

Corrections
(Contract Management
of Prisons)
Amendment Bill 2009

*Submission of the New Zealand Public Service
Association Te Pūkenga Here Tikanga Mahi to
the Law and Order Select Committee*

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Submission to the Law and Order Select Committee by the Public Service

Association: Te Pūkenga Here Tikanga Mahi

22 May 2009

Introduction

1. The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 58,000 members. We are a democratic organisation representing members in the public service, the wider state sector (the district health boards, crown research institutes and other crown entities, and state owned enterprises), local government and non-governmental organisations working in the health, social services and community sectors.
2. The PSA has over 2500 members working in the Department of Corrections with the majority working in Community Probation and Psychological Services (approx.1400 members) and Prison Services (900 members). They are corrections officers, community probation officers, psychologists, social workers, administrators, nurses, instructors, managers, community work supervisors, senior community work supervisors, programme deliverers, crime prevention officers, facilities management and maintenance workers. We also represent 1700 members in the Ministry of Justice who work courts, national functions, collections and tribunals, including the Waitangi Tribunal.

3. A significant proportion of PSA members in Corrections are Māori and are represented in Te Rūnanga o Ngā Toa Āwhina, the PSA Māori structure, and in the New Zealand Council of Trade Unions through Te Rūnanga o Ngā Kaimahi Māori.
4. The PSA is an affiliate of the New Zealand Council of Trade Unions: Te Kauae Kaimahi (the CTU) and, through the CTU, works with other unions representing workers in the Department of Corrections. The PSA has collaborated with the CTU on their submission and strongly supports it. We request that the Committee read this submission alongside the CTU submission.
5. The PSA's Corrections National Delegate group, representing PSA members across the country, surveyed members in all parts of the Department. This submission focuses on PSA members' views and on specific issues related to the content of the Bill and employment arrangements rather than on the compelling international evidence against private prison management, which is well covered in the CTU submission. Comments submitted as part of our survey of PSA members in Corrections are included throughout this submission in italics. The quantitative results of this survey are attached as appendix 1.
6. We seek to be heard by the Select Committee on this submission.

Summary of key points

7. PSA members want decent jobs, where workers have a voice, where wages are fair and equitable, and where workers are stakeholders in the provision of services. We also seek productive, high performing workplaces which deliver value for the public funds used.
8. PSA members work in all parts of the Department of Corrections and we also have strong membership in the courts and the Ministry of Justice. They work at the frontline of our criminal justice system everyday and as professionals have strong and well informed views about how the current system works and how it can deliver better outcomes and increased value for taxpayer money.
9. We acknowledge issues with the current penal system. Prisons are by their very nature complex and difficult to run but as much as they present practical, cost and political challenges to the State, private contractors are not the solution.

10. A substantial majority of PSA members working in the Department of Corrections believe that privatising prison management would have strongly negative effects on the performance of prisons, the accountability and cost of prisons to the tax-payer and communities, the quality of prison management and public safety. It is also their view that this would have a strongly negative effect on the ability of the prison service to innovate, to respond to the needs of particular groups of inmates (e.g. Māori inmates), on prison culture and on integration of the prison service with the rest of the criminal justice system¹.
11. PSA members believe that private prison management will have a strongly negative impact on staff safety, their pay and terms and conditions, staff turnover and their enjoyment of their jobs².
12. There is not the evidence, either from the New Zealand experience or from international experience, to support the belief that cost savings can be made and that more innovation will occur through the contracting-out of prison management³.
13. Where savings have been made through the privatisation of prisons, it has been done at the expense of the services delivered, the safety of staff and inmates and to the accountability of prison management to local communities and to the taxpayers who fund prison services⁴.
14. In respect of innovation, there are models in the New Zealand public prison service demonstrating that innovations can be made, and have been made, in the public prison system. For example, the establishment and effectiveness of Māori focus units provides evidence that contracted-out prison management is not needed to work effectively with Māori, and with Māori communities to achieve better rehabilitation outcomes.
15. The perceived issues in some other countries of inflexible approaches by unions creating barriers to innovation and positive change within prisons do not exist here.
16. The issue of private prisons is separate from the critical issues of the high Māori prison population and Māori governance within the criminal justice system and proceeding with

¹ Survey of PSA members in Department of Corrections, May 2009.

² Ibid.

³ Roth, Privatisation of Prisons, 2004, New South Wales Parliamentary Library Research Service.

⁴ Andrew J, Prisons, the Profit Motive and Other Challenges to Accountability, Critical Perspectives on Accounting, 2006

devolution of direct responsibility for prisons to multinational for-profit providers will create further barriers to making progress on these issues.

