation into any reported incidents of prisoner on prisoner fighting recorded on cell phones in other New Zealand prisons.

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<sup>1</sup> A copy of the Terms of Reference appears as Appendix 1 to this Report.

## Executive Summary

### Preliminary note

This Report makes a number of Findings which are critical of Serco's operation of MECF.

Serco has been consulted extensively during the Investigation and the drafting of this Report. It has accepted many of the Findings and Recommendations, but disputes others.

I have addressed Serco's core criticisms of some of my Findings and comments in the body of this Report. Additionally, Part 10 summarises Serco's response to this Report's Findings and Recommendations. I note that Serco proposes to make a number of improvements in the event that it returns to manage MECF.

### Investigation Findings

#### Organised fighting

The YouTube Footage provides irrefutable evidence that organised fighting was occurring at MECF. I am of the opinion that it is likely that organised fighting was occurring at least once a week during certain periods in the months to which my Investigation relates. Closed circuit television (**CCTV**) footage, MECF documentary records, and the YouTube Footage,<sup>2</sup> show:

- Twelve identified incidents of sparring between 18 June 2015 and 13 July 2015.
- Five confirmed instances, and two probable separate instances, of 'contender fighting' or 'fight club' in the period from 11 June 2015 to 4 July 2015 (noting that CCTV footage does not record what happens in cells).

I note that, with the exception of footage of specific incidents which were saved by Serco staff, the Investigation has been able to review only CCTV records from around late June 2015, due to Serco's practice of overwriting CCTV footage after around 14 days (which is standard prison practice).<sup>3</sup> Accordingly, for the only period in relation to which I was able to review CCTV evidence, organised fighting was shown to be occurring frequently.

Consistent with that, prisoner interviews indicate that organised fighting other than sparring is likely to have occurred on a regular basis, and at least as often as weekly during certain periods of time in the months which are the subject of the Investigation.

It is Serco's position that this Investigation identifies that a significant number of isolated events of organised fighting occurred at MECF. It accepts the Finding that it is likely that organised fighting was occurring at least once a week during certain periods.

Some incidents of organised fighting were of significant duration, involving multiple 'rounds' of fighting between participants, and multiple consecutive fights. On occasions the victor of the first fight would immediately fight a subsequent challenger.

It is likely that organised fighting was most prevalent within Delta Unit cells and the Alpha Unit Yards. However, fighting was not confined to only these units. I have accepted as credible reports of organised fighting occurring in Bravo, Charlie and Golf Units.

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<sup>2</sup> Appendix 2 to this Report contains a list of all YouTube Footage and CCTV footage referred to in this Report. That footage will be made available to the Chief Executive to review.

<sup>3</sup> Although some CCTV footage from June has been saved, full records are available only from early July.

Some prisoners reported being compelled to engage in organised fighting. Prisoners reported that if they refused to participate they would be threatened, “pack attacked” or assaulted by senior members of the Killer Beez, Head Hunters, Black Power or other gangs who were involved in organising the fights.

With one exception, in which a staff member was identified in CCTV footage as participating in sparring, there is insufficient evidence for me to conclude that staff were directly involved in organised fighting. Most of the staff interviewed indicated that they had some anecdotal knowledge about organised fighting, but none acknowledged witnessing it first-hand.

Senior management at Serco were given multiple internal reports suggesting that organised fighting was occurring. However, it is likely that senior management were unaware of the full extent of organised fighting at MECF.

In July 2014, the National Commissioner Corrections Services directed a Special Monitor’s Investigation into allegations of organised fighting. The MECF Prison Director was provided with an edited copy of the draft report in May 2015 but states he was advised not to share its contents with anyone. That report was never finalised.

### **Cell phones and contraband**

Section 6 (c)



Staff are likely to have been a primary source of contraband. Two staff members have recently been dismissed for contraband-related reasons, and another is under investigation. Further, numerous prisoners gave consistent and credible statements that staff were the primary source of contraband available in MECF, and that contraband was easily obtainable. It is highly unlikely that these prisoners would have been able to collude with each other, as the prisoners who gave statements to this effect were housed in 6 different prisons, or released, when interviewed. Procedures for searching staff entering MECF were relaxed from July 2013. A minimum of 40 staff were required to be searched on a random basis upon entry each month, instead of every staff member being searched upon entry. Although Serco exceeded its own random searching numbers, this meant that many incoming staff were not searched, giving them the opportunity to smuggle contraband into the prison, if so inclined.

Cell searches were being conducted far less frequently than required by the 2014 / 2015 MECF Search Plan, with some units not having any recorded cell searches in the period April 2015 to June 2015. The lack of cell searching enabled prisoners to hide contraband in their cells as they rightly perceived there to be little likelihood of it being discovered.

### **Dropping**

There have been suggestions, including in the media, that there was a practice of ‘dropping’ that occurred at MECF whereby prisoners were thrown over the top of a balcony. The Investigation has found no evidence that ‘dropping’ was practiced at the site.

## **Security and supervision**

Serco operated a Dynamic Staffing Model and Daily Operational Risk Matrix for rostering the day-to-day duties of staff. This model was fundamentally flawed as there is documentary evidence that the staffing roster used included some staff who were on annual leave, medical leave, or had resigned. This resulted in an inaccurate picture of the actual level of custodial staff available to ensure the Daily Operational Risk Matrix operated effectively.

A review of CCTV footage highlighted that there were instances where no staff could be seen in some units for extended periods, in one case of up to 2 hours and 34 minutes while prisoners were unlocked and left unsupervised. Because CCTV cameras do not operate in cells, this meant that organised fighting in cells could occur undetected.

The absence of prison officers present in residential units during unlock hours provided ample opportunity for organised fighting to occur with minimal chance of detection.

In some cases staff present in a unit were observed from CCTV footage failing to undertake an active role in supervising prisoners – for instance staff were observed playing pool or table tennis. This lack of active supervision may have allowed organised fighting to occur even while these staff members were present in the unit.

## **Standards, operational systems, work practices and internal controls**

### *Reporting of serious assaults*

Specific allegations of organised fighting and prisoner-on-prisoner violence reported in the media were further examined during the Investigation. A number of serious assaults were noted involving prisoners receiving serious injuries requiring hospitalisation, including broken limbs and brain damage.

Two instances have been reviewed during the Investigation showing evidence of prisoner on prisoner assaults meeting the criteria to be notified as a serious assault, but which were initially reported to Corrections' National Office by Serco as an accident, or not at all.

### *Operational systems, work practices and internal controls*

The Investigation did not include a full operational audit of all MECF's standards, operational systems, work practices and internal controls. However, a number of systems relating to prisoner welfare were examined on the basis of concerns raised by prisoners:

- Some prisoners have been denied their fundamental right to telephone calls to their legal adviser for significant periods of time: in some instances they have waited up to 5 weeks. Serco failed to adequately resource the process to load prisoners' approved phone numbers, including lawyers, to ensure that calls could be made in a timely manner.
- Prisoners complaining of lengthy delays in receiving property which they are entitled to.

- Kitchen sanitation fell far below an acceptable standard. Prisoners have been served food that has been contaminated by birds, and food that was stored inappropriately. Meals were cold due to inoperative food delivery trolleys' and meal delivery practices were not sufficient to ensure that all prisoners received a meal.
- Initial prisoner medical assessments were not being carried out by appropriately qualified personnel. The assessment process had a task-orientated focus, which may have negatively impacted on the time available for response to healthcare needs.
- The lack of effective controls in the issuing of radios indicates that radios were not properly managed and accounted for at all times.
- MECF risk management and assessment processes did not in my view provide adequate assurance that key operational risks were being managed effectively or that MECF policies and procedures were being complied with. Serco's Compliance programme has not been operating effectively in identifying key operational areas of concern.

### **Actions taken by Serco to address prisoner violence prior to the release of the YouTube Footage**

Prior to the identification of the organised fighting problem, Serco had put in place a number of overlapping initiatives to address issues of general violence at MECF.

In particular, a Violence Reduction and Safer Custody strategy were established in 2013 following an Operational Review on Violence at MECF. I was not provided any evidence indicating that Serco had successfully implemented any effective anti-violence strategies. The lack of a Violence Reduction Coordinator – an integral part of these strategies – and staff apparently not taking personal responsibility for the implementation of and adherence to these strategies appears to have meant that the strategies were not effectively implemented.

### **Role of the Monitors**

A number of areas of concern identified in this Report were not adequately identified by Corrections Monitors (**Monitors**), or were not escalated and pursued until properly resolved.

The Monitors' relationship with Serco was often very difficult. They would sometimes experience significant 'pushback' from Serco when raising issues requiring remedial action such as meal distribution, homebrew, graffiti in cells, and disorderly evening lockup. Following a lack of timely action, the Monitors appear in many cases to have accepted Serco's position as to the adequacy of its own response to identified issues. The extensive 'pushback' and challenge received from MECF management was successful in shifting Monitors' focus away from core issues, and minimising the Monitors' criticisms of the significance of the issues identified.

Monitors' reporting and escalation arrangements have not functioned effectively to identify and resolve all areas of concern identified in this Report. This may be a result of:

- the fact that, since July 2013, Monitors have reported to the Relationship Manager Private Prisons, which appears to have resulted in Monitors taking a consultative approach of raising issues with Serco for its consideration;
- Monitors accepting inadequate responses from Serco when issues were raised, possibly due to confusion as to the appropriate steps for resolution;

- confusion in that the Monitors believed they did not have any statutory power if issues did not directly relate to a breach of Contract, legislation, or the Chief Executive instructions. .
- a task-orientated focus on scheduled reviews, which may have distracted Monitors from undertaking observations and recording issues as they arose; and
- lack of specific training or guidelines for the role of a Monitor.

### **A note on the scope of this Report**

This Report, although relatively wide-ranging in parts, is not intended to be an exhaustive review of all aspects of prisoner welfare at MECF. Accordingly, while it identifies various areas of concern, it does not recite the areas in which no concerns have been identified, and in which Serco may in fact be performing well.

### **Conclusions**

The lack of an effective control environment at residential unit level including in particular insufficient ‘staff on the floor’ provided prisoners with opportunities to participate in organised fighting and other illicit activities. Senior gang members were able to organise regular fighting in MECF units without the knowledge of staff. This was due to two key factors:

- Sparring was allowed to occur frequently, in full view of CCTV cameras; and
- Staff were often not in the residential units, so prisoners were able to arrange undetected fights in cells that were not secured while prisoners were unlocked.

It is likely that staff were a primary source of contraband, and that it was freely available. Prisoners talked freely about the availability of contraband at MECF and numerous prisoners gave statements to the effect that “*if you could fit it in an ice cream container, it could be smuggled in*”.

There was a lack of staff supervision in the residential units. Unit supervisors were noticeable by their absence on the floor. Some staff were observed by the Inspectorate not able to undertake core custodial duties such as a ‘face-to-name muster’.

### **Recommendations**

I have made specific Recommendations relating to the Findings of the Investigation. These are detailed in full in this report.

## Structure of this Report

### Part 1: Context and Methodology

#### 1.1 History of Mount Eden Site

1. Mount Eden Prison was originally a military stockade that was built in 1856. It has housed prisoners since 1888. Its design and functionality, and the deteriorating condition of the buildings, made it progressively more difficult to keep prisoners securely and humanely contained.
2. In July 2000 Auckland Central Remand Prison was built adjacent to Mount Eden Prison, and became New Zealand's first privately run prison under the management of Australian Correctional Management Ltd (later Global Expertise in Outsourcing NZ Ltd). In July 2005 the prison was placed under the control of Corrections.
3. In 2008 a decision was made to redevelop the site and create a single integrated prison called MECF, which involved incorporating the current ACRP buildings within the newly constructed facility. In August 2011 MECF was fully commissioned, Serco was contracted to run MECF, and the old historic Mount Eden Prison, which was a distinctly separate site and run by Corrections, was closed as a residential facility.

#### **MECF: An Overview**

4. MECF is the main remand prison for the Auckland and Northland area. It has a maximum prison population of 976 prisoners. As at 17 August 2015, MECF's prison population was 976 comprised of 532 remand accused, 260 remand convicted and 184 sentenced prisoners. This makes it one of the largest prisons in the country.
5. MECF has the largest remand population (75 % or more of the total population) in New Zealand. As such, it has unique characteristics. Serco has advised that its recent records show:<sup>4</sup>
  - a) Approximately 50% of the individuals that arrive there stay for a period of less than 23 days.
  - b) 45% of prisoners housed at MECF are gang affiliated and 60% have a previous history of violence.
  - c) 11% of the population at MECF are under 21 years of age.
  - d) 12.7% of the population are receiving mental health care.
  - e) There are over 30,000 prisoner movements per year, resulting in around 8,000 different prisoners residing at MECF during the year due to a turnover of 50% every 23 days.
  - f) There are up to 180 daily prisoner movements, and monthly more than 2,000 domestic visits, 700 legal visits, and 500 court appearances via audio visual link.

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<sup>4</sup> Email from MECF Prison Director to Chief Inspector dated 5 August 2015.

## 1.2 Statutory and Contractual Framework for MECF

6. Corrections operates its facilities in accordance with the Corrections Act 2004, the purposes of which include:<sup>5</sup>
  - a) ensuring that custodial sentences and related orders that are imposed by the courts and the New Zealand Parole Board are administered in a safe, secure, humane, and effective manner; and
  - b) providing for corrections facilities to be operated in accordance with rules set out in the Corrections Act 2004 and regulations made thereunder, that are based, amongst other matters, on the United Nations Standard Minimum Rules for the Treatment of Prisoners.
7. In November 2009 Parliament passed the Corrections (Contract Management of Prisons) Amendment Act 2009, which inserted new provisions into the Corrections Act 2004 providing for the Chief Executive to enter into a contract with a private provider for the management of a Corrections prison.<sup>6</sup>
8. In May 2010 Cabinet approved putting the management of MECF out for tender. The Contract was the result of a two-stage procurement process through which Serco's proposal was assessed as offering the highest value.
9. In December 2010, the Minister of Corrections (the **Minister**) authorised the Chief Executive to enter into the Contract with Serco for the management of MECF. The term of the Contract is ten years, although either party may terminate at the end of the first six years.<sup>7</sup>
10. The services to be provided by Serco are set out in detail in the Contract.<sup>8</sup> The Contract broadly requires Serco to undertake all prison management services, including managing prisoner security, welfare, activities and movements, managing prison infrastructure, and assessing and identifying rehabilitation and reintegration needs.
11. A portion of the remuneration under the Contract is a 'Performance Related Fee', linked to Serco's performance against a set of key performance indicators (**KPIs**), minus any 'Specific Deductions'.<sup>9</sup> KPIs are weighted performance measures, and include matters such as the percentage of prisoners testing positive for drugs, and the rate of serious assaults.<sup>10</sup> Specific Deductions set out a fixed deduction for matters such as escapes and deaths in custody.<sup>11</sup> The Performance Related Fee represents 10% of the Maximum Services Fee.<sup>12</sup>
12. Staffing arrangements are not the subject of a KPI or Specific Deduction. Rather, Serco is required to ensure that sufficient suitable staff members are engaged to enable Serco to perform its contractual and statutory obligations.<sup>13</sup>

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<sup>5</sup> Section 5.

<sup>6</sup> Corrections Act 2004, ss 198–199K.

<sup>7</sup> Contract, cl 3.

<sup>8</sup> In particular in Schedule 2 of the Contract.

<sup>9</sup> Contract, cl 10 and Schedules 3 and 4.

<sup>10</sup> Contract, Schedule 3, cls 2.3 and 2.4.

<sup>11</sup> Contract, Schedule 3, cl 3.

<sup>12</sup> Contract, Schedule 3, cl 1.1.

<sup>13</sup> Contract, cl 16.2.

### 1.3 Management and supervision of MECF

#### 1.3.1 Oversight by Corrections

13. There are a number of oversight mechanisms in place designed to promote and ensure prisoner welfare.
14. The principal means of oversight is via Monitors, who are appointed under the Corrections Act 2004 to assess and review the management of MECF.<sup>14</sup> Serco is required to provide incident reports and performance reports to Monitors.<sup>15</sup> The on-site monitoring team is managed by Corrections' Relationship Manager Private Prisons, who reports to Corrections' Chief Custodial Officer.
15. Monitors carry out their role by:
  - a) Attending Serco's daily morning briefs to staff and also the Senior Managers' operational briefing, and reviewing any operational matters that may be relevant to the Contract.
  - b) Carrying out daily observation walks through MECF, and observing operational practice.
  - c) Conducting a daily review of incidents and prisoner complaints.
  - d) Meeting with members of the Serco management team on a weekly basis to discuss issues that have arisen during the week or have been carried over from previous meetings. Monitors are also invited to attend monthly Security Intelligence Meetings at MECF.
  - e) Weekly monitoring of Serco's records relating to appropriate prisoner management and segregation.
  - f) Recording issues on an issues log (**Issues Log**) and providing quarterly reports to the Joint Contract Board (**JCB**).
  - g) If necessary, immediately reporting any matters of concern to the Serco management team, or to the Chief Executive.<sup>16</sup> Monitors report to the Relationship Manager Private Prisons, who reports to the Chief Custodial Officer. The Chief Custodial Officer reports to the Deputy Chief Executive, Service Development who reports directly to the Chief Executive.
16. Corrections also has the right to conduct an audit of Serco's performance of the services to be provided under the Contract.<sup>17</sup>
17. Senior Corrections staff also meet regularly with senior Serco staff to discuss operational and strategic matters concerning MECF. At the most senior level, Corrections' staff meet with senior management at Serco Asia Pacific via quarterly meetings of the JCB, which is comprised of:

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<sup>14</sup> Corrections Act 2004, ss 172 and 199E.

<sup>15</sup> Contract, cl 22 and Schedule 5.

<sup>16</sup> Corrections Act, s 199E(4).

<sup>17</sup> Contract, cl 21.2.

- a) Corrections: Chief Executive, Deputy Chief Executive Corrections, National Commissioner, Deputy Chief Executive Finance, Technology and Commercial; and
  - b) Serco: CEO Serco Asia Pacific, Managing Director Justice and Health, Director of Operations Serco Asia Pacific.
18. The matters discussed at these meetings include: emerging risks and issues, health and safety, results against performance measures and general updates on the relationship between Serco and Corrections.
19. If an issue raised by Monitors or auditors is not able to be resolved through informal discussions and consultation with Serco management, the matter can be referred to Commercial Contracts Team. This team conducts service audits to monitor contractual compliance,<sup>18</sup> liaises closely with the Monitors, and can recommend the issuance of Performance Notices for non-trivial breaches of the Contract.<sup>19</sup> Corrections has a range of powers available to it under the Contract, including issuing directions to Serco to remove personnel who are not considered to be fit and proper, or adequately trained,<sup>20</sup> including the Prison Director.<sup>21</sup> The primary means of managing contractual non-compliance is through issue of a Performance Notice. A Performance Notice requires Serco to investigate and resolve the root cause of any breach,<sup>22</sup> and can lead to a Final Warning Notice.<sup>23</sup> The Commercial Contracts Team is also responsible for calculation of the Performance Related Fee.
20. The Inspectorate also provides oversight of MECF.<sup>24</sup> Inspectors are independent statutory officers with wide powers under the Corrections Act who report to the Chief Executive.
21. The role of the Inspectorate includes:
- a) Visiting any correctional facility or other place where offenders are under control or supervision, at the Inspector's discretion, to interview any offender.
  - b) Examining the treatment and conduct of prisoners.
  - c) Dealing with complaints made to an Inspector.
  - d) Inquiring into any abuses or alleged abuses of offenders or any matter referred to the Inspector by the Chief Executive including death in custody and serious assault investigations and special project reviews.
  - e) Reporting to the Chief Executive on any of the aforesaid matters or any other matters relating to the management of offenders.

### **1.3.2 Oversight by the Office of the Ombudsman**

22. Another body exercising oversight of MECF is the Office of the Ombudsman (**Ombudsman**). The Ombudsman conducts visits and formal inspections as part of

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<sup>18</sup> Contract, cl 21.

<sup>19</sup> Contract, cl 25.

<sup>20</sup> Contract, cl 16.5.

<sup>21</sup> Contract, cl 16.8.

<sup>22</sup> Contract, cl 25.2.

<sup>23</sup> Contract, cl 25.6. Further Performance Notices following a Final Warning Notice may have further contractual consequences including step-in and termination: cls 28 and 29, in particular 29.2.

<sup>24</sup> Corrections Act 2004, s 28.

its role as a designated National Preventive Mechanism in terms of the United Nations Optional Protocol to the Convention Against Torture (**OPCAT**).<sup>25</sup> As such, the Ombudsman has responsibility for monitoring prisons and making recommendations to improve the conditions and treatment of detainees. The Ombudsman inspects 117 facilities under OPCAT and is required to visit them at least once every four years.

23. In 2013–2014, the Ombudsman conducted both a formal inspection and follow-up inspections of MECF, resulting in 13 recommendations.<sup>26</sup>
24. The Ombudsman is being kept informed of the progress of the Investigation. A representative of the Office of the Ombudsman was present at the Investigation for the purpose of confirming the focus and scope of the matters investigated, with a view to enabling the Ombudsman to assess whether a separate investigation should be made, under the Ombudsmen Act 1975, into any matters that the Chief Inspector has investigated.

### **1.3.3 Prison Performance Table**

25. Another form of oversight is provided by Corrections' Prison Performance Table (**PPT**).<sup>27</sup> The PPT assesses prison performance across core security, internal procedures and rehabilitation indicators relative to all other prisons across the prison estate. A prison can achieve one of four grades on the PPT, with placement on the PPT determined by their grade.<sup>28</sup> MECF has received an exceptional grade on the PPT for 12 months up to March 2015.<sup>29</sup> The next performance table update is for the period to June 2015. At the time of writing this Report, the next update had not yet been published. The Investigation has not included a review or audit of the PPT.

### **1.3.4 Oversight by the State Services Commission**

26. Corrections itself is also subject to oversight from other Crown agencies, in particular the State Services Commission. In September 2012, the State Services Commission published a Performance Improvement Framework (**PIF**) analysis of Corrections.<sup>30</sup> A PIF analysis seeks to identify whether an agency is fit-for-purpose at the time of review and identify how the agency could change to improve performance in the future.
27. The September 2012 PIF analysis rated Corrections as 'strong' in its efficiency and effectiveness measures regarding 'management of third-party custodial services'. It

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<sup>25</sup> "Optional Protocol to the Convention Against Torture (OPCAT) Subcommittee on Prevention of Torture National Prevention Mechanisms" Office of the High Commissioner for Human Rights <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx>.

<sup>26</sup> Office of the Ombudsman annual report 2013/14 at [42].

<sup>27</sup> "Prison Performance Tables" (5 June 2015) Department of Corrections [http://www.corrections.govt.nz/resources/prison\\_performance\\_tables.html](http://www.corrections.govt.nz/resources/prison_performance_tables.html).

<sup>28</sup> The four grades are (1) Needs Improvement; (2) Effective; (3) Exceeding; and (4) Exceptional.

<sup>29</sup> "Prison Performance Table – Performance grade for 12 months to March 2015" Department of Corrections.

[http://www.corrections.govt.nz/\\_\\_data/assets/pdf\\_file/0003/793263/PPT\\_Q3\\_2014\\_15.pdf](http://www.corrections.govt.nz/__data/assets/pdf_file/0003/793263/PPT_Q3_2014_15.pdf).

<sup>30</sup> State Services Commission, the Treasury, the Department of the Prime Minister and Cabinet "Performance Improvement Framework: Forman Review of the Department of Corrections" (September 2012) <http://www.ssc.govt.nz/sites/all/files/pif-corrections-review-sept12.PDF>.

stated that Corrections “has been vigilant in ensuring that the private operator is addressing shortfalls in its performance and is assisting where it can.”<sup>31</sup>

28. A follow-up PIF report was published in April 2014.<sup>32</sup> It addressed Corrections’ management of Serco and MECF less directly, but commented on the tension created by the different roles Corrections has to play with respect to MECF, in particular that it would be inappropriate for Corrections to impose its own safety system on Serco, and that policies and plans should be discussed by Corrections with Serco.<sup>33</sup>

### **1.3.5 International oversight**

29. Because New Zealand is a signatory to OPCAT, officials from the United Nations Subcommittee on the Prevention of Torture are entitled to inspect New Zealand prisons, including MECF. Between April and May 2013, the Subcommittee inspected several New Zealand prisons, including MECF.<sup>34</sup> These visits occur periodically every 3 – 4 years but are separate to COTA visits.

## **1.4 Investigations into previous reports of organised fighting and violent incidents at MECF and Mount Eden Prison**

### **1.4.1 2009 investigation**

30. In 2009 the Northern Regional Manager of Prisons commissioned the Professional Standards Unit (**PSU**) to investigate allegations of prisoner fighting at Mt Eden Prison which was under the control of Corrections at that time.<sup>35</sup> The PSU investigated allegations that staff were involved in organising these fights and betting on the outcome. This investigation and report pre-dates the commissioning of MECF. The findings of the draft report included that:
- a) It was more likely than not that prisoners were involved in fights within Mt Eden Prison.
  - b) The incidents were more likely to be short fights or assaults carried out in areas away from staff, and from the yards, where CCTV cameras operated.
  - c) It was likely that some prisoners were unwilling participants, and were either assaulted or threatened with assault if they do not participate.

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<sup>31</sup> State Services Commission, the Treasury, the Department of the Prime Minister and Cabinet “Performance Improvement Framework: Forman Review of the Department of Corrections” (September 2012) <http://www.ssc.govt.nz/sites/all/files/pif-corrections-review-sept12.PDF>, page 31.

<sup>32</sup> State Services Commission, the Treasury, the Department of the Prime Minister and Cabinet “Performance Improvement Framework: Follow-up Review of Department of Corrections” (April 2014) [http://www.corrections.govt.nz/\\_\\_data/assets/pdf\\_file/0009/738063/PIF-Corrections-followup-apr14.pdf](http://www.corrections.govt.nz/__data/assets/pdf_file/0009/738063/PIF-Corrections-followup-apr14.pdf).

<sup>33</sup> State Services Commission, the Treasury, the Department of the Prime Minister and Cabinet “Performance Improvement Framework: Follow-up Review of Department of Corrections” (April 2014). [http://www.corrections.govt.nz/\\_\\_data/assets/pdf\\_file/0009/738063/PIF-Corrections-followup-apr14.pdf](http://www.corrections.govt.nz/__data/assets/pdf_file/0009/738063/PIF-Corrections-followup-apr14.pdf) at 17.

<sup>34</sup> *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to New Zealand* CAT/OP/NZL/1 (2014) [http://tbinternet.ohchr.org/Treaties/CAT-OP/Shared%20Documents/NZL/CAT\\_OP\\_NZL\\_1\\_7242\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT-OP/Shared%20Documents/NZL/CAT_OP_NZL_1_7242_E.pdf).

<sup>35</sup> This is the old Mount Eden prison, which was comprised of historic buildings which are not part of MECF’s housing facilities, and was under Corrections’ management at the time.

- d) While possible, it was unlikely staff were involved in organising and betting on these fights.
- e) There was a consensus amongst some staff and prisoners that these fights were tolerated by certain staff because it made the management of troublesome prisoners easier.

31. Key recommendations were:

- a) Given that the Prison Manager had implemented steps to mitigate the risk to prisoners, this initiative should remain a priority in the foreseeable future and management should remain vigilant for non-reporting of assault-related incidents.
- b) That management actively monitor prisoner assault related incidents to identify any trend that might be indicative of organised fighting.<sup>36</sup>

#### **1.4.2 Identification of 'contender bouts', and 2013 Operational Review of Violence**

32. Following the 2009 investigation, the first record of organised fighting at MECF since Serco taking over the management in 2011, appears to have emerged on or around 14 January 2013. On that date a staff notice was issued by the MECF Acting Prison Director stating:

It has come to the attention of management that the matter of 'contender bouts' where prisoners are given the option of taking part in a bout or being assaulted if they refuse has arisen again. This is a serious matter and all possible action will be taken to eradicate this practice and disciplining those who instigate this form of violence.

