



The Indigenous incarceration crisis:
the Queensland Productivity Commission
response is inadequate

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The QPC's draft report does not adequately address Indigenous incarceration

The QPC's draft report does not adequately address the issue of Indigenous incarceration, despite it being an explicit part of the inquiry's terms of reference. Indigenous Australians are only 3% of Australia's population, but make up 27% of the Australia's prison population. Indigenous people are, as the *Uluru Statement from the Heart* laments, "the most incarcerated people on the planet."¹

The QPC inquiry must grapple with the question of *why* all previous attempts at addressing Indigenous incarceration have so comprehensively failed? Why is it that Indigenous incarceration is worse now than it was at the time of the Royal Commission? Why did the rate of [Indigenous incarceration increase](#) by an astonishing 45% between 2008 and 2018, for example? Why has everything done in the past failed to fix things, and in fact probably made things worse?

If we are to begin to turn the Indigenous incarceration situation around, the starting point must be fearless honesty, acknowledging at the outset:

- There is no reason to believe that whatever we propose to do will make any difference for the better.
- There is every reason to believe Australia does not know what to do to truly turn this crisis around.
- These problems have become entrenched, cyclical and intergenerational and there are many signs they are possibly becoming worse.
- That no-one has a compelling or convincing plan to tackle this wicked problem.

The problem of Indigenous imprisonment and recidivism is not a small problem. It's massive. It is tragic and urgent. It requires big thinking and big solutions, not the same old same old. Small ideas, and small changes to a system that has comprehensively failed, will not lead to the improvements we all want to see.

We have a moral obligation to properly come to grips with the question of what must be done to reverse the pattern of Indigenous incarceration. Unless the QPC grapples with the fundamental challenges, this inquiry will fail to have any impact on our great state and national disgrace as it will have failed to get to the heart of the problem—either in its diagnosis, or the treatment proposed. This inquiry will be yet another inadequate report on Indigenous incarceration, offering inadequate solutions to one of the most pressing problems facing our nation. The inquiry will have served only a political purpose, even if it

¹ See Anthony, T. 2017. [FactCheck Q&A: are Indigenous Australians the most incarcerated people on Earth?](#) *The Conversation*.

serves no serious practical one—it will allow the government to continue to dodge the hard questions and avoid dealing with the heart of the problem.

Australia must come to grips with the failure of the Royal Commission

The Royal Commission into Aboriginal Deaths in Custody held some 30 years ago, awakened our national consciousness to the gross overrepresentation of Indigenous people in prison. At the time, and in the period following, there has been unequivocal political support for its findings. But three decades on, such support has not translated into improved outcomes. The problem has continued to worsen.

The Royal Commission failed to adequately identify and distinguish the proximate and the ultimate drivers of incarceration, and to recommend effective responses to these key drivers. The Royal Commission correctly diagnosed the key problem was that of Indigenous disempowerment. In 1991, in his final report of the Royal Commission into Aboriginal Deaths in Custody, the Commissioner, the late Elliot Johnston QC, focused on the importance of the empowerment of Aboriginal society. He identified three critical elements of such empowerment:

The first and the most crucial is the desire and capacity of Aboriginal people to put an end to their disadvantaged situation and to take control of their own lives. There is no other way.

Only the Aboriginal people can, in the final analysis, assure their own future. This, of course, is no easy thing. Where a people have been put down for so long, deprived of rights, made dependent, regarded and treated as inferior, assigned a totally inferior status in society, some or many become lost in despair.

The second prerequisite is assistance from the broad society and this basically means assistance from governments with the support of the electorate, or at least without its opposition.

The third prerequisite to the empowerment of Aboriginal people and their communities is having in place an established method, a procedure whereby the broader society can supply the assistance referred to and the Aboriginal society can receive it whilst at the same time maintaining its independent status and without a welfare-dependent position being established as between the two groups.

That requires an adherence to the principles of self-determination...

Despite this insight, the Royal Commission made no attempt to describe *how* the disempowerment of Indigenous people should be remedied so that Indigenous

communities themselves can take greater responsibility in finding solutions to the complex problems of Indigenous disadvantage—this was and still is a fatal flaw. It did not describe a method for empowerment. It did not set out the structural reforms required.

The critical matter of *how* this key change could be achieved cannot be left unexamined. Despite the political support for the Royal Commission’s reforms, governments struggled to grapple with this fundamental question of the method for empowerment, and instead sought simpler answers through more narrowly focusing on issues such as improvements to the criminal justice system.

Not only did the Royal Commission fail to suggest a method for empowerment, it also did not adequately identify and distinguish the proximate factors in Indigenous offending from this ultimate cause of disempowerment, and thus it largely overlooked reforms needed to address such proximate factors. The key connection between drivers such as alcohol and drug misuse, and violence, and Indigenous offending were not adequately addressed.² The Royal Commission applied ‘symptom theory’ thinking: which holds that it is mainly dispossession and poverty that causes and maintains addictions, dysfunction and violence. But this thinking is wrong. The abuse of grog and violence are epidemics their own right, not merely symptoms of underlying social and psychological problems.

We need a new theoretical framework. The theory underpinning the Royal Commission has obviously failed in a very fundamental way. Yet in the face of this ongoing failure, we appear to have no solutions other than to continue to pursue the same old standard formula to respond to the overrepresentation of Indigenous people. The reform legacy of the Royal Commission continues to offer false promise—it is a damaging distraction from the real changes that are required if the situation is to be turned around.