17. To achieve the aims of the criminal justice system, including corrections and courts, and before taking further decisions about changes to sentencing policy or prison management, the Government should develop a longer term strategy and approach to prisons and the criminal justice system. A less politically driven approach to sentencing policy, the role of incarceration and how it is managed, will enable increased effectiveness, efficiency and innovation and ensure maximum value for the taxpayer dollar.
18. The Bill leaves open the possibility of long-term contracts for prison management which would cost the tax-payer more and reduce flexibility for the government. We recommend the Bill provide guidance about contract length to address these issues.
19. The Corrections (Contract Management of Prisons) Bill 2009 (the Bill) does not make sufficient provision for transition arrangements for staff in the case of a publicly run prison being transferred to private management. This will result in unnecessary loss of jobs in these tough economic times and loss of experience and capability within prisons. We recommend that provisions be included to safeguard terms and conditions, workplace democracy arrangements and safety standards for staff.
20. The protection extended by the Bill to members of the Government Superannuation Fund should also be extended to members of the State Sector Retirement Savings Scheme.

The PSA's agenda and approach

21. Proponents of prison privatisation in other jurisdictions have argued that union views on privatisation are essentially self-serving and that inflexible approaches by the unions of prison staff are barriers to innovation and positive change in prisons. The PSA does not agree that this is the case and it is also clear that this is an issue that does not exist in New Zealand.
22. Our recent work with the Department on rosters, agreed in our last round of collective bargaining, demonstrates that enabling prison staff, through their unions, to actively participate in developing innovative approaches to historically intractable issues such as rosters can offer an opportunity to reduce operating costs, increase effectiveness and

facilitate innovation. We continue to work constructively with the Department on a range of issues which in particular seek to address the growth in the prison muster.

23. PSA members work in all parts of the Department of Corrections and we also have strong membership in the courts and the Ministry of Justice. They work at the frontline of our criminal justice system everyday and as professionals have strong and well-informed views about how the current system works and how it can deliver better outcomes and increased value for taxpayer money – which we understand is the objective of the legislation.

Democracy at Work

24. *Democracy at Work* is the PSA's strategic agenda, developed from extensive consultation with our membership. It has three goals and provides the framework within which the PSA seeks to engage with employers and with members:

- **Decent work:** better jobs for PSA workers
- **High-performing workplaces:** sustainable services, productive workplaces
- **Public value:** working with citizens to deliver valued public services.

Public Value

25. As one of the three elements of *Democracy at Work*, the concept of public value is central to the PSA's thinking: the idea that citizens deserve and expect high quality public services that deliver value for the investment of public funds. A key part of this is the contribution that workers make to public value; through their motivation and commitment, their interaction with service users, and their ability to bring forward ideas that can improve and develop services.

26. A strong element in public value is value-for-money – the effective and efficient use of funds and resources provided through rates and taxes, so that maximum benefit is generated by their expenditure. Union members are willing to engage in dialogue with employers and contribute their ideas about how to get better results and work 'smarter'. We recognise the current intense pressure on the Government's budget but we believe that this work is more effective when it is not undercut by assumptions of job losses, cost-cutting and a drive to do more with fewer resources.

Decent work/decent workplaces

27. High-performing workplaces are those that support a culture of autonomy and trust, where workers have a voice, where wages are fair and equitable, and where workers are stakeholders in the provision of service, and these ideas are contained in *Democracy at Work*. The CTU has described the 5 key features of a decent workplace⁵:

- It will be highly productive, add value to quality goods and services and reward workers with high wages and excellent conditions of work.
- It will be a centre of lifelong learning that invests in people, lifts transferable skills, and constantly strives to develop the workforce.
- Workplace practices will be based on fairness and respect in a high trust environment that values participation, diversity and flexibility.
- It will have strong networks with others in the sector and the community and will recognise the value of public services and constructive social partnership.
- It will be healthy, safe and its work will be engaging and rewarding, while recognising that people have lives outside work.

PSA members' views about private prison management

28. PSA members working for the Department of Corrections have strong views about the possibility of prisons being moved to private management. We have included below quotations from members' responses to our survey so that the Committee can directly hear the views of those at the frontline.

29. 89% of respondents to our survey reported that they view the possibility of private prison management negatively and 72% of respondents held strongly negative views about prison privatisation.

Comments from PSA members, May 2008:

"I do not believe that it is a responsible thing to do to put prisons back in the hands of private companies. There is too much negative research/evidence across the world to support the issues highlighted by ineffective running of private prisons."

⁵ *Te Huarahi Mo Nga Kaimahi – the CTU vision for the workplace of the future*, NZCTU, 2007, p9

“A private prison will be motivated by returning as large a profit as possible to their shareholders. To enable this to happen they will lower wages and conditions for the prison officers and provide the bare minimum to the inmates.”

“I have already told Pita Sharples that privatisation of public services does not work. It will cost more money, lose the experience that we have gained and will set about reinventing the wheel for profit rather than public service.”

30. Just over 50% of respondents have more than 10 years of service with the Department, 5.4% of them have previously worked in a privately owned or managed prison (some worked at ACRP and others at prisons overseas) and 17.7% have previously worked in a privately owned security firm.
31. PSA members’ report that they believe moving to private prison management would have a negative or strongly negative effect on the cost of prisons to the taxpayer (77%), performance of prisons (78%), accountability of prisons to the public (81%) and public safety (84%).

