



Knowledge Consulting Pty Ltd
PO Box 128 Alderley Qld, 4051
Australia

www.knowledgeconsulting.com.au

A submission to the Queensland Productivity Commission (qpc) Relating to:

Issues Paper: Imprisonment and Recidivism – September 2018

Author: Keith Hamburger AM

khamburger@knowledgeconsulting.com.au

Mobile: 0408 987 127

26 October 2018

Table of Contents

| | |
|---|----|
| 1. The Author | 3 |
| 2. Structure of this submission | 4 |
| 3. Background – qpc Issues Paper Section 2 | 4 |
| 4. Trends and causes – qpc Issues Paper Section 3 | 13 |
| 4.1 Crime rates: | 13 |
| 4.2 Imprisonment | 13 |
| 4.3 Imprisonment - Questions | 19 |
| 5. Recidivism – qpc Issues Paper Section 4 | 23 |
| 6. Costs and benefits of imprisonment – qpc Issues Paper Section 5 | 24 |
| 7. Reducing imprisonment – qpc Issues Paper Section 6 | 27 |
| 8. Preventing recidivism – qpc Issues Paper Section 7 | 36 |
| 9. Governance – qpc Issues Paper Section 9 | 38 |
| Attachments to this submission: | 41 |

1. The Author

Keith Hamburger AM was Queensland's first Director General of the Queensland Corrective Services Commission (December 1988 - June 1997). As Director General, Keith led successful implementation of the *Kennedy Commission of Inquiry Reform Agenda*. Commonwealth Industry Commission reports during Keith's and the then Board's tenure showed QLD as having one of the most cost-effective systems of Corrections in Australia and the lowest return to prison rate.

Underpinning these achievements was a strategy of work place reform, innovative prisoner programs, greater community involvement in corrections and rebuilding of all of the State's prison infrastructure.

The reduced return to prison rate and policies relating to increased use of 24/7 supervised community custody options allowed closure of Woodford High Security prison with significant budget savings.

Lotus Glen Correctional Centre received a Human Rights Medal for *humane and innovative programs for Indigenous offenders*, the first such award to a correctional centre in Australia. Keith has visited and studied corrections systems in Germany, Holland, England, Singapore, USA, New Zealand, Papua New Guinea and the Solomon Islands.

Keith was a member of the Queensland Community Corrections Board (Parole Board) for eleven years.

Other relevant experience: Keith as a Public Service Inspector was Consultant Team Leader on two major inquiries into the then Queensland Prison Service:

- The Bredhauer Inquiry into the QLD Prison System (1974); and
- The Longland Inquiry into riots at Boggo Road High Security Prison (1985)

During 1982 Keith held the position of Deputy Director General (Corrective Programs), Department of Welfare Services where he had administrative oversight of the QLD Prison Service.

Keith had input into:

- The Kennedy Commission of Inquiry into the Queensland Prison System (1988);
- The Mulholland Report relating to the Queensland Parole System (1996); and
- The Queensland Parole System Review conducted by Walter Sofronoff QC (2016).

In 2000, Keith established Knowledge Consulting Pty Ltd now Australia's leading independent provider of consulting services to correctional jurisdictions and to financiers investing in correctional services. www.knowledgeconsulting.com.au As Managing Director, Knowledge Consulting, Keith has led significant correctional and immigration detention consulting projects throughout Australia, Christmas Island, New Zealand, the Solomon Islands, Nauru and Papua New Guinea.

Keith has extensive experience in working with First Nation people to reduce their over representation in the criminal justice system and in prisons. During 2016 Keith was Team Leader of a Review of the Northern Territory Department of Correctional Services and was an expert witness before the Royal Commission into Protection and Detention of Children in the Northern Territory.

Keith has a Bachelor of Arts from the University of Queensland majoring in Government and Sociology, including Criminal Justice. He is a Member in the General Division of the Order of Australia for Public Service (AM)

2. Structure of this submission

This submission provides the author's responses to questions raised in each Section of the Issues Paper together with reasons underpinning the responses.

3. Background – qpc Issues Paper Section 2

First Question:

Does the criminal justice system make the community safer, rehabilitate offenders and enact fair retribution? Does it do it well?

Answers to the four parts of the question:

Part 1 - Does the criminal justice system make the community safer? – Answer: NO.

Notwithstanding that there is some level of deterrent achieved by the system for a minority of offenders (most offenders are not deterred from offending by the threat of imprisonment) and that during periods of incarceration offenders are incapacitated from offending in the community, the overall evidence is that current functioning of the criminal justice system in fact contributes to the ongoing decline in a '*civil and safe society*' that has occurred during my lifetime.

This is because the criminal justice system is represented by a number of silos that do not function as a holistic system and these silos are not part of a holistic whole of government and community response to family and community breakdown and crime. Consequently, the criminal justice system is isolated from influencing the drivers of the circumstances causing people to offend. The work that Courts, Correctional Centres and Community Corrections do with individual offenders is mostly undone for the majority of offenders when they return to their debilitating family, associates and community circumstances. Hence, they reoffend, more crime, community safety is compromised and we have high recidivism rates.

Part 2 - Does the criminal justice system rehabilitate offenders? – Answer: Mostly NO.

This is evidenced by the terrible, unacceptably high recidivism rate for First Nation people and while the recidivism rate for non-First Nation people is lower, it is also unacceptably high. As stated above the criminal justice system needs to function as part of a holistic whole of government and community response to family and community breakdown and crime before we will see improved rehabilitation outcomes. Such an approach drove the Northern European low imprisonment outcomes via a strategy that had regard to the following imperatives:

- a) *To reduce social breakdown and crime, societies need to place emphasis on good social policy that protects and nurtures children and facilitates optimal development of their potential;*
- b) *The functioning of the criminal justice system should reflect the higher order goal of **keeping peace in society** and therefore should fulfill its punitive function within a restorative framework that seeks, if possible, to restore something to the victim, restore something to society if appropriate and if possible restore the offender to a law-abiding lifestyle, that is, a **restorative justice model**;*

- c) *There is a time lag between implementation of social policy impacting on young children and the assessment of outcomes on their adult lives;*
- d) *There is a need for a 15-year business plan driven by government that takes a whole of community approach. The plan must be based on objective data on the current cost of crime, the extrapolated cost of crime over the life of the plan under current policies and the expected savings and benefits to be achieved over the life of the plan due to proposed policies and initiatives. Key achievement milestones can be assessed in line with the ongoing election cycle;*
- e) *The development of such a plan requires high level conceptual input from across a range of disciplines including economists, criminologists, social demographers, sociologists, educationalists, child and family psychologists, correctional, police and family welfare practitioners, judges, the legal profession and politicians; and*
- f) *There is a need to achieve community understanding and support for the appropriate balance between good social policy and the role and outcomes of the criminal justice system as reflected in the business plan. This is achieved through factual information being disseminated by governments, elements of the criminal justice system, social/ community support agencies and academia concerning:*
 - *the underlying causes of crime and social breakdown;*
 - *statistics showing what is occurring where and trends; and*
 - *information concerning world's best practice in addressing these issues, including what works and what does not work¹.*

Part 3 - Does the criminal justice system enact fair retribution? - Answer: NO

This is because our criminal justice system does not work to *restorative justice principles*.

Part 4 - Does it do it well? - Answer; NO

As stated above it cannot function effectively until it becomes part of a of a holistic whole of government and community response to family and community breakdown and crime.

Second Question:

Does the criminal justice system achieve the right balance between the three purposes outlined above? If not, what purpose should be given more/ less weight and why?

Answers to the two parts of the question:

Part 1 -Does the criminal justice system achieve the right balance between the three purposes outlined above? - Answer; NO

¹ Restorative Justice: Victims and Offenders: In the Context of Developing a National Approach to a Best Practice Response to Social Breakdown and Crime in Australia, author K. Hamburger, published 2006

As covered above, the current system under which the criminal justice system functions does not allow it to achieve the right balance between the three purposes of making the *community safer, rehabilitating offenders and enacting fair retribution for wrongs committed*.

Balance between these three purposes can only be achieved when the policy settings allow for the criminal justice system function as part of a whole of government and community response to social breakdown and crime, with embedded principles of *restorative justice* driving sentencing and *justice reinvestment* facilitating reprioritisation of resource allocations to *front end* initiatives to strengthen families and communities.

Part 2 - If not, what purpose should be given more/ less weight and why?

See answer to Part 1 of the question above. It is not possible to re-weight focus across the three purposes under the current ineffective siloed systems of *criminal justice* and agencies responsible for implementation of *social policy and services*; and in circumstances where *restorative justice* sentencing is not in place and *justice reinvestment* is not part of the funding model for agencies.

Third Question – Response also covers issues raised in the last two paragraphs above the questions in Section 2 Background, Page 5 of the issues Paper:

How should competing interests and concerns (for example, the interests of victims, offenders and the broader community) be balanced.

Second last paragraph: *“Achieving these purposes may involve trade-offs. For example, retributive punishments may make it difficult to rehabilitate prisoners, which makes them more likely to commit another offence after their release. Similarly, a focus on rehabilitation over punishment may weaken disincentives to commit crime”.*

Last paragraph: *Any analysis needs to recognise the tensions that exist between the different purposes (and the fact that society's expectations play a role in how our justice system works in practice). An important consideration will be the extent to which punishment and rehabilitation work to improve or reduce community safety.*

Comment:

I respectfully suggest that the discussion should not be about potential *trade-offs between retributive punishment and rehabilitation*. The issue to be addressed is how to achieve *the best balance between the three key purposes of the criminal justice system of making the community safer, rehabilitating offenders and enacting fair retribution for wrongs committed*, which is the thrust of the questions posed in this Section of the issues paper.

In considering how to achieve this balance, I was privileged to discuss *restorative justice sentencing* practices with Magistrates and criminologists in Holland in the 1990's where during my visit this was being applied in the juvenile justice system.

In summary once the offender was found guilty, sentencing involved a number of conferences chaired by the Magistrate over a period of around 3 weeks. Participants in the conferences were selected on the basis of the nature of the crime and the identified behaviours and needs of the offender and could include the offender, police, corrections specialists, health specialists including psychologists and

psychiatrists, welfare agencies, legal representatives, offender's family and associates and where possible victim/s or their representatives.

Participants would make submissions to the Magistrate concerning their views on the potential punishment, treatment/ placement needs of the offender and the best way to compensate victim/s if this was possible. These submissions would be discussed in front of the Magistrate by participants.

The victim/s were encouraged to address the offender to describe the effect of the crime upon them if they wished to do this. The offender was encouraged to respond to the victim's concerns. The Magistrate facilitated discussion between all of the professionals concerning their views of the most appropriate way to construct a sentence that in effect would **ensure community safety**, facilitate **restoring the offender to a law-abiding lifestyle** and **restoring something to the victim/s and or community** as compensation for the offence.