Many reports have since continued to call for the faithful implementation of the Royal Commission’s recommendations as the solution. Indeed the same policy formula put forward by the Royal Commission, continues to be the policy formula that dominates today.

This formula posits that the solution is to be found in the social policy paradigm—more funding for more programs and services, more diversion, and a better, fairer criminal justice system. The formula has been updated somewhat in recent years with recommendations also for Justice Reinvestment and proposals for a justice target to add to the Closing the Gap framework, such as in the [recent report of the Australian Law Reform Commission](#). The QPC draft report indicates it may be at risk of following the same well-travelled path.

Offending is the key proximate factor

In terms of proximate factors in the gross overrepresentation of Indigenous people in custody, as Don Weatherburn and others have pointed out, the empirical evidence shows

² Criminologists such as Don Weatherburn are correct in so far as they argue this: see Weatherburn, D. 2014, *Arresting Incarceration: Pathways Out of Indigenous Imprisonment*, Aboriginal Studies Press, Canberra.

that there are lots of Indigenous people in prison because there is lots of offending.³ Offending, and in particular the intolerable rates of serious violence that Indigenous people inflict upon each other, usually at times when alcohol or other drugs are involved, is the leading proximate factor in the overrepresentation of Indigenous people in prison.

Why are we not more keenly focused on that? To suggest otherwise obscures the problem. Such obfuscation guarantees ongoing failure in addressing it.

Let us be clear, the primary factor in Indigenous incarceration is Indigenous offending, but as the Uluru Statement correctly points out, Indigenous people are not “innately criminal”. Appalling offending and incarceration rates are not due to any genetic or cultural defect peculiar to our First Nations people. To suggest otherwise would be both intellectually dishonest and morally repugnant. Such thinking adopts prejudiced colonialist logic—the very attitudes that led us to this situation to begin with. Rather, “these dimensions of our crisis tell plainly the structural nature of our problem”. As the Uluru Statement identifies, “This is the torment of our powerlessness.”

Of course, where structural/institutional discrimination and bias exists,⁴ it must be confronted.⁵ This discrimination can manifest both in hard prejudice and soft bigotry—equally unjust and inadequate responses standing in the way of solving the problem. We know of one innovative idea to drive reform in this area. Associate Professor Adrian Marrie and Bukal Consultancy Services provide details in a report to the Queensland Anti-Discrimination Commissioner in 2017, *Addressing Institutional Barriers to Health Equity for Aboriginal and Torres Strait Islander People in Queensland’s Public Hospital and Health Services*. Using five key indicators (participation in governance, policy implementation, service delivery, recruitment and employment, and financial accountability and reporting) an objective and evidence-based audit was conducted of the levels of institutionalised racism in Queensland’s public health system. The same matrix for auditing institutions so that reforms can be implemented to address structural/institutional discrimination, could also be used in other service areas including the justice system, child protection, public housing, education and employment.

By all means, let’s find more effective ways make the criminal justice system fairer and more culturally competent. But more must be done to reduce Indigenous offending in a very substantial way. We must consider why does a relatively high proportion of the Indigenous

³ See e.g. Weatherburn, D. 2014, *Arresting Incarceration: Pathways Out of Indigenous Imprisonment*, Aboriginal Studies Press, Canberra.

⁴ There are arguments about the evidence of ‘systemic bias’ resulting in Indigenous over-representation in prison as a result of: laws and punishment practices that—intentionally or not—are more likely to impact Indigenous people; and discrimination by agents such as police (in their surveillance, arresting and charging) and judges (in their sentencing and bail decisions), see e.g. Anthony (2013), and Weatherburn (2014).

⁵ Criminologists such as Thalia Anthony and Chris Cunneen are correct in so far as they argue this: see e.g. Anthony, T. 2013, *Indigenous People, Crime and Punishment*, Routledge, Abingdon.

population commit so much crime of such a severe nature as to incur long periods of imprisonment? This is a lesson we appear slow to learn.

Many policy responses and strategies have been devised and implemented since the Royal Commission, but there are no signs of such approaches bringing about the positive changes imagined. The Royal Commission did not result in the great focus that is needed on attacking drug and alcohol abuse, child neglect and abuse, and poor school performance. In Queensland, following the Royal Commission the Aboriginal and Torres Strait Islander Justice Agreement (the Agreement) between the Queensland Government and the Aboriginal and Torres Strait Islander Advisory Board in 2000 made a 10 year commitment to:

1. A 50% reduction in the rate of Indigenous incarceration by 2011.
2. A longer-term aim to reduce the rate of Indigenous contact with the criminal justice system to the same rate as other Queenslanders.

Under the Agreement, improvements were made to the criminal justice system to benefit Aboriginal and Torres Strait Islander people. These included for example:

- Measures to ensure that police routinely consider diversionary options, particularly for young people.
- The establishment and expansion of Murri Courts involving respected Indigenous people in the sentencing of offenders.
- Support for Community Justice Groups to act locally to assist victims and offenders in the criminal justice system and make submissions to the court on bail and sentencing.
- Increased community supervision through expansion of probation and parole.
- Improved access to victim support services and financial assistance for Indigenous victims of crime.

Under the 10 year Justice Agreement, however, there was no reduction in Indigenous incarceration—there was an *increase* in the rate of incarceration. The [Queensland Government's own assessment](#) of the 10 year Justice Agreement, concludes a key reason for its failure was its lack of focus on reducing offending.