Comments from PSA members, May 2009:

“It is 2-3 years since the death of the youth in the security van in Auckland and we are still feeling the effects of that incident in our every day work with the vast changes in compliance. When you break down all the reports, it was really very simple. All the information was at the hands of the security (private staff) company and he should not have been put in the van. Private prisons are there to make money.”

“It appears to me that the ability to gain or gather accurate information is somewhat restricted by the mantle of “commercial sensitivity”.

“The cost of private prisons will drop initially, but the contractor will come back to the Government in time for more money as they will find out they can’t run a prison on the money offered by the Government”

“In the long run privatised prisons will turn out to be very costly for society, because they will lack the attitude that is necessary to reduce re-offending. The released prisoners will very likely re-offend as soon as they shut the gate behind them.”

“I believe that the present government is of the opinion that the Auckland Remand centre was a success. However, my opinion, based on publicly available information,

is that their performance was not good in a wide range of areas. I would not choose to work for a private corrections company and believe that PPS is more accountable.”

“I believe as a Social Worker I will be unable to offer the service I presently provide because of the ethos of make a profit. This means that I will be expected to provide the same service but in less time. An impossible task! This will lead to a greater number of disgruntled clients and whanau.”

32. Members also believe that moving to private prison management would have a negative or strongly negative effect on the ability of the prison service to be innovative (77%), on the quality of prison management (69%), on integration with the rest of the criminal justice system(83%) and on prison culture(80%).

Comments from PSA members, May 2009:

“The ability to provide proven rehabilitation programmes in line with international criteria will be severely compromised. In addition, the ability of staff from Community Probation and Psychological Services to develop a relationship with private prisons will not be as productive as the ones we have with Public prisons. When ACRP was private, visiting psychologists were treated as outsiders and it was often difficult to gain access to records that are vital for our job and custody staff did not know their prisoners well enough to comment on their behaviour.”

“As a reintegration worker, I believe that private prisons would not provide the service I currently do and would only be focussed on containing prisoners and releasing them back into the community without treating the issues relating to their offending.”

“Privatisation will effectively stop the appropriate reintegration of prisoners back into the community, as this will not be seen as profitable endeavour. Programmes for prisoners will be limited for the same reason. As more and more services get cut to ensure that a profit will be made, my work as a social worker will increase (and my pay decrease) due to the unrest from both staff and prisoners. This frustration is likely to manifest itself in an increase in physical assaults by all parties. If double bunking is part of the privatisation this will also increase my work load as sexual assaults become part of the norm in this prison. To date there have been NO sexually related incidents at this prison.”

“The justice system within NZ is not just about prisons. Justice in its entirety is a bona fide responsibility of government and should not be “piecemealed” for the benefit of other.”

33. PSA members believe moving to private prison management would have a strongly negative effect on staff safety(87%), their pay and terms and conditions(88%), staff turnover(89%) and their enjoyment of their jobs(77%).

Comments from PSA members, May 2009:

“Friends, who have worked in Private Prisons in Australia, have stated to me that they are babysitters. Minimal training, over-crowding, minimal staff, with low morale and the prisons are shut down with minimal notice. We are better than this. There is no re-integration, just lock/unlock on a daily basis. Staff would become corrupt to survive in this environment.”

“I worked for the Probation Service in the UK for 8 years, including a prison secondment and have some experience and knowledge of the problems of privately run prisons within that country. Commonly, prison officers/correctional officers in privately run prison have far less training and access to developmental opportunities than that of their state employed colleagues. From my experience, private prisons in the UK suffer from poor morale. High staff turnover, less favourable terms and conditions of employment, corruption and inadequate security (higher prisoner to staff ratio in private prisons). It was common for staff in privately run prisons to try to gain employment with their state counterparts due to these problems. These problems, in turn, have a negative effect on prisoners, commonly spending too much time in their cells and not having access to suitable and meaningful rehabilitative programmes to name just two (due to staff shortages).”

“I was involved in the review of training at ACRP before it was handed back to public prisons. The level of capability of the staff was generally lower than in the public prison service. The level of the initial training, which was run by an outside provider, also appeared to be of a lower standard than that supplied at the ITC run by public prisons. The private prisons have also only been involved with the remand prisoners in NZ and they are generally short serving and better behaved. Public prisons deal with harsher prisoners and cannot be compared to any proposed success that private prisons have had.”

“I have worked in the probation service in NZ and now with the prison service – however I have been involved with private prisons in the UK (15 years both private and public) and the experience was a negative one. There were very little in the way of programmes for prisoners/rehabilitation for prisoners. The company was very cost focussed, with cost savings in staff wages, training and professionalism.”

34. 75% of PSA members who responded to the survey believe that privatisation would impact negatively or strongly negatively on the ability of the prison service to respond to the needs of particular groups of inmates, e.g. Māori inmates.

Comments from PSA members May 2009:

“In my view the impact that privatisation will have on Rehabilitation Programmes will be strongly negative, particularly Māori Focussed Rehabilitation.”

“If overseas companies were running the prisons there would be little knowledge of NZ culture (i.e. Māori/PI groups).”