- 33. It has not been determined what incident or complaint led to this notice, or if Serco took any further action on this matter after posting the staff notice.
- 34. Unconnected to that staff notice, but in response to an escalation in the number of violent events, Serco commissioned an operational review of incidents of violence within MECF during April and May 2013.
- 35. The operational review concluded that the events reviewed appeared to be isolated incidents, and staff had acted in accordance with operational protocols and legislation. The matters considered by the operational review were not specifically connected with organised fighting.

#### **1.4.3 2014 Investigations into allegations of organised fighting at MECF**

36. In May 2014, Corrections received information from a Probation Officer that she had been informed by offenders that there was organised fighting occurring at MECF.<sup>37</sup>

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<sup>36</sup> In responding to drafts of this Report, Serco has said that a number of matters have not been, or have not sufficiently been, taken into account. One of those matters is the proposition that this Report should be considered in the context of two earlier reports into organised fighting at MECF. I have considered the findings of this 2009 investigation, as well as the 2014 investigation discussed in Subpart 1.4.3. However, I did not conduct either of these reports, and do not consider that I am bound by their conclusions or methodology.

<sup>37</sup> Serco has advised that, at this time, it was unaware of the 2009 investigation.

37. On the basis of the information received, the PSU made enquiries, which included interviewing the probation offenders who alleged there was a significant amount of fighting taking place, particularly in two units. Offenders had also made allegations that staff were involved in assaults, gambled on fights, and placed prisoners in dangerous situations. However the PSU investigation concluded that there was no substantiated evidence supporting these claims.
38. Following the PSU enquiry, the National Commissioner of Corrections directed an operational review of this issue. Two principal custodial advisors were appointed as special monitors (the **Special Monitors**), and undertook an investigation in June 2014. The Terms of Reference for the Special Monitor's report were to investigate the allegations of organised fighting uncovered by PSU's enquiries. The methodology included: reviewing all available CCTV footage and interviewing any prisoners, staff or incident notification reports that related to fights and assaults.
39. A final draft of the Special Monitors' report was completed on 9 July 2014 and a copy delivered to the office of the National Commissioner.
40. The Special Monitors' draft report found that:
- a) Prisoner interviews indicate that organised fighting was occurring.
  - b) All prisoners who confirmed the existence of organised fighting said it was being organised by criminal gangs.
  - c) There was no evidence of staff involvement other than reports by prisoners, but staff at MECF must at least be aware of the existence of organised fighting.
  - d) Staff who confirmed that organised fighting had occurred around 12 months ago said that incidents had occurred during periods of reduced staffing.
41. The report was never finalised, but was provided in redacted draft to the MECF Prison Director in May 2015. The Prison Director has stated that he was told not to reveal the contents of the report to anyone.
42. The reasons why this report was never finalised were investigated by a separate body to this investigation. I am of the view that this report should have been finalised and provided to Serco. The failure to finalise the report is not attributed to Serco. Two independent members of the Corrections' Audit and Risk Committee<sup>38</sup> had been tasked with reviewing the management of this report under terms of reference approved by the Chief Executive. I have been provided a copy of their review which supports my belief that the original report should have been finalised and provided to Serco, and escalated to Corrections senior management including the CE. The Investigation will not include any further consideration of this matter.

### **1.5 Emergence of footage of organised fighting, and Corrections' decision to step-in**

43. On 15 July 2015, Corrections became aware that a series of video clips showing organised fighting between prisoners at MECF had been uploaded to YouTube. The footage was apparently recorded by prisoners, indicating access to contraband cell phones.

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<sup>38</sup> This review was undertaken by Audit and Risk Committee members – **Section 9(2)(a)**

44. In addition to the emergence of YouTube Footage of organised fighting at MECF, allegations were made in the public media that a practice of 'dropping' occurred at MECF. 'Dropping' is a term used to describe a practice whereby prisoners were forcibly thrown or pushed over the top of a balcony. I have found no evidence that the practice of 'dropping' occurred at MECF.
45. On 24 July 2015, following a meeting between the Minister and the Chief Executive, a step-in notice was given to Serco whereby Corrections exercised its contractual right of step-in at MECF (the **Step-in**). Step-in was considered necessary to protect the safety of the staff and prisoners in MECF.
46. For the duration of the Step-in, Corrections has appointed a Prison Director and Deputy Prison Director and certain additional Corrections management and custodial staff.

## **1.6 Methodology of the Investigation**

### **1.6.1 Fact-gathering and consultation**

47. The fact-gathering phase of the Investigation involved the following steps by members of the Inspectorate, under my oversight:
  - a) Identifying the prisoners shown in the YouTube Footage.
  - b) Interviewing those prisoners, ex-prisoners from MECF who raised concerns about their treatment, and other prisoners who had been housed within MECF and who had emerged as persons with potential knowledge of organised fighting during the course of the Investigation. A total of 48 prisoners or ex-prisoners from MECF (referred to below generally as 'prisoners') were interviewed.
  - c) Interviewing Serco operational and management staff who had responsibility for MECF during the relevant period. A total of 42 Serco staff were interviewed, including prison officers,<sup>39</sup> duty supervisors, senior management and the Deputy Director and Prison Director. The Inspectorate also interviewed a number of Corrections Staff including the MECF Monitors, Relationship Manager Private Prisons, Regional Commissioner and Assistant Regional Commissioner.
  - d) Reviewing Serco's CCTV footage. This is ordinarily overwritten at all prisons due to storage limits after around 14 days, but Serco was asked on 17 July 2015 for all available footage to be saved. The Investigation also found that Serco had saved certain CCTV footage of incidents of concern from before this date.
  - e) Reviewing prisoner information held on Corrections' Integrated Offender Management System (**IOMS**). IOMS is a central database of prisoner management information which is operated and held by Corrections, and which each prison is responsible for updating with relevant information. It includes medical and disciplinary information, as well as records of prisoner complaints.
  - f) Reviewing Serco's incident reports.
  - g) Reviewing relevant Serco operating policies, standards and procedures.

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<sup>39</sup> Prison officers employed by Serco are known as corrections officers within Serco. In order to avoid confusion, we have referred to Serco employees at MECF as prison officers.

- h) Liaising with Corrections' Operational Intelligence team, Corrections' Contract Management team, and New Zealand Police (**Police**).
- i) Reviewing prisoner complaints made to the Corrections Inspectorate, and those contained on Serco's internal complaint system.
- j) Consulting with Serco and considering and incorporating its feedback on drafts of this Report.

### **1.6.2 Serco's objection to reliance on anonymous sources**

48. The majority of interviewees, in particular those prisoners interviewed, asked not to be identified in this Report, for fear of reprisal from those who may be implicated. They were given undertakings that the statements that they made would not be attributable to them. For this reason, material tending to identify a particular individual has been generalised.
49. Serco has objected strongly to my partial reliance on anonymous statements by interviewees. It says that it has not been given an opportunity to respond to allegations, for example, Findings relating to the frequency of organised fighting, because:
- a) Serco has not been told the identity of the person who made the allegation; and
  - b) in many cases, the allegations are generalised, for example where a prisoner interviewed has said that organised fighting happened daily, almost daily, or weekly.
50. Serco considers that it is entitled to an opportunity to test the reliability of each interviewee's statements by being told the details of each specific incident to which a statement relates. So, for example, Serco's position is that I am not entitled to place any weight on a prisoner's statement that fighting occurred on a daily basis unless I have first ascertained and disclosed to Serco the date, time and location of each separate daily incident, so that Serco can:
- a) ensure that the prisoner was in the unit he claims knowledge of;
  - b) check if any medical records match the claims being made; and
  - c) check if any complaint was made by the prisoner, and if so whether it was investigated and/or upheld.
51. I have carefully considered Serco's complaints about my partial reliance on anonymised prisoner and staff interviews. The material gained from those interviews, while not the only evidence supporting my Findings, is highly relevant to the investigation that I have been required to undertake, and the absence of this material would impact on my ability to carry out my statutory function:
- a) First, it would have been impossible to gather many, if not all, of the statements obtained in the absence of an agreement as to anonymity. Prisoner and staff interviews were voluntary, and these people agreed to speak to members of the Inspectorate almost universally on the understanding that they not be identified (with the exception of senior Serco employees, who were willing to have their statements attributed to them). The reasons for their concerns (i.e. assault or adverse employment outcomes) are

very reasonable. Further, in my experience, prisoners are commonly nervous of authority for obvious reasons, and are much more inclined to speak freely and frankly when they know that their statements will not be directly attributed to them.<sup>40</sup>

- b) For the same reason, prisoners were understandably reluctant to provide anything other than generalised comment. In addition to being scared of physical reprisal for being a 'nark', these individuals are inherently reluctant to be involved in any type of structured interview, in which specific details are sought, possibly due to their experiences with Police leading to their incarceration. Prisoners frequently indicated discomfort and sought to terminate interviews if pushed beyond the level of information they were prepared to provide.
- c) Finally, even if they were prepared to comment in detail, the interviewees themselves are very unlikely to be able to give the level of specificity which Serco seeks. A prisoner may be able to credibly say that organised fighting happened on a daily basis during one period of his incarceration, while being totally unable to recall who was involved, in which cell, and at what time, on each single occasion.

52. Further, I do not believe that disclosing the confidential information to Serco would in fact assist materially in it responding to the statements recorded in this report:

- a) I have confirmed that the prisoners interviewed were in the units that they claim knowledge of.
- b) I have taken into account whether, in relation to consistent statements made by prisoner interviewees, prisoners were housed in the same prisons at the time of the interviews, which may have resulted in collusion of stories.
- c) While Serco has no medical records of organised fighting, to the extent that information about organised fighting might be inferred from records of injuries, assaults, and fighting generally, that information has been set out in Graphs 1, 2 and 3 in Subparts 2.2.5 and 2.2.6 below.
- d) I have confirmed that no complaints of organised fighting were made by any prisoners to Serco. As explained in Subpart 2.2.1, IOMS records only two instances of organised fighting, neither of which records were prompted by prisoner complaints. As is evident from Subpart 2.2 below, a number of episodes of organised fighting occurred, and were captured on CCTV. In a context such as this, an absence of records does not prove an absence of fighting. The lack of other records of the fighting captured by CCTV in June and July 2015, and in the YouTube Footage, illustrates this point clearly.

53. Where possible, I have used oral evidence from prisoners solely for the purpose of corroborating conclusions available from other evidence, such as documentary records and CCTV footage. In regard to my conclusion as to the likely frequency of

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<sup>40</sup> In order to protect interviewees' details, Corrections initially refused to provide any interview notes to Serco. The Inspectorate has since attempted to contact all interviewees to determine if they would consent to the release of their interview notes. Of the 48 prisoners and 42 staff interviewed, 13 prisoners and 2 staff agreed to the provision of their interview notes to Serco, although all of those prisoners, and one of the two staff members, agreed to this only on the condition that their names be redacted.

organised fighting, I have relied upon interviews only to corroborate what is already clear from documentary and video evidence.

54. Serco also says that anonymous statements from prisoners are inherently unreliable. I address this criticism in Subpart 2.2.3.2 below.

### 1.7 Issues raised by MECF Prison Director

55. When interviewed, the former MECF Prison Director raised concerns to the Inspectorate regarding what he considered to be high levels of risk placed on Serco. These included:

- a) A high number of internal movements - up to 2,725 per week.<sup>41</sup>
- b) A high number of external movements that MECF were expected to accommodate often at short notice.
- c) A significant number of high risk and violent prisoners who were unable to be moved out from the site.
- d) Up to 300 sentenced prisoners housed at MECF. MECF was designed specifically to be a remand facility and does not have capability to provide sentenced prisoners with the necessary reintegration programmes.
- e) That MECF was kept at its maximum muster when other prisons operated at less than maximum muster.
- f) An increase in high risk prisoners following the Springhill riot in 2013.
- g) A significant number of prisoners with gang affiliations and history of violence.

56. I have borne in mind the concerns raised by the Prison Director regarding increased risks at MECF, and accept that MECF is a challenging site to manage due to the high turnover of prisoners and resulting movements. This would have been expected at a site of this nature and would, I expect, have been considered when Serco made their bid. I have also borne in mind that Serco has said that its principal issue, which is the muster at MECF, is today substantially different from that outlined by Corrections in the RFP (request for proposal) documents preceding the Contract. Serco says that it is that substantial difference that has put so much strain on management and which has, over a long period, been communicated to Corrections as an on-going risk.

57. I accept that MECF is a difficult site to manage and the issues of risk raised by the Prison Director and by Serco may be factors in making the site more challenging than Serco initially believed when awarded the Contract.

58. However, the Terms of Reference do not instruct me to investigate issues relating to Corrections' and Serco's understanding of the Contract. I have discussed Serco's concerns with Corrections personnel, and can say that:

- a) Corrections Northern Regional Commissioner (**Regional Commissioner**) confirmed that she was aware of the issues raised by the Prison Director. However, the Regional Commissioner believed that MECF had sufficient capability to manage these risks on the basis that MECF is a contracted remand facility, which contemplates the management of high risk and violent prisoners and this was what the Contract anticipates, and was the basis of Serco's bid.

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<sup>41</sup> This concern was previously raised in a Request for Additional Corrections Officers 15/12/14 v12.

- b) Corrections has advised that MECF has been operating at maximum muster since December 2014 due to increasing muster pressures nationally. Corrections has also confirmed that it was working with Serco on the preparation of a business case to establish a new movements group to alleviate issues around movements of prisoners (Corrections' and Serco's comments on the negotiation of a movements group are discussed in more detail in Subpart 3.1.2 below).
  - c) Following the Springhill riot, prisoners were transferred to a number of prisons around New Zealand, not only MECF. It was deemed that MECF was a suitable placement for some of the prisoners as it was a high security facility, and a number of the prisoners would be facing court charges related to the riot.
59. I note that the Prison Director's concerns about the higher number of prisoners at MECF with gang affiliations appears to be incorrect. The Inspectorate conducted a check of similar sized and profiled prisons (Rimutaka and Christchurch Men's) which showed a similar spread of gangs on site and of similar or higher percentage than MECF. Therefore, I do not accept that MECF has a significantly higher proportion of gang members than other similar sites.
60. During consultation, Serco has said that drafts of this Report failed to take into account (or failed to sufficiently take into account) that contributing factors to the incidence of violence at MECF have been previously brought to the attention of Corrections prior to July 2015. I wish to make clear that I have considered all of the issues set out in this Subpart 1.7, and have considered Corrections' oversight of MECF, with particular reference to Monitors, in Part 7.

## Part 2: Findings as to the prevalence of organised fighting

### 2.1 Introduction

61. The YouTube Footage confirmed the presence of organised fighting at MECF. Throughout the 6 videos seen on YouTube Footage, 13 prisoners are seen engaged in fighting, and 47 prisoners watching. It is possible that some of the same prisoners may feature in a number of the video events. The organisation of that fighting is evident from the following:
- a) In most cases the filming begins before the fighting.
  - b) The fights are all one-on-one. In one video the winner of the first fight immediately begins to fight another combatant.
  - c) Those watching appear to be acting as spectators rather than interested parties. In spontaneous fighting, associates of each party could ordinarily be expected to become involved.
  - d) Most of the fights show some degree of rule-following: prisoners who have been knocked down are allowed back to their feet before the fight recommences, the fights seem to follow a format of 'rounds', and in one instance spectators appear to tell one combatant to release his opponent from a choke hold.
  - e) There appears to be an absence of the type of animosity that would ordinarily be associated with spontaneous fighting. In one of the fights the combatants appear to shake hands after the fight.
62. This Part is primarily concerned with the prevalence of organised fighting, and the extent of staff knowledge (2.2 and 2.3 below).<sup>42</sup>
63. A note on terminology:
- a) Serco has advised that unacceptable fighting activity exists on a spectrum including:
    - I. 'Sparring', consisting of pre-fight training and rehearsing, for which injuries are less common and, where sustained, less serious.
    - II. 'Contender fighting', being organised fighting between two participants, usually organised by a gang member, and usually involving willing

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<sup>42</sup> In responding to drafts of this Report, Serco has said that a number of matters have not been, or have not sufficiently been considered, including the proposition that violence is prevalent throughout the New Zealand prison system. As Chief Inspector of Corrections I am generally aware of the level of violence throughout the New Zealand prison system. This was not something which I was instructed to consider in Phase 1 of the Terms of Reference, to which this Report relates. I have been careful not to compare MECF with other New Zealand prisons (except for very limited purposes in considering certain statistical information – see Graphs 1, 2 and 3). Phase 2 will include a review of the adequacy of controls designed to address prisoner violence and access to cell phones operating in other New Zealand prisons. I note that I have drawn on my experience with prisoner behaviour in support of a number of comments and conclusions in this Report, in particular in Subpart 3.1.1, in which I discuss the importance of staffing for adequate prisoner supervision.

participants. Fights are planned and take place in cells, out of sight of prison officers and CCTV cameras. Injuries sustained in these fights can be serious.

- III. 'Fight club', being organised fighting usually involving gangs and gang-affiliated prisoners, in which participants are either willing or unwilling. Like 'contender fights' these fights usually take place in cells, out of sight of prison officers and CCTV cameras or in an exercise yard during periods of non-supervision. Other prisoners housed in the same unit will usually know that a fight is to occur and can sometimes be engaged to distract prison officers to ensure that the fighting is not detected. Injuries sustained in these fights can be serious.

All of these activities are considered unacceptable by both the Inspectorate and by Serco, and are referred to below generically as organised fighting except where specifically distinguished.

- b) MECF residential accommodation is divided into units Alpha to Kilo, each of which consists of two independent sub-units called pods, both monitored from the same Housing Control Room. Unit pods are designated with a number, hence this Report refers, for example to 'Delta 1', being one of the Delta Unit pods.
- c) Custodial officers are referred to as prison officers. Serco's internal term for prison officers is Corrections Officers, but this term has been avoided to prevent an inference that these staff are employed by Corrections.

## 2.2 Whether prisoner on prisoner fighting is widespread within MECF or limited to specific units

### *Findings:*

- *Organised fighting in the form of 'sparring' occurred frequently in full view of CCTV cameras, with 12 incidents recorded on CCTV in the 26 days between 18 June 2015 and 13 July 2015.*
- *It is likely that organised fighting in the form of 'contender fighting' or 'fight club' occurred at least once a week, during certain periods in the months the subject of the Investigation. CCTV footage, MECF documentary records, and the YouTube Footage show five incidents, and two probable separate incidents, occurred in MECF between 11 June 2015 and 4 July 2015. Of the 12 prisoners who were prepared to comment on the frequency of this activity, one said it happened weekly, and the others said that it occurred more frequently than that, including four who said it occurred daily or almost every day, in the units in which they were housed.*
- *At least some incidents of organised fighting were of significant duration, involving multiple 'rounds' of fighting between participants, and multiple consecutive fights. In some cases different pairs of participants would fight consecutively. On occasions the victor of the first fight would immediately fight a subsequent challenger.*
- *It is likely that organised fighting was most prevalent within the Delta Unit cells and the Alpha Unit Yards. However, organised fighting was not confined to*

these units. There were multiple credible reports of organised fighting having occurred in Bravo, Charlie and Golf Units.

- The fighting is likely to have been organised primarily by senior members of a number of gangs, including Black Power, Killer Beez and Head Hunters.
- Some prisoners were compelled to engage in organised fighting, and it is likely that coercion was a not uncommon aspect of organised fighting.

## 2.2.1 MECF documentary records suggest a more prevalent underlying problem

### 2.2.1.1 Review of MECF documentary records

64. There are very few records of organised fighting within MECF's formal recording and reporting systems:

- a) IOMS records only two instances of organised fighting, which are discussed below; and
- b) Monitors' reports and the Issues Log each contain one reference each. Corrections' monitoring arrangements are considered in detail in Part 7 of this Report.

65. However, Serco's corporate records, include discrete incident reports, correspondence, and meeting minutes, disclose a number of specific incidents:

- a) On 25 August 2014 an incident of organised fighting lasting around 43 minutes occurred in Bravo Unit. The incident was not recorded in IOMS. This event was identified from correspondence between the MECF Prison Director and senior management saying:

*"At approximately 10:05hrs [a Section 9(2)(a) responsible for monitoring security] was on the DVM when Section 9(2)(a) came across live footage of contender / fightclub happening in Bravo 2 yard; Section 9(2)(a) immediately contacted Bravo Housing and spoke to a [prison officer]. Section 9(2)(a) was on loud speaker at the time; [two other prison officers] were also present in the Housing (3 staff in the Housing Control); Section 9(2)(a) explained clearly that fighting was happening at that moment in Bravo 2 yard; At approximately 10:12 no action had been taken by the officers who were still sat in the Housing; Section 9(2)(a) informed Section 9(2)(a) who informed [a Senior Duty Manager]; The yard was entered by staff at 1019 hours, some 14 minutes after the alarm was raised; Having reviewed the CCTV footage, it has been confirmed that fighting/sparring commenced at 09:36hrs; Fighting occurred for 43 minutes and was only interrupted as a result of Section 9(2)(a) stumbling upon this occurrence; This occurred with apparently full staffing. Can you please outline some remedial actions. Section 9(2)(a) – to feature in your findings and suggestions".*

- b) Serco has advised that in October 2014 prisoners were sighted sparring in Alpha Unit, which was reported to senior management.

- c) The first internal Serco record indicating the presence of organised fighting in 2015 dates from March 2015. On 26 March 2015 Serco's security intelligence team became aware through monitoring of the prisoner telephone system that prisoners in Delta Unit were walking around with black eyes, attributed by those using the telephones to organised fighting. This information was discussed at a <sup>Section 6(c)</sup> meeting on 30 March 2015 and an 'Intel' meeting on 2 April 2015, both of which were attended by senior Serco staff. The MECF Prison Director was present at the Intel meeting. The Intel meeting minutes state:

*"last 7 days, 3 incidents where prisoners in Delta 2 were presenting with facial bruising, unwilling to discuss how they incurred this injury. Telephone monitor of Prisoner X, states prisoners are walking around in Delta 2 with black eyes due to contender fighting. It is possible the incidents are as a result of contender fighting.*

*the MECF <sup>Section 9(2)(a)</sup> noted "staff are not challenging sparring and fighting often."*

- d) On 13 May 2015, a prison officer conducting lock up in Bravo 1 Unit noticed a prisoner with facial bruising. An incident report was written, which states that the prisoner refused medical attention and would not reveal any information on what had happened. A follow-up report was written on 14 May 2015, indicating that Serco staff had subsequently viewed CCTV footage of an organised fight involving the prisoner.<sup>44</sup>
- e) On 11 June 2015 a prison officer was made aware that a prisoner in Golf Unit had arranged a fight between two fellow prisoners. One of the prisoners who was made to fight told the prison officer that he won the fight and was told by gang members they would "stab him the next day". All three prisoners were charged with fighting and an incident report was written.
- f) The incident reports of 13 May and 11 June 2015 are the only incidents of organised fighting prior to the Investigation that have been recorded on IOMS.
- g) On 15 June 2015 a prisoner using an MECF telephone ended his conversation with the statement that he had to leave to fight in a contender fight because of "Kill Bee/Tribesman shite". Serco's Intelligence Team advised that a review of CCTV footage shows the prisoner making his way to a cell in Delta Unit, and emerging around seven minutes later without a shirt, and with three other prisoners who appear to have suffered recent minor injuries. This incident is not recorded on IOMS, but the Inspectorate has been provided with an email correspondence making the MECF Prison Director and Deputy Director aware of the incident on 15 June 2015.
- h) On 24 June 2015, the Serco <sup>Section 9(2)(a)</sup> created a Security Information Report (SIR) which stated that:

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<sup>43</sup> <sup>Section 6(c)</sup>

<sup>44</sup> The follow-up report states that both prisoners were to be disciplined for misconduct. However, IOMS records do not indicate that this ever occurred. Nor do any records indicate that the second fight captured in the CCTV footage viewed during this Investigation was noted by Serco staff at the time or that any action was taken in relation to that second fight.

- I. a prisoner with a broken hand had claimed that the injury was sustained during a fight for which he was 'nominated' without his consent;
  - II. he had further damaged his hand two days later when he was required to fight another opponent;
  - III. Killer Beez gang members were organising fighting within the Delta Unit;
  - IV. he had not been interviewed about his hand by Delta Unit staff, who he said generally turned a blind eye to the activities going on around organised fights;
  - V. the prisoner expected that he would be forced into further fights, and indicated his cellmate was also at risk; and
  - VI. the prisoner and his cellmate ought to be relocated.
- i) The SIR was provided to the Serco **Section 9(2)(a)** Manager in an email dated 25 June 2015 stating:

*"Look at this **Section 9(2)(a)** Manager]. Looks like Delta staff are just ignoring this kind of thing, it does appear to be run by the KBs. I'm telling you **Section 9(2)(a)** Manager] someone is going to get seriously hurt and the staff will have to stand up and be counted."*

#### 2.2.1.2 Conclusions from review of MECF documentary records

66. The above records indicate that a number of separate incidents occurred. I consider that they are consistent with either:
- a) a significant number of isolated events of organised fighting, all or most of which were detected and recorded by Serco, albeit not always within the formal reporting and recording system, IOMS; or
  - b) a more prevalent underlying problem, of which most incidents were not detected or recorded by Serco.
67. It is not possible to state definitively from the MECF records above which of these scenarios best describes the true extent of the organised fighting problem at MECF, but I conclude from these records that the second scenario is more likely because:
- a) It is unlikely that Serco detected all or most instances of organised fighting:
    - I. the records above indicate that prisoners were reluctant to talk about organised fighting; and
    - II. in its explanation of the different types of organised fighting, Serco has confirmed that prisoners may go to significant lengths to avoid detection of organised fights. Serco has also indicated that prisoners are unlikely to report 'fight club' or 'contender fighting' because these activities are linked with gang activity, and prisoners are unlikely to report these activities because they are either party of the gang involved, or intimidated by the gang involved.

- b) There is reason to believe that Serco staff were not pro-actively identifying incidents of organised fighting. The records above show that two Serco staff members have raised concerns that other staff members are “*just ignoring*” or “*not challenging*” organised fighting.
68. Putting aside the issue of frequency, it is evident that at least some organised fighting events were not limited to a single fight between two combatants:
- a) The YouTube Footage shows combatants engaged in fights composed of multiple rounds, and in some cases multiple fights taking place in sequence.
  - b) The incident on 25 August 2014 lasted 43 minutes.
  - c) The incident on 15 June 2015 appears to have resulted in minor injuries to at least three prisoners.

**2.2.2 CCTV footage and YouTube Footage shows organised fighting, in particular sparring, occurred regularly**

*2.2.2.1 Review of CCTV footage and YouTube Footage*

69. The Investigation has reviewed MECF CCTV records held at the time Serco was asked to save the CCTV files on 17 July 2015. The Investigation also found CCTV records of specific organised fighting events prior to this date, which records had apparently been saved by Serco management staff.
70. The footage reviewed showed:
- a) The incident of 25 August 2014 mentioned at 2.2.1 above. This incident went on for a total of 43 minutes. The fights showed a degree of organisation in that one of the combatants had three separate fights and participants showed a reasonable degree of rule-following – e.g. allowing the other participant back to his feet after a knock-down.
  - b) On 6 May 2015 eight prisoners engaged in sparring for 45 minutes in the Alpha 1 Internal Yard.
  - c) On 18 June 2015 eight prisoners engaged in sparring for 1 hour in the Bravo External Yard.
  - d) On 22 June 2015 twelve prisoners engaged in sparring for 1 hour and 20 minutes in the Bravo External Yard.
  - e) On 23 June 2015:
    - I. Six prisoners engaged in sparring for 50 minutes in the Bravo External Yard. A prison officer joined in and actively participated.
    - II. Two prisoners were fighting in Alpha Unit East External Yard while a number of other prisoners spectated and cheered on the fighters, congratulating them when the fight concluded. The fight lasted for 5 minutes and 15 seconds.
    - III. Footage of the Alpha 1 day room on 23 June 2015 shows a number of prisoners crowded around the door to the internal yard, watching what

appears to be a fight. When the prisoners dispersed from the yard an assault occurred in the dayroom which initiated a 'code blue' call.<sup>45</sup> Multiple prisoners are shown throwing pool balls at their opponents to facilitate their retreat from the dayroom.