The draft QPC report does not analyse the type of conviction leading to custodial sentences in Queensland to show the difference between non-Indigenous and Indigenous patterns of offending and incarceration, for example. At the national level, ABS data show that almost half of all Indigenous sentences are from 'acts intended to cause injury' and 'unlawful entry with intent'.

Data shows a lot of violent offending is linked to alcohol, yet the draft report does not make any mention of this link or the alcohol management policies (including Alcohol Management Plans or AMPs) applying to Indigenous communities. The draft QPC report has little to say on how to tackle alcohol and drug abuse in Indigenous communities, and the only recommendation made is that communities should implement alcohol management plans if they wish to. This suggests nothing new.

We must continue to improve the effectiveness of our approaches, and the QPC should consider what can be done to reduce alcohol and drug related harms. How can government

fulfil its responsibility to help to normalise levels of alcohol related harm, and also increase Indigenous responsibility and restore Indigenous authority? How can community leadership for reducing alcohol related harms be supported and strengthened?

Ascertaining the 'community' view about alcohol restrictions has always been problematic. In all Queensland's Indigenous communities views differ, as in any society. The notion of assessing a community's 'choice' when it comes to alcohol restrictions must be carefully considered. The underlying philosophy that local communities must be empowered to respond to is absolutely supported by CYI, but there are fundamental prerequisites that must be in place for such empowerment to occur. The current policy approach does not establish these prerequisites. For example:

- Each community should have access to up-to-date data and analysis to understand how they are faring and to properly inform any decisions being made. They should also have information about the large body of evidence from Australia and elsewhere regarding what initiatives may help to reduce alcohol related problems. There is no empowerment, and no choice, without improved access to such information. It should be noted the Queensland Government used to openly publish Quarterly Reports on key indicators of harm in Queensland's Indigenous communities so that impacts of any reform at the local level could be openly monitored. Annual reports were also available that considered longer term statistical trends. The government no longer publishes these up-to-date local level data in Quarterly Reports, so there is now a lack ongoing scrutiny and transparency.
- The clear goal for all Indigenous communities must remain normalisation of levels of alcohol and drug related harm. This will ensure that whatever approach is pursued locally, rights and responsibilities are kept in proper balance. For example, the perceived 'right to drink' may interact negatively with the right of vulnerable community members, particularly children, to be free from violence and fear, and to grow up safe and healthy, to go to school, to be educated, and to enjoy high standards of physical and mental health.
- CYI has long advocated for development of a staged, medium to long term approach to transition, involving serious financial incentives for communities to help motivate individuals and community leaders to reduce alcohol related harm.
- There must be a clear process and authority by which alcohol restrictions, if relaxed or removed, can also be re-introduced according to the wishes of the community if an increase in the level of harm occurs. Community interests have little ability to successfully influence liquor licensing decisions to limit the availability of alcohol anywhere in Queensland, and more responsive systems must be introduced before it can be said that Indigenous communities are empowered to drive the approach.
- There must be avenues created for greater local level involvement in enforcement of local alcohol restrictions. There must be greater local level control of sanctions and other responses provided to those who are responsible for alcohol and drug-related harms, such as can currently occur in a small number of communities through the

authority of local elders and respected leaders acting with real powers as Local Commissioners on the Family Responsibilities Commission (FRC).

The draft QPC report also says nothing about the influence of intergenerational welfare dependency, and what this does to communities, families and children. Nor does it suggest how we might tackle cycles of family violence, child abuse and neglect. The draft report is almost completely silent on youth detention, and although youth detention is not in the terms of reference, the QPC cannot ignore it. Together with the failing Child Protection system, the juvenile justice system forms a major pipeline for Indigenous imprisonment. Although the numbers are relatively small (1000 youth) compared to the adult numbers in prison (10,000), the fact that the numbers are growing rapidly and that Indigenous young people are 26 times more likely to be youth detention is highly concerning.

Child safety and the number of First Nations children in out of home care is irrefutably a key driver on the trajectory to juvenile detention, and in turn adult incarceration. The number of Indigenous children in Queensland for example in the Child Protection system is rapidly going up. The rate of Indigenous children in out of home care tripled in the decade prior to the [Carmody report](#). Very soon in Queensland more than 50% of children in out of home care will be Indigenous. Spending is going up, but the picture is getting worse for our kids. The State is already spending more than \$700 million on Child Safety, and by 2020 it will be more than \$1 billion.⁶ There is no indication that compelling solutions to this child protection crisis are being put in place.

First Nations people know that our problems are growing at a rate that outstrips any small differences that can be made. Changes to the bail procedures, to sentencing, or to policing have no prospect of successfully reversing the trends in Indigenous incarceration while the crisis in Indigenous child protection continues to escalate. It is dishonest to suggest otherwise.

To effectively respond to high levels of offending as the leading proximate factor for Indigenous incarceration levels, we must tackle the dense causal pathways involved in all their complexity. Factors include: cyclical and intergenerational disadvantage; low education and employment; overcrowding and homelessness; poor health, including mental health and cognitive impairment, Foetal Alcohol Spectrum Disorders and disability; alcohol and drug abuse; early contact with the juvenile justice system and intergenerational incarceration; poor parenting, physical and sexual abuse, and the experiences of Indigenous children in out-of-home care. If we don't tackle these foreground drivers of offending, we have no hope of reducing Indigenous incarceration. This requires more than just slow, incremental improvement in identifying and applying best practice programs.