“It would be a shame to see private Māori only prisons as that is a huge backward step.”

“When will the inventors ever learn they do not have the answers for a Māori nation, and neither does any government who sanctions failed plans? We the Māori do!”

The PSA’s view of the evidence and research on private prisons

35. Prisons are difficult by nature. The political, operational and cost challenges raised by State run prisons in New Zealand do not reflect failings intrinsic to State ownership, management or control but rather that incarceration is a difficult, complex and unsympathetic area to operate in.

“I am not saying that the State run system is perfect; however no matter how you put it, there are major flaws with the idea of private prisons.”

PSA member, May 2009

36. We support the CTU’s analysis of the international research and experience of prison privatisation and ask that the Committee read our submission alongside the CTU submission.

37. The PSA supports a whole of government approach to the criminal justice sector. While the focus of this submission is on prisons, incarceration is but one of the services provided by the Department of Corrections and Corrections is part of the wider justice system. To an extent its work is reactive as decisions and actions by other agencies impact on it, for example Police arrest rates, sentencing decisions by courts and political decisions by Ministers.

38. Further we note that some of the issues currently existing with the operation of prisons have resulted from difficulties dealing with unforecast increases in inmate numbers following political decisions about sentencing policy. For example, in response to recent changes in sentencing policy the Department has already had to rapidly and significantly increase both

staff and bed numbers which has in turn resulted in the need for double-bunking and a significant and worrying imbalance in the ratio of experienced to inexperienced staff. Both of these measures create serious staff and public safety risks.

39. Before taking or implementing further decisions about changes to sentencing policy or prison management, the Government should work with the other political parties in Parliament, communities and other appropriate stakeholders, including those working in Corrections and the Ministry of Justice, to develop a longer term strategy and approach to prisons and the criminal justice system. A less politically driven approach to sentencing policy, the role of incarceration and how it is managed, will better place the Department to plan for any future expansion of operational capacity, to increase effectiveness and efficiency, to innovate and to provide maximum value for the taxpayer dollar.
40. The PSA believes that any cost saving resulting from competitive and contested tendering would be limited as there are a very limited number of companies operating in this area and many of these companies are connected to each other commercially. We are also concerned about the potential risks of undue reliance on a small number of contractors or a single contractor.
41. The current significant difficulties with recruiting corrections officers is also likely to be compounded if prison management is contracted to internationally based private providers. Recruitment is so difficult that the Department has to recruit a significant number of officers from overseas. They have an immigration exemption from the Talent (Accredited Employer) Work Policy for this purpose. Many of our members who have immigrated to New Zealand under this scheme, and who were professional corrections officers in their home countries, report that one of the reasons they accepted jobs here is because they were able to move from jobs with these same private providers to a better-run public prison service.
42. It is important to note that while all New Zealand prisons are publicly owned and operated, we do not have a purely public prison service. Corrections has been innovative in its partnerships with private for-profit and community sector providers. We believe that the current mix of public sector, private for-profit and community sector not-for-profit providers is sufficiently balanced and appropriate.
43. We note that the Bill provides no guidance about contract length. This risks the possibility of very long term contracts, as used in some overseas jurisdictions, which negate any savings

from contested tendering and increase the risk of uncompetitive renegotiation and/or contractors failing within the contract term⁶.

44. Further, longer term contracts create inflexibility and would reduce the Government's ability to make long term plans around demographic and social trends. They also prevent timely response to rapid changes brought about changes in context forced by events such as technological advances or changes in the local or global economic situation. We recommend that the Bill provide guidance about contract length to address these issues.
45. In summary, the Government has not provided substantial and transparent evidence that there are cost saving, innovation and efficiency gains that stem directly from prison privatisation. The evidence from overseas is either inconclusive or negative. Assertions and assumptions of private sector effectiveness are not sufficient basis for a decision to further devolve delivery and responsibility for services.
46. No such decision should be taken in the absence of sufficient evidence or before there is agreement on how to address the increasingly urgent issue of Māori participation and governance in the criminal justice system.
47. We refer the Committee to the comprehensive evidence considered by the New South Wales Legislative Council General Purpose Standing Committee No.3 as part of their recent Inquiry into the Privatisation of Prisons and Prison-related Services. We note that a wide range of groups and individuals, including academics, community groups and the New South Wales police association, submitted compelling evidence against prison privatisation based on the Australian experience of private prisons.

Specific comments on the Corrections (Contract Management of Prisons) Amendment Bill 2009 and employment arrangements

48. The Bill does not make sufficient provision for transition arrangements for staff in the case of a publicly run prison being transferred to private management. We are concerned that without clear and sufficient transfer provisions around employment arrangements any transfer of prison management responsibility to a private contractor will result in significant job losses and redundancy costs in these difficult economic times. It is also likely to result in

⁶ P252, Funnel, Jupe & Andrew, 2009, In Government We Trust, University of New South Wales Press.

significant loss of capability from the prison workforce, and an unsafe and undesirable ratio of experienced to inexperienced staff, as experienced officers choose redundancy rather than a job in a private prison.