- f) On 30 June 2015 there are two incidents of sparring in the Bravo 1 Internal Yard:
    - I. one incident lasted for 20 minutes; and
    - II. the other incident lasted for 15 minutes.
  - g) On 3 July 2015 CCTV footage shows two prisoners fighting in Delta External Yard. When the fight ended both shook hands. Ten minutes later, a second fight commenced. The CCTV footage shows that the camera zooms in to the second fight, indicating that staff in the Delta Unit Housing Control Room were actively monitoring the fight. However, staff do not enter the yard until 26 minutes later.
  - h) On 4 July 2015 CCTV footage shows approximately 10 prisoners entering a cell in Delta 2 over a period of 50 minutes. After this period a prisoner emerges, and washes his hands and his head. Prisoner behaviour is consistent with an organised fight having taken place in the cell. Two staff are shown sitting in the unit approximately 5 metres from the cell throughout the duration of this incident, and appear not to notice the activity.
  - i) Between 5 July 2015 and 12 July 2015 there were a number of incidents of sparring in the Hotel Unit Gym:
    - I. 5 July 2015: 6-8 prisoners engaged in sparring for 15 minutes;
    - II. 6 July 2015: 3 prisoners engaged in sparring and kick training for 15 minutes;
    - III. 9 July 2015: 2 prisoners engaged in sparring for 30 minutes;
    - IV. 9 July 2015: 6-8 prisoners engaged in sparring for 50 minutes;
    - V. 12 July 2015: 4 prisoners engaged in intermittent sparring over a 30 minute period;
  - j) On 13 July 2015 two sets of prisoners were sparring for 20 minutes in the Bravo 1 Internal Yard.
71. Serco has indicated that, of the date information it is able to provide, the organised fighting shown in the YouTube Footage occurred:
- a) in one case, between 1 April 2015 and 26 May 2015; and
  - b) in one case, on or around 15 June 2015 – this may be the fight which was recorded by Serco's Intelligence Team, and discussed in Subpart 2.2.1 above.

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<sup>45</sup> A 'Code Blue' call is used in incidents and all identified incident responders are to go immediately to incident scene.

72. Serco was unable to confirm the date of two of the organised fighting events, but their release in July 2015 suggests that they are likely to have occurred reasonably close to this time.

#### *2.2.2.2 Conclusions from review of CCTV footage and YouTube Footage*

73. The events recorded above show that organised fighting, particularly sparring, occurred frequently in full view of CCTV cameras. I note that, with the exception of footage of one fight in August 2014, which was apparently saved by Serco staff of their own initiative, the Investigation has been able to review only CCTV records from around late June 2015, due to the accepted practice of overwriting CCTV footage after around 14 days.
74. Most of the incidents recorded on CCTV involve sparring, rather than ‘contender fighting’ or ‘fight club’. As noted above, Serco has explained that ‘contender fighting’ and ‘fight club’ events typically occur in cells, out of sight of CCTV cameras. This is consistent with the YouTube Footage, of which five of the six videos were filmed within cells.
75. CCTV footage shows 12 incidents of sparring between 18 June 2015 and 13 July 2015.
76. CCTV footage also shows numerous instances of organised fighting other than sparring, being:
- a) three definite instances of organised fighting other than sparring (one in Alpha Unit External Yard on 23 June 2015, and two on 3 July 2015 in Delta Unit External Yard); and
  - b) two probable separate instances of organised fighting other than sparring (on 23 June in Alpha 1 dayroom, and on 4 July 2015 in Delta 2).
77. The YouTube Footage shows that at least one additional organised fight occurred during this period, on or around 15 June 2015.
78. I am concerned that prison officers staffing the Housing Control cameras do not appear to have seen many of these incidents, or undertaken any subsequent disciplinary action.

#### **2.2.3 Statements from prisoners support the conclusion that ‘contender fighting’ and ‘fight club’ is likely to have occurred regularly**

##### *2.2.3.1 Prisoner interviews*

79. There was a consensus among interviewees who were prepared to comment that organised fighting occurred regularly, with multiple interviewees stating that the fights had been occurring as frequently as daily:
- a) Of the prisoners who were prepared to estimate the frequency of organised fighting during their incarceration at MECF:<sup>46</sup>
    - i. One said it occurred weekly.

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<sup>46</sup> I note that one prisoner said that he never saw fight club, although he had seen other violent incidents.

- II. Another said it occurred around three to four days a week.
  - III. Another said that fights happened in every wing at least every couple of days.<sup>47</sup>
  - IV. Four prisoners reported that fights occurred daily or almost daily at some periods during their incarceration. One said that “*fight club or contender series went on every day.*”<sup>48</sup>
- b) Frequency can also be inferred from prisoners’ statements as to the number or frequency of fights they watched, or participated in:
- I. One said that he himself had fought about every second day during one period.
  - II. Another said that he had been in 10 fights during his five month incarceration.<sup>49</sup>
  - III. Another said that he had his first fight the first day, under duress, and had a total of seven or eight fights, including five or six during a month and a half in Delta Unit.
  - IV. Another said that he had been involved in three fights in three weeks.
  - V. Another prisoner stated that he had seen over 30 fights during his incarceration of around 11 months.
  - VI. Another prisoner says he fought 5-6 times in a single month, including one incident of 13 fights in a single day.
  - VII. Another prisoner said that “*everyone in the unit goes through it*”.
80. The statements above as to the frequency were made by a total of 12 separate prisoners.
81. It is important to note that prisoners were not questioned about sparring, which the CCTV footage discussed at 2.2.2 above shows occurred frequently in common areas. The responses above were given in response to questions about the frequency of contender fighting or fight club activities. Serco has said that it is possible that some of these prisoners were talking about sparring rather than the more concerning types of organised fighting. Having discussed this possibility with the Inspectors who conducted the interviews, I consider that the likelihood of this is low. However, I have taken into account this possibility in considering the extent to which these prisoner interviews corroborate what is already known from the CCTV and YouTube Footage, and from MECF records.
82. Of the 42 staff interviewed none admitted to having witnessed organised fighting personally, however many of the staff acknowledged that they had heard of it occurring. Staff knowledge is considered in more detail in Subpart 2.3 below.

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<sup>47</sup> The interviewer of this prisoner who provided this statement considered that his evidence was likely to be in substance correct, but may have been exaggerated.

<sup>48</sup> The interviewer of one of these prisoners who provided this statement considered that his evidence was likely to be in substance correct, but may have been exaggerated.

<sup>49</sup> The interviewer of this prisoner believes that he may have been involved in spontaneous fights or assaults rather than being directly involved with organised fighting.

### 2.2.3.2 Conclusions from prisoner statements

83. Particularly when considered in the context of the CCTV footage and YouTube Footage, I consider that the prisoner statements above are credible evidence that organised fighting other than sparring is also likely to have occurred on a regular basis, and at least as often as weekly during certain periods of time in the months which are the subject of the Investigation. Serco does not agree that these prisoner statements can be relied upon to draw any conclusions as to the frequency of organised fighting.<sup>50</sup>
84. In particular, Serco says that prisoner statements:
- a) are anonymous;
  - b) are generalised;
  - c) are unable to be verified;
  - d) are not consistent;
  - e) were made by prisoners with little or no incentive to be truthful, and who may be incentivised to cause embarrassment to authorities; and
  - f) were made by only a small subset of prisoners interviewed (being 12 of 48).
85. I consider that the statements from prisoners represent valuable evidence as to the prevalence of organised fighting at MECF.
86. I have discussed Serco's objections with the investigators who conducted prisoner interviews. The investigators informed me that they considered prisoners' demeanours in general to be straightforward and truthful when discussing the prevalence of organised fighting. Every interview was conducted by an investigator with extensive experience interviewing prisoners, and I have confidence in their judgments of prisoner demeanour.<sup>51</sup> Where an interviewer had concerns about a prisoner's credibility, this has been noted.
87. Addressing Serco's objections in turn:
- a) As explained in Subpart 1.6.2 above, prisoner statements are anonymous because prisoners have reasonable concerns for their safety if they are identified as a 'nark'.<sup>52</sup> Serco recognises that prisoners with knowledge of

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<sup>50</sup> As explained in section 1.6.2, Serco has objected to the use of anonymous statements for any purpose.

<sup>51</sup> I note that one of the interview notes provided to Serco during preparation of this Report included the following statement: "*Experienced prisoner whose only reasons for agreeing interview were self-serving. No worthwhile information forthcoming from interview*". I have spoken with the interviewer concerned, who has explained that this statement was not intended to indicate that the information given by that prisoner on matters relevant to this Report were not reliable. Rather, that the prisoner had evidently agreed to be interviewed for the purpose of making a complaint about an assault he had suffered. The prisoner was unwilling to name the perpetrators, so no worthwhile information was given in connection with that assault. The interviewer did not consider that any of this prisoner's comments were improperly motivated, or lacked credibility for any other reason.

<sup>52</sup> As explained above, where prisoners have subsequently agreed, the notes from these interviews have been provided to Serco by Corrections in accordance with the Official Information Act 1982.

organised fighting may be intimidated by the gangs organising the fighting, and gang intimidation was a common theme among prisoners interviewed:

- I. Of 14 interviewees who confirmed that they had participated directly in organised fighting, 10 said that they were coerced to participate by threats of being assaulted by the gangs organising the fights.
  - II. There is reason to treat some of these statements with caution, as combatants might be expected to diminish their responsibility for events, and in one case a combatant who said he was forced to fight was perceived by another prisoner as being a willing participant.
  - III. However, on balance, I consider that there is persuasive evidence that prisoners were not uncommonly coerced into fighting by the gangs organising the fights. The multiple reports by those involved in the fights are corroborated by the facts that:
    - (i) Other prisoners who were not themselves forced to fight confirmed that coercion was a core aspect of the organised fighting problem at MECF.
    - (ii) In one case, a prisoner who refused to fight said that he was attacked as a consequence. This prisoner has no apparent incentive to lie, and has not named a perpetrator.
- b) I do not accept that prisoner statements are unreliable because they are generalised:
- I. First, not all statements are generalised: specific numbers of incidents were given by many of the interviewees.
  - II. Secondly, estimates as to frequency – daily, weekly – are by their nature general.
  - III. Thirdly, prisoners cannot reasonably be expected to recall the date, time, location, and persons involved, of each specific occurrence.
  - IV. Most importantly, it needs to be understood that all prisoner statements were made voluntarily, and by individuals who were frequently reluctant to comment due to fear of reprisal (as discussed further in Subpart 1.6.2 above). In most cases the level of co-operation did not permit a structured type of interview in which prisoners could be pressed for specific details. Prisoners frequently indicated discomfort and sought to terminate interviews if pushed beyond the level of information they were prepared to provide. Accordingly, I do not consider that the generalised nature of some prisoner statements means that they lacked credibility.
- c) Prisoner statements are unable to be verified by reference to documentary evidence because organised fighting is by its nature covert, as Serco has indicated.<sup>53</sup> MECF documentary records suggest a prevalent underlying problem, but because of the lack of formal MECF records of organised fighting, prisoner statements are in fact some of the best available evidence of

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<sup>53</sup> I note that Serco has sought to test prisoner statements by being given information as to which Unit they were in at which time, but this is not possible, for the reasons explained in Subpart 1.6.2.

the prevalence of the problem, and are consistent with the CCTV footage from the period available.

- d) I do not accept that prisoner statements are not consistent, and therefore unreliable. The prisoners making the statements were placed in various units at various times during the period to which the Investigation relates, so it is to be expected that they report different levels of frequency.
- e) As to the proposition that prisoners had no incentive to be truthful, and may be incentivised to cause embarrassment to authorities, I have borne this possibility in mind, but must also consider that prisoners' incentives may cause them to understate the level of organised fighting out of fear of disciplinary action and reprisal from other prisoners. As Serco has indicated, prisoners are intimidated from reporting organised fighting, and one interviewee said that everywhere he went, another prisoner was there to make sure he didn't 'nark'. If prisoners interviewed had wished to cause embarrassment by lying, they could have done so more effectively by accusing staff of impropriety. However, of the 12 prisoners who made statements as to the frequency of organised fighting, none said that staff were involved.
- f) It is accepted that the statements above as to the frequency of organised fighting rely on the statements of 12 prisoners. I do not consider that this means that no weight can be attached to their statements:
  - I. First, given prisoners' reasonable disincentives to comment discussed immediately above, I do not consider that 12 independent statements represents a small subset of prisoners.
  - II. Secondly, I do not believe it is correct to say that this number of statements is inadequate to draw any conclusions as to the frequency of organised fighting at MECF. Each of the statements of the prisoners who commented directly on frequency supports my conclusion that organised fighting (even excluding sparring) is likely to have occurred on a regular basis, and at least as often as weekly during certain periods of time in the months which are the subject of the Investigation. Even if some of these statements were, as Serco suggests, improperly motivated or otherwise inaccurate, I do not consider that they can all be dismissed, again particularly given that they are consistent with the evidence of the YouTube Footage, and the CCTV footage available to the Investigation.

#### **2.2.4 Overall conclusions on frequency of organised fighting**

- 88. MECF's records of organised fighting are in my view most consistent with a prevalent underlying organised fighting problem, of which most incidents were not detected or recorded by Serco. Frank comments by Serco staff, including that "*Delta staff are just ignoring this kind of thing*" are concerning.
- 89. It is clear from the CCTV footage that sparring occurred very regularly during the period the subject of the Terms of Reference, with 12 identified incidents between 18 June 2015 and 13 July 2015.<sup>54</sup>

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<sup>54</sup> Noting again, that, other than isolated incidents, the Investigation was only able to view CCTV footage from late June 2015.

90. As to 'contender fighting' and 'fight club':
- a) The CCTV footage and YouTube footage also shows that organised fighting other than sparring occurred regularly at MECF, with four confirmed instances, and two probable separate instances, in the period from 11 June 2015 to 4 July 2015 (noting that CCTV footage does not record what happens in cells). This does not include the two organised fighting events in the YouTube Footage, for which Serco has been unable to provide a date.
  - b) MECF documentary records state that three prisoners were charged with fighting on 11 June 2015, which means that, combined with the evidence of the CCTV footage and YouTube Footage, there were five confirmed, and two probable instances of organised fighting in the less than four weeks between 11 June 2015 and 4 July 2015.
  - c) In my view the demeanour of the fighters and spectators in the YouTube Footage and in CCTV videos is consistent with a regular occurrence of this type of organised fighting. The prisoners that appear in these videos appear totally unsurprised at what is taking place, and seem to treat it as an ordinary part of life at MECF.
  - d) Prisoner interviews are consistent with organised fighting other than sparring having occurred on a regular basis, and at least as often as weekly during certain periods of time in the months which are the subject of the Investigation.
91. Based on the above, I conclude that organised fighting other than sparring is likely to have occurred on a regular basis, and at least as often as weekly during certain periods of time in the months which are the subject of the Investigation.

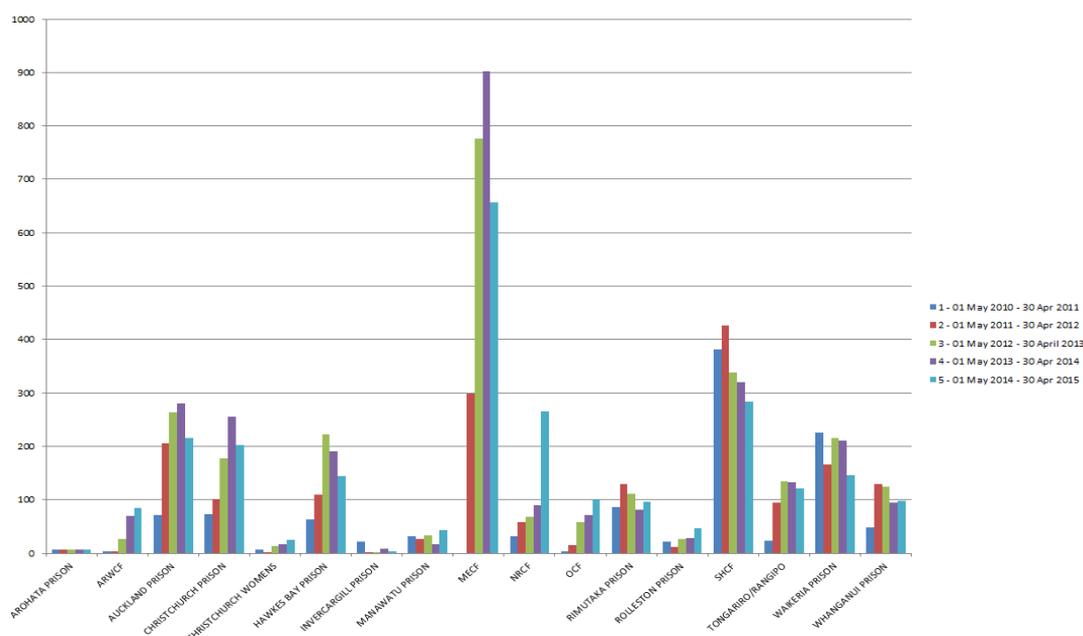
### **2.2.5 Medical records consistent with underreported organised fighting**

92. Serco's own medical files do not record injuries as having been reported by prisoners as the result of *organised* fighting, but these records do note the cause of some injuries as assaults or fighting. As discussed above, prisoners were understandably reluctant to report injuries as being the result of organised fighting.
93. Although the medical records do not contain any direct reports of organised fighting, inferences can be drawn from the number of injuries occurring at MECF.
94. Graph 1 shows that records of prisoner claims to The Accident Compensation Corporation (**ACC**), compiled by Corrections' Intelligence Team, recorded a significantly higher number of reported injuries at MECF from May 2012 to April 2015 compared with both:
- a) MECF in the period from May 2011 to April 2012; and
  - b) Spring Hill Correctional Facility (**SHCF**), and Rimutaka Prison, both of which are of a similar size to MECF.
95. In the 2011-2012 year, MECF had fewer accidents than SHCF, whereas in the subsequent three years it has more than doubled the number reported at SHCF.
96. This data has been approached with a degree of caution for the purposes of this Report because:

- a) This Report is not concerned with comparing MECF with other prisons in New Zealand.
- b) The data in Graph 1 includes all reported accidents, not only those that might be associated with organised fighting. Fighting accounts for 15% and assaults 33% of total ACC reports for the period 1 April 2015 – 14 July 2015, although this Report has already noted that prisoners may have reasons to misreport fighting-related injuries as having been due to other causes.<sup>55</sup>

97. However, an increase in accidents of the significance shown in Graph 1 does at least tend to indicate that MECF was a dangerous place to be from around 2012. I am prepared for the purposes of considering the prevalence of organised fighting at MECF to conclude that the above figures are consistent with, and certainly do not contradict, the Finding that organised fighting is likely to have been occurring frequently at MECF.

**Graph 1 Prisoner Accidents per site for period 1 May 2010 – 30 April 2015**



### 2.2.6 Location of Fight Club / Contender Series events within MECF

98. MECF is divided into ten residential units: Alpha, Bravo, Charlie, Delta, Echo, Foxtrot, Golf, Hotel, Juliet and Kilo, plus the Management and At Risk Units. Prisoners are frequently moved between units. MECF is a remand prison with prisoners entering and leaving the facility frequently. As explained by the Prison Director, prisoners on an average have a stay of 23 days. Operational requirements to house prisoners in a

<sup>55</sup> In further analysis of ACC claims at MECF over the period 1 April 2015 – 12 July 2015, there were 19 instances that recorded the injury was due to an assault but had no incident report recorded on IOMS.

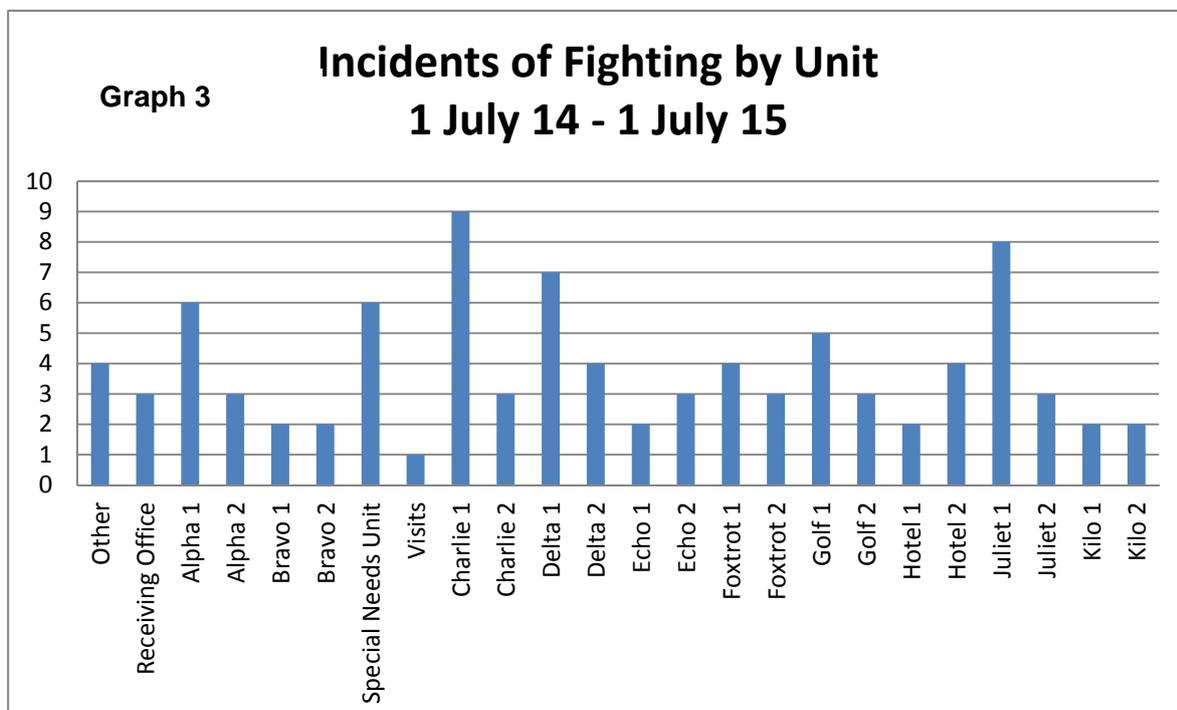
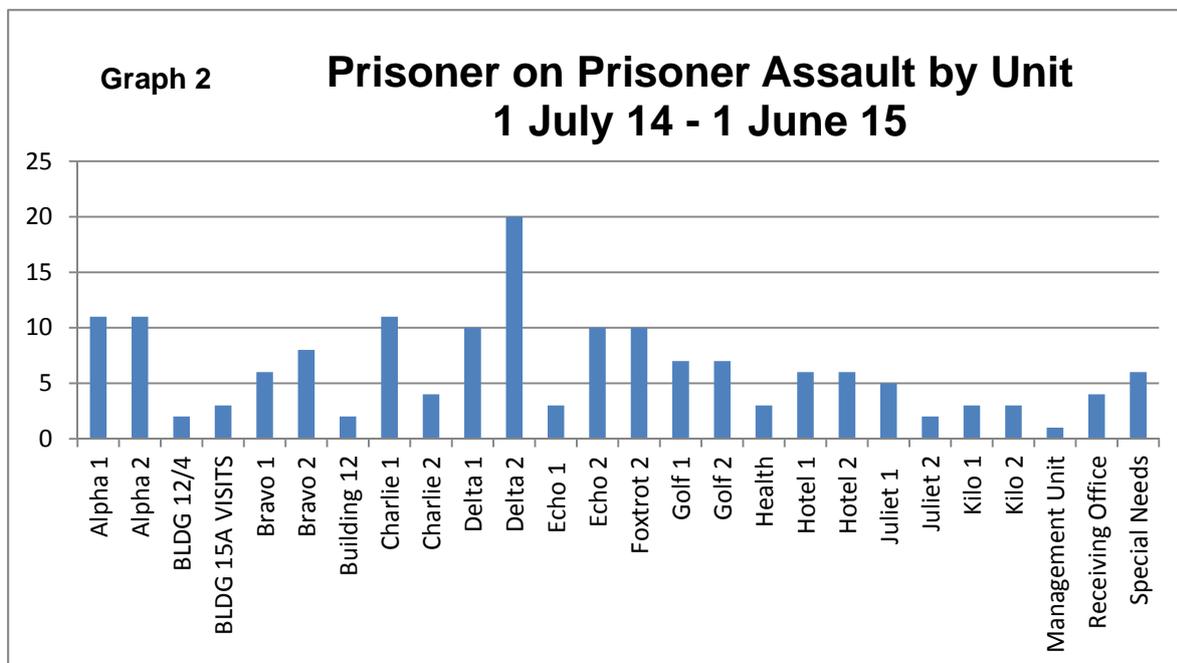
way that reduces the likelihood of conflict mean that regular re-organisation of prisoners is required.

99. An analysis of the YouTube Footage, and identification of the prisoners involved, indicates that five of the fights depicted took place within cells in Delta Unit, one took place in one of the Alpha Yards, and the fights primarily involved gang members or associates including Black Power, Killer Beez and Crypts gangs.
100. Prisoners interviewed reported that organised fights had occurred in each of Alpha, Charlie, Bravo, Delta and Golf.
101. The consensus among prisoner interviewees seemed to be that fighting was most prevalent in the Delta, Alpha and Bravo Units. Interviewees said:
  - a) *“Organised fighting occurs in the ‘Jungle’ units”*.<sup>56</sup> This was said by three separate prisoners.
  - b) *“Heard the term contender from staff but was told it mostly occurred in Delta.”* It is recognised that this statement is hearsay.
  - c) *“I noticed a lot of the fights were in Delta”*.
  - d) *“Charlie is general fitness but in Delta it’s contender training.”*
102. However, interviewees also reported significant occurrence in Bravo, Charlie and Golf Units. Reports included:
  - a) *“Delta [fight club] occurs in the cells. Alpha and Bravo in the yards.”*
  - b) *“Fighting was compulsory in Golf Unit.”*
  - c) *“[Organised fighting] occurred in Bravo amongst young people.”*
  - d) *“I know that there were a lot of contenders going on in Charlie 1.”*
  - e) *“My first fight was in Bravo Unit.”*
103. IOMS records of reported assaults and fighting, are somewhat informative, although no firm conclusions are possible. Although there are no records of *organised* fighting, it is possible that these events, where detected, were recorded as either fights or assaults:
  - a) Graph 2 below illustrates the number of prisoner on prisoner assaults recorded in IOMS by unit and sub-unit, for the period July 2014 – June 2015. Delta Unit (being Delta 1 and Delta 2) accounts for 30% of reported assaults, and Alpha Unit’s assaults were 22% of total reported assaults.
  - b) Graph 3 shows that recorded events of fighting were highest in Alpha, Charlie, Delta and Juliet Units, particularly Alpha 1, Charlie 1, Delta 1, and Juliet 1.
104. Because of the difficulties in detecting organised fighting, these graphs are not considered to be conclusive evidence of the concentration of organised fighting. At best, it can be said that Graphs 2 and 3 provide some support for the statements of interviewees’ that organised fighting was most prevalent in Alpha and Delta Units.

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<sup>56</sup> The Jungle is a term used by prisoners to refer to the Delta and Alpha Units.

105. I consider that organised fighting is likely to have been more prevalent in the Delta and Alpha Units. However, fighting was not confined solely to these units. Serco says that organised fighting is a product of where certain gang members are located at particular times. Therefore prevalence of fighting may have varied from unit to unit, at different times, due to relocation of the same prisoners.



## 2.3 Whether staff and management at MECF had knowledge of the existence of organised fighting, and whether any staff were involved in its operation

### Findings:

- *It is likely that senior management were unaware of the full extent of organised fighting at MECF. However, senior management were aware of multiple internal reports suggesting that organised fighting was occurring.*
- *It is likely that some prison officers were aware of some events of 'contender fighting' and 'fight club' activity which they did not report.*
- *With one exception, in which a prison officer was identified as participating in sparring, there is insufficient evidence for me to conclude that staff were directly involved in organised fighting.*

### 2.3.1 Prison officers' knowledge and involvement

#### 2.3.1.1 Review of MECF records and interviews concerning knowledge of prison officers

106. There is evidence of one prison officer being actively involved in sparring. CCTV footage of the Bravo 2 External Yard at 9.29 am on 23 June 2015 shows an officer overseeing a sparring session between prisoners. At 9.42 am the prison officer took an active part as a participant and during this period his radio dropped on the floor and was picked up by a prisoner and laid to one side. This information was passed on to Serco management, who took disciplinary action against the prison officer concerned. I have been informed by Serco that the prison officer in question was dismissed.
107. CCTV footage in the Alpha 1 Unit dayroom on 23 June 2015, shows that a <sup>Section 9(2)(a)</sup> employee, believed to be a <sup>Section 9(2)(a)</sup>, was present during what appears to be a fight in the yard, and was in a position to observe the prisoners gathered around the entrance to the yard watching what is believed to be a fight. Unit staff are not visible in the unit, and she did not appear to make any attempt to alert unit staff via the radio she was carrying. Staff were observed entering the unit just prior to the prisoners dispersing from the yard. It is possible that the case worker may have left the dayroom at this time at the direction of unit staff.
108. Multiple prisoners interviewed stated that prison officers, while not involved in organising fights, were aware of organised fighting, and prisoners were concerned that complaints would either be ignored, or reported to the gang members organising the fights:
- a) Ten of the prisoners interviewed said that prison officers knew about organised fighting, of which two stated that prison officers had been present or nearby during organised fighting events.
  - b) Interviewees also reported that staff members made dismissive comments about prisoner injuries:
    - I. One prisoner who had facial injuries reported a staff member told him that next time he should 'keep his guard up'.

