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Private Prisons in Australia

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The debate surrounding private prisons in Australia has highlighted a number of misconceptions about privatisation, including its possible effects on the public prison system. This Trends and Issues, written by an Honorary Senior Consultant to the Australian Institute of Criminology (Professor Richard Harding is a former Director of the Institute), clarifies this important public policy issue, and provides the basis for informed discussion. Experience so far suggests that contract management of prisons by private operators has a useful place in the Australian corrections system.

Duncan Chappell
Director

Privatisation takes a Hold

Australia's first private prison became operational in January 1990. It is a 244-bed prison, situated at Borallon, near Brisbane. It was built by the Queensland Corrective Services Commission (QCSC) at a cost of $22 million. The operator is the Corrections Company of Australia (CCA), which is a consortium equally owned by the Corrections Corporation of America, the John Holland construction group, and Wormald's Security Ltd. The initial contract is for three years, and negotiations for its renewal are expected to take place during November 1992.

Junee prison in New South Wales is expected to become operational in March 1993. It is a 600-bed prison. Design and construction has been undertaken by the successful tenderer, Australian Correctional Management Ltd (ACM), which in turn is a consortium of the Wackenhut Corporation of Texas, the Thiess construction group, and ADT Correctional Services Ltd (the Australian-based management company of Wackenhut). The operating contract is for an initial period of five years, with expectation of renewal for a further three years.

In October 1991, following the breakdown of negotiations with the state Services Union (prison officers branch) on revised work practices, tenders were also called for the management of the newly-constructed Wacol Remand and Reception Centre in Brisbane. Five bids were short-listed. On 9 March 1992 state Cabinet announced that ACM was the successful tenderer. The annual contract management fee will be $11.5 million, as opposed to an estimated $18 million if it were run by the public sector. The 380-person facility is now expected to become operational from July 1992.

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In July 1991 the Northern Territory government called for expressions of interest in the design, construction and management of a new prison at Alice Springs. Four proposals were short-listed. However, none met tender specifications adequately, and in December 1991 it was decided that the public sector would take on the full range of tasks.

The ALP government of Victoria is firmly opposed to the notion of private prisons. The other state governments either have no explicit policies on the matter or hold a watching brief. Nevertheless, the momentum seems inexorably to be increasing. Indeed, the Wacol contract could mean that, for cash-strapped governments, the ideological walls will now come tumbling down. The question is thus not whether privatisation will occur; but rather to what extent, in relation to what sorts of institution and which types of prisoner, according to what legal and administrative arrangements, and above all whether it will improve the overall imprisonment system.

Definitions

'Privatisation' of prisons is something of a misnomer. The concept refers not to private ownership and control of an enterprise but to contract-management, that is private sector (or non-government) management of institutions which remain a public sector responsibility.

There may be lesser degrees of privatisation—for example, contracting out particular services to the private sector, such as the supply of meals or building maintenance. Conversely, there may be greater degrees—such as private sector design, construction, and financing of a new institution, followed by leasing back to the state. This has occurred in the United States, but not yet in Australia; though, in calling for expressions of interest in the new Alice Springs prison, the Northern Territory government left open the possibility that this model might be adopted. Short of that, private sector design and construction has occurred in Victoria (Loddon Prison), whilst in Western Australia the construction of the Eastern Goldfields prison was a loose form of joint venture with the local shire.

The key point, whatever degree or model of privatisation is adopted, is that the allocation of punishment should remain the responsibility of the state apparatus, whilst the day-today administration of that punishment is devolved to the contract-managers. The question of effective accountability thus becomes central.

It should be emphasised that the pursuit of profit is not a necessary or inevitable aspect of privatisation. Voluntary or non-government (NGO) sector participation in juvenile offender programs is, for example, historically quite normal in many places, including Australia. Indeed, the brief case study, below, of flawed privatisation relates to a juvenile detention program where profit was not an objective. However, the same basic questions are crucial, whatever the motivation of the contract-managers.

Of course, where profit is the objective, there is always liable to be the suspicion that corners will be cut or standards eroded so as to maximise returns. This is particularly so where the detainees are even more 'ghosts of the civil dead' than convicted prisoners. For example, in both the UK and the United States, private sector management of detention centres for illegal immigrants has attracted considerable criticism.