49. Clarity and consistency in how transfers would work is important, not only for staff welfare and productivity, but also to aid retention and therefore the Department's ability to maintain service levels in the run-up to any transfer dates, and for any new employer to maintain this. There already exist significant difficulties in recruiting prison officers and any reduction in working or employment conditions will further compound this.
50. We note that having different employers of prison staff around the country, and workers on different terms and conditions of employment, works against a whole of Government approach and the coherence of the criminal justice system. It reduces any flexibility to efficiently and responsively distribute and redistribute staff and other resources regionally and nationally.
51. Should the Government progress with the Bill, we expect that at a minimum the Bill would provide for continuance of collective agreements and collective engagement arrangements, transfer on no-less-favourable terms and conditions, guaranteed recognition of service for transferring staff for the purposes of redundancy, retirement and leave, including maintaining eligibility for the parental leave payments provided for by part 7A of the Parental Leave and Employment Protection Act 1987.
52. Further we expect there would be a commitment to union engagement at the outset in any proposals for transfer of management, structural and/or service delivery changes and that any potential savings as a result of restructuring should be allocated to service improvement rather than to profits for private providers.
53. We are pleased that provision has been made in the Bill for those staff who are members of the Government Superannuation Fund (GSF) to transfer employer and maintain their GSF membership, however an equivalent protection needs to be afforded to those who are members of the State Sector Retirement Savings Scheme. GSF closed to new members in 1992 and the State Sector Retirement Savings Scheme accepted members between July 2004 and April 2008.

Prison Privatisation Survey Results

PSA members working in the Department of Corrections were surveyed in May 2009 on their views on privatisation of prisons. The results of the survey are presented below.

Background Information

Of those who responded, 52% were male and 48% were female, 64% were over 45 with 22% over 55 and just under 10% under 35. 65% were NZ European/Pakeha, 23% were Māori, 4% Pasefika, 4% other European and 4% other ethnicities.

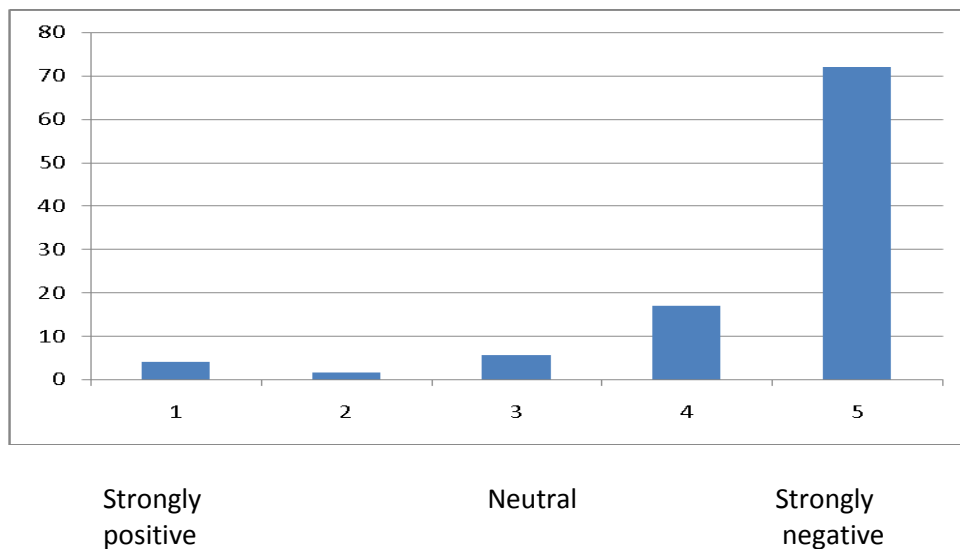
16% of respondents had over 20 years' service with the Department, 34% had between 10 and 20 years, 22% had between 5 and 9 year's service, 19% between 3 and 5 year's and 9% had less than 2 year's service.

5.4% of respondents have previously worked in a privately owned or managed prison.

17.7% have previously worked in a privately owned or managed security firm.