- II. Another prisoner reported that prison officers routinely ignored prisoners' facial injuries, and one prison officer who noticed this prisoner's facial injuries sarcastically asked if he had fallen over.<sup>57</sup>
  - c) Two prisoners<sup>58</sup> said that the prison officers would tell the gangs if any complaints were made, as the prison officers wanted to avoid complaints. Fears of staff informing gang members of reports of organised fighting were consistent with prisoner perception of staff and gang collusion on other matters, which are discussed in Part 3 below.
109. Two prisoners interviewed said they were not aware that staff had knowledge of organised fighting. One said that he believed staff were not aware of fighting, as it was organised to avoid detection.
110. Of the 42 Serco staff interviewed many acknowledged that they had heard of organised fighting occurring, but none admitted to having witnessed it, and most believed it was a historical problem.

*2.3.1.2 Conclusions from review of MECF records and interviews concerning the knowledge of prison officers*

111. It is evident from the MECF documentary records and CCTV footage discussed at 2.2.1 and 2.2.2 above, that certain prison officers had not reported incidents of organised fighting. Serco says that staff identified indications of organised fighting where they occurred and reported that intelligence to MECF managers, as they would be expected to do.
112. I cannot accept that every prison officer reported all incidents of organised fighting of which he or she was aware or suspected:
- a) As discussed in subpart 2.2.1, MECF's own records suggest that Serco staff were not pro-actively identifying incidents of organised fighting. The records show that two Serco staff members have raised concerns that other staff members are "*just ignoring*" or "*not challenging*" organised fighting.
  - b) CCTV footage discussed in subpart 2.2.2 above shows that there were a significant number of unreported incidents that took place in full view of cameras.
  - c) I consider that the prisoner interviews set out above provide credible evidence of some staff at least being aware of the prevalence of organised fighting at MECF. In coming to this view I have borne in mind the matters discussed in subpart 2.2.3.2 above, including Serco's assertion that prisoners may make false allegations in order to cause embarrassment.
  - d) Staff statements that they had not witnessed organised fighting first-hand are not in my view conclusive evidence that all staff reported all incidents of organised fighting of which they were aware. It is possible that the staff

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<sup>57</sup> I wish to make clear that not all prison officers acted callously to prisoner injuries. For example, the staff escorting Prisoner B (discussed in Subpart 6.2 below) enquired as to his apparent injuries. Paragraph 65(d) also refers to a case in which staff showed concern to an injured prisoner and undertook follow-up action.

<sup>58</sup> The interviewer of one of these prisoners considered that his evidence was likely to be in substance correct, but may have been exaggerated.

interviewed had no direct knowledge of organised fighting. It is also reasonable to treat their statements with caution given the obvious incentive not to admit to having failed to report violent prisoner behaviour.

113. Accordingly, I consider that it is likely that some prison officers were aware of instances of organised fighting, including 'contender fighting' and 'fight club' activity, which had not been reported.
114. While two prisoners implicated staff in organising fighting (in addition to the staff member who was dismissed for involvement in sparring), I do not consider that there is sufficient evidence to make a Finding that staff were actually involved in organised fighting.

### **2.3.2 Knowledge by senior management**

115. It is likely that senior management were not fully aware of the prevalence of organised fighting, due to:
  - a) prisoners' fears of 'narking', as explained; and
  - b) prison officers failing to report incidents of organised fighting, or suspected incidents of organised fighting.
116. However, it is clear from MECF records that staff at management level were aware of some incidents of organised fighting. Incidents recorded in the year prior to the Terms of Reference are set out at 2.2.1 above.
117. Although some of these matters might reasonably be viewed as isolated incidents, there were a significant number of reports, and at least two showed evidence of a pervasive problem:
  - a) The record of the incident on 26 March 2015 said that three prisoners displayed facial bruising, and included a statement that "*staff are not challenging sparring and fighting often*".
  - b) The Serco Intelligence report of 26 June 2015 concerning a prisoner with a broken hand says that the fighting was gang-organised, participants were being compelled to fight, and staff members were turning a blind eye.
118. In my view these reports made senior management aware of the possibility that there was a pervasive problem of organised fighting at MECF.
119. Prior to the YouTube Footage, Serco did not undertake any investigation of its own to determine if organised fighting was occurring.

## Part 3: Supervision and Security

### Findings:

- *It was not uncommon for unit pods to be without a staff member present while all cells were unlocked. Because CCTV cameras do not operate in cells, this meant that any organised fighting in cells could not be detected by a prison officer monitoring CCTV.*
- *A review of MECF's daily staffing has confirmed that MECF's staffing arrangements were not sufficient to ensure that each unit pod was adequately staffed at all times when prisoners were unlocked.*
- *In some cases staff present in a unit pod failed to take an active role in supervising prisoners. This may have allowed organised fighting to occur while these staff members were present in a unit pod.*

### 3.1 Introduction

#### 3.1.1 Importance of staffing to prevention of organised fighting

120. In any prison environment, prisoner behaviour is monitored and controlled by custodial staff who are either present in a residential unit or monitoring prisoner behaviour by CCTV. In my view, prevalent organised fighting is unlikely to be present in a prison with adequate staffing arrangements and active supervision.
121. Serco does not agree with this view. It says that there is no causative link between the incidence of organised fighting and the level of supervision at MECF or any other prison. Serco says that when organised fighting occurs, it is not the result of any lack of supervision, but of a complex combination of factors that includes New Zealand's pervasive gang culture, a culture of violence, the tolerance of violence in certain communities, and difficulties created by the volatile and ever-changing MECF muster.
122. I agree that in some sections of the community violence is more tolerated, especially within the gang context. However, Serco has also claimed that incidents of violence and organised fighting are opportunistic. If this is to be accepted, then it is vital that opportunity to be involved in these activities is reduced.
123. In my view, supervision by appropriate numbers of appropriately trained staff is the only means of detecting and preventing organised fighting opportunities. I am unaware of any other means by which organised fighting could be prevented, other than segregating all prisoners. Additionally, Serco has recognised in correspondence that staff numbers are important, in particular it notes that:
- a) Serco increased the number of full time employees from 278 in April 2011 to 330 in November 2014, and 334 in September 2015; and
  - b) Serco entered into negotiations in October 2014 to agree the creation of a dedicated movements group to ease pressure on Unit staffing, although no agreement was ultimately reached (discussed further in subpart 3.1.2 below).
124. I agree with Serco that how MECF prisoners were supervised was a matter for Serco to determine. Serco has emphasised that the Contract sets no minimum level of staffing, and that Serco's management model is focused on outcomes, not inputs.
125. The object of this Part 3 is to establish whether or not Serco's supervision and security was operating effectively to prevent organised fighting.

### 3.1.2 **Previous consideration of staffing arrangements and practices, and actions in response**

126. The adequacy of staffing and supervision at MECF has been the subject of significant consideration prior to the period considered by the Investigation. This is set out below by way of context.
127. Staffing and supervision were considered briefly in respect of a number of discrete incidents in 2013:
- a) Serco's Operational Review of Violence at MECF April – May 2013 concluded that staffing numbers were not a factor in the incidents considered in that Operational Review, noting that staff were present at each incident. It should be noted that 6 of the 7 incidents reviewed related to prisoners assaulting staff.
  - b) An Inspectorate report into a serious assault on a prisoner in the Hotel Unit Yard found that the lack of staff presence contributed to the situation giving rise to the assault. The report recommended a review of the operational management of staffing at MECF and that staff were supported "*as much as possible to supervise unlocked prisoners.*" Serco's own Operational Review of Violence referred to this incident, but did not conclude that the level of staffing was a contributing factor.
  - c) On 30 September 2013 the Corrections monitoring team raised a concern in the Issues Log about staffing arrangements at MECF noting, "*observation on levels of staff present in Residential Units. When staff leave a pod to undertake tasks such as internal escorts this location is unmanned by a Custodial Officer*". Serco's Prison Director, at that time, responded that a recent directive had been issued to address this issue, and new rosters would increase staff presence on the units.
  - d) On 4 October 2013 Serco advised Corrections that a Corrections Association of New Zealand (**CANZ**) delegate had formally reported a hazard to Serco in response to an alleged written instruction/directive by Serco that one prison officer could remain within a unit during periods of unlock. Serco advised that CANZ's concern was that this would lead to increased levels of assaults on staff, and that Serco was mitigating the risks by reviewing rostering, and recruiting to cover an existing shortfall of 14 prison officers.
128. Corrections commissioned an independent staffing review by Deloitte in late 2013 (**Deloitte Review**). The aim of the Deloitte Review was to understand and compare the staffing on the days that Deloitte was onsite to the staffing model shared by Serco. The review was not to compare the staffing arrangements of Corrections-operated prisons against MECF, but to establish whether Serco was implementing its own staffing model.
129. In summary, the Deloitte Review found that no prison officer was present in some of the pods during unlock hours for 29% of the time observed in October 2013 and 23% of the time observed in March 2014:
- a) The initial period of observations for the Deloitte Review took place in October 2013. Deloitte were not provided by Serco with a staffing model, and were therefore not able to determine Serco's intended staffing arrangements for units.<sup>59</sup>
  - b) Deloitte therefore assumed that Serco's staffing model was that set out in the 'bid model' prepared by Serco, which assumed that each unit would have a

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<sup>59</sup> Deloitte "MECF Staffing Review" August 2014, pp 4 and 11.

minimum of three staff on a '1-1-1' configuration: one in each unit pod (i.e. each independent sub-unit), and one in the Unit Housing Control Room. This is a secure area from which prison officers undertake administrative duties as well as monitor the unit via CCTV, and observe prisoners through a window.<sup>60</sup>

- c) On their October 2013 visit Deloitte observed that pods lacked a prison officer present for 29% of unlock hours.<sup>61</sup>
  - d) The Deloitte Review was finalised in August 2014, following a further three days of observations. Staff interviews indicated that in practice unit staffing arrangements had undergone some changes including staff allocation being done centrally by Duty Supervisors as opposed to Duty Supervisors and Supervisors working independently and allocating staff based on their understanding.<sup>62</sup> However, further observations in March 2014 confirmed that prison officers were not present in pods around 23% of the time that prisoners were unlocked.<sup>63</sup>
130. Serco has stated that it does not accept the findings of the Deloitte Review, and considers that Deloitte sought to impose uniform staff targets on all units, which reflects a model focused on inputs rather than outcomes. Further, as discussed below, Serco says that it does not have any specific targets for staffing.
131. Deloitte's finding that staff were not present in unit pods for significant periods of time was consistent with observations by Monitors, and by the Relationship Manager, during the same period:
- a) On 5 February 2014, the Relationship Manager expressed concern to Serco's Prison Director about three violent incidents that occurred, stating that *"Having viewed today's [incidents] I can advise that no staff were in the units at the time the incidents took place, and from what I saw of the fight in "bravo" it did seem to be an organised fight as one of the gents had fabric wrapped around his hands... Additionally, CCTV footage is being relied on to identify what/who was involved in the incident in the kitchen which also demonstrates that staff were not "out there" supervising/observing"*. The email concludes by suggesting that *"the Prison Director / SERCO may get exposed if the incidents did end in a fatality and you suggest the staffing models you have been actively promoting are in place daily."*
  - b) On 7 February 2014, Monitors noted that *"incidents appear to be taking place in the units when the staff are out of the unit/s for short periods of time"*, and that *"a visit to Delta unit on Friday 07 Feb did identify nil staff in the wings of both Delta 1 and Delta 2 [i.e. both Delta Unit pods]."*
  - c) On 28 February 2014, it was reported that the Monitors' observations over a two week period showed that unit pods were being left unstaffed while prison officers conducted prisoner escorts and attended to other duties.
  - d) The Monitors' Quarterly Report (January – March 2014) also emphasised the operational impact of staff attendance. The staffing model was mentioned as an *"area requiring improvement"*.
  - e) On 9 June 2014, the Monitors observed that staff shortages meant some prisoners did not receive breakfasts.

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<sup>60</sup> At p 4.

<sup>61</sup> Ibid, at 5.

<sup>62</sup> At p 9.

<sup>63</sup> At p 5.

132. Following the Deloitte Review:
- a) The Chief Executive wrote to Serco on 2 October 2014 urgently requesting a plan for Serco to address the significant periods of time during which there were no staff working in unlocked pods. That letter was accompanied by Performance Notice 42 (**PN42**), stating that Serco had failed to control and supervise the activities of prisoners to ensure the safety and security of prisoners and other persons present at MECF.
  - b) Serco's response set out an interim solution based around an overall increase in staffing numbers, and a long-term solution of "*exploring the establishment of a Movements Group, in consultation with Corrections. This frontline team will be responsible for managing prisoner movements and other business requirements which are currently managed by staff working in units, thus ensuring greater staff presence.*"
  - c) On 17 October 2014, Serco presented its final response to the issue of PN42. The 'Current status (including remedial action)' stated that "*Changes continue to be made in order to ensure that staff are always physically present on residential units*", and set out various operational changes which had been made.
  - d) Despite some improvement in staffing numbers, Corrections considered the interim steps taken by Serco had not sufficiently addressed the contract breach outlined in PN42. On 2 June 2015, the Chief Executive formalised Corrections' position on PN42, and a \$50,000 deduction was made.
133. In March 2015, Serco introduced a movements group at MECF consisting of five rostered prison officers to assist the residential staff when moving prisoners around the site (**Movements Group**). These staff are rostered week days with the weekends off.
134. Additionally, Serco has put in place a flexible staffing procedure comprised of a Daily Staffing Operational Risk Matrix, to be used in conjunction with a Dynamic Staffing Model. Initial indications were positive: the Monitors' Quarterly Report (January to March 2015) to the JCB noted that the Daily Staffing Operational Risk Matrix had been providing suitable staffing numbers in all units.
135. Another attempted solution to mitigate the impact of identified staffing issues was the introduction of 'rolling unlocks'. In September 2014, Serco commenced a system of staged unlocks within units. The aim was to ensure that all prisoners received their exercise entitlement without all prisoners being unlocked at once, thereby reducing the demands on staff. However, in late January 2015, Corrections directed that the use of rolling unlocks be discontinued, due to the Ombudsman raising concerns that some prisoners had been denied their minimum legislative entitlements and to meet the requirement outlined in the contract.

### **3.2 CCTV footage shows staff absent from unit pods for significant periods**

136. The consideration of staffing arrangements and supervision initially focused on establishing Serco's staffing arrangements for each unit, and determining whether these were being complied with.
137. As Serco has informed the Inspectorate that it has no specific staffing arrangements, the Investigation has focused on the length of time during which unit pods were left without a prison officer present while prisoners were unlocked. If no prison officer is

present in a unit pod, it will be difficult to detect, and impossible to confirm, whether organised fighting is occurring in cells, where CCTV cameras do not operate.

138. CCTV footage showed that staff were often not visible in the yards and the internal units' common areas. Based on the CCTV footage of Alpha, Bravo, Charlie, Delta, Golf and Foxtrot Units on 13, 14 and 16 July 2015 between 6am and 6pm, the Investigation found that unit pods were left unsupervised for lengthy periods, some in excess of 2 hours, while prisoners were unlocked from their cells.
139. Table 1 sets out the number of minutes prisoners were unlocked on each day and the time that no staff could be seen in the unit during these unlock periods.

**Table 1: Staff presence in unit pods during unlock**

Unit pod	Monday 13 July		Tuesday 14 July		Thursday 16 July		Totals		%
	Unlock minutes	Time no staff in pod during unlock minutes	Unlock minutes	Time no staff in pod during unlock minutes	Unlock minutes	Time no staff in pod during unlock minutes	TOTAL UNLOCK MINUTES	TOTAL TIME NO STAFF IN UNIT DURING UNLOCK minutes	
Alpha 1	364	102	355	157	332	90	1051	349	33%
Alpha 2	383	158	376	248	323	75	1082	481	44%
Bravo 1	370	123	367	282	329	188	1066	593	56%
Bravo 2	347	27	344	125	298	212	989	364	37%
Charlie 1	350	74	295	93	296	244	941	411	44%
Charlie 2	354	135	318	253	327	168	999	556	56%
Delta 1	376	217	329	201	366	129	1071	547	51%
Delta 2	333	172	327	111	349	183	1009	466	46%
Foxtrot 1	381	82	359	60	329	141	1069	283	26%
Foxtrot 2	372	21	335	81	317	103	1024	205	20%
Golf 1	363	183	234	100	236	146	833	429	52%
Golf 2	241	106	250	79	264	59	755	244	32%
<b>TOTALS</b>	4234	1400	3889	1790	3766	1738			
%		33%		46%		46%			

140. Of particular note is that:
- a) On 13 July, of the units reviewed:
    - I. For 33% of prisoner unlock hours there were no staff in unit pods.
    - II. There were extended periods of time in which no staff were observed in individual unit pods, including two hours and 34 minutes in Delta 2, and two hours and 16 minutes in Golf 1 during which no staff were observed in those unit pods.
  - b) On 14 July, of the units reviewed:
    - I. For 46% of prisoner unlock hours there were no staff observed in the unit pods.
    - II. There were extended periods of time in which no staff were observed in individual unit pods, including one hour and 30 minutes in Charlie 2, and two hours and 11 minutes in Delta 1.
  - c) On 16 July, of the units reviewed:
    - I. For 46% of prisoner unlock hours there were no staff observed in the unit.
    - II. There were extended periods of time in which no staff were observed in individual unit pods, including one hour and 23 minutes in Bravo 2, and one hour and 26 minutes in Charlie 2.
141. The review was conducted by viewing CCTV footage and determining when staff were visible in the unit. Due to the positioning and angles of the cameras, the exact time at which staff members entered and left unit pods cannot be established precisely.

### **3.3 The number of staff assigned to each unit**

142. As noted above, Serco says that it does not set any specific staffing arrangements.
143. Prior to having been informed of this, the Investigation had proceeded on the basis that Serco's daily disposition roster set out its staffing arrangements for each unit. Accordingly, an analysis had been undertaken comparing weekly disposition rosters with actual staffing arrangements recorded in unit log books during June 2015 (which are intended to provide a record of actual staff allocations).<sup>64</sup>
144. Table 2 sets out this analysis, although it should be noted that the unit log books do not show when staff have been temporarily reassigned away from a unit, for example to undertake a prisoner movement. Accordingly, the staff available in each unit may in fact have been lower than both the rostered level and the level shown in the unit log for certain periods during a shift.

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<sup>64</sup> Note that the 8 June 2015 is omitted from the results as no records of the daily dispositions were made available. Therefore the totals and averages are calculated over 29 days, not 30.

**Table 2: Comparison of rostered staffing to actual staffing**

Unit & staffing level as posted on the weekly roster	Number of days in June 2015 staffing level below target	Number of days in June 2015 staffing level at 3	Number of days in June 2015 staffing level above target
Alpha (4)	5	4 (1 under; and one day 2 under)	2 (1 over)
Bravo (5)	25	3 (2 under)	Nil
Charlie (5)	28	7 (2 under)	Nil
Delta (5)	10	7 (2 under)	2 (1 over)
Echo (4)	7	7 (1 under)	2 (1 over)
Foxtrot (5)	15	2 (2 under)	Nil
Golf (4)	5	5 (1 under)	2 (1 over)
Hotel (4)	9	9 (1 under)	2 (1 over)
Juliet (4)	12	12 (1 under)	Nil
Kilo (4)	16	15 (1 under; and one day 2 under)	2 (1 over)
MRU (3) <sup>65</sup>	nil	9 (par)	19 (1 over)
Transit (3) <sup>66</sup>	nil	11(par)	16 (1 over)

<sup>65</sup> Serco advised that, although the posted roster for MRU and Transit Units have three Officers assigned, management made a decision as part of the risk matrix to increase these unit base levels to four Officers. However, for the purpose of this exercise, the review has calculated the figures strictly from the posted rosters. Therefore, MRU and Transit are based on 3 Custodial Officers per day.

<sup>66</sup> As above.

145. Serco has advised that the daily disposition rosters are not a 'target', but rather a 'starting point', and are overtaken by the fact that each afternoon managers evaluate the muster for the following day, and set staffing arrangements for each unit accordingly. This system involves:
- a) Re-assigning staff at the beginning of each shift to areas of priority, for example where there are unplanned absences, or requirements arise for staff to conduct hospital guard, escort or similar duties.
  - b) Re-assigning staff as required during shifts to undertake alternative duties, such as overseeing prisoner movements.
146. I therefore restrict my comments on the information in Table 2 to the following observations:
- a) First, it is clear that the total number of staff typically fell short of the total number of 'starting points'. Accepting that Serco may in practice redeploy staff flexibly, it is apparent from Table 2 that the total number of rostered staff per day across all 12 residential units is lower than anticipated by the daily disposition roster. The total number should be 50. This review found that;
    - I. The site ran below the rostered level on 28 of the 29 days.
    - II. The average number of staff on shift per day for this period was 46.6, being a shortfall of 3.4 prison officers.
    - III. The lowest day recorded was 40 staff on 6 June 2015.
    - IV. The highest day recorded was 57 on 1 June 2015, a public holiday, on which staff are paid time and a half.
  - b) Of greater concern is the fact that units are frequently staffed by only three (and on two occasions two) prison officers. This means that if any staff member in these units is required to leave the unit for any reason, a unit pod will be left unattended. This is consistent with the CCTV evidence set out in Table 1.
147. I note that the review found that there were occasions where staff who were no longer employed or placed on special leave, were kept on the roster. This practice gives a false impression that those units were capable of being fully staffed, when in fact the staff rostered on were known to be unavailable. Examples are:
- a) Bravo Unit – Officer A (4 weeks special leave July/August 2015).
  - b) Bravo Unit – Officer B (2 weeks special leave August 2015).
  - c) Hotel Unit – Officer C (4 weeks special leave August 2015).
  - d) Officer D dismissed in June 2015, yet still on roster on 16 July 2015.

### **3.4 Staff and prisoner concerns about adequacy of staffing**

148. Further corroborating the concerns above regarding adequacy of staffing, interviews with both prisoners and staff identified consistent and credible concerns that staffing arrangements were not adequate at all times to identify and control prisoner behaviour.
149. Prisoners said;
- a) *"Staff were rarely on the floor".*
  - b) *"Only saw officers at unlock and meals".*
  - c) *"Didn't use[d] to see [staff]".*

- d) *"I didn't see supervisors. Only when involved in confrontation"*.
  - e) *"I hadn't seen the staff in the unit before", the same prisoner went on to say that "MECF is not a safe place"*.
  - f) *"Didn't see the white shirts<sup>67</sup> at all."<sup>68</sup>*
150. Many of the 42 Serco staff members interviewed said that they thought that staff numbers were inadequate, or expressed concerns about safety. Staff said:
- a) *"Staff levels run at a bare minimum"*.
  - b) *"I don't like the roster, we are short staffed...We [search] 2 cells a day random and other target searches as directed by the supervisors. However, if they are not around the searches don't get done"*.
  - c) *"All areas of the prison are understaffed – can't do job"*.
  - d) *"I do not feel safe in my job"*.
  - e) *"[I] don't feel safe at MECF"*.
151. Statements received from CANZ also show a number of staff concerns. CANZ concerns included:
- a) *"Low staff levels because of things like hospital guards, sickness, people resigning and too many staff on leave. The problem with this is that it puts more pressure on those of us that are left...The other day we had most, if not all units with only one or two staff."*
  - b) *"This is dangerous for our [CANZ members], and something needs to be done before someone gets hurt because they have no backup in an altercation with a prisoner."*
  - c) *"Staff are being asked to do multiple shifts which is dangerous because of the obvious reason of the Officers being too tired to be properly attentive of what is happening around them and this could potentially end with them being seriously hurt."*
152. I consider that the prisoner and staff views set out above are genuinely held. In regards to staff concerns, Serco has said that 81% of MECF prison officers are members of CANZ, and says that CANZ is ideologically opposed to all private sector involvement in Corrections. I have taken this comment into account.

### **3.5 Day-to-day staffing not sufficient to prevent organised fighting**

153. The YouTube Footage demonstrates that supervision and security was not adequate to prevent numerous instances of organised fighting, and Part 2 of this Report sets out my conclusions as to the prevalence of the organised fighting problem at MECF.<sup>69</sup>

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<sup>67</sup> Prisoners at MECF use the term "white shirts" to identify Supervisors.

<sup>68</sup> The interviewer of the prisoner who provided this statement had concerns about his credibility

<sup>69</sup> In responding to drafts of this Report, Serco has said that a number of matters have not been, or have not sufficiently been taken into account, including the proposition that organised fighting occurs at prisons run by Corrections. Fighting at other prisons is outside the Terms of Reference, although Phase 2 will include a review of the adequacy of controls designed to address prisoner violence and access to cell phones operating in other New Zealand prisons. Without having investigated Corrections-run prisons I am not in a position to draw conclusions as to the presence or absence of organised fighting in those prisons. The presence of fighting at MECF is not disputed by Serco, so I do not see that the presence of organised fighting at other prisons has a bearing on my Report.

154. Because CCTV cameras do not operate in cells, and cells were not locked behind prisoners, I consider that adequate staffing and supervision to prevent organised fighting was required. At least one prison officer should be present in each unit pod at all times, and actively supervising prisoners. Leaving prisoners unlocked and unsupervised for long periods, with access to unlocked cells, provides opportunity for organised fighting to occur.
155. The reasons for prisoners being left unsupervised while unlocked appear to be a combination of the facts that:
- a) Serco is required to provide prisoners with a minimum number of 'unlocked hours' per day.<sup>70</sup>
  - b) The Movements Group of five prison officers has not been sufficient to attend to all prisoner movements, therefore unit staff were still required to undertake prisoner movements and take care of daily operational requirements. Serco says that the five person Movements Group was intended only as an interim measure after failing to negotiate the establishment of a larger group with Corrections. Although matters of compliance with the Contract are not specifically the subject of this Report, I note that it is not clear why Serco did not take it upon itself to establish a larger Movements Group if this was required. As Serco has said, the Contract does not set staffing arrangements, and Serco is responsible for determining how it chooses to meet the outcomes specified in the Contract. Serco has asked me to note that a full strength movements group was established by Corrections upon stepping in. I consider that this point is relevant insofar as it supports the proposition that – as Serco and Corrections appear to agree – Serco's own Movements Group was understaffed.
  - c) There are not enough unit staff for a staff member to be present in each unit pod at all times, while attending to other duties such as prisoner movements.
156. One way of reducing the opportunity for organised fighting and other clandestine activity would be to lock cells behind prisoners, thereby removing the main areas not covered by CCTV.
157. Serco has advised that it does not consider this to be a practical option. It raises unspecified safety concerns, and says that locking cells behind prisoners could lead to serious complications, particularly relating to access to toilet facilities.
158. In my opinion, the risks associated with leaving cells unlocked are unacceptably high, especially in view of Serco's staffing practices, and I do not consider that locking cells

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Another matter which Serco has said has not sufficiently been taken into account is the proposition that organised fighting occurs where staff to prison ratios are higher than those at MECF. This is also outside the Terms of Reference, and not something which I have investigated. It is possible that other prisons have similar or different staffing adequacy problems to those I have identified at MECF, but I do not consider that this is relevant to my conclusions.

