



Queensland
Mental Health
Commission

Queensland Productivity Commission Inquiry into Imprisonment and Recidivism

Submission to the Queensland Productivity Commission by the Queensland Mental Health Commission

October 2018

1. The Queensland Mental Health Commission

The Queensland Mental Health Commission (the Commission) is an independent statutory agency established under the *Queensland Mental Health Commission Act 2013*, (the Act).

It was established to drive ongoing reform towards a more integrated, evidence-based and recovery-oriented mental health and substance misuse system. In exercising its functions under the Act, the Commission must take into account issues for people with mental health and substance misuse issues in the criminal justice system¹

The Commission promotes policies and practices that are aligned to the vision in the Queensland Mental Health, Alcohol and Other Drugs Strategic Plan 2018-2023 (Strategic Plan) for a fair and inclusive Queensland, where all people can achieve positive mental health and wellbeing and live their lives with meaning and purpose.

The Commission works in four main ways:

- developing a whole-of-government strategic plan for improving mental health and limiting the harm associated with problematic alcohol and other drugs use.
- undertaking reviews and research to inform decision making, build the evidence base, support innovation and identify good practice
- facilitating and promoting mental health awareness, prevention and early intervention.
- establishing and supporting state wide mechanisms that are collaborative, representative, transparent and accountable.

2. Overview

The Commission recognises that achieving the balance between making the community safer, rehabilitating offenders and providing a means for victims of crime to feel that justice has been served is complex.

The Commission is of the view that real reform will only be achieved through the collaborative effort across agencies to consider how and why people enter detention in the first place and by reducing the impact of incarceration or the threat of incarceration on the wellbeing of people living with a mental illness or problematic alcohol and other drug use. A similar focus is necessary post-release to maximise the opportunities for education and training, employment and secure housing to reduce the risk of recidivism

¹ Section 11(2)(c) of the Queensland Mental Health Commission Act 2013

The Commission notes that there has been significant investigation of many of the issues within the scope of the Inquiry, including the rigorous examination of Queensland's parole system in 2016 and the Queensland Government's response to the *Queensland Parole System Review Final Report November 2016* report. Additionally, the Sentencing Advisory Council is currently examining matters arising from report's recommendations including community-based sentencing orders, imprisonment and parole options. The final report is due to be delivered to the Queensland Attorney-General by 30 April 2019.

In responding, the Commission has commented on the Terms of Reference for the inquiry that most align to the role of the Commission.

3. The factors driving Aboriginal and Torres Strait Islander imprisonment and recidivism and options to improve matters.

There have been a number of reviews into the incarceration rates of Aboriginal and Torres Strait Islander People. *The Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*ⁱ report is directly relevant to the current inquiry.

This report highlights the cyclical and intergenerational nature of trauma and social and economic disadvantage that contribute to Aboriginal and Torres Strait Islander imprisonment rates. This includes lack of education and low employment rates, inadequate housing, overcrowding and homelessness, poor health outcomes and a lack of access to services and infrastructure in some remote areas.

Poverty, economic and environmental inequalities can be both a determinant and a consequence of poor mental health. People in lower socio-economic circumstances are exposed to more stressors by virtue of their life circumstances and have fewer resources to manage them. Increased psychological risks increase the chances of poor mental health and is more common in areas of deprivation. Poor mental health is consistently associated with unemployment, lower levels of education, low income and material standard of living.^{ii iii}

As touched on in the Queensland Productivity Commission Issues Paper, the Murri courts allow Elders and respected community members to work with defendants who plead guilty to develop suitable outcomes.

The Commission is of the view that the involvement of Elders and respected community members allows for consideration of the impact of deprivation, poverty, trauma or abuse where those factors may affect a person's moral culpability. Detention settings and the threat of incarceration can cause further psychological distress. The Commission is of the view that the direct influence of disadvantage

needs to be considered when sentencing all defendants who identify as Aboriginal and Torres Strait Islander.

