

# Chalk and Cheese

Australian vs. Norwegian Prisons

by Irina Dunn



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## EXECUTIVE SUMMARY

At a prisons Reintegration in Australia in 2017, former NSW Inspector of Custodial Services John Paget said that the \$3.8 billion expansion of NSW prisons, including 7,000 extra beds show “the expensive failure of public policy in Australia”.<sup>1</sup> This perspective provides a useful starting point for comparing prison retributive expansion in Australia with the successful rehabilitative justice systems in Norway and The Netherlands.

This comparison could not have taken place in 1984 when the Norwegian and Dutch prison systems were clearly similar to that in Australia today. However, new policies in the Netherlands that focus on rehabilitation and promote a reduction in the crime rate have allowed the successful closure of several prisons throughout the country.

Australia’s justice system, however, is based on retributive and deterrence-based practices. Rates of re-offending are high, with approximately 45% of inmates returning to prison within just two years.<sup>2</sup> Not only do high recidivism rates stretch prison resources and cause overcrowding, this rate of re-offending also increases the number of communities affected by crime.

The restorative justice models used in Norwegian and Dutch prisons have proven to reverse these negative effects and have created safer communities. A focus on education and social services better prepare inmates for life after prison and future social integration. Bastoy Prison governor and clinical psychologist, Arne Wilson, argues that prisons should simply deprive inmates of liberty rather than provide inhumane conditions that prevent them from functioning as part of society post-release.

The sentencing, confinement and public perception of the Norwegian Anders Breivik and the Australian Martin Bryant cases throw into stark relief the differences in the prison models, and, importantly, highlight areas for improvement in the Australian case.

This report will focus on these case studies, recidivism rates, and foreign prison experiences in order to highlight the differences between Australia and the prison models of Norway and the Netherlands, showing the potential for transformation and a revision of the way Australia’s justice system responds to crime.

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<sup>1</sup> Inspector of Custodial Services, Full House: The growth of the inmate population in NSW (April 2005) Department of Justice <http://www.custodialinspector.justice.nsw.gov.au/Documents/Full%20House%20-%20Final%20report%20April%202015.pdf>

<sup>2</sup> Sentencing advisory council, Released Prisoners Returning to Prison, 22/11/17, <https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/released-prisoners-returning-to-prison>

## **The Norwegian Prison System**

“Deprivation of liberty and nothing else”<sup>3</sup> is the main principle guiding the Norwegian prison system. Prisoners are given as much as possible in order to live a normal life, with only their liberty restricted.<sup>4</sup>

Norwegian prisons provide humane living conditions. Thus, inmates are allowed to talk to the media and to have access to television and other entertainment. Many prisons in Norway are equipped with televisions, computers, showers and sanitation, kitchens with sharp objects, and windows without bars. Prisoners are allowed to walk around unaccompanied as this autonomy will help them adapt to life when they are released. There is plenty of open space and fresh air, which reduces stress. Some Norwegian prisons have a Skype room where prisoners are allowed to call their families, which is a more effective form of communication than telephone calls. Some even have the option of spending weekends at home.<sup>5</sup> There are also computer courses that are designed to build skills in preparation for reintegration into society.<sup>6</sup>

Prisons are small and spread all over the country to keep prisoners close to their families and communities, which is essential for rehabilitation and reducing recidivism. If prison rules are broken, there is no immediate punishment but an investigation. Tom, a prisoner from Bastoy, says, “treat people like dirt and they will be dirt. Treat them like human beings, and they will act like human beings.”<sup>7</sup>

Prison life is designed to replicate normal life as much as possible.<sup>8</sup> This has had a significant impact as Norway has one of the lowest recidivism rates in the world, just 20% compared to the US, which has one of the highest rates of recidivism, with 76.6% of prisoners arrested just within five years of being released.<sup>9</sup>

### ***The transformation of Norwegian prisons***

In Norwegian prisons between the 1980s and early 1990s, there was little cooperation between inmates and corrective officers. This facilitated hostility between these two groups and encouraged criminogenic behaviour. Inmates took part in behaviour such as drug use and assault rather than participating in any form of rehabilitation, contradicting the purpose of what prison was designed for.

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<sup>3</sup> BBC, “Anders Breivik: Just how cushy are Norwegian prisons?” BBC, 16 March 2016, available at [www.bbc.com/news/magazine-35813470](http://www.bbc.com/news/magazine-35813470)

<sup>4</sup> *Ibid.*

<sup>5</sup> L. Slade, 2015, Foreign National Prisoners; best practice in prison and resettlement, available at [www.prisonwatch.org/assets/best-practices-fnp-2015.pdf](http://www.prisonwatch.org/assets/best-practices-fnp-2015.pdf)

<sup>6</sup> C. Sterbenz, “Why Norway’s Prison System is so successful,” 12 December 2014, *Business Insider*, available at [www.businessinsider.com.au/why-norways-prison-system-is-so-successful-2014-12?r=US&IR=T](http://www.businessinsider.com.au/why-norways-prison-system-is-so-successful-2014-12?r=US&IR=T)

<sup>7</sup> B. Dreisinger, “Norway Proves That Treating Prison Inmates As Human Beings Actually Works,” 3 August 2016, *Huffington Post*, available at [www.huffingtonpost.com/entry/norway-prison\\_us\\_578418b6e4b0e05f05232cb7](http://www.huffingtonpost.com/entry/norway-prison_us_578418b6e4b0e05f05232cb7)

<sup>8</sup> *Ibid.*

<sup>9</sup> C. Sterbenz, “Why Norway’s Prison System is so successful,” 12 December 2014, *Business Insider*, available at [www.businessinsider.com.au/why-norways-prison-system-is-so-successful-2014-12?r=US&IR=T](http://www.businessinsider.com.au/why-norways-prison-system-is-so-successful-2014-12?r=US&IR=T)

This incarceration model heightened psychiatric problems suffered by inmates as well as increased the likelihood of recidivism, which at that point was around 60-70%.<sup>10</sup> This also resulted in several riots, a high-record number of escapees, and the deaths of two prison officers between the 1980s and early 1990s.

Since then, the Norwegian prison system has undergone a significant transformation. These were outlined by Jan-Erik Sandlie, Deputy Director General for the Directorate of Norwegian Correctional Service.<sup>11</sup> Sandlie has played a key role in developing projects within the Norwegian correctional services, including the implementation of electronic monitoring, reducing the delay in the list of convicted criminals waiting to begin their prison sentence, and the planning of the Halden Prison in Norway.

The prison's reliance on incarceration as punishment, according to Sandlie, resulted from a lack of community-based or correctional alternatives.<sup>12</sup> There was no coordination between prison and probation organisations prior to inmate release. These downfalls created a reliance on prison and increased prison rates to an all-time high.

The introduction of restorative justice, "which aims to repair the harm caused by crime rather than punish people," as well as the import model, have paved the way for the transformation of the Norwegian prison system.<sup>13</sup> This new approach of a more open, progressive prison system encourages the idea of the rehabilitation of prisoners rather than punitive punishment.<sup>14</sup> The Norwegian import model is based on the premise that all citizens, including prisoners, have the right to education, work and health services, regardless of whether they are in prisons. Also emphasised is that services that are fundamental to prisoner rehabilitation should be delivered through local and community organisations and service providers.<sup>15</sup> The services include, educational, health, dental, library, religious, labour and welfare, substance abuse and psychiatric services. This not only makes the community accountable to an extent for inmates prior to release but also aids the reintegration process necessary to prevent future re-offending.