Serco has also said that drafts of this Report failed to take into account, or failed to sufficiently take into account, that the contract prison model operates from a different foundation to that of the public sector management model. I understand that this comment relates to my conclusions on staffing. On this point, I note that the Terms of Reference did not require me to assess Serco's management of MECF by reference to a public sector model, and I have not done so. Where I have made criticisms of Serco, it is because I believe their management (eg unit staffing and cell searches) are not adequate to fulfil the necessary objectives of running a safe and secure prison.

<sup>70</sup> Serco has said that this Report is critical of the fact that unlocked hours are a requirement of the Contract. I consider that there is nothing inappropriate in ensuring prisoners are given appropriate time out of their cells. The point is that Serco have not deployed sufficient staff to meet prisoners' unlock entitlements while ensuring their safety.

is likely to adversely affect prisoner safety. Access to toilet facilities could easily be addressed by either designating one cell as a toilet during unlock hours, requiring prisoners to notify staff when cell access is required, or (in some units) utilising the toilet facilities in the yards.

### 3.6 Quality of prisoner supervision by staff

159. In addition to the conclusion above that the level of staffing was inadequate, the Investigation uncovered concerns with the quality of prisoner supervision.
160. The CCTV footage for 13, 14 and 16 July 2015 also showed that prison officers were not showing the level of professionalism and diligence that ought to be common practice:
- a) Unless conducting mandatory tasks such as muster and lock/unlock, some prison officers would only come out to the unit to play pool or table tennis and then return to the Housing Control Room. Serco says that playing pool and table tennis with prisoners is unacceptable, and has asked that the Report reflect its position.
  - b) Staff failed to regularly move through unit pods to check where prisoners were or what they were doing. While there were staff in the unit for periods of time, they spent approximately 90% of that time seated at a table talking to one or two prisoners or playing table tennis while all the other prisoners were observed 'doing their own thing'. Examples of staff being unsure of what was going on around them include:
    - I. Footage from Delta 2 at 13:50 4 July 2015 during which staff were sitting at a table within 5 metres of cell where it appears, from the number of prisoners entering and exiting the cell, that an organised fight was taking place.
    - II. Footage from Delta 2 at 16:34 on 7 July 2015 during which staff were seen sitting at a table with prisoners in the cell behind them where they could be seen apparently sharing home brew from an ice cream container. CCTV zoomed in on the cell, indicating that the prison officer in the control room noticed the prisoners' activity, but no action was taken.
  - c) At no time during the three days reviewed were any face-to-name muster<sup>71</sup> checks or cell searches carried out by staff.
  - d) There were no checks in relation to cell security at lock up or before a cell was unlocked. It would appear that staff relied on the electronic system to ensure cells were locked.
  - e) There was a total lack of any staff supervision of meals and no assurance in some units as to those who got a meal.
161. I am of the opinion that officers displayed poor control of prisoners within some units, although it was observed that some other units appeared to operate with an appropriate level of control. The lack of control apparent in some units was demonstrated through:
- a) Multiple instances where it took prison officers considerable time to conduct lock up, including an occasion in Delta 1 Unit on 6 July and 13 July 2015 in which lock up took up to 45 minutes to complete. On these occasions prisoners were observed on CCTV footage continuing their day to day

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<sup>71</sup> A check to ensure that all prisoners are assigned to the correct cells.

- business, playing pool and heating meals, ignoring the orders of the prison officers.
- b) During meal times, prisoners were observed swarming around the meal trolleys collecting their meals themselves, in some cases taking two. There was no evidence of supervision by prison officers to ensure that every prisoner received a meal.
  - c) The Investigation found there was a lack of visible presence by the supervisors. While there is a supervisor appointed to each unit, at any one time there may only be three or four supervisors on site, due to rostering or unplanned absences. These supervisors are left to look after multiple units and are spread throughout the site.
162. CCTV footage showed instances in which staff were overly familiar with prisoners, including staff giving prisoners a hug or putting their arms around them. This behaviour is at odds with the standard of prisoner supervision that would be expected. The Initial Training Course (ITC) states that staff should be actively managing prisoners and interacting with them in a positive way, and warns against overfamiliarity with prisoners to avoid “*getting got*” (i.e. exposing themselves to inappropriate behaviour).
163. On one significant occasion, Serco staff did not respond with the necessary urgency to an incident of serious assault:
- a) On Section 9(2)(a) 2015 Prisoner A, who was housed in Kilo 1 Unit, was subject to a serious assault, allegedly by members of the Killer Beez gang.
  - b) The Inspectorate is undertaking a separate review into the circumstances of this incident following a complaint received by Prisoner A. At this time the Inspectorate’s review is pending the outcome of a Police investigation into the incident that is currently underway.
  - c) On Section 9(2)(a) 2015, the Inspectorate viewed CCTV footage from MECF that showed Prisoner A lying on the floor of the dayroom following the assault. The CCTV footage also shows a clear lack of response from Serco staff who walked past Prisoner A, leaving him still lying on the floor<sup>72</sup>.
  - d) Prisoner A was admitted to Auckland Hospital for treatment to his injuries, which had resulted in Section 9(2)(a). He returned to MECF on Section 9(2)(a) 2015 following 2 weeks treatment at the Section 9(2)(a). Prisoner A’s Section 9(2)(a) was assessed by the Section 9(2) as severe.
164. A number of prisoners and staff indicated consistent concerns that staff who were present in the units were not providing fair and effective prisoner supervision at all times.
165. Prisoners said:
- a) *“Some staff collude with the gangs.”*
  - b) *“I’m not a racist but the poly officers used to ignore you. You would be asking for something at the window and they wouldn’t reply but as soon as a poly prisoner came up they would answer them straight away and they just got everything they wanted.”*
  - c) *“Staff tipped off prisoners of searches before they happened.”*
  - d) *“Staff tell other prisoners what prisoners are complaining about.”*

<sup>72</sup> Due to current court proceedings Serco has not commented on this incident

- e) *“One day I saw a guy in the communal shower burning a toothbrush to make the ink. A guard came by and said “hurry up there is a manager coming.”*
  - f) *“Staff, in general, at MECF [are] inappropriately friendly with prisoners.”*
166. A staff member also said:
- “There is too much “cuzzie bro” - Pacific Island staff looking after Pacific Island prisoners.”*
167. I note that some prisoners made positive comments about staff. Serco has said that the lack of previous drafts of this Report’s reference to this meant that those draft lacked balance. As I explain in the Executive Summary, this Report is not a comprehensive audit of Serco’s performance. I have been tasked with investigating areas of concern – in the present instance the level of security and supervision at MECF that would have allowed organised fighting to occur.
168. There has been one documented case of staff dismissal due to an inappropriate intimate relationship with a prisoner. However, I do not consider that this was a pervasive problem at MECF.
169. There is evidence that prisoners were directing cell allocation between prisoners. A prison officer spoken to by investigators stated that six cell movements had already taken place in Delta 2 that morning without the authority of unit staff, and that power to the unit had gone out three times due to suspected tattooing, which is often the purpose for which cell movements are desired by prisoners.
170. Staff who had been recently appointed in Delta Unit were witnessed by Inspectors having difficulty conducting a face-to-name muster and had to be shown how to do so by a Corrections staff member while the Investigation team was in the unit.
171. One of the causes for the aforementioned issues in quality of staff supervision may be staff turnover.
172. Serco is a registered and accredited Private Training Establishment with the New Zealand Qualifications Authority. Newly recruited prison officers complete an ITC over a 10 week period. This course involves a combination of ‘in classroom’ learning and on floor practical work shadowing current staff.
173. During the period August 2014 – July 2015, 27 staff have either resigned or been dismissed giving a turnover rate of 13.07%. As at 17 September 2015, 36.8% of the prison officers at MECF had completed their ITC since March 2015. This is likely to be in part to the need for significant recent recruitment since around 40 staff from MECF, including senior supervisors, transferred to Auckland South Corrections Facility when it opened in May 2015.

## Part 4: Contraband cell phones

### Findings:

- Section 6 (c) [REDACTED]
- *The level of contraband within MECF cannot be reliably established, because procedures for ascertaining and limiting the level of contraband already present in MECF were not functioning effectively. Cell and unit searches were being conducted far less frequently than required, with some units not having any recorded cell searches in the period April 2015 to June 2015.*
- *Contraband was likely to have been easily obtainable during the period the subject of this Investigation. Numerous prisoners made credible statements to this effect.*
- *Staff were likely to have been a primary source of contraband available in MECF. Procedures for searching staff entering MECF were relaxed from July 2013. Instead of every staff member being searched, random searches on entry were introduced. This meant that many incoming staff were not searched, including those carrying in large unopened bags in which contraband could have been hidden. Further, numerous prisoners gave credible statements that staff were the source of contraband, and two staff members were recently dismissed for contraband-related reasons.*
- *Procedures and controls for ensuring contraband was not introduced via the vehicle entrance sally port were inadequate.*

4.1 Section 6 (c) [REDACTED]

174. Section 6 (c) [REDACTED]

175. Section 6(c) [REDACTED]

176. Section 6(c) [REDACTED]

177. Section 6 (c) [REDACTED]

178. Section 6 (c) [REDACTED]

179. Section 6 (c) [REDACTED]

Section 6 (c)

180.

181.

#### 4.2 Cell Phone Detection

182.

Section 6 (c)

183. I have found no evidence of any alternative strategies or specific actions to minimise access to, and use of, cell phones.

184.

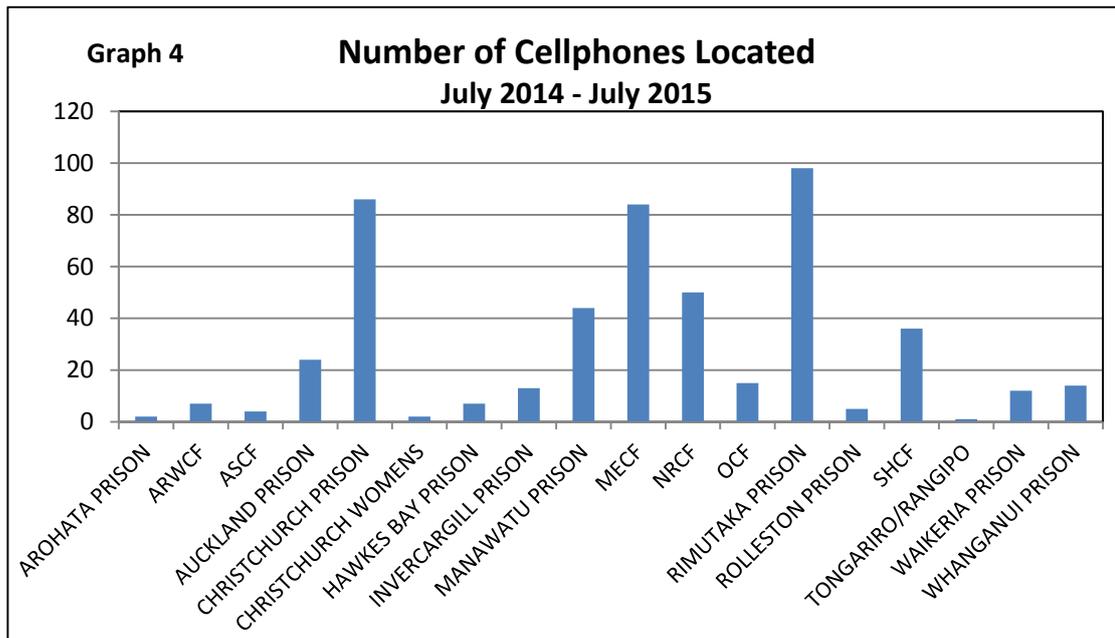
Section 6 (c)

##### 4.2.1 Level of recorded contraband cell phones

185. There is evidence of a reasonably high level of contraband cell phones at MECF. Graph 4 sets out information from IOMS showing the number of communication devices (cell phones) that were found at MECF in comparison to other prison sites for the period 1 July 2014 to 31 July 2015. MECF had the third largest number of cell phone finds with 84 for this period, behind Rimutaka with 98 and Christchurch Men's Prison with 86.

186. It is not possible to confirm whether the number of phones found is a reliable indication of the level of cell phones present at MECF. Shortcomings, discussed in subparts 4.3 and 4.4 below, in regards to searches of cells and staff, may have resulted in a high number of cell phones being undetected. I note that this Investigation has not considered the cell searching regimes in place at the other prisons shown in Graph 4. It may be that other prisons' contraband reporting is similarly unreliable, although I would be surprised if cells in the other prisons were searched as infrequently as has evidently been the practice at MECF.

Section 6 (c)



#### 4.3 Weaknesses identified in procedures and controls for preventing introduction of contraband

187. There are a numerous ways in which contraband may be introduced into a prison, including MECF. They include, but are not limited to:

- a) Prisoners smuggling contraband internally.
- b) Visitors bringing in contraband during visits.
- c) Contraband being concealed inside items permitted to prisoners, such as in radios/stereos.
- d) Contraband being introduced by trades/services staff, and possibly conveyed to prisoners hidden in food being delivered to the kitchen.
- e) Custodial staff smuggling contraband.
- f) Contraband being thrown over the external perimeter fence.
- g) Contraband being introduced via mail.

188. The Investigation identified control weaknesses in staff searching, in the operation of the x-ray machine used to scan bags, and in the vehicle sally port entrance in regards to pedestrian access.

##### 4.3.1 Procedures for preventing introduction of contraband by staff

189. Staff should only enter MECF through the front entrance of the prison, which is known as the Single Point of Entry (SPoE).

190. Until 1 July 2013, all incoming MECF staff were required to be screened upon arrival at the SPoE.

191. On 1 July 2013, the blanket screening requirement was relaxed and random searching of staff was introduced. This was on the basis that a minimum of 40 staff per month would be searched upon entering the prison and 20 staff per month upon exiting the prison. These searches were conducted using an x-ray machine, hand

- held scanner, metal detector, and by a property search. Staff were permitted to bring in with them large bags containing personal items such as food and gym clothes.
192. Information provided by Serco indicates that the minimum searching requirements were exceeded, with 682 staff searched while entering the prison and 168 staff searched exiting the prison during the period April 2015 – June 2015.
  193. The records provided by Serco show that the searches were undertaken over a concentrated period ranging from three days to a week, rather than spread over the full month. This means that there were periods of up to two weeks when no staff were searched upon entry.
  194. The Inspectorate has viewed CCTV footage of staff entering the SPoE during a concentrated period of random searching and noted that on the morning shift of 14 July 2015, more than 30 staff were observed entering the site consecutively without any being subject to screening.
  195. Serco does not accept that changing to a random search regime created a higher risk of introduction of contraband. Serco says that staff were not told how many searches would take place each month, or when they would take place. This explanation is not sufficient to satisfy me that the move away from comprehensive searching did not increase the risk that staff could bring contraband into MECF. In my view replacing the certainty of a search with the risk of a search creates the opportunity for the introduction of contraband, albeit that staff may have been aware that there was a risk of discovery. Further, I have not been provided with any evidence that staff could not in any circumstances have found out, either from the staff tasked with conducting the searches, or from rosters or similar sources, when searches were less likely to take place.
  196. A notice to staff was issued by the acting Prison Director on 16 July 2015 (prior to Corrections' Step-in) stating that, with immediate effect, there would be a move from random searching of staff entering MECF to searching every staff member on entry. Furthermore, on 31 August 2015, following Step-in, a clear plastic bag policy was adopted whereby a clear plastic bag is the only mode permitted for staff to carry approved personal items into the prison.

#### **4.3.2 Weaknesses in Searching Regime for Vehicle Entrance**

197. A number of weaknesses in the searching regime for the vehicle sally port entrance were identified. CCTV footage on July 2015 shows that while vehicles appeared to be appropriately searched, pedestrians were allowed to access the prison through the vehicle sally port without being properly searched or their property going through an x-ray screen.
198. On one occasion, two employees (believed to be maintenance contractors) walked through this area. Both were wearing overalls and heavy jackets and one was carrying a bag. An officer came to search them, conducted a reasonably thorough search of the bag but made no attempt to check the visitors' persons with a scanner. Both were therefore allowed to access the prison without adequate searching.
199. A draft Custodial Safety Heat Map Assessment undertaken of MECF on 27 July 2015 identified shortcomings with the procedures and controls for searching vehicles. Inbound vehicle checks were deemed cursory and staff in the vehicles were not scanned or searched.

### **4.3.3 X-ray Machine operation not best practice**

- 200. During the course of the Investigation, the Inspectorate team observed the operations of the SPoE and the x-ray machine.
- 201. It was observed that on a number of occasions the staff operating the x-ray machine were both loading the items and reading the screen.
- 202. This practice may result in the operator losing focus, and not picking up on indicators of the x-ray screen due to trying to undertake multiple tasks at once.
- 203. Aviation Security, who may be considered experts in this field, have an officer assigned to view the screen only, not undertaking other tasks such as loading or unloading bags. These tasks are undertaken by others thereby allowing total concentration and focus on the screen. In my view, detection of unauthorised items through the x-ray machine would be more effective if the operator responsible for monitoring the screen did not also have responsibility for loading or unloading items.

## **4.4 Weaknesses identified in procedures and controls for detecting and limiting contraband within MECF**

### **4.4.1 Regular cell and unit searching not being carried out**

- 204. Regular cell searching is a key control of detecting and limiting the level of prisoner access to contraband.
- 205. Serco is required under Part B of Schedule 2 of the Contract to adhere to its Search Plan, which states that every operational cell is searched at least once each performance quarter. These searches are to be recorded in unit log books and in an electronic register maintained by the Serco Compliance Team.
- 206. I consider that even if compliance with the MECF 2014 / 2015 Search Plan requirement was met, this would be an inadequate level of searching to reliably detect and limit contraband.
- 207. However, unit log book records for Quarter 2 (April 2015 to June 2015) indicate that Serco was not even meeting its quarterly search targets. There were a large number of cells that were not searched, as can be seen from Table 3.
- 208. Serco does not accept that the unit log books are an accurate record of the number of searches conducted. Serco's own Monthly Contract Report from December 2014 records the view that MECF had "*a robust and accurate Search Plan*", but that "*some key areas such as recording searching activities, particularly on residential units, require additional attention to provide additional assurance that this particular requirement is compliant*". I note that the Inspectorate review of unit log book records was for Quarter 2 (April 2015 and June 2015). This was some time after the concerns raised in the December 2014 Monthly Contract Report.
- 209. In my view it is possible that Serco carried out more cell searches than it recorded, but in the absence of any other evidence, I can only rely on Serco's own records, which are summarised in Table 3 below.

**Table 3: Cell search records**

<b>Quarter 2 April - June 2015</b>			
<b>Unit</b>	<b># of Cells</b>	<b># of Cells Searched</b>	<b>% of cells searched</b>
Alpha 1	26	0	0
Alpha 2	30	0	0
Bravo 1	32	20	63
Bravo 2	28	9	32
Charlie 1	26	6	23
Charlie 2	30	4	13
Delta 1	32	2	6
Delta 2	28	6	21
Echo 1	26	13	50
Echo 2	34	4	12
Foxtrot 1	26	16	62
Foxtrot 2	34	7	21
Golf 1	26	14	54
Golf 2	34	14	41
Hotel 1	26	0	0
Hotel 2	34	0	0
Juliet 1	30	4	13
Juliet 2	30	4	13
Kilo 1	30	4	13
Kilo 2	30	3	10
RO	19	0	0
Transit	18	14	78
At Risk	6	3	50
Management	20	10	50
Punishment	6	0	0
Te Tihi	5	5	100
<b>TOTAL</b>	<b>666</b>	<b>162</b>	<b>24</b>

210. While there were a number of targeted or ‘rummage’ searches conducted in units during this period, the 2014 / 2015 MECF Search Plan states that these searches are not to be counted in relation to the requirement to search each cell once per quarter.
211. In addition to cell searches, Serco’s Directors Rule No. 012 states that accommodation facility checks are to be conducted every day. These checks are described as ‘fabric checks’, and are intended to encourage cleanliness, prevent and detect damage/vandalism, and provide an opportunity to check furniture fittings. Once the check is complete, staff are required to record these in the log book. I have not uncovered any evidence that fabric checks were completed.

**4.4.2 Level of recorded contraband other than cell phones**

212. While the Investigation primarily focused on the issue of cell phones, it is recognised that contraband encompasses a wide range of unauthorised items including, but not

limited to, drugs and drug paraphernalia, alcohol, tattoo equipment, weapons and gang paraphernalia.

213. There were a significant number of homebrew discoveries at MECF over the period June 2014 – July 2015. MECF recorded 97 homebrew finds, where in comparison, the prison with the next highest number of homebrew finds was Rimutaka with 60 instances of homebrew over the same period.
214. Shortcomings in supervision by staff and lack of cell searches, provided opportunity for prisoners to engage in tattooing. In two cases, prisoners received a significant number of tattoos, including on their faces, over a relatively short period of time while they were in MECF.

#### **4.4.3 Prisoner and staff statements as to contraband availability**

215. Prisoner interviews indicated that contraband was easy to source, with most prisoners agreeing that contraband is predominantly introduced by staff. Prisoners who were prepared to comment told the Inspectorate:
- a) *“Ice cream containers were used by staff to bring contraband in such as drugs, tobacco and cell phones into MECF. If you could fit it in an ice cream container, you could get it in.”*
  - b) *“Staff bring contraband in. \$6k for 50 x 50gm of tobacco in an ice cream container.”*
  - c) *“[I] had a backdoor<sup>77</sup> and for \$1000 could get anything (meth, weed, cigs, synthetic, cell phones).”*
  - d) *“\$1500 for an ice cream container – whatever you wanted.”*
  - e) *“Contraband was coming in by staff. There was a male staff member who brought in an ice cream container with 8-10 packs of tobacco and a cell phone.”*
  - f) *“Contraband is brought in by staff.”*
  - g) *“For \$2000 staff member would bring in an ice cream container full of stuff...P, Dope and cigarettes.”*
  - h) *“Could get whatever you wanted. Staff were the main source of contraband – cell phones, iPads, PSPs.”*
  - i) *“Contraband coming in back doors– safer and cheaper. Could get anything except weapons.”<sup>78</sup>*
  - j) *“Contraband was coming in to MECF. Staff were involved.”*
216. I consider these statements by prisoners to be consistent and credible:
- a) The 10 prisoners who gave the statements above were, at the time they were interviewed, housed in 6 prisons across New Zealand, or released, and would have had very limited opportunity for collusion. Their accounts are consistent in respect of matters of detail such as the use of ice cream containers.
  - b) Further, these statements are consistent with several staff comments and disciplinary issues discussed below.

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<sup>77</sup> The “back door” is a term used by prisoners that refers to staff who are willing to smuggle contraband in to the prison.

<sup>78</sup> The interviewer of this prisoner concluded that the part of the statement that the prisoner could get anything except weapons may have been exaggerated.

217. Serco says that prisoners are highly incentivised to blame staff, rather than other sources of contraband such as family members or others. It says that the similarity in prisoners' accounts may be due to a series of rumours or myths among the New Zealand prison population generally. I have borne these comments in mind in assessing the credibility of the prisoners' statements. However, I do not consider that I can discount all of the prisoners' accounts for the reasons suggested by Serco.
218. Some staff interviewed also stated that staff members may be responsible for bringing in contraband, although their statements were matters of general impression rather than personal knowledge:
- a) *"Prisoners tell us that staff bring contraband in."*
  - b) *"I would not be surprised to hear that staff are bringing it in."*
  - c) *"Wouldn't be surprised if staff bring it in."*
  - d) *"Contraband is an issue and I would not be surprised if staff are involved."*
219. It is noted that two staff have been dismissed for professional standards matters related to smuggling contraband into MECF over the period June 2014 – July 2015. Serco has advised that a further two officers had been dismissed for issues relating to contraband since 2011. Furthermore, another officer is suspended and currently undergoing an employment investigation for allegedly introducing tobacco.

## Part 5: Remedial actions to address organised fighting and access to contraband cell phones

### Findings

- *Serco had introduced a number of policies and strategies aimed at reducing prisoner violence. Most of these strategies appear not to have been fully implemented, or else abandoned, due to staff not taking personal responsibility for implementation. The Findings in Parts 2 and 3 of this Report indicate that they have not been effective to prevent the level of organised fighting identified, although it is noted that these strategies were not directed specifically at organised fighting, as the extent of this problem was not previously identified.*
- *Other than its searching regimes, Serco did not have a specific strategy for addressing the problem of contraband cell phones.*

#### 5.1 Actions to reduce prisoner on prisoner violence

220. Serco undertook a number of overlapping initiatives in 2013 to address issues of violence occurring at MECF.
221. These initiatives related to prisoner violence generally, and not to organised fighting specifically, the extent of which had not been identified at that time.

##### 5.1.1 Zero Tolerance to Violence Policy

222. During interviews, MECF senior management repeatedly referred to Serco's Zero Tolerance Policy towards Violence. However, interviews with both staff and prisoners, combined with viewing of CCTV footage, indicated that some prison officers were in fact tolerating a level of violence. Some incidents of sparring and fighting known to prison officers were not reported.
223. Serco's management are unlikely to have been aware of the extent of the tolerance of prisoner violence.
224. A review of Serco's Initial Training Course (**ITC**) found that there was no specific staff training in relation to a Violence Reduction Strategy or Zero Tolerance to Violence policy. Staff were reminded of this policy via staff notices and posters located on the walls around the facility. A Staff Notice, dated 14<sup>th</sup> January 2013 states;
- "This is a reminder to staff that any incidents of violence between gang members or incited by gang members will not be tolerated under any circumstances. MECF has a Zero Tolerance policy towards violence. Any incident of assault, fighting, or violence towards or by prisoners will be fully investigated using CCTV footage and other methods to identify those involved. Disciplinary action including referring the matter to the police, will be taken wherever perpetrators are identified."*
225. Serco has advised that it has updated its ITC to include a specific unit on violence reduction and says that this course has always included a range of techniques for dealing with violence where it occurs.

### **5.1.2 Operational Review of Violence at MECF April and May 2013**

226. The Serco Asia Pacific Director of Operations commissioned an operational review of incidents of violence within MECF during April and May 2013 following an unusual escalation of violence incidents at MECF. Seven specific incidents (6 related to prisoners assaulting staff) were highlighted and identified and an analysis of the circumstances leading up to these specific violent incidents, including the presence of consistent themes, causal factors, operational response and post-incident management was conducted. The Operational Review of Violence found that serious assaults had decreased by 50% over the period reviewed, while minor to moderate violence had increased.
227. The Operational Review identified the one common theme among the incidents as the history of violence of the perpetrators. However, there were three contributing factors to the increase in level of assaults identified in the report. These were:
- a) Stand overs and bullying related to Nicotine Replacement Therapy.
  - b) Differing classification cohorts resulting in last minute changes to roles of units and regimes to prevent mixing. This may result in an unsettled and frustrating environment for prisoners and difficulties for staff to engage with prisoners subject to a restricted regime due to their behavioural patterns.
  - c) MECF is subject to receiving of perceived problem prisoners before an investigation can be carried out by the sending facility. MECF works well with other prisons in terms of muster management and discussions regarding problematic prisoners prior to transfer to ensure good staff awareness at the Receiving Office. However, the number of movements, as well as the fact that not all potential behaviour is known or captured, means that it is necessary for MECF to manage risk on a daily basis in terms of muster management and receptions.
228. The report identified that the MECF Senior Management had a number of strategic initiatives in place to proactively address the issue of institutional violence at the site. These included:
- a) The Safer Custody Strategy and Violence Reduction Strategy.
  - b) Incentives and earned privileges to encourage prisoners to manage their own behaviours and those of their peers to achieve group rewards.
  - c) Statistical data collection of Violence Incident reports via a specific staff member identified to develop, format and embed violent incident reports in MECF.
  - d) Business objectives targeting violence reduction identified in the 2013 – 2015 strategic plan. These include a Local Security Strategy and a strategic approach to eradicate, educate, challenge and change anti-social and violent behaviour under a zero tolerance agenda.
  - e) The reintroduction of Chaplaincy services into MECF.
229. Recommendations of Serco's operational review include:
- a) Implementing the planned initiatives, embedding them into everyday routine and tracking them to measure their effectiveness.
  - b) A further independent review is recommended within 12 months to highlight the success / failure in this area.