There remains a pervasive but naive belief that by funding a better, fairer criminal justice system and more of what works, our systems and programs will be able to make inroads

⁶ See Queensland Government's 10 year Roadmap responding to Carmody report



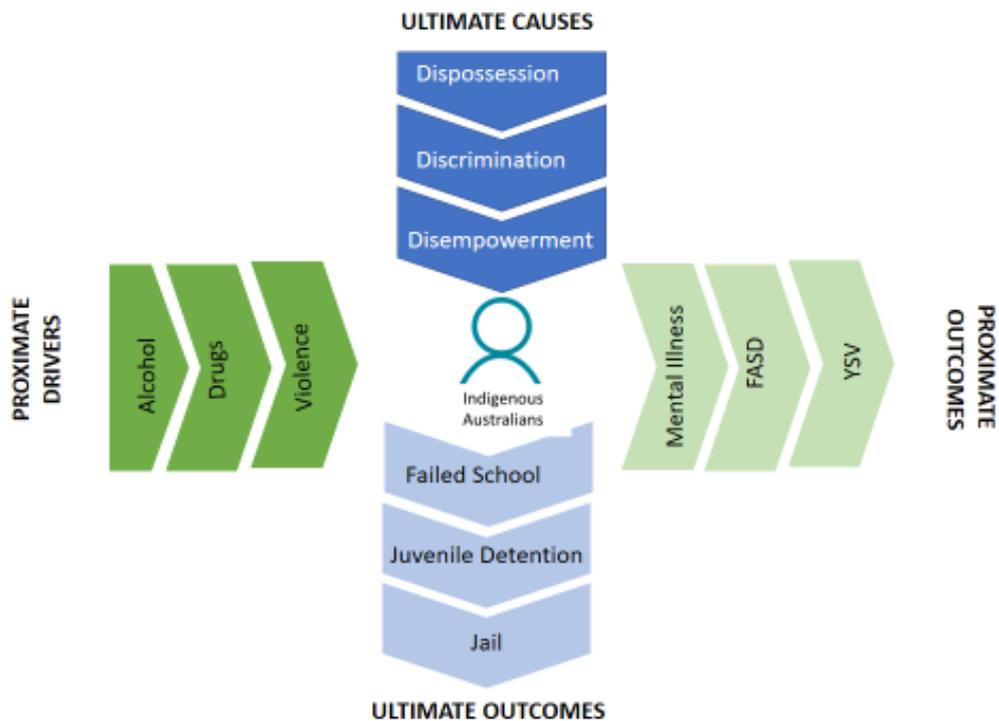
into this devastating problem affecting our people. It is simply not the case that we can close the justice gap through more funding for First Nations-led legal services, or putting in place new nationally coordinated targets, and investing in what works. It is entirely misleading to claim that anything other than very marginal gains can be made in this way.

It might be the case that particular programs can be identified that can show success at helping Indigenous people to obtain their driver's licenses, and to the extent that these programs prevent people from coming into contact with the criminal justice system for driving unlicensed this is a positive thing, for example. But there is not a programmatic solution to this problem—it is not a matter of finding individual programs that work and adapting them to other areas. Such an approach will guarantee at best that we are achieving success only at the margins of such a large problem, while the size of that problem itself continues to grow—and this cannot be considered any success at all. The same is true in terms of Indigenous suicide and child protection. System reform is needed.

Oppression is the ultimate cause

The Royal Commission was correct in that it is the oppression of Indigenous people that is the ultimate cause of Indigenous incarceration. This oppression is rooted in the history of colonisation of Australia, and the dispossession and racial discrimination—the stolen wages, land and children, the discriminatory laws and exclusion—that have helped create and perpetuate Indigenous disadvantage. This oppression continues to be present today in the almost complete dependence that Indigenous people have on the governments of the day to make the laws, policies and programmatic decisions that govern their fate and their futures. Objectives of protection and management are still the dominant paradigm for the treatment of Indigenous peoples and communities. Structural, institutional and process changes are needed to confront the ultimate cause for First Nations peoples. Disempowerment has been the status quo for far too long.

It is not that the Australian majority and the country's governments intend this oppression. Most Australians want for Indigenous people to be free and prosperous. However structural solutions are required to overcome oppression. For as long as we continue to ignore this, Australia will continue to grow an even bigger problem. The nation cannot afford this human cost.



There is nothing new in suggesting a major shift to an empowerment approach is needed. A high-level political and policy consensus has existed across Australia for some time that to address Indigenous disadvantage and improve outcomes, the approach to Indigenous affairs must be transformed so a better partnership can address the power asymmetry between governments and Indigenous people. This Australian policy consensus is also consistent with vast assembled knowledge from across the world—development does not occur where there is a lack of active, effective and lasting participation of the intended beneficiaries. Local ownership is vital to success.

While acknowledging the need for empowerment is not new, setting out *how* it can be achieved, or actually implementing changes to achieve it is where there is a huge deficit. Almost all governments since the Royal Commission have routinely espoused the rhetoric of developing a new partnership with Indigenous people. Recommendations for greater Indigenous empowerment, self-determination, control, power, autonomy, engagement and responsibility for decision-making have continued to dominate reports and reviews, and government have continued to make promises to deliver. Recently Australia’s First Nations people have repeatedly heard governments offer high-level commitments to work differently. For example:

- In 2016, Prime Minister Malcolm Turnbull declared government would Close the Gap not by “delivering to” Indigenous Australians, but by “working with” leaders and their communities (Turnbull 2016; see also Rudd 2008).