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<sup>10</sup> Jan-Erik Sandlie, "13th biennial Australasian Corrections Education Association" (Canberra, 6 October 2017)

<sup>11</sup> Jan-Erik Sandlie, "13th biennial Australasian Corrections Education Association" (Canberra, 6 October 2017)

<sup>12</sup> *Ibid.*

<sup>13</sup> Christina Sterbenz, "Why Norway's prison system is so successful" *Business Insider* (online), 12 December 2014, <https://www.businessinsider.com.au/why-norways-prison-system-is-so-successful-2014-12?r=US&IR=T>

<sup>14</sup> *Ibid.*

<sup>15</sup> Torfinn Langelid (1999), "The Sharing of Responsibility in the Rehabilitation of Prisoners in Norway: The Import-Model in Theory & Practice," *Journal of Correctional Education*, vol. 50, no. 2, pp. 52-61

The benefits of the import model include the establishment of service contact and early reintegration of prisoners back into the community. According to Sandlie, the involvement of the community in prison rehabilitation has seen the strengthening of connections and communication, unlike the previous punitive model of incarceration within Norway. It has not only improved the image of prisons and prisoners but also encourages long-term community participation, cooperation and social inclusivity.<sup>16</sup>

It is argued that the loss of liberty should be the only restriction placed on a prisoner during their incarceration, no other rights should be denied. Therefore, prisoners have access to services provided within the community and are not limited only to services provided by the prison.<sup>17</sup>

### ***Access to education, training and skill-building programs***

Norwegian prisons focus on keeping inmates engaged and educated so they can adapt to society on release.<sup>18</sup> They are provided with learning course work, open communication, and support networks, which include access to mental health professionals and other skilled support workers. There are also programs such as teaching prisoners how to cook.

The Norwegian government also works to secure a home, a job and access to a supportive social network for each inmate before release.

### ***Prison Studies***

Bastoy and Halden prisons are vying for the title of best in the world. They use a graduation system from high security to lower security, then to a halfway house before full freedom. They allow some prisoners to have breaks from incarceration, to take trips home and focus on reintegration into normal society.

#### **1. Halden Prison**

Described as a “prison utopia,” Halden is a maximum security prison, but is very liberal. There are no electric fences, although a tall concrete wall surrounds the prison and can be seen at all points. The architect Molden stated that the wall served as a symbol and instrument of punishment. No prisoners have ever tried to escape, and the isolation room, which includes a limb-restraining bed, has never been used. The prison operates as a “physical expression of an entire national philosophy about the relative merits of punishment and forgiveness”.<sup>19</sup>

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<sup>16</sup> Jan-Erik Sandlie, “13th biennial Australasian Corrections Education Association” (Canberra, October 6 2017) <sup>17</sup> Jan-Erik Sandlie, “13th biennial Australasian Corrections Education Association” (Canberra, October 6 2017)

<sup>17</sup> Australian Human Rights Commission, “Human Rights and Prisoners” (online), [https://www.humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRA\\_prisoners.pdf](https://www.humanrights.gov.au/sites/default/files/content/letstalkaboutrights/downloads/HRA_prisoners.pdf)

<sup>18</sup> *Ibid.*

<sup>19</sup> Jessica Benko, “The Radical Humaneness of Norway’s Halden Prison,” NYT, (online) 26 March 2015, <https://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html>

The facility aims to help inmates deal with psychological pressures. It is filled with natural terrain with trees and grass. The centre is designed according to dynamic security, a philosophy that sees interpersonal relationships between the staff and inmates as crucial to maintaining safety in the prison. Prison officers are encouraged to socialise with inmates, and prisoners are free to move around the grounds unaccompanied by guards.

The prison has normal furniture. There is steel cutlery in the kitchen and a music studio. Inmates have access to televisions and a beach volleyball court, and they prepare their own food. They can train for cooking certificates in the professional grade kitchen classroom. Every aspect of the prison is designed to help inmates prepare for life after imprisonment. Emphasising the feeling of safety within the prison, one inmate, Tom, stated the environment and availability of therapists made it easier to rehabilitate than in other prisons.<sup>20</sup>

## **2. Bastoy Prison**

Bastoy is an island prison which has a village-style setting. CNN once described Bastoy Prison as the “world’s nicest prison”. Situated on a picturesque one-square-mile island, Bastoy prison has no walls or fences and inmates have keys to their own rooms. Prisoners are allowed to freely walk around, dress like ordinary citizens and can ski, cook, play tennis, play cards, go to the beach, have access to an organic farm and run the ferry to and from the island. Only a handful of guards are left on the island at the end of the day and prisoners sometimes keep their jobs while serving time.<sup>21</sup> This is all part of Norway’s “pleasant-prison” philosophy.<sup>22</sup> The island houses approximately 115 inmates, and there are no problems of overcrowding.

### ***Culture***

The Norwegian government did not succumb to exploiting social anxieties after the Oslo terrorist attacks by Anders Behring Breivik; instead, it emphasised the importance of not being ruled by fear. Rather than being used to further the destruction of social bonds, state discourse about the Breivik case urged Norwegians not to turn their backs on the welfare policies that allow for Norway’s comparatively egalitarian social order. The language used by Norwegian government officials draws upon core societal values such as trust in the government, social solidarity, and overcoming fear. This response differed significantly from that deployed by US officials in the aftermath of 9/11, which was punitive in tone, emphasizing “evil enemies” and the establishment of a “with us or against us” dichotomy.

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<sup>20</sup> *Ibid.*

<sup>21</sup> Baz Dreisinger, “Norway Proves That Treating Prison Inmates As Human Beings Actually Works,” [www.huffingtonpost.com/entry/norway-prison\\_us\\_578418b6e4b0e05f05232cb7](http://www.huffingtonpost.com/entry/norway-prison_us_578418b6e4b0e05f05232cb7)

<sup>22</sup> Gilmore, *Why would You Ever Leave?* (Publishers’ Development Corporation, 2015) Vol. 60



Norway has high employment rates, high quality of life, highly ranked education, low poverty rates, low-income inequality, and does not have a penal culture. Social policy emphasises access to health care, education, parental leave and child care to promote the benefit of society as a whole. These contribute to Norway's more community-orientated and socially inclusive cultural orientation. It has also been stated by scholars that the overall fear of crime in Scandinavian countries ranks the lowest of the European nations. Furthermore, there is a high level of trust within the community, as Statistics Norway found in 2011, when ranked on a scale of 0 to 10, the average rating is 7.3, which indicates a strong trust in others.

Norway and other Scandinavian countries have a slogan that "good social policy is the best criminal policy," and this has led them to believe that most crime is the result of a failure of citizen integration.

Commenting on the response of the Norwegian people in the days after the atrocities committed by Breivik, Pratt and Eriksson<sup>23</sup> observe that people focused on solidarity, democracy and unity instead of demanding "savage recrimination from the state" and the death penalty for Breivik.

Similarly, Norwegian criminologist Nils Christie comments, "What has happened is a catastrophe that can only be met by holding on to the foundational values of Norwegian society. If we abandon those, then Breivik has achieved something."<sup>24</sup>

### ***Analysing Government talk***

One way to better understand the Norwegian response to the Breivik case is to review what agents of the government had to say. Analysis of political discourse not only provides a window into how the government wishes to portray itself, it also aspires to set the tone for media discourse and public opinion.

Trust and confidence in the government, social cohesion and inclusiveness, and over-coming fear have all been identified as social attributes which might help to constrain punitive, hasty reactions to crime and tragedy. Government talk surrounding the Breivik case highlights these constraints on punitiveness. This is consistent with the predominance of language calling for restraint in the handling of the Breivik case.<sup>25</sup>

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<sup>23</sup> J. Pratt and A. Eriksson (2013) *Contrasts in Punishment: An explanation of Anglophone excess and Nordic exceptionalism*, p. 208

<sup>24</sup> *Ibid.*

<sup>25</sup> K. Waggoner, "What can Government Talk Tell Us about Punitiveness? The Case of Norway Post 22 July 2011," (2015) 15 *Criminology & Criminal Justice* 186

## **The Dutch Prison System**

In the Netherlands, there is a falling crime rate, with the Dutch Ministry of Justice suggesting that crime will drop by 0.9% a year over the next five years, beginning from 2016. In turn, this will cause prisons to close.

So what's the cause of this rather desirable crisis they're having in the Netherlands? The drop in crime and prison sentences has been attributed to an older population, which is less likely to commit crime, and a rapid decrease in violent offences.<sup>26</sup> Rather than focusing on a punitive justice system, Dutch authorities have changed the paradigm to emphasise rehabilitation, and have built facilities that assist the reintegration of inmates when they are released back into society.

The Dutch penal system focuses on diversion and non-custodial penalties, such as community service orders, fines and electronic tagging. This enables those who have broken the law to still keep their jobs and stay with their families. This helps to keep them connected with society and away from the negative effects of incarceration. This reliance on non-custodial penalties has resulted in a mere 10% of offenders being sent to prison, and judges are handing out shorter prison sentences when required.