- c) Utilise multi-disciplinary case management to articulate risk posed by the prisoner, identify factors which trigger their violent behaviour and develop a management plan which aims to reduce risk and change behaviour.
  - d) Further work to be undertaken in building a partnership between the Corrections and Serco to identify and implement an effective placement strategy for prisoners transferred in and out of the facility.
  - e) Officers to be refreshed about the importance of writing an individual IOMS incident report and not a direct copy of a colleague's.
  - f) A review of the operational regime would be useful to ensure that frontline prison staff remain as much as possible on the residential wings.
  - g) Further resource to the Security Department as an innovation and linked to the national strategy on gangs. This will also assist in identifying and tracking gang activity at MECF.
230. In June 2013 Serco established an Action Plan to combat violence at MECF, which specified 20 issues and remedial actions to be addressed in response to the Operational Review of Violence. I have seen no evidence that any follow up remedial actions were implemented effectively. In particular, it seems that the recommended independent review and review of the operational regime was not carried out. It is also noted that many of these initiatives were to be led by the 'Safer Custody Coordinator'; a position which has remained vacant. Serco has advised that a decision was made for the Senior Management Team to take collective responsibility for this initiative.

### **5.1.3 Violence Reduction Strategy**

231. MECF introduced a Violence Reduction Strategy in May 2013. The strategy outlined that this would be achieved through file notes, incident reports, unit concern/alerts folder, management plans and tactical communication.
232. The strategy states supervisors are to deal with prisoner/unit briefings, management plans, violence reduction strategy (implementation/monitoring) and rewards.
233. In late 2013 the two MECF staff members who had originally taken ownership for the strategy resigned. Subsequently it appears that the strategy was left as the responsibility of 4 different senior staff members. Serco has advised that this strategy was the collective responsibility of the Senior Management Team. It appears that this resulted in the strategy not being actively pursued, as no staff member took direct ownership of its implementation.

### **5.1.4 Safer Custody Strategy**

234. This strategy calls for a holistic prison approach and uses resources including: education, rehabilitation programmes, specific target programmes, mentoring, physical fitness and training, volunteer groups, cultural guidance, staff interaction and coaching, positive and decent environments and management plans, to challenge, guide and support prisoners who display poor behaviour.

In particular, the strategy had proposed the establishment of a Violence Reduction Coordinator to oversee all enquiries and investigations with elements of violence, bullying, intimidation or any suspicious behaviour in them. To date, this role had not been filled. The MECF Deputy Director stated the Coordinator role had been added on to the responsibilities of a Section 9(2)(a) in Bravo Unit. However I have found no

record of this having been formalised, or of the Bravo Unit **Section 9(2)(a)** taking any steps to fulfil the role of Violence Reduction Coordinator.

235. The Safer Custody Committee was established at MECF in May 2013 as a result of the aforementioned Violence Reduction Strategy. This strategy commits to positive staff / prisoner relationships, the Responsible Prisoner Model, Pro-social modelling, and effective intelligence sharing (internally and externally where appropriate).
236. The Safer Custody Committee was to look at key strategic themes such as “decent”, “safe”, “secure”, “responsible” and “efficient” taking into account: situational response and de-escalation training, systematic collection of information and intelligence about all fights and assaults; regular analysis of this information highlighting the problem areas and an action plan to improve safety.
237. Monthly Safer Custody Meetings were to occur and be attended by representatives from Offender Management, Programmes, Training, Volunteers, Security & Intel, Monitors, Chaplaincy and Health. These meetings would be organised by the Coordinator and chaired by the Assistant Director Residential. Set agenda items include the use of force, self harm and harm minimisation, violence related incidents, trends and analysis, SACRA, racial incidents and suspicious injuries.
238. It appears that implementation of the Safer Custody Strategy may have been discontinued. To date, the Inspectorate has been provided with various records of monthly Safer Custody, Violence Reduction Meetings dated 4 June 2013 - 17 June 2014, with minutes available. However, there are no records of these meetings since that date. The Inspectorate has been told that the Safer Custody information is discussed at wider Senior Management Team meetings, but has not been provided with any minutes detailing the matters discussed, or action points agreed.

#### **5.1.5 Prisoner programmes**

239. In September 2013, MECF reviewed and developed all prisoner programme structures to address offending behaviour, including violence. The one-session Powerful Parenting and one session Powerful Relationships programmes facilitated at MECF have anti-violence and relationship specific skill building threaded throughout and a four session Anger Management programme specifically addresses the difference between anger and violence and how to tolerate difficult emotions.
240. In December 2013, the MECF Prison Director developed a four module, self-directed, in-cell programme specifically to assist individuals who were involved in incidents of violence and housed in the Management Unit. Due to its popularity, this is now facilitated across the whole site. Anti-violence messages and skills for impulse control, communication, goal setting and distress tolerance are threaded throughout however, due to staff shortages, at the start of 2015 until recently, the programme was more available on some units than others.
241. Data provided by Serco shows 596 entries for completion of this programme between 14 August 2014 and 30 June 2015, noting that some prisoners have completed the course more than once. Serco has advised that MECF state they have 8000 new prisoners per year, therefore the 596 entries of completion of this programme represents 7.5% of the population.

#### **5.1.6 Effectiveness of strategies to reduce prisoner violence**

242. Around a year after the above measures were introduced, monitors raised concerns suggesting that these strategies were no longer in place, with the exception of posters referring to the Zero Tolerance Policy.

243. The Monitors' Monthly Report for September 2014 states:

*The inference drawn from the Monitor's reviews of incidents over September and the three previous months is that acts of violence at Serco are not reducing.*

*Serco do have "wall art" communication that does not support violence, however there does not appear to be other strategies in place to reduce the levels of violence*

## **5.2 Actions to minimise access to, and use of, cell phones**

244. I have found no evidence that any strategies or specific actions to minimise access to, and use of, cell phones. Serco's general controls and procedures for contraband detection and limitation are set out in Part 4 above.

## **5.3 Actions subsequently implemented by MECF management**

245. The Terms of Reference for this Investigation has required the Chief Inspector to examine any subsequent actions implemented by MECF management subsequent to the Investigation commencing.

246. On the 24 July 2015 the Chief Executive invoked the Step-In clause in the contract that Corrections have with Serco. Three days later, a team of Corrections Managers and Custodial Officers were seconded to MECF to oversee its day to day operations while Serco's staff remained on site.

247. During this period, Corrections are in control of the operations at MECF. Accordingly, a number of changes to key operational systems have been made by the Corrections management team.

248. For that reason, Serco have not had the opportunity to take any remedial actions in respect of the operational systems and procedures identified by the Investigation. As explained in Part 10, Serco has accepted many of the Recommendations of this Report, and has proposed to make a number of improvements in the event that it returns to manage MECF.

249. During consultation, Serco has said that this Report does not take into account, or does not sufficiently take into account, that incidents of violence, including organised fighting, have continued to be an issue at MECF since Corrections took over management of the prison in July 2015. I have not been instructed to review remedial actions taken by Corrections since Step-in, or the relative success or failure of those actions. I was instructed to pay particular attention to the three months preceding the Earlier Terms of Reference (refer to the Introduction to this Report), and have done so accordingly.

## Part 6: Prisoner welfare

### Findings

- *The Investigation has uncovered two cases in which serious assaults were not reported to Corrections by Serco, or were reported incorrectly. The Investigation has not uncovered any evidence of deliberate or widespread misreporting.*
- *Some prisoners who were intended to be charged under Serco's internal disciplinary processes for violence-related incidents have not been charged.*
- *It is likely that many prisoners housed at MECF have been denied their right to call their legal adviser for significant periods of time.*
- *Following its decision to require prisoners to use prisoner-designated phones for calls to legal representatives, Serco failed to adequately resource the process to ensure that calls could be made in a timely manner.*
- *MECF kitchen sanitation practices fell far below an acceptable standard.*
- *Prisoners have been served food that has been contaminated by animals, and food that has been stored in an uncovered and unsanitary manner.*
- *Meal delivery practices were not sufficient to ensure that all prisoners received a meal, and that the meals delivered were appropriately heated.*
- *MECF's prisoner medical assessments were in my view not being carried out by appropriately qualified personnel, and may create a task-orientated focus, which may negatively impact the time available for responsive healthcare.*
- *The Investigation has not uncovered any evidence that Serco's Compliance programme was operating effectively to address identified areas of concern.*
- *MECF risk management and assessment processes did not provide proper assurance that key operational risks were being managed effectively or that MECF policies and procedures are being complied with.*
- *The lack of effective controls in the issuing of radios indicates that radios were not properly managed and accounted for at all times.*
- *New Arrival Risk Assessments were not adequately resourced, with only one staff member assigned to complete up to 80 assessments per day.*

#### 6.1 Prisoner Complaints regarding welfare

250. A number of concerns were raised by prisoners during interviews regarding welfare matters. Subsequently, the Inspectorate examined a sample of prisoner complaints logged on MECF's internal complaints register relating to these matters.
251. These areas relate to:
- a) Serious assaults.
  - b) Prisoners' access to lawyers using MECF telephones.
  - c) Prisoners not receiving property promptly.
  - d) The food services at MECF.
  - e) The health services at MECF.
252. The Investigation's consideration of these matters is necessarily high-level, given that the Investigation's focus has been on organised fighting.

253. Serco has advised that it considers the matters above are selective.
254. Serco has also said that:
- a) it considers that drafts of this Report have not taken into account, or have not taken sufficiently into account the facts that:
    - I. prisoners in all prisons make complaints; and
    - II. only a small number of complaints are held to be justified by the Inspectorate, and
  - b) drafts of this Report have inappropriately placed reliance on the volume of prisoner complaints, and the integrity of certain complaints.
255. I have considered these matters, and have not in this Report relied solely upon the existence of a single prisoner complaint to make a factual Finding. While this Part 6 includes discussion of numerous complaints, I emphasise that I have borne in mind the risks associated with relying on complaints as evidence of their truth, and have considered possible motivations for false complaints, and the other matters which I discuss in Subpart 2.2.3.2 above in regard to the credibility of prisoner statements generally.
256. I note that, although only a small number of complaints are ‘justified’ by the Inspectorate upon investigation, this does not mean that the non-justified complaints were incorrect or otherwise improper. ‘Justifying’ a complaint is a step taken only when a resolution to a prisoner’s complaint is unable to be achieved through discussions with the relevant prison. If, for example a prisoner complains that a prison has lost an item of personal property, but the prison provides reasonable compensation to the prisoner following an investigation by the Inspector, that complaint will not be ‘justified’.
257. I have recorded in this Report a number of prisoner complaints, which appear to indicate concerns regarding Serco’s responses to prisoner requests for medical attention (Subpart 6.6.1), and access to prisoner property (Subpart 6.4). I consider it appropriate that I note these complaints, as the Terms of Reference required me to review prisoner complaints, and these complaints may appropriately be the subject of further investigation. However, recognising that the focus of this Report has been on organised fighting and contraband, I have not made a specific factual Finding on either of these points, except insofar as I note that there is sufficient evidence of an underlying problem to justify further investigation.
258. Finally, I wish to make clear that this section, although relatively wide-ranging, is not intended to be an exhaustive review of all aspects of prisoner welfare at MECF. This section of the Report does not deal with the core issues in the Terms of Reference, nor is this Report the appropriate vehicle for a comprehensive audit of Serco’s overall contractual performance. Accordingly, while it identifies various areas of concern, it does not recite the areas in which no concerns have been identified, and in which Serco may in fact be performing well.

## **6.2 Response to serious assaults and prisoner violence**

259. A serious assault is defined in the Contract to include an act of physical violence that involves bodily harm requiring medical intervention by medical staff followed by overnight hospitalisation in a medical facility, and bodily harm requiring extended periods of ongoing medical intervention.<sup>79</sup> Over the period 1 July 2014 – 30 June 2015, 9 serious assaults at MECF were notified to the Corrections, National Office.
260. Serious assaults must be notified to Corrections National Office via an ‘Incident Line’.

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<sup>79</sup> Schedule 2, Part B, Table 15.

261. Corrections' guidelines for what constitutes a serious assault include;
- a) Victim admitted to local medical centre / hospital overnight or requiring extended periods of ongoing treatment.
  - b) Fractures.
  - c) Severe internal injuries.
  - d) Serious lacerations requiring multiple stitches / staples.
  - e) Severe burns.
  - f) Severe general shock.
  - g) Broken and / or missing teeth requiring reconstruction.<sup>80</sup>
262. I was concerned to discover two incidents which appear to have been capable of detection and categorisation as a serious assault, but which were not notified to Corrections National Office as such:
- a) **Prisoner B**
    - I. On Section 9(2)(a) 2015 Prisoner B was transferred from MECF to Manawatu Prison. Prisoner B was assessed on arrival by medical staff at Manawatu Prison Receiving Office and taken directly to Palmerston North Hospital Emergency Department. Prisoner B disclosed that he had been assaulted the previous day by three (according to Prisoner B's interview with the Inspectorate) or four (according to Serco's Fact Finding Review) prisoners. The Manawatu Nurse recorded injuries including a swollen left eye and swollen right forearm.
    - II. Prisoner B claimed that he asked for medical attention when his cell was unlocked the morning after he was assaulted, but was told to hurry up or he would miss his plane. Manawatu staff notified National Office of Prisoner B's injuries via the incident line following him being taken to Palmerston North Hospital to get checked. X-rays confirmed a facial fracture.
    - III. Serco conducted a Fact Finding Review, which found that there was no evidence indicating that MECF staff were aware Prisoner B had been assaulted. Serco's Fact Finding Review found that none of the staff members recalled Prisoner B showing any physical sign of injury up to the time of his transferral, however Serco's response to a draft of this Report records that:
      - (i) one of the prison officers escorting Prisoner B reported that the prisoner asked for his handcuffs to be moved because his arm was sore; and
      - (ii) another prison officer noticed swelling starting to appear underneath his eye, although when asked Prisoner B said "*I'm alright, cheers for asking*".
    - IV. There are no records on IOMS from MECF or notification made to National Office in regard to the alleged serious assault, including after Serco were made aware of this assault by Manawatu staff on Section 9(2)(a) 2015.

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<sup>80</sup> Ibid.

b) **Prisoner C**

- I. On <sup>Section 9(2)(a)</sup> 2014 Prisoner C presented himself to prison officers in Alpha 2, reporting a sore elbow. Prisoner C was assessed by medical staff on site and then taken to Auckland Hospital. Prisoner C remained in hospital for 4 days and subsequently had an operation to place pins and plates into his arm as a result of the injuries sustained.
  - II. It appears that Prisoner C initially told prison officers that the injury was due to having slipped in the shower. The incident is recorded on IOMS as a serious harm accident (rather than a serious assault), and was notified to National Office as such.
  - III. However, an internal Serco notification from the MECF medical staff that attended to Prisoner C on <sup>Section 9(2)(a)</sup> 2015 stated that Prisoner C said that his injury was due to an assault.
  - IV. On <sup>Section 9(2)(a)</sup> 2015, the Inspectorate was advised that no action had been taken to advise National Office that the injury had been reported as having been the result of an assault, and the incident had not been referred to the Police.
  - V. Since this issue has been raised during the course of this investigation, the MECF Assistant Director <sup>Section 9(2)(a)</sup> has assured the Investigation that a review has now been commissioned to consider how it handled the incident with Prisoner C. This will include consideration of Serco's reporting to the National Office.
  - VI. Serco has accepted that it recorded Prisoner C's injury as an accident and that it later failed to update the IOMS report when Prisoner C changed his account of what had occurred.
263. In Prisoner B's case, the prisoner appears not to have told Serco staff that his injuries were the result of assault, although I consider that Serco staff could have done more to investigate his obvious injuries, and ought to have reported the incident as a serious assault to Corrections National Office once informed of the facts by Manawatu prison.
264. The case of Prisoner C appears to be the result of an internal Serco systems failure.
265. A related concern is that Serco's records indicate that a number of prisoners identified as having been involved in violent incidents were apparently not charged with misconduct. During the 3 month period 1 April 2015 –30 June 2015, of 205 incident reports related to violence reviewed by the Investigation, 125 of these resulted in misconduct charges being laid through Serco's Internal Disciplinary Process.
266. There were a further 15 documented cases where incident reports stated that the prisoner(s) involved would be subject to a misconduct charge. However, I could not find any record of these charges on IOMS. It therefore appears that the prisoners were never charged.
267. Serco has advised that it can be difficult to establish sufficient evidence to lay charges in the time available with any prisoner. However, the importance of appropriately dealing with all prison assaults has been recognised by senior Serco management. In a statement to the media on 23 July 2015, following the allegations of an assault on a Prisoner at MECF, Serco Asia Pacific Director of Operations said, "*regrettably, assaults in prisons do occur, but we believe that one assault is one too many, and we are committed to preventing them. Prisoners who engage in violence*

can expect to face internal disciplinary processes and criminal charges. All incidents are rigorously reported, thoroughly investigated and police notified as required.”

### 6.3 Access to lawyers

268. Prisoners are entitled to be given reasonable access, free of charge, for the purposes of communicating with their legal adviser about bail or pending proceedings.<sup>81</sup> Prisoners are permitted to make calls to their legal adviser under Section 77 of the Corrections Act 2004.
269. Until recently, prisoners at MECF were entitled to call their legal representatives through a staff-designated phone. Any other phone calls were to be made through a prisoner-designated phone, which required the outgoing number to be approved and ‘loaded’ on to the prisoner telephone system before the call could be made.
270. In January 2015, a change was made to this process at MECF whereby calls to legal advisers were to be made through the prisoner-designated phone, but the costs would not be charged to prisoners. However, there appears to have been a significant delay in approving and loading prisoners’ numbers.
271. Interviews with prisoners, and complaints to Serco via the CMS Kiosk, indicate that the change in procedure resulted in some significant delays in prisoners being able to call their legal representatives. Examples of prisoner statements and complaints are as follows:
- a) One prisoner interviewed stated that he had been in custody for 5 weeks and had a court appearance the following week but was still waiting to get his lawyer’s telephone number loaded. When this was brought to staff’s attention by the Inspectorate, the prisoner was allowed to make a phone call via the staff phone.
  - b) Another prisoner claimed it took up to 8 weeks for approved phone numbers, including lawyers, to get loaded.
  - c) A prisoner complaint stated “*[i]t’s been 7 weeks and I still haven’t received my numbers (private numbers) as well as my <sup>Section 9(2)(a)</sup> to call my <sup>Section 9(2)(a)</sup>. I was given the wrong number for my lawyer and have handed in a form with the correct number. I need these numbers to know what’s going on in my case. This is my second complaint form I have handed in and I am wishing for something to be done.*”
  - d) “*I have requested my lawyer’s phone numbers (mobile and landline) to be approved and I have been waiting 1 month for my numbers to be approved and I am still waiting for it. I need my lawyer’s number so I can ring her to discuss my court case.*”
  - e) “*I have been waiting 2 weeks to get one personal number and my lawyer’s numbers approved. I have court in one day and haven’t been able to contact my lawyer at all.*”
  - f) Another prisoner admitted to using a Head Hunter’s cell phone to contact his brother, as his approved numbers had not yet been loaded. This is of concern, as it suggests that the issue of telephone numbers not being loaded in a timely manner could encourage prisoners to use contraband cell phones that are available to them and could be viewed as inadvertently creating incentives for the use of contraband cell phones.
272. Serco has noted that there have been only three complaints to the Inspectorate in 2015 about access to phones, although there were 20 complaints to Serco via the

<sup>81</sup> Corrections Regulations 2005, rr 86 and 87.

CMS Kiosk between 1 April and 30 June 2015. Complaints to the Inspectorate typically only occur when prisoners have failed to resolve their complaint with Serco, and wish to take the matter further.

273. Interviews with Serco management confirmed that there have been issues with the timeliness of loading approved numbers on to the prisoner telephone system, and have said that this was due to the large muster at MECF coupled with the high levels of prisoner churn and only one receptionist being tasked with entering the forms.
274. It appears that the delays were primarily due to Serco assigning only one MECF staff member to loading the numbers into the system. This person was also responsible for receiving and directing all incoming calls to the Prison. It is noted that there is only one computer able to load these numbers.
275. It is also noted that, while it may be expedient to load lawyer's numbers on the approved phone lists to allow prisoners to use the prisoner pay phone in the unit, the phones in the unit are in an area which is accessible by all prisoners during unlock hours. This creates an additional issue of lack of privacy for this type of call as other prisoners may be in the vicinity.

#### **6.4 Prisoner property**

276. During the period 1 July 2014 – 30 June 2015, the Inspectorate received 15 property related complaints, including issues regarding delays in processing 'property claims' and issuing property to prisoners. These were resolved by the Inspectorate in conjunction with Serco.
277. Interviews also revealed that prisoners were waiting for significant periods of time to receive their property from the receiving office. One prisoner complained of a delay of 5 months.
278. Complaints received via Serco's CMS Kiosk indicate that there may have been lengthy delays in receiving property. Examples of these include:
  - a) *"I have been requesting my property from [the Receiving Office]. I have filled in 3 different forms and I still have no luck with getting my property"*
  - b) *"I have requested my property 5 times. It has been over a month now. I am wanting a claim form if nothing is done!"*
  - c) *"I wish to make a complaint about property forms. I have done 3 in the past four weeks, none of which have been sent to my partner. It is as if they are disappearing. I have spoken to floor staff and I've been told to keep doing a new one? Who do I talk to regarding this issue?"*
  - d) *"It's been 5 months now and I still have nil issued boxers, briefs and socks that were sent October 2014."*
  - e) *"It's been over 4 weeks now that I have been waiting. I've sent in over 5 property claim forms and am still waiting. There are important clothes I need like undies, socks, T shirts, singlets."*
279. The Investigation was also told during interviews with prisoners, that some prisoners were being forced to pay a 'tax' to gang members for their TV sets despite already paying MECF for their rental. Fees were alleged to be approximately \$5 per night.
280. The Inspectorate has not investigated the facts underlying these complaints as part of this Investigation. However, I consider that the number of complaints bears noting, and may justify further investigation.

## **6.5 Food services**

### **6.5.1 *Unsanitary state of the MECF kitchen***

281. The MECF kitchen was visited by the Inspectorate and the Ombudsman on 31 July 2015 and was found to be in an unsanitary and disorganised state:

- a) There was black mould on the ceilings and floors.
- b) Cooking oil spilled on the floors had not been cleaned up.
- c) Kitchen equipment appeared not to have been cleaned adequately or recently.
- d) Food scraps were lying on the floor under the dishwasher.
- e) Containers of food stuffs were left open in the cool room and other areas.

282. Over 30 photographs were taken by the Inspector during this visit. The photographs below show various cleanliness issues, as well as showing uncovered pumpkin in a tray left on the floor, and uncovered meat in the 'cool room'.



283. Following this visit, external contractors were brought in to clean the facility and equipment. Furthermore, live CCTV footage observed by the Investigation on 31 July 2015 revealed unsanitary habits among kitchen workers, including in particular food being placed in areas where it could be contaminated by animals: there was footage of birds eating bread that had been placed on the top of trolleys awaiting delivery to the housing units from the kitchen loading bay. I note that Serco says that this Report does not cite evidence that prisoners were served this contaminated food. In my view, this food was very likely to have been served to prisoners, having been placed on top of trolleys awaiting delivery to the housing units.
284. I consider that these practices pose undue health and sanitary risk to prisoners and staff.
285. Some of the sanitation issues identified by the Investigation on 31 July 2015 had been previously identified. In May 2015, Spotless<sup>82</sup> conducted their 6 monthly Hygiene and Sanitation Review. This review stated:
- a) *“The Kitchen was in a poor state of cleanliness with a number of opportunities for improvement noted.”*
  - b) *“Food in the walk in fridge was observed to be unlabelled, undated and some was also uncovered or poorly covered. In addition, cooked food was shelved below uncooked food.”*
  - c) *“Cooked and plated uncovered meals were observed being delivered to various areas and left uncovered. These plates were observed in the guard rooms throughout the prison, still uncovered.”*
  - d) *“Whilst the floor generally appeared visually clean, the coving at the edges of the floor was in a very poor state of cleanliness especially between the dishwasher and the wall. In places, food debris was observed on walls.”*
286. The Investigation also found that key items of equipment were not working effectively. The heated meal trolleys were in various states of disrepair. One was viewed without a proper handle or seal on the door, which was swinging open, leaving the food exposed and getting cold. The food trollies were purchased by Serco at the commencement of the Contract and are its responsibility for maintenance.
287. Serco accepts that at the time the MECF kitchen was inspected it was not maintained at the standard that Serco would expect and says that:
- a) It plans to task prisoners with working in the kitchen, supervising food preparation and clean-up, supervised by two kitchen instructors. However, Serco says that the fact that it has no control over its muster under the Contract means that it does not have reliable access to suitable low-risk prisoners who have been vetted and approved.
  - b) It received the Spotless report in mid-June 2015, and that a senior manager from Serco Australia was brought to MECF to conduct a full hygiene audit of the facility, including the kitchen. Serco state that they were taking action on the recommendations of this audit at the time of the Step-in.
  - c) The Inspectorate has viewed the audit report which contains a small section related to the kitchen but does not identify specific issues to be addressed. The recommendations from this audit contain a specific recommendation in respect of the employment of a qualified professional cleaning supervisor to

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<sup>82</sup> Serco's and Corrections' contracted asset management agency.

have oversight of sanitation and hygiene issues across the site. This position has not been appointed at this point in time.

### **6.5.2 Inadequacies with food delivery**

288. In addition to hygiene issues observed in the kitchen, I could not establish that any formal and consistent process existed for delivering the meals to each individual prisoner. CCTV footage on 3 July 2015 showed one instance in which a food trolley was simply left in the unit pod common area. Prisoners swarmed around the trolley taking meals without any order or supervision by staff. Some prisoners were observed to be taking two meals, and it is not possible to confirm that all prisoners received a meal.
289. It is noted that cold, inadequate, and out of date food was the subject of multiple prisoner complaints via the CMS Kiosk. While individual statements were not individually investigated as part of this Investigation, I consider that they were consistent with the evidence that Serco's food delivery practices were seriously inadequate, as discussed above.

## **6.6 Health Services**

### **6.6.1 Concerns regarding responses to prisoner requests for medical attention**

290. In order for a prisoner to request medical attention, they ordinarily log a request via the unit CMS Kiosk. Requests are viewed by a nurse in the Health Centre on the computer each morning, who then allocates requests to the appropriate service and sends an electronic response to the prisoner.
291. The Investigation found a number of instances in which CMS Kiosk requests appear to have been overlooked, or triaging appears to have been inappropriate, resulting in patients being seen in inappropriate timeframes for their symptoms. Examples from complaints submitted include:
- a) *"On Sunday <sup>Section 9(2)(a)</sup>, I injured my finger and the nurse on that day did not book me an x-ray. The x-ray was only booked when I asked to be taken back to medical on Wednesday <sup>Section 9(2)(a)</sup>."*
  - b) *"On the <sup>Section 9(2)</sup> I requested to see the doctor about my hand being broken, and it wasn't until the <sup>Section 9(2)</sup> that I was finally seen and had a plaster cast put on, 3 weeks after I first requested for it to be looked at."*
  - c) *"I put in a chit in <sup>Section 9(2)(a)</sup> to see medical (written one) after the swelling went down. Didn't get seen for a month so I put a second one in the Kiosk. I didn't see anyone so gave up."*
  - d) *"Didn't get to see medical. [Staff] told me to put it in to Kiosk but I never got a reply."*
292. Also, interviewees said:
- e) *"I asked if I could see a doctor after I was assaulted, but was told "no you will miss your plane." I didn't see anyone in medical until I got to Manawatu."<sup>83</sup>*
  - f) *"Got jaw broken in <sup>Section 9(2)(a)</sup> after being assaulted. Just took me to medical, got a couple of Panadol and that was it. Five days later went back to medical and they finally took me to hospital."*
293. The Inspectorate has investigated the case of Prisoner D, who complained via the CMS Kiosk of blackouts, and the following day was given a booking with a Medical

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<sup>83</sup> This interviewee is Prisoner B, discussed in Subpart 6.2 above.

Officer in a further two days' time. This prisoner was then transferred to another site the next morning, with no record on his travel documentation that he required medical follow up at the receiving site. A complaint of blackouts should have resulted in the prisoner being urgently assessed.

294. Many of these complaints allege serious deficiencies in Serco's delivery of medical services. However, because the Investigation has not focused on the delivery of health services, and has not investigated the circumstances of each complaint, I do not make a specific factual Finding as to these matters. I simply note that further investigation may be warranted.

