



Our Ref: BNE3414537

15 April, 2019

Imprisonment and Recidivism Inquiry  
Queensland Productivity Commission  
PO Box 12112  
George St QLD 4003

Dear Colleague,

### Imprisonment and Recidivism Inquiry

We refer to the above Inquiry. Thank you for the opportunity to provide this submission on the draft report.

### About the Anti-Discrimination Commission Queensland ('the ADCQ')

1. The ADCQ is a statutory authority established under the Queensland *Anti-Discrimination Act 1991* ('**the Act**').
2. The functions of the ADCQ include undertaking research to promote the purposes of the Act, consulting with various organisations to ascertain means of improving services and conditions affecting groups that are subjected to contraventions of the Act and promoting an understanding, acceptance and public discussion of human rights.
3. A purpose of the Act is to promote equality of opportunity for everyone by protecting them from unfair discrimination.

### Our work related to imprisonment and recidivism in Queensland

4. In June 2004, the ADCQ received a submission from Sisters Inside Inc.,<sup>1</sup> which outlined concerns about the treatment of female prisoners generally and Aboriginal and Torres Strait Islander women specifically. In response, we conducted a review to research and consult on the treatment of women in Queensland's prisons on the basis of gender, race and disability. We released our Women in Prison Report, outlining our findings and recommendations for improvement, in March 2006.
5. Ten years later, in September 2016, the Queensland Ombudsman released a report into overcrowding at the Brisbane Women's Correctional Centre ('**BWCC**'). The Ombudsman's report found that overcrowding at the BWCC was creating '*circumstances where the administration of the BWCC is improperly discriminatory towards female prisoners.*'
6. In consideration of the Ombudsman's report, in 2017 the ADCQ commenced a consultation with current and former prisoners, Queensland Corrective Services ('**QCS**') staff, non-government organisations working in connection with the justice system and advocates to assess what progress had been made since the release of our 2006 report.

<sup>1</sup> Sisters Inside Inc. is a Queensland-based advocacy group for female prisoners.

7. Our Women in Prison 2019 (*'the Women in Prison Report'*) was released on 6 March 2019. The report found that many of the issues that we had identified in 2006 had not been rectified.
8. Our work related to the Women in Prison Report provided the ADCQ with insights that are relevant to the Productivity Commission's inquiry into imprisonment and recidivism. While our work focused primarily on the experience of female prisoners, many of our observations, findings and recommendations have application across the criminal justice system.

### **Summary of our relevant findings and recommendations**

9. Over the course of conducting our consultations connected with the Women in Prison Report we observed that Queensland's criminal justice system is disjointed and overwhelmed by the growing prisoner population. We observed:
  - a. The continued over-representation of Aboriginal and Torres Strait Islander prisoners, who now constitute over a third of female prisoners in Queensland.
  - b. The female prison population grew by 59% between 2006 and 2016.
  - c. The increasing female prison population has resulted in severe overcrowding in the BWCC. Overcrowding issues have recently been alleviated with the opening of the Southern Queensland Correctional Centre. However, if the prisoner population continues to grow at current rates, overcrowding will arise again.
  - d. Many women in prison have experienced trauma and are not receiving the support they need, either in prison or post-release. Housing shortages across the state are also impacting heavily on women trying to reintegrate into society. Subsequently, many women reoffend or break their parole conditions and are returned to prison.
  - e. Half the women in prison are there for less than 3 months. Disruption caused to their dependent children can be very harmful, and there needs to be a focus on other ways of dealing with these women's offending that are less costly to our community and less disruptive to their families.
10. The Women in Prison Report makes 39 recommendations, including in relation to justice reinvestment and investment in more diversionary programs to provide alternatives to jail.
11. The ADCQ is of the view that our current system is broken. We need a new, coherent plan to address overcrowding in prisons and recidivism. The plan should include:
  - a. early intervention through the child protection and youth justice systems
  - b. incentives to change the way police do policing, ensuring that police are rewarded when their work results in both reduction in arrests and safer communities (less crime)
  - c. better diversion pathways (including investing in services)
  - d. changing sentencing laws and practices, including affirmative action in relation to Aboriginal and Torres Strait Islander peoples
  - e. improving the ability of prisoners to be released on parole
  - f. re-designing the programs and services that are available when people are in prison

- g. improving the way people are supported both prior to release and when they re-enter the community after prison
  - h. dealing with the state's housing shortage and
  - i. independent scrutiny of new legislation for impacts on the operation of the criminal justice system generally and specifically on rates of imprisonment
12. We also need an over-arching independent body that will monitor the implementation of the plan and allocation of resourcing. Within this body there should be staff who provide advice about how to redirect resources from the criminal justice system to community-led, place based initiatives that address drivers of crime and incarceration. This body should be overseen by a board that has strong representation of Aboriginal and Torres Strait Islander people, including women.

### **Responses to information requests**

The remainder of this submission contains information relevant to your draft recommendations and information requests.

### **Reduce the scope of criminal offences**

13. Given that the purpose of corrective services includes community safety and crime prevention, there must be evidence that imprisonment, and the resulting deprivation of liberty or limit on a person's human rights, achieves that legitimate aim. As your draft report outlines, evidence does not demonstrate that imprisonment always leads to safer communities and crime prevention.
14. There are large numbers of women in prison on short sentences. Half of female prisoners are there for less than three months, and many of these prisoners have committed crimes where there is no significant threat to community safety. As Queensland's Commissioner of Police, Mr. Ian Stewart, recently stated:
- "...as a community we've got to look at smarter ways of dealing with people who make minor errors and ones that can be perhaps diverted from the criminal justice system rather than being subsumed by it".<sup>2</sup>*
15. The ADCQ supports reforms that would lead to less people being in prison for relatively minor offences. Consideration should be given to ensuring that offences connected to traffic and vehicle regulation and public order do not lead to imprisonment. In addition, in situations where the offence does not cause significant harm to others, including when connected with unlawful entry, theft, fraud, drug offences, property damage and offences against justice procedures, government security and government operations, consideration should be given to keeping offenders out of jail.

### **Increase in the range of non-custodial sanctions**

16. Imposing a custodial sentence should always be a last resort. This fundamental principle of the Convention on the Rights of the Child should be legislated as a binding requirement imposed upon the judiciary when sentencing minors.

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<sup>2</sup> 'Top Cop says jail not the answer to crime', The Courier Mail (Brisbane), 1 August 2017.

17. The ADCQ supports the Productivity Commission's suggestion that a greater use of non-custodial options could apply to:
  - Less serious and non-violent crimes
  - Victimless crimes
  - More serious offences where the offender has a mental illness or has experienced trauma.
18. The ADCQ strongly believes that the Queensland Government should take affirmative action as a special measure to reduce the rate of imprisonment of Aboriginal and Torres Strait Islander peoples. We submit that when an offender is Aboriginal or Torres Strait Islander additional consideration should be given to whether a non-custodial sentence could be used.
19. In the Women in Prison Report we recommended that the Queensland Government:
  - a. *take action so that low risk Aboriginal and Torres Strait Islander women are diverted from prison into non-custodial services; and*
  - b. *place greater focus on providing wrap-around community engagement and facilitated support to help all eligible low risk women commit to a managed plan that enables them to stay safe in the community, rather than being placed in custody.*<sup>3</sup>
20. The ADCQ supports more investment in community-based sentencing alternatives and interventionist courts to facilitate diversion from prison. The Queensland Drug and Alcohol Court ('QDAC'), Court Link / the Queensland Integrated Court Referrals ('QICR') program, the Murri Court and the DV Court are all examples of this. These programs help to address the underlying causes of crime and assist with rehabilitation rather than focusing on punishment. For example, Court Link / QICR helps defendants to access services connected to problematic substance use, mental illness, impaired decision-making capacity and homelessness. Currently this program is only available in four locations across Queensland. Similarly, QDAC is only available to those residing within the district of the Brisbane Magistrates Court. Expanding the availability of these programs that address the causes of crime and support people to heal will ultimately lead to less crime and safer communities.

### **Reduce the use of remand**

21. The ADCQ has identified that both homelessness and lack of effective legal representation has contributed to the high number of remand prisoners.
22. Experienced criminal lawyers who were consulted by the ADCQ for the purpose of the Women in Prison Report said that many women who are remanded in prison do not seek bail. Their view was that less experienced duty lawyers are not advising clients to seek bail when they should be. In addition, lawyers working with Aboriginal and Torres Strait Islander clients may not have been trained to work and communicate with their clients.
23. Considering the cost of imprisonment, significant savings could be made if bail applications were made on behalf of women before they were remanded in custody. In the Women in Prison Report, we pointed to the success of the Queensland Corrective

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<sup>3</sup> Recommendation 7.

Services- funded Supreme Court Bail Program as an illustration of the merits of such programs.

24. The Women in Prison Report found that many prisoners are released from prison after they appear before the court because they are found not guilty, are given a community order, or are deemed to have served their time. The ADCQ was told that ‘many women sit in remand for months, not knowing what is happening to their case.’ We heard that some remand prisoners are being held in prison for periods longer than their final sentence. It is highly concerning that delays or other blockages in the justice system are leaving people in prison longer than is warranted.
25. In the Women in Prison Report we recommended that:
  - a. *The Queensland Government funds specialised duty lawyer assistance for vulnerable prisoners, and legal representation for Magistrates Court guilty pleas and trials.*<sup>4</sup>
  - b. *Queensland Corrective Services Sentence Management Unit case-manages women on remand to ensure they get a call from a lawyer within the first week of entering prison. Also, that one week prior to the sentencing hearing, if a woman hasn’t had contact with a legal representative, Sentence Management Unit organises this as part of the woman’s progression plan.*<sup>5</sup>
26. When appearing in court for the first time after their arrest, many women who would otherwise be eligible for bail are being refused bail because they are homeless.<sup>6</sup> Many Aboriginal and Torres Strait Islander women are also being refused bail because their home is considered to be unsuitable because other people with a criminal history also reside there.
27. The Department of Child Safety, Youth and Women has recently appointed Sisters Inside to operate a women’s bail assistance program in both south east and north Queensland to assist women on remand to access accommodation once they have been released on bail. The program is in the implementation phase and should eventually be evaluated for, among other things, its effectiveness in ensuring that women are not refused bail because of a lack of suitable housing.
28. In the Women in Prison Report we recommended:

*“The Queensland Government continues to seek alternative solutions to imprisoning women on remand who would otherwise be eligible for bail, but for the fact that they do not have a suitable address.”*<sup>7</sup>

### **Improve rehabilitation and reintegration**

29. Rehabilitation of offenders is one of the purposes of QCS. Prisons are an opportunity to connect people with the services and support they need to address the underlying causes of criminal behaviour. Investment in rehabilitation programs will reduce reoffending, thereby improving community safety.

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<sup>4</sup> Recommendation 4.

<sup>5</sup> Recommendation 5.

<sup>6</sup> Walter Sofronoff QC, Queensland Parole System Review: Final Report (Queensland Government, 2016). (*the Sofronoff Report*), 160 at [798].

<sup>7</sup> Recommendation 10.

30. The Corrective Services Act (*'the CSA'*) requires QCS to establish programs and services:
- to help prisoners to reintegrate into the community after their release from custody, including by acquiring skills; and
  - to initiate, keep and improve relationships between offenders and members of their families and the community; and
  - to help rehabilitate offenders.<sup>8</sup>
31. This year QCS provided the ADCQ with data which shows that women's access to programs and services at female facilities has increased since the 2016 Ombudsman report, as follows:

*Table 31: Program completions in Queensland women's prisons*

<b>Location</b>	<b>Program completions in 2016-17</b>	<b>Program completions in 2017-18</b>	<b>Program completions in 2018-19 (to end of Dec 2019)</b>
Townsville Women's Correctional Centre	177	135	129
Brisbane Women's Correctional Centre	176	222	92
Southern Queensland Correctional Centre			(from August 2018) 21
Numinbah Correctional Centre	85	87	99
<b>TOTAL</b>	<b>438</b>	<b>444</b>	<b>341</b>

*Source: Queensland Corrective Services (unpublished administrative data).*

32. In 2017-2018, the most common length of stay in custody was 1–2 months, with more than 50% of the prisoner population serving less than four months in custody. This, coupled with the fact that QCS know only a small proportion of the total prison population's actual release date, means that making referrals to programs and intervention services is very difficult.
33. During consultations, the ADCQ observed that many programs offered to women in prison are not fit for purpose. They are designed for people who are in prison for long periods of time. Further research is required to understand how best to engage and

<sup>8</sup> section 266 (1)(b) – (d).

<sup>9</sup> For example, on 31 August 2018, only 13.1% of prisoners had an actual known release date, due to a high number of prisoners on remand or their release date being a decision of Parole Board Queensland.

rehabilitate prisoners who are in prison (sometimes repeatedly) for short amounts of time.

34. Supporting a proposal made in the Sofronoff Report, in the Women in Prison Report we recommended that QCS increases the number and diversity of programs, training and education opportunities available for prisoners.<sup>10</sup>
35. Programs that could be improved for the effective and efficient rehabilitation and reintegration of prisoners include:

*a. Pathways programs*

Only highest risk prisoners are eligible to participate in pathways programs, including the substance abuse program. During our consultation we became aware of many women who were prevented from - but wanted to participate in and would have benefited from - this program. We recommended that more places in this program be offered, that the eligibility be broadened and that the program be made available to women in Townsville Women's Correctional Centre.

*b. Access to programs*

During our consultation women reported that there was not enough time to access programs. They suggested remedying this by:

- Having a later lock-down time (currently 6pm)
- Running programs more than 5 days per week.

36. Examples of programs that prisoners may have incentives to participate in include:

*a. SPER debt reduction program*

Many women come into prison with unpaid fines, reducing their capacity to manage their finances when they are released from prison. During our consultation we became aware of a pilot program being trialled at the Helena Jones Correctional Centre which allows prisoners to perform unpaid community work while incarcerated to pay off their debts.

*b. Parole requirements*

During our consultation we heard of women being denied parole because they had not completed programs that they were required to undertake during their sentence. Often the requirement could not be satisfied because of long waiting lists for programs. If parole is used as an incentive for completing a program, QSC should ensure that prisoners are able to access the relevant programs.

*c. VET Programs*

Prisoners who have completed vocational educational training (VET) programs while in prison are less likely to re-offend. Consideration should be given to expanding programs like the Borallon Training and Correctional Centre into other prisons in Queensland.

37. In our consultation we identified the following barriers to participating in programs:

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<sup>10</sup> Recommendation 35.

- a. The lack of variety in courses – for example offering hairdressing but not other programs of interest like woodwork, welding, forklift driving or fitness.
- b. A lack of career advice regarding industries where their criminal history would not be a barrier to employment.
- c. Success is not properly measured. QCS measure participation rather than outcomes, including completion.
- d. Prisoners are at times required to pay for programs.
- e. Lack of work release programs.
- f. Information collected about the capacity of individual prisoners, including information about any impairments they may have, does not follow them through the criminal justice system.

### *Housing*

38. Both short-term transitional housing and longer-term accommodation are in short supply in Queensland. This impacts heavily upon women exiting prison who are attempting to reintegrate into society. In our Women in Prison Report we also suggested that the lack of housing is a major contributing factor to women offending and reoffending.
39. QCS has recently funded community organisations to deliver transitional services to women in south east Queensland. The MARA project has several initiatives underway to address housing issues.<sup>11</sup> To assist with the major gap in housing availability MARA has approached private rental providers and engaged in head leasing agreements. Women are accommodated in subsidised housing whilst MARA supports them to gain long-term accommodation with the Department of Housing and Public Works (DHPW), Community Housing Providers or via the private rental market. In February 2019, MARA had six properties.
40. In January 2018 MARA commenced provision of support to women in the 'Next Step Home – Women on parole' pilot program (a joint initiative with DHPW). This pilot program aims to provide women who would otherwise be homeless or at risk of being homeless on release from custody with timely access to secure and appropriate housing and coordinated support services. Women receive support while in custody, transitioning out of prison and into the community. Dedicated DHPW staff work in collaboration with MARA to provide a coordinated person-centered tenancy and individual support services to women. As of 4 February 2019, a total of 67 women had been assisted through this supported housing pilot in south east Queensland. It is anticipated that 120 women will be supported over a three-year period.<sup>60</sup>
41. Developing and funding re-entry accommodation and support for women with high-needs exiting prison is required in Queensland. The Cairnlea model in Victoria and Drew House in the USA are examples of housing solutions for women who have high support needs.
42. Through consultation the ADCQ identified that many women are being released from prison in accordance with court orders at 5pm on Friday afternoons. This is problematic because the services that should be connected to women post-release

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<sup>11</sup> Mara is the Maltese word for woman.

usually operate within ordinary business hours. A solution to this would be to ensure that courts only make orders for prisoners to be released within business hours between Monday and Wednesday.

### **Cost and benefit of imprisonment**

43. Through our consultation we uncovered numerous examples of the significant personal and societal cost of incarceration, including on families and children. The following stories, contained in our Women in Prison Report, provide examples:

*a. T's story (June 2017)*

*T's mum, M, was very anxious about her 20-year-old daughter who had been self-harming while M was in prison. M had already lost one daughter who died in a car accident, and she was terrified that while she was in prison, she might lose T as well.*

*T, who has autism, had lived with M (a single mum) in a housing commission house. They moved to a private rental house when M got a well-paid job, but when M lost her job, they became homeless, so they moved into a friend's house.*

*Around this time, M's older daughter (T's sister) was killed in a car accident. Things fell apart for M, and in 2015, she was found guilty of a driving offence and sent to jail for three months. T lived interstate with her aunt while her mother was imprisoned. When M was released she had no accommodation, so both M and T moved into a share house with M's friend. However the share house did not work out (the friend did not get on with T), and again M and T were homeless.*

*M relapsed into drug use, reoffended (drug use and supply, and dangerous operation of a motor vehicle) and in late 2016 was sentenced to an 11-month prison term. T couch surfed with friends, and again, it did not work out.*

*After T threatened to jump in front of a train, T sought help for her mental health in hospital. Youth services found her accommodation in a unit, but provided T very limited support. T, still grieving the death of her sister, and upset that her Mum was absent, continues to threaten self-harm. M manages to make phone calls to T while in prison, but she had not been able to speak to Youth Services about her concerns for her daughter.*

*Even though Youth Services organised new ID for T (which had been lost when T was homeless), with all her difficulties, T had been unable to visit M in the six months since she went to prison.*

*A week prior to the Commission's visit to the prison, T telephoned the prison to try to speak with M. A miscommunication occurred when she spoke to prison staff, and T mistakenly believed M had been released from prison. As M had not turned up at T's accommodation, T became distraught thinking her mother had left her. She self-harmed by drinking from a bottle of 'Mr Muscle' (a cleaning product) and was taken to hospital.*

*M managed to speak to T in hospital with the assistance of the prison*

*staff. A few days later, T telephoned the prison to try and speak with a counsellor, but got very upset after speaking to a prison officer who informed her that her Mum's release date was in November 2017. T had desperately been hoping her Mum would be released on parole prior to that date.*

*M was highly concerned about her daughter, the state of her mental health, her inability to cope on her own, the lack of suitable support for her, her continued self-harming, and the fact that she still not had been able to visit the prison to see and get support from her Mum.*

*b. A's story (June 2017)*

*A has three children aged four, 13, and 15. Her four-year-old son lives with his father. After A went to prison to serve a 16-month sentence, her daughters (aged 13 and 15) initially stayed with various friends and family. However, since Christmas 2016 both girls have been homeless. A's 13-year-old daughter was raped while living on the streets.*

*A was extremely anxious about the welfare of her daughters, and her inability while in prison to arrange adequate accommodation and support for them. She had great difficulty making phone calls to arrange places at a homeless shelter for them, and felt very aggrieved at what she saw as the lack of help from the prison counsellor to assist with this task. Ultimately, A contacted the Department of Child Safety to help find suitable accommodation.*

*The girls visited A in prison on four occasions with the assistance of Sisters Inside. While she was in BWCC, her son visited A once to attend the playgroup — which she described as 'awesome'. When her children visited her, A was actively discouraged from touching them, and was told 'you can't console your children'.*

*A said there was a lack of support for helping her daughters. She would like a network to try and help them. In her view, there was a huge need for more assistance for prisoner's children 'on the outside'.*

44. In our consultation we heard about inadequate plumbing resulting in toilets overflowing and competition over food and basic facilities. Prisoners often claimed that there was not enough food provided. We also heard and documented numerous humiliating examples of prisoners being denied access to sanitary pads and underwear.
45. The following example provided to us raises serious questions as to how it is possible to quantify the cost to our society when people are treated in such a deeply undignified and disrespectful way.

*c. R's story*

*R had been detained in Brisbane City watch house for seven nights and eight days. The reason for the lengthy stay in the watch house was due to overcrowding in BWCC. During this period, she was provided with one tracksuit top and one pair of tracksuit pants. R was not provided with a bra, any underwear, socks and shoes, or thongs, but was provided with a blanket and a bar of soap, though no shampoo or other toiletries. R was permitted a shower each morning, but was required to put on the same*

*tracksuit pants and top each day.*

*R said her cellmate had her menstrual period during this time. The cellmate had to stick the adhesive tape on her menstrual pad to her tracksuit pants. R stated, 'There was blood everywhere. They eventually gave her an incontinence nappy, and a clean pair of pants.'*

*R was permitted to access the exercise yard twice in 8 days and alleged that when women went into the yard, male prisoners in the watch house would 'watch and go crazy, masturbating against the glass, upsetting the young girls.'*

*On day five, R suffered a panic attack and was taken to the Princess Alexandra hospital. She was shackled and handcuffed, and had to walk through the accident and emergency section of the hospital in her dirty clothes, with no shoes.*

*On day eight, R was transferred to BWCC and asked to be transferred wearing her civilian clothing. As these had been packed away, she was denied this request. For the transfer, the dirty tracksuit pants and top were replaced with 'a man's singlet, and a pair of men's nylon football shorts, no undies, no bra, and no shoes.' After putting on these clothes, R was required to wait for approximately an hour in the public area at the front of the watch house in view of all watch house staff, incoming prison officers, and prisoners. R said that her eight days experience at the watch house was 'humiliating, overwhelming, disgusting, and demoralising.'*

## **Conclusion**

46. Diverting people from the prison system should to be a high priority. The current system is costly to the taxpayer and highly disruptive to the lives of the prisoners and their dependent children.
47. A coherent plan to address the rates of imprisonment and recidivism, which is developed in true partnership with Aboriginal and Torres Strait Islander peoples including women, is urgently required. This plan should be implemented by an independent body.
48. Rather than building more prisons and imprisoning greater numbers of prisoners, addressing the underlying issues leading to offending and imprisonment must become the future focus of government. The current rate of growth in the prison population is financially unsustainable and a poor reflection on our community's ability to address problems caused by disadvantage and marginalisation.
49. Thank you for the opportunity to provide our submission to your inquiry.

Yours faithfully



**Scott McDougall**  
**Anti-Discrimination Commissioner**

## **Queensland**