



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

The New Zealand Council of Trade Unions

Submission on

**Corrections (Contract Management
of Prisons) Amendment Bill**

May 2009

1.0 INTRODUCTION

- 1.1 The New Zealand Council of Trade Unions – *Te Kauae Kaimahi* (CTU) represents 39 affiliated unions with a membership of over 350,000 workers. The CTU is the New Zealand member organisation of the International Trade Union Confederation (ITUC).
- 1.2 The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers. The Corrections (Contract Management of Prisons) Amendment Bill is a fundamentally important legislative and public policy issue for the CTU, the CTU Runanga, and CTU affiliated unions representing prison officers and the wider membership of the CTU.
- 1.3 The Public Services Association (PSA) and the Corrections Association of New Zealand (CANZ) are affiliates of the CTU. Both unions have large and strongly unionised workforces working in prisons. Both the PSA and CANZ have a high Māori membership working in prisons.
- 1.4 The 350,000 workers represented by CTU unions have a vital interest in the provision of strong public services - including prison services. The CTU and its affiliated unions, representing prison workers, strongly oppose the privatisation of prison services and the contracting-out of prison management.

2.0 EXECUTIVE SUMMARY

- 2.1 The CTU disputes the arguments that costs savings can be made and that standards in prisons can be improved by a competitive tendering enabling privatised management of prisons.
- 2.2 There is not the evidence, either from the New Zealand experience or from international experience, to support the proposition that cost savings can be made and that positive innovation will occur through the contracting-out of prison management.
- 2.3 Where there have been savings made through the privatisation of prisons, it has done so at the expense of the services delivered. 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.
- 2.4 The CTU believes the issue of private prisons has become mixed up and unhelpfully confused with the critical issue of the high Māori prison population. The high Māori prison population and high recidivism rates of prisoners are issues of major concern to the CTU also. But it is the prevention

of crime that is the key solution to reducing the high Māori prison population and crime, not the privatising of prison management services.

- 2.5 The establishment of Māori focus units provides evidence that contracted-out prison management is not necessary to work effectively with Māori, and with Māori communities to achieve better rehabilitation outcomes.
- 2.6 While the CTU and the unions who represent prison officers acknowledge there are some unsatisfactory issues within the current prison system, private contractors in the prison system are not the solution. There is powerful evidence that private prisons lower standards and produce unacceptable outcomes.

3.0 BACKGROUND

- 3.1 The question of whether or not prisons should be privatised is highly controversial and has been in every country where it has arisen.
- 3.2 New Zealand's first and only experience with private prisons was in the 1990s. An amendment in 1995 to the Penal Institutional Act 1954 enabled the chief executive of the Department of Corrections, with the prior consent of the Minister, to contract-out prison management.
- 3.3 The newly built Auckland Central Remand Prison (ACRP) was contracted out to the Australian Correction Management Services Ltd - a subsidiary of the Wackenhut Corporation of Texas. The contract ended in 2005.
- 3.4 The questions of private prison re-emerged in 2008 with statements from the National Party 2008 signalling support for private prisons. In 2009 the Corrections (Contract Management of Prisons) Amendment Bill was introduced to provide for competitive tendering of prison management on a case by case basis.

3.5 Corrections (Contract Management of Prisons) Management Bill

- 3.6 In the explanatory note to this Bill, the Government states that it is looking for innovation and change in the way New Zealand prisons are operating and that providing for the running of prisons by contract management will enable the Government to achieve cost savings in the delivery of prison services.
- 3.7 The explanatory note to the Bill refers to the experience of the ACRP and states it wants to build on the positive experience of the ACRP which was managed under contract from 2000 - 2005.
- 3.8 But there is no analysis in the explanatory note of the risks and or any evidence provided to support the proposition that cost savings can be made

and most importantly how private prisons provide for cost savings and for more innovation.

3.9 CTU Policy: Prisons and Privatisation

3.10 The issue of private prisons is similar though different from the commercial provision of health and or other social services. Prison privatisation represents one of the greatest areas of risk from privatisation because the power of the State is at its most extreme form in prison.

3.11 This is because competitive tendering for prison management introduces a business and market model into prison management. In doing so, it introduces perverse incentives – the most alarming one is the incentive to keep prison numbers high to maintain the profitability of the business. It is these perverse incentives that make the contracting out of prison services such a controversial and a moral issue.

3.12 The policy of the CTU is for strong public services that maintain and build the state sector so the State maintains its essential role in providing valuable and necessary social services to our communities. Prison administration and management is a core function of the State.