### **6.6.2 Medical Improvement Outcome Assessment System**

295. MECF medical and health staff use an assessment system called the Medical Improvement Outcome (**MIO**) to record prisoner data, and thereby provide a basis for further clinical interventions and supporting improvement in health outcomes.

296. The MIO is comprised of three parts, an initial assessment on arrival to prison, a follow up at 2 weeks and again at 12 weeks. Data recorded is intended to become part of the prisoner's clinical record.

297. I have three concerns about the effectiveness of the MIO system:

- a) Firstly, there is a risk that MIO records have not been transmitted to other prisons to which prisoners are transferred. This is a clinical risk as other prison sites may not receive critical information concerning prisoner needs. MECF is the only New Zealand prison that uses the MIO assessment process: other prisons record prisoner medical data on a centralised database called MedTech, a component of IOMS. While Serco also use MedTech, the MIO assessment is not fully recorded in MedTech. Serco policy states that the MIO is to be printed and placed in the prisoners' medical hard file to ensure the information goes with the prisoner to any subsequent site.
- b) Secondly, the requirement for a staged, scored assessment risks creating a task-orientated focus among nursing staff, which may negatively impact the time available for response to prisoners' healthcare needs.
- c) Lastly, the initial assessment of the MIO is a complex assessment of a person's body systems and is currently completed by a Health Care Assistant (**HCA**) rather than a Registered Nurse. Health Care Assistants do not receive any specific training in the MIO process and therefore, I am not confident that a HCA holds the level of competency including knowledge, to ensure that these assessments are conducted thoroughly and accurately at the level required.

## **6.7 Compliance and Risk Management**

### **6.7.1 Compliance**

298. The compliance function at MECF is the responsibility of the Assistant Director Contract Performance and Assurance (**AD**) and operates in conjunction with a wider Serco Risk, Quality and Compliance Group.

299. The AD is responsible for ensuring that the MECF's policies and procedures manual is adhered to through bi-monthly and random checks. The 2015 – 2016 Compliance work programme (beginning February 2015) was established following the recent restructure of the Compliance function and focuses on areas of key contractual requirements and KPIs such as prisoner communication, rehabilitation, complaints and providing minimum entitlements.

300. As mentioned in Subpart 4.4.1 cell searches were not being completed in accordance with the 2014 / 2015 Search Plan with only 24% of cell searches recorded as being completed.
301. I did not uncover any investigation by the AD into staff non-compliance with the required frequency of cell searches or accommodation and facility checks in accordance with the 2014 / 2015 MECF Search Plan. However, Serco has informed the Inspectorate that its December 2014 Monthly Contract Report included the results of a compliance review, and found that Serco had a “*robust and accurate Search Plan*”.
302. The register of Fact Finding Reviews (**FFRs**) that have been commissioned to further investigate incidents is maintained by the Compliance team. When this was inspected during the Investigation it was found to be incomplete and out of date.
303. Given the compliance issues raised in this Report, including the hygiene issues identified in the kitchen (which is also the responsibility of the AD) I am not confident that Serco is adequately following up on their compliance reviews and investigations into serious incidents and allegations, or providing sufficient remedial actions.

### **6.7.2 Risk Management**

304. There are three separate risk registers held at MECF: an occupational health and safety risk register, a site-wide register, and a Risk Action Plan, all of which are updated monthly.
305. The risks identified on these registers generally focused on areas related to MECF's performance measures. The operational risks identified do not include any risk mitigation strategies.
306. It is noted the risk registers do not include the areas of concern raised by the Prison Director referred to in subpart 1.7.
307. I do not have confidence that issues of operational risk, or non-compliance with policies, were being effectively managed by the Compliance group.

### **6.8 Concerns regarding prisoner access to staff radios**

308. The YouTube Footage showed a prisoner in possession of a staff radio. The Investigation found that a staff radio had been reported missing on 29 June 2015 and was located three days later through notification by a Prisoner after a site lock down and search.
309. Serco commissioned an internal investigation into this incident, which established that 2 additional radios had been found missing on 9 and 15 June 2015. These radios were then Section 6(c), ■ and:
- a) one was subsequently found on 6 August 2015 in a Serco safe; and
  - b) the other radio has not been recovered, although it appears from recent Facebook posts to have made its way outside MECF.
310. At the time of that investigation, prison officers were required to collect a radio from outside Oscar 1 office<sup>85</sup> at the start of their shift, and secure it to their belt in a pouch at all times. A check before leaving the gatehouse was required to ensure the radio was working and that there were no faults. The Oscar 1 Supervisor was required to

Section 6 (c)

<sup>85</sup> Oscar 1 is the terminology given to the Duty Supervisor responsible for Custodial Operations.

complete a check of the number of radios nightly, but the system did not succeed in identifying the three missing radios.<sup>86</sup>

311. I am concerned with the loss of control of any radio and consider this to be a very serious security breach. Section 6 (c) [REDACTED]
312. Subsequent to Corrections' Step-in, these processes have been changed and radios at MECF are now issued and accounted for on a [REDACTED] Section 6(c) [REDACTED] as used in other prisons. Serco has noted that its internal investigation identified that improvements could be made, but which have been overtaken by the Step-in.

## 6.9 New Arrival Risk Assessments

313. A New Arrival Risk Assessment (**NARA**) is designed to ensure new arrival prisoners who are at risk to themselves are identified on reception and their immediate needs identified and addressed. Every effort is required to be made in order to identify prisoners at risk and manage them to minimise their risk of self-harm.
314. MECF's Operations Manual states that:
- "New arrival risk assessments are completed on IOMS within 4 hours of reception of all prisoners. Assessor completes, on IOMS, questions and A sections, then B section of the NARA is prisoner is deemed to be at risk. The responses contained in the NARA form are cross referenced with other information from the prisoner's file and IOMS to reconcile the responses given in the NARA form."*
315. It was observed that there was only one officer in the RO who was tasked with completing all NARAs. That officer said that [REDACTED] Section 9(2)(a) role required [REDACTED] Section 9(2)(a) to conduct between 60 – 80 assessments per shift. A [REDACTED] Section 9(2)(a) on secondment at MECF said that each assessment should take between 15 and 20 minutes to complete thoroughly. The [REDACTED] Section 9(2)(a) stated that [REDACTED] Section 9(2)(a) was unable to complete each assessment as per the Operations Manual, due to the high volume and time constraints. [REDACTED] Section 9(2)(a) reported that [REDACTED] Section 9(2)(a) had approximately 9 minutes to complete each assessment and that this had been the situation for some time. [REDACTED] Section 9(2)(a) was concerned that this may compromise prisoners' safety and had made efforts to get MECF management to address this issue, to no avail.

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<sup>86</sup> Serco Internal Investigation into missing radio X-Ray 19.  
Section 6(c) [REDACTED]

## Part 7: Monitoring

### Findings

- *There have been occasions where some areas of concern have not been identified or pursued effectively by the Monitors. These include the prevalence of organised fighting at MECF and the unhygienic state of the kitchen.*
- *Monitors' reporting and escalation arrangements have not functioned effectively to identify and resolve all areas of concern identified in this report.*
- *I have not identified a satisfactory explanation why the monitoring arrangements have not functioned effectively in regards to these areas of concern. Reasons may include:*
  - *the fact that, since July 2013, monitors have reported to the Relationship Manager Private Prisons, which appears to have resulted in monitors focusing on a consultative approach of raising issues with Serco for its consideration;*
  - *monitors accepting inadequate responses from Serco when issues were raised, possibly due to confusion as to the appropriate steps for resolution;*
  - *confusion in that the monitors believed they did not have any statutory power if issues did not directly relate to a breach of Contract, legislation or the Chief Executive instructions. Operational issues could be raised by the monitors;*
  - *a task-orientated focus on scheduled reviews, which may have distracted monitors from undertaking observations and recording issues as they arose; and*
  - *a lack of specific training or guidelines for the role of a monitor.*
- *I do not have any concerns as to monitors' access to essential information, and consider that the monitors' statutory powers are sufficient to allow them to carry out their roles effectively.*

### 7.1 Monitors' functions and duties

#### 7.1.1 Statutory powers and obligations

316. The role of monitors is set out in the Corrections Act 2004. The Chief Executive must appoint one monitor in respect of each contract prison (the **Primary Monitor**),<sup>88</sup> who is responsible to the Chief Executive for:<sup>89</sup>
- a) the assessment and review of the management of the contract prison in respect of which they are appointed; and
  - b) reporting to the Chief Executive on the management of that prison, and whether or not the contractor responsible for the management of the prison is complying with the prison management contract, the provisions of the Corrections Act 2004, and relevant regulations, instructions and guidelines.
317. The Primary Monitor may at any time that he or she considers appropriate, make recommendations to the Chief Executive on any matters relating to the contract prison.<sup>90</sup>
318. The Chief Executive may also appoint additional monitors to assist the Prison Monitor,<sup>91</sup> and must ensure a regular change of the monitor or monitors appointed in respect of each contract prison.<sup>92</sup>

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<sup>88</sup> Section 199E(1)(a).

<sup>89</sup> Section 199E(3).

<sup>90</sup> Section 199E(4).

319. It is noted that two of the three monitors have been in the role for approximately four years.
320. A contractor must ensure that any monitor has free and unfettered access at all times to:<sup>93</sup>
- a) every part of the contract prison managed by that contractor;
  - b) all prisoners in that prison;
  - c) all persons who work in that prison, but only when they are actually in the prison; and
  - d) all records held by the contractor that relate to;
    - I. that prison;
    - II. any prisoner or former prisoner; or
    - III. any staff member or former staff member of that prison.

### **7.1.2 Monitors' observation and reporting practices**

321. Monitors carry out their role by:
- e) Reviewing any operational matters that they consider relevant to compliance with the Contract, legislation, Serco's policies and procedures and Chief Executive instructions.
  - f) Attending Serco's daily morning briefs to staff, and also the Senior Managers' operational briefing.
  - g) Carrying out daily observation walks through MECF, and observing operational practice to ensure the Contractor is compliant with the contract, their own policies and procedures, legislation and Chief Executive instructions.
  - h) Conducting a daily review of incidents and prisoner complaints.
  - i) Meeting with members of the Serco management team on a weekly basis to discuss issues that have arisen during the week or have been carried over from previous meetings. Monitors are also invited to attend monthly Security Intelligence meetings at MECF.
  - j) Weekly monitoring of Serco's records relating to appropriate prisoner management and segregation.
  - k) Recording and escalating observations of concern to Issues Log.
  - l) Providing monthly reports to the Deputy Chief Executive Corrections, Chief Custodial Officer (**CCO**), Commercial Contract Team, National Commissioner and the Northern Regional Commissioner.
  - m) Weekly meetings with the Commercial Contract Team to discuss issues and concerns.

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<sup>91</sup> Section 199E(1)(b).

<sup>92</sup> Section 199E(7).

<sup>93</sup> Section 199F(2).

- n) Providing quarterly reports to the Joint Contract Board (**JCB**).
  - o) If considered necessary, immediately reporting any matters of concern to the Serco management team. If the monitors consider that the issues are not being adequately dealt with, they may issue a 'Monitor's Request'. If the request is not dealt to in a timely manner the monitors may issue a direction instructing the contractor to resolve the matter, or provide assurance of a resolution. The direction is used in cases whereby the Monitors seek assurance that the safety and security site has not been compromised.
  - p) If considered necessary, immediately reporting any matters of concern to the Commercial Contract Team, CCO, Northern Regional Commissioner and Chief Executive.
322. I have not undertaken a full appraisal of the daily activities completed by the Monitors listed above. However, there have been occasions where some areas of concern have not been identified or pursued effectively.

### **7.1.3 Monitors' location within Corrections' organisational structure**

323. Within Corrections' organisational structure, the MECF Monitors were initially part of Corrections' Commercial Contract Team. The decision to locate the Monitors within this team was made in November 2010, when the Corrections Executive Leadership Team formed the view that that *"locating the Monitors within the Contract Management function avoids the risk of business capture and enables the private operator to retain its individuality without stifling innovation."*
324. Monitors currently report to the Relationship Manager Private Prisons (**Relationship Manager**), who reports directly to the Corrections' CCO, and also meets regularly with the Corrections Commercial Team, and the Northern Regional Commissioner.
325. The Relationship Manager position was originally created in December 2011, and in July 2013 the direct reporting line for the Monitors changed from the Director of Commercial Contracts, to the Relationship Manager, who reports to the CCO.<sup>94</sup> This reporting line was generally for managerial and administrative purposes only. When issues were raised that required further resolution, the Relationship Manager would report contractual matters to the Commercial Contracts team and operational matters to the Northern Regional Commissioner or Assistant Regional Commissioner Northern.
326. Unlike Monitors, the Relationship Manager's role is not subject to specific statutory provisions. The CCO's view is that the role of the Relationship Manager added value to the team. The Relationship Manager provides a much needed step between the statutory functions of the Monitors in regards to operational and contractual performance while also providing a mechanism to observe and comment on general prison practice.
327. The role of the Relationship Manager is to provide advice and support, and to work in cooperation with MECF management, in regards to the day to day operations. They are responsible for working with private prisons to identify, introduce and champion innovations that will benefit the operation and improve the performance of Corrections. The Relationship Manager is responsible for introducing Corrections best practice that they may wish to emulate within private prisons.

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<sup>94</sup> For a short period of time in 2013 the monitors reported directly to the Chief Custodial Officer.

## **7.2 The role of the Chief Custodial Officer**

328. The Chief Custodial Officer (**CCO**) provides informed advice on emerging custodial practices and developments worldwide, and maintains an overview of research trends and future thinking. They are one of the key influencers of the development of operational policy and practice for Corrections.
329. The CCO is in daily contact with the Relationship Manager and matters arising from MECF are discussed. The CCO advised that he does not hold any authority over provisions of the Contract with Serco nor does he hold a separate statutory monitoring power, and relies on the reporting and escalation processes already in place. However, from time to time he would informally discuss issues with the MECF Prison Director and the National Commissioner Corrections. It is noted that on some occasions these matters were discussed formally.
330. He believed that there was no formal process for him to elevate matters raised by the Monitors to the Chief Executive. He understood that the appropriate formal processes for elevating these matters by the Monitors was through the Northern Regional Commissioner or Director Commercial. Accordingly, the Monitors report contractual breaches to the Commercial Contracts team. Custodial and operational issues were elevated to the Northern Regional Commissioner who is responsible for operations at all prisons in the Northern region, including MECF.

## **7.3 Monitors in some instances did not identify or effectively escalate and pursue areas of significant operational concerns**

331. Unit staffing arrangements were one area in which Monitors' concerns appear to have been appropriately elevated, resulting in the Deloitte Report discussed above. It is noted that Serco did not accept the findings of the Deloitte Report. The issues with unit supervision identified in Deloitte's report have not been resolved. This is evident in the Investigation's review of CCTV footage in select residential units over 13, 14, 16 July 2015.
- a) Unit staffing arrangements were raised on the Issues Log on 30 September 2013 with lengthy responses from the Prison Director and Deputy Director.
  - b) Concerns with the adequacy of staffing arrangements at MECF were raised at the JCB meetings of March 2012, July 2013, August 2014 and December 2014. The Corrections' Director Commercial has confirmed that the Monitor's quarterly reports are tabled at the JCB meeting as a standing agenda item and that every JCB member is provided with a copy of the Monitor's quarterly report prior to each meeting.
332. I consider that a number of areas of significant concern identified by the Investigation ought to have been elevated to Corrections for further remedial action by the Monitors. While I note that many of these areas may have been raised in previous Monthly reports by the Monitors, I do not believe they were adequately escalated and pursued until properly resolved. Examples include:
- a) It is clear that the prevalence of organised fighting found by the Investigation was not identified by the Monitors. Organised fighting is mentioned only once in the Issues Log, and once in a Monitors' Monthly Report, although both of these sources note the apparent high level of prisoner on prisoner violence,

assaults and unexplained injuries. The Monitors sent a request to MECF for a FFR on 24 March 2015 in regards to the allegation of “prisoners arranging fights” they had raised on the Issues Log. A FFR conducted by Serco management, was received on 30 March 2015 and was deemed not up to standard by the Monitors. The issue was closed off on 20 April 2015 after the Monitors received an updated FFR. However the second FFR does not address the issues raised by the Relationship Manager in respect to the first FFR and appeared to be the same report. No further action was taken by the Monitors or Serco.

- b) A high number of communication devices located and use of cell phones in exercise yards was raised on 21 May 2015. Serco responded that the cell phones were located through intel led searches and were not linked to any compliance issues with the Search Plan. It was removed from the Issues Log citing Serco’s view that it was “not clear what the actual issue is”.
- c) Poor hygiene and cleanliness standards in the kitchen were not specifically identified as a potential risk. However, on 28 January 2014 Monitors raised Health and Safety issues with the kitchen and laundry after the Section 9(2)(a) was taken on a tour of the site and identified a number of concerns in these areas. Serco responded on 3 February 2014 that the H&S co-ordinator was developing an action plan to resolve H&S concerns in the laundry area and that the Kitchen would be reviewed toward the middle of the month. The issue was removed from the Issues Log on 24 March 2014 citing “advised the action plan sent to Relationship Manager - but resend to Primary Monitor”.
- d) Poor supervision of meal delivery, which was raised with Serco through the Relationship Manager, and was not responded to by Serco (discussed further below at subpart 7.4.2).
- e) On 16 May 2014, Monitors raised concerns with their observations in Bravo 2 Unit where fabric checks had not completed. It was also noted that Charlie Unit fabric checks sheets were not completed or signed for and staff had not signed the fabric check sheet the days prior to the Monitors’ visit. Monitors were sent the “back to basics” instructions Serco sent out to staff in response. This issue was removed from the Issues Log on 23 June 2014 in agreement between MECF management and the Monitors. The log cited “In future examples related to monitoring observations will be advised to Serco in the first instance and managed through the Monitor’s allocation process”.
- f) Move to random staff searching at the SPoE – not identified as a potential risk.
- g) Lack of accountability for radios – not identified as a potential risk.
- h) Inadequacy of staffing practices relating to prisoner control and supervision including face to name musters, was raised on 30 May 2014. Serco responded that this was a 'back to basics ' issues to be included in staff reminders and was removed from the Issues Log on the 9 June 2014 as the issue was being covered in other enquiries.
- i) Delay in approving phone numbers for lawyers and family contacts – not raised as a potential risk.

333. I believe that in the instances identified above, the Monitors were ineffective in following up on remedial actions to the issues they had raised. Issues were prematurely removed from the Issues Log without satisfactory remedial response or action from Serco.

334. The Inspectorate has reviewed the JCB minutes dated from Oct 2011 – April 2015 and was not able to find any specific evidence of these matters having been discussed or any remedial actions proposed. However, the Deputy Chief Executive Corrections acknowledges that matters were discussed, especially staffing, but may not have been included in the minutes.
335. The Relationship Manager has advised he does not receive any feedback on the Quarterly Reports or remedial actions on issues raised through the JCB.
336. It is noted that Monitors have identified and appropriately responded to a number of identified issues that are not listed among the areas of significant concern discussed above. Since May 2012 there have been 13 Monitors Directions issued at MECF. All Monitors Directions were of an operational nature and relate to matters such as appropriate prisoner segregation, compliance with safety razor policy, full searching of prisoners, observing at risk prisoners, prisoner adjudications, security classifications and prisoner minimum entitlements. The last Monitor's direction was served to Serco in April 2015.

#### **7.4 Possible reasons for lapses in effectiveness**

337. I consider that Monitors had sufficient statutory power and opportunity to identify and effectively pursue and escalate areas of concern when these were in breach of the Contract, legislation or Chief Executive instructions.
338. I have been unable to find a satisfactory explanation why the monitoring arrangements have not functioned effectively in regards to these areas of concern. Reasons may include:
- a) the fact that, since July 2013, Monitors have reported to the MECF Relationship Manager. This appears to have resulted in Monitors focusing on a more consultative approach to raising issues with Serco for its consideration;
  - b) Monitors accepting inadequate responses from Serco, possibly due to Serco management challenging the issues that the Monitors were raising or confusion as to the appropriate steps for resolution;
  - c) confusion in that the Monitors believed they did not have any statutory power if issues did not directly relate to a breach of Contract, legislation or the Chief Executive's instructions. Monitors are responsible for reporting on the management of the prison.
  - d) a task-orientated focus distracting Monitors from observing and recording issues as they arose; and
  - e) lack of specific training or comprehensive guidelines for the role of a Monitor.

##### **7.4.1 Monitors reporting to Relationship Manager**

339. Interviews with the Monitors and the Relationship Manager have suggested that, in practice, the role and objectives of the Monitors have evolved over time from an initial focus upon statutory and contractual compliance, when reporting to the Director of Commercial Contracts, to a more consultative approach, reporting to the Relationship Manager, which focused on:
- a) providing advice to the private operator on custodial operation matters;
  - b) investigating incidents and reporting them to the Relationship Manager and;
  - c) undertaking focus reviews of operational activities that include elements of quality assurance.

340. The Monitors reported that they considered that they were required to establish a balance between reporting potential non-compliance by Serco, and providing advice on operational matters to Serco. There was therefore some confusion among Monitors as to the appropriate steps required to address identified issues.
341. The Relationship Manager states that he made the differences between his role and their role clear to the Monitors. However, I consider that locating the Monitors under the Relationship Manager may have caused Monitors to shift some of their focus towards assisting Serco with its operation of MECF, rather than reporting areas of potential non-compliance. This change of focus may have adversely affected Monitors' independence from Serco, and the extent to which they felt able to escalate unresolved issues.
342. I believe that this raises potential risk of a conflict of interest, in that Monitors who may have provided advice to Serco on policy matters may be compromised if they are required to monitor and direct action in regard to situations where they have provided "expert advice".
343. Under the current governance arrangements for MECF, it is unclear how significant operational and contractual matters and recommendations identified by the Monitors, are escalated to the attention of the Chief Executive.

#### **7.4.2 Challenges from Serco on identified issues**

344. The Monitors advise that their relationship with MECF management was often very difficult. They would sometimes experience significant 'pushback' from the MECF Prison Director when raising issues requiring remedial action. There is no evidence that their objectivity and independence has been compromised.
345. However, I believe the Monitors have been overwhelmed, worn down and consumed by MECF management continually challenging their requests for resolution to matters.
346. This is evident from certain entries in the Issues Log, which show Monitors escalating issues through the Relationship Manager without appropriate resolution. Following a lack of timely action, the Monitors have accepted Serco's decision as to the adequacy of its own response to identified issues. The extensive 'pushback' and challenge received from MECF management would shift the focus, or minimise the significance of the issue concerned. Examples include:
- a) In an email trail beginning 2 June 2015:
    - I. The Relationship Manager raised a number of issues related to meal distribution, homebrew, graffiti in cells, disorderly evening lockup and Housing Control doors left open. Photographic evidence was included.
    - II. The Prison Director responded stated "*taking photographs the morning after 180 moves in and out of the prison raises other questions for me in terms of perspective and priority*". The Prison Director referred to MECF's "*high standards that have taken [it] to the top of the performance table...despite being by far the busiest prison in the NZ estate*", but did not provide any direct acknowledgement of the issues raised or propose any mitigations.
    - III. The graffiti issue was dealt with by Serco by painting over the graffiti several days later, but the Investigation has not found any evidence that any of the other issues were acknowledged or dealt with.
  - b) The Monitors regularly raised the issue that MECF's Policies and Procedures Manual (**PPM**) required updating as the PPM had not been updated since 2011. Serco acknowledged that this needed to be undertaken, but continued

to extend the target date for completion. It is noted that the Monitors are still in the process of raising this issue, more than 12 months later. The most recent target date for completion of this review is now end of October 2015.

- c) The Monitors raised the need for a policy for the management of prisoners with “free moving” privileges at MECF on 30 June 2014. After 4 months of consultation with MECF management, on 20 October 2014 the Monitors agreed to remove the issue from their Issues Log pending confirmation that written instructions for management of these “free moving” prisoners are received.
347. There are also a number of issues noted on the Issues Log for which the Investigation has not been able to establish whether any remedial action has been taken, or whether the Monitors have undertaken any follow-up action to ensure that the matters have been addressed satisfactorily. Examples include:
- a) Incident involving use of force on a prisoner closed off on the Issues Log 12 June 2015 with no indication recorded of why it was closed off.
  - b) Issue of observations of poor cleanliness in Delta 2 Unit closed off citing only “*Deputy Prison Director emailed 12.06.15*”.
  - c) Issue of medical delaying escorts by not providing medication in a timely manner was closed off citing “*Health has provided assurance that staff have been reminded to use approved process re medications for prisoners coming in from court.*”
348. Serco does not accept the characterisation of its actions as ‘pushback’. It says that its relationship with Monitors was “*a robust one, as should be expected in a complex environment such as MECF*”. Whatever language is used, I consider that the Monitors’ effectiveness was affected by Serco’s persistent challenges to the issues they raised.

#### **7.4.3 Monitors’ narrow focus on contractual compliance and absence of training specific to the requirements of their roles**

349. One of the Monitors expressed a narrow view of their reporting power as being limited to matters of compliance with the Contract. So, for example, this Monitor expressed a view that the Monitors did not have the power to comment on Serco’s resourcing of NARAs.
350. The Investigation found that there was no specific training given to Monitors in respect of their role, authority and responsibilities at MECF. In my view, Monitors ought to be given training specific to the requirements of their role, which includes reporting on the management of the prison as well as contractual compliance. There is a need for a training package to be developed to ensure Monitors are suitably equipped to undertake the tasks required of them.

#### **7.4.4 Focus on planned activities**

351. Another contributing factor may be a prescribed, task-orientated focus. The Monitors are tasked with reviews of specific operational activities in the housing units. This included spending 2 – 3 hours per day in the units making observations and consulting with staff and prisoners.
352. A typical day for a Monitor as advised by the Relationship Manager includes:
- a) 2 – 3 hours planned observation of activities in the units.
  - b) 1 – 2 hours analysis of activities.
  - c) 2 – 3 hours corroborating and verifying using CCTV footage.

- d) Up to 1 hour report writing.
  - e) Attend Security Intelligence, Health and Safety and Monitor's meetings.
353. I acknowledge that MECF is a large and busy site and have not been able to determine why the Monitors did not identify clearly observable issues such as the unhygienic state of the kitchen. I am of the opinion that the Monitors may have been more concerned with undertaking planned monitoring activities, and did not maintain an effective presence around all areas of the site to proactively detect clear operational issues.
354. It is noted that from 1 July 2015 the Monitors have been operating a new model whereby one Monitor focuses on undertaking the annual schedule reviews and the others respond to 'issues arising' and conducting regular unit / site observations.