- In 2017, Australian governments through COAG agreed to “work differently” and have a “genuine partnership with Indigenous leaders, organisations and communities” to close the gap.
- In 2019, both the Prime Minister and the Leader of the Opposition have again committed to a “new partnership” between government and Aboriginal and Torres Strait Islander people.
- Similarly, the Queensland Government proposes that *Thriving Communities* will “reframe its partnership to work with” Indigenous people.

Despite the longstanding, and broad consensus about the need for a new approach, there has been no success in implementing real change. Government commitments to put in place a new empowering partnership so far amount to nothing more than hollow promises.

All past government-led efforts to put in place methods for such new empowering partnership (e.g. ATSIC, COAG trials, Shared Responsibility Agreements, Regional Partnership Agreements and now the Closing the Gap arrangements) have rapidly been declared to have failed, and have been abandoned. Evaluations and assessments have found that despite the well-intended high-level commitments given, government-led efforts to reframe the partnership have repeatedly failed to lead to any real change in the way government worked with Indigenous communities (see Anderson 2006; Morgan Disney and Assoc. et al. 2006: 6; Limmerick 2014: 30).

The reforms required cannot be led by government. Instead government must support First Nations people themselves to design and implement new empowering partnership structures from the ground up.

While history and experience show the critical matter of *how* change will be achieved cannot be left unexamined—there have been very few serious attempts to outline a method for empowerment to enable Indigenous development. The key thinking that exists has been driven by First Nation people themselves. For example:

- The 2007 *Hand Up to Hand Out* design report, which led to the Cape York Welfare Reform trial, began to articulate the shift needed from a social policy approach to a development approach. The trial included empowering elements such as the FRC, which was established to restore local Indigenous authority.
- A more comprehensive articulation of an empowerment and development approach was provided through the [Empowered Communities Design Report](#), which was developed through collaboration of eight regions across the county, including Cape York, and was provided to the Queensland Government and Australian Government in 2015.
- Cape York has continued to develop the detailed structural reforms which would implement an empowerment and development approach. Cape York’s regional

organisations facilitated co-design of the [Pama Futures agenda](#), with the first design phase occurring over six months in 2017, and involving more than 800 people from across Cape York's 12 communities participating in Summits, smaller co-design workshops, and in-community engagement. In March 2018, a [Pama Futures submission](#) was provided to the Queensland Government. It has now been more than a year, and there has been no substantive response from the Queensland Government. Since that time details of the new empowering partnership structures have continued to evolve through co-design. Progress has been documented and is [publicly available](#).

- In 2017, the *Uluru Statement from the Heart* asked for a constitutionally enshrined First Nations Voice to parliament so that Indigenous people can have a say in the decisions that affect them.

It's time to stop tinkering at the edges with minor changes that will fix nothing. Adding a justice target to the already beleaguered Closing the Gap framework, as the QPC draft report also recommends, will do nothing to change the outcomes. We need far more comprehensive change than the now popular solution of Justice Reinvestment. Indigenous people of a place must have far greater control across the entire budget, so they can pursue a holistic approach to development—this important change should not be restricted to merely one slice of the vast budget spent by government in the name of Indigenous people, with such poor results.

The fundamental question of empowerment has not yet been answered. This requires a constitutionally enshrined First Nations Voice to parliament at the apex as the Uluru Statement asks, but the Voice must be underpinned also by new empowering partnership structures built from the ground-up by Indigenous people themselves. We must move beyond high-level promises and policy rhetoric, to focus on the *how* of empowerment.

The QPC's previous report and Government's Thriving Communities response

The QPC's draft report largely defers its response on Indigenous overrepresentation, to the Queensland Government's response to its previous 2017 inquiry report on [Service delivery in Remote and Discrete Aboriginal and Torres Strait Islander Communities](#)⁷ without making any comment on the adequacy or completeness of that response. This is a serious omission that must be corrected if the QPC's work is to assist First Nations' people to reduce incarceration.

⁷ The QPC's 2017 inquiry report on Service delivery in Remote and Discrete Aboriginal and Torres Strait Islander Communities, is referred to here as the QPC's 'previous report'.

The QPC is well placed to accurately diagnose both the proximate and ultimate causes of the extreme levels of incarceration of Indigenous people, and to set out the reforms required to finally begin to turn the problem around. Indeed it has already gone a long way to outline the reforms required in its previous report. The *Empowered Communities* thinking, and the thinking of Indigenous people themselves through Queensland's Indigenous communities, informed the QPC's own articulation of a new architecture for empowerment outlined in previous inquiry. Properly implemented, this QPC reform agenda would go a long way to addressing the systemic dysfunctions at the heart of the relationship between Indigenous communities and government, so that more inroads could be made into all the complex causes of incarceration.

It is not enough for the QPC's current inquiry on imprisonment and recidivism to defer to the Queensland Government's response to the previous QPC report when it comes to the Indigenous incarceration crisis. It is vital that the QPC's current inquiry assess the adequacy and completeness of the Queensland Government's *Thriving Communities* response, if the QPC's work is to assist First Nation's people to reduce incarceration. It will soon be 18 months since the QPC's previous report. The QPC and the public at large, should be able to make an assessment of the direction the Queensland Government has taken and any progress made.

