Imprisonment and recidivism: Have your say

The Treasurer has directed the Queensland Productivity Commission (the Commission) to undertake an inquiry into imprisonment and recidivism in Queensland.

This draft report provides an opportunity for consultation on the issues raised by the inquiry—and, in particular, on our preliminary analysis, findings and recommendations.

The final report will be prepared after further consultation and will be provided to the Queensland Government in August.

Make a submission

The Commission invites all interested parties to make a submission on the draft report.

Submissions are due by close of business 17 April 2019. They can be lodged online or via post:

**Imprisonment and recidivism inquiry**
Queensland Productivity Commission
PO Box 12112
George St QLD 4003

Submissions are treated as public documents and are published on the Commission's website. If your submission contains genuinely confidential information, please provide the confidential material in a clearly marked separate attachment.

Contacts

Enquiries regarding this project can be made by telephone (07) 3015 5111 or online at www.qpc.qld.gov.au/contact-us
Foreword

In September 2018, the Queensland Government directed the Queensland Productivity Commission to undertake an inquiry into imprisonment and recidivism. This report summarises our early findings and nominates areas where further information is sought.

Despite declining crime rates, the imprisonment of Queenslanders is escalating. Concerning trends include the growth in the rate of imprisonment of women, which doubled the rate of men over the last ten years, and the significant and growing over-representation of Aboriginal and Torres Strait Islanders. These matters are not unique to Queensland and reflect wider Australian and international trends.

In direct financial terms, imprisonment costs the Queensland community almost a billion dollars every year. Its social costs, although harder to measure, are much greater. Incarceration has profound impacts on prisoners, their families and the community—loss of employment, housing, relationships, as well as mental health problems and potential criminogenic effects—all of which increase the risk of reoffending.

In this report, we ask whether community safety is best served by continuing the current approach. Is there a case for some crimes to be punished with non-custodial options? Could better outcomes be achieved with greater attention to rehabilitation and reintegration? Would some offences be better treated as medical issues than criminal offences? Should victims be empowered by building in restitution and restoration options? Early indications are that the community may actually be made safer by reforming current practices, and we are seeking further information to allow us to complete the inquiry.

This report reflects the contributions of over 400 stakeholders, representing a broad cross-section of Queenslanders—government agencies, victim peak bodies, prisoner advocates, unions, the judiciary, corrections officers, prisoners, Indigenous peak bodies, and academics. We applaud the willingness of stakeholders to seek better outcomes for victims, offenders, and the community.

Finally, we would like to thank the staff of the Commission for their commitment and professionalism in the preparation of this material.

Kim Wood
Principal Commissioner
(Presiding Commissioner)

Bronwyn Fredericks
Commissioner

February 2019
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Overview
Key points

- The rate of imprisonment in Queensland—the number of prisoners per head of population—has increased by 44 per cent between 2012 and 2018.
  - This increase is being driven by behavioural, policy and system changes, not underlying rates of crime, which have been falling steadily for the last 20 years.
  - The median prison term is short (3.9 months) and most (65 per cent) are for non-violent offences.
- Imprisonment is expensive:
  - It costs around $107,000 to accommodate a prisoner for a year.
  - Imprisonment also has indirect costs on prisoners, their families and communities. These costs are difficult to estimate, but could be around $40,000 per prisoner per year.
  - At the current rate of growth, Queensland will require an additional 4,600 to 5,800 additional prison cells by 2025—this will require around $5.2 to 6.5 billion in infrastructure costs alone.
- Imprisonment benefits the community where it incapacitates and deters offenders, particularly where it prevents high harm offences. However, preliminary analysis suggests that:
  - for a material portion of Queensland’s prison population, the costs of imprisonment outweigh the benefits to the community
  - for a further portion, lower cost alternatives would provide greater benefits to the community.
- Every month over 1,000 prisoners are released back into the community. Many receive limited rehabilitation or support to reintegrate. Over 50 per cent will be back in prison or under community supervision within two years.
- There are no easy policy solutions. Options that will have a meaningful impact on the prison population will require significant and politically challenging changes to the way things are done. Four priority areas for reform are most likely to improve outcomes for the community.

1. **Adopt more effective ways to deal with offending**
   - Redefine offences currently classified as crimes where the costs of criminalisation outweigh the benefits (possible offences include some regulatory, illicit drug and public nuisance offences).
   - Establish a victim restitution and restoration process.
   - Increase non-prison sentencing options, including home detention, monetary penalties and community-based orders, and remove unnecessary restrictions on these options.

2. **Break the cycle of reoffending**
   - Reconfigure rehabilitation and reintegration through an effective service delivery model of throughcare. Remove regulatory and other barriers to reintegration and employment.

3. **Reduce interactions with the criminal justice system**
   - Increase diversionary options, including cautions.
   - Fill the gaps in prevention and early intervention.

4. **Build a better decision-making architecture**
   - Change the way funding and policy decisions are made, by establishing a separate justice reform office that is accountable for criminal justice system outcomes.
1 What is the inquiry about?

Across Australia and other developed countries, governments are contending with rising imprisonment and high levels of recidivism. In Queensland, the number of people in prisons has risen by around 58 per cent between 2012 and 2018. The rate of imprisonment—the number of prisoners per head of population—increased by 44 per cent. Infrastructure has not kept up with this growth, with prisons currently holding around 37 per cent more prisoners than they are designed to hold.

More than half of prisoners reoffend and are given a new sentence of imprisonment or community supervision within two years of their release. The rate of imprisonment for Aboriginal and Torres Strait Islander people continues to outstrip the rate for the rest of the population, and imprisonment rates for women have been increasing faster than for men.

The growth in prisoner numbers has significant social and economic implications for the Queensland community, affected individuals and their families, and the Queensland Government.

In September 2018, the Queensland Government asked the Commission to undertake an inquiry into imprisonment and recidivism in Queensland. The terms of reference for this inquiry ask us to examine how government resources and policies can be best used to reduce imprisonment and recidivism and improve outcomes for the community over the medium to longer term.

The terms of reference ask us to consider:

- trends in imprisonment and recidivism and the causal factors underlying these trends
- factors affecting imprisonment for Aboriginal and Torres Strait Islander people, women and young people
- the benefits and costs of imprisonment, including its social effects, financial costs and effectiveness in reducing/preventing crime
- the effectiveness of programs and services in Australia and overseas to reduce the number of people in prison and returning to prison, including prevention and early intervention approaches, non-imprisonment sentencing options, and the rehabilitation and reintegration of prisoners
- the efficacy of adopting an investment approach, whereby investments in prevention, early intervention and rehabilitation deliver benefits and savings over the longer term.

The terms of reference require that our recommendations are consistent with the Queensland Government Policy on the Contracting-out of Services, which states that there will be no contracting-out of services currently provided by the Queensland Government unless it can be clearly demonstrated to be in the public interest.

Our approach

There are many factors that influence imprisonment and recidivism. The scope of this inquiry therefore encompasses a broad set of issues and areas—from early intervention to post-prison support (Figure 1).

Our approach to this inquiry reflects that there have been at least 10 major reviews looking at aspects of the criminal justice system in Queensland over the last decade. Many of their recommendations are still being implemented. The Commission has built on, rather than revisit, the issues covered by these reviews.

As this is a forward-looking inquiry, we have not assessed the extent to which additional prison infrastructure is required to address current levels of overcrowding, nor have we conducted an operational review of each element of the criminal justice system. Rather, we have focused on policy areas where change is most likely to provide the largest benefits for the community.

The inquiry is predominantly concerned with the adult corrections system. In this context, the Commission has considered the youth justice system as an important pathway into the adult corrections system. Further, the Queensland Government has only recently completed its Youth Justice Strategy for 2019–23 following the 2018
Report on Youth Justice (the Atkinson report). For this reason, the Commission has not conducted a review of the youth justice system for this draft report.

Figure 1 The scope of the inquiry

This draft report represents the first stage of the inquiry. It presents initial findings and recommendations based on the evidence received so far.

To prepare this draft report, we released an issues paper (September 2018) and consulted with more than 400 stakeholders through:

- public forums in Brisbane, Townsville, Cairns and Rockhampton
- individual meetings with a wide range of stakeholders including the judiciary, unions, legal advocates, peak bodies, Indigenous and non-Indigenous advocacy groups, service providers, academics and government
- visits to drug and Murri courts
- site visits to four correction centres.

We also received 43 written submissions, which have been incorporated in our analysis.

The policy areas under consideration for this inquiry are complex and potentially controversial, and the evidence is not always clear or settled. For some areas, the Commission is still analysing the evidence to understand why imprisonment levels in Queensland have been rising, particularly for women and Aboriginal and Torres Strait Islander peoples. The Commission is also yet to fully analyse the costs and benefits of potential reform options.

As a result, the analysis in this report should be considered as preliminary—the purpose of this draft report is to seek further comment on the findings and recommendations. The Commission intends to release supporting papers for consultation during 2019, which will examine trends in imprisonment and recidivism. Following a second round of consultation, we will develop final findings and recommendations and deliver a final report to the Queensland Government by 1 August 2019.
The Queensland system

Several institutions make up the Queensland criminal justice system, including law enforcement agencies; courts; agencies responsible for detaining, supervising and rehabilitating offenders (including prisons); a range of advocacy and oversight bodies; and agencies involved in prevention and intervention.

There are over 11,000 sworn police officers, over 200,000 criminal lodgements dealt with by the courts each year and around 9,000 prisoners managed in custody (11 high security prisons, 6 low security prisons, and 13 work camps). In 2016–17, the cost of the criminal justice system in Queensland represented by police, the courts and corrections was $3.6 billion, or $728 per capita.

Prisons have a key role (Figure 2). As established in the Corrective Services Act 2006, their purpose is to keep the community safe by preventing crime through the humane containment, supervision and rehabilitation of offenders. When making sentencing choices, courts must consider how prisons deter, incapacitate and rehabilitate offenders (Penalties and Sentencing Act 1992).

**Figure 2 Role of prisons**

A wide range of programs and activities aim to reduce crime. These include policing effort to better detect and deter crime, strategies to encourage reporting and enforcement of offences (such as domestic and sexual violence) and broader whole of government efforts to address the underlying causal factors that drive offending behaviour.

New systems of alternative justice procedures to address offending behaviours are emerging within the court system—examples include the Drug and Alcohol and Murri Courts. Also, there is a stronger focus on rehabilitation in corrections—for example, the recently opened Borallon Training and Correctional Centre provides a new approach to prison rehabilitation. Box 1 provides a small sample of policies and programs in Queensland.
Box 1 A sample of policies and programs in Queensland

**Borallon Training and Corrections Centre**

The Borallon Training and Corrections Centre is Queensland’s first dedicated training prison with an emphasis on education and employment outcomes. It opened in 2016 as a training facility where prisoners are encouraged to ‘earn and learn’.

As of June 2018, nearly half of the 387 prisoners were employed in prison industries. Borallon has partnered with TAFE Queensland South West to develop and provide this training with an onsite campus, teachers and IT services. It offers courses such as horticulture, engineering, welding, automotive, construction and tertiary education. Other programs at the centre include mental health services and psychological interventions to support transitioning back into the community.

The prison is taking a positive approach to rehabilitation and transformation of prisoners; however, a formal evaluation is yet to be completed.

**Project Booyah**

Project Booyah is a program for at-risk 15- to 17-year-old children. It seeks to re-engage children with their family, community and the education system to reduce their risk of offending. The 17-week program focuses on vocational pathways, employability skillsets, and adventure-based activities to build confidence, self-worth and resilience.

Since 2016, a total of 345 people were accepted into the program, with 83 per cent successfully graduating, 82 per cent obtaining a Certificate I or II in Hospitality, 70 per cent becoming re-engaged in education, 25 per cent gaining employment and 33 per cent starting further vocational training or pathways.

A review found that the project reduced recidivism by 62.5 per cent over the three years. Victimisation by participants also fell by 84 per cent post program (Queensland Government sub. 43, p. 60).

**Drug and Alcohol Court**

Queensland has re-established a Drug and Alcohol Court to divert offenders with substance-abuse-related offences away from prison. The Court provides an intensive program to address offender’s dependencies and criminal thinking. It aims to improve public safety by rehabilitating offenders so that they can reintegrate into the community as productive members of society. The Court does this through regular random drug testing, regular court appearances to ensure they stay on track, and incentives to encourage offenders to engage with treatment.

Evaluations of the former Queensland drug court, and drug courts in New South Wales, Victoria and international jurisdictions, have demonstrated a reduced likelihood that participants will reoffend, as well as improved social stability, housing and employment outcomes. The Queensland Government undertook a review to ensure the drug court was evidence-based and cost-effective prior to its implementation. The court is scheduled for evaluation (Queensland Courts 2018b).
2 Imprisonment: a growing policy problem

Imprisonment rates are increasing, despite falling rates of crime

Imprisonment is growing much faster than population—the rate of imprisonment in Queensland is currently higher than at any time since 1900. The prison population grew rapidly during two periods. From 1992 to 1999, the rate of imprisonment roughly doubled. It increased rapidly again from 2012 to the present—growing by 44 per cent.

Figure 3 Adult imprisonment per 100,000 population, Queensland

Source: ABS 2018k, 2018a; OESR 2009.

Similar trends are occurring in the rest of Australia. Measuring changes in underlying crime rates is challenging, because the rate at which crimes are reported change over time. This may reflect changing community attitudes—for example, in relation to domestic and sexual violence—but can also reflect changes in policing effort or focus.

Over the longer term, the most reliable indicator of crime levels are homicide rates (since most cases are reported). While homicide rates increased slightly during the 1970s, they have declined approximately two-thirds from their peak in the 1980s.

Figure 4 Homicide rate per 100,000 population, Australia


Queensland data suggest a similar trend. Reported crime rates have trended downward for the past two decades. Moreover, analysis suggests that the more harmful crimes have fallen faster than less serious crimes.

Figure 5 Reported offence rate per 100,000 population, Queensland

Note: The increase in reported offences against the person from 2015 appears to be due to additional reporting and policing (largely of domestic and family violence) rather than an increase in the underlying crime rates.

Source: QPS 2018d.
Reporting and policing of crime has increased significantly—implying that the underlying crime rates have fallen by more than the reported rates shown in Figure 5.

Despite the decline in underlying crime rates, surveys show that most Australians believe that crime is increasing (Box 2).

**Box 2 Do public perceptions match the reality?**

Crime is one of the key concerns for people in the community. This is for good reason. Victims of serious offences can suffer trauma that severely reduces their quality of life. For others, fear of crime can limit their participation in the community.

While Australians’ perception of safety has improved on some measures, most Australians believe that crime rates have increased over the last few years, and about a third believe that crime has increased a lot. This is similar in other countries, where people commonly believe crime rates are rising, when in fact the opposite is occurring.

Similarly, it is frequently reported that community members feel the judiciary is ‘out of touch’ or that sentences are too lenient and inconsistent. However, research shows that when given the full facts about a case, members of the public typically choose sentences that are on par with, or more lenient than, the sentence actually imposed.

Public anxiety about crime is what drives state government investment in law enforcement. It is this investment, not underlying trends in crime, which has played the dominant role in shaping demand for criminal justice resources over the last ten years. (Weatherburn 1993)

1. For example, in 1996 females were almost twice as likely to avoid public transport and one and half times less likely to walk home alone after dark than they are today. ABS 2017, Personal Safety, Australia, Catalogue no. 4906.0.
Rising imprisonment rates are driven by policy changes, not crime rates

The Commission is yet to develop a complete picture of the reasons for the increase in the rate of imprisonment. Nonetheless, it appears that the key reasons are:

- increased reporting of crime—the reporting rate for physical assault increased 41 per cent between 2008–09 and 2016–17
- an increase in the use of prison sentences over other options—the proportion of sentences involving prison has risen for both violent and non-violent offences
- an increase in recidivism rates—the proportion of prisoners returning to prison with a new sentence within two years increased from 29 per cent in 2006–07 to 40 per cent in 2016–17
- an increase in policing effort—clearance rates for reported offences against the person and offences against property have increased since 2008–09
- an increased propensity for police to use court action—the proportion of offences (other than public order) dealt with through court action increased from 83.7 per cent to 87.5 per cent between 2008–09 and 2016–17, with police less likely to use non-court options such as cautions, conferencing and penalty notices
- a significant increase in the proportion of unsentenced (remanded) prisoners in the last five years—while difficult to measure, this appears to have resulted in a sizeable number of prisoners serving longer time in prison than they otherwise would have.

Changes in sentence lengths have had little impact on imprisonment rates.

Figure 6  Key drivers of the rising rates of imprisonment
Increasing imprisonment can make the community less safe

At a general level, prisons do reduce crime. While an offender is in prison, they are unable to commit further offences. Prison can also deter others from offending and can deter prisoners from reoffending.

However, there are diminishing returns from the use of imprisonment—that is, the additional benefit (through a reduction in crime) declines as more people are imprisoned.

Research from the United States has demonstrated that at some point increased use of prison can result in more crime.

This occurs because prisons can have criminogenic effects on individuals and the communities they come from (Box 3).

Box 3 Do prisons make reoffending more likely?

While prisons may keep the community safe during the time a prisoner is incapacitated, it is important to consider what happens after prisoners exit from prison, and the extent to which prison rehabilitates or criminalises prisoners. For example, if prisons turn prisoners into more effective criminals, prisons may make the community less safe over time.

The relationship between imprisonment, rehabilitation and the criminogenic effects of prison is poorly understood and likely to vary considerably depending on the prison environment, including the level of overcrowding. Nevertheless, research suggests that during the first year of a prison term the criminogenic effects of prison override any benefits arising from rehabilitation or from deterring the prisoner from offending again (Figure 7).

Figure 7 Possible effects of sentence length and recidivism

The costs of imprisonment are high

Imprisonment is costly, and this cost is borne by the community

On average, it costs $107,000 to keep an adult in prison for a year. In 2016–17, the total cost of running Queensland’s prisons was $872 million.

These costs are increasing. From 2011–12 to 2016–17, real net operating expenditures increased by around 22 per cent, significantly more than the increase in general government expenditures.

Queensland prisons are overcrowded—across all prisons, capacity is currently at 130 per cent. Without efforts to reduce demand, a significant expansion of capacity will be required (Box 4).

Box 4 The cost of housing Queensland’s growing prison population

Queensland’s prison population is growing rapidly, increasing from 6,079 to 9,021 in the past five years. In September 2018, the number of prisoners exceeded the design capacity of all high security prisons by 37.3 per cent, or 2,264 prisoners. Increasing capacity to meet this shortfall would cost around $2.5 billion.

If current trends continue, by 2020 the high security prison population will exceed capacity by between 2,900 and 3,300 prisoners. The construction of additional infrastructure to house these prisoners, and to address existing shortfalls, is projected to cost approximately $3.5 billion. By 2025, the high security prison population could exceed current capacity by between 4,600 and 5,800 prisoners, requiring government expenditures totalling $5.2 billion to $6.5 billion in infrastructure costs alone.

Prison imposes additional costs

Although prison is intended to punish offenders, costs extend beyond the direct effect on the prisoner during the term they serve. These costs include forgone employment, as well as higher rates of unemployment, social exclusion, homelessness and poor mental health following release. Prison disrupts parent–child relationships, alters the networks of familial support and places new burdens on government services such as schools and family support services. Studies suggest that the indirect costs of imprisonment may be in the order of $40,000 per year for each prisoner.

Queensland’s prison population

Research shows that people who are most likely to experience deep and persistent disadvantage are the same people that are overrepresented in the prison population.

Table 1 Prisoner characteristics, Queensland

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<th>Characteristic</th>
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<tr>
<td>Completed Year 12</td>
<td>17%</td>
<td>62%</td>
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<td>Used illicit drugs in last 12 months</td>
<td>64%</td>
<td>16%</td>
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<td>High levels of psychological distress</td>
<td>27%</td>
<td>12%</td>
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<tr>
<td>Unemployed in 30 days prior to imprisonment</td>
<td>49%</td>
<td>6%</td>
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<tr>
<td>Homeless</td>
<td>23%</td>
<td>0.5%</td>
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Indigenous Queenslanders are overrepresented

Around 32 per cent of prisoners identify as Aboriginal or Torres Strait Islander, and imprisonment rates are currently more than 13 times higher than the non-Indigenous rate.

Figure 8 Age standardised imprisonment rate per 100,000 population, Queensland

Imprisonment rates for Indigenous Queenslanders are increasing faster than for the general population.

Around 80 per cent of Indigenous prisoners have been in prison before—compared to less than 60 per cent for non-Indigenous prisoners.

Figure 9 Proportion of prisoners who have been in prison before, Queensland, 2018

Source: ABS 2018k.

A growing female prison population

While women make up a relatively small proportion of all prisoners, female imprisonment has grown significantly faster than for men (Figure 10). Since 2008, the number of female prisoners has increased by 62 per cent.

Figure 10 Cumulative growth in prisoner numbers, Queensland

Source: ABS 2018k.
### What stakeholders told us

#### The system is not achieving desired outcomes

*Prison/detention does not prevent offending. Research consistently shows that prisons are ineffective in rehabilitating offenders and preventing re-offending. Imprisonment is therefore a poor use of public money, particularly as the building, maintaining and staffing of detention centres or prisons is very costly.*  
*(Balanced Justice sub. 1, p. 33)*

*When governments talk about community protection as a reason, they only focus on the short term when offenders are actually in prison, and very little focus on community protection in the long term, e.g. post release.*  
*(Associate Professor Anna Erikson, Monash University sub. 5, p. 5)*

*Despite falling crime rates, record numbers of our most marginalised Queenslanders have been imprisoned, and continue to be re-imprisoned.*  
*(Sisters Inside sub. 39, p. 3)*

*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.*  
*(Keith Hamburger sub. 14, p. 2)*

*Prisons are overcrowded, and this is impacting rehabilitation*

*Double ups are occurring in every state run centre (other than the low security centres), in some there are insufficient facilities for all prisoners to sit down to eat at the one time and access to scarce industry programs designed to assist in rehabilitation is further reduced.*  
*(Together Queensland sub. 29, p. 1)*

#### Addressing Indigenous incarceration requires a long term, community-led focus

*Any real improvements in the headline imprisonment rates will forever be elusive unless there is a clear focus on empowerment and developing ‘human capital’ so that Indigenous people, over generations, have the means to lift themselves out of poverty.*  
*(Cape York Partnerships sub. 6, p. 2)*

#### Offending behaviours are often the result of many complex factors

*There is a significant body of evidence documenting the links between mental health issues and incarceration, as well as between childhood trauma and future psychosocial problems.*  
*(The Royal Australian & New Zealand College of Psychiatrists sub. 31, p. 5)*

#### There are no quick fixes

*Investing in programs addressing offending behaviour is not an easy sell, however, if we are serious about preventing crime and increasing the safety of our children, young people and communities, we must look into investing in long term solutions, not short term perceived ‘fixes’.*  
*(Bravehearts sub. 40, p. 1)*

#### Issues are broader than the prison system

*Rehabilitation is of little assistance when gaol offers a more inviting environment than the communities to which they must return.*  
*(Families Responsibilities Commission sub. 23, p. 1)*

Queensland, like the rest of Australia, relies heavily on the criminal justice system to respond to alcohol and other drug use despite recognition that alcohol and other drug use is better framed as a health issue.  
*(Queensland Network of Alcohol and Other Drug Agencies sub. 30, p. 3)*
3 A framework for assessing options

The Commission has used an economic framework to assess various options that might address the problems relevant to this inquiry.

These options are assessed against the overarching objectives of the system, which, in simple terms, is to keep communities safe. Achieving this objective should:

- keep the community safe over time—there may be little justification for actions today if they jeopardise public safety in the future
- maintain the legitimacy of the system—any changes to the system need to satisfy the community's expectations about justness and fairness, including the community's tolerance for loss of liberty, and desire for retribution and denunciation of acts considered unacceptable.

The goal of community safety must be seen in context. For example, social welfare will only be enhanced if the benefits of improving community safety outweigh the costs. Take the example of road safety—higher levels of road safety could be achieved by limiting the use of private motor vehicles, but that would impose prohibitive costs on the broader community.

Equally, it is unlikely that absolute community safety can be achieved as this would involve costs that most in the community would find unacceptable. Attempts to achieve 'no harm' or 'zero tolerance' often have large unintended consequences.

Resource constraints are another limiting factor in achieving community safety. More public money spent on community safety means less resources to fund schools, hospitals and roads. Beyond some point, there are also diminishing returns from efforts to increase safety.

Viewed through this lens, the Commission has asked four key questions:

- What are the right roles for government? While the Queensland Government has a clear part to play in achieving community safety, it can adopt many different approaches.
- Do current policies and programs keep the community safe over time? Policies and actions should be consistent with the objective of keeping communities safe and should be implemented in a way that ensures they meet this objective.
- Are there more effective and efficient ways of achieving community safety? The most effective and efficient policy options should be used to keep communities safe, and these should be improving over time.
- Are there ways to improve decision-making across and within government, and encourage innovation to improve efficiency and effectiveness? Decision making should be informed by robust evidence, ensure coordination across the system and encourage continuous improvement.
Overview of reforms

RATIONALE FOR CHANGE

**Imprisonment rates are rising despite falls in crime rates**

There is little evidence that the increasing use of imprisonment benefits the community.

**Prisons are overcrowded compromising safety and rehabilitation efforts**

On current trends, investments of $5.2 to $6.5 billion will be required to ensure that prison capacity is able to meet demand in 2025.

**Prisons are expensive - it costs around $107,000 per year to house each prisoner**

High rates of reoffending are compromising community safety.

OPTIONS FOR CHANGE

**Adopt more effective ways to deal with offending**
- Increase the range of, and support for non-custodial sanctions
- Introduce victim restoration and restitution
- Reduce the scope of criminal offences

**Break the cycle of reoffending**
- Deliver an effective model of throughcare
- Remove regulatory and operational impediments to rehabilitation and reintegration
- Ensure prison facilities support rehabilitation

**Reduce interactions with the criminal justice system**
- Address gaps in intervention and prevention
- Expand the use of diversionary options

**Build a better decision-making architecture**
- Clarify objectives for the criminal justice system
- Enhance transparency and accountability
- Ensure evidence-based funding and policy decisions
4 Policy options to improve outcomes

Adopt more effective ways to deal with offending

The prison population is not a homogenous group. Prisoners have committed different types of offences, some very serious and some relatively low-harm. They come from different backgrounds and have offended under different circumstances. Some respond to conditioning in prison; others not. Therefore, the costs and benefits of imprisonment vary considerably across different offenders.

In this context, prison can be a blunt instrument for dealing with offending behaviours.

Most prison sentences are short. The median prison sentence is 3.9 months. Often the majority or whole sentence is served on remand. In these circumstances, there are limited opportunities for rehabilitation but potential for remandees and less serious offenders to be exposed to the criminogenic effects of prison.

Prisons are increasingly used for non-violent crimes. The majority of custodial sentences are for non-violent crimes, and this share is increasing (Figure 11).

This can be seen in types of offences that are attracting prison sentences (Figure 12).

Drug offences made the largest contribution to the growth in the prison population (32 per cent) between 2011-12 and 2017-18.

Offences against justice procedures, theft and unlawful entry offences contributed a further 29 per cent of all growth over the same period.

These offences tend to be non-violent, relatively lower harm or are ‘victimless’.

Acts intended to cause injury contributed 16.3 per cent, however, the most serious categories (such as grievous bodily harm) did not contribute to growth.

Figure 11 Prison sentences by type of offence, Queensland

![Graph showing the distribution of prison sentences by type of offence in Queensland.](source: ABS 2018e)

Figure 12 Sentenced prisoners, contributions to growth, 2011–12 to 2017–18, Queensland

![Bar graph showing contributions to growth in sentenced prisoners in Queensland.](source: unpublished data)
For some offences, the benefits from imprisonment do not outweigh the costs. The benefits of prison mainly arise from the deterrence of harmful acts. The deterrence effect of prison declines as more people are imprisoned; however, the best estimates from the literature suggests that, with the current rate of imprisonment, incarcerating an additional prisoner prevents around 13 crimes for property offences, and around 1.3 crimes for violent offences. These benefits need to be assessed against the direct and indirect costs of imprisonment.

The Commission has undertaken a preliminary, illustrative analysis of the costs and benefits of imprisonment for a range of offences. A simple example (Table 2) shows that prison provides a large net benefit to the community for homicide offences (where the harm of offending is high), but the benefits are less clear for burglary (where harm is much lower).

This does not suggest that we should never imprison anyone for burglary, but that increasing the use of prison for burglary, particularly for less serious offences, is likely to impose a net cost on the community.

### Table 2  Illustrative net benefits of imprisonment

<table>
<thead>
<tr>
<th>Offence</th>
<th>Harm avoided(^a)</th>
<th>Sentence length(^b)</th>
<th>Prison cost(^c)</th>
<th>Net benefit(^d)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicide</td>
<td>$3,861,126</td>
<td>7.2 years</td>
<td>$772,560</td>
<td>$3,088,566</td>
</tr>
<tr>
<td>Burglary</td>
<td>$30,795</td>
<td>1 year</td>
<td>$107,300</td>
<td>−$76,505</td>
</tr>
</tbody>
</table>

\(^a\) Harm avoided is the average harm associated with the offence (from 2014 Australian Institute of Criminology harm estimates) multiplied by the offences avoided.

\(^b\) Sentence length is the average sentence length sourced from ABS Prisoners in Australia (cat. no. 4517.0).

\(^c\) Prison costs are the average sentence length multiplied by $107,300.

\(^d\) The net benefit is the harm avoided less the prison cost.

Even where there is a net benefit from using prison, incarceration may not be the best option—there is sufficient evidence to suggest that alternatives to prison, for at least some offences, can provide greater net benefits to the community.

### Reduce the scope of criminal offences

Criminal sanctions are only one option for dealing with behaviours currently defined as a criminal offence. Many activities that are known to be harmful, such as smoking, are dealt with in other ways including through measures such as public health campaigns and regulation without criminal sanctions.

Decisions about whether to criminalise an activity should depend, among other things, on the costs that criminalising it imposes on society, and whether there are better ways of dealing with the activity. Among the costs to consider are the unintended consequences of addressing the activity through the criminal code—for example, there may be harms associated with illicit drug markets, such as increased gang violence and property crimes.

For some offences, the use of criminal sanctions appears to impose large and unnecessary costs or unintended consequences on the community. Dealing with these offences in ways that do not involve the criminal justice system is likely to result in less imprisonment and provide a net benefit to the community.

Consideration should be given to reducing the scope of behaviours that are dealt with under the criminal justice system. Some of the offences that could potentially be excluded are:

- regulatory offences
- drug offences
- public nuisance offences.
Criteria for determining the types of activities that should be removed from the criminal code could include:

- the extent to which the activity causes harm to others
- the costs that criminal sanctions impose on offenders and whether these costs are proportionate to the harm caused to others
- the extent to which criminal sanctions deter harmful offending
- whether criminalisation has unintended consequences that result in greater harm
- whether criminalisation undermines public perception of the legitimacy of the law.

If some crimes are removed from the criminal code, then further consideration will need to be given to how the harms from these offences are best dealt with.

Box 5 The Portuguese experience—decriminalisation

In 2001, Portugal decriminalised the purchase and possession for personal use of all drugs. The change went beyond depenalisation, which removes custodial sentencing as an option for low-level drug offenders but did not amount to legalisation. Trafficking, supplying and possessing large quantities of an illicit drug remain criminal offences. Low-level offenders are now dealt with administratively by an informal ‘Dissuasion Commission’ which determines an appropriate non-custodial sanction. The purpose of the commission is not to punish the offender but to encourage treatment and rehabilitation. The commission is not able to mandate treatment but can suspend a penalty on the condition that an offender agrees to be treated.

There is no evidence that the reforms led to increased drug use in Portugal, while drug-related harms, and criminal justice system costs seemed to have declined. It is difficult to determine the extent to which the reforms affected imprisonment\(^a\); however, the Portuguese incarceration rate declined after the reforms and then grew from this lower base.

\(^a\) It is difficult to determine the impacts on incarceration without a counterfactual forecast—that is, what would imprisonment rates have done in the absence of reforms?


Give more focus to victims

The criminal justice system focuses on criminals; not on the victims of crime.

Currently, in criminal matters the state is the litigant and the victim plays a largely passive role in the process. The offender’s ‘debt’ is paid to the state, often in the form of a prison sentence. The victim plays no role in the setting of the sentence and typically receives no compensation from the offender for the harm done.

Beyond the direct impact on victims of this approach (with limited opportunity for restitution or restoration), the indirect impact has been to entrench a high-cost approach to community safety, with ongoing pressures for further legislative and other interventions in an attempt to address community harm. The result, at least anecdotally, is that such interventions have not always met the needs of victims and more offenders are in prison than is necessary.
Under a victim-focused system, victims can be provided with an option to choose a sentencing pathway that focuses on victim restitution and restorative justice, rather than the standard sentencing process. Where the victim chooses direct involvement in the process, the offender’s debt is in effect paid to the victim prior to any state consideration. This could involve both financial and non-financial assistance to victims.

**Figure 13 A victim-focused sentencing process**

These approaches are typically associated with a reduction in the use of imprisonment because they provide acceptable alternatives to prison (through compensation, rehabilitation requirements and victim–offender restoration). For low-harm offences, restorative justice can substitute for court sanctions, including imprisonment. For more serious offences, the court may need to consider any residual state interest. That is, final sentencing should consider genuine attempts toward victim restoration, as well as any residual need to protect the community, including by deterring others. In other words, the offender’s ‘punishment’ is the sum of her or his efforts towards victim restoration plus the residual sanction imposed by the courts.

Where victims and offenders are suited to restorative justice practices, there is solid evidence that these practices can reduce recidivism. Evidence also indicates that victims are more satisfied with outcomes under restorative justice practices compared to normal court sentencing.

The victim-focused approach to sentencing is perhaps most advanced in New Zealand, where the requirement to provide for the interest of victims is enshrined in legislation—for example, sentencing purposes include both restoration and reparation to victims.

The Commission recommends that a victim restitution and restoration system be adopted in Queensland, including that a victim-focused approach be included in the *Penalties and Sentencing Act 1992*. 
Use more cost-effective sentencing options

For at least some offences, the use of prison imposes costs on the community that appear to outweigh the benefits provided. For these offences, it is likely that the use of other, non-custodial options would better achieve the purposes of sentencing, and, from a cost–benefit perspective, be a better option than imprisonment for less serious crimes.

The greater use of non-custodial options could apply to:

- less serious and/or non-violent crimes
- victimless crimes
- more serious offences if offenders have a mental illness or have experienced trauma.

Non-custodial options could also be used for unsentenced prisoners, who would otherwise be remanded.

The evidence suggests that, effectively supported, the greater use of non-custodial sentences is unlikely to compromise community safety and will better support rehabilitation. Non-custodial options also cost significantly less than custodial options—it currently costs $5,000 to supervise an offender in the community, compared with $107,000 to keep them in prison for a year.

Removing some of the existing sentencing restrictions would allow courts to impose effective and efficient sentences. In particular:

- Non-custodial sentences such as monetary penalties, community service, restitution and compensation could be used more frequently to substitute for imprisonment.
- Community-based sentences could be attractive substitutes for imprisonment if restrictions on their duration and combination with other penalties are removed, and if they are supplemented by approaches such as electronic monitoring and home detention.
- Courts should be able to impose custodial sentences on low risk offenders that are served in low security facilities.

For these sentencing options to be an effective alternative, they would need to be appropriately supported.

Currently, limited resourcing is provided to support the supervision of offenders in the community. Queensland expenditures on community supervision are the lowest in Australia and Queensland has the highest ratio of offenders to community corrections staff. Although 70 per cent of individuals being supervised by QCS are under a form of community corrections order, this cohort attracts only 10 per cent of the corrections budget (the remainder is spent on prisons).

If courts are to be given a greater range of sentencing options, the community should be assured they are used appropriately. The Queensland Sentencing Advisory Council (QSAC) is well placed to strengthen the community’s confidence in sentencing outcomes by:

- producing and communicating an evidence base for sentencing
- assessing sentencing in Queensland against this evidence and community expectations.

Introducing a greater range of alternatives to prison may encourage ‘net widening’. This occurs when a penalty is imposed on low-harm offenders who would never have received a prison sentence. This can be a problem because the penalty can lead to a breach of conditions that may then lead to imprisonment for the offender who otherwise would never have entered the system. If new sentencing options are made available, some oversight may be required to ensure they provide benefits to the community.

It is possible that backlogs in the courts have added to the remand population in prison. To address this, any opportunities to reduce remand levels by reducing court delays and increasing time for bail hearings should be identified.
Break the cycle of reoffending

Currently, over 1,000 prisoners are released back into the community every month—over half of these will return to prison or corrective services within two years (Figure 14). Evidence available to the Commission suggests many prisoners receive limited rehabilitation, and many are released back into the community with minimal support. This makes the community less safe than it otherwise could be.

Figure 14 Proportion of individuals released from prison (left) and community corrections (right) returning to corrective services within two years

![Graph showing the proportion of individuals released from prison (left) and community corrections (right) returning to corrective services within two years.](image)

*The proportion of 2011–12 community corrections discharges returning to corrective services within 2 years was unavailable in Queensland.

Source: PC 2018c.

Improve rehabilitation and reintegration services

Reducing the rates of reoffending will require more effective rehabilitation and reintegration of prisoners.

The evidence shows that effective programs can reduce reoffending, saving the community significant social and economic costs. However, positive results are by no means universal or large. Most successful programs are likely to have a moderate impact on reoffending.

This makes it difficult to determine the optimal level of resourcing for rehabilitation and reintegration. Nevertheless, it appears that there is underinvestment across the system, with reintegration and rehabilitation services provided for a minority of prisoners. This is exacerbated by the fact that the rehabilitation and reintegration of prisoners is not as effective or efficient as it could be, and there are few incentives to encourage improvement.

Underlying issues are impeding the efficiency and effectiveness of rehabilitation and reintegration. For example:

- although QCS has a responsibility for rehabilitation during imprisonment, no single agency is responsible for prisoner reintegration
- there are few accountability mechanisms for achieving rehabilitation and reintegration outcomes
- there is limited coordination between in-prison and post-prison rehabilitation and fragmented service delivery after prison
- a range of regulatory and operational impediments are restricting effective rehabilitation and reintegration.
To address these problems, the Commission recommends that the Queensland Government:

- better articulate the importance that the government attaches to rehabilitation and reintegration and ensure that resourcing is available to meet this commitment
- introduce reporting measures that better incentivise performance
- remove unnecessary regulatory impediments, including the inability to utilise work release orders, and excessively prescriptive release schedules
- put greater effort into rehabilitation, including during prisoner reintegration into the community
- introduce measures for coordinating the delivery of services to support prisoner rehabilitation and reintegration.

**Introduce arrangements to encourage effective throughcare**

Throughcare is a coordinated approach to prisoner rehabilitation and reintegration that aims to reduce recidivism. It provides for continuity of care and supervision during prison and after release into the community. Throughcare approaches to prisoner rehabilitation and reintegration are generally considered as best practice.

Although the Queensland system provides for a throughcare approach ‘on paper’, the Commission’s observation is that there is not an effective throughcare model in practice. This observation is consistent with the 2016 Queensland Parole System Review (QPSR), which included recommendations to improve throughcare to better support prisoner rehabilitation and reintegration.

The Commission’s view is that introducing an effective throughcare model is likely to require a more fundamental reform than suggested in the QPSR. This is likely to require a significant change in the governance arrangements, not just funding or support for new services.

The Commission will explore the best options for such a model for the final report, and will consider a range of issues including:

- where throughcare should start (for example whether initial screening should occur prior to sentencing)
- the arrangements that would encourage services to meet the specific rehabilitation needs of prisoners, including women and Aboriginal and Torres Strait Islander prisoners
- how to encourage and facilitate the coordination of service delivery, including the exchange of timely information between service providers
- the extent to which authority to make decisions can be devolved
- the best ways to incentivise performance, including performance measures, outcomes-based funding and oversight mechanisms
- how to encourage community-led and market-led solutions.

**Get the capital mix right**

The prison system in Queensland is overwhelmingly focused on high security prisons—around 90 per cent of prisoners are held in high-security facilities, significantly higher than the national average.

High security prisons are not designed for rehabilitation and often result in institutionalisation, particularly for prisoners with complex mental health or trauma issues. Further, they are an expensive way to deal with prisoners, particularly for low-risk offenders.
When developing its capital program for building new prisons or modifying existing ones, the Queensland Government should consider cost-effective opportunities to improve facilities' contribution to rehabilitation, including those that:

- draw on the best available evidence about how facilities affect rehabilitation
- provide greater opportunities for rehabilitation
- allow a more 'normalised' environment
- provide opportunities for prisoners to recover from past trauma (particularly Indigenous prisoners), drug addictions and/or mental health issues.

**Reduce interactions with the criminal justice system**

**Ensure that the right diversionary options are available and used**

For many low-harm or minor offences, police enforcement and court proceedings impose costs on offenders that exceed the harm of their offending. Further, this initial interaction can result in an escalation of interactions with the criminal justice system. Diverting these offenders can avoid unnecessary impacts for the individual and save costs across the criminal justice system.

Options for police to divert offenders away from the criminal justice system are limited. Apart from a caution/diversion for minor drug possession, there is limited scope for adult cautioning in Queensland. This is reflected in proceedings. In 2016–17, the police made just under 170,000 proceedings against offenders, sending most to court. Queensland makes the least use of non-court proceedings (17 per cent), compared to New South Wales, Victoria and South Australia (59, 29, and 55 per cent respectively), particularly for illicit drugs and public order offences (Table 3). With few non-court options, the risk of mismatching the response to the crime increases.

**Table 3 Non-court proceedings, 2016–17**

<table>
<thead>
<tr>
<th>Offence</th>
<th>Qld</th>
<th>NSW</th>
<th>Victoria</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illicit drugs</td>
<td>20%</td>
<td>28%</td>
<td>34%</td>
<td>80%</td>
</tr>
<tr>
<td>Public order offences</td>
<td>42%</td>
<td>84%</td>
<td>90%</td>
<td>78%</td>
</tr>
</tbody>
</table>

*Source: ABS 2018e.*

Adding an adult caution, as well as specific cautions for minor drug offences, will slow the escalation of people through the criminal justice system into prison. To reduce recidivism, the cautioning process should also provide appropriate diversion to effective treatment and support to prevent reoffending.

These changes will give the police a greater and more active role in preventing crime. To provide guidance on how discretion should be used, a simple public interest should be introduced to police practice.

The NZ policing excellence program (2009–2014) illustrates how setting appropriate targets, in conjunction with a plan to achieve them, can have an impact on police operations, performance and ultimately community safety. The five-year program achieved a 20 per cent reduction in recorded crime and over 40 per cent reduction in prosecutions. In light of those outcomes, adopting a similar approach in Queensland would be consistent with the objectives for this inquiry. Further information is sought on the extent and types of change in policing objectives and practices that would be required and the costs of making such a change.

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2 These are proceedings against those aged 10 years and over, and any proceeding may include several offences.
Queensland is increasing the diversion available through the Drug and Alcohol Court and Court Link. These referral-based diversions are based on sound models and are scheduled for evaluation. But Queensland is a late adopter compared to other states, where those models and referrals are already embedded, and it will need to grow the referral structure to match a more graduated system of proceedings.

The Murri court, Community Justice Groups and local mediation initiatives are highly valued by stakeholders. The Murri court evaluation, due in February 2019, will be considered in the final report.

Address gaps in prevention and early intervention

Prevention and early intervention measures can help people avoid the behaviours that lead to crime and imprisonment. While evidence suggests they can reduce crime, these approaches can be risky investments because they can involve large costs with uncertain outcomes. Further, benefits from early interventions typically provide benefits beyond those that affect imprisonment and recidivism—these are beyond the scope of this inquiry.

Several recent inquiries have recommended reforms based on targeted early intervention:

- Carmody Inquiry into the child protection system
- Report on Youth Justice
- Inquiry into service delivery in remote and discrete Aboriginal and Torres Strait Islander communities
- Townsville Community Champion on Youth Crime Report

While these reports have made many recommendations, it is not always clear whether, how and when the government will implement and evaluate them. The Commission recommends that the government publicly report on the status of reforms and proposed responses.

Given the number of review recommendations still being implemented, the Commission has not investigated operational issues in regards to youth justice or child protection. Further, given the wide scope of possible early interventions, it has not been possible for the Commission to fully consider many of the relevant issues, particularly those relating to youth justice or child protection, in the time available.

Nonetheless, the Commission has identified some gaps in prevention and early intervention.

Addressing the high levels of Indigenous incarceration will require the rebuilding of social norms in many communities. This is particularly true in remote Indigenous communities where rates of offending are much higher than in the rest of the state. Key to addressing these issues is to enable communities to develop solutions for themselves. To achieve this, the government should make a clear commitment and progress the reforms outlined the Commission’s inquiry into remote and discrete Aboriginal and Torres Strait Islander communities. Lessons from this inquiry should be extended to other Indigenous communities where relevant.

Many stakeholders raised concerns that disconnection from the school system is a key risk factor for offending behaviours. While further analysis is required to develop solutions, more could be done to support at-risk children identified through the school system. This is likely to require more innovative mechanisms than are currently available.

Stakeholders also raised concerns about barriers that prevent some individuals from accessing services to help prevent offending behaviours. These include a lack of support for services that aim to prevent highly stigmatised offences such as sexual offending. The Commission will explore these issues further in the final report.
Improve the decision-making architecture

The recommendations proposed in this report aim to reduce imprisonment and recidivism and improve outcomes through a wide range of policy reforms. However, without change to the policy and funding decision-making architecture, the benefits of reforms may not be realised, and problems will re-emerge over time.

The decision-making architecture that supports the criminal justice system could be improved through:

- more effective coordination across the various institutions that make up and support the criminal justice system
- better data sharing, modelling and program evaluation to support evidence-based decision-making
- more robust policymaking processes
- funding mechanisms to provide resources across the system to where they are most needed.

Weaknesses in these areas have, at least in part, contributed to bottlenecks and overcrowding across the system and limited the ability of the government to lead the conversation on the need for reform of the criminal justice system.

To move forward, the criminal justice system needs to move to a system where agencies are pursuing common objectives to support outcomes. To achieve this there needs to be a system where the decision-making architecture:

- ensures that all costs and benefits are considered in policymaking, including those that cut across individual agencies
- establishes sufficient accountability and authority to ensure that policy and funding reforms are achieved.

While there are a range of options that might be considered, the Commission considers progress may be best achieved by establishing a justice reform office that is at arm’s length from the criminal justice system, but responsible for leading change across the system.

The office needs to have a governance structure that enables it to consider the perspectives of each of the core agencies responsible for delivering the criminal justice system, as well as those services that surround the system. The office will also need sufficient expertise and authority to get things done.

The Commission will continue to explore the best arrangements; one option is for the justice reform office to be responsible to a board comprised of the chief executives of each of the core criminal justice agencies and independent experts.

The justice reform office's key functions should be to:

- coordinate and review policy and budget submissions from the core criminal justice sector agencies to Cabinet and Cabinet committees
- implement justice system reforms
- advise government of priority criminal justice policy issues
- lead and support evidence-based policymaking.
Draft recommendations

The draft recommendations outline the key reforms the Commission considers will reduce the use of imprisonment and reduce reoffending in the medium to long term. The Commission’s view is that the draft recommendations are unlikely to compromise community safety and, by addressing many of the issues that drive offending, are, instead, likely to make the community safer over the longer term.

However, the policy areas under consideration for this inquiry are complex and potentially controversial, with evidence that is not always clear or settled. For some areas, the Commission is still analysing the evidence, including data from Queensland Government agencies.

Therefore, each of these proposed reforms will require more analysis to ensure they can be implemented in a way that will deliver the best outcomes for the community.

The Commission is seeking further comments from stakeholders on each of these recommendations.

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Reduce the scope of criminal offences

Draft Recommendation 1

The Queensland Government should seek to remove those activities from the *Criminal Code Act 1899* and other relevant legislation, for which the benefits of being included do not outweigh the costs. This reform should focus on, but not be limited to, acts that do not have an obvious victim, including:

- public order offences
- illicit drugs offences
- regulatory offences.

When assessing whether an activity should be redefined, consideration should be given to:

- the extent to which the activity causes harm to others
- the costs that criminal sanctions impose on offenders and whether these costs are proportionate to the harm caused to others
- the extent to which criminal sanctions deter harmful offending
- whether criminalisation has unintended consequences that result in greater harm
- whether criminalisation undermines public perception of the legitimacy of the law.
Draft Recommendation 2

To support any changes to the use of criminal law, the Queensland Government should develop alternative policy approaches where required, including:

- incentives to reduce undesirable behaviours, such as civil remedies, tax and regulatory regimes and other non-criminal sanctions
- education and information provision, to highlight potential harms from newly decriminalised acts
- health responses, such as those that address mental health and drug problems.

Information request

The Commission is seeking further information on the following issues:

- What current offences do not warrant being defined as an offence? What current offences do not warrant being defined as an offence if imprisonment is a potential punishment?
- What offences, if any, are candidates for downgrading from a criminal offence or misdemeanour to a simple offence or to a regulatory offence?
- Is there scope for greater use of the civil law, and for which offences?
- Does criminalisation impede a health–based response to the problem of illicit drug usage?
- Are there approaches to drug reform that offer significant net benefits?
Provide options for victim involvement

Draft Recommendation 3

The Queensland Government should introduce victim-focused restitution and restoration into the sentencing process. This system should:

- give victims the option of engaging in a process of restitution and restoration with the offender prior to sentencing
- provide victims and offenders with a wide range of options for achieving restoration for harms inflicted, including financial and non-financial compensation
- reflect and enforce, through the sentencing process, agreements that are reached between the victim and offender
- provide mechanisms to ensure that courts consider any residual public interest in final sentencing
- allow normal court processes to proceed where victims choose not to pursue restitution or restoration or where victims and offenders cannot reach agreement
- include appropriate protections for victims and offenders.

Victim-focused restitution and restoration should be made available for any offence where a victim is identifiable.

Information request

The Commission is seeking information on the design of a victim restitution and restoration system, including:

- key design features such as:
  - the principles that should guide the residual public interest test
  - mechanisms to minimise the risk of unnecessary delays
  - any processes needed where offenders do not fulfil their agreed obligations
- whether restoration principles should be included as a sentencing purpose in the Penalties and Sentencing Act 1992
- how restitution and restoration may best meet the needs of Indigenous communities
- key risks, costs and benefits, including potential unintended consequences.
Increase the range of non-custodial sanctions

Draft Recommendation 4

The Queensland Government should reform sentencing legislation to:

- make sentences involving home detention available to courts
- allow courts to impose custodial sentences in low security correctional facilities
- remove restrictions on the use of monetary penalties, community service and community-based orders, or the combination of these orders with other sentences.

To encourage the appropriate use of non-custodial sentencing, the Queensland Government should:

- establish a mechanism to allocate resources to community corrections to support changing court sentencing practices
- amend section 9(2) of the *Penalties and Sentences Act 1992* to include a consideration of the costs of sentencing options, including the financial costs imposed on the community
- review legislated restrictions on judicial discretion to check if they are serving their intended purpose.

To ensure sentencing options support community safety and rehabilitation, the Queensland Government should introduce pre-sentence assessment of offenders who may be facing prisons terms.

Draft Recommendation 5

To strengthen community confidence in sentencing, the Queensland Government should:

- expand the role of the Queensland Sentencing Advisory Council in producing and communicating an evidence base for sentencing and assessing sentencing in Queensland against this evidence
- introduce judicial self-monitoring, independent external review or other appropriate mechanisms to improve the consistency of sentencing outcomes for lower level offences where appeals mechanisms are infrequently used.

Information request

The Commission is seeking further information on:

- the extent to which the proposed changes to sentencing would result in ‘net widening’, whether this would be desirable, and, if not, ways that it can be managed
- the consistency of sentencing outcomes and appropriate ways for sentencing consistency to be monitored in the Magistrates Court
- whether victims of crimes should be given the right to instruct the Director of Public Prosecutions to seek leave to appeal against a sentence handed down by a District or Supreme Court.
Reduce the use of remand

Draft Recommendation 6
To encourage confidence in, and greater use of bail, the Queensland Government should:
• develop evidence-based risk assessment tools to assist police and courts when considering bail applications
• make available, through legislative amendment, a greater range of non-custodial options to courts, including the use of electronic monitoring and home detention
• establish a mechanism to allocate resources to support any changes in the use of community-based supervision
• trial remand accommodation options for homeless offenders, including bail hostels and low security custodial facilities
• consider extending the operations of Court Link and QMERIT to more locations.

Draft Recommendation 7
The Queensland Government should assess whether there are opportunities to reduce time spent on remand by reducing court delays and increasing time for bail hearings.

Draft Recommendation 8
To provide greater guidance to courts, the Queensland Government should insert ‘guiding principles’ into the Bail Act 1980, based on the following principles:
• maximising the safety of the community and persons affected by crime
• taking account of the presumption of innocence and the right to liberty
• taking account of the cost of imprisonment to the community
• promoting transparency and consistency in bail decision-making
• promoting public understanding of bail practices and procedures.

Information request
The Commission is seeking further information on:
• the causes of the growth in the remand prisoner population
• the causes for delays in court proceedings and possible remedies
• any changes to court procedures that could improve decision-making
• bail support services and non-custodial options that would improve the effectiveness of, and confidence in, non-remand options
• how police and courts should consider risk when assessing bail applications.
Improve rehabilitation and reintegration

Draft Recommendation 9

The Queensland Government should modify legislation, policy and operational procedures to include a clear and specific objective of rehabilitation and reintegration of prisoners.

Draft Recommendation 10

To improve rehabilitation and reintegration of prisoners, and to reduce recidivism, the Queensland Government should introduce an effective throughcare model into the adult criminal justice system. The features of this model should include:

- clear objectives to rehabilitate and reintegrate prisoners
- adequate resourcing to meet these objectives
- a focus on individual rehabilitation needs of prisoners
- coordinated service delivery
- sufficient delegation of authority
- transparency and accountability mechanisms that would encourage continuous improvement
- incentives to reduce reoffending.

In developing this model, consideration should be given to ways to foster markets and community involvement in services that support rehabilitation and reintegration.

Information request

The Commission is seeking evidence from stakeholders on:

- the arrangements that would best encourage continuous improvement and effective and efficient rehabilitation and reintegration of prisoners
- the appropriate starting point for throughcare in the adult corrections system.
Draft Recommendation 11

When Queensland Corrective Services develops its capital program for building new corrections centres or modifying existing facilities, it should assess options to make infrastructure more effective for prisoner rehabilitation. Consideration should be given to:

- the best available international evidence on the effect of infrastructure on rehabilitation
- cost-effective options to improve rehabilitation of prisoners.

**Information request**

The Commission is seeking information on:

- completion rates of in-prison programs and the evidence from evaluations or other studies of the contribution of in-prison programs to reducing recidivism in Queensland
- how QCS considers the impact on rehabilitation when designing its capital program
- the incentives for:
  - prison managers, to encourage prisoners to participate in and complete programs within prisons and to engage in meaningful employment
  - prisoners, to participate in and complete programs within prisons and to engage in meaningful employment
  - course providers, to encourage prisoners to participate in and complete programs within prisons
- changes to governance arrangements that would improve rehabilitation and reduce recidivism.
Draft Recommendation 12

To lower reoffending, the Queensland Government should improve the likelihood of successful reintegration by:

- removing regulatory impediments to reintegration, including the lack of work release options, and uncertain release dates
- introducing measures to ensure parole workers’ caseloads support effective community supervision
- providing sufficient flexibility on release dates to allow Corrective Services to effectively prepare prisoners for release
- ensuring all prisoners, at release, have up-to-date identity documents, including a Medicare card and birth certificate, a driver's licence and bank account where required, and information on social welfare and employment services.

Information request

Further information is sought on:

- the number of prisoners receiving reintegration support from government service providers, and the costs of these services
- the number of released prisoners accessing government-funded housing each month
- the extent to which the NGO sector is supporting prisoners with accommodation (not funded by government)
- the number of prisoners released without a planned release date and any problems this creates for the delivery of reintegration services
- options for linking released prisoners to accommodation services without government funding
- the practicality and value of developing temporary release programs for prisoners in the final stage of a prison sentence.
Address gaps in prevention and early intervention

Draft Recommendation 13

To progress initiatives relating to the youth justice system, the Queensland Government should publish its Youth Justice Action Plan in response to the Report on Youth Justice. As part of this response, the government should publicly report on recommendations and evaluation of programs.

Draft Recommendation 14

In implementing the recommendations of the Service delivery to Queensland’s remote and Indigenous communities report, the Queensland Government should prioritise recommendations that address the causal factors for offending, such as entrenched economic disadvantage, including:

- removing barriers to local economic activity, including ensuring that procurement and job requirements do not exclude local participation
- developing a land tenure reform plan that better supports economic development in remote communities
- reforming policies that facilitate the growth of the Indigenous private sector
- investigating ways to develop community and market initiatives in Indigenous communities including through the use of arm’s length funding arrangements that devolve authority to communities.

Draft Recommendation 15

The Queensland Government should:

- fill gaps in preventative service delivery where stigmatisation prevents accessibility or funding (such as programs that encourage self-referrals to prevent sexual offending), and establish trials where these are suitable
- establish a trial program through schools to identify and better support at-risk children to prevent disengagement from the education system.

Information request

The Commission is seeking further information on:

- any deficiencies in prevention and early intervention strategies operating in Queensland
- options that are likely to address the underlying causes of incarceration of Indigenous Queenslanders
- options that would increase accessibility of stigmatised preventative programs
- supports that are required to keep at-risk children in schools.
Expand diversionary options

Draft Recommendation 16

To prevent unnecessary interactions with the criminal justice system, and to better treat offending behaviour, the Queensland Government should:

• review current practice and establish KPIs to encourage the efficient use of police discretion, diversion and cautions
• introduce additional diversionary options for police, including on-the-spot fines, conditional referrals and additional cautioning options
• develop a simple public interest test for police, to encourage and guide the use of discretion.

To support these changes, reporting and monitoring arrangements will need to be in place to ensure public confidence and accountability.

Information request

The Commission is seeking information on:

• other options that would be effective in reducing unproductive interactions with the criminal justice system
• issues that a simplified public interest test should consider
• whether there would be benefits from reversing the onus of the public interest test used by public prosecutors for selected low-harm or ‘victimless’ offences
• reporting and monitoring arrangements that would ensure public confidence and accountability on the way that police discretion is used.
Build a better decision-making architecture

Draft Recommendation 17
The Queensland Government should establish a justice reform office to:

• coordinate and review policy and budget submissions from the core criminal justice sector agencies to cabinet and cabinet committees
• implement justice system reforms
• advise government of priority criminal justice policy issues
• lead and support evidence-based policymaking.

The office should be responsible to a suitably constituted board that includes representation from each of the core criminal justice agencies and independent experts.

Draft Recommendation 18
The Queensland Government should require the justice reform office to introduce the following specific reforms:

• common performance objectives and indicators across the core criminal justice agencies, including targets for:
  – reducing offending and reoffending rates, including for youth and women
  – closing the gap on Indigenous incarceration
• mechanisms for allocating resources to support system objectives
• systems to provide accurate and timely data to support decision-making, and improved transparency and accountability
• modelling that promotes understanding of how policy and other proposals are likely to impact across the system
• mechanisms to ensure decision-makers are informed of the full impacts of policy proposals on the criminal justice system, clients and stakeholders, such as:
  – incorporating justice system proposals into the existing regulatory impact assessment process
  – introducing a formal test to assess impacts across the criminal justice system.

These reforms are to be introduced within 24 months of the reform office’s establishment.

Information request
The Commission is seeking comment on the appropriate governance mechanisms to improve policy and funding decision-making. In particular, comments are invited on what arrangements would best ensure that:

• government is advised of priority criminal justice reform issues
• justice system reforms are implemented and coordinated
• an environment conducive to evidence-based policymaking is fostered.
Recidivism—trends and measurement

Information request

The Commission is seeking information on approaches, technical details and challenges associated with measuring and modelling recidivism, including:

- how recidivism indicators could be used to better measure performance
- appropriate estimation approaches
- how baseline performance should be established, including any modelling challenges.

Cost and benefits of imprisonment

Information request

There are net benefits from keeping the most serious offenders in prison. For other prisoners, the picture is less clear. An illustrative analysis of the costs and benefits of imprisonment suggests that the use of prisons for less serious offences is unlikely to provide net benefits at the margin. The Commission is seeking qualitative and quantitative evidence on all types of benefits and costs associated with serving custodial sentences in prison or in the community.
1.0 Introduction
In September 2018, the Queensland Government asked the Queensland Productivity Commission to undertake an inquiry into imprisonment and recidivism.

This draft report sets out the Commission’s preliminary findings and recommendations for consultation.

1.1 What has the Commission been asked to do?

Across Australia and other developed countries, governments are increasingly contending with rising imprisonment and high levels of recidivism. In Queensland, the number of people in prisons has risen by around 58 per cent between 2012 and 2018. More than half of prisoners reoffend and are given a new sentence within two years of their release. The rate of imprisonment for Aboriginal and Torres Strait Islander people continues to outstrip the rate for the rest of the population, and imprisonment rates for women have been increasing faster than for men (Chapter 4).

In this context, the Commission has been asked to investigate how government resources and policies could be best used to reduce imprisonment and recidivism to improve outcomes for the community over the medium to longer term. The terms of reference for the inquiry asks us to report on:

• trends in imprisonment and recidivism and the causal factors underlying these trends
• factors affecting imprisonment for Aboriginal and Torres Strait Islander people, women and young people
• the benefits and costs of imprisonment, including its social effects, financial costs and effectiveness in reducing/preventing crime
• the effectiveness of programs and services in Australia and overseas to reduce the number of people in prison and returning to prison, including prevention and early intervention approaches, non-imprisonment sentencing options, and the rehabilitation and reintegration of prisoners
• the efficacy of adopting an investment approach, whereby investments in prevention, early intervention and rehabilitation deliver benefits and savings over the longer term.

The terms of reference require that our recommendations are consistent with the Queensland Government Policy on the Contracting-out of Services, which states that there will be no contracting-out of services currently provided by the Queensland Government unless it can be clearly demonstrated to be in the public interest.

The full terms of reference for the inquiry are provided at Appendix A.

1.2 Our approach

This inquiry relates to imprisonment and recidivism. However, as imprisonment and recidivism are impacted by a broad set of factors, the scope of this inquiry encompasses a wider set of issues and areas—from early intervention to post-prison support (Figure 1.1).

At least 10 major reviews have looked at aspects of the criminal justice system over the last decade (Appendix D). Many of the recommendations are still being implemented. The Commission has not attempted to revisit the findings of these reviews—such as the recent Report on Youth Justice.

The Commission has not assessed the extent to which additional prison infrastructure is required to address current levels of overcrowding nor has it conducted an operational review of each element of the criminal justice system. Rather, the Commission has focused on policy areas where change is most likely to provide the largest benefits for the community.
The policy areas under consideration for this inquiry might be considered by some to be complex and potentially controversial, and the evidence is not always clear or settled. The Commission is still analysing evidence on some of the topics. Also, the Commission received only recently much of the data and information that will give insight into rising imprisonment levels in Queensland (particularly for Aboriginal and Torres Strait Islander peoples), as well as indicate the costs and benefits of reform.

Therefore, the findings and recommendations in this report should be considered as preliminary—the purpose of this draft report is to seek further comment on these findings and recommendations. Following a second round of consultation, we will develop our final findings and recommendations and deliver a final report to the Queensland Government by 1 August 2019. Information and details with respect to this inquiry and its timelines can be found on the Commission's website (www.qpc.qld.gov.au).

1.3 Consultation

The Commission operates on a public inquiry model, which is underpinned by open and transparent consultation. To date, the Commission has held over 70 meetings with over 400 stakeholders, including academics, community leaders, service providers, courts, police, corrections and other government agencies. To prepare this draft report, we released an issues paper (September 2018) and:

- conducted public forums in Brisbane, Townsville, Cairns and Rockhampton
- held direct meetings with stakeholders, including Indigenous and non-Indigenous advocacy groups, service providers, the judiciary, unions, legal advocates, peak bodies, academics and government
- visited drug and Murri courts
- conducted site visits to four correctional centres.

We also received 43 written submissions, which we have incorporated into our analysis.

Further details on consultation, including submissions, are available at Appendices B and C. The Commission would like to thank all individuals, organisations and agencies that have participated in the consultation process to date.
1.4 **Report structure**

This report consists of three parts:

Chapter 1: Introduction

**Part A—Background**

Part A contains an overview of the criminal justice system, examines the data on imprisonment and recidivism and the costs and benefits of imprisonment.

Chapter 2: Conceptual framework

Chapter 3: An overview of the system

Chapter 4: State of play and how we got here

Chapter 5: Recidivism—trends and measurement

Chapter 6: Benefits and costs of imprisonment

**Part B—Analysis of the system**

Part B assesses the options to address rising imprisonment and recidivism.

Chapter 7: Prevention and early intervention

Chapter 8: Diversionary options

Chapter 9: Reducing the scope of crime

Chapter 10: A victim-focused system

Chapter 11: Increasing non-prison sentencing options

Chapter 12: Reducing the remand population

Chapter 13: In-prison rehabilitation

Chapter 14: Reintegration of prisoners

**Part C—System reforms**

Part C examines whole-of-system reforms.

Chapter 15: Coordinating rehabilitation and reintegration

Chapter 16: Improving decision-making and allocating funding
Part A

Background
2.0 Conceptual framework
Key points

- This inquiry is looking at how to reduce imprisonment and recidivism in Queensland and improve outcomes for the community.

- Many options exist for reducing imprisonment and recidivism, from early intervention through to post-prison support. These options cut across the criminal justice system and the 'ecosystem' that surrounds it.

- Options need to be assessed against the overarching objective of the criminal justice system, which, in simple terms, is to keep the community safe. In practice, however, this means that measures implemented today must:
  - keep the community safe over time—there may be little purpose in measures taken to keep the public safe today if they jeopardise public safety in the future
  - maintain a fair and just system—the community (including offenders and victims) must have confidence in the system for it to support community safety over time.

- Options to improve community safety can increase social welfare only where they provide benefits that outweigh the costs to the community. Comparing the costs and benefits of different options— their relative efficiency—can identify which options are likely to improve outcomes the most. Analysis of costs and benefits can also show that attempts to achieve 'zero tolerance' or 'no harm' are likely to impose costs much greater than the benefits they provide and may have large unintended consequences.

- Ultimately, resources for community safety are limited, as there are many other policy priorities. Also, beyond some point there are diminishing returns from increased effort to improve safety. Eliminating all crime is not a feasible option.

- Within this context, the relevant issues are how many resources should be allocated to achieving community safety and how they can best be used. The approach in this inquiry revolves around four questions:
  1. What are the right roles for government? While the Queensland Government has a clear part to play in achieving community safety, it can do so in many ways.
  2. Are current policies and programs keeping the community safe over time? Policies and actions should be consistent with the objective of keeping communities safe and should be implemented in a way that ensures they meet this objective.
  3. Are there better ways of doing things? The most effective and efficient policy options should be used to keep communities safe, and these should be improving over time.
  4. Are there ways to improve decision-making across and within government, and encourage innovations to improve efficiency? Decision-making should be informed by robust evidence, provide the right incentives and encourage constant improvement.
2.1 Introduction

This chapter outlines a framework for considering options to reduce imprisonment and recidivism and improve outcomes for the community over the medium to longer term.

Governments have a number of roles within the criminal justice system:

• administering the legal and regulatory framework
• establishing and funding police, courts and corrections
• commissioning a range of services for early intervention, diversion and reintegration.

There are many influences on imprisonment rates within the system, whose elements can work together or in opposing directions.

It is necessary to first set out the overarching objectives of the criminal justice system and the constraints around the system. Only then can one assess the performance of the system and investigate the options for reform.

After identifying the objectives, the question becomes how government can best achieve its objectives while minimising the cost to the community. Essentially, at issue is how many resources should be allocated to achieving community safety and how those resources can be best used. Under this approach, there are four key questions:

• What are the best roles for government?
• Are current policies and programs consistent with keeping the community safe over time?
• Are there policies that would improve upon current outcomes?
• Are there ways to improve decision-making and encourage innovation across and within government? Could the incentives driving policy implementation be strengthened?

2.2 Objectives

The starting point for determining the best role for government is to understand the objectives government is aiming to achieve through the criminal justice system.

Various legislation and policy settings suggest that the primary objective is to keep communities safe. This is one of government’s main responsibilities and is established in one of the Queensland Government’s six priorities:

*The government is absolutely committed to ensuring Queenslanders are safe. The evidence clearly demonstrates the need to focus on the causes of crime and violence, and on prevention such as education, employment and other social services.* *(Queensland Government 2018b)*

Safety is an objective of the criminal justice system, because crime not only harms victims, but also threatens the peace and security of society at large and erodes social and economic capital *(Cooter & Ulen 2016, p. 457).* Crime can also make the community feel less safe. In unsafe communities, people are exposed to trauma, which can profoundly affect their quality of life and expose them to financial costs; people need to change their behaviour or spend money to avoid becoming victims of crime; property rights are not respected and saving and investment is discouraged *(OECD 2013).*

At a high level, the community safety objective appears unambiguous. However, there are some important and subtle conditions for this objective to be met. First, community safety must prevail over the longer term. In practice, this means that actions taken today must keep the community safe both in the short term and over
time. For example, if imprisoning low-level offenders has a significant criminogenic effect, they can become more serious offenders, making the community less safe over time.\(^3\)

The community (including offenders and victims) must have confidence in the system’s justness and fairness for the system to support community safety over time. Legitimacy of the system is crucial, because crime and the criminal justice system both involve infringements on personal liberty. Crimes are involuntary transactions between offenders and victims, and in the criminal justice system the state uses coercive powers to infringe on the rights of offenders (including to imprison them). The system needs to satisfy community expectations about justness and fairness, including the community’s tolerance for loss of liberty, desire for retribution and denunciation of acts considered unacceptable.

A second condition is that the objective must be achieved in a way such that the benefits outweigh the costs to the community. Securing the benefits of safety involves costs—for example, to run the police force, courts and prisons. Trade-offs must be made against other uses of resources and tough questions must be confronted, including the level of safety the community is willing to pay for.

Ultimately, options to improve community safety are also limited by the resources that are available. Given the many public policy objectives, it is not possible to devote unlimited resources to provide community safety, particularly since beyond some point there are diminishing returns from increased effort to improve safety. An extra dollar spent on the criminal justice system means that less is available for other government priorities, such as health, education and protecting the Great Barrier Reef (Queensland Government 2018b). The net benefits of spending on the criminal justice system need to exceed what could have been earned elsewhere:

*The community, which funds the criminal justice system, has every right to expect these funds to be used effectively.* (Moynihan 2008, p. 20)

Finally, different approaches are used to achieve the community safety objective in various parts of the criminal justice system. The main approaches to improve community safety can be categorised as:

- deterring potential offenders
- incapacitating people who have offended so that they cannot commit more crime
- rehabilitating and reintegrating offenders so they are able to pursue more productive lives.

Ideally, the three should support each other, but this is not always the case. For example, imposing longer jail sentences to increase deterrence may undermine efforts to rehabilitate offenders who might have been rehabilitated if they had spent less time in jail. The challenge is to find optimal combinations of deterrence, incapacitation, and rehabilitation that contribute most to community safety at the least cost.

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\(^3\) The possible criminogenic effects of imprisonment are discussed in Chapters 6, 11 and 13.
2.3 The role of government

The power to restrict people’s rights through imprisonment and other penalties rests with government. The government, therefore, has the pre- eminent role to play in the criminal justice system.

From an economic perspective, the government's role is conditioned by the presence of market failure:

- Community safety has the characteristics of a public good, for which private provision is typically inadequate.
- Externalities are common—criminals impose costs on victims which would be inappropriate to prevent in advance through commercial negotiation, and for which they cannot seek compensation after the event.
- Information asymmetries are frequent—for example, most people rarely need legal advice and are not equipped to assess the quality of lawyers. This makes a case for government regulation of legal services.

Government is heavily involved in the criminal justice system through six broad roles (Box 2.1).

Box 2.1 Government roles in the criminal justice system

First, governments administer the legal and regulatory framework, which sets out acts currently defined as crimes and gives the state the capacity to impose sentences that punish offenders. Legislation influences sentencing policy, although the law also develops through judicial interpretation.

Second, governments commission services. This includes:

- choosing between different service provision models, such as in-house or contracting out
- designing the governance framework within which the chosen model operates
- implementation, which could include administering regulation
- service stewardship, including performance monitoring, evaluating outcomes, spreading good practice, and managing boundaries with other services (New Zealand Productivity Commission 2015, p. 131).

Third, governments establish and fund agencies and other institutions, including police, courts, tribunals, ombudsmen, corrections facilities, schools and other institutions with a role in early intervention.

Fourth, governments provide services; for example, the Queensland Government manages most prisons in Queensland.

Fifth, governments become contract managers when they hire private firms to provide services. For example, the private sector operates two prisons in Queensland and provides services in others.

Sixth, governments regulate activities provided by the private sector, such as legal services.

With appropriate regulation, many of the roles—and activities—are delivered efficiently in markets. For example, legal advice and some security services are provided commercially, and non-government organisations are involved in rehabilitation and reintegration. However, across the criminal justice system, because of the risk of market failure, some key services are administered by government.

The questions for this inquiry then are about which roles government should undertake in the criminal justice system and how it should undertake them.
2.4 Are current policies and programs effective at keeping communities safe?

Criminal justice policies are effective if they help achieve the government's objective of keeping the community safe.

Governments would not knowingly implement policies that are ineffective at keeping the community safe. They can, however, experience pressure to respond quickly to problems and must make judgments about how much evidence to collect before acting. This is especially the case in regards to complex social problems where policies do not necessarily have the intended effect, even those policies which seem logical. For example, in communities with high incarceration rates, prison sentences may be considered the 'norm' or a 'rite of passage'; therefore, the denunciation and deterrence effect of prison may be low.

Policy at times can also have unintended consequences. For example, mandatory sentencing treats people alike even though the harm their crime causes differs, and the offences are committed under different circumstances. Mandatory sentencing may prevent courts from imposing what could be the most effective and efficient sentence in a particular case (Chapter 11).

Poor implementation can also reduce effectiveness. Meeting the government’s objectives depends on the actions of many agencies. Developing performance targets, measuring performance, evaluating policies, and considering how to improve them, all become critical tasks. Further, if the approaches that agencies use conflict, resources could be wasted when different areas do not support each other, or work against each other.