Pressures for Privatisation

Amongst the factors pushing governments and correctional agencies towards privatisation are the following: (a) prison population matters, particularly crowding and difficulties in managing inmates housed in decaying stock; (b) excessive costs, both capital for stock renewal and recurrent in a labour-intensive industry which is strongly unionised; and (c) the need for more effective prisoner programs, coupled with a recognition that the public prison system seems to have difficulty in responding to changing circumstances, so that private prisons might provide competition and set new benchmarks. A distinct sub-theme within each of those heads is (d) concern at the power of prison officer unions over prison operations.

The weight of these factors varies across time and place; crowding, for example, has been a far more potent force in the United States than in Australia, though it is certainly a factor now in New South Wales. Similarly, concern at union power has been a more explicit factor in the UK than in Australia, though probably the underlying significance of this factor has been as great here. At any rate, each of the above strands can be detected in the Australian developments.

The *Kennedy Report* into corrective services in Queensland picked up mainly on points (b), (c) and (d). Reporting in late 1988, at a time when the new Borallon prison was at an advanced stage of construction, Kennedy recommended that its management should be privatised for the following reasons:

- the problems of finding adequate good staff from within the system would be solved;
- career prospects for correctional officers and managers would be opened up;
- there would be an important element of competition for correctional officers which could ultimately lift their status, pay and conditions;
- the market for corrective institutions in Australia and Queensland would be created;
- there would be added flexibility; and
- for the first time there would be competition, providing a real measure against which to test the performance and costs of the Queensland corrective services (Kennedy 1988).

The then National Party government accepted his recommendation; following tender, the

management contract was let to CCA. The ALP government, coming to power a month before the first prisoners were due to be received at Borallon, agreed that the arrangement should proceed. However, it was stated that the performance of the contract would be closely scrutinised. Consequently, experience at Borallon can be expected to shed light on the question of how far the possible hazards of privatisation can effectively be forestalled. The fact that, just over two years later, a contract has been let for the contract management of Wacol suggests that the Queensland government and the QCSC are relatively reassured by what they have seen so far.

The Hazards of Privatisation

Analysts of prison privatisation around the world have identified the following possible hazards: occupancy rates and general incarceration policies may be driven by a private sector lobby intent on maximising imprisonment levels and thus the opportunity for profitable participation; the administration of punishment within the institutions may spill over into its allocation; accountability is likely to be inadequate in itself and less effective than within the public prison system; and dual standards may develop, leading to a quality private prison system for prisoners posing no major management problems and an increasingly depressed and run-down public prison system for outsiders—racial minorities, the mentally unstable, violent offenders, drug-dependent prisoners, lifers, protection cases, and those suffering from communicable diseases such as AIDS.

It will be seen that most of these concerns may be exaggerated in the current Australian context. However, an early case study indicates that, unless privatisation is properly regulated, these hazards may become realities.

Deeply Flawed Privatisation: an Australian Case Study

From 1984 for a period of about a year the Sydney City Mission ran a residential Wilderness program, modelled on Vision-Quest, at Tallong, near Goulburn, New South Wales. Non-government money got it going; but to remain viable, the program after a while required government funding. Three reviews were accordingly initiated (Hawkins 1985; Findlay 1985; Harding 1985), following which the tentative promise of funding was withdrawn. This in turn led to the program's discontinuance and the closure of Tallong.

A primary problem was that the program did indeed tend to depend upon occupancy rates and thus to drive incarceration policies. This came about as follows.

To be cost-effective and to utilise human resources optimally, the program required that a total of 160 youths should participate overall in the four-stage, year-long program. In other words as 40 'graduated' at stage 4, a further 40 should be entering at stage 1.

Initial entry to the program was predominantly via the juvenile court, as a condition of probation or binding over. Before such a condition would be imposed, the youth had to undergo an assessment by the operators of the program, a key aspect being willingness to sign a 'contract' to remain in the program for the full period of one year. The assessment process also screened out all youths whose offences involved premeditated violence or drug use. In other words, the detainees were mainly low-risk offenders who would otherwise probably not have been incarcerated in the public system at all or at any rate for a far shorter period than one year.

How did it come about that the courts were prepared to use their sentencing powers in this way? The answer was: because they were persuaded by the infectious enthusiasm and misplaced good intentions of those responsible for the program that it would be in the youths' best interests. The very existence of the program thus had a direct bearing upon the allocation of punishment as well as its administration.

In addition, as the whole arrangement operated without statutory authorisation, both the imposition of disciplinary sanctions upon recalcitrants and also the recapture of 'escapees' by staff of the detention camp amounted to allocation of punishment, rather than its administration.

These features also epitomised the lack of proper accountability. Other factors exacerbated this defect: the Tallong base camp was situated in an isolated area, on private land to which there was no general right of public access; record-keeping and case-management notes were fragmentary, thus making any evaluation of treatment methods or program impact virtually impossible; there were no objectively stated or publicly accredited standards for staff qualifications or recruitment; policy input from the state department responsible for youth services was minimal; and there was no external monitoring of the Tallong regime.

As for dual standards, it would be very much a matter of opinion whether Tallong was better or worse than the public juvenile detention centres. As in any case it targeted a population that would not normally have been incarcerated at all, this would seem to have been the least of the problems.

Tallong was an exemplar of what critics fear about privatised custodial institutions. But its history establishes a backdrop against which to measure the progress which has been made in confronting such issues.

Avoiding the Hazards: Borallon and Junee

As Borallon is a functioning prison, already inspected by scores of official and semi-official visitors including myself, and as its experience is now starting to be documented, most of what follows will focus upon that

institution. However, reference will also be made, where possible, to the as yet abstract statutory and contractual arrangements relating to Junee.

Occupancy rates and incarceration policies

With regard to occupancy rates, the Borallon contract is costed on the basis of 100 per cent occupancy throughout the year. The onus thus lies with the QCSC, if it is to secure full contract value, to supply inmates as vacancies occur. Financially, a shortfall at Borallon would neither benefit the QCSC nor prejudice CCA. The Junee contract has the same effect.

As to general incarceration policies, it has been asserted that private prison operators

> *will be in a position . . . to publish lurid descriptions of violence in prisons, reinforcing a perceived need for increased facilities. This will feed the imagination of the media, creating an environment of fear in the community. Such tactics will support policies that ensure that beds are full (George 1989).*

There is no evidence to suggest that this is a problem in Queensland. Indeed, since Borallon was opened, the Queensland imprisonment rate has fallen from 75.8 per 100,000 to 69.3, whilst the overall Australian rate has risen from 73.7 to 81.4. One public prison (Woodford) has been closed down altogether and the worst in the state (Boggo Road) will close soon. This strongly suggests that, whatever else is driving incarceration policies in Queensland, it is certainly not a lobby in support of high imprisonment rates to underwrite private prisons.

In New South Wales, incarceration policies have been driven by a government intent on pursuing 'truth in sentencing'. Consequently, the prison population has increased, between April 1988 (when the Liberal-National Party government came to power) and November 1991, from 4,003 (70.7 per 100,000) to 5,919 (100.2). This rate is the highest since 1907. If it continues to increase after Junee is commissioned, it would be stretching credibility to try to argue that it will have been privatisation which has spurred it along.

Administration and allocation of punishment

Two areas where the administration of punishment could spill over into its allocation are the granting of parole and the imposition of sanctions for breaches of prison discipline.

In Queensland, parole decisions are made by the Community Corrections Board under the provisions of the *Corrective Services Act 1988*. The Act lays down clear rules as to eligibility and procedures; these include the right of the applicant to put his case in writing or through a legal representative, and the duty of the Board to give written reasons for refusal.

The Board's principal source of information and advice is a report prepared by a community corrections officer. This report is derived from diverse factual material: home assessment; previous performance of the offender on temporary release programs; psychological or medical information; progress as measured against the case management plan; and information about custodial conduct. In other words, all information, including custodial information, is mediated through the report of an independent officer working to a different line of command. There is thus almost total separation of parole decisions from custodial minutiae, whether they relate to time served in a public prison or at Borallon. Administration of punishment does not spill over into its allocation.

In New South Wales, parole is considered by the Offenders Review Board constituted under the *Sentencing Act 1989*. For prisoners whose sentence is three years or less, parole is virtually automatic; thus no question can arise of adverse intervention of custodial officers, either within the public prison system or employed at Junee.

Parole decisions for longer-term prisoners are made after consideration of a wide variety of material and reports. These include: information from parole officers, with regard to prerelease matters; from community corrections officers, with regard to post-release matters; and from custodial officers.

Potentially, the private prison custodial hierarchy will thus make an input into the parole decision. However, in practice the Board takes note only of factual matters such as continued drug use or involvement in bashings rather than judgmental ones such as 'recalcitrance' or 'lack of cooperation with prison authorities'. Nevertheless, there does seem to be a structural question—though it should be no more problematic for Junee prisoners than for those who serve their time in the public system.

With regard to discipline, Moyle (1991) has documented for Borallon the somewhat peremptory manner in which a charge was handled, culminating in a penalty of seven days' solitary confinement. However, it should be noted that the section of the Act (s. 102) under which all 'major disciplinary breaches' are brought denies legal representation to prisoners. From this, rather than from Borallon's inherent nature as a private prison, inevitably flows rather quixotic approaches to due process. The problem is one of legal regimes within prisons generally.

Accountability

A primary factor is staffing; no system of accountability can work if staff set out to undermine it. The QCSC retains a virtual power of veto over the 'prison manager' at Borallon (Corrective Services Act, s. 18), as does the New South Wales Corrective Services Commission (NSWCSC) in relation to the 'governor' at Junee (*Prisons Act 1952-90*, s.31C). In each case, authorisation may be revoked.

Also, custodial staff employed by the contractor must be authorised by

the QCSC to carry out functions under the Act; a condition is that such staff undergo and pass a training course accredited by the QCSC: *Corrective Services (Administration) Act 1988*, ss. 19(2) and (3). The New South Wales law contains parallel provisions: ss. 31C(1)(b), (2)(a) and (4). In each case, authorisations may be revoked.

It should be noted that, for Queensland, the combination of these provisions means that the management contract itself can effectively be terminated at any time, by withdrawal of relevant authorisations—a far-fetched possibility and one which would doubtless attract civil obligations, but nevertheless a crucial safeguard for a crisis situation such as breakdown in care or major disturbances. In the case of Junee, each of these foregoing statutory provisions or implications is specifically fortified by the terms of the management contract.

All the general safeguards which apply to the public prison system in each of the two states likewise apply to the private prisons: official visitors, Ombudsman overview, parliamentary scrutiny of the Commissions themselves, Independent Commission Against Corruption jurisdiction in New South Wales, freedom of information (in New South Wales, but not yet in Queensland), not to mention the unrelenting media attention which Borallon has already received and Junee can anticipate.

In addition, provision is made for the appointment of a monitor, to check not only contract compliance but also, more importantly, compliance with general standards. This mechanism has no equivalent in relation to public prisons, though in each state there is administrative provision for regular audit or inspection by departmental teams. In New South Wales the oversighting function will be fortified by the fact that the monitor possesses statutory autonomy and also will be supported by a Community Advisory Council (s. 31E), whereas for Borallon the arrangement is an administrative/contractual one carried out by an employee of the QCSC.

In each case, however, there are accessible standards and performance criteria to monitor. These are found in the contracts. It is notable that in New South Wales the Commissioner (the chief executive officer of Corrective Services) must cause a minimum standards document to be prepared as part of the contract. In fact, that document is detailed and comprehensive as to the whole range of issues that worries inmates and also worries the public about prison standards. It is remarkable that in relation to the public prison system there is no equivalent obligation, and no standards document has in fact been drawn up. The QCSC, however, has promulgated Mandatory Standards for Secure Facilities for Audit Purposes, and these are applicable to all parts of the prison system.

In practice, monitoring Borallon means that a middle-level employee reporting to Director level visits as and when he/she wishes. On the average this is twice or three times a week. This person can make formal inspections of records or facilities, interview staff or prisoners, and generally do whatever is considered necessary to ascertain whether standards are being met, what problems have occurred or may be brewing, and so on.

The hiatus in all of this is that the final contract documents themselves are treated as being 'commercial-in-confidence'. Naturally the main provisions are known; for Junee, for example, these formed part of the tender specification. However, changes may have been made in the course of completing negotiations, and this leaves outsiders and inmates guessing at the fine details of the performance standards. In the UK, management contracts relating to the two private prisons are publicly available. There seems to be no convincing reason why the standards provisions of the contract, as opposed perhaps to the financial provisions, should be treated in this way. Their nature simply is not 'commercial'.

In summary, accountability for the private prison systems in Australia seems to exceed that applicable to public prisons. Deficiencies mostly mirror those found in the public system. The superior private system of accountability may stimulate improvements to public system standards.

Dual standards

Borallon is a 'popular' prison. The only submissions from prisoners which Kennedy received when he sought responses to his interim report were strongly supportive of privatisation. The canny expectations of experienced inmates have evidently been met, for there have been numerous applications to be transferred there. This is the best possible indicator that Borallon is a 'good' prison. The QCSC has now established a queuing system.

Does this mean that there are dual standards, that we are moving towards an up-market private system and a run-down public one? The answer is both Yes and No.

First, Borallon is arguably over-secure for the range of prisoners it accommodates. It was built as a 244-person facility, with 84 maximum and 160 medium security beds. At the end of 1991 the muster comprised 195 medium, 32 low and 10 open security prisoners. Second, Borallon contained no HIV-positive, protection, or remand prisoners. Under the management contract, CCA is not obliged to accept any such prisoners. On the other hand, the muster now contains some lifers, Aborigines, and violent offenders.

There is some evidence, then, that the private prison may be catering somewhat for easily manageable prisoners in an institution which is over-secure for their needs, and thus unduly expensive in capital terms. The experience at Junee should be carefully observed, therefore, to see whether, like Borallon, it slides away from the anticipated muster on questions of which prisoners the contractors may refuse to take, as well as the positive criteria and procedural arrangements for selection.

Of course, it does not follow from the fact that the private system may be

heading 'up-market' that the public system correspondingly will fall into worse decay. On the contrary, it already seems that private prison standards may stimulate improvement to public prisons. If so, this can hardly be to the bad. 'Privatization, rather than being viewed as an outcome, might be viewed more usefully as a process' (O'Hare 1990).

In that context, the Director of the UK Prison Reform Trust, an avowed opponent of privatisation, has precipitantly said:

> *I think the case against privatization would be that much stronger if there were not substantial evidence that the public system is either squalid or ludicrously wasteful of resources. The opponents of privatisation have to be careful not to be defenders of the public squalor (Shaw 1989).*

In Australia, bearing in mind the *Nagle Report* (1978), the Pentridge Prison fire (Hallenstein 1989), the Fremantle riots (McGivern 1988) and generally the *Final Report of the Royal Commission into Aboriginal Deaths in Custody* (Johnston 1991, vol. 3, pp. 301-24), privatisation should be seen, strategically, as a lever to improve, rather than a burden which may worsen, the public system.

Reaping the Benefits of Privatisation

Crowding

The relief of crowding was not a factor with Borallon. The QCSC building program generally, not merely the private prison program, is progressively enabling decaying stock to be closed down.

Crowding is a factor in New South Wales, where the government's much-vaunted public prison building program has lagged. However, the opening of Junee will hardly make a dent in the population occupying the squalid facilities at the Long Bay complex. Just as the UK government has now come to understand that it can never build its way out of prison crowding, so must the government of New South Wales. The problem being systemic, so is the solution.

Costs

With regard to capital costs, the 600-bed Junee prison will come in at an estimated $57 million. Two prisons being built directly by the New South Wales government will each cost about that much—but each is half the capacity. The builders of Junee, the Thiess group (part of the ACM consortium), have made novel work-site and training agreements with the relevant unions, including the exclusion of known troublemakers, and have streamlined industry practices (Bruce 1992). Capital savings thus appear to have been made for the public purse in ways which public authorities generally seem unable to achieve.

By contrast, Casuarina, the 400-bed maximum security prison in Western Australia, opened in 1991, cost $90 million. Off the record, officials will say that $15 million of those construction costs were attributable to union feather-bedding and restrictive practices.

As for recurrent costs, the evidence has hitherto been unclear. In 1990, the ACT government paid the NSWCSC $135 per prisoner per day to accommodate prisoners. The same year the comparable figure for Borallon prisoners was $92. On the other hand, costs across the Queensland public system are about the same as at Borallon—though they seem to have come down in real terms since Borallon opened. Moyle (1991) argues that the true costs of Borallon have been artificially deflated by excluding the attributable costs of QCSC general overheads. Also, the CPI increase to the Borallon contract price for 1992 has taken the costs slightly above those attributable to public prisons. However, the true costs of the public prison system are also somewhat higher than is usually admitted (Gottfredson & McConville 1987; McDonald 1990).

The Wacol arrangement puts the costs argument in a new and much more decisive light; an annual saving of $7.5 million or 41 per cent. Of course, the key question—as yet unanswerable—is whether equivalent services and programs will be delivered at that reduced cost. The likelihood is that the QCSC, with Borallon experience under their belt, will have specified contract requirements very carefully.

A key source of saving has been less reliance on static uniformed staff, thus reducing fixed labour costs. Changed work practices do not, of course, arise simply from privatisation, but also partly out of improved prison design. Previously, however, the benefits of improved designs have been left in the total wage-bill of the work-force.

Programs

It appears that some of the value of reduced costs is being passed on in the form of better programs. Certainly, at Borallon the education and the work and skills development programs seem more focussed than I have previously encountered in public prisons. A key concept is that of 'going to work' (whether in an industrial or an educational/skills program) for a full 'work-day'. At Borallon, one no longer sees, as in many public prisons, inmates lounging around in cells or shuffling around zoo-like yards during the day.

Perhaps this is partly a function of having a more biddable group of prisoners to manage. It must also be said that the success of these programs has not yet been evaluated. However, the impact of competition is tangible. This is not only within the Queensland public prison system (for example, at Lotus Glen) but also at Casuarina, WA, where programs are comparable. Senior officials had closely inspected Borallon before Casuarina was opened, and were undoubtedly influenced by them.

In the Northern Territory, a quite remarkable Memorandum of Understanding negotiated whilst privatisation was actively on the

agenda commits the Prison Officers Association to winding back various employment privileges and to cooperating in the introduction of unit management in all institutions. That, in turn, will facilitate general improvement in standards and free up resources for improved prisoner programs. In other words, whilst savings will be made in the total wage-bill, some part is likely to go back into prisoner programs.

Generally, privatisation seems to have put the spotlight onto the fact that prisons exist at least as much for prisoner welfare as for the convenience of officers. Custodial staff have in the past tended to exercise undue control over programs and change (Vorenberg 1972; Hawkins 1976; Vinson 1982; O'Hare 1990; Woolf 1991; but cf. Lombardo 1989). There has even been high-level speculation that a spate of escapes from Queensland public prisons between May and July 1991 may have been condoned, if not positively engineered, by officers trying to hold back the pace of reform (*The Australian*, 16 July 1991). Such an assertion is not necessarily fanciful. The Inquiry into the 1986 riots in several UK prisons found that at least one outbreak (at Gloucester Prison) was actively provoked by officers intent on forestalling reform (HM Inspector of Prisons 1987).

A benefit of private prisons is that a close-knit sub-culture, with its intense peer-group values (Williams 1983), is less likely to develop amongst custodial staff. This is because they are qualified to perform other security tasks for their employers and are thus less dependent on hierarchical career opportunities within the prison system. Moreover, they are members of different unions from public prison officers, thus further diluting opportunities for sub-cultural myopia.

Conclusions

Contract management of prisons by private operators seems to be here to stay—a small but growing component of the total prison system. Its impact has so far been positive, in terms of costs, conditions and prisoner programs. The prison system is becoming less introverted, not only as the stranglehold of uniformed officers over prison regimes starts to be confronted but also as middle managers and senior administrators respond to competition. Also, the main pitfalls have been avoided, not only in terms of the abstract statutory provisions but also, it seems, in arrangements on the ground.

There have been some recent improvements to the public prison system, and these should not be attributed to the impact of privatisation alone. A whole new generation of Australian prison administrators were committed to change and renovation long before the word 'privatisation' ever reared its head.

However, it is clear that privatisation, and the very act of drawing up a management contract, compels correctional authorities and governments to confront and clarify what it is they are hoping to achieve. In the jargon of economics, the process of imprisoning people starts to become 'output-based' rather than 'input-based'. The public system has tended to drift and lose momentum over the years precisely because it has, in structural terms, been primarily input-based. Properly scrutinised and regularly evaluated, private prisons can stimulate improvement across the whole of Australia's prison system—a system which, during its first two centuries' wholly public existence has been no less squalid, oppressive, inequitable, degenerate and demoralising than the English system upon which it was modelled.

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