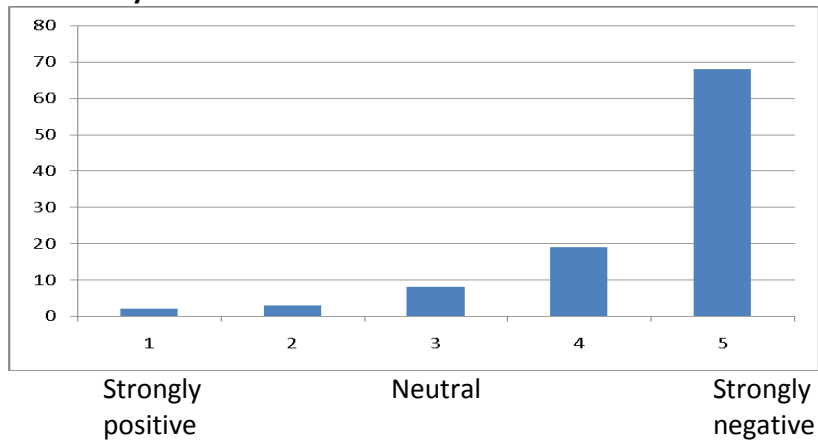
Prison privatisation

1. Overall view of the possibility of prisons being privatised:

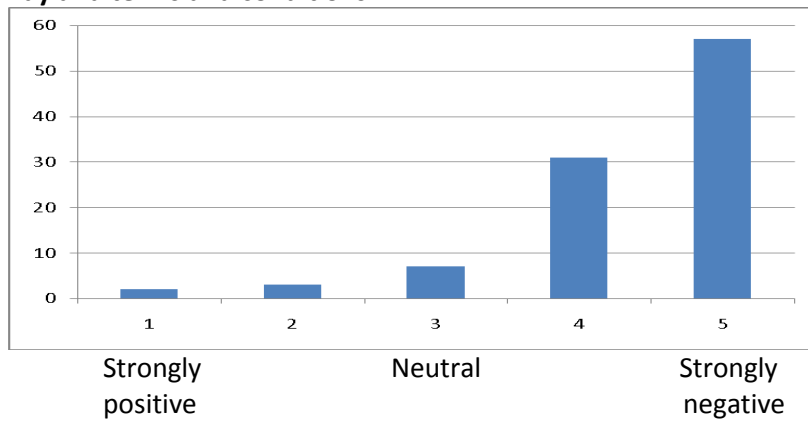


Effect of privatisation of prison management on:

