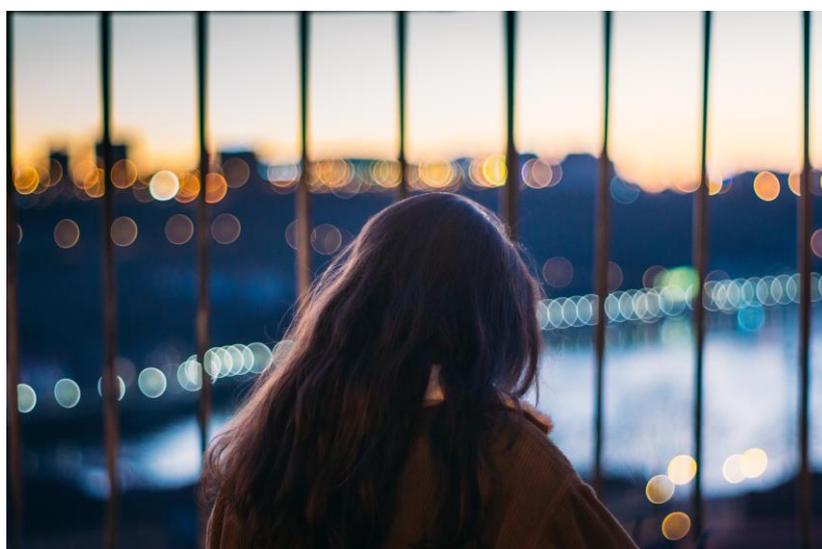


QCOSS

Queensland Council
of Social Service

A new justice narrative

*QCOSS submission in response to the
Queensland Productivity Commission
Inquiry into **Imprisonment and
Recidivism** Draft Report*



April 2019

About QCOSS

The Queensland Council of Social Service (QCOSS) is the state-wide peak body representing the interests of individuals experiencing or at risk of experiencing poverty and disadvantage, and organisations working in the social and community service sector.

For 60 years, QCOSS has been a leading force for social change to build social and economic wellbeing for all. With members across the state, QCOSS supports a strong community service sector.

QCOSS, together with our members continues to play a crucial lobbying and advocacy role in a broad number of areas including:

- place-based approaches
- citizen-led policy development
- cost-of-living advocacy
- sector capacity and capability building.

QCOSS is part of the national network of Councils of Social Service lending support and gaining essential insight to national and other state issues.

QCOSS is supported by the vice-regal patronage of His Excellency the Honourable Paul de Jersey AC, Governor of Queensland.

Lend your voice and your organisation's voice to this vision by joining QCOSS. To join visit [the QCOSS website](http://www.QCOSS.org.au) (www.QCOSS.org.au).

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QCOSS position

Thank you for the opportunity to make a submission to the *Queensland Productivity Commission (QPC) Inquiry into Imprisonment and Recidivism Draft Report*.

QCOSS develops policy and undertakes advocacy about how to support people out of poverty and disadvantage. Our aim is a Queensland where everyone can exercise their inalienable human rights, has equal access to resources and opportunity to participate in and benefit from social, cultural and economic life.

QCOSS is making a submission to this inquiry because people who are experiencing disadvantage are often more vulnerable to legal problems and are disproportionately represented in the justice system, leading to a criminalisation of poverty and disadvantage. This is most obvious in the criminalisation of people experiencing homelessness (given the leading cause of homelessness is a lack of affordable housing).

Many of these problems are caused by a system failure of various institutions not working together, for example corrections working more closely with health and housing to ensure people are not exited to homelessness. Supports can be siloed, complex and difficult to access and navigate when urgently needed. Problems also occur simply because people have inadequate income, making them more vulnerable outside of the prison system.

QCOSS congratulates the QPC on the Draft Report as it contains many valuable proposals for reform that, if implemented, will contribute to reducing imprisonment and recidivism.

Recommendations

QCOSS recommends the following actions be taken:

