

# A New Zealand Mega-prison - Will It Work?

2<sup>nd</sup> March 2018

A Discussion Paper  
by Kim Workman

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## 1.0 Purpose of this Paper

The former National government recently accepted a tender to build a 3000-bed maximum security prison at Waikeria. This paper compares the NZ mega-prison proposal with the 2007 UK Titan Prison proposal and, based on the available evidence, considers whether the proposed Waikeria prison will provide a safe, effective, humane and lawful environment for prisoners, as stated in the Department of Corrections submission to the Minister of Correction, in April 2017.<sup>1</sup> It concludes by commenting on the impact of a mega-prison on the future of the penal system.

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<sup>1</sup> Waikeria Prison Capacity Increase, Notice of Requirement and Assessment of Environmental Effects  
Prepared for the Minister of Corrections, 10 April 2017.

<http://www.otodc.govt.nz/assets/Uploads/Corrections-Waikeria-NOR-and-AEE-Final.pdf>

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### **3.0 Executive Summary**

#### *Situation*

3.1 The Department of Correction propose to build a 3000-bed prison at Waikeria which would initially house 25% of the national prison population, and be almost three times larger than the current largest prison, Rimutaka, (1067 prisoners). It is also larger than similar prisons elsewhere; the Titan prisons proposed in the UK were for 2,500 prisoners, and the largest prison in Western Europe was originally built for 2,600 prisoners, but now holds 3,500.

3.2 The Waikeria Prison proposal is considered the fastest and most cost-effective way of housing the growing number of inmates; Corrections can use land it already owned and contends that a mega-prison will provide operational efficiencies. In its report, Corrections stressed urgency and identified risks to public safety, outbreaks of violence and disorder, and inability to provide rehabilitation programmes, if the proposal did not proceed,. It also emphasised its obligations to operate within the law.

#### *Consultation*

3.3 Key stakeholders were consulted as part of an environmental impact assessment required by law, and the department separately commissioned an economic benefits report, in order to market the benefits of the 3000-bed prison to the local community. No other public consultation took place and the social impact report did not envisage any negative impact on the community.

### *Social Impact*

3.4 The environmental assessment report proceeded on the assumption that the Department of Corrections will manage a 3000- bed prison in much the same way that it manages existing prisons, and with the same outcomes.

### *Mixed Security Classifications in a Maximum Security Prison*

3.5 There are however, three differences acknowledged in the report.

- (a) The prison will be built as a high security prison, but not contain high security prisoners,
- (b) It will hold a mix of remand and sentenced prisoners from high through to minimum security,
- (c) Prisoners with lower security classifications will be housed in high security accommodation units, but be 'managed with less restrictive conditions' consistent with the levels of risk they pose'.

### *Lack of Analysis*

3.6 There is no evidence of any in depth analysis about;

- a) The department's capacity and capability to manage a mega-prison;
- b) Whether mega-prisons will deliver the same level of outputs as smaller prisons;
- c) Whether a mega-prison will enable the Department of Corrections to fulfil its legal obligations under s.5 and s.6 of the Corrections Act 2004 and the Corrections Regulations
- d) The impact on the safety and well-being of prisoners.

### *Comparison with 2007 UK Titan Prisons Proposal*

3.7 This paper compares the Waikeria proposal with 2007 UK proposal by Lord Carter to build three 2,500 'Titan prisons', a proposal which generated significant public and professional opposition. Numerous submissions were made from criminal justice professionals and organisations which in summary, argued that:

- (a) On measures of safety, respect, purposeful activity and resettlement, smaller prisons were more effective than large prisons;
- (b) Harmful cultures are more likely to develop in larger prisons. Titan prisons were more likely to be unsafe and to require the use of force to control prisoners;
- (c) The distance of larger prisons from a prisoner's home, reduced capacity of family members to visit, and difficulty accessing rehabilitative services, will have a negative impact on rehabilitative and reintegrative processes,
- (d) The government should instead invest in good local community prisons which allow individuals to maintain family and community ties and have the ability to provide excellent support and interventions – prisons should not exceed 400 prisoners.

### *Family Visits to Prison*

3.8 The Waikeria report acknowledged that the most substantial negative effect would be the continued difficulty of visiting by families due to the rural nature of the site and lack of public transport. It recommended that PARS (Prisoners Aid and Rehabilitation) be encouraged to run buses from Rotorua or Whakatane, and that the department allow prisoners and families to communicate via AVL (audio visual link).

### *A High Security Prison for Minimum and Medium Security Prisoners*

3.9 Waikeria is set apart from other prisons in New Zealand, as it is proposed that:

- a) It will be constructed as a high security prison;
- b) It will hold a mix of remand and sentenced prisoners from high through to minimum security, (but no maximum-security prisoners);
- c) Prisoners with lower security classifications will be housed in high security accommodation units, but be 'managed with less restrictive conditions consistent with the levels of risk they pose'.

3.10 The above proposal breaches both Sections 5 and 6 of the Corrections Act 2004, and the Mandela Rules,

- (a) Sentences and orders must not be administered more restrictively than is reasonably necessary; (s.6(g) Corrections Act 2004);
- (b) Groups should be distributed in separate prisons suitable for the treatment of each group (Mandela Rule 89)
- (c) It is desirable to provide varying degrees of security according to the needs of different groups. (Mandela Rule 89)
- (d) Open prisons, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to the rehabilitation of carefully selected prisoners. (Mandela Rule 89)
- (e) Prisoners in closed prisons should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such prisons should not exceed 500. (Mandela Rule 89)

3.11 The effects of increased punitiveness, segregation, risk-informed logics, and narrow organisational understandings of the person on institutional behavior and dynamics are more likely to occur in a maximum-security setting.

