

17 April 2019

Queensland Productivity Commission
Inquiry into Imprisonment and Recidivism

Dear Sir or Madam

Thank you for the opportunity to provide a submission on the draft report to the Queensland Productivity Commission Inquiry into Imprisonment and Recidivism. The Queensland Network of Alcohol and other Drugs (QNADA) submission is attached.

QNADA represents a dynamic and broad-reaching specialist network within the non-government alcohol and other drug (NGO AOD) sector across Queensland. We have 53 member organisations, representing the majority of specialist NGO AOD providers. This submission is made following consultation with QNADA members.

QNADA is pleased to provide further information, or discuss any aspect of this submission. Please don't hesitate to contact me at Rebecca.Lang@qnada.org.au or by calling 07 3023 5050.

Yours sincerely



Rebecca Lang

CEO



Queensland Productivity Commission Inquiry into Imprisonment and Recidivism

Submission on the draft report – April 2019

This submission has been prepared by the Queensland Network of Alcohol and Other Drug Agencies (QNADA). The content of this submission is informed by consultation with QNADA member organisations providing treatment services in Queensland, as well as a review of research and other jurisdiction's legislation.

QNADA welcomes the opportunity to provide a submission on the draft report to the Queensland Productivity Commission Inquiry into Imprisonment and Recidivism and the opportunity to meet in person with representatives from the Commission in April 2019 to provide further information.

We agree with the report's assessment that, 'for a material portion of Queensland's prison population, the costs of imprisonment outweigh the benefits to the community', and 'for a further portion, lower cost alternatives would provide greater benefits to the community. We congratulate the Productivity Commission on identifying decriminalising personal possession and use of illicit drugs as one of the solutions to increase community benefit and reduce rates of imprisonment and recidivism. We strongly support recalibrating the Queensland system towards health-based responses for people who use illicit drugs, and moderating the law enforcement approach for drug trafficking and supply, which we believe will improve health and wellbeing of Queensland communities.

In Queensland, people who use illicit drugs are almost nine times more likely than dealers or traffickers to find themselves facing action in the criminal justice system (39,099 and 4,385 respectively in 2016-17).¹ Global research indicates that 88-89% who use illicit drugs do not experience dependence or require a treatment intervention,² which means that for many people who use illicit drugs, the risk of harm to both themselves and community productivity is increased primarily as a consequence of involvement in the justice system, not substance use. The impact of a high rate of sentencing for drug possession offences in Queensland is compounded by a declining rate of police proceedings resulting in non-court action.³

The investment required to enforce illicit drug possession offences is significant and growing. Between 2011-12 and 2015-16, the number of people sentenced for drug possession offences (as their most serious offence) has increased by 42.7%, far exceeding population growth in the same period, which was between 1.3% and 2.0%.^{4 5} We note this is consistent with the Productivity Commission's draft finding that 'rising imprisonment rates are driven by policy changes, not crime rates.'

A principle benefit of a health-based approach to illicit drug use and possession is that it reduces significant resource impost on the criminal justice system, enabling law enforcement to focus on other types of offences.⁶ Additionally, health-based responses to illicit drug use and possession reduce the adverse social consequences of contact with the justice system and provide a more efficient and cost-effective opportunity to identify people most in need of treatment.

¹ Australian Criminal Intelligence Commission. Illicit Drug Data Report 2016-17. (2018).

https://www.acic.gov.au/sites/default/files/iddr_2016-17_050718.pdf?v=1536906944

² United Nations Office on Drugs and Crime. World Drug Report 2017. accessed March 1, 2019

https://www.unodc.org/wdr2017/field/Booklet_2_HEALTH.pdf

³ Arie Frieberg, Jason Payne, Karen Gelb, Anthony Morgan, Toni Makkai, "Queensland Drug and Specialist Courts Review", Queensland Courts (2016), https://www.courts.qld.gov.au/__data/assets/pdf_file/0004/514714/dc-rpt-dscr-final-full-report.pdf.

⁴ Queensland Sentencing Advisory Council (2017). Sentencing Spotlight on... possession of dangerous drugs.

⁵ Queensland Government Statistician's Office. Population growth highlights and trends, Queensland, accessed March 1, 2019.

<http://www.qgso.qld.gov.au/products/reports/pop-growth-highlights-trends-qld/index.php>

⁶ Caitlin Elizabeth Hughes and Alex Stevens. "What can we learn from the Portuguese Decriminalization of Illicit Drugs?", British Journal of Criminology 50, (2010), 999-1022.

For people who require treatment, research shows that for every dollar invested in alcohol and other drug treatment and harm reduction services, there is a seven dollar return.⁷ Comparatively, as stated in the draft Productivity Commission report, ‘there are diminishing returns from the use of imprisonment’. Therefore, we support the removal of criminal penalties for possession of illicit drugs as a reasonable system recalibration strategy from both an economic and population health perspective.

Feedback on key elements of the draft summary report

- The current description of Drug and Alcohol Court is unclear about who the target group is for this intervention. Drug court tends to target people who require treatment, have multiple charges in relation to summary or indictable offences, and who intend to plead guilty to those offences. Further, it is noted that the removal of criminal penalties for personal possession and use of illicit drugs would not negate the need for Drug and Alcohol Court, which would remain an essential component of the system for people whose other offending (eg drink driving, property crime) is directly related to their substance use. The benefits of the Drug and Alcohol Court program are not simply provided by the court but by the alliance between health services and the court, where the court’s monitoring supports continued engagement with the alcohol and other drugs treatment component, provided by specialist alcohol and other drugs treatment services in the community. We also note that the accountability measures required of clients by the court (eg drug testing) are not the primary way in which the rehabilitation of offenders occurs, which the current wording suggests, but rather the treatment intervention offered.
- The report refers to ‘rehabilitation’ and ‘rehabilitation service’ in the prison setting throughout the document. We recommend distinguishing between specialist alcohol and other drugs rehabilitation and offender rehabilitation.
- The term ‘drug offences’ is used throughout the draft report, with associated statistics. It is important to distinguish between trafficking and possession for clarity, as decriminalisation only refers to possession offences.
- Under the section ‘Reduce scope of criminal offences’ we suggest rewording paragraph 2 to clarify what we believe the intent of this paragraph is, which is to draw the link between criminalising drug use and people who use being required to access drugs from an unregulated market, thereby associating with organised crime.
- Under the section ‘Introduce arrangements to encourage effective throughcare’, dot point five refers to outcomes-based funding. We note the research evidence in the alcohol and other drugs treatment sector for the effectiveness of outcomes-based funding is experimental and can lead to a range of adverse consequences.⁸ We believe effective throughcare can be achieved through structural incentives without the need for outcomes based funding.
- Under the section ‘Use more cost effective sentencing options’, we recommend adding ‘where people who commit summary or indictable offences have issues related to problematic alcohol or other drug use’ to the list of dot points. This lines up with Drug and Alcohol Court and serves to distinguish between different target groups (ie personal use and possession of

⁷ Alison Ritter et al., "New Horizons: The Review of Alcohol and Other Drug Treatment Services in Australia," in *Final Report* (Sydney: University of New South Wales, 2014).

⁸ *Ibid.*

illicit drugs is a victimless crime, while other crimes, such as property offences, while not victimless can still be directly related to problematic use).

- While we support expansion of cautioning and the use of police discretion for minor drug offences we favour full decriminalisation as a more effective response. Diversion is not clearly defined in this part of the report. It is important that 'Police and Court Diversion' is not conflated with the Drug and Alcohol Court. While both 'divert' people from the justice system, the Drug and Alcohol requires a guilty plea, with sentencing suspended during the operation of the court order to participate in program.
- In Figure 13 there is no pathway represented for when an 'offender does not agree, or victim not satisfied' (eg back to existing court process or sentencing).

Feedback on recommendations

QNADA supports the draft recommendations outlined in the summary report and provides the following specific comments:

Draft recommendation 1

Reference to 'illicit drugs offences' should clearly defined as previously noted (eg personal possession and use vs trafficking)

Draft recommendation 2

Dot point 3 should include alcohol.

Information request:

As noted throughout our submission, we believe personal possession and use of illicit drugs does not warrant being defined as an offence. Where drug use is currently viewed as criminal, 'people who use drugs, by default, are stigmatised as deviant criminals.'⁹ Research demonstrates that stigmatisation of people who use drugs makes them less likely to seek health support if and when they need it. Stigma can impact on the effectiveness of treatment, trigger further alcohol and other drug use, and hinder people's ability to reconnect with the community.¹⁰ At a policy level, the criminalisation of illicit drug use means that evidence informed health responses, with demonstrated effectiveness in reducing harm, improving treatment access and improving individual health and wellbeing are less likely to be considered by policy makers due to misconceptions of 'encouraging' or 'condoning' drug use.

We believe that decriminalisation of personal possession and use of illicit drugs offers significant net benefits to the community as described above.

Draft recommendation 4

Many people who experience problems with alcohol and other drugs are among the most financially disadvantaged in our community and are disproportionately impacted by monetary penalties. Appropriate care should be taken in considering this as a reform option

⁹ International Network of People Who Use Drugs (INPUD), "Drug User Peace Initiative: Stigmatising People Who Use Drugs," (London: INPUD Secretariat, 2014).

¹⁰ Drug Policy Modelling Program, "Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use" (2018), <https://dmpm.unsw.edu.au/sites/default/files/dmpm/resources/Monograph%2026%20Drug%20Policy%20Modelling%20Program.pdf>

to ensure monetary penalties are not applied to community members who have no capacity to pay.

Draft recommendation 6

We support the extension of the QMERIT program. However, we do not support the extension of Court Link. QNADA members report that Court Link referrals to specialist alcohol and other drugs treatment services frequently result in an assessment indicating no treatment is required. This can cause a system bottleneck where treatment services are spending large amounts of time completing assessments that do not result in a service being offered or accepted.

Draft recommendation 10

We support the introduction of an effective throughcare model in the justice system. One example of an effective model can be found in Portugal, where employers are incentivised to take on people leaving prison through a rebate scheme and employees are guaranteed employment for the first 6 months post release.

Draft recommendation 12

Information request:

QNADA members report it is not uncommon for people leaving prison to be referred to residential rehabilitation services as a proxy accommodation option. In most cases residential treatment is not indicated, given the period of abstinence during incarceration, though it is noted this cohort may benefit from relapse prevention support which can be offered as an outclient counselling service.

Draft recommendation 15

Information request:

In relation to alcohol and other drugs education in schools, there are deficiencies in some programs being offered, which include those characterised as one off sessions being delivered by people or professionals external to the school environment (eg police or person recovering from a substance use disorder). These are known to be ineffective and in some cases increase student interest in particular drugs.

There are a range of evidence informed programs available in relation to alcohol and other drugs education in schools such as:

- Positive Choices - <https://positivechoices.org.au/>
- Climate Schools - <https://www.climateschools.com.au/>

Further, students who are suspended or expelled from school are at increased risk of drug related harm, however some schools are not equipped nor resourced to respond appropriately when they become aware of students who use drugs. It is of paramount importance that schools are supported to implement evidence informed responses to drug use to keep at-risk children engaged in education.

Draft recommendation 16**Information request:**

We recommend adding the removal of 'stop and search on suspicion of drugs' provisions as an additional measure to prevent unproductive interactions with the criminal justice system.