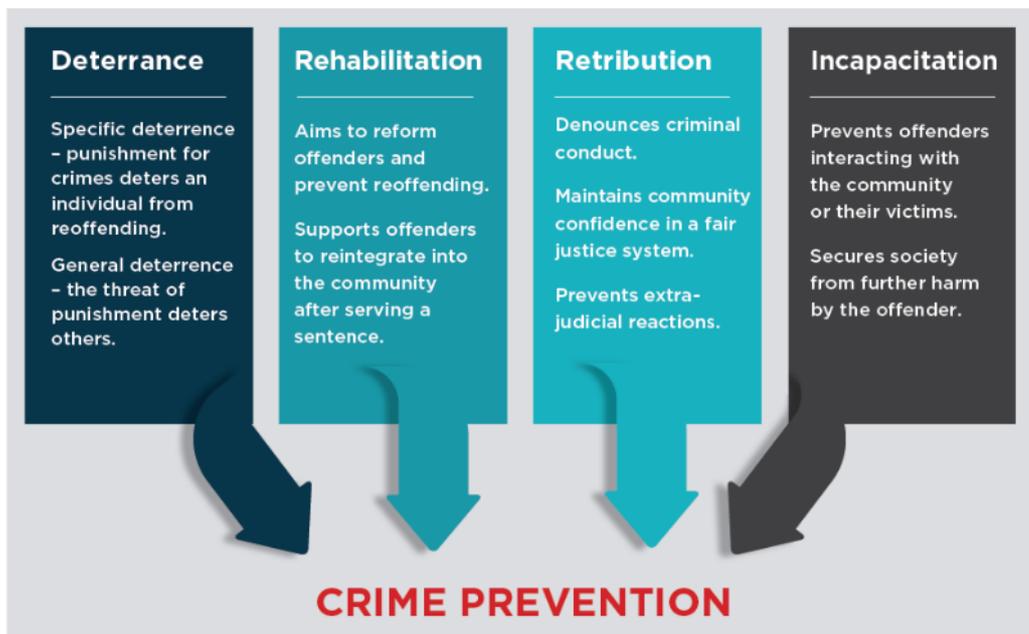
1. **Implement recommendations from previous inquiries and reports** – governments must promptly implement the many recommendations from previous inquiries and reports. (In support of QPC Draft Recommendations 13 and 14.)
2. **Challenge the false ‘tough on crime’ narrative with regular reporting** – politicians and the media must end the counter-productive ‘tough on crime’ rhetoric. Government bodies can influence this with timely and accurate reporting of relevant data. (In support of QPC Draft Recommendations 17 and 18.)
3. **Follow a human rights framework** – the criminal justice system (from policy makers to prisons) must adhere to a human rights framework as formulated in the new Queensland *Human Rights Act 2018*.
4. **Improve rehabilitation by targeting prevention and early intervention** – adequately fund support services so that they support people before they encounter the criminal justice system, through to transitioning back to community. (In support of QPC Draft Recommendations 9, 10, 11, 12 and 15.)
5. **Reduce scope of criminal offences, ensure proportionality and expand diversionary options** – implement alternatives to imprisonment and decriminalise illicit drug use and sex work. (In support of QPC Draft Recommendations 1, 2, 4, 5 and 16.)
6. **Implement place-based justice reinvestment** – make the Cherbourg justice reinvestment trial permanent, implement learnings from this and the trial in Burke, NSW.
7. **Improve protections for groups more likely to experience disadvantage and who are vulnerable to injustice** – these include those financial excluded, First Nations people, people living with a disability and people experiencing homelessness.

Background and context

Do prisons achieve their purpose?

The QPC Summary Report notes that the intended purpose of imprisonment within the criminal justice system is to prevent crime through:

- **Deterrence** – punishing crime to prevent it and to reduce recidivism
- **Rehabilitation** – reduce re-offending and support re-integration
- **Retribution** – fair punishment and prevent extra-judicial vigilantism
- **Incapacitation** – protect community and individual safety



Source: QPC Inquiry into Imprisonment and Recidivism Summary Report (2019)

However, for many people encountering the criminal justice system, it does not keep them or the community safe, it is not fair or just, and instead causes harm and lifelong consequences that are disproportionate with the nature of the offence. This contributes to low levels of trust and confidence in the system.

The criminal justice system has a disproportionate impact on people experiencing vulnerability or disadvantage. This is reflected in the prison population where Aboriginal and Torres Strait Islander people, people living with a mental illness, people that have experienced trauma, people experiencing homelessness and people with drug and alcohol issues are significantly over-represented in our prisons.

It is estimated that up to 85% of female inmates in Australia are parents of dependent children and heads of single parent families. The impact on children with supporting parents in prison is critical (ADCQ, 2006). For many children, the incarceration of their mother causes instability in multiple domains. Emotional attachment is impaired and relationships dislocated causing psychological insecurity potentially compounded by altered living arrangements, schooling, stigma and financial hardship. The incarceration of a primary care giver also places children at increased risk of contact with the child protection system further traumatising the child, perpetuating generational disadvantage and increasing the economic burden on the state.

The Justice Report (Law Council of Australia, 2016), found that our largest mental health institutions in Australia are our prisons. It is important to recognise that it is not just those who end up in prison who are negatively impacted by the system, but also the families and communities that are impacted by the person's absence.

When a person spends time in prison, away from their family and community, they are likely to experience negative consequences that extend far beyond their time in prison such as; barriers to employment, housing; and banking and finance issues. It can also put their families in financial hardship and housing stress. Communities that have high numbers of people going to prison are also adversely impacted.

A person's contact with the criminal justice system often stems from poor experiences with other aspects of our essential service systems: health, housing, education, employment, banking and finance, transport, or income support.

The criminalisation of poverty also occurs through federal social security measures (such as robo-debt, drug-testing, income quarantining, work for the dole, demerit points and cashless welfare) applied to people accessing income support. The evidence indicates that these expensive, harmful and discriminatory measures disempower, stigmatise and further disadvantage people on low incomes, further entrenching their poverty.