## Part 8: Findings

- *Organised fighting in the form of ‘sparring’ occurred frequently in full view of CCTV cameras, with 12 incidents recorded on CCTV in the 26 days between 18 June 2015 and 13 July 2015.*
- *It is likely that organised fighting in the form of ‘contender fighting’ or ‘fight club’ occurred at least once a week, during certain periods in the months the subject of this Investigation. CCTV footage, MECF documentary records, and the YouTube Footage, show five incidents, and two probable separate incidents, occurred at MECF between 11 June 2015 and 4 July 2015. Of the 12 prisoners who were prepared to comment on the frequency of this activity, one said it happened weekly, and the others said that it occurred more frequently than that, including four who said it occurred daily or almost every day, in the units in which they were housed.*
- *At least some incidents of organised fighting were of significant duration, involving multiple ‘rounds’ of fighting between participants, and multiple consecutive fights. In some cases different pairs of participants would fight consecutively. On occasions the victor of the first fight would immediately fight a subsequent challenger.*
- *It is likely that organised fighting was most prevalent within the Delta Unit cells and the Alpha Unit Yards. However, organised fighting was not confined to these units. There were multiple credible reports of organised fighting having occurred in Bravo, Charlie and Golf units.*
- *The fighting is likely to have been primarily organised by senior members of a number of gangs, including Black Power, Killer Beez and Head Hunters.*
- *Some prisoners were compelled to engage in organised fighting, and it is likely that coercion was a not uncommon aspect of organised fighting.*
- *It is likely that senior management were unaware of the full extent of organised fighting at MECF. However, senior management were aware of multiple internal reports suggesting that organised fighting was occurring.*
- *It is likely that some prison officers were aware of some events of ‘contender fighting’ and ‘fight club’ activity which they did not report.*
- *With one exception, in which a prison officer was identified as participating in sparring, there is insufficient evidence for me to conclude that staff were directly involved in organised fighting.*
- *It was not uncommon for unit pods to be without a staff member present while all cells were unlocked. Because CCTV cameras do not operate in cells, this meant that any organised fighting in cells could not be detected by a prison officer monitoring CCTV.*
- *A review of MECF’s daily staffing has confirmed that MECF’s staffing arrangements were not sufficient to ensure that each unit pod was adequately staffed at all times when prisoners were unlocked.*
- *In some cases staff present in a unit pod failed to take an active role in supervising prisoners. This may have allowed organised fighting to occur while these staff members were present in a unit pod.*

- **Section 6 (c)**
- *The level of contraband within MECF cannot be reliably established, because procedures for ascertaining and limiting the level of contraband already present in MECF were not functioning effectively. Cell and unit searches were being conducted far less frequently than required, with some units not having any recorded cell searches in the period April 2015 to June 2015.*
- *Contraband was likely to have been easily obtainable during the period the subject of this Investigation. Numerous prisoners made credible statements to this effect.*
- *Staff were likely to have been a primary source of contraband available at MECF. Procedures for searching staff entering MECF were relaxed from July 2013. Instead of every staff member being searched, random searches on entry were introduced. This meant that many incoming staff were not searched, including those carrying in large unopened bags in which contraband could have been hidden. Further, numerous prisoners gave credible statements that staff were the source of contraband, and two staff members were recently dismissed for contraband-related reasons.*
- *Procedures and controls for ensuring contraband was not introduced via the vehicle entrance sally port were inadequate.*
- *Serco had introduced a number of policies and strategies aimed at reducing prisoner violence. Most of these strategies appear not to have been fully implemented, or else abandoned, due to staff not taking personal responsibility for implementation. The Findings in Parts 2 and 3 of this Report indicate that they have not been effective to prevent the level of organised fighting identified, although it is noted that these strategies were not directed specifically at organised fighting, as the extent of this problem was not previously identified.*
- *Other than its searching regimes, Serco did not have a specific strategy for addressing the problem of contraband cell phones.*
- *The Investigation has uncovered two cases in which serious assaults were not reported to Corrections by Serco, or were reported incorrectly. The Investigation has not uncovered any evidence of deliberate or widespread misreporting.*
- *Some prisoners who were intended to be charged under Serco's internal disciplinary processes for violence-related incidents have not been charged.*
- *It is likely that many prisoners housed at MECF have been denied their right to call their legal adviser for significant periods of time.*
- *Following its decision to require prisoners to use prisoner-designated phones for calls to legal representatives, Serco failed to adequately resource the process to ensure that calls could be made in a timely manner.*
- *MECF kitchen sanitation practices fell far below an acceptable standard.*
- *Prisoners have been served food that has been contaminated by animals, and food that has been stored in an uncovered and unsanitary manner.*
- *Meal delivery practices were not sufficient to ensure that all prisoners received a meal, and that the meals delivered were appropriately heated.*

- *MECF's prisoner medical assessments were not in my view being carried out by appropriately qualified personnel, and may have created a task-orientated focus, which may negatively impact the time available for responsive healthcare.*
- *The Investigation has not uncovered any evidence that Serco's Compliance programme was operating effectively to address identified areas of concern.*
- *MECF risk management and assessment processes did not provide proper assurance that key operational risks are being managed effectively or that MECF policies and procedures were being complied with.*
- *The lack of effective controls in the issuing of radios indicates that radios were not properly managed and accounted for at all times.*
- *New Arrival Risk Assessments were not adequately resourced, with only one staff member assigned to complete up to 80 assessments per day.*
- *There have been occasions where some areas of concern have not been identified or pursued effectively by the Monitors. These include the prevalence of organised fighting at MECF, and the unhygienic state of the kitchen.*
- *Monitors' reporting and escalation arrangements have not functioned effectively to identify and resolve all areas of concern identified in this report.*
- *I have not identified a satisfactory explanation why the monitoring arrangements have not functioned effectively in regards to these areas of concern. Reasons may include:*
  - *the fact that, since July 2013, Monitors have reported to the Relationship Manager Private Prisons, which appears to have resulted in Monitors focusing on a consultative approach of raising issues with Serco for its consideration;*
  - *Monitors accepting inadequate responses from Serco when issues were raised, possibly due to confusion as to the appropriate steps for resolution;*
  - *confusion in that the Monitors believed they did not have any statutory power if issues did not directly relate to a breach of Contract, legislation or the Chief Executive instructions. Operational issues could be raised by the Monitors;*
  - *a task-orientated focus on scheduled reviews, which may have distracted Monitors from undertaking observations and recording issues as they arose; and*
  - *a lack of specific training or guidelines for the role of a Monitor.*
- *I do not have any concerns as to Monitors' access to essential information, and consider that the Monitors' statutory powers are sufficient to allow them to carry out their roles effectively.*

## Part 9: Recommendations for Improvement

355. Based on the Investigation's Findings, I make the following Recommendations for improvement to the operations, systems and controls at MECF.
356. Not every Finding, view or conclusion contained in this report has resulted in a specific Recommendation.
357. The Investigation has generally focused on the three months prior to 19 July 2015. I am aware that a number of actions since the Step-in may mean that Recommendations made may already have been implemented or overtaken by alternative measures.

**Recommendation 1:** Custodial staffing arrangements should be reviewed urgently by MECF management, to ensure there are sufficient numbers of staff and unit Supervisors actively managing prisoners in the units at all times.

**Recommendation 2:** MECF management should urgently review the Policy and Procedures Manual currently in place to ensure that it is fit for purpose and it relates specifically to the operations at MECF.

**Recommendation 3:** MECF management should ensure that cell doors are locked behind prisoners who are unlocked for association, to prevent unauthorised behaviour out of the range of CCTV cameras or direct staff supervision.

**Recommendation 4:** MECF management should ensure that staffing arrangements across the prison are adequate to allow staff to carry out prisoner movements without unit staffing arrangements dropping at any time below the number sufficient to manage prisoners in each unit.

**Recommendation 5:** Unit Supervisors at MECF should closely monitor the performance of their staff, and provide appropriate training and re-training where required.

**Recommendation 6:** The frequency of cell searches should be increased beyond the current requirement of the 2014 / 2015 MECF Search Plan of searches of each individual cell every operational quarter.

**Recommendation 7:** MECF management should ensure that staff are sufficiently competent in completing incident reports and that reports are accurate, fully detailed and correctly classified when recorded on IOMS and notified to Corrections. This includes incident reports on suspected activities such as violence.

**Recommendation 8:** MECF management should review the operations of the single point of entry to ensure staff are competent in the proper procedures and are sufficiently trained in using detection equipment.

**Recommendation 9:** Section 6 (c)



**Recommendation 10:** The compliance work programme at MECF should be reviewed to ensure that there is adequate assurance that key operational tasks are being completed according to policy and that an internal control monitoring regime is established to ensure that key controls are operating effectively.

**Recommendation 11:** Key operational risks at MECF should be identified and included on an appropriate risk register, which should be reviewed on a regular basis.

**Recommendation 12:** MECF management should take urgent action to ensure that all prisoners housed at MECF are given free and timely access to their legal advisers by phone.

**Recommendation 13:** General hygiene and cleanliness standards in the MECF Kitchen must be monitored daily, and any problems rectified immediately by MECF management.

**Recommendation 14:** There should be a review of the provision of health services at MECF, and in particular the MIO assessment process, to ensure all prisoners have timely access to adequate healthcare including the Medical Officer.

**Recommendation 15:** Robust controls and procedures should be established by MECF management in order to ensure the accountability of staff radios at all times.

**Recommendation 16:** MECF management should take appropriate and timely disciplinary action in regards to prisoners who have been identified as perpetrators of violence.

**Recommendation 17:** Corrections should undertake a review of MECF's custodial operational systems to ensure that they are fit for purpose and staff fully understand how to perform their duties.

**Recommendation 18:** A timely follow up review by Corrections should be undertaken to ensure the concerns raised in this report have been addressed satisfactorily.

**Recommendation 19:** Corrections should review the role and responsibilities of the Monitors and Relationship Manager at MECF, including their reporting lines, to ensure that key issues are raised and the appropriate remedial action is taken in a timely manner.

**Recommendation 20:** Corrections should urgently develop a Monitor's rotation policy in accordance with Section 199E (7) of the Corrections Act 2004 which states that the Chief Executive must ensure a regular change of the Monitor or Monitors appointed under subsection (1) in respect of each contract prison.

**Recommendation 21:** Corrections should urgently establish a national gang strategy that specifically focuses on the custodial and operational aspects of managing gangs effectively.

## Part 10: Serco's response to drafts of this Report and its Recommendations

### 10.1 Consultation with Serco

358. Serco has been consulted extensively on the content of this Report throughout the Investigation. It has provided a number of detailed responses to drafts of this Report, all of which have been considered, and many of which have resulted in additions and refinements to the content of the Report.
359. This Report has also addressed the allegations which Serco has made in High Court proceedings seeking to prevent the finalisation of previous drafts of this Report.

### 10.2 Serco's position on key Findings: prevalence of organised fighting and adequacy of supervision and security

360. It is Serco's position that this Investigation identifies that a significant number of isolated events of organised fighting occurred at MECF. It also accepts the Finding that it is *likely* that organised fighting was occurring at least once a week during certain periods.
361. Serco says that it does not accept that this Investigation has evidence upon which to make a *certain* finding as to the frequency of organised fighting. This is consistent with the Findings of the Report with regard to the Finding on the frequency of 'fight club' and 'contender fighting' which is *likely* to be at least weekly. However, this Report does also find that sparring occurred frequently in full view of CCTV cameras.
362. Serco also says that it does not accept the Finding that a wider systemic failing of prison management occurred. I understand this to be a criticism of the Report's comments on staffing, which were found to be not sufficient to ensure that each unit pod was adequately staffed at all times when prisoners were unlocked, a situation which I refer to in the Conclusion section of the Executive Summary as a lack of an effective control environment at residential unit level including in particular insufficient 'staff on the floor'. I consider that there is unequivocal evidence of Serco's inadequate staffing practices – a matter which it has accepted (see Subpart 10.3 below), and I stand by my comments in this regard.
363. Serco's chief criticism in terms of the methodology of this Report is the reliance on anonymous prisoner interviews, the reasons for which I address in detail at 1.6.2 and 2.2.3.2 above.

### 10.3 Serco's acceptance of identified shortcomings and Recommendations

364. As explained in Subpart 5.3 above ('Actions subsequently implemented by MECF management'), Serco has not had the opportunity to take any remedial actions in respect of the operational systems and procedures identified by the Investigation. Further, Part 9 ('Recommendations') records that a number of actions since the Step-in may mean that Recommendations below may already have been implemented or overtaken by alternative measures.
365. However, Serco has asked that it be recognised that it has accepted responsibility for identified short-comings:
- a) Serco expressly accepts that organised fighting occurred at MECF.
  - b) Serco expressly accepts that it needed to better balance its staffing levels across the MECF units.
  - c) Serco expressly accepts that in certain cases the level of supervision in units has been unacceptable.

366. Further, Serco for the most part accepts the Recommendations above, and says that, in anticipation of a possible end to the Step-in it has proposed various changes, in particular:

- a) Serco has committed to increase staffing numbers by 38.5 full time equivalent staff members, including 12 residential prison officers, nine officers to strengthen its Movements Group, and two supervisors (responding to Recommendations 1, 4 and 5).
- b) Serco is currently reviewing its Policy and Procedures manual (responding to Recommendations 2 and 10). Serco has also advised that it regards as unacceptable its staff's actions in being inappropriately familiar with prisoners, and showing a lack of concern about prisoner injuries.
- c) Serco proposes to provide additional training, and to enhance its reporting system and training (responding to Recommendation 7).
- d) Of the new staff to be employed, Serco proposes to employ five prison officers to make up a dedicated point of entry group (responding to Recommendation 8).
- e) Serco has proposed to develop a more detailed risk register, although it does not agree that it has previously failed to identify risks (responding to Recommendation 11).
- f) Serco intends to improve its performance in providing free and timely access to lawyers (responding to Recommendation 12).
- g) Serco agrees that hygiene standards in the kitchen were not acceptable at the time of the Inspectorate visit, and has plans to employ a dedicated person to oversee the kitchen and ensure compliance. However, Serco maintains that the functioning of the kitchen is dependent on Corrections providing Serco with "*a better managed and more stable prisoner workforce*", and "*access to low risk, high trust prisoners*" (responding to Recommendation 14).

367. As discussed in Subpart 3.5 above, Serco does not accept Recommendation 3, and says that locking cell doors would not be safe practice. Nor does Serco accept that it should review its provision of Health Services (Recommendation 15).

368. Serco has also asked that this Report refer to specific internal management changes which have taken place within Serco since the Step-in. I have considered this point, but do not consider it appropriate for this Report to include comment on individual employment matters.

#### **10.4 The scope of the Investigation: relevance of historical reports of organised fighting**

369. During consultation on drafts of this Report, Serco has said that this Report fails to acknowledge historical and contextual contributing factors to organised violence, in particular with regard to a 2009 report into allegations of prisoner fighting at Mount Eden Prison. That report relates to a now decommissioned residential facility, and pre-dates the commissioning of MECF and management by Serco. As explained in Subpart 1.4.1, that report found that it was more likely than not that prisoners were involved in fights within Mount Eden Prison, and that it was likely that some prisoners were unwilling participants.

370. Serco says that, while it accepts that organised fighting occurred at MECF (and continues to occur at the prison), both Serco and Corrections staff have failed, over time, to manage this issue effectively.
371. I have explained the various investigations into, and previous reports on organised fighting and violent incidents at MECF in some detail in Subpart 1.4, and I wish to record that Serco is correct to say that there is evidence that organised fighting was an issue at MECF (or, more accurately, its predecessors) since before Serco took over the management in 2011.
372. However, the Terms of Reference direct me to report on the circumstances surrounding the events depicted in the YouTube Footage, and the potential existence of organised fighting at MECF, paying particular attention to the three month period preceding the Earlier Terms of Reference, to determine (relevantly) the prevalence of this type of activity, and the adequacy of Serco's supervision and security. This Investigation is not concerned with the old Mount Eden Prison in 2009.
373. Serco says that the 2009 report has present relevance because it was not previously aware of this report, and would have been more attuned to the issue and able to be more proactive at addressing the issue of organised fighting if and when it occurred. In my view the recent reports of organised fighting known to Serco management (discussed in Subpart 2.2.1) gave Serco sufficient notice that it ought to proactively address this issue.
374. Similarly, while I comment that Corrections 2014 investigation into organised fighting should have been finalised and provided to Serco prior to May 2015 (Subpart 1.4.3), I do not consider that Serco can reasonably take the position that it was unaware of the need to detect and prevent organised fighting.

### **Acknowledgements**

375. I acknowledge the co-operation and assistance provided by the management and staff at MECF throughout the Investigation process.

**Andy Fitzharris**

Chief Inspector of Corrections  
Corporate Services

## Terms of Reference

27 August 2015

IN012003

S/15/01

### **TERMS OF REFERENCE FOR THE INVESTIGATION OF THE CIRCUMSTANCES SURROUNDING ORGANISED PRISONER ON PRISONER FIGHTING (*Fight Club*) AND ACCESS TO CELL PHONES AT MOUNT EDEN CORRECTIONS FACILITY (MECF)**

#### **Background**

On 15 July 2015 the Department of Corrections became aware that a series of video clips showing organised fighting between prisoners at MECF had been uploaded to YouTube which appears to indicate the presence of a “fight Club” operating at MECF.

Subsequent video footage has also been released which indicates prisoner access to contraband and a Prison radio.

An internal Investigation into these events is being completed by Serco management. Police have also been advised and may conduct their own Investigation.

The Department of Corrections believes that it is appropriate that the possible existence of organised prisoner on prisoner fighting “fight club” and access to contraband, including cell phones, be fully investigated by the Chief Inspector of Corrections.

#### **The Investigation**

The Investigation team will be led by Chief Inspector Andy Fitzharris and assisted by Ms Louise MacDonald, Inspector of Corrections.

The Office of the Ombudsman has been invited to monitor and review the Investigation. Full cooperation will be afforded to the Ombudsman’s investigator, who may also independently report on any matter concerning the incidents or its subsequent Investigation.

The Investigation will have access to all relevant information, documentation, premises and persons pertaining to the events, and may, with the approval of the Chief Inspector, call on such additional or specialist assistance to the Investigation as may be appropriate.

Phase one of the Investigation will be completed and a report presented to the Chief Executive, through the Chief Inspector, by 30 October 2015.

Phase two of the Investigation will be completed, and a report presented to the Chief Executive, through the Chief Inspector, by 30 November 2015.

## **Terms of Reference**

### **Phase One**

1. To investigate and report on the circumstances surrounding the events, as depicted on YouTube, and the potential existence of organised prisoner on prisoner fighting (fight club) at MECF.

The Investigation will pay particular attention to the last 3 month period to determine:

- Whether this type of activity is widespread across the site or limited to specific Units.
  - The adequacy of controls and procedures to prevent access to, and the use of, cell phones.
  - Whether staff and management had knowledge of the existence of a 'fight club' operating, and any involvement by staff in its operation.
  - Levels of supervision and security operating that would allow this activity to occur without staff intervention.
  - What information was available to management through Intel, staff reports or Health Services which may indicate that prisoners may be involved in unreported fighting.
  - Whether incidents of prisoner on prisoner violence was being under-reported.
  - Review any actions taken previously by MECF to address prisoner violence or access to contraband.
  - What actions management have subsequently implemented to prevent this type of activity.
2. To investigate and report on the extent to which the standards, procedures, operational systems, work practices and internal controls for the proper management of prisoners were in place and being complied with.
  3. To make such recommendations for the improvement of promulgated standards, procedures, operational systems, work practices and internal controls as may be necessary, arising out of the findings of the Investigation.
  4. To review the Department of Corrections prison monitoring arrangements at MECF. This will include the Corrections monitors' areas of focus, access to essential information, reporting and escalation arrangements and their interactions between Serco management and Corrections management.
  5. To investigate prisoner safety and welfare in general at MECF and review prisoner complaints, particularly those related to serious assaults.

## **Phase Two**

6. To review the adequacy of controls designed to address prisoner violence and access to cell phones operating in other New Zealand prisons. Investigate any similar reported incidents of cell phone use in other New Zealand prisons.

## **Ray Smith**

Chief Executive  
Department of Corrections

## Appendix 2

## YouTube Footage and CCTV Footage

VIDEO #	VIDEO FOOTAGE	DATE	TIME	UNIT	CAMERA #	DESCRIPTION	SOURCE
	YouTube: TMC DOWN AGAIN	Uploaded to YouTube June 16 2015		Delta	Cellphone	<a href="https://www.youtube.com/watch?v=Fabg3ThQm9M">https://www.youtube.com/watch?v=Fabg3ThQm9M</a> 'FightClub'	YouTube
	YouTube: BLACK PROSPECT.RIPPA	Uploaded to YouTube June 16 2015		Delta	Cellphone	<a href="https://www.youtube.com/watch?v=fP4b6v0nvGM">https://www.youtube.com/watch?v=fP4b6v0nvGM</a> 'Fight Club'	YouTube
	YouTube: Section 9 (2) (a) KO CRIPSTA	Uploaded to YouTube July 4 2015		Alpha	Cellphone	<a href="https://www.youtube.com/watch?v=ixGQ-hyR10c">https://www.youtube.com/watch?v=ixGQ-hyR10c</a> 'Fight Club'	YouTube
	YouTube: Jail Fights Serco	Uploaded to YouTube June 16 2015		Delta	Cellphone	<a href="https://www.youtube.com/watch?v=gJJkZoS5Zw">https://www.youtube.com/watch?v=gJJkZoS5Zw</a> 'Fight Club'	YouTube
	YouTube: JAIL FIGHTS SIMIYOYO	Uploaded to YouTube June 30 2015		Delta	Cellphone	<a href="https://www.youtube.com/watch?v=SjBillBRyn8">https://www.youtube.com/watch?v=SjBillBRyn8</a> 'Fight Club'	YouTube
	YouTube: TMC LKNOCKED OUT	Uploaded to YouTube June 16 2015		Delta	Cellphone	<a href="https://www.youtube.com/watch?v=2WD8-w4eXik">https://www.youtube.com/watch?v=2WD8-w4eXik</a> 'Fight Club'	YouTube
1	Section 6(c)	06-May-15	2:03PM	Alpha	Section 6(c)	x8 prisoners sparring from <b>6.22</b> to <b>54.22</b> when an officer comes in to stop sparring	Saved by Serco
2	Section 6(c)	13-May-15	02.19PM	Bravo	Section 6(c)	2 sets of prisoners taking part in organised fighting. First fight begins at <b>0.47</b> and ends at <b>03.30</b> and Second fight begins at <b>04.06</b> and ends at <b>07.49</b>	Saved by Serco

3	Section 6(c)	25-Aug-14	09.37AM	Bravo 2	Section 6(c)	Fight Club.	Saved by Serco
4	Section 6(c)	18-Jun-15	09.39AM	Bravo	Section 6(c)	x8 prisoners sparring. Prisoners start sparring at <b>01.06</b> and conclude at <b>59.22</b> .	Found by Investigation
5	Section 6(c)	22-Jun-15	09.02AM	Bravo	Section 6(c)	x12 prisoners sparring	Found by Investigation
6	Section 6(c)	23-Jun-15	08.56AM	Bravo	Section 6(c)	Prisoners sparring. Officer enters yard at <b>33.22</b> and joins in sparring at <b>46.12 - 49.04</b> . Officer leaves yard with prisoners at <b>51.50</b> .	Found by Investigation
7	Section 6(c)	23-Jun-15	08.50AM	Alpha	Section 6(c)	Prisoners in yard training from <b>6.10</b> and then Fight Club begins at <b>54.34</b> .	Found by Investigation
8	Section 6(c)	23-Jun-15	10.10AM	Alpha	Section 6(c)	A number of prisoners crowded around the door to the internal yard, watching what appears to be a fight. When the prisoners dispersed from the yard an assault occurred in the dayroom which initiated a 'code blue' call. Multiple prisoners are shown throwing pool balls at their opponents to facilitate their retreat from the dayroom.	Saved by Serco
9	Section 6(c)	30-Jun-15	09.48AM	Bravo	Section 6(c)	Prisoners Sparring	Found by Investigation

10	VIDEO 10	30 June 2015	10.04AM	Bravo		Prisoners Sparring	Found by Investigation
11	Section 6(c)	3 July 2015	10.34AM	Delta	Section 6(c)	Youth prisoners fighting in big exercise yard. Staff move camera to view better from <b>0.01</b> and multiple times throughout this footage.	Found by Investigation
12	Section 6(c)	04-Jul-15	01.50PM	Delta	Section 6(c)	10 prisoners entering a cell in Delta 2 over a period of 50 minutes. After this period a prisoner emerges, and washes his hands and his head. Prisoner behaviour is consistent with an organised fight having taken place in the cell. Two staff are shown sitting in the Unit approximately 5 metres from the cell throughout the duration of this incident, and appear not to notice the activity.	Found by Investigation
13	Section 6(c)	05-Jul-15	10.14AM	Hotel	Section 6(c)	Prisoners Sparring	Found by Investigation
14	Section 6(c)	06-Jul-15	03.30PM	Hotel	Section 6(c)	Prisoners sparring and practicing kicking each other in yard	Found by Investigation
15	Section 6(c)	09-Jul-15	09.25AM	Hotel	Section 6(c)	Prisoners Sparring	Found by Investigation

16	Section 6(c)	09-Jul-15	10.30AM	Hotel	Section 6(c)	Prisoners Sparring	Found by Investigation
17	Section 6(c)	12-Jul-15	10.00AM	Hotel	Section 6(c)	Prisoners Sparring	Found by Investigation
18	Section 6(c)	13-Jul-15	09:27AM	Bravo	Section 6(c)	Prisoners Sparring	Found by Investigation
19	Section 6(c)	02-Jul-15	03.06PM	Delta	Section 6(c)	Group of prisoners sharing a drink from an ice cream container inside Cell 3. Camera zooms in at <b>2.20</b> . 2 staff outside talking to prisoners at table	Found by Investigation
20	Section 6(c)	03-Jul-15	05.07PM	Bravo	Section 6(c)	Prisoners hug staff before they lock themselves up	Found by Investigation
21	Section 6(c)	6 July 2015	05.03PM	Delta	Section 6(c)	Delta staff trying to do lock up. Starts at 5.00pm and finishes at 5.42pm	Found by Investigation
22	Section 6(c)	17-May-15	09.30AM	Kilo	Section 6(c)	Prisoner assault. Prisoner notifies housing control at <b>9.32</b> . Staff members walk in at <b>11.53</b> and walk past prisoner lying on floor and leave him unattended for over <b>5</b> mins until he is put in recovery position and medical arrive at <b>17.55</b>	Saved by Serco

23	Section 6(c)	27-Jul-15	07.31AM	Vehicle Sallyport	Section 6(c)	Lack of appropriate searching of pedestrians.	Found by Investigation
24	Section 6(c)	01-Aug-15	11:15AM	Outside Roller Door	Section 6(c)	Birds sitting on food trollies eating the bread	Found by Investigation
25	Section 6(c)	03-Jul-15	11.03AM	Alpha	Section 6(c)	Meal trolley pushed into yard and prisoners swarm around	Found by Investigation
26	Section 9 (2) (a) radio	unknown	unknown		Section 6(c)	Prisoner uses two way staff radio to give instruction to master control.	Given to investigation (had been uploaded to the internet and shown on news)
27	Section 9(2) (a) Section 6(c)	12-Jan-15	10.26AM	Alpha	Section 6(c)	Section 9(2) (a) and 3 other prisoners in yard fight club training	Saved by Serco
	Section 6(c)	13-Jul-15	06.00AM	Alpha	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	14-Jul-15	06.00AM	Alpha	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	16-Jul-15	06.00AM	Alpha	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	13-Jul-15	06.00AM	Alpha	Section 6(c)	Staffing arrangements in Unit	Found by Investigation

	Section 6(c)	14-Jul-15	06.00AM	Alpha	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	16-Jul-15	06.00AM	Alpha	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	13-Jul-15	06.00AM	Bravo	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	14-Jul-15	06.00AM	Bravo	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	16-Jul-15	06.00AM	Bravo	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	13-Jul-15	06.00AM	Bravo	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	14-Jul-15	06.00AM	Bravo	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	16-Jul-15	06.00AM	Bravo	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	13-Jul-15	06.00AM	Charlie	Section 6(c)	Staffing arrangements in Unit	Found by Investigation

	Section 6(c)	14-Jul-15	06.00AM	Charlie	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	16-Jul-15	06.00AM	Charlie	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	13-Jul-15	06.00AM	Charlie	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	14-Jul-15	06.00AM	Charlie	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	16-Jul-15	06.00AM	Charlie	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	13-Jul-15	06.00AM	Delta	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	14-Jul-15	06.00AM	Delta	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	16-Jul-15	06.00AM	Delta	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	13-Jul-15	06.00AM	Delta	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	14-Jul-15	06.00AM	Delta	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	16-Jul-15	06.00AM	Delta	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	13-Jul-15	06.00AM	Foxtrot	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	14-Jul-15	06.00AM	Foxtrot	Section 6(c)	Staffing arrangements in Unit	Found by Investigation

	Section 6(c)	16-Jul-15	06.00AM	Foxtrot	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	13-Jul-15	06.00AM	Foxtrot	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	14-Jul-15	06.00AM	Foxtrot	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	16-Jul-15	06.00AM	Foxtrot	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	13-Jul-15	06.00AM	Foxtrot	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	14-Jul-15	06.00AM	Foxtrot	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	16-Jul-15	06.00AM	Foxtrot	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	13-Jul-15	06.00AM	Foxtrot	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	14-Jul-15	06.00AM	Foxtrot	Section 6(c)	Staffing arrangements in Unit	Found by Investigation
	Section 6(c)	16-Jul-15	06.00AM	Foxtrot	Section 6(c)	Staffing arrangements in Unit	Found by Investigation