The Queensland Government announced the previous QPC inquiry in late 2016. The Queensland Government received the Final Report on 22 December 2017. The report itself provides 422 pages of rigorous analysis and makes 22 recommendations for change. The Final Report was not released to the public until 22 June 2018, so the Government could prepare and concurrently release its response.

Despite the critical importance of the QPC's previous report, the Queensland Government Response is a mere eight-pages, and as at April 2019 it remains that only the barest outline of the *Thriving Communities* approach has been provided. There are three key sources of information, and although there are some differences, they essentially repeat the same high-level outline:

1. On 27 November 2018, Deputy Premier, Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships, Jackie Trad announced the Queensland Government's *Thriving Communities* approach in Brisbane, at an event celebrating 10 years of achievement of the Family Responsibilities Commission (FRC) under Cape York Welfare Reform.
2. A *Thriving Remote and Discrete Aboriginal and Torres Strait Islander Communities: Factsheet*, was distributed by email to stakeholders in the wake of the Deputy Premier's announcement on 4 December 2018. It provides little, if any, further detail.

3. The Deputy Premier's announcement and the Factsheet clarify that *Thriving Communities* is the label now given by the Queensland Government to describe its response to the QPC inquiry. The eight-page [Queensland Government Response](#) released with the [QPC's Final Report](#) on 22 June 2018, can thus now be understood to also provide information about the *Thriving Communities* approach.

CYI has closely considered the scant details that are available regarding *Thriving Communities*, and provides the following summary of our critique:

- The paucity of detail produced regarding the Queensland Government's *Thriving Communities* approach raises many questions. The Queensland Government has made high level promises for reform and buzzwords abound, but the complete absence of detail provides no transparency, meaning it is impossible for community members to hold the government to account. "Co-design" is said to have replaced the usual government mode of consultation, but there is no explanation of what is, or will be, actually different under the new approach to ensure on-the-ground engagement and local ownership of reforms improves, for example.
- The *Thriving Communities* response does not provide an explicit, unequivocal endorsement of the recommendations made by the QPC. The commitment offered is to implement "the intent of" the QPC's proposed reforms. Where decisions have clearly already been made to depart from the QPC's suggested approach, this is not made explicit by the Queensland Government and is not explained. Once again, the approach lacks transparency.
- The Queensland Government's *Thriving Communities* response misrepresents the scale and profundity of the reforms recommended in the QPC's previous report. It does not acknowledge the key conclusion of the QPC—that the current system of government control of Indigenous communities is fundamentally broken. Instead *Thriving Communities* provides an arguably false and misleading summary of the QPC's reform blueprint—its tone and content suggesting the Queensland Government is already on the right path.
- The Queensland Government does not appear to have heeded the message of the previous QPC report that governments' pervasive preoccupation with improving services to overcome Indigenous disadvantage is not only a flawed approach, it is a key part of the problem. The QPC's previous report is clear that an empowerment and holistic development approach must be supported by the Queensland Government, together with the Australian Government. It says this approach must go beyond a focus on service delivery to include economic development, welfare reform, and changing the incentives. Despite the QPC's comprehensive rejection of the Queensland Government's dominant service delivery approach, no fundamental shift has been signalled or made by the Queensland Government under *Thriving Communities*.

- The “Thriving Communities” brand is not new, and is not used exclusively in the context of the Queensland Government response to the QPC report. It is also used in Queensland, and elsewhere, to describe a variety of government and service provider led attempts to improve service delivery for people with disabilities and other vulnerable people, in mainstream and Indigenous communities alike. The various Thriving Communities initiatives seem to share a common language of being “place-based”, and they emphasize “co-design”. Another common feature is that although they claim to put communities at the centre, community is rarely, if ever, in the room. In Queensland, the Thriving Communities brand represents weak, monolithic social policy, Indigenous communities have been lumped in to an approach narrowly focused on improvements to service delivery, and controlled by government and service providers. If the Queensland Government’s response to the QPC is derived from or connected to the general approach, which appears to be the case, this is a backwards step.
- The Queensland Government claims it has already undertaken “co-design” to develop the Queensland Government Response and *Thriving Communities* approach, and further that this co-design process is ongoing in a number of communities. No details have been provided to describe the process, setting out for example the number of participants, the breadth and depth of participation, the principles guiding it, the practices used, or any reporting back. All details remain hidden. Genuinely resetting the partnership and co-designing with First Nations people directly in each of Queensland’s 19 complex and unique communities, and across a holistic agenda—dealing not with a single issue, but across all relevant issues from governance, service delivery reform, housing reform, land reform to community safety etc—is no small feat. Genuine co-design requires skills and expertise, and new ways of working, distinct to those traditionally deployed by government. The Queensland Government is poorly equipped to deliver on its promise, and there is also genuine question as to whether it is possible, or even appropriate, for a government agency to lead a co-design approach effectively in the circumstances, given the traditional relationship and power differential is exactly what must be turned on its head in the process.
- Under *Thriving Communities* the Queensland Government is not working in close partnership with the Australian Government to change incentives and consider reforms to take people from welfare dependency to work, for example, as has been said by the QPC to be a vital component for development. *Thriving Communities* sounds very much like the Queensland Government is ‘going it alone’, despite the inherent limitations of any such approach. The Queensland Government’s Response to the QPC report provides an astonishingly weak commitment merely to “work with the Federal Government to develop improved ways of working together”. For the Queensland Government’s actions to be effective, it should seek to work in lock-step with the Australian Government.
- *Thriving Communities* applies only to 19 Indigenous communities, and it does not progress the transformation between Indigenous people and government that is required to improve outcomes outside of these 19 communities. Although the terms of

the reference for the QPC's previous inquiry were limited to Indigenous communities, the Queensland Government has failed to identify or act upon a key opportunity for innovation presented in the QPC's reform blueprint—the current system must be replaced for all of Queensland's First Nations people to put in place a new empowering partnership to Close the Gap.