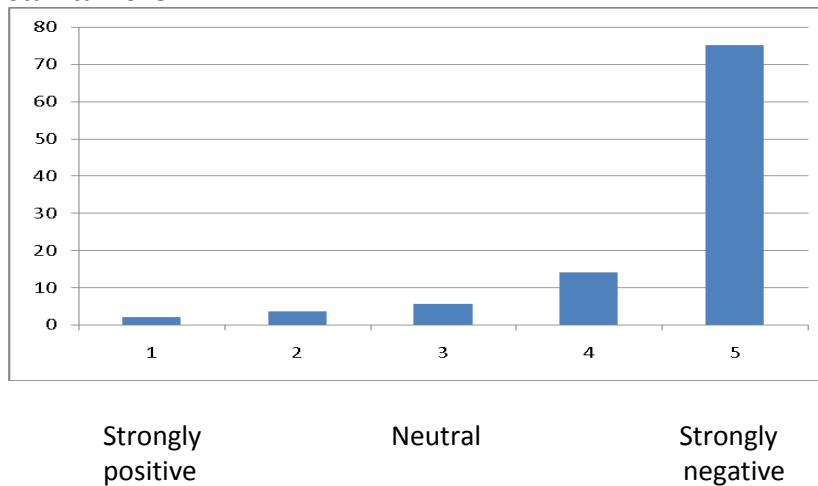
Staff safety



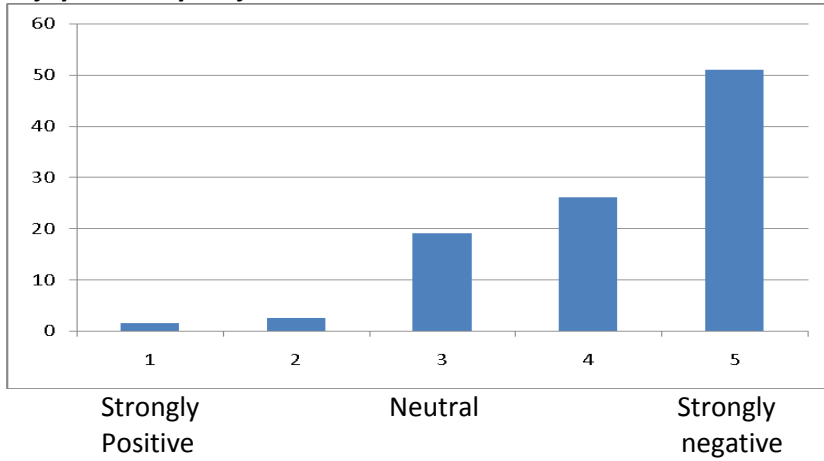
Pay and terms and conditions



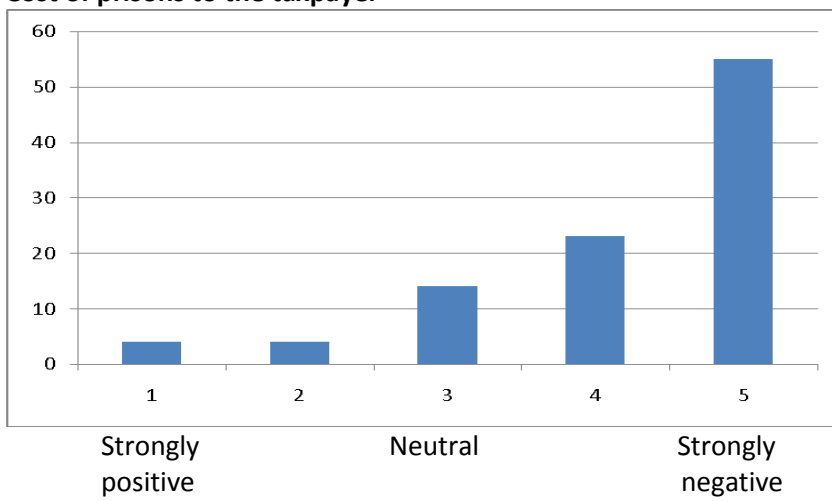
Staff turnover



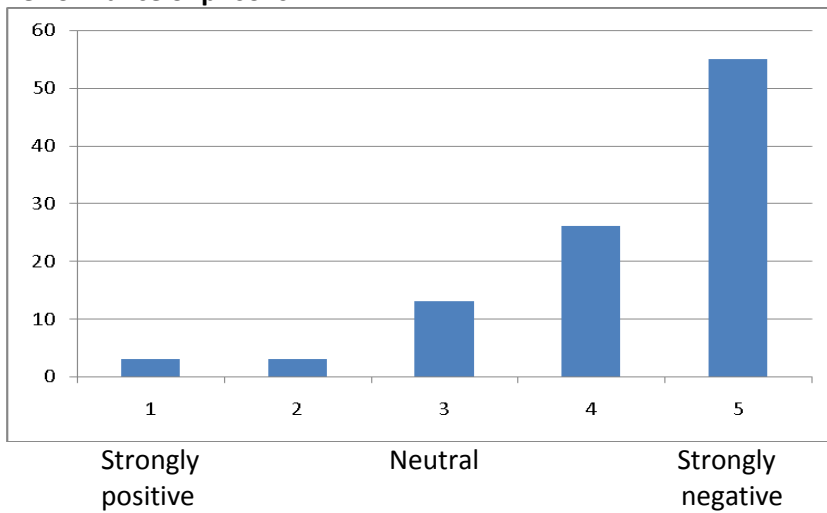
Enjoyment of your job



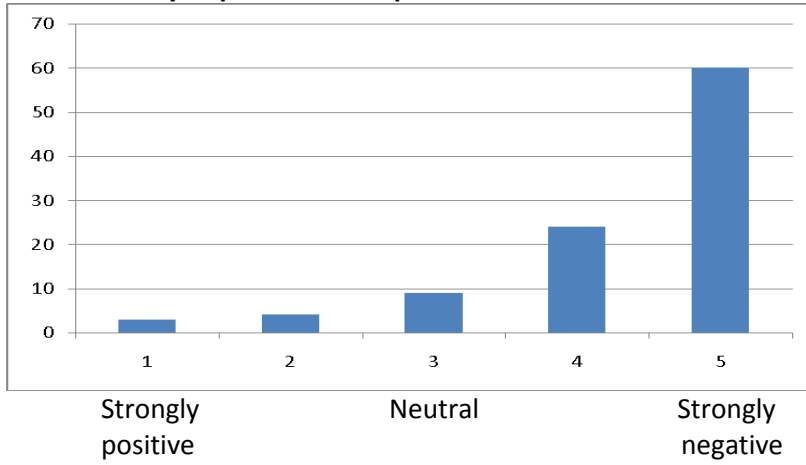
Cost of prisons to the taxpayer



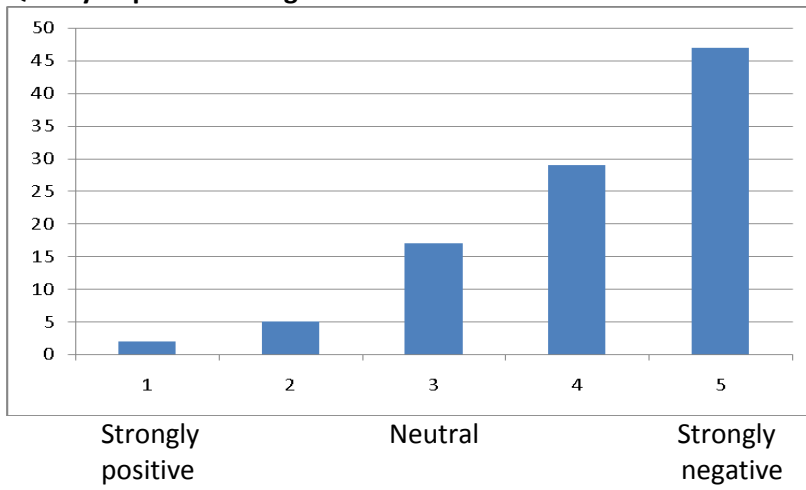
Performance of prisons



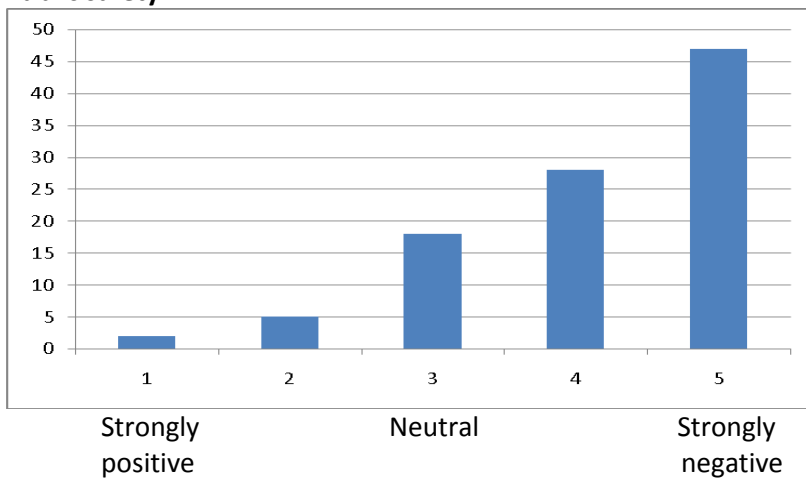