3.13 The CTU opposes privatisation and public private partnerships that introduce the profit motive into public services and undermine public value. Strong public services such as prison services should be integrated with other services and be accountable to citizens through public ownership and delivery.

3.14 Recent decisions in Australia re private prisons

3.15 The New South Wales Government announced this month (May 2009) that it will revise plans to privatise two state prisons and that Cessnock jail, in the Hunter Valley, is to be retained under public management.

3.16 There was strong community opposition to the sell off of Cessnock prison. Of the 453 submissions made to the Parliamentary Inquiry only eleven, including the Department of Corrective Services and the multinationals, supported privatisation. The New South Wales Corrective Services Minister, John Robertson, said community concerns in the Cessnock area led to the decision to retain the prison under public management. The community campaigners described this reversal of policy as a victory for recognising that the justice system is a fundamental community responsibility and that the justice system should not be run for profit.

4.0 THE ARGUMENTS AGAINST PRIVATE PRISONS

4.1 *Argument 1: Private prisons are not cheaper*

The major reason given for the introduction of this Bill is that private prisons can reduce costs. This argument - that the private prisons are cheaper - is one of the most compelling ones to rebut.

Given that cost savings are the primary driver for this Bill one might assume that there would be evidence available that prisons run by contract management are cheaper and deliver better services. The lack of evidence to support this claim is because of the difficulty of finding the evidence to support the claim that savings can be made by the contracting-out of prison management.

If it was true that savings could be made from prisons privatisation, then the public should have the right to know how such savings could and would be made. There is no mention of this in the Bill. The true cost comparisons between private and public prisons are difficult to determine because of lack of commensurability.

A review by Sachdev ¹ (2004), principal lecturer of Kingston Business School, Kingston University, found that only a small part of the cost savings achieved by private prisons in the United Kingdom were the result of innovative management practices. By far the larger part was attributed to employees working longer hours, with fewer holidays for lower pay and inferior pension and other benefits.

In their 2009 submission² Australian academics, Dr Jane Andrew and Dr Damien Cahill, who examined a report on correctional centres produced by the New South Wales Government, stated that there was neither substantial nor transparent evidence that there are costs savings and efficiency gains from prison privatisation. Based on their research they concluded that the costings presented were not sufficiently transparent to enable the claims to be made the private prisons were cheaper to operate.

A United States Bureau of Justice Assistance report in 2001 entitled *Emerging Issues on Private Prisons* concluded that the cost benefits of privatisation have not materialised to the extent promised by the private sector³.

¹ Sanchez, S (2004) *Paying the Cost? Public Private Partnerships and the Public Sector Workforce*, Catalyst, www.catalystforum.org.uk

² Andrew, J, Cahill, D (2009) *Inquiry into the Privatisation of Prisons and Prison Related Services*, Submission NSW Legislative Council General Purpose Standing Committee No 3

³ Roth, L (2004) *Privatisation of Prisons*, Background Paper No 3/04, NSW Parliamentary Library Research Service

Roth ⁴ reported that evaluating the comparative cost and quality of private and public prisons is problematic. Firstly, prison facilities differ in ways that confound real comparison of costs and, secondly, differences between public sector and private sector accounting practices make for difficulties in comparing true costs.

4.2 Argument 2: Private prisons lack accountability

The biggest concern with private prisons is the lack of public accountability and transparency of the prison service due to commercial sensitivity requirements.

There must be public accountability for the function of justice and deprivation of liberty. Government acting on behalf of society must be held responsible for decisions regarding the crime and punishment and the treatment of prisoners because prison is one of the most restrictive human responses.

Public accountability is critically important in the closed and isolated environment of prisons. Technical or purely administrative discharge of duty is not enough as the vulnerability of those incarcerated and the invisibility of those who manage that incarceration inscribe a moral dimension to the accountability relationships that result. Andrew⁵ argues that public accountability is central to a democratic government's ability to exercise its powers of restraint and punishment.

In the United Kingdom the lucrative markets for building and running private prisons have also been secretive ones. While significant profits have been made out of the criminal justice system from privately run prisons, the public have been denied the opportunity to scrutinise the contracts handed out to prison operators.

The lack of accountability of private prisons means that issues regarding accountability are not assumed and taxpayers do not have accountability or transparency about how their money is being spent. Privatisation weakens public accountability. There is a clear public interest in the disclosure of information about publicly funded public services.

While private providers might aspire to a spirit of openness, in practice accountability is much more limited because of the cloak of commercial sensitivity. In Britain this was demonstrated when the Prisons Minister, who was asked about staff absences in prisons, said that "Information about privately managed prisons is not available as it is commercial in confidence"⁶.

⁴ Ibid

⁵ Andrew, J (2007) Prisons, the profit motive and other challenges to accountability, *Critical Perspectives on Accounting* 18 877-904

⁶ Hansard, House of Commons, United Kingdom written answers, 2nd April 2003, reported in *Private Punishment: Who Profits?* www.prisonreformtrust.org.nz

Information in the United States about prisons salaries is withheld because companies are not held to any public disclosure requirements.

4.3 Argument 3: Private prisons reduce standards

The only way the private sector can reduce prison costs is by reducing standards. The effect of this has been seen with multiple examples of failure of prisons in privately-run prisons. Private prisons both in the United States and Australia have been closed or reclaimed by the State.

The overwhelming experience with private prisons in the United Kingdom is that of inferior working conditions. Working conditions are inextricably linked with staff morale, training and education, career development and turnover.

A 2005 report by the United Kingdom Prison Reform Trust found that evidence of savings in the United Kingdom was at the expense of employment conditions for prison staff ⁷. This report commented on the harsh realities of working in a private as opposed to a public prison: basic salaries for prison officers are nearly a third lower, there are longer working weeks, fewer holidays and pensions are less generous.

As a result of these working conditions many prison staff in private prisons in the United Kingdom are young and inexperienced and have little knowledge of the prison system. There are 17 percent fewer staff per prisoner in private prisons and the staff turnover rate is at least double that in the public sector.

The result of reducing costs in the prison sector is that safety is compromised for both staff and prisoners. In the United Kingdom six out of ten (private) prisons fail to meet their targets on serious assaults.

In Australia, the Australian Medical Association called for an independent inquiry into the running by Australian Correction Management (ACM), (the same company who ran ACRP) based on staffing problems, substandard services and child abuse.

ACM have been found guilty of unsafe work practices in their prisons. There are continuing concerns that those problems have not been adequately addressed.

Wackenhut, in the United States, was stripped of contracts to run prisons in Texas and Louisiana in 1999. It was fined for mistreating prisoners and accused of seeking to maximise profits at the expense of drug rehabilitation, counselling and literacy programmes.

⁷ Prison Reform Trust (2005) *Private Punishment: Who Profits?*www.prisonreformtrust.org.uk

In their quest to reduce costs, private prison companies make savings and cut costs by cutting corners.

4.4 *Argument 4: Imprisonment and penal policy is a function of the State*

Imprisonment is an essential state function and should not be delegated to private businesses. The view of the CTU is that it is morally wrong to allow profits to be made from the infliction of punishment.

Private prisons are accountable to their shareholders whereas public prisons are morally and fiscally accountable to taxpayers. Tony Blair expressed it in these words:

“I believe people sentenced by the State to imprisonment should be deprived of their liberty and kept under lock and key by those accountable primarily and solely to the State.”

The Universal Declaration of Human Rights and other international Conventions provide for the protection of prisoners’ human rights. The deprivation of liberty, in the form of imprisonment, does not remove human rights protection. But the profit motive of returning to shareholder profits will be in conflict with human rights requirements and justice responsibilities with incentives to cut costs and reduce standards to ensure prison profitability.

It is very difficult to write, let alone enforce a contract with a private contractor that covers all the social requirements of a prison.

4.5 *Argument 5: Privatisation of prisons means foreign ownership*

The pool of private companies working in the field of prison management is very small. If private prison management is reintroduced into New Zealand prisons, foreign companies will again be involved because of the small pool of companies in this business - most likely US or Australian companies.

It is questionable and doubtful what interest an overseas owned company would have in the Treaty relationship and addressing the concerns of the high Māori prison population.

4.6 *Argument 6: Private prisons develop a two tier prison system*

Private prisons introduce a two-tier prison system, reducing the overall prison services and leaving public prisons to deal with the most difficult and costly inmates who have extremely complex needs.

A two-tier system will have the private sector running profitable modern establishments with the public sector left to manage the more difficult prison population who are incarcerated in high numbers in outdated facilities.

A difficult problem and one for extreme caution is that at a time of overcrowding and record prison numbers, companies will have a vested interest in keeping the prison population high to be rewarded with more contracts.

4.7 *Argument 7: Private Prisons are not better for Māori*

The CTU Rūnanga is concerned that the high Māori crime rate is being used as a reason that a new type of prison service is needed to meet the needs of Māori better. The CTU Rūnanga view the high crime rate among Māori as not determined by sentences imposed, but largely determined by the economic environment, for example whether or not people have jobs and are secure. As well education, literacy, mental health, drug addictions, and lack of whanau support are common issues for many prisoners.

Given this, it is not surprising that Māori, who are over represented in the prison system, are also the group who are over represented in the lower socio-economic populations of this country, over represented in unemployment, education and literacy need, drug addictions, and mental health support needs and in the prison population.

The prison system is not a solution to social, political, and economic problems. The CTU Rūnanga believes that inviting Māori to participate in the privatised prison system will reflect support for a justice policy that will create longer sentences and more Māori incarceration.

4.8 *Argument 8: Private prisons contravene ILO Convention 29*

International Labour Convention (ILO) 29 exists to prevent exploitation of prison labour. Article 2(2) (c) of ILO Convention 29 prohibits forced or compulsory labour. Work within prisons is excluded from this definition provided that it is:

Carried out under the supervision and control of a public authority (*Article 2*);
Not for the benefit of private individuals, companies or associations (*Article 4 & 5*);
Paid at rates prevailing in the case of voluntary labour including overtime (*Article 13*)

ILO Convention 29 was ratified by NZ in 1938. A number of New Zealand prisons run industry programmes with labour provided by prisoners. The use of prison labour programmes in private prisons would be in contravention of ILO Convention 29.

The CTU also raises our significant concerns about the potential for private prisons to use prison labour to undermine private sector commercial operation and threaten jobs.

5.0 SERVICES BY MĀORI FOR MĀORI

- 5.1 In respect of the needs of Māori in regard to prison services, the CTU Rūnanga supports the Māori Potential Approach which is a Māori public policy framework developed by Te Puni Kokiri (TPK). At the core of this Māori Potential Approach is the belief that Māori are the key catalyst for achieving exceptional life quality for themselves, their whanau and their communities. This approach affirms that Māori have the capability, initiative and aspiration to make choices for themselves in ways that support their cultural identity while contributing to exceptional life quality.
- 5.2 The Māori Potential Approach is guided by 3 principles:
- Māori potential
 - Culturally distinct
 - Māori capability
- 5.3 The Māori Potential Approach is understood through the importance of services *For Māori by Māori* and investment in Māori people that build upon their own capability and initiative are catalysts for changing lives.
- 5.4 Te Kete Hauora, the Māori health directorate, also supports the *For Māori by Māori* approach to achieve wellbeing, acknowledging that Māori communities should be able to define and provide for their own priorities for health and be encouraged to develop the capacity for delivery of services to Māori communities.
- 5.5 The *For Māori by Māori* approach within the education sector has also been supported with the establishment of kohanga reo, kura kaupapa and te Wananga. With improved health statistics, education statistics and employment statistics for Māori there can be no doubt that services utilising the *For Māori by Māori* approach achieve real results for Māori.
- 5.6 Te Rūnanga therefore supports the *For Māori by Māori services*. We note that it was in 1997 that the Corrections Department opened the first Māori focus unit. There are now Māori focus units within four prisons in Aotearoa. The sole purpose of the Māori focus units is to reduce offenders' risk of reoffending.
- 5.7 The focus units operate under the very same principles of the Māori Potential Approach developed by the Ministry of Māori Affairs that recognise understanding Māori culture, identity, Tikanga and that communities are key to reducing the risk of re-offending.
- 5.8 Māori focus units are not established for the sole purpose of incarceration and punishment, nor are they established for profiteering from incarceration and punishment.

- 5.9 Services *For Māori by Māori* are already operating within the state system and by all accounts working well. Not only do the Māori focus units provide a learning experience in understanding culture, identity and tikanga but further to this, is the Kaiwhakamana initiative of Kaumatua who visit with Māori prisoners to help and support prisoners in their identity as Māori.
- 5.10 The focus of services *For Māori by Māori* must be for rehabilitation, not for profit. To imply that opportunities *For Māori by Māori* are created through this Bill is a veil over the truth. The CTU Rūnanga believes the only reason to support the privatisation of prisons is to make money.
- 5.11 Sadly the racialised assumptions of criminality, images of Māori continuing to breed criminal children are constants in the media. The racist practices leading to Māori conviction, arrests and sentencing patterns were articulated and recorded by Moana Jackson in his 1988 report on law reform to the Ministry of Justice.
- 5.12 Jackson's influential report⁸ was a watershed and articulated a new perspective which is every bit as relevant today. Jackson argued on the basis of a Māori world view for greater recognition of the impact of historical and cultural impacts in Māori offending. Jackson noted that within Māoridom, a communal rather than an individualistic approach prevails and he concluded that a parallel system is necessary to ensure justice for Māori.

6.0 THE AUCKLAND CENTRAL REMAND PRISON (ACRP)

- 6.1 The Minister of Corrections in the explanatory notes to this Bill states that the Government wants to build on the positive experience with ACRP and develop effective working relationships between private and public sector providers and facilitate the exchange of ideas and initiatives and provide for innovation and excellence in penal reform.
- 6.2 But the experience of the ACRP does not prove that private prisons are successful. Those working in the prison service have identified that many of the practices and ideas adopted by the ACM were established by the Corrections Department. It is not accurate to attribute these to ACM. Points to note are that:
- Some of the success of ACRP was clearly attributable to the leadership of the prison itself in the form of the General Manager – Dom Karauria
 - ACRP was a new facility and being a remand centre did not have the same pressures and obligations of the wider prison

⁸ Jackson, M. (1988) *The Maori and the Criminal Justice System: He Whaipaanga Hou - A New Perspective*, Part 2. Wellington: Department of Justice.

- The strong relationship the centre had with the local tangata whenua was first developed by the Department of Corrections
- Figures from Corrections regarding savings show that there were not significant savings under the ACRP when it was under private management. Corrections figures show that ACM cost taxpayers \$43,000 per inmate when the company ran the ACRP while Corrections operating costs per remand prison were \$36,000
- A significant issue for public prisons was that ACM refused to admit prisoners after 6.30pm when the 12 hour shift had ended. Refusing to admit prisoners after 6.30 pm of course becomes a cost for the State prisons to bear thus increasing costs to public prisons and shows the cost shifting that does go on.

7.0 RESEARCH ON PRIVATE PRISONS

- 7.1 There have been many instances of failures of private prisons and international empirical studies, are at best mixed, on whether private prisons offer better quality of value for money.
- 7.2 A report by the Bureau of Justice Assistance in the United States, in 2001, reported that there was no definitive evidence to support the conclusion that privately operated facilities were significantly cheaper or of better quality⁹.
- 7.3 Roth in 2004 reporting to the New South Wales Parliament on the Privatisation of Prisons said that research was very limited on the performance of private prisons¹⁰.
- 7.4 A study into a private prison in Queensland concluded that the private sector failed to deliver on the promises of internal and external reforms because properly functioning regulatory structures had not been put in place.
- 7.5 In Victoria, an independent investigations into private prisons found that the introduction of the private sector had mixed results and recommendations to promote greater cohesiveness across the sector were made. The Metropolitan Women's Prison in Victoria Australia was reclaimed by the State due to deficiencies.
- 7.6 Wackenhut was stripped of contracts to run prisons in Texas and Louisiana in 1999. It was fined for mistreating prisoners and accused of maximising profits at the expense of drug rehabilitation, counselling and literacy and programmes.

⁹ Quoted in Roth, L (2004) *Privatisation of Prisons*, Background Paper No 3/04, NSW Parliamentary Library Research Service

¹⁰ Ibid

- 7.7 In 2008, 10 of Britain's 11 private prisons ranked in the bottom quarter of a league table of 132 prisons. The privately managed prisons scored badly on security and maintaining order and control. The Prison Governor's Association is urging the British Government to rethink its policy of allowing private prisons to run prisons.
- 7.8 In the United States concerned citizens have formed the National Public Service Council to abolish private prisons.

8.0 THE PRISON INDUSTRY

- 8.1 Private prisons are attractive for economic reasons and because of their profit potential. In the United States, prison privatisation is the most obvious instance of capital's current movement toward the prison industry. In March of this year, the Corrections Corporation of America (CCA), the largest United States private prison company, claimed 54,944 beds in 68 facilities under contract or development; Puerto Rico; the United Kingdom and Australia. Following the global trend of subjecting more women to imprisonment, CCA recently opened a women's prison outside Melbourne. The company recently identified California as its "new frontier."
- 8.2 Wackenhut Corrections Corporation, the second largest United States prison company, claimed contracts and awards to manage 46 facilities in North America, United Kingdom and Australia. It boasts a total of 30,424 beds as well as contracts for prisoner health care services, transportation, and security.
- 8.3 The stocks of both CCA and WCC have done extremely well. Between 1996 and 1997, CCA's revenues increased by 58 percent, from \$293 million to \$462 million. Its net profit grew from \$30.9 million to \$53.9 million. WCC raised its revenues from \$138 million in 1996 to \$210 million in 1997.