The process usually involved 2 or 3 conferences over a 3-week period before a very informed sentence decision was reached by the Magistrate. Sentences covered period of incarceration if this was required, amount of time to be spent under community supervision and under what conditions, what programs/ treatment the offender must undertake, key milestones the offender must reach in terms of changed behaviour and the level of compensation for victim/s or community. There was a requirement for progress reports on the offender to be provided to the Magistrate and if necessary the offender would be required to appear back before the Magistrate if there were concerns with progress and pleasingly at times to be complimented by the Magistrate where excellent progress was being made.

There are many advantages of the above approach. One in particular is that where victims are involved in the sentencing process in the manner described above, they mostly feel that their concerns have been heard and because they have been part of the process that determined the sentence they generally feel that justice has been done. Further, given the extent of professional input into the sentencing process from a range of disciplines, in many cases offenders who in the absence of this input would have gone to prison were able to be appropriately supervised/ managed in the community with significant savings for the taxpayer.

I have discussed the above approach with Judges and Magistrates in Qld who see its merit. However, they advise that their workloads would not allow them to conduct sentencing conferences as described above.

However, in the context of the Terms of Reference for the qpc's *Inquiry into Imprisonment and Recidivism*, my view is that a cost benefit analysis would demonstrate overall budget savings from increasing court resources to implement Restorative Justice Sentencing practices which, on Northern European experience, would reduce both initial incarceration and recidivism. The building cost alone of a modern high security prison of 1,000 cells when divided by the number of cells is in the order of \$800,000 per cell. This cost is a huge incentive to look at options other than cells.

Concerning the statements above relating to *'the role community expectations play in how our justice system works in practice and the important consideration of the extent to which punishment and rehabilitation work to improve or reduce community safety'*, in my 2006 paper, previously referenced,

I dealt with the issue of political/ societal/ community expectations of the criminal justice system as follows:

“The Australian Institute of Criminology has estimated the total cost of crime to the Australian community as being in the order of \$47.6 billion per year.² In addition there is the associated degradation of the quality of community life and community assets and the personal loss, injury and grief caused to individuals. With \$47.6 billion per year on the table surely this justifies the attention of government in terms of encouraging development of a business plan to claw some of this money back, even leaving aside the social and personal benefits for citizens.

Changes in imprisonment rates do not necessarily reflect changes in crime rates. However, appropriate initiatives can reduce both crime and imprisonment rates resulting in massive bottom line budget savings over time as well as a safer community with an enhanced quality of life.

As a starting point we should seek to achieve broad political agreement as to where the balance should be in our various responses and initiatives in crime prevention. At State elections the issue of Law and Order is part of each major party’s policy platform. No major political party wants to position itself so that its opponents can label it as soft on crime. Accordingly, at election time and in between elections, in the face of increasing social breakdown, more crime and sensational reporting of horrific crime our political leaders make stern-faced announcements promising more police, more resources for police, more judges to reduce court backlogs, longer prison sentences including restricting the autonomy of judges in sentencing, more restrictions on phased release of prisoners and more money for more prisons.

We hear politicians and other commentators talking of the need to punish criminals not only for their own misdeeds but also as a deterrent to like-minded people, of the need to protect society from criminals, of the need to mount a war on drugs and the rhetoric goes on. The logic of their position is that if we have enough well-trained and well-equipped police to catch most of the criminals and if the courts were tougher and we can take criminals off the street for long enough and if corrective services ran prisons and not motels, then we will have a safer community.

Further, if the punishment inflicted on criminals is harsh enough it will deter others from becoming criminals. Thus, through an efficient and tough criminal justice system we will be able to largely punish crime away.

An effective and efficient criminal justice system is an essential plank in the implementation of the rule of law and needs to be properly resourced. However, I argue that the current emphasis in Australian political debate on the law and order issue has placed too much weight and expectation on the capacity of the criminal justice system to reduce crime. Consequently, political and public attention and considerable public resources are being directed into reactive back end options after the crime has occurred such as police, courts and prisons, with less than appropriate attention being given to front end options that could prevent crime from occurring in the first place.

² Russell G Smith et al., *Counting the costs of crime in Australia: A 2011 estimate*. (2011), 76. http://aic.gov.au/media_library/publications/rpp/129/rpp129.pdf_>

As far as Corrective Services is concerned, while overall expenditure is increasing, critical rehabilitative initiatives within prisons and community supervision options are generally underfunded due to these programs being seen politically as soft options. This is unfortunate as effective rehabilitation programs reduce crime and therefore make the community safer.

The foregoing indicates that generally in Australia our philosophical approach to developing a safer community is founded in the principle of punishing crime away rather than in an approach directed at maintaining a civil society where the moral values outlined by Dr Cooray underpin the rule of law and the criminal justice system contributes to keeping peace in our society as envisaged by Professor Pfeiffer.

Based on my more than 30 years' experience in the criminal justice system, as well as considerable experience with state welfare services and various community support agencies, I make the assertion that when a social system is in decay and the political and community focus is not on the underlying causes of this decay, then the criminal justice system will not be able to maintain peace in our society.

Indeed, the criminal justice system will lose the respect of the community as it fails to meet the expectations set by our politicians for it to curb crime. We have seen many examples of this, increasingly in recent years, where citizens, shock jocks, media generally and politicians have attacked the judiciary over sentencing practices and prison administrators for alleged soft conditions for prisoners thus weakening the community's respect for the efficiency and effectiveness of the criminal justice system.

The widely-held notion that we can punish crime away has its genesis, I suspect, in the fact that the significant majority of Australians in the 50 year plus age group can reflect on a childhood and young adulthood where there was less crime. I often hear comments such as, 'if I stepped out of line the local copper gave me a good kick up the backside and sent me home to dad where I got a clip around the ear and I didn't do that again', or 'I went into National Service, a bit of good old army discipline, that really made a man of me'. They extrapolate from these experiences to the view that a bit of good discipline or stern punishment is what thugs/ criminals need to put them on the straight and narrow and therefore stricter discipline/ punishment will go a long way towards curing dysfunctional and criminal behaviour in society.

The problem for this position in considering broader social and justice policy is that the great majority of people, who have been and remain the law-abiding people within our community, come from loving and supportive family environments where discipline is imposed on children in an appropriate manner within that loving and supportive environment. The great majority of us in our formative years would have received more pats on the back than kicks up the backside and when we got our kicks or discipline it was appropriately applied and we understood it in the context of our total environment.

In considering policies and action to reduce crime and to make our community safer, we need to start with an understanding of the social demographics of the people who form the criminal sub culture in our society. These people mostly do not come from loving and supportive families. They mostly come from dysfunctional abusive families where some or all of the following apply:

- *Disagreements are dealt with by screaming and by violence;*
- *Child discipline is grossly inappropriately applied;*
- *Child health and nutrition is neglected;*
- *Substance abuse is a fact of life for family members;*
- *Children can be sexually abused;*
- *Children are not nurtured and appropriately socialized in their early formative years;*
- *Lack of parental commitment and or finances result in children being disadvantaged in relation to resources and activities that more fortunate children take for granted; and*
- *No support with the trials and tribulations of school life.*

These are the children that classroom teachers, commencing with pre-school teachers, across Australia can identify as our future criminals. These are the children, who come to school without breakfast, who show evidence of physical and emotional abuse, who don't have clean or appropriate clothes and who have it reinforced to them on a daily basis that they are different, that they are inferior. The Australian school classrooms and playgrounds become the bleeding edge of society for these children. They become disruptive in the school environment, they fail to cope, they truant, they drop out and many become the clients of the criminal justice system.

When these kids are truanting, vandalizing, committing petty crimes, a good kick up the backside by the local copper would have no positive effect, they have had far worse at home, and it would only reinforce the rest of the negativity in their lives. The threat of jail is of no concern; quite often they have visited dad or other family members or associates in jail. Jail for many is part of their normal life experience.

For many years I was a member of the Queensland Parole Board and reviewed the cases of many hundreds of serious offenders, those serving sentences of 5 years or more, the armed robbers, rapists and murderers. I can say that in the order of 80 per cent of those offenders came from the dysfunctional abusive family background that I have just outlined. I do not say this to excuse their crimes but, in the context of this paper, to provide some explanation of factors underpinning their behaviour.

I believe each of us needs to reflect on where we might have ended up today if we had been subjected to gross neglect and abuse as a young child. Some survive the physical and emotional trauma but many do not. They end up on the conveyor belt of the criminal justice system and, after causing considerable grief and cost to society, are deposited in big expensive bins called prisons to be "rehabilitated".

In this regard to achieve better understanding of the challenge we are facing it is useful to consider the following demographics of the Australian prisoner population:

- *At least 50 per cent of the prisoner population is aged under 34 years³;*
- *Prisoners with an intellectual disability are vastly over-represented in prison populations, with estimates of the prevalence of intellectual disability being 1.5 per cent to 29 per cent in prisons and 0.3 per cent to 3 per cent in the general population⁴;*

³ Australian Bureau of Statistics, above n 3.

⁴ Shasta Holland et al., *Intellectual Disability in the Victorian Prison System: Characteristics of prisoners with an intellectual disability released from prison in 2003-2006* (2007), 9. <

- In Queensland 32 per cent⁵ of the prison population is Indigenous, compared with their representation of just over 4 per cent of the State's population⁶;
- The national rate of adult imprisonment for Indigenous persons is 2,755 per 100,000, an increase of approximately 36 per cent since the December quarter of 2005⁷ (**Note:** Comparison of this figure to the imprisonment rates of Nations and States in Tables 1 and 2 above reveals stark evidence of the tip of a horrific social and criminal justice nightmare that is shameful for our great country);
- Some 60 per cent of prisoners are not functionally literate or numerate⁸;
- A high proportion suffers from mental illness. A 2009 study in NSW found that 49 per cent of prisoners had reported an "emotional or mental problem". Female prisoners made up the majority with mental health issues at 54 per cent, with 45 per cent of females suffering from depression; 13 per cent suffering from manic depressive psychosis; and 9 per cent suffering from schizophrenia⁹;
- The aforementioned study also found that 30 per cent of prisoners were placed in care before the age of 16 years due to family breakdown, abusive parents and drug and alcohol problems¹⁰;
- A 2008 study of 199 female prisoners in NSW found that 59 per cent had experienced some form of sexual coercion or violence in their lifetimes¹¹. Other estimates suggest rates of up to 90 per cent for females, with the majority of abuse occurring in childhood¹²;
- 92 per cent of prisoners are male. (Males are 12 times more likely to be in jail than females)¹³.

In a chilling pointer to the future in so far as crime and imprisonment rates are concerned, Brisbane's daily paper the Courier Mail in articles on August 2nd and 8th 2006 reported on "Child Abuse Files of Shame". Many of the children living in 'out of home care' had endured multiple placements and it was reported that the predicted outcome of this would be 'reduced health status, lower education levels, a lack of stability in future relationships and a higher incidence of imprisonment, drug abuse and mental health problems'.

http://assets.justice.vic.gov.au/corrections/resources/0423a0c6-958e-4847-904a-61032a59a7d9/intellectual_disability_in_the_victorian_prison_system.pdf >

⁵ Australian Bureau of Statistics, above n 3.

⁶ Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians, June 2011*– 3238.0.55.001, 20th January 2015

⁷ Australian Bureau of Statistics, above n 3.

⁸ Eileen Baldry, *The Booming Industry: Australia Prisons* (2008), 4. <

http://www.nobars.org.au/downloads/Baldry_Debate.pdf >

⁹ Devon Indig et al. *2009 NSW Inmate Health Survey: Key Findings Report*. (2009), 135.

< <http://www.justicehealth.nsw.gov.au/publications/2009-ihs-report.pdf> >

¹⁰ Ibid, 30.

¹¹ Richters, Juliet et al., *Sexual health and behavior of New South Wales prisoners*. (2008), 21. <

https://sphcm.med.unsw.edu.au/sites/default/files/sphcm/Research/Sexual_Health_NSW_Prisoners.pdf >

¹² Hayley Clark and Bianca Fileborn, 'Responding to women's experiences of sexual assault in institutional and care settings' (2011) 10 *ACSSA Wrap*, 6-7 <

<http://www.aifs.gov.au/acssa/pubs/wrap/wrap10/w10.pdf> >

¹³ Australian Bureau of Statistics, above no 3.

In the most recent assessment by the Australian Institute of Health and Wellbeing (2012-2013)¹⁴, a total of 24,763 notifications of child abuse were investigated by authorities in Queensland. Of these 7,149 were substantiated with in the order of 1/3 of these being Indigenous children. The Indigenous figure is disproportionately high given Indigenous representation in the State's population of around 4%. Sadly, experience in these matters tells us that these figures would most likely understate the total number of neglected and abused children. This is a significant ticking time bomb that will explode into an adult crime wave as this cohort group moves into its teens and early adult years.

As they commit crimes as juveniles, and as they commit further crimes as adults, do you think that punishing them will deter them and or their associates from committing more crimes? On the basis of past experience and common sense given their backgrounds, the answer to that question is largely NO. These people do need to be held to account for their crimes and many must be locked away for the protection of society. However, the point I am making is that while such action may incapacitate them from committing further crime for a period and may assist in some cases with rehabilitation, it will not deter their associates from crime nor will it deter from crime the next wave of neglected, abused and at-risk young people coming through our social system”.

And:

“In considering imprisonment rates in Australia, the majority of prisoners are young males in the age group 18 years to 34 years.

Prisoner case files show that the significant proportion of these young men who come to prison after their 18th birthday did not suddenly decide to become an adult offender at this stage of their life. The evidence is that they come from the previously described social demographic of the dysfunctional family involving child neglect and abuse, under-achieving at school, poor peer group association and anti-social and or criminal behaviour as a juvenile. Disturbingly, a significant proportion has a background of mental illness. A grossly disproportionate number are Indigenous people.

Therefore, if we consider a cohort group of neglected and abused children in the age range of one to seven years, the critical developmental years according to child psychologists, then we can expect this group to begin impacting on crime and imprisonment rates in the out years 11 through 17. This means that when we look at today's imprisonment and crime rates in Australia we are looking at the consequences of social policy settings that were in place around two decades ago.

There is a frightening scenario for Australia, working with the figures quoted previously relating to neglected and abused children. That is, we already have a very large number of young Australians in at risk life circumstances where a significant proportion of this number are very likely to become involved in the criminal justice system, with all of the resulting grief for victims and cost to society. That is, today's approach to social problems has hard wired in an increasing crime and imprisonment rate for the next two decades, unless we can implement a circuit breaker.”

¹⁴ Australian Institute of Health and Welfare, Child Protection Australia 2012- 2013, Child Welfare Series No 58, Tables A5 Page 71, A6 Page 72 and A8 Page 75

I provide the above information as background to my view, outlined below, relating to the comment in the issues paper referenced above, “*and the fact that society's expectations play a role in how our justice system works in practice*”.

Over the years I have spoken at numerous public forums where I have outlined the drivers of social breakdown and crime as covered in the above extract from my 2006 paper. At the conclusion of my presentations and during question and answer sessions it becomes apparent that people are generally uninformed of the matters I have outlined above. Armed with the information I provide at these forums most present are supportive of a change to our current system to one founded in *restorative justice* and *justice reinvestment* principles.

Under the Northern Europe system that I saw during the 1990’s the public were kept well informed through factual, published data relating to sentencing statistics that allowed for analysis, comparison and debate of the sentencing practices of the judiciary in terms of effectiveness having regard to a range of other data relating to imprisonment rates, ethnicity of prisoners, prisoners health including mental health, recidivism, crime rates generally, the cost of crime etc.

In conclusion on the issue of society’s expectations, a change to a criminal justice system founded in *restorative justice* and *justice reinvestment principles* must go hand in glove with a strong community information program and desirably with bipartisan political support.

4. Trends and causes – qpc Issues Paper Section 3

4.1 Crime rates:

Question:

What factors are important to consider when thinking about crime trends and their impact on imprisonment? Are there other factors relating to crime rates that are important for this inquiry?

Answer:

My experience and the literature support the summary information contained in **Section 3 Trends and causes**. However, the other critical issue, which is the subject of the qpc inquiry is recidivism.

Recidivism rates of over 70% for First Nation people and over 40% for non-First Nation people point to system failure in the important area of rehabilitation. This failure as evidenced by the recidivism rates is catastrophic and is a significant driver of crime rates.

In my view, what is ‘*important for this inquiry*’, as I have stated above, is to arrive at recommendations that guide government towards policy settings that allow for the criminal justice system function as part of a whole of government and community response to social breakdown and crime, with embedded principles of *restorative justice* driving sentencing and *justice reinvestment* facilitating reprioritisation of resource allocations to *front end* initiatives to strengthen families and communities.

4.2 Imprisonment

Concerning the statement in Box 1 Page 8: “*Although Australia’s incarceration rate is not high by international standards, incarceration rates in some geographical regions and for some population groups are. For example, imprisonment rates in remote Aboriginal and Torres Strait Islander*

communities are very high by international standards”, I provide the following Tables covering international and Australian imprisonment rates from my paper cited above¹⁵. **These figures were last updated in 2015.**

Table 1

| Country | Prison Population Rate Per 100,000 of Population |
|--|---|
| The Top Ten | |
| USA | 716 |
| St Kitts & Nevis | 714 |
| Seychelles | 709 |
| U.S. Virgin Islands | 539 |
| Barbados | 521 |
| Cuba | 510 |
| Rwanda | 492 |
| Anguilla - U.K. | 487 |
| Belize | 476 |
| Russian Federation | 475 |
| Some Interesting Comparisons with the USA | |
| South Africa | 294 |
| New Zealand | 192 |
| England and Wales | 148 |
| Scotland | 147 |
| Australia ¹⁶ | 186 |
| Canada | 118 |
| Germany | 79 |
| Sweden | 67 |
| Denmark | 21 |
| Finland | 58 |
| Norway | 72 |

Note: *The figures are median rates for the particular countries. However, it should be noted that countries with limited or non-existent incarceration data are not included (e.g. People’s Republic of China, Eritrea, Guinea Bissau, Somalia and North Korea (DPRK)). The source paper also expresses some qualifications in relation to the preciseness of some data but despite its limitations provides a useful basis for comparison between countries.*¹⁷

There is a stark difference between the imprisonment rates in northern European countries and that of the USA. Canada and the USA is also an interesting comparison.

¹⁵ Restorative Justice: Victims and Offenders: In the Context of Developing a National Approach to a Best Practice Response to Social Breakdown and Crime in Australia, author K. Hamburger, published 2006

¹⁶ Australian Bureau of Statistics, *Prisoners in Australia 2014* – 4517.0, 17th January 2015

¹⁷ Roy Walmsley, *World Prison Population List*, (10th ed 2014)

The prison population rates above were calculated as a rate per 100,000 of the country's total population and represent the median rate for the whole country. For our purposes it is useful to look at the imprisonment rates for each of the Australian states:

Table 2
Imprisonment Rate of Australian States per 100,000 of the Adult Population

| QLD | NSW | VIC | NT | WA | TAS | SA | ACT | AUST |
|-------|-------|--------------|--------------|-------|-----|-------|--------------|--------------|
| 192.9 | 181.7 | 134.4 | 829.4 | 264.6 | 112 | 187.9 | 130.4 | 185.6 |

Notes:

- (i) *The rate shown in each case is calculated against the Australian **adult population**.*
- (ii) *The Northern Territory's imprisonment rate ranks among the worst in the world; and*
- (iii) *Of the three most populous States, New South Wales, Victoria and Queensland, Queensland has the highest imprisonment rate.*

On the basis of the above figures, my view is, that in seeking excellence we should be comparing Australia's imprisonment rate of 186 to rates in Northern European countries that average 59. Even taking account that our figure of 186 is per 100,000 of **adult population** and Northern Europe's average figure of 59 is per 100,000 of **total population**, Australia's outcome is a tragic one. This tragedy is exacerbated by the fact that the Northern Territory has arguably the worst imprisonment rate in the world with some 85% of their prisoners being First Nation people and Western Australia, New South Wales and Queensland figures being greatly inflated by First Nation prisoners.

Box 1 poses the question – Are imprisonment rates higher than they should be? The short answer is, **of course they are**. The next statement in Box 1 is: **The important question is whether the increase in the prison population provides net benefits to the community, relative to alternative options?** A number of considerations are then listed.

My response to the headline question is that there are no **net benefits** and in fact the current overall system **results in severe detriment** to the community as I have covered above in terms of **not dealing with the front-end drivers of crime in First Nation communities and in lower-socio economic communities generally and failing to have in place criminal justice and social systems that operate holistically under restorative justice and justice reinvestment principles**.

Concerning the considerations listed:

How the change in imprisonment has affected community safety and criminal activity

It has been to the detriment of community safety generally and has entrenched criminal activity in various regions of the state.

The economic and social costs of imprisonment

They are horrific. qpc will have access to a range of figures on this. However, for your information, in 2006 Debbie Kilroy from Sisters Inside and I made a presentation to the Queensland Parliaments Public Works Committee where we demonstrated that if Queensland could reduce its imprisonment rate to that of Victoria's, Qld would save in the order of \$125 million per annum in corrections costs alone.

How the various benefits that prison may provide (deterrence, retribution, rehabilitation and incapacitation) should be valued.

In considering this question, I feel that to achieve any or all of these benefits the systemic responses need to be targeted according to prisoner demographics. Obviously, the approach taken with a serious, violent long-term prisoner should vary from that taken with a range of less dangerous and or non-violent offenders.

Our current prison system largely adopts a *'one size fits all'* approach with far too many short-term prisoners being churned through high security facilities at great financial cost with little or no rehabilitation outcomes. That is, the *'one size fits all'* is tailored to the highest common denominator of high security prisoners, which is essential for their *incapacitation* but counterproductive to outcomes of *deterrence, retribution, rehabilitation* for less serious offenders.

To achieve the potential benefits of *deterrence, retribution, rehabilitation and incapacitation*, responses available to Courts for the accommodation and treatment of offenders need to be expanded driven by a new conceptual approach.

For example, Magistrates, correctional professionals, criminologists, First Nation Community Leaders, professionals working in government and NGO's across the welfare sector will testify that if there were adequate **community custody options** linked to a **holistic family and community strengthening response** in disadvantaged communities across Queensland, then social breakdown, crime and recidivism will be reduced and the prison accommodation problem will become manageable.

To support the above view:

- World's best imprisonment outcomes are largely driven by sound social policies targeting at risk families and young people as well as a holistic, joined up services response to support rehabilitation;
- Around Australia and internationally there has been a failure of large high security prison precincts to reduce recidivism rates. Queensland's large prisons are disconnected from prisoners' communities of interest, they are silos that inhibit joined up service delivery (throughcare) and of necessity are highly regimented and bureaucratic with limited time or resources for rehabilitation programs. They are structured to work against quality staff interaction with prisoners and are a significant cause of high recidivism rates
- The number of prisoners held beyond Parole release date or re-imprisoned due to breeches. If this figure was halved it would result in **1,000 less prisoners** (it is relatively simple to solve this system failure). Plus, there are more than **1,000 First Nation and non-First Nation prisoners** currently in secure custody **who need not be there (views of experienced correctional practitioners)** who should be dealt with via community custody and a holistic family and community strengthening response. Prison overcrowding crisis is driven to a large extent by these system failure issues;
- Gross overrepresentation of First Nation people in prisons and a dreadfully high recidivism rate driven largely by dysfunctional family, social and economic circumstances;

- Many First Nation prisoners are held in secure custody because they are unable to exercise bail provisions due to lack of appropriate accommodation and or drug and alcohol issues. Again, *system failure* due to lack of appropriate **community custody** options;
- A large number of prisoners who receive very short sentences, weeks or a few months create a costly *churn factor* and occupying expensive secure cells. Again, **system failure** in that many could be accommodated in appropriately located, designed and staffed community custody options with therapeutic programs;
- Lack of whole of government and whole of community response to social breakdown and crime, particularly in First Nation and lower socio- economic non-First Nation communities;
- Disempowerment of First Nation people and people in lower socio-economic communities from ownership of solutions to the crisis facing their communities and people;

A new conceptual approach that drives better operational outcomes to take account of the above issues and aimed at achieving the potential benefits *of deterrence, retribution, rehabilitation and incapacitation* will result in a massive saving to Queensland's budget bottom line as well as driving economic and social development in First Nation and other lower socio-economic communities.

Whether the current use of imprisonment for certain offences is the most appropriate sentencing option?

For many sentences, imprisonment is over used because Courts do not have available alternative options that will both protect public safety and offer credible rehabilitation opportunities.

What alternative options could be used and whether these would provide greater net benefits to the community than prison?

Holistic Justice and Community Services Pty Ltd, a company established by Knowledge Consulting Pty Ltd Directors, working with the Bidjara people in South West Queensland, placed a Market Led Proposal (MLP) before the Queensland Government on **4th April 2016** for a pilot project to demonstrate an approach to **empower** First Nation people to drive social and economic change in their communities to result in a reduction in First Nation people coming into contact with the criminal justice system and in imprisonment.

The proposal Bidjara and HJCS have put forward will certainly provide *greater net benefits to the community than prison*. It has the support of:

- Goorathuntha and Bidjara Traditional Owners in the Charleville – Augathella region. They will provide land, staff and facilities for the Pilot Project;
- A number of other First Nation communities across Qld who wish to replicate the project;
- Murweh Shire Council;
- Chief Magistrate, Deputy Chief Magistrate and Murri Court Magistrate – in principle support;
- Indigenous Land Council (ILC);
- Qld Corrections;

- Department of Aboriginal and Torres Strait Islander Partnerships;
- Market Led Proposals (MLP) Secretariat – Stage 1a Submission approved;
- Mr Mick Gooda, Former Australian Government, Aboriginal and Torres Strait Islander Social Justice Commissioner; and
- Ms Jacki Huggins, Co-Chair of The National Congress of Australia’s First Peoples.

After extensive consultations with the MLP Secretariat and with Queensland Corrections this MLP proposal was accepted as unique, a key criterion for MLP approval. As a consequence of feedback from these consultations a revised Submission was submitted on **17th March 2017** and was supported by the MLP Secretariat for submission to the Queensland Government for approval.

We are awaiting advice from the Queensland Government as to whether or not Bidjara and HJCS’s submission will be approved.

Essentially our MLP approach is founded in the following principles:

- Government agencies, including corrections, **primary role** in First Nation and non- First Nation lower socio-economic communities should be to act as **enablers** and **capacity builders** to **empower** community leaders and people to develop enterprise and strengthen self – efficacy in the people of the community such that strong families and strong communities are created.

As **enablers and capacity builders**, government agencies would have an ethos of **not doing things for or to people in lower socio-economic communities**, but rather **enabling** First Nation People and people in other communities to own and deliver the essential services required to build strong families and strong communities.

- Queensland Corrections should move away from large prison precincts to a model of the following components:
 - a) A number of relatively small high security facilities (*size could be perhaps in the order of 100 -150 beds with this size tested in co-design with corrections and other agencies*) for dangerous/intractable/ long term prisoners – a significant minority of prisoners; and
 - b) A significant number of small (*perhaps in the range of 12 to 24 beds, this size range to tested in co-design with corrections and other agencies*) **therapeutic community custody options** that provide 24/7 supervised *Healing and Rehabilitation* options seamlessly linked to family and community strengthening programs, mentoring and other support services for individual offenders.

These facilities and services to be delivered by First Nation enterprises on Traditional lands and by community agencies in other lower socio-economic communities across Qld. Set a goal for **1,000 offenders** to be diverted to these facilities over the next 3 years;

Offenders would be diverted from Courts to these 24/7 therapeutic community custody options, having regard to the nature of the offence and on the basis of pre-sentence reports from relevant professionals, via a Probation Order with a *residency clause* requiring them to reside at the facility and undergo specified rehabilitation programs,

followed by a period of community mentoring. **That is, they would not enter the prison system.**

In discussing the above model with a Senior Magistrate who had served for 2 years as the Charleville Magistrate, the location of our proposed pilot project, he stated that if this model had been in place during his time at Charleville he could think of only two offenders over that period that he would have sentenced to prison. If this experience was replicated across Queensland then the benefits would be enormous.

- c) An expanded role for Community Corrections is introduced involving **enabling** and **strengthening** of families and communities in First Nation and lower socio-economic communities generally;

Note: Our preliminary costings demonstrate that the above options would result in significant operational and capital savings for Queensland corrections. This, coupled with reduced recidivism achieved through the 24/7 **therapeutic community custody options** will result in significant reductions in crime and overall costs to the government.

- d) In terms of measuring success, government agencies in the fields of corrections, law enforcement, education, health and other relevant human service delivery areas should work together to establish a number of Key Performance Targets in areas critical to achieving improvements in reducing crime, social breakdown, recidivism and stronger families and communities in defined locations.

In developing strategies to achieve these Key Performance Targets, agencies should have regard to the definition of a primary role which should be set for them i.e. to act as **enablers** and **capacity builders** to **empower** community leaders and people.

4.3 Imprisonment - Questions

What are the main factors that are driving imprisonment rates in Queensland?

Increase in remand prisoners – This is largely driven by incapacity to access bail provisions due to factors such as poverty, lack of an appropriate residence, substance abuse issues and lack of community support services to give the Court comfort that reoffending is unlikely while on remand.

The availability of 24/7 supervised therapeutic community custody options as covered above would see a dramatic reduction in remand numbers in secure prisons.

HJCS has two proposals before the Queensland Government time, yet to be approved, that would provide for a total of 40 beds for women remandees in 24/7 supervised therapeutic community custody options owned and operated by First Nation organisations. Approval of these projects would provide relief of some of the overcrowding in the Brisbane Women's high Security prison as well as demonstrate the capacity to roll these facilities out across Queensland.

What are the key factors that have driven the increase in Indigenous incarceration rates?

From my experience over many years in dealing with Indigenous prisoners, their families and their communities and from the literature I identify the following key factors driving this increase:

- A key factor is government and non- government agencies doing things to and for First Nation people rather than taking an empowerment approach via enabling and capacity building¹⁸. This has been a significant driver of the sense of hopelessness in First Nation communities, it is a major cause of social and family dysfunction, the lack of enterprise and employment in these communities and the poverty.

As I have said above there is a need for a holistic whole of government and community response to family and community breakdown and crime in First Nation and lower socio-economic communities generally. This response must be driven by empowerment of *champions* in these communities who are supported by *enablers* and *capacity builders* from across government, non-government and private sectors.

- Another key factor is the current practice of imprisoning First Nation people in culturally inappropriate high security prisons remote from their communities and where it is impossible to engage them in meaningful rehabilitation. In cases where the Courts, Correctional Centres and Community Corrections have done good work with individual First Nation offenders, it is often undone when they return to their debilitating family, associates and community circumstances. Hence, they reoffend, more crime, community safety is compromised and we have high recidivism rates.
- As covered above First Nation incarceration and recidivism rates will be driven down if the corrections system is restructured along the lines of:
 - A number of relatively small high security facilities for dangerous long-term offenders;
 - A significant number of 24/7 supervised therapeutic community custody options across Queensland on Traditional Lands and in lower-socio economic communities for the majority of offenders who currently imprisoned. Across Australia, the lack of credible 24/7 supervised therapeutic community custody options is a major driver of imprisonment rates;
 - The role of Community Corrections is refocused to incorporate an enabling and capacity building role in First Nation and lower socio-economic communities generally; and
 - The above initiatives are undertaken within a sentencing process that that applies *restorative justice principles* and a government funding model for the criminal justice and human service delivery systems that has its basis in *justice reinvestment principles*.

¹⁸ Empowered Communities: Empowered Peoples, Design Report, Wunan Foundation Inc. 2015

Why have female imprisonment rates increased relative to males?

I have insufficient information to make an informed comment on this. However, I am aware that lack of appropriate community custody options has driven up the number of female prisoners remanded in custody.

Has sentencing changed over the last ten years? What are the key factors that have driven these changes? What is driving the shift from non-custodial sentences?

