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

Draft Report: Inquiry into Imprisonment and Recidivism – February 2019

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[Redacted]

[Redacted]

16th April 2019

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1. The Author

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

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

The reduced return to prison rate and policies relating to increased use of 24/7 supervised community custody options allowed closure of Woodford High Security prison with significant budget savings. During this period Lotus Glen Correctional Centre also received a Human Rights Medal for *humane and innovative programs for Indigenous offenders*, the first such award to a correctional centre in Australia.

Keith has a strong global perspective of best practice through his career experience, and through his proactive visits and studies of corrections systems in Germany, Holland, England, Singapore, USA, New Zealand, Papua New Guinea and the Solomon Islands.

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

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

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

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

Keith had input into:

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

In 2000, Keith established [Knowledge Consulting](#) Pty Ltd, now Australia's leading independent provider of consulting services to correctional jurisdictions and to financiers investing in correctional services.

As Managing Director, Knowledge Consulting, Keith has led significant correctional and immigration detention consulting projects throughout Australia, Christmas Island, New Zealand, the Solomon Islands, Nauru and Papua New Guinea.

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

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

2. Introduction

The Terms of reference for the Inquiry are essentially aimed at achieving potential solutions and or recommendations to overcome the problems of an increasing imprisonment rate (even though crime is reducing) overcrowded prisons and the unacceptably high recidivism rates. The awful impact of imprisonment and recidivism on First Nations peoples is also a critical issue given their over-representation in contact with the criminal justice system and in prisons.

While the Draft Report is commendable, I am concerned that the draft recommendations do not provide for immediate practical steps to address the awful circumstances in various communities across Queensland, which create crime and cause high rates of recidivism. I feel that the draft report does not convey the need for urgency to address the social, health, education and economic crisis impacting on families and children in these communities; as well as the huge financial impost imposed on Queenslanders due to unnecessarily high imprisonment and recidivism rates.

I feel strongly that there are a number of things that should and can be done quickly, and I know that in all of these affected communities there are community champions calling for leadership and support to bring about change. I feel that the draft report, if adopted in its current form, will not be the catalyst for the change that is desperately needed.

I would love to be proven wrong, but I suspect that while the recommendations are important and useful, they will have little or no impact at the *bleeding edge of dysfunctional communities* for many years and potential community champions will remain disempowered and disheartened.

Accordingly, in this submission I provide my view on key issues, including referencing my previous submission of 26 October 2018, and I respectfully provide for your consideration recommendations that I would like to see included in your final report.

I feel the report would be enhanced if it developed its recommendations from a *starting point* of a clear presentation of what are the drivers or causal factors of crime, imprisonment and recidivism. Such a presentation and the understanding that would flow from this, in my view, would direct thought towards additional recommendations that provide for urgent action to commence to address the social and economic crisis we are facing.

To arrive at a *starting point* of the *drivers or causal factors of crime, imprisonment and recidivism* we need to know:

Who are the people who commit crimes, go to prison and become recidivists; what is their family and personal background and demographics including their ethnicity, education, employment history health, whether they have suffered abuse, neglect or homelessness; what communities do they come from; and where do they go on release from prison?

The above data is readily available and much of it is referenced in the Draft Report. However, the Draft Report does not extrapolate this data to identify the '*elephant in the room*' which is:

The significant drivers of most crime, imprisonment and recidivism are dysfunctional families and communities beset by poverty, unemployment, neglected and abused children, violence, substance

abuse and with the majority of community members lacking the self-efficacy and agency to do something about this real state of affairs.

If we identify the postcodes of all prisoners in QLD, juveniles and adults, we will find that the significant majority come from lower socio-economic communities, including First Nations peoples' communities where they are exposed to trauma caused by the above circumstances.

Therefore, it is no surprise that people in these circumstances commit crimes, often against their own family members; other members of their dysfunctional community; or the wider community; and ultimately go to prison. Also, in terms of recidivism, following the period of incarceration many people return to their dysfunctional family and community circumstances – and so it is no surprise that they become recidivists and re-offend.

Clear identification of the above '*elephant in the room*' opens readers and policy makers' minds to the following facts:

- a) The *drivers or causal factors of crime, imprisonment and recidivism* largely exist in certain locations, that is they are '*place-based*', they are multi-faceted, and we can clearly identify the reasons for their existence. **This indicates that responses to be effective need to be *place-based and holistic*;**
- b) An enormous human tragedy is unfolding each and every day in a significant number of communities, which is destroying the chances of large numbers of children (thousands across Queensland) and their future children to ever have a meaningful, safe and productive life. A significant proportion of these disadvantaged, neglected and abused children will become adult offenders over the next two decades creating enormous social and economic cost. **This crisis must be averted through a change in policy, structural and operational settings now.**
- c) This enormous human tragedy has created, and continues to create, a huge social and financial cost for Queensland through crime and the operations of the criminal justice system;
- d) These families and communities, a minority of total Queensland families and communities, **should not be demonised** as they are locked in a cycle of depression and hopelessness that over many decades has been exacerbated by challenges in co-developing, in conjunction with these communities, innovative solutions to the circumstances they face;
- e) Given the enormity of the problem, there needs to be sense of **extreme urgency** created in the minds government and the community to drive action to resolve the current situation. For example, if thousands of people (*a similar number to those in prison each day due largely to the social and economic disaster covered above*) were displaced, homeless and otherwise damaged as a consequence of a physical disaster, then government and the community would react with the utmost urgency to stabilise the situation and implement recovery and future prevention strategies. This social disaster needs the same priority attention;
- f) Given that over many decades an enormous amount of public funds has been spent by human service delivery agencies and the criminal justice system in attempting to improve circumstances for families and communities in these locations to no avail, **then it is clear that a new approach is**

needed. That is, more of the same or enhancements within the same structural framework of service delivery will likely result in the same outcomes;

If the '*elephant in the room*' as identified above, and the facts a) through f) above that flow from its identification are accepted, then policy makers can turn their minds to the following questions:

Question 1

What is the most effective 'place-based' approach to strengthening or building self-efficacy, in families and communities that enables them to develop commitment/ ownership and capacity to address their dysfunctional circumstances such that social breakdown and crime is significantly reduced?