- Only three broad process timelines have been established. One of these—the establishment of a committee to oversee the reforms—has already not been achieved. The others also look likely to slip. The lack of timeframes around implementation again makes it difficult, if not impossible, for First Nations people to hold government to account for making progress. There is no sense of urgency revealed in the Queensland Government response. Of course, for First Nations people themselves, development is a race against time. Empowerment, and improving social, economic and cultural development outcomes is not something that would be 'nice to have' when the time is right or it is convenient, it is quite literally a matter of life and death and all that lies in between, right now, as well as in the future.
- Although the rhetoric is about responding to community "readiness", the slow pace at which government is moving is holding back on the ground progress. *Pama Futures* is neither perfect, nor finalised (it will continue to develop over time), but it is well ahead of the Queensland Government's plodding pace of reform. *Pama Futures* is consistent with the QPC's reform blueprint, in fact it progresses the agenda laid out by the QPC in a far more detailed, analytical and rigorous way than the Queensland Government's response. *Pama Futures* has been strongly supported by the Australian Government, who have been by the side of the Cape York regional organisations throughout the facilitation of the extensive, intensive co-design process. The process is transparent and fully documented. Despite this, there has been no substantive discussion or engagement on the *Pama Futures* agenda from the Queensland Government whatsoever despite an open invitation from both the Australian Government and the Cape York regional organisations to be a partner. The Queensland Government has continued to simply suggest that its response to *Pama Futures* will be part of its broader rollout of *Thriving Communities*.
- The lack of transparency and the high administrative costs of government agencies, highlighted by the QPC, have not been addressed in the Queensland Government response. The Queensland Government has had ample time to improve the level of funding transparency provided at the community level, or at very least give a commitment to do so. Empowerment demands First Nations people have transparency about the flow of resources into their places. It is only armed with such information that First Nations people can hold government and the service provision industry servicing Indigenous disadvantage and dysfunction into account.
- *Thriving Communities* purports to be a "long-term" reform agenda, but no steps have been taken to institutionalise the reform agenda as is required if this is to be the case.

This is the position that was put by the QPC in its previous report (at p. 242). It is also reflected in the extensive First Nations history of advocating formal, binding commitments, by which policy fundamentals are enshrined in legislation, for example, to oblige successive governments to stick with commitments and through which they can be held to account for their performance. Despite challenges of ensuring the reform agenda is long-term, and the fact the Queensland Government has previously received analysis and proposals for legislation enshrining an empowerment policy from Indigenous people and communities, the government provides no information as to how it intends to achieve the stated high-level goal of a long-term *Thriving Communities* approach. Best endeavours will simply not be enough.

- The first major change under *Thriving Communities* has been to unilaterally announce an important decision about the future of the Family Responsibilities Commission (FRC) established as part of the Cape York Welfare Reforms. The decision will impact on at least the five communities that currently have the FRC, although it may have implications across all Indigenous communities. The communication of what is intended has been far from clear and the *Thriving Communities* announcement has created a great deal of uncertainty about the future of the FRC and Cape York Welfare Reforms, when according to the government's own promises this future should lie in the hands of the communities involved, not in the hands of the government. The announcement to transition from the FRC Welfare Reform model to *Thriving Communities* may be interpreted to mean either of two things:
 1. The FRC and Cape York Welfare Reform will cease under *Thriving Communities*.
 2. The learnings of the FRC and Cape York Welfare Reform will be taken into a new one-size fits all model of local authority to replace the FRC and Cape York Welfare Reform and apply across all 19 communities under *Thriving Communities*.

If the intention is that the FRC and Cape York Welfare Reform will cease, this is at odds with the previous QPC report. The FRC itself is an example of local Indigenous empowerment, achieved by giving life to a structure designed by Cape York people for Cape York people. It is the only extant example of a structural reform in Queensland that shifts real power and responsibility that would otherwise be held by government, to respected local elders and leaders acting as local Indigenous Commissioners, so they can assist their own people to change their behavior.⁸ The FRC, linked with amendments to the Commonwealth Social Security Law, enables elders from our community to make

⁸ Through a set of 'family responsibilities' triggers, it gives local Commissioners, the power to call people in and conference them if they have failed to send their children to school, been the subject of a child safety notice, committed a crime, or failed to pay their rent, for example. During an FRC conference Local Commissioners can have difficult conversations and they can make decisions about how a person before them, or the family, can be supported to improve their lives. The FRC's process provides a critical connection, through case management under local authority, between the Queensland Government's service delivery system and the Commonwealth's income support (and family payments) system. It does not prescribe blanket income management of all, but income management can be applied where Local Commissioners deem it to be necessary. Income management under the model is seen primarily as a means of support for those who need it the most, rather than a form of punishment.

decisions in relation to income support payments to community members, depending upon whether they are fulfilling some basic social responsibilities. This is a crucially important linkage and a completely vital structural reform. The QPC's Final Report itself provides a great deal of positive comment suggesting the FRC and Cape York Welfare Reforms exemplify exactly the kind of community-driven reform effort that the Queensland Government should embrace.