By way of background to this question, following the reforms to Queensland Corrections initiated by the Kennedy Commission of Inquiry 1988, the then Queensland Corrective Services Commission was proactive in establishing alternatives to imprisonment such as home detention, half-way houses, outstations on First Nation Traditional Lands and Western Out Reach Work Camps (WORC Scheme);

The Commission also instituted a:

- significant increase in the number of professional program staff working in secure correctional centres;

A *“through care”* model that saw a much greater emphasis upon the use of community corrections and a consequent fall in the numbers of prisoners in secure custody. The legislation enacted at that time enabled Community Corrections Boards to implement *phased release* of prisoners via half way houses to home detention and ultimately to parole;

- Community Justice programs in Indigenous communities;
- Implementation of programs to allow offenders to make restitution to the community and to victims of crime;
- Community groups providing support programs within secure correctional centres as well as in community corrections;
- Achievement of goals to significantly increase the number of Indigenous people and women working in secure and community corrections;
- Rebuilding and or refurbishing the states entire correctional infrastructure to make it suitable for a modern system of corrections with a goal to reduce recidivism. (*However, in the rebuilding program, with the wisdom of hindsight, we took a wrong turn in entrenching the large prison model*);
- Implementing Community Corrections Boards across the State to provide greater access by prisoners to supervised parole release thus enhancing their chances of a law-abiding life style;
- Greater emphasis upon cognitive skills programs for offenders aimed at addressing the underlying causes of their offending behaviour;
- Introduction of the concept of individual case management of all prisoners whether in secure or community custody; and

- Establishment of Parole Units in each prison to allow Community Corrections Officers to work with prisoners to better prepare them for parole release and to assist them in developing their post release plans

During the life of the Queensland Corrective Services Commission prisoner numbers dropped to the extent that it became possible to close the 250 bed Woodford Correctional Centre with significant savings to Queensland's budget. The Commonwealth Industry Commission during this period reported QLD as having one of the most cost-effective systems of Corrections in Australia and the lowest return to prison rate

I have no information as to whether or not sentencing practices have changed. However, it is possible that Courts either do not have confidence in the current community-based corrections options to maintain community safety while rehabilitating offenders and or there is a significant lack of appropriate community-based options e.g. 24/7 supervised therapeutic community custody options.

Many prisoners are imprisoned for non-violent offences. Why is this the case/ what are the pathways which lead to non-violent offenders being imprisoned?

From my experience over many years where I have discussed this issue with Magistrates I can assert that most Magistrates prefer to sentence an offender to a community-based option, providing community safety can be assured and that the programs that will be available to the offender are credible in terms of rehabilitation and or restitution.

Sadly, at present I believe that the following factors are in play that cause Magistrates to incarcerate rather than use community-based sentencing options:

- Many young offenders come from the abusive, neglectful circumstances I have previously mentioned and are impulsive and thoughtless in their response to authority. Magistrates could be concerned that release of such a person to standard community supervision where they are required to report to a Probation Officer from time to time and largely left to their own devices between reporting would put community safety at risk and not be effective in changing behavior;
- Many are substance abusers and require treatment which is in scarce supply in the community and Magistrates may have little confidence that the offender will either have the will to access what is available or if he or she has the will are there services available? In these circumstances the Magistrate may opt for a custodial sentence where the offender may be able to 'dry out' and perhaps have access a program in prison which, sadly, under current arrangements is also unlikely; and
- An increasing number of offenders' present with complex mental health issues that cannot be dealt with under the current operating model of Community Corrections.

All of the above scenarios point to the need for 24/7 supervised therapeutic community custody options with specific treatment options as alternatives to imprisonment. This form of custody is the missing link between prisons and traditional community corrections supervision.

There is also a need for a change to the way Community Corrections Officers perform their community supervision role. There has been too much emphasis upon *regulatory functions* to the detriment of providing enabling and capacity building support to individual offenders to support them in their transition to a law-abiding lifestyle. As stated previously, Community Corrections Officers also need to be involved in enabling and capacity building to support families and communities where there is a history of chronic offending.

24/7 supervised therapeutic community custody options and a reform in the way Community Corrections Officers perform their roles will, in my view, result in Courts having confidence in diverting offenders away from prison.

Is the severity of sentencing outcomes broadly reflective of – or proportional to – the harm done to victims of crime?

In my experience, including experience as a prison administrator and as a member of the Parole Board:

- I can cite cases where sentencing has not been, in my view, proportional to the harm done to victims. These are limited in number and have mostly related to horrific cases and where there is not a capacity to impose an unambiguous *never to be released sentence*. Courts do need this option in my view;
- In a significant number of cases I feel comfortable in asserting that the sentence is broadly reflective or proportional to the harm done to victims; and
- Concerningly, I can also cite a significant proportion of cases where I am of the view that sentences imposed are disproportionately harsh having regard to the harm done to victims and the overall circumstances of the offender. These are cases where the offender has come from the deprived social and economic circumstances in formative years that I have previously canvassed and has mental/ cognitive issues and the sentencing approach does not function in a restorative manner to arrive at a balanced outcome for the offender and victim.

To achieve sentencing outcomes that are broadly reflective of – or proportional to – the harm done to victims of crime we need sentencing to be conducted under a *restorative justice* framework.

5. Recidivism – qpc Issues Paper Section 4

Questions:

What principal factors influence recidivism? What evidence is available to support an analysis of the causes of recidivism? and

Do recidivism rates vary between different classes of prisoners (type of crime, age, ethnic or cultural differences)?

Answer:

There is significant literature relating to recidivism. I won't canvass that here. The following comments are founded in my corrections experience, including Parole Board membership. In my experience, offenders who are most likely to be recidivists are those who have some or all of the following characteristics:

- Have endured abuse and neglect during formative years;

- Lack education and training;
- Have cognitive impairment;
- Have low impulse control and anger management issues;
- Come from families who have a history of contact with the criminal justice system;
- Have a history of juvenile offending;
- Have substance abuse issues;
- Have anti-social peer group associates;
- Are pedophiles and some other categories of sex offenders;
- Are fraudsters;
- Are psychopaths or sociopaths

Sadly, given the awful social and economic circumstances in many First Nation and other low socio-economic communities many people from these communities exhibit a number of the above characteristics.

6. Costs and benefits of imprisonment – qpc Issues Paper Section 5

Question:

What costs (including non-financial costs) does imprisonment impose, and who bears these costs?

What evidence is available about the magnitude of these costs?

Answer:

Qpc's Issues Paper states that: *"Prisons and community corrections in Queensland cost more than \$950 million in 2016–17. To keep pace with the expanding prisoner population, expenditures have had to grow faster than other government expenditures—expenditures on prisons grew almost twice as fast as general government expenditures over the period 2011–12 to 2016–17."*

On a corrections study tour to the USA during the early 1990's I found that in some American States the prisons budget equaled or exceeded the State's education budget, an unbelievably bad situation. It will be a shameful situation should that ever occur in Australia. However, as the statement in the *Issues Paper* indicates, we are moving down that path and urgent remedial action is needed.

Russell G Smith in a paper in 2011 said the Australian Institute of Criminology has estimated the total cost of crime to the Australian community as being in the order of \$47.6 billion per year.¹⁹ Apart from police and Courts, prisons form a significant proportion of this and in addition there is the associated degradation of the quality of community life and community assets and the personal loss, injury and grief caused to individuals.

All these costs are born by taxpayers with taxpayers who are also victims suffering an additional impost. Offenders also bear a cost in that their actions that resulted in imprisonment has resulted in difficulty and suffering for them and their families.

¹⁹ Russell G Smith et al., *Counting the costs of crime in Australia: A 2011 estimate*. (2011), 76. http://aic.gov.au/media_library/publications/rpp/129/rpp129.pdf

What benefits does imprisonment provide to the community? How should these be measured, and what evidence is available to support this?

In terms of What benefits does imprisonment provide to the community?: In my response to Section 3 of the Issues Paper in dealing with the question: *The important question is whether the increase in the prison population provides net benefits to the community, relative to alternative options?* : I responded, “that there are no net benefits and in fact the current overall system results in severe detriment to the community as I have covered above in terms of not dealing with the front-end drivers of crime in First Nation communities and in lower-socio economic communities generally and failing to have in place criminal justice and social systems that operate holistically under restorative justice and justice reinvestment principles.”

However, in dealing with the question - *How should these be measured, and what evidence is available to support this?* – and given my answer above that there are no benefits in the current system, then for the purposes of my response to the Issues Paper, I propose to apply this question to the alternative model I have proposed in responding to the imprisonment question above (**Page 19**) which is a system of corrections where:

- i) Dangerous long-term offenders are housed in a number of relatively small purpose built humane, high security facilities;
- ii) Other offenders are accommodated in a significant number of 24/7 supervised therapeutic community custody options across Queensland on Traditional Lands and in lower-socio economic communities;
- iii) The role of Community Corrections is refocused to incorporate an enabling and capacity building role in First Nation and lower socio-economic communities generally; and
- iv) The above initiatives are undertaken within a sentencing process that that applies *restorative justice principles* and a government funding model for the criminal justice and human service delivery systems that has its basis in *justice reinvestment principles*.

KPI’s for outcomes in i) above would relate to safe, secure and humane containment of offenders, safety of staff and visitors, positive changes in cognitive functioning of offenders and effective planning for ultimate release where this is feasible.

For ii) through iv) above, KPI’s for outcomes would be set for all of the services that would be in place to deliver a holistic approach to social breakdown and crime on a community by community basis. Under this model it is feasible to have service providers held meaningfully to account for outcomes such as reduced recidivism, improved mental health, education, training and employment outcomes as well as reduced family violence, more prosocial behaviour across communities, community safety generally, reduction in school truancy, better behaviour in schools and improved academic attainment by students.

What factors have influenced the cost of imprisonment?

- Apparent incapacity to learn from ‘world best outcomes’, e.g. Northern Europe; and including not adopting *restorative justice* principles in sentencing and not funding justice and human service delivery responses under a *justice reinvestment* framework;

- Failure to adopt policies that EMPOWER people in First Nation and other lower socio-economic communities to lead provision of a holistic suite of services to strengthen families, protect and nurture children, supervise and rehabilitate offenders.
- Siloed approach across the criminal justice and human service delivery systems that impedes a holistic response to social breakdown and crime;
- Channelling all offenders who are sentenced to imprisonment through high security remand and or reception facilities;
- Holding a significant proportion of prisoners in high security accommodation where this is not necessary;
- System failure where some 30% of prisoners are held beyond their parole eligibility date or are reimprisoned in high security facilities for technical parole breaches, occupy some 2,000 cells;
- Lack of appropriate 'community custody' options in lieu of prisons for prisoners who could be safely held in these facilities;
- Many prisoners are remanded into secure custody because they cannot access bail provisions due to lack of appropriate accommodation or because of drug and alcohol issues. Once again, this points to a lack of appropriate community custody options;
- Large number of prisoners receiving very short sentences, weeks or months, create a costly *churn factor* - occupying expensive secure cells and they receive little or no rehabilitation programs. Once again, this points to a lack of appropriate community custody options;
- Significant driver of crime and imprisonment rates is the failed policy of large prison precincts that do not function as part of a holistic response to crime and social breakdown and are not cost effective – see alternative model discussed above.

How might these change in the future

See alternative model discussed in this response.

Do the costs and benefits of incarceration vary according to the class of prisoner and type of prison?

Costs vary with high security prisons being more expensive than medium and low security prisons.

I have covered the issue of benefits previously in this response.

If so, why do these costs and benefits differ?

- Due to the security classification of the prisoner; and
- Privately managed prisons tend to operate more cost efficiently than State managed prisons due to labour force efficiencies. I am not aware, however, that they are more effective in terms of recidivism due to the systemic issues I have covered elsewhere in this response.

How do the costs and benefits of prison compare to alternatives?

Preliminary analysis that we have conducted of the costs and benefits of the alternative model outlined in this response, together with experience when the then Queensland Corrective Services Commission introduced the very successful Western Outreach Camps (WORC) Scheme which enabled the Commission to close the then Woodford prison, demonstrates that the alternatives would be hugely beneficial in terms of effectiveness (recidivism), efficiency (operational costs) and infrastructure capital costs.

7. Reducing imprisonment – qpc Issues Paper Section 6

Questions:

What strategies are most effective in permanently reducing crime that leads to imprisonment?

Following is an extract from my previously referenced paper, *Restorative Justice: Victims and Offenders: In the Context of Developing a National Approach to a Best Practice Response to Social Breakdown and Crime in Australia*, author K. Hamburger, published 2006. This extract I feel best deals with this question.

By way of background, I delivered this paper to a National Conference in Sydney conducted by the Menzies Institute. A senior officer from the Prime Minister's Office was in the audience. He subsequently arranged for me to present and discuss the paper with senior officers of the Department of Prime Minister and Cabinet. They were favourably impressed. I was later informed that they were discussed with the then Prime Minister and came within 'a bee's whisker' (quote) of being adopted:

"CRIME REDUCTION AS PART OF A BROADER SOCIAL POLICY

I earlier quoted the German criminologist Dr Pfeiffer who said that the higher order role of the criminal justice system is 'to contribute to keeping peace in our society', as opposed to the commonly held notion that the criminal justice system exists to 'punish offenders and through punishment deter offending behaviour'. When I last met Dr Pfeiffer some years ago he advised that in the decade following the Second World War a number of Northern European countries concluded that:

- *To reduce social breakdown and crime, societies need to place emphasis on good social policy that protects and nurtures children and facilitates optimal development of their potential;*
- *The functioning of the criminal justice system should reflect the higher order goal of keeping peace in society and therefore should fulfill its punitive function within a restorative framework that seeks, if possible, to restore something to the victim, restore something to society if appropriate and if possible restore the offender to a law-abiding lifestyle, that is, a restorative justice model;*
- *There is a time lag between implementation of social policy impacting on young children and the assessment of outcomes on their adult lives;*
- *There is a need for a 15-year business plan driven by government that takes a whole of community approach. The plan must be based on objective data on the current cost of crime, the extrapolated cost of crime over the life of the plan under current policies and the expected*

savings and benefits to be achieved over the life of the plan due to proposed policies and initiatives. Key achievement milestones can be assessed in line with the ongoing election cycle;

- *The development of such a plan requires high level conceptual input from across a range of disciplines including economists, criminologists, social demographers, sociologists, educationalists, child and family psychologists, correctional, police and family welfare practitioners, judges, the legal profession and politicians; and*
- *There is a need to achieve community understanding and support for the appropriate balance between good social policy and the role and outcomes of the criminal justice system as reflected in the business plan. This is achieved through factual information being disseminated by governments, elements of the criminal justice system, social/ community support agencies and academia concerning:*
 - *the underlying causes of crime and social breakdown;*
 - *statistics showing what is occurring where and trends; and*
 - *information concerning world's best practice in addressing these issues, including what works and what does not work.*

RESTORATIVE JUSTICE: A COMMUNITY ROLE FOR SENTENCING

Community support for the above approach was enhanced through a restorative justice approach to sentencing where victims and or their representatives are involved in the sentencing process thus achieving more appropriate and better understood sentencing outcomes. The sentencing process, which is conducted by the trial judge, as well as having input from victims, can include input from professionals from the fields of corrections, health, child and family welfare, police, and any other discipline relevant to the case to assist the trial judge in arriving at a sentence outcome that:

- *Appropriately reflects the seriousness of the crime as viewed by the victim and the community;*
- *If possible provides for a measure of restoration to the victim and to the community if appropriate;*
- *Provides guidance to correctional authorities on the appropriate rehabilitation programs, including where imprisonment occurs, the acceptable stages at which the offender can be considered for community supervision options; and*
- *Confronts the offender with the seriousness of the impact on the victim/s of the crime and clarifies for the offender in the context of the sentence the steps/ programs the offender has to undertake to change behaviour such that benefits of supervised release and ultimately freedom can be achieved;*

Under this model, sentencing statistics are regularly published that enable analysis, comparison and debate of the sentencing practices of the judiciary in terms of effectiveness having regard to a range of other data relating to imprisonment rates, ethnicity of prisoners, prisoner's health including mental health, recidivism, crime rates generally, the cost of crime etc.

Sentencing practice is a major divisive element in the Australian context which drives the punish crime away protagonists. There is a common perception, fuelled by media coverage of cases of horrific crime

that certain offenders are not being appropriately punished and or controlled. In support of this view, there is strong experiential and clinical evidence that certain types of serious offenders are highly likely to re-offend in a horrific manner. Therefore, there is a strong case, using the incapacitation argument, that for such offenders the possibility of parole or any form of future release should not be an option while they are physically able to cause harm.

Over the years this minority group of very serious offenders has contributed to a negative perception within the community of the credibility and integrity of the parole system. This occurs on two counts. Firstly, the decision to release high profile serious offenders on parole always receives publicity and mostly draws condemnation of the decision from victims, victim's organisations, police, concerned citizens, etc. who regard such release as inappropriate due to the nature of the crime and concern that the offender may re-offend. In the process of expressing their criticism many denigrate the parole system as a soft option not only for such offenders but for offenders generally.

Secondly, when, as occurs from time to time, one of these very serious offenders re-offends while on parole, community outrage is directed at the parole system resulting in serious diminution of community respect for the credibility and integrity of the overall parole system.

Controversies of the above nature that result in loss of community respect for the parole system are a tragedy as parole is a critical element in the rehabilitation process for most prisoners as part of phased release or through care. That is, prisoners who demonstrate progress in rehabilitation programs can achieve reduced security classification, transfer to low security facilities, access to leave of absence, release to work, home detention and ultimately parole. Throughout this process they are supervised and supported resulting in a higher probability of effective reintegration into the community with a law-abiding life style and reduced recidivism which means less crime.

The controversy surrounding the release of very serious offenders on parole coupled with the lack of effort by most Australian correctional authorities in promoting the essential nature and the considerable benefits to the community of phased release and community supervision of prisoners, has led to negative outcomes including increased crime.

That is, we have seen politicians around Australia taking populist and knee jerk decisions to restrict access to parole by prisoners and in the process denigrate and considerably weaken a critical element of the rehabilitation and crime reduction process. This element is the community supervision of the majority of offenders to facilitate maintenance of a law-abiding lifestyle as they re-integrate into society applying improved thought processes and behaviours learned through prison rehabilitation programs.

The very serious offenders are a minority of offenders but the issue of sentencing in these cases needs to be addressed urgently to take this issue off the table so that sensible debate can occur in relation to sentencing for offenders not in this category. I say this because for a significant proportion of offenders in the less serious categories, my experience is that sentencing outcomes are inappropriate either in terms of harshness and or in not facilitating rehabilitation.

A restorative justice approach to sentencing for the majority of offenders would facilitate the development of just and humane outcomes, reduce re-offending and reduce the cost of crime.

In Northern Europe a number of policy initiatives were taken within the framework of the foregoing which has contributed to the outcome of the lowest imprisonment rates in the world and generally lower crime rates. It was not a quick fix and there have apparently been hiccups along the way including issues relating to substance abuse, the opening up of Eastern Europe with, for a short period, the resultant migration of a criminal element to Western Europe, from time to time various ethnic tensions and the usual swings in public and political opinion when particular incidents of horrific crime occur.

Nevertheless, the various pendulum swings have mostly returned to the central theme, on which there is general political and community agreement, of good social policy aimed at addressing the underlying causes of social breakdown and crime with the criminal justice system contributing to maintenance of a peaceful society through a restorative emphasis.

Dr Pfeiffer provided a number of practical examples of restorative justice at work. I will share one small example with you which had a very powerful outcome and provides food for thought for us in Australia in considering how we may choose to philosophically redefine our approach to crime prevention.

Hanover, a city in Northern Germany, has a city mall which is the focus of this example. The mall became a gathering point for young people, particularly on Friday and Saturday evenings. A minority of these young people caused considerable problems in terms of assaults, vandalism, substance abuse and general disorderly behaviour. The initial thought by authorities was to send in the police. However, due to the positive interrelationships that exist between police and juvenile welfare authorities under a restorative justice model, an alternative first response was constructed. The elements of the response were as follows:

- *Identification of the social demographic of the trouble makers by youth workers. They were found to be essentially young males who came from disadvantaged families, who had limited resources, were not part of a constructive peer group and were basically bored with plenty of misdirected energy;*
- *An objective was set to encourage these young males to not attend the mall on Friday and Saturday nights through engaging their attention and energy in some constructive alternative activity;*
- *A warehouse was leased on the outskirts of the city. This warehouse had a considerable tract of adjacent land. The warehouse was stocked with an appropriate number of wrecked motor bikes that were donated by wrecking yards;*
- *A number of retired mechanics/ tradesmen were engaged to attend at the warehouse on Friday and Saturday evenings;*
- *Each Friday and Saturday evening a van with youth workers would attend the mall. Youth workers would approach the identified trouble makers and their associates with an offer that was too good to refuse, 'I know where there are some wrecked motor bikes with some blokes who will help you to put them together and when they are fixed you can keep them';*
- *Each Friday and Saturday van loads of potentially offending youth were taken to the warehouse, worked on the motor bikes, ultimately built a dirt track on the adjacent land,*

created a motor cycle club and mostly refrained from anti-social behaviour. Many found work as a result of this activity;

- *Police in the mall worked in concert with the youth workers to refer youth at risk to youth workers rather than charge with offences and a variety of other similar programs were developed; and*
- *The mall became largely peaceful, young people were diverted away from the criminal justice system and into constructive activity.*

This is one small but powerful example of how a positive vision for a peaceful society can result in good social policy where people from welfare agencies and the criminal justice system work together to prevent crime while enhancing the life chances of young people. It demonstrates what can be achieved when the temptation to make the first response to social disorder a punitive one is resisted.

The cost of the above initiative was far outweighed by the costs that would have been incurred by processing these young offenders through the criminal justice system, coupled with the benefits of crime reduction. This initiative needs to be viewed in the context of a whole myriad of creative initiatives, many of which are quite complex, implemented across a nation. These initiatives were targeted to particular areas of need, based on sound demographic analysis of the underlying cause of the problem, appropriately resourced with the costs and benefits of outcomes measured against quantifiable data relating to the cost of crime. That is, a properly constructed business plan to reduce crime, reduce the cost of crime and to achieve a safer community.

In summary, in my view, in Australia we have within our midst a social tragedy of immense proportions that is destroying the life chances of a significant group of young Australians.

If we continue to do so these increasing numbers of neglected and abused young Australians will continue to wreak havoc of increasing severity that will continue to erode our quality of life. A concerted national plan of action is long overdue and desperately needed. For this to occur there needs to be a sense of urgency at the national and state political leadership levels concerning the challenge we are facing, an understanding of the problem, a vision for where we might go from here and enthusiasm at that leadership level to search for solutions.

RECOMMENDATIONS

Accordingly, I recommend as follows:

Recommendation One

That the issue of a national approach to developing a best practice response to social breakdown and crime in Australia is placed on the Standing Agenda for the Council of Australian Governments (COAG). This is because the national importance and cross-jurisdictional nature of the issue makes this an appropriate matter for COAG. That in placing the issue on the COAG agenda, COAG be asked to consider the following:

- *That in specific regions and communities across Australia there is debilitating social, family and economic circumstances denying a significant number of children and young people a reasonable opportunity for a happy, healthy and productive life. These circumstances*

contribute to the underlying causes of crime and social breakdown which impact adversely on the wider community.

- *That there is past evidence from communities such as Redfern, Sydney and Palm Island, North Queensland where dysfunctional social circumstances have erupted into extreme community violence and contempt for the rule of law with disturbing images beamed around the world, thus diminishing Australia's reputation as a safe and cohesive society. There have been disturbing recent reports of radical extremist elements infiltrating certain disadvantaged low socio-economic communities to recruit and develop 'home grown terrorists'.*
- *That there are a range of proactive initiatives under way across Australia to address systemic disadvantage, to protect children and young people and to reduce crime. Many of these have been driven by the Commonwealth Government. Nevertheless, significant areas of responsibility lie with the States and while there are success stories on a variety of initiatives, there is evidence from imprisonment and crime rates that Australia is behind world best practice in its approach to crime reduction through addressing the underlying causes.*

This results in economic disadvantage to Australia through unnecessarily high expenditure on reactive criminal justice system needs that divert public and private sector funds away from nation building projects. What is needed now is to pull the success stories together and for them to be adopted more widely. That needs serious State involvement as well as Commonwealth involvement and leadership.

- *Key themes from the Pathways to Prevention Report of 1999, the World Health Organisation's Safe Communities Model and other relevant research papers and best practice models should be reflected in the COAG paper.*
- *An example of potential savings that could be achieved by a more peaceful society through better balance and interrelationship between social policy initiatives and the criminal justice system is, if we take the Australian Institute of Criminology's estimate of the total cost of crime to the Australian community as being in the order of \$48.6 billion per year, a modest 10 per saving could reduce the cost to Australian community by the considerable sum of around \$4.86 billion per year.*
- *Australia's reputation as a safe and prosperous society, with a high quality of life for its citizens must be maintained and enhanced into the future if we are to continue to achieve strong economic development. Our tourism industry largely depends upon our reputation as a safe destination.*
- *All the evidence is that the response to the challenge facing Australia to address systemic disadvantage in certain communities, to protect children and young people and to reduce crime needs a national approach, led and directed at the highest level of political leadership (COAG) under the auspices of a Business Plan. This plan would look at:*

- *World's best practice and bench marks in areas of social policy and criminal justice initiatives;*
- *The cost of crime in Australia, nationally and on a State and regional basis;*
- *Evidence as to the underlying causes of crime on a State and regional basis;*
- *Targeted initiatives for crime reduction on a State and regional basis;*
- *A review of sentencing practices in the light of a restorative justice approach, including a community acceptable outcome to the issue of serious offenders;*
- *A planning time line of in the order of fifteen years with milestones for achievement;*
- *Agreed cost benefit targets for each milestone. That is, funds directed to initiatives in regions and States need to be justified as making a contribution against measurable cost savings due to less crime, e.g. less money spent on repairing vandalism including graffiti, less money spent on court services due to fewer people appearing in courts, savings in corrections budgets due to reduction in prisoner numbers, savings in government expenditure in dealing with child neglect and abuse cases, etc. etc;*
- *Acceptance that there will be a need to increase government outlays in the early years of the plan to resource front end community building initiatives in regions and communities. However, the rigorous targeting and implementation of these initiatives will result in these outlays being repaid many times over as the plan unfolds through its 15-year cycle; and*
- *Agreement that critical to the success of the 15-year plan is:*
 - *high level conceptual input from across a range of disciplines including economists, criminologists, social demographers, sociologists, educationalists, child and family psychologists, correctional, police and family welfare practitioners, judges, the legal profession and politicians;*
 - *community understanding and support for the appropriate balance between good social policy and the role and outcomes of the criminal justice system as reflected in the business plan. This will require a sound information dissemination and communication strategy;*
 - *a refocusing of some practices within the criminal justice system having regard to the principles of restorative justice. This will attend to some structural and coordination issues in the way that governments and relevant agencies respond to social breakdown and crime to facilitate proactive addressing of the underlying causes; and*
 - *never losing sight of the fact that there is no quick fix and that the social and justice policies we have in place today will determine our crime and imprisonment rates in fifteen years' time.*

Recommendation Two

Subject to COAG agreeing in principle that the issue is worthy of further consideration, I recommend that COAG appoint a suitably resourced, relatively small Task Force of government and non-government personnel to develop the concepts to the level of a broad strategy document for its further consideration.

The Task Force should develop this broad strategy document in consultation with appropriate State and Commonwealth Government representatives and seek conceptual and practical operational input as required from people outside of government.

CONCLUSION

The Australian Criminal Justice System is dealing with a significant number of individuals whose attitudes and behaviours have been shaped by life circumstances where they have suffered abuse and neglect as children and or endured deprived socio-economic circumstances in the communities in which they reside. A significant proportion of these people come from Indigenous communities and lower socio-economic communities within urban environments.

Many thousands of Australian children live in neglectful, dangerous and destructive circumstances that will destroy their life chances and will result in many of them entering the criminal justice system. This is a social and economic tragedy of immense proportions.

We need:

- *Understanding and acceptance in the community generally and at the highest levels of government that this a national disaster that requires a nation building approach; and*
- *Action based on world's best practice to achieve a civil and peaceful society within the rule of law where children and young people are protected and nurtured.*

We are proud to be Australian. We stand tall on the world stage in many fields of endeavour. We believe in a fair go for everyone, we are resourceful and creative, economically we are a wealthy nation, socially we have much to be proud of, we have a strong democracy and the quality of life for most of us is exceptional. However, progress depends on a healthy feeling of dissatisfaction that we can and need to do better.

I have a healthy feeling of dissatisfaction that in the midst of all our success, our social and legal systems' uncreative, blinkered and uncoordinated approach to the underlying causes of social breakdown and crime is reducing our quality of life and condemning abused and neglected children to becoming cannon fodder for the criminal justice system.

I believe that we must and can do better. I know we have the ability, we have the human and financial resources, all we need now is an understanding of the challenge we are facing and a commitment to address it.

Keith Hamburger AM."

Are there early intervention, diversionary or sentencing options that the Commission should consider?

There are numerous options that will emerge on a community by community basis under a restorative justice sentencing approach incorporated with a holistic service delivery response.

What evidence of their effectiveness is available?

A lot of evidence from Northern European experience and Australian experience over the years in various communities including the First Nation *Justice Reinvestment* initiative, *Maranguka (caring for others)*, in Bourke;

Are there any barriers to providing these programs? If so, how might these be addressed?

The major barrier is the lack of a conceptual framework approved by government that EMPOWERS communities as covered in this response to the qpc's issues Paper.

Does the youth justice system effectively steer young offenders away from becoming adult offenders? If not, how could the system be improved?

There is significant evidence that the youth justice system in all Australian jurisdictions is failing. See the recent Royal Commission into Protection and Detention of Children in the Northern Territory. Also, from my experience in various capacities over many years with the Juvenile Justice System in Queensland I am aware of deep-seated problems in this system. Youth Justice systems across Australia should be recalibrated in line with the Northern European experience, including *restorative justice* and *justice reinvestment* principles and founded in the community EMPOWEMENT model discussed in this response.

Are current strategies appropriate for the diverse communities across Queensland? If not, how should current approaches be modified for these places or groups? Answer: NO

As discussed previously in this response, there needs to be community by community approach led from the community up within a top down policy framework that legitimises a community based operational approach

How do non-prison sentencing options and/or diversionary programs impact on victims of crime, offenders and the families of victims and offenders?

I believe, from my experience in implementing a range of community base options and negotiating with communities during the implementation phase of these options, including with community hostels (half-way houses), the WORC Scheme, etc, that across the community there are a range of views on non-prison options.

For example, there is general acceptance that offenders carrying out community service as reparation is appropriate and a good thing. However, from time to time there is push back when particular cases are sensationally highlighted in the media. Often it is the case that all of the circumstances of the offence known to the Court that resulted in the sentence are not adequately explained in the public arena and on occasions it is difficult to justify the decision.

Nevertheless, in spite of hiccups from time to time, I believe there is general community consensus that non-prison diversionary options are a worthy initiative.

However, over the past couple of decades with the significant increase in the number of offenders with substance abuse issues and with mental issues arising from trauma in formative years, the impulsive behaviour of these individuals and their anti-social peer group associates has made it increasingly difficult for Courts to have confidence in sentencing many of these offenders to community-based sentencing options. Such offenders do not treat these options with respect. This has, in my view, contributed to increased imprisonment.

The 24/7 community custody model, as an alternative to imprisonment, followed by a period of mentoring in the community as proposed earlier in this response is an important missing link in the

current system. As I have argued, implementation of this model will have a significant impact in reducing prison numbers.

Concerning victims, the current system treats victims badly in terms of communication. Police and Courts processes for communicating outcomes of arrest and sentencing to victims is abysmal. This is driven, I believe, largely by workload and to some extent by lack of prioritisation of the importance of communication to victims.

If there was better communication with victims throughout the arrest and sentencing process, as occurs under a *restorative justice* approach, then victims will be more likely to be satisfied with the process and there will be less sensational reporting of anguished and aggrieved victims.

Offenders, under a restorative justice approach, are more likely to develop an understanding of the impact of their offence upon victims and this can assist in them commencing a journey of rehabilitation.

How should these considerations be balanced?

Implement a *restorative justice* sentencing model.

Are there any acts currently defined as offences that should not be, and/or that should be handled through alternatives to the criminal law?

Don't have enough knowledge in this area to comment.

Are there any acts currently defined as offences where the harm caused by the offence can never justify the use of imprisonment as a form of penalty?

Not informed enough to comment on particular offences. However, the community custody model I have argued for above would result in offenders across a wide range of offences not having to go to prison.

How do sentencing outcomes perform against the legislated sentencing principles (to imprison only as a 'last resort' and a preference for penalties which allow the offender to stay in the community)?

In my experience sentencing outcomes do not perform well against 'last resort' criterion. This is not because Courts are not cognizant of 'last resort' or lack the desire to meet it, but because there are insufficient credible community-based alternatives to safely accommodate, manage and rehabilitate people who are impulsive, have substance abuse and mental health issues, will return to live with anti-social associates and or have no satisfactory place residence.

Once again, the community custody model would have a significant impact in assisting Courts with meeting 'imprisonment as a last resort' outcomes.

8. Preventing recidivism – qpc Issues Paper Section 7

Question

Are the right programs and support services available for prisoners to encourage their rehabilitation? Answer: NO

Are sufficient support services available to prisoners after their release? Answer: NO

As part of our *Market Led Proposal submission to the Queensland Government to Reduce Aboriginal & Torres Strait Islander People's Contact with the Criminal Justice System including Imprisonment* we said:

"The proponents recognise that offenders often come from disadvantaged families and communities and will generally return to those families and communities when released from prison. The best efforts of corrections to provide training and rehabilitative programs for offenders and the best efforts of prisoners to address their offending behaviour can be thwarted when the offender returns home.

We believe that work with offenders must be supported by work with offenders' families and communities to address disadvantage and the causes of offending, and to build social capital to support offenders to make pro-social choices and maintain a crime-free lifestyle.

Working with communities means empowering communities to help themselves. It means bringing everyone to the table – not just the policy makers or service providers but representatives of all sections of the community. It means working within an appreciative framework, recognising that there is something (or many things) that work well in every community, helping the community to identify and build on those strengths. It also means working with the community and providers of services and programs to achieve a joined-up approach to service delivery in and with the community.

Our approach to working with Aboriginal and Torres Strait Islander offenders is evidence-based, with emphasis on the training and skills staff need to increase the effectiveness of correctional programs. However, offender responsivity is a critical factor in the success of any correctional program.

It is our belief that before Aboriginal and Torres Strait Islander offenders can really begin to work on their offending behaviour, they need healing - time on-country, re-connection with the land, traditional culture and spirituality; recognition of the effects of rejection, loss and grief, with time for reflection and healing supported by others who understand and who have had similar life experiences and yet have come out the other side stronger.

The foregoing cannot be achieved through the current structures of the criminal justice and human service delivery systems. It requires a new way that is Aboriginal and Torres Strait Islander owned and led that empowers and rewards them to provide the above culturally appropriate responses and services to their people. This submission outlines how this new way can be achieved".

Are these services effective?

There are some very good services. However, they are in short supply particularly for mental health and substance abuse. Also, most of these services are not delivered as part of a holistic family and community approach thus negating the effectiveness of what could otherwise be a valuable service.

If not, how could they be improved?

Incorporate them as part of a holistic family and community approach.

Do programs and services meet the needs of the diverse prisoner population, including the needs of male and female prisoners respectively, Aboriginal and Torres Strait Islander prisoners and people living in regional and remote parts of Queensland? Answer: NO

As discussed in this paper these needs can never be met while we maintain the current siloed structure of the criminal justice and human service delivery systems and while First Nation people and people in lower socio-economic communities generally remain disempowered from ownership of the solutions to their circumstances.

For offenders who are not responsive to punishments, and are therefore not easily deterred by prison sentences, are there alternative approaches that would be more effective at reducing recidivism?

Please see **attached Charts 1, 2 and 3** that provide an overview of the community based holistic custody and treatment model discussed throughout this paper.

What are the key barriers, if any, that prevent effective program or service delivery?

Large prisons in the way that they function are incapable of offering holistic, joined up services to prisoners that deal with their personal, family and community circumstances that are the drivers of their anti-social lifestyles.

Also, current community-based services are fragmented, do not deliver a holistic response and generally are not owned and driven by the community.

Community Corrections does not have a focus on a *therapeutic approach* to engagement with and in the management of offenders; nor does it engage in family and community strengthening initiatives. This detracts from their capacity to achieve improved rehabilitation outcomes that reduce recidivism.

What lessons can be learnt from practices in other jurisdictions? Which programs have been successful in reducing recidivism?

We need to look closely at the experience in Northern Europe in relation to *restorative justice*, in Canada relating to initiatives for their Indigenous people and at examples of *justice reinvestment* initiatives in Australia and internationally.

9. Governance – qpc Issues Paper Section 9

Question:

Do the governance arrangements (including incentives)—from policymaking to service delivery—encourage the best outcomes (such as reducing recidivism)?

No. Our unacceptably high imprisonment and recidivism rates demonstrate a failure in governance. This is no surprise, given the failed approach of large prison precincts, the siloed approach across custodial and community corrections and between courts, police and corrections, the underfunded community sector, the disempowerment of communities from owning and developing solutions, a sentencing system that is *not restorative* and an overall system funding model that is not founded in *justice reinvestment*.

At a prison operational level, it should be noted that the governance standards for private sector operated prisons are much more robust than the governance applied to State operated prisons. This needs to be addressed.

Question:

If not, what changes should be made?

Tinkering around the edges of the current system will not solve current awful situation or avert the looming disaster in the decades ahead as our society lurches further down the path of social decay - witness the USA. What is needed is a 'root and branch' change that results in systemic change built around:

- *Restorative Justice* sentencing;
- *Justice Reinvestment* funding;
- Recognition that large prisons and large prison precincts impede rehabilitation and result in increased recidivism;
- Having high security prisons for the significant minority of prisoners who are dangerous and or serving long term sentences. These should be of relatively small size and purpose built to facilitate humane containment and staff safety;
- Empowerment of First Nation and people in lower socio-economic communities generally so they are **rewarded** via enterprise and jobs to deliver justice and social support services in their communities to strengthen their families and communities;
- Courts diverting the majority of prisoners, who currently clog up high security cells, to 24/7 supervised community custody rehabilitation options of the type described in this response that are created under the *empowerment approach*. This is in line with the extract above from our MLP submission to the Qld Government – “*We believe that work with offenders must be supported by work with offenders’ families and communities to address disadvantage and the causes of offending, and to build social capital to support offenders to make pro-social choices and maintain a crime-free lifestyle.*”; and
- Enhancing and expanding the role of Community corrections to include enabling and capacity building functions in First Nation and other lower socio-communities and to play a role in developing holistic and or better coordinated responses by the Non-Government sector to the needs of offenders, their families and communities.

Question:

Is the system sufficiently transparent and accountable to government, the community, victims and prisoners? Answer: NO

I feel I have covered the deficiencies raised by this question elsewhere in this response.

Are programs and services measured and evaluated adequately, and are the outcomes of the evaluation used for improvement? Answer: NO

As indicated previously in this response, under the current governance and structural arrangements it is impossible to have an effective evaluation process that is not corrupted by the non-holistic rehabilitation/ treatment approach delivered by the current dysfunctional system.

How well do current institutional arrangements and practices support collaboration and cooperation between agencies, governments, providers and the community?

As indicated throughout this response, current arrangements actually impede collaboration and cooperation.

To what extent are wider costs and benefits recognised in decision-making, including in the allocation of resources?

Obviously given our unacceptably high imprisonment and recidivism rates, the tragic dysfunction in many First Nation and lower socio-economic communities, the unnecessarily high social and financial costs to our society of social breakdown and crime, the fact that we ignore the successful experience in Northern Europe in reducing crime and imprisonment rates as well as the literature and research that points to the flaws in our current system as well as providing guidance to a better way and our failure to embrace *restorative justice sentencing* and *justice reinvestment funding models*, the answer to your question is **No, the wider costs and benefits are not recognised in decision making, including in the allocation of resources.**

Which barriers to reform exist, if any? How could they be removed to deliver better outcomes?

- The uninformed and politically divisive '*law and order*' debate. Needs to be countered by factual information as discussed previously in this response.
- Lack of a reform agenda vision. This needs to be developed. It must be accompanied by an ongoing public education campaign via the media that identifies the challenges to be dealt with and the safe, cost effective solutions to be applied. Desirably, the reform agenda would have bi-partisan political support as was achieved successfully in 1988 following the Kennedy Royal Commission into the then prison system;

This reform agenda should include adoption of *restorative justice* and *justice reinvestment* principles; the empowerment model for First Nation and lower socio-economic communities generally; and reshaping of Corrections prisoner accommodation and services as discussed in this response;

- The entrenched dysfunction in many First Nation and lower socio-economic communities and the sense of *hopelessness* that pervades these communities. This needs to be addressed as part of the *empowerment model* discussed in this response and using the community development methodology summarized in the charts included with this response;

Our Market Led Proposal currently before the Queensland Government (previously referenced) could form the basis for a reform agenda. I suggest that the framework for a reform agenda could be built around the following:

- a) Agreement by the QLD Government – Bi-partisan support would be highly desirable – that there is a need for a *better way* to dramatically reduce Queensland's crime and imprisonment rates to achieve safer communities and significant budget savings for the Qld Government;
- b) Acceptance that a Holistic response is required and that this cannot be delivered through the current silos of the criminal justice and human service delivery systems;
- c) Acceptance that a *better way* must be led from the *Community Up* within a *Top Down* policy framework that legitimises a *community based holistic operational approach*;

Agreement that the *Top Down* policy framework must allow for *empowerment* of people in First Nation and other lower socio-economic communities to lead provision of a holistic suite of services to strengthen families, protect and nurture children and supervise and rehabilitate offenders.

They are rewarded for this through ownership of the enterprises that deliver these services and create the jobs to sustain the community- all within a culturally appropriate framework;

- e) That the concept of First Nation and NGO owned Not for Profit enterprises – *Child and Family Community Hubs* - becomes the vehicle to deliver these services;

That a Steering Committee led by eminent First Nation people with relevant public sector officers, Sisters Inside and HJCS representatives, supported by a Task Force, is established to:

1. Oversee implementation of the Bidjara Lighthouse project, the subject of the MLP; and
2. In parallel with 1 above, develop a Business Case for Cabinet consideration to achieve over 3 years a reduction in the daily prison state by 1,000 First Nation people and closure of all existing juvenile detention facilities through establishing a network of *Child and Family Community Hubs* across QLD with 24/7 supervised therapeutic community custody options and holistic community services as covered in this submission.

I will be pleased to discuss this response and or provide additional information if necessary.

Attachments to this submission:

Chart 1 - Corrections and Social Policy Planning- Need for Change

Chart 2 - Overview of Community Development Model

Chart 3 - Overview of Potential Business Model to Reduce Incarceration

Keith Hamburger AM

26 October 2018