3.12 A recent study of restraint and seclusion practices in New Zealand found that there was a high use of solitary confinement and restraint, often not used as a measure of last resort . It also found that

- (a) There were indications of a high level of risk aversion in the units visited, resulting in staff safety taking too much precedence over patients' and prisoners' comfort and rights. There appeared to be greater focus on control of individuals than on their treatment, and an anticipation of disruptive behaviour.<sup>2</sup>
  
- (b) Māori and Pacific Islanders made up approximately 80 per cent of Directed Segregations (Management units and Disciplinary segregation). By comparison, pākehā accounted for a mere 15 per cent of prisoners in Directed Segregation.<sup>3</sup>

3.13 The decision to operate the Waikeria prison within a maximum-security environment, is consistent with the increased use of administrative detention and solitary confinement within the prison system.

### *Conclusion*

3.14 In its submission to the Minister of Corrections, the department stressed that unless the 3000-bed prison was built, risks would include

- Reduced ability to ensure staff safety;
- Increased risk of violent, self-harms and suicide incidents;
- Inability to deliver effective rehabilitative initiatives;
- Reduced ability to respond to unexpected events
- Inability to house all prisoners in an environment and regime matched to their security rating and separate prisoners who are on remand to those who have been sentenced;

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<sup>2</sup> Ibid p.47

<sup>3</sup> Ibid p.26

- Reduced opportunity for prisoners to engage in prison employment; and
- Increased damage to facilities.<sup>4</sup>

3.15 The review of existing research indicates that if the mega-prison is built, it is more likely to:

- Increase the risk to staff;
- Increase risk of violent, self-harms and suicide incidents;
- Contribute to ineffective rehabilitative and reintegrative outcomes;
- Make it more difficult to house prisoners in accordance with their security rating;

3.16 The proposal to establish High Security Prison for Minimum and Medium Security Prisoners, breaches Sections 5 and 6 of the Corrections Act 2004, and the Mandela Rules.

### *Concluding Comments*

3.17 It is a defining moment in criminal justice history. There is significant pressure on the prison estate, but for the reasons set out in this paper, a mega-prison will not only reinforce a developing view of the corrections system as essentially punitive and ineffective, but seriously hinder the government's intention to reduce the prison population.

3.17 There may be a middle ground. If the government stands by its ideals and implements a progressive downsizing strategy immediately, it could take the pressure off the prison estate, to enabling a rethink about the sort of prison system it wants; one that aligns with our social values. That may necessitate a broader review of the criminal justice system, and a sector wide examination.

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<sup>4</sup> Ibid, p.19

## 4.0 Circumstances Leading to Decision to Build a Mega-prison

4.1 The prison population continues to hit new records, reaching 10,470 at the end of September 2017. It rose 23% between March 2014 and September 2017.

4.2 Using the July 2016 Justice Sector Forecast, the Department predicted that 1,700 additional prisoner places would be required across New Zealand's prison network by 2025. However, the July 2016 Justice Sector Forecast was outstripped by actual growth in the prisoner population. The actual prisoner population as at January 2017 was over 800 above the July 2016 forecast peak for that month.

4.3 The existing prison facilities at Waikeria accommodated approximately 650 prisoners. The department now proposes to continue operating the existing facility, and build a new prison for 2000 prisoners, with a reserve capacity to build a further facility for up to 350 prisoners if required - a 3000 bed prison.

4.4 The term 'mega-prison' is used to describe prisons which are exceptionally large – the Waikeria proposal qualifies. If built, it would initially house 25% of the national prison population and be almost three times larger than the current largest prison, Rimutaka, with 1067 prisoners. It is also larger than similar prisons elsewhere. The 2007 UK Titan concept included the proposed construction of three new prisons each housing 2,500 inmates. The largest UK prison at the time was HMP Wandsworth in London, with a 1,461 capacity.<sup>5</sup> In France, in 1992 it was decided to build a very large prison just outside Paris, to hold 2,700 people – still smaller than Waikeria.<sup>6</sup>

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<sup>5</sup> [https://en.wikipedia.org/wiki/Titan\\_\(prison\)](https://en.wikipedia.org/wiki/Titan_(prison))

<sup>6</sup> Evidence of Chief Inspector of Prisons, Anne Owers to the House of Commons Justice Select Committee in December 2007

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## 5.0 Reasons for Building a Mega-prison

### *Efficiency and Cost Effectiveness*

5.1 In its report to the Minister, the Department of Corrections reported that Waikeria Prison was considered the fastest and most cost-effective way of housing the growing number of inmates. Corrections could use land it already owned and a mega prison would provide operational efficiencies through pooling functions like security checkpoints and services like sewerage.<sup>7</sup> Alternative options for expansion – at Springhill (north Waikato) and Auckland Prison at Paremoremo, were ruled out.<sup>8</sup>

### *Safety and Security*

5.2 The department's report emphasises the consequences of not proceeding urgently with this matter. It identifies the possibility of threat to public safety, and outbreaks of violence and disorder within the prison population.

5.3 Risks associated with overcrowding include:

- Reduced ability to ensure staff safety;
- Increased risk of violent, self-harms and suicide incidents;
- Inability to deliver effective rehabilitative initiatives;
- Reduced ability to respond to unexpected events (for example, earthquakes or prisoner unrest) that result in prison facilities being unavailable;
- Inability to house all prisoners in an environment and regime matched to their security rating and separate prisoners who are on remand to those who have been sentenced;
- Reduced opportunity for prisoners to engage in prison employment; and
- Increased damage to facilities.<sup>9</sup>

5.4 The impact report goes to great trouble to reassure the community about the level of external security provisions, including perimeter fencing, use of technology, and so on.