RATIONALE FOR CHANGE

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



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



PRISONS ARE **OVERCROWDED** compromising safety and rehabilitation efforts



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



PRISONS ARE **EXPENSIVE** - it costs around **\$107,000** per year to house each prisoner

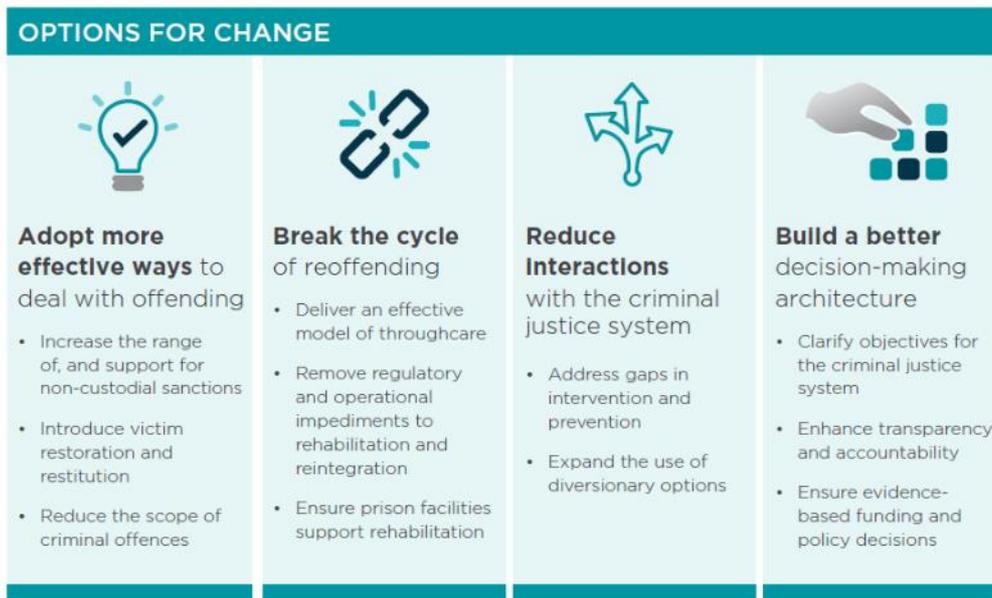


High rates of **reoffending** are compromising community safety



Source: QPC Inquiry into Imprisonment and Recidivism Summary Report (2019)

Recommendations



Source: QPC Inquiry into Imprisonment and Recidivism Summary Report (2019)

1. Implement recommendations from previous inquiries and reports

QCOSS supports **QPC Draft Recommendation 13 and 14** to publish the 'Youth Justice Action Plan' and implement the recommendations of QPC 'Service delivery to Queensland's remote and Indigenous communities report'.

Governments have failed to implement the many evidence-based recommendations that have already been made, especially those that aim to improve outcomes for groups who are vulnerable to injustice. As the Inquiry Issues Paper notes, there have been at least 10 major reviews into the Queensland Criminal Justice System in the past ten years. It also notes that recommendations from these reviews have not been fully implemented. The Queensland government must implement all these previous recommendations, especially those regarding people who are vulnerable to injustice.

There are also many relevant inquiries, submissions and reports, both national and Queensland-focussed, that provide valuable recommendations. QCOSS specifically endorses the conclusions and recommendations of these reports:

- *Double Punishment - How People in Prison Pay Twice*, (Financial Counselling Australia, 2018)
- *Indefinite detention of people with cognitive and psychiatric impairment in Australia*, (Community Affairs Reference Committee, 2016)
- *Queensland Drug and Specialist Courts Review* (Queensland Courts, 2016)
- *Royal Commission into Aboriginal Deaths in Custody*, (Johnston, 1991)
- *Service delivery to Queensland's remote and Indigenous communities report* (Queensland Productivity Commission, 2017)
- *The Justice Project Final Report* (Law Council of Australia, 2018)
- *The Provision of Services under the NDIS for People with Psychosocial Disabilities Related to a Mental Health Condition*, (Joint Standing Committee on the NDIS, 2017).

2. Challenge the false ‘tough on crime’ narrative with regular reporting

QCOSS supports **QPC Draft Recommendation 17 and 18** to build a better decision-making architecture including improving transparency and accountability by providing timely and accurate data.

The QPC Summary Report indicates the following evidence that runs counter to the prevailing ‘tough on crime’ narrative:

- *“Imprisonment rates are increasing, despite falling rates of crime*
- *Rising imprisonment rates are driven by policy changes, not crime rates*
- *Increasing imprisonment can make the community less safe*
- *The costs of imprisonment are high”* (2019, p. 8-12)

The Australian Survey of Social Attitudes (ASSA) (Roberts & Indermaur, 2009) indicated that the Australian public sources their information about the Criminal Justice System, (“the system”), primarily from broadcast and tabloid media. This has resulted in much of the public having inaccurate views about the occurrence of crime and the severity of sentencing. The ASSA indicates that the Australian public perceives crime to be increasing when it isn’t, overestimates the proportion of crime that involves violence, and underestimates the proportion of charged persons who go on to be convicted and imprisoned.

Political parties and leaders seek to benefit politically from the public’s fears of increasing violent crime and weak sentencing by engaging in self-defeating ‘tough on crime’ rhetoric. This is not based on evidence and further contributes to this false narrative. As a result, to ‘reflect community expectations’, the criminal justice system has been skewed unfairly towards harsher, more punitive responses including mandatory sentencing, minimum terms, and reduced parole. These approaches impinge excessively and unnecessarily on human rights, without evidence that positive outcomes of reducing crime or recidivism are achieved.

Politicians and media must end the self-defeating ‘tough on crime’ rhetoric. Harsher penalties, such as mandatory sentencing, minimum terms, and reduced parole do not reduce crime, imprisonment or recidivism.

“Despite increasing investment in prisons and the justice system in WA and a ‘tough on crime’ approach, including mandatory sentencing, minimum terms, and reduced parole, no significant return on the State’s investment in this area has been achieved. This investment has not led to a reduction in offending rates, reduction in recidivism rates, or improvements in community safety.” (WAAMH, WACOSS & WANADA, 2013).

“More intense crime repression can backfire because it increases the possibility that criminals’ sons become criminals themselves” (Bezin, Verdier & Zenou, 2018).

The harsh ‘tough on crime’ rhetoric appeals to some community expectations both because of the fear of becoming a victim of crime, and the belief that offenders deserve punishment. However, it is a dishonest rhetoric without evidential support (Roberts & Indermaur, 2009).

Whilst the scope of this QPC Inquiry does not include media or political campaigning, it does highlight this concern with the narrative in the Draft Report in the section “*Stakeholder views on the roles of politics and media*” (2019, p. 238). This shows strong and broad support for reforming the destructive ‘tough on crime’ narrative that is in defiance of the evidence.

QCOSS recommends that governments be required to regularly, accurately and comprehensively report on imprisonment data and trends such as imprisonment rates, crime and recidivism rates, community safety and cost of imprisonment.

3. Follow a human rights framework

Decision makers in the criminal justice system must make decisions that are consistent with a person's human rights. This is best done with the application of an explicit human rights framework to assess decisions against.

QCOSS supports the Queensland Government's new Human Rights Act as a critical step in providing Queenslanders with the confidence in the criminal justice system. QCOSS supports the inclusion of both civil and political rights, economic, social and cultural rights as part of a Human Rights Act for Queensland.

It is important to have a strongly defined Human Rights Act that protects basic freedoms that all human beings are entitled to, no matter their race, gender, religion, political belief, sexuality and/or age. Queenslanders who experience disadvantage, including those encountering the criminal justice system, will benefit greatly from the additional protection of the new Human Rights Act.

Specifically, the new Act identifies a 'Right to liberty and security of person', 'Humane treatment when deprived of liberty', 'Fair hearing', 'Rights in criminal process', 'Children in criminal process', 'Right not to be tried or punished more than once' and 'Retrospective criminal laws' (Sections 29 to 35, p. 23-27). It also makes changes to the Corrective Services Act 2006 and Corrective Services Regulation 2017, (Sections 125 to 131, p. 68-70). These changes have implications for the current overcrowding in Queensland prisons.

However, QCOSS strongly urges the government to consider alternatives canvassed in this inquiry instead of the construction of new prisons in responses to this over-crowding. Privatisation of prisons is also not the answer to overcrowding and escalating costs of incarceration. The link between private prison profits, increased prison populations, and harsher sentencing from 'tough on crime' rhetoric, demonstrates an obvious conflict of interest. QCOSS welcomes the Queensland government decision in March 2019 to restore the previous privately run prisons to government administration.

The Human Rights Act also highlights the collective and cultural aspects of Aboriginal and Torres Strait Islander people with the inclusion of an explicit right to self-determination for all Aboriginal and Torres Strait Islander people in the Preamble (p. 10).

Additionally, the consideration of human rights should extend beyond those directly affected by imprisonment and recidivism, including children of those offending. The United Nations Convention on the Rights of the Child, Article 17, outlines the need for children to know their parents, and the right to be cared for by them whenever possible. Parents imprisoned for non-violent offences are unable to care for their children directly, consequently disrupting the family unit.

4. Improve rehabilitation by targeting prevention and early intervention

QCOSS supports the **QPC Draft Recommendation 9, 10, 11 and 12** to improve rehabilitation and reintegration. This can be achieved by specifying rehabilitation as an objective, improving throughcare, requiring consideration of rehabilitation when assessing corrections infrastructure and improving the likelihood of successful reintegration. QCOSS also supports **QPC Draft Recommendation 15** to address gaps in prevention and early intervention.

Adequately fund support services

People that are identified as being at-risk should be supported as early as possible to prevent contact with the criminal justice system, or to respond quickly when they encounter the system, to ensure they can get the support they need to get their lives back on track. The

Queensland Government needs to focus on increasing investment in early intervention and prevention approaches for people experiencing vulnerability or disadvantage.

Properly funded services and supports are essential for all people that encounter the criminal justice system. These supports include:

- **legal** aid and community legal centres
- **financial** counsellors and resilience workers
- **social** and health support services including cultural, disability, mental health, and alcohol and other drugs.
- **essential** services including health, education, housing, income support, energy, water, transport and telecommunications
- **employment** services

The **Justice Project** indicated that attention needs to be paid to people exiting institutions: hospitals, child protection system, detention, mental health facilities and prison, with increased investment needed in bail accommodation, bail support programs and post release accommodation for prisoners.

Examples of such support programs include Sisters Inside, Community Re-entry Services Team (CREST), SEQ Women's Re-entry Service (MARA) and the Borallon Training and Correctional Centre (BTCC) Throughcare Services. MARA is providing support to women participating in the "Next Step Home" Women on Parole supported housing program being delivered by the Department of Housing and Public Works in South East Queensland. Sisters Inside will be supporting women through "Next Step Home" in North Queensland (Townsville).