The complexity of the criminal justice system, which involves many agencies with decision-making discretion, can lead to such problems. One view of the criminal justice system is that it is:

[a] loosely coupled collection of interdependent agencies, each having bureaucratic interests, and each having specific functions (which can be in conflict with other agencies) that are subject to legal regulations, where agency workers have great discretion in making decisions when responding (or not responding) to harms defined as criminal by the state, and where value conflicts exist within and across agencies and in the general population about the meaning of justice.

Although [agencies] are connected to each other and share certain objectives, they also have their own agendas. A more accurate term for criminal justice system would be a ‘collection of interdependent agencies’, each having its own function … Conflicts over aims stem from the functions of each agency. For example, the police are to investigate crime and arrest and detain suspects, while the courts are to protect the rights of the defendant. Conflict may also emerge from the bureaucratic interests of each agency. (Daly 2012, pp. 3–4)

Different views about the purpose of imprisonment further complicate the picture (Box 2.2).
Agency discretion is important, and some tension between the objectives of individual agencies is healthy. However, if it goes too far it can undermine the government’s desired policy outcomes. For example, in an attempt to charge suspects as quickly as possible, police may be tempted to cut corners, while prosecutors may insist on the letter of the law (as well as the spirit) being met (Daly 2012, p. 4). The former may conflict with justice, while the latter could conflict with effectiveness.

Clear policy objectives give direction and reduce the risk of inconsistent implementation. However, an overly prescriptive approach may impede efficiency and flexibility. It may also inhibit innovation, since legislation is amended infrequently.  

This report discusses whether the criminal justice system activities covered by the terms of reference have objectives that are:

- clear
- consistent with each other and with the overarching policy objective
- broad enough, so that they do not undermine legitimate discretion and prescribe how to achieve the objective.

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Box 2.2 The role of imprisonment

Views on the purpose of imprisonment include:

- providing retribution in proportion to the magnitude of the wrongdoing
- deterring reoffence
- preventing reoffence while a person is imprisoned
- rehabilitating prisoners so that they choose not to reoffend.

These objectives are not necessarily consistent with each other. For example, harsh retributive punishments may work against rehabilitation, making prisoners more likely to reoffend. On the other hand, placing rehabilitation ahead of retribution may weaken the legitimacy of the criminal justice system or reduce deterrence.

Changing the relative weights given to these objectives can affect sentencing policy, rates of imprisonment, and investment in prison capacity and in rehabilitation programs. If different parts of the system simultaneously pursue retribution and rehabilitation, both objectives may be compromised.

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4 Objectives specified in legislation are often quite broad. In such cases, instruments such as agreements and statements of expectations can provide clarity without being too prescriptive. For example, since 1996 there have been seven agreements between the Australian Government and the Reserve Bank of Australia, aimed at fostering a sound understanding of the nature of the relationship between the Reserve Bank and the Government, the objectives of monetary policy, the mechanisms for ensuring transparency and accountability in the way it is conducted, and the independence of the Reserve Bank (https://www.rba.gov.au/monetary-policy/framework/, accessed 10 September 2018).
2.5 Are there more effective and efficient policies that would improve outcomes?

To find policy improvements, this inquiry seeks to identify effective and efficient options for achieving the government’s objectives.

First, identify the problem and develop policy options

A primary challenge is identifying policies and programs that target the cause rather than the symptoms of policy problems. To identify policy options that will improve wellbeing, it is important to first carefully define the underlying problem, and its source and scale, and why the government needs to intervene.

Diagnosing the problem usually suggests options for addressing it. For example, if there is evidence certain barriers to employment cause recidivism, options that reduce these barriers could be an effective way to reduce recidivism.

This example illustrates that options may not fit neatly into individual components of the criminal justice system. For example, options for reducing recidivism include helping prisoners to develop employment skills, offering reintegration services after release, and improving access to social welfare agencies, possibly run or funded by different levels of government. Delivery of these services by different agencies complicates implementation and raises governance issues (discussed below).

Second, assess the policy options

Policies should induce socially valuable change, provide the right incentives and avoid unintended consequences. There are usually several policy options for addressing social problems. To choose between them requires an assessment of whether they will work (effectiveness) and the size of net benefits (efficiency).

Will/does the policy work? (effectiveness)

It is often not possible to predict how effectively an intervention might contribute to a broad outcome—such as community safety—because many other factors are involved. Measures of effectiveness therefore frequently focus on outputs—such as the number of prisoners participating in an accredited program—rather than outcomes (PC 2018b). Even then, however, effectiveness can be difficult to predict. Where it is not possible, options can be selected based on good design features such as:

- targeting a well-specified problem, with clear outputs and targets
- not being excessively complex
- already having been implemented effectively elsewhere
- offering strong incentives for those responsible to implement the proposal
- having low barriers to implementation.

Is the policy the best way to address the problem? (efficiency)

Typically, there are several policy choices that can achieve community safety—from early intervention to post-prison support. Allocating more resources to any of these options will have some impact on crime, imprisonment and recidivism. The key question for government is what policies will deliver the greatest net benefit to the Queensland community.
A policy option is efficient if its benefits exceed its costs (including all social costs and benefits) and no other use of resources would yield higher value for the community. The inclusion of social costs and benefits is important, as costs and benefits must be considered from the perspective of overall community wellbeing.

Efficiency requires minimising the costs of producing specified outputs (productive efficiency), producing the most valued outputs (allocative efficiency) and ensuring there is improvement over time (dynamic efficiency) (Box 2.3).

**Box 2.3 Concepts of efficiency**

**Productive efficiency**

The inquiry looks for options that improve productive efficiency, and therefore reduce production costs. For example, maintaining quality while reducing the cost of supplies used in prisons improves productive efficiency.

**Allocative efficiency**

Even after productive efficiency is achieved, it is still possible that resources could create bigger social benefits elsewhere. For example, rather than spending money on prisons—even after improving their productive efficiency—a higher return might be achieved by spending more money on crime prevention.

Adopting an allocative efficiency framework can help governments to consider how much to spend on community safety and where to spend it. It implies that there is an efficient level of spending on safety—given that community welfare would be reduced if the benefit from increasing expenditure beyond this point were less than its cost—and that the budget should be spent where it yields the highest net benefits.

**Dynamic efficiency**

Whereas productive and allocative efficiency are about how resources are used at a given time, dynamic efficiency is about how resource use improves over time, often through innovation. Dynamic efficiency in the criminal justice system is affected by the strength of incentives to innovate. This may depend on whether, for example, funding is supportive; whether risk-taking is penalised or rewarded; the degree of decision-making flexibility and autonomy of managers of facilities; and workplace relations arrangements. The strength and impact of these incentives depend on governance arrangements.

Measuring efficiency can be challenging, particularly where intangible benefits (such as community perceptions about safety) are important. Cost–benefit analysis is typically used to measure efficiency and assess options against each other. Chapter 6 discusses cost–benefit analysis, and its application to this inquiry.

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5 Examples include access to on-line education services in prisons; using biometric and smart card technologies for prisoner management; and new ways of rewarding prison operators—such as outcome-based contracts or incentives—for reducing recidivism. An innovation agenda for United States corrections developed by the RAND Corporation highlights the diverse sources and types of innovation. Some, such as ‘virtual visitation’ and tools to assess whether a subject is being deceptive, involve new technologies. Others involve developing new models to improve, for example, risk assessment. A third category requires organisational change; for example, increasing agencies’ flexibility to reallocate funds (Jackson et al. 2015).
2.6 Are there ways to improve decision-making across and within government, and encourage innovations to improve efficiency?

The agencies that comprise the criminal justice system are highly interdependent—a policy change or action in one part of the system can affect the operations of other parts of the system. Interdependency requires system governance, in the form of a mechanism for allocating resources and making decisions. Such a mechanism should incentivise collaboration, effectiveness and efficiency.

*Good governance should establish processes that lead to optimal decisions and outcomes for the wider community, including efficient and responsible use of Government resources ... Good governance arrangements increase the likelihood and degree to which an agency will deliver on its objectives, and meet its intended purpose ... [and] allow an agency to promptly identify any issues or risks that might arise.* (Economic Regulation Authority of Western Australia 2015, p. 87)

Governance arrangements should encourage decision-makers to focus on their objectives and to seek to improve their performance. The arrangements need to be designed on a system-wide basis so that, for example, the roles and responsibilities of agencies are consistent with each other, rather than being in conflict or leaving gaps. This will help them to manage their interdependencies, without undermining the appropriate discretion of individual agencies.

Various sources (Economic Regulation Authority of Western Australia 2015; UK House of Commons Justice Committee 2017; UK Ministry of Justice 2016) suggest that effective governance arrangements include:

- a clear and well-understood purpose—which influences whether institutions and individuals are focused on achieving that purpose
- clearly and consistently defined roles and responsibilities—how decisions are made about whether and how to expand, maintain or close programs and infrastructure affects costs and performance
- appropriate devolution of decision-making authority to managers, backed up by adequate resources and performance frameworks—the extent to which decision-making is devolved to managers influences the scope for innovation, their capacity to attract high quality staff, and the scope and flexibility to provide services in an integrated way, which affects effectiveness and cost of services
- measures (such as reporting requirements and performance agreements) to ensure accountability follows responsibility—the performance management framework influences incentives, behaviour and outcomes
- independent and public assessment to determine whether purposes have been achieved—independent scrutiny influences performance and the scope for improving poor performers
- a robust evidence base for decision-making and sharing information about successful approaches
- a framework within which decisive action is taken if performance is deficient.

The way these features combine determines the shape and strength of incentives. Different combinations are possible. Using these criteria to identify gaps in governance—such as incomplete objectives, performance indicators or evaluation frameworks—can suggest options for improving them.
2.7 A framework for considering policy options

This chapter has set out a framework for considering policy options to reduce imprisonment and recidivism while improving outcomes for the community. The Commission’s approach concentrates on whether government is in the right roles; whether current policies and programs are consistent with keeping the community safe; whether there are policy options likely to provide greater benefits to the community than current practice; and whether governance arrangements allow effective decision-making and encourage innovation.

Under this framework, a broad range of policies should be considered. In general terms, policies fall in three categories:

- **reduce crime**—options may include targeting risk factors, deterring criminal activity or changing the scope of acts defined as crime
- **reduce incarceration**—such as by increasing the use of alternative sentencing options or reducing the scope of acts that are eligible for prison sentences
- **reduce recidivism**—this may include improving rehabilitation and reintegration through more funding, improved program design or changing incentives.

A stylised illustration of the framework is presented in Figure 2.1.

**Figure 2.1 Framework for considering policy options**

The remainder of this report applies this framework to assess current arrangements and propose options for reform.
3.0

An overview of the system
This chapter describes the key features of the Queensland criminal justice system that influence imprisonment and recidivism. It describes the making and enforcement of criminal law, and provides a brief examination of how offenders move through the criminal justice system.

Key points

- The criminal justice system in Queensland is made up of a number of different institutions including law enforcement agencies, courts, corrections (including prisons), a range of advocacy and oversight bodies, and organisations involved in rehabilitation, reintegration, prevention and intervention.
- In 2016–17, there were over 11,000 sworn police officers, and more than 200,000 criminal lodgements dealt with by the courts. Currently there are around 9,000 prisoners detained in 11 high security prisons, 6 low security prisons, and 13 work camps.
- In 2016–17, the cost of the core criminal justice system in Queensland (police, the courts and corrections) was $3.6 billion or $728 per capita.
- Within this system, prisons play a key role. Their purpose is to deter crime, incapacitate offenders and rehabilitate prisoners. Prisons also provide the community a means to exact retribution for wrongs committed by offenders.
- The criminal justice system is one of three legal systems that mediate harmful behaviours. The other systems are the regulatory and civil justice systems. The boundaries between these systems are not always obvious.
- Criminal justice comprises two separate processes—the making of criminal law and the enforcement of that law. Both influence the prison population.
- Criminal law involves legislation made by parliament, and common law, which is based on historical court decisions. Over the past twenty years, key changes to legislation have tended to increase the penalties—including the use of prison—applying to offences.
- Criminal law is enforced through a criminal justice process undertaken by police, courts and corrections. Decisions made at each stage of this process influence imprisonment and recidivism—a court decision to imprison an offender is the culmination of decisions and subsequent actions across the criminal justice system.
- In 2016–17, 498,000 offences were reported in Queensland. Most offences are dealt with outside of the prison system—only 13,100 people were sentenced or remanded to prison over the course of that year.
- Given the high flows of offences and offenders moving through the criminal justice system, small changes at any decision point in the criminal justice system can have large impacts on the size of the prison population.
- Given the high degree of interdependence between the various components of the criminal justice system, mechanisms are required to ensure there is sufficient coordination across the system.
3.1 The criminal justice system in Queensland

This chapter explores the main features of the criminal justice system that influence imprisonment and recidivism.

The institutions

The Queensland criminal justice system comprises a diverse range of institutions, including law enforcement agencies, courts, agencies (including prisons) responsible for detaining, supervising and rehabilitating offenders, a range of advocacy and oversight bodies, and agencies involved in prevention and intervention. Of these, police, courts and corrections represent the core institutions.

Police

The Queensland Police Service utilises over 11,000 sworn officers in maintaining public order, investigating and preventing crime, and arresting and bringing alleged offenders before the courts. Most police investigations are initiated following a report made by the public.

Queensland Police Service—service objectives

- To uphold the law by working with the community to stop crime and make Queensland safer.
- To contribute to stopping crime and making the community safer through road safety relationships, reducing road trauma and evidence-based enforcement anywhere, anytime.

Source: Queensland Government 2018e.

Courts

The courts decide on bail and remand, preside over the trial and plea process, decide on guilt (which may be made by jury), sentence offenders, and hear appeals against conviction and sentence. Important roles in the court process are also played by the prosecution and defence counsel (including Legal Aid Queensland).

The three levels of court in Queensland are the Magistrates Court, which deals with summary offences and less serious indictable offences, the District Court, which deals with offences with up to a 20-year maximum imprisonment, and the Supreme Court, which hears all other offences. Additional specialist courts include the Children’s, Coroners, Mental Health, Murri6, Drug and Alcohol, and Domestic and Family Violence courts.

The Department of Justice and Attorney-General is responsible for administering justice in Queensland and supports the court system by delivering prosecution and court services.

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6 The Murri court is a Magistrates court that links Aboriginal and Torres Strait Islander defendants to cultural and support services—to reduce offending and guide them through the court process—that are facilitated by Elders or Respected Persons from the community. ‘Murri’ is the name of the Indigenous people of Queensland and north-west New South Wales.
Corrections

Queensland Corrective Services (QCS) is responsible for the administration of prisons and community corrections. It holds people on remand, supervises prison sentences, provides rehabilitation, prepares inmates for release and supervises probation, parole and community service orders.

Prisons form an important component of the criminal justice system (Figure 3.1). As established in the Corrective Services Act 2006, their purpose is to prevent crime through the humane containment, supervision and rehabilitation of offenders. When making sentencing choices, courts must consider how prisons deter, incapacitate and rehabilitate offenders (Penalties and Sentencing Act 1992).

Figure 3.1 Role of prisons
QCS provides two core services—the prison system and community corrections:

- Around 9,000 prisoners are currently managed on any given day in facilities across Queensland, including 11 high security prisons, 6 low security facilities, the Princess Alexandra Hospital secure unit, and 13 work camps. Two high security facilities are privately managed (Arthur Gorrie and Southern Queensland).
- Around 21,000 offenders are currently managed in the community under community corrections by the probation and parole service within QCS. The service is divided into seven regions, with 34 district offices servicing major areas of Queensland.

Within both systems, supervisory and rehabilitation services are provided. QCS provides these services or contracts out the delivery of these services to private or non-government organisation sectors.

**Corrective services—service objectives**

- To provide safe, modern and responsive correctional services to rehabilitate prisoners and offenders, and prevent crime, making Queensland safer.

*Source: Queensland Government 2018d.*

**Resourcing**

In 2016–17, government funding of the core criminal justice system in Queensland (police, the courts and corrections) was $3.6 billion, or $728 per capita (QPC calculations; ABS 2018a; PC 2018c). Police comprise the largest portion, at 68 per cent of costs, compared to 28 per cent for corrections and 5 per cent for courts (Table 3.1).

**Table 3.1  Structure, activity and expenditure indicators for police, courts and corrections, 2016–17**

<table>
<thead>
<tr>
<th>Institution</th>
<th>Structure</th>
<th>Activity</th>
<th>Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police</td>
<td>Staff (FTEs)</td>
<td>Reported offences: 498,332</td>
<td>$ 2,406 million</td>
</tr>
<tr>
<td></td>
<td>Total operational: 14,184</td>
<td>Cleared offences: 353,077</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sworn officers: 11,272 (79%)</td>
<td>Proceedings: 168,913</td>
<td></td>
</tr>
<tr>
<td>Courts</td>
<td>Judges/Magistrates (FTEs):</td>
<td>Criminal lodgements to:</td>
<td>$ 168 million</td>
</tr>
<tr>
<td></td>
<td>- Supreme Court: 10.5</td>
<td>- Supreme Court: 2,740</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- District Court: 26.7</td>
<td>- District Court: 6,937</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Magistrates: 78.6</td>
<td>- Magistrates: 215,473</td>
<td></td>
</tr>
<tr>
<td>Corrections</td>
<td>Corrections facilities: 14</td>
<td>Average daily:</td>
<td>$ 982 million</td>
</tr>
<tr>
<td></td>
<td>(including 2 private prisons)</td>
<td>- Prisoners: 8,129</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Design capacity: 7,258 prisoners</td>
<td>- Community Corrections: 19,780</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Staff (FTEs): 4,937</td>
<td>probation: 11,465</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>parole: 6,049</td>
<td></td>
</tr>
</tbody>
</table>

*Note: Magistrates Court information includes the Children’s Court. Corrections expenditure includes capital costs. Sources: ABS 2018l, 2018c; PC 2018c; QCS 2018b; QPS 2017.*
Other participants in the criminal justice system

While police, courts and corrections represent the core institutions of the criminal justice system, many other public sector and non-government organisations have roles within the criminal justice system or participate in some way in criminal justice processes. Some have regulatory roles, some provide services, and others are advocates. The community itself is central to the process, while the media can be highly influential in how the system operates.

This diverse range of institutions include:

- **Monitoring and oversight bodies.** Several bodies in Queensland perform monitoring and oversight functions including the Crime and Corruption Commission (investigates major crime and corruption), the Public Interest Monitor (monitors applications for and the use of surveillance and covert search warrants), the Legal Services Commission (receives and deals with complaints about lawyers, law practice employees and unlawful operators) and the Office of the Chief Inspector (monitors standards and operational practices relating to the Queensland corrective services system).

- **Institutions involved in policy and legislation development.** Government and non-government bodies provide input into the development of policy and legislation, including the parliament, government departments, the Queensland Sentencing Advisory Council, the Queensland Law Reform Commission, the Queensland Law Society, the Queensland Bar Association, the Crime and Corruption Commission, and the Crime Statistics and Research Unit.

- **Legal services.** Legal assistance to financially disadvantaged people is provided by Legal Aid Queensland and the Aboriginal and Torres Strait Islander Legal Service.

- **Service providers.** Many organisations and individuals provide services to the system—such as solicitors, barristers, other government departments (such as Queensland Health, the Department of Education and Department of Housing and Public Works) and non-government organisations (such as victim support counsellors and rehabilitation service providers).

- **Representative groups.** Organisations who represent particular interests—such as victim representation groups, the law society, trade unions and prisoner groups—monitor, participate in and express views on the criminal justice system.

- **The community.** The community itself also plays an important role in the operation of the criminal justice process. Community reporting of crime is the primary means for initiating police action. Members of the public act as witnesses, fulfil jury duty and facilitate the reintegration of prisoners. The community sets the environment in which crime is committed and victims are supported, and to which offenders return.

- **The media.** The media has a role in informing the public of crime issues and the operation of the criminal justice system. For example, the media has contributed to the current community focus on domestic and family violence. Also, the process that led to the Fitzgerald inquiry into police corruption in Queensland was initiated by investigative journalism.
The criminal justice system—one of three systems for mediating harm

The criminal justice system is one of three legal systems that mediate behaviours to provide for individual liberty, fair trade and community safety. The other systems are the regulatory and civil justice systems. Together these systems influence behaviours that might otherwise cause harm—whether those harms involve physical violence, negligence, reducing the level of trade and exchange in an economy, or imposing externalities. Criminal law is the only legal system in which imprisonment is a frequently used penalty.

The choice of legal system involved in resolution of a harm is usually dictated by the nature of the interaction or transaction that has occurred—that is, whether it has features of market failure or an identifiable victim, and the degree of intent in the harm committed (Figure 3.2).

Figure 3.2  The criminal, civil and regulatory legal systems
3.2 **Criminal justice comprises two parts—making and enforcing criminal law**

Criminal justice comprises two separate processes—the making of law and its enforcement.

The government is involved in both processes, having the majority control or confidence of the elected parliament that makes laws, and the responsibility to administer the criminal justice process.

Queensland adheres to the Westminster system, which provides for a separation of powers between the legislative, executive and the judiciary. Under this system the legislature makes laws and the executive administers policy. The interpretation of the law, as well as the authority to exercise that law, rests with judicial officers (judges and magistrates) presiding over courts.

**Making criminal law**

Prior to 1899, criminal conduct in Queensland was defined through common law. Common law is the body of historical court decisions that arose from victims, and then governments, bringing perpetrators before court for judgment. Queensland codified common law into legislation with the *Criminal Code Act 1899*. Queensland’s criminal code is an extensive law, but common law is still relied upon if there is ambiguity. New South Wales and Victoria have less defined criminal legislation and consequently rely more heavily on common law. Parliamentary statute is the source for the creation of new offences and takes precedence over common law if there is any conflict (Hemming 2015).

The State Parliament has virtually sole responsibility for making criminal law in Queensland. Commonwealth law is confined primarily to family law, taxation, native title, trade practices, industrial relations and corporations law. Crimes involving border or international issues, such as drug importation and human trafficking, are prosecuted under Commonwealth law.

Usually, executive government proposes a law, and parliament considers, sometimes amends, and passes the necessary legislation.

Over the past twenty years, key changes to criminal justice legislation have tended to increase the penalties applying to offences by:

- separately identifying specified offences and aggravating factors, usually to apply greater penalties—the serious violent offences regime, organised crime, child pornography, child sex offending and exploitation, one punch, strangulation and domestic violence as an aggravating factor
- increasing maximum penalties—for breaches of domestic violence orders, graffiti and drug trafficking
- restricting the use of bail—presumption of no bail in specified domestic violence offences
- limiting the availability of parole—non-parole periods for serious violent offences, multiple murders, child sexual offences, and 'no body, no parole'
- introducing, and subsequently reversing, a harsher youth justice regime (boot camps), Vicious Lawless Association Disestablishment and the removal of prison as a sentence of last resort.

A list of major legislation that defines Queensland law is provided in Table 3.2.
Table 3.2  Key legislation determining criminal acts in Queensland

<table>
<thead>
<tr>
<th>Act (all Qld)</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal Code Act 1899</td>
<td>The primary instrument for the source of criminal law in Queensland. Specifies offences and maximum terms of imprisonment.</td>
</tr>
<tr>
<td>Drugs Misuse Act 1986</td>
<td>Specifies drug related offences, and in conjunction with the Drugs Misuse Regulation 1987, defines drugs and quantities for different levels of offence.</td>
</tr>
<tr>
<td>Police Powers and Responsibilities Act 2000</td>
<td>Provides for the powers and responsibilities of police officers.</td>
</tr>
<tr>
<td>Justices Act 1886</td>
<td>Sets out the powers and jurisdiction of justices and magistrates and provides for proceedings and appeals.</td>
</tr>
<tr>
<td>Bail Act 1980</td>
<td>Sets out requirements around the release of defendants charged with offences.</td>
</tr>
<tr>
<td>Evidence Act 1977</td>
<td>Sets out the requirements for the admissible use of evidence and witnesses in trial.</td>
</tr>
<tr>
<td>Penalties and Sentencing Act 1992</td>
<td>Establishes the powers of courts to sentence offenders and provides sentencing guidelines.</td>
</tr>
<tr>
<td>Corrective Services Act 2006</td>
<td>Specifies the objectives for corrective services, the operation of imprisonment according to court sentences, requirements to manage prisoners in a safe and secure environment, and requirements regarding parole.</td>
</tr>
<tr>
<td>Dangerous Prisoners (Sexual Offenders) Act 2003</td>
<td>Defines dangerous prisoners and provides for their continued detention, care and treatment, or supervised release.</td>
</tr>
<tr>
<td>Youth Justice Act 1992</td>
<td>Establishes the basis for administration of juvenile justice, including requirements for police, diversion, courts and detention.</td>
</tr>
<tr>
<td>Victims of Crime Assistance Act 2009</td>
<td>Provides for the financial assistance of victims in cases of serious harm.</td>
</tr>
<tr>
<td>Regulatory Offences Act 1985</td>
<td>Defines offences for minor theft and damage to property.</td>
</tr>
<tr>
<td>Summary Offences Act 2005</td>
<td>Defines public nuisance and minor offences (graffiti).</td>
</tr>
</tbody>
</table>
Enforcing criminal law—the criminal justice process

The enforcement of criminal law occurs across the various institutions that form the core criminal justice system—the police, courts and corrections. The typical process or flow through the adult criminal justice system starts when a crime is reported and may flow through to a range of outcomes including imprisonment of an offender (Figure 3.3).

Figure 3.3 The criminal justice process

The police determine the numbers of offenders flowing through the system by making decisions to:

- police certain activities and enforce the law
- divert offenders away from the criminal justice system or to undertake criminal proceedings
- support bail or seek the remand in custody of the accused.

The courts directly or indirectly impact imprisonment and recidivism, including through:

- bail—courts consider applications for bail if police have previously rejected bail
- conviction—courts (juries, judges or magistrates) determine the guilt or otherwise of an accused
- sentencing—judges and magistrates impose a sentence if the accused is found guilty. Sentences can include penalties involving fines, community service, community-based corrections and imprisonment
- parole—if a prison sentence of less than three years is imposed for offences other than sexual or serious violent offences, courts set a parole release date (parole is the conditional release of a prisoner into the community under supervision). If a prison term is imposed of more than three years (or for sexual or serious violent offences), courts can set a parole eligibility date when an application for parole can be made to the Parole Board.
Corrections is often the final stage in the process. Important decisions affecting offenders in the corrections system include:

- assessment of prisoners—QCS assesses prisoners to determine the rehabilitation needs of prisoners, and the support that is required for prisoners returning to the community
- parole—the independent Parole Board considers parole applications and whether parole should be rescinded if an offender breaches parole conditions.

Imprisonment is the culmination of various stages of the criminal justice process. In 2016–17 there were around 498,300 offences reported to Queensland police. The vast majority of those offences were dealt with through means other than imprisonment—only 13,100 people were sentenced to or remanded in prison in that year (Figure 3.4, with further explanation in Appendix E).

**Figure 3.4  From offence to prison, Queensland, 2016–17 (‘000s)**

<table>
<thead>
<tr>
<th>Category</th>
<th>Value (‘000s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reported offences</td>
<td>498.3</td>
</tr>
<tr>
<td>Cleared offences</td>
<td>353.1</td>
</tr>
<tr>
<td>Police actions</td>
<td>320.3</td>
</tr>
<tr>
<td>Proceedings</td>
<td>193.0</td>
</tr>
<tr>
<td>Court finalisations</td>
<td>163.7</td>
</tr>
<tr>
<td>Sentences</td>
<td>150.0</td>
</tr>
<tr>
<td>Prison (incl. remand)</td>
<td>13.1 (incl. 5.9 on remand)</td>
</tr>
</tbody>
</table>

*Note: An alleged offender may have several offences and be involved in several proceedings and court finalisations. For example, the 193,000 proceedings reflect 163,700 court finalisations (that arose from 139,600 court proceedings made by police) plus 29,300 non-court proceedings for 93,200 unique offenders, who may have multiple offences and offend multiple times within the year.
Sources: QPC estimates; ABS 2018l, 2018e, 2018c; QPS 2017.*
3.3  A system of interdependence and independence

The criminal justice system involves a sequence of decisions, so changes made at one stage affect later stages. Imprisonment is the result of prior decisions regarding enforcement activities, arrest, remand, adjudication, sentencing and custodial supervision (probation, community service and parole). Those latter stages can then have future impacts after release from prison, through their influence on recidivism.

Both resourcing and decision-making can have flow-on effects. For example:

- Increased resourcing of police can result in increased police activity and a subsequent increase in the number of arrests. If the resourcing of courts is not similarly increased, delays in court proceedings can result in an increase in the numbers of people remanded in custody. The increased number of people on remand and sentenced to prison can then result in larger prison populations, possibly beyond the design capacity of the prisons and the operational capability of the prison system if additional resourcing is not provided. In an overcrowded prison environment, rehabilitative treatments could be less effective, thus increasing recidivism, with resulting impacts on the community and police.

- A legislative amendment that requires the judiciary to impose prison sentences for certain offences may not only increase the prison population (with the possible consequences discussed in the previous example), but also impact disproportionately on the offenders’ families and communities. This may result in greater personal and social disadvantage and increased intergenerational criminality, leading to higher criminal activity and flow on impacts for policing.

Despite this interdependence, independence of components of the system is also a feature of the system. The separation of the powers of the executive, parliament and the judiciary is an important principle of government in Queensland, designed to prevent the abuse of coercive power. The degree of independence required to deliver the effective protection of liberty is subject to debate, but the independence of the judiciary and sovereignty of parliament are considered essential features of successful democracies (Porčnik & Vasquez 2018; Wells 2006). Some degree of independence of police operations, and, to a lesser degree, the operations of corrective services, is also considered desirable, even though they are both arms of the executive government.

These elements of independence can lead to institutions in the criminal justice system functioning separately and without coordination of their activities.

A challenge for government is to administer these components of the criminal justice system, which often function independently, yet are interdependent, to secure the best overall outcomes for the community.
State of play and how we got here

4.0

State of play and how we got here
This chapter discusses aggregate crime trends and key drivers of the increase in imprisonment.

Key points

- The rate of imprisonment in Queensland has increased steadily since the 1930s. However, in recent decades the rate of increase has accelerated. From 1992 to today the rate of imprisonment increased by 164 per cent. Between 2012 to 2018 this rate increased by 44 per cent.

- Imprisonment rates for:
  - Indigenous Queenslanders are 11.6 times the rate for non-Indigenous Queenslanders
  - women are lower than for men, but the female imprisonment rate is increasing faster—growing by 62 per cent in the last decade.

- Most prison sentences are short—the median duration of stay is 3.9 months.

- From 2012 to 2018, the offences that contributed most to the growth in sentenced prisoners were illicit drug offences, which added around one third of the growth in prisoner numbers.

- There is no evidence that the increase in the rate of imprisonment has been caused by increasing crime rates.
  - The rate of reported offences fell by 11 per cent over the period 1997 to 2017. Given that reporting rates have increased, underlying crime rates are likely to have fallen by more than this.
  - Some of the most serious offences appear to have decreased the most over the last 20 years. Reported rates of homicide have decreased 62 per cent, conspiracy to murder by 88 per cent and manslaughter by 74 per cent. Rape and attempted rape is an exception, increasing 81 per cent.

- Although crime rates are generally falling, surveys show that most Australians believe crime rates have increased in the last few years and around a third believe crime has increased a lot.

- There are a number of drivers of the increase in imprisonment. The most important factors appear to be the increases in:
  - the proportion of crime reported to police
  - the use of prison sentences over other options—from 2011–12 to 2016–17, the proportion of sentences involving prison increased for both violent offences (from 16.8 to 26.1 per cent) and non-violent offences (from 4.1 to 5.8 per cent)
  - recidivism rates—the proportion of prisoners returning to prison within two years increased from a low of 27.6 per cent in 2005–06 to 40.2 per cent in 2016–17
  - policing effort—clearance rates for reported offences against the person and offences against property have risen substantially since 2008–09
  - the propensity for police to use court—the proportion of offences other than public order dealt with through court action increased from 83.7 per cent to 87.5 per cent between 2008–09 and 2016–17, with police less likely to use cautions, conferencing, drug diversionary schemes or penalty notices
  - the proportion of prisoners on remand—the unsentenced prisoner population increased 103 per cent between 2012 and 2018, from 1,250 prisoners to 2,652 prisoners. Breach of bail offences almost doubled, from 259 offences per 100,000 people in 2010–11 to 502 offences in 2015–16.
State of play and how we got here

4.1 Introduction

This chapter examines the main determinants and drivers of rising imprisonment in Queensland. Identifying the drivers of rising imprisonment is not a simple task, as the factors that influence imprisonment are complex and reflect not only changes in criminal behaviour but also broader community and societal changes. The lack of availability of consistent or granular data imposes limitations on this analysis and has driven variations in the use of dates and jurisdictions throughout this chapter.

This chapter provides an analysis of Queensland data, including disaggregated data for Indigenous and female prisoners where possible.

4.2 A long-term decline in crime rates

Measuring changes in underlying crime rates is challenging, because the rate at which crimes are reported change over time. This can reflect changing community attitudes—for example, in relation to domestic and sexual violence—but can also reflect changes in policing effort or focus.

Over the longer term, the most consistent indicator of crime is the homicide rate (since most homicides are reported). Homicide rates in Australia have declined by about two-thirds since the 1980s and are now at their lowest in a century (Figure 4.1).

Figure 4.1 Homicide rate per 100,000 population, Australia


Queensland data from the Queensland Police Service (QPS) suggests other offences have followed a similar trend. Between 1997 and 2017, the total rate of reported offences fell by 11 per cent, with rates related to the most serious crimes falling by significantly more (Figure 4.2). The rate of reported offences against the person, which include assaults, declined by 14 per cent over the period. The homicide rate decreased 62 per cent, while rates for conspiracy to murder decreased by 88 and for manslaughter by 74 per cent. The only exception to this trend was the offence rate for rape and attempted rape, which increased by 81 per cent between 1997 and 2017.
The general decline in serious crimes observed in Queensland is consistent with national trends:

*Between 2002 and 2016 Australia experienced an unprecedented fall in crime. The recorded murder rate in Australia fell by 33%, the recorded rate of kidnapping/abduction fell by 29%, the recorded robbery rate fell by 58%, the recorded rate of burglary/break and enter fell by 55%, the recorded rate of motor vehicle theft fell by 54% and the recorded rate of other theft fell by 26%. (Weatherburn 2018)*

Reported offence rates against property also trended downward, declining 38 per cent. This included unlawful entry down 64 per cent, arson down 48 per cent, fraud down 23 per cent and theft down 14 per cent.

**Figure 4.2  Reported offence rates per 100,000 population, Queensland**

For other crimes—which include violations for drugs, prostitution, weapons, gaming, liquor, traffic and breaches of domestic violence orders—the reported offence rate increased from 225 to 377 per 100,000 persons. The main contributors to the increase are:

- drug offences (31.0 per cent contribution)—comprised mostly of possession of drugs (11.4 per cent) and other drug offences (16.7 per cent)
- good order offences (35.1 per cent contribution)—comprised mostly of resist, incite, hinder and obstruct police offences (18.3 per cent) and public nuisance (11.3 per cent)
- breach of domestic violence protection order (21.1 per cent contribution).

*Source: QPS 2018d.*
Victimisation rates

Victimisation statistics, which include both reported and unreported crimes, can provide a more accurate measure of the underlying incidence of crime compared to reported offences only. That said, as victimisation statistics are survey-based, they are prone to large sampling errors and, by design, do not provide information on victimless crimes (such as traffic offences or possession of illicit drugs).

Victimisation data suggests the rate at which crime was experienced by people in Queensland between 2008–09 and 2016–17 fell for most types of crime (Figure 4.3). The proportion of the state’s population aged 15 and over who experienced a physical assault and a face-to-face threatened assault fell by 20 and 40 per cent, respectively, while victimisation rates for malicious property damage and motor vehicle theft more than halved.

Figure 4.3 Victimisation rates for those aged 15 and over who experienced a crime in the last 12 months, Queensland

Source: ABS 2018d.

The only crime type that did not decline is sexual assault. The ABS data shows that victimisation rate for sexual assault declined between 2008–09 and 2013–14, but the rate is now back to its 2008–09 level.7

The propensity to report crime

Changes in people’s propensity to report crime affects official crime rates. People may not report crimes for a variety of reasons, including because they thought it was too trivial, thought nothing could be done, did not want to incur additional costs, considered the matter was personal, were too upset or injured, did not want the perpetrator punished or for some other reason. Also, changes in society’s awareness of and tolerance for crime can affect people’s inclination to report crime.

7 ABS estimates of the victimisation rate for sexual assaults should be considered with caution as they are subject to large sampling errors. While some of the estimated victimisation rates for Queensland are less reliable, estimates for the whole of Australia suggest a similar trend of declining crime rates for all offences except for sexual assault. The whole-of-Australia estimates are based on a larger sample size, have lower standard errors and therefore are considered to be more reliable.
Between 2008–09 and 2016–17, victimisation rates appear to have fallen more than offence rates, suggesting an increase in the propensity to report crime. That is, the number of reported offences as a proportion of the number of people surveyed has increased. If the propensity to report crime had remained constant, then the decline in recorded offence rates would have been even larger.

Victims of personal crimes, including physical and sexual assault, appear to be more frequently reporting crime to police (ABS 2018d). The reporting rate of physical assault increased 41 per cent between 2008–09 and 2016–17. Victims of property crimes are also becoming more likely to report incidents to police, apart from motor vehicle theft.

**Do perceptions of crime match reality?**

Crime is one of the most important concerns of the Queensland community (CEDA 2018, p. 9). The effects of crime can significantly reduce quality of life and many people live in fear of crime, which can constrain people's involvement in the community.

The public’s perception of crime plays an important role in shaping policy through its influence in the political process, and indirectly through the evolution of social norms (for example, concerning what is just punishment).

> Public anxiety about crime is what drives state government investment in law enforcement. It is this investment, not underlying trends in crime, which has played the dominant role in shaping demand for criminal justice resources over the last ten years ... Whenever unwarranted public anxiety about crime trends is the trigger for all this, public money is being wasted on a grand scale. It is no use consoling oneself with the thought that, if the investment was driven by a mistaken view of crime trends, it will nonetheless have the effect of reducing crime. The available evidence gives little reason to believe that increased investment in law enforcement automatically brings with it a decrease in crime rates. *(Weatherburn 1993, p. 37)*

Australians’ perceptions of safety on some measures have improved over the last two decades, particularly for females (ABS 2017). In 2016, females were almost half as likely as in 1996 to avoid public transport and two-thirds as likely to avoid walking alone because they felt unsafe. The proportion of females that felt unsafe at home alone after dark fell from 21.4 per cent to 9.9 per cent.

Nonetheless, a majority of Australians believe that crime rates have increased over the last few years (Essential Research 2018). About a third believe crime has increased a lot. Research into crime perceptions in Australia suggests perceptions are often inaccurate:

> In Australia, studies have shown a substantial proportion of the population incorrectly believe crime rates are increasing when, in fact, they are stable or declining. *(Davis & Dossetor 2010, p. 1)*

Regular time series data on Australian perceptions of crime is not available. However, evidence from other countries suggests there is a lack of a relationship between changes in crime rates and people’s perceptions of changes in crime rates. In the United States, despite violent victimisation rates falling by three-quarters since 1994, the majority of people in almost every year believed that crime was increasing (McCarthy 2014). Similarly, in the United Kingdom, most respondents thought that crime was increasing in each year surveyed despite crime rates falling since 1995 (UK Office for National Statistics 2017). While people are likely to perceive crime as increasing in general, they are much less likely to perceive crime as increasing in their local neighbourhood (Davis & Dossetor 2010; Weatherburn et al. 1996).

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8 Rates for non-face to face threatened assault, robbery and sexual assault generally have random standard errors above 25 per cent and are quite volatile; the ABS recommends using caution in interpreting them. Australian crime reporting rates generally increased as well, which, given the larger sampling sizes, provides more confidence in the survey results.
4.3 Rising rates of imprisonment

The rate of imprisonment in Queensland is currently higher than at any other time since 1900 (Figure 4.4). Following a period of steady decline between 1900 and 1938, the trend reversed and the imprisonment rate steadily increased for over half a century. Since 1992, two periods of rapid rises in the imprisonment rate have occurred, which together increased the rate 164 per cent. Between 1992 and 1999 the imprisonment rate doubled. Then, from 2012 to 2018, the imprisonment rate increased by 44 per cent (Figure 4.4).

From 2012 to 2018 the prison population increased from 5,594 to 8,840 prisoners—an increase of 58 per cent.

Figure 4.4 Imprisonment rate per 100,000 population, Queensland

Note: To show continuous historical data of imprisonment rates, the number of adult prisoners is divided by the entire population. The ABS present imprisonment rates as the number of prisoners divided by the adult population.
Source: QPC calculations; ABS 2018k, 2018a; OESR 2009.

Indigenous imprisonment rates are higher and increasing faster than non-Indigenous rates

Aboriginal and Torres Strait Islander peoples are overrepresented in Queensland prisons. They comprise 4.6 per cent of the state population, but 31.1 per cent of the prison population. The age standardised rate of imprisonment for Indigenous Queenslanders is 10 times higher than for non-Indigenous people (Figure 4.5).

Between 2008 and 2018, the Indigenous age standardised imprisonment rate increased by around 45 per cent, significantly faster than for the non-Indigenous rate (around 31 per cent). For the whole of Australia, the increase in imprisonment rates were similar for Indigenous people (45 per cent) and non-Indigenous people (29 per cent).
Figure 4.5  Rate and growth of age standardised adult imprisonment per 100,000 adults, by Indigenous status

Note: Age standardised rates are adjusted for differences in the age distribution of the Indigenous and non-Indigenous populations. Source: ABS 2018k.

Female imprisonment rates are low but growing faster than for men

Female prisoners in Queensland accounted for 8.45 per cent of the prison population in 2012, but this share increased steadily to 9.5 per cent in 2018. The proportion of females in prison per 100,000 persons has grown 61.7 per cent from 26 persons in 2008 to 42 persons in 2018, while that of males has grown by 30.8 per cent (Figure 4.6). The Queensland female imprisonment rate has grown quicker than the nationwide change of 45.6 per cent.

Figure 4.6  Rate and growth of adult imprisonment per 100,000 adults, by gender, Queensland

Source: ABS 2018k.

Increase in prisoners by type of offence

From 2012 to 2018, the number of sentenced prisoners rose by 1,729 persons or 40.2 per cent (QCS unpublished data). The largest driver was increased illicit drug offences, contributing 32 per cent of the growth (Figure 4.7).
Offences against justice procedures, theft and unlawful entry offences—all of which tend to be non-violent, lower harm or, in some cases, victimless—contributed a further 29 per cent of growth. Acts intended to cause injury contributed 16.3 per cent.

Figure 4.7 Contributions to the growth in sentenced prison population from 2012 to 2018, Queensland

The change in contributions has changed the overall composition of the prison population. The share of prisoners convicted of homicide (and related offences) fell by 2.4 percentage points, while the share of illicit drug offenders rose by 6.2 percentage points (Table 4.1).

Table 4.1 Share of sentenced prison population by type of offence, Queensland, 2012 and 2018

<table>
<thead>
<tr>
<th>Offence type</th>
<th>Share (per cent)</th>
<th>Change percentage points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicide and related offences</td>
<td>10.9</td>
<td>8.5</td>
</tr>
<tr>
<td>Acts intended to cause injury</td>
<td>18.7</td>
<td>18.0</td>
</tr>
<tr>
<td>Sexual assault and related offences</td>
<td>15.0</td>
<td>13.0</td>
</tr>
<tr>
<td>Dangerous or negligent acts, abduction, harassment etc</td>
<td>3.3</td>
<td>4.4</td>
</tr>
<tr>
<td>Robbery, extortion and related offences</td>
<td>10.3</td>
<td>9.6</td>
</tr>
<tr>
<td>Unlawful entry with intent. burglary, break and enter</td>
<td>14.9</td>
<td>13.5</td>
</tr>
<tr>
<td>Theft and related offences</td>
<td>2.8</td>
<td>4.2</td>
</tr>
<tr>
<td>Fraud and property damage</td>
<td>6.1</td>
<td>4.3</td>
</tr>
<tr>
<td>Illicit drug offences</td>
<td>10.3</td>
<td>16.5</td>
</tr>
<tr>
<td>Regulatory, weapons, public order, traffic and other</td>
<td>3.6</td>
<td>2.0</td>
</tr>
<tr>
<td>Offences against justice procedures, government operations</td>
<td>4.2</td>
<td>6.1</td>
</tr>
</tbody>
</table>

Source: QCS unpublished data.
Most prisoners receive relatively short sentences

The prison population is characterised by a high degree of ‘churn’—that is, prisoners discharged a short time after arrival. More than half (52.9 per cent) of prisoners discharged in 2017–18 were in prison for between one and six months (Figure 4.8). The median sentence length for all prisoners is 3.9 months.

Figure 4.8 Duration of stay in custody for prisoners discharged during the year, Queensland

![Duration of stay in custody for prisoners discharged during the year, Queensland](source: QCS unpublished data)

Rising numbers of prisoners on remand

The number of unsentenced prisoners (on remand) increased from 20 per cent of the total prison population in 2009 to 31 per cent in 2018 (Figure 4.9). Between 2009 and 2018, there was a 14 percentage point rise in the remand rate for female prisoners, compared to a 11 percentage point increase for male prisoners (QCS unpublished data). Remand rates for Indigenous and non-Indigenous prisoners both increased by 11 percentage points.

Figure 4.9 Proportion of unsentenced prisoners by gender and Indigenous status, Queensland

![Proportion of unsentenced prisoners by gender and Indigenous status, Queensland](source: QCS unpublished data)
Characteristics of prisoners in Queensland

Compared to the general population, prisoners are younger, more likely to be male and more likely to be Aboriginal or Torres Strait Islander people (Table 4.2). The prison population is less likely to be educated, less likely to have been employed and more likely to have been homeless. They are more likely to have high or very high psychological distress and more likely to be taking mental health medication. They additionally consume tobacco and illicit drugs, particularly methamphetamines, at higher rates.

Table 4.2  Characteristics of Queensland prisoners

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Queensland prisoners (%)</th>
<th>Queensland population (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>91.8</td>
<td>49.4</td>
</tr>
<tr>
<td>Aboriginal or Torres Strait Islander</td>
<td>23.3</td>
<td>4.6</td>
</tr>
<tr>
<td>Median age (years)</td>
<td>33.2</td>
<td>36.4</td>
</tr>
<tr>
<td>Foreign born</td>
<td>12</td>
<td>28.9</td>
</tr>
<tr>
<td>Completed Year 12</td>
<td>16.9</td>
<td>61.7</td>
</tr>
<tr>
<td>Not completed Year 10</td>
<td>37.0</td>
<td>19.0</td>
</tr>
<tr>
<td>Employed</td>
<td>37&lt;sup&gt;a&lt;/sup&gt;</td>
<td>61.6</td>
</tr>
<tr>
<td>Unemployment rate</td>
<td>49.4&lt;sup&gt;a&lt;/sup&gt;</td>
<td>6.2</td>
</tr>
<tr>
<td>Sleeping rough or in temporary housing</td>
<td>22.6&lt;sup&gt;a&lt;/sup&gt;</td>
<td>0.5</td>
</tr>
<tr>
<td>High or very high psychological distress</td>
<td>27.3&lt;sup&gt;a&lt;/sup&gt;</td>
<td>11.9&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
<tr>
<td>Taking mental health related medication</td>
<td>27&lt;sup&gt;b&lt;/sup&gt;</td>
<td>18.2</td>
</tr>
<tr>
<td>Very good/excellent self-reported health</td>
<td>51.4&lt;sup&gt;a,c&lt;/sup&gt;</td>
<td>55</td>
</tr>
<tr>
<td>Disability limiting activity, employment or education</td>
<td>19.1</td>
<td>18.3</td>
</tr>
<tr>
<td>Daily smokers</td>
<td>61&lt;sup&gt;a&lt;/sup&gt;</td>
<td>12.2</td>
</tr>
<tr>
<td>Taken any illicit drug in the past year</td>
<td>63.9</td>
<td>16.8</td>
</tr>
<tr>
<td>Used methamphetamine in the past year</td>
<td>46.7&lt;sup&gt;a&lt;/sup&gt;</td>
<td>1.5</td>
</tr>
<tr>
<td>Used marijuana in the past year</td>
<td>40.1&lt;sup&gt;a&lt;/sup&gt;</td>
<td>10.3</td>
</tr>
</tbody>
</table>

<sup>a</sup> Prior to entry to prison.
<sup>b</sup> Based on national data.
<sup>c</sup> Likely biased significantly higher because of the relative youth of prisoners. Note: Values are drawn from 2015 and 2016 data for relevant comparisons.

4.4 Drivers of the increasing adult prison population

Higher imprisonment rates have primarily been driven by the functioning of the criminal justice system and society's attitudes towards crime, rather than an increase in the incidence of crime.

Recorded offences provide a count of the number of offences flowing into the criminal justice system. For many of the crimes typically associated with imprisonment, the rate of recorded offences has declined. This suggests that the increasing rate of imprisonment in Queensland cannot be explained as being a consequence of a general increase in offences against the person or against property. A compositional shift in crime towards 'other' crimes also cannot be a significant contributor to the increase in the rate of imprisonment, because most of these crimes have a lower likelihood of imprisonment compared to offences against person and property.

Overall, most of the factors that are driving increases in the rate of imprisonment appear to be factors primarily involving the criminal justice system—that is, interactions with the system and decisions taken within the system.

Significant contributors to the increase in imprisonment

A range of factors have contributed to rising imprisonment. The main factors appear to be an increase in:

• the reporting of crime (see section 4.2 of this chapter)
• the remand population
• police effort
• police propensity for court action
• custodial sentencing versus alternatives
• recidivism.

The reduction in the incidence of crime is likely to have offset at least some of the increase in imprisonment.

Remand and bail

Growth in remand (unsentenced prisoners) appears to have made a significant contribution to increasing imprisonment. Between 2012 and 2018, the unsentenced prisoner population (prisoners on remand) increased 112 per cent, from 1,250 prisoners to 2,652 prisoners (Figure 4.10). This increase was faster than for the sentenced prison population, which increased 43 per cent over the same period.
State of play and how we got here

Figure 4.10  Sentenced and unsentenced prisoners, Queensland

<table>
<thead>
<tr>
<th>Year</th>
<th>Sentenced</th>
<th>Unsentenced</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2009</td>
<td></td>
<td></td>
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<tr>
<td>2010</td>
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<tr>
<td>2011</td>
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<td>2012</td>
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<td>2015</td>
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<td></td>
</tr>
<tr>
<td>2016</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2017</td>
<td>2,652</td>
<td></td>
</tr>
<tr>
<td>2018</td>
<td>4,250</td>
<td></td>
</tr>
</tbody>
</table>

Note: Data is from the National Prisoner Census on prisoners held in custody in Australian adult prisons in all states and territories on 30 June of each year. 'Total prisoners' includes sentenced prisoners, unsentenced prisoners (prisoners on remand), and post-sentenced prisoners. For this chart, 'sentenced prisoners' includes post-sentenced prisoners (0.4 per cent of the prisoner population in 2017).

Source: ABS 2018k.

If a prisoner does not spend any additional time in prison due to remand (for example, if a year is spent on remand and the prisoner then receives a three-year sentence, so spends a further two years in prison), then an increase in the use of remand will not increase the overall prison population. However, not all people on remand will be found guilty, some will be found guilty but not sentenced to prison, and some might not be sentenced to prison; others may be in remand longer than the prison sentence they eventually receive. In these cases, an increase in remand contributes to increasing imprisonment. Although there is a lack of data to disentangle these issues, it is likely that the increase in remand is a contributor to the increase in imprisonment.

Several factors appear to be contributing to the increase in the remand population:

- A backlog of cases in the magistrates' courts has grown amid slow growth in the number of judicial officials—the pending case load of Queensland criminal courts (67 per cent) has risen faster than the number of judicial officials (7 per cent) to hear those cases. Between 2010–11 and 2016–17, the backlog of criminal court cases increased 126 per cent, while the remand prison population increased 108 per cent (PC 2018a).

- Recent changes in the treatment of domestic violence arising from Not Now, Not Ever have resulted in an increase in the reporting of domestic violence, increased domestic violence protection orders and associated breaches—changes removing the presumption of bail in 2017 for those charged with a domestic violence offence are likely to impact on the number of remand prisoners.

- Breach of bail offences have increased—the rate has approximately doubled from 259 per 100,000 people in 2010–11 to 502 in 2015–16 (QSAC 2017). The rate of offences for breach of bail where it was the main offence rose 54 per cent.
Police productivity and practices

From the data, police appear to have become more effective at solving crimes and bringing proceedings. The proportion of reported offences against the person that were cleared by the QPS rose from 84.8 per cent in 2008–09 to 94.1 per cent in 2013–14 (although the proportion of cleared offences has since fallen to 86.6 per cent in 2016–17) (QPC calculations).\(^9\) The proportion of offences against property cleared by police rose from 35.7 per cent in 2008–09 to 45.8 per cent in 2016–17.

During the same period, the ratio of all police personnel to the population fell slightly. This suggests police are solving more crimes and maintaining offence rates with relatively fewer personnel.

It is also possible that as personal and property crime becomes less prevalent, more police resources are devoted to tackling other offences that do not necessarily have an identified victim.

The police are more likely to use court action for most offences. The proportion of all offences except for public order offences that are dealt with through court action has increased—from 83.7 per cent in 2008–09 to 87.5 per cent in 2016–17 (QPC calculations; ABS 2018l). It appears that police have become less likely to use non-court actions such as cautions/warnings, conferencing, counselling, drug diversionary schemes or penalty notices for most crimes other than public order offences.

Court decisions

Between 2005–06 and 2012–13, the use of custodial orders increased more than twice as fast as non-custodial orders (13.8 and 5.8 per cent respectively) (ABS 2018e). The QSAC found that the use of imprisonment in the higher courts increased 1.5 times from 2005–06 to 2007–08, while the share of other orders halved (QSAC 2018c, p. 16).

From 2011–12 to 2016–17, the proportion of sentences involving custody in a correctional institution increased for both violent offences—from 16.8 to 26.1 per cent—and non-violent offences—from 4.1 to 5.8 per cent (Figure 4.11). Courts are becoming less likely to sentence offenders to monetary orders, with the proportions of violent and non-violent offenders sentenced to monetary orders falling from 58.3 to 42.5 per cent and 79.6 to 73.4 per cent respectively. The proportional use of fully suspended sentences, community supervision orders and other non-custodial orders all increased.

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\(^9\) This is measured by the number of offences reported during the period and cleared during the period plus the number cleared from previous periods, divided by the number of offences reported in the period. An offence is deemed to be cleared if at least one offender is arrested, or another action is taken against the offender or a range of other circumstances, or there is some bar to prosecution. Data is sourced from QPS 2010, 2011, 2012, 2015a, 2016, 2017.
State of play and how we got here

Queensland Productivity Commission

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Figure 4.11 Share of types of sentences for higher and Magistrates courts, Queensland

Note: By selected principal sentence, because data is not available for all offence types. Violent crimes include homicide, acts intended to cause injury, sexual assault, robbery and related offences. Nonviolent crimes include unlawful entry, fraud, illicit drugs and related offences.

Source: ABS 2018e.

Court-ordered parole

Since 2000, the most significant legislated change to impact on prison numbers was the move to court-ordered parole in 2006. This changed the sentencing options available to courts, and at the same time reduced the ability of QCS to release prisoners to the community. The result was that the courts switched from using partially suspended prison sentences to court-ordered parole. The impact of this shift was to reduce time in prison and increase the remaining parole period (the length of headline sentences did not change much over this period). Many offenders were ordered immediate release to parole at sentencing (close to 50 per cent) and the number of prisoners on short sentences decreased significantly (QCS 2018e).

The longer parole periods increased the parole population—who are susceptible to parole breaches and suspensions—and return to prison. Much of the flattening in the prison population from 2006–07 to 2012–13 arose from a shift of those who would otherwise have been sentenced to prison being released into the community on parole (which rose by 30 per cent over that same period).

By 2010–11, parole suspensions began to increase. The reasons for this are unclear, but the reversal in this trend in 2014 suggests that this may be the result of changes in QCS risk assessment procedures (QSAC 2018c; QCS 2013). Without court-ordered parole it is likely that a more gradual increase in the prison population would have occurred from 2006. Overall, the changes altered the pattern of growth in prison numbers, first flattening then contributing to the increase in imprisonment from 2011–12.

Recidivism

When ex-prisoners reoffend, their offence contributes to the incidence of underlying crime and, if the offence is reported or detected by police, it is captured in reported crime statistics. An increase in the rate of recidivism can increase the aggregate likelihood that a punishment of imprisonment will be chosen by the judiciary (for example, the offender has already traversed through the sentencing hierarchy, or the severity of offences is
more likely to merit imprisonment). The increase in recidivism is likely one factor contributing to the proportional increase in custodial sentencing options noted above.

The common indicators for recidivism suggest that recidivism rates are increasing in Queensland (Chapter 5). For example, the proportion of offenders proceeded against more than once increased 7.1 percentage points between 2010–11 and 2016–17. The proportion of released prisoners in Queensland receiving new sentences increased 3.9 percentage points between 2012–13 and 2016–17 (PC 2018c). The proportion of prisoners who have known prior imprisonment increased from 58.2 per cent in 2008 to 63.6 per cent in 2018.

Factors that had no or only a minor effect

The factors below do not appear to have significantly contributed to the rise in imprisonment.

Sentence lengths

Several legislative changes since 2000 have increased sentence lengths for specified offence types, such as by setting non-parole periods and maximum sentence amounts. These have been limited to more serious and less frequent offending (for example, the one-punch, 'no-body, no-parole' and child exploitation laws).

Overall, aggregate sentence length data and expected time to serve data indicate that the time spent in prison has not been an important driver of increasing imprisonment. The average expected time to serve for all offences declined 3.0 per cent from 29.7 months in 2012 to 28.8 months in 2018.

The average duration of stay in custody for all prisoners discharged during the year was 7.4 months in 2011–12. It declined to 6.4 months in 2014–15, before returning to 7.4 months in 2017–18 (QCS unpublished data).

Prosecution success rates

The probability of a defendant being found guilty is stable—about 89 per cent of defendants in Queensland’s magistrates and higher courts were found guilty in 2016–17, which is unchanged from 2005–06.

Proportion of probation and parole orders successfully completed

Between 2012–13 and 2016–17, the proportion of probation and parole orders that were successfully completed was relatively stable at 77 per cent (DJAG 2017, p. 120). However, an increasing rate of parole combined with a constant rate of parole failure would contribute to an increase in the imprisonment rate.

4.5 A comparison with the 1990s increase in imprisonment

The recent increase in the rate of imprisonment in Queensland has both similarities with and differences to the increases experienced in the 1990s (Box 4.1). Key similarities include:

- The increase in imprisonment in both periods was due to a wide range of influences operating across the criminal justice system.

- The volume of reported offences in the 1990s made a small positive contribution, while more recently it has made a negative contribution. Nonetheless, in neither period was the volume of offences entering the criminal justice system an important driver of increasing imprisonment rates.

- Sentence lengths did not contribute to changes in imprisonment during either period:

  - Aggregate sentence lengths handed down by courts did not contribute to increasing imprisonment in either period. In the case of the 1990s, changes in parole practices had the effect of making a contribution through lengthening the duration of stay.
• In both periods, a shift occurred in court sentencing, with a sentence of imprisonment becoming more likely than other sentencing options.

• In both periods, recidivism increased, which would be one of the factors influencing court sentencing.

The two main differences between the 1990s increase and the more recent increase are:

• The proportion of unsentenced (held on remand) to sentenced prisoners remained stable in the 1990s. More recently, the ratio has increased—increases in remand appears to play a larger role than in the 1990s.

• Fine-related offences formed a large share of new prison arrivals in the 1990s. That factor has not contributed significantly to the recent increase in imprisonment.

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Box 4.1 The doubling of the Queensland imprisonment rate in the 1990s

From the early to late 1990s, the rate of imprisonment increased rapidly—doubling over a relatively short period. The largest impact on prison numbers was caused by corrective services practices and the courts, with a moderate impact from police practices, and low impacts from changes in the legislative framework and demographic trends. The main drivers were:

• crime trends and police activities—these activities resulted in a 1997–98 prisoner population that was estimated by the Criminal Justice Commission (CJC) to be around 5 per cent greater than would otherwise have been the case

• a declining rate of community-based orders—estimated to have resulted in a 1997–98 prisoner population 25 per cent greater than might otherwise have been the case

• in both absolute and proportional terms, the increase of fine defaulters imprisoned rose steadily—in January 1999, 43 per cent of all admissions to prison were solely for fine defaulting

• changes in corrections policies and practices—which resulted in a 1997–98 prisoner population around 20 per cent greater than may otherwise have been the case. These changes slowed the progress of prisoners through their sentences, increasing their length of stay. The main changes were:
  – a decline in the use of early release practices by corrections
  – a reduction in the number of parole decisions following the dismissal of the Board in 1997 and a tightening of criteria
  – an increasing number/proportion of prisoners with high or medium security classifications, due in part to the unavailability of required programs
  – These factors contributed to the average number of months that prisoners served prior to release rising from four months in 1993 to over five months in 1998. The increases in the length of stay were not driven by sentence lengths, which remained fairly stable over the period

• increasing recidivism since 1994 may have contributed as much as 7 per cent to the prisoner population.

**Summary**

Queensland’s current rate of imprisonment is the highest it has been since 1900. Since 2012 the rate of imprisonment has increased by 44 per cent, with the prison population increasing from 5,594 to 8,840 prisoners.

The types of offences that made the largest contributions to this growth were illicit drug offences (32 per cent), robbery, unlawful entry, burglary and theft (26 per cent), acts intended to cause injury (16 per cent) and offences against justice procedures (11 per cent).

Imprisonment rates have increased despite falling crime rates. The largest reductions in crime were generally for the most serious offences.

Preliminary analysis indicates that the rise in imprisonment rates has been driven by a number of 'system' changes. Figure 4.12 summarises these drivers.

**Figure 4.12  Drivers of the increase in imprisonment in Queensland**

For the final report, additional and more detailed data are expected to be available, which will help provide a better understanding of the increase in Queensland’s prison population. The data will make it possible for the Commission to investigate the relative magnitudes of the various contributions to the growth in the prison population. It will also provide additional descriptive information on the prison population, and on contributions to increasing imprisonment, by gender, age and Indigenous status.
5.0

Recidivism—trends and measurement
This inquiry has been asked to examine measures of recidivism and trends in recidivism, particularly with respect to Aboriginal and Torres Strait Islanders and women. In this chapter, trends in recidivism are highlighted and currently available measures are set out. The shortcomings of those measures and how these may be overcome are also discussed.

**Key points**

- Recidivism occurs when a previous offender commits a new offence. Measuring recidivism is important because it:
  - helps identify disproportionate harm to some families and communities caused by cycles of crime, and creates incentives for the criminal justice system to address this harm
  - indicates the effectiveness of the criminal justice system in rehabilitating offenders
  - shows whether specific policies or programs are effective, which creates incentives for program operators and enhances the efficient allocation of resources.
- Not all crime can be observed. Therefore, proxy indicators such as reimprisonment or reconviction are required to measure recidivism. Measures currently available are:
  - the number and proportion of offenders who are proceeded against by police multiple times in a year—for example, in 2016–17, one in three Queensland offenders were proceeded against more than once
  - the proportion of adults released from prison who return to corrections—of the most recent cohort, 40.2 per cent had returned to prison and 10.9 per cent had returned to community corrections (but not prison) within two years
  - the proportion of adults released from community orders who return to corrections within two years—of the most recent cohort, 22 per cent returned to prison or community corrections
  - the number and proportion of prisoners who have previously been imprisoned—for example, in 2018, 63.6 per cent of Queensland prisoners had been in prison before.
- Currently available measures indicate that recidivism rates in Queensland are increasing. Aboriginal and Torres Strait Islanders reoffend more than their non-Indigenous counterparts, and men reoffend more than women.
- There is no single measure that allows comparison with other states. However, measures suggest prisoner recidivism rates in Queensland are at or above the national average.
- Information by Queensland Corrective Services on the 'risk of reoffending' scores of prisoners indicates that since 2012 both the proportion of higher risk offenders and the average risk level of offenders have increased.
- Currently available measures are crude indicators of recidivism. They do not track the relative severity of reoffending, the number of reoffending episodes or the time between such episodes. They provide limited information on prisoner characteristics, making valid comparison difficult. New measures are required to address these shortcomings.
5.1 Introduction

Recidivism is the return to criminal behaviour by an individual after they have been arrested, convicted, sentenced and discharged in respect of a prior offence (Maltz 1984, p. 1). Measuring recidivism is important for three reasons.

First, it measures the degree to which offenders are rehabilitated. Reducing the rate and severity of reoffending is an important purpose of the criminal justice system. Given rates of reoffending are an important outcome for justice sector operators, accurate measurement is important to provide incentives and feedback.

Second, recidivism among participants is an important outcome for many treatment programs. High levels of recidivism may indicate prison rehabilitation or re-entry programs are failing to deliver decriminalisation outcomes. As an indicator of program effectiveness, measured recidivism creates incentives for program operators. It allows programs to be compared and resources to be allocated cost-effectively.

Third, measuring recidivism identifies harm and provides incentives for the criminal justice system to address this harm. For families and communities, recidivism can lead to repeat victimisation, reduce the social stigma associated with crime, damage local economies and weaken community networks. Reduced criminal stigma and the weakening of community networks can also lead to more crime generally (Morenoff & Harding 2014, p. 215). One study determined that reducing the percentage of recidivists re-entering prison had a greater impact on the cost of corrective services than the same percentage reduction in new offenders (Weatherburn et al. 2009, p. 6).

The main difficulty with measuring recidivism is that crime, and its timing, is difficult to observe. Measures of recidivism must use a proxy for reoffending based on available data, such as:

- the number or proportion of prisoners who return to prison in a given timeframe
- the length of time before reoffending
- the number or proportion of offenders who are reconvicted in a given timeframe
- the number or proportion of offenders proceeded against multiple times in a given timeframe.

This chapter examines trends and deficiencies in existing measures of recidivism. It also considers how a more holistic measure of recidivism can be constructed.

5.2 Available measures

Recidivism can be measured on a system-wide scale (macro) or an individual or program scale (micro). Macro measurement—which uses aggregate data—is important for assessing overall trends in recidivism, determining the effect of system-wide policy and promoting public confidence in the criminal justice system. Micro measurement—which uses individual data—is important for assessing the outcomes of different programs and treatments, including their interactions with differing offender backgrounds.

Currently, the main publicly available recidivism measures are macro-level data provided by the Australian Bureau of Statistics and the Productivity Commission. While useful for evaluating the criminal justice system, these measures are insufficient for the assessment of the impacts of specific policies or programs. The most commonly used measures are:

- the proportion of offenders aged 10 or older who are proceeded against multiple times within a year
- the proportion of adults released from prison in a given year who return to corrective services (either prison or community corrections) within two years
- the proportion of adults discharged from community corrections orders who return to corrective services (either prison or community corrections) with a new correctional sanction within two years
Recidivism—trends and measurement

- the proportion of current prisoners who have been previously imprisoned.

Publicly available measures have key problems. They do not track lifetime reoffences, do not track the relative severity of crimes, do not capture the time between offences and are not standardised by or constructed with reference to offender characteristics.

Younger people tend to commit more crime (see Figure 5.1). To allow for comparisons between groups with different age profiles, or the same group over time, imprisonment and offence rates are standardised by age—however, currently available recidivism rates are not. As offending and reoffending rates tend to decline as offenders age, this may distort comparisons in ways that are not obvious but have policy implications. For example, longer prison terms may reduce measured recidivism simply because offenders are older when they are released. It further means that comparisons between populations with different age profiles, such as Aboriginal and Torres Strait Islander and non-Indigenous Queenslanders, may be invalid. Trends in measured recidivism will be influenced by changes in demography making comparisons over time challenging.

Figure 5.1 Proportion of offenders by age and number of proceedings, Queensland, 2016–17

Whatever measure of recidivism is used, neither the proportion nor the number of offenders should be viewed in isolation. If recidivism is measured as the proportion of the offender population, it is possible for that rate to increase even if the number of reoffenders has fallen. This occurs when the number of non-recidivists is decreasing at a faster rate than the number of recidivists.

Proportional and absolute measures can serve different purposes. The proportion of offenders who reoffend is important for assessing the ability of the justice system to rehabilitate offenders. For example, a decreasing proportion of offenders who reoffend may indicate the justice system is becoming more effective at rehabilitation. In contrast, the number of reoffenders (or reoffences) is more useful for measuring total social costs. Where possible, the latter should be adjusted for population when comparing different groups (for example, Indigenous and non-Indigenous) or changes over time.

Common Australian measures are discussed below. Many measures of recidivism internationally and in policy research cannot be usefully compared. International comparisons of recidivism are largely invalid due to inconsistent measures, opaque methodology and, in some cases, outdated data (Fazel & Wolf 2015, p. 6).

5.3 Trends

Proportion and number of offenders proceeded against in a given year

One in three Queensland offenders was proceeded against multiple times in 2016–17, the highest proportion of any Australian state (PC 2018c). Between 2010–11 and 2016–17, the number of offenders proceeded against more than once increased by 26.2 per cent, and the proportion increased by 7.1 percentage points. The largest increase occurred in those proceeded against more than five times, the number of which grew by 72.2 per cent (Figure 5.2).
This measure demonstrates that measures of recidivism relative to the offender population can be deceptive. Between 2015–16 and 2016–17, the proportion of offenders proceeded against more than once increased, but the absolute number fell.

**Figure 5.2  Proportion and number of offenders by number of proceedings, Queensland**

![Graph showing proportion and number of offenders by number of proceedings](image)

Source: ABS 2018l; PC 2018c.

Indigenous offenders were much more likely to be proceeded against multiple times in a year than non-Indigenous offenders (Figure 5.3). In the 2012–13 financial year, 1 in 28 Indigenous Queenslanders and 1 in 254 non-Indigenous Queenslanders faced at least two police proceedings. By 2016–17, those rates had increased to 1 in 24 and 1 in 211, respectively.\(^\text{10}\)

**Figure 5.3  Proportion and number of offenders by Indigenous status and number of proceedings, Queensland**

![Graph showing proportion and number of offenders by Indigenous status](image)

Source: ABS 2018d.

Figure 5.4 shows that male and female prisoners are proceeded against multiple times at similar rates. Trends in both the number and proportion of offenders are similar across genders.

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\(^{10}\) In this chapter, estimates of the Indigenous population are drawn from ABS cat. no. 3238.0, series B. Total populations are drawn from ABS cat. no. 3101.0, and non-Indigenous populations are calculated as the differences between the two. This is to maintain consistency with the approach in ABS cat. no. 4517.0 (see explanatory notes 63–64) and 4519.0 (explanatory notes 16–22), from which data in the chapter is drawn.
Three trends are present. First, the rate of reoffending leading to prosecution within a given year is increasing amongst the offender population. Second, both Indigenous offenders and Indigenous Queenslanders are more likely to face multiple prosecutions than their non-Indigenous counterparts. Third, male and female offenders reoffend at similar rates.

**Returns to corrective services**

Another indicator of recidivism is the proportion of offenders who return to corrective services within two years. Two measures are provided. The first reports the proportion of individuals released from prison, including those subject to correctional supervision following release (such as parole). The second reports the proportion discharged from community corrections who were not imprisoned.

Of Queensland offenders released from prison in 2014–15, 40.2 per cent had returned to prison by 2016–17, and 10.9 per cent had returned to community corrections (Figure 5.5). These return rates have increased since...
Recidivism—trends and measurement

2006-07, when the rate was 28.7 per cent. The proportion of Queensland prisoners released in 2014–15 who returned to corrective services was slightly below the national average but just over 6 percentage points higher than figures for Western Australia and South Australia.

Rates of return were much lower for those released from community corrections. Of Queensland offenders discharged from community corrections in 2014–15, only 22 per cent returned to either community corrections or prison by 2016–17.

Proportion of prisoners who have been imprisoned previously

Of Queensland prisoners in 2018, 63.6 per cent had known prior imprisonment, the highest proportion of any state and higher than the national average of 56.7 per cent (Figure 5.6).

Trends for this indicator suggest that recidivism is increasing. The proportion of prisoners who had been previously imprisoned in Queensland in 2018 was 5.4 percentage points higher than in 2008. However, this may have been partially caused by legislative changes rather than any changes in the underlying rates of reoffending. If legislation increases the likelihood of an offender going to prison, this measure of recidivism will increase, regardless of changes in the underlying rates of reoffending.

As of 2008, Queensland data is derived from the Integrated Offender Management System (IOMS) of Queensland Corrective Services (QCS). Comparisons should not be made with pre-2008 data (ABS 2018k Explanatory Note 97).

**Figure 5.6 Proportion of prisoners who have been previously incarcerated, Queensland and Australia**

A much larger proportion of Indigenous male and female prisoners had been previously incarcerated than their non-Indigenous counterparts. Of male prisoners in 2018, 81.2 per cent of Indigenous prisoners had been previously imprisoned, compared to 57.2 per cent of non-Indigenous prisoners.

In 2018, 1 in 56 Indigenous males in Queensland were current in prison for at least the second time, compared to 1 in 553 Indigenous females, 1 in 743 non-Indigenous males and 1 in 9,746 non-Indigenous females (Figure 5.7).

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11 See, for example, Criminal Law Amendment Act 2012; Criminal Law (Child Exploitation and Dangerous Drugs) Amendment Act 2013; Criminal Law and Other Legislation Amendment Act 2013, and Criminal Law (Criminal Organisations Disruption) Amendment Act 2013.
In addition to the general problems for the other indicators identified above, this measure suffers from an unspecified timeframe. If a second imprisonment term is lengthy, that prisoner will continue to impact this indicator long after the reoffending occurred. This means that this indicator may not provide a useful indicator of the current health of the criminal justice system or cost of recidivism to communities.

Risk of reoffending scores

Another measure developed by QCS is the 'risk of reoffending' ('RoR') score. RoR scores are determined by QCS on prison entry to assess an offender's general risk of reoffending. A higher score indicates a greater risk. RoR scores are calculated based on 'evidence-based' risk factors, including age, education, employment level, number of current offences and number of previous convictions (Queensland Government sub. 43, p. 74). As these scores are based on individual offender characteristics, they are the only micro measure of recidivism currently available to the Commission.

Although RoR scores do not measure actual reoffending, their strong predictive validity was confirmed in 2015 by the Griffith Criminology Institute, which compared predicted levels of recidivism with actual levels of recidivism (Queensland Government sub. 43, pp. 74–75). As such, RoR scores of prisoners today proxy future recidivism levels. Less than 10 per cent of prisoners with RoR scores of 1 reoffend, compared to approximately 70 per cent of prisoners with a score of 15 and 90 per cent of prisoners with the maximum score of 22.

Of prisoners with an RoR score, the proportion with a score of at least 16 has increased by 5.0 percentage points between July 2012 and August 2018. Over the same period, the proportion with an RoR score of no more than 10 fell by 6.8 percentage points and the average RoR score grew from 11 to 11.7. This indicates that the current prison population is increasingly recidivistic.
This measure suffers from the same general problems identified above. However, RoR scores have an advantage over other currently available measures, in that they incorporate relevant prisoner characteristics. The key disadvantage is that a considerable proportion (around 20 per cent) of the prison population are not assessed—these appear to be remanded prisoners. Any systematic difference between remanded and sentenced prisoners would weaken any inferences made from this measure.

5.4 Constructing a measure of recidivism

A complete measure of recidivism is not possible using a single metric. A complete measure should incorporate the number of additional offences per offender, the time between repeat offences (or release and reoffence) and the relative severity of the reoffending. Ensuring that all factors are considered is especially important for policy and program evaluation.12

Box 5.1 contains a brief description of the technicalities involved in measuring recidivism.

The greater the level of offender detail a measure contains, the more useful it will be. If one group of prisoners have higher rates of recidivism, for example prisoners from a certain region, it may indicate that the justice system is less effective in rehabilitating them. It may also signal that the more recidivistic group’s communities bear a greater proportion of the costs of recidivism. As a minimum, a measure of recidivism should be decomposable by age, Indigeneity and gender.

For similar reasons, greater offence detail is important. It is likely that criminals who commit a certain kind of crime are more recidivistic than others. It may also be the case that certain types of offenders are more recidivistic and accurately defining these individuals allows resources to be efficiently allocated.

Current publicly available measures are limited by their definitions of reoffending. To construct as broad a measure as possible, multiple definitions should be used, including rearrests, reconvictions and the imposition of new custodial sentences. Most offenders who interact with the police, courts or corrections are assigned a Single Person Identifier (SPI) which can be used to track their interactions with the justice system. Using this information allows for an accurate measure of recidivism to be constructed, which provides information of the above characteristics.

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12 Even if the number of recidivists fall, the number of reoffences might increase if the remaining recidivists reoffend at a higher rate. Alternatively, a fall in the number of new offences may be caused by more serious offending triggering prison terms sanctions.
Box 5.1 Technical issues

Operationalised measures of recidivism must be restricted to observable aspects of crime (indicator events) performed by an observable criminal population (the sample group). In respect of timing, a measurement period must be selected, which can be framed prospectively (for example, the proportion of previous prisoners who go on to be reincarcerated) or retrospectively (for example, the proportion of current prisoners who have previously been incarcerated). Prospective measures are generally superior in relation to juvenile offenders, as such measures are able to track offenders’ progress out of the juvenile justice system (Richards 2011, p. 19). Prospective measures are also superior for policy evaluation purposes (NSWLRC 2013, p. 10).

As broad as possible series of measures should be constructed, using multiple types of indicator events. The broadest sample group should be used, though measures of recidivism should be able to be conditioned on the membership of a subgroup (for example, recidivism of prisoners compared to recidivism of convicted non-prisoners). Indicators will need to be constructed from existing administrative data sets drawn from police (QPRIME), courts (QWIC) and corrections (IOMS).

Ideal estimations would be of reoffending distributions as functions of offence type, previous offence type, time since the previous offence (or since release from prison), personal characteristics of the offender and their interactions with the justice system. These models could be non-parametric (for example, Meier-Kaplan) or parametric (for example, a binomial regression).

The Commission is seeking feedback from stakeholders on effective methods for modelling these distributions. At least three sources of significant bias are immediately identified:

- omitted variable bias, arising from unobserved prisoner characteristics and treatment in the justice system
- simultaneity bias arising from the endogenous relationship between variables, particularly age of release, sentence length and offence type
- censoring bias arising from the lack of observation of future reoffences committed by current reoffenders.
5.5 Conclusion

Currently available measures of recidivism in Queensland could be improved. Their shortcomings are that they do not account for lifetime reoffending per offender, measure the time delay between offences, control for the influence of age, reflect the relative severity of crimes or identify the types of offender who reoffend at greater rates. Insofar as the measures are useful, they indicate that recidivism is relatively high in Queensland and is increasing. They further indicate that Indigenous individuals and males reoffend at higher rates.

A new metric to measure recidivism that overcomes those inadequacies is desirable—to evaluate the health of the justice system, the effectiveness of specific programs or policies and the cost of recidivism to the community, and to provide relevant incentives to service providers. Such a metric is currently unavailable. The Commission is seeking further information about how to improve the measurement of recidivism, and particularly how to apply such measurement to policy research and decision-making.

Information request

The Commission is seeking information on approaches, technical details and challenges associated with measuring and modelling recidivism, including:

- how recidivism indicators could be used to better measure performance
- appropriate estimation approaches
- how baseline performance should be established, including any modelling challenges.
Benefits and costs of imprisonment
The terms of reference ask us to examine the costs and benefits of imprisonment. This chapter sets out a high-level framework for considering these costs and benefits, and provides an preliminary, illustrative analysis.

Key points

- Cost–benefit analysis (CBA) provides an objective and systematic framework for comparing the total benefits and costs of a policy against other options. It can be used to answer a range of questions, including:
  - Do the benefits of imprisonment outweigh its costs for the various categories of offenders?
  - What alternative policies can deliver the same or better outcomes at lower cost?
- In practice, there have been few attempts to quantify the costs and benefits of imprisonment or policy alternatives—this is most likely due to the methodological challenges in generating robust estimates across the broad range of financial and social impacts.
- The Commission has taken some first steps to set out a framework to illustrate the potential costs and benefits of imprisonment.
- In terms of costs:
  - The Queensland Government spends a substantial amount to support its 14 prisons centres—$872 million in 2016–17 or around $107,300 per prisoner per year.
  - The costs of imprisonment go beyond operating prison facilities. Imprisonment also affects families and wider communities; it can also negatively affect post-release outcomes for those released back to the communities.
  - These indirect costs may be in the order of $40,000 per year per prisoner.
- In terms of benefits:
  - Imprisonment primarily delivers benefits through incapacitation and deterrence—initial estimates suggest that, on average, between 13 and 33 property crimes are avoided for every additional person imprisoned for property offences, while 1 violent crime is avoided for each additional person imprisoned for violent crimes.
  - The average harm avoided varies considerably across offence types—from around $3 million for homicide to around $2,300 for residential burglary.
  - Other benefits associated with imprisonment are difficult to quantify (for example, increases in perceptions of public safety); however, these can still be considered in a CBA framework.
- The Commission’s preliminary assessment suggests:
  - There are large net benefits—in terms of harm avoided—from keeping some offenders in prison (generally, for the most serious offenders).
  - For other prisoners, the evidence suggests that for at least some offences, the increasing use of prison is unlikely to provide net benefits to the community.
  - For other offences, non-custodial options would provide greater benefits to the community.
- The Commission will undertake further assessment and consultation to better understand:
  - the relative costs and benefits of imprisonment for different types of offenders
  - the efficacy of adopting non-custodial alternatives within the criminal justice system.
6.1 Introduction

A primary question for this inquiry is whether the current policy settings, including imprisonment, provide a net benefit or whether alternatives would improve outcomes for the Queensland community.

Cost–benefit analysis (CBA) provides a framework for examining the benefits and costs of policy options. It can be used to inform decision-makers on both the overall impact of imprisonment, but importantly whether the benefits outweigh the costs for various categories of offenders and whether alternatives can deliver similar outcomes at a lower cost.

Whilst CBA has been used to assess some individual programs within the criminal justice system (see for example, Deloitte Access Economics 2012; Dossetor 2011; McCausland et al. 2013), the Commission is not aware that it has been used to assess imprisonment.

This chapter takes some first steps in understanding the costs and benefits of imprisonment. It sets out a framework that identifies the costs and benefits typically associated with imprisonment and provides an initial illustrative analysis of the main impacts. Based on the information available to the Commission for the draft report, completing a full CBA was not possible. Where data permits, a more detailed analysis will be prepared for the final report.

6.2 The CBA approach

CBA is a method of evaluation that uses economic concepts to estimate and compare the total benefits and costs of a policy against other options for addressing a policy issue (Queensland Treasury 2015a). It calculates the dollar value of the benefits and costs incurred by a community affected by the policy problem. CBA takes a broad perspective, typically considering financial, social and environmental costs and benefits. If the sum of all benefits less costs is positive, then the community is said to be better off from the policy.

The goal is to identify the policy option that provides the largest net benefit to the community. By monetising impacts, CBA provides an objective framework to compare different impacts, including those that occur in different time periods. Box 6.1 lists the key steps in conducting a CBA.

Box 6.1 Steps in cost–benefit analysis

- **Step 1** Specify the set of options.
- **Step 2** Decide which costs and benefits ‘count’ (e.g. state, national or international impacts).
- **Step 3** Identify the impacts.
- **Step 4** Predict the impacts over the life of the proposed policy.
- **Step 5** Monetise (place dollar values on) the impacts.
- **Step 6** Discount future costs and benefits to obtain present values.
- **Step 7** Compute the net present value of each option.
- **Step 8** Perform sensitivity and distributional analysis.
- **Step 9** Formulate a conclusion.
Applying CBA to complex social issues is challenging, because social policies often provide intangible benefits and costs—such as increase in safety—which have no explicit monetary value and can be difficult to quantify. Given these challenges, a CBA will in practice:

- identify all direct and indirect costs and benefits
- quantify and monetise each cost and benefit, if possible
- describe unquantifiable costs and benefits, including an assessment of likely magnitude, if possible
- assess the timing and distribution of costs and benefits.

Best practice in CBA requires all assumptions used in the analysis to be made explicit.

The remainder of this chapter outlines the key direct and indirect costs and benefits and attempts to quantify the most significant of these.

### 6.3 What are the benefits of imprisonment?

The community benefits from imprisonment in that it reduces crime mainly through two effects—incapacitation and deterrence:

- The *incapacitation effect*—while in prison, an offender cannot cause harm to the public. Accordingly, imprisonment results in less crime because offenders are physically inhibited from breaking the law when they are incarcerated.

- The *deterrence effect*—the threat or experience of imprisonment can prevent crime. This effect presumes that individuals are aware of the consequences of breaking the law, and that these are accounted for in all decisions to commit a crime. Deterrence thus occurs when the cost of punishment is perceived to be greater than the benefits of offending, and the individual chooses to not offend.

Studies confirm that imprisonment leads to statistically significant but small reductions in crime through both the incapacitation and deterrence effects.

For incapacitation, the evidence suggests that crime rate reductions are significant, but this effect diminishes as the rate of imprisonment increases (Barbarino & Mastrobouni 2014; Buonanno & Raphael 2013; Owen 2009). This occurs because an increase in imprisonment rates without a corresponding increase in crime rates implies less serious offenders are being incarcerated. This equates to a weaker incapacitation effect for each additional prisoner.

For deterrence, the literature suggests that, while crime is responsive to policing effort (the probability of being caught), it is not particularly responsive to the severity of criminal sanctions (Chalfin & McCrary 2017). These findings are explained by the general tendency of offenders to ‘discount’ the cost of future penalties heavily. This temporal discounting implies that potential criminals are more strongly influenced by the immediate threat of arrest than the threat of a future punishment. Studies also show that for any given probability of arrest once an individual receives a penalty, further or harsher penalties do not cause further deterrence (Drago et al. 2011; Mastrobuoni & Rivers 2016).

The use of prisons may also deliver other benefits. The most significant of these pertain to the benefits that victims and the community receive from retribution, and any rehabilitation that occurs as a result of imprisonment. Estimating the value of these benefits is possible, but challenging, since, for example there is no obvious market price on feelings. Further, it is not clear from the literature that victims receive a clear benefit from the retributive elements of imprisonment (Funk et al. 2014) or that prison provides a significant contribution to rehabilitation.
Using elasticities to measure benefits

In quantifying the crime-prevention effect of imprisonment, economists generally measure the 'elasticity' of crime with respect to imprisonment. Elasticity is an economic concept that measures the response of one variable to a unit change in the other. The elasticity of crime is often used to indicate the size and direction of change in the crime rate for every unit change in a policy variable, such as the arrest rate or the imprisonment rates. A value of −1.0, for example, means that a 1 per cent increase in imprisonment rate leads to a 1 per cent decrease in the crime rate.

Box 6.2 Estimates of elasticities

Elasticities can be calculated from specific crimes (for example, murder, rape or armed robbery) or from general crimes (for example, violent or non-violent crime). In practice, the estimation of specific or general elasticities depend on the aim of the exercise as well as on available data. For this inquiry, general elasticity estimates are used because they are readily available and provide coverage across offence types. Ideally, specific crime elasticities would be used since (at least in theory) they allow a more precise estimate of the effects of imprisonment. However, these are not available in the literature.

A recent survey of international studies by Chalfin and McCrary (2017) showed that elasticity of general crime with respect to imprisonment ranges from −0.10 to −0.70, although they place the true value at 'approximately −0.20'. This means that a 1 per cent increase in the probability of imprisonment results in a 0.20 per cent reduction in the general crime rate.

Using Australian data, Kelaher and Sarafidis (2011) and Wan et.al (2012) obtained values of these elasticity measures for property and violent crimes as follows:

<table>
<thead>
<tr>
<th></th>
<th>Property crime</th>
<th>Violent crime</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Short-run</td>
<td>Long-run</td>
</tr>
<tr>
<td>Wan et.al 2012</td>
<td>−0.087</td>
<td>−0.115</td>
</tr>
<tr>
<td>Kelaher and Sarafidis (2011)</td>
<td>−0.179</td>
<td>−0.282</td>
</tr>
</tbody>
</table>

*not statistically significant.

These estimates suggest that a 1 per cent increase in imprisonment results in a reduction of property crime of between 0.087 and 0.179 per cent in the short run. For violent crimes, the reduction in crime is estimated by Wan et.al (2012) to be a 0.107 per cent in the short run and 0.170 per cent points in the long run. The estimates from Kelaher and Sarafidis (2011) indicate no effect of imprisonment on violent crimes—a result which is at odds with other literature. Given this, the Commission has not used the Kelaher and Sarafidis results.

The use of elasticity estimates is helpful because it captures the idea of diminishing marginal utility. This states that as more and more of a good or service is provided or consumed, the gains from the last unit added (the marginal unit) will be less than that of the previous one. In the context of imprisonment, the principle implies that each additional increase in imprisonment has a lower impact on crime. This notion makes intuitive sense and implies that society should ensure its most serious offenders are imprisoned first.
To make practical use of these elasticity values, the number of crimes avoided annually due to the marginal prisoner is computed using the following formula\(^\text{13}\):

\[
C_a = |\xi| \times \frac{1}{\text{ppn}} \times N
\]

where \(C_a\) is the number of crimes avoided, \(\xi\) is the elasticity of crime rate due to imprisonment, \(\text{ppn}\) is the prison population and \(N\) is the number of crimes committed during the period. \(1/\text{ppn}\) is the fraction increase in the prisoner population due to one additional prisoner.

Applying the Australian elasticity estimates in Box 6.2 above, and using the corresponding prison population and crime numbers for Queensland, estimates of crime avoided \((C_a)\) values that were obtained indicate that imprisoning an additional offender would avoid between 10 and 21 property crimes each year in the short run, and between 13 to 33 crimes in the long run. For violent crimes, the calculations indicate that about 1 crime would be avoided.

**Table 6.2  Number of crimes avoided by imprisoning the marginal prisoner**

<table>
<thead>
<tr>
<th>Input values used for the crime-prevention formula</th>
<th>No. of property crimes avoided</th>
<th>No. of violent crimes avoided</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Short run</td>
<td>Long run</td>
</tr>
<tr>
<td>(\xi) from Wan et. al (2012)</td>
<td>10.2</td>
<td>13.4</td>
</tr>
<tr>
<td>(\xi) from Kelaher and Serafis (2011)</td>
<td>20.9</td>
<td>33.0</td>
</tr>
<tr>
<td>Prisoner population ((\text{ppn}))(^a)</td>
<td>1,972</td>
<td>1,972</td>
</tr>
<tr>
<td>Number of offences ((N))(^b)</td>
<td>230,473</td>
<td>230,473</td>
</tr>
</tbody>
</table>

\(^a\) Prisoner number data from ABS 2018k.  
\(^b\) Reported offences data from QPS 2017.

**Combining elasticities with estimates of harm**

To convert these numbers into measures of monetary benefits, the number of crimes avoided is multiplied by the dollar value of the harm associated with that crime. The resulting monetary benefit should be interpreted as the marginal benefit from imprisonment. That is, the savings incurred from avoided crime by incarcerating an additional prisoner.

Estimates of harm for a range of crimes are sourced from the AIC’s *Counting the costs of crime in Australia: A 2011 estimate* (Smith et al. 2014). The AIC report presents estimates of the costs of 13 broad types of crime including homicide, assault and burglary. The report attempts to quantify a broad range of harms, but does not quantify all indirect costs, such as those from increased fear of crime, reputation damage to victims and disinvestment in high crime areas.
6.4 What are the costs of imprisonment?

The costs of imprisonment can be broken down into the direct costs and the indirect costs. The direct costs relate to the direct financial costs of imprisonment. These include the costs of running prisons and the other criminal justice system costs, including policing, court costs and prisoner reintegration.

The indirect costs of imprisonment are wider in scope and can include impacts on prisoners, their families and the broader community. They may also include loss of social capital, lost productive capacity and increased risks to health and mental wellbeing (Besemer & Dennison 2017; Enggist et al. 2014; McCausland et al. 2013). These costs are less tangible than the direct costs and are therefore more difficult to estimate since many have no obvious market price.

One controversial aspect in obtaining indirect costs of imprisonment is the inclusion of the costs to the prisoner—after all, prison is intended to impose significant costs on people who commit offences. However, the costs that prisons impose on prisoners often extend after the sentence has been served. Excluding prisoner costs can bias decision-making, and lead to incorrect conclusions about alternative policies.

Direct costs: prisons

The financial cost of prison should include both the operating costs and an allowance for the capital costs of running Queensland’s prisons. The Productivity Commission’s Report on Government Services shows that the Queensland Government spent $872 million in 2016–17 for its 14 prison facilities. This equals $107,300 per prisoner per annum or $293 per prisoner per day (PC 2018b).

The state’s prison system is only a part of the wider criminal justice system which includes the courts and the police. As shown in Figure 6.1, these other parts of the criminal justice system have large costs (total expenditures across the criminal justice system in 2016–17 were around $3.6 billion). Any costs that are attributed to the use of imprisonment should be included in the analysis. However, it is not possible to clearly identify these based on publicly available information alone.

Figure 6.1 Distribution of criminal justice system resources, Queensland, 2016–17

Source: PC 2018b.
Indirect cost: lost production

For the duration of the jail term, a prisoner is unable to be employed in the community. This cost includes all lost wages or business income that the prisoner would otherwise have earned; it also includes the loss of the prisoner’s productive capacity due to any depreciation of work skills or employability because of imprisonment. Offsetting these losses are any productive work the prisoner engages in while in prison.

Approximately 37 per cent of Queensland prisoners were employed in the 30 days prior to entering prison in 2015 (AIHW 2015). As far as the Commission is aware, the aggregate value of such productivity loss for the economy has not been estimated for Queensland. However, Morgan (2018) estimated that the cost of lost productivity averaged $16,543 per prisoner in Victoria.

While many prisoners engage in some form of work while in prison, the value of a portion of this effort is captured in the financial costs shown in the previous section, and so should not be double counted.

Other indirect costs

Imprisonment imposes many indirect costs on prisoners, their families and the broader community. Imprisonment has been shown to worsen prisoners’ physical health (Enggist et al. 2014), exacerbate mental illness (White & Whiteford 2006) and cause inmates’ human capital to decline, with costs increasing with the length of imprisonment. Post-release data also show that imprisonment adversely affects future outcomes including higher unemployment (Holzer 2009; Mueller-Smith 2014; Travis et al. 2014), social exclusion and homelessness (Payne et al. 2014).

For the families of prisoners, the loss of income of a prisoner reduces family resources available for meeting everyday expenses. Besemer & Dennison (2017), for example, show an increased dependence on welfare benefits among families with experience of imprisonment. For prisoners who are parents to young children, imprisonment ‘disrupts parent-child relationships, alters the networks of familial support, and places new burdens on governmental services such as schools, foster care, adoption agencies, and youth-serving organizations’ (Beil et al. 2018). In Australia, the increase in women’s imprisonment has been shown to impact on children’s welfare in both the short and long term (Goulding 2007).

Measuring the total value of indirect costs due to imprisonment is difficult, given the wide range of individual backgrounds across the prison population. A survey by Donohue (2009) suggests that all indirect or ‘collateral’ costs could add up to around $25,000 USD per year per prisoner in 2005. Others have suggested that the total ‘social’ costs of imprisonment (including lost productivity) are about twice the magnitude of direct prison costs (Spelman 2000). On the basis of these and other more recent studies, the Commission estimates that for Queensland, total indirect cost incurred per prisoner per year is at least $40,000 in June 2018 prices.

There are also some savings from avoided provision of government services to individuals while they are in prison that would offset some of these costs—for example, welfare, public health and housing.

Criminogenic effects

Imprisonment has been shown to worsen prisoner outcomes through its criminogenic effect. This effect views prisons as a social learning environment in which criminal orientations are potentially reinforced. Accordingly, instead of being reformed, the experience of imprisonment can intensify one’s commitment to a life of crime and increase criminal offending through the transfer of pro-criminal attitudes, values, skills, and roles.

Australian policy papers often identify the criminogenic effect of prison as a major contributor to higher rates of recidivism, even though results in the international academic literature are mixed and not definitive (for example, Bayer et al. 2009; Nagin et al. 2009). Weatherburn (2014) demonstrates some criminogenic effect from prison in Australia. In this study of New South Wales inmates, Weatherburn observed that offenders who received a prison sentence were slightly more likely to reoffend than those who received a non-custodial
penalty. Despite the small sample used in the analysis, this study provides some evidence that prison increases the risk of reoffending amongst offenders convicted of non-aggravated assault.

6.5 What may the net impact be? An illustrative example

The Commission has undertaken some preliminary analysis of the costs and benefits of imprisonment for a range of offence types. The results of our initial assessment are summarised in Table 6.3. The specific steps taken to arrive at the net benefits figures are described in detail in the table notes.

In general, some caution should be used when interpreting these results. The estimates are only partial—they do not include the indirect costs of imprisonment, nor do they include any retributive or rehabilitative benefits. Further, the benefits have been estimated using aggregate indicators that may not apply to specific cases—for example, the harms per offence are the average harm associated with an offence and may not represent the harms avoided through imprisonment. For this reason, the results in this table should be considered as being illustrative only.

Table 6.3 Illustrative net benefits from imprisonment

<table>
<thead>
<tr>
<th>Offence</th>
<th>Harm per offence ($)</th>
<th>Expected time to serve (years)</th>
<th>Costs of imprisonment ($)</th>
<th>Benefits (avoided harm) ($)</th>
<th>Net benefits ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violent offences—</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Homicide</td>
<td>3,046,275</td>
<td>7.2</td>
<td>772,560</td>
<td>3,861,126</td>
<td>3,088,566</td>
</tr>
<tr>
<td>Assault</td>
<td>2,956</td>
<td>1.1</td>
<td>118,030</td>
<td>3,747</td>
<td>–114,283</td>
</tr>
<tr>
<td>– Hospitalised</td>
<td>72,612</td>
<td>1.1</td>
<td>118,030</td>
<td>92,035</td>
<td>–25,995</td>
</tr>
<tr>
<td>– Uninjured</td>
<td>561</td>
<td>1.1</td>
<td>118,030</td>
<td>711</td>
<td>–117,319</td>
</tr>
<tr>
<td>Property offences—</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residential burglary</td>
<td>2,291</td>
<td>1.0</td>
<td>107,300</td>
<td>30,795</td>
<td>–76,505</td>
</tr>
<tr>
<td>Thefts of vehicle</td>
<td>7,238</td>
<td>0.6</td>
<td>64,380</td>
<td>97,283</td>
<td>32,903</td>
</tr>
</tbody>
</table>

Notes:
1 Harms per offence are derived from Counting the costs of crime in Australia: A 2011 estimate (Smith et al. 2014). Harms per offence were converted into June 2018 prices.
2 Expected time to serve were taken from ABS 2018k and matched with the Australian Institute of Criminology offence types.
3 The costs of imprisonment is calculated as the expected time to serve multiplied by $107,300 (PC 2018b).
4 Benefits are calculated as the harm per offence multiplied by the offences avoided through imprisonment (1.3 for violent crimes and 13.4 for property crimes).
5 Net benefits are calculated as the benefits less costs of imprisonment.
Interpretation

It is important to note that these results are illustrative, and there are some important caveats on their interpretation and use.

First, because the calculations used aggregate, broad estimates, important detail may have been missed that would paint a more complete picture regarding the net benefits of imprisonment for specific crimes. This is illustrated by the results for assault. The harm estimates used represent the harm associated with the average assault, which may or may not result in imprisonment. This suggests that a more fulsome analysis should be conducted at finer points of disaggregation of crime types.

Secondly, the results represent the costs and benefits at the margin. That is, they reflect the net benefits (or costs) from imprisoning an additional prisoner, rather than the average prisoner. This is an important caveat on the interpretation of results and means the results should not be interpreted as saying there are no net benefits from imprisoning (for example) any burglars. Rather, the results imply that increasing the use of prison for burglars, particularly for those causing minor damages, is likely to impose large costs on the community.

Table 1.3 presents net benefits estimates for a sample of violent crimes and property offences. It shows that for homicide, society is likely to achieve a net gain of around $3 million by imprisoning an additional offender. For assault, the results are less clear, showing that society would incur a net loss by imprisoning an additional offender. However, some caution should be used when interpreting these numbers. Even for hospitalised assaults, it is possible that the results underestimate the harm avoided since they use average harms, rather than the specific types of harm that might be associated with offences that result in imprisonment. Nevertheless, the results suggest that some caution should be used when considering increasing the use of imprisonment for offences related to assault.

For property offences, the table indicates that society incurs net loss of about $77,000 for an additional residential burglar that is jailed. In contrast, society gains around $33,000 in net benefits for an additional offender jailed for vehicle theft.

Alternatives to imprisonment

There are a range of non-custodial options that may be used in place of imprisonment. An intensive corrections order (ICO) is a common sentence of one year or less, served in the community under intensive supervision. An ICO may be issued with or without a prison sentence.

While CBA can offer insights as to whether ICOs and other non-custodial sentences should be more widely used, the Commission currently does not have sufficient information to conduct an informed CBA for these options. However, some preliminary evidence on these alternatives to prison are presented in this section.

Benefits

When considering the use of non-custodial options as a replacement for current or future imprisonment, the primary question is whether they are as effective at keeping the community safe. The evidence to answer this question is still emerging. However, the literature suggests that, for at least some offences, the use of community-based corrections orders can be as effective as custodial sentences.

While community corrections cannot be as effective as prison for preventing crime by incapacitating offenders, there is little evidence that, used appropriately, they are any less effective at deterring offending behaviour (Sydes et al. 2018; Trevena & Poynton 2016; Trevena & Weatherburn 2015). There is, however, emerging evidence that community-based sentences are more effective than prison terms at breaking the cycle of reoffending.

Wang and Poynton (2017) find an 11–31 per cent reduction in the odds of reoffending for an offender who received an ICO compared with another who received a prison sentence of up to 24 months. This result is
consistent with earlier studies of Ringland and Weatherburn (2013), which showed lower rates of reoffending for recipients of ICOs, compared to those who served their sentences in prison.

This result is qualified by Drake (2011) who found that intensive supervision focused on surveillance achieves no reduction in recidivism; but intensive supervision coupled with treatment achieves about a 10 per cent reduction in recidivism. Wan et.al. (2014) examined the relationship between parolee supervision and reoffending and found that more active supervision can reduce parolee recidivism, but only if it is rehabilitation-focused.

**Costs**

The costs of community-based corrections are typically a fraction of the cost of imprisonment. The annual cost of keeping a person in jail in Queensland is more than 20 times the costs of supervising a person in the community (Table 6.4).

The indirect costs associated with the use of community corrections is also likely to be significantly lower than for imprisonment. When offenders are given the opportunity to serve their sentences in the community, it is easier for offenders to keep their homes and retain their community and family ties. It is also avoids exposure to any of the criminogenic environment associated with prisons (Bartels et al. 2018).

**Table 6.4 Costs of community corrections and imprisonment, Queensland**

<table>
<thead>
<tr>
<th>Year</th>
<th>Total net expenditures on corrections (000s)</th>
<th>Share of corrections budget (%)</th>
<th>Prison No. of prisoners in jail (persons)</th>
<th>Cost per prisoner ($)</th>
<th>Share of corrections budget (%)</th>
<th>Community corrections No. of prisoners in community (persons)</th>
<th>Cost per offender ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016–17</td>
<td>964,431</td>
<td>90.4</td>
<td>8129</td>
<td>107,302</td>
<td>9.6</td>
<td>19,780</td>
<td>4,660</td>
</tr>
<tr>
<td>2015–16</td>
<td>902,907</td>
<td>90.4</td>
<td>7522</td>
<td>108,469</td>
<td>9.6</td>
<td>18,004</td>
<td>4,832</td>
</tr>
<tr>
<td>2014–15</td>
<td>878,292</td>
<td>90.0</td>
<td>7167</td>
<td>110,279</td>
<td>10.0</td>
<td>16,332</td>
<td>5,383</td>
</tr>
<tr>
<td>2013–14</td>
<td>844,206</td>
<td>90.3</td>
<td>6693</td>
<td>113,957</td>
<td>9.7</td>
<td>15,795</td>
<td>5,159</td>
</tr>
<tr>
<td>2012–13</td>
<td>822,765</td>
<td>89.8</td>
<td>5849</td>
<td>126,374</td>
<td>10.2</td>
<td>14,942</td>
<td>5,595</td>
</tr>
<tr>
<td>2011–12</td>
<td>801,324</td>
<td>89.3</td>
<td>5650</td>
<td>126,656</td>
<td>10.7</td>
<td>15,181</td>
<td>5,646</td>
</tr>
</tbody>
</table>


**Net benefits**

The high-level evidence presented above suggests that the use of community corrections may present greater net benefits than prison sentences for a range of sentences. In particular, the evidence suggests that community corrections may be a preferred option where they replace short prison sentences for non-violent offenders.

This is a conclusion shared by Andrew Bushnell of the Australian Institute of Public Affairs:

*It is still reasonable to say that community safety in the immediate term trumps reoffending, and this means violent criminals should be imprisoned. But it does suggest that the growth of community corrections may contribute to a longer-term increase in community safety, as long as offenders are selected appropriately.* (Bushnell 2018, p. 21)

There are, however, a range of intangible costs and benefits that need to be considered.
Morgan (2018) makes an attempt at considering a broader range of costs. The study used propensity scoring\(^{14}\) to match a small cohort of 804 Victorian prisoners and community corrections offenders who were then tracked over a five-year period. The approach considered a broad range of indirect costs including lost productivity, lost earnings, supported accommodation costs, medical costs, government payments, value of community work and changes in the use of drugs and alcohol. The study found:

- The total costs of the original sentence were $61,179 for those who served a prison term and $6,516 for those who served a community sentence.
- Over a five-year period, the net present value of costs associated with the prison cohort were $144,480 compared to $49,633 for the cohort who were originally sentenced to a community corrections sentence.

Despite the study’s limitations, its results highlight an important point: that there may be significant cost advantage in moving some offenders from prison to community corrections.

The Commission will undertake further work to quantify the costs and benefits of prison alternatives if sufficient data and other information can be assembled.

\(^{14}\) Propensity scoring is a statistical matching technique that attempts to estimate the effect of a treatment—policy or other intervention—by analysing the differential effects on the covariates before and after the treatment.

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**Information request**

There are net benefits from keeping the most serious offenders in prison. For other prisoners, the picture is less clear. An illustrative analysis of the costs and benefits of imprisonment suggests that the use of prisons for less serious offences is unlikely to provide net benefits at the margin. The Commission is seeking qualitative and quantitative evidence on all types of benefits and costs associated with serving custodial sentences in prison or in the community.
Part B
Analysis of the system
7.0 Prevention and early intervention
This chapter considers the effectiveness of prevention and early intervention approaches in reducing the number of people in adult prisons. It highlights the challenges and barriers to effective implementation, and provides examples of programs in Queensland, before concluding by identifying some policy gaps and recommendations for the Queensland Government.

Key points

- Prevention and early intervention programs can be effective in preventing individuals from entering the adult corrections system; however, implementation challenges can render them unsuccessful:
  - If at-risk individuals cannot be correctly identified or their problems properly assessed, costs will be higher, or benefits will be reduced, diminishing the effectiveness of the intervention.
  - Replicating or upscaling programs can be problematic, since prevention and early intervention depend heavily on context. The factors that make a certain program successful, such as key people with expertise, motivation and networks, may not be available in other contexts.
- Prevention and early intervention strategies typically involve one of three approaches:
  - Situational prevention—aims to modify the physical environment to reduce opportunities for crime, such as improving surveillance and the security of assets
  - Developmental prevention—aims to address risk factors, such as poor education or mental health, which contribute to the likelihood that an individual will commit a crime
  - Community prevention—aims to strengthen communities by addressing social and economic exclusion and promoting community cohesiveness.
- Prevention and early intervention must be implemented carefully, with due consideration to identification and assessment of at-risk individuals and communities.
- Evidence of the effectiveness of prevention and early intervention is mixed. Although prevention and early intervention programs have the potential to reduce the number of people entering the criminal justice system, their effectiveness, as reflected by cost–benefit ratios of individual programs, can vary widely. Sometimes their costs will exceed the benefits. The benefits of programs can be broad and extend beyond their impact on crime and imprisonment.
- There are a number of prevention and early intervention programs in Queensland. Each of these programs should be evaluated to allow successful programs to be extended and unsuccessful ones to be curtailed.
- Beyond the existing programs, other opportunities exist:
  - to address entrenched economic disadvantage in Indigenous communities
  - for schools to play a role in identifying potential future anti-social and criminal behaviour, and in taking actions other than suspensions and expulsions, so that students can further their education
  - for the Queensland Government to provide greater transparency regarding its implementation of the recommendations of the Report on Youth Justice
  - to provide greater opportunities for self-referrals for individuals at risk of sexual offending.
7.1 Introduction

Crime prevention includes ‘strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes’ (AIC 2012). Early intervention attempts to do this by identifying individuals and communities who are most at risk of participating in crime, to reduce the likelihood of people entering the adult criminal justice system and ultimately prison.

Because prevention and early intervention programs address the root contributors of crime, they have the potential to reduce criminal offending and adult imprisonment. There is empirical evidence both internationally and in Australia that early intervention approaches can work (Allard et al. 2014).

*Overall, the research shows that early prevention programmes are effective in substantially reducing long-term criminal justice costs: Investing in early prevention is more cost–effective than imprisonment ... (Gluckman 2018, p. 13)*

*Crime prevention can reduce the long-term costs associated with the criminal justice system and the costs of crime, both economic and social, and can achieve a significant return on investment in terms of savings in justice, welfare, health care, and the protection of social and human capital. (AIC 2012, p. 2)*

Many stakeholders suggested that greater investment in prevention and early intervention initiatives is needed, particularly for Indigenous Australians.15 Stakeholders also suggested that leaving intervention until a person was in the correctional system was leaving it too late:

*Like health, it is best to prevent rather than have to cure. (QHVSQ sub. 18, p. 1)*

Crime imposes a large cost on victims and the criminal justice system, and results in higher rates of imprisonment. Therefore, prevention and early intervention to reduce crime is an approach that deserves consideration in this inquiry. However, the success of these programs can be mixed and their implementation needs to be carefully considered.

While this inquiry’s focus is on the adult prison system, the youth justice system can be an important pathway to the adult system. Early intervention in the youth justice system can prevent people progressing to adult imprisonment. The Commission notes that the Queensland Government has recently provided its response to the *Report on Youth Justice* (Atkinson 2018), and for this reason, has not revisited youth justice in detail at this time.

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15 Balanced Justice sub. 1, p. 1; Eriksson sub. 5, p. 3; Ellem et al. sub. 7, pp. 6–7; PWC sub. 13, p. 11; yourtown sub. 15, pp. 6–7; QHVSQ sub. 18, p. 1; QCOSS sub. 20, pp. 1,12; RANZCP QLD sub. 31, pp. 3–5,13; YAC sub. 34, p. 6; Amnesty International sub. 37, p. 16; QMHC sub. 38, pp. 8–11; Sisters Inside sub. 39, pp. 22–24; Bravehearts sub. 40, p. 1; Change the Record sub. 41 pp. 3,6–7,20; Bar Association sub. 42, p. 2.
7.2 Types of prevention and early intervention

Prevention and early intervention programs can be classified into three categories—situational, developmental and community prevention (Figure 7.1).

Figure 7.1 Types of prevention and early intervention programs

Situational prevention focuses on changing the opportunities for crime by increasing its costs or reducing its benefits. Common approaches include increasing surveillance, setting rules and norms, concealing or removing targets of crime, and technologies that increase security (Welsh et al. 2015, p. 477).

Developmental prevention programs focus on addressing risk factors. The theory behind these programs postulate that criminal behaviour is influenced by behavioural and attitudinal patterns that were learned during an individual’s development (Welsh et al. 2015, p. 468). Interventions often focus on elements such as education, health, behaviour management and parenting (Welsh et al. 2015, pp. 470–471).

Community prevention promotes social cohesion and guardianship whilst attempting to address social disorder and deterioration. It also focuses on addressing risk and protective factors. It concentrates not only on the physical environment but also on institutions such as schools, religious and cultural groups, and families. Common approaches include programs to address employment, education and intergenerational disadvantage (Welsh et al. 2015, p. 484).

The three types of prevention and early intervention programs are not always clearly delineated, and borders become blurred when programs have multiple approaches and objectives.
Most prevention and early intervention programs target risk factors

While the decision to commit an offence ultimately rests with the individual performing the act, there is a large body of evidence to suggest that an individual’s contextual factors increase or decrease the risk that they will make decisions that lead to crime.

The factors that criminologists regard as causing criminal behaviour do not invariably result in criminal behaviour, which makes targeting individuals for intervention difficult. Targeting is discussed later in this chapter. Risk factors for crime are, however, cumulative in their effect (Weatherburn 2001). Similarly, there are protective factors that reduce the likelihood that an individual will commit an offence. Risk and protective factors (some of which are listed in Figure 7.2) can apply to both individuals and communities.

Figure 7.2 Risk factors and protective factors

<table>
<thead>
<tr>
<th>Risk factors</th>
<th>Protective factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Poverty and unemployment</td>
<td>• Strong community</td>
</tr>
<tr>
<td>• Experience of trauma</td>
<td>• Employment, and hope for the future</td>
</tr>
<tr>
<td>• Drug and alcohol abuse</td>
<td>• Education</td>
</tr>
<tr>
<td>• Poor school performance (truancy, suspension,</td>
<td>• Resilience</td>
</tr>
<tr>
<td>dropout, poor academic achievement)</td>
<td>• Health and resilience</td>
</tr>
<tr>
<td>• Delinquent, antisocial, or poor peer relations</td>
<td>• A place to call home</td>
</tr>
<tr>
<td>• Early age of delinquency onset</td>
<td>• Positive influences (e.g. family,</td>
</tr>
<tr>
<td>• Anti-establishment attitudes, violent</td>
<td>friends, and work)</td>
</tr>
<tr>
<td>• Youth, gender and indigeneity</td>
<td>• Effective parenting</td>
</tr>
<tr>
<td>• Public tolerance of crime</td>
<td></td>
</tr>
<tr>
<td>• History of abuse/victimisation</td>
<td></td>
</tr>
<tr>
<td>• Family problems (i.e. discord; domestic</td>
<td></td>
</tr>
<tr>
<td>violence; poor parenting skills)</td>
<td></td>
</tr>
<tr>
<td>• Family members with criminal justice</td>
<td></td>
</tr>
<tr>
<td>involvement</td>
<td></td>
</tr>
<tr>
<td>• Mental health issues</td>
<td></td>
</tr>
<tr>
<td>• Key life transitions</td>
<td></td>
</tr>
<tr>
<td>• Homelessness</td>
<td></td>
</tr>
</tbody>
</table>


Submissions to this inquiry also referred several times to the need to better address risk factors.16 Addressing risk factors early through targeted interventions generally requires a multi-pronged approach:

[B]ecause SVJ [serious and violent juvenile] offending is multidetermined, intervention approaches need to address its multiple causes. This implies that several modes of intervention need to be implemented concurrently, for example, parent training and improving academic attainment. Second, interventions addressing multiple risk factors often need to be implemented simultaneously in several settings. For example, home visits to improve family functioning may have to be combined with classroom management programs for teachers so that the same high-risk youth can be targeted in the two settings. (Loeber & Farrington 1999, p. 423)

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16 Prison Fellowship sub. 22, p. 11; QNADA sub. 30, p. 5; QFCC sub. 36, p. 2; Sisters Inside sub. 39, pp. 4–7.
7.3 Challenges with prevention and early intervention

Prevention and early intervention can be seen as a three-stage process. Each stage presents its own challenges (Figure 7.3).

**Figure 7.3 Stages of prevention and early intervention**

**1. Identification**
of individuals or communities at risk

**2. Assessment**
of respective needs

**3. Intervention**
that effectively targets respective needs

**Identification**

Identifying those individuals and communities who are most at risk of criminal behaviour and would benefit most from remedial intervention is central to the success of a prevention or early intervention program.

Targeting the wrong individuals/communities unnecessarily wastes resources on those who do not need the program, those who it is unlikely to positively affect, or may miss those who need it most. Similarly, targeting individuals but not their community (and vice versa) may result in the intervention being ineffective in achieving sustained improvements, as it may fail to comprehensively and concurrently address risk factors (Loeber & Farrington 1999, p. 423).

While risk identification tools can assist in identifying individuals and communities with a concentration of risk factors, their effectiveness can be questioned (Loeber & Farrington 1999, pp. 413–414).

During consultations, one stakeholder suggested that whilst some tools can be effective in identifying at-risk individuals, their universal application is unnecessarily expensive. This is because those who are most at risk are often already in contact with the justice system, or are known to authorities; or they can be readily identified through other channels such as schools and child safety.

This was supported by literature, which also highlights the problem of universal tool and program application:

> School problems, especially when combined with other problems, characterize 80% or more of serious delinquent youth. It should be carefully observed, however, that the converse is not true. The largest proportion of youth having school problems are not serious delinquents. (Loeber & Farrington 1999, p. 409)

**Government child safety services also plays a critical role in identifying at-risk children:**

> Two in every five (40.8%) children in detention had also been involved in the child protection system … In Queensland, Department of Justice and Attorney-General (DJAG) data from February 2014 shows that 76% of children known to the Queensland youth justice system were also known to Child Safety Services. Similarly, in 2015–16, 32% of children in youth detention in Queensland had a child protection order history. (QFCC sub. 36, p. 82)
Dr Kath McFarlane raised the intergenerational implications of imprisonment and out-of-home-care:

Research indicates that many children of prisoners become enmeshed in the justice system once they enter care, with devastating long-term consequences including imprisonment, homelessness, disrupted education etc. This is a transgenerational cycle: many of the parents in prison were themselves looked after, so too were their grandparents. Many of the children taken into care following parental imprisonment will follow this same path, with young women in care likely to become pregnant and then have their child removed while they themselves are still in the care system. (McFarlane sub. 10, p. 8)

Interventions tend to use socioeconomic and crime-related data to determine at-risk communities. If such data is available, this may be a cost-effective approach to identifying these communities.

Assessment

Interventions are most effective when the needs of an individual and their community have been properly assessed. Failure to appropriately address all or at least most of these needs (and their root causes) may diminish the effectiveness of the intervention.

In Queensland, assessment is often undertaken as part of a 'case management' process. One stakeholder suggested this process was inadequate as it emphasises the individual as the 'problem' without analysing the social environment that contributes to the criminal behaviour (Sisters Inside sub. 39, p. 15).

A case management approach can be useful for navigating the complex web of social services, particularly for individuals who may experience physical or intellectual impairment, are illiterate or homeless, or have mental health issues, but it can also be expensive.

Intervention

Interventions often involve coordination between organisations and individuals to address what is usually a complex and multifaceted problem. It generally includes project management, procurement, people management and evaluation.

Interventions that address multiple risk factors (such as health, education and behaviour) are likely to involve coordination between multiple government organisations, not-for-profits, private sector specialists and the family. Such an intervention crosses multiple 'system' boundaries, posing significant coordination challenges.

Requirements and needs change, depending on the community or individual. Implementers must therefore be dynamic and responsive in what can be a volatile, uncertain, complex and ambiguous environment (Bennett & Lemoine 2014).

The goal of promoting both human and community development is fundamental yet calls for an extraordinary range of skills and a level of community engagement and trust that can take years to develop. (Batchelor et al. 2006, p. 3)

A program that has been effective in its pilot study is not guaranteed to be successful when scaled. Pilot interventions are often implemented by experts in the field with strong networks, high motivation, a strong desire and incentives to see a program succeed. 'Hidden' parameters, such as cultural or environmental factors, may also be impacting on the outcomes of pilot studies. These elements can be difficult to identify and replicate on a large scale and in different contexts (McCardle 2011).

It is sometimes not clear when it is best to intervene, particularly for developmental programs. Some studies advocate intervening at critical transition points (for example, points related to family, school, peers, life events and community and cultural factors) (AIC 2012, p. 5). Others suggest age is an important factor:

[I]t is easier to build strong children than to repair broken men. (McMillan & Davis 2016, p. 5)
Some suggest focusing interventions on chronic offenders, as the cost of chronic offenders is disproportionately large:

*Moderate and chronic offenders represented 15.8% of the cohort but 70% of total costs.*
*(Allard et al. 2015, p. 468)*

Conceptually, successful and effective interventions prior to an offence is likely to yield far greater net benefits than successful diversionary or post-incarceration interventions, as the costs of crime may be delayed or avoided altogether. However, the cost of the intervention itself is also brought forward and may capture people who were never going to enter prison in the first place.

It is not possible to say conclusively that intervening at any one age, transition point (e.g. entering high school), or event (e.g. receiving a police caution) is best. Comprehensive data on all variables in a variety of contexts is not available and different individuals have different needs at different times.

A final consideration is that the benefits of these programs often extend beyond reductions in crime to other social and economic benefits. This does not diminish their overall social and economic benefit, but these broader benefits may not reflect government priorities and may distort incentives for individual government agencies to implement particular programs.

### 7.4 Effectiveness of prevention and early intervention

While prevention and early intervention programs can have material payoffs, they can be difficult and costly to implement and carry a risk of failure.

A recent meta-analysis of the benefits and costs of crime prevention programs (Welsh et al. 2015) shows that, although it is challenging to make direct comparisons between individual programs, there are wide differences between the effectiveness of different programs and approaches.

The results of the meta-analysis show that benefit–cost ratios vary widely across programs (Appendix F). While most of the ratios are positive, the costs exceed the benefits in some of the programs, although where that is the case, the benefit–cost ratio is positive for certain sub-groups.

The results of the meta-analysis also suggest that situational and community prevention strategies have been more successful than strategies that target individuals for developmental interventions.

Overall, the key lessons can be summarised as:

- Evidence of the effectiveness of prevention and early intervention is mixed. Although prevention and early intervention programs have the potential to reduce the number of people entering the criminal justice system, their effectiveness, as reflected by cost–benefit ratios of individual programs, can vary widely. Sometimes the costs exceed the benefits. The benefits of programs may be broad and extend beyond reductions in crime.

- The role of government in implementing prevention and early intervention programs needs to be considered. Where the benefits accrue to individuals with the capacity and incentives to undertake the measures themselves, the government’s role should be limited.

- Prevention and early intervention must be implemented carefully, with due consideration to identification and assessment of at-risk individuals and communities. If at-risk individuals cannot be tightly identified or their problems properly assessed, costs will be higher or benefits will be reduced, diminishing the effectiveness of the intervention.

- Replicating or upscaling programs can be problematic, since prevention and early intervention depends heavily on context. Further, the factors that made a certain program successful, such as key people with expertise, motivation and networks, may not be available for use elsewhere.
7.5 Prevention and early intervention in Queensland

The Queensland Government currently has a number of prevention and early intervention initiatives in place. In some cases, these have been implemented in response to major reviews, such as:

- *Report on Youth Justice* (Atkinson 2018) (Box 7.1)
- *Queensland Child Protection Commission of Inquiry* (Carmody 2013)
- *Townsville’s voice: local solutions to address youth crime* (Smith 2018)

**Box 7.1 Report on Youth Justice**

This report provided advice to the Queensland Government on the progress of its youth justice reforms and measures to reduce recidivism; and made recommendations for youth detention from the Royal Commission into Institutional Responses to Child Sexual Abuse. The report focused on 'four pillars':

- Intervene early.
- Keep children out of court.
- Keep children out of custody.
- Reduce reoffending.

The report provided a total of 77 recommendations, which can be broadly summarised as:

- continued investment in early intervention to prevent youth offending
- intervention and support for parents as early as the pre-natal stage
- greater collaboration between the Department of Child Safety, Youth and Women, the Queensland Police Service and the Children’s Court
- more alternative and flexible schooling options for young people at risk of disengaging from education
- keeping minor offences out of the court system
- reducing the number of young people in youth detention
- options to divert young people away from the youth justice system (Atkinson 2018, pp. 1–13; Farmer 2018, p. 1).


The Queensland Government has supported initiatives to reduce crime and improve community outcomes in specific communities (that is, place-based initiatives) including Townsville (Queensland Government 2018f), Cairns (Ryan 2018), Aurukun (Queensland Treasury 2018, p. 67) and Cherbourg (Furner 2017). Queensland’s youth detention centres also undertake a variety of intervention programs (Queensland Government 2018).
Other Queensland initiatives

There are other private and public programs that align with prevention and early intervention objectives. Some have been evaluated; others have not. A sample of those programs includes:

- **Transition2Success (T2S)**—seeks to improve outcomes of people within the youth justice system. The program is offered in 11 locations throughout Queensland and focuses on assisting at-risk youth with job-related training, social skills and behaviour management. The program is delivered by trained youth workers in local community settings. Of the T2S participants, 95 per cent were either further engaged in education, employment or training. Less than half (43 per cent) of participants with a prior history committing offences reoffended within six months of completion, compared with 59 per cent of the comparator group (DCSYW 2018b; Queensland Government 2018g). T2S was recently evaluated and was found to be successful, with a benefit–cost ratio of 2.57 (Deloitte Access Economics 2018)

- **Pathways to Prevention**—designed to involve family, schools and community in a variety of interventions to prevent antisocial behaviour. The program has since been transformed into 'Creating Pathways to Prevention' (Batchelor et al. 2006, p. 2; Griffith University 2018a)

- **Logan Together**—aims to reduce developmental vulnerability of Logan children through maternity and child health, 'first three years' development initiatives, neighbourhood networks, community mobilisation, jobs and investment in service integration (RANZCP sub. 31, p. 14)

- **Cherbourg justice reinvestment trial**—seeks to redirect investment into early intervention projects (Amnesty International sub. 37, p. 5)

- **Youth Justice First Nations Action Board**—assists in developing culturally appropriate approaches for Indigenous people in the youth justice system (DCSYW 2018c)

- **Social Benefit Bond ‘reoffending’**—funds multisystemic therapy services to young people in the south east Queensland youth justice system (DCSYW 2018c)

- **Project Booyah**—police mentoring and work program (QPS 2015b; Ryan 2017)

- **Clontarf**—behavioural, educational, and mentoring program for Indigenous youth (Clontarf Foundation 2017)

- **First 1000 Days**—a Queensland Health place-based (Caboolture and Townsville) program with a focus on health and wellbeing from conception to two years. It deals with family violence, unemployment, mental illness, substance abuse and disability (Fentiman 2016)

- **Yinda**—an Indigenous youth program for those coming out of detention to connect with culture and work (McMahon 2017)

- **High Risk Youth Court**—a specialist court that stemmed from the Townsville youth crime response (Palaszczuk 2017)

- **Griffith Neighbourhoods**—prevents sexual offending among youth through targeting sexualised behaviours at school (Griffith University 2018b)

- **yourtown**—a national charity that provides support to Australia's most disadvantaged children and young people (yourtown sub. 15)

- **Positive Learning Centres, District-based Centres and Flexible Learning Services**—provides alternative educational pathways (RANZCP sub. 31, p. 18)

- **Project EURECA**—a police liaison program with residential care services to develop strategies to better support children (QFCC sub. 36, p. 96).
7.6 Where are the opportunities in Queensland?

The Queensland Government has many prevention and early intervention initiatives in place. While it is not within the capacity of the Commission to review these programs, there is a need to ensure that prevention and early intervention programs are systematically evaluated. These evaluations can inform decisions on which programs to extend and scale up, and which to discontinue.

In relation to the criminal justice system, these evaluations will assist in making decisions on where government investments should be made. It is possible that evaluation may enhance community welfare and reduce crime and imprisonment to invest in individuals and communities, rather than directly in elements of the criminal justice system, such as prisons. This is the basic premise of the concept of justice reinvestment. However, in the absence of detailed and comparative evaluation results for prevention and early intervention programs, and alternative programs in the criminal justice system to address overcrowding in the prisons, it is not possible to make a judgement on the validity of this approach in Queensland.

However, the Commission has identified several directions that could be pursued, which involve prevention and early intervention to complement existing programs and strategies.

Better service delivery in remote and discrete Indigenous communities

Indigenous people are overrepresented in the Queensland prison system (see Chapter 4). Addressing the high levels of Indigenous incarceration will require improvements in social capital, incentives and economic opportunity in many Indigenous communities. Despite the strong desire from government, service providers and communities to improve outcomes, significant investment in community intervention has not had its desired impact (QPC 2017, p. xviii).

Enabling Aboriginal and Torres Strait Islander communities to develop solutions themselves is likely to produce the best outcomes. Submissions to this inquiry\(^\text{17}\) suggested service provision would be better coordinated and implemented if greater control is devolved to communities.

To achieve this, the government will need to work with Indigenous leaders to improve service delivery of health, education and other services reforms. Such a reform agenda was detailed in the Commission’s report *Service delivery in Queensland’s remote and discrete Indigenous communities*. Given the complex social issues facing communities and individuals, there should be a greater focus on improving governance, coordination, accountability, and building markets (QPC 2017, pp. xiv–xvi). The Commission’s report also made recommendations regarding economic development pathways, and in particular land tenure, to assist community development.

The Queensland Government should continue to implement and publicly report on the progress of recommendations outlined in the Commission’s report, including a detailed response to the inquiry’s recommendations on economic development pathways and land tenure.

Overrepresentation in Queensland prisons also extends to Indigenous people in non-remote communities. The Queensland Government should continue to address disadvantage through community and market initiatives to enhance the economic and social capacities of these communities. Arm’s length funding approaches, such as the use of social benefit bonds, should be considered.

\(^{17}\) PWC sub. 13, pp. 1–2; Hamburger sub. 14, p. 17; YAC sub. 34 p. 20; Change the Record sub. 41, pp. 4–5.
Schools' role in identifying and addressing potential future criminality

While schools are primarily responsible for providing education to children, they can play a key role in prevention and early intervention strategies. Schools can help identify young people with behaviours that may lead to subsequent criminality, and to ensure that young people acquire a quality education and the enhanced employment opportunities that constitute important protective factors against criminalisation (Homel et al. 2015, p. 2).

A range of stakeholders¹⁸ raised concerns with school suspension and expulsions being increasingly used in Queensland (Department of Education 2018b). As the Report on Youth Justice found:

> As early as age five, children manifest behavioural signs indicative of a need for targeted support with increasing numbers of children of a very young age being excluded from primary school in several Australian jurisdictions, including Queensland, where in 2017, 1,027 children at prep level were subject to suspensions or exclusions. (Atkinson 2018, p. 34)

Keeping children connected to school is expected to improve social participation, skills and educational achievement levels, which have been demonstrated to reduce offending (Heerde et al. 2018; Homel et al. 2015, p. 2; Loeber & Farrington 1999; Victorian Auditor General’s Office 2011; Weatherburn 2001).

With respect to this, the Report on Youth Justice made recommendations around:

- targeting schools for early intervention programs
- providing alternative school options to high-risk students
- providing greater coordination and involvement between government agencies in transitioning a child back into school following detention (Atkinson 2018, p. 8).

The Queensland Government does have programs that focus on keeping children in education such as T25, Regional Youth Engagement Hubs, pop-up class rooms and positive learning centres (Department of Education 2017a, 2018a; Queensland Government 2018g). Notwithstanding this, there may be further opportunities to encourage ongoing school participation, particularly with respect to suspensions and expulsions (Atkinson 2018, p. 34).

Significant processes are involved in considering the suspension or expulsion of a child from school, including assessments of the child’s behaviour and individual circumstances. The school must also consider its duty of care to the child; yet, beyond altruism there appears to be little incentive to keep 'problem' children in school (Department of Education 2017b, pp. 1–16). Principals have a broad remit to suspend a child under s. 282 of the Education (General Provisions) Act 2006 (Qld) (EGPA). This also now includes committing a criminal offence (Department of Education 2017b, pp. 1–16).

Principals may exclude a child if suspension is inadequate to deal with the student's disobedience, misbehaviour, conduct or risk. The threshold requirements for doing so are outlined in s. 292 of the EGPA. Expulsion decisions are tested by the Director-General. A regional manager is also allocated to the student. Students and parents/carers have a right of reply to any suspension or expulsion notice (Department of Education 2017b, pp. 1–16).

There are competing considerations. Schools are primarily responsible for providing education—the impact that at-risk children might have on other students should not be underestimated or left unconsidered when developing alternative solutions to suspension and exclusions.

Developing alternatives to suspension and exclusion could have significant benefits in improving education outcomes and reducing future antisocial and criminal behaviour, although further research on this is required.

¹⁸ yourtown sub. 15, pp. 7–9; QHVSQ sub. 18, p. 2; YAC sub. 34, p. 20.
Prevention and early intervention

(Homel et al. 2015, p. 2). It is not clear what policy levers, programs and supports would be required or what would be cost-effective. It is also not clear what funding mechanisms would be most appropriate, particularly since benefits are likely to accrue beyond just the criminal justice system. The Commission is seeking further information on this.

Further transparency around action on youth justice is needed


While this inquiry will not be undertaking a review of the Report on Youth Justice, the Commission notes:

• The Queensland Government released its Youth Justice Strategy 2019–2023 in December 2018. Whilst this strategy draws on the Report on Youth Justice, it is not clear which recommendations will be implemented and which ones will not. The Government has committed to producing a 'Youth Justice Action Plan' linked to this strategy (Queensland Government 2018h, pp. 3, 28), which may provide greater clarity.

• It is likely that many of the recommendations outlined in the Report on Youth Justice will involve additional resources. Prior to implementation, the Queensland Government should establish the case that the benefits of intervention will exceed the costs.

Programs are not always accessible to those who need them

Stakeholders raised concerns about barriers that are preventing some individuals from accessing services to prevent offending behaviours. These include a lack of support for preventative services that aim to prevent highly stigmatised offences such as sexual offending:

Identifying and providing prevention and early intervention programs with sex offenders is critical in any holistic approach to protecting communities and addressing sexual offending. Prevention programs targeting potential abusers, who have not actually committed an offence but may be at risk of doing so, are not as developed as other types of programs but clearly demonstrate an opportunity for prevention. (Bravehearts sub. 40, p. 7)

Whilst free mental health services are available under the Mental Health Care Plan, they are not necessarily accessed because of the stigma and the fear of reporting (Beyond Blue 2018). Individuals may be hesitant to disclose their thoughts, fearing that practitioners may feel compelled to disclose this information to other entities.

Whilst these provisions are clearly important for public safety, the threat of being reported and the associated stigma can prevent individuals seeking help. The benefits of specific programs for these individuals can be substantial:

Research on the impact of treatment on reoffending shows positive trends. MacGregor (2008) reviewed evaluation results from studies of eight treatment programs for adults and five treatment programs for adolescents who sexually offend across Australia and New Zealand. The reviewed evaluations showed that twelve out of the thirteen programs were effective in reducing sexual recidivism. (Bravehearts sub. 40, p. 11)

International examples may provide an indication of what may be achievable. A self-prescribing program in the UK called Stop It Now! administered 118 people in one year to help them address their sexually abusive behaviours. This program was available to adults as well as youth (Bravehearts sub. 40, pp. 8–9). These programs help people in two ways: firstly, they raise awareness that assistance is available, and secondly, they provide reassurance to those seeking help that it is a safe place to seek it. There is a prima facie case to consider trialling a similar program in Queensland.
Draft Finding 1

Prevention and early intervention have the potential to reduce adult imprisonment and achieve better community outcomes. However, poor or complex design and implementation often render interventions ineffective and expensive. Scaling or applying programs to other contexts can also be challenging. This makes prevention and early intervention programs a risky investment for governments.

There are many private and public prevention and early intervention programs operating in Queensland. Opportunities remain in Queensland, particularly with respect to the transparency and implementation of other reviews’ recommendations; Indigenous-specific programs; and program accessibility, including school attendance.

Draft Recommendation 13

To progress initiatives relating to the youth justice system, the Queensland Government should publish its Youth Justice Action Plan in response to the Report on Youth Justice. As part of this response, the government should publicly report on recommendations and evaluation of programs.

Draft Recommendation 14

In implementing the recommendations of the Service delivery to Queensland’s remote and Indigenous communities report, the Queensland Government should prioritise recommendations that address the causal factors for offending, such as entrenched economic disadvantage, including:

- removing barriers to local economic activity, including ensuring that procurement and job requirements do not exclude local participation
- developing a land tenure reform plan that better supports economic development in remote communities
- reforming policies that facilitate the growth of the Indigenous private sector
- investigating ways to develop community and market initiatives in Indigenous communities including through the use of arm’s length funding arrangements that devolve authority to communities.

Draft Recommendation 15

The Queensland Government should:

- fill gaps in preventative service delivery where stigmatisation prevents accessibility or funding (such as programs that encourage self-referrals to prevent sexual offending), and establish trials where these are suitable
- establish a trial program through schools to identify and better support at-risk children to prevent disengagement from the education system.
**Information request**

The Commission is seeking further information on:

- any deficiencies in prevention and early intervention strategies operating in Queensland
- options that are likely to address the underlying causes of incarceration of Indigenous Queenslanders
- options that would increase accessibility of stigmatised preventative programs
- supports that are required to keep at-risk children in schools.
8.0

Diversionary options
This chapter examines the criminal justice process from the initial engagement with police through to court sentencing. At various points in that process a person may be diverted to justice processes that are less costly or better fit the circumstances. The chapter identifies opportunities to improve diversion and the related use of police discretion.

**Key points**

- Relatively minor contact with the criminal justice system can have unintended negative consequences:
  - It can stigmatise potential or minor offenders, increasing the likelihood that they will commit more serious crimes later in life.
  - The action of arrest and enforcement for minor offences may escalate into more serious offences, including resisting arrest or assault.
  - It may lead to missed court dates and escalation of sentencing.

- Diversion from the criminal justice process, such as the use of cautions, can reduce these unintended impacts. There is little evidence that the use of diversionary options presents risks to community safety. Such options are likely to save justice system resources.

- In Queensland, some diversionary options are available for minor offences. Court-based options that can divert people to receive help with their offending behaviours include the Drug and Alcohol Court and Court Link. Both those diversions are modelled on successful programs and periodic evaluations of them are planned. Community justice groups, Murri Courts and local mediation initiatives are highly valued by stakeholders.

- Compared to other states, Queensland makes the least use of non-court proceedings, particularly for drug and public nuisance offences. Of the 169,000 proceedings in 2016–17, just over 17 per cent used non-court action, well below New South Wales (59 per cent), Victoria (29 per cent) and South Australia (55 per cent).

- The act of arrest can be criminogenic. The second most common set of offences sentenced in the Magistrates Court between 2005–06 and 2016–17 were resisting arrest, or inciting, hindering or obstructing police (6.7 per cent of offences, or 10,600 offenders on average per year).

- Recent police reform in New Zealand suggests that changes in police objectives and practices can reduce both crime and prosecution within short timeframes.

- The current diversion options available to Queensland Police Service are limited. Options should be expanded to include a wider range of adult cautions. These can be complemented by increasing checks before people escalate through the court system (testing for public interest) and by encouraging de-escalation in police practices.

- Making good use of diversionary options requires police to use their discretion. The right incentives for police officers will encourage the effective and efficient use of discretion. Creating these incentives will require:
  - key performance indicators (KPIs) to prioritise harm reduction rather than enforcement activities
  - a simpler public interest test.
8.1 The reason for diversion

Diversion provides alternatives to formal police and court processes for dealing with offenders and their offences. There are three broad types of diversion:

- diversion away from the court system—such as cautions and policing practices
- diversion to treatment—for underlying risk factors for offending, such as drug and alcohol abuse
- diversion to alternative justice processes that better serve the victim or defendant—such as Murri Court or restorative justice.

Diversionary options are important, as relatively minor contact with the criminal justice system can lead to lasting social and personal consequences:

- It can stigmatise potential or minor offenders, making them more likely to commit more serious crimes later in life.
- The action of arrest and enforcement for minor offences can escalate into more serious offences, including resisting arrest or assault.
- It can lead to missing court dates and escalation of sentencing.

The stigma of interactions with the criminal justice system can affect employment, social status, self-esteem, identity and personal relationships (Moore et al. 2016). Stigma can act as a deterrent, but it can also encourage self-identification as an offender, leading to further offending. The latter effect is considered strongest when defendants are younger and more impressionable (Wiley & Esbensen 2013). Accordingly, diversion is the preferred approach for young people. The focus here is on diversion for adults.

These stigmatising effects become stronger when convictions are recorded and culminate with imprisonment (Wiley & Esbensen 2013). Research indicates the deterrence effect of stigma is lower for groups who already face stigmas associated with race, drug addiction or homelessness (Moore et al. 2016). Stakeholder feedback indicated that these impacts are particularly evident in relation to Indigenous individuals and communities.

Diversion provides options for people who have been identified as having committed an offence, but for whom:

- the impact of proceeding to court-determined punishment is disproportionate to the seriousness of the offence
- a court-ordered punishment will not treat the underlying cause of the offending and does not reduce the risk of reoffending
- the likelihood of criminogenic effects through the criminal justice system is high.

The diversion pathways an adult offender can follow usually depend on whether they acknowledge guilt or seek court judgement. For minor offences, admitting guilt allows for police cautioning and/or diversion in limited offences. This avoids the need for a trial and court-ordered sentence. Where prosecution requires court adjudication and sentencing, offenders can be diverted to treatment, rehabilitation or alternative justice processes. Typically, the offender returns to court after the diversionary process, and the outcomes of the diversion are often considered in final sentencing.

Diversion options provide police with the discretion to better match a response to the offence and offender. These responses can extend beyond diversion to police practices, such as actively managing situations to avoid offending or escalating offences.
8.2 Diversion in Queensland

In Queensland, police can draw from a small number of options to divert adults from court proceedings:

- Certain offences, such as public nuisance and minor drug possession, allow the police to impose spot fines (tickets) or a drug education intervention.
- Verbal cautions are available for ticketable offences (mainly traffic and nuisance offences).
- A non-statutory caution can also be given (that is, a caution that is not specified in legislation but is provided by police operational procedures).\(^{19}\)

The Queensland government is making more diversion options available through the introduction of the Drug and Alcohol Court, Court Link, and work and development orders.\(^{20}\) These diversions are based on models operating in other states that have been favourably evaluated (Freiberg et al. 2016; PwC 2009) and are scheduled for evaluation (Queensland Government sub. 43, p. 63). Queensland is a late adopter compared to those states, where those models and referrals are already embedded in criminal procedure. The referral structure needs to grow to match a more graduated system of proceedings. Providing access outside the main centres remains a challenge (Freiberg et al. 2016, pp. 60, 205).

Alternative justice processes that have been used, such as Community Justice Groups, the Mornington Island Restorative Justice Project and the Murri Court, have led to improved outcomes and are highly valued by stakeholders. An evaluation of the Murri Court is due February 2019 (Queensland Government sub. 43), which the Commission will consider for the final report.

The focus of this chapter is the diversion of offenders from the court system by the police and prosecution using tools and operational practices.

8.3 Some potential directions for reform

This section considers the use of cautions as a diversionary tool, the discretion available to police and the public interest test for prosecution.

Cautions

Compared to other states, Queensland makes the least use of non-court proceedings, particularly for illicit drugs and public order offences (Table 8.1). In 2016–17, Queensland police made just under 169,000 proceedings against offenders aged 10 years and over. A single proceeding may involve multiple offences. Just over 17 per cent of proceedings were made using non-court action. This is well below that of New South Wales (59 per cent), South Australia (55 per cent) and Victoria (29 per cent). With few non-court options, the risk of mismatching the response to the crime increases.

Non-court proceedings were more likely to apply to young people (aged under 18 years—or 17 years historically), and for non-serious offences, such as public order and minor drug offences. Adult cautions comprised less than 0.3 per cent of actions taken by police in 2016–17 (QPS 2017).

\(^{19}\) A non-statutory caution can be used by police when there is an admission of guilt and no existing record or recent cautions for the same offence. The purpose is to prevent adult-onset offending, divert first-time offenders from the criminal justice system, manage the use of prosecution resources on minor matters and finalise matters efficiently and effectively. The caution requires the agreement of any victim, the offender being informed of the likely consequences of a court process and the approval by a ranking officer (QPS 2018b).

\(^{20}\) Work and development orders were introduced in December 2017 and provide a way for people in financial hardship to resolve their State Penalties Enforcement Registry (SPER) debt through unpaid community work.
Table 8.1 Non-court proceedings, 2016–17

<table>
<thead>
<tr>
<th>Offence</th>
<th>Qld</th>
<th>NSW</th>
<th>Victoria</th>
<th>SA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illicit drugs</td>
<td>20%</td>
<td>28%</td>
<td>34%</td>
<td>80%</td>
</tr>
<tr>
<td>Public order offences</td>
<td>42%</td>
<td>84%</td>
<td>90%</td>
<td>78%</td>
</tr>
</tbody>
</table>

Source: ABS 2018e.

**Increasing the use of cautions and fines**

While the broader reform of illicit drug offences is recommended (Chapter 9), there is a case under the current system to make greater use of cautions for minor drug offences. Frieberg et al. (2016, p. 36) suggest three levels of caution: a simple caution, a caution with educational material which may be delivered online, and a caution with a requirement to attend or participate in a face-to-face or online education program. Penalty infringement notices could also be extended to a broader range of minor illicit drug offences.

Allowing a set of cautions to be applied more generally that follow the structure suggested for minor drug offences (a simple caution and cautions with conditions) would allow the police more discretion and the ability to add conditions to a caution where a simple caution would be an inadequate response.

The Aboriginal and Torres Strait Islander Legal Service (sub. 35) suggested that community-based mediation may provide a better solution for addressing the offence of 'commit public nuisance'. It suggested that the public nuisance offence should be restricted to ticketing only, and imprisonment for it should be removed as a possible sentence if proceeded at court.

Several issues arise when considering the design of diversion:

- Admission of guilt is usually required prior to the application of any diversion option. This precondition provides incentives for the individual to confess, and thus encourages self-incrimination and compromises procedural fairness (Queensland Government sub. 43, p. 59).

- By reducing the consequences of 'contact', diversion may result in an overall increase in the numbers of people having contact with the criminal justice system—a phenomenon known as 'net widening' (Prichard 2010). This effect can bring its own set of unintended consequences. For example, in a 2009 trial of spot fines for public nuisance offences in South Brisbane and Townsville, police were able to stay longer on patrol, by avoiding returning to the station to process offenders, resulting in a greater number of enforcement actions (Mazerolle et al. 2010).

The Commission considers that there is greater scope for issuing cautions in Queensland without degrading community safety—the appropriate use of cautions reduces reoffending. The Commission is seeking stakeholder views on an implementation issues and potential unintended consequences of changing police practice in this regard. The Commission is also seeking stakeholder views on any constraints (practical and legal) on trialling conditional cautioning in Queensland.

**Police discretion**

Police officers can exercise wide discretion over many incidents, particularly those involving minor public offences. Exercise of police discretion can divert minor offenders away from formal criminal justice processes and minimise adverse effects including stigmatisation and reoffence.

The act of arrest can be criminogenic. The second most common set of offences sentenced in the Magistrates Court between 2005–06 and 2016–17 were resisting arrest, or inciting, hindering or obstructing police (6.9 per cent of offences, or 10,600 offenders on average per year). Those charges were the most serious offence for 57 per cent of those offenders (QSAC 2018b, p. 8).
Police discretion can play an influential role in diversion for Aboriginal and Torres Strait Islander peoples. It can also have a significant impact through the policing of domestic violence.

Statistics from the Queensland Sentencing Information Services for the Magistrates Court indicate that between March 2014 and February 2018 Aboriginal persons:

- received 87 per cent of all sentences for consuming liquor in a public place—but only 11 per cent of offences for drunk/disorderly on licensed premises
- received 33 per cent of public nuisance sentences—but 62 per cent of public nuisance sentences involving domestic violence
- received 94 per cent of unlawful assembly sentences.

In 2016–17:

- The rate of arrest for Indigenous juvenile offenders was 1.8 times that for non-Indigenous juveniles—8,680 Indigenous juveniles were arrested, compared to 5,767 non-Indigenous offenders. That difference is reflected in rates for the use of cautions that are almost half of those for non-Indigenous juveniles.
- For adults, Indigenous offenders were almost 50 per cent more likely to be arrested (48 per cent) than non-Indigenous offenders (33 per cent). Indigenous offenders also have a lower probability of receiving a Notice to Appear (39 per cent)—which is a less intrusive measure—than non-Indigenous offenders (52 per cent) (QPS 2017).

The increased use and policing of domestic violence (DV) protection orders have been an important part of the government’s response to the 2015 report Not Now, Not Ever: Putting an end to domestic and family violence in Queensland. A concerning recent trend has been an increase in DV-related offences for Indigenous women (Douglas & Fitzgerald 2018). Sisters Inside (sub. 39, p. 6) suggested this is a result of changes in police behaviour. The Commission considers that restorative justice approaches (Chapter 10) may provide a useful pathway for resolving DV conflict and is seeking further information on the role that police practices and alternative resolution can play in reducing this pathway to prison.

Improving the framework to encourage effective use of discretion

The New Zealand (NZ) police force reconfigured their activities in the five-year Policing Excellence program (Box 8.1). Of significance is that the program reduced both crime (by more than 20 per cent) and prosecutions (by more than 40 per cent). The NZ experience illustrates how setting appropriate targets and developing plans to achieve them can have a significant impact on police operations, performance and community safety. For example, the use of pre-charge warnings in NZ was part of a significant change in policing practices credited with reducing crime. Use of those warnings is monitored and cases that were eligible but did not receiving warnings are reported and audited to ensure policy is followed consistently.

There is evidence that the Queensland Police Service has grown more effective in policing crime (Chapter 4). The QPS is currently involved in a research project (led by Prof. Murphy of Griffith University) to develop a crime harm index to be used in prioritising QPS activities (QPS 2018a). The rationale is that more harmful crimes should receive more police attention and resources. This research and possible new intervention options (such as cautions) provide an opportunity for the government and police to reconsider how they measure policing success.

The Commission considers that the results that the NZ Police achieved from its shift to a prevention and victim-based focus merit serious consideration of changing Queensland’s policing approach.

The NZ example indicates that, in addition to providing diversion options, incentives to use those options are required to encourage their use. The Commission further recommends that the government and QPS revise KPIs to align policing practices to encourage the efficient use of discretion, diversion and cautions.
Box 8.1 Policing Excellence program

The New Zealand Police undertook a five-year program (2009–2014) as part of a transformation to move from:

> being predominantly reactive and offender focused, to being proactive, prevention and victim focused, resulting in a modern, mobile and accessible police service.

*(NZ Police 2014, p. 7)*

Policing Excellence set the following targets:

- a 4 per cent shift in resources to police prevention activities (a 5.8 per cent shift was achieved)
- a 13 per cent decrease in recorded crime (a 20.1 per cent reduction was achieved)
- a 19 per cent decrease in non-traffic prosecutions (a 41.3 per cent drop was achieved).

Key features of the program were:

- High risk communities were used to develop and trial prevention activities and reduced victimisation. This led to the development of neighbourhood policing teams as a means for developing local initiatives.
- District commanders were made responsible for ensuring implementation.
- Alternative resolutions were introduced: pre-charge warnings, written traffic warnings and community justice panels. Pre-charge warnings freed up time for prevention activities.
- Twelve district victim managers were established. Victims were assessed for risk of re-victimisation, received advice and were prioritised for prevention.
- There was a focus on problem-solving of underlying causes of crime.
- Mobile technology solutions were introduced (iPhones and iPads).
- A continuous improvement process was implemented.
- Consistent case management criteria were introduced to ensure resources were focused on solving crimes.

*Source: NZ Police 2014.*

Public interest in prosecution

Diversion can also be effected through prosecution decisions. The decision of a police officer to proceed against an alleged offender is based on a two-tiered test (QPS 2018b):

- Is there sufficient evidence?
- Does the public interest require a prosecution?

The public interest test specifies 19 factors, relating to the offender, victim, offence, availability of alternative actions and public justice (Box 8.2). Officer decisions should not be influenced by race, gender, personal feelings or politics.
Box 8.2 The public interest test

'Factors which arise for consideration in determining whether the public interest requires a prosecution include:

(i) the seriousness or, conversely, the triviality of the alleged offence or it is of a ‘technical’ nature only;
(ii) any mitigating or aggravating circumstances;
(iii) the youth, advanced age, intelligence, physical health, mental health or special infirmity of the alleged offender, a witness or a victim;
(iv) the alleged offender’s antecedents and background, including culture and ability to understand the English language;
(v) the degree of culpability of the alleged offender in connection with the offence;
(vi) whether the prosecution would be perceived as counter-productive to the interests of justice;
(vii) the availability and efficacy of any alternatives to prosecution (including justice mediation);
(viii) the prevalence of the alleged offence and the need for deterrence either personal or general;
(ix) whether or not the alleged offence is of minimal public concern
(x) any entitlement or liability of the victim or other person or body to criminal compensation, reparation or forfeiture, if prosecution action is taken;
(xi) the attitude of the victim of the alleged offence to a prosecution with regard to the seriousness of the alleged offence and whether the complainant’s change of attitude has been activated by fear or intimidation;
(xii) the cost of the prosecution relative to the seriousness of the alleged offence;
(xiii) whether the alleged offender is willing to cooperate in the investigation or prosecution of others, or the extent to which the alleged offender has done so, subject to the DPPG, particularly Guideline 35: ‘Immunities’;
(xiv) the necessity to maintain public confidence in such institutions as the Parliament and the courts;
(xv) the effect on public order and morale;
(xvi) pending the outcome of any other prosecution from the same circumstances (including in a civil jurisdiction);
(xvii) whether the prosecution for the class or type of offence has been discouraged by the courts in the course of judicial comment;
(xviii) whether the prosecution will result in hardship to any witness, particularly children; and
(xix) vexatious, oppressive or malicious complaints.'

Source: QPS 2018b, Chapter 3 p. 8.
If the evidence is sufficient, the QPS Operational Policies Manual suggests:

*The factors relevant to whether the public interest requires a prosecution will vary from case to case. In most cases there will be public interest factors supporting a prosecution and competing public interest factors supporting a decision not to prosecute. Generally, the more serious the offence the more likely the public interest will require a prosecution. Indeed, the proper decision in most cases will be to proceed with the prosecution if there is sufficient evidence. Mitigating factors can be put to the court at sentence.* (QPS 2018b, Chapter 3 p. 8)

Because of the stigmas attached to a court prosecution, the Commission considers that the current public interest test should be simplified and reviewed to ensure it adequately reflects the social costs of exposing low risk offenders to the criminogenic effects of courts and imprisonment. The Commission is also seeking views on whether the public interest test for prosecution should be modified, particularly for offences where there is no victim.

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**Draft Recommendation 16**

To prevent unnecessary interactions with the criminal justice system, and to better treat offending behaviour, the Queensland Government should:

- review current practice and establish KPIs to encourage the efficient use of police discretion, diversion and cautions
- introduce additional diversionary options for police, including on-the-spot fines, conditional referrals and additional cautioning options
- develop a simple public interest test for police, to encourage and guide the use of discretion.

To support these changes, reporting and monitoring arrangements will need to be in place to ensure public confidence and accountability.

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**Information request**

The Commission is seeking information on:

- other options that would be effective in reducing unproductive interactions with the criminal justice system
- issues that a simplified public interest test should consider
- whether there would be benefits from reversing the onus of the public interest test used by public prosecutors for selected low-harm or ‘victimless’ offences
- reporting and monitoring arrangements that would ensure public confidence and accountability on the way that police discretion is used.
Reducing the scope of crime

9.0

Reducing the scope of crime
This chapter discusses the rationales for criminalising an activity and considers the broad spectrum of criminal offences against these rationales. The intention is to highlight types of offences with relatively weaker rationales which, subject to further detailed analysis, might be candidates for reform.

Key points

- The criminal offences that apply in Queensland are defined in legislation passed by either the Queensland or Commonwealth Parliament. For some offences, there does not appear to be a strong rationale for criminalisation.

- There is evidence of problems associated with excessive criminalisation in Queensland. Three key problems are reductions in liberty and excessive imprisonment; reductions in the legitimacy of the law; and diversion of enforcement resources to lower-harm offences.

- Criminal sanctions are only one option for dealing with behaviours currently defined as a criminal offence. Many activities that are known to be harmful are dealt with through other policy approaches.

- Decisions about whether to criminalise an activity should depend, among other things, on the costs that criminalising it imposes on society, and whether there are better ways of dealing with the activity. Among the costs to consider are the unintended consequences of addressing the activity through the Criminal Code Act 1899 (criminal code)—for example, the costs associated with illegal activities such as gang violence and property crimes.

- Offences that involve harm to self, indirect harm, or risk of harm, or that give offense, generally result in low to medium harm and account for roughly 30 per cent of the prison population. The rationale for criminalising these offences is relatively weak (compared to the offences of murder, manslaughter, rape, assault and theft, which directly harm someone else), although criminalisation may still provide net benefits, depending on the offence.

- The Commission recommends that the Queensland Government seek to remove activities from the criminal code and other legislation that define criminal offences, where the benefits of including the activities do not outweigh the costs.

- Case studies highlight potential problems with the criminalisation of illicit drug and public order offences and point to opportunities for reform. Strict liability offences are a growing concern for many, although it is unclear how much they contribute to imprisonment rates.

- The Commission will undertake further work to understand the benefits and costs of redefining activities currently defined as criminal by the law.
9.1 Introduction

Every person in a Queensland prison has either been found guilty of a criminal offence defined under a law passed by the Queensland Parliament or the Commonwealth Parliament (or they are on remand).

For many offences, the choice to use the criminal law to address an activity provides clear benefits over alternative policies or approaches that would also regulate, reduce or prohibit the act. However, there are instances where the case for the criminal law appears weak. Alternative approaches may be preferable and also result in reduced demand for prisons.

This chapter discusses these issues and considers:

- the problems associated with excessive use of the criminal law (overcriminalisation)
- whether this is a problem in Queensland
- the various rationales that might be used to justify defining an activity as a crime.

The chapter also provides a preliminary examination of types of offences that might be candidates for removal from the Criminal Code Act 1899 (Qld) (the criminal code). It considers whether there are alternative ways to address the harms from these offences. The Commission will undertake more detailed work and consult with stakeholders on these issues to prepare the inquiry’s final report.

The term 'criminalisation' is used in this report to refer to activities (acts or behaviours) that are made criminal rather than to the process of criminalising actors or offenders. The process of creating new offences is sometimes referred to as formal criminalisation—making an activity illegal under the criminal law (putting a crime 'on the books'). In contrast, substantive criminalisation refers to non-formal changes that change the application of the criminal law through the exercise of discretion, for example, by the judiciary, the police, prosecutors and parole boards (McGorrery 2018a, p. 189). This chapter focuses primarily on formal criminalisation, and whether an activity should be made an offence or should be addressed in another way. Other chapters discuss the broader concept of criminalising actors and issues concerning substantive criminalisation, such as the exercise of discretion by enforcement agencies.

9.2 Costs of criminalisation

The purpose of criminalisation is to protect society from activities considered harmful. However, excessive criminalisation can impose a range of costs on the community, including unwarranted reductions in liberty, too many people imprisoned, reductions in the legitimacy of the law in the eyes of the public, diversion of enforcement resources away from higher harm crimes towards lower harm crimes, and dilution of the stigma meant to be associated with the criminal law.21

The use of criminal law is likely to be excessive where the laws and regulations that make certain behaviours criminal have a detrimental effect on society, or where there are less harmful or more effective ways to deal with the same behaviour.

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21 Additional risks of excessive criminalisation include reduced judicial flexibility resulting from an increasing stock of legislation imposing more restrictions on the judiciary; reductions in private behaviours that are welfare enhancing overall, but sometimes also produce impacts that are undesirable; and reductions in deterrence through criminalising acts that are less deserving of the stigma associated with committing crimes (stigma dilution) Ashworth 2008; Mungan 2012, 2015.
Reductions in liberty, including excessive imprisonment

The criminal law provides an important plank to underpin individual liberty by protecting the rights of individuals to go about their business without being harmed or coerced by others. It also works to protect individual property rights and helps to underpin the conditions required to foster economic growth.

However, excessive criminalisation can undermine liberty in unnecessary ways. When there are too many rules, or there are rules that a large proportion of the population choose to ignore, there is a risk that criminalisation will punish or restrict the liberty of too many people. A system which overcriminalises is bound to overpunish by both punishing those who deserve no punishment and by inflicting too harsh a punishment on those that do. By leading to overpunishment, the excessive use of the criminal law violates the generally accepted notion that criminal sanctions should be proportional to the seriousness of the offence (Husak 2010, p. 623).

Excessive criminalisation can result in increasingly lower harms being made criminal with the potential of imprisonment. One of the ways this contributes to rising imprisonment is due to ‘net widening’—expansion in low harm acts increases contacts with the criminal justice system and can act as a pathway to prison. The risk of imprisonment is increased, while the censured behaviour may be neither harmful or wrongful:

[The third common case of prosecution against the public interest relates to young people whose only crime is developmentally-appropriate exploration of their sexuality. In Queensland, if two children – even if both fifteen years old – are involved in [consensual] sexual activity, they can both be charged with indecent dealing of a child under 16 ... As a result, the future of some Queensland children will be significantly affected due to having sexual offence records which will unfairly label them. Whilst education is important to discourage behaviours which put children and young people at risk, criminalisation is not. (YAC sub. 34, p. 10)]

Reductions in the legitimacy of the law

The excessive use of criminal law to address some acts or behaviours risks undermining the public’s respect for the law. This means that overcriminalisation can erode the principle of legality itself:

- Where there are large volumes of criminal law, it becomes difficult for ordinary citizens to know what is proscribed. Since ignorance of the law is rarely an excuse, the criminal law can ambush persons, punishing them for behaviour they did not know to be prohibited (there is no fair warning). This muddies and narrows the distinction between criminals and ordinary citizens (Mungan 2012).
- If citizens encounter inessential and obscure criminal laws, or laws that they do not respect, their respect for the wider legal system can also decline, threatening the maintenance of social order (Husak 2010).

Overcriminalisation can mean that ordinary citizens who might otherwise regard themselves as law-abiding are committing crimes, and only official discretion (in arrest or prosecution) protects them from prosecution and punishments. When the criminal justice system overcriminalises, no discernible principle distinguishes those persons who are punished from those who are not.

McGorrery notes that the criminal law may not be the best response to undesirable behaviour and urges considerable caution in expanding the use of the criminal law for offences:

The criminal law is a necessary part of a fully functioning liberal democracy, but it should be used with extreme caution ... Research has repeatedly proven the effectiveness of a criminal justice system is inextricably linked to whether it is perceived as legitimate, fair and coherent. When the criminal law is too broad, too narrow, or inconsistent, it loses legitimacy. It also loses legitimacy when new laws are introduced that are purely symbolic and add no real substance to existing laws. (McGorrery 2018b)
Reducing the scope of crime

Criminal laws that are rarely or never enforced impose costs on a legal system, including a lessened respect for law; the potential for selective, arbitrary, and unequal enforcement; and the potential for extortion from officials with discretion whether to enforce such laws.

> When criminal law is used to prohibit actions that are: (a) widespread and ubiquitous; (b) strongly motivated so that such actions will continue to be done even if prohibited; (c) unclear in a populace’s mind as to their moral status; (d) clear but divided in the populace’s mind about their moral status; or (e) clearly wrong in a populace’s mind but not popularly thought properly punishable by the criminal law (so that criminal prohibition is just ‘for show’) — when criminal law prohibits these kinds of actions, it invites under-enforcement. (Moore 2014, p. 203)

Diversion of enforcement resources to lower harm offences

Overcriminalisation can also mean that low harm offences are drawn into the scope of the criminal justice system. This can lead to the government’s scarce resources being devoted to dealing with low harm offences rather than being applied to more important priorities:

- Overcriminalisation can result in the diversion of enforcement and other resources away from higher-harm offences towards low-harm offences (Kim & Kim 2015, p. 1652).
- The enforcement of laws can direct money and time away from more important issues, such as tackling the social problems that create the incentives and occasions for offending in the first place (Husak 2010).

Stigma dilution

An important feature of the criminal law is the stigma that the criminal law provides, compared to alternatives such as the civil law. ‘Stigma’ is the cost to the offender of other people’s knowledge of the offender’s crime.

The criminalisation of minor offences can reduce the stigma attached to being convicted of a serious crime, such as murder, rape or theft (referred to as stigma dilution). A consequence is that the deterrence of serious offences is reduced in the absence of offsetting policy changes, such as longer sentence lengths. As stigma is an efficient form of punishment (Friedman 2000), stigma dilution increases the total social costs of crime, because it increases enforcement costs for a given level of crime and/or it increases crime through reducing deterrence.

If there are offences which should be addressed in a way other than through the criminal law, then a benefit of decriminalisation is that it will increase the deterrence value of sanctions applied to serious crimes when the label ‘criminal’ more closely aligns with truly wrongful acts (Mungan 2015, p. 3).

9.3 Does Queensland make excessive use of the criminal law?

It is difficult to establish if the criminal law is used only in those situations where it provides the best possible response to a problem.

There are no comprehensive stocktakes or measures of criminalisation in Queensland or Australia. International evidence suggests that the reach of the criminal law has expanded too far in some countries (Box 9.1).

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22 ‘Stigma dilution takes place when the signal provided by a serious conviction becomes noisier, and therefore less informative, due to some legal change that pools in relatively highly productive individuals with people who have high criminal tendencies. Increasing the scope of the criminal law, in particular, can cause stigma dilution by broadening the pool of criminals, and therefore reducing their average deviation from the average citizen’ Mungan 2015, p. 2.
Further, there have been few studies that have examined whether the acts currently defined as offences in Queensland should be addressed by the criminal law. This section examines the available evidence on this matter and presents the views of various stakeholders who provided comment to the Commission.

A recent study measured the creation of new offences in Queensland, New South Wales and Victoria for the period 2012 to 2016, plus many other aspects of the criminal law that can expand or contract the reach of the criminal law. It found that:

A large majority (85%) of the criminal law statutes passed in NSW, Victoria and Queensland between 2012 and 2016 effected an expansion of criminalisation. Predictably, expanded criminalisation often took the form of new offence creation (34 instances) (16%) of expanding occasions), or penal intensification (41 (20%) of expanding occasions) ... Only 14 per cent of the statutes passed in the review period narrowed the parameters of criminalisation, in any respect. (McNamara et al. 2018, pp. 102–103)

While aggregate measures of criminalisation are not available, case studies, observation and anecdotal evidence support some degree of overcriminalisation:

In many countries, including Australia, the number of criminal offences has grown exponentially over the last three decades, and the list of activities brought within the category of 'crime' has correspondingly widened. The word 'over-criminalisation' has been coined to capture the phenomenon of the deployment of criminal law as a policy response or regulatory mechanism beyond its legitimate limits. (McNamara 2015, p. 33)

Box 9.1 Evidence from the United Kingdom and the United States

The number of acts or behaviours defined as criminal offences and regulated through the criminal law has expanded rapidly in the United Kingdom and the United States:

In 2000, it was estimated that there were more than 4000 punishable crimes at the federal level alone in the United States. There wouldn’t be a criminal lawyer in the country, let alone a lay person, familiar with each of those offences... conducted a similar review of new crimes in the UK over two separate years, finding that thousands of offences were created, an alarming number of them outside the legislature through subordinate legislation ... The offences were most commonly in the areas of agriculture, terrorism, health and safety at work, and elections, and more than half of them were punishable by a term of imprisonment. (McGorrery 2018a, p. 191)

More than 8,000 criminal offenses now exist in England and Wales. Many of these offenses criminalize activities that do not involve moral turpitude. In the United States there are 4,000 Federal offenses, and a comparable number of criminal offenses in the individual states. Likewise, in the U.S.A. there is also a third stratum of criminalization at the local level. (Baker 2011, p. 6)

Chalmers & Leverick (2014, p. 65) found that 1,395 criminal offences were created in the UK in 1997–98 alone, and a further 1,760 offences in 2010–11.
Consultations and submissions to the inquiry have raised concerns about the criminalisation of a range of offences:

> [It is] essential to consider and implement systemic alternatives to criminalisation, for example: decriminalisation of minor offences (e.g. public nuisance, evade fare, begging, possession of drugs under a certain quantity); introduction of adult cautioning, and/or greater use of justice mediation or referral to restorative justice conferencing, even for violent offences. (Sisters Inside sub. 39, p. 27)

The impacts of the criminalisation of illicit drugs was highlighted most. Stakeholders favoured addressing the problems of illicit drugs through health strategies rather than criminalisation:

> 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. (QMHC sub. 38, p. 8)

> The decriminalisation of drugs will lead to reduced prisoner numbers ... and refocus substance use as a health issue that requires a health intervention. (APS College of Forensic Psychologists sub. 27, p. 5)

> Decriminalisation of personal use and possession of illicit drugs provides the opportunity for a health response rather than a criminal justice response and facilitates greater treatment seeking and opportunities for recovery. Learnings from efforts to improve criminal justice policy responses to drug use and distribution, such as have occurred in Portugal, conclude that decriminalisation does not lead to increases in drug use and in fact, evidence indicates reductions in problematic drug use, drug related harms and criminal justice overcrowding. Decriminalisation in Portugal has enabled police to focus their attention on more serious drug trafficking offences. (QNADA sub. 30, p. 8)

Submissions also raised significant concerns about public nuisance offences:

> Our observation is that the charging and sentencing of persons with public nuisance offences lead to the overuse of short sentences of imprisonment with respect to repeat offenders who inevitably have a mental illness or addiction issues that lead them into unwanted attention. The other group that is frequently charged with repeat public nuisance offences are the homeless. (ATSILS sub. 35, p 3)

Many of the concerns expressed in consultations and submissions can find support in the criminology, legal, health, economic and other literatures, although arguments in favour of current approaches to criminalisation can also be found.

While there is uncertainty about the scale of the problem in Queensland, a significant proportion of the prison population is imprisoned for offences that were not illegal less than 50 years or so ago, or the acts themselves are relatively new (for example, due to technological changes), and are non-violent offences (Figure 9.1). As the decision-making processes by which an activity is made criminal are less than ideal, it is possible that the justification for some acts to be made criminal has neither a strong moral, economic or other justification.
9.4 How to consider which acts should be criminalised

There is no commonly agreed test to determine whether an act, or an omission, should be made criminal. Despite this, it is clear that some kind of rationale is required to assess whether an activity should be added or removed from the legislation that makes the activity criminal. Without a considered rationale, there is a risk of either excessive or under-criminalisation, with unintended consequences. Creating a new criminal offence may be a politically convenient response to public concern. The pressure on politicians to be seen as taking immediate action discourages consultation and research. Growth in the criminal law may significantly reflect this pressure (Ashworth 1995, p. 23).

There are several commonly accepted rationales that might be considered when assessing whether an activity or offence should be criminal or not.

The harm principle

There is agreement that harm is always a relevant consideration when deciding to criminalise an act. That is, the extent to which an activity harms others should be a primary consideration for criminalisation. However, it is also generally accepted that when considering whether to impose a criminal sanction, some thought needs to be given to the extent to which the criminal sanction itself imposes a harm.
This concept is based on John Stuart Mill's 'harm principle', first discussed in On Liberty Mill 1869. This principle is based on the idea that individuals should be free from coercion by others, including the state (negative liberty). A different but related concept is that individuals should have the ability to act on their free will (positive liberty).

Criminal sanctions, particularly imprisonment, involves a choice by the state to restrict an offender's liberty. When considering whether the use of state power to limit the liberty of a citizen can be justified, the restriction of the liberty of one citizen can be justified only to prevent harm to others. Under the harm principle based on negative liberty, it is never a relevant reason to restrict conduct merely because the conduct is offensive (as opposed to harmful) or intrinsically immoral, or because it is necessary to prevent a person from harming himself or herself:

\[ P \]eople have a general right not to have their choices restricted by criminalization. The right is not only about having the freedom [to] do as one chooses so long as it does not wrong others, but also about not being subjected to the harmful consequences that flow from unfair criminalization (detention, penal fines, conviction, stigmatization, etc.). Criminalization has harmful consequences for those who are labelled criminals and therefore people have a right not to be criminalized unless it is fair to override their right. (Baker 2011, p. 2)

Indeed, many writings on criminalisation hold that John Stuart Mill's concept of liberty—based on harm to others—should be the litmus test on whether an activity is criminalised:

\[ T \]he prevention of harm to others is the sole justification for state interference with personal liberty. (Luna 2005, discussed in Herring 2015, p. 10)

If this principle was the sole test of whether an activity should be criminalised, then undesirable acts that do not involve harm to others would not be made offences. Given the value placed on the liberty of all citizens, the state could not justifiably imprison or otherwise punish offenders who have committed acts that do not involve significant and direct harm to others. This principle would not restrict state action focused on restorative or rehabilitative efforts.

The concept of harm, however, may extend beyond the idea of harm to others. It may include:

- **harm to self**: actions that hurt or endanger the actor (the principle of legal paternalism)
- **indirect harm**: actions that do not directly harm anyone, but may indirectly cause harm, or only harms the 'public interest' (for example, pollution, possession of weapons)
- **risk of harm**: actions that have not caused harm, but create a risk of harm (for example, drink driving). Exposing a person to a risk of harm can be viewed as wrongdoing them. A person's 'interests' may be set back whether or not the person is actually harmed.

There are strongly opposing views on the merits of these extensions to the harm principle. Whatever the case, one consequence has been to weaken the concept of negative liberty as a constraint on state action, resulting in a more permissive approach to extending the reach of the criminal law (eds Ratnapala & Moens 2011, p. 3).

Some authors reject these extensions of the harm principle and the expanded criminalisation that results:

> Only specific, direct violations of an individual's self-ownership and property rights may justify the use of non-consensual force against an aggressor. (Barnett & Hagel 1977)

The concept of negative liberty (focusing narrowly on significant and direct harm to others) can provide a stronger bulwark against criminalisation:

> The stipulation we need is 'liberty' in the sense of negative liberty; for it is liberty of this kind that is opposed to the kind of restraints constituting the criminal law. (Moore 2014, p. 185)
The criminal law as moral condemnation

The moral arguments around whether extending the harm principle is right or wrong are largely outside the scope of this inquiry. However, the debate has consequences for the inquiry. Extending the harm principle contributes to an extension of the reach of the criminal law, resulting in a broadening of the range of enforcement activities and expansion in the demand for prison services.

Consistent with the declaratory function of the criminal law, some authors argue that for an activity to be criminalised it must be worthy of moral condemnation. If not, criminal law ceases to relate to genuine wrongdoing and loses legitimacy (McGorrery 2018a, p. 190). Others argue that the moral argument for criminalisation is only justified where there is significant harm to others:

Harm to others is not the only justification for overriding a person's right not to be criminalized, but it is the only moral justification of sufficient weight to outweigh a person's right not to be jailed. (Baker 2011, p. 8)

Some acts might warrant being defined as a crime only if the maximum sentence does not involve potential imprisonment (that is, the restriction on the offender’s liberty or autonomy is only justified to the extent that the maximum penalty is a fine).

The economic rationale

The economic argument for criminalisation avoids moral arguments and aims to minimise the total social costs of crime, including the harm done by crime and the costs of enforcing laws. As crime causes harm, the objective of crime policy should be to find the most efficient ways to minimise harm.

The decision-making process for establishing criminal sanctions using an economic rationale is the same as for any other consideration of whether the state should intervene in the private and voluntary interactions of people, businesses and other institutions. That is:

- Establish a rationale for government intervention by clearly identifying a problem and understanding why, in the absence of intervention, the problem will persist.
- Consider the merits of alternative policy options for addressing the problem, including doing nothing, and determine which option provides the greatest expected net benefit.
- Consider whether the intervention is likely to improve outcomes taking account of, for example, potential implementation problems and unintended consequences, such as, those that result from difficult-to-predict changes in behaviour.

The economic approach takes as a given people's preferences and values, such as, whether an activity elicits strong feelings of moral condemnation. Whereas moral arguments weigh heavily in determining whether an activity should be criminalised or not, the economic perspective focuses on outlining the costs and benefits of different choices. In this sense, it puts a price on the moral being protected, but whether or not the public is willing to pay that price is a matter for democratic (political) decision-making processes.

The Commission's approach

The Commission's approach to determining whether an activity should be made criminal is similar to that outlined by Ashworth (1995), that conduct should only be criminalised to the extent necessary to 'protect individual autonomy, or to protect those social arrangements necessary to ensure that individuals have the capacity and facilities to exercise their autonomy'. The decision should be taken with an assessment of the 'probable impact of criminalization, its efficacy, its side-effects, and the possibility of tackling the problem by other forms of regulation and control' (Ashworth 1995, p. 64).
In analysing whether an activity should be criminalised, the Commission is of the view that the following criteria should be considered:

- the extent to which the activity causes harm to others and the nature and level of that harm
- whether the use of criminal sanctions imposes costs on offenders that are proportionate to the harm caused to others
- whether the act of criminalisation creates more positive effects for society than negative ones—this should include an assessment of deterrence and any unintended consequences that might cause harm
- whether there are other, non-criminal options that might better prevent harm.

### 9.5 Reform options

The criminal justice system is just one of three legal systems for mediating behaviours that cause harm (Chapter 3). Overlaying these three systems are the social support services (such as health and welfare), which also act to reduce and manage harms through activities such as education and other preventative activities.

Consideration of alternatives to the criminal law should form part of the process when deciding whether an activity should be criminalised. The use of civil law remedies, advertising and education will be less invasive to individual freedom and may provide a response that is at least as effective as the criminal law. A criminal law that is only as wide as necessary also maintains the censure attached to criminal convictions (Herring 2015, p. 20).

Reform of the policy of criminalisation can take any one of, or some combination of, three paths:

- **decriminalisation**—while the activity remains illegal, sanctions are removed from the criminal law. The key feature of decriminalisation is that the activity does not carry a criminal record at least in the first instance
- **depenalisation (or decarceration)**—while the activity remains a criminal offence, penal sanction options are reformed. In particular, imprisonment is removed as a sanction option. Other criminal sanctions such as police record, probation, fines, community service and so on are still available
- **legalisation**—the amendment of law to eliminate any sanction, criminal or administrative, associated with the activity.

The above options can be supported by various other policy reforms, such as regulations (for example, those that regulate the control or quality of harmful substances like tobacco), health options (rehabilitation or support for mental health or substance addiction issues) and education.

The policy instruments likely to provide the best solution will depend on the circumstances. The challenge is to identify the option likely to provide the greatest net benefit from a state-wide and long-term perspective.

### Options within the criminal law

Section 3 of the criminal code divides offences into two types—criminal offences and regulatory offences. Criminal offences comprise simple offences, crimes and misdemeanours.

- **Simple offences**: a simple offence (also known as a summary offence) is a less serious offence—for example, many driving offences, creating a public nuisance, trespassing and minor drug offences. If a criminal offence is not otherwise designated (for example, as a misdemeanor or crime), it is automatically a simple offence. Simple offences are usually heard in the Magistrates Court. Imprisonment is the maximum sanction for most simple offences. As the offences are heard in the Magistrates Court, the maximum sentence that can be imposed is three years imprisonment, although a sentence of up to four years imprisonment can be imposed.
by the Magistrates Court sitting as the Drug and Alcohol Court. A monetary fine is the maximum sentence for some simple offences.\textsuperscript{24}

- **Crimes and misdemeanours** (indictable offences): an indictable offence must be prosecuted on an indictment (a written charge by a person authorised to prosecute criminal offences) before a judge and jury in the District or Supreme Court. In certain circumstances, a charge on indictment may be prosecuted before a judge alone, without a jury. Generally, crimes are more serious than misdemeanours. Indictable offences carry a maximum sentence of imprisonment (Caxton Legal Centre 2019; QSAC 2018a).

Regulatory offences are further set out in the *Regulatory Offences Act 1985 (Qld)* and include acts such as stealing goods valued at $150 or less from a shop; leaving a hotel or restaurant without payment of a bill for goods or services valued at $150 or less; damaging property valued at $250 or less. Regulatory offences must be finalised in the Magistrates Court only. These offences provide police with an alternative to charging a person with a criminal offence. Regulatory offences carry fines as the maximum penalty according to the Act.

There might be some scope to redefine, or downgrade, offences within this structure, and/or to amend legislation so that fines are the maximum penalty.

**Civil law**

A large number of acts involving harm to an identifiable victim could be addressed solely through civil (tort) law.\textsuperscript{25} Whether this is a good approach or not depends in part on certain characteristics of the offenders or offences, for example:

- Judgment-proof criminals—acts involving intent tend to have much lower detection rates as offenders take precautions not to be identified and apprehended, implying high monetary sanctions are required for optimal deterrence\textsuperscript{26}, which increases the likelihood that offenders will not have the capacity to pay them. In general, the criminal law is more suited to handling the challenges created by this problem than tort law. If the offender does not have the financial resources to pay compensation (are judgment-proof), then the criminal law has the option of imposing a custodial sentence.\textsuperscript{27}

In tort cases, the offender is usually known to the claimant because, as the activity often does not involve intent, the offender did not take precautions against detection. In these cases, the probability of detection, apprehension and punishment (the certainty of punishment) is high (approaching 100 per cent). In contrast,\textsuperscript{24} Some examples of the potential maximum imprisonment period for simple offences include: public nuisance offences (six months); trespass (one year); public begging (six months); possession of a graffiti instrument (one year); throwing things at a sport event (6 months); performing tattooing on a minor (six months); and unlawful unregulated high risk activities (for example, climbing up or down the outside of a building or structure) (one year) (*Summary Offences Act 2005 (Qld)*). Public urination and unlawfully driving a motor bike on public land is an example of a simple offence where the maximum penalty is a fine. While a fine only, the offences still result in a criminal conviction and a criminal record.

\textsuperscript{25} In many cases, individuals are able to bring a civil suit in addition to any criminal proceedings.

\textsuperscript{26} An optimal deterrence rule will set the severity of a sanction equal to the harm caused divided by the certainty (probability) of punishment. As an example, if an offence causes harm of $100 and has a certainty of punishment of 50 per cent, then the optimal sanction equals $200 ($100/0.5). At this level of sanction, the expected value to the offender of committing the crime is zero (ignoring issues concerning the timing of costs and benefits and the discounting of those costs and benefits). Tort law will set the fine at $100, which offsets the liability owed to the plaintiff, but is too low from a deterrence perspective. On the other hand, if tort law was to set the fine at $200—so that the monies paid to the plaintiff is greater than the harm caused—then this would introduce incentives resulting in the problem of positive value offences discussed above. While the problems of judgement-proof offenders and positive-value offences pose challenges for the civil law, Friedman 2000 discusses a number of mechanisms for private law to overcome these problems.

\textsuperscript{27} In principle, the length of the custodial sentence can be set to provide a level of deterrence equal to that which would be provided under an optimal monetary sanction (fine).
Reducing the scope of crime

the certainty of punishment for many types of criminal offences is 50 per cent or less. These differences in the certainty of punishment matter to the setting of optimal sanctions from an economic perspective.

- ‘Positive value’ offences—these are offences for which it is easy to manufacture false positive verdicts. If the court sets a sanction above the level of harm (for example, a probability multiplier is applied for the purpose of deterrence), then the value to the ‘victim’ of a guilty finding may be greater than the actual harm done. This provides an incentive for entrapment and/or framing offenders (Friedman 2000, pp. 286–7).

Mungan (2012) uses two other features of the law for helping to determine whether an activity is best addressed through the civil versus criminal law:

- Standard of proof and signalling—a criminal conviction provides more accurate information on the character/productiveness of the offender compared to tort and administrative law alternatives, which have lower standards of proof.
- Whether harm is necessary—in tort law, for damages to be paid it must be shown that the defendant committed an act which resulted in actual harm to the plaintiff. This is not the case for many offences under criminal law, and regulatory laws. For example, a person who is speeding is not fined because he caused harm, but because he is engaging in a dangerous activity which may result in harm (Mungan 2012).

Restorative justice

Restorative justice is:


Some supporters of restorative justice see potential to go much further, so that restorative justice becomes a fundamental replacement for many aspects of the current criminal justice system, and not just a mechanism or program to complement existing approaches in the criminal justice system:

There is much to commend in having this more expansive vision of [restorative justice] as a long term political project for changing the ways we think about ‘crime’, ‘being a victim’, ‘responding to offenders’, among other categories nominated by Johnstone. (Daly 2006, p. 135)

Another possible collective response to public wrongs is to avoid any formal legal process, in favour of a publicly organized (and funded) system of mediation, negotiation, or ‘restorative justice’: that is, to treat (alleged) public wrongs, which could be defined and treated as crimes, as ‘conflicts’, or ‘troubles’ that need to be resolved by those involved in them, rather than as crimes whose perpetrators should be called to formal, public, censorial account … our concern here is with versions that offer not new ways of dealing with crimes as crimes, but ways of avoiding the perspective and structure of criminal law altogether. (Duff 2018, p. 282)

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28 Many types of offences have reporting rates that are around 50 per cent or less in 2016–17, including: physical assault, theft from a motor vehicle; face-to-face threatened assault; malicious property damage; attempted break-in; and other theft ABS 2018d. The perceived likelihood of being punished is also affected by an offender’s beliefs about the probabilities of being charged and found guilty.

29 Non-criminals participate in legal economic activity that produces outputs valued at more than the resources consumed in their production. In contrast, criminal activity does not add value or contribute to net increases in welfare; rather, it produces harm and consumes significant resources (for example, in enforcing laws). Criminal activity is therefore usually highly inefficient or unproductive.
Restorative justice is discussed in more detail in the next chapter, where a formal proposal for extending its role in the criminal justice system is made. One of the benefits of this proposal is that it could substitute for existing sentencing focused on punishment for some offences and possibly reduce sentencing for other types of offences.

9.6 Some preliminary analysis

Given the timeframe for the inquiry's draft report and the size of the task, it has not been possible for the Commission to examine every offence to determine whether the criminal law is the best option for addressing the underlying act.

This section aims to identify some key areas where it appears that there may be opportunities to reduce the scope of criminal law. The Commission is seeking further comment from stakeholders on the issues raised in this section.

What the data tell us

There are many thousands of criminal offences. This makes it difficult to determine which offences should be assessed for removal from the criminal code (or other legislation). One option is to examine offences based on the type and level of harm that they cause.

The National Offence Index (NOI) is a tool that ranks all offences in the Australian and New Zealand Standard Offence Classification (ANZSOC) according to the perceived seriousness of each offence (ABS 2018j). Offences are ranked according to how serious they are. The rankings are based on information from statutory maximum sentences, sentencing practice (actual court outcomes) and public and expert opinion. Appendix G provides the NOI rankings based on ANZSOC classifications.

Two of the criteria used in the NOI to group similar offences are the nature and vulnerability of the victim (persons, property or community); and whether the offence involved intent, negligence or recklessness. The NOI classifications can be further examined to identify the type of harm—harm to others, harm to self, indirect harm, risk of harm or results in offence (such as racial vilification). Offences involving both high harm and intent are considered to have a strong rationale for criminalisation (Mungan 2012).

An examination of the NOI classifications combined with Queensland prison data for 2018 shows that:

- The largest share of the prison population by type of harm is direct harm to others (68.8 per cent as at 30 June 2018). This comprises harm to individual persons (43.8 per cent) and harm to persons through property (25.0 per cent).
- Of the 6,031 prisoners whose offences relate to direct harm to individual persons, 2,642 prisoners were sentenced with a major sentence classified in the top or most harmful third of the NOI.
- Of the 1,507 prisoners who committed property offences involving direct harm to individual persons, 580 prisoners were classified as high harm offences and 927 prisoners as medium harm (middle third in NOI rankings).
- The remaining offences cover a wide range of offences involving harm to self, indirect harms, risk of harm and offences that cause offence and account for some 30 per cent of the prison population. These offences involve harms that rank medium to low harm on the NOI. An important exception is the offence of dealing or trafficking in illicit drugs, which ranks as high harm and accounts for 10.5 per cent of the prison population (QCS unpublished data; ABS 2018j).

30 The Queensland Police Service has been working with Griffith University to construct a crime harm index for Queensland. There is a possibility that this work might be available for use for the inquiry's final report.

31 Other offences typically include offences classified in ANZSOC divisions 9–16.
Reducing the scope of crime

There is less justification to treat offences based on extensions of the harm principle and that involve low to medium harm offences under the criminal law, than there is in the case of traditional common law offences. Arguments to support this view include:

- **legal/moral arguments**—the offences usually do not involve harm significant enough to warrant the moral condemnation of the criminal law, and/or harm sufficient to justify restricting an offender's liberty, particularly if the form of punishment is imprisonment

- **economic arguments**—the case for using the criminal law to address 'other offences' versus alternatives is less clear than for traditional common law crimes. The range of alternatives is broader with traditional regulatory, tax and expenditure policy frameworks potentially providing feasible alternatives. As these offences usually involve less serious crimes, there is a risk that they contribute to stigma dilution.

These offences should be reviewed under a comprehensive strategy to reduce imprisonment. Various alternative approaches are often available that may produce better outcomes, including reducing undesirable behaviours over the long term.

**Illicit drug offences**

Illicit drug-related issues have featured prominently in consultations and submissions to this inquiry. They have arisen in a wide range of contexts, not least of which is related to their contribution to increases in Queensland's prison population. The prisoner share for these types of offences rose from 10.3 per cent in 2012 to 16.5 per cent in 2018 (Chapter 4).

Illicit drug use is often referred to as a 'victimless' crime. In most cases, taking drugs provides benefits to the consumer in the same way that the consumption of alcohol or gambling does. But like alcohol consumption and gambling, it can result in significant costs for some consumers, including costs to their family, friends and the wider community (PC 1999, 2010). Unlike alcohol and gambling, where there is a suite of regulatory and expenditure policies to reduce and better manage these problems, the policy approach to the problems of illicit drugs is primarily one of criminalisation.

**The criminal law implements a policy of prohibition**

The criminal law prohibits the production, supply and possession of a range of drugs. In Queensland, narcotic drugs and psychotropic substances are listed in different schedules of the Drugs Misuse Act 1986 (Qld), differentiated by their natural or chemical ingredients and/or their seriousness or addictiveness:

- **Schedule 1 substances** are generally more dangerous substances, including amphetamine, cocaine, heroin, lysergide, phencyclidine, MDMA ('ecstasy'), PNA ('death') and methamphetamine.

- **Schedule 2 substances** are generally less dangerous substances, including cannabis, methadone, morphine, opium, anabolic steroids, and other image-enhancing drugs (Schloenhardt 2015, p. 399).

For both schedules, maximum penalties are high (Table 9.1).

The Australian Government has enacted laws defining criminal offences for illicit drugs. These offences are mainly concerned with conduct relating to the import and export of drugs. The most common instance of federal criminal law in state courts are Commonwealth drug offences, which overlap with equivalent state offences. A 'significant proportion' of offences are prosecuted under both regimes (Schloenhardt 2015, p. 38).
### Table 9.1 Penalties for drug offences, *Drugs Misuse Act 1986* (Qld)

<table>
<thead>
<tr>
<th>Conduct</th>
<th>Schedule 1 substances</th>
<th>Schedule 2 substances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trafficking</td>
<td>25 years (s. 5(a))</td>
<td>20 years (s. 5(b))</td>
</tr>
<tr>
<td>Supplying</td>
<td>25 years (s. 6(1)(a)—aggravated supply)</td>
<td>20 years (s. 6(1)(c)—aggravated supply)</td>
</tr>
<tr>
<td></td>
<td>20 years (s. 6(1)(b))</td>
<td>15 years (s. 6(1)(d))</td>
</tr>
<tr>
<td>Producing</td>
<td>25 years (s. 8(a))</td>
<td>20 years (s. 8(d))</td>
</tr>
<tr>
<td></td>
<td>20–25 years (s. 8(b))</td>
<td></td>
</tr>
<tr>
<td></td>
<td>20 years (s. 8(c))</td>
<td></td>
</tr>
<tr>
<td>Possession</td>
<td>25 years (s. 9(a))</td>
<td>20 years (s. 9(c))</td>
</tr>
<tr>
<td></td>
<td>20–25 years (s. 9(b))</td>
<td></td>
</tr>
<tr>
<td></td>
<td>15 years (s. 9(e))</td>
<td>15 years (s. 9(e))</td>
</tr>
<tr>
<td>Possessing things</td>
<td>15 years (s. 10(1))</td>
<td>15 years (s. 10(1))</td>
</tr>
</tbody>
</table>

*Note: A ‘thing’ can include, for example, a hypodermic syringe or needle.*

*Source: Reproduced from Schloenhardt (2015).*

### The costs and benefits of prohibition

The use of illicit drugs causes significant health, social and economic burdens:

> Of the total social costs of drug abuse in 2004/05 of $55.2 billion, alcohol accounted for $15.3 billion (27.3 per cent of the unadjusted total), tobacco $31.5 billion (56.2 per cent) and illicit drugs $8.2 billion (14.6 per cent). Alcohol and illicit drugs acting together accounted for another $1.1 billion (1.9 per cent). (Collins & Lapsley 2008, p. 3)

The illicit drug cost estimates included tangible costs associated with reduction in workforce and absenteeism, premature death, sickness, healthcare costs (medical, hospital, nursing homes and ambulances), road accidents, crime and enforcement costs. Additional intangible social costs include loss of life, and pain and suffering related to road accidents (Collins & Lapsley 2008, pp. 4–5).

The potential benefits of a prohibition policy relate to the reduction of some of these cost burdens.

### Prices and consumption

The threat of criminal sanctions is intended to increase the potential costs of drug use to the point where, for some drug consumers, costs outweigh benefits and they either reduce their consumption of drugs or stop taking drugs altogether. Prohibition is also intended to raise the costs of supplying drugs, resulting in higher prices to consumers and lower drug consumption (Miron 2004):

> If public policies are effective in reducing costs associated with illicit drugs, then the potential benefits to society are large. The objectives of law enforcement approaches are to reduce supply and demand through arrests, interdiction and source control activities. Enforcement of these policies leads to a higher risk of arrest and incarceration for buyers and sellers and frequent disruptions in supply, which should lower participation in illicit drug markets and discourage consumption. If law enforcement approaches, as commonly believed, have greater effects on the supply side, then prices should increase. If potential drug consumers find participation too risky or are dissuaded by high prices, society could benefit from reduced drug abuse, fewer addicts and reduced public health costs. Negative consequences of drug use or addiction, such as sickness, disease and increased mortality, should also decline with reductions in the size of the market. (Shepard & Blackley 2010, p. 257)
Drug consumption appears to be fairly responsive to changes in the price of drugs, as evidence suggests, although the degree of responsiveness varies between studies. The effect of changes in the price of one drug on demand for others is less certain (Chalmers et al. 2009, p. 3).

This might be viewed as supporting prohibition. However, an alternative policy approach involving a regulatory framework coupled with the taxation of drugs could also influence prices and consumption. Whether prices would be lower or higher under an alternative approach compared to the existing prohibition policy is likely to depend on the details of any reform proposals.

Potential unintended consequences of prohibition

It is not clear that prohibition actually reduces illicit drug usage, or reduces it sufficiently to produce benefits that outweigh the costs imposed by the policy, both the costs of enforcing drug laws and any other costs, including those resulting from any unintended consequences of the policy. There is disagreement about the impact of prohibition on drug use patterns, overall public health and safety, crime and economic productivity (Miron 2004). Experts also disagree about whether harms stem from drug use itself or the public policies of prohibition (Shepard & Blackley 2010, p. 251).

Evidence shows that the prohibition of illicit substances results in a wide variety of unintended consequences:

- a lack of medical supervision for most illicit drug use
- the spread of preventable disease
- a large number of preventable overdose deaths
- violence around the drug distribution trade—the fact that the most violent and ruthless people win control of the highly profitable drug trade
- distraction or diversion of police resources from other law enforcement activities
- corruption of law enforcement by prosperous suppliers
- secondary crime by users to enable them to purchase drugs
- very limited success in reducing illicit drug use
- funding for health and social services being diverted into law enforcement, prosecution and incarceration where benefits are hard to identify (Mostyn et al. 2012, pp. 264–5).

Overall, Mostyn et al. (2012) find that prohibition is counterproductive—it causes significant harms additional to those resulting from drug use.

Criminalisation can divert resources away from enforcement of higher harm property and violent crime. By transferring scare resources such as prison spaces and police budgets away from other crimes, increasing the deterrence of drug crime may reduce the deterrence of those other crimes. Studies using data from Florida, New York and Portugal consistently show that escalations in drug enforcement are accompanied by property and violent crime rates increasing, relative to what they would have been (Benson 2009, p. 294).

Prohibition drives the supply side of the illicit drug market underground, where it is unregulated and driven by high profit levels, thereby creating violence for the control of markets:

[Despite the best of intentions, a dominant focus on law enforcement strategies has not eradicated the supply and availability of illicit substances but has contributed to increased harms associated with these substances, in addition to the availability of new and often more harmful drugs on the illicit drug market. Some commentators have argued equally that the ‘drug problem’ is in fact not about the drug per se but the attendant problems associated with illicit drug markets and drug distribution systems, something not applicable to the regulated markets for alcohol and tobacco. (Parliament of Victoria 2018, p. 61)]
Reducing the scope of crime

There are concerns about the ability of the criminal justice system to exert any real control over the drug market. A lack of such ability can undermine respect for and compliance with the law. Many individuals who sell, purchase and consume illicit drugs pay little penalty for their law-breaking. This may weaken their fear of apprehension, encouraging them to break other laws. A similar effect may be felt by people who are law-abiding but observe those who are not. Prohibition ‘fosters a social norm in which voluntary compliance with all laws is diminished’ (Miron 2004, p. 26).

Sentences imposed may be disproportionate to the harms caused and ineffective at achieving their objective of severely curtailting the supply of drugs:

[Illicit drug offences] can be committed in an extraordinarily wide range of circumstances— from truly cynical operations involving millions of dollars, to the desperate few efforts of hopeless addicts attempting to support a habit over which they have no control. Many of the people serving sentences for drug trafficking were involved in selling to support their own addiction. While judges exercise their sentencing discretion taking into account the individual circumstances of the offender, the laws make it very difficult to avoid imposing large sentences which are of little or no social benefit. The illusion that the trade in illicit drugs can be stamped out by heavy sentences results in a large prison population of people who are, themselves, victims. (Bar Association sub. 42, p. 4)

A prohibition policy may still produce net benefits even where the policy itself results in significant costs. It depends largely on the magnitude of the reduction in drug use and associated avoided harms resulting from the policy, compared to what could be achieved under an alternative policy approach that produces fewer or less significant unintended consequences.

**Possible reform directions**

Hughes et al. (2016) stated in a National Drug & Alcohol Research Centre (NDARC) briefing note that research evidence indicates that decriminalisation of drug use:

- reduces the costs to society, especially the criminal justice system costs
- reduces social costs to individuals, including improving employment prospects
- does not increase drug use
- does not increase other crime
- may, in some forms, increase the numbers of people who have contact with the criminal justice system (net widening).32

Submissions to this inquiry supported moving away from a prohibition approach to the problems of drug usage, towards a health-based approach:

> Queensland, like the rest of Australia, relies heavily on the criminal justice system to respond to alcohol and other drug use despite recognition that alcohol and other drug use is better framed as a health issue. (QNADA sub. 30, p. 3)

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Reducing the scope of crime

The approach to illicit drug reform taken in Portugal was given broad support:

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 biopsychosocial issues leading to problematic drug use through evidence-informed treatment, is consistent with the Australian National Drug Strategy 2017-2026 commitment to harm minimisation through three pillars [harm reduction, demand reduction and supply reduction]. (QMHC sub. 38, pp. 10–11)

The Committee recommended exploring alternative models of treatment for these offences, such as the Portuguese model of reform, which decriminalised the personal use and possession of all illicit drugs in 2001. Rather than being arrested, people caught with a personal supply are given an appropriate ruling or penalty by a Commission for the Dissuasion of Drug Addicts such as, they may be given a warning or be required to attend treatment services. The Commissions come under the Ministry of Health rather than Ministry of Justice and comprise a treatment professional, social worker and lawyer and are supported by a range of agencies such as treatment, health, employment, child protection, social services and schools. (RANZCP sub. 31, p. 5)

In the case of the reforms undertaken in Portugal in 2001, decriminalisation of the purchase, possession and use of all drugs does not appear to have increased usage (Box 9.2).

Box 9.2 Overseas approaches: decarceration and decriminalisation

**The Texan approach—decarceration**

In 2007, rather than spending $US 2 billion on prison capacity expansion, the Texan government chose to spend $US 240 million on drug courts, rehabilitation programs, and in prison programs for drug offenders and the mentally ill (Bauer 2014, p. 7). Since the introduction of those reforms, the Texan incarceration rate has fallen by nearly 20 per cent, its prison population has fallen by 10,000, four prisons have been closed, and there are plans to close four more (Greenblatt 2018). Recidivism is lower and crime in Texas is at its lowest level since 1968 (Bauer 2014, p. 7; Greenblatt 2018).

The Texan approach is about prison reform, driven by access to probation, parole, drug treatment and mental health treatment. Criminal law and sentencing law remained largely unchanged over the period (Greenblatt 2018).

**The Portuguese approach—decriminalisation**

In 2001, Portugal decriminalised the purchase, possession and use of all drugs. The change went beyond depenalisation, which removes custodial sentencing as an option for low-level drug offenders but did not amount to legalisation. Trafficking, supplying and possessing over a certain quantity of an illicit drug remain criminal offences. Low-level offenders are now dealt with administratively by an informal 'Dissuasion Commission' which determines an appropriate non-custodial sanction. The purpose of the commission is not to punish the offender but to encourage treatment and rehabilitation. The commission is not able to mandate treatment but can suspend a penalty on the condition that an offender agrees to be treated.

There is no evidence that the reforms led to increased drug use in Portugal, while drug-related harms, and criminal justice system costs seem to have declined. While the incarceration rate initially declined after the reforms, it has since returned to pre-decriminalisation levels.
I illicit drug reforms are being canvassed in other Australian jurisdictions. The Law Reform, Road and Community Safety Committee (LRRSC) of the Parliament of Victoria recommended a reform option within the criminal law:

"The Committee found there is a need to treat the offences of drug use and possession of illicit drugs for personal use as a health issue rather than a criminal justice issue, to ensure the timely referral of people apprehended for these offences to treatment and/or other social services as required by their personal circumstances. This would retain all offences in criminal law, and would punish other criminal behaviours where appropriate while treating the drug use. There are a variety of mechanisms to achieve this, including exploring alternative models for the treatment of these offences, such as the Portuguese model, codifying current drug diversion processes to reduce discretion regarding its use by Victoria Police, and conducting education and awareness programs to communicate with the public about the need to treat drug use as a health issue. (Parliament of Victoria 2018, p. xxiv)"

Reform of the policy of illicit drug prohibition can take any one of the decriminalisation, depenalisation and/or legalisation approaches discussed earlier. These options can be supported by various other policy reforms, such as, regulations that influence the supply of drugs, their quality control and their usage, and expenditure programs focused on, for example, rehabilitation and reducing drug dependence. These approaches might be applied to individual drugs (such as cannabis), or they could be applied based on schedule one and schedule two listed drugs.

Following the draft report, the Commission will undertake additional work to examine the case for reform, specify alternative options and, to the extent possible, attach costs and benefits to the options. 33

Public order offences

Public order offences include disorderly conduct, regulated public order offences and offensive conduct.

Problem identification

Two key characteristics of public order offences are the following:

- The 'victim' is usually the community or public interest and not an individual person. In some cases, the victim may be an individual, for example, when an activity vilifies or incites hatred on racial, cultural, religious or ethnic ground, or where cruelty to animals is involved.

- The offences usually involve relatively low harm or harmless acts, such as the consumption of legal substances (for example, alcohol) in prohibited spaces.

Given these characteristics, offenders are rarely sentenced to imprisonment for a public order offence. As at 30 June 2018, public order offences accounted for only 0.2 per cent of the prison population (QCS unpublished data). However, their impact on the criminal justice system is much larger. In 2017, 23,341 public order offences or 9 per cent of all offences, proceeded to charging (QPS unpublished data). In addition, public order offences may lead to other and more serious offences, so that an offence against the public order is one of a number of more serious charges for which an offender is imprisoned. 34 Public order offences invariably involve conflict:

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33 The Parliament of Victoria 2018 inquiry report noted that there were very few Australian studies of the costs and benefits of alternative drug reform options which is why the committee recommended that the Victorian Government commission such a study (Parliament of Victoria 2018, p. 83).

34 Prisoners are classified based on their major serious offence. A prisoner may also have committed other (lesser) offences for which they were sentenced, including public order offences.
Reducing the scope of crime

The policing of public order is fraught with conflict. The ‘right’ of one person or group to enjoy public spaces is often presented as being in conflict with the rights of others to do the same. Other rights may conflict with one another in the context of public space, including the right to freedom of expression, the right to freedom of assembly and the right to freedom from interference. Further, interactions in public space between police and members of the public can result in both verbal and physical conflict. Each may harbour resentment and prejudice against the other which influences, and is influenced by, the exchanges that occur between them in public space. (Walsh 2008, p. 1)

Concerns were raised during the inquiry that too many people are charged with public order offences:

Many of these people with issues are then charged with something called ‘public nuisance’ which is an all-encompassing offence aimed at removing potential ‘troublemakers’ from the public gaze.

Over 25000 people are charged every year in this State with ‘public nuisance’ offences and yet we hear nothing of the circumstances of these cases unless the media deems them sensational or supportive of the standard ‘law and order’ demands for punishment. (White sub. 28, p. 6)

Concerns were also raised that the harm thresholds are too low, resulting in too many people having contact with the criminal justice system, particularly young adults:

[i]t takes very little to meet the criteria for public nuisance, obstruct/assault police or contravene a direction by police. To a significant extent, this comes down to how police respond and engage ... For some young people, while their behaviour is not optimum, they do not have the skills to be able to manage their actions and express their frustration and anger more appropriately. Bringing them in the criminal justice system will not assist with this. Additionally, some engagements with police result in children being charged with the offences solely as a result of their interaction with police. (YAC sub. 34, p. 10)

Reform directions

Community-based methods were suggested as an alternative way of handling public order offences:

The purpose of the offence of commit public nuisance is to protect community interests in the peaceful use and passage through public spaces. For the reasons noted in Professor Walsh’s paper, it is an overused and misused charge. We would suggest investigating community-based methods for addressing a commit public nuisance. It is after all a community interest in the use of public spaces that is sought to be protected. To that end, it is an offence that could more appropriately be dealt with by way of court-ordered mediation to address the underlying concerns. That one measure alone would have a dramatic impact on the incarceration rates.\(^{35}\) (ATSILS sub. 35, p. 4)

Strict liability offences

Problem identification

The expanding use of the criminal law in the area of regulatory offences raises issues concerning criminal intent and blameworthiness, consistency with the aims of the criminal law and the stigma associated with being a 'criminal.'

\(^{35}\) See Walsh (2006, 2008) and Mazerolle et al. (2010).
In the case of the United Kingdom, it was estimated that:

*nearly half of all offences are offences of strict liability, although most of them involve minor offences.* (Herring 2015, p. 234, citing Ashworth & Blake 1996)

The Institute of Public Affairs (IPA) raised concerns about the expanded use of strict liability in the context of regulatory offences:

*Strict liability regulatory offences can impose prison sentences on individuals who have demonstrated no intent to cause harm. It is difficult to see incarceration for these offenders as necessary for the protection of the community and its norms.* (IPA sub. 11, Attachment: The use of prisons in Australia: Reform directions, p. 60)

Under the economic framework used in (Mungan 2012), it was found that strict liability crimes should not be criminalised. The main legal objection to criminalisation is that there is 'something fundamentally objectionable to subjecting a defendant who has not behaved in a blameworthy way to conviction and punishment under the criminal law' (Herring 2015, p. 245). While recognising some arguments provide support for strict liability, it is claimed that these benefits, 'would be just as strong if a negligence-based offence was used, or at least one where there is a defence of "due diligence"' (Herring 2015, p. 246).

However, the contribution of strict liability to Australia’s expanding prison populations is unclear:

*The exact contribution that strict liability makes to over-criminalisation in Australia, and thus to the growing culture of incarceration, requires further study. However, it is clear that in order to address the rising incarceration rate, we must be more consistent in our application of the principles of punishment, paying closer attention to the real purpose of prison and the circumstances in which it is unnecessary. This implies that mens rea reform should be considered as part of broader criminal justice reform efforts.* (IPA sub. 11, Attachment: The use of prisons in Australia: Reform directions, p. 60)

For the final report, the inquiry will examine the role of intent in Queensland offences and seek to identify the contribution of strict liability offences to Queensland’s increasing prison population. If the increasing use of strict liability is making a significant contribution, then the inquiry will investigate if there are alternative policy options that could provide for both better outcomes and a reduction in the future prison population.

### 9.7 The way forward

This chapter sets out some of the principles that can be used to consider whether an activity should be criminalised, including the nature and level of harm. It introduces some of the economic perspectives used to analyse alternative options in addressing an undesirable activity.

The three case studies present types of offences that, if reformed, would have different implications for Queensland’s prison population:

- **Illicit drugs** form a large and growing share of the prison population.
- **Public order offences** account for only a small proportion of the prison population, but it is suspected that these offences lead to or accompany other offences of a more serious nature that result in imprisonment.
- **Strict liability offences** account for an unknown, but likely increasing, proportion of the prison population.

For each of the case studies, stakeholders expressed a concern about the criminalisation of the offences and supported some type of reform which would reduce the reach of the criminal law.

However, to make any reform recommendations concerning specific offences, or types of offences, more detailed analysis of the cases both for and against reform is required. This work will be undertaken for the inquiry’s final report. Stakeholders are encouraged to address the questions below to assist with this process.
Draft Recommendation 1
The Queensland Government should seek to remove those activities from the *Criminal Code Act 1899* and other relevant legislation, for which the benefits of being included do not outweigh the costs. This reform should focus on, but not be limited to, acts that do not have an obvious victim, including:
- public order offences
- illicit drugs offences
- regulatory offences.

When assessing whether an activity should be redefined, consideration should be given to:
- the extent to which the activity causes harm to others
- the costs that criminal sanctions impose on offenders and whether these costs are proportionate to the harm caused to others
- the extent to which criminal sanctions deter harmful offending
- whether criminalisation has unintended consequences that result in greater harm
- whether criminalisation undermines public perception of the legitimacy of the law.

Draft Recommendation 2
To support any changes to the use of criminal law, the Queensland Government should develop alternative policy approaches where required, including:
- incentives to reduce undesirable behaviours, such as civil remedies, tax and regulatory regimes and other non-criminal sanctions
- education and information provision, to highlight potential harms from newly decriminalised acts
- health responses, such as those that address mental health and drug problems.

Information request
The Commission is seeking further information on the following issues:
- What current offences do not warrant being defined as an offence? What current offences do not warrant being defined as an offence if imprisonment is a potential punishment?
- What offences, if any, are candidates for downgrading from a criminal offence or misdemeanour to a simple offence or to a regulatory offence?
- Is there scope for greater use of the civil law, and for which offences?
- Does criminalisation impede a health–based response to the problem of illicit drug usage?
- Are there approaches to drug reform that offer significant net benefits?
A victim-focused system
This chapter proposes a fundamental change to the role of victims in the sentencing process, with significant implications for the criminal justice system and the use of prisons. Focusing relatively more on victims means focusing relatively less on punishment through imprisonment.

**Key points**

- While improvements have been made to recognise and address the harm resulting from crime, victims are still largely peripheral to the criminal justice system other than as a potential witness. Assistance provided to victims offsets only a fraction of the harm done, and victims have no effective role in sentencing. This has consequences for the effectiveness of the criminal justice system, including how prisons are used:
  - Incentives to report crime are reduced—this means many crimes go unpunished, while harsher sentencing is encouraged for those that are apprehended.
  - The need for imprisonment is increased—restitution to victims and restorative justice processes can provide effective substitutes to imprisonment (at least for lower-harm crimes), and can reduce the severity of court sentencing for higher-harm crimes.
  - Opportunities are missed to reduce recidivism—evaluations of restorative justice processes have found that they are a cost-effective way to reduce reoffending.
  - For victims and offenders for whom restorative justice practices are suitable, the processes have been found to increase victim satisfaction with the criminal justice system.

- Consultations and stakeholder submissions provided strong support for an expansion of existing restorative justice processes.

- The purposes of just punishment, deterrence and rehabilitation could be better achieved under a victim-focused sentencing process. The process would introduce an option that would reduce the need for imprisonment and improve the community's confidence in the criminal justice system.

- Subject to consultation and further design, key features of the process should be:
  - The victim is given an opportunity to choose between whether sentencing should proceed under a restitution and restoration process, or under normal court processes.
  - Through a mediated process, victims and offenders agree a course of action that satisfies both the victim and the offender.
  - If the victim's demands are unreasonable, the offender will not proceed with the agreement. The case returns to court for sentencing in the usual way.
  - Where agreement is reached, the court should accept the conditions of the agreement and modify sentencing outcomes accordingly.
  - Where there remains a residual public interest (for example in deterring other offenders), the court should take account of the victim-offender agreement, but have the opportunity to impose further sentencing.
  - Where there is no residual public interest, the court should accept the conditions of the agreement.

- The public interest test will require a threshold test based on the degree of harm involved.

- The proposal should apply for all types of offences involving harm to an identifiable victim.
10.1 Introduction

While improvements have been made over recent decades in recognising and addressing the harm done to victims, victims are still largely peripheral to the criminal justice system other than as a potential witness. This has consequences for the effectiveness of the system, including how prisons are used.

This chapter:

- outlines assistance provided to victims, primarily from the Queensland Government
- discusses how the assistance is relatively limited compared to the harm caused by crimes against individuals
- outlines some consequences of the current role that victims play in the criminal justice system
- introduces a proposal to provide victims with a role in sentencing focused on restitution and restorative justice
- provides a preliminary assessment of the proposal.

As discussed throughout this chapter, a system that provides greater focus on victims is not only likely to build greater confidence in the criminal justice system, it will also provide for a greater range of non-prison options for dealing with offending behaviours.

10.2 Current assistance provided to victims

Restitution and compensation orders

Under the Penalties and Sentencing Act (Qld) 1992, the court can make restitution and compensation orders to be paid by an offender to a victim. These orders can provide monies to the victim and return of property.

A restitution and compensation order can be applied in addition to any other sentence, such as community service orders. If the offence caused any injury to any person (not just the actual victim of the offence), compensation may also be ordered.

Failure to comply with a restitution or compensation order can result in the offender being arrested and taken into custody. The offender may again be dealt with for the original offence. Alternatively, the court can extend the time period over which the payment is to be made (ss. 38–40).

An offender convicted in a Magistrates Court of an offence relating to property may be released with no sentence imposed if the offender pays damages (which may include that person’s legal costs) to the person who is entitled to the property (Caxton Legal Centre 2019).

In 2016–17, Queensland courts made 14,857 restitution and compensation orders, comprising 3,058 compensation orders and 11,799 orders for restitution of property (DJAG unpublished data). In comparison, there were 264,822 reported offences against person or property in the same year (QPS 2018c). For the draft report, information was not available on the level of restitution and compensation provided.

35 s. 35 states that a court may order an offender to: make restitution of property; pay compensation to a person for any loss or destruction of, damaged caused to, or unlawful interference with, property; and/or pay compensation for personal injury suffered by a person because of the commission of an offence. In this chapter, the use of the term ‘restitution’ has a broader meaning than in s. 35. It covers the restitution of property, financial compensation and other forms of ‘compensation’ that might be agreed between an offender and a victim.
Victim assistance programs

Some of the types of assistance provided to victims include:

- the Victim Coordination Program run by Victim Assist Queensland, which helps victims of violent crime through the court process, including referrals to agencies for support and support for attending court

- the Charter of Victims' Rights, which describes the way a victim should be treated, as far as practicable and appropriate, by Queensland Government agencies and non-government organisations

- the victim register, which allows the victim to receive information on the facility to which the sentenced offender has been assigned, when they apply for parole and when they are eligible for release.

Under the *Victims of Crime Assistance Act 2008*, the Queensland Government provides a range of financial assistance to victims of crime (Box 10.1).

<table>
<thead>
<tr>
<th>Box 10.1 Financial assistance from the Queensland Government</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victims of acts of violence may be granted financial assistance.</td>
</tr>
<tr>
<td>If a victim’s application for financial assistance is approved, then monies to cover some or all of the costs associated with the victim's recovery may be provided, including:</td>
</tr>
<tr>
<td>• medical and counselling costs, and other reasonable expenses to help recovery from an injury</td>
</tr>
<tr>
<td>• loss of earnings (up to $20,000—special conditions apply)</td>
</tr>
<tr>
<td>• crime scene cleaning costs</td>
</tr>
<tr>
<td>• legal costs incurred in applying for assistance (up to $500—special conditions apply) and funeral costs (up to $8,000).</td>
</tr>
<tr>
<td>The total amount of assistance granted will vary depending on the victim’s individual circumstances.</td>
</tr>
<tr>
<td>A primary victim may also be eligible to receive a special assistance payment of up to $10,000. A related victim may be eligible to receive a distress payment of up to $10,000 as well as a dependency payment.</td>
</tr>
<tr>
<td>In total, a primary victim may be granted up to $75,000. Other victims may be granted up to $50,000.</td>
</tr>
</tbody>
</table>

*Source: Queensland Government 2017a.*

From December 2009 to September 2018, the total number of applications for victim financial assistance was 20,870, of which 16,302 have been finalised (Figure 10.1). Of the 16,302 finalised applications, 1,606 applications did not receive funding as they were assessed as not eligible. Of those applications, 11,468 were for assistance to the primary victim of the crime, with an average grant amount of $8,211 (DJAG 2018c).

Of the applications for assistance to the primary victim, most involved offences that were assault-related, followed by domestic violence and sexual offences. The largest grants (on average) were provided for murder (in relation to domestic violence) and sexual offences.
A victim-focused system

Figure 10.1 Applications for victim financial assistance, primary victims, December 2009 to September 2018

Note: The Victims of Crime Assistance Act 2009 defines a primary victim as a person who dies or is injured as a direct result of the act being committed against the person. Apart from the primary victim, financial assistance may be available for the categories of parent secondary, related, witness secondary and funeral only. A 'witness secondary' victim is someone who is injured because they saw or heard the act of violence. A 'parent secondary' victim is the parent or carer of a victim (under 18) injured as a result of becoming aware of the act of violence. A 'related victim' is a close family member and financial dependants of a person who has died as a direct result of the act of violence. A person who, under Aboriginal tradition or Torres Strait Island custom, is regarded as a close family member may also be considered.

Source: DJAG 2018c.

Adult restorative justice in Queensland

Restorative justice differs from the conventional criminal justice system in the following ways:

- The crime is perceived as a conflict between individuals, which has resulted in harm to victims and communities.
- Emphasis is placed on repairing the harm caused by offending and restoring relationships.
- An opportunity is provided for active participation by victims, offenders and communities (Mikos 2012).

Queensland’s adult restorative justice conferencing (ARJC) service is available at any stage of the criminal justice process. It involves a voluntary meeting between the offender, the victim and their respective communities of support to discuss the offence, its impacts and what steps the offender can take to redress the harm caused. If

37 All ARJC’s run by the Dispute Resolution Branch of the Department of Justice and Attorney-General are conducted under the Dispute Resolution Centres Act 1990.
there is agreement, the ARJC service can monitor it for compliance. Other variations on the restorative justice model are also in operation in Queensland (Box 10.2).

In Queensland, there is capacity for restorative justice conferencing for crimes committed by youth and adults. In 2017–18, there were 2,273 referrals to youth restorative justice conferencing (45 per cent were police referrals), and 1,412 conferences were held (DCSYW 2018d). Over the same time period, there were 358 referrals to the ARJC and 184 conferences held (DJAG unpublished data). It has been reported that the ARJC service achieved a 92 per cent satisfaction rate amongst victims and offenders, and a 96 per cent compliance rate with outcomes agreed to in ARJC (DJAG 2018b).

**Box 10.2 Mornington Island Restorative Justice Program**

Initially funded by the Australian and Queensland governments in 2008 and managed by the Queensland Department of Justice and Attorney-General, the Mornington Island Restorative Justice Program has been operated by the Junkuri Laka Justice Association since 2011. Developed in consultation with families and Elders, the model uses a culturally sensitive approach to resolving and minimising community conflicts to prevent conflicts from escalating. It differs from the Queensland Government adult restorative justice conferencing model and New Zealand restorative justice models in that it is mainly a community peacemaking process rather than an element of the traditional court-based criminal justice process, although most referrals are from police and courts. Consideration of serious crimes remains with the courts.

An evaluation conducted in 2014 found the program produced positive results, with over 90 per cent of survey participants indicating that ‘mediation sorted out trouble better than police or court’ at least sometimes, and 89 per cent considering that it stopped adults getting into trouble with police and courts at least sometimes and that mediation made them feel safer (Colmar Brunton 2014, pp. 80, 93, 112).

In 2017–18, the Mornington Island Restorative Justice Program had approximately 104 mediation files with a resolution rate of 86 per cent.

*Source: DJAG 2018a, p. 37.*

**10.3 Victims remain peripheral to the system**

**Assistance addresses a small fraction of harm**

Victim assistance measures address only a small number of the cases involving harm to victims:

- Financial Assistance Grants help address the harm to victims but are only provided in relatively few cases. Of the 276,944 reported offences against the person between December 2009 and September 2018, only 11,468 assistance grants were provided to victims—equivalent to 4 per cent of offences (DJAG 2018c; QPS 2018c).
- Restitution and compensation orders accompany only a small fraction of crimes involving harm to a victim.
- Adult restorative justice processes are provided for a relatively small number of criminal defendants.

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38 DCSYW (2018a) provides an interim evaluation of the Restorative Justice Project for youths.
Victim Impact Statements are the only means by which victims can influence sentencing. The statements describe the effect of a crime on a victim—how the crime has harmed the victim and affected their life—but provide no mechanism for the victim to seek reparation.

No role in sentencing

Victims have no authority in sentencing for any criminal offence.

For crimes involving identifiable victims, harm is overwhelmingly internalised by the victim of the crime and the victim's close family and friends. Some harm may be externalised to the community more broadly, but generally it is of a lower magnitude and is rarely sufficient to justify conceptualising crime as being against the state rather than the individual.

Nonetheless, the criminal justice system displaces the victim of a crime from playing a role in the redress of the criminal act. Instead, a criminal act is perceived to be an offence against the law, with the state as the main party to the dispute. Crime is conceived of as against society rather than against the individuals harmed. The punishment of crime then involves 'debts' paid to the state, rather than to the victim.\(^{39}\)

A survey of NSW residents in 2011 found that almost 87 per cent of respondents agreed that victims of theft, vandalism and assault should have the opportunity to inform offenders of the harm caused, and roughly 74 per cent agreed that victims should have a say in how the offender can make amends (Moore 2012). The study concluded, 'principles underpinning restorative justice initiatives are well supported by the community' (p. 1).

Similar results were found in the United Kingdom, with 94 per cent of survey respondents agreeing that people who have committed offences, such as theft and vandalism, should be required as part of their sentence to do unpaid work in the community, 88 per cent agreeing that victims should be given an opportunity to inform offenders of the harm caused, and 71 per cent agreeing that victims should have a say in how the offender can make amends for the harm caused (Prison Reform Trust 2011, p. 1).

### 10.4 Consequences of the current system

The system reduces incentives to report crime and encourages inefficient sentencing

The lack of restitution and restoration of victims reduces incentives to report crime:

Results indicated that payment of restitution, perception of fair process, and good interpersonal treatment were positively related to victims' willingness to report crimes in the future but that satisfaction with information about the process was not. (Ruback et al. 2008, p. 697)

\(^{39}\) Chapter 9 discusses acts that are sufficiently harmful to warrant the moral condemnation of the criminal law, and how these acts, in addition to the harm caused to individuals, can damage social norms or values.
This is because victims tend to report crime with a view to what reporting will accomplish, not because of an obligation to report:

When victims decide whether to report a crime, their decision rests largely on what they think reporting will accomplish. For example, among reporters of property crimes, the most common reasons given for reporting are to recover property or collect insurance (32%), to prevent this crime or to prevent further crimes (15%), or to catch or punish the offender (12%) (Matson & Klaus, 2003, table 101). Only a small percentage (7%) report because they feel a duty to report the victimization. In fact, if victims report only to realize specific goals, they are likely to be disappointed because most reported crimes are not solved, and, even if there is a conviction, victims are unlikely to have their property restored. (Ruback et al. 2008, p. 698)

Reporting rates are less than 60 per cent for all offences other than break-ins and motor vehicle theft. Reporting rates for attempted break-ins, other theft and face-to-face threatened assault are around 40 per cent—which implies that 60 per cent of these offences are not reported to the police (Table 10.1).

Table 10.1 Reporting rates, selected offences, Queensland 2016–17

<table>
<thead>
<tr>
<th>Offence</th>
<th>Reporting rate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical assault</td>
<td>58</td>
</tr>
<tr>
<td>Break-in</td>
<td>75</td>
</tr>
<tr>
<td>Face-to-face threatened assault</td>
<td>42</td>
</tr>
<tr>
<td>Malicious property damage</td>
<td>52</td>
</tr>
<tr>
<td>Other theft</td>
<td>39</td>
</tr>
</tbody>
</table>

Note: Non-face-to-face threatened assault, robbery and sexual assault rates in most years have higher relative standard errors and should be used with caution. Therefore, they have not been included in the table.
Source: ABS 2018d.

Weak incentives to report crimes mean that crimes can go unpunished. This in turn creates an environment in which the deterrence for committing and offence is lower than would otherwise be the case for any given level of punishment (since an offender knows they are less likely to be punished). To overcome this lack of deterrence, punishments need to be increased, including the use of imprisonment.

The system increases the need for imprisonment

Restoration of the victim is a potential substitute for court-applied sanctions including imprisonment. A significant proportion of prisoners in Queensland prisons are sentenced for low-harm offences. Restoration has the potential to stop the flow of offenders of low-harm crimes against an identifiable person into prison.

There was support for viewing restitution/restoration as a substitute for imprisonment:

Prison should be an absolute last resort and certain offences should never lead to prison. As the Inquiry Issues Paper highlights there are alternatives available (such as home detention, forfeiture and restitution, and restorative justice). (QCOSS sub. 20, p. 13)

Crime is typically considered to be deterred by two factors: the probability of being punished and the severity of that punishment. An increase in one can be offset by a decrease in the other to keep the level of deterrence fixed.
The criminal justice system should have incentives for restitution. Of the alternatives to prison, restitution is the only punishment that explicitly puts the needs of the victim first; before inquiring into any other interests of justice, where possible we ought to incentivise making the victim whole. (IPA sub. 11, p. 62)

[IP]ncarceration actually requires the victims of crime to pay to punish the victim as their taxes are spent on incarceration. And given the host of issues prisoners face upon release, such as poor health and employment outcomes, there is likely to be a greater impost on the victim through publicly funded health care and unemployment payments. (IPA sub. 11, p. 62)

For low-harm offences, restoration can fully substitute for court-imposed sanctions even if offenders have little financial capacity for restitution, because restitution can include both financial and non-financial 'payments' (such as the provision of services to the victim or the community requiring only the offender’s labour).

For medium- and higher-harm offences, restoration could provide a partial substitute for court sentencing. However, this can also reduce the number of prisoners at any one time if courts take account of the restoration efforts of the offender and reduce the severity of sentences accordingly (for example, where the court reduces sentence lengths).

Even where courts are unlikely to impose a prison sentence, restoration processes can reduce offender interactions with the criminal justice system, leading to a reduction in imprisonment over time.

The system does not respond to different circumstances

The criminal justice system tends to follow uniform approaches to problems rather than respond to significant differences in victims and offenders and their respective needs. However, there is significant heterogeneity in:

- the level of harm caused to victims from similar actions—the same offence can result in widely varying levels of harm depending on the characteristics of victims, any relationships between the victim and offender and the circumstances in which the offence was committed
- offenders' responses to the same set of incentives—policy settings that strongly deter some would-be offenders may be highly ineffective for other would-be offenders
- victims' desired responses to the harm
- remorse expressed by offenders to the harms they have caused.

A system designed to treat crimes homogenously can cause problems when there is widely differing underlying conditions:

Victims of similar criminal acts oftentimes suffer significantly different harms ... however, the law is unable to impose accurate sanctions based on actual harms because information problems pervade the criminal justice system. Criminals oftentimes do not know who the high-harm victims are ex ante. Courts oftentimes cannot confirm certain types of harms ex post... [and] cannot always utilize the information they have in their possession. As a result, the law commonly treats dissimilar cases alike. Within large bounds, law imposes the same expected sanction on crimes inflicting different levels of harm. (Mikos 2012, p. 94)

The result is a certain level of victim and community dissatisfaction with sentencing. This in turn, at least anecdotally, has driven a rising number of ad hoc legislative and system changes that have contributed to the increase in imprisonment without necessarily keeping the Queensland community safer (see Chapter 4).

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41 See Bartels et al. (2018); Gately et al. (2017); Lovegrove (2007); and Mackenzie et al. (2012).
Missed opportunities to reduce recidivism

Evaluations of restorative justice conferencing (RJC) have found that they are a cost-effective way to reduce re-offending:

[O]n average, RJC cause a modest but highly cost-effective reduction in repeat offending, with substantial benefits for victims. A cost-effectiveness estimate for the seven United Kingdom (UK) experiments found a ratio of 8 times more benefit in costs of crimes prevented than the cost of delivering RJC. (Strang et al. 2013, p. 2)

In their experience working with prisoners in Australia since 1979, Prison Fellowship Australia is of the view that restorative justice practices can reduce recidivism and that, in general, offenders are willing to participate:

b) Prisoners are largely unaware of the personal impact of their crimes – an important component of the rehabilitation process, and restorative justice is the best means of delivering this insight.

c) Prisoners have been keen to undertake challenging restorative justice encounters in our experience, and have become more empathetic and aware of the effects of crime and experience reduced recidivism.

d) The current approach does not facilitate crime victims/survivors with opportunities to meet their offender or as in Queensland a ‘surrogate offender’, and this is a barrier to the healing process for them. (Prison Fellowship sub. 22, p. 15)

The New Zealand experience demonstrates that restorative justice conferencing can reduce re-offending:

The main results ... were that for offenders who participated in a Police or court-referred RJ conference, 34% reoffended over the following 12 months. This is in comparison to 39% of otherwise similar offenders who did not participate in an RJ conference ... In combination, the international and New Zealand research allow us to safely conclude that RJ conferences for adult offenders reduce reoffending. (New Zealand Government 2016, p. 3)

10.5 A victim-focused sentencing reform

The purposes of sentencing may be better achieved under a victim-focused sentencing process. This section provides an outline of a proposed reform that would imbed a victim-focused sentencing option into the sentencing process. It discusses high-level features, rather than the operational design. Further consultation is needed to understand the checks and balances that would be required to support reforms.

Prioritise the victim's 'claim'

The reform proposal is based on prioritising the victim's claim over the state's claim to pursue any one of the purposes of sentencing as set out in the Penalties and Sentencing Act (Qld) 1992. Victims have an opportunity to seek restoration prior to court sentencing.

The victim's claim would be exercised through their choice of sentencing path.

Victims choose a sentencing path

Under the proposal, the authority is given to victims to choose whether to have sentencing proceed as per existing court processes or along a path that encompasses a range of options from restitution through to restorative justice (Figure 15).
Some victims and offenders will be amenable to the more restorative aspects of the process, while others will be comfortable with a narrower focus on restitution (or compensation), whether financial or non-financial.

**Figure 15** A victim-focused sentencing process for adult offenders

Restitution processes can be about more than financial compensation and restorative justice can also entail a component of compensation—in practice, there can be significant overlap between the processes. Even where there is a strong focus on restitution to the victim, there can be benefits to the offender—for example, where it substitutes for court-imposed sanctions, such as imprisonment.

The balance between restitution and restoration will vary, given heterogeneity in victims and offenders and evolving perceptions of the successfulness or otherwise of mediated outcomes.

**A voluntary mediated process**

Through a mediated process, victims and offenders agree a course of action that satisfies both the victim and the offender.

Evidence has shown that for a restorative justice approach to work, the process needs to be voluntary, and both the victim and the offender need to be committed to the process:

> RJC delivered in the manner tested ... appear likely to reduce future detected crimes among the kinds of offenders who are willing to consent to RJC, and whose victims are also willing to consent. The condition of consent is crucial not just to the research, but also to the aim of its generalizability. (Strang et al. 2013, p. 5)
Voluntary consent to participate strengthens compliance with agreed outcomes:

*Participation in restorative justice programs is voluntary. As a result, offenders often comply with restitution agreements when they have followed a restorative justice program (Van Hecke & Wemmers, 1992). Once admitted into a restorative justice program, offenders are prone to accept responsibility for their behaviour and repair the harm caused to the victim and, as a result, the victims of these offenders are likely to receive reparation.* (Wemmers & Canuto 2002, p. 19)

**How the process might proceed**

The process might proceed along the following lines:

- A mediator is appointed.
- Basic information on the process and the options available to the victim are provided to the victim as soon as possible.
- The mediator meets with the victim (or their representative).
- Where the victim's focus is exclusively on restitution, the mediator enters directly into negotiations with the offender, which may or may not involve face-to-face meeting/s between the offender and victim.
- Where the victim is willing to proceed along a restorative justice path, the mediator meets with the offender and forms a judgment on the appropriateness of such a path and advises the victim. Where both the victim and offender wish to proceed, the conference proceeds (that is, the mediator facilitates, but does not have the final say).

The functions of the mediator could vary, for example, assisting the victim in choosing the best way forward for the victim; mediating restitution; facilitating and arranging the supporting services for restorative justice processes; and providing restorative justice conferencing services.

**Reaching agreement**

**Scope of actions under the agreement**

The agreement between victim and offender could include many elements other than financial payments to the victim, particularly where the offender does not have the capacity to pay, or where the victim and offender are focused on restorative practices. For low-harm offences, offenders with no financial resources can still pay restitution through their time or labour, for example, cutting lawns, painting houses and assisting community organisations.

Victims would not have authority to seek some options currently available to the judiciary, such as custodial sentencing options.

If the victim is unreasonable in their demands, then the offender will not proceed with the agreement. The case returns to court for sentencing in the usual way.

**Signalling partial victim satisfaction**

The victim may acknowledge that the offender has bargained in good faith and has done what the offender is capable of in terms of restitution. However, this may not satisfy or fully restore the victim. The agreement should have a facility to acknowledge the efforts of the offender and that the victim believes that the efforts fall short of restoration. The court would take the efforts of the offender in to account and may or may not agree with the victim that further sentencing is required.
Role of the court under the proposal

Below a threshold, the court would be obligated to accept the conditions of the agreement

Unless specified otherwise, the agreement between the victim and the offender is presented to a magistrates court, accepted by the court, and no further action is permitted except for the purposes of rehabilitation. This exception may be necessary in order to provide access to costly treatment or other forms of rehabilitation programs.

The agreement 'clears' the offender's debt. The approach has strong parallels to the operation of the civil law where wrongs are addressed between victims and offenders.

Where there is a residual public interest, the court imposes a further sentence

In cases where there is a residual public interest, the court would have the authority to impose further sentencing outcomes.

A set of principles would need to be established to determine when the judiciary would have scope to impose a sanction in addition to that agreed between victim and offender. Take murder as an extreme example:

- Through a mediator, the victim's family makes an agreement with the murderer. This agreement provides some but not full restitution given the value of life.
- The victim–offender agreement is presented to the court. If no further action is taken by the court, then the purpose of the restoration of victims is not fulfilled, just punishment is not served, and there is potentially under-deterrence of a serious violent offence. An additional prison sentence is required.

For offences receiving a sentence of imprisonment under current court processes, 100 per cent of the 'debt owed' by an offender is usually paid to the state in the form of time spent in prison—zero per cent is usually paid to the victim. Under the proposal, say 50 per cent of the debt might be paid to the victim through some form of restoration and 50 per cent to the state or community through prison time or community supervision (these fractions would vary depending on judicial decisions and the specifics of each case). From an offender’s perspective, the severity of sentencing might change little under the proposal, but a portion of the debt paid would be redirected towards the restoration of victims. From a broader community perspective, victim restoration is improved and there is a reduction in the resources consumed in imprisoning offenders.

A set of principles establishing a residual public interest will likely be based on the degree of harm relating to the offence. A range of other specific sentencing contexts will also need to be addressed, such as the existing role of indefinite sentencing where there is a high risk of further harm upon release from prison.

Eligibility

Applies only to those crimes with an identifiable victim

The proposal would apply to crimes where there is harm to an individual/s identifiable victim. The process would not apply, for example, to offences against public property, victimless crimes where there has been no harm, or crimes involving the risk of harm, such as certain traffic-related offences.
Applies to all types of offences

The proposal would apply to all types of offences where harm has been caused to an individual identifiable victim/s. This would include high-harm as well as low-harm offences:

When [Restorative Justice] conferences are conducted as they were in the experiments... there can be a high confidence of good results with violent crime, and somewhat less confidence with property crime. The evidence suggests that with serious offenders with long criminal records, the delivery of RJC also offers substantial cost-effectiveness. The evidence in the London experiments in particular suggests that banishing RJC to low-seriousness crimes is a wasted opportunity. If governments wish to fund Restorative Justice at all, this evidence suggests that the best return on investment will be with violent crimes, and also with offenders convicted after long prior histories of convictions. (Strang et al. 2013, p. 48)

The most recent evidence shows that: ... [Restorative Justice] is potentially more effective at reducing reoffending among violent offenders than among other offenders. (New Zealand Government 2016, p. 4)

The evidence suggests that RJC has a more significant impact in reducing recidivism for violent crimes than for property crimes:

The average effect of RJC (compared to [Conventional Justice]) on repeat offending across all three reported property crime experiments was nil, while the average effect of RJC across five experiments with violent crime was a modest but statistically significant reduction in the frequency of repeat offending. (Sherman et al. 2015, p. 528)

10.6 Potential impacts of a victim-focused system

Consultations and submissions to this inquiry were consistent in providing support for restorative justice practices. Restorative justice practices are seen as offering significant benefits:

The Age of Criminal Responsibility in Queensland information paper identifies restorative justice conferences as a particularly effective response in the youth justice system. These conferences allow the offender to accept responsibility for their actions and start to repair the harm caused, while allowing the victim to share their experience and contribute their views on the offender’s sentence. (QFCC sub. 36, p. 2)

Submissions considered that there were benefits in terms of reduced risks of reoffending:

The [Sycamore Tree Project] program and its themes of remorse, forgiveness, responsibility and restitution helps prisoners make a meaningful internal commitment to get off the cycle of offending. Prison officials spoke about prisoners gaining understanding of forgiveness and taking responsibility for their actions. (Prison Fellowship sub. 22, p. 5)

Restorative justice practices have significant potential to reduce the interactions between Aboriginal and Torres Strait Islander youth and the criminal justice system:

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42 The study conducted and measured outcomes from a program of 12 randomised trials over two decades in Australia and the United Kingdom. The program tested an identical method of restorative justice taught by the same trainers to police officers and others.
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. (QMHC sub. 38, p. 9)

For those victims and offenders for whom restorative justice processes are suited, evidence indicates improved victim satisfaction compared to normal criminal justice processes.43

Victims’ satisfaction with the handling of their cases is consistently higher for victims assigned to RJC than for victims whose cases were assigned to normal criminal justice processing. (Strang et al. 2013, p. 5)

Beyond restoration, there was also support for a greater role for restitution and making the victim whole (IPA sub. 11, p. 62).

It is important to note that the proposal is unlikely to be a panacea for imprisonment—the option is voluntary and may not be accessed by a large number of victims, particularly during its initial phase. It will also need to be carefully designed and implemented. Overall, however, the proposal is likely to improve outcomes, reduce imprisonment, reduce recidivism and increase community confidence.

**Benefits for the victim and the offender**

By prioritising the victim’s claim over the state’s claim and allowing victims to choose a sentencing pathway, benefits are likely to be achieved for victims and offenders compared to current outcomes:

- For individual victims, there is a significantly enhanced opportunity for restoration.
- For low-harm recidivists committing an offence against an identified victim, there is an increased likelihood of restoration and a lower likelihood that ‘punishment’—or making amends—will take the form of imprisonment.
- For medium- to high-harm offenders, there is an expanded opportunity for restoration and for having these sentences taken into account by the judiciary when determining sentencing. This could result in reduced sentence lengths and/or earlier probation periods, although the aggregate severity of the sentence may not change significantly.

**Effects supporting positive longer-term impacts**

Prioritising victim restoration over other purposes, including deterrence and offender rehabilitation, is likely to better achieve those purposes incidentally. This can be explained by the following reasons:

- Victim choice introduces a degree of voluntary and devolved decision-making into the sentencing process. Experimentation and adaptation is better supported, as victims and offenders seek mutually beneficial solutions.
- Information problems that impede judicial decision-making, such as understanding the harm to victims, are reduced or overcome, which should support a closer balancing of the severity of punishment with the harm done.

43 Studies included in the systematic review were from Australia (Canberra), the United States (Indianapolis), and the United Kingdom (seven studies).
• The proposal is one of a number of strategies canvassed in this report that reduces the interactions of low-harm offenders with the criminal justice system, which should reduce the risk of progression towards higher-harm crimes and imprisonment.

• For more serious crimes above the residual public interest test threshold, restorative justice processes have the potential to provide benefits to offenders that contribute to offender rehabilitation efforts.

• Prioritising victims may better support rehabilitation efforts. Effectively, by better addressing the harm of crime, more tolerance towards the rehabilitation of offenders is purchased:

  An arguable added benefit of the Japanese approach is that the emphasis on victim compensation and pardon reduces societal demands for revenge and retribution and thus facilitates efforts by law enforcement authorities to provide effective means for offender rehabilitation. In other words, as societal demands for punishment as retribution are reduced the authorities are then able to respond with greater leniency. (Haley 1991, p. 137)

10.7 The way forward

The proposed role of victims in sentencing could have a significant impact on the criminal justice system and the restoration of victims. The Commission will further consider the design of a victim-focused system and will consult widely with stakeholders on these design issues prior to developing recommendations for the final report.
Draft Recommendation 3

The Queensland Government should introduce victim-focused restitution and restoration into the sentencing process. This system should:

• give victims the option of engaging in a process of restitution and restoration with the offender prior to sentencing
• provide victims and offenders with a wide range of options for achieving restoration for harms inflicted, including financial and non-financial compensation
• reflect and enforce, through the sentencing process, agreements that are reached between the victim and offender
• provide mechanisms to ensure that courts consider any residual public interest in final sentencing
• allow normal court processes to proceed where victims choose not to pursue restitution or restoration or where victims and offenders cannot reach agreement
• include appropriate protections for victims and offenders.

Victim-focused restitution and restoration should be made available for any offence where a victim is identifiable.

Information request

The Commission is seeking information on the design of a victim restitution and restoration system, including:

• key design features such as:
  – the principles that should guide the residual public interest test
  – mechanisms to minimise the risk of unnecessary delays
  – any processes needed where offenders do not fulfil their agreed obligations
• whether restoration principles should be included as a sentencing purpose in the Penalties and Sentencing Act 1992
• how restitution and restoration may best meet the needs of Indigenous communities
• key risks, costs and benefits, including potential unintended consequences.
11.0 Increasing non-prison sentencing options
This chapter explores ways of improving the effectiveness of the suite of non-custodial sentencing options, so that they can more widely replace terms of imprisonment for some offenders. It also looks at appropriate ways to build community confidence in judicial sentencing through light-touch judicial accountability mechanisms.

**Key points**

- For many perpetrators of serious offences, lengthy sentences in high security prisons will be the appropriate sentence.
- However, for less serious offences, non-custodial sentences can be both more effective (by better achieving sentencing purposes) and more efficient (by achieving sentencing purposes at a lower cost).
- There are a range of impediments that restrict the efficient use of non-custodial sentences, and encourage greater use of imprisonment, including:
  - restrictions on how monetary penalties, community service, restitution and compensation can be used
  - a lack of flexibility on how community-based sentences and home detention can be imposed
  - insufficient support, including the use of technologies such as electronic monitoring, that would give the community greater confidence in community supervision
  - a lack of consideration of the full costs and benefits of the sentence, including the financial costs of imprisonment, by courts.
- Sentencing outcomes can be improved by:
  - removing unnecessary restrictions on the use of non-custodial sentences
  - supplementing non-custodial sentencing with technological solutions
  - ensuring that sufficient resourcing is made available to support community-based corrections, including through the reallocation of resources from prisons to community corrections.
- A strong evidence base on the effectiveness and efficiency of sentences in achieving sentencing purposes, and more rigorous pre-sentence screening of offenders would support better sentencing outcomes.
- Imprisonment in low security facilities is often less criminogenic than in high security prisons and is better suited to some offenders. Where prison sentences are necessary, courts should be able to impose custodial sentences served in low security facilities for suitable low risk offenders.
- Community confidence in sentencing is important for the proper functioning of the criminal justice system. However, responses to community concerns involving mandatory minimum sentencing and other restrictions on judicial independence can have unintended consequences and may result in increases in imprisonment that provide little, if any, benefit to the community.
- Generally, legislative restrictions on judicial discretion in sentencing should be avoided, and existing restrictions should be reviewed to ensure they are working as intended.
- Reporting by the Queensland Sentencing Advisory Council on how actual sentencing practice accords with community expectations and the evidence on what works best could enhance community confidence. Mechanisms to monitor the consistency of sentencing in the Magistrates Court and the introduction of victim-initiated appeals can also be considered.
11.1 Assessment of custodial and non-custodial penalties

A range of adult sentencing options are available to judges and magistrates under the Penalties and Sentences Act 1992 (Box 11.1). Several of these penalties may be combined into a single sentence, although there may be legislative restrictions in doing so.

Box 11.1 Existing sentencing options

Absolute release—release without a recorded conviction or any further penalty.

Good behaviour bonds—a promise of good behaviour for a set period, which may include a surety (guarantee or amount of money) and other conditions.

Restitution or compensation order—an order to pay for property taken or damaged, or compensate someone for an injury. This order can be added to another sentencing order.

Non-contact or banning order—a ban on contacting the victim of the offence or another person, or going to particular places for a set time. This order can be added to another sentencing order.

Fine—an order to pay a fine as punishment for the offence. The amount depends on the type of offence and the court hearing the case.

Community service order—an order to do unpaid community service for 40 to 240 hours (usually in one year), and comply with reporting and other conditions.

Graffiti removal order—an order of up to 40 hours to remove graffiti, usually within 12 months.

Probation—an order between six months and three years, allowing the offender to remain in the community and report regularly to a probation officer. The court may set other requirements, such as participating in programs and counselling.

Intensive correction order—a prison sentence of one year or less served in the community under intensive supervision. The offender reports to a supervisor regularly, attends rehabilitation programs and counselling, and performs community service.

Suspended sentence of imprisonment—if the offender is sentenced to up to five years in prison, the court may suspend all, or part, of the sentence; if the offender commits another offence punishable by imprisonment while on a suspended sentence, the offender must serve the original suspended prison period plus the sentence for the new offence.

Imprisonment—a sentence served in prison. If a court sentences an offender to prison for three years or less, and the offence is not a sexual or serious violent offence, a parole release date is set. For longer prison terms or for sexual or serious violent offences, the court may set a parole eligibility date with the parole board to consider whether parole should be granted at that time.

Source: QSAC 2018a.

Non-custodial penalties are already frequently applied. The predominant penalty imposed by courts is a fine, which represented 62 per cent of penalties imposed during the period 2005–06 to 2016–17. Other non-custodial penalties represented less than 10 per cent of penalties imposed, while imprisonment represented 13 per cent of penalties imposed. 44 Approximately 9,000 people are in Queensland prisons, compared to 21,000 in community corrections, which includes offenders on parole (ABS 2018c).

44 Calculated from Queensland Sentencing Advisory Council data (QSAC 2018b, 2018c).
The custodial and non-custodial penalties available to judges and magistrates are each effective in some ways and less so in others. To assess their effectiveness, the major categories of penalties—imprisonment, monetary penalties (fines, restitution and compensation) and community services (including graffiti removal orders), and community-based orders (probation and intensive correction orders)—are compared against the sentencing purposes in the *Penalties and Sentences Act 1992* and other criteria, such as cost and flexibility (Table 11.1).

**Table 11.1  Assessment of the effectiveness of penalties**

<table>
<thead>
<tr>
<th>Sentencing purpose/other criteria</th>
<th>Custodial Imprisonment</th>
<th>Non-custodial Monetary/Community service</th>
<th>Community-based orders</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Punishment and denunciation</strong></td>
<td>Regarded as the most severe punishment and clearest expression of denunciation</td>
<td>Penalties can be severe, though limited by the capacity of the offender</td>
<td>Penalties can be severe if tight conditions are able to be imposed</td>
</tr>
<tr>
<td><strong>Community protection</strong></td>
<td>Community is safe during the term of imprisonment</td>
<td>Offender usually has few, if any, restrictions on movement</td>
<td>Some geographic restrictions can be imposed</td>
</tr>
<tr>
<td><strong>Deterrence</strong></td>
<td>Limited effect on general and specific deterrence in many cases</td>
<td>Limited effect on general and specific deterrence in most cases</td>
<td>Limited effect on general and specific deterrence in most cases</td>
</tr>
<tr>
<td><strong>Rehabilitation</strong></td>
<td>Rehabilitation may be impacted by the prison environment. Adverse impacts on protective factors such as employment, housing and relationships</td>
<td>No rehabilitation usually provided. Employment, housing and relationships are more likely to be preserved</td>
<td>Treatment in social environment can be effective. Employment, housing and relationships are more likely to be preserved</td>
</tr>
<tr>
<td><strong>Cost</strong></td>
<td>High capital and operating costs of imprisonment. High post-sentence costs to the offender through lost employment, housing and relationships</td>
<td>No costs, or offset by monetary or service penalty. Lower post-sentence cost to the offender</td>
<td>Community supervision significantly less costly than imprisonment. Lower post-sentence cost to the offender</td>
</tr>
<tr>
<td><strong>Flexibility</strong></td>
<td>Imprisonment is normally in high security environment. Flexibility mainly in duration</td>
<td>Flexibility in size of fine and duration of community service, or mix of the two</td>
<td>Duration, supervision, treatments and conditions can all be varied</td>
</tr>
</tbody>
</table>

Imprisonment is a severe form of punishment and therefore a clear expression of community denunciation of an act. It is also the most effective way available to incapacitate an offender and prevent the offender from reoffending in the community. The threat of imprisonment deters crime, although increases in the certainty of apprehension and punishment produces a stronger deterrent effect (Victorian Sentencing Advisory Council &
Increasing non-prison sentencing options

Ritchie 2011). As discussed in Chapter 6, evidence indicates that increased use of imprisonment provides only a relatively small general deterrence effect, and, for lower harm offences at least, these benefits do not justify the additional costs. There is also limited evidence that imprisonment acts as a specific deterrent—that is, deters that offender from further criminal acts—and may have a criminogenic effect in some instances.45

Non-custodial penalties may be considered less severe, although that depends on the size of the monetary penalty, the duration of the community service and the duration and severity of the conditions and supervision imposed with a community-based order.

Prison terms are often not conducive to rehabilitation, particularly for short-term sentences. Prisoners on sentences under 12 months and those assessed as low risk do not have access to rehabilitation programs in Queensland prisons (Sofronoff 2016, p. 90).

Even short terms in prison can undermine factors that reduce the probability of someone reoffending—offenders can lose their jobs; their accommodation, education and health and psychological treatment can be disrupted; and relationships with family and friends can break down. Short-term imprisonment can also disrupt whatever treatment was being received in the community. The loss of these protective factors can seriously undermine the rehabilitation of the offender, and increase the likelihood of reoffending. A study of the prison-to-community transition experience of prisoners with severe mental illness and co-occurring substance use disorder found:

As adults, the impact of repeated short−term incarceration meant that participants experienced ongoing “structural violence” in terms of a cluster of poverty, unstable housing, unemployment, social isolation and stigma… which may have contributed to their ongoing drug use and associated risk behaviours. It is clear that the participants in this study experienced low levels of social capital prior to their involvement in the criminal justice system and that the impact of repeated short-term incarceration contributed to a depletion of any social capital that they were able to achieve in their brief periods of living in the community. (Denton, sub. 4, p. 18)

Generally, rehabilitation programs can be more effectively delivered in the community than in prison divorced from the realities of public life. An example gives insight into the limitations of the prison environment:

Southern Queensland Correctional Centre has a guide dog program, where some prisoners get to be the caretaker for a young dog, providing the initial training for these future assistance animals. This is a fantastic program that should be expanded, but the point is that these dogs have to leave the prisons on weekends since the environment in the prison is so superficial and under-stimulating, that they could never learn to be a proper guide dog while in there. For example, stopping in front of every door waiting for it to be unlocked; there is no traffic, a lack of colour and diversity, too much concrete and too little green spaces. The point is, that if we think that prisoners who spend years or even decades in such an environment are well prepared for a life in the wider community, then we are very much mistaken. (Erikson sub. 5, p. 4)

Imprisonment is costly for the community. A 12-month term in a prison costs the public around $107,000, while community supervision costs around $5,000 (PC 2018b). Non-custodial sentences can also be more flexible and include monetary penalties, community service, restrictions on movement, rehabilitative treatment and suspensions of penalties, among others. This flexibility can be directed to constructing a sentence that better fits the offence and the offender’s circumstances.

Overall assessment

A stakeholder submitted the view that:

*With respect to non-violent offenders, we question whether imprisonment is a proportionate or cost-effective response to the offending in most instances, and question whether stronger custodial penalties have a meaningful deterrent effect. Again, non-custodial sentences, including community service orders, are likely to be more appropriate, and far less costly to the taxpayer. Non-custodial sentences can be used in conjunction with fines and compensation orders to enhance deterrence (ATSILS sub. 35, p. 6).*

For many perpetrators of serious offences, lengthy sentences in high security prisons are the appropriate sentence. The community's safety is preserved through the incapacitation of these offenders, and the public has a strong expectation that anything less than a long prison sentence would not reflect just punishment. However, in many cases, custodial sentences are unlikely to provide a net benefit to the Queensland community (Chapter 6). For many less serious offences, where punishment and incapacitation are less important and rehabilitation is more likely to be beneficial, non-custodial sentences can be more effective (by better achieving the sentencing purposes) and/or more efficient (by achieving the sentencing purposes at a lower cost).

Assessing effective and efficient sentencing

There is a problem if prison sentences are being used when non-custodial sanctions are expected to be more effective and efficient than imprisonment. It may indicate:

- courts are not using the most effective and efficient sentences available to them
- restrictions on non-custodial sentencing options are limiting their use. These restrictions may include the range of non-custodial options available, legislative restrictions in their use, or legislative or other requirements that imprisonment be applied.

It is difficult to assess whether courts are imposing the most effective and efficient sentence in individual cases, although, as discussed in Chapter 9, the proportion of non-custodial penalties to all penalties has declined over the last decade—with a commensurate increase in custodial penalties.

One impediment to the court imposing effective and efficient sentencing is if the sentencing decision has not considered all the relevant costs and benefits.  

Section 9 (2) of the Penalties and Sentencing Act 1992 provides a list of matters that the court must have regard to in sentencing an offender. In neither that section nor s. 9(1) (the sentencing purposes) is there a requirement for the court to consider costs of the sentence. While there is a provision that a sentence of imprisonment should only be used as a last resort, it would be beneficial if the court also considered the financial cost of the sentence to the community. This would be most easily achieved by adding a requirement that the financial cost to the community be considered in s. 9(2).

Several states in the United States have been considering including the costs of imprisonment as a consideration when sentencing. The state of Missouri provides this financial data to the judge, although it is not required to be a consideration (Eisen 2013).

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46 Including personal and social factors, as well as financial and economic.
47 Although this does not apply if the offence involves violence.
11.2 Extending non-custodial sentencing options

The victim-focused system outlined in Chapter 10 will help make sentencing outcomes more effective and efficient. Restitution to victims and restorative justice processes can provide effective substitutes to imprisonment, at least for low-harm crimes. For many higher-harm crimes, restitution and restorative justice outcomes can reduce, albeit not replace, the need for court sentencing.

However, restitution and restorative justice approaches are unlikely to cover all cases, and even where it is used, there will often be a significant public interest component that will require sentencing. The judiciary will continue to play a primary role in sentencing, and the effectiveness and efficiency of sentencing will be determined by the decisions judges and magistrates make.

The wider the array of sentencing options and the more flexibility available to judges and magistrates, the more they will be able to set the most effective and efficient sentence in individual cases. Further, if judges and magistrates are provided with more non-custodial sentencing options in which they have confidence, they are more likely to impose those sentences as substitutes for imprisonment.

Other states have recently reconsidered their non-custodial penalties and examined the possibility of providing their courts with a broader range of options. For example, in 2015 South Australia undertook a public consultation process to consider alternative sentences to imprisonment (Box 11.2).

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**Box 11.2 South Australian Review of Sentencing Options**

In 2015, the South Australian Attorney-General's Department released a discussion paper *Better Sentencing Options: Creating the Best Outcomes for Our Community*, as part of a broader initiative of criminal justice reform.

The discussion paper presented options for the community's consideration including:

- intensive correction orders
- home detention
- forfeiture and restitution
- restorative justice.

Through the discussion paper, the South Australian Government asked the community to consider what purpose is served from imprisonment and whether serving a sentence in the community can provide better long-term outcomes.

Following that consultative process, legislation was passed to:

- require that the primary consideration for a court in sentencing be the protection of the safety of the community, together with a series of secondary considerations
- allow the court to impose community-based orders and intensive correction orders, including providing greater flexibility in the use of home detention.
Monetary penalties, community service, restitution and compensation

There is potential for greater use of non-custodial sentences that directly penalise offenders through monetary loss or the provision of community services (for example, the offender’s labour). Both options currently exist through the use of fines and community service, but can be difficult to impose. For example, stakeholders during consultations advised that offenders often cannot afford to pay fines, particularly if they are unemployed or already have a large fine liability, and imposition of community service penalties is often limited by a shortage of sufficient suitable projects.

An option is to impose a monetary penalty by confiscating property. The Criminal Proceeds Confiscation Act 2002 already allows the confiscation of property which is:

- derived directly or indirectly from criminal activity
- used in committing an offence
- belonging to serious drug offenders
- belonging to individuals who are unable to explain how they lawfully acquired their wealth.

These powers could be extended to a broader range of offences, property and circumstances, rather than resort to imprisonment. For example, it could be a more effective way to deal with particular offences such as financial fraud (SA Attorney-General’s Department 2015, p. 14).

Courts should be provided with the capability to use this category of penalties more effectively and flexibly. For example, where appropriate fines and forfeiture are not possibilities because of the limited financial means of the offender and the impact on dependants, service to the community or the victim should be substituted. Where public work projects are not available, partnerships with not-for-profit organisations should be able to be considered.

These penalties may usefully complement the recommendations of Chapter 10 for more victim-focused approaches.

These penalties have the elements of both punishment and restitution. If the purposes of the sentence can be achieved by some combination of payment of fines, confiscation of property or provision of service, courts should not be impeded in applying them because of inflexibilities imposed by legislation or other impediments.

Community-based sentences

There is potential to make community-based sentences more effective sentencing options especially for low level crime that would normally attract only short sentences. Three avenues could be pursued to make them more effective sentencing options, through more flexibility, use of technology to enhance community safety, and reallocation of resources.

Increasing flexibility

Sentences should not only fit the offence but also the circumstances of the offender. Offenders are diverse, with different backgrounds, histories, aptitudes and attitudes, and come from and will be returning to different community environments. When sentencing, judges and magistrates not only need to be conscious of the need for equality before the law and consistency of sentencing, but that the effect of a sentence on one offender may be very different for another.

Imprisonment in high security facilities offers little flexibility—they are all very similar in the environment they provide and the daily routine they require of prisoners. Community-based sentences have the potential to offer much more flexibility to allow sentences to better fit the rehabilitation requirements of the offender.
However, lack of flexibility in community-based sentencing may be resulting in unnecessary prison sentences. The *Queensland Parole System Review* suggested that:

*It is a difficult task for sentencing judges to impose a sentence that is fair and appropriate for the offender, the victim and the public and within the established sentencing range. Courts should have the greatest possible range of sentencing options available to carry out this task. It is possible that the reason so many offenders are sentenced to imprisonment with court ordered parole is due to the lack of flexibility available to the Court when sentencing.*

(Sofronoff 2016, p. 96)

Broadening the range of non-custodial sentencing options will assist in augmenting this 'greatest possible range of sentencing options', but this needs to be supplemented with sentencing flexibility and a stronger evidence base regarding their effectiveness.

There are currently rigidities in the way sentences can be made that restrict the ability of the judiciary to impose efficient sentences. For example, probation orders cannot be less than six months or more than three years and cannot be combined with a prison term of longer than one year (s. 92 of the *Penalties and Sentencing Act 1992*).

The Victorian Community Correction Order offers a possible model on which a more flexible sentencing instrument could be based (Box 11.3).

**Box 11.3 Victorian Community Correction Order**

The Victorian Community Correction Order (CCO) provides a flexible sentencing option that the offender serves in the community. It allows for the full consideration of sentencing purposes, including retribution and rehabilitation, and therefore can be a more effective alternative to imprisonment. A court can impose a community correction order on its own or in addition to imprisonment or a fine, and can be applied for up to five years (for multiple offences). At least one condition must be applied, including:

- complete unpaid community work of up to a total of 600 hours
- live (or not live) at a specified address
- abide by a curfew, remaining at a specified place for between 2 and 12 hours each day
- stay away from nominated places or areas
- not enter, remain within or consume alcohol in licensed premises (such as a hotel, club or restaurant)
- abstain from contact or association with particular people (for example, co-offenders)
- undertake medical treatment or other rehabilitation
- be supervised, monitored and managed by a corrections worker
- be monitored and reviewed by the court to ensure compliance with the order
- pay a bond—a sum of money that may be given up wholly or partly if the offender fails to comply with any condition imposed (Victorian Sentencing Advisory Council 2018a).

A court must not impose a custodial sentence if the purpose or purposes of the sentence can be achieved by a community correction order combined with certain conditions. Certain offences cannot receive a CCO including murder, causing serious injury, rape, drug trafficking and aggravated home invasion.
The Queensland Attorney-General has requested the Queensland Sentencing Advisory Council (QSAC) to review community-based sentencing orders and parole options, and see if there are any laws that create inconsistency or constrain sentencing options available to a court. The due date for the final report is 31 July 2019.

The QSAC review presents an opportunity to consider how the flexibility of Queensland’s community-based orders can be enhanced, and the Commission recommends it consider the desirability of the Victorian CCO as a model for a more flexible community-based sentencing option.

**Better use of technology**

Non-custodial sentences may never be a suitable option for a proportion of the prison population. However, the use of technology such as electronic monitoring can reduce the community safety risk to a level that community supervision (sentences involving probation and parole) may become a more viable option for those offenders who would present a lower risk to the community.

Queensland already uses electronic monitoring (on sexual offenders and parolees and, most recently, for some on bail), as do most other Australian states. Some overseas jurisdictions use electronic monitoring to a much greater degree than Australia—in 2016, the United States used electronic monitoring for 125,000 offenders and defendants at any one time; England and Wales, 13,210; and New Zealand, 4,021. This compares to Australia where around 1,000 offenders and defendants used electronic monitoring (Martinovic 2017).

Electronic monitoring can take the form of a device (usually GPS) attached to the offender’s ankle or wrist to allow the offender’s movements in the community to be monitored to help ensure that locational restrictions, such as proximity to schools, are observed.

**Home detention**

In other jurisdictions, electronic monitoring is often used with home detention in which the offender is restricted to their home, being able to leave only with the approval of the supervising officer to go to prescribed locations such as those for work, education and rehabilitation. In the South Australian home detention scheme, other conditions can apply such as the banning of drugs, alcohol, gambling and firearms. Supervision involves visits and telephone calls by their community corrections officer at any time and requires attendance at a community corrections centre. Electronic monitoring provides real time data and can detect offenders who attempt to remove their ankle bracelet, allowing for an immediate response (SA Department for Correctional Services 2018). To support home detention, South Australia has the Home Detention Integrated Support Services program which aims to provide individually tailored rehabilitation and reintegration support to home detainees.

The potential of electronic monitoring to be used in conjunction with community supervision and rehabilitation is illustrated in a recent New South Wales study (Williams & Weatherburn 2018), which found that home detention with electronic monitoring and prescribed rehabilitation for offenders of non-violent and non-serious offences reduced the probability of reoffending within 24 months by 16 percentage points compared to serving a prison sentence. This reduction persisted for five years. There were cost savings of nearly $30,000 for each eligible prisoner from reduced supervision and future court and prison costs.

Other studies support the potential for electronic monitoring to reduce reoffending, at least in some situations. A systematic review of the literature (Belur et al. 2017) found that electronic monitoring can produce positive effects for certain offenders (such as sex offenders), at certain points in the criminal justice process (post trial as an alternative to prison), and in combination with other conditions (for example, geographic) and therapeutic components.

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48 As at 4 October 2018, there were 121 offenders and 224 parolees subject to electronic monitoring conditions under the Dangerous Prisoner (Sexual Offenders) Act 2003 and Corrective Services Act 2006 respectively (Queensland Government sub. 43, p. 73).
Beyond electronic location monitoring

Technological advancements are making electronic monitoring more reliable and flexible as an option. For example, if a condition of probation is a limitation on alcohol consumption, an ankle bracelet can be fitted to detect alcohol consumption and transmit measurements to a control centre. The ubiquity of mobile phones means that offenders are always contactable.

Professors Bagaric and Hunter of Swinburne University, and Gabrielle Wolf of Deakin suggest that concrete prison walls should be replaced by the real-time monitoring of offenders, and by technology that can remotely immobilise offenders who are in the process of misbehaving. They argue technological and surveillance devices can achieve all of the appropriate objectives of imprisonment, including the imposition of proportionate punishment and community protection. This could be achieved at a much lower cost than imprisonment. Implemented properly, they believe technological incarceration could result in the closure of all but a small fraction of existing prisons (Bagaric et al. 2017).

Although electronic monitoring should not be regarded as a panacea for the problems of prison overcrowding, opportunities exist for the greater use of technology to support a shift from prison to community management of the offender population.

Reallocation resources to better support community-based sentencing

While 70 per cent of the offenders managed by Queensland Corrective Services (QCS) are under some form of community supervision, community corrections receives only 10 per cent of total expenditure, with the remainder being spent on prisons. Expenditure on community supervision in Queensland is the lowest in Australia—in 2016–17, Queensland spent $12.76 per day for each offender on community supervision, compared to $25.58 in New South Wales, $30.87 in Victoria and $41.50 in Western Australia. Queensland also has the highest ratio of offenders to community corrections staff in Australia (PC 2018b).

The judiciary may not have confidence in community-based sentencing if there is a resourcing shortfall in their services. As suggested by the Aboriginal and Torres Strait Islander Legal Service:

Further, courts can only impose meaningful community-based conditions where: 1) appropriately funded support service providers actually exist in the locality in question; and 2) the court is actually aware of their existence (and e.g. of any qualifying criteria). (ATSILS sub. 35, p. 10)

To support the increasing substitution of community-based sentences for prison sentences, resources will need to be allocated from the prison system to the community corrections system.

11.3 Increased use of low security facilities

Low security facilities usually do not have security fences; they allow much greater movement of prisoners; and they generally give prisoners greater responsibility to manage their lives, which prepares them better for life in the community. Prisoners in Queensland’s low security facilities spend nearly 16 hours per day out of their cells, compared to less than 10 hours in high security prisons (PC 2018b). Studies suggest that incarceration in lower security custodial facilities decreases recidivism compared to high security (Sydes et al. 2018, pp. 18–19).

Eight per cent of prisoners in Queensland are in low security prisons. This compares to the national average of 21 per cent (PC 2018b). Low security prisons are nearly 20 per cent under capacity, with around 150 places

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49 One experimental study randomly allocated prisoners to different prison security levels. Prisoners assigned to the highest level security had a return to prison rate 31 per cent higher than those assigned to lower level security prisons (Gaes, G & Scott, D.C. "Unintended consequences: experimental evidence for the criminogenic effect of prison security level placement on post-release recidivism" in Journal of Experimental Criminology, vol. 5, no. 2, cited in Sydes et al. 2018, p. 18.)
available. At the same time, high security prisons in Queensland are 30 per cent over capacity, with nearly 2,000 prisoners over the built capacity of the prisons (Queensland Government sub. 43, pp. 66–67).

There seems to be an opportunity to use low security facilities more extensively as a custodial option. This has been recognised by QCS, which recently reviewed the placement criteria for low security custody for women prisoners. This has resulted in an increased utilisation of low security custody for women prisoners (Queensland Government sub. 43, p. 69).

Currently, judges and magistrates who impose a sentence of imprisonment cannot specify the prison, including the security level, to which the prisoner is assigned. Assignment of prisoners to correctional facilities is the responsibility of QCS, who takes into account such factors as capacity, proximity to the offender’s home, the needs of the prisoner and the risk assessment of the prisoner. Overcrowding of prisons is likely to exacerbate the need for QCS to be able to manage their prison population.

From the perspective of the judge deciding on a sentence, there is a significant difference in the freedoms accorded to prisoners between a sentence to be served in the community and a term of imprisonment in a high security facility.

Allowing a sentence of imprisonment to specify that it be served in a low security facility may provide another sentencing option for judges and magistrates. While this would still constitute a custodial sentence, it could be considered a more appropriate one for offenders who require tight restrictions on their freedom of movement, but without the onerous controls over normal daily routines that high security imprisonment requires.

Risks and costs would be associated with a new sentencing option of low security imprisonment:

- It would limit the operational flexibility of correctional authorities to allocate prisoners across facilities. While Queensland’s low security facilities currently has capacity, there are only around 150 free spaces. In the absence of new infrastructure, these spaces could be filled very quickly, especially if courts choose to use low security imprisonment as an option for offenders who would not otherwise have been given a prison term.

- It may limit the ability of correctional facilities to use accommodation in low security facilities as an incentive for prisoners to cooperate or work towards rehabilitation, or as a transition stage for offenders before they exit the prison system.

- The risk associated with an offender may be better assessed after some time in imprisonment—the judicial officer may not be well placed to make this assessment at the time of sentence, resulting in an overall heightened risk for the corrections system. The issue of pre-sentence screening is discussed further below.

Notwithstanding these risks, imprisonment in a low security facility seems an underutilised option that may better satisfy the sentencing purposes for some offenders.

### 11.4 Net widening

The introduction of new sentencing options risks net widening. This occurs when courts impose new sentencing options on offenders who previously would not have received so severe a sentence. For example, the introduction of home detention may result in its imposition not only on offenders who would otherwise have received imprisonment, but also on offenders who would have otherwise received a less stringent community-based sentence.

One view on net widening is that it can produce a positive result if offenders receive a more appropriate sentence. Using the above example, a judicial officer may, in the absence of home detention, have imposed the less stringent community-based sentence simply because a term of imprisonment was considered much too severe—a sentence somewhere between the two produces the appropriate sentencing balance.

A contrary view is that net widening can produce a negative result. A new sentencing option intended to reduce imprisonment can result not only in offenders receiving harsher sentences than they would have otherwise
received, but can also create another avenue to imprisonment if the strict conditions of the new sentencing option are breached. Using the earlier example, courts may impose home detention on a large pool of offenders, many of whom would have otherwise received a less stringent community-based sentence. A significant proportion of that pool of offenders then breach the strict conditions of home detention and find themselves imprisoned. The result is imprisonment for many offenders who may have otherwise avoided it.

It would be difficult to dispense with imprisonment as an ultimate sanction if the offender continually breaches the conditions of community-based sentences or repeatedly reoffends. At the same time, it may be considered perverse if the end result of a new non-custodial sentencing option intended to reduce imprisonment is to imprison offenders who would otherwise have successfully completed a less stringent sentence.

The Commission will give greater consideration to the issue of net widening in the final report and is seeking comment from stakeholders.

### 11.5 Better information to support sentencing

While providing more sentencing options and greater sentencing flexibility can make the sentencing task more effective and efficient, it can also make it more complex. To maximise the opportunities while mitigating the risks, sentencing can be supported with a stronger evidence base to help guide the judiciary. This is sometimes referred to as evidence-based sentencing.

Evidence-based sentencing refers to:

> judges using information about offender risk, needs and responsivity to inform the most appropriate sentence for a convicted offender. This information, provided to judges prior to sentencing, improves judicial decision-making by identifying sentences and treatments that are most effective and cost efficient in reducing an offender’s future risk to the community.  

(Kleiman 2012, p. 299)

A more evidence-based approach can potentially:

- balance the sentencing purposes of incapacitation, rehabilitation and deterrence when crafting a sentence to maximise the community’s safety in the long term
- reassure the community, as well as the victim, that the sentence is well-considered and based on the best information
- reassure the offender that the sentence is not arbitrary, and takes into account their rehabilitation needs if that is consistent with the welfare of the community.

The evidence base available for the judicial officer when sentencing can take two forms:

- evidence on the effectiveness and efficiency of different sentences in achieving the sentencing purposes
- information regarding the relevant circumstance of the offender.

**Evidence on sentencing**

In many jurisdictions specialist expert bodies are responsible for determining the effectiveness of sentencing options in achieving the sentencing purposes. The New South Wales Bureau of Crime Statistics and Research and the Victorian Sentencing Advisory Council (VSAC) have roles in improving the evidence base of sentencing, having produced a number of studies or reviews on the effectiveness of different sentences. For example, they have produced many papers examining the effect of prison and non-prison sentences on achieving the sentencing purpose of general and specific deterrence. This evidence can then be used by courts when crafting a sentencing to achieve certain sentencing purposes more effectively.
Although research has the potential to improve sentencing, it is less clear how such research affects sentencing in practice. For example, VSAC research shows that while increases in the severity of punishment have no corresponding increased general deterrent effect on offending, judges and magistrates most often prioritised general deterrence as the most important purpose for the sentences they imposed (Victorian Sentencing Advisory Council & Ritchie 2011; Victorian Sentencing Advisory Council 2018b).

In Queensland, QSAC provides independent research and advice, seeks public views and promotes community understanding of sentencing matters. The Crime Statistics and Research Unit (CSRU) has a function to build an evidence base to support decision-making and policy development for government. QSAC and CSRU also have roles in informing the public and the judiciary of the effectiveness and efficiency of sentencing options. A strong evidence base underpins effective and efficient sentencing and decision-making in the criminal justice system more broadly. Chapter 16 discusses the role of research, evaluation and modelling to improve the evidence on which decisions are based.

Pre-sentence screening

The pre-sentencing stage is an opportunity for all relevant information to be made available to help ensure that the sentence imposed is effective, efficient and compatible with an appropriate treatment plan for the offender. Victoria has a process in which the court receives more comprehensive information on the offender and the services available before imposing a community corrections order (Box 11.4).

The prosecution and defence counsel have important roles in providing the judicial officer with information on the personal details of the offender, including details about the offender’s physical and mental health, and to advise on the desirable sentence. Judges can also seek further information in the form of pre-sentence reports, which can provide information on the social background of the offender. A pre-sentence report may also be requested from QCS, which may include information on the offender’s criminal and traffic history (Corrective Services Act 2006, s. 344).

**Box 11.4 Victorian pre-sentence reports**

In Victoria, the court needs to obtain a pre-sentence report from Corrections Victoria before imposing a community corrections order. This pre-sentence report can include information on:

- the offender’s age, social, medical and/or psychiatric history and any special needs
- the offender’s level of education and employment history
- the offender’s financial circumstances, including if they can afford to pay a bond
- the offender’s drug or alcohol use
- the circumstances surrounding any other offences on the offender’s record
- the services available that may help to reduce the risk of the offender offending again, including any courses, treatments or programs that may assist
- whether the offender is able to do any unpaid work
- how long any intensive correction period should last
- any other information that is relevant.

It could also be possible to perform the health and psychological tests usually conducted on an offender’s reception into a prison at the pre-sentence stage so that the judicial officer has all the relevant information to help ensure the sentence fits the offence and the offender’s circumstances.
Dr Grazia Catalano submitted that there are advantages for the criminal justice process of early screening and identification of persons with intellectual and cognitive impairment, and that it can lead to diversion from prison to more appropriate alternatives for some offenders (Catalano sub. 25, p. 11).

A process where relevant information is assembled and the broad parameters of the most therapeutic treatment approach is considered at sentencing would help ensure that the sentence is consistent with the most appropriate post-sentence treatment of the offender.

A risk is that the requirement for pre-sentence reports and testing can lead to court delays. Victorian pre-sentence reports can usually be prepared on the same day they are ordered (Sofronoff 2016, p. 99), although if further tests are required to be conducted, this could further delay proceedings. If necessary to reduce undesirable delays, this pre-sentence assessment of offenders could prioritise offenders facing prison sentences.

11.6 Judicial accountability

The independence of the judiciary is both a fundamental component of the criminal justice system and a key element of the doctrine of the separation of powers that is a feature of our system of democratic government. Judicial discretion also responds to the more practical issue that legislation cannot be drafted to properly reflect every circumstance of an offence and the offender—the judiciary is required to interpret the legislation and apply it to specific cases.

However, judicial discretion in sentencing can lead to community concerns about how this discretion is being applied and whether courts are imposing appropriate sentences. Parliaments can respond to these community concerns by passing legislation that gives more explicit direction to courts in the sentences they impose. Sometimes this involves restricting the courts’ discretion in bringing down sentences.

Mandatory minimum sentencing

In Queensland, there are mandatory minimum prison sentences for murder, repeat serious child sex offences and certain offences associated with serious organised crime. There are also mandatory non-parole periods for a range of offences including serious violent offences. During consultations, stakeholders told the Commission that there are many other legislative provisions that have the effect of requiring courts to impose terms of imprisonment.\(^\text{50}\)

Such restrictions limit the capacity of the court to impose the sentence that, in the court’s view based on the individual circumstances of the case and the offender, is the most appropriate. Many submissions to the inquiry were critical of mandatory sentencing\(^\text{51}\), with the Bar Association of Queensland illustrating the problems that can arise in relation to the offence of trafficking in illicit drugs:

*This offence can be committed in an extraordinarily wide range of circumstances—from truly cynical operations involving millions of dollars, to the desperate few efforts of hopeless addicts attempting to support a habit over which they have no control. Many of the people serving sentences for drug trafficking were involved in selling to support their own addiction. While judges exercise their sentencing discretion taking into account the individual circumstances of the offender, the laws make it very difficult to avoid imposing large sentences which are of little or no social benefit. The illusion that the trade in illicit drugs can be stamped out by heavy sentences results in a large prison population of people who are, themselves, victims. (Bar Association sub. 42, p. 4)*

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\(^{50}\) For example, ATSILS sub. 35, p. 6.

\(^{51}\) For example, Balance Justice sub. 1; IPA sub. 11; PWC sub. 13; ATSILS sub. 35; Amnesty International sub. 37; Sisters Inside sub 39; Bar Association sub 42.
Increasing non-prison sentencing options

Balanced Justice (sub. 1, p. 16) summarised many of the arguments expressed, when it suggested that mandatory sentencing can:

- be harsh and unfair and does not reduce crime
- disproportionately affect Aboriginal and Torres Islander and other marginalised groups
- fail to consider an offender’s circumstances
- lead to harsh and unfair sentences
- shift discretion from the courts to police and prosecutors.

While mandatory sentencing can be a response to perceived leniency by the judiciary, often it is a reaction to exceptional cases, rather than being a problem with judicial sentencing in general (IPA sub. 11). Research in other jurisdictions suggest that while respondents tend to note a general dissatisfaction with sentencing outcomes, when confronted with relevant information about sentencing, they tend to suggest sentences that are on par with or more lenient than the sentence imposed by the judge (Bartels et al. 2018, p. 279).

Legislative mandatory sentencing can result in unintended consequences, and reduces the ability of judges and magistrates to impose sentences that align with the sentencing purposes. Generally, while Parliament has the role of setting the legislative framework for sentencing—through, for example, setting the sentencing purposes—the evidence suggests that the judiciary is best placed to impose sentences in individual cases based on legal principles and the evidence of the effectiveness of sentences.

Legislative provisions that have the effect of requiring a term of imprisonment risk inefficient sentencing and other unintended consequences. As a general rule, these should be avoided, and there would be benefit in reviewing existing provisions to ensure they are having the effect that was intended.

Abolition of short prison sentences

Discussions with stakeholders indicated a dissatisfaction with the value of short prison terms. As discussed elsewhere, short terms do not provide an opportunity for rehabilitation, while being destructive of protective factors, such as family relationships, employment and accommodation, that help reduce recidivism.

One approach is to remove the option of short sentences of imprisonment. Western Australia has adopted the approach of not allowing terms of imprisonment of less than six months, except in certain circumstances. There is some debate as to the effect of this provision, with some suggesting that it has resulted in sentence creep, while others have disputed this (Australian Law Reform Commission 2017, p. 88).

While such an approach has its attractions, it has similarities to mandatory minimum sentencing in that it disallows courts from imposing what could be the most effective and efficient sentence in a particular case. An approach in which courts have a wider array of sentencing non-custodial options, with the flexibility for their adoption and the evidence base on which to base sentencing decisions is likely to deliver the best outcomes. If the evidence does not exist for short sentences, this evidence-based approach should result in a reduction of short term imprisonment sentences over time, without the need for outright abolition.

Building public confidence through accountability

While the judiciary should be provided with the discretion they need to decide the appropriate sentence in any individual case, it is important for community confidence that sentencing is evidence-based and broadly consistent with community norms. If discretion is to be provided to the judiciary, it should be coupled with an appropriate degree of accountability.

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52 A view supported in other submissions, including PWC sub. 13, p. 39.
53 Sentencing Act 1995 (WA), section 86.
Alignment with community expectations

To a large extent, there is already a large degree of self-regulation by the judiciary that helps ensure the courts' sentences accord with legal principles, community values, and a strong evidence base that the sentences being imposed are achieving their purposes.

This is recognised by the courts, including the High Court:

> A judge's sentence and reasons are usually exposed to public scrutiny through publication or media reporting. Public responses to sentencing, although not entitled to influence any particular case, have a legitimate impact on the democratic legislative process. Judges are aware that, if they consistently impose sentences that are too lenient or too severe, they risk undermining public confidence in the administration of justice and invite legislative interference in the exercise of judicial discretion. For the sake of criminal justice generally, judges attempt to impose sentences that accord with legitimate community expectations. (Cited in Findlay et al. 2014, p. 272).

What constitutes 'community expectations' can be contentious, but the Commission agrees with the view that it should reflect the views of members of the public who are informed of the facts of a case to a similar extent to the judge, rather than public opinion based on media reports.

QSAC can play a valuable role in informing the public and the courts of how actual sentencing aligns with community expectations and with the evidence base. While QSAC already does this to a certain extent through such programs as ‘Judge for Yourself’, this function could be expanded to provide more rigorous analysis, as is done by the Victorian and Tasmanian sentencing advisory councils.

Sentencing consistency

During consultations, some stakeholders raised the issue of consistency of sentencing, particularly in the Magistrates Court. Consistency in applying the law is a fundamental legal principle and courts already seek to avoid inconsistencies in sentencing by referring to precedent in similar cases.

Inconsistency can reduce the community’s confidence in the criminal justice process and also suggests that some sentences are not optimal. However, consistency in sentencing does not require the same penalty for the same offence—since there is wide diversity in the circumstances of offences and offenders (for example, repeat offenders), an efficient system would be expected to exhibit diversity in the sentences that are brought down.

While the appeal process is intended to provide a mechanism to review sentences, it can be impractical to access for many defendants. Other mechanisms to reduce inconsistency, such as the use of mandatory sentencing and strict sentencing guidelines, can reduce judicial discretion. Providing the judiciary with better information on precedents and the evidence base for sentences, as discussed, are softer-touch approaches.
An initial step is to monitor sentencing consistency to support better sentencing practice and to inform the public of the performance of the court. Mechanisms to provide this monitoring in a way that would not infringe the courts’ independence include:

- self-monitoring by the courts, possibly using a process of periodic peer review of selected cases
- ongoing or periodic external review, possibly by a body like QSAC or a university, using broader statistical techniques to measure consistency, perhaps with interjurisdictional comparisons.

The Commission seeks stakeholders’ views on the consistency of sentencing and the most appropriate way for consistency to be monitored in the Magistrates Court.

**Victim-initiated appeals**

A more victim-focused system would assist in reassuring the public that the criminal justice system is being responsive to those most directly affected by criminal acts (Chapter 10).

Even so, where the process is not used or not successful, the victim may not be satisfied with the sentence imposed by the court.

One stakeholder suggested victims of crime be given the right to instruct the Director of Public Prosecutions (DPP) to seek leave to appeal against a sentence handed down by a District or Supreme Court (IPA sub. 11). Currently only the defendant and the state can appeal the sentence given by a court in criminal cases.

The main features of the proposal include:

- The victim would not appeal on his or her own behalf. Instead the victim would have the right to direct the DPP to appeal the sentence.
- The victim could make an appeal for relatively serious offences. In homicides, the right to seek appeal would reside with the next of kin.
- The grounds of appeal would be the same as those ordinarily brought by the DPP; that is, the sentence is manifestly inadequate and some substantial wrong has occurred in fixing the sentence.
- The office of the DPP would make itself available to consult with the victim and provide their advice on the sentence imposed.
- If the victim directs the DPP to seek leave to appeal, the application would be drafted by the office of the DPP and public prosecutors would appear at the hearing. The victim would not have separate representation.
- The office of the DPP would bear the costs of the appeal.

The proposal could strengthen both the public’s confidence in the judiciary and the position of the victim in the criminal justice process. However, as there are no direct costs to the victim, a primary challenge of this proposal would be to avoid inefficient or frivolous appeals.

This form of victim appeal has not been introduced elsewhere, although variations have been applied by South Australia, Germany and India (IPA sub. 11). South Australia provides victims with the right to request that the DPP make such an application. This right does not trigger an appeal, but does commit the DPP to consulting in regards to the request (IPA sub. 11).

The Commission seeks stakeholders’ views on this proposal.
Draft Recommendation 4

The Queensland Government should reform sentencing legislation to:

- make sentences involving home detention available to courts
- allow courts to impose custodial sentences in low security correctional facilities
- remove restrictions on the use of monetary penalties, community service and community-based orders, or the combination of these orders with other sentences.

To encourage the appropriate use of non-custodial sentencing, the Queensland Government should:

- establish a mechanism to allocate resources to community corrections to support changing court sentencing practices
- amend section 9(2) of the Penalties and Sentences Act 1992 to include a consideration of the costs of sentencing options, including the financial costs imposed on the community
- review legislated restrictions on judicial discretion to check if they are serving their intended purpose.

To ensure sentencing options support community safety and rehabilitation, the Queensland Government should introduce pre-sentence assessment of offenders who may be facing prison terms.

Draft Recommendation 5

To strengthen community confidence in sentencing, the Queensland Government should:

- expand the role of the Queensland Sentencing Advisory Council in producing and communicating an evidence base for sentencing and assessing sentencing in Queensland against this evidence
- introduce judicial self-monitoring, independent external review or other appropriate mechanisms to improve the consistency of sentencing outcomes for lower level offences where appeals mechanisms are infrequently used.

Information request

The Commission is seeking further information on:

- the extent to which the proposed changes to sentencing would result in 'net widening', whether this would be desirable, and, if not, ways that it can be managed
- the consistency of sentencing outcomes and appropriate ways for sentencing consistency to be monitored in the Magistrates Court
- whether victims of crimes should be given the right to instruct the Director of Public Prosecutions to seek leave to appeal against a sentence handed down by a District or Supreme Court.
Reducing the remand population
This chapter discusses factors that lead to people being remanded in prison, and ways of reducing the growth in remand numbers.

**Key points**

- Remand in custody is the holding of an individual, usually in prison, prior to trial and sentencing. Remand is often justified to ensure the individual attends court or does not interfere with witnesses and the victim, and to protect the community from further offences.

- Remand in custody can present problems, as it:
  - incarcerates someone who, until they are convicted, is presumed innocent
  - makes it more difficult for the defendant to prepare their defence
  - imposes high personal and resource costs on the defendant
  - can add to an overcrowded prison population
  - limits the opportunity to provide the remandee with rehabilitation services
  - makes preparing the defendant's re-entry into the community more difficult.

- Nearly five times as many people are in Queensland prisons on remand as there were twenty years ago. The proportion of the prisoner population on remand has also been growing, from under 10 per cent in the 1980s to 30 per cent at present.

- The key reasons behind the growing proportion of prisoners on remand are likely related to policy and decision-making pressures, and court workloads leading to longer periods on remand.

- Opportunities to reduce remand levels exist through:
  - developing guiding principles and a supporting assessment tool to help ensure the ‘right’ people are on remand
  - providing alternative non-custodial options to remand in custody
  - increasing the availability of bail support services, including alternative accommodation options, to improve the effectiveness of and confidence in non-remand options
  - working with the courts to reduce court delays and increase the time for consideration of bail applications.
12.1 Issues with remand in custody

The decision to grant bail or remand in custody is one of the most important decisions in the criminal justice process. As the decision takes place before conviction, a presumption of innocence exists. Yet if the decision is made to remand a defendant in custody, it results in imprisoning someone, possibly for months, who may later be found not guilty, or guilty but given a non-custodial or shorter prison sentence.

The bail process is described in Box 12.1.

The benefits associated with placing a defendant on remand include:

- securing the accused person’s attendance at court proceedings
- protecting the community and victim from further offending from the defendant, at least for the period that the defendant is in custody
- increasing the celerity of punishment; that is, imposing the punishment earlier and closer to the time of the offence. Waiting until after conviction to impose imprisonment can significantly delay the punishment. Increased celerity can enhance any specific deterrence effect of punishment.

However, significant problems are also associated with remanding a defendant in custody:

- It incarcerates someone who, until they are convicted, is presumed innocent. Both the defendant and the community can be said to have suffered a loss if the presumption of innocence is diminished.
- For the defendant, the costs of being remanded into custody can be high, including:
  - loss of their liberty and exposure to the hardship, violence and possible criminogenic effects of high security prisons, often for a longer period than they would otherwise have been subject to
  - the potential loss of employment, disruption of education, loss of accommodation, breakdown of relationships, and cessation of any therapeutic treatment that was being received. Where the defendant is the primary wage earner, parent or carer in a family or group, it can result in hardship for others
  - the defendant’s defence potentially being jeopardised. Preparing their case becomes more difficult when access to their legal representative is restricted.
- While the community is protected during the period of remand, it can become more vulnerable to a higher risk of the defendant reoffending upon release, since defendants:
  - can experience adverse changes to social circumstances, such as employment, accommodation and personal relationships, that may increase their risk of offending on the future
  - have only limited access to education, training and rehabilitation programs while on remand
  - can lose the opportunity for supported re-entry into the community if they are released on or soon after the day of sentencing. The limited notice of a prisoner’s actual release date can make referrals to intensive programs and intervention services difficult, as prisoners generally need to be engaged in the program or intervention for at least six months for it to be effective (Queensland Government sub. 43, p. 13).
- For the government, the cost of remanding a defendant in custody is high—each additional day a person unnecessarily spends in prison costs $293. Remand can exacerbate the problems of prison overcrowding, with consequences for other prisoners and prison employees.

A period on remand in custody contributes to the overall prison population if the period on remand is longer than the prison sentence the defendant would have received if that person had not been on remand.
In 2015–16, of the 5,568 prisoners admitted on remand, almost 30 per cent were released from remand to freedom or to a non-custodial sanction, with 70 per cent sentenced to imprisonment. Of those, 43 per cent were released on the same day to court ordered parole (Sofronoff 2016, pp. 59–60). As courts can be inclined to equate a prison sentence to time served rather than nominate a lesser prison term, it is possible that in some of those cases the remandees would have received a shorter term if sentencing had occurred earlier. Thus, of those remandees who are released from prison on the day of sentence (around 60 per cent of those on remand), a significant proportion may be spending excessive time in prison.

Box 12.1 The bail and remand process

The use of bail is legislated under the Bail Act 1980. In Queensland, a person accused of committing a criminal offence will usually be given a notice to appear which requires the defendant to appear at court on a certain date. If the offence is more serious, the police may choose to arrest the person.

If the person is arrested, the police may grant bail (watch-house bail) or remand the person in custody to appear in court for a bail hearing. Once before the court, the defendant may apply for bail (court bail) to remain in the community during later court proceedings.

While there is a general presumption in favour of bail (s. 9 of the Bail Act 1980), bail can be refused if the court or police are satisfied there is an unacceptable risk that the defendant will fail to appear at court, commit a crime, endanger the victim of the crime or interfere with witnesses. Defendants can also be remanded in custody for their own protection (s. 16(1)).

In assessing this risk, considerations to be taken into account (s. 16(2)—16(3)) include:

- the nature and seriousness of the offence
- the character, antecedents, associations, home environment, employment and background of the defendant
- the history of any previous grants of bail to the defendant
- the strength of the evidence against the defendant
- if the defendant is an Aboriginal or Torres Strait Islander person—any submissions made by a representative of the community justice group in the defendant’s community
- if the defendant is charged with a domestic violence offence—the risk of further domestic violence being committed by the defendant
- If the defendant is charged with certain serious crimes, bail is refused unless the defendant can show why detention is not justified.

The granting of bail may come with a monetary surety and conditions (including prohibitions on the defendant’s movements) to help ensure the defendant appears in court on a specified date, does not commit a further offence and does not interfere with the witnesses. However, the conditions are not to be ‘more onerous for the person than those that in the opinion of the court or police officer are necessary having regard to the nature of the offence, the circumstances of the defendant and the public interest’ (s. 11). If any of the bail conditions are breached, bail may be revoked and a conviction for breaching bail may follow.

If bail is not granted, the alleged offender will usually be transferred to a high security remand centre.
12.2 Trends in remand

Nearly five times as many people are in Queensland prisons on remand as there were twenty years ago. After being stable in the 2000s, the remand population has grown sharply in the last six years (Figure 12.1). Over that period the number of people remanded in custody has more than doubled—from 1,250 in 2012 to 2,652 in 2018.

Figure 12.1 Unsentenced prisoners, Queensland

![Graph showing the increase in the remand population from 1998 to 2018.](image)

*Source: ABS 2018k.*

This increase means the prison remand population now represents nearly a third of the prison population.

The proportion of the prisoner population on remand has been growing for several decades, from under 10 per cent in the 1980s to 30 per cent currently (Figure 12.2). Between 2012 and 2018, the remand population increased 112 per cent (1,402 prisoners), compared to the growth in the sentenced population of 42 per cent (1,844 prisoners). This growth in the remand population is a significant driver in the overall growth of the prison population.

Figure 12.2 Unsentenced prisoners (as a proportion of prison population), Queensland

![Graph showing the proportion of prisoners on remand as a percentage of the prison population from 1982 to 2017.](image)

*Sources: ABS 2018k; Carcach & Grant 2000.*
Just as Aboriginal and Torres Strait Islander people are disproportionately represented in the prisoner population, they also make up a disproportionate share of the remand population—29 per cent of the remand population are Indigenous. Currently, 29 per cent of Indigenous prisoners are on remand and 35 per cent of female prisoners are on remand (QCS unpublished data).

High rates of remand are not only an issue for the adult corrections systems, but also for the youth justice system. Youth remand rates in Queensland have been increasing in recent years, such that currently 80 per cent of children in Queensland detention centres are on remand (Atkinson 2018, p. 52).

Queensland is not alone in experiencing strong growth in prison remand population. Remand populations in all states and territories represent a similar or higher proportion of the prison population. Similarly, remand populations have grown rapidly in recent years across Australia (Table 12.1).

### Table 12.1  Unsentenced prisoners, interjurisdictional comparison

<table>
<thead>
<tr>
<th></th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>NT</th>
<th>ACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate per 100,000 adult population</td>
<td>75.0</td>
<td>55.6</td>
<td>70.4</td>
<td>96.6</td>
<td>80.4</td>
<td>39.8</td>
<td>266.0</td>
<td>56.9</td>
</tr>
<tr>
<td>Proportion of prison population (%)</td>
<td>33.5</td>
<td>35.3</td>
<td>30.0</td>
<td>27.8</td>
<td>37.3</td>
<td>28.8</td>
<td>28.9</td>
<td>37.8</td>
</tr>
<tr>
<td>Growth in unsentenced prisoners, 2012–2018 (%)</td>
<td>86</td>
<td>172</td>
<td>112</td>
<td>96</td>
<td>72</td>
<td>101</td>
<td>46</td>
<td>104</td>
</tr>
</tbody>
</table>

*Sources: ABS 2018c, 2018k.*

### 12.3 Why is remand growing?

A major driver of the increase in the remand population has been the number of unsentenced prisoners whose most serious charge is assault, representing half of the total increase in prisoners on remand. From 2015 to 2017, this category of remand prisoners grew 88 per cent. Moreover, the growth in the number of prisoners on remand on an assault charge has significantly outpaced growth in the number of sentenced prisoners whose most serious offence was assault (Figure 12.3).

### Figure 12.3  Prisoners with assault as most serious offence/charge (number)

*Sources: ABS 2013, 2018k.*
A secondary driver of the increase in remand in Queensland is the growing number of bail breaches. Breaches of bail conditions increased markedly after 2011–12. Between 2011–12 and 2015–16, the annual number of breaches of bail conditions as the most serious offence increased by 59 per cent. Over the same period, the number for female offenders increased by 82 per cent and by 30 per cent for Indigenous offenders (QSAC 2017).

The data is not available to determine precisely the underlying causes of these drivers, but recent events and the literature point to possibilities:

• Legislation, policy and decision-making—a combination of policy change, public pressure and changing defendant characteristics can influence the decision to place defendants on remand.

• Court processes—increasing court delays can lead to remandees spending more time in prison.

Legislation, policy and decision-making

It has been argued that throughout Australia the purpose of remand has been shifting from trial integrity to community safety (Brown 2013, p. 85; Collins 2000, p. 3). That is, the emphasis has shifted from ensuring that the defendant’s trial is not compromised (by absconding or interfering with witnesses) to protecting the community from further offence.

This shift is evident in legislation where, for some offences, the presumption has been reversed from being in favour of bail, to the defendant having to show cause why remand in custody is not warranted. A recent example in Queensland of the growing application of reverse onus has been the amendment to the Bail Act 1980 in 2017, which reversed the usual presumption in favour of granting bail for those charged with a serious domestic violence offence.

There are several reasons why changes in policy may be more strongly reflected in changes in the number of prisoners on remand than in the number of sentenced prisoners.

First, it can be a timing issue. If there is an increase in arrests due to a change in policy, there is likely to be an associated increase in the number of defendants remanded in prison. If court procedures are such that there are substantial delays in the commencement and conduct of trials, and therefore sentencing, growth in the remand population may initially outpace growth in sentenced prisoners. Over time, growth in the number of sentenced prisoners is likely to converge with that of prisoners on remand.

Second, substantial discretion is accorded to police and judicial officers in relation to bail decisions. Decisions on bail occur at the point of apprehension when police can arrest or issue a notice to attend court, at the police station when police can grant or refuse bail, or in the court when the judicial officer can grant bail or require the alleged offender to be remanded in custody. At each point, police and judicial officers must apply their judgment, which can be shaped by the legislative, social and organisational contexts in which they operate (King et al. 2009, p. 24).

Bail decisions allow for more discretion than judicial judgments of defendant guilt and sentencing, where discretion is more constrained by the facts of the case, a more clearly defined burden of proof, the precedents set by previous cases and the opportunity for appeal. Thus, bail decisions can be more susceptible to organisational policy and practices. For example, a study in South Australia found that it was not uncommon for operational policies to encourage arrests over summons or to use remand as a strategy to achieve crime reduction goals (Sarre et al. 2006).

These factors may help explain the growth in recent years in the number of unsentenced prisoners whose most serious charge is assault, especially in the period after 2015.

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54 Bail breaches are breaches of bail conditions that may include, for example, restrictions on entering licenced premises, imposition of a curfew, a requirement to report to a police station, or a ban on contact with certain people.
Discretion in bail decision-making can also be affected by factors other than official policy:

- **Community attitudes**: Bail decisions can be affected by community, political and media attitudes, and the consequences if the decisions do not meet the expectations of some:

  *No magistrate or judge enjoys being singled out for public criticism by the government for a bail or sentence decision that upsets the shock jocks or tabloid media... Judges and magistrates may be independent, but they are not insensitive to public, political and media criticism. If politicians keep demanding tougher penalties, courts will eventually deliver them.*

  *(Weatherburn 2016, p. 149)*

Specific public incidences can also affect bail decision-making. In explaining increased remand numbers in Victoria, the 2017 Victorian Bail Review referred to ‘increased risk aversion by police and other decision-makers as a result of high profile cases such as the murders of Jill Meagher and Luke Batty’, and the deaths of pedestrians in Bourke Street, Melbourne, by a motor vehicle driver (Coghlan 2017, p. 22).

- **Defendant characteristics**: It has been suggested that the prevalence of drug and mental health problems has been a significant driver of the increase in remand (Sarre et al. 2006). The escalating use of methamphetamines with its association with violent behaviour is likely to have made the decision to grant bail to illegal drug users more problematic. The number of unsentenced prisoners on remand for illicit drugs offences increased 374 per cent over the six years to 2018.

**Court processes**

Court delays increase the time those on remand spend in prison. This makes it more likely that they spend more time in prison than they otherwise would have and therefore contributes to an increase in the prison population.

Increases in the duration and backlog of criminal cases in the Magistrates Court since 2012–13 suggest that there may be excessive criminal case workload (Table 12.2). This may be resulting in longer court delays and the time that defendants are spending remanded in custody.

**Table 12.2  Magistrates Court, criminal cases (weeks)**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean</td>
<td>12.0</td>
<td>12.2</td>
<td>10.5</td>
<td>10.0</td>
<td>10.7</td>
<td>11.4</td>
<td>13.1</td>
</tr>
<tr>
<td>Median</td>
<td>4.0</td>
<td>4.1</td>
<td>4.1</td>
<td>4.3</td>
<td>4.6</td>
<td>4.9</td>
<td>5.0</td>
</tr>
<tr>
<td>Backlog indicator (%)</td>
<td>28</td>
<td>25</td>
<td>26</td>
<td>30</td>
<td>31</td>
<td>33</td>
<td>37</td>
</tr>
</tbody>
</table>

*a Duration from initialisation to finalisation.  
b Defined as the number of cases greater than six months as a percentage of the court’s total active pending caseload.  
Sources: ABS 2018e; PC 2018a.*

Time on remand has shown an increase, albeit not large, since 2013 (Table 12.3).

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55 One study found that frequent methamphetamine increases the odds of violent behaviour ten-fold, much more than heavy alcohol consumption (McKetin et al. 2014).

56 Although there has been similar growth in the number of sentenced prisoners for that category.
Table 12.3  Unsentenced prisoners, time on remand (months)

<table>
<thead>
<tr>
<th>Year</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean</td>
<td>6.0</td>
<td>6.3</td>
<td>5.5</td>
<td>5.7</td>
<td>5.9</td>
<td>5.8</td>
<td>6.0</td>
<td>6.1</td>
</tr>
<tr>
<td>Median</td>
<td>3.4</td>
<td>3.9</td>
<td>3.5</td>
<td>3.7</td>
<td>3.5</td>
<td>3.5</td>
<td>3.7</td>
<td>3.6</td>
</tr>
</tbody>
</table>

Source: ABS 2018k.

The Commission is seeking further information on the causes of the growth in the remand prisoner population for the final report.

12.4 Opportunities for reform

International comparisons show a wide disparity between prison remand populations across the world (Table 12.4). While circumstances in nations differ, it still suggests that jurisdictions may have a substantial degree of policy influence in relation to remand.

Table 12.4  Rates of remand in custody, international comparison

<table>
<thead>
<tr>
<th>Country</th>
<th>Rate of remand prisoners (per 100,000 population)</th>
<th>Remand population (percentage of prison population)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan</td>
<td>4</td>
<td>10.8</td>
</tr>
<tr>
<td>Norway</td>
<td>14</td>
<td>22.9</td>
</tr>
<tr>
<td>UK—England &amp; Wales</td>
<td>16</td>
<td>11.5</td>
</tr>
<tr>
<td>Germany</td>
<td>16</td>
<td>21.7</td>
</tr>
<tr>
<td>Sweden</td>
<td>18</td>
<td>30.6</td>
</tr>
<tr>
<td>Singapore</td>
<td>23</td>
<td>11.5</td>
</tr>
<tr>
<td>UK—Scotland</td>
<td>26</td>
<td>18.2</td>
</tr>
<tr>
<td>France</td>
<td>31</td>
<td>29.7</td>
</tr>
<tr>
<td>Canada</td>
<td>44</td>
<td>38.6</td>
</tr>
<tr>
<td>Australia</td>
<td>55</td>
<td>32.2</td>
</tr>
<tr>
<td>New Zealand</td>
<td>65</td>
<td>30.6</td>
</tr>
<tr>
<td>United States</td>
<td>135</td>
<td>20.3</td>
</tr>
</tbody>
</table>

Note: ‘Rates of remand prisoners’ are not comparable with Table 12.1 as rates are based on total populations rather than adult populations.
Source: World Prison Brief nd.

The investigation of the underlying causes of the growth in remand (section 12.3) implies that the opportunities for reform lie in, first, focusing on the factors that influence the bail decision, and, second, improving court processes to reduce the time prisoners spend on remand.

Develop guiding principles and risk assessment tools

The Victorian Bail Review stated in relation to the bail–remand decision that ‘[u]ltimately, the question is how to ensure that the right people are on remand’ (Coghlan 2017, p. 20). From an economic perspective, this question is best answered through the consideration of all the costs and benefits when an application for bail is made.
Section 9 of the *Bail Act 1980* has a presumption in favour of bail. Notwithstanding this, section 16(1) requires bail to be refused if police or courts assess unacceptable risk exists in relation to trial integrity and community safety. Other impacts on the defendant and the community are not specifically listed for consideration. Similarly, section 16(2) lists considerations in the assessment of risk, but that list is narrow even in relation to community safety—for example, the potential criminogenic effects of short terms of imprisonment are not a consideration.

The Victorian Parliament recently inserted guiding principles into its bail legislation, which recognise the importance of:

- maximising the safety of the community and persons affected by crime to the greatest extent possible
- taking account of the presumption of innocence and the right to liberty
- promoting fairness, transparency and consistency in bail decision-making
- promoting public understanding of bail practices and procedures.

The Victorian guiding principles provide a good base for a set of guiding principles for the Queensland legislation. However, it appears incongruous that the Victorian guidance principles accept the presumption of innocence but then do not recognise the impact of imprisonment on the defendant. If guiding principles are adopted, they should take into account a wider range of considerations, specifically the impact on the defendant and their dependents of being remanded in custody, including the potentially criminogenic effects of a term in prison. That would be consistent with maximising the safety of the community, but would take a longer-term view.

In a similar way, the financial costs to the community of imprisonment should be taken into account. Imprisonment incurs an opportunity cost, that is, a cost in terms of the forgone benefit of using the resources for other purposes—for example, health care or education.

Considerations listed in section 16 of the *Bail Act 1980* may need to be amended to support the guiding principles.

In practice, decision-makers, such as police and the judiciary, are unlikely to be able to undertake a detailed cost–benefit analysis for every bail application, although courts may be in a better position to make a more considered bail decision than police. To assist, bail assessment tools should be developed to assist decision-makers to make this assessment. It should be based on an analysis of the risks associated with granting and refusing bail, including the likelihood of breaching by bail recipients. Such guidance could include:

- principles underlying the making of the bail decision
- decision flowcharts that step through the key considerations
- supporting evidence underlying the bail assessment guidance
- case studies.

The bail assessment tool should not be overly prescriptive and should allow the reasonable use of discretion by decision-makers. For example, decision-makers need to use their judgment in relation to the strength of the evidence against the defendant (a consideration listed in section 16 of the *Bail Act 1980*), an important factor in assessing the risk of granting bail.

The development of evidence-based risk assessment tools could allow for the reverse onus provisions to be reconsidered. The higher risks associated with certain violent offenders would be reflected in the risk assessment tool. This would simplify decision-making required for bail, at least partly offsetting any greater complexity associated with additional considerations required by the guiding principles.

Risk assessment guidance would have the additional advantages of improving transparency and consistency in bail decision-making.
Provide alternative non-custodial options

Chapter 11 includes a discussion of the options available to judicial officers in sentencing. One suggestion is that judges would be more likely to decide on sentences that do not involve imprisonment if they had community-based options that allowed them to achieve the sentencing purposes at least as effectively and efficiently as a term of imprisonment.

A similar approach can be adopted for bail. In particular, the greater use of electronic monitoring, including its application in home detention, can be used as a restriction on the movements of those on bail who would otherwise be remanded in custody. The ability to monitor the movement of those higher risk bail recipients should give greater confidence to police and courts to give bail. The 2018–19 State Budget provided $3.3 million over two years to provide courts the capacity to impose a condition under the Bail Act 1980 for an electronic tracking device to be worn by defendants (Queensland Government sub. 43, p. 4).

A risk with the wider use of electronic monitoring is that it might lead to net widening—the overuse of electronic monitoring to a wider cohort of bail recipients than otherwise warranted. This will continue to be a risk, although a reduced one, if the relevant recommendations are adopted—that is, to develop guiding principles and supporting risk assessment tools that would provide guidance to the appropriate use of bail conditions.

Increase availability of bail support services

Decision-makers’ concerns regarding the risk of offending, the defendant’s own protection and the likelihood of the defendant meeting bail conditions (including attendance at court) can be mitigated if bail support services are improved. Given the high cost of policing bail breaches and the remand of defendants in high security prisons, the diversion of resources for this purpose would likely be financially sound, and would deliver benefits to the community and defendant.

Bail support programs involve interventions that increase the likelihood of accused people being granted bail and completing their bail period without breach (Willis 2017, p. 5).

Based on the international literature, the Australian Institute of Criminology suggested best practice principles for bail support programs (Box 12.2).
Box 12.2 Best practice principles for bail support programs

Best practice principles suggest that bail support programs should:

- be voluntary, ensuring that the client is at least somewhat motivated and willing to engage with treatment and make changes to their life
- be timely and individualised—that is, available immediately upon bail being granted and responsive to the accused person’s immediate needs, even before they have left the court
- be holistic, addressing the full range of the individual’s criminogenic needs
- be collaborative, using interagency approaches involving other government and non-government service providers
- consistently apply a strong program philosophy program-wide, at the individual case-manager level
- prioritise support over supervision, with response to and treatment of an individual’s criminogenic needs emphasised over monitoring
- be localised and make use of local community resources and knowledge
- have a court-based staffing presence and establish good working relationships with court officers and service providers. Working relationships with court officials and the judiciary are important for establishing credibility and instilling judicial confidence
- be based on sound guidelines and processes that assist clients to engage with the structured processes of the courts and the requirements of court orders while maintaining program integrity.


In Queensland, existing bail programs for adult defendants include:

- **Court Link**—an integrated court assessment, referral support program that connects participants to treatment and support services to address housing, employment, drug and alcohol, health and other social needs. Court Link is available in Brisbane, Cairns, Ipswich and Southport (Queensland Courts 2018a). Court Link is modelled on a Victorian program, the Court Integrated Services Program (CISP). An evaluation in 2009 found that those who completed CISP offended less frequently and less seriously, and spent less time in prison. A cost–benefit analysis of CISP indicated a benefit–cost ratio of 2.6 after five years (on a net present value basis) and 5.9 after 30 years (PwC 2009). This suggests that funding bail support programs has the potential to represent a good investment for the community.

- **Queensland Magistrates Early Referral Into Treatment (QMERIT)**—a 12–16 week voluntary, bail-based diversion program for defendants charged with an offence relating to illicit drug use. The program offers medically supervised and community-based withdrawal and in-house residential rehabilitation. It operates in the Maroochydore and Redcliffe Magistrates Courts only (Queensland Courts 2018c).

- **Sisters Inside Supreme Court Bail Program**—Queensland Corrective Services (QCS) initiated the Supreme Court Bail Program to support remanded women prisoners to apply for and achieve bail. The program commenced in March 2016 and is currently delivered by Sisters Inside at Brisbane Women’s, Numinbah and Townsville Women’s Correctional Centres. QCS is currently working with Sisters Inside to expand the program to the Southern Queensland Correctional Centre (Queensland Government sub. 43, p. 68).
• **QCS Men’s Bail Program**—in the 2018–19 State Budget, QCS received funding of $3.931 million over three years to support the continuation of the Supreme Court Bail Program and to trial a bail support program for male remanded prisoners to assist male prisoners apply for and achieve bail, thereby reducing the number of prisoners on remand (Queensland Government sub. 43, p. 68).

Court Link received additional funding in the 2018–19 State Budget to extend the program to Ipswich and Southport. As Court Link has commenced only recently, it may be premature to undertake an evaluation of its performance. However, once evaluations are undertaken for both Court Link and QMERIT, they should be the basis of government consideration of further extending their operations to other locations across Queensland.

Understanding the experience of defendants on bail will provide insights into how to help ensure that bail conditions are breached less often. The Queensland Government is undertaking research into the factors that help and hinder defendants in keeping to their bail conditions to inform the development of future bail programs (Box 12.3).

**Box 12.3 Bail Adherence Research Project**

In May 2018, the Integrated Criminal Justice program in the Department of Attorney-General and Justice (DJAG) commenced behavioural insights research to understand the barriers and enablers of defendants’ behaviour while on bail and how the systems that surround them behaves to support or hinder compliance.

The purpose of this research is to inform strategies to reduce the demand on the system by better supporting defendants to adhere to their bail conditions. In turn, by supporting defendants to adhere to their bail conditions, the risk is reduced that further charges are laid that may result in more fines or incarceration. The research is overseen by an Advisory Group made up of members from the Queensland Police Service, Office of the Director of Public Prosecutions, Legal Aid Queensland and DJAG.

*Source: Queensland Government sub. 43, p. 64.*

There may be simple ways to assist defendants on bail. For example, in New York, a pilot scheme has been introduced to send text message to remind defendants of upcoming court appointments. The Queensland Government introduced a similar trial last year in Mackay, with SMSs being issued for court appearance date reminders, targeting clients with a watch-house bail undertaking (Chamberlin 2017).

**Provide alternative accommodation options**

A lack of safe, stable and secure accommodation can often result in defendants being refused bail, especially if they suffer from mental illness, drug addiction, homelessness or difficult home environments. Because of this absence of suitable accommodation, they are directed to high security prisons, with minimal freedoms, limited access to services, and exposure to hardened criminals.

Not only is such accommodation inappropriate for at least some remandees, it is also very costly. As pointed out by ATSILS:

> Obviously, keeping accused remanded in custody in preference to anywhere else is the most expensive option. Immediate relief to the overcrowding in prisons could be created by more suitable alternatives for remand, such as bail hostels. (ATSILS sub. 35, p. 5)
Reducing the remand population

This view was supported by Professor Carrington and Professor Hogg:

_Custodial remand (whether of juveniles or adults) is very costly, has harmful effects especially on children and probably does little to enhance community safety... Remand drives up imprisonment rates. Many adults and juveniles are remanded in custody, not because they have been accused of offences that would warrant a prison sentence upon conviction, but because of the lack of alternatives to incarceration for disadvantaged people with multiple problems such as homelessness, unemployment, mental health problems and or drug addiction. Increasing safe affordable community housing options for these juvenile and adults cohorts (with gender and Indigenous appropriate options) would considerably reduce the use of remand and relieve the crisis in the Qld juvenile and criminal justice systems (sub. 3, p.4)._ 

Bail accommodation is currently being established for the Queensland youth justice system (Caldwell 2017). Extension of bail hostels to the adult system could provide accommodation that is supervised, has support services and allows the defendants to continue working, continue their education and maintain other social and economic relations. It can also provide support, for example by reminding defendants of court and other appointments, which reduces the risk of the defendant breaching bail conditions.

The use of bail hostels can raise some concerns, including:

- net widening—where defendants who would have been bailed into the community are instead bailed into a bail hostel (Willis 2017, p. 21)
- location—balancing community concerns about proximity to residential areas and the need for bail hostels to be close enough to defendants’ families, services and employment
- security risk—ensuring the assessment of defendant risk aligns with the security of the hostel.

These issues could be considered and addressed using a trial.

In the absence of available bail hostels, remand in a low security facility should be an option for the court when the defendant is being remanded for their own protection.

**Work with the courts to improve processes and procedures**

The time prisoners have been spending on remand has been increasing in recent years. Queensland’s unsentenced prisoners spend the second-longest time on remand in Australia, after New South Wales (Figure 12.4).

**Figure 12.4** Unsentenced prisoners, average time on remand (months)

![Graph showing average time on remand for different states in Australia](source: ABS 2018k)
Reducing the time on remand, all other things equal, would reduce the remand population. A reduction in the time on remand can be achieved by reducing court delays, which, in turn, can be achieved by additional resources or finding ways to make the court procedures more efficient without compromising the justice process.

One indicator of the courts’ resourcing is their staffing relative to their workload. Queensland is the jurisdiction with the fewest judicial officers and staff per 100 finalisations (Figure 12.5), suggesting that, at least in comparison with other jurisdictions, Queensland courts are not over-resourced.

Figure 12.5 Judicial officers and full time equivalent staff per 100 finalisations, 2016–17, Criminal Courts

An examination of court procedures may find that more resourcing is required at certain stages to improve the effectiveness and efficiency of decision-making with regard to bail and remand. In a court observation study conducted in 2002 and 2003, it was found that the median time taken for a contested hearing in Victoria was 18 minutes, while in South Australia it was five minutes (Sarre 2016, p. 200). The longer period in Victoria was largely the result of police being required to give evidence to the court to justify their decision not to grant bail and the extra time for the court to scrutinise the evidence. This resulted, the study concluded, in the police being more inclined to grant bail in the first place if they thought their decision would be later overturned by the court.

Moreover, an examination may find that resourcing to deliver more efficient decision-making is best applied to other aspects of the court system, such as providing better legal assistance to defendants to navigate through the criminal process.

The Commission is unable to ascertain the capacity to generate greater efficiencies in the court process. The benefits of additional court funding and greater efficiencies, such as lower remand, need to be carefully examined against the opportunity costs and any adverse, possibly unforeseen, consequences. This means any proposals to amend court procedures will need to involve consultation with court officials and other relevant parties.
Draft Recommendation 6

To encourage confidence in, and greater use of bail, the Queensland Government should:

- develop evidence-based risk assessment tools to assist police and courts when considering bail applications
- make available, through legislative amendment, a greater range of non-custodial options to courts, including the use of electronic monitoring and home detention
- establish a mechanism to allocate resources to support any changes in the use of community-based supervision
- trial remand accommodation options for homeless offenders, including bail hostels and low security custodial facilities
- consider extending the operations of Court Link and QMERIT to more locations.

Draft Recommendation 7

The Queensland Government should assess whether there are opportunities to reduce time spent on remand by reducing court delays and increasing time for bail hearings.

Draft Recommendation 8

To provide greater guidance to courts, the Queensland Government should insert ‘guiding principles’ into the Bail Act 1980, based on the following principles:

- maximising the safety of the community and persons affected by crime
- taking account of the presumption of innocence and the right to liberty
- taking account of the cost of imprisonment to the community
- promoting transparency and consistency in bail decision-making
- promoting public understanding of bail practices and procedures.

Information request

The Commission is seeking further information on:

- the causes of the growth in the remand prisoner population
- the causes for delays in court proceedings and possible remedies
- any changes to court procedures that could improve decision-making
- bail support services and non-custodial options that would improve the effectiveness of, and confidence in, non-remand options
- how police and courts should consider risk when assessing bail applications.
In-prison rehabilitation
This chapter highlights the importance of improving the approach to rehabilitation in Queensland prisons.

**Key points**

- Successful rehabilitation not only reduces crime but also saves the state at least $107,000 per prisoner for every year of imprisonment avoided.
- International research is broadly positive about the contribution that programs provided in prisons make to rehabilitation, but the results are mixed and local differences limit their applicability to Queensland.
- This literature emphasises:
  - It is important to design programs that are specific to prisoners’ rehabilitation needs.
  - Programs should be only one part of a broader approach to rehabilitation.
  - Careful implementation is crucial.
  - Programs should be evaluated to enable an evidence-based approach to continuous improvement.
- The design of correctional facilities and how they are operated can significantly affect rehabilitation outcomes. It is likely that there are opportunities for improving the contribution that new and existing facilities make to prisoner rehabilitation. These opportunities should be informed by the best internationally available evidence about how facility design affects rehabilitation outcomes.
- Few evaluations of Queensland's in-prison programs have been published. However, the stubbornly high recidivism rate, previous reviews and submissions to this inquiry all suggest that there is considerable scope for improvement.
- Problems include disjointed case management, narrow eligibility for in-prison programs, inadequate catering for the special needs of specific groups, and governance arrangements that lead to weak incentives for rehabilitation. The government has accepted recommendations from the Queensland Parole System Review to address some of these issues.
- Additional benefits would be gained from focusing on the governance arrangements and incentives around in-prison rehabilitation. Important questions are whether there is scope to:
  - strengthen incentives for prisoners, prison operators and course providers to reduce recidivism
  - clarify the respective roles of prisons and Queensland Corrective Services in designing, delivering and evaluating rehabilitation programs, to ensure that these roles are clearly designed, mutually consistent and backed up by appropriate authority and resourcing
  - improve coordination between prisons and other agencies involved in reducing recidivism.
- These questions should be considered in the broader context of prisoner rehabilitation, including prisoners’ reintegration into the community.
13.1 Introduction

This chapter considers the role of Queensland’s prisons in rehabilitating prisoners and preventing recidivism. Rehabilitation is one of three mechanisms—together with incapacitation and general and specific deterrence—through which imprisonment can reduce crime. Disentangling how these mechanisms affect reoffending is difficult, particularly as the criminogenic effects of imprisonment may work to offset rehabilitative efforts:

\[ \text{Incarceration could increase re-offending if it builds criminal expertise and limits post-release employment opportunities, either through skill atrophy or labour market stigma.} \]

\( \text{(Council of Economic Advisers 2016, p. 39)} \)

The prison environment influences rehabilitation in four main ways:

- The day-to-day environment—which may be affected by, for example, prison size, whether it is a high or low security facility, and the behaviour of guards—may influence the outcomes from rehabilitation programs.

- The activities—such as work—in which prisoners engage, can help them to develop skills and good practices. All Queensland prisons have employment for prisoners, either to maintain the prison (in the laundry, kitchen or as a cleaner), or in prison industries, which include metal, leather and wood-working workshops.

- Prisoners may be assigned to specific programs which aim to address offending behaviours, including programs aimed at violent offenders, sexual offenders, substance abuse problems, and mental health issues.

- Training and education programs seek to improve employability.

Rehabilitation is closely related to the reintegration of prisoners (Chapter 14) and should be part of an integrated system that considers both in-prison rehabilitation and after-prison services (Chapter 15).

The Queensland Government (sub. 43, p. 9) considers that prison has a key role to play in the rehabilitation of offenders. If rehabilitation can reduce reoffending, it not only reduces crime but also saves the state at least $107,000 per prisoner for every year of imprisonment avoided (Chapter 6).

The chapter begins by drawing out five lessons from the international literature for the management of in-prison rehabilitation programs in Queensland. It then points out that there is little publicly available information—other than the high recidivism rate—about how well in-prison rehabilitation works in Queensland. Finally, the chapter examines the governance and incentives affecting rehabilitation.

13.2 Lessons from overseas

The overall picture

International research is broadly positive about the effectiveness of rehabilitation programs in prisons. However, the results are mixed, with some programs showing clear impacts and others not. Moreover, the importance of the local context—for example, differences in prison configuration, composition of the prisoner population and sentencing options—suggests that what works in one jurisdiction may not work elsewhere.

The range of programs is broad, from substance abuse and behavioural programs through to programs aimed at increasing post-prison employability.\(^5\) While there are significant challenges in measuring the effects of these

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\(^5\) Imprisonment changes prisoners’ opportunities and incentives and can exacerbate the social disadvantages many offenders face. Time in prison usually makes prisoners less employable—their skills deteriorate, and the ex-prisoner ‘label’ also puts off many potential employers. This loss of earning capacity, combined with the impacts of pro-criminal attitudes and skills learnt in prison, strengthens incentives to
In-prison rehabilitation programs (Box 13.1), the evidence suggests that in-prison rehabilitation is unlikely to be a panacea for dealing with offending behaviours. For example, a recent survey of meta-analyses of research concludes that while prison education reduces recidivism, the effects vary widely, but are often modest\(^8\) (Duwe 2017, pp. 6–17).

**Box 13.1 Challenges in measuring the effectiveness of rehabilitation programs**

The effectiveness of rehabilitation programs is typically measured by their impact on reoffending. However, three challenges make measurement difficult.

First, it is difficult to establish causality, because many factors affect reoffending behaviours, including age, indigenous status, sentence length, education, prior employment, drug and alcohol dependence, and family connections (Callan & Gardner 2005, pp. 33–34; Economic Regulation Authority of Western Australia 2015, p. 144). The Family Responsibilities Commission considers that rehabilitation is ‘of little assistance when gaol offers a more inviting environment than the communities to which they must return’ (sub. 23, p. 1).

Second, the prison environment, including the configuration of prisons and the composition of the prison population, affects rehabilitation outcomes.

Good quality studies isolate the impacts of different environmental and other contributors to reoffending. However, many studies do not. Randomised control trials are rare, selection bias is common and sample sizes are often small (Duwe 2017, p. 6).

Finally, there is no single agreed measure of recidivism (Chapter 5). The standard measure—the proportion of prisoners who reoffend within two years of release—does not measure whether the rate of reoffending has been affected or whether new offences were for more, or less, serious crimes.

The impact of some in-prison programs is modest, partly because they are countered by the criminogenic effects of incarceration. That is, the more time offenders spend in prison, the more criminal expertise they can build and the more limited their post-release employment opportunities become. The risk of reoffending therefore increases. Given these competing forces, it is not surprising that past research into the effects of incarceration on reoffending has found mixed results (Council of Economic Advisers 2016, p. 39).

Four meta-analyses of program evaluations undertaken in other countries support the positive effects of some programs within prisons, while identifying methodological problems that apply to some of the research (Aos, Steven et al. 2006; Davis et al. 2013; Duwe & Clark 2014; Gaes 2008).

In addition to the measurement challenges, three other factors limit the relevance of conclusions from international studies for Queensland:

- The context differs between jurisdictions. For example, one argument (Hamburger sub. 14, p. 39) is that the large prisons and prison precincts in Queensland impede rehabilitation and increase recidivism.

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\(^8\) Some studies have large impacts, for example, one survey (cited in Duwe 2017) showed that participation in education programs reduced recidivism by 43 per cent.
• Sentencing options may differ. There is evidence that graduated release, and the use of alternatives other than incarceration, is effective in reducing recidivism (Walsh 2017, p. 4). If sentencing options available elsewhere do not exist in Queensland, overseas estimates of the benefits of rehabilitation programs may exceed the likely benefits of programs in Queensland.

• Overcrowding in Queensland prisons may reduce program availability, and lead to in-prison programs being less effective than international studies suggest:

  Over-crowded correctional centres ... reduce access to rehabilitation opportunities, which compromises community safety and critically, presents workplace health and safety risks for correctional centre staff. (QCS 2018d, p. 7)

Key lessons

While the specific results of studies in other jurisdictions may not apply directly to Queensland, general lessons from international research are likely to be relevant.

First, the effectiveness of rehabilitation programs hinges on how closely they are matched to individual offenders' rehabilitation needs (Buitrago 2017, p. 4).

Second, effective strategies to reduce recidivism do not rely solely on in-prison programs. Programs work when they address the factors predisposing a person to criminal activity and are supported by other activities in prison and after release (Travis et al. 2001, cited in Borzycki & Baldry 2003, p. 2). Services provided in prisons to encourage rehabilitation need to be integrated with services provided after release. For example, programs that aim to increase employability may need to be supported by transitional programs to help prisoners to find jobs after release.

Third, program design and implementation should be evidence-based, where feasible:

  Ensuring that the program is implemented with fidelity to a research-based model increases the likelihood that it could successfully reduce recidivism. (Taylor 2017, p. 8)

Fourth, given that outcomes vary, are difficult to predict and are affected by program design and implementation, investments in evidence and evaluation can have large payoffs (Council of Economic Advisers 2018). Returns on investment vary considerably between programs—evaluation can help agencies reallocate budgets towards better performing programs and improve results from the same or smaller spending.

Finally, to facilitate program design where evidence is lacking—as is often the case—experimentation is important:

  Additional experimentation and evaluation is necessary to paint a clearer picture of which approaches are cost-effective and for whom ... We should acknowledge that achieving the successful reintegration and rehabilitation of the most at-risk members of our communities is difficult, and that most strategies we try will fail. A willingness to try new things, and rigorously test whether they are working, will be the key to finding effective solutions in this policy space. (Doleac 2018, p. 9)

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59 The Corrective Services Act 2006 abolished sentencing options that provided alternatives to full-time incarceration.

60 The Council of Economic Advisers found that United States programs that address prisoners' mental health or substance abuse generated a total return of $1.47 to $5.27 per dollar of expenditure. However, for many programs—such as those for which the primary focus is education—the evidence is inconsistent and the rate of return more uncertain (Council of Economic Advisers 2018, p. 1).
13.3 How well does in-prison rehabilitation work in Queensland?

There is little publicly available information—other than the high recidivism rate—about how well in-prison rehabilitation works in Queensland. This makes it difficult to assess Queensland’s approach to rehabilitation.

Given these limitations, this section considers how features of Queensland’s approach to rehabilitation might be expected to influence rehabilitation outcomes, drawing on submissions and on the Queensland Parole System Review (Sofronoff 2016).

Published evidence

Program participation

Many prisoners participate in Queensland Corrective Services (QCS) rehabilitation programs—in 2017–18, 5,315 individuals participated in literacy programs, 4,552 participated in vocational training and 655 participated in tertiary education. Prisoners from low security facilities completed more than 270,000 hours of community service. Prison industries are available at every correctional centre in Queensland (Queensland Government sub. 43, p. 10).

In Queensland prisons during 2016–17:

- 39.1 per cent of eligible Queensland prisoners were involved in education and training, above the national average of 32.9 per cent (16.5 per cent were in pre-certificate level 1 courses; 2.5 per cent in secondary school education; 20.4 per cent in vocational education and training; and 6.4 per cent in higher education)
- 68.8 per cent of eligible prisoners were employed; below the national average of 74.7 per cent (30.5 per cent were in commercial industries and 38.3 per cent in service industries) (PC 2018b).

While many prisoners are involved in programs, no information is available on the outcomes (such as post-prison employment) from these programs.

During consultations, stakeholders indicated that the pre-certificate level 1 course—the main reason for Queensland having above the Australian average proportion of prisoners involved in education—was not a useful qualification. Stakeholders also indicated that few prisoners are involved in employment that provided useful preparation for post-prison work, and that attendance rates in programs are being reduced by prison overcrowding.

Information about program attendance rates, completion rates, reasons for non-completion, or outcomes of programs in individual prisons, or about how QCS and prisons use such information, is limited. Sofronoff (2016, p. 150) noted the relatively small number of completions of programs for Aboriginal and Torres Strait Islanders. The Queensland Audit Office reported that:

> QCS measures the actual time prisoners spend in structured activity in its privately operated prisons, but does not do this for its publicly operated prisons. This impedes its ability to compare and analyse a part of the performance of all its prisons. (QAO 2016, p. 47)

These data do not include participation in non-accredited education and training programs or in offence-related programs, such as drug and alcohol programs, psychological programs, psychological counselling and personal development programs.
Outputs and outcomes

Queensland’s recidivism rates are high and is growing (see Chapter 5). Almost 64 per cent of prisoners have been previously imprisoned, higher than the Australian average of 57 per cent. Recidivism rates are even higher for indigenous Australians, with 80 per cent of Indigenous prisoners having been imprisoned before. A submission commented that:

Recidivism rates ... for First Nation people and ... 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. (Hamburger sub. 14, p. 13)

Recidivism might have been higher without in-prison programs or other rehabilitation activities. However, the absence of publicly available information about the effectiveness or efficiency of in-prison programs makes it difficult to assess their contribution to community safety or to compare them with other approaches.

Issues raised by stakeholders

Composition of the prison population

A large proportion of Queensland’s prison population is made up of people who are on remand or serving short sentences. During 2016–17, 45 per cent of all new prisoners were remanded (ABS 2018c). A further 36 per cent of all prisoners entering prison had sentence lengths of less than six months (ABS 2018e).

This means that many prisoners are either not eligible for in-prison programs or, if they are eligible, do not complete them. These prisoners are therefore exposed to the criminogenic effects of prisons without any offsetting impacts of in-prison programs. Several submissions commented on this (Box 13.2).

Box 13.2 Remand and short sentence lengths restrict rehabilitation

Submissions argued that eligibility for programs is unduly restricted for prisoners with short sentences, for those on remand and for some classes of prisoners.

- Ian Pack (sub. 12, p. 8), a former prison chaplain, noted that 'inside prior to sentencing even people willing to address offending behaviour are often not eligible for appropriate courses before the time served and release'.

- The APS College of Forensic Psychologists (sub. 27, pp. 3, 6) commented that rehabilitation is ‘often not available via programs as people spend extended periods of time on remand and then may be released on time served or receive a sentence length that does not provide them access to programs. This likely increases risk of further imprisonment’. It considers that there should be options for prisoners on remand, focusing programs on psychosocial issues rather than on offences.

- Keith Hamburger (sub. 14, p. 17) argued that many short-term prisoners are held in secure prisons, but could be accommodated in appropriately located, designed and staffed community custody options where they could access therapeutic programs.

- Dr Kathleen Ellem et al. (sub. 7, pp. 9, 12) submitted that prisoners with cognitive disability may have difficulties accessing appropriate rehabilitation programs within prison that can assist early release. They considered that QCS and Youth Justice should develop rehabilitation programs for these prisoners.

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62 Sofronoff found that ‘no evaluations of the effectiveness of QCS programs, with the exception of the 2010 evaluation of sexual offending programs and a 2010 review of indigenous treatment, have been published’ (2016, p. 140).
The prison environment

Several submissions argued that the prison environment does not support rehabilitation. The first problem they raised is that most offenders are held in high security prisons, even though their time in prison is frequently short.

Associate Professor Eriksson (sub. 5, pp. 2–3) considered that:

> For rehabilitation to have a chance to be successful, it needs to take place in physical and social environments that support this, and which are characterised by values of responsibility, respect, certainty, hope, trust and humanity ... almost all prisoners are released from high security prisons ... effective rehabilitation programs are difficult to organise in high security, since the total character and lack of normalisation practices in such institutions, quickly negate the positive effects of good programs and education initiatives.

> For much of the non-violent offending, community corrections, fines and suspended sentences can be much better options. Such sentencing alternatives provides better access to treatment (particularly around drugs-alcohol and gambling addictions), allows people to maintain family links, work, education and so on.

Keith Hamburger (sub. 14, p. 16) argued that:

> Queensland's large prisons are disconnected from prisoners' community 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.

Queensland Advocacy Incorporated (sub. 16, p. 13) and the College of Forensic Psychologists—Queensland Branch (sub. 27, p. 5) make a similar point.

A second problem is overcrowding. Together Union argued that 'any meaningful attempt to reduce recidivism must include a reduction in over-crowding'. It pointed out that 'the work of our members has never been more dangerous and stressful' (sub. 29, p. 8). Rehabilitation is unlikely to be a priority in this type of setting.

The dominance of high security prisons affects the prospects for rehabilitation. Changes to the types of prisons could only be made through the long-term capital program, particularly the construction of new prisons. The Commission is seeking further information on how decisions are made about the types of prisons to build, the extent to which decision-makers consider the impact on prisoner rehabilitation, and whether they draw on the best internationally available evidence about how different types of facilities affect rehabilitation.

Assessment of prisoners

QCS procedures require that prisoners be assessed on admission to inform prisoner management and progression planning, and that progress be reviewed regularly (QCS 2018c). These procedures include an estimate of the prisoner’s risk of reoffending; determination of eligibility for intervention programs; identification and prioritisation of literacy and numeracy needs; and development and review of progression plans, including re-entry to the community. QCS procedures require that a progression plan be completed within three weeks of relevant assessments being made.

Sofronoff (2016) criticised QCS’s approach to risk assessments in custodial, probation and parole setting contexts. Ellem et al. (sub. 7, p. 4) submitted that there is a lack of systematic screening of people with cognitive disability at all stages of the criminal justice system and that QCS should invest in standardised brief psychometric screening tools that can assess the likelihood of intellectual impairment, and in other resources to make these tools more relevant to people with cognitive disability.
In-prison rehabilitation

Sofronoff (2016, p. 118) recommended replacing the present approach with validated assessment, implemented after external expert advice is sought. Another recommendation was that a body be established with the expertise to ensure that risk assessments, staff training, and the interventions used are regularly evaluated and supported by research (Sofronoff 2016, p. 120).

Case management

Case management is largely the responsibility of prison guards. Given that prisoners may change locations within and between prisons, their case managers may change frequently. This can be exacerbated by prison overcrowding and the short stays of most prisoners.

Sofronoff (2016, pp. 107–108) concluded that case management in prisons is disjointed and should be improved by implementing a dedicated case management system:

There is no person, or small unit of people, with the necessary qualifications and experience in case management, who has direct contact with the prisoner and is responsible for managing the prisoner while the prisoner is in custody so as to ensure the prisoner is prepared for parole by the prisoner’s parole release date or parole eligibility date.

The needs of specific groups

The effectiveness of programs depends on how closely they match offenders’ needs, as noted above. The disproportionate representation among prisoners of Aboriginal and Torres Strait Islanders and people with mental health and substance abuse problems, and the growing number of female prisoners, mean that programs for these groups are particularly significant. While QCS has made efforts to address specific needs, stakeholders suggested more needs to be done.

- The Queensland Alliance for Mental Health (sub. 21, pp. 1–2) pointed out that 49 per cent of prisoners have mental health issues and that all parts of the criminal justice system need to consider their needs, including alternatives to imprisonment.
- Dr Michelle Denton (sub. 4, p. 3) described the special challenges facing mentally ill prisoners, who need comprehensive interventions during prison to community transition, such as supported accommodation, assisted employment and other individually tailored individual supports.
- The APS College of Forensic Psychologists (sub. 27, p. 5) believed there are insufficient rehabilitation programs in custody for young offenders and insufficient qualified staff.
- 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’ is, in Keith Hamburger’s view, a key driver of increasing indigenous incarceration rates (sub. 14, p. 20).
- QCS has not yet implemented changes to its business practices needed to integrate with the National Disability Insurance Scheme business model (QAO 2016, p. 10).

The Queensland Parole System Review (Sofronoff 2016, p. 26) recommendations to assist specific groups included:

- Reviews should be undertaken of the resourcing of prison and community forensic mental health services and of provision of mental health services for Aboriginal and Torres Strait Islander people and for women.
- QCS should increase delivery and develop new rehabilitation programs specifically designed for Aboriginal and Torres Strait Islander people, by Aboriginal and Torres Strait Islander people.
- QCS should provide substance misuse rehabilitation to all prisoners and offenders as required in accordance with their assessed risk and need.
Staff training and work practices

The College of Forensic Psychologists (sub. 27, p. 6) considered that the number and qualifications of staff are barriers to program effectiveness. Several stakeholders, including correctional staff, made the same point to the Commission.

Associate Professor Eriksson argued that staff training, education, and ongoing support and mentoring are crucial for achieving better rehabilitation outcomes:

> Currently, strong staff cultures exist that dehumanise prisoners, that actively discourage prisoners to enrol in education programs, and who maintain a very large distance between staff and prisoner groups, as well as between uniformed and non-uniformed staff, all contributing to a culture of risk management that undermines rehabilitation ... For this to change, several things need to be taken into account, but perhaps the first is a much more comprehensive training and education of new prison staff.

> As mentioned by a staff member in one prison, and which was echoed across two States: 'Being a Prison Officer is a very unsupported profession, both by the government and by society ... It is seen as low-status but it is one of the most important jobs in society.' (sub. 5, pp. 4–5)

Prison procedures and policies also affect rehabilitation. For example, the Commission observed prisoners being locked down in the middle of the day, to accommodate lunch breaks for staff. This lockdown process takes considerable time and means that educational and training facilities are empty for significant parts of the day.

Release dates

Uncertainty about when prisoners will be released complicates the task of managing prisoners’ access to programs, even for prisoners serving longer sentences. QCS submitted that only 13.1 per cent of prisoners had a known release date. This:

> makes referrals to intensive evidence-based programs difficult, as prisoners generally need to be engaged in the program or intervention for at least six months for it to be effective. This challenge is being managed through increasing delivery of short, high intensity programs and interventions in custody, with longer term interventions being actioned upon release to community-based supervision. (Queensland Government sub. 43, p. 13)

This issue is covered in Chapter 14.

13.4 Improving in-prison rehabilitation

The limited evidence about the effectiveness of in-prison rehabilitation in Queensland is not encouraging. The Queensland Parole System Review (Sofronoff 2016) proposed increasing the number and diversity of programs and made other recommendations to improve the evidence base for program development.

The Queensland Government accepted these recommendations, indicating that expanding rehabilitation, drug and alcohol and mental health treatment services in prison was a priority. It committed to developing a long-term plan to implement them63 (Queensland Government 2017b, pp. 1–2). While the plan has not been published, some progress has been made (Box 13.3).

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63 With two exceptions, which were not about in-prison rehabilitation programs.
In-prison rehabilitation

Box 13.3 Progress on rehabilitation reform

The Queensland Government has committed $265 million over six years to address reforms suggested by the Queensland Parole System Review—it is not clear how much of this was allocated to support in-prison rehabilitation. However, funding was provided for an additional 18 full-time equivalent staff for Queensland Health to support rehabilitation, drug, alcohol and mental health services (QAO 2018, p. 56).

QCS pointed out that implementing many of the Queensland Parole System Review’s recommendations depends on infrastructure capacity (QCS 2018d, p. 8). However, it has progressed reforms including:

- partnering with KPMG and Swinburne University to review and replace existing risk and need assessments with validated assessment tools suitable for prisoners in custody and offenders under supervision in the community
- re-establishing a dedicated research and education team responsible for leading and managing complex research projects, evaluating outcomes from the Queensland Parole System Review, and other research activities for QCS, including program evaluations, research events and publications
- deploying additional rehabilitation programs, training and re-entry services to correctional centres and offenders in the community (QCS 2018b, p. 30)
- rolling out substance abuse programs from January 2019
- commencing a review of mental health programs in prisons to ensure services available to prisoners are equivalent to that which is available to the community
- commencing consultations about delivering a greater variety of rehabilitation programs developed and provided by Aboriginal and Torres Strait Islander people (Queensland Government sub. 43, p. 79).

The Department of Child Safety Youth and Women is investing in service responses to help manage the increasing demand on the correctional system, specifically in relation to the increasing number of women in custody (Queensland Government sub. 43, p. 12).

Although the Commission has not assessed the Queensland Parole System Review proposals or other reports as part of this inquiry, there is a long list of options to do ‘more’ to improve rehabilitation. The challenges for government include determining which options will be effective and efficient, and allocating (or reallocating) resources appropriately. Other than those challenges, another more fundamental issue relates to the responsibilities and incentives of those involved in rehabilitation.

Prison operators, prisoners and program providers all function within a governance framework that shapes their incentives to foster or seek rehabilitation.

Prison operators

How prison managers run prisons affects rehabilitation, including through their influence on prisoner participation in and completion of programs, which they can exert by:
In-prison rehabilitation

Taking opportunities to encourage prisoners to attend and persist with programs, by ensuring prisoners are able to get to programs on time and ensuring that education and programs go ahead as scheduled. (Economic Regulation Authority of Western Australia 2015, p. 144)

Their incentives to devote resources and effort to rehabilitating prisoners will depend on factors such as:

- the significance that the government and QCS attach to rehabilitation relative to other objectives
- how this is reflected in assessments of prison performance
- how much authority and flexibility prison managers have to design and offer programs
- how their budgets are structured
- other financial incentives.

There is limited transparency about these arrangements, which makes it difficult to assess their effects. For example, although there are service agreements for privately operated prisons, insufficient governance information is available on government prisons:

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. (Hamburger sub. 14, p. 38)

Reviews in other jurisdictions of the governance arrangements under which prisons promote rehabilitation suggest that this could be a promising way to improve performance (Box 13.4).

Box 13.4 Changes in governance in other jurisdictions

In its review of Western Australian prisons, the Economic Regulation Authority of Western Australia (ERA) concluded that performance measurement of prisoner participation in, and completion of programs would strengthen incentives to promote rehabilitation. To enable comparisons between prisons, it designed a weighted scorecard approach system of benchmarking for use in a published ‘league table’ of prisons, with benchmark targets adjusted to reflect differences in the composition of each prison’s population. New Zealand and the United Kingdom (UK) use similar approaches (Economic Regulation Authority of Western Australia 2015, p. 7).

In 2016, the UK Government published a White Paper setting out reforms of prisons, including giving governors the capacity to:

- choose which programs to run in their prisons and how much to spend on them
- design and create their own programs
- decide how to structure their educational regime, how it is sequenced and integrated with other services, who provides it and how to spend the education and related budgets.

Governors are encouraged to work with local employers and to use data on local labour market gaps, to choose the right vocational training to help offenders find employment. The UK is also establishing a Prisoner Apprenticeship Pathway, which would give prisoners access to equivalent quality training that an apprentice could expect in the community (UK Ministry of Justice 2016, pp. 30–34).

For example, private prison operators have less incentive to generate profit from prison industries compared to public prisons, because private prisons do not keep industry profits beyond what is contractually agreed, whereas the public prisons can offset their profits against their operational costs (QAO 2016, p. 45).
Prisoners

Prisoners’ incentives to engage in activities in prisons that might encourage rehabilitation are affected by many factors, including:

- whether they are granted out-of-prison leave for educational or vocational activities and whether participation affects the time spent in prison
- whether income from prison work is foregone, and the cost of books, university union fees and other required materials
- direct financial incentives to encourage program participation
- the level of remuneration for prisoner employment
- whether educational programs or employment in prisons are likely to lead to employment after prison. This is influenced not only by the quality of the programs or employment, but also by whether the programs are integrated with opportunities for post-prison employment.

The Commission is seeking information about how factors such as these operate in Queensland’s prisons.

Program providers

Education and vocational training are provided through internal, external, funded and non-funded arrangements. The training is primarily accessed through direct purchasing of vocational training and literacy/numeracy modules by QCS, or through state government funding models. Prisoners can also access funding for training through VET Fee Help and HECS-HELP Study Assist (Sofronoff 2016, p. 138).

Ron Wadforth, a corrections officer, stated that:

> it is essential that greater cooperation is achieved between vocational education and the industries units … work must be complemented by clearly defined vocational education and training. Such training should be part of the overall budget and strategy. (sub. 29, p. 13)

Providers’ incentives to reduce recidivism by prisoners attending their courses are influenced by at least three factors:

- the basis on which courses and course providers are accredited—QCS accredits programs under the National Offender Program Accreditation Standards, which are based on international research about interventions that are most effective in reducing recidivism (Sofronoff 2016, p. 140)
- whether course impacts on reoffending are measured—QCS undertakes pre- and post-program assessments to determine measurable changes in the short-term impact of program participation, but only two have been published (Sofronoff 2016, p. 140). Not making assessment results public reduces the incentive effects of evaluation
- payment arrangements, including whether payment is linked to recidivism by course attendees.

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65 Although a United States study found that financial incentives to encourage parolees to engage in treatment for substance abuse had no effect on treatment retention (Doleac 2018, p. 30).
66 All Queensland prisons have some employment for prisoners, either to maintain the prison (in the laundry, kitchen or as a cleaner), or in prison industries, which include metal, leather and wood-working workshops. Some prison jobs provide opportunities to work with trade instructors and learn skills. QCS determines pay structures based on minimal payments and prisoners are not protected by industrial laws. There is no power to compel a prisoner to work, but most choose to do so to earn money to pay for telephone calls and personal items. Prisoners’ willingness to work is factored into considerations about their progress through the prison system and can affect their chances of being released on parole. Prisoners who are willing to work, but for whom there is no job available or who have a disability, are entitled to a small unemployment allowance (Caxton Legal Centre 2019).
13.5 Preliminary assessment

International research is broadly positive about the contribution to rehabilitation of programs provided in prisons, but the results are mixed and local differences may limit their applicability to Queensland. The design of correctional facilities and the way they are operated also have a large impact on rehabilitation outcomes. The government should consider, when developing its capital program for building new corrections centres or modifying existing ones, cost-effective opportunities to improve facilities’ contribution to rehabilitation. The government should draw on the best internationally available evidence about how different types of facilities affect rehabilitation.

Few evaluations of Queensland’s in-prison programs have been published. However, the stubbornly high recidivism rate, the Queensland Parole System Review and submissions to this inquiry indicate considerable scope for improvement. Problems include disjointed case management, narrow eligibility for in-prison programs, inadequate catering for the special needs of specific groups, and governance arrangements that lead to weak incentives for rehabilitation. The government has accepted recommendations from the Queensland Parole System Review that would address some of these issues.

Additional benefits would be gained from focusing in more detail on the governance arrangements and incentives around in-prison rehabilitation. Important questions are whether there is scope to:

- strengthen incentives for prison operators, prisoners and course providers to reduce recidivism
- clarify the respective roles of prisons and QCS in designing, delivering and evaluating rehabilitation programs, to ensure that these roles are clearly designed, mutually consistent and backed up by appropriate authority and resourcing
- improve coordination between prisons and other agencies involved in reducing recidivism.

A range of possible options could be considered as ways of altering the incentives and capability for rehabilitation, including improved performance measurement and devolution of decision-making (Box 13.3). These options typically involve complex design issues. For instance, new performance measures for prisons should allow for the difficulty of isolating each prison’s contribution to rehabilitation. Prisons do not design programs and so cannot be held accountable for program quality. They also do not control overcrowding or transfers between prisons that could interfere with rehabilitation plans.

Importantly, whether rehabilitation is achieved depends on the effectiveness of the integrated system involving both in-prison rehabilitation and after-prison services. Options for improving rehabilitation therefore need to be assessed in that broader context (Chapter 15).

Draft Finding 2

While few evaluations of the contribution of prisons in Queensland to rehabilitation have been published, signs are that there is room for improvement. That is clear from the stubbornly high recidivism rate, previous reviews, and evidence presented to this inquiry. Governance arrangements are likely to be an important part of an effective improvement program but need to be considered in the context of the integrated system involving both in-prison rehabilitation and after-prison services.
Draft Recommendation 11

When Queensland Corrective Services develops its capital program for building new corrections centres or modifying existing facilities, it should assess options to make infrastructure more effective for prisoner rehabilitation. Consideration should be given to:

- the best available international evidence on the effect of infrastructure on rehabilitation
- cost-effective options to improve rehabilitation of prisoners.

Information request

The Commission is seeking information on:

- completion rates of in-prison programs and the evidence from evaluations or other studies of the contribution of in-prison programs to reducing recidivism in Queensland
- how QCS considers the impact on rehabilitation when designing its capital program
- the incentives for:
  - prison managers, to encourage prisoners to participate in and complete programs within prisons and to engage in meaningful employment
  - prisoners, to participate in and complete programs within prisons and to engage in meaningful employment
  - course providers, to encourage prisoners to participate in and complete programs within prisons
- changes to governance arrangements that would improve rehabilitation and reduce recidivism.
Reintegration of prisoners
This chapter considers how the process for reintegrating prisoners in the community can reduce recidivism, whether the reintegration process in Queensland can be improved and what options exist to make improvements.

**Key points**

- Most Queensland prisoners will ultimately return to the community. Less than 6 per cent of prisoners in 2017 were serving life sentences, with the majority (65 per cent) serving sentences of five years or less. Currently, more than 1,000 prisoners are released back into the community every month.

- Successful reintegration of prisoners will reduce offending and allow ex-prisoners to contribute to their communities.

- Services and programs can assist prisoners to reintegrate into the community:
  - Where services work, they are likely to save the community significant social and economic costs.
  - However, reintegration services are 'risky' investments because positive results are by no means universal or large—most successful programs are likely to have moderate effects on reoffending.

- It is therefore difficult to determine the optimal level of funding for reintegration services. That said, the aggregate level of resourcing for reintegration services remains a small component of the Queensland Corrective Services annual operating budget.

- More investment in effective reintegration is likely to result in savings across the criminal justice system.

- Prisoner reintegration is a multi-dimensional process that spans basic needs and ongoing treatment for health and behavioural issues. Under the criminal justice system:
  - there are few incentives to support reintegration, with agencies and actors primarily tasked with delivering other functions
  - there is no clear responsibility for reintegration, which impedes coordinated and effective delivery of the range of services involved in reintegration
  - there is limited accountability for reintegration, with no effective reporting on outcomes, efficiency or effectiveness. As a result, there is little evidence about what works and few incentives for innovation or ongoing improvement.

- Regulatory impediments, such as an inability to use work release orders and excessively prescriptive release schedules also appear to limit the effectiveness of reintegration.

- Reforms to improve reintegration need to be considered alongside in-prison rehabilitation—these are considered in Chapter 15.
14.1 The value of reintegration services

Most Queensland prisoners will one day return to the community. Less than 6 per cent of prisoners in 2017 were serving life sentences, with the majority (64 per cent) serving sentences of five years or less (ABS 2018k). Currently, more than 1,000 prisoners are released back into the community every month (QCS unpublished data).

The treatment that prisoners receive while they are in prison and the support they receive after leaving have a bearing on whether they will commit further offences, return to prison or reform.

As discussed in Chapter 5, recidivism rates in Queensland are high and have been increasing for at least the last decade. In 2018, 63.6 per cent of prisoners in Queensland had been in prison before. The statistics for Aboriginal and Torres Strait Islander people are even more sobering, with 79.9 per cent of Indigenous prisoners having been in prison before, compared to 56.2 per cent for the non-Indigenous cohort (ABS 2018k). The impact of recidivism is both socially and economically destructive.

Prisoner reintegration aims to minimise the social and economic costs caused by prisoners who reoffend as a response to the difficulties of adjusting back to life in the community. Although there is a lack of data on the proportion of prisoners who reoffend because of these difficulties, the evidence suggests they make a significant contribution to recidivism:

Through the process of this review I have had the opportunity to speak with many stakeholders involved with prisoners on release from custody. A common thread in such conversations has been the real difficulty prisoners have when they seek to reintegrate into the community (Sofronoff 2016, p. 155).

For prisoners the transition out of custody is a risky period for relapse and recidivism (RANZCP sub. 31, p. 7).

Obviously being able to find accommodation and set up a stable life after imprisonment is a monumental ask for many vulnerable and disadvantaged women who are leaving prison (Women’s Legal Service Queensland sub. 17, p. 3).

[A] former prisoner is likely to feel isolated and will be highly susceptible to facing common barriers, including but not limited to homelessness, unemployment and a lack of connection to family, community and culture (Serco sub. 19, p. 1).

Prisoner reintegration is a multi-dimensional process which spans basic needs such as housing, employment and income to ongoing treatment for mental illnesses and substance addictions and assistance with relationships and behavioural changes. Meeting basic needs, such as securing employment and housing, can be difficult because of the stigma attached to prison. In addition to meeting the basic needs of living, former prisoners need to navigate the complexities of social welfare and public health systems to find and receive treatment.

Payne (2007, p. xiii) summarises the reintegration challenge as:

Post-release difficulties are particularly important. These difficulties, such as limited access to financial resources, limited contact with family and limited knowledge of social support and health services are all key factors identified as barriers to successful reintegration. They are factors that are subsequently linked to a higher probability of reoffending.

Reintegration services, such as assisting with access to housing and employment, can provide large benefits to the community by lowering crime, restoring family units fractured by imprisonment and bolstering the economy through restoring people to meaningful work.

In-prison rehabilitation (Chapter 13) and reintegration services are two parts of a system which rehabilitates prisoners. Reintegration services complement rehabilitation—without effective reintegration, rehabilitation
programs cannot reach their potential for reducing recidivism. Expecting an ex-prisoner to rehabilitate without helping them to reintegrate in the community would be analogous to expecting someone to pass a driving test after only studying the theory of driving.

### 14.2 Existing reintegration services

Reintegration services were first offered in Queensland in 2000. The services were localised—that is, designed and implemented at each prison. In 2002, the services were standardised across the state (Sofronoff 2016).

From 2000 to 2015, the number of prisoners receiving reintegration services rose from around 4,500 to just under 7,500. The number of offenders that were supported with some kind of reintegration service increased from just over 12,000 in 2008 to just over 17,000 in 2015 (Sofronoff 2016, p. 335).

The first formal Offender Reintegration Support Service commenced in 2008. Following a 2015 Queensland Corrective Services (QCS) commissioned review, integration services were redesigned, and three new reintegration services were introduced, which targeted specific groups and regions.

The 2016 *Queensland Parole System Review* (Sofronoff 2016) examined the reintegration of prisoners. It noted that there were significant differences in approach to the provision of reintegration services in Queensland compared to other jurisdictions. For example, New South Wales used social impact investments as well as traditional procurement and delivery options and delivered a wider scope of services. This led to a recommendation to expand reintegration so all prisoners have access to reintegration services (Sofronoff 2016, p. 160). The review’s recommendations in relation to reintegration services were largely accepted by the Queensland Government (Box 14.1).

#### Box 14.1 *Queensland Parole System Review* recommendations on reintegration services (2016)

**Recommendation no. 32**

The Government should undertake a short-term evaluation of Queensland Corrective Services’ redesigned re-entry service after 12 months of implementation, with a further review prior to the contract renewal period.

Government response: Accepted, with a review period of two years.

**Recommendation no. 33**

Queensland Corrective Services should expand its re-entry services to ensure that all prisoners have access to the services, including specialty services to assist remandees and short sentenced prisoners.

Government response: Accepted.

**Recommendation no. 34**

An intergovernmental taskforce, with representation from the Department of Housing and Public Works, Queensland Corrective Services and the Department of Premier and Cabinet, should be established to examine the issue of the availability of suitable long-term accommodation for prisoners and parolees.

Government response: Accepted.
The Queensland Government announced additional funding of $265 million over six years in the 2017–18 Budget to implement the recommendation of the *Queensland Parole System Review*. The proportion of this funding that will go towards implementing the recommendations on reintegration services is not publicly available.

The Queensland Government’s 2018–19 Budget also included $2.86 million to improve service delivery for prisoners with a disability or mental illness, including reintegration support services (Queensland Government sub. 43, p. 25).

In Queensland the following government-funded reintegration services are available to prisoners:

- QCS reintegration services (all Queensland correctional centres)
- Prison Mental Health Service Transitional Support Services (funded through Queensland Health)
- Queensland Forensic Mental Health Service Indigenous Mental Health Intervention program (funded through Queensland Health)
- Prisoner Throughcare Program (ATSILS Queensland, funded by the Australian Government)
- Ipswich Residential Project—Five Bridges (funded by the Australian Government)
- From Jail to Jobs pilot (funded by the Queensland Government).

**Queensland government-funded services**

Insufficient information is available to make any reasonable assessment of the adequacy of the services provided by the state government.

The Queensland Government (sub. 43, p. 14) reported there were 19,691 in-prison contacts and 5,086 post-release contacts for its reintegration services in 2017–18. However, the Commission has not been able to access information on the kinds of services these entailed, how they are coordinated, how many prisoners are accessing these services and how effective they have been.

The main QCS reintegration program, CREST, is delivered by contractors in the Far North, Northern, Central, North Coast and South East Queensland regions. The services comprise an in-prison information and referral service, which can be accessed by prisoners, and case management and crisis support services for prisoners assessed as having a high risk of reoffending. However, there is no information on whether these services are effective in assisting prisoners to reintege into the community.

Targeted services also have been developed. For example, MARA is a reintegration program designed specifically for women (Box 14.2). An example of a place-based program is the Aurukun Reintegration Justice Project (Box 14.3).

**Box 14.2 MARA**

MARA is a reintegration program designed specifically to meet the needs of women prisoners. It was introduced in 2016, with annual funding of $1 million. The service is delivered at the Brisbane Women’s Correctional Centre, Numinbah Correctional Centre, Helana Jones Centre, and probation and parole offices in South East Queensland. Townsville Women’s Correctional Centre has its own specific North Queensland-based provider in place.

Stakeholders spoke highly of this program, noting it was developed applying co-design principles involving prison staff and service providers, who helped identify workable and in-demand services.
Box 14.3 Aurukun Reintegration Justice Project

The Aurukun Reintegration Justice Project (ARJP) was established as part of the Queensland Government’s Aurukun Four Point Plan. This plan identified the return from custody of adults and young people as a key risk factor in Aurukun.

The vast majority of the ARJP work has been aimed at adult prisoners returning to the community, with existing youth justice service delivery transitional processes continuing to occur for youth clients.

The program is coordinated among and delivered by collaborating state government departments. The ARJP case-management-led processes include:

- pre-release and transition support
- engagement in cultural connection programs prior to release
- post-release support and case management following return to the Aurukun community

(Queensland Government sub. 43, p. 18).

The ARJP has demonstrated some positive outcomes; however, it does appear to be a resource-intensive model.

Box 14.4 includes data on the coverage of reintegration services in New Zealand and Victoria. In New Zealand, around 25 per cent of all released prisoners are delivered a service by reintegration providers (NZ Department of Corrections 2018, pp. 95–97). The Victorian Budget in 2017–18 included funding to increase reintegration service places to 3,000 (Victorian Department of Justice and Regulation 2018, p. 30).

The Commission seeks data to make a comparison of the coverage of reintegration services in Queensland and other jurisdictions.

Box 14.4 Reintegration services markets in other jurisdictions

New Zealand

Around 16,000 people are released from New Zealand prisons each year. In 2017–18, nearly 7,500 referrals were made to reintegration service providers. From these referrals, there were over 4,290 program starts.

Victoria

In 2016–17, just over 10,000 prisoners were released from Victorian prisons. The 2017–18 State Budget expanded post-release support services for those prisoners being discharged from prison who require assistance, with a focus on remand and short-sentence prisoners. Program delivery is on track to increase places from 990 per annum to 3,000 per annum in 2021.

Australian Government-funded services

The Australian Government funds some small reintegration programs which target Indigenous offenders including programs operated by Five Bridges in Ipswich and the Aboriginal and Torres Strait Islander Legal Service (ATSILS) in several locations across the state.

The ATSILS program is a prisoner throughcare program that supports Indigenous prisoners and youth detainees before and after prison. The program is intended for those at high risk of reoffending and involves using an
intensive case management approach working with the ex-prisoner and other stakeholders. The average length of time spent on the program is six months. However, funding limits the program to a limited number of prisoners, and only at certain correctional facilities.

Parole service

The parole system is closely linked with the way post-prison support is offered—most (but not all) prisoners are released on parole, either through court-ordered parole (for sentences less than three years that are not sexual offences), or through application to the parole board (for longer sentences).

Under parole, prisoners are released into the community to serve the remainder of their sentence. Prisoners are supervised by a parole officer (employed by Queensland Corrective Services) who monitors their behaviour (depending on the conditions of their parole) until the end of their sentence.

Court-ordered parole provides for the mandatory release of prisoners into parole. The intent is to ensure that prisoners have access to parole to help them reintegrate into the community before their prison term ends. Court-ordered parole has been criticised for removing incentives for prisoners to engage in rehabilitation (previously, parole was approved by the parole board once certain conditions were met)—however, the Queensland Parole System Review recommended keeping the system of court-ordered parole.

A substantial proportion of parolees are sent back to prison because the risk that they could offend is deemed to be high. The decision to revoke parole can result from a new charge or a change of circumstance that the supervising officer considers makes it more likely they will commit an offence. Examples of changed circumstances are when an offender loses secure housing or is unable to access support services. These examples emphasise the value of providing reintegration services to avoid the financial and social costs of imprisonment.

The Queensland Parole System Review identified the following effects of the parole service on reintegration services:

• There was a shortage of involvement of Aboriginal and Torres Strait Islander people in parole (and probation). Officers were often not culturally competent and there were insufficient Aboriginal and Torres Strait Islander people working as parole officers.

• There is a disconnect between the recommendations from parole boards and the programs and services available to support these recommendations.

• There is a lack of resourcing for parole officers—high case-loads and low expenditures per offender being supervised.

• The inability for prisoners to be released for a job interview or to organise a house prior to release, for example, meant they were less prepared on the day of release than they could be (prior to 2006, this was available as resettlement leave).

• Conflicting roles for case officers where they need to fill the role of confidant (for example, offenders need to be able to admit problems dealing with addictions) and breaches make it difficult to establish trust and arrange assistance.

The effective and efficient operation of the Probation and Parole Service is an important part of successful reintegration of prisoners to the community. While the Commission recognises that the reforms from the Queensland Parole System Review will take time to reach full effect, expenditure on community supervision in Queensland is the lowest in Australia (Chapter 11). Queensland also has the highest ratio of offenders to community corrections staff in Australia (PC 2018b).
14.3 The effectiveness of reintegration services

It can be difficult for prisoners to resume their life after their sentence is complete. The literature suggests that reintegration services can facilitate this process and minimise recidivism. However, the success of reintegration programs varies according to time and place. A 2018 meta-analysis (Sydes et al. 2018) identified 56 studies examining reintegration services that used a robust evaluation method, preferably randomised controlled trials. The key findings from this report were that recidivism was primarily reduced through:

- reintegration planning with offenders
- accommodation initiatives targeted at high risk offenders
- reconnection with family and/or work through temporary release programs
- health (including mental health) services.

The authors noted that partnership and collaborative approaches produced better results.

Reintegration planning

Reintegration planning is an in-prison activity that aims to help a prisoner to inform and plan for their release. The Victorian Ombudsman 2015, p. 101) reported that it is well understood that ‘people exiting prison are less likely to reoffend if they are assisted to prepare for their release and have access to information and support on their return to the community’.

However, the success of reintegration planning is not universal. For example, Sydes (2018, p. 104) reports mixed success in reducing recidivism by offering reintegration planning services. Doleac (2018, p. 31) also cautions on the use of ‘wrap-around’ service programs, suggesting that these programs are labour-intensive and expensive to administer and rarely evaluated.

Reintegration planning is one of the components of rehabilitation. Ideally, planning for rehabilitation and reintegration will take place at the beginning of a custodial sentence and the time in custody is used productively to prepare for the inevitable release back into the community. This approach does not appear to be standard practice for all prisoners in Queensland.

Eriksson (sub. 5, p. 3) submitted that preparation for release should start during the first week of incarceration.

Needs, risk- and protective factors should be identified and a sentencing plan organised accordingly. Due to overcrowding and lack of progression from high security, this kind of preparation tends to happen a few months before release, which is woefully inadequate for supporting desistance.

Submissions received by the Commission noted several areas of potential improvement in planning and coordination and seemingly simple changes than can be made to facilitate reintegration.

If prisoners could be assisted to ensure they have a current Driver’s licence, Medicare card, ID (Birth Certificate) and as many Certificates for courses completed whilst in prison, this would go a long way toward reducing recidivism. (Pack sub. 24, p. 1)

It is also vital that screening processes identify those people who are potentially eligible for the NDIS, so those people are supported to make an application. This includes people who have a psychosocial disability—it is estimated approximately 14% of NDIS participants will have a primary psychosocial disability. (QAMH sub. 21, p. 6)

[Individuals with ‘lived experience’ with incarceration need to be part of the solution to the rehabilitation and reintegration of individuals ... (Lifeblood Australia sub. 9, p. 1)
A lack of planning for release is likely to be exacerbated by uncertainty about release dates. During consultation, prison managers stated that this was an impediment to prisoner reintegration. As a consequence, prisoners were released with limited reintegration planning. As noted in the Queensland Government (sub. 43, p. 13):

> At any given time, the release date for only a small proportion of the total prison population is known to QCS. For example, on 31 August 2018, 13.1% of the prisoner population had an actual known release date ...

The Commission seeks information on any operational disadvantages for the Courts or Parole Board Queensland of providing specific release dates to more prisoners.

### Accommodation

Several studies have tracked prisoners after discharge from prison (for examples, see Cutcher et al. 2014; Kinner 2006; Morrison & Bowman 2017; Schetzer & StreetCare 2013). Prisoners participating in these studies identified securing stable accommodation as their single biggest issue after release. Problems with accommodation arrangements are also commonly identified as a short-term risk factor for reoffending.

> The reality hits that you might not have a house or roof over your head. Prison at that point looks like a pretty good option—clean bed, three meals a day, you go to work [in prison] and come home at night, you’re with your mates and apart from the violence and a few other things, it’s not a bad option rather than being homeless. (Victorian Ombudsman 2015, p. 108)

Little empirical evidence is available that assesses how homelessness impacts on recidivism in Australia, but a longitudinal study in the United Kingdom showed that those who were homeless prior to imprisonment were much more likely to reoffend than those who had stable accommodation (79 per cent versus 47 per cent reoffending rates, respectively) (AIHW 2015, p. 28). In Queensland, around 23 per cent of prison entrants in 2015 were homeless in the four weeks prior to imprisonment and 37 per cent of dischargees either did not know where they would be staying or were expecting to be staying in short-term or emergency accommodation on release (AIHW 2015).

The extent to which the Queensland Government supports prisoner accommodation needs after imprisonment is unclear. The Queensland Government stated in its submission (sub. 43, p. 37) that:

> DHPW gives a high priority to providing appropriate housing assistance to offenders leaving correctional facilities who would otherwise be facing homelessness, such as social housing or private housing assistance products, including RentConnect, bond loan or rental grant, either at the time of their exit from the correctional centre or prior to their release as part of their transition process.

It also noted two specific programs. The Queensland Government’s Next Step Home—Women on Parole pilot program assists women who would otherwise be homeless or at risk of homelessness on release from custody with reintegration services. As of September 2018, 93 women had been triaged, with 45 women housed (6 women exited the program). The pilot is still under development (sub. 43, p. 38).

The Queensland Government also operates a Youth CONNECT Homelessness Social Benefit Bond (sub. 43, p. 40). This program provides housing and other support for youths exiting statutory care or custody. The program began in December 2017 and has received 53 referrals, 60 per cent of which were Indigenous.

However, other than these examples, the Commission has not been able to access data on the number of prisoners supported, the costs of the support, or its effectiveness.

Several other submissions noted both the importance and undersupply of accommodation for released prisoners.
Further there is insufficient housing available to support bail applications, parole outcomes and successful reintegration into the community. This is particularly an issue in rural and remote regions meaning that available accommodation is unlikely to be near social and other welfare supports. (APC College of Forensic Psychologists sub. 27, p. 3)

Increasing safe affordable community housing options for these juvenile and adults cohorts (with gender and Indigenous appropriate options) would considerably reduce the use of remand and relieve the crisis in the Qld juvenile and criminal justice systems. (Carrington and Hogg sub. 3, p. 4)

Moving often, lack of family and professional support, lack of employment and worsening drug use were all associated with poor housing and return to prison. (Ellem sub. 7, p. 11)

With over 1,000 prisoners returning to the community each month, the demand for government-funded housing is likely to exceed supply.

The Queensland Parole System Review also noted the coordination problems between prisoner release and access to public housing and recommended a taskforce be established to improve coordination.

**Employment**

The available evidence on employment programs, largely drawn from United States studies, is mixed. Former prisoners who find employment are less likely to reoffend. However, it matters what type of job they have.

In the United States literature, placing prisoners in subsidised employment on release has no impact on the likelihood of reoffending. In contrast, former prisoners who find employment in industries which demand labour with their skills are less likely to reoffend (Sydes et al. 2018, p. 75). The implication here is that in-prison skills training should equip prisoners with skills that are in demand in the labour markets in which they will be released. TAFE Queensland (sub. 8, p. 1) observed that ‘VET courses have maximum impact and contribute to rehabilitation when prisoners are pre-screened for suitability to the industry and likely job opportunities post-release’.

Work release programs are used extensively in the United States. For example, work release was established as a prison-to-community transition program in Florida over 40 years ago (Bales et al. 2015). Evaluations of these work release programs indicate that they can reduce recidivism and help former prisoners to find and maintain employment. Given that a proportion of prisoner income is charged as fees to offset the cost of their incarceration, these programs are also likely to reduce the costs of incarceration to the community.

Initiatives aimed at reducing the stigma of a prison record and addressing the perceived risk of hiring an ex-prisoner through, for example, a court-issued rehabilitation certificate, have been found to reduce the likelihood of reoffending. Interestingly, the opposite approach of prohibiting employers for asking about criminal history early in the hiring process have no impact on recidivism (Doleac 2018).

Although there are a range of initiatives to assist prisoners to develop skills (Box 14.5), there is insufficient evidence available on the efficiency or effectiveness of current approaches to reintegrate prisoners into work. However, the Commission notes that there may be several impediments to this objective:

- Temporary release programs are not permitted under Queensland legislation. Being able to work while detained in prison provides an opportunity for prisoners to apply the knowledge gained in training and to prepare for the adjustment to a normal routine when released from prison.
- Currently only a very small proportion of prisoners engage in work that might develop industry-relevant experience or skills, because the supply of in-prison jobs is restricted by policies that restrict prisons from undertaking work that might compete with existing industry.
Health services

During consultation, stakeholders raised concerns about the relationship between offending and substance addiction, which is linked to mental health. This was also a dominant theme in many submissions.

Sydes et al. (2018) show that most aftercare drug and alcohol programs were able to demonstrate a reduction in relapse or reoffending. Their conclusion was that the available studies provide promising results for the use of aftercare programs for substance-using offenders. However, these evaluations suggest that reductions in offending behaviours are not large.

Reports by the New Zealand Department of Corrections (NZ Department of Corrections 2018) show similar results. The department publishes the results of evaluations of its in-prison and in-community programs. It has two in-community programs dealing with alcohol and drugs. In 2017, both reported reductions in reoffending.
(and reconviction) by participants in the program, although only one study was statistically significant, and the reduction was less than 3 per cent.

Submissions noted that a high proportion of prisoners have substance addictions and mental illnesses. Several submissions commented favourably on the transition program provided by Queensland Health, which targets prisoners with severe and persistent mental illness (QAMH sub. 21; APC College of Forensic Psychologists sub. 27; RANZCP sub. 31).

A clear theme in submissions was that there was insufficient support for prisoners released into the community. There is a need for a more integrated response between Probation and Parole and the alcohol and other drug treatment sector to ensure a person can be linked with appropriate, specialist treatment if and when they need it. Obviously, this strategy would require further investment in the specialist treatment sector to ensure capacity to meet need. (QNADA sub. 30, p. 7)

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. (Keith Hamburger sub. 14, p. 37)

14.4 Issues with reintegration services

Queensland has been offering standardised reintegration services for just over a decade. Since 2008 there appears to have been one major change in the design of services, which occurred in 2015. All current programs were introduced in 2015 or later (Sofronoff 2016).

There is little information available that demonstrates the effectiveness of existing reintegration services. When responding to the Queensland Parole System Review in February 2017, the government committed to complete a review of reintegration services within two years.

Reintegration services are important but risky investments. The evidence base for programs is drawn from evaluations that vary widely according to place, time and design. Two submissions highlighted the difference in opinion on how robust the evidence of effectiveness of a program is (Richards sub. 2; Elliot sub. 3). Therefore, the performance of programs should be regularly monitored. More formal and preferably independent studies, which use appropriate methodologies, should complement ongoing monitoring. No information has been provided on the monitoring and reporting framework that QCS uses to assess the effectiveness of reintegration services. Without this information, it would be imprudent to further expand the existing suite of reintegration services.

Several stakeholders considered that accommodation and health services are undersupplied. Further information is sought from the agencies on the number of prisoners that are provided with such services and the effectiveness of the services. The funding for both these services is provided to the delivering agencies rather than QCS.

The funding for reintegration services is spread across several agencies—the Department of Health, QCS and the Department of Public Works and Housing. Spreading funding across agencies requires effective collaboration between agencies to ensure there are sufficient services and they have the required impact on reoffending. This is a broader system issue (considered in Chapters 15 and 16).
There are some notable gaps in the reintegration services funded by QCS:

- Effective reintegration planning is not undertaken for most prisoners.
- Employment release programs are not available.
- Opportunities for prisoners to engage in work, to develop relevant post-release skills, are limited.

The Commission is keen to understand if there are operational practices that could be introduced to improve the preparedness of prisoners for their reintegration. For example, it is not clear if operational practices are in place to manage the sudden release of prisoners and still achieve successful reintegration.

Notwithstanding the increase in funding received since 2017–18 for reintegration services, several submissions commented on the current level of resources allocated between detention, and rehabilitation and reintegration.

The Queensland Government needs to rebalance the investment profile from crisis responses, to prevention, early intervention, and recovery. (QCOSS sub. 20, p. 12)

The role and effectiveness of such alternatives are however hampered by at least two mutually reinforcing factors. First, as noted above, the prison devours most of the resources in correctional budgets, reducing what is available to support a broad range of innovative alternative sanctions with which courts and corrections might more effectively meet the goals of the sentencing system. Meaningful alternatives could be provided at a fraction of the cost of incarceration, but starving of them resources sets them up to fail. (Carrington and Hogg sub. 3, p. 13)

It is inexcusable to keep hundreds of prisoners in custody for no other reason than having not completed a program, when the cost of increasing interventions and programs is far cheaper than the cost of imprisonment. (Anonymous sub. 26, p. 2)

The Commission was unable to determine the level of expenditures on reintegration. However, despite the increase in funding for reintegration services from 2017–18, it appears the aggregate level of resourcing for reintegration services remains a small component of the QCS $950 million annual operating budget.

Prior to any further expansion of reintegration services, the government would need to assess whether the benefits from expanding services exceed the costs. Reintegration services are a risky investment in the sense that the reductions in reoffending can be small. However, the savings from preventing a term of imprisonment are large, even before considering the other social benefits.
Draft Recommendation 12

To lower reoffending, the Queensland Government should improve the likelihood of successful reintegration by:

- removing regulatory impediments to reintegration, including the lack of work release options, and uncertain release dates
- introducing measures to ensure parole workers’ caseloads support effective community supervision
- providing sufficient flexibility on release dates to allow Corrective Services to effectively prepare prisoners for release
- ensuring all prisoners, at release, have up-to-date identity documents, including a Medicare card and birth certificate, a driver’s licence and bank account where required, and information on social welfare and employment services.

Information request

Further information is sought on:

- the number of prisoners receiving reintegration support from government service providers, and the costs of these services
- the number of released prisoners accessing government-funded housing each month
- the extent to which the NGO sector is supporting prisoners with accommodation (not funded by government)
- the number of prisoners released without a planned release date and any problems this creates for the delivery of reintegration services
- options for linking released prisoners to accommodation services without government funding
- the practicality and value of developing temporary release programs for prisoners in the final stage of a prison sentence.
Part C

System reforms
15.0 Coordinating rehabilitation and reintegration
This chapter highlights the importance of an integrated approach to rehabilitation and reintegration.

Key points

- Rates of reoffending can be reduced by effectively rehabilitating prisoners and reintegrating them into the community.

- The process of managing the rehabilitation of offenders as they move through the criminal justice system until they are reintegrated into the community is known as throughcare. It requires vertical coordination across the various stages of rehabilitation and reintegration and horizontal coordination between the many government and non-government organisations that provide services for rehabilitating and reintegrating prisoners.

- Throughcare can be managed and coordinated in various ways, but best practice approaches feature:
  - clear objectives to rehabilitate prisoners
  - adequate resourcing to meet these objectives
  - a focus on rehabilitation needs of each individual prisoner
  - coordinated service delivery
  - sufficient delegation of authority
  - mechanisms to encourage continuous development
  - incentives to reduce reoffending.

- Although there is a commitment to a throughcare approach in policy, the application of throughcare is not best practice.

- People and agencies involved in throughcare need the right incentives to provide, coordinate and use throughcare services as efficiently and effectively as possible. These incentives, which are heavily influenced by the governance arrangements around throughcare, will shape its outcomes.

- There are a range of options, including those set out in this chapter, for improving throughcare. The Commission will consider these options for the final report. Important issues include:
  - where throughcare should start (for example, whether initial screening should occur prior to sentencing)
  - how to improve governance arrangements and the incentives that they create for efficient, effective and continuously improving service delivery.

- When developing the throughcare model, it is necessary to consider ways to foster markets for services that support rehabilitation and integration. Community involvement in such services is another important factor.
15.1 Introduction

Queensland provides rehabilitation services in prisons (discussed in Chapter 13) and reintegration services after release (Chapter 14). However, weaknesses in case management have been identified, as well as gaps in the incentives to coordinate and improve rehabilitation and reintegration services. There is also room for improving the evidence base for developing new initiatives. Significant opportunities exist to improve coordination between rehabilitation that occurs in prison and during reintegration into the community (Chapters 13 and 14).

Throughcare is a process that attempts to address many of the weaknesses in the system by integrating the management of offenders' rehabilitation as they move through the criminal justice system and back into the community.

Throughcare is a process of delivering continuous care in an integrated and seamless manner throughout a prisoner’s sentence and on release to the community. In theory, throughcare policies will address prisoner needs from their first contact with prison and will focus on reintegration needs. Interventions need to commence in prisons and continue after release. Reintegration requires close working among multiple agencies, not just correctional services. A throughcare approach also recognises that interwoven, long-term problems often require long-term solutions. (Lloyd et al. 2013, p. 33)

In Australia, throughcare was first introduced in South Australia in 1998 and subsequently in all seven Australian jurisdictions in an attempt to reduce recidivism (Griffiths et al. 2016, p. 10). It is based on extensive research and evidence that shows many offenders have multiple and complex needs that need to be addressed as part of their rehabilitation (Griffiths et al. 2016, p. 2). To address these needs, continuity of care and seamless delivery of a variety of services are required (ACT Social Policy and Implementation Branch, Chief Minister and Cabinet Directorate 2011, p. 1).

The reward from effective throughcare is the rehabilitation of offenders who might otherwise have reoffended, so that they become successful contributors to society. Another way of expressing this is that society pays a high price when throughcare is ineffective. Queensland’s stubbornly high rate of recidivism implies that Queenslanders are paying that price.

Queensland Corrective Services (QCS) recognises this and is exploring opportunities to improve its approach to rehabilitation and reintegration:

The offender management framework is under review, following the Sofronoff Review recommending that a new end-to-end offender management framework should be developed to ensure continuity of case management from custody to the community. The Sofronoff Review also recommended that assessments should commence in custody to ensure interventions can commence immediately upon release from custody. This work has commenced, with QCS undertaking a significant program of work to benchmark the current state for offender management within QCS. (Queensland Government sub. 43, p. 72)

This chapter describes seven characteristics of effective throughcare arrangements, including the governance framework within which they operate. The Commission’s analysis indicates that Queensland’s throughcare arrangements do not perform strongly against these characteristics. Insights about how to improve throughcare can be gained by considering the role that government performs as funder, provider and purchaser of throughcare services. This approach suggests that reforms involving some changes to government’s role as provider and purchaser of services warrant more analysis.
15.2 Features of effective throughcare

It can be unclear at which point throughcare should begin and when it should finish. Queensland’s juvenile justice system focuses on rehabilitation from the time of sentencing, whereas in the adult system assessment occurs after imprisonment.67

Whatever the starting and finishing points, there needs to be vertical coordination between the various stages of rehabilitation that occur during and after imprisonment. Rehabilitation and reintegration of offenders also require horizontal coordination between the many government and non-government organisations that provide housing, health services, education, and other social supports.

Effective horizontal and vertical coordination of so many services is challenging. The current system is a shared responsibility between the prison service and the parole service, with rehabilitation and reintegration managed in prison by prison officers and on release by the parole service. Other services, such as income support, housing, employment and health care, are usually provided by other agencies.

QCS contracts or has administrative arrangements with many services and providers. Most are for services provided in prisons, although some assist with the transition to release. The list in Box 15.1 covers only some of the services involved in throughcare.

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Box 15.1 The coordination challenge

The diversity and number of services that QCS procures demonstrates the complexity of the coordination task. For example, QCS:

- has partnerships with community agencies, private sector providers, religious groups, registered training organisations and government agencies. It funds or has contracts with visitor transport services, chaplaincy services, playgroups for mothers who are in custody and their children, the Supreme Court Bail Program, domestic violence prevention and vocational education and training. It ‘works with’ organisations such as the Islamic Council of Queensland and Elder Groups (QCS 2018b, pp. 47–49)
- is exploring new strategies such as facilitating access to traditional housing after release, as part of its ‘demand management strategy’ (Queensland Government 2018d, pp. 6–7)
- works with on-site providers at Borallon Training and Correctional Centre to coordinate an individualised employment and education pathway and throughcare services
- partners with the Australian Government Department of Human Services (Centrelink, Medicare and Childcare Agency) to support throughcare. A Program Protocol Agreement details responsibilities for providing services to prisoners, covering DHS services to help prisoners avoid debts, provide pre-release services to ensure timely payment of financial support on release, and provide access to Medicare cards on release (QCS 2018b, p. 49)
- has other partnerships with the Australian Government (QCS 2018b, pp. 46–52).

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67 If a juvenile court finds a child guilty of an offence, the magistrate or judge may ask for a pre-sentence report to help them decide the sentence. The report provides information about what led the child to break the law, sentencing options, and programs and services available to help them. If the child is sentenced to detention, a case worker is assigned to them and they are required to go to school while in detention. There are also behavioural, social and cultural programs (Queensland Government 2018i).
There is no single correct model for throughcare—different jurisdictions have approached it in different ways, with varying success. Effective throughcare arrangements, however, commonly have the following features.

First, there should be a **clear and well-understood objective to rehabilitate prisoners**, which encourages institutions and individuals to focus on that objective.

Second, throughcare models require **adequate resourcing** to achieve their objectives. There is little value in developing rehabilitation plans if the services and programs considered to provide the best chance of preventing reoffending are unavailable. Intervention strategies need to be 'resourced appropriately, prioritised, targeted and delivered at the right time' (Tasmanian Department of Justice 2016, p. 5).

Third, the model should include **incentives for all stakeholders to reduce reoffending**: for prisoners to engage in rehabilitation; case managers to provide the best opportunity to prevent reoffending; and service providers to offer and deliver effective and efficient services (Economic Regulation Authority of Western Australia 2015). Incentives may be strengthened if, for example:

- those involved in throughcare have clearly and consistently defined roles and responsibilities
- measures such as performance agreements hold decision-makers accountable for their decisions
- there is independent and public assessment of performance.

Fourth, there should be **sufficient devolution of decision-making**, with responsibility located where decisions are made most efficiently (UK Ministry of Justice 2016). Decisions affecting the entire system for providing throughcare—for example, deciding whether responsibility for purchasing services should be with government or outsourced—should be made centrally. Decisions about how to provide services to groups of prisoners, on the other hand, are likely to be faster, more flexible and more responsive to the rehabilitation requirements of prisoners if they are decentralised.

Fifth, because all prisoners are different, **throughcare should be tailored to address the rehabilitation requirements of individual prisoners** (MacDonald et al. nd, p. 5). Each prisoner should have a rehabilitation plan, based on early risk assessment and the prisoner’s input. Plans that outline programs and services should be developed as soon as possible after prison reception (Borzycki & Baldry 2003, p. 4). Throughcare is the process for implementing these plans.

Sixth, to **enable coordinated service delivery**, there needs to be a mechanism for bringing together diverse services. This might include consistent case management of prisoners’ plans throughout prison and reintegration, delivered by suitably skilled case managers, and pre-release transitional programs (Walsh 2004, pp. 7–9). Timely exchange of relevant information between service providers is needed, to avoid duplication and improve individual outcomes (Tasmanian Department of Justice 2016, p. 5).

Information exchange requires ‘clear procedures on communication, information and data sharing and data protection’ (MacDonald et al. nd, p. 35).

Seventh, there should be mechanisms, such as evaluation of processes and services, to **enable continuous development and organisational learning**:

> Evaluation processes are important because they: identify how well the client's needs were met; assess service outcomes or impacts; identify the extent objectives were met; assess efficiency and cost-effectiveness. Above all, evaluation helps identify 'what works' and 'what does not work' in reducing reoffending ... (MacDonald et al. nd, p. 53)

Evaluation needs to be part of the broader accountability and assessment framework, as this will encourage participants in throughcare to implement evaluation results.
15.3 Assessment of Queensland's existing model

Queensland's throughcare arrangements do not perform strongly against the seven performance criteria (Table 15.1). There is little evidence that throughcare in Queensland is highly coordinated, based on best practice approaches or subject to strong mechanisms of continual improvement.

Table 15.1  Assessment of current Queensland arrangements against desirable throughcare features

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Yes</th>
<th>Partial</th>
<th>No</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clear objective to rehabilitate prisoners</td>
<td>✓</td>
<td></td>
<td></td>
<td>While rehabilitation is one of the objectives legislated in the <em>Corrective Services Act 2016</em>, there is not a clear and well-defined objective, or specific guidance from government about what it wants these services to achieve or who is responsible for rehabilitation and reintegration.</td>
</tr>
<tr>
<td>Adequate resourcing to meet objectives</td>
<td>✓</td>
<td></td>
<td></td>
<td>While the adequacy of resourcing is difficult to assess, only a fraction of QCS funding is devoted to rehabilitation and reintegration.</td>
</tr>
<tr>
<td>Focused on rehabilitation needs of the individual</td>
<td>✓</td>
<td></td>
<td></td>
<td>While prisoners are assessed and have individual plans, the <em>Queensland Parole System Review</em> found deficiencies in the assessment process.</td>
</tr>
<tr>
<td>Coordinated service delivery</td>
<td>✓</td>
<td></td>
<td></td>
<td>The <em>Queensland Parole System Review</em> found case management and the transition from prison to reintegration are disjointed. There are few mechanisms for coordinating services.</td>
</tr>
<tr>
<td>Sufficient devolution of decision-making</td>
<td>✓</td>
<td></td>
<td></td>
<td>Queensland prison managers appear to have some autonomy in the way individual prisons are managed; however, there appears to be little flexibility in the way individual prisoners are managed.</td>
</tr>
<tr>
<td>Mechanisms to encourage continuous development/improvement</td>
<td>✓</td>
<td></td>
<td></td>
<td>There is little evidence of evaluation processes or of other activities that would contribute to or encourage continuous development and organisational learning.</td>
</tr>
<tr>
<td>Incentives to reduce reoffending</td>
<td>✓</td>
<td></td>
<td></td>
<td>The available evidence suggests that incentives could be improved. There is little public reporting of outcomes; contractual arrangements for the public prisons are opaque; and there appears to be little evaluation of rehabilitation and reintegration programs.</td>
</tr>
</tbody>
</table>
15.4 Reform directions

Governments around the world have adopted different approaches to throughcare. Case management of individual plans for prisoners is common, but there is significant diversity in the strategies considered or used to coordinate services, create incentives for reducing reoffending and encourage continuous improvement. This diversity provides a rich source of potential options for improving Queensland’s approach to rehabilitation and reintegration.

Three broad theoretical models for throughcare (Figure 15.1) are considered here—government monopoly; devolved provision; and devolved purchasing and provision. The models have different combinations of roles for government as the funder, purchaser and provider of services. Each model also has its advantages and disadvantages. Government is the main funder under each model, since there is only ever likely to be minimal private sector funding for throughcare services.

Any operational throughcare system is unlikely to fit perfectly into any one of these three models. For example, Queensland’s current approach to rehabilitation and reintegration has elements of the government monopoly and devolved provision models.

Figure 15.1  Options for throughcare delivery
Monopoly provider: government funds, purchases and provides services

Under a monopoly provider model, the government funds, purchases and provides all throughcare services, usually through many government agencies. This model allows government to control the delivery of services, which can be useful when the costs of contracting with non-government providers and the costs of non-delivery are high, and when statutory powers are required (New Zealand Productivity Commission 2015, p. 138).

The monopoly provider model facilitates centralised decision-making and consistency of service provision.

Problems associated with this model include:

- Incentives for responding to individual rehabilitation requirements are often weaker than when decision-making is less centralised. The findings of the Queensland Parole System Review (Sofronoff 2016) regarding the disjointed nature of case management within prisons suggest that the incentives are not strong under government monopoly arrangements.

- Coordination across government agencies is challenging. Attempts at coordination, such as through coordination committees or lead agencies, can be insufficient to effectively coordinate service delivery (Tasmanian Department of Justice 2016; Victorian Ombudsman 2015).

- A lack of competition between providers of throughcare services reduces incentives to improve performance.

Independent and transparent oversight of throughcare performance could encourage continuous development. Queensland agencies responsible for oversight of throughcare performance—such as the Office of the Chief Inspector (OCI), the Queensland Ombudsman and the Crime and Corruption Commission—could strengthen incentives for effective throughcare by publishing performance reports about prisons’ contribution to throughcare.

For example, the QCS website describes the tests for the OCI’s reviews of correctional facilities, which the OCI uses when preparing a ‘Healthy Prison Report’. One of the four indicators for this test (that is, resettlement) is about throughcare. Under the resettlement criterion, ‘prisoners are prepared for release into the community and helped to reduce the likelihood of re-offending’ (QCS 2018a). The most recent published report on the QCS website was prepared in 2013. Regular publication of up-to-date reports would help the community to assess the contribution of throughcare in reducing recidivism and would strengthen incentives of relevant agencies.

Devolved service provision: government funds and purchases services but devolves provision

In this model, the government funds and purchases services to support throughcare from for-profit or not-for-profit providers. It does this through contracts, which aim to achieve value for money and to align the incentives facing suppliers with the needs of those receiving services. However, the government as purchaser still interprets the needs of users rather than the users themselves.

Increased use of non-government providers increases the scope to reward good service providers that find ways to help offenders to reintegrate into the community and to dispense with poor ones that do not. Contracts with providers can be extended, terminated, or reviewed. Providers who deliver poor services lose customers and may become unviable.

More innovative contracting approaches may be required to support devolved service provision. One such approach is to reduce the prescription of service methodology, and to focus instead on the achievement of results.

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68 The OCI is a statutory position created under the Corrective Services Act 2006.
The advantages of payment-by-results contracts include that they:

- provide access to specialised skills that are not available within government
- create a new service culture by bringing in new service providers
- reduce costs through competitive procurement processes
- enable government to step back from day-to-day management
- increase transparency, because the government needs to specify its requirements (New Zealand Productivity Commission 2015, pp. 138, 300).

Social benefit bonds, which are a form of results-focused contract, are used increasingly internationally (Box 15.2).

These advantages are not, however, always realised. For example, submissions to an inquiry into social services in New Zealand—covering services like those in throughcare—argued that government contracting practices can:

- reduce service quality if providers are selected based on the cheapest bid
- stifle innovation by introducing excessive prescription into contracts
- discourage integrated service delivery, because governments often prefer short-term contacts that do not enable providers to build relationships
- impose excessive reporting requirements, which add costs and can discriminate against small providers (New Zealand Productivity Commission 2015, pp. 309–316).

The government agency managing the throughcare system will need to develop a high contracting capability to make this model work efficiently and effectively.

**Box 15.2 Social benefit bonds**

While social benefit bonds (SBBs) can take many forms, all involve:

- private investors providing initial capital to cover the cost of delivering a service (or an intervention) by a service provider to improve or deliver a defined social outcome
- early intervention or prevention to avoid or limit the severity of the social issue for the target population
- government repaying private investors their principal investment and a financial return at the end of the contracted period (which can be 5 to 10 years) if the agreed social outcome has been achieved and verified (Queensland Treasury 2015b, p. 1).

SBBs can deliver wrap-around services that would normally require significant coordination across agencies. On the other hand, they have high administrative and compliance costs for all parties involved (Gustafsson-Wright et al. 2015).

SBBs have been used in the United Kingdom, United States and New South Wales to coordinate services that reduce recidivism. An evaluation of the United Kingdom SBB found an 8.4 per cent reduction in reconviction events.
Devolved purchaser model: government funds services, but devolves purchasing and provision

Under this model, the government funds throughcare services and devolves purchasing and provision to others. This has the advantage of bringing purchasing decisions closer to service users, who can request services that meet their specific rehabilitation requirements. Decisions about which services will most help the rehabilitation of individual prisoners are likely to be faster, more flexible and more responsive to their needs if decentralised.

Person-based care models are being rolled out in human services in Australia through the National Disability Insurance Scheme (NDIS), which is empowering clients with disabilities to make decisions relating to their care. Applying this approach to rehabilitation and reintegration services could strengthen incentives for prisoners to rehabilitate as they work with their case manager to develop service plans they believe will lead to their rehabilitation.

Many decisions and functions—for example, about system design and about establishing and implementing performance frameworks—would continue to be made centrally. However, day-to-day decisions about which types of services to purchase, and when, would move closer to those who use the services.

Person-based funding enables greater competition between providers of rehabilitation and reintegration services. In the current model, prisoners can request services but are limited to services procured by the QCS. A limited range of service providers and programs is available to prisoners (Chapter 14). As part of the design of a person-based funding model, the number of accredited service providers would be increased. Person-based funding (and delivery) models often require fundamental organisational change because they shift from a directive method of delivery to one based on guidance from the client. Additional training and skill development throughout QCS would be needed to implement this model, within prisons and the parole service. The experience of the NDIS demonstrates that many market design issues would need to be resolved.

The devolved purchaser model, by devolving decision-making towards users, increases the onus on users to coordinate the delivery of services that they need. This may improve coordination, provided that instruments such as contracts, performance measures and budgetary arrangements are used to support coordination and that government seeks to remove barriers to coordination—for example, barriers to sharing information between providers.

There may be concerns about giving former prisoners control—albeit constrained—over the use of public funds. In this event, a less extreme option that moves in the direction of moving the choice of services closer to those who use them is to devolve purchasing decisions to prison managers or specialist companies. This has been trialled in the United Kingdom with mixed success (Box 15.3).

Box 15.3 United Kingdom reforms in devolution

The United Kingdom Government recently increased prison governors’ autonomy and expanded their role in services provided after release. Governors were given more flexibility in how to spend their budgets. At the same time, new performance standards—which include preparing prisoners for life after prison—were included in their performance agreements with the Secretary of State for Justice. This ensured that governors had increased accountability to match their expanded autonomy.

Making performance management work in the United Kingdom has been challenged by difficulties in achieving consistency of reporting and in apportioning accountability for post-release outcomes between prison governors and other contributing services; and a lack of clarity about how the government weights indicators of performance (UK House of Commons Justice Committee 2017, pp. 18–24).
Table 15.2 provides a preliminary summary analysis of the broad reform options discussed earlier. It implies that, at least conceptually, service provision models that shift services away from government monopoly providers can provide significant advantages to both service users (through better performance) and to funders (through more efficient service delivery). This suggests that reform should involve some winding back of the government’s involvement as a purchaser and provider of throughcare services. However, the design and implementation reforms are fundamental to success—the more complex or far-reaching the reform, the more difficult is the implementation challenge.

Table 15.2 Preliminary high-level analysis of reform options

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Government monopoly</th>
<th>Devolved provision</th>
<th>Devolved purchasing and provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clear objective to rehabilitate prisoners</td>
<td>✓ ✓ Rehabilitation competes with other objectives</td>
<td>✓ ✓ ✓ Contractual arrangements require objectives to be made clear</td>
<td>✓ ✓ ✓ System design should make objectives clear</td>
</tr>
<tr>
<td>Adequate resourcing to meet objectives</td>
<td>✓ No dedicated resourcing for rehabilitation</td>
<td>✓ ✓ ✓ Incentives created by contractual arrangements</td>
<td>✓ Requires dedicated funding</td>
</tr>
<tr>
<td>Incentives to reduce reoffending</td>
<td>✓ Relies on reporting arrangements being in place</td>
<td>✓ ✓ Provides opportunities to terminate under-performing providers, incumbents face threat of competition</td>
<td>✓ ✓ ✓ Competition provides incentives for performance</td>
</tr>
<tr>
<td>Sufficient devolution of decision-making</td>
<td>✓ Decisions largely centralised</td>
<td>✓ ✓ Some movement away from centrally managed decision-making</td>
<td>✓ ✓ ✓ Devolution of day-to-day service choice decisions close to users</td>
</tr>
<tr>
<td>Focused on rehabilitation needs of the individual</td>
<td>✓ Incentives tend to focus effort on meeting agency and head office requirements rather than individual needs</td>
<td>✓ ✓ Contractual arrangements can provide incentives for providers to focus on the needs to individuals</td>
<td>✓ ✓ ✓ Individuals/case managers incentivised to focus on prisoner rehabilitation needs</td>
</tr>
<tr>
<td>Coordinated service delivery</td>
<td>✓ Difficult to achieve</td>
<td>✓ ✓ Contractual arrangements (such as social benefit bonds) can aid coordination</td>
<td>✓ ✓ ✓ Allows users/case managers to pursue coordination</td>
</tr>
<tr>
<td>Mechanisms to encourage continuous development/improvement</td>
<td>✓ Possible, but challenging</td>
<td>✓ ✓ Threat of competition encourages improvement</td>
<td>✓ ✓ ✓ Competition strengthens incentives for improvement</td>
</tr>
</tbody>
</table>

Increasing implementation challenge
It is possible that reforms to throughcare arrangements in Queensland could involve elements of all three models, with some services supplied by government providers, some purchased by government from community sector or private providers, and others purchased by ex-prisoners, or brokers on their behalf, during their reintegration.

### 15.5 Reforms in Queensland and elsewhere

This section provides examples of the many reforms to throughcare arrangements that have been introduced or proposed recently in Queensland and elsewhere. While they do not fit neatly into the three models described in the previous section, they all involve changes in government’s role as funder, purchaser and provider of throughcare services and give insights into practical options that could be used or developed in Queensland.

#### Queensland—current reforms

As part of its approach to procurement, QCS has used a co-design approach to develop a reintegration project for female prisoners. This works through:

> fostering a consultative approach through the engagement of staff and prisoners, as well as external government and non-government stakeholders. The framework involves a process of designing a practical solution alongside the people it will directly affect. (Burton 2015)

This illustrates how government can enhance its purchasing role by involving in contract design those who will apply and use reintegration services.

The *Queensland Parole System Review* made three suggestions for improving the coordination of throughcare services:

- **To improve vertical coordination,** the *Queensland Parole System Review* proposed that QCS:
  - implement a system so that the case manager from probation and parole who is to manage a prisoner on parole begins contact with, and involvement in the management of, the prisoner, before he or she is released from custody. In response, the government indicated that it will implement a new parole process
  - assess and prepare prisoners for parole when they enter custody and consider embedding a dedicated Assessment and Parole Unit in each correctional centre. The government indicated that it sees benefit in a dedicated case management system.

- **To improve horizontal coordination,** the *Queensland Parole System Review* proposed that an intergovernmental taskforce be established to examine the availability of suitable long-term accommodation for prisoners and parolees. The government has established this taskforce (Queensland Government 2017b, p. 4, 5 and 7).
ACT—Extended Throughcare program

The Australian Capital Territory (ACT) introduced an Extended Throughcare pilot program in 2013 (Griffiths et al. 2017). The program provided for case management both prior to release and for 12 months after release, giving support in five core areas:

- accommodation
- health
- basic needs
- income
- community connections.

The program was voluntary and available to ex-prisoners not subject to ongoing supervision orders. It provided links to Centrelink, health, housing, outreach programs, and drug and alcohol programs, and engaged offenders’ families. The program, which involved community organisations, was tailored to each individual. The aim was to provide coordinated and continuous support, and to reduce duplication and gaps in services. One of the five lead service providers (based on the person’s highest support needs) was given brokerage funds to work with the client.

A 2017 evaluation of the program (Griffiths et al. 2017) looked at outcomes over three years (2013 to 2016) and found the following:

- Program clients benefited from material and non-material support.
- Return to custody episodes were reduced by more than 20 per cent.
- Those returning to custody remained in the community for longer, on average.
- The program had particularly positive impacts on Indigenous female clients (although small sample sizes may make this a spurious result).
- The program’s areas of greatest impact were seen to be the long-term nature of support, flexibility, improvements in accessing services and the assistance for clients to access stable housing.

Limitations of the study69, particularly in terms of establishing a suitable control group, may mean that the recidivism impacts are overstated.

The ACT Government allocated $5.3 million in its 2017–18 budget to continue the program for four years. The program was put out to tender, with documents noting the model was a 'significant extension of the existing Throughcare concept' (Burgess 2017).

United States—re-entry partnership initiative

Some United States jurisdictions have established teams under the re-entry partnership initiative (RPI), which seeks to improve coordination of throughcare services through intensified case management and a network of agency and support team collaborations. The approach is divided into three stages:

- an institutional phase, beginning ideally at prisoner intake
- a structured re-entry phase, stretching from a few months before release until one month after release

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69 The study compared outcomes for offenders who participated in the program with outcomes for a matched group of offenders who had custodial episodes in the three years prior to the program commencing. Although the matched control group had similar characteristics to the program group, this introduced a number of potential issues, including that the different time periods can introduce the potential for other effects, such as changed employment conditions, to influence results; and the offending risk of individuals may change over time.
• a community reintegration phase, starting in the second month after release.

Reintegration teams are established in the second and third phases, to give 'vertical' continuity. They perform a key role, for example, in the second phase, they form partnerships with victims, treatment programs, social service agencies, law enforcement, and institutional and community corrections organisations (Garland & Hass 2013).

Singapore—rehabilitation enterprises

During the 1970s Singapore embarked on reforms after rethinking the purpose of imprisonment, shifting focus onto rehabilitation which, among other things, it expected would solve its prison overcrowding problem.

To enact the reforms, a new entity was created that became responsible for promoting rehabilitation and integrating rehabilitation services. The Singapore Corporation of Rehabilitative Enterprises (SCORE) was established as a statutory board in 1975. It worked alongside the Singapore Prison Service (SPS), to take care of the prison industry, provide vocational and educational training, and assist in finding employment for released prisoners. A new agency—Community Action for the Rehabilitation of Ex-offenders (CARE)—was set up later, to improve coordination with other government and non-government service providers.

By 2000, it was recognised that all these agencies needed to be aware of what each of the others was doing so as to achieve better synergy and deployment of resources. SPS and SCORE took the lead to set up a new coordinating structure to connect these different agencies in May 2000. This became known as the Community Action for the Rehabilitation of Ex-offenders (CARE) ... [which] strives to improve the effectiveness of rehabilitation of ex-offenders in Singapore by engaging the community in rehabilitation, coordinating member agencies' activities and developing innovative rehabilitation initiatives for ex-offenders. All of this contributes towards the creation of seamless transfer between incare and aftercare. (Singapore Prison Service 2013, p. 26)

CARE’s case management framework for ex-offenders deals with reintegration issues and it has established a professional training framework for ex-offenders (Singapore Prison Service 2013). It has also coordinated efforts to educate the public about the importance of rehabilitation, through a series of initiatives known as the Yellow Ribbon Project, designed to address the lack of acceptance felt by former prisoners.

The recidivism rate in Singapore dropped from 44.4 per cent to 26.5 per cent between 1998 and 2009 (Victorian Ombudsman 2015, p. 141).

England and Wales—'Transforming Rehabilitation'

In response to 'stubbornly high reoffending rates', the United Kingdom Government introduced its Transforming Rehabilitation reforms to open the market for private and voluntary organisations to provide rehabilitation services. While high risk offenders would remain under the management of National Probation Services, non-government 'community rehabilitation companies' (CRCs) would manage low and medium risk offenders. Voluntary organisations were encouraged to apply for grants to provide services (Grayling 2013, p. 17).
The program was launched before a pilot program had been completed (House of Commons Justice Committee 2018, p. 13). Inquiries into the system by the Inspector of Probations (HMIP 2018), the National Audit Office (Morse 2016) and a Parliamentary Justice Committee (House of Commons Justice Committee 2018) found both implementation and outcomes were poor.

- CRC agreements were entered into by ‘black box’ contracts, which left considerable discretion to service providers and resulted in opaque and inconsistent service delivery. Reconciling the CRC's services and costs with payments was ‘a long and tedious exercise’ (HMIP 2018, p. 36). Contracts placed too much weight on 'outputs,' rather than outcomes (House of Commons Justice Committee 2018, p. 25), with an emphasis on administrative processes. This led to adverse outcomes, with contracts incentivising the production of administratively focused prisoner resettlement plans rather than substantive improvements in outcomes, either for prisoners or in terms of reoffending (Smith et al. 2016, p. 7).

- Contracts were incorrectly designed for organisations with low levels of fixed costs, undermining sustainability of payments for participating organisations (House of Commons Justice Committee 2018, pp. 17–18).

- The system used for administration and offender management was tedious and difficult to use, causing inefficiency and errors. Monitoring the delivery of the contracted services was difficult and expensive. Services were understaffed, and many staff were new and inexperienced. Morale among staff fell significantly. Voluntary sector involvement also fell, particularly among smaller, localised organisations (House of Commons Justice Committee 2018, pp. 35, 41–44).

The relevant minister stated in his response to the Justice Committee report that he believed that the program was based upon sound principles (Gauke 2018).

The extent of the implementation problems makes it impossible to evaluate the soundness of the core concept. At the time of writing, the United Kingdom Government was planning to make significant changes to the administration, including the contractual framework. Whether this delivers the desired outcomes remains to be seen.

15.6 Conclusion

Queensland's approach to rehabilitation and reintegration is not a best practice throughcare approach. Insights about how to improve throughcare can be gained by considering the role that government performs as funder, provider and purchaser of throughcare services. One significant insight from viewing throughcare through this lens is that reforms involving changes to government involvement as both provider and purchaser of services warrant more analysis. However, the more far-reaching the reforms, the more challenging the implementation becomes. To assess whether specific reforms are efficient and effective, both the gains from change and the costs of implementation need to be considered.

No matter which model is used to deliver throughcare services, objectives regarding rehabilitation and reintegration need to be clearly specified and adequately funded. The absence of a clear and well-defined objective for throughcare is a deficiency. To remedy this, the Queensland Government should modify legislation, policy and operational procedures to include a clear and specific objective of rehabilitation and reintegration of offenders.
The Commission will further consider options for improving throughcare in the final report and is seeking stakeholder feedback about this. It will consider issues such as:

- when throughcare should start (for example, whether initial screening should occur prior to sentencing)
- how to improve throughcare services through, for example:
  - clear objectives to rehabilitate prisoners
  - adequate resourcing to meet these objectives
  - focusing on individual rehabilitation needs of prisoners
  - coordinated service delivery
  - sufficient delegation of decision-making authority
  - mechanisms to encourage continuous development
  - incentives to reduce reoffending
- how to encourage community- and market-led solutions to achieving implementation of assessment plans
- implementation challenges.
Draft Recommendation 9
The Queensland Government should modify legislation, policy and operational procedures to include a clear and specific objective of rehabilitation and reintegration of prisoners.

Draft Recommendation 10
To improve rehabilitation and reintegration of prisoners, and to reduce recidivism, the Queensland Government should introduce an effective throughcare model into the adult criminal justice system. The features of this model should include:

- clear objectives to rehabilitate and reintegrate prisoners
- adequate resourcing to meet these objectives
- a focus on individual rehabilitation needs of prisoners
- coordinated service delivery
- sufficient delegation of authority
- transparency and accountability mechanisms that would encourage continuous improvement
- incentives to reduce reoffending.

In developing this model, consideration should be given to ways to foster markets and community involvement in services that support rehabilitation and reintegration.

Information request
The Commission is seeking evidence from stakeholders on:

- the arrangements that would best encourage continuous improvement and effective and efficient rehabilitation and reintegration of prisoners
- the appropriate starting point for throughcare in the adult corrections system.
16.0 Improving decision-making and allocating funding
This chapter looks at decision-making in the criminal justice system and options for improving governance and funding arrangements.

**Key points**

- The recommended policy reforms in Part B aim to reduce imprisonment and recidivism and improve outcomes through a wide range of specific policy measures.
- However, without change to the underlying decision-making system that supports the criminal justice system, the benefits of reforms may not be realised and problems will re-emerge over time.
- The current decision-making framework has some shortcomings including:
  - Policy development and service delivery occur through separate agencies, which is not well-suited to delivering coordinated services to address complex social problems.
  - Policy-making processes are not always best practice.
  - There is limited Information and data systems to inform decision-making.
  - Funding arrangements do not support the effective and efficient allocation of resources across the sector.
- Decision-making is made more challenging by a contentious policy environment created by the complex interaction of politics, the media and public misperceptions.
- There are opportunities to improve policy development and service delivery in the criminal justice system through:
  - clearer objectives for the criminal justice system, which can guide policymaking and decision-making across the sector
  - transparency in decision-making and accountability for achieving criminal justice objectives
  - evidence-based funding and policymaking to improve the effectiveness and efficiency of service delivery.
- The decision-making architecture can be improved in various ways. Primarily, however, any changes must ensure that the full set of costs and benefits are internalised into decision-making, and appropriate authority and accountability arrangements are in place.
- A separate justice reform office, with appropriate governance arrangements, may be best placed to drive reform across the criminal justice system.
### 16.1 Introduction

Government and agencies that operate within the criminal justice system face significant challenges in addressing the complex problems (‘wicked problems’) associated with crime and imprisonment (Table 16.1).

#### Table 16.1 Crime and imprisonment as ‘wicked problems’

<table>
<thead>
<tr>
<th>Characteristics of wicked problems</th>
<th>Crime and imprisonment context</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wicked problems are difficult to clearly define</td>
<td>There are different views regarding the extent to which crime is a problem and whether increasing imprisonment is itself a problem or is part of the response to concerns about crime.</td>
</tr>
<tr>
<td>Wicked problems have many interdependencies and are often multi-causal</td>
<td>Crime has many personal and social causes that are interdependent. Tensions exist between different responses to crime, including imprisonment, which emphasise either deterrence based on punishment, or therapeutic approaches that address offenders' personal issues and build protective factors such as better health and education, and employment opportunities.</td>
</tr>
<tr>
<td>Attempts to address wicked problems often lead to unforeseen consequences</td>
<td>Actions taken in one part of the criminal justice system can lead to impacts elsewhere. For example, higher arrest rates to reduce crime may lead to intergenerational disadvantage that results in higher crime and imprisonment rates in the long term.</td>
</tr>
<tr>
<td>Wicked problems are often not stable</td>
<td>Factors such as new technology affecting policing or criminal activity, or market developments (such as new supplies of illegal drugs) leading to changes that can quickly change the policy environment.</td>
</tr>
<tr>
<td>Wicked problems usually have no clear solution</td>
<td>No single set of solutions is likely to provide a complete answer. The success of responses such as more aggressive policing or increased therapeutic treatment of offenders is likely to provide only a partial solution and may only be observable in the longer term.</td>
</tr>
<tr>
<td>Wicked problems are socially complex</td>
<td>Issues of social disadvantage, Indigeneity, gender and youth interact with broader social and economic factors, as well as concepts of justice and fairness, in highly complex ways, making clear solutions difficult to find.</td>
</tr>
<tr>
<td>Wicked problems hardly ever sit conveniently within the responsibility of any one organisation</td>
<td>Agencies in the justice, health, education and housing sectors; the judiciary, and the legal profession; non-government organisations; and private companies all have roles to play in reducing crime and imprisonment through their participation in the criminal justice system or in delivering the services or creating the conditions which make criminal activity more or less likely.</td>
</tr>
<tr>
<td>Wicked problems involve changing behaviour</td>
<td>Changing the behaviour of not only offenders, but also other participants in the criminal justice system sector, is important in solving problems.</td>
</tr>
<tr>
<td>Some wicked problems are characterised by chronic policy failure.</td>
<td>Despite some examples of good practice and successful reform, imprisonment rates have been rising for a long time. This trend is observable across many other jurisdictions. However, there are some examples of good practice and successful reform.</td>
</tr>
</tbody>
</table>

*Source: Adapted from APSC 2007.*
Given the complexity of the issues, the contentious and volatile environment in which policymaking occurs and the central role of government, the framework for decision-making will be a significant determinant of overall outcomes from the criminal justice system.

The Commission is recommending policy reforms to reduce imprisonment and recidivism and improve outcomes through a wide range of specific policy reforms. However, in the longer term, it is the quality of decision-making that will determine the success of any reform agenda. Without an effective decision-making architecture to support the criminal justice system, reform may not be achieved and problems will re-emerge.

Within the complex policy environment it operates, the decision-making architecture of the criminal justice system needs to ensure that on an ongoing basis:

- the best and most efficient ways of delivering agencies’ existing functions are used (technical efficiency)
- resources are diverted from less effective and efficient activities to more effective and efficient ones (allocative efficiency)
- new and innovative solutions are encouraged (dynamic efficiency).

16.2 The current decision-making framework

The current decision-making framework has several shortcomings:

- Policy development and service delivery occur through separate agencies, resulting at times in a lack of coordination.
- Policymaking processes may not always be best practice, resulting in unforeseen consequences.
- Information and evidence systems are deficient, resulting in some decisions being made without the best information.
- Funding arrangements do not support the optimal allocation of resources across the sector.
- A contentious environment that may lead to sub-optimal decision-making.

Policy development and service delivery occur through separate agencies

Many of the multifaceted issues facing the criminal justice system do not fit neatly into the traditional government structures built on functions and siloed agency service delivery. Three core agencies are active in the criminal justice system—Queensland Police Service (QPS), the Department of Justice and Attorney-General (DJAG) and Queensland Corrective Services (QCS). These agencies are separate bodies, although QPS and QCS report to the same minister. Until 2017, QCS was located in DJAG, although QCS and DJAG reported to different ministers.

The three agencies and the broader criminal justice system are highly interdependent—a policy change or action in one part of the system can affect the operations of other parts of the system. Given the degree of interdependency, coordination of decision-making, investment and funding should be evident across the criminal justice system.

Several coordination mechanisms are in place across the criminal justice system (Box 16.1 lists the main mechanisms), as well as commitments to cooperation and coordination across agencies.
Notwithstanding these co-ordinating mechanisms, there is limited evidence that coordinated action in pursuit of common objectives is prevalent in the sector. As noted by the Youth Advocacy Centre Inc. (sub. 34, p. 12):

*There are two challenges to improved cooperation: The inability of government to date to ‘de-silo’ and work effectively across agencies.*

Importantly, there is no performance framework to support accountability of agencies in achieving targets under a common strategy:

*In an environment in which there is no common goal it is inevitable that participants will pursue their own goals. The credibility of the system is seriously undermined by the absence of both an agreed understanding of its purpose and an effective coordination of all its participants towards that purpose. If there is no consensus on the purpose of the system, then it is hard to imagine how there can be a strategic direction. (Glanfield 1993)*
Although there are examples of coordination across agencies, the service delivery statements of each agency do not relay a strong sense of interconnectedness and collaborative action.

**Policymaking processes and capabilities**

Criminal justice policy development and service delivery take place in a multifaceted and volatile environment. The activities of criminal justice organisations are interconnected, the clients of the system and the situations they face are themselves often complicated, and there is always a potential for rapid social, economic and technological change.

To make optimal decisions in such an environment, agencies require:

- best practice policymaking
- a strong information and evidence base when developing policy and making service delivery decisions
- funding allocation processes that support best practice policy.

**There are opportunities for better policymaking processes**

The complexity of issues in the criminal justice system heightens the need for policymaking based on best practice principles.

It is difficult to determine whether policy development in the criminal justice sector consistently follows best practice principles. Regardless, the internal decision-making and funding architecture has not been able to anticipate the need for reform or reallocate resources to areas in need of them.

In Queensland (as in most other states), there is an exclusion from the regulatory impact assessment (RIA) process (see Box 16.2) for 'regulatory proposals relating to police powers and administration, general criminal laws, the administration of courts and tribunals and corrective services' (Queensland Government 2016). It excludes, for example, proposals to lengthen mandatory sentences, introduce new criminal offences and make changes to prison practices. This means that one of the ‘safeguards’ to ensure that policymaking and legislative change in the criminal justice sector follow best practice principles is not available.

Stakeholders noted the adverse impact of programs being terminated prematurely, and therefore not existing for a period long enough to implement the program to completion and apply learnings (PWC sub. 13, p. 12). Evidence from stakeholders also suggests the possibility of unforeseen consequences arising from legislative changes. For example, it is argued that mandatory sentencing may result in unjust sentences and impact disproportionately on Indigenous peoples (PWC sub. 13, p. 30; ATSILS sub. 35, p. 6).
Box 16.2 Regulatory impact assessment—best practice principles

Recognising the importance of good policymaking practice, regulation making throughout Australia is subject to regulatory impact assessment. This is a systematic approach to regulation making that employs a cost–benefit framework and stakeholder consultation to inform the decision-maker of the best response to a regulatory issue. The Council of Australian Governments established best practice principles for regulation making:

- Establish a case for action before developing solutions.
- Consider a range of feasible policy options, and an assessment of their benefits and costs.
- Adopt the option that generates the greatest net benefit for the community.
- Ensure legislation does not restrict competition unless the benefits exceed the costs.
- Provide effective guidance to relevant regulators and regulated parties.
- Ensure that regulation remains relevant and effective over time.
- Consult effectively with affected stakeholders at all stages of the regulatory cycle.
- Ensure that government action is effective and proportional to the issue being addressed.

The Queensland Government established the independent Office of Best Practice Regulation to assist agencies in applying effective and rigorous regulatory impact assessment as part of their standard policy development process.

Information, modelling and evaluation can be enhanced

Access to high-quality information supports good decision-making at both a policy level and a service delivery level. Robust and timely data, modelling and program evaluation, combined with best practice policy processes, allow the government to improve performance. High-quality information systems support a better understanding of the experience of offenders in and outside of the criminal justice system.

A number of data and evaluation shortcomings were identified during consultations with stakeholders:

- **Connectivity of databases**—databases across the three core agencies fail to connect directly, with data unable to be easily matched from one database to the next. This partly arises from the different bases on which each of the systems is structured—'offence', 'case' or 'offender'. Moreover, the use of the 'single person identifier', intended to be a common field used on all databases to allow tracking of individuals as they pass through the criminal justice system, is not rigorously applied. A tendency to concentrate on the quality of data that is immediately useful to the individual agency leads to a degradation of data that would otherwise be useful for the analysis of the whole criminal justice system.

- **Modelling capability**—there is insufficient modelling capacity within the agencies of the criminal justice system. Hence, primary questions such as how much additional prison capacity is required if police numbers are increased, a new criminal offence is introduced or bail eligibility is tightened, are not informed by robust modelling.

- **Program evaluation**—while program evaluation is used throughout the Queensland Government, including the core criminal justice agencies, it is not comprehensive, systematic or undertaken on a common basis. This makes it difficult to determine the success or otherwise of activities and to inform reallocation of resources. For example, lack of program evaluation information has made it difficult for the Commission to come to views with respect to the government’s rehabilitation and reintegration activities.
Policy and funding decision-making can be better coordinated

The current funding model provides resources for individual agencies activities (such as services, schemes and programs). Each agency makes separate submissions to the annual budget process. Although central agencies play a monitoring and coordinating role, it is probable that cross-agency operational and financial impacts remain undetected because of the complexity of causal impacts in the criminal justice system. The current decision-making process for allocating funding has some shortcomings:

- Separate budget submissions by each of the three agencies reduces the likelihood of consideration of the impact of proposals on other agencies. This means that the flow-through impacts of decisions made by any single agency are not internalised by that agency, giving them few incentives to consider how purchasing and delivery affects the broader criminal justice system.

- Funding is top-down and distributed centrally, with few mechanisms for those who use and supply services to affect decision-making. Those who know what is required often do not have the capability or incentives to make change. For example, prisoners and case workers have little opportunity to influence rehabilitation and reintegration decisions, which may reduce incentives for prisoners to engage in rehabilitation.

- Although the problems being addressed are complex and dynamic, current funding arrangements do not appear to promote a wide range of services and procurement processes and may not be sufficiently dynamic to deliver the service solutions for the wicked problems evident in the criminal justice system.

This funding process has not addressed the current prison funding and overcrowding challenges (Box 16.3).

Box 16.3 The cost of housing Queensland’s growing prison population

Queensland’s prison population is growing rapidly, increasing from 6,079 to 9,021 in the past five years. In September 2018, the number of prisoners exceeded the design capacity\(^a\) of all high security prisons by 37.3 per cent, or 2,264 prisoners. Increasing capacity to meet this shortfall would cost around $2.5 billion.

If current trends continue, by 2020 the high security prison population will exceed capacity by between 2,900 and 3,300 prisoners. The construction of additional infrastructure to house these prisoners, and to address existing shortfalls, is projected to cost approximately $3.5 billion. By 2025, the high security prison population could exceed current capacity by between 4,600 and 5,800 prisoners, requiring government expenditures totalling $5.2 billion to $6.5 billion in infrastructure costs alone.

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\(^a\) To allow for prisoner movement, ‘total design capacity’ refers to 95 per cent cell occupancy.

Sources: ABS 2018k, 2018b; Queensland Government sub. 43, p. 72; Iliffe 2011; Commission estimates.
Investment decision-making

A number of stakeholders noted that past investment decisions have favoured high security correctional facilities over other facilities that might better rehabilitate prisoners, thereby keeping the community safer over the long term. For example:

*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.* (Hamburger, sub. 14, p. 16).

A funding formula is used to supplement QCS when prisoner numbers exceed the design capacity of a prison, a circumstance that currently applies to Queensland’s high security prisons. While the increase in funding is necessary to ensure the safe management of a prison, it also reduces the incentive to examine other options. It was noted in one submission that there may be a resourcing imbalance between the prison and community corrections systems:

*In 2014–2015 the average daily population of offenders under supervision whether in prison or in the community numbered 23,500. Of these, approximately 30% only were in prison. When we look at total recurrent expenditures we find that this 30% of offenders consumed 90% of the correctional budget, leaving a paltry 10% of the budget to support the supervision of 70% of offenders in the community.* (Carrington & Hogg, sub. 3, p. 12)

The policy environment

The activities of police, courts and corrective services take place in a contentious and volatile environment. Crime is an emotive issue that is reflected in news coverage and in television programs, movies and books. ‘Law and order’ is a significant issue in almost every state election. This environment is characterised by:

- **Inaccurate perceptions about crime**—studies suggest that the public’s perceptions of trends in crime, the percentage of crimes that involve violence, and the imprisonment rates of convicted offenders are often highly inaccurate (Davis & Dossetor 2010; Essential Research 2018; Roberts & Indermaur 2009). The public often perceive sentences to be too lenient in general, but when they learn more about a case, they tend to agree with the sentence actually imposed—or even suggest a more lenient sentence (Bartels et al. 2018).

- **an influential media**—the main source of news for a majority (around three-quarters) of the public is traditional media (Watkins et al. 2016). The media’s presentation of crime has the potential to affect not only the public’s understanding of crime and criminal justice, but also their perceptions of safety and, in turn, criminal justice policymaking (Waters et al. 2017).

- **high-profile events that generate intense public interest**—public concerns can be heightened by individual high-profile cases. Two recent examples are the alleged murder of Elizabeth Kippin in 2016 by a man on parole and the motor vehicle attack on pedestrians in Bourke Street, Melbourne, in 2017. Both events prompted calls for tighter controls on the use of parole and bail conditions.

This environment can create the conditions where criminal issues become polarising, with policy responding to intense political pressures that may not generate policy outcomes in the public interest.
During periods of increased crime rates, or in the aftermath of crimes that draw particular attention, governments can often face pressure from the public and the media to implement or extend ‘tough on crime’ responses such as increased arrests, tougher sentencing laws and practices, mandatory sentencing, and tougher bail eligibility and conditions. While these may be politically expedient, there is no evidence to suggest that these policy responses have any beneficial impact on reducing the rates of offending. (PWC sub. 13 p. 69)

These concerns were expressed often by stakeholders during consultations and in submissions (Box 16.4).

**Box 16.4 Stakeholder views on the roles of politics and media**

Given that the increased use of imprisonment has continued whilst crime rates have been falling, it has been suggested that it is politics, rather than crime, which is increasing these imprisonment rates. (Balanced Justice sub. 1, p. 28)

Studies have shown that confidence in the courts is affected by access to information. This means that cases that attract media attention are likely to shape how the public perceives the courts. For obvious commercial reasons, the media reports on interesting, unusual cases rather than on every case or the overall pattern of cases. (IPA sub. 11, p. 34)

Responding objectively to the evidence is made difficult, however, by a hostile media and others who demonise young people and take a ‘lock them up’ approach. The lack of empathy for young people in some parts of our community is highly concerning. (YAC sub. 34, p. 4)

The Australian public and the media are able to influence decision makers, which is why during periods of increased crime rates, or in the aftermath of crimes that draw particular attention, governments often face pressure to get ‘tough on crime’. However, there is a discrepancy between the public’s perception of crime and what the statistics reveal. (PWC sub. 13, p. 40)

Politics is clearly the main barrier [to reform]. Any government running on a law and order platform tend to see more prisons and longer sentences as a sure way to more votes. And when governments talk about community protection as a reason, they only focus on the short term when offenders are actually in prison, and very little focus on community protection in the long term, e.g. post-release. (Eriksson sub. 5, p. 5)

Change the narrative – politicians and the media must end the counter-productive ‘tough on crime’ rhetoric and respond to the (actual, not perceived) risk to individuals and community. (QCOSS sub. 20, p. 4)

The generation of better quality and more readily digestible data would be of benefit to dispelling popular misconceptions, as would the promotion of greater political bipartisanship. (Carrington & Hogg sub. 3, p. 6)

This cannot be a political issue ... For long term change to occur we need long term planning. Both major parties and independent MP’s need to consider the value of developing support to address the issue of early intervention. (QHVSQ sub. 18, p. 3)
16.3 Options for improving decision-making

The previous section provided a high-level assessment of the decision-making architecture in the Queensland criminal justice system and identified opportunities for improvement through:

- more rigorous policymaking processes
- a more robust evidence base for decision-making
- a better policy and funding decision-making architecture.

Options for delivering these improvements are considered in turn below.

Improving the policy development process

Much policy development for criminal justice is excluded from any form of regulatory impact assessment (such as the RIA process discussed in Box 16.2).

At least in principle, there is no reason why criminal justice policy proposals should not be subject to a development process similar to RIA. Criminal justice proposals would benefit as much as other regulatory proposals from proper problem definition, canvassing of a wide range of options, consideration of all the costs and benefits, and comprehensive consultation. Given the potential for unintended consequences arising from policy changes involving criminal justice issues, a thorough process of policy development along the lines of RIA should be used.

In the United Kingdom, departments are required to complete a justice impact test (JIT) for all new policy proposals they are making that could potentially impact on any operational aspect of the justice system, particularly on the volume of cases going through courts or tribunals, or the way that cases are dealt with by the justice system. The JIT is then circulated to the relevant business groups across the Ministry of Justice to quantify the impacts on their areas. The department making the proposal generally funds any additional costs imposed by the proposal (UK Ministry of Justice 2018).

RIA in Queensland and JITs in the United Kingdom have different coverage and purposes. RIA requires consideration of options, extensive stakeholder consultation and application of a cost–benefit analysis framework, but it excludes proposals of a fiscal nature—to increase police numbers, for example. JITs have broader operational coverage, including fiscal measures, but do not require a comprehensive policy assessment process and do not require consideration of the impact of proposals on, for example, different disadvantaged client groups beyond their legal requirements.

There is potential to develop a process that adopts the best of the two approaches that could help improve service coordination and evidence-based policymaking processes throughout the criminal justice system.
Improving access to information and evidence

Improving information management

In July 2017, the Queensland Government announced the establishment of the Crime Statistics and Research Unit (CSRU) to provide an independent, transparent and authoritative information service that could undertake criminal justice research and data analysis, and report findings in a meaningful way. Its functions include:

- providing a central repository of crime data and enable data linkages between criminal justice agencies
- strengthening the integrity and quality of recorded crime data and instil public confidence in crime statistics
- building an evidence base to support decision-making and policy development for government
- undertaking detailed data analysis and report the information in a meaningful way
- undertaking dedicated criminal justice research and evaluation
- improving access to crime data for all Queenslanders (Queensland Government, sub. 43, pp. 4–5).

If successful, the CSRU will improve the information base for the Queensland criminal justice sector. However, the unit is yet to release any data or publications.

The South Australian Government's Criminal Justice Information Management project provides an example of an initiative to improve the quality of data management to better understand and measure the operation and performance of the criminal justice system (Box 16.5). The aims of the South Australian system seem broader and applicable to the issues of modelling and performance evaluation examined below.

Box 16.5 South Australian Criminal Justice Information Management

In 2016, the South Australian Government initiated its Criminal Justice Information Management (CJIM) project in recognition that, historically, criminal justice system information had existed in silos, with only basic levels of interaction between organisations. Through the CJIM project, business processes are to be improved to avoid rework, overlap, duplication and unnecessary effort through better sharing of information. The CJIM aims to:

- develop a deeper understanding of the interconnected criminal justice system
- establish mechanisms to measure the performance of the criminal justice system
- identify ways that the criminal justice system might be improved, both in terms of delivering better services to citizens and by finding ways to be more effective from an organisational perspective.

Source: SA Attorney-General’s Department 2016.

Developing better modelling of the criminal justice system

As discussed earlier, modelling capacity within and across the agencies of the Queensland criminal justice system is limited. Other jurisdictions have a greater modelling capability. For example:

- In New South Wales, the Bureau of Crime Statistics and Research (BOCSAR) has developed a significant modelling capacity. For example, BOCSAR was able to successfully predict how changes to bail processes would impact on the remand population (Halloran et al. 2017).
• Other jurisdictions are also developing their modelling capacity. Last year, the Western Australian Government announced the development of new modelling capacity to assist in directing reform of the criminal justice system (Box 16.6).

An improved modelling capacity within the core criminal justice agencies would provide valuable support to policy development within the sector, particularly when investigating the impact of policy proposals. However, such modelling needs to balance being useful to government and its agencies, understandable in its mechanics and easy to maintain. An organisation needs to be made accountable for its ongoing development and maintenance.

Box 16.6 Western Australian Justice Pipeline Model

In 2017, the Western Australian Government announced a budget allocation of $850,000 towards the development of a Justice Pipeline Model to assist with policy development of justice-related issues.

The model is intended to capture the flow of activities and costs throughout the justice sector, from police dealing with crime, through to the courts and to the management of prisons and community sentences. It will identify how changes in one part of the system can have a significant impact on the other parts of the system, for example the effect on the court and prison system of a sudden increase in the number of police prosecutions, or the effect of an increase in the number of judges on time to trial in a particular court.

The Western Australian Treasurer indicated it would be able to project the potential success or failure of initiatives and direct money where it would do the most good.

Source: Government of Western Australia 2017.

Enhancing evaluation and evidence

Program evaluation is conducted throughout the Queensland Government, including the core criminal justice agencies. However, evaluation of programs would be more beneficial if it were systematically employed, integrated into service design and undertaken within a framework that allowed programs across the criminal justice system to be directly compared. This approach would allow resources to be reallocated from less successful to more successful services.

The work of Washington State Institute for Public Policy (WSIPP) is an example of how evidence-based program evaluation based on cost–benefit analysis can be used to improve public policy (Box 16.7). The New South Wales Government has sought to emulate the approach of WSIPP (NSW Treasury 2016). Other examples of evidence-based policy and program evaluation in the criminal justice area includes the evidence briefs of the New Zealand Ministry of Justice (Ministry of Justice 2018) and the reports of the United Kingdom’s What Works Network (UK Government 2018). Sentencing advisory councils in Queensland and other jurisdictions also support evidence-based policy.

The development of a strong evidence base, such as a database of performance evaluations that allow comparison of programs operating within the criminal justice system, may also encourage more effective service delivery and resource allocation.
Improving decision-making and allocating funding

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Box 16.7  Washington State Institute for Public Policy

The Washington State Institute for Public Policy (WSIPP) is a nonpartisan public research group which works with legislators, legislative and state agency staff, and experts in the field to carry out research in the areas of education, criminal justice, children and adult services, health and general government.

Cost–benefit analyses are conducted on a large number of programs to allow comparison of performance. WSIPP’s goal is to provide 'policymakers and budget writers with a list of well-researched public policies that can, with a high degree of certainty, lead to better statewide outcomes coupled with a more efficient use of taxpayer dollars'.

For example, in 2006, WSIPP produced a paper 'Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates'. It considered the performance of a wide range of programs and found that:

there are economically attractive evidence–based options in three areas: adult corrections programs, juvenile corrections programs, and prevention... if Washington can successfully implement a moderate–to–aggressive portfolio of evidence–based options, then a significant level of future prison construction can be avoided, state and local taxpayers can save about two billion dollars, and net crime rates can be lowered slightly. (Aos, S. et al. 2006, p. 16)

WSIPP’s work is considered to have contributed to Washington’s better performance on reducing crime. By 2011, impacts on several crime indicators had been achieved—for example, Washington’s juvenile arrest rates had declined by 67 per cent since 1990, compared to 49 per cent nationally, crime rates had declined, and its incarceration rate is 56 per cent of the national rate (NSW Treasury 2016).

WSIPP continues its program evaluation and evidence-based research work for Washington State.


Improving the decision-making architecture

Enhancing coordination mechanisms

From an economic perspective, market incentives can induce coordination of agencies and individuals. Just as monetary and other incentives induce labour and capital to cooperate in firms, and markets coordinate the supply of goods and service to meet the demands of consumers, monetary and non-monetary incentives could be considered at some points in the criminal justice system to induce beneficial cooperation. Some possibilities may apply to the provision of a throughcare model (Chapter 15).

In the absence of such mechanisms and incentives, governments can adopt administrative and governance options that aim to coordinate agency decision-making. Mechanisms can vary from informal networks to use of procedures to major departmental structural reforms (Table 16.2).

Importantly, coordination does not always have to happen only at the top of organisations. It may be more effective if coordination is focused at the lower levels of organisations where the imperative to quickly respond to real clients with real needs is stronger (Peters 2018, p. 3). However, this approach can be undermined if decision-making authority remains centralised, where a commitment to collaboration is not shared. A study of the implementation of a community level 'joined-up government' initiative found that 'operating a joined-up model requires a supporting architecture which resets incentives, provides authority, builds long-term trusting-based relationships, and recognizes and rewards cooperative behaviours' (O’Flynn et al. 2011).
Table 16.2  Coordination mechanism options

<table>
<thead>
<tr>
<th>Coordination mechanisms</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Networks</strong></td>
<td>Officials working together outside of official channels</td>
</tr>
<tr>
<td><strong>Collaboration</strong></td>
<td>Officials meeting to create common understanding and reframe policy issues</td>
</tr>
<tr>
<td><strong>Hierarchy</strong></td>
<td></td>
</tr>
<tr>
<td>– Central agencies</td>
<td>Organisations to supervise and support line agencies</td>
</tr>
<tr>
<td>– Cabinet committee</td>
<td>Committee to bring together ministers to produce collective policies</td>
</tr>
<tr>
<td>– Superministry</td>
<td>Administrative structure that brings agencies together to facilitate internal coordination</td>
</tr>
<tr>
<td>– 'Czar'/taskforce/office</td>
<td>Group of ministers or officials given responsibility to make and/or implement policy</td>
</tr>
<tr>
<td><strong>Procedures</strong></td>
<td></td>
</tr>
<tr>
<td>– Program management system</td>
<td>Setting of government priorities, monitoring of achievement</td>
</tr>
<tr>
<td>– Notification requirement</td>
<td>Ministers with proposals to cabinet to notify colleagues and seek views</td>
</tr>
<tr>
<td>– Budget process</td>
<td>Process to identify and fund policy priorities</td>
</tr>
<tr>
<td>– Policy impact assessment</td>
<td>Formal systematic process of critically assessing policy proposals</td>
</tr>
</tbody>
</table>

Source: Adapted from Peters 2018.

Other jurisdictions use a combination of these mechanisms (Box 16.8). New South Wales and Victoria combine the policy functions of the police, court and correctional services into single departments, while South Australia and New Zealand have had administrative offices or committees to coordinate policy activities across the sector. Other jurisdictions have maintained separate agencies.
Box 16.8 Approaches in other jurisdictions

**New South Wales**
- The Department of Justice (DoJ) has roles including advising the government on law, justice and legal reforms; administering courts; supervising adult offenders; supervising youth in custody, on bail, and community-based orders; and implementing intervention and diversionary programs. DoJ has an Office for Police, with the NSW Police Force as a separate agency. DoJ reports to the Minister for Police, Attorney General and Minister for Corrections. DoJ is the principal department of the Justice Cluster consisting of justice sector agencies including the NSW Police Force.

**Victoria**
- The Department of Justice and Regulation (DoJR) leads the delivery of justice and regulation services in Victoria. Its 10 policy and program divisions include criminal justice strategy and coordination, criminal law policy and operations, police and crime prevention, corrections and youth justice. Victoria Police is a separate agency. DoJR reports to six ministers including the Attorney-General and Ministers for Police, Corrections and Youth Affairs.

**Other Australian States and Territories**
- Other Australian states and territories either have their court and corrective services functions in the one agency, with their police agency separate (Western Australia, Tasmania and Northern Territory), or the three functions in separate agencies (South Australia).
- In 2013, South Australia established the Criminal Justice Sector Reform Council chaired by the Attorney-General and Minister for Justice Reform. It consisted of the Ministers for Police and Correctional Services, the Under Treasurer and the heads of relevant agencies across the criminal justice sector. Chief judicial officers were observers. The council agreed on five specific projects across the sector involving diversion, remand, early resolution of court issues, information flows and technologies, and performance measures (SA Attorney-General’s Department 2014).
- The Australian Capital Territory has a Justice and Community Safety Directorate which is responsible to the Attorney-General, Minister for Police and Emergency Services, Minister for Corrections and Justice Health, and Minister for Justice, Consumer Affairs and Road Safety.

**New Zealand**
- The Department of Justice, Department of Corrective Services and New Zealand Police report to different ministers.
- The Justice Sector Leadership Board is responsible for ensuring the achievement of collective goals. The board coordinates major change programmes and oversee planning to improve services, reduce harm and the number of people in the criminal justice system, maintain institutions and manage investment. The board includes the Secretary for Justice (chair); Commissioner of New Zealand Police; Chief Executive, Department of Corrections; Chief Executive, Serious Fraud Office; Solicitor-General; and Crown Law Office.
Reallocating funding and resources across the sector

Fiscal reprioritisation—whereby resources are reallocated from less to more effective and efficient uses—should be a basic instrument of improving allocative efficiency across the criminal justice system.

Such an approach would accord with a strategy of justice reinvestment. Justice reinvestment is a funding strategy which originated in the United States as a response to rising and unsustainable numbers of people in prison. The central principle of justice reinvestment is that better social outcomes can be achieved by reallocating some of the expenditure on prisons to other programs which directly target the underlying causes of crime.

Justice reinvestment often has a geographic focus as it seeks to divert prisons funding back to prosocial programs in those communities from which a large proportion of prison populations were drawn.

The application of justice reinvestment has changed focus and intent within and between countries.

- In the United States, the place-based focus on high-imprisonment communities has shifted to correctional reform in probation and parole schemes.
- In the United Kingdom, justice reinvestment describes policies framed around payment for outcomes and social impact investment.

In Australia, justice reinvestment has been used on a limited scale to invest in place-based solutions and for social impact investments targeting recidivism. Justice reinvestment has been introduced in Cherbourg, Queensland. A justice reinvestment project in Bourke, New South Wales has recently been evaluated (Box 16.9).

The ongoing application of the principle of justice reinvestment could improve the flexibility of funding within the criminal justice system. There are several options for the practical application of justice reinvestment. The simplest application is to require all criminal justice agencies to apply the principle to its service delivery framework and demonstrate the application of the principle in its annual budget submission.

The benefit of such an approach is that each agency must demonstrate how funding has been released from less to more effective options for achieving the government’s objectives and therefore the approach becomes ingrained in the agency’s service delivery approach. However, a key weakness of the approach is that information on the potential for reallocation is only known by each agency; therefore, it will require additional accountabilities between government and agencies and a mechanism to redirect savings between agencies.
Cross-agency funding models

A cross-agency funding model would assist with transfers across the criminal justice system.

As the name implies, a cross-agency funding model resources several agencies to pursue outcomes sought by government. The funding can be a supplementation for several agencies that are jointly contributing to an outcome for the government or an ongoing arrangement for pooling resources. There are many examples of the supplementation model having been applied in Queensland, often in response to recommendations from inquiries or whole-of-government strategies.

An example of a pooling model is the Justice Sector Fund (JSF) used in New Zealand. The JSF uses money saved by an agency to fund another agency’s initiatives to reduce crime and reoffending. The JSF commenced in April 2012. By 2017, it had funded 66 projects from savings by justice sector agencies. Over the five-year period, the total savings across the justice sector agencies were NZ$273 million, an average of NZ$55 million per annum (annual justice agencies total funding exceeds NZ$2 billion).

The pooling model also can be used to directly apply the principle of justice reinvestment across the criminal justice system. The incentives for criminal justice system agencies to make and release savings into the pool are stronger compared to a single agency justice reinvestment funding model, because each agency has an opportunity to bid for funds in the pool. A further benefit is that it encourages innovation in service delivery, as new ideas can be funded from the funding pool.

Box 16.9 Maranguka Justice Reinvestment Project, Bourke

Bourke is one of the most disadvantaged communities in Australia, with high long-term unemployment and family violence, and the highest rate of juvenile convictions in New South Wales.

The community of Bourke was concerned about the number of Aboriginal families experiencing high levels of social disadvantage and rising crime. In response to these concerns, the local community identified a number of initiatives to reduce offending and make the community safer.

The Maranguka Justice Reinvestment project was initiated in 2016, after many years were spent developing a model for improving outcomes and creating better coordinated support for vulnerable families and children through the empowerment of the local Aboriginal community.

Recently released data for Bourke shows that between 2015 and 2017 there were significant reductions in crime rates. In particular, rates reduced by:

- 18 per cent for major offences
- 34 per cent for non-domestic violence related assaults
- 39 per cent for domestic violence related assaults
- 39 per cent for drug offences
- 35 per cent for driving offences.

The project has a diverse funding base including the Vincent Fairfax Family Foundation, Dusseldorf Forum, Cages Foundation, JUST Reinvest NSW, St Vincent de Paul Society, the NSW Government and Lend Lease.

Sources: Allam 2018; Just Reinvest NSW 2016.
16.4 What is the right option for Queensland?

There are potential benefits from reforming the decision-making architecture and processes in the criminal justice system.

No single type of governance arrangement is likely to fully address the issues identified. Establishing new agencies or frameworks, or implementing requirements on their own, without addressing the underlying incentives and changing decision-making, responsibilities and accountabilities, may only have limited impact.

The decision-making architecture must meet at least three criteria:

- Internalise the full set of costs and benefits in policy and funding advice and decision-making, whilst ensuring effective delivery of each of the criminal justice functions.
- Establish sufficient accountability to ensure that policy and funding reforms are vigorously pursued.
- Provide sufficient authority to allow policy and funding reforms to be achieved.

Three forms of decision-making architecture that can be tested against these criteria are the current model, and two structural reform models involving a dedicated coordinating body (a justice reform office) and a mega-department (the ‘Department of Justice’) (Table 16.3).

The justice reform office’s key functions would be to:

- coordinate and review policy and budget submissions from the core criminal justice sector agencies to cabinet and cabinet committees
- implement justice system reforms
- advise government of priority criminal justice policy issues
- lead and support evidence-based policymaking.

The barriers to coordination are substantial, so the governance arrangements of the justice reform office would need to be carefully considered. The governance structure must enable it to consider the perspectives of each of the core agencies responsible for delivering the criminal justice system, as well as those services that surround the system. The office will also need sufficient expertise, resources and authority to implement the reform agenda. The Commission will continue to explore the best arrangements to meet the three criteria identified above; however, one option is for the office to be responsible to a board comprising senior executives of each of the core criminal justice agencies and other experts.

Key activities for the office should include:

- Developing common performance objectives and indicators across the core criminal justice agencies, such as targets for Indigenous incarceration and reoffending rates.
- Reporting on justice system changes, including net widening, and whether these are in the community’s interest.
- Introducing mechanisms for allocating resources to support system objectives.
- Developing data and modelling systems to support decision-making.
- Establishing a program evaluation framework and reporting arrangements.
- Introducing mechanisms, such as a formal test of impacts, to ensure decision-makers and stakeholders are informed of the full impacts of proposed policy changes.
Table 16.3 Decision-making architecture reforms—the status quo versus a coordinating body and mega-department

<table>
<thead>
<tr>
<th>System reform</th>
<th>Status quo</th>
<th>Justice reform office (JRO)</th>
<th>Department of Justice (DOJ)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structural separation</td>
<td>Structurally separated agencies with strong vertical accountabilities and operational priorities.</td>
<td>Being a separate body responsible for achieving the system reform agenda, the JRO is more likely to adopt a 'system-wide' approach and account for all costs and benefits of policy options.</td>
<td>DOJ would have the potential for greater internalisation of costs and benefits across its functional areas, having shorter lines of communication. However, separation of the operational areas of police and corrections from the DOJ would reduce this benefit.</td>
</tr>
<tr>
<td>Internalisation of costs and benefits in advice and decision-making</td>
<td>Internal priorities may create resistance to funding reallocation. Central agencies advise on funding priorities.</td>
<td>JRO would be more objective in providing advice on funding priorities and reallocation across the sector, including transfers external to the core agencies (for example, justice reinvestment).</td>
<td>Full consideration possible, but a large department structure can make it challenging. Despite being in the same broader organisation, the three functional areas could still operate as discrete areas.</td>
</tr>
<tr>
<td>Sufficient accountability</td>
<td>The three agencies have separate objectives and are accountable to two different ministers. Accountability for reform can be diluted across the ministers and agencies.</td>
<td>JRO would be accountable to its minister and cabinet for fulfilling its defined coordination and reform function. At the same time, it could have a degree of horizontal accountability to the core agencies through their representation on the JRO board.</td>
<td>DOJ would be accountable for multiple objectives and possibly to several ministers. This could dilute accountability for achieving system reform objectives.</td>
</tr>
<tr>
<td>Sufficient authority</td>
<td>No single authority to progress 'systemwide' reform. Political leadership may assist, but without a lead agency there would not be an organisation to champion reform.</td>
<td>JRO would have a mandate to pursue its reform agenda. Representation of core agency CEOs on the JRO board would assist in giving JRO the authority with the core agencies to achieve its agenda.</td>
<td>DOJ could be given a mandate from the government to achieving a reform agenda. Having the core functions in the one organisation may reduce resistance to change.</td>
</tr>
</tbody>
</table>
While there are benefits from the other options, the Commission considers reform is likely to be best achieved by establishing a justice reform office that is arm's length from, but accountable to, the criminal justice system.

Whichever model is adopted, leadership will be critical for the success of the reform agenda. That leadership will need to come from the top. A study of the evidence on joined-up government found that strategic commitment from politicians was universally regarded as key to successful initiatives. As well as providing a mandate for change, politicians proved critical for cutting through administrative silos in times of need, or putting out emerging 'turf wars' (Carey & Crammond 2015, p. 3). However, there is also a need for strong leadership at all levels, whether they are strategic, managerial or local. Essentially, the justice reform office and the reform effort more generally cannot be expected to succeed in the absence of political and justice agency leadership.

A major task in the implementation of reform will be to find the best ways to collaborate with the criminal justice system beyond the core agencies and with other stakeholders and the community more broadly.

As mentioned throughout this report, decision-makers in the criminal justice process can be influenced by discussion and debate in the community. This can contribute positively to decision-making if the debate provides an accurate portrayal of the values held by the community. However, if the views are poorly informed, they can be misleading and diminish the capacity for good policy development and decision-making. An important consideration for the justice reform office, as for other organisations in the criminal justice sector, will be how to best engage with the community to improve the community’s understanding of the pressures and trade-offs that the criminal justice agencies and their officers face daily. In this way, the community will be in a better position to make a valuable contribution to the solutions for the difficult issues arising in the criminal justice sector.
Draft Recommendation 17

The Queensland Government should establish a justice reform office to:

- coordinate and review policy and budget submissions from the core criminal justice sector agencies to cabinet and cabinet committees
- implement justice system reforms
- advise government of priority criminal justice policy issues
- lead and support evidence-based policymaking.

The office should be responsible to a suitably constituted board that includes representation from each of the core criminal justice agencies and independent experts.

Draft Recommendation 18

The Queensland Government should require the justice reform office to introduce the following specific reforms:

- common performance objectives and indicators across the core criminal justice agencies, including targets for:
  - reducing offending and reoffending rates, including for youth and women
  - closing the gap on Indigenous incarceration
- mechanisms for allocating resources to support system objectives
- systems to provide accurate and timely data to support decision-making, and improved transparency and accountability
- modelling that promotes understanding of how policy and other proposals are likely to impact across the system
- mechanisms to ensure decision-makers are informed of the full impacts of policy proposals on the criminal justice system, clients and stakeholders, such as:
  - incorporating justice system proposals into the existing regulatory impact assessment process
  - introducing a formal test to assess impacts across the criminal justice system.

These reforms are to be introduced within 24 months of the reform office’s establishment.

Information request

The Commission is seeking comment on the appropriate governance mechanisms to improve policy and funding decision-making. In particular, comments are invited on what arrangements would best ensure that:

- government is advised of priority criminal justice reform issues
- justice system reforms are implemented and coordinated
- an environment conducive to evidence-based policymaking is fostered.
Appendices
Appendix A  Terms of reference

Queensland Productivity Commission Inquiry into Imprisonment and Recidivism

Context
The growth in prisoner numbers is a serious and growing public policy concern for Queensland.

- The imprisonment rate of people in Queensland prisons increased by 40 per cent in the five years from 2012 to 2017, around five times the population growth rate for Queensland.
- The imprisonment rate of Aboriginal and Torres Strait Islanders increased by 50 per cent over the same period.
- Recidivism is high with more than 60 per cent of new prisoners having been in prison before.
- Of further concern is the real increase of imprisonment of women, especially Aboriginal and Torres Strait Islander women.

The growth of prisoner numbers has major social and economic implications for affected individuals and the wider Queensland community. It also has significant financial implications for government.

Change is necessary however, the problem is complex. Prisoner numbers reflects underlying forces including long term social and economic factors and community views about criminal justice; but they also reflect the daily activity and decisions at key points within the criminal justice system, sentencing and legislative frameworks, police resourcing and decisions, sentencing practices, court workloads and access to support services including legal aid.

A system wide approach to change is essential - considering both the underlying forces and the practical operation of Queensland’s criminal justice system. Potential measures must be thoroughly worked-through and rigorously tested, including comprehensive public consultation.

The Queensland Government considers that the Queensland Productivity Commission, as the State’s independent public policy review body, is an excellent mechanism to undertake such innovative and evidence-grounded research, investigation, testing and consultation.

Terms of Reference
The Queensland Productivity Commission is directed to undertake an Inquiry into Imprisonment and Recidivism.

The central question is, how can Government resources and policies be best used to reduce imprisonment and recidivism and improve outcomes for the community over the medium to longer term?

In the context of the Government’s objective of ensuring a fair, safe and just Queensland, the Commission should consider:

- trends in the rate of imprisonment in Queensland in recent years, including comparison with other sentencing options;
- evidence about the causal factors underlying trends in the rate of imprisonment;
- the factors driving Aboriginal and Torres Strait Islander imprisonment and recidivism and options to improve matters;
- the factors driving the imprisonment and recidivism of women and options to improve matters;
• factors affecting youth offending and corresponding imprisonment rates and options to improve matters;
• measures of prisoner recidivism rates, trends in recidivism and causes of these trends;
• the benefits and costs of imprisonment, including its social effects, financial costs and effectiveness in reducing/preventing crime;
• the effectiveness of programs and services in Australia and overseas to reduce the number of people in and returning to prisons, including prevention and early intervention approaches, non-imprisonment sentencing options, and the rehabilitation and reintegration of prisoners;
• the efficacy of adopting an investment approach, where investments in prevention, early intervention and rehabilitation deliver benefits and savings over the longer term; and
• barriers to potential improvements and how these barriers could be lowered.

The Commission’s recommendations should be consistent with the ‘Queensland Government Policy on the Contracting-Out of Services’, which provides that services currently delivered in-house, including publicly-operated prisons, will not be outsourced other than in certain limited circumstances.

Consultation

The Commission must undertake public consultation in relation to the Inquiry, including with peak bodies, experts, government agencies and other key stakeholders.

The Commission must consult with the Deputy Director-General Cluster Group for the ‘Keep Communities Safe Priority’ of ‘Our Future State: Advancing Queensland’s Priorities’ and the Crime Statistics and Research Unit in the Queensland Government Statistician’s Office.

Reporting

The Commission must publish a draft report (including interim recommendations) for consultation by 1 February 2019.

The Final Report must be provided to the Government by 1 August 2019.
### Appendix B  Submissions

Written submissions provide a significant contribution to the Commission's evidence base. In total, the Commission received 43 submissions as listed below.

<table>
<thead>
<tr>
<th>Individual or organisation</th>
<th>Submission number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balanced Justice</td>
<td>IRIP-001</td>
</tr>
<tr>
<td>Dr K Richards, School of Justice, QUT</td>
<td>IRIP-002</td>
</tr>
<tr>
<td>Professor K Carrington and Professor R Hogg, Crime, Justice and Social Democracy Research Centre, QUT</td>
<td>IRIP-003</td>
</tr>
<tr>
<td>Dr M Denton, School of Nursing, Midwifery and Social Work, University of Queensland</td>
<td>IRIP-004</td>
</tr>
<tr>
<td>Associate Professor A Eriksson, Imprisonment Observatory, Monash University</td>
<td>IRIP-005</td>
</tr>
<tr>
<td>Cape York Partnership</td>
<td>IRIP-006</td>
</tr>
<tr>
<td>Dr K Ellem, Dr M Denton, M O’Connor and Dr D Davidson</td>
<td>IRIP-007</td>
</tr>
<tr>
<td>TAFE Queensland</td>
<td>IRIP-008</td>
</tr>
<tr>
<td>Lifeblood Australia</td>
<td>IRIP-009</td>
</tr>
<tr>
<td>Dr K McFarlane, Centre for Law and Justice, Charles Sturt University</td>
<td>IRIP-010</td>
</tr>
<tr>
<td>Institute of Public Affairs (IPA)</td>
<td>IRIP-011</td>
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<tr>
<td>Ian Pack—Prison Chaplain Townsville</td>
<td>IRIP-012</td>
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<tr>
<td>PricewaterhouseCoopers (PWC)</td>
<td>IRIP-013</td>
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<tr>
<td>Keith Hamburger AM, Knowledge Consulting</td>
<td>IRIP-014</td>
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<td>yourtown</td>
<td>IRIP-015</td>
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<td>Qld Advocacy Incorporated (QAI)</td>
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<td>Women’s Legal Service Qld (WLSQ)</td>
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<td>Queensland Homicide Victim’s Support Group (QHVSG)</td>
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<td>Serco Australia</td>
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<td>Queensland Council of Social Service (QCOSS)</td>
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<td>Queensland Alliance for Mental Health (QAMH)</td>
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<td>Prison Fellowship Australia</td>
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<tr>
<td>Family Responsibilities Commission (FRC)</td>
<td>IRIP-023</td>
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<tr>
<td>Jenni Pack</td>
<td>IRIP-024</td>
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<tr>
<td>Dr G Catalano, School of Social Science, University of Queensland</td>
<td>IRIP-025</td>
</tr>
<tr>
<td>Anonymous</td>
<td>IRIP-026</td>
</tr>
<tr>
<td>Australian Psychology Society College of Forensic Psychologists, Queensland Branch</td>
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<tr>
<td>David White</td>
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<td>Together Queensland</td>
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<td>Queensland Network of Alcohol and Other Drug Agencies (QNADA)</td>
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<td>Dr Jane Garner</td>
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<td>Dr Ian A Elliott</td>
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<td>Youth Advocacy Centre Inc (YAC)</td>
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<td>Aboriginal &amp; Torres Strait Islander Legal Service (Qld) Ltd (ATSILS)</td>
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<td>Queensland Mental Health Commission (QMHC)</td>
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<td>Bravehearts Foundation Ltd.</td>
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<td>Change the Record Coalition</td>
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<tr>
<td>Bar Association of Queensland</td>
<td>IRIP-042</td>
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<tr>
<td>Queensland Government</td>
<td>IRIP-043</td>
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Appendix C  Consultations

Correctional site visits

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<th>Site</th>
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<tbody>
<tr>
<td>Arthur Gorrie Correctional Centre</td>
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<td>Brisbane Women’s Correctional Centre</td>
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<tr>
<td>Capricornia Correctional Centre</td>
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<td>Townsville Correctional Centre</td>
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Other site visits

<table>
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<tr>
<th>Site</th>
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<tbody>
<tr>
<td>Drug Court</td>
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<tr>
<td>Murri Court</td>
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<tr>
<td>Magistrates Court</td>
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Consultations

<table>
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<tr>
<th>Organisation or person</th>
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<tr>
<td>Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd</td>
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<tr>
<td>Amaroo Aboriginal &amp; Torres Strait Islander Elders Justice Group</td>
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<tr>
<td>Amnesty International Australia</td>
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<tr>
<td>Bar Association of Queensland</td>
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<tr>
<td>Bravehearts Foundation Ltd</td>
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<td>Cairns Regional Domestic Violence Service</td>
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<td>Cairns Sexual Assault Service (CSAS)</td>
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<td>Cape York Partnership</td>
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<td>The Honourable Chief Justice Catherine Holmes</td>
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<td>Centacare</td>
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<td>Community Justice Group - Palm Island</td>
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<td>Corrs Chambers Westgarth</td>
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<td>Crime and Corruption Commission</td>
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<td>Danika Jackson</td>
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<tr>
<td>Darryl Clark</td>
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<td>Department of Aboriginal and Torres Strait Islander Partnerships</td>
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<tr>
<td>Department of Child Safety, Youth, Justice and Women</td>
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<td>Department of Premier and Cabinet</td>
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<tr>
<td>Deputy Director-General Cluster Group for the ‘Keep Communities Safe Priority’ of ‘Our Future State: Advancing Queensland’s Priorities’</td>
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<tr>
<td>Don Weatherburn</td>
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<td>Family Responsibilities Commission – Cairns/Townsville</td>
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<td>Dr Jeff Nelson</td>
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<td>Jeff Williams</td>
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<td>Juwarki Kapu-Lug Ltd</td>
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<td>Keith Hamburger (Knowledge Consulting)</td>
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<td>Professor Kerry Carrington</td>
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<td>Legal Aid Queensland</td>
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<td>LGAQ Indigenous Leaders Forum</td>
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<td>Professor Lorraine Mazerolle</td>
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<td>Major General Stuart Smith – Townsville Community Champion</td>
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<td>Ministerial Outcome Oversight Group</td>
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<td>Napranum Aboriginal Shire Council</td>
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<td>New Zealand Ministry of Justice</td>
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</tr>
<tr>
<td>His Honour Judge Orazio Rinaudo AM, Chief Magistrate</td>
</tr>
<tr>
<td>Ozcare</td>
</tr>
<tr>
<td>Prison Fellowship Queensland</td>
</tr>
<tr>
<td>Queensland Alliance for Mental Health</td>
</tr>
<tr>
<td>Queensland Audit Office</td>
</tr>
<tr>
<td>Queensland Corrective Services</td>
</tr>
<tr>
<td>Queensland Family and Child Commission</td>
</tr>
<tr>
<td>Queensland Government Statistician’s Office</td>
</tr>
<tr>
<td>Queensland Health – Queensland Forensic Mental Health Service</td>
</tr>
</tbody>
</table>
Organisation or person
Queensland Homicide Victims Support Group
Queensland Mental Health Commission
Queensland Police Service
Queensland Sentencing Advisory Council
Queensland Treasury
Reverend Charles Harris Diversionary Centre
Salvation Army Court and Prison Chaplain
Sisters Inside Incorporated
Stanley Smith
Dr Stephen King
Professor Tamara Walsh
Tim Braban
The Salvation Army – Australia One
Together Union
Townsville Central City Mission
Townsville Community Champion
Townsville Stronger Communities
Uniting Care Prison Ministry
Women’s Legal Service – Qld
Yarrabah Aboriginal Shire Council
Yarrabah Leaders Forum
Youth Advocacy Centre
Yumba Meta

Public forums
Locations
Brisbane
Cairns
Rockhampton
Townsville
Appendix D  Previous Reviews

This appendix provides background information on previous reviews into the criminal justice system relevant to this inquiry’s terms of reference.

### Table B.1  Previous reviews and reports

<table>
<thead>
<tr>
<th>Review/Inquiry</th>
<th>Scope and Findings</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report on Youth Justice</td>
<td>Examine and report on a series of youth justice matters, including other measures to reduce recidivism.</td>
<td>In December 2018 the Government responded to this report through the release of the Youth Justice Strategy.</td>
</tr>
<tr>
<td>Bob Atkinson AO, 2018</td>
<td>Recommended that the Queensland Government as a whole adopt four pillars as its policy position for youth justice.</td>
<td></td>
</tr>
<tr>
<td>Finalising unpaid fines</td>
<td>Assess the effectiveness and efficiency of public sector entities in finalising unpaid fines.</td>
<td>Almost all the recommendations were agreed by the relevant departments. SPER note that revised write-off guidelines may need to differ from commercial debt, as they contribute to the integrity of fines as a punitive option. The cost effectiveness of enforcement will need to consider the justice aspect of fine collection activity.</td>
</tr>
<tr>
<td>(Report 10: 2017–18)</td>
<td>Recommended better agency/State Penalties Enforcement Registry (SPER) processing and unpaid fine hand-over to increase effectiveness and timeliness of debt collection activities. Evaluation of cost effectiveness of SPER enforcement actions. Revised debt write-off guidelines.</td>
<td></td>
</tr>
<tr>
<td>Queensland Audit Office (QAO), 2018</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminal Justice System—reliability and integration of data: (Report 14: 2016–17)</td>
<td>Found a number of serious flaws in criminal justice data processes.</td>
<td>Agency responses indicate that all recommendations are expected to be implemented by December 2018.</td>
</tr>
<tr>
<td>QAO, 2017</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Independent Review of Youth Detention</td>
<td>Review in response to incidents at Cleveland youth detention facility. Recommendations address day to day detention activities and implementation.</td>
<td>Government accepted all recommendations.</td>
</tr>
<tr>
<td>December 2016</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminal Justice System—prison sentences: Report 4: 2016–17</td>
<td>Assessed how effectively the criminal justice entities capture and use data for calculating and administering prison sentences. Identified gaps in processes for detection, quality assurance, recording, reporting, and integration of sentencing data, resulting in prisoners being released in error or unlawfully detained.</td>
<td>QPS and DJAG agreed to recommendations. The Lawful Detention Expert Reference Group (LDERG) was established (DJAG, QPS, and QCS), and is responsible for ensuring audit recommendations are adequately addressed and to address ongoing agency coordination issues.</td>
</tr>
<tr>
<td>Review/Inquiry</td>
<td>Scope and Findings</td>
<td>Response</td>
</tr>
<tr>
<td>---------------</td>
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</tr>
<tr>
<td>Queensland Drug and Specialist Courts Review Queensland Courts, November 2016</td>
<td>The report recommends reinstatement of the Drug Court.</td>
<td>Passed into law October 2017. The first Drug and Alcohol Court under the new powers was established in Brisbane in early 2018. Following evaluation further decisions on rollout will be made.</td>
</tr>
<tr>
<td>Queensland Parole System Review Sofronoff, 2016</td>
<td>Sofronoff makes 91 recommendations relating to all aspects of parole in Queensland.</td>
<td>Supported directly, or in principle, most recommendations. Rejected removal of mandatory parole periods (Rec 7) and flexibility in classifying security level for prisoners (Rec 58). QSAC will be reviewing community-based sentence options and parole options (Sofronoff recs 2–5). Their report is due by 31 July 2019.</td>
</tr>
<tr>
<td>Taskforce on Organised Crime Legislation DJAG (Chaired by Wilson) March 2016</td>
<td>The taskforce responds to an ALP election commitment to review the 2013 VLAD legislation. Also asked to develop a serious organised crime offence. The taskforce made recommendations covering criminal justice data, sentencing guidelines, definitional, regulatory and criminal code changes.</td>
<td>The government passed the Serious and Organised Crime Legislation Amendment Act 2016 (assent on 9 Dec 2016). It largely implements the recommendations of the Taskforce in full or in principle (as well as those of the COA review and Commission).</td>
</tr>
<tr>
<td>Management of privately operated prisons (Report 11: 2015–16) QAO, February 2016</td>
<td>Report concluded that the private provision in the state’s prison system is realising significant cost savings while providing a level of service commensurate with publicly run prisons. QH delivers its medical services in public prisons at a significantly higher cost than do the private operators. QCS contract management is poor.</td>
<td></td>
</tr>
<tr>
<td>Review/Inquiry</td>
<td>Scope and Findings</td>
<td>Response</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Not Now, Not Ever Special Taskforce on Domestic and Family Violence, February 2015</td>
<td>Identified 140 recommendations across three broad themes: cultural attitudes of communities, the role of services and the need for an integrated response, and functioning of the legal and justice systems (to prioritise victim safety and hold perpetrators to account). Report recommends that QCS increases access to therapeutic interventions for domestic and family violence offenders in prison (Rec 81).</td>
<td>All recommendations accepted. Developed strategy and established DFV Implementation Council to report on progress. The council regularly reports on progress. The evaluation framework for the prevention strategy was completed in February 2017.</td>
</tr>
<tr>
<td>Inquiry on strategies to prevent and reduce criminal activity in Queensland Parliamentary Committee: Legal Affairs and Community Safety Committee, November 2014</td>
<td>The Committee made a total of 88 recommendations.</td>
<td>The Government noted it had made a number of commitments that align with the recommendations and/or themes of the Committee’s Report.</td>
</tr>
<tr>
<td>Follow up—Management of offenders subject to supervision in the community (Report 4: 2013–14) QAO, October 2013</td>
<td>Follow-up found QCS has implemented 4 of the 7 recommendations from Report 1: 2011. Recommendations on program evaluation and staff workloads were incomplete. While service cost is lower than other states, due to high offender to staff ratios, recidivism is also high and indicates a false economy. The report was also critical of the lack of cost-benefit analysis and longer-term evaluation of biometric identification program (PRISM).</td>
<td>QCS (then in Department of Community Safety) considered that it had substantially completed the prior recommendations. During public briefing on this report (in 2015) by the Parliamentary Committee (LACSC) it was made aware of anomalies in the data reported by QCS for the Productivity Commissions Report on Government Services regarding recidivism, and subsequently offender to staff ratios. This resulted in the request for the 2016–17 data management audits. Incorrect data on recidivism had been provided over a ten-year period, with revised rates showing prisoners returning to corrective services some 5 percentage points higher than reported results.</td>
</tr>
<tr>
<td>Review/Inquiry</td>
<td>Scope and Findings</td>
<td>Response</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Restoring Order: Crime Prevention, policing and local justice in Queensland's Indigenous communities CMC, November 2009</td>
<td>Investigated the increased incarceration rates since the Royal Commission into Aboriginal Deaths in Custody, particularly for juvenile offenders. A broader relationship approach (using community safety plans). Increased Indigenous roles in policing.</td>
<td></td>
</tr>
<tr>
<td>Review of the civil and criminal justice system in Queensland The Hon Martin Moynihan AO QC, December 2008</td>
<td>Report into the operation of aspects of the justice system, focusing primarily on streamlining the court system. Makes clear the interconnectedness of the system, even within the confines of the court system. A Criminal Justice Procedure Co-ordination Council to facilitate cooperation between QPS, Court, DJAG and QPS systems.</td>
<td></td>
</tr>
<tr>
<td>Policing Public Order: A Review of the Public Nuisance Offence. CMC, May 2008</td>
<td>That the new Public Nuisance Offence in effect from 21 March 2005 had not changed the nature of public nuisance policing. Such policing continued to focus on two offender types, party people and street people (the later are predominantly homeless, Indigenous, and/or those with mental health issues). The new offence had been used by police to increasingly focus on alcohol related offending (by party people). Recommended that: Arrest data include a type of offence field to allow monitoring of bad language offending (which is often a type applied to indigenous offenders) Introducing a public nuisance ticketing offence to save court costs. Other minor adjustments.</td>
<td>One-year trial of Public nuisance ticketing in Townsville and South Brisbane from 1 January 2009. An evaluation by Griffith University indicated: Higher rates of fines in Townsville (408 per 100k) than South Brisbane (225). Primarily focused on CBD, night time, entertainment spots. Primarily for urination and disorderly offences. Increased rates of police detection and fines attributed to increased policing (the ticketing process allows officers more time on the street). Previously overlooked offences now incur fines. Overall cost savings estimated at $18-30 million for state-wide implementation. Rolled out to rest of the state from 8 November 2010.</td>
</tr>
<tr>
<td>Review/Inquiry</td>
<td>Scope and Findings</td>
<td>Response</td>
</tr>
<tr>
<td>----------------</td>
<td>--------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Queensland Aboriginal and Torres Strait Islander Criminal Justice Agreement 2000</td>
<td>Signed with Aboriginal and Torres Strait Islander Advisory Board. Aim to reduce rate of overrepresentation of Indigenous people in custody by 50 per cent by 2011. Methods focused on: alternatives to court, effective diversion, legal assistance, community input to sentencing, more indigenous workers in the justice system.</td>
<td></td>
</tr>
</tbody>
</table>
Appendix E  From offences to prison

The data in Table E.1 provides a breakdown of the data found in Figure 3.4, chapter 3.

Table E.1  From offence to prison, Queensland 2016–17 ('000s)

<table>
<thead>
<tr>
<th>Stage of the criminal justice process</th>
<th>Total ('000s)</th>
<th>Components</th>
<th>('000s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reported offences</td>
<td>498.3</td>
<td>Against the person</td>
<td>34.4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Against property</td>
<td>230.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other</td>
<td>233.5</td>
</tr>
<tr>
<td>Cleared offences—other offences</td>
<td>353.1</td>
<td>Against the person (% cleared)</td>
<td>26.3 (76%)</td>
</tr>
<tr>
<td>are usually initiated by the police</td>
<td></td>
<td>Against property (% cleared)</td>
<td>93.2 (40%)</td>
</tr>
<tr>
<td>and always cleared</td>
<td></td>
<td>Other</td>
<td>233.5</td>
</tr>
<tr>
<td>Police actions—used to clear offences</td>
<td>320.3</td>
<td>Arrest</td>
<td>116.6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Summons and warrants</td>
<td>7.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Notice to appear</td>
<td>148.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cautions, conferences</td>
<td>13.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other action</td>
<td>35.2</td>
</tr>
<tr>
<td>Arrest raises the issue of remand</td>
<td>116.6</td>
<td>Remand flows to prison</td>
<td>5.9</td>
</tr>
<tr>
<td>Arrest, summons, warrants and notices</td>
<td>271.9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>to appear are actions that could</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>potentially result in court</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>proceedings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proceedings</td>
<td>193.0</td>
<td>Non-court</td>
<td>29.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Court</td>
<td>163.7</td>
</tr>
<tr>
<td>Court finalisations</td>
<td>163.7</td>
<td>Not-guilty</td>
<td>1.3</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Withdrawn</td>
<td>12.4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Guilty plea</td>
<td>126.4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Guilty—court</td>
<td>2.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Guilty—ex parte</td>
<td>21.6</td>
</tr>
<tr>
<td>Sentences—applied to all guilty</td>
<td>150.0</td>
<td>Monetary orders</td>
<td>110.7</td>
</tr>
<tr>
<td>findings</td>
<td></td>
<td>Community orders</td>
<td>15.5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other non-custodial orders</td>
<td>16.4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fully suspended sentence</td>
<td>5.4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Custody in community</td>
<td>0.2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Custody in correctional institution</td>
<td>11.8*</td>
</tr>
<tr>
<td>Prison</td>
<td>13.1</td>
<td>Remand flows to prison</td>
<td>5.9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sentenced prisoners</td>
<td>7.2</td>
</tr>
</tbody>
</table>

*a Not all custodial sentences result in prison if time on remand is considered 'time served' or if immediate parole is ordered. Source: ABS 2018c, 2018l, 2018e; QPS 2017.*
Appendix F  Empirical evidence on the effectiveness of prevention and early intervention programs

This appendix provides a brief overview of the three types of prevention and early intervention programs and outlines the cost–benefit ratios of various studies for each of the three types. A benefit–cost ratio greater than 1 indicates the program is beneficial to the community, whereas a ratio below one suggests the community would be worse off from the program. The higher the ratio the greater the net benefit to the community.

Situational prevention

Most situational crime prevention benefit–cost studies have been found to produce positive returns, but not all do so (Table F.1).

Table F.1  Situational crime prevention studies

<table>
<thead>
<tr>
<th>Main source</th>
<th>Program name/type and short description</th>
<th>Sample size</th>
<th>Benefit–cost ratio*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cirel et al. (1977)</td>
<td>Block Watch: Natural surveillance targeted on residential burglary</td>
<td>1,474 homes</td>
<td>0.4</td>
</tr>
<tr>
<td>Skilton (1988)</td>
<td>Concierges: Employee surveillance targeted on vandalism in public housing</td>
<td>305 homes (in two high rises)</td>
<td>1.44</td>
</tr>
<tr>
<td>Ekblom, Law, and Sutton (1996)</td>
<td>Safer Cities Programme: Target hardening (locks, alarms, entry systems)</td>
<td>7,500 homes</td>
<td>High risk: 3.0;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>average risk: 0.9</td>
</tr>
<tr>
<td>Ayres and Levitt (1998)</td>
<td>Lojack: Formal surveillance targeted on auto theft</td>
<td>6 cities with populations over</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td></td>
<td>250,000</td>
<td></td>
</tr>
<tr>
<td>Painter and Farrington (2001), Dudley</td>
<td>Improved street lighting: Natural surveillance targeted on property and</td>
<td>879 homes</td>
<td>6.2–121</td>
</tr>
<tr>
<td></td>
<td>personal crime</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Painter and Farrington (2001), Stoke-on-Trent</td>
<td>Improved street lighting: Natural surveillance targeted on property and</td>
<td>540 homes</td>
<td>5.4–54</td>
</tr>
<tr>
<td></td>
<td>personal crime</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bowers, Johnson, and Hirschfield (2004)</td>
<td>Alley gates: Target hardening focused on residential burglary</td>
<td>106 housing blocks</td>
<td>6 months: 1.01;</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>12 months: 1.86</td>
</tr>
<tr>
<td>Gill and Spriggs (2005)</td>
<td>CCTV: Formal surveillance targeted on property and person crime</td>
<td>7 projects</td>
<td>City outskirts:</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1.24; Hawkeye: 0.67; other five: 0</td>
</tr>
</tbody>
</table>

Note: * Expressed as a ratio of benefits to costs in monetary units (national currencies).
Developmental prevention

Empirical evidence on the effectiveness of developmental preventative programs is mixed (see Table F.2). Some have large impacts, whilst other programs have costs that exceed their benefits.

Table F.2 Developmental crime prevention studies

<table>
<thead>
<tr>
<th>Main source</th>
<th>Program name and short description</th>
<th>Sample size</th>
<th>Benefit–cost ratio*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lipsey, Cordray and Berger (1981)</td>
<td>Los Angeles County Delinquency Prevention Program: Family counselling, academic tutoring, employment training</td>
<td>7,637 youths</td>
<td>1.4</td>
</tr>
<tr>
<td>Long, Mallar and Thornton (1981)</td>
<td>Job Corps: Vocational training, education, health care</td>
<td>5,100 youths</td>
<td>1.45</td>
</tr>
<tr>
<td>Hahn (1994)</td>
<td>Quantum Opportunities Program: Education, skills development</td>
<td>250 youths</td>
<td>3.68</td>
</tr>
<tr>
<td>Earle (1995)</td>
<td>Hawaii Healthy Start: Parent education, parent support, family planning, community support</td>
<td>2,706 families</td>
<td>0.38</td>
</tr>
<tr>
<td>Schochet, Burghardt and McConnell (2006)</td>
<td>Job Corps: Vocational training, education, health care, socialisation activities</td>
<td>11,313 youths</td>
<td>Full sample: 0.25; age group 20–24: 2.3</td>
</tr>
<tr>
<td>DuMont et al. (2010)</td>
<td>Healthy Families New York: Parent education, parenting skills, parent support, parental and child health care, home visits</td>
<td>1,173 families</td>
<td>Full sample: 0.15; HPO subgroup 0.25; RPO subgroup; 3.16</td>
</tr>
<tr>
<td>Reynolds, Temple, White et al. (2011)</td>
<td>Child-Parent Center Early Education Program: Education, family support, parent involvement, parent support, health care, continuity between preschool and early elementary school</td>
<td>1,539 children</td>
<td>Preschool program: 7.2; school-age program: 2.11; preschool plus school-age: 5.21</td>
</tr>
<tr>
<td>Miller (2013)</td>
<td>Nurse-Family Partnership Parent education, parent support, community support, family planning, nurse home visits</td>
<td>371 families</td>
<td>2.9</td>
</tr>
</tbody>
</table>

Community prevention

Cost–benefit analysis indicates community prevention programs have been effective (Table F.3).

Table F.3  Community crime prevention studies

<table>
<thead>
<tr>
<th>Main source</th>
<th>Program name/type and short description</th>
<th>Sample size</th>
<th>Benefit–cost ratio*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jones and Offord (1989)</td>
<td>Participate and Learn Skills: Non-school, skill development program</td>
<td>905 children and teens</td>
<td>2.55</td>
</tr>
<tr>
<td>Cook and MacDonald (2011)</td>
<td>Business Improvement Districts: CCTV, development planning, improved policing, and other city services, security guards</td>
<td>1,072 areas of the city</td>
<td>18.8–21.3</td>
</tr>
<tr>
<td>Kulklinski et al. (2012)</td>
<td>Communities That Care: Implementation of needs-based, tested and effective prevention programs</td>
<td>4,407 children and youths in 24 communities</td>
<td>5.3–10.23</td>
</tr>
<tr>
<td>Heller et al. (2013)</td>
<td>Becoming a Man: In-school and after-school programs, cognitive behavioural therapy</td>
<td>2,740 boys (grades 7–10)</td>
<td>2.3–33</td>
</tr>
</tbody>
</table>

Note: * Expressed as a ratio of benefits to costs in monetary units (national currencies).
Source: Welsh et al. 2015, p. 487.

Limitations to cost–benefit ratios

There are limitations to the cost–benefit analyses outlined above. Firstly, as noted by the authors, they are not comparable, as each study considers a different set of costs and benefits (Welsh et al. 2015, p. 491).

Moreover, comparisons between prevention types are problematic. For instance:

Developmental prevention in particular has important monetary benefits beyond reduced crime. These can take the form of, for example, increased tax revenues from higher earnings, savings from reduced usage of social services, and savings from lower health care use. The benefits of situational prevention, by contrast, appear largely to be confined to reductions in crime and often to reductions in specific types of crime. This may be because only crime benefits were measured in situational evaluations. Nevertheless, developmental prevention has a potentially wider range of benefits than situational prevention. Also, the benefits of developmental prevention may persist longer than the benefits of situational prevention, although little is known about the long-term effects of situational prevention. (Welsh et al. 2015, pp. 490–91)

These cost–benefit ratios often have large confidence intervals, suggesting minor changes in assumptions can have significant impacts on findings (Welsh et al. 2015, p. 491). It can also be difficult to value the full costs and benefits, for example:

It is difficult to quantify the immediate and long term economic costs of imprisoning women and children. These impact every social institution and system. (Sisters Inside sub. 39, p. 13)

Evaluations should therefore be treated with some caution, particularly when systems overlap. Whilst cost–benefit ratios are generally conservative and often underestimate the benefits, it is possible that benefits may be counted twice (Welsh et al. 2015, p. 491). For example, a program that involves schools may have benefits that are counted by both the education system and the criminal justice system in two separate cost–benefit evaluations when seeking resourcing. This would result in an overstatement of benefits collectively.
Appendix G  Definition and classification of crime

This appendix provides background information on:

- how offences are defined and classified
- characteristics of offences at the Australian and New Zealand Standard Offence Classification (ANZSOC) 4-digit level, such as measures of the seriousness of the offence.

What acts are defined as a crime?

Definition of an offence

The Criminal Code (Qld) 1899 defines an offence as an act or omission which renders the person doing the act or making the omission liable to punishment. Crime is defined through the definition of offences.

Offences are divided into indictable offences, which are ordinarily punishable only after conviction on indictment, and simple offences, punishable upon conviction by justices or a magistrate in petty sessions. An indictable offence may be a crime, which ordinarily imports that an offender may be arrested without warrant, or it may be a misdemeanour.

In Queensland, offences are either regulatory offences or criminal offences.

Regulatory offences are set out in the Regulatory Offences Act 1985 (Qld) and include acts such as: stealing goods valued at $150 or less from a shop; leaving a hotel or restaurant without payment of a bill for goods or services valued at $150; damaging property valued at $250 or less. Regulatory offences must be finalised in the Magistrates Court and all offences carry fines as the maximum penalty according to the Act (regulatory offences are not subject to custodial penalties).

Criminal offences comprise crimes, misdemeanours and simple offences:

- crimes and misdemeanours (indictable offences): an indictable offence must be prosecuted on an indictment (a written charge by a person authorised to prosecute criminal offences) before a judge and jury in the District or Supreme Court. In certain circumstances, a charge on indictment may be prosecuted before a judge alone, without a jury.

- simple (or summary) offences: these are less serious offences. Examples of simple offences include being a public nuisance or trespass. If a criminal offence is not otherwise designated (e.g. as a misdemeanour or crime), it is automatically a simple offence. Simple offences are usually heard in the Magistrates Court.

An offense classification system

Criminal offenses are defined under a number of different Acts of Parliament, including:

- Criminal Code Act 1899 (Qld)
- Drugs Misuse Act 1986 (Qld)
- Domestic and Family Violence Protection Act 2012 (Qld)
- Summary Offences Act 2005 (Qld)
- Transport Operations (Road Use Management) Act 1995 (Qld).

The bulk of offenses are defined under the Criminal Code. In addition to the above Acts, offences are also defined in a range of other state Acts.

Queensland courts also hear cases and sentence people for offences defined under Commonwealth legislation.
ANZSOC 2011 classifications

The ANZSOC was developed for use in the compilation and analysis of crime and justice statistics in Australia and New Zealand. The objective of the ANZSOC is to provide a uniform national statistical framework for classifying criminal behaviour in the production and analysis of crime and justice statistics. The ANZSOC is used in Australian Bureau of Statistics statistical collections, Statistics New Zealand statistical collections, Australian police, criminal courts and corrective services agencies and New Zealand police and justice agencies.

There are two main purposes of ANZSOC:

- to provide a standardised statistical framework for organising key behavioural characteristics of criminal offences;
- to overcome differences in legal offence definitions across states and territories.

ANZSOC has a tree structure comprised of three levels: the 2-digit Division level provides the highest level of detail; the 3-digit Subdivision level; and the 4-digit Group level. A description of each Division is provided below.

Criteria used to classify offences

The criteria used to classify offences are:

- **Violence**: Whether violence is involved. If violence is involved the nature and level of the violence is considered including whether a weapon was used, whether abduction or deprivation of liberty was involved, whether the violence was sexual in nature and the outcome of the violence (e.g. whether life was taken, threatened or endangered).

- **Acquisition**: Whether the intent of the offence is acquisitive (e.g. to obtain property).

- **Nature of Victim**: The nature and vulnerability of the victim or object offended against. Types of victims include persons, property and the community.

- **Ancillary Offences**: Whether the offence only exists as an extension of, or in relation to, another offence. Such offences include attempts, threats and conspiracies to commit another offence, or offences involving the intent that another offence shall take place.

- **Seriousness**: Seriousness can be reflected through the involvement or otherwise of a personal victim, or it can be measured as a function of factors of aggravation, such as whether the victim was vulnerable; whether the offence was committed in company; or whether a weapon was used.

- **Intent**: Whether the offence occurs as a result of a negligent or reckless act, or as a result of an intent to commit an offence. This criterion distinguishes, for example, manslaughter from murder (ABS 2011, Australian and New Zealand Standard Offence Classification (ANZSOC), Australia, 3rd edition, June).

ANZSOC 2011 Divisions

01 **Homicide and related offences**: Unlawfully kill, attempt to unlawfully kill or conspiracy to kill another person. This division is further disaggregated into subdivisions based on the level of culpability involved, as reflected by: a criminal intent in the form of either an intent to kill or to commit a crime leading to the killing of another person; or the degree of involvement in the physical act of killing another person.

02 **Acts intended to cause injury**: Acts, excluding attempted murder and those resulting in death (Division 01), which are intended to cause non-fatal injury or harm to another person and where there is no sexual or acquisitive element. This division is further disaggregated into subdivisions based on whether or not an act constitutes a direct assault upon a person or persons.
03 Sexual assault and related offences: Acts, or intent of acts, of a sexual nature against another person, which are non-consensual or where consent is proscribed. This division is further disaggregated into subdivisions based on whether or not the sexual act involved physical contact with the person.

04 Dangerous or negligent acts endangering persons: Dangerous or negligent acts which, though not intended to cause harm, actually or potentially result in injury to oneself or another person. This division is further disaggregated into subdivisions based on whether or not the dangerous or negligent act involved the operation of a vehicle.

05 Abduction, harassment and other offences against the person: Acts intended to threaten or harass, or acts that unlawfully deprive another person of their freedom of movement, that are against that person’s will or against the will of any parent, guardian or other person having lawful custody or care of that person. This division is further disaggregated into subdivisions based on whether the offence involved abduction, deprivation of liberty, harassment or threatening behaviour.

06 Robbery, extortion and related offences: Acts intended to unlawfully gain money, property or other items of value from, or to cause detriment to, another person by using the threat of force or any other coercive measure. This division is further disaggregated into subdivisions based on whether or not the act involved the use and/or threatened use of immediate force or violence.

07 Unlawful entry with intent: The unlawful entry of a structure with the intent to commit an offence, where the entry is either forced or unforced. A structure is defined as a building that is contained by walls and can be secured in some form.

08 Theft and related offences: The unlawful taking or obtaining of money or goods, not involving the use of force, threat of force or violence, coercion or deception, with the intent to permanently or temporarily deprive the owner or possessor of the use of the money or goods, or the receiving or handling of money or goods obtained unlawfully. This division is further disaggregated into subdivisions based on the following elements: whether or not the property was taken from a motor vehicle; whether or not the offence involved the actual taking or obtaining of money or goods; or whether or not the intent was to permanently deprive the owner or possessor of the use of the property.

09 Fraud, deception and related offences: Offences involving a dishonest act or omission carried out with the purpose of deceiving to obtain a benefit. This division is disaggregated into subdivisions based on the type of fraud or deception involved. Offences in this division are classified into the following subdivisions: Obtain benefit by deception; Forgery and counterfeiting; Deceptive business/government practices; and Other fraud and deception offences.

10 Illicit drug offences: Actions resulting or intended to result in either the importation of illicit drugs or controlled substances into Australia, or the exportation of illicit drugs or controlled substances from Australia. This subdivision is disaggregated based on whether illicit drugs are imported or exported.

11 Prohibited and regulated weapons and explosives offences: Offences involving prohibited or regulated weapons and explosives. Those offences also involving assault, sexual assault or robbery are coded to the relevant groups within Subdivisions 021, Assault; 031, Sexual assault; and 061, Robbery respectively. This division is further disaggregated into subdivisions based on whether or not the weapons and/or explosives are prohibited or simply regulated.

12 Property damage and environmental pollution: The wilful and unlawful destruction, damage or defacement of public or private property, or the pollution of property or a definable entity held in common by the community. For this division, ‘destruction’ means altering the property in any way so as to render it imperfect or inoperative. This division is further disaggregated into subdivisions based on whether property was damaged by pollution or by other means.

13 Public order offences: Offences relating to personal conduct that involves, or may lead to, a breach of public order or decency, or that is indicative of criminal intent, or that is otherwise regulated or prohibited on moral or
ethical grounds. In general, these offences do not involve a specific victim or victims; however some offences, such as offensive language and offensive behaviour, may be directed towards a single victim. This division is further disaggregated into subdivisions based on whether or not the behaviour is regulated.

14 Traffic and vehicle regulatory offences: Offences relating to vehicles and most forms of traffic, including offences pertaining to the licensing, registration, roadworthiness or use of vehicles, bicycle offences and pedestrian offences. This division is further disaggregated into subdivisions based on whether or not the offence was in breach of regulations relating to having a driver’s licence, the registration or roadworthiness of a particular vehicle, or the manner in which the vehicle is operated. While some ‘drink driving’ offences, such as exceeding the prescribed blood alcohol limit, are included in this division, others such as driving under the influence of alcohol or other substance form part of Division 04, Dangerous or negligent acts endangering persons.

15 Offences against justice procedures, government security and operations: An act or omission that is deemed to be prejudicial to the effective carrying out of justice procedures or any government operations. This includes general government operations as well as those specifically concerned with maintaining government security. This division is further disaggregated into subdivisions based on whether or not the act or omission was against justice procedures or government operations.

16 Miscellaneous offences: Offences involving the breach of statutory rules or regulations governing activities that are prima facie legal, where such offences are not explicitly dealt with under any other division. If an offence is specified under regulation and involves an act that would be illegal under common law or general criminal legislation (e.g. assault on Occupational Health and Safety Inspector), then this offence should be dealt with under the appropriate generic group. This division is further disaggregated into subdivisions based on whether the offence was against the individual, the collective public, business or other entity.

Classifying offences by their 'seriousness'

National Offence Index

The National Offence Index (NOI) is used to determine the most serious charge for unsentenced prisoners for all states and territories. The NOI is a tool which provides an ordinal ranking of all offences in ANZSOC according to the perceived seriousness of each offence. The purpose of the NOI is to enable the representation of a prisoner by a single offence/charge in instances where multiple offences/charges occur for the same prisoner.

The National Offence Index (NOI) was based on the Offence Seriousness Index developed by the Crime Research Centre (CRC) in Western Australia. The CRC Index was developed based on research conducted into public perceptions of offence seriousness and consideration of legislated sentences. The CRC Index was first developed in 1991, and subsequently reviewed in 1998 following the introduction of Australian Standard Offence Classification (ASOC).

The ABS developed NOI by building on the 1998 version of the CRC Index, using data from the 2001-02 Higher Criminal Courts collection to refine the ordering by seriousness. The severity of sentences handed down to adjudicated finalised defendants were analysed to establish a principal offence for defendants. Consultation with practitioner and advisory groups in crime, courts and corrective services, resulted in further changes to the ranking of selected offences.

For the NOI, seriousness rankings are assigned based on an intuitive synthesis of information about statutory maxima, sentencing practice and public and expert opinion. Second, because the NOI allows non-legal factors (such as public opinion) to influence offence seriousness rankings, it is less than ideal as a measure of the way in which offence seriousness (as the courts view it) influences penalty choice (MacKinnell et al. 2010).
NSW Bureau of Crime Statistics and Research MSR and MSMR indices

The NSW Bureau of Crime Statistics and Research constructs two indices:

- Median Sentence Ranking (MSR): the MSR is a measure of actual court sentencing practice. To remove the influence of prior criminal record on penalty choice, the index is based on penalties imposed upon offenders who have no prior criminal record. The index utilised a procedure which combines penalties varying in type as well as quantity. The index provides a measure of relative seriousness from the viewpoint of the judiciary.

- Median Statutory Maximum Ranking (MSMR): the MSMR is based on the statutory maximum penalty specified in legislation in New South Wales for each offence. Only imprisonment and fine penalties are considered because NSW legislation sets maximum penalties in terms of imprisonment and fines. The index provides a measure of relative seriousness from the viewpoint of legislators (MacKinnell et al. 2010, p. 3,5).

Supporting tables

Table G.1 The seriousness and characteristics of offences by ANZSOC 4-digit level

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>NOI 2018 ranking</th>
<th>NOI 2009 ranking</th>
<th>BOCSAR MSR ranking</th>
<th>BOCSAR MSMR ranking</th>
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</thead>
<tbody>
<tr>
<td>111</td>
<td>Murder</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
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<tr>
<td>121</td>
<td>Attempted murder</td>
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<td>2</td>
<td>2</td>
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<tr>
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<td>Aggravated sexual assault</td>
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<td>7</td>
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<tr>
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<td>Non-assaultive sexual offences against a child</td>
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<td>Sexual servitude offences</td>
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<td>9</td>
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<td>Child pornography offences</td>
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<td>Non-aggravated sexual assault</td>
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<td>Non-assaultive sexual offences, n.e.c.</td>
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<td>Non-assaultive sexual offences, n.f.d.</td>
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<td>Code</td>
<td>Description</td>
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<td>NOI 2009 ranking</td>
<td>BOCSAR MSR ranking</td>
<td>BOCSAR MSMR ranking</td>
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<td>Import illicit drugs</td>
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<tr>
<td>1012</td>
<td>Export illicit drugs</td>
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<tr>
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<td>Deal or traffic in illicit drugs - commercial quantity</td>
<td>19</td>
<td>17</td>
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<tr>
<td>1031</td>
<td>Manufacture illicit drugs</td>
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<td>18</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td>1032</td>
<td>Cultivate illicit drugs</td>
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<td>54</td>
<td>11</td>
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<td>Manufacture or cultivate illicit drugs, n.f.d.</td>
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<td>Deal or traffic in illicit drugs - non-commercial quantity</td>
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<td>21</td>
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<td>Serious assault resulting in injury</td>
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<td>23</td>
<td>50</td>
<td>35</td>
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<tr>
<td>511</td>
<td>Abduction and kidnapping</td>
<td>26</td>
<td>24</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>611</td>
<td>Aggravated robbery</td>
<td>27</td>
<td>25</td>
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<tr>
<td>521</td>
<td>Deprivation of liberty/false imprisonment</td>
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<td>26</td>
<td>21</td>
<td>55</td>
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<td>Serious assault not resulting in injury</td>
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<td>27</td>
<td>67</td>
<td>40</td>
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<td>Common assault</td>
<td>30</td>
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<td>94</td>
<td>72</td>
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<td>30</td>
<td>39</td>
<td>34</td>
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<td>Stalking</td>
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<td>53</td>
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<tr>
<td>491</td>
<td>Neglect or ill-treatment of persons under care</td>
<td>36</td>
<td>34</td>
<td>97</td>
<td>103</td>
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<td>Code</td>
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<td>Other dangerous or negligent acts endangering persons, n.e.c.</td>
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<td>35</td>
<td>75</td>
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<td>411</td>
<td>Drive under the influence of alcohol or other substance</td>
<td>39</td>
<td>37</td>
<td>70</td>
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<td>Dangerous or negligent operation (driving) of a vehicle</td>
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<td>85</td>
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<td>na</td>
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<td>612</td>
<td>Non-aggravated robbery</td>
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<td>40</td>
<td>28</td>
<td>16</td>
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<td>610</td>
<td>Robbery, n.f.d.</td>
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<td>Blackmail and extortion</td>
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<td>Robbery, extortion and related offences, n.f.d.</td>
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<td>Threatening behaviour</td>
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<td>42</td>
<td>66</td>
<td>44</td>
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<td>Procure or commit illegal abortion</td>
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<td>43</td>
<td>89</td>
<td>102</td>
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<td>Property damage by fire or explosion</td>
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<td>44</td>
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<td>45</td>
<td>60</td>
<td>59</td>
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<td>Import or export prohibited weapons/explosives</td>
<td>51</td>
<td>46</td>
<td>79</td>
<td>14</td>
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<td>1112</td>
<td>Sell, possess and/or use prohibited weapons/explosives</td>
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<td>NOI 2009 ranking</td>
<td>BOCSAR MSR ranking</td>
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<tr>
<td>1121</td>
<td>Unlawfully obtain or possess regulated weapons/explosives</td>
<td>55</td>
<td>50</td>
<td>90</td>
<td>36</td>
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<tr>
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<td>Misuse of regulated weapons/explosives</td>
<td>56</td>
<td>51</td>
<td>98</td>
<td>82</td>
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<td>1123</td>
<td>Deal or traffic regulated weapons/explosives offences</td>
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<td>Counterfeiting of currency</td>
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<td>56</td>
<td>38</td>
<td>19</td>
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<tr>
<td>1542</td>
<td>Bribery involving government officials</td>
<td>62</td>
<td>57</td>
<td>13</td>
<td>28</td>
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<tr>
<td>1561</td>
<td>Subvert the course of justice</td>
<td>63</td>
<td>58</td>
<td>22</td>
<td>31</td>
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<tr>
<td>711</td>
<td>Unlawful entry with intent/burglary, break and enter</td>
<td>64</td>
<td>59</td>
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<td>911</td>
<td>Obtain benefit by deception</td>
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<td>Forgery of documents</td>
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<td>Possess equipment to make false / illegal instrument</td>
<td>67</td>
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<td>Bribery (excluding government officials)</td>
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<td>Vilify or incite hatred on racial, cultural or ethnic grounds</td>
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<td>Resist or hinder police officer or justice official</td>
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<td>Resist or hinder government official (excluding police officer, justice official or government security officer)</td>
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<tr>
<td>1420</td>
<td>Vehicle registration and roadworthiness offences, n.f.d.</td>
<td>170</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>1432</td>
<td>Exceed the legal speed limit</td>
<td>171</td>
<td>148</td>
<td>106</td>
<td>118</td>
</tr>
<tr>
<td>1433</td>
<td>Parking offences</td>
<td>172</td>
<td>149</td>
<td>125</td>
<td>122</td>
</tr>
<tr>
<td>1439</td>
<td>Regulatory driving offences, n.e.c.</td>
<td>173</td>
<td>150</td>
<td>100</td>
<td>117</td>
</tr>
<tr>
<td>1430</td>
<td>Regulatory driving offences, n.f.d.</td>
<td>174</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>1326</td>
<td>Consumption of legal substances in regulated spaces</td>
<td>175</td>
<td>151</td>
<td>130</td>
<td>132</td>
</tr>
<tr>
<td>1329</td>
<td>Regulated public order offences, n.e.c.</td>
<td>176</td>
<td>152</td>
<td>122</td>
<td>129</td>
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<tr>
<td>1320</td>
<td>Regulated public order offences, n.f.d.</td>
<td>177</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>1300</td>
<td>Public order offences, n.f.d.</td>
<td>178</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>1441</td>
<td>Pedestrian offences</td>
<td>179</td>
<td>153</td>
<td>133</td>
<td>124</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
<td>NOI 2018 ranking</td>
<td>NOI 2009 ranking</td>
<td>BOCSAR MSR ranking</td>
<td>BOCSAR MSMR ranking</td>
</tr>
<tr>
<td>-------</td>
<td>--------------------------------------------------</td>
<td>-------------------</td>
<td>------------------</td>
<td>--------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>1400</td>
<td>Traffic and vehicle regulatory offences, n.f.d.</td>
<td>180</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>1699</td>
<td>Other miscellaneous offences n.e.c.</td>
<td>181</td>
<td>155</td>
<td>104</td>
<td>126</td>
</tr>
<tr>
<td>1690</td>
<td>Other miscellaneous offences n.f.d.</td>
<td>182</td>
<td>na</td>
<td>na</td>
<td>na</td>
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<tr>
<td>1600</td>
<td>Miscellaneous offences, n.f.d.</td>
<td>183</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>9998</td>
<td>No data provided</td>
<td>184</td>
<td>156</td>
<td>134</td>
<td>133</td>
</tr>
<tr>
<td>9999</td>
<td>Inadequate data provided</td>
<td>185</td>
<td>157</td>
<td>135</td>
<td>134</td>
</tr>
</tbody>
</table>

Notes: The Median Sentence Ranking (MSR) was initially developed using criminal court sentences imposed in NSW between April 2000 and March 2005. The MSR was originally published in Mackinnell et al. 2010. At that time, NOI rankings were available for 155 ANZSOC four-digit offences out of a possible 185 offence codes (including codes 9998 and 9999). The MSR rankings in the above table are based on a 2016 update. MSR rankings are not available at this time for the full set of 185 codes.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Adjudication</strong></td>
<td>The determination of rights and liabilities in dispute. In a criminal law this refers to the determination of the guilt of the accused.</td>
</tr>
<tr>
<td><strong>Bail</strong></td>
<td>The release from custody granted to a person charged with an offence subject to any conditions the court may impose, on the condition that he or she undertakes to return to the court at some specified time.¹</td>
</tr>
<tr>
<td><strong>Breach of suspended sentence</strong></td>
<td>Applies if an offender commits another offence during the operational period of suspended sentence.</td>
</tr>
<tr>
<td><strong>Case management</strong></td>
<td>Process for close monitoring and supervision of an offender while in diversion programs or rehabilitation whilst in custody.</td>
</tr>
<tr>
<td><strong>Caution</strong></td>
<td>A warning issued as an alternative to prosecution.</td>
</tr>
<tr>
<td><strong>Celerity</strong></td>
<td>The 'swiftness' or immediacy of punishment following an offence.</td>
</tr>
<tr>
<td><strong>Chronic offenders</strong></td>
<td>Individuals who commit at least five offences.</td>
</tr>
<tr>
<td><strong>Clearance rates</strong></td>
<td>The proportion of crimes reported to police which result in a charge being laid.</td>
</tr>
<tr>
<td><strong>Commitment</strong></td>
<td>Imprisonment resulting from a failure to pay a fine or in response to contempt of court.</td>
</tr>
<tr>
<td><strong>Community Re-Entry Support Team (CREST)</strong></td>
<td>A service available to prisoners to discuss re-integration needs, provide post-release support for up to three months and assists parolees in need of extra assistance.</td>
</tr>
<tr>
<td><strong>Community-based orders</strong></td>
<td>Sanctions or penalties imposed by the courts that are non-custodial. It can include a community service order, graffiti removal order, intensive correction order or probation order.</td>
</tr>
<tr>
<td><strong>Corrections</strong></td>
<td>An umbrella term which ordinarily refers to the part of the criminal justice system dealing with imprisonment, parole and probation.</td>
</tr>
<tr>
<td><strong>Corrections officer</strong></td>
<td>An officer appointed under Chapter 6, Part 4 of the Corrective Services Act who exercises their powers under that act in accordance with the directions of the chief executive. Synonymous with prison officer, custodial officer or corrective services officer.</td>
</tr>
<tr>
<td><strong>Corrective Services Act 2006 (Qld)</strong></td>
<td>The principal Queensland legislation governing imprisonment. The stated purpose of the act is ‘community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders.’ See Corrective Services Act 2006 (Qld) s. 3(1).</td>
</tr>
<tr>
<td><strong>Cost-benefit analysis (CBA)</strong></td>
<td>A method of evaluation that provides an objective framework for weighing up the different impacts of the current policy of imprisonment.</td>
</tr>
<tr>
<td><strong>Court–ordered parole</strong></td>
<td>Parole ordered at the time of sentencing by the sentencing court. Currently available as an option for sentences up to three years that are not violent or sexual offences.</td>
</tr>
<tr>
<td>-------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Criminal Justice Commission (CJC)</strong></td>
<td>A predecessor to the current Crime and Misconduct Commission; created in response to the Fitzgerald Inquiry.</td>
</tr>
<tr>
<td><strong>Criminal justice system</strong></td>
<td>The people, processes, institutions and laws associated with the defining, monitoring and enforcement of rules, for which the breach attracts a financial or custodial sanction.(^1)</td>
</tr>
<tr>
<td><strong>Criminal law</strong></td>
<td>The rules of statute and common law which direct that certain actions are punishable by the state. Generally, offences of a regulatory nature, such as parking offences and minor traffic offences, are not considered to be part of the criminal law.(^1)</td>
</tr>
<tr>
<td><strong>Criminal stigma</strong></td>
<td>The disdain or discrimination directed by a community toward an individual because of their criminality.</td>
</tr>
<tr>
<td><strong>Criminalisation</strong></td>
<td>The process by which an action is rendered a criminal offence, or by which a person undertaking such an action is rendered a criminal.</td>
</tr>
<tr>
<td><strong>Criminogenic effect</strong></td>
<td>An outcome that increases the likelihood of criminal behaviour. Imprisonment is said to have a criminogenic effect if prisoners have, post-release, a higher propensity to commit crime than before their time in prison.</td>
</tr>
<tr>
<td><strong>Custodial sentence</strong></td>
<td>A sentence involving an imprisonment term, which may be wholly or partly suspended subject to conditions. An intensive corrections order is considered a custodial sentence.</td>
</tr>
<tr>
<td><strong>Decarceration</strong></td>
<td>The process of removing people from prisons or reducing the prison population.</td>
</tr>
<tr>
<td><strong>Decriminalisation</strong></td>
<td>The lessening or removal of criminal sanctions in relation to certain acts (e.g. drug decriminalisation). Distinct from legalisation, which is the complete removal of a prohibition on an act.</td>
</tr>
<tr>
<td><strong>Depenalisation</strong></td>
<td>While an act remains a criminal offence, sentencing options available to the judiciary are reformed. Depenalisation may involve removing imprisonment as the most severe sentencing option.</td>
</tr>
<tr>
<td><strong>Deterrence effects</strong></td>
<td>The prevention of crime through the threat of a criminal sanction, including imprisonment.</td>
</tr>
<tr>
<td><strong>Discount rate</strong></td>
<td>The rate used to 'discount' the value of future transactions to present value terms.</td>
</tr>
<tr>
<td><strong>Diversion programs</strong></td>
<td>In criminal law, a procedure intended to divert a specific class of offender, or an offender charged with a specified type of offence, away from the criminal justice system. If the procedure is followed to completion, then the person will not be dealt with by the court for the offence in respect of which the person came under police notice.(^1)</td>
</tr>
</tbody>
</table>
Efficient policy

A policy is efficient if its benefits exceed its costs (including all social costs and benefits) and no other use of resources would yield higher value for the community.

Elasticity

An economic concept that captures the response of one variable to a change in another variable. More formally, an elasticity summarises the both magnitude and relative direction of change in two variables (equivalent to the percentage change in X relative to the percentage change in Y).

Electronic monitoring

The use of GPS, radio and other technologies to provide surveillance and tracking capabilities over offenders released to the community. It can take the form of electronic braces and other tamper-proof electronic devices fitted to the person, where these transmit signals to correctional authorities to monitor offenders.

Fitzgerald Inquiry


Home detention

A community-based sentence order which requires offenders to remain at a specified address for a specified period. This sentence is usually applied in conjunction with an electronic monitoring device attached to the individual.

Human capital

The value of skills, knowledge and experience possessed by individuals.

Imprisonment

The confinement of an offender in custody or the restraint of a person's liberty.¹

Incapacitation effect

The prevention of further offences by imprisoning an offender and removing them from society.

Index crime

A crime used as an index of the general level of criminal activity. An index crime has a definition that is relatively uniform across time and jurisdiction (for example murder).

Intensive corrections order (ICO)

A court order that an offender receiving a sentence of not more than one year imprisonment serve the sentence undergoing intensive correction in the community rather than a prison term. Generally, the minimum terms for an intensive correction order are that the offender not reoffend, regularly report during the period of correction, perform community work, and undergo counselling.¹

For more information, see Part 6 of the Penalties and Sentences Act 1992.

Legalisation

The amendment of law to eliminate any sanction, criminal or administrative, associated with an activity.

Mandatory sentencing

A sentence for an offence prescribed by legislative instrument as opposed to an exercise of judicial reasoning.

MARA

A service available in south east Queensland which provides pre-release support including referral to other agencies and post-release support up to nine months after release.

Mediation

A process in which the offender and victim discuss the source of the harm and ways it may be remedied. The process is ordinarily overseen by a mediator (or a judge) and may additionally involve a prosecutor or legal representation for the parties.
Non-custodial sentence
A sentence not involving imprisonment. This may involve absolute release, the imposition of a good behaviour bond, a restitution or compensation order, a non-contact or banning order, a fine, a community service order, or a probationary period.

Non-parole period
The period within which a prisoner is ineligible to apply for parole and must remain in prison. This may be specified by the sentencing court or is determined by law.

Offender
A person who is convicted of an offence, whether or not a conviction is recorded. See Penalties and Sentences Act 1992 (Qld) s. 4.

Opportunity cost
The cost of foregoing the next-best option when making a choice.

Overcriminalisation
The excessive use of the criminal law. This concept is discussed in Chapter 9.

Parole
The release of a prisoner from custody, after the completion of a minimum period of imprisonment determined by a court so that the prisoner may serve the rest of the sentence on conditional liberty.¹

Penalties and Sentences Act 1992 (Qld)
The principal legislative instrument governing criminal penalties and sentences in Queensland.

Plea bargaining
Negotiations between the prosecution and defence by which an accused agrees to plead guilty to avoid prosecution on an additional or alternative charge, or for the prosecution to pursue a lower sentence. Note that plea bargaining does not affect a court's discretion in imposing a sentence.

Police Powers and Responsibilities Act 2000 (Qld)
The principal Queensland legislative instrument which provides and governs the powers and responsibilities of police officers in relation to investigating offences and enforcing the law.

Probation
The period of supervision over an offender, ordered by court instead of serving time in prison. An offender on probation is typically ordered to follow certain conditions set out by the court, usually under the supervision of a probation officer. Breaking these conditions may result in imprisonment.

Queensland Corrective Services (QCS)
The government body primarily charged with the management, operation and oversight of prisons in Queensland.

Queensland Parole System Review (QPSR)
A review led by Mr Walter Sofronoff QC into the parole system in Queensland. The review report was delivered on 1 December 2016, and the Government’s response was issued on 16 February 2017. Also referred to as the Sofronoff review.

Recidivism
The reversion of an individual to criminal behaviour after they have been arrested, convicted, sentenced and discharged in respect of a prior offence (Maltz 1984, p. 1).

Reintegration program
A program under the Corrective Services Act 2006 designed to assist an offender to re-integrate into the community, including parole.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remand</td>
<td>To stand a matter over until a future date and as a consequence return the accused to custody. A remandee is an individual held in custody prior to the completion of a related criminal case. A sentencing judge may have regard to time spent in remand, including by treating that as time served in prison.</td>
</tr>
<tr>
<td>Reoffending</td>
<td>In this report the terms reoffending and recidivism are treated as synonyms. Note that in other material the terms may be defined differently and treated as distinct.</td>
</tr>
<tr>
<td>Report on Government Services (ROGS)</td>
<td>An annual report issued by the Productivity Commission which provides information on the equity, effectiveness and efficiency of government services in Australia.</td>
</tr>
<tr>
<td>Reported offence</td>
<td>An offence which has been reported to the police.</td>
</tr>
<tr>
<td>Restitution</td>
<td>The giving up of an enrichment or its value to the person at whose expense it was obtained. Restitution in the Penalties and Sentences Act involves the return of an illegally obtained item to its original owner. Relatedly, a compensation order may be made for property loss, property damage or personal injury. In this report, the term is used broadly to encompass the return of property and both financial and non-financial forms of compensation to a victim.</td>
</tr>
<tr>
<td>Restitution agreement</td>
<td>An instrument formed between a victim and offender for restitution or compensation which may be considered in sentencing.</td>
</tr>
<tr>
<td>Restorative justice</td>
<td>An approach to justice which places principal importance on the rehabilitation of offenders, and reconciliation between offenders, victims and the community at large. The centrepiece of a restorative justice framework is typically mediation between those parties.</td>
</tr>
<tr>
<td>Retribution</td>
<td>The theory that the imposition of punishment under the criminal law is justified because a person who inflicts harm should receive a proportionate amount of harm in return. This is in contrast with other considerations in sentencing such as deterrence and rehabilitation.</td>
</tr>
<tr>
<td>State Penalties Enforcement Registry (SPER)</td>
<td>A division of Queensland Treasury responsible for the collection and enforcement of unpaid infringement notice fines, court-ordered monetary penalties, offender debt recovery orders and offender levies.</td>
</tr>
<tr>
<td>Suspended sentence</td>
<td>Following the imposition of a sentence of imprisonment of less than five years, a court may order the conditional or unconditional release of an offender where appropriate to do so in the circumstances. A sentence may be suspended in whole or in part. Following the commission of another offence or breach of the conditions of the suspension a court may reactivate the sentence. For more information, see Part 8 of the Penalties and Sentences Act 1992.</td>
</tr>
<tr>
<td>Temporary release</td>
<td>The release of a prisoner for a fixed period and on certain conditions. The exact nature of temporary release varies by jurisdiction. Depending on jurisdiction, the term may be synonymous with parole. In South Australia, for example, it may be granted to attend the funeral of a relative or to participate in work release programs. In other jurisdictions the term ‘temporary license’ is used.</td>
</tr>
<tr>
<td>Glossary Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Throughcare</td>
<td>The provision of services to prisoners both in anticipation of and following their release to assist with their reintegration and rehabilitation.</td>
</tr>
<tr>
<td>Victimisation</td>
<td>The process of becoming a victim of crime.</td>
</tr>
<tr>
<td>Work release</td>
<td>A type of temporary release in which prisoners are maintaining non-prison employment but return to prison outside of working hours.</td>
</tr>
<tr>
<td>Wraparound services</td>
<td>Rehabilitation or reintegration services that aim to simultaneously address several needs at once (for example, a service that addresses mental health, homelessness and substance abuse).</td>
</tr>
<tr>
<td>Youth justice</td>
<td>The application of the criminal justice system to young offenders. In Queensland, 'young offenders' are individuals who are 17 or younger. The Youth Justice Act 1992 (Qld) is the primary statute. Youth justice regimes focus on the greater vulnerability of children who offend and the greater interest in rehabilitating and reintegrating childhood offenders.</td>
</tr>
</tbody>
</table>

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1 LexisNexis, Encyclopaedic Australian Legal Dictionary (at 12 November 2018).
### 18.1 Table of acronyms and initialisations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
</tr>
<tr>
<td>ANZSOC</td>
<td>Australian and New Zealand Standard Offence Classification</td>
</tr>
<tr>
<td>ARJC</td>
<td>Adult Restorative Justice Conferencing</td>
</tr>
<tr>
<td>BOCSAR</td>
<td>NSW Bureau of Crime Statistics and Research</td>
</tr>
<tr>
<td>CCO</td>
<td>Community Corrections Order</td>
</tr>
<tr>
<td>CJS</td>
<td>Criminal Justice System</td>
</tr>
<tr>
<td>CREST</td>
<td>Community Re-Entry Support Team</td>
</tr>
<tr>
<td>CSRU</td>
<td>Crime Statistics and Research Unit</td>
</tr>
<tr>
<td>DCSYW</td>
<td>Department of Child Safety, Youth and Women</td>
</tr>
<tr>
<td>DJAG</td>
<td>Department of Justice and Attorney-General</td>
</tr>
<tr>
<td>ICO</td>
<td>Intensive Correction Order</td>
</tr>
<tr>
<td>IOMS</td>
<td>Integrated Offender Management System</td>
</tr>
<tr>
<td>NOI</td>
<td>National Offence Index</td>
</tr>
<tr>
<td>PC</td>
<td>Productivity Commission (Commonwealth)</td>
</tr>
<tr>
<td>QCS</td>
<td>Queensland Corrective Services</td>
</tr>
<tr>
<td>QPRIME</td>
<td>Queensland Police Records and Information Management Exchange</td>
</tr>
<tr>
<td>QPS</td>
<td>Queensland Police Service</td>
</tr>
<tr>
<td>QPSR</td>
<td>Queensland Parole System Review</td>
</tr>
<tr>
<td>QSAC</td>
<td>Queensland Sentencing Advisory Council</td>
</tr>
<tr>
<td>QWIC</td>
<td>Queensland Wide Inter-Linked Courts</td>
</tr>
<tr>
<td>ROGS</td>
<td>Report on Government Services</td>
</tr>
<tr>
<td>SBB</td>
<td>Social Benefit Bonds (also called Social Impact Bonds)</td>
</tr>
<tr>
<td>SPER</td>
<td>State Penalties Enforcement Registry</td>
</tr>
</tbody>
</table>
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