Question 2

What changes/ enhancements do we need to make in the structure and functioning of Human Service Delivery Agencies and the criminal justice system to support and or facilitate best practice outcomes in the 'place-based' approach to strengthening or building self-efficacy, in families and communities arising from considerations in answering Question1?

3. Place-based Approach

Question 1 in Introduction: *What is the most effective 'place-based' approach to strengthening or building self-efficacy, in families and communities that enables them to develop commitment/ ownership and capacity to address their dysfunctional circumstances such that social breakdown and crime is significantly reduced?*

The qpc's 2017, FINAL REPORT, *Service delivery in remote and discrete Aboriginal and Torres Strait Islander communities* provided guidance that is relevant in addressing this question as follows:

"The Queensland Government can best improve outcomes through reforms that enable Aboriginal and Torres Strait Islander peoples to develop ways to improve outcomes for themselves:

- 1. Structural reform to transfer accountability and decision-making to regions and communities, reform funding and resourcing arrangements, and monitor progress through independent oversight.*
- 2. Service delivery reform to better focus on the needs of people through service delivery models that suit the circumstances.*
- 3. Economic reform to enable economic activity, support community development and make communities more sustainable.*

Underpinning each of the reform elements must be support for capacity and capability building, so that government, service providers and communities can adjust to a new way of doing things. Independent oversight, as well as timely and transparent data and reporting, will be required to keep reforms on track and ensure accountability. The reforms will be most successful where the Queensland and Australian Governments work together and jointly commit to change".

The above reform principles, in my view, are excellent and apply equally to non-indigenous communities with lower-socioeconomic status.

As outlined in my submission to the qpc of 26 October 2018, Knowledge Consulting and the Bidjara people, Charleville region, have developed a model that encapsulates these reform principles.

The model has support from senior public servants, First Nation leaders in Queensland and other States, First Nation community representatives across Queensland, members of the judiciary, senior academics and professional bodies involved with the criminal justice system.

My submission to the qpc of 26 October 2018 outlines how our model meets and operationalises the key elements identified in the qpc's 2017 report as follows. (qpc key elements in bold below):

“Structural reform to transfer accountability and decision-making to regions and communities, reform funding and resourcing arrangements, and monitor progress through independent oversight”.

- In each region establish a First Nations Special Purpose Vehicle (SPV) Charitable Not for Profit enterprise (Public Benefit Corporation PBC) to deliver, in partnership with government, family and community strengthening services, special assistance education schools, justice services and rural and tourism industries. Similar PBC's can be established in other lower socio-economic communities;
- Independent oversight of the PBC that provides, IP, capacity building and governance support;
- Redesign of existing government and stakeholder regional committees such as community justice committees, public sector coordination groups, etc into a *regional oversight/ steering committee* for PBC's in the region, empowered by respective Head Offices with decision-making capacity within agreed parameters to facilitate/ ensure a holistic approach to service delivery by the PBC's;

Notes:

- i) The above approach removes service delivery silos, empowers First Nations and other PBC's to deliver services, and creates First Nations employment; PBC surpluses are reinvested in the community (*Justice reinvestment*), the challenges faced by dysfunctional families are addressed holistically and government decision making occurs locally via the *regional oversight/ steering committee*;
- ii) As indicated above, the model applies equally, with some adjustments, to non-indigenous communities with lower socioeconomic status;

“Service delivery reform to better focus on the needs of people through service delivery models that suit the circumstances”.

As covered in my submission to the qpc of 26 October 2018, the structural reform summarised immediately above provides for service delivery models where PBC's, whose Board members are local community leaders and or '*champions*,' deliver a range of services in a holistic and culturally appropriate manner to suit local circumstances. The local Board is supported by independent experts who provide IP, Governance, Quality Assurance and Capacity Building services. The PBC's would provide services as follows:

Families

- Early support;
- Family Strengthening Programs e.g.:
 - Parenting skills;
 - Cognitive change;
 - Anger mgmt.; etc

- Health services;
- Care & Protection Services.

Education

- Alternative Education Schools including Rodeo Schools – provided by First Nations organisation, *The Silver Lining Foundation Australia* under the auspices of the PBC; and
- Employment Training.

Justice Services

- Assessment of young & adult offenders for Courts;
- Supervised separate accommodation for young and adult offenders diverted under Orders from Courts in lieu of imprisonment;
- Cultural healing, rehabilitation & education/employment training;
- Mentoring/ community supervision.

Other Services

- Housing Services
- Aged Care
- Rural Industries
- Tourism

Program delivery will involve strategies where young and adult offenders and families will at times undertake a number of programs together and at other times separately, but with facilitated activities that allow for sharing of learnings and experiences between offenders and families.

The alternative education services provided by *The Silver Lining Foundation Australia* have a proven track record of engaging young people in education who had become totally disengaged from traditional school-based learning, with a consequent reduction in juvenile offending.

“Economic reform to enable economic activity, support community development and make communities more sustainable”.

Establishment of the PBC’s employing local people, builds local capacity, puts pay packets into the communities, surpluses from the PBC’s are invested into the community and so the community is strengthened and becomes more sustainable.

First Nation communities across Queensland have largely untapped potential for rural and tourism industries. There is also potential for economic return from a range of human service delivery opportunities.

“Underpinning each of the reform elements must be support for capacity and capability building, so that government, service providers and communities can adjust to a new way of doing things. Independent oversight, as well as timely and transparent data and reporting, will be required to keep reforms on track and ensure accountability”

Our model as summarised above and outlined in more detail in my submission of 26 October 2018 meets these requirements. In the model we are proposing it is critical that the local PBC’s, under the oversight of the *regional oversight/ steering committee*, and supported by governance and capacity building services, are in the *‘driver’s seat’* leading the holistic delivery of services.

Therefore, government human service delivery agencies, corrections and the large Not for Profits will need to change their mind set/ philosophy from one of doing things **to and for** people in lower socio-economic communities to one of supporting the PBC’s with *capacity building* services. Where the PBC

needs specific services requiring resources or skills not available locally, the PBC will specify the services and agencies will tender to the PBC to deliver these services under contract to the PBC.

“The reforms will be most successful where the Queensland and Australian Governments work together and jointly commit to change”.

Agreed.

4. Changes/ enhancements to functioning of human services agencies and the criminal justice system to achieve an effective place-based response

Question 2 in Introduction: *What changes/ enhancements do we need to make in the structure and functioning of Human Service Delivery Agencies and the criminal justice system to support and or facilitate best practice outcomes in the ‘place-based’ approach to strengthening or building self-efficacy, in families and communities arising from considerations in answering Question1, Section 3 above?*

Our model proposes evidence-based changes to address the following significant issues that contribute to social breakdown, crime and recidivism in specific communities:

- The existing approach of government agencies delivering *siloed services* into regions and local regional communities is ineffective;
- Large National or State based *Not for Profits* being contracted to deliver services **to or for** First Nations people and in lower socio-economic communities is counter-productive in that they deprive local communities of ownership of both the challenges they face and the solutions to these challenges. It also inhibits community strengthening as it does not build capacity in local communities and deprives communities of *justice reinvestment* opportunities from surpluses if these services were delivered by locally owned PBC’s;
- The significant drivers of most crime, imprisonment and recidivism are dysfunctional families and communities beset by poverty, unemployment, neglected and abused children, violence, substance abuse and with the majority of community members lacking the self-efficacy and agency to do something about this shocking state of affairs;
- The *drivers or causal factors of crime, imprisonment and recidivism* largely exist in certain locations, that is they are *‘place based’*, they are multi-faceted and we can clearly identify the reasons for their existence. **This indicates that responses to be effective need to be *place-based, holistic and largely locally owned and delivered*;**
- The criminal justice system as it is currently structured is not *restorative* in its sentencing processes and does not facilitate *justice reinvestment*; as such it is a significant factor in the entrenchment of social dysfunction and crime in specific communities, high rates of recidivism and increasing prison populations;
- The criminal justice system lacks an overriding sense of purpose for its existence that results in the individual components of the system working within silos;
- Corrections/ prisons lack clarity and or focus about their reason for existence and consequently have invested in a significant amount of costly unnecessary and or inappropriate infrastructure. Also, as currently structured, corrections are operationally incapable of

achieving or contributing to effective rehabilitation outcomes for a significant proportion of offenders.

To adequately deal with the issues summarised immediately above requires wider reform of the overall criminal justice system and the system's relationship with human service delivery agencies generally. The model outlined in my submission to the qpc of 26 October 2018, which currently remains under consideration by the Queensland Government, is a practical place-based approach that will have a significant positive impact on a region by region basis across Queensland. However, desirably it should be part of an overall reform summarised as follows:

4.1 A sense of purpose for the criminal justice system defined by an overarching goal for the system

In my submission to the qpc of 26 October 2018, I referenced my paper: *Restorative Justice: Victims and Offenders: In the Context of Developing a National Approach to a Best Practice Response to Social Breakdown and Crime in Australia*¹. Following is an extract from that paper:

One of the defining, indeed fundamental, characteristics of our system of democracy is the rule of law. The essential characteristics of the rule of law have been summarised in the work of Professor A. V. Dicey who identified nine principles. One of these principles is 'an underlying moral basis for all law'. In writing on this topic, Dr Mark Cooray said:

*'Morality includes such values as honesty, the pursuit of truth, responsibility, duty, fairness in interpersonal relations, concern for one's immediate neighbours, respect for property, loyalty and duty to one's spouse and children, the work ethic and keeping one's word. The emphasis is upon the duty and responsibility of the individual. No society can function efficiently or humanely and no civilisation can endure, without these values.'*²

Individual responsibility is a critical concept but for some people, including a significant proportion of offenders who come to prison, it needs to be considered in the context of some of the tragic and almost insurmountable life circumstances they have endured in their formative childhood years when personal values are being formed.

The *rule of law* in western democracies has a fundamental role in ensuring that the moral values of our society, as reflected in the law, are upheld. It is the role of a range of institutions within our society, not the least of which is the family, to develop, promote and achieve understanding within the community of acceptable moral values. The manner in which the justice system responds to people who breach society's moral values is critical in protecting the community and in reinforcing what is acceptable behaviour in the eyes of the community.

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

² LJM Cooray, *The Australian Achievement: From Bondage to Freedom* (Australian Achievement Project, Epping 1987) Chapter 8. < <http://www.ourcivilisation.com/cooray/btof/index8.htm>>

German criminologist Dr Christian Pfeiffer, Director of the Lower Saxony Criminological Research Institute, has said that the higher order role of the criminal justice system is '*to contribute to keeping peace in our society*' as opposed to the commonly held notion that the criminal justice system exists to 'punish offenders and through punishment deter offending behavior.'³

Pfeiffer's position relating to the role of the criminal justice system is critical in considering policy settings to reduce crime and social breakdown in our society. If we accept his view that the higher order role of the criminal justice system is to contribute to *keeping peace in society*, **then it opens up a range of proactive, positive and cost effective options for policy makers to consider to reduce offending behaviour and strengthen social cohesion as opposed to our current model which is largely driven by the punishment imperative and consequently is reactive, negative and not cost effective.**

In the same paper, referring to family and social breakdown and neglect and abuse of children, I said:

"today's approach to social problems has hard wired in an increasing crime and imprisonment rate for the next two decades, unless we can implement a circuit breaker.

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

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

³ Discussion between the author of this paper and Dr Pfeiffer, Hanover, Germany, 1991.

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

In the light of the foregoing and having regard to:

- The awful circumstances in many communities across Queensland that are destroying the life chances of families and children;
- The need for structural reform across the criminal justice system and human service delivery agencies generally to facilitate empowerment of these communities via a *place-based response* to address the challenges they are facing;
- The strong support across communities in Queensland and from leading academics in this field, First Nations Leaders of National standing, the Judiciary, senior public servants and others identified in Section 3 above for the model I have presented in this and my previous submission; and
- The need for urgent action to deal with this human crisis;

I respectfully submit the following recommendations for your consideration.

5. Recommendations

Recommendation 1

That the Queensland Government adopts '*to contribute to keeping peace in our society*' as the overarching goal for the criminal justice system;

Recommendation 2

That it is agreed the significant drivers of most crime, imprisonment and recidivism are dysfunctional families and communities, where poor parenting is endemic, in certain locations beset by poverty, unemployment, neglected and abused children, violence, substance abuse and with the majority of community members lacking the self-efficacy and agency to do something about this current and real state of affairs;

Recommendation 3

That, given that the *drivers or causal factors of crime, imprisonment and recidivism* are multi-faceted and largely exist in certain locations, that is they are '*place-based*', the Queensland Government commits to:

- a) A coordinated policy approach across agencies to achieve a holistic response to social breakdown and crime in line with the overarching goal of agencies working *'to contribute to keeping peace in our society'*;
- b) Structural reform across agencies that results in a mechanism in regions to replace current siloed systems of service delivery with a holistic place-based response that is owned and driven by local communities. In this regard the advice by the qpc in its 2017 Final Report, *Service delivery in remote and discrete Aboriginal and Torres Strait Islander communities* as follows is relevant:

"The Queensland Government can best improve outcomes through reforms that enable Aboriginal and Torres Strait Islander peoples to develop ways to improve outcomes for themselves:

- 1. Structural reform to transfer accountability and decision-making to regions and communities, reform funding and resourcing arrangements, and monitor progress through independent oversight.*
- 2. Service delivery reform to better focus on the needs of people through service delivery models that suit the circumstances.*
- 3. Economic reform to enable economic activity, support community development and make communities more sustainable.*

Note: This approach should be applied to lower-socio economic communities generally.

Recommendation 4

That the Justice Reform Office (Recommendation 18 in Draft Report) is tasked as lead agency to facilitate with relevant departments' implementation of the structural reform as required in Recommendation 3 above.

Recommendation 5

That a sentencing practice policy is adopted for offenders that where the offence would attract a term of imprisonment of 12 months or less, they may be sentenced to a Probation Order with a residency clause requiring them to reside at a 24/7 supervised Community Custody facility, where such exists, for a period determined by the Court. This decision would be subject to pre-sentence reports as to their suitability and the Courts discretion in the matter having regard to the circumstances of the offence and risks posed by the offender.

The Probation Order will prescribe programs that must be satisfactorily completed by the offender while in Community Custody. Where this is achieved the offender will be allowed into the community under a supervision order as determined by the Court.

Failure by the offender to meet performance/ behaviour criteria of the Order will result in the Offender being returned to the Court for action as deemed appropriate by the Court.

Recommendation 6

That in the light of Recommendation 5, Queensland Corrections secure custodial correctional facilities will house only prisoners who receive head sentences of more than 12 months and those who have received head sentences of less than 12 months but in the judgement of the Court are not suitable for

24/7 supervised Community Custody. This recommendation to be phased in as 24/7 Community Custody facilities become available.

Recommendation 7

That in the light of Recommendations 5 and 6, the Justice Reform Office, is set a goal of working with relevant agencies to facilitate achievement of an objective to reduce the Queensland prison population daily state by 1,000 within 3 years.

Recommendation 8

That 24/7 supervised Community Custody facilities are established in lower socio-economic communities across Queensland to be owned and operated by First Nations and other Charitable Not for Profit enterprises under the auspices of Child and Family Centre community Hubs in partnership with the Queensland Government. These Hubs would also deliver family and community strengthening services, special assistance education schools, community mentoring of offenders, housing services, aged care and engage in rural and tourism industries and employment services.

Recommendation 9

That three Pilot Projects where developmental work towards business cases has been undertaken, that is Bidjara people's project for the Charleville, Augathella, Mount Tabor Station region, Cherbourg and a Murri Watch project in Brisbane be approved to progress.

Recommendation 10

That an independent Steering Committee is established, under the auspices of the Justice Reform Office, of prominent First Nation and non- First Nation people with strong experience in First Nation affairs and matters pertaining to the criminal justice system, including in corrections, to oversight finalisation of the Business Cases for the Pilot Projects in Recommendation 9 and for expansion of the concept to achieve a reduction in Queensland's prison population daily state by 1,000 within 3 years.

The business cases to be developed under a codesign process involving local community First Nation people and leaders, relevant departmental officers and external stakeholders. Codesign to be informed by Knowledge Consulting's Intellectual Property and project managed by Knowledge Consulting and Palladium a highly respected and credible organisation experienced in in law and justice capacity building programs in Australia and overseas. (Knowledge Consulting and Palladium are in the process of entering into a Joint Venture to promote the concept covered in this submission to jurisdictions throughout Australia and overseas).

The business cases to be quality assured by an independent major private sector agency qualified in the field of Cost Benefit Analysis

Recommendation 11

That in the light of Recommendations 5 through 10, Queensland Corrections in conjunction with the Justice Reform Office, undertakes planning for infrastructure and operations to support the recommended initiatives to reduce the prison population daily state by 1,000 within 3 years through the use of Community Custody facilities.

6. Comments on the Draft report

Overview, Page xxii

Options for Change should also mention family and community strengthening and capacity building and need for a holistic response by agencies.

Use more cost – effective sentencing options, Page xxvii

The statement – *“it currently costs \$5,000 to supervise an offender in the community, compared with \$107,000 to keep them in prison for a year”*, I feel is misleading in that Community Corrections current operating model does not give Courts confidence to place more offenders under community corrections orders in lieu of imprisonment. Costs would rise significantly if Community corrections was required to accept more offenders under more onerous supervision conditions.

Our model deals with this issue by offering a Community Custody model under the auspicious of Community corrections that will provide a credible option for Courts to use in lieu of imprisonment at a less cost than imprisonment, with greatly reduced recidivism.

You have made the suggestion on Page xxvii that *“Courts should be able to impose custodial sentences on low risk offenders that are served in low security”*. Our model as described in this submission provides for this with Courts having the ability to impose a Probation Order with a residency clause requiring offenders to reside in a Community Custody facility (Healing and Rehabilitation Facility) in lieu of a prison sentence.

Improve rehabilitation and reintegration services, Page xxviii

The structural reform proposed in our model in conjunction with your Draft Report’s proposal for a Justice reform Office addresses the issues raised in this Section.

Introduce arrangements to encourage effective throughcare, Page xxix

The statement is made, first paragraph, that *“throughcare approaches to prisoner rehabilitation are generally considered as best practice”*. While the concept of ‘throughcare’ is laudable, in practice in Australia it is not working effectively across jurisdictions as evidenced by the high recidivism rates, particularly for First Nations people.

You state that, *‘the Commission will explore the best options for such a model for the final report’*. My view is that the existing concept of ‘throughcare’ will never work effectively under the present structure of the criminal justice system and the way that prisons function.

The proposal contained in this and my previous submission encapsulates the principles of ‘throughcare’ within the context of structural reform that will ensure effective rehabilitation and reduced recidivism.

Overview, Page xxx

See the structural reform proposal in this and my previous submission that completely changes prison architecture and rehabilitation processes. The proposal is founded in international and Australian best practice plus innovation.

Overview, Page xxxiv - Draft Recommendation 2

An issue that needs to be considered in relation to this recommendation is that a significant proportion of offenders are in very poor financial circumstances and cannot meet the impost of monetary penalties, resulting in their imprisonment. The *restorative justice* approach in sentencing as proposed in our model is a viable alternative to imprisonment for many offenders.

Overview, Page xxxv – Draft Recommendation 3

Our *Community Custody* model as proposed in this and my previous submission provides Courts with a viable alternative to imprisonment where outcomes relating to *restitution* to victims and *restoration* of the offender to a law-abiding life style can be pursued in an effective manner, to the satisfaction of victims and ultimately to offenders in terms of their rehabilitation.

Overview, Page xxxvi – Draft Recommendation 4

I don't agree with courts having capacity to "*impose custodial sentences in low security correctional facilities*", if this means sentencing offenders to Queensland Corrections current facilities. Low security correctional facilities are required as part of the process of transitioning longer term prisoners back into society e.g. Prison Farms.

Our 24/7 Community Custody model allows courts to sentence people to Community Custody under a Probation Order with a residency clause without the stigma of a prison sentence. It is a very cost-effective option that is safer for prisoners and will reduce recidivism as part of a holistic community strengthening approach.

Concerning, "*establish a mechanism to allocate resources to community corrections to support changing court sentencing practices*", needs to be considered in the context of work practices required under our Community Custody model if this is to be adopted, which should be under the auspices of Community Corrections. These changed work practices would include capacity building of community mentors to supervise offenders and initiatives supporting family and community strengthening. Additional resources should not be allocated to do *more of the same*.

Overview, Page xxxvi – Draft Recommendation 5 – Information request

In developing our model covered in this and my previous submission we were cognisant of the issues raised in the first two dot points. We have had preliminary discussions with the Chief Magistrate concerning these issues and have thoughts on how they can be addressed during the co-design process for our model.

Overview, Page xxxvi – Draft Recommendation 6

Our Community Custody model provides a very effective option to reduce the number of prisoners remanded into prison custody who have bail conditions. We, working with Murri Watch and Sisters inside have two sites with a total of 40 beds that can be activated very quickly. They will be 24/7 supervised with substance abuse and other programs that will assist in offenders potentially achieving a community supervision order rather than a prison sentence when their cases are heard. Other sites can be activated relatively quickly.

The programs offered in these facilities will be linked to family and community strengthening initiatives.

Overview, Page xxxvii – Draft Recommendation 8 – Information request

My understanding from working with people engaged in prisoner support activities is that there are many prisoners held in remand prisons who have a bail provision that they cannot activate due to not having funds to raise bail or a suitable place of residence where they will not be at risk of reoffending.

In addition, many have substance abuse and or impulsive behaviour problems that makes them high risk in terms of release on bail.

Our 24/7 supervised Community Custody model with substance abuse and other programs will provide a credible alternative for Courts in lieu of imprisonment.

Overview, Page xxxviii – Draft Recommendation 10 – Information request

As stated in my response above **to - Introduce arrangements to encourage effective throughcare, Page xxix**, my view is that the existing concept of *'throughcare'* will never work effectively under the present structure of the criminal justice system and the way that prisons function.

The proposal contained in this and my previous submission encapsulates the principles of *'throughcare'* within the context of structural reform that will ensure effective rehabilitation and reduced recidivism.

In the last paragraph in Draft Recommendation 10, where it is stated "*consideration should be given to foster markets and community involvement that support rehabilitation and reintegration*", my view is that our model as summarised in this submission and my previous submission provides a highly effective *throughcare* approach that is driven by local community Special Purpose Vehicle (SPV) Charitable Not for Profit enterprises (Public Benefit Corporation PBC's)

Overview, Page xxxix – Draft Recommendation 11 – Information request

This recommendation says, "*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".*

The Information request with this question, in my view, needs to be preceded by a discussion about the future role of prisons. For example, current large prison precincts, 1,000 plus cells with blocks of 50 cells for living quarters, are a failed concept in terms of rehabilitation, cost effectiveness and staff and prisoner safety. There is a range of evidence to support this assertion. These large prison precincts need to be phased out over time.

Adoption of the 24/7 Community Custody model covered in this and my previous submission would mean that High Security prisons would be required only for those prisoners who meet the criteria of long-term sentences (more than 12 months) and or those who are classified as dangerous. They should be relatively small in size e.g. 150 – 200 beds with good capacity to segregate prisoners, living blocks should be relatively small to facilitate staff and prisoner safety, have mental health services, provide meaningful opportunities for work and education and criminogenic programs.

These High Security prisons should be located across various regions in QLD and would cater for a significant minority of the current prisoner population – estimate 30 -35% - figure needs to be checked with QLD Corrections. The remainder of prisoners who are currently housed in prisons would be accommodated in 24/7 supervised Community Custody facilities.

If the above is accepted then the discussion about prisoner programs is framed in the context of the two accommodation models i.e. prisons and community custody facilities. Each of these models require a different approach to the suite of programs offered.

Overview, Page xli – Draft Recommendation 14

My view is that our model as summarised in this submission and my previous submission provides a platform to advance matters covered in the dot points in this recommendation via the local community Special Purpose Vehicles (SPV's) Charitable Not for Profit enterprises (Public Benefit Corporation PBC's).

Overview, Page xlii – Draft Recommendation 16

The place-based approach via our proposed local community Special Purpose Vehicles (SPV's) Charitable Not for Profit enterprises (Public Benefit Corporation PBC's) will facilitate "*police discretion, diversion and cautions*" in the knowledge that offenders will be subject to supervision by trained Community Mentors and that there will be credible local programs in place to assist people at risk of offending.

Overview, Page xlii – Draft Recommendations 17 and 18

I support the initiative of a Justice Reform Office (JRO). I have made mention in my suggested recommendations in Section 5 above as to how I see the JRO engaging in development of the model proposed in this submission.

Overview, Page xliv – Cost and benefits of imprisonment – Information request

Draft report states, "*There are net benefits from keeping the most serious offenders in prison*". I agree with this subject to the role of prisons being re-defined as stated above to be for those prisoners who meet the criteria of long-term sentences (more than 12 months) and or those who are classified as dangerous. They should be relatively small in size e.g. 150 – 200 beds with good capacity to segregate prisoners, living blocks should be relatively small to facilitate staff and prisoner safety, have mental health services, provide meaningful opportunities for work and education and criminogenic programs.

Draft Report also states, "*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*". Given that a significant proportion of prisoners are serving sentences of less than 6 months and many for periods of between 6 and 12 months, it is safe to say, supported by my and my teams experience in this area, that a large proportion of these can be safely and securely accommodated in our community custody model which provides for reduced infrastructure and operating costs and improved rehabilitation resulting in reduced recidivism in the out years.

Therefore, redefinition of the role of prisons and implementation of a 24/7 supervised Community Custody model as stated above will generate massive savings over time.

Section 2.2 objectives, Page 9

Suggest that this section should make reference to the social and economic circumstances that result in neglected and abused children ultimately becoming a significant proportion, if not the majority of offenders in contact with the criminal justice system. Perhaps could refer to how good social and economic policies reduce criminality.

Section 2.3 The role of government, Page 11

Could be mentioned that government also has a role to ensure that the criminal justice system does not operate as a silo and should work holistically with other human service delivery agencies to support efforts to reduce criminality by ensuring that the responses to crime are *restorative* and founded in *justice reinvestment* principles.

Box 2.2 The role of imprisonment, Page 13

I feel that this box misses the opportunity to present the key issue up front in the report that prisons operate at the end of the conveyor belt of failures in the social and criminal justice systems. The experience of prisons over generations is clearly that they fail to rehabilitate offenders due to adverse circumstances that have shaped offenders from childhood and these are the circumstances most return to on release from prison, hence we have high recidivism rates.

Retribution, deterrence, prevention and rehabilitation as covered in the Box need to be presented in the context of the overall failures in the social system and the structural problems in the response by government and other agencies that entrench these failures. As covered in this submission and in my previous submission there needs to be fundamental change in the structure of the criminal justice system as part of a holistic response to the causes of social breakdown and crime. Under the changes I have proposed, the role of prisons would change significantly and the majority of people now housed in prisons would be accommodated in supervised Healing and Rehabilitation facilities under probation orders. Prisons would be much smaller and for longer term dangerous offenders.

It is in the above context that the role of imprisonment should be discussed, in my view.

Section 2.6 Are there ways to improve decision making..., Page 16

The first dot point on page 16, - a clear and defined purpose – in the context of this Inquiry, my suggestion is that the *'purpose'* should be to address the fundamental starting point of strengthening families and communities through their empowerment by creating self-efficacy to achieve positive pro-social productive life style outcomes.

My fear is that unless we start with this purpose, then the rest of the dot points could entrench the current ineffective siloed approach by agencies.

The criminal justice system – one of the systems for mediating harm, Figure 3.2, Page 25

I pose for consideration whether Figure 3.2 should show that the majority of offenders come from dysfunctional families and communities and show the need for a holistic response between the Criminal Justice System and other human service delivery agencies to deal with this?

First dot point, Page 29

This dot point states; *"assessment of prisoners – QCS assesses prisoners to determine rehabilitation needs of prisoners, and the support that is required for prisoners returning to the community"*.

The issue arising from the above is that most of the work by QCS with prisoners is often undone when prisoners return to the dysfunctional circumstances from where they came. Our proposed holistic response addresses this challenge.

Section 4 State of play and how we got here – Key Points, Page 32

I feel that a *key driver* not mentioned is: *Lack of meaningful action to address the challenge of poverty-stricken dysfunctional families and communities that create the majority of offenders*. Our proposed model provides for meaningful action to address this.

Section 5.1 Introduction, Page 51

I feel that this introduction to the discussion around recidivism would benefit from a comment along the lines *that a significant driver of recidivism is the family, community, social and economic circumstances to which the prisoner returns as well as the negative peer group pressure of associates that thwarts the offender's best intentions to remain law abiding*.

Under a holistic response as proposed by our model, measures of recidivism would be analysed in conjunction with outcomes under KPI's for family and community strengthening.

I feel that this Section of the report needs to be expanded to include discussion around the point that recidivism figures must be considered in conjunction with a range of other indicators of social dysfunction so that effective preventative strategies can be developed.

Section 7.3 Challenges with prevention and early intervention, commences Page 80

I feel that this Section would benefit from input around place-based initiatives, owned and driven by the local community. It also does not mention Northern European experience, Community Hubs and the NSW Bourke initiative.

Section 7.5 Prevention and early intervention in Queensland, Page 83

I am happy to be corrected on this, but in relation to the last paragraph on Page 83, I suspect that these initiatives are mostly being done *'to and for'* communities without genuine ownership supported by capacity building for these communities.

Illicit drug offences, Page 115

You may wish to consider the *Australia 21, Roundtable report of law enforcement and other practitioners, researchers and advocates. Sydney, September 2015, Editors Mick Palmer, Alex Wodak, Bob Douglas and Lyn Stephens - Can Australia respond to drugs more effectively and safely?*

It provides some very useful perspectives that may be of benefit to your Inquiry.

Case management, Page 187

Statement is made that: *Case management is mainly the responsibility of prison guards.*

My comment here is that if *prison guards* have the main responsibility for case management, then the approach to case management is badly flawed in Queensland prisons. Sofronoff's conclusion as cited in this Section is how it was under the Queensland Corrective Services Commission.

Top of Page 190 – Discussion around encouraging prisoners to attend and persist with programs

I feel this section would benefit from including that prisoners' families and or close associates should participate in prison programs. This can be readily facilitated via expanding prison visits into an *'approved program'* where family members and or associates participate with the prisoner in programs e.g. cognitive change, anger management, etc and then on completion of the program segment the visit continues as a social visit.

This would be a cost-effective way of introducing joined up programs involving prisoners and their families and associates so that reintegration into family and community life is assisted for the prisoner upon release.

Page 196, Key points and subsequent Sections, including Recommendation 12

Our place-based model as covered extensively in this submission and in my previous submission provides a best practice reintegration approach.

Coordinating rehabilitation and reintegration, key points, Page 212

The second dot point that refers to *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 integrating prisoners*, in my opinion is too simplistic and omits a significant axis of *individual, family and community commitment, supported by empowerment initiatives to reduce crime and recidivism.*

The following key points in this section suffer because of the above omission and do not reflect that a new paradigm is needed for the criminal justice system as covered in this submission and my previous

submission. Throughcare, as I have previously mentioned can not operate effectively under the existing paradigm.

I feel this section, Pages 212 through 217 needs redrafting to reflect the new paradigm.

Pages 218 through 220

I feel these sections would benefit from input relating to the concepts and structural reform inherent in our model as covered in this submission and my previous submission.

Table 5.2 Preliminary high-level analysis of reform options, Page 221

I feel that this table does not adequately reflect a '*community ownership model*' as proposed in our new paradigm and does not cover the critical elements of *restorative justice* and *justice reinvestment* that are fundamental to an effective criminal justice system.

Section 15.6 Conclusion, Page 225

Before consideration is given to *modifying legislation, policy and operational procedures around throughcare and reintegration of offenders*, as stated in my response above to your Draft Recommendation 11, the issue of the role of secure prisons and 24/7 supervised Community Custody options as part of a holistic response to social breakdown and crime needs to be decided.

If the model we have proposed is adopted, then the discussion about prisoner programs can be framed in the context of the two accommodation models i.e. prisons and community custody facilities. Each of these models require a different approach to the suite of programs offered, including *throughcare*.

Throughcare's effectiveness will be compromised unless it is part of a holistic response including family and community strengthening.

16.1 Introduction, Table 16.1, Page 231

Second last *wicked problem*, i.e. *Wicked problems involving changing behaviour*: In the *context comment*, I feel that the words – their families and communities – should be included after the word *offenders* in the first line.

Box 16.2 Regulatory impact assessment – best practice principles, Page 235

The first dot point – *establish a case for action before developing solutions* -, clearly in considering imprisonment and recidivism in Queensland there is a case for action. However, before we take action, we must clearly identify the fundamental drivers of the problem that we wish to solve. If we don't, we will be treating symptoms or consequences of the drivers and our work will continue to be ineffective.

As stated previously in this submission, the significant drivers of most crime, imprisonment and recidivism are:

- Dysfunctional families and communities beset by poverty, unemployment, neglected and abused children, violence, substance abuse and with the majority of community members lacking the self-efficacy and agency to do something about this shocking state of affairs;
- These *drivers or causal factors of crime, imprisonment and recidivism* largely exist in certain locations, that is they are '*place based*', they are multi-faceted and we can clearly identify the reasons for their existence. **This indicates that responses to be effective need to be *place based, holistic and largely locally owned and delivered*;**

- The criminal justice system as it is currently structured is not *restorative* in its sentencing processes and does not facilitate *justice reinvestment*. As such it is a significant factor in the entrenchment of social dysfunction and crime in specific communities, high rates of recidivism and increasing prison populations;
- The criminal justice system lacks an overriding sense of purpose for its existence that results in the individual components of the system working within silos; and
- Corrections/ prisons lack clarity and or focus about their reason for existence and consequently have invested in a significant amount of costly unnecessary and or inappropriate infrastructure. Also, as currently structured corrections are operationally incapable of achieving or contributing to effective rehabilitation outcomes for a significant proportion of offenders;

I submit that the model proposed in this submission and my previous submission represents a solution that addresses the above drivers of crime, imprisonment and recidivism.

16.3 Options for improving decision making, Improving the policy development process, Page 239

This section outlines a macro level approach to policy development. However, I argue that, in Queensland's circumstances where we have an extremely urgent challenge that each day is impacting in the worst possible way on families, children and communities, such an approach needs to work in concert with a bottom up approach that brings together all of the *moving parts* in a place based Pilot Project that demonstrates the effectiveness of a holistic response.

This will then inform many of the policy considerations required at the macro level, including structural reform required across and within agencies to ensure that public services are delivered effectively to disadvantaged communities.

In this regard, our pilot project has been assessed by the Queensland Government's Market Led Proposals Secretariat as being unique and worthy of proceeding.

Table 16.2 Coordination mechanism options, Page 243

As covered throughout this submission, the challenge of crime and recidivism is largely a place-based community one and the communities need to be empowered to develop, own and deliver the solutions. This Table appears to exclude community input. In our approach we are proposing an independent high profile, highly qualified, culturally sensitive Steering Committee to provide advice to government and oversight development and implementation of place-based solutions.

I feel this Table would benefit from inclusion of a mechanism for *community input* as part of the coordination mechanism options, particularly given that effective solutions can only be achieved where community members are engaged in their development and own the solutions.

7. Conclusion

We have developed a more detailed presentation of the model outlined in this submission, that provides an overview of the structural reform proposed in this and my previous submission. The presentation covers:

- Current responses to drivers of social breakdown and crime versus desired responses;

- Risk factors driving social breakdown and crime, consequences of untreated risk factors and current public sector and NGO response to social breakdown and crime;
- Justification for the recommended goal for the criminal justice system – “*to contribute to keeping peace in society*”;
- Macro Structural Reform to respond to need for a holistic response to multi-faceted causes of social breakdown and crime that are ‘**place-based**’, to replace current siloed and disempowering structure of service delivery;
- A community development model to drive capacity building and empowerment in First Nations and lower socio-economic communities generally;
- Overview of the business model for First Nations Not for profit (PBC’s) to drive place-based holistic service delivery; and
- Codesign:
 - Principles to guide codesign process;
 - An overview of the relationship between the justice reform Office, a departmental IDC, the Independent steering committee and the codesign team;
 - Structural reform involving Departments, Justice Reform Office, Regional Leadership and local Place-Based Leadership; and
 - How *restorative justice* and *justice reinvestment* principles are incorporated into the sentencing process.

The presentation discloses a significant intellectual property investment from Knowledge Consulting and therefore has not been attached with this submission. However, we would be pleased to share and discuss this material with you on a *commercial in confidence* basis.

I appreciate the opportunity to provide input to your Draft Report on this critically important issue for Queensland.



Keith Hamburger AM
 Managing Director
 Knowledge consulting Pty Ltd