The Queensland Government needs to provide assistance for people at risk of long-term unemployment by providing targeted, tailored and flexible assistance to overcome barriers to employment and reduce the risk that children will grow up in jobless households.

5. Reduce scope of criminal offences, ensure proportionality and expand diversionary options

QCOSS supports the **QPC Draft Recommendation 1 and 2** to remove activities from criminal code where the costs outweigh the benefits and explore alternative policy approaches to criminalisation. QCOSS also supports **QPC Draft Recommendation 4 and 5** to explore the range of non-custodial sanctions, and **QPC Draft Recommendation 16** to expand diversionary options.

Implement alternatives to imprisonment

To demonstrate the fairness of the system, punishments must not escalate beyond the scale of the original offence. The ultimate penalty must relate to the original act with protection from imprisonment provided for minor offences that escalate because a person cannot comply with a court imposed fine or other penalty.

Prison should be an absolute last resort and certain offences should never lead to prison. As the Inquiry Report highlights there are alternatives available (such as home detention, forfeiture and restitution, and restorative justice).

The Queensland Review of the Drug Courts (Queensland Courts, 2016), offers comprehensive principles, recommendations, and best practice standards for drug court diversionary treatment programs.

Decriminalisation of illicit drug use and replace with a health response

There is a high prevalence of problematic substance use among people in contact with the criminal justice system. In Queensland, people who use substances are seven times more

likely than dealers or traffickers to encounter the criminal justice system. Possession and consumption of illicit substances should be decriminalised.

Problematic alcohol and other drug use is a health issue and should have a health response. There is a lack of support for people who have used drugs prior to incarceration and insufficient support programs for those exiting incarceration. The QNADA submission to this inquiry indicated that *“illicit drug use recognised as the most stigmatised health condition in the world and often cited as a barrier for people wishing to enter treatment”* (QNADA, 2018).

The *Queensland Drug and Specialist Courts Review* (Queensland Courts, 2016), indicated that the Queensland Criminal Justice System has been experiencing increasing engagement with people for illicit drug offences, with the growth in the number of people with an illicit drug offence as their principal offence exceeding total criminal justice system growth.

A high level of demand for alcohol and other drug treatment services shows there needs to be a significant investment in the sector including in opportunities for people to engage in treatment as part of the judicial process which has been found to be highly effective in reducing recidivism and improving health outcomes.

The Drug and Specialist Courts Review developed a comprehensive criminal justice model that outlined several interventions, (including drug courts), that have the purpose to:

- reduce the risks, frequency and seriousness of offending of people encountering the criminal justice system with alcohol and other drug issues and other significant issues that are contributing to their offending
- divert offenders from prison where it is safe to the community to do so, and reduce their risks of future imprisonment
- improve health and social outcomes for the defendant and their family members.

Drug courts provide an intensive form of intervention for some of the highest risk, highest needs offenders with entrenched problematic substance use issues. Drug courts provide the motivational mechanisms for offenders to receive treatment for problematic substance use and other factors such as mental illness, homelessness and criminal behaviours.

The Drug and Specialist Courts Review recommended the following guiding principles for interventions (including for alcohol and other drug interventions) in a criminal justice context:

- proportionality
- cost effectiveness
- minimise unintended consequences
- respect right to privacy
- minimal coercion
- consent to intervention.

QCOSS supports the evidence-based QNADA recommendation that *“System responses to alcohol and other drug use should be health and treatment focused as distinct from criminal justice/law enforcement approaches”* (QNADA, 2018). QCOSS also supports evidence-based changes to allow for drug safety testing and harm reduction services at nightclubs and festivals, such as ‘The Loop’ pill-testing services.

Decriminalisation of sex work to support safe work practices

The 1989 Fitzgerald inquiry exposed high levels of police corruption and recommended removing police from any regulatory role over sex industry. Thirty years later police are still regulating individual sex workers. The current Queensland laws (such as the Prostitution Act, 1999) do not provide a safe working environment, effectively regulate the industry, nor protect against police corruption.

The current laws in Queensland make essential safe working practices illegal (such as working in pairs, texting each other when clients leave, hiring a receptionist, helping each other with advertisements, using a driver that another sex worker uses).

QCOSS supports the campaign by Respect Inc. and the Scarlet Alliance to fully decriminalise sex work. Decriminalisation is a regulatory model that is low cost, reduces barriers to compliance and results in improved workplace health and safety and access to justice for sex workers.

Diversionsary services for people intoxicated in public spaces

Diversionsary services for people intoxicated in public space are located in seven city centres across Queensland and play an important role in diverting people from negative contact with the justice system. These programs are able to respond to referrals from the Qld Police Service, other government and community services and community members.

The three service types of services are (1) Cell Visitor program (practical and emotional support to people in custody for substance related offences), (2) Community Patrols (engagement with intoxicated people in public space and transport to safe places if required) and (3) Diversion Centres (respite centres where intoxicated people can sleep under observation and access food, water, showers and referrals). These services are all valuable and QCOSS recommends that they be adequately resourced and expanded to other centres as required.