The Netherlands also keeps inmates engaged in their own communities as they retain the right to vote, and do not face punitive measures such as voting bans and restrictions on employment, housing and public assistance. Conversely, inmates in the USA face these restrictions, which increases the likelihood of re-offending.<sup>27</sup> The Netherlands does, however, reserve imprisonment for those who are perceived to be too dangerous or vulnerable to live among the general population.<sup>28</sup>

### ***Facilities, opportunities, programs and staffing***

In order to ensure that the only punishment in prison is a lack of liberty, proper facilities, opportunities and programs are provided. For example, prisoners are given proper beds rather than concrete slabs with a thin level of padding, as used in other prisons around the world. There are bar-less windows, open spaces, fresh air and wide hallways. Prisoners are also afforded privacy, and correctional officers must knock on doors before entering cells or rooms. Prisoners are also unaccompanied while walking around so as to provide them with greater autonomy.

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<sup>26</sup> Senay Boztas, "Netherlands doesn't have enough criminals to fill its prisons as crime to drop," 22 March 2016, *The Telegraph*. Accessed from [www.telegraph.co.uk/news/worldnews/europe/netherlands/12201375/Netherlands-doesnt-have-enough-criminals-to-fill-its-prisons-as-crime-to-drop.html](http://www.telegraph.co.uk/news/worldnews/europe/netherlands/12201375/Netherlands-doesnt-have-enough-criminals-to-fill-its-prisons-as-crime-to-drop.html) on 8 December 2016

<sup>27</sup> The Editorial Board, "Lessons from European Prisons," *The New York Times* (7 November 2013). Accessed from [www.nytimes.com/2013/11/08/opinion/lessons-from-european-prisons.html](http://www.nytimes.com/2013/11/08/opinion/lessons-from-european-prisons.html) on 5 December 2016.

<sup>28</sup> Paul Gregoire, "The Netherlands Closes Prisons, While Australia Builds More", Sydney Criminal Lawyers, (online, 16 November 2016), <http://www.sydneycriminalawyers.com.au/blog/the-netherlands-is-shutting-down-prisons-while-australia-is-building-more/>

There are Drug Addiction Treatment Programs, Anger Management Programs and Debt Counselling, as well as education programs and vocational courses that can help detainees after they are released back into society.

Prisoners are allowed to wear their own clothes, decorate their own rooms, cook their own meals and are paid for work they complete. Inmates are allowed visits with family and friends, and this continued connection has been shown to reduce re-offending.

The Dutch prison system adopts a “therapeutic culture” and so prison staff mainly comprised social workers, mental health professionals and attorneys. Prison workers receive extensive training before working in Dutch prisons. This training is not merely in prison security but also in educational theory and conflict management.

### ***Length of sentences and imprisonment rates***

Dutch prisons view incarceration as a last resort and prefer the use of alternative approaches, such as the use of ankle bracelet monitoring systems, community service, fines and probation. With incarceration rates of less than 10% of convicted offenders, in comparison to 70% in the US, this method has resulted in the overall prison population declining by 27% between 2011 and 2015.<sup>29</sup>

### ***Youth detention***

Dutch prisons offer a range of intensive programs, with counselling, education and parental support. Scandinavian prisons hold hardly anyone under 18, which is also likely to reduce the potential for bullying and sexual assault.

### ***Focus on crime prevention***

There is a heavy reliance on crime prevention, with prisons offering drug addiction treatment programs, anger management programs and debt counselling in a bid to reduce recidivism.

### ***Recidivism***

The Netherlands has a unique policy towards persistent re-offenders, who receive two-year sentences with tailor-made rehabilitation programs. This has resulted in a less than 10% recidivism rate. A 2007 report on recidivism released by the US Department of Justice found that strict incarceration actually increases offender recidivism, while facilities that incorporate “cognitive-behavioural programs rooted in social learning theory” are the most effective at keeping recurring offenders out of jail.<sup>30</sup>

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<sup>29</sup> Christopher Moraff, “Can Europe offer the U.S. a model for prison reform?” (19 June 2014) *Next City*. Accessed from [nextcity.org/daily/entry/us-prisons-reform-european-prisons-model](http://nextcity.org/daily/entry/us-prisons-reform-european-prisons-model) on 5 December 2016

<sup>30</sup> Christina Sterbenz, “Why Norway’s prison system is so successful”, *Business Insider Australia*, (online, 12 December 2014, [www.businessinsider.com.au/why-norways-prison-system-is-so-successful-2014-12?r=US&IR=T](http://www.businessinsider.com.au/why-norways-prison-system-is-so-successful-2014-12?r=US&IR=T))

## ***Problems / Criticisms***

Dutch policing reforms over the past few years have led some to question the effectiveness of the rehabilitative justice policy. In addition, the Vught prison built in 1990 to address the escapee crisis the prison system was facing has met with significant criticism. The decision to build the supermax prison was controversial in itself as the so-called special security units (SSUs) already in place were not as secure as expected and the prison system was viewed negatively by society as incompetent, lacking in discipline and security. The rationale behind a supermax facility is to segregate the most dangerous inmates to protect prison staff and the general prison population, and also to deter other inmates from committing criminal acts within the facility walls.<sup>31</sup> In stark contrast to the majority of the Netherland's humanitarian oriented prisons, the supermax facility follows strict rules based on the belief that prisoners need to live a structured life.

The aim of detention in this case is to protect society from convicted criminals, not to rehabilitate them back into society. Prisoners are entitled to basic amenities, personal safety and respectful treatment but educational or recreational programmes are offered only to selected well-behaved prisoners, rather than to the entire prison population.

Staff believe inmates are able to cope with such conditions, and psychologists describe inmates here as suicidal, a walking time bomb, depressives, lacking self-appreciation, tense and lazy, lonely and psychologically hard and aggressive. This further reinforces arguments made by academics that the extreme security measures adopted by supermax prisons pose dangers to the psychological health and wellbeing of inmates. The European Commission for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment's 1998 report heavily criticised the supermax prison regime.<sup>32</sup>

## **The Australian Prison System**

The underlying principle governing the Australian penal system, in contrast to that of Norway's and the Netherlands' is retribution and deprivation. Australia has higher recidivism rates and is more focused on locking up offenders and punishing them than on keeping them out of the system and rehabilitating them.

NSW has the highest state prison population at 12,729 as of September 2016. This represents an increase of over 21% between 2014-2016.<sup>33</sup> In NSW, 48% of inmates returned to prison within two years, contributing to the rise of the prison population.

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<sup>31</sup> Fellner & Mariner in Jesenia Pizaeo & Vanja M.K. Stenius, 'Supermax Prisons: Their Rise, Current Practices, and Effect on Inmates' (2004) 84.2 *The Prison Journal*

<sup>32</sup> Arjen Boin, "Securing safety in the Dutch prison system: pros and cons of a supermax," *The Howard Journal of Criminal Justice*, (November 2001)

<sup>33</sup> Rachel Olding, "Call for complete rethink as prison population, recidivism explode", *Sydney Morning Herald* (online, 19 February 2016, <http://www.smh.com.au/nsw/recidivism-20160218-gmxmog.html>)

Australia's tough stance on crime is overcrowding the prison system and costing taxpayers approximately \$3.8 billion a year. The issue is extensive, with reports of inmates sleeping on mattresses on the floor and in foldout beds in Queensland, Victorian and South Australian facilities. Overcrowding results in increased violence inside prisons, amongst prisoners themselves and between prisoners and guards.<sup>34</sup> As the NSW Auditor-General's Report notes in 2015, "overcrowding of correctional centres can negatively impact all aspects of custodial life, and ultimately result in higher re-offending rates".<sup>35</sup>

In NSW, a reported decrease in crime rates was accompanied by a 7% increase in prison population, highlighting the dismal failure of imprisonment as an effective deterrent. Furthermore, contrary to the NSW Department of Corrective Service's goal of reducing adult rates of re-offending by 5% by the year 2019, the rate of adult re-offending has continued to climb.<sup>36</sup> The NSW Auditor-General's Report found a 35.9% rate of recidivism within one year of release in 31 December 2013. This rate of re-offending notably increased to 45.8% by 30 June 2014, within two years of release. These rates are not limited to NSW and, as shown below, demonstrate a national upward trend in adult re-offending, a clear indication that the prison system is not achieving the aim of reducing recidivism. This is further elucidated by the national imprisonment rate increasing by 6% over the 2015-16 period.