Having a criminal record, particularly as a juvenile or as a young adult, in turn increases the likelihood of unemployment, poverty and problematic alcohol and other drug use, which again increases the likelihood of future incarceration. The Commission supports the provision of effective diversion programs and commends the Stronger Communities Initiative led by Youth Justice to reduce rates of incarceration and recidivism by investing in services in the community^{iv}. The value of these approaches lies in the potential to direct resources into community building and thereby strengthen and empower communities to help people at risk of developing mental health issues and to reduce reoffending.

The Commission is of the view that the Maranguka Justice Reinvestment Project in Bourke New South Wales is worthy of further consideration in this inquiry. This community led initiative is reported to have reduced driving offences by 35%; reduced domestic violence-related assaults by 39%; and reduced the number of young people charged with driving without a licence by 72%^v.

4. The factors driving the imprisonment and recidivism of women and options to improve matters;

Aboriginal and Torres Strait Islander women account for 34% of the adult female prison population and eighty percent of this group are mothers.^{vi} Programs and services developed for female Aboriginal and Torres Strait Islander offenders need to consider the potential impact on their children to break the links between child protection, out of home care, juvenile and adult incarceration. Aboriginal and Torres Strait Islander children placed into out of home care are 16 times more likely than the equivalent general population to come under youth justice supervision in the future.^{vii}The Queensland Productivity Commission Issues Paper refers to community consultation undertaken by the South Australian Government into the option of home detention, and the circle sentencing of Aboriginal offenders in New South Wales.

The Commission would welcome further consideration of initiatives such as these to reduce the impact on the children of female offenders.

Studies have shown that many Aboriginal people act out their underlying grief and trauma associated with dispossession, disadvantage and removal from families in anti-social and self-destructive behaviour. Much of this behaviour is either undiagnosed, misdiagnosed or treated as a police problem.^{viii}

The Commission welcomes the commitment to acknowledge and consider trauma^{ix} as well as relevant cultural factors for Aboriginal and Torres Strait Islander peoples when

implementing the recommendations in response to the Independent Review of Youth Detention.

5. Measures of prisoner recidivism rates, trends in recidivism and causes of these trends.

People with mental illness comprise a disproportionate number of the people who are arrested, who come before the courts and who are imprisoned.^x This is due to the complex interaction between mental illness, social isolation and disadvantage, unstable housing or homelessness and problematic alcohol and drug use.^{xi} Untreated mental illness may cause some people to behave in a way that poses harm to themselves or other people. The person encountering a mental health crisis may find it difficult to communicate their distress and come to the attention of the police.^{xii}

Recidivism rates are also higher for people living with a mental illness. This may be due to personal health and community factors that increase the difficulty of complying with community-based sentence conditions.^{xiii}

The *Mental Health Act 2016*² includes provisions for the prosecution and dispositions for people with a mental illness and special provisions for the unique cultural, communication and other needs of Aboriginal and Torres Strait Island peoples and persons from culturally and linguistically diverse backgrounds to be taken into account in the administration of the Act in relation to a person who has or may have a mental illness.

Foetal alcohol spectrum disorder

Foetal alcohol spectrum disorder (FASD) is a common developmental disability. Research suggests that FASD affects between two to five per cent of the Australian population. As a result of cognitive and intellectual impairments, people with FASD are at high risk of criminal behaviour, coming into contact with the criminal justice system, failing to comply with court ordered sentences and re-offending.

Research^{xiv} indicates a lack of certainty by the Queensland judiciary about how FASD might be relevant in considering sentencing options. It suggests that greater use of existing frameworks such as greater use of judicial referral for assessment to assist with the sentencing process, including pre-sentence reports that include FASD screening. It is critical that the sentence imposed is clearly understood by the individual and that they are able to abide by the conditions.

The Special Circumstances Court currently offers a model that directs offenders to rehabilitation, treatment and support.

² Section 3 (b) and 5 (g) and (h) of the Queensland Mental Health Act 2016.

Diagnosis of FASD is challenging and requires involvement from a range of professionals. While awareness of FASD amongst health professionals is relatively high, diagnosis remains low. Accessibility for families to specialist support to seek a diagnosis is extremely limited. Australia's first FASD Diagnostic Clinic was established by the Gold Coast Hospital and Health Service in 2014.