6. Implement place-based justice reinvestment

The Queensland Government needs to rebalance the investment profile from crisis responses, to prevention, early intervention, and recovery, (see also “*Improve rehabilitation through early intervention*” above). This should include improved access to early childhood development opportunities for children experiencing poverty and disadvantage and increased support for vulnerable parents to assist them to improve child development outcomes.

A place-based, developmental approach to crime prevention seeks to address future potential criminal behaviour by addressing risk factors and strengthening the protective factors known to be associated with criminal behaviour. A developmental approach to crime prevention takes a life course approach identifying transition points where interventions are most effective at reducing the potential for future criminality. This approach acknowledges that prevention and early intervention is required to lesson risk factors and build protective factors.

An example of a successful, evaluated justice reinvestment program is the *Maranguka Justice Reinvestment Project* (KPMG, 2016). The project, the largest of its kind in Australia, is to build safer, stronger communities. The initiative developed in 2013 when members of the Bourke Aboriginal community approached Just Reinvest NSW with an interest in adopting a community-led justice reinvestment approach. A community strategy for change was developed, *Growing Our Kids Up – Safe, Smart, Strong*, and implementation commenced in 2015. The Project is directed and guided by the Bourke Tribal Council and a ‘backbone’ team works with existing services to work collectively to develop and implement local solutions.

Statistics demonstrate the following changes in Bourke between 2015 and 2017:

- 18 per cent reduction in the number of major offences reported
- 34 per cent reduction in the number of non-domestic violence related assaults reported
- 39 per cent reduction in the number of domestic violence related assaults reported
- 39 per cent reduction in the number of people proceeded against for drug offences.
- 35 per cent reduction in the number of people proceeded against for driving offences.

Re-offending has also decreased, with the following changes observed between 2014 and 2016:

- eight per cent reduction in the overall rate of re-offending with a new offence within 12 months of release
- 15 per cent reduction in the rate of domestic violence re-offending among domestic violence offenders (aged 18-25 years)

- 48 per cent reduction in the rate of domestic violence re-offending among domestic violence offenders (aged 26 and over).

For children and young people (10-25-year old's) the following changes have occurred:

- 14 per cent reduction in the rate of re-offending with a new offence within 12 months of release (2014 to 2016)
- 12 per cent reduction in the total number of young people proceeded against for offences from 2015 to 2017
- 38 per cent reduction in number of young people (up to 25 years) proceeded against for driving offences from 2015 to 2017
- 43 per cent reduction in number of young people proceeded against for breaches of Apprehended Violence Orders from 2015 to 2017
- 43 per cent reduction in number of young people proceeded against for domestic violence related assault from 2015 to 2017.

QCOSS supports the Queensland Government's social reinvestment pilot program currently being trialled in Cherbourg. The program provides positive opportunities for young people to be involved in their community. The social reinvestment pilot supports community-led actions in partnership with government, which is intended to improve wellbeing, and therefore lessen the demand on government-funded services. QCOSS recommends that the government make the Cherbourg justice reinvestment trial permanent, implementing learnings from both this trial and the one in Burke, NSW.

7. Improve protections for groups more likely to experience disadvantage and who are vulnerable to injustice

The recommendations of the *Justice Project* (Law Council of Australia, 2018) provide an analysis of the legal needs, barriers and service gaps and laws, policies and practices for people who are experiencing disadvantage that are vulnerable to injustice. The *Justice Project* takes a human rights approach to law reform. It identifies 13 groups experiencing significant disadvantage, vulnerability to legal problems and disproportionate representation in the justice system:

- Aboriginal and Torres Strait Islander people
- people with disability (including cognitive or psychosocial disability)
- people experiencing economic disadvantage
- people who are homeless
- older persons
- children and young people
- prisoners and detainees
- people who have been trafficked and exploited
- LGBTI+ people
- recent arrivals to Australia
- people seeking asylum
- people who experience family violence
- rural, regional and remote Australians

The Organisation for Economic Co-operation and Development (OECD) recognised social and economic costs and impacts of limited access to justice. It recognises the 'intrinsic links between access to justice, poverty reduction and inclusive growth (OECD, 2016). The OECD describes the costs of unmet legal needs on citizens, business and society:

"...individual consequences can in turn translate into greater spending on public programs such as social and health services, income supports, disability plans, employment insurance, and other services. The failure to resolve legal problems can contribute to a 'cycle of decline'...in which one problem leads to another with escalating individual and social costs. Inability to resolve legal problems and limited

access to justice may diminish access to economic opportunity, reinforce the poverty trap, and undermine human potential, which could affect growth.” (OECD, 2016)

Financial exclusion and double punishment

The Double Punishment Report, (Financial Counselling Australia, 2018), shows that people who are in prison are also punished financially because the prison, government and banking systems make it difficult to manage outstanding debts. People leave prison in a much worse financial position than when entering it, making it harder to re-establish themselves. Existing and new debts often increase while in prison because people in prison:

- are not able to pay debt while in prison as access to income and banking is lost
- have no time or knowledge to negotiate debts or payment arrangements, are forced to break rental leases resulting in loss of bond and rental arrears
- are subject to many debts continuing while in prison; mortgage, rates, utility bills, existing debt such as toll debt, SPER debts and credit card payments
- may find it difficult to find and appoint a power of attorney to manage their financial affairs while in prison
- are more likely to have low literacy and numeracy skills and are not able to advocate for themselves especially while in prison where access to advocacy services is limited.

When a person comes out of prison they often have higher debts, and this may lead to homelessness and reoffending.

- Barriers to rental accommodation due to possible rent arrears, inclusion on TICA (rental blacklist), poor credit rating or unexplained gap in employment.
- If a creditor has taken enforcement action to recover a debt, a person may have a new court ordered penalty such as a suspended licence, an additional fine, or assets repossessed. This acts as a further barrier to housing and employment.
- There are limited financial counsellors in Queensland and accessing legal advice for financial matters can also be limited, leaving a person without access to advocacy and support services.

Financial counsellors attending prisons can help prisoners advocate with creditors; revoke or establish power of attorney, negotiate with utility companies, banks and other institutions to access long-term hardship payment plans. This includes writing applications to banks for financial hardship. Banks, for example, can put a halt on mortgage payments and then capitalise the arrears.

First Nations peoples

The *Justice Project* identifies Aboriginal and Torres Strait Islander people as experiencing significant disadvantage, vulnerability to legal problems and disproportionate representation in the justice system (Law Council of Australia, 2018). This is especially so for Aboriginal and Torres Strait Islander people living with disability. The project recommends an integrated, cross jurisdictional, and culturally competent approach to supporting the needs of Aboriginal and Torres Strait Islander people living with disability encountering the justice system. This includes:

- better strategies to identify disability
- better access to support services, particularly in rural, regional and remote communities.

The recent review (Deloitte Access Economics, 2018) of the Royal Commission into Aboriginal Deaths in Custody (Johnston, 1991) indicates that only two-thirds of commission's recommendations have been fully implemented.

The Royal Commission into the Protection and Detention of Children in the Northern Territory (White & Gooda, 2017) was established after revelations regarding the Don Dale Youth

Detention Centre in the Northern Territory. The commission found that the Northern Territory youth detention system was in breach of, or inconsistent with, the following:

- *Anti-Discrimination Act 1996* (NT)
- *Convention on the Elimination of All Forms of Discrimination Against Women*
- *International Covenant on Civil and Political Rights*
- *Sex Discrimination Act 1984* (Cth)
- *United Nations Convention on the Rights of the Child*
- *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*
- *United Nations Standard Minimum Rules for the Treatment of Prisoners*

The commission reported numerous cultural failings in the youth detention system including that it:

- directed children and young people not to use Aboriginal language
- failed sufficiently to recognise the benefits of using Aboriginal interpreters and interpreting services
- systematically failed to identify and use kinship carers for Aboriginal children.

The report made several recommendations related to Aboriginal culture, including:

- **Recommendation 7.3:** The Northern Territory and Commonwealth Governments immediately engage with Aboriginal community representatives to negotiate the broad terms for the partnership and its implementation across the Northern Territory.
- **Recommendation 16.8:** The Department of Education recruit tutors proficient in the major Aboriginal language(s) of the area in which the detention centre is located to deliver, at least weekly, a literacy program in Aboriginal language.
- **Recommendation 18.1:** Territory Families:
 - a) implement policies to incorporate Aboriginal cultural competence and safety in the design and delivery of education, programs, activities and services for children and young people in detention
 - b) implement the recommendations of the 2014 review of the youth justice and community corrections recruitment processes targeted at recruiting more Aboriginal youth justice officers
 - c) require case management assessments to ascertain a detainee's personal, family and cultural background, including skin or language group and competence in the English language.
 - d) establish a working party comprised of representatives of relevant Aboriginal organisations, the department responsible for youth detention and senior representatives of the detention centres to explore the development, funding and implementation of an enhanced Elders Visiting Program and other culturally appropriate activities and programs.

The Human Rights Act highlights the collective and cultural aspects of Aboriginal and Torres Strait Islander people with the inclusion of an explicit right to self-determination for all Aboriginal and Torres Strait Islander people in the Preamble (2018, p. 10).

People living with disability

The inquiry into *Provision of Services under the NDIS for People with Psychosocial Disabilities Related to a Mental Health Condition*, (Joint Standing Committee on the NDIS 2017) identified specific concerns:

- There have been problematic intersections with the NDIS and prisoners exiting forensic mental health facilities. In some cases, plans appear to stop when a person enters a facility (even though they are not meant to).
- There are situations where NDIA planners have refused to fund certain supports until a release date is set. So, a person can't exit a facility without supports and can't get support until they exit a facility such as supports for day support or overnight leave

from forensic mental health facilities. This is essential for someone transitioning out of a facility into the community (that is: people must prove they can function safely in the community through staged release). Previously most day supports (“core supports” under the NDIS) and supported accommodation (respite) were provided for under state-based programs, many of which have since rolled into the NDIS.

- Some service providers are choosing not to work with the most complex clients, therefore finding organisations to provide services to ex-forensic participants under a plan is difficult.

These concerns were further explored by the inquiry into *Indefinite detention of people with cognitive and psychiatric impairment in Australia* (Community Affairs Reference Committee, 2016). This inquiry covered the key issues for people with psychiatric conditions and intersections with criminal justice system (forensic patients).

The *Justice Project* made specific recommendations regarding people living with disability (including cognitive or psychosocial disability). These are:

- to develop a disability justice plan/action plan that is codesigned with people with lived experience of disability and the justice system
- to increase funding for disability-aware legal assistance services particularly in rural, regional and remote areas. This includes disability workers and advocates to provide support (particularly those with mental health and cognitive impairment) at every stage of their involvement with the system.
- training, education and awareness raising programs codesigned with people with disability for staff across the justice system (police, legal practitioners, judiciary and corrections staff), including trauma informed and recovery approaches.
- formally recognise supported decision making as per the *Convention on the Rights of Persons with Disabilities* (CRPD).

The *Justice Project* also recommended that ‘unfitness to stand trial’ laws be reviewed from a human rights framework (and new act). If someone is found unfit to stand trial, then:

- there are limits on detention time
- independent and regular review of detention orders
- access to judicial review for those held without charge or conviction
- alternative non-custodial accommodation options (that are sustainable, stable, secure, rehabilitative and individualised).

People experiencing homelessness

The QCOSS *Home for Good* campaign was a community-driven project during 2014/15 which successfully captured valuable localised data regarding homelessness in 17 communities across Queensland. It found that “*the homeless population are one of the most criminalised groups and, despite committing generally minor offences, are much more likely to be imprisoned*” (Flatau, 2018).

Data from *Home for Good* surveys of more than 2,500 people who experience homelessness in Queensland indicated that over 30 per cent of respondents had previously served a term of imprisonment, with Indigenous people 15 times more likely to experience homelessness than non-Indigenous people. Nearly 24 per cent of the cohort experienced learning or intellectual impairment, 19 per cent had been involuntarily hospitalised for mental health reasons, and 47 per cent had a history of problematic drug and/or alcohol use.

The *Justice Project* recommended that jurisdictions commit to specialist homelessness legal services and related supports, increased investment and support for safe, secure, stable and affordable housing, particularly for groups at high risk of homelessness:

- women and children escaping domestic and family violence
- children transitioning from institutional care
- recently released prisoners

- Aboriginal and Torres Strait Islander people
- people living with disability.

The leading cause of homelessness is a lack of affordable housing. Effectively dealing with homelessness requires more than just adequately funding homelessness services. Evidence shows that the most effective approach to eliminate homelessness is a 'Housing First' approach of rapidly re-housing people in long term accommodation with wrap around support services to sustain tenancies. However, this requires an integrated response from governments and services to provide both secure accommodation and appropriate support services.

Australian housing is a complex, interconnected social, economic and political system, involving individual, community, business and government values and choices. This is impacted by a range of social and economic policy measures including employment, transport, taxation and income support, as well as traditional housing policy areas of rental tenancies, housing finance and construction and social housing. As a result, housing needs a holistic, integrated and comprehensive policy response. The *QCOSS Housing Position Statement* outlines a holistic, integrated and comprehensive response to declining housing stability and affordability across the housing continuum. (QCOSS, 2018)

A case study - Transport2Court

In Queensland, if a person fails to appear in court in accordance with a bail undertaking or recognizance, they commit an offence. Failing to appear is an offence that leads to a waste of critical policing, judicial and other socio-legal resources in addition to more profound sentencing outcomes for the individual. Failure to appear in court often results in accused persons being remanded in custody.

Transport2Court was a prototype project in 2013 that aimed to financially assist vulnerable and disadvantaged criminal law defendants to attend their court proceedings. The project arose out of a concern that people were unable to afford the cost of public transport to attend court proceedings were being further criminalised by being charged with the criminal offense of 'failure to appear'. Partnerships were established with relevant service providers (Queensland Court Referral, Brisbane Murri Court and the Aboriginal and Torres Strait Islander Legal Service) that worked with vulnerable defendants and each organisation was provided with prepaid TransLink go cards to distribute to clients who had an upcoming court date.

Providing this assistance reduces pressure on police resources, allows people to attend court and not to be criminalised for their poverty.

Conclusion

A new justice narrative with increased trust in the system and better social outcomes

The criminal justice system is a critical element of civil society. Citizens have high expectations but low trust in the system. As with many social policy areas, the evidence that a justice reinvestment approach reduces imprisonment and prevent recidivism is known, it just requires political will, and funding priority.

The narrative about the criminal justice system must change from harsh, ineffective 'tough on crime' rhetoric, to one that focuses on building strong resilient communities that support people and families that are experiencing vulnerability and disadvantage.

This new narrative needs to be supported by a rebalancing of the investment profile from the criminal justice system (police, courts and prisons) to services that improve resilience and wellbeing (health, education, housing, transport, banking and finance, and income support).

This rebalancing will lead to:

- improved resilience and wellbeing (community and individual)
- reduced offending and reoffending
- fewer people in prison
- savings and improved effectiveness of the criminal justice service system (police, courts and prisons)
- increased trust and confidence in the system

As the Inquiry Issues paper noted, there have been more than one review a year into the Queensland Criminal Justice System in recent times, with many of the recommendations not yet fully implemented. The political and structural barriers to reforming the system must be addressed directly, (including changing the narrative), to ensure governments are held accountable and act to implement these recommendations.

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