Accountability of prisons to the public



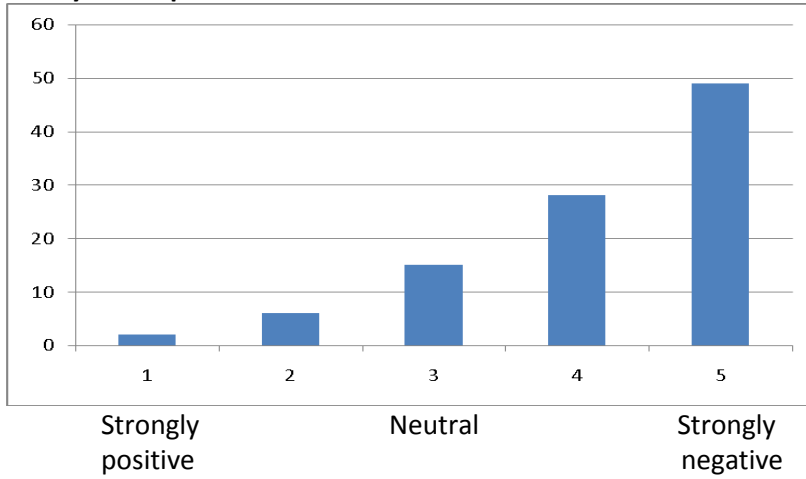
Quality of prison management



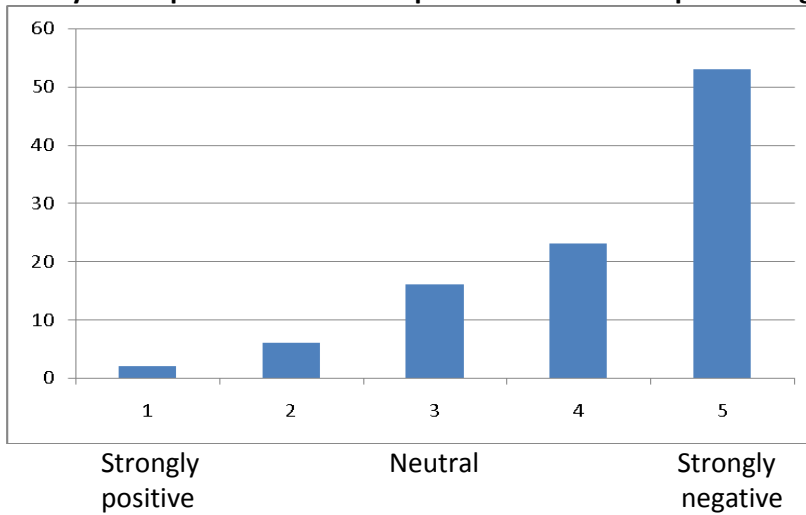
Public safety



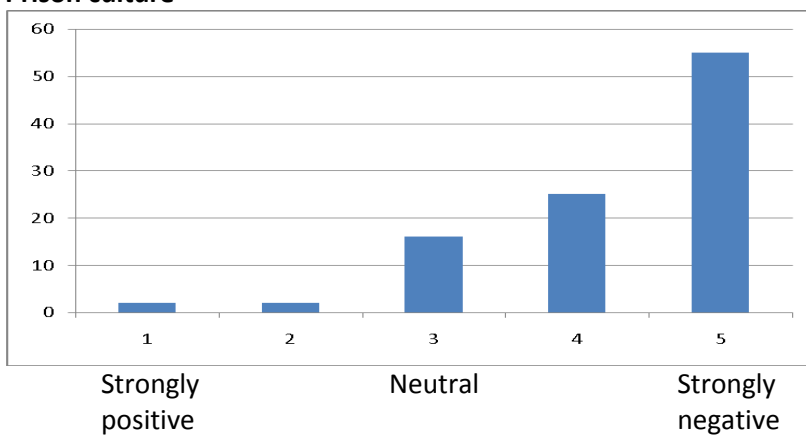
Ability of the prison service to be innovative



Ability of the prison service to respond to the needs of particular groups of inmates, e.g. Maori



Prison culture



Integration with the rest of the criminal justice system