The Commission supports a focus on prevention and early intervention to reduce the incidence of FASD. Investment in community awareness raising of the harms arising from alcohol consumption during pregnancy, investment in training and skilling of the specialist workforce is also required.

It is of note that the National FASD Strategy (a sub-strategy of the National Drug Strategy) is due to be released by the Australian Government before the end of 2018.

Stigma and discrimination

Stigma and discrimination causes significant harms and is disproportionately experienced by people experiencing problematic alcohol and other drug use across a range of areas in their lives including, but not exclusively in access to health care, employment and housing, and the criminal justice system. For some of our most vulnerable Queenslanders, stigma and discrimination can lead to and compound socio-economic disadvantage through unemployment, insecure housing and social isolation. For Aboriginal and Torres Strait Islander people existing stereo types can be reinforced.

Stigma and discrimination is a barrier to people seeking help and support to make changes in their lives and can contribute to 'cycling' in and out of the criminal justice system. For many people the stigma and discrimination associated with having a criminal record continues through life, long after treatment has been sought and drug use has stopped. Reconnection to work and family is often a motivator in treatment, and is key to enhancing social inclusion, however motivation can be impeded by the legacy of a criminal history.

Many people report that a past criminal record for drug use/possession reduces their chances of reintegration into society, for example by limiting opportunities for work.

Decriminalisation of personal use and possession of illicit drugs

In Queensland, between 2010–11 and 2014–15, matters related to illicit drug use grew substantially and at a higher rate than the overall criminal justice system.

Between 2010–11 and 2014–15 there were increases of:

- 71 per cent in the number of alleged offenders with a principal offence involving an illicit drug offence (from 15,834 to 27,015)
- 88 per cent in the total number of alleged drug offences (from 42,280 to 79,636)
- 95 per cent in the number of police proceedings relating to illicit drug offences as a principal offence (from 22,229 to 43,268) which is substantially higher than the growth in overall police proceedings (28 per cent)
- 9 per cent in the proportion of total police proceedings with a principal offence relating to illicit drugs.

Between 2005–16 Aboriginal and Torres Strait Islander people accounted for 9.4 per cent of all offenders sentenced for possessing dangerous drugs as their most serious offence despite representing approximately 3.8 per cent of Queensland’s population aged 10 years and over.

Decriminalisation of personal use and possession of illicit drugs provides the opportunity for a health—rather than criminal justice—response and facilitates greater treatment seeking and opportunities for recovery. This in turn could contribute to reducing recidivism rates.

The interaction between imprisonment, drug use, and other social problems such as homelessness, family violence, child protection interventions, mental ill health and suicide are well documented.

Continuing investment in alcohol and other drug treatment services and workforce development are required to ensure adequate assessments, access to treatment and support during the incarceration period and input into post-release planning.

6. The effectiveness of programs and services in Australia and overseas to reduce the number of people in and returning to prisons, including prevention and early intervention approaches, non-imprisonment sentencing options, and the rehabilitation and reintegration of prisoners.

The Commission supports the increased use of alcohol and other drug diversion programs to divert people from the criminal justice system.

Diversion programs provide a means of rehabilitation and are widely recognised as an important component of a properly functioning justice system. All Australian states and territories, including Queensland, have introduced diversion programs for cannabis use. Criminal penalties may be applied in cases of non-compliance. The Queensland Police Service, Queensland Health and the Department of Justice and

Attorney-General are currently in discussion about expanding the current diversion programs.

The current Queensland Police Drug Diversion Program enables police officers to offer eligible persons the opportunity to participate in a drug diversion assessment program as an alternative to prosecution. The aim of the program is to reduce the number of people appearing before the courts for minor drugs offences and to provide them with access to a brief health intervention to help them address their drug use and associated offending behaviour. Other programs such as the Illicit Drugs Court Diversion Program, the Drug and Alcohol Assessment Referral (DAAR) and the Queensland Magistrates Early Referral into Treatment (QMERIT) operating in Maroochydore and Redcliffe Magistrates Court support prevention and early intervention approaches, treatment and rehabilitation services, the Commission identifies that the accessibility of these programs is limited due to referral criteria, location and lack of service treatment options.

The re-establishment of the Queensland Drug and Alcohol Court followed significant research and consultation to identify best practice in court-based drug and alcohol interventions in Australia and internationally to address drug and alcohol issues linked to offending. The research and consultation was undertaken by the Australian National University with the Australian Institute of Criminology. The Queensland Drug and Alcohol Court is one part of a broader continuum of court-based interventions and referral services to address offending and problematic alcohol and other drug use.

The Commission acknowledges the expansion of mental health treatment, and alcohol and other drug treatment, in prisons following the *Queensland Parole System Review Final Report November 2016* and the Queensland Government's response to the report. Significantly this includes a roll out of opioid substitution treatment across Queensland prisons. These are positive steps supported by the Commission.

In many instances, the first contact with the police service will determine whether a person living with a mental illness or problematic alcohol and other drug-use issues is directed towards a health service or the criminal justice system.^{xv}

The Commission is of the view that the approach taken in several countries including Portugal, to move towards a health-based approach to address the underlying bio-psycho-social issues leading to problematic drug use through evidence-informed treatment, is consistent with the *Australian National Drug Strategy 2017-2026*^{xvi} commitment to harm minimisation through three pillars.

1. Harm reduction, which specifically aims to reduce the adverse health, social and economic consequences of the use of drugs, for the user, their families and the wider community;

2. Demand Reduction, through delaying the onset of use and supporting recovery from dependence through evidence-informed treatment and
3. Supply Reduction, through reducing the production and supply of illegal drugs and regulating availability of legal drugs.

The health-based approach adopted in Portugal applies to personal use and possession. Drug possession is still prohibited, and the approach is based on the principles of “Intervention in Dissuasion.” The trends since 2001, indicate that the benefits of the decriminalisation of drug use include^{xvii}

- Reduced burden of drug offences on the criminal justice system
- Reduced stigmatisation of drug users
- Reduction in opiate -related deaths and infectious diseases.
- Reduction in the public burden caused by drug use.

The Commission views the introduction of restorative justice conferences in Queensland as a very positive approach to reduce the overrepresentation of Aboriginal and Torres Strait Islander children in the justice system. The process provides an opportunity for the individual child to better understand the impact that their act of breaking the law has had on the people affected and the community.

7. The efficacy of adopting an investment approach, where investment in prevention, early intervention and rehabilitation deliver benefits and savings over the longer term:

The Commission acknowledges that investment in the earliest years of life have some of a greatest long-term returns, not only for the justice system, but also for the education, child protection and health systems.

The work of James Heckman illustrates the significant social and economic returns from investing in high quality early childhood programs, particularly those focused on vulnerable children and families. Heckman^{xviii} estimates that every dollar spent on high-quality, birth to five years programs for disadvantaged children delivers a 13% per annum return on investment. These returns diminish every year that intervention is delayed. The short term costs of investment in early years programs, are more than offset by the immediate and long-term benefits in terms of reduction in the need for special education and remediation, better health outcomes, reduced need for social services, lower criminal justice costs and increased self-sufficiency and productivity among families.

The Commission acknowledges that significant activity is already underway in Queensland to support those in the early years, including for those who may be vulnerable to poor social outcomes, for example, investments in Early Years Places, Family and Child Connect services, Intensive Family Supports, Aboriginal and Torres

Strait Islander Family Wellbeing Services, and the Centre for Perinatal and Infant Mental Health. However, the Commission is of the view that there could be greater integration between these programs and more coherent overall vision for supporting the early years to guide future policy and investment.

The Commission suggests that there would be significant long-term benefits for the justice systems should Queensland seek to develop a shared vision for supporting the early years, which is backed by supportive social and economic policy and greater integration between early years services. The Commission is particularly keen to see a greater focus on creating easily accessible and integrated early childhood programs for all families, which include avenues to more intensive support for families showing early signs of vulnerability.