On the other hand, if the Queensland Government's intention under *Thriving Communities* is that the lessons learnt from the FRC and Cape York Welfare Reform will be used to roll out a one-size fits all model of local authority across all 19 communities, this goes against the need for communities to have real ownership at the local level of the reforms they want to pursue for their own development, if such reforms are to be effective. The FRC and Cape York Welfare Reforms are intended to be opt-in reforms, and are not intended to be externally imposed on any community. Whatever decision has been made about the FRC, it has not been made by the communities themselves, but by the Queensland Government in William Street. Either way, the Queensland Government is pursuing an agenda that is at odds with both the spirit and the letter of the QPC's previous report, which promotes moving away from such disempowering, 'government knows best' decisions. Either way, there is a level of government control and decision-making that is occurring that is not clear and transparent, and that denies community members any real voice in key decision-making.

Thriving Communities is being led and controlled from the top of the pyramid by senior government officials, with limited input from First Nations people. There is absolutely no sign that the Queensland Government is seriously embarking on a reform agenda that has any real prospect of shifting power and responsibility into Indigenous hands. Right from the start, the Queensland Government has set parameters that create only a limited and narrowly defined space for Indigenous leadership, influence and control.

Many Indigenous voices provided serious input into the previous QPC report, all demanded the paradigm shift outlined in the report. Yet these many voices have still not been heard. It is difficult to imagine any government pursuing a major reform agenda in any other area of policy, in a manner that so obviously lacks the rigor that is needed. The *Thriving Communities* approach cannot deliver the reforms that are required as articulated in the QPC's previous report.

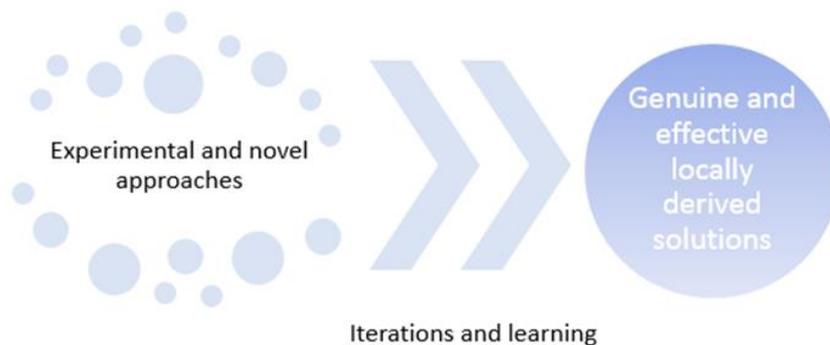
Indigenous people themselves must be empowered to try innovative approaches

To Close the Gap on critical issues such as incarceration, First Nations people must face a wide range of complex, interconnected problems, about which there is little certainty as to the effective solutions. In our communities the journey on which we must embark is not a technical exercise. We cannot follow a well-established and reliable best-practice map. We

must be empowered to move step-by-step into the unknown, learning and adapting in a continuous manner, and making the map as we go along. The leadership that is required can in large part only come from the people whose lives and futures are at stake, those who are in it for the long haul. It is Indigenous people that have the most intimate understanding of the circumstances that must be confronted in their own places, who are best placed to drive solutions, and who can be held to account by other Indigenous people over the long term.

Importantly a new empowerment and development approach supported through structural reform, can also deliver a far stronger ability to try new things—resulting in greater innovation for particular local contexts, and learning over time. As stated in the *Empowered Communities* report, the current system of top-down government control and management of Indigenous communities and lives results in a level of frenetic chopping and changing, and policy pulsing, that comes with electoral cycles and as the political pendulum swings from left to right. Key decision makers are not in it for the long haul. They are averse to taking risks and genuine innovations, and are rarely in it long enough to learn from their decision-making over time and to be able to use the sum of that experience to drive better outcomes. Fresh-faced ministerial enthusiasms at the state and national level ensure that decision-making in Indigenous policy feels much like a merry-go-round—replete with the same old traps and reinvented wheels.

Iterative learning occurs over time



The QPC have correctly identified the need to “break the cycle of reoffending”, of which three key initiatives have been identified:

1. Deliver an effective model of throughcare.
2. Remove regulatory and operational impediments to rehabilitation and reintegration.
3. Ensure prison facilities support rehabilitation.

First Nations people must be empowered to genuinely co-design and implement innovations in this area, informed by the evidence that exists. Such initiatives can learn from the success of the innovative Family Responsibilities Commission (FRC) described above, for example, established under Queensland legislation which represents the only existing



structural reform in Queensland that puts real power in the hands of communities themselves to change social norms and restore local authority.

Interventions and supports should be designed around people, and not determined by political ideology or pre-existing silos of responsibilities within or across governments. The [Queensland Government's own assessment](#) of its failed 10 year Justice Agreement which aimed to reduce Indigenous incarceration, states:

The need for high levels of Aboriginal and Torres Strait Islander engagement and ownership of future initiatives is irrefutable. This must remