

14 November 2018

Imprisonment and Recidivism Inquiry
Queensland Productivity Commission
PO Box 12112
George Street
Brisbane Qld 4003



Dear Commissioner

Re: Imprisonment and Recidivism

Thank you, on behalf of the Bar Association of Queensland ('the Association'), for the invitation to make a submission to the Queensland Productivity Commission's ('the QPC') inquiry into imprisonment and recidivism in Queensland ('the inquiry').

The Association is comforted by the Government's commitment to examine these issues by utilising the QPC and its inquiry powers, and welcomes the terms of reference which will see the QPC examine important issues of public concern.

The Association recognises both an increase in the prison population and recidivism rates in Queensland, and the many complex and interrelating contributors to this. In order to address these issues directly, the Association advocates for an approach which examines the core contributing factors which have led to these increases. The Association herein articulates what we perceive as some of these core contributors.

Introduction

The terms of reference include an examination of how Government resources and policies can be best utilised to reduce imprisonment and recidivism, and improve outcomes for the community over the medium to long term. Specifically, the QPC has been asked to consider the following:

- trends in the rate of imprisonment in recent years, including comparison with other sentencing options;
- evidence about the causal factors underlying trends in the rate of imprisonment;
- factors driving Aboriginal and Torres Strait Islander imprisonment and recidivism and options to improve matters;
- factors driving the imprisonment and recidivism of women and options to improve matters;
- factors affecting youth offending and corresponding imprisonment rates and options to improve matters;

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- measures of prisoner recidivism rates, trends in recidivism and causes of these trends;
- the benefits and costs of imprisonment, including its social effects, financial costs and effectiveness in reducing/preventing crime;
- the effectiveness of programs and services in Australia and overseas to reduce the number of people in and returning to prison, including prevention and early intervention approaches, non-imprisonment sentencing options, and the rehabilitation and reintegration of prisoners;
- the efficacy of adopting an investment approach, where investments in prevention, early intervention and rehabilitation deliver benefits and savings over the longer term; and
- barriers to potential improvements and how these barriers could be lowered.

Given the broad scope of the inquiry, the Association has restricted its submission to the last three matters in the terms of reference: the effectiveness of programs and services to reduce imprisonment, the efficacy of adopting an investment approach, and barriers to potential improvements.

Submissions

The effectiveness of programs and services to reduce imprisonment

The Association submits there should be a greater focus on rehabilitation programs and that these should be made available to persons immediately upon being refused bail and remanded in custody. Presently, only a limited number of programs and work opportunities are afforded to remand prisoners.

Statistically, a large percentage of the prison population is made up of persons held on remand. Further, persons are frequently sentenced to imprisonment but released on court-ordered parole on the day of their sentence because they have already spent excessive or, at least, sufficient time in prison. Restricting employment opportunities and programs has the practical effect of releasing people from custody in circumstances where they have not been afforded the necessary opportunity to participate in rehabilitation. The Association is concerned that this is a major factor influencing the rise in recidivism rates. It follows that rehabilitation services should be accessible pre-sentence.

Further, there are presently inadequate resources committed to assisting persons transitioning from a custodial setting back into the community. When a person is remanded in custody following a refusal of bail or a person is sentenced to a term of imprisonment, they often lose their sources of stability in the community such as access to housing, access to medical treatment (including mental health treatment) and access to their individual support services. The Association contends that the loss of these stabilisers and the lack of transitional support services, between them, are significant contributors to the increased rates of recidivism, whether in the form of substantive re-offending or as a result of technical breaches of parole requirements.

Additionally, adequate resourcing of probation and parole, more generally, is needed to ensure that the conditions placed on offenders make a meaningful contribution towards breaking an existing cycle of offending behaviour.

The support and rehabilitation services available both in prison and for community-based offenders need to be reviewed. To perform the role that prisons are intended to play in the community, programs should be available which can transform prisoners from people who cannot cope in society to people who have the skills to play constructive roles (including with their families and others) in the community.

These programs need to cover a wide range of training in expertise from things as simple as nutrition and healthy and economical cooking to academic courses in the arts, humanities and the sciences. It is the Association's view that prisons and corrective services are not currently meeting these standards.

Ultimately, the Association recommends a fulsome review of rehabilitation programs in prisons. The Human Rights Watch report into *Abuse and Neglect of Prisoners with Disabilities*¹ indicates that Queensland prisons are failing the 50% of their population who suffer from disabilities, and that harsh punishments - including solitary confinement - are being used in circumstances where treatment and support is more appropriate than punishment. This report poses a huge challenge for the Queensland justice system and should receive prompt and proper attention.

The efficacy of adopting an investment approach

The Association submits that the approach to addressing the escalating rates of imprisonment should be guided by justice reinvestment principles. These principles represent 'a form of economic modelling whereby resources are redirected from punitive responses to crime to preventative strategies, and early diversion away from the criminal justice system in areas with high crime rates'.²

Justice reinvestment principles rely 'heavily on interactions between agencies at both the State and local level'.³ They also have significant community-focus, and seek 'community-level solutions to community-level problems'.⁴ 'It is these aspects of justice reinvestment, along with its evidence-based approach and focus on addressing and preventing the underlying causes of crime such as unemployment and drug and alcohol abuse, that have given rise to the growing support for justice reinvestment in recent years throughout the world'.⁵

It is imperative that targets be developed. A reduction of the prison population by 40% in three years is proposed. The Association contends this target is achievable if there is a greater focus on rehabilitation programs for remand prisoners and an increase of funding to support services for persons transitioning from the prison population into the community.

Further, the Association recommends that savings achieved by the reduction in the prison population and the associated decrease in rates of recidivism be reinvested in rehabilitation programs (not only in a custodial setting but also in the community). Large amounts of the reinvestment should go to mental health and education services, as well as treatment for drug/alcohol addiction, and accommodation services.

¹ Human Rights Watch, "*I Needed Help, Instead I was Punished*": *Abuse and Neglect of Prisoners with Disabilities in Australia* (February 2018) <<https://www.hrw.org/report/2018/02/06/i-needed-help-instead-i-was-punished/abuse-and-neglect-prisoners-disabilities>>.

² Law Council of Australia, Submission No 97 to Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia (22 March 2013) 6 cited in Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion Paper No 84 (2017) part 5 [13.1].

³ Ibid [13.5].

⁴ Ibid.

⁵ Ibid.

The Association is strongly of the view that the community will be supportive of lower incarceration rates if it can be shown that the resources are being reinvested into measures which support and advance rehabilitation. It may not appeal to populist sentiment, but it remains true to say that society is made safer if revenue is directed towards rehabilitation measures rather than to the incarceration of more people, for longer periods, with all of the consequences that has for rates of recidivism.

Barriers to potential improvements

As foreshadowed in the last paragraph of the preceding section, effective messaging is essential if negative responses to attempts to lower imprisonment rates are to be avoided. The Association suggests resources be allocated to educating the public about the present enormous costs to the community of incarceration, and the benefits (including long term costs savings) associated with effective rehabilitation programs.

Many studies have found that community outrage at lenient sentencing is able to be corrected with education as to the relevant factors considered at sentence. Research has also found that, when members of the community are properly informed about the facts of the case, they invariably either agree with the sentence imposed by the court or take a more lenient view. The Tasmanian Jury Sentencing Study, a methodical, intensive and well-resourced study, confirmed that this is the case.⁶ Focus groups may be one tool that could be utilised in the education process. However, in order to overcome the often inaccurate media reporting of such issues, a sustained educational campaign with focussed messaging is likely to be necessary.

At present there is an over-reliance on harsher sentencing laws, such as mandatory sentencing, as a crime prevention strategy. The Association has strongly, and consistently, opposed mandatory sentencing. There are many reasons for this. They range from the inefficiencies it produces to the long term negative consequences that flow from the erosion of judicial independence by eliminating judicial discretion. Ultimately, they lead to unjust and disproportionate sentences which will ultimately undermine a community's confidence in the administration of justice..

The illusory effect of such sentences can be illustrated by reference to the offence of trafficking in illicit drugs. This offence can be committed in an extraordinarily wide range of circumstances – from truly cynical operations involving millions of dollars, to the desperate few efforts of hopeless addicts attempting to support a habit over which they have no control. Many of the people serving sentences for drug trafficking were involved in selling to support their own addiction. While judges exercise their sentencing discretion taking into account the individual circumstances of the offender, the laws make it very difficult to avoid imposing large sentences which are of little or no social benefit. The illusion that the trade in illicit drugs can be stamped out by heavy sentences results in a large prison population of people who are, themselves, victims.

A wider range of sentencing options for first and second-time offenders should be available. These should include residential drug rehabilitation placements as an alternative to imprisonment. The community is, clearly, better served by the rehabilitation of drug-addicted offenders. Successful rehabilitation leads directly to a reduction in recidivism which, in turn, amounts to crime prevention, saving the community significant expense and resources. The application of harsher sentencing laws, on the other hand, results in an increase in the prison population and the attached stigma that can hamper future employment prospects and rehabilitation, thereby, maintaining high and unproductive recidivism and incarceration rates. For these many

⁶ Kate Warner, Julia Davis, Maggie Walter, Rebecca Bradfield and Rachel Vermeij, 'Public judgement on sentencing: Final results from the Tasmanian Jury Sentencing Study' (Trends & issues in crime and criminal justice paper No 407, Australian Institute of Criminology, 2011).

reasons, the Association supports increased flexibility in sentencing options and the options suggested in the QPC's Issues Paper.

Lastly, high technology options such as real-time surveillance referred to in the QPC's Issues Paper should not be adopted as a panacea. They may, however - if deployed appropriately - be of use in the case of prisoners who constitute an unacceptable level of risk but who are unlikely to benefit from increased time in prison, such as, *inter alia*, intellectually disabled people, some mental health offenders and foetal alcohol syndrome sufferers.

Conclusion

Thank you for the opportunity to provide this submission for the QPC's consideration. The Association would be pleased to provide further feedback, or answer any queries you may have on this matter.

Yours faithfully

A handwritten signature in black ink, appearing to read 'G A Thompson', with a long, sweeping horizontal stroke extending to the right.

G A Thompson QC
President