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<sup>7</sup> Waikeria Prison Capacity Report, p.24

<sup>8</sup> Ibid pp 26-29

<sup>9</sup> Ibid, p.19

## *Lawfulness*

5.5 The report also emphasises its duty to operate within the law, and in accordance with rules set out in the Act and regulations made under the Corrections Act 2004, that are based, amongst other matters, on the United Nations' Standard Minimum Rules for the Treatment of Prisoners, (now known as the 'Mandela Rules'). It warned that as the capacity shortfall deepens, it will impact on the Department's ability to deliver its statutory obligations and core objectives.<sup>10</sup>

### **6.0 The Consultation Process**

6.1 Consultation was limited to a consideration of the environmental impact of the proposal and was undertaken as part of Boffa Miskell Ltd environmental report. It included a social impact assessment by Neil Quigley of Quigley and Watt Ltd. Potential service providers were questioned on their ability to meet increased demands, not on their view of a mega-prison. There was no other community wide consultation undertaken, and no evidence that the public were asked whether they wanted a 3000-bed prison in their neighbourhood. In the UK Titan consultation, 52 percent of people polled said government should build small, community prisons. Only 32 percent supported prisons of 2,500 inmates.<sup>11</sup>

6.2 The department also commissioned a report by Market Economics Limited, to assess the economic benefits of the new prison to the region. According to the report (which was widely published), the build will pump \$1.6 billion into the Waikato region over four construction years, 2018-2021. Corrections expect the \$1 billion new facility to employ 595 custodial staff and 335 prison support workers, creating a total of 930 fulltime equivalent – and on-going – jobs. Operating at full capacity, the 2000 prisoner facility is expected to spend on average \$150 million a year.<sup>12</sup>

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<sup>10</sup> Idem

<sup>11</sup> The Centre for Social Justice, YouGov polling, 19 January 2009.

<sup>12</sup> Andrea Fox, Prison extension would be massive for Waikato, Waikato Business News, 2<sup>nd</sup> November 2017

<http://wbn.co.nz/2017/11/02/prison-extension-massive-waikato/>

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6.3 The Department of Corrections did an excellent job of marketing the benefits of a mega-prison to the community, and the business community responded favourably. Waikato Means Business chairman Dallas Fisher is quoted;

*This is big. Very, very big. Put simply, people working on the build and later within the prison will need supermarkets and homes, their cars will need fuel and service, their houses will need tradespeople, their children will need schooling. They'll want to buy stuff. They'll want coffee. They'll want to eat out and socialise. They'll be spending.*<sup>13</sup>

6.4 There was also mention of the potential for Maori entities to benefit; "opportunities for Kingitanga and the wider Tainui confederation to work alongside Corrections in the expansion of Waikeria Prison to determine better outcomes for Maori."<sup>14</sup>

6.5 The environmental impact report, does not envisage any negative impact on the social wellbeing of the community; It concludes that:

(a) the proposed increase in capacity will have a neutral social effect on community way of life, stigma or fear;<sup>15</sup> and

(b) the proposed capacity increase ..... will have a positive social impact on the region.<sup>16</sup>

## **7.0 Business as Usual**

7.1 The environmental impact study, the social impact assessment, and the economic benefits report, all proceed on the assumption that the Department of Corrections will manage a 3000-bed prison in much the same way that it manages existing prisons, and with the same outcomes. Nor does the department's description of its proposed operation at Waikeria in the report differ markedly from its current operations.<sup>17</sup>

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<sup>13</sup> Ibid

<sup>14</sup> BIM December 2017, p.18

<sup>15</sup> Waikeria Prison Capacity Report p. 26

<sup>16</sup> Waikeria Prison Capacity Report p.104

<sup>17</sup> Waikeria Capacity Report, pp 35-38.

7.2 There are however, three differences identified in the report.

- (d) The prison will be constructed as a high security prison;
- (e) It will hold a mix of remand and sentenced prisoners from high through to minimum security.
- (f) Prisoners with lower security classifications will be housed in high security accommodation units, but be 'managed with less restrictive conditions consistent with the levels of risk they pose'.

7.3 The department explains: it is the facility that has the high security rating, not necessarily the prisoner inside it. The advantages of this is that high security accommodation can be managed to hold any type of prisoner, whereas low security accommodation cannot hold high security prisoners. This makes it an 'essential strategic asset' for the department. <sup>18</sup>

## 8.0 Adequacy of Environmental Impact Analysis

8.1 There is no evidence of any in depth analysis about;

- e) The department's capacity and capability to manage a mega-prison;
- f) Whether mega-prisons will deliver the same level of outputs as smaller prisons;
- g) Whether a mega-prison will enable the Department of Corrections to fulfil its obligations under s.5 and s.6 of the Corrections Act 2004 and the Corrections Regulations 2005 to improve public safety and contribute to the maintenance of a just society.
- h) The impact on the safety and well-being of prisoners.

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<sup>18</sup> Ibid p.35

8.2 It is there useful to compare the New Zealand proposal with that of the 2007 UK proposal to build a 2,500 Titan prison – 500 prisoners less than the NZ equivalent. The next section;

- (a) Describes the 2007 Titan proposal;
- (b) Relates responses to it from criminal justice professionals, community and key stakeholders;
- (c) Considers the evidence for the proposal.

## 9.0 The 2007 UK Titan Proposal

9.1 In his review of prisons for the Labour Government, Lord Carter recommended that, over and above the expansion of the prison estate already planned and in train, the Prison Service should provide a further 6,500 places to increase capacity by 2012. A large “Titan” prison should be part of this and another two Titan prisons should be provided as part of the modernisation of the prison estate, to remove inefficiencies.<sup>19</sup>

9.2 Lord Carter set out his vision of what a Titan prison would be. Amongst other things, each would provide up to 2,500 places in five units of approximately 500 offenders, draw on best practice, and be cost-effective, both in construction and operation.<sup>20</sup>

9.3 On the day of the publication of the Carter report, the then Justice Secretary, Jack Straw, announced that, along with other measures to increase the size of the prison estate, he had accepted the recommendation to build up to three Titan prisons.<sup>21</sup> A month later, in January 2008, the then Prime Minister, Gordon Brown, stated that the Titan prisons would go ahead after the Justice Secretary’s consultation, implying that the consultation would be about the detail rather than the principle.

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<sup>19</sup> Securing the Future: Proposals for the efficient and sustainable use of custody in England and Wales (Lord Carter’s Review of Prisons), December 2007: Executive summary: page 2

<sup>20</sup> Ibid pp 67-69

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9.4 Views from penal experts and Parliament attracted a lot of criticism – the Prison Reform Trust, called it a “gigantic mistake”.<sup>22</sup> The president of the Prison Governors’ Association (PGA) complained about the lack of consultation and expressed his concerns that Titan prisons would lead to an increase in prison "gang culture"<sup>23</sup>

9.5 In April 2008, thirty-four leading criminal justice organisations signed an open letter demanding Justice Secretary Jack Straw scrap the policy.<sup>24</sup> They warned that 'warehousing' up to 2,500 inmates in each of the jails was a recipe for disaster and would make it harder to rehabilitate criminals. Housing prisoners in smaller local prisons had a greater chance of success. Signatories include the Prison Officers Association, Prison Reform Trust, Liberty, Nacro, the International Centre for Prison Studies and Napo, the probation officers union.

9.6 Jon Collins, of the Criminal Justice Alliance, which co-ordinated the letter, said:

*“This demonstrates the widespread opposition to the plans for Titan prisons, yet the Government's consultation, which closes today, does not even ask the fundamental question of whether Titans should be built at all.”*

9.7 In giving evidence to the Justice Committee’s enquiry into effective sentencing, Anne Owers, HM chief inspector of prisons, cast doubt on the case for Titan prisons, pointing out that on measures of safety, respect, purposeful activity and resettlement, smaller prisons were more effective. The size of the prison, she suggested, could create a harmful culture, and that when a negative culture develops in large institutions it can affect very much the way they work.<sup>25</sup>

9.8 The Centre for Social Justice (CSJ), established by the former Conservative party leader Iain Duncan Smith, was similarly critical. In its report ‘Locked Up Potential’, the CSJ argued that Titan prisons were more likely than smaller prisons, closer to prisoners’ homes, to be unsafe and to require the use of force to control prisoners. Smaller prisons, on the other hand, were more likely to be effective in rehabilitating prisoners and reducing re-offending.<sup>26</sup>

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<sup>22</sup> Prison Reform Trust, Titan prisons: A gigantic mistake , August 2008: page 3

<sup>23</sup> Erwin James, Titan prisons could go wrong on a massive scale, The Guardian, 5 August 2008 [https://www.theguardian.com/society/2008/aug/05/prisonsandprobation1?CMP=share\\_btn\\_link](https://www.theguardian.com/society/2008/aug/05/prisonsandprobation1?CMP=share_btn_link)

<sup>24</sup> [www.dailymail.co.uk/news/article-1050090/Plans-Titan-prisons-recipe-disasterJack-Straw-told.html](http://www.dailymail.co.uk/news/article-1050090/Plans-Titan-prisons-recipe-disasterJack-Straw-told.html)

<sup>25</sup> Anne Owers in Justice Committee, Towards effective sentencing , 22 July 2008, HC 184-ii 2007-08: Q375-77

<sup>26</sup> The Centre for Social Justice, ‘Locked up Potential’, A Policy Report by the Prison Reform Working Group A New Zealand Mega-prison – will it work’ | Discussion Paper - Feb 2018 | Kim Workman Publicly available from [www.crimonologycollective.nz](http://www.crimonologycollective.nz) |

9.9 Locked Up Potential drew together some of the criticism of Titan prisons from parliamentarians, penal experts and pressure groups: Clive Martin, Director of voluntary sector umbrella body organisation Clinks, offered this concise critique of the model:

*The resettlement issues that will arise out of building Titan jails – including such basic things as location and distance from inmates’ home area, whom the jails hold, and what they seek to achieve – have undergone little or no discussion. They will be built miles from the services that prisoners need to access upon release, and the prisoners in them (like the prisoners in most jails) will have to rely on redundant communication methods that will make services even more difficult to access. It is hard to believe that if we, as a society, really took the National Offender Management System’s aim of rehabilitation seriously we would still build such prisons...*

*We hope government will instead consider a previous Home Secretary’s enthusiasm for small, community-rooted prisons:*

*We should aim to provide good local community prisons which allow individuals to maintain family and community ties and have the ability to provide excellent support and interventions...I see these prisons becoming far more engaged with their local communities and better at building relationships with a wide variety of other organisations.*

*Charles Clarke, then Home Secretary, addressing the Prison Reform Trust in 2005*

9.10 The HM Chief Inspector of Prisons produced evidence to show that smaller prisons are far more desirable and are proven to work better. She noted:

*Evidence shows that small prisons perform better than large ones. This year’s inspections show that large prisons are more likely to be unsafe and to need to rely more on force. More in-depth research shows that taking into account other variables, size is the most influential predictor of performance against the tests of safety and respect and overall that resettlement is best provided in prisons close to home.*

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<https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2016/08/CSJLockedUpPotential.pdf>

*These findings should underpin planning for the future of the prison estate. They reinforce concerns about the proposed huge Titan prisons and support the approach taken in the Corston report for smaller custodial settings where needed.*<sup>27</sup>

9.11 It is instructive to draw a comparison between the Carter review and the Corston review on vulnerable women in the criminal justice system.<sup>28</sup> In preparing her report Baroness Corston consulted widely and in an annex to her report she provides details of how she did so and who she consulted: an impressive list that takes up eleven pages. This is in clear contrast to Carter who thanks “all those who have contributed to my review” but gives no indication as to who they were.

9.12 The Prison Reform Trust, conducted a survey, using unpublished Inspectorate data, to demonstrate the superiority of smaller prisons over larger prisons.<sup>29</sup> It found that of the 154 prisons surveyed during 2006/07, large institutions were significantly less effective at ‘meeting prisoners needs and creating a healthy prison environment’. In two-thirds of the factors compared (102 out of 154) smaller prisons scored significantly better than large ones. In 38 of the 102 areas, the disparity exceeded ten percentage points. For 19 of the 24 factors concerning safety, small local prisons scored significantly better. For resettlement, small locals were better for 18 out of 28 compared and were worse for only one.

9.13 The Prison Reform Trust, in its comprehensive briefing ‘Titan Prisons: a gigantic mistake’,<sup>30</sup> drew together opposition to the Titans from the Chief Inspector of Prisons, the Prison Governors’ Association, Prison Officers’ Association, Chief Inspector of Probation, the Independent Prison Monitoring Board National Council, representatives of each of the three main political parties and the Criminal Justice Alliance.

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<sup>27</sup> Dame Anne Owers, 07/08, HM Chief Inspector of Prisons for England and Wales, Annual Report, London: HM Inspectorate of Prisons, January 2009, p7

<sup>28</sup> Corston, J. (2007) The Corston Report – A report by Baroness Jean Corston of a review of women with particular vulnerabilities in the criminal justice system, London: Home Office.

<sup>29</sup> Prison Reform Trust, Titan Prisons: a gigantic mistake, London: Prison Reform Trust, 2008, p8-9

<sup>30</sup> Prison Reform Trust, Titan prisons: A gigantic mistake (undated)

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## The Impact on Prison Culture

9.14 The Prison Reform Trust's view of the impact of large prisons on prison culture is concerning;

*The case for Titans is also undermined by its failure to recognise the importance of the extent to which prison staff can influence culture. The cost savings predicted for Titans are based on an assumption that a lower staff-prisoner ratio would be required, but these savings should be balanced against the significant added short- and long-term costs of an approach which uses fewer staff. High prisoner-to-staff ratios are linked to the predominance of a prisoner culture which encompasses widespread drug misuse and dealing; gangs; reliance on violence to regulate inter-prisoner conflict; norms against engagement with staff; a high tolerance of exploitation and threatening behaviour. These aspects of prisoner culture will be amplified in large institutions, particularly if staff cost reductions are pursued. Titans are likely to lead to an increased re-offending rate due to their inability to challenge and control prisoner culture.*

9.15 The briefing also quoted the views of Lord Woolf and criminologist Professor Alison Liebling: Lord Woolf in his seminal report on the prison system following the disturbances at Strangeways prison recommended prisons 'should not normally hold more than 400 prisoners ... the evidence suggests that if these figures are exceeded, there can be a marked fall off in all aspects of the performance of a prison'. Professor Alison Liebling, of the Institute of Criminology, University of Cambridge cited several analyses of prison life and quality and provided empirical support for the argument that "small is better".

## 10.0 Mega Prisons Elsewhere

10.1 The concept of a prison that will hold 2,500 was alien to the UK, but a survey showed that the largest prisons were often the most infamous. The United States have capacity which matches or exceeds this: Attica, with over 2,000 places; San Quentin with 5,000; the complex on Rikers Island which services New York City has space for 15,000 prisoners in ten prisons, the largest of which can hold 3,000 men. The largest prison in Western Europe is Fleury-Mérogis in Paris, with capacity for over 3,000 prisoners. It was built in the 1960s but the French have never built another prison of this size, despite having an extensive building programme. The current French

view is that prisons should not exceed 700 to 800 in size, and that Fleury-Mérogis was a mistake.<sup>31</sup>

## 11.0 By Way of Contrast

11.1 In March 2009, the Centre for Social Justice Prison Reform Review made a working visit to Slovenia to make assessment of its approach to the rehabilitation of offenders in custody.<sup>32</sup> The Review members visited the community prison in Koper, which held 130 prisoners and employed 68 staff. The prison, built next to a major shopping area at cost of Eur 8.1 million, holds both remand and convicted prisoners. The regime and environment clearly seeks positive personal change.

11.2 Following motivation and assessment work through the support of local employers and Social Service agencies, 47 prisoners live in semi-open conditions, undertaking work in the community on a daily basis.

11.3 After demonstrating a desire to rehabilitate, others are also given the opportunity to join their peers and to participate in similar schemes. Being rooted in the community, visiting arrangements and maintaining family relationships are much easier.

11.4 Weekly group meetings are held between prisoners and specialist staff, monthly meetings between prisoners and the senior management team (including the Director).

11.5 All such meetings enhance communication, understanding and relationships within the prison. Knowing all the prisoners within his care, the Director of the prison considers these meetings a critical element of his responsibility as Director. Prison officer training lasts for 6 months in Slovenia and all staff readily acknowledged their important role in leading prisoners toward personal change. Re-offending rates are currently measured at approximately 40 per cent within two years of release. This is a considerable improvement on re-offending rates of over 60 per cent for adult prisoners and 75 per cent for younger prisoners in England and Wales.

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<sup>31</sup> Andrew Coyle, (2008) *Taking Gods Name in Vain: Carter Mark 3*, Criminal Justice Matters, 71:1, 20-21, DOI: 10.1080/09627250801937561

<sup>32</sup> The Centre for Social Justice, 'Locked up Potential' p.100

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## 12.0 Titan Prison Proposal Abandoned

12.1 A consultation paper, Titan Prisons, was published in June 2008.<sup>33</sup> The summary of responses was published by the Ministry of Justice in April 2009. With it came the announcement that there would be no Titan prisons. The stated reasons overlapped with the potential difficulties identified by Lord Carter, the Prison Reform Trust and others:

*We have come to the conclusion that the additional risk, novelty and complexity involved in building 2,500 place prisons is likely to increase the cost. In addition, we believe they are unlikely to provide the correct environment in which to rehabilitate offenders.*<sup>34</sup>

## 13.0 Whānau and Family Relationships with Prisoners

13.1 The available evidence does not support the Waikeria proposal as viable. Simply put, mega-prisons do not work, particularly when prisoners are housed away from population centres, some distance from their family and whānau, and with inadequate public transport – making the cost of travel prohibitive for prison visits.

13.2 Family and whānau contact is critical to successful rehabilitation and reintegration, and as the evidence shows, mega-prisons perform poorly in both areas.

13.3 Quigley and Watt's social impact report acknowledges that for prisoners and their families, the most substantial negative effect will be the continued difficulty of visiting by families due to the rural nature of the site and lack of public transport. It recommends that the department investigate the extension of the PARS (Prisoners Aid and Rehabilitation) transport service from Rotorua to Waikeria Prison to Whakatane or Tauranga "if warranted based on prisoner numbers from those areas. It also recommends the department provides adequate facilities to allow certain

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<sup>33</sup> MoJ, Consultation Paper CP10/0

<sup>34</sup> MoJ, New Prisons Consultation Response, 27 April 2009, p3

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prisoners and families to communicate via AVL (audio visual link) in a “controlled environment”,<sup>35</sup> suggesting that private conversations may be monitored.

13.4 The department points out that a prisoner is entitled to receive at least one visitor each week for a minimum duration of 30 minutes – not including legal advisers or other authorised persons. Visiting hours are prescribed and managed – the visits are will be located within the inner security area, and visiting hours will be determined by prison management.<sup>36</sup> Experience overseas suggests that once AVL: is available, the next logical step is to restrict or even abolish face-to-face meetings between whānau and prisoners.

13.5 Section 6 states that the principles that guide the operation of the corrections system are that –

- (i) contact between prisoners and their families must be encouraged and supported, so far as is reasonable and practicable and within the resources available, and to the extent that this contact is consistent with the maintenance of safety and security requirements.

13.6 Prisoners at Waikeria will not have the same level of access or quality of whānau communication as in other prisons – a sign of things to come. On the basis of what is known, the Minister of Correction’s intention to "work with officials on how we can make education, rehabilitation and reintegration services in prisons more innovative and effective",<sup>37</sup> will be difficult in a mega-prison.

## **14.0 A High Security Prison for Minimum and Medium Security Prisoners**

14.1 Waikeria is set apart from other prisons in New Zealand, as it is proposed to that:

- d) The prison accommodation will be constructed as a high security prison;

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<sup>35</sup> Waikeria Capacity Report, p.59

<sup>36</sup> Ibid p.32

<sup>37</sup> David Fisher, *Corrections on 'disaster' footing as ballooning inmate numbers drove creation of a mega prison* N Z Herald, 23 February 2018

[http://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12000562](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12000562)

- e) It will hold a mix of remand and sentenced prisoners from high through to minimum security.
- f) Prisoners with lower security classifications will be housed in high security accommodation units, but be 'managed with less restrictive conditions consistent with the levels of risk they pose'.

14.2 This change in policy is unprecedented in New Zealand and deserves close examination. The nearest equivalent is in Canada, when in 2007 the Harper government, led by former Ontario Conservative corrections minister Rob Sampson, established a blueprint to overhaul the federal system, including the proposal to build mega-prisons, which would house more than 2,000 inmates at all security levels at one site.<sup>38</sup> The proposal to build maximum-security cellblocks inside medium security prisons in Ontario and Manitoba, was seen by observers as a move to create super prisons while avoiding public scrutiny and controversy.

14.3 A multi-level prison was problematic, according to Michael Mandelcorn, vice-president of the Canadian Prison Law Association. "You can't really run it as a multi-level," he said. "You run it as a maxi because you have to go with the highest denominator." He noted that inmates classified as minimum security at the multi-level Grand Valley women's prison in Kitchener, Ont., live behind a razor-wire topped fence.<sup>39</sup>

14.4 Kevin Grabowsky, president of the correctional officers' union, commented that it would be easy to move inmates up and down security levels a little easier without the need for an official transfer.

14.5 National prison ombudsman Howard Sapers, who normally had access to internal Correctional Service of Canada plans and documents, was unaware of the intent to put maximum-security units inside medium-security prisons. He responded,

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<sup>38</sup> Tripp, R. (2011, August 01). Government building de facto mega-prisons: Critics. *Postmedia News*, p. Postmedia News, Aug 1, 2011.

<sup>39</sup> Ibid

"This raises significant policy and operational issues. The service will have to ensure that the legal requirement to always utilize the least restrictive measure necessary will be adhered to."

14.6 Sapers was referring to Canada's corrections legislation and the UN Minimum Standards for the Treatment of Prisoners, now known as the Mandela Rules. In New Zealand, the issue is addressed in Sections 5 and 6 of the Corrections Act 2004.

14.7 Section 5 provides that the purpose of the corrections system is to improve public safety and contribute to the maintenance of a just society by –

(b) providing for corrections facilities to be operated in accordance with rules set out in this Act and regulations made under this Act that are based, amongst other matters, on the United Nations Standard Minimum Rules for the Treatment of Prisoners;

14.8 Section 6 states that the principles that guide the operation of the corrections system are that –

(g) sentences and orders must not be administered more restrictively than is reasonably necessary to ensure the maintenance of the law and the safety of the public, corrections staff, and persons under control or supervision:

14.9 The Mandela Rules stress the importance of 'normalising' the prison environment, and ensuring that prisoners should be separated through a classification process, with the least restrictive conditions providing the conditions most favourable for rehabilitation.

### **Rule 5 1.**

The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

### **Rule 89**

1. The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups. It is therefore desirable that such groups should be distributed in separate prisons suitable for the treatment of each group.

2. These prisons do not need to provide the same degree of security for every group. It is desirable to provide varying degrees of security according to the needs of different groups. Open prisons, by the very fact that they provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favourable to the rehabilitation of carefully selected prisoners.

3. It is desirable that the number of prisoners in closed prisons should not be so large that the individualization of treatment is hindered. In some countries it is considered that the population of such prisons should not exceed 500. In open prisons the population should be as small as possible.

14.10 The proposal to establish High Security Prison for Minimum and Medium Security Prisoners, breaches Sections 5 and 6 of the Corrections Act 2004, and the Mandela Rules.

## **15.0 Punishment and Rehabilitation in Maximum Security Settings**

15.1 The decision to operative the Waikeria prison within a maximum-security environment, is consistent with the increased use of administrative detention and solitary confinement within domestic prison systems. The meaning of punishment has been expanded in recent years to now include a variety of administrative sanctions outside of the formal sentencing process.<sup>40</sup>

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<sup>40</sup> Reiter, Keramet, and Alexa Koenig, eds. *Extreme Punishment: Comparative Studies in Detention, Incarceration and Solitary Confinement*. Springer, 2015.

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15.2 In a recent publication, Liebling describes prisoners accounts of their experience of the changing shape of high-security prisons in England, when the Home Office received reports of a new crisis of trust and recognition between prisoners and staff, and asked her to review the situation.<sup>41</sup> She repeated a research conducted in the same prison 12 years earlier, and found that an all-consuming ideology of risk and danger had squeezed out humanity and trust, which had been present and flowing in the first study, in 'guarded' but significant ways. Activities that permitted psychological growth among prisoners were now known as 'pampering' and so were restricted. Prisoners described experiencing crises of identity and survival, violence and the fear of violence, and religious and other forms of discrimination. They described being trapped: unable to access, or ineligible to take, the courses they were required to take in order to move on. They were 'too risky' to downgrade but not risky enough for intervention; and they were regarded as 'manipulative' if they engaged in positive behaviours.<sup>42</sup>

15.3 The new absence of trust, hope, and meaning had led to distancing from staff, inauthentic relations, and increased fear and violence in the prison compared to the situation as described only 12 years earlier.<sup>43</sup> The effects of increased punitiveness, segregation, 'risk-informed logics', and 'narrow organisational understandings' of the person on institutional behavior and dynamics are stark, widespread, and deeply troubling.<sup>44</sup> There was a clear link between dehumanizing penal policies and the dysfunctional and damaging social climate created when staff and prisoners are subjected to them.<sup>45</sup> A social shift toward risk aversion, and the 'atmosphere of suspicion', meant that staff were 'always on red alert'. Staff felt under pressure from intelligence units within the Prison Service and the police to investigate, monitor, and report on prisoners. Officers were required to observe and manage prisoners 'for intelligence' on a daily basis.<sup>46</sup>

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<sup>41</sup> Alison Liebling, A New 'Ecology of Cruelty'? The Changing Shape of Maximum-security Custody in England and Wales, in Reiter, Keramet, and Alexa Koenig, eds. *Extreme Punishment: Comparative Studies in Detention, Incarceration and Solitary Confinement*. Springer, 2015, pp 91-114

<sup>42</sup> Ibid p.93

<sup>43</sup> Liebling, A & Price, D 2001, The prison officer, Prison Service (and Waterside Press), Leyhill. 2nd edition completed February 2009

<sup>44</sup> Shalev, S 2009, Supermax: controlling risk through solitary confinement, Willan Publishing, Devon

<sup>45</sup> Haney, C 2009, Reforming punishment: psychological limits to the pains of imprisonment, American Psychological Association, Washington DC.

<sup>46</sup> Alison Liebling, A New 'Ecology of Cruelty'? p.95

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15.4 In that environment, it is a small step for prison officers to develop a fear and loathing of prisoners, and while all prisoners become 'objects of suspicion', those involved in gang activity, drug running, and of Maori and Pacific ethnicity, become special 'objects of suspicion'.<sup>47</sup> Any consideration of rehabilitative goals become subsumed by concerns about present and future 'vivid danger'.<sup>48</sup>

15.5 Prison staff at their best operate in a highly skilled and professional manner, distributing degrees and varieties of trust to many prisoners (choosing who to unlock, who to support, who to provide positive reports for, who to believe, and so on), and this form of trust is developed via enduring relationships with individual prisoners. This skilled use of discretion brings risks, but it is preferred to (that is, regarded as more legitimate than) blunt rule enforcement.<sup>49</sup>

15.6 As a result of continuous monitoring and assessment, self-censorship was an art form. Prisoners checked their demeanour, their contact with others, their networks, and their expressed emotional range. Every move had consequences. Those who had not learned the skills and self-control required to contain their frustration were doomed.<sup>50</sup>

## 16.0 The Shalev Report

16.1 There will be those who, reading the previous section, will quickly conclude that while such conditions and attitudes may exist in England and Wales, they do not apply in New Zealand. A recent review by Dr Sharon Shalev, of restraint and seclusion practices in New Zealand indicates that those conditions already exist.<sup>51</sup>

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<sup>47</sup> Simon, J 2001, 'Fear and loathing in late modernity: reflections on the cultural sources of mass imprisonment in the United States', *Punishment & Society* vol. 3, no. 1, pp. 21–33.

<sup>48</sup> Padfield, N 2002, *Beyond the tariff: human rights and the release of life sentence prisoners*, Willan Publishing, Devo

<sup>49</sup> Alison Liebling, *A New 'Ecology of Cruelty'?* p.97

<sup>50</sup> *Ibid*, p.102

<sup>51</sup> Sharon Shalev, *Thinking Outside the Box A Review of Seclusion and Restraint practices in New Zealand*, Human Rights Commission, 2017

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## 16.2 In summary it found:

- A high use of solitary confinement and restraint;
- Overrepresentation of ethnic minority groups in solitary confinement and restraint incidents;
- A small but persistent number of 'chronic' cases where solitary confinement and restraint were used for prolonged time;
- The placement in solitary confinement of people belonging to vulnerable groups;
- Impoverished physical environments for people who are secluded, segregated or isolated
- Indications that seclusion and restraint are not always used as options of last resort
- Concerns regarding the record keeping associated with seclusion and restraint in various settings
- Limited access to basic provisions
- Limited access to a confidential complaint mechanism

16.3 There were disturbing indications that the behaviour reported by Liebling and others in UK maximum security settings, are also present in New Zealand;

- (c) There were indications of a high level of risk aversion in the units visited, resulting in staff safety taking too much precedence over patients' and prisoners' comfort and rights. There appeared to be greater focus on control

of individuals than on their treatment, and an anticipation of disruptive behaviour.<sup>52</sup>

(d) New Zealanders of non-European descent were much more likely to be segregated compared to their counterparts of European descent. Between May and October 2016, Māori and Pacific Islanders made up approximately 80 per cent of Directed Segregations (Management units and Disciplinary segregation). By comparison, New Zealanders of European descent accounted for a mere 15 per cent of prisoners in Directed Segregation.<sup>53</sup>

## 17.0 Conclusion

17.1 In its submission to the Minister of Corrections, the department stressed that unless the 3000-bed prison was built, risks would include

- Reduced ability to ensure staff safety;
- Increased risk of violent, self-harms and suicide incidents;
- Inability to deliver effective rehabilitative initiatives;
- Reduced ability to respond to unexpected events
- Inability to house all prisoners in an environment and regime matched to their security rating and separate prisoners who are on remand to those who have been sentenced;
- Reduced opportunity for prisoners to engage in prison employment; and
- Increased damage to facilities.<sup>54</sup>

17.2 The review of existing research indicates that if the mega-prison is built, it will :

- (a) Increase the risk to staff;
- (b) Increase risk of violent, self-harms and suicide incidents;
- (c) Contribute to ineffective rehabilitative and reintegrative outcomes;

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<sup>52</sup> Ibid p.47

<sup>53</sup> Ibid p.26

<sup>54</sup> Ibid, p.19

(d) Make it more difficult to house prisoners in accordance with their security rating;

17.3 It is also clear that the proposal to establish High Security Prison for Minimum and Medium Security Prisoners, breaches Sections 5 and 6 of the Corrections Act 2004, and the Mandela Rules.

## **18.0 Concluding Comment**

18.1 Since at least the 1987 general election, New Zealand has been locked into a law and order bidding campaign, in which the major political parties compete every three years, to emphasis their commitment to crime control and punishment – longer prison sentences, the expansion of punishment, increased policing and the develop of punitive welfarism. This bidding war has been stimulated by neoliberal ideology.

18.2 The 2017 general election, however, was different. The Labour party declared that ‘neoliberalism was dead’ and it would reduce the prison population by 25% over the next 15 years. The National-led government on the other hand, prior to the election, accepted a tender to build a 3000-bed prison at Waikeria.

18.3 It is a defining moment in criminal justice history. There is significant pressure on the prison estate, but for the reasons set out in this paper, a mega-prison will not only reinforce a developing view of the corrections system as essentially punitive and ineffective, but seriously hinder the government’s intention to reduce the prison population.

18.4 There may be a middle ground. If the government stands by its ideals and implements a progressive downsizing strategy immediately, it could take the pressure off the prison estate, to enabling a rethink about the sort of prison system it wants; one that aligns with our social values. That may necessitate a broader review of the criminal justice system, and a sector wide examination. We are at the crossroads.

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