The strain on prison infrastructure and services has resulted in deteriorating prisoner health conditions and rising incidents of self-harm. As the inmate / parole officer ratio increases, the attempt to rehabilitate and reintegrate prisoners into society has become more difficult. In contrast, Dutch prisons employ numerous social workers, mental health professionals and lawyers to support prisoner rehabilitation.<sup>37</sup>

The consequences of overcrowding of prisons includes, but is not restricted to, reduced access to adequate support and education opportunities. The NSW prison system, for example, sometimes houses three inmates per two-man cell, with more than 50 inmates sharing a phone.<sup>38</sup>

Meanwhile, Queensland's prison population increased by 20% in 2014 and 2015, resulting in 1,600 prisoners sharing cells.<sup>39</sup> In the ACT, 46 detainees were housed in the 30-bed centre.<sup>40</sup>

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<sup>34</sup> Jess Lodge and Dominic Cansdale, 'Prison overcrowding blamed for spike in serious assaults at Maryborough prison', *ABC News*, (online) 14 October 2016, <<http://www.abc.net.au/news/2016-10-14/maryborough-prisoners-in-hospital/7932172>>

<sup>35</sup> Audit Office of New South Wales, *New South Wales Auditor-General's Report: Financial Audit*, Volume 7 (2015)

<sup>36</sup> Bureau of Crime Statistics and Research, "Re-offending statistics for NSW", NSWBOSSCAR, [http://www.bocsar.nsw.gov.au/Pages/bocsar\\_pages/Re-offending.aspx](http://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Re-offending.aspx), 10 October 2017, viewed on 21 October 2017

<sup>37</sup> Debra Killalea, "The Netherlands to close more prisons: Here's what Australia could learn", *News.com.au*, (online, 3 August 2016), <http://www.news.com.au/lifestyle/real-life/news-life/the-netherlands-to-close-more-prisons-heres-what-australia-could-learn/news-story/5788f56ffdba69555254d4276c262406>

<sup>38</sup> Inspector of Custodial Services, Full House: The Growth of the Inmate Population in NSW (April 2005, Department of Justice)

<sup>39</sup> "Australia's Prison Overcrowding Epidemic," 4 June 2015, O'Brien Solicitors, available at [obriensolicitors.com.au/australias-prison-overcrowding-epidemic/](http://obriensolicitors.com.au/australias-prison-overcrowding-epidemic/)

<sup>40</sup> C. Knaus, "New prison centre full one month after opening as overcrowding crisis continues," 28 December 2015, *The Canberra Times*, <http://www.canberratimes.com.au/act-news/new-prison-centre-full-one-month-after-opening-as-overcrowding-crisis-continues-20151221-glscmk.html>

In Victoria, prisoners were forced to sleep on foldout beds in common rooms and visiting areas for more than a year. The Police Union reported that overcrowding leads to an increase in prisoner tension, which means gaining the cooperation of prisoners is much more difficult. This has led to an increase in violence and escapes.<sup>41</sup>

In South Australia, a bed shortage was forcing “unsuitable prisoners” into the low and medium-security Mobilong Prison, which was a risk for prison guards.

In Western Australia, the Office of the Inspector of Custodial Services has called for a new prison to be built as “the system is already unsustainably stretched.”<sup>42</sup>

According to Auditor-General, Tony Whitfield, overcrowding has undermined confidence in the justice system and the effectiveness of prisons. His report outlines the ineffectiveness of Corrective Service NSW’s (CSNSW) performance framework.<sup>43</sup> Specifically, from 2014-15, only five of 12 organisational targets of public correctional centres were met. Targets that were not met include no prisoner-on-prisoner assaults and eight hours’ time out of cells for inmates in secure facilities.<sup>44</sup>

In response, the NSW government’s Better Prisons reform program, which commenced in March 2016, aims to address these issues. The program seeks to lift standards and strengthen accountability of prisons by requiring NSW prisons to meet performance targets. The project is designed so that rates of recidivism are reduced, community protection is increased, and prison standards are lifted.<sup>45</sup>

For example, under the program, the NSW government’s \$3.8 billion investment over four years will create thousands of new beds for inmates in the state’s prison system in response to increasing inmate numbers. Already this has funded the delivery of an extra 1,500 beds within existing prisons.<sup>46</sup> One can only ask why Australian governments focus on building prisons when Scandinavian governments are closing them. Is it because Australia’s convict past is genetically inheritable, or does it have something to do with prevailing cultural attitudes?

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<sup>41</sup> McGhee, A. Victorian prisons: Violence, escapes linked to overcrowding, report finds, ABC. 16 March 2015, available at <http://www.abc.net.au/news/2015-03-16/violence-and-escapes-in-victorian-prisons-linked-to-overcrowding/6322620>

<sup>42</sup> Wildie, T., “Lack of dignity in double-bunked WA prison cells, report finds,” ABC, 19 December 2016, available at [www.abc.net.au/news/2016-12-19/wa-prisons-overcrowded-cells-inadequate-report-finds/8133278](http://www.abc.net.au/news/2016-12-19/wa-prisons-overcrowded-cells-inadequate-report-finds/8133278)

<sup>43</sup> Audit Office of New South Wales, “Performance frameworks in custodial centre operations”, (online, 3 March 2016), <http://www.audit.nsw.gov.au/publications/latest-reports/performance-frameworks-custodial-centre-ops>

<sup>44</sup> [www.justiceaction.org.au/images/Media\\_Release\\_Performance\\_frameworks\\_custodial\\_centre\\_operations\\_3\\_March\\_2016.pdf](http://www.justiceaction.org.au/images/Media_Release_Performance_frameworks_custodial_centre_operations_3_March_2016.pdf)

<sup>45</sup> 23 March 2016, available at <http://www.justice.nsw.gov.au/Pages/media-news/news/2016/better-prisons-program-announced.aspx>

<sup>46</sup> CSNSW, Better Prisons, available at [www.correctiveservices.justice.nsw.gov.au/Documents/CSNSW%20Fact%20Sheets/Better-prisons-overview.pdf](http://www.correctiveservices.justice.nsw.gov.au/Documents/CSNSW%20Fact%20Sheets/Better-prisons-overview.pdf)

Furthermore, the Better Prisons reform program will introduce a new service delivery model for the provision of education and vocational training to inmates. The aim is to more than double the number of inmates completing literacy and numeracy courses and increase participation in vocational education and training activities by 20%. This is directed towards helping them gain employment and reintegrate into society upon release.<sup>47</sup>

## The United Kingdom Prison System

Between 1990 and 2015, the United Kingdom's prison population increased by over 90%, meaning an average increase of 3.6% per annum.<sup>48</sup> This increase has dramatically contributed to the overcrowding of prisons in England and Wales where, as of February 2015, it was found that 60% of prisons were overcrowded.<sup>49</sup> The rise in prison population has been partially attributed to historical perspectives of being "tough on crime,"<sup>50</sup> which have resulted in a dramatic increase of criminal justice legislation since 1994.<sup>51</sup>

Between 2011 and 2012, there was a fall in inmate numbers due to measures such as the *Legal Aid Sentencing and Punishment of Offenders Act (2012)* that reduced the remand for young offenders.<sup>52</sup> This fall in inmate numbers in the under-21 age group accounted for three-quarters of the fall in the total prison population.<sup>53</sup> There was also a decrease in the duration of imprisonment, especially in sentences of six months or less.<sup>54</sup>

However, the prisoner population has remained stable in recent years, not rising more than 1.3% during consecutive months.<sup>55</sup> In June 2015, around 25.5% of the inmates lived in overcrowded cells designed for fewer people; this means that 70 of the 117 prisons in England were overcrowded.<sup>56</sup> These percentages serve to prove that the rate of inmate intake has been stable because most of the prisons in UK are overcrowded and cannot hold any more prisoners. Statistics forecast a rise in custodial sentences (from 85,977 in 2015 to 86,700 by June 2016),<sup>57</sup> but rates of imprisonment have not risen because there is no space for further inmates and no further jails have yet been built.

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<sup>47</sup> *Ibid.*

<sup>48</sup> Grahame Allen and Noel Dempsey, "Prison Population Statistics" (House of Commons Library, July 2016). Briefing paper number SN/SG/0434

<sup>49</sup> *Prisoner Population And Overcrowding: Key Issues For The 2015 Parliament* (2016) UK Parliament [www.parliament.uk/business/publications/research/key-issues-parliament-2015/justice/prisoner-population/](http://www.parliament.uk/business/publications/research/key-issues-parliament-2015/justice/prisoner-population/)

<sup>50</sup> Grahame Allen and Noel Dempsey, "Prison Population Statistics" (House of Commons Library, July 2016). Briefing paper number SN/SG/04334

<sup>51</sup> *Ibid.*

<sup>52</sup> Table 2.1a Ministry of Justice (2013) Offender Management Statistics Quarterly Bulletin July to September 2012, London: Ministry of Justice, and full report text

<sup>53</sup> MoJ Offender management statistics quarterly

<sup>54</sup> MoJ Offender management statistics quarterly

<sup>55</sup> Grahame Allen and Noel Dempsey, "Prison Population Statistics" (House of Commons Library, July 2016). Briefing paper number SN/SG/04334

<sup>56</sup> Ministry of Justice (2015) *Monthly population bulletin*, March 2015, London: Ministry of Justice

<sup>57</sup> UK Government, "Prison Population Projections 2015-2021 England and Wales," *Ministry of Justice Statistics Bulletin*, 26 November 2015

Along with political pressure to be “tough on crime”, prisons are overcrowded in part because of harsher sentencing and the application of “indeterminate” life sentences. This tendency has risen by 40% since June 2002, encouraged by the belief that short prison sentences are less effective.<sup>58</sup>

Even though the numbers of incarcerated have increased, according to the UK National Audit Office, there is no consistent correlation between the level of crime and rates of imprisonment.<sup>59</sup>

### ***Re-offending and rehabilitation***

Since people who have already been through the criminal justice system commit around half of crimes in the UK,<sup>60</sup> the government has created alternatives to imprisonment which have focused on reducing recidivism rates. These alternatives include community sentences, which aim to keep low-risk offenders out of the prison system, as well as treatments and programs that will identify why the offender has committed a crime, and how its repetition can be stopped.

Imprisonment of mothers for non-violent offences has cost the state over 17 million pounds in a decade due to the increased likelihood of their children committing criminal offences as well.<sup>61</sup>

Prisons lack an effective record for reducing re-offending, since 47% of adults are reconvicted within a year of release, while an appallingly high 73% of children re-offend within a year.<sup>62</sup>

Networks formed in prison are also a topic of research. The formation of like groups in prison can continue after release, and prisoners stuck in these networks are more likely to re-offend. Peer pressure plays an important role, especially when ex-prisoners are confronted with unemployment and the scarce possibilities of finding a decent job.

As mentioned above, according to the UK National Audit Office, there is no consistent correlation between the level of crime and rates of imprisonment.<sup>63</sup> Thus, less harmful alternatives can be used to achieve the same objective: to prevent crime and re-offending.

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<sup>58</sup> UK Government, “Story of the Prison Population: 1993-2016 England and Wales,” Ministry of Justice, July 2016

<sup>59</sup> National Audit Office (2012) *Comparing International Criminal Justice Systems*, London: National Audit Office

<sup>60</sup> UK Government, “2010 to 2015 Government Policy: Reoffending And Rehabilitation,” Home Office and Ministry of Justice 2015

<sup>61</sup> Prison Reform Trust, “Why focus on reducing women’s imprisonment?,” July 2015

<sup>62</sup> Prison: the facts, 2013, Prison Reform Trust, available at [www.prisonreformtrust.org.uk/portals/0/documents/prisonthefacts.pdf](http://www.prisonreformtrust.org.uk/portals/0/documents/prisonthefacts.pdf)

<sup>63</sup> National Audit Office (2012) “Comparing International Criminal Justice Systems,” London: National Audit Office



Under the *Criminal Justice Act 2003*, the “generic community sentence” was adopted as a means of rehabilitation through tailored flexible sentencing measures that matched the needs of the offender. Many of these measures have included an education or skills base which is integral to post-release success and reducing recidivism.<sup>64</sup> Education is important because rates of recidivism are considerably lower for prisoners undertaking post-secondary education programs. In Norway, where internet access is permitted in cells, recidivism rates are as low as 20%. In New Zealand, educational programs are helping to reduce recidivism by 11%.<sup>65</sup>

Community sentences have received a positive response, as it was found that reconviction rates were 14% lower compared to offenders who served jail time.<sup>66</sup> Community sentences are a form of restorative justice, which emphasises the need to repair harm to victims, to restore community relationships, and to help improve the attitudes, behaviour and relationships of offenders. The courts’ practice of ordering community sentences over custodial sentencing is becoming common due to the overcrowding of prisons. Community sentences of one year have been proven to be 8.3% more effective in reducing recidivism than custodial sentences of less than 12 months (in cases of similar offences).<sup>67</sup>

The Government established the 2010-2015 intelligent sentencing frameworks in an attempt to focus on rehabilitation to break the cycle of crime.<sup>68</sup> The aims of the frameworks were to reduce re-offending, the number of victims and the cost of imprisonment to taxpayers.

The framework introduced three new bills; the Offender Rehabilitation Act, the Legal Aid, Sentencing and Punishment of Offenders Act (2010-2012) and Crime and Courts Act.<sup>69</sup> The framework’s measure, “Payments by Results” (PbR), in which the government invests only in public service providers that generate better results in terms of rehabilitation programs,<sup>70</sup> has seen an 11% fall in recidivism rates after they were introduced.<sup>71</sup>

In terms of offenders’ rehabilitation, the PbR scheme will, by 2017, direct funding to the Transforming Rehabilitation programme,<sup>72</sup> in which offenders sentenced to less than 12 months’ prison will be supervised by community rehabilitation companies, which are mostly privately led.<sup>73</sup>

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<sup>64</sup> Robert Verkaik, “The Big Question: What are the alternatives to prison, and do they work?” *The Independent* (online), 9 October 2006, <http://www.independent.co.uk/news/uk/crime/the-big-question-what-are-the-alternatives-to-prison-and-do-they-work-5330852.html>

<sup>65</sup> A. Antonio and H. Farley, “Offline inmates denied education and skills that reduce re-offending,” 24 April 2015, *The Conversation*, available at [theconversation.com/offline-inmates-denied-education-and-skills-that-reduce-re-offending-38709](http://theconversation.com/offline-inmates-denied-education-and-skills-that-reduce-re-offending-38709)

<sup>66</sup> Robert Verkaik, “The Big Question: What are the alternatives to prison, and do they work?”, October 2006, *The Independent* (online), <http://www.independent.co.uk/news/uk/crime/the-big-question-what-are-the-alternatives-to-prison-and-do-they-work-5330852.html>

<sup>67</sup> Prison Reform Trust, “Prison: the facts,” Bromley Briefings, Summer 2013

<sup>68</sup> UK Government, “2010 To 2015 Government Policy: Reoffending and Rehabilitation,” Home Office and Ministry of Justice, 2015

<sup>69</sup> Refer to [www.justiceaction.org.au/index.php?option=com\\_content&view=article&id=795&Itemid=1438](http://www.justiceaction.org.au/index.php?option=com_content&view=article&id=795&Itemid=1438), Draft Report on Failures of Imprisonment, page 2

<sup>70</sup> UK Government, “2010 to 2015 Government Policy: Reoffending and Rehabilitation,” Home Office and Ministry of Justice, 2015

<sup>71</sup> Ministry of Justice, “Payment by results prison pilot continues to show falls in reoffending,” 24 April 2014, available at <http://www.gov.uk/government/news/payment-by-results-prison-pilot-continues-to-show-falls-in-reoffending>

<sup>72</sup> UK National Audit Office, “Outcome-based payment schemes: government’s use of payment by results,” June 2015

<sup>73</sup> UK Parliament, “Contracting out of probation services: 2013-2016,” June 2016

However, performances of the Transforming Rehabilitation program will still be unclear until 2017, when re-offending data is compiled.<sup>74</sup>

A recent finding highlights the success of restorative justice for youth in the UK, with only 19% re-offending under restorative justice programs in contrast to a disturbingly high 63% on community service programs.<sup>75</sup>

Similarly, youth justice conferences, while popular in the UK as an alternative to prison for youth, have proved unsuccessful compared to restorative justice programs, with the re-offending rate under youth justice conferences at 54%.<sup>76</sup>

Restorative justice programs also deliver benefits to victims since it reduces post-traumatic stress symptoms. Another advantageous aspect of this alternative method is that it is less expensive than conventional criminal justice.

Electronic monitoring has also been used as an alternative system to custodial sentences. Although it is attractive because of its cost (around £5,300 cheaper than custody for a 90-day period),<sup>77</sup> controversy arose after its implementation of G4S electronic monitoring.

The *International Business Times* reports that some offenders were sent to prison because the equipment wrongly showed they were in breach of their curfew.<sup>78</sup>

Prisoners involved in vocational training are more likely to secure employment after release.<sup>79</sup> However, it was found in 2013-14 that only 25% of these prisoners found employment on release.<sup>82</sup> Prospects for women are significantly worse than for men.<sup>81</sup>

Alternatives to imprisonment need to be improved to increase their effectiveness and because no matter what, every individual is entitled to their human rights and to live in appropriate conditions of dignity.

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<sup>74</sup> UK National Audit Office, "Transforming Rehabilitation," Ministry of Justice, April 2016

<sup>75</sup> Restorative Justice Council, "More evidence of the effectiveness of restorative justice for young offenders," April 2015

<sup>76</sup> *Ibid.*

<sup>77</sup> UK National Audit Office, "The Electronic Monitoring of Adult Offenders," House of Commons, January 2006

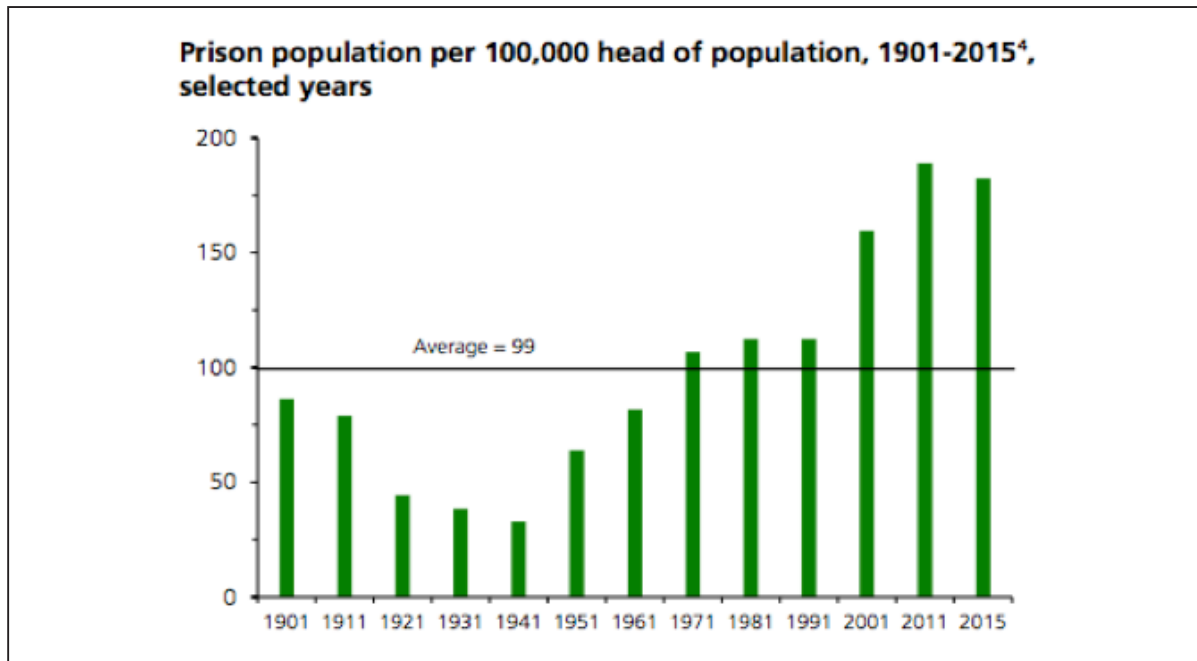
<sup>78</sup> Shane Croucher, "Electronic Tagging Scandal: How G4S Mishandled its Ministry of Justice Contract", March 2014, *International Business Times*

<sup>79</sup> Brunton-Smith, I. and Hopkins, K. (2014) "The impact of experience in prison on the employment status of longer-sentenced prisoners after release," London: Ministry of Justice

<sup>80</sup> Table 12, Ministry of Justice (2014) National Offender Management Service Annual Report 2013/14: Management Information Addendum, London: Ministry of Justice

<sup>81</sup> Prison Reform Trust (2015) Working it out, London: Prison Reform Trust

## *Trends in Imprisonment*



The prison population increased exponentially since World War II, when there were 25 prisoners per 100,000 head of the population. Now it exceeds the historic average of 99 at 182 prisoners per 100,000 head of the population. This is a reflection of the trend in favour of incarceration, coupled with the handing down of lengthy and unnecessary sentences fuelled by penal populism.

Remand populations comprise people who are held in custody before their sentencing or trial, as ordered by the court. Remand populations began to fall since early 2012.<sup>82</sup> By the end of 2012, only 15% of the remand population went on to get custodial sentences; thus, 85% of the remand population either got non-custodial sentences, were acquitted, or a trial did not proceed.<sup>83</sup>

On average, the length of custodial sentences has become longer,<sup>84</sup> from an average of 16 months for “all indictable offences” in 1993 to an average of 18.8 months in 2015.<sup>85</sup> Indeterminate sentences do not set a release date and as of December 2015, 11,505 people were serving indeterminate sentences.<sup>86</sup>

From 2014-2015, there was a decrease in the number of people found guilty in court, and fewer crimes were recorded by the police. However, individuals who were found guilty were more likely to be imprisoned.<sup>87</sup> Thus, prisoner numbers have remained relatively stable.

<sup>82</sup> UK Government, “Story of the Prison Population: 1993-2012 England and Wales” (Ministry of Justice), January 2013

<sup>83</sup> Prison Reform Trust, “Prison: the facts,” Bromley Briefings, Summer 2013

<sup>84</sup> UK Government, “Criminal Justice Statistics Quarterly Update to December 2012 England and Wales,” Ministry of Justice, Statistics bulletin, May 2013

<sup>85</sup> Prison Reform Trust, “Prison: the facts,” Bromley Briefings, Summer 2016

<sup>86</sup> Ministry of Justice (2016) Offender management statistics quarterly: October to December 2015, London: Ministry of Justice

<sup>87</sup> Prison Watch UK, “Why does UK lock up more people than any other western European country?,” June 2015

The age of criminal responsibility in UK is 10, meaning that a child under the age of 10 cannot be found guilty of committing a criminal offence, as stipulated under *s50 Children & Young Persons Act 1933*.<sup>88</sup> Juvenile detention is ordered as a last-resort measure for punishment of a “serious” crime. Courts are faced with the task of determining whether the crime committed by the juvenile is worthy of a non-custodial sentence.<sup>89</sup> Courts are more likely to issue a custodial sentence to older juveniles in the most serious cases.<sup>90</sup>

The rehabilitative needs of the juvenile are taken into account by sending youth to centres that safely deal with their requirements. Factors such as age, seriousness of the crime, gender, background, physical health, mental state and proximity to home will influence whether juveniles are sent to these centres. These initiatives have a major impact on restorative justice practices.

The goal of these programs is to make re-integration into the community a safe, easy and achievable task.<sup>91</sup>

### ***Government reforms***

In 2016, the Rt Hon. Michael Gove, Secretary of State for Justice, proposed nation-wide prison reforms designed to allow prisoners more autonomy and democratic participation in their incarceration, essentially creating a more humane prison environment for inmates.

Mr Gove announced plans to let prisoners out during the week to work as part of an approach to improve rehabilitation as well as reduce re-offending. Mr Gove said, “Release on temporary license has made useful citizens – social assets – out of people who once generated only pain, injury and trouble”.<sup>92</sup>

Gove’s reforms include prioritising reformatory justice over punitive justice, referring to cells as “residences” to make them more comfortable for the prisoners, increasing domestic staff and providing more resources for cultural activities and reform programs.<sup>93</sup>

Nine new prisons will be opened in England and Wales (five by 2020) to replace the “Victorian” prisons. The new sites have not been decided but about 10,000 inmates will be moved in a bid to save about £80m a year. Bigger prisons do not mean better prisons. The government’s plans for saving money may even harm prisoners’ conditions, as basic amenities and number of educating staff may be cut to curb costs and maintain profits, possibly leading to overcrowding and declining emphasis on education and training.

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<sup>88</sup> Jan Blakeman, “The youth justice system of England and Wales,” [www.unafei.or.jp/english/pdf/RS\\_No78/No78\\_13VE\\_Blakeman.pdf](http://www.unafei.or.jp/english/pdf/RS_No78/No78_13VE_Blakeman.pdf)

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> UK Government, “Young people (juvenile offenders),” (Ministry of Justice), February 2012

<sup>92</sup> M. Gove, 13 May 2016, “Making Prisons work,” available at [www.gov.uk/government/speeches/making-prisons-work](http://www.gov.uk/government/speeches/making-prisons-work)

<sup>93</sup> Charlie Peters, “How Gove made prisons more humane,” July 2016, *Spiked*

### *Privatisation of prisons*

The UK has more private prisons than any other country in Europe, with 18% of the prison population held in private prisons.<sup>94</sup>

Private prisons have been a way for the government to offload the problems of the public prison system, but this has not always been successful.

The private security company G4S has experienced widespread problems since opening in April 2012 and has repeatedly denied reports of full-scale riots at its Oakwood prison. The Inspectorate of Prisons Report declared it unsafe after an unannounced visit, stating it had high levels of victimisation. This was particularly embarrassing for a government, which once held up Oakwood as the model private prison.

The majority of blame for the prisons' shortcomings is levelled at G4S, whose prisons are running out of budget and therefore providing fewer rehabilitative services, among others. Moreover, private prisons are built with a cheap design in mind, and this uninspiring landscape does not offer prisoners a positive environment.

The inherent problems of private companies generating a profit for their shareholders from punishment, rather than promoting rehabilitation and restoration of prisoners to the community, must surely be a cause for concern. Oakwood, for example, was meant to be a blueprint private prison but it is no longer regarded as such due to a lack of institutional support and rehabilitative services.

### **Case Study – Anders Breivik vs Martin Bryant**

#### ***Anders Behring Breivik***

On 22 July 2011, Anders Behring Breivik killed eight people and injured 200 more in a car bombing near a government building in Oslo. Later, on Utøya Island, Breivik gained access to a Labor Party youth camp by impersonating a police officer. Here, Breivik shot and killed an additional 69 people, many of who were children. These attacks represent the largest act of terrorism in Norwegian history.



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<sup>94</sup> Ministry of Justice (2014) Prison population monthly bulletin March 2015, London: Ministry of Justice and US Department of Justice

On 24 August 2012, the Oslo District Court delivered its verdict, finding Breivik sane and guilty of murdering 77 people. He was sentenced to 21 years in prison, the maximum penalty in Norway. This sentence is a form of preventative detention, with a minimum of 10 years' incarceration and the possibility of one or more extensions for as long as he is deemed a danger to society.

If Breivik had been found to be insane (as established by the first psychiatric report), he would not have been sentenced to a prison term but detained in a psychiatric hospital.

### ***Martin Bryant***

Martin Bryant plead guilty to murdering 35 people and injuring 23 others in the Port Arthur massacre in 1996. He was sentenced to 35 life sentences, plus 1,035 years without parole, in Risdon prison.



Martin Bryant was previously found to have diminished intellectual capacity. As well as this, Bryant's alcohol consumption increased heavily in the six months prior to the massacre. Bryant first thought of the massacre around 12 weeks before the event.

After the massacre, Bryant was judged fit to stand trial. For the first eight months of his imprisonment, he was held in a purpose-built suicide prevention cell in almost complete solitary confinement. On 13 November 2006, Bryant was moved into Hobart's Wilfred Lopes Centre, a secure mental health unit. It is staffed with doctors, nurses and other support workers. Inmates are not locked down and can come and go from their cells. Martin attempted suicide twice on 25 and 27 March 2007. In 2015, Bryant was moved to the maximum security Risdon Prison.

In the period from late 2014 to early 2016, Bryant seriously assaulted four people in prison. He was placed on psychiatric medication but this did not help his behaviour.

### ***Prison terms***

Breivik was sentenced to 21 years, the maximum sentence in Norway for any crime less severe than genocide or war crimes.<sup>95</sup> In comparison, Bryant was sentenced to life imprisonment without parole for each of the 35 counts of murder for which he was indicted, and an additional 21 years for each case of an additional 37 counts.<sup>96</sup>

The life sentence in the Australian legal system is very rare and, at the time of sentencing, Bryant was the only person in recent Tasmanian history to receive a life sentence.<sup>97</sup> Although it was recognised that Bryant had a mental health condition he still received a heavy sentence, whereas Breivik was declared sane and got a comparatively light sentence for a meticulously pre-meditated attack.

### ***The use of solitary confinement***

Breivik was held in solitary confinement for 22 to 23 hours a day, and was denied contact with prisoners or staff (other than through a glass barrier). This treatment was deemed in contravention of Article 3 of the European Convention on Human Rights, and his lawyers argued he was damaged and often appeared disoriented and forgetful as a result.<sup>98</sup> No Norwegian prisoner in recent history has spent more time in solitary confinement than Breivik.<sup>99</sup>

Bryant was kept in solitary confinement for the first eight months of imprisonment. He was housed in a special cell with the aim of preventing suicide. Now he is kept in the Mersey unit of Risdon Prison, a unit designed to segregate those with mental health issues or are on suicide watch. Although he is not held in solitary confinement and is allowed to interact with other prisoners, Bryant is largely shunned by other inmates.

### ***Prison conditions***

Breivik is housed in “preventative detention”, that is, an extra-high security prison used to house Norway’s most dangerous criminals. However, his living conditions are relatively comfortable compared to those of Bryant. Breivik has access to three cells; one for sleeping, one for studying, and one for exercising, as well as an exercise yard, video games, TV, newspapers and access to a computer without internet.<sup>100</sup>

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<sup>95</sup> M. Fisher, “A Different Justice: Why Anders Breivik Only Got 21 Years for Killing 77 People,” 24 August 2012, *The Atlantic*, available at [www.theatlantic.com/international/archive/2012/08/a-different-justice-why-anders-breivik-only-got-21-years-for-killing-77-people/261532/](http://www.theatlantic.com/international/archive/2012/08/a-different-justice-why-anders-breivik-only-got-21-years-for-killing-77-people/261532/)

<sup>96</sup> SBS, “Snapshot: Australia’s longest sentences,” 8 February 2017, SBS, available at [www.sbs.com.au/news/article/2013/08/01/snapshot-australias-longest-sentences](http://www.sbs.com.au/news/article/2013/08/01/snapshot-australias-longest-sentences)

<sup>97</sup> Chapter 12: The Port Arthur Massacre”, Cambridge Legal Studies 4th Edition, Cambridge

<sup>98</sup> BBC, “Anders Breivik case: How bad is solitary confinement?” 21 April 2016, *BBC*, available at <http://www.bbc.com/news/world-europe-35813348>

<sup>99</sup> A. Seierstad, “Mercy for a Terrorist in Norway,” 25 April 2016, *The New Yorker*, available at [www.newyorker.com/news/news-desk/mercy-for-a-terrorist-in-norway](http://www.newyorker.com/news/news-desk/mercy-for-a-terrorist-in-norway)

<sup>100</sup> J. Henley, “Anders Breivik’s human rights violated in prison, Norway court rules,” 21 April 2016, *The Guardian*, available at [www.theguardian.com/world/2016/apr/20/anders-behring-breiviks-human-rights-violated-in-prison-norway-court-rules](http://www.theguardian.com/world/2016/apr/20/anders-behring-breiviks-human-rights-violated-in-prison-norway-court-rules)

Breivik is also allowed to prepare his own food, do his own washing, and keep in contact with prison staff, lawyers, a priest, and health professionals. Breivik receives visits from a military chaplain every two weeks, and his mother visited him before her death in 2013. No other visitors have been approved.

Bryant, on the other hand, is housed in a 2m x 3m cell, with a television, desk, bookshelf, and bed. The shower has a privacy screen, but the toilet is visible from a small window in the door. Bryant is fed three meals a day, which are mostly pre-packaged and “aeroplane style”. He is permitted to use the exercise yard, which consists only of a few stools and pieces of exercise equipment.<sup>101</sup> Bryant is reportedly kept on medication to ease his suicidal tendencies and to prevent aggressive behaviour. These drugs, however, apparently kept him in a “vegetative-like” state, which government officials have suggested may be a ruse that allows him to deceive prison officials. Bryant attempted suicide twice within three days in 2007 by slashing his wrist with a razor blade.

### ***Public perception***

Public perceptions of both men tend to be quite polarised. In the wake of the Oslo attacks many, including the Norwegian prime minister, Jens Stoltenberg, pledged not to seek vengeance, and to respond with “more democracy, more openness, and more humanity”.<sup>102</sup> Many overseas commentators regarded Breivik’s 21-year sentence with shock, but Norwegians, for whom such a short sentence represents an important principle of their restorative justice system, generally reacted to the sentence with relief. Many survivors of the attack noted that by not subjecting Breivik to a more severe punishment, the courts had stayed true to the principles of Norwegian democracy.<sup>103</sup>

For Bryant, the public perception was relatively negative, with many media outlets and commentators seeking to portray Bryant as a monster, detailing the calculated nature of his crimes and the fact that he expressed no remorse during the trial.<sup>104</sup> Such portrayals sought to depict Bryant as a “natural born killer”, implying that his various psychological disabilities inevitably lead to the perpetration of the crime.<sup>105</sup>

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<sup>101</sup> S. Blake, “A monster on the inside,” 12 September 2015, *Daily Telegraph*, available at [www.dailytelegraph.com.au/news/special-features/in-depth/monster-on-the-inside/news-story/751e16b4517c9d4d4226e6ba78d5b079](http://www.dailytelegraph.com.au/news/special-features/in-depth/monster-on-the-inside/news-story/751e16b4517c9d4d4226e6ba78d5b079)

<sup>102</sup> R. Orange, “Answer hatred with love: how Norway tried to cope with the horror of Anders Breivik,” 15 April 2012, *The Guardian*, available at [www.theguardian.com/world/2012/apr/15/anders-breivik-norway-cope-horror](http://www.theguardian.com/world/2012/apr/15/anders-breivik-norway-cope-horror)

<sup>103</sup> M. Lewis, “Why Norway Is Satisfied with Breivik’s Sentence,” 27 August 2012, *Time*, available at [world.time.com/2012/08/27/why-norway-is-satisfied-with-breiviks-sentence/](http://world.time.com/2012/08/27/why-norway-is-satisfied-with-breiviks-sentence/)

<sup>104</sup> “Chapter 12: The Port Arthur Massacre”, Cambridge Legal Studies 4th Edition, Cambridge

<sup>105</sup> R. Wainwright and P. Totaro, “A dangerous mind: what turned Martin Bryant into a mass murderer?”, 27 April 2009, *Sydney Morning Herald*, available at [www.smh.com.au/national/a-dangerous-mind-what-turned-martin-bryant-into-a-mass-murderer-20090426-ajk4.html](http://www.smh.com.au/national/a-dangerous-mind-what-turned-martin-bryant-into-a-mass-murderer-20090426-ajk4.html)



### *Treatment of mental health issues*

During both trials, mental health was inevitably brought into the spotlight. Breivik underwent an initial examination by court-appointed psychiatrists in 2011 and was found to be criminally insane with paranoid schizophrenia.<sup>106</sup> This report was approved by the Norwegian Board of Forensic Medicine. News in the meantime emerged that psychiatric staff in charge of treating prisoners at the prison in which Breivik was being held failed to make any observations suggesting that he suffered from psychosis or depression. A second report diagnosed Breivik with anti-social personality disorder and narcissistic personality disorder, and concluded that he was not psychotic during the attacks. As a result, Breivik was ultimately found sane enough to stand trial and be charged as a competent adult.<sup>107</sup> However, there was and remains a significant amount of disagreement among psychiatrists as to whether Breivik was in fact criminally insane, with some, such as Malt, believing that he had paranoid psychosis, Asperger Syndrome and Tourette Syndrome.

In Bryant's case, however, it was clear to those who conducted psychiatric evaluations of him that he possessed a number of mental health issues.<sup>108</sup> These professionals included psychiatrists who evaluated Bryant after he was jailed and described him as "more insane than sane," throwing into doubt the notion that he was sane enough to be held criminally responsible. In his sentencing remarks, Cox CJ accepted psychiatric evidence that Bryant was of limited intellectual ability consistent with a significant personality disorder. He acknowledged that this may call for understanding and pity, and reduced Bryant's culpability. However, Cox CJ noted that Bryant did not suffer from a mental illness that rendered him incapable of knowing the quality of what he was doing, or deprived him of the power to resist an impulse to do what he did. He was therefore sentenced as a fully sane adult.

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<sup>106</sup> BBC "Norway massacre: Breivik declared insane," 29 November 2011, *BBC*, available at [www.bbc.com/news/world-15936276](http://www.bbc.com/news/world-15936276)

<sup>107</sup> M. Lewis, "Anders Behring Breivik delivers final tirade to bemused court," 23 June 2012, *The Guardian*, available at [www.theguardian.com/world/2012/jun/22/anders-behring-breivik-final-tirade](http://www.theguardian.com/world/2012/jun/22/anders-behring-breivik-final-tirade)

<sup>108</sup> R. Wainwright and P. Totaro, "A dangerous mind: what turned Martin Bryant into a mass murderer?," 27 April 2009, *Sydney Morning Herald*, available at [www.smh.com.au/national/a-dangerous-mind-what-turned-martin-bryant-into-a-mass-murderer-20090426-ajk4.html](http://www.smh.com.au/national/a-dangerous-mind-what-turned-martin-bryant-into-a-mass-murderer-20090426-ajk4.html)

## CONCLUSION

The comparisons between Australian and British prisons with Norwegian and Dutch prisons have elicited some insights and areas for improvements for the Australian prison system. Australia and Britain could embody the principles underlying Norway and the Netherlands's treatment of prisoners to firstly, increase prospects of reintegration into communities upon prisoners' release, and secondly, to lower recidivism rates after release.

The Norwegian and Dutch prisons' commitment to restorative justice and reintegration can be observed by the many facilities prisoners are afforded in prison. The provision of educational resources, training and skills building programs have promoted and sustained change and rehabilitation during and after prisoners' sentences.

The close proximity of Norwegian and Dutch prisons to prisoners' local communities limits the negative emotional distress that comes from adjusting to prison conditions. The success of their less punitive "pleasant-prison" philosophy can be observed by the 10% recidivism rate.

Conversely, the terrible and arguably inhumane conditions of Australian prisons, and the lack of facilities and programs that may promote change for prisoners, has resulted in a 60% recidivism rate, with 48% of convicted NSW offenders returning to prison two years after release.

Furthermore, the "tough on crime" stance of Australian authorities has led to overcrowding in Australian prisons, which have in turn led to escalated violence and rioting inside prisons.

As a result of overcrowding, prisoners have less access to adequate support, education and rehabilitation opportunities.

This vicious circle highlights the limits of Australian and British correction models.

The limits to vote, and restrictions on employment, housing and public assistance mean that Australian and British prisoners are not engaged with their communities.

Therefore, the prospects of their successful rehabilitation and reintegration after release are limited. This increases rates of recidivism.

In the Netherlands and Norway's prisons the belief that prisoners should be treated as much as possible like normal civilians is a prime reason for their low incarceration and recidivism rates.

Australia has much to benefit by adopting the practice, policies and philosophy of the Norwegian and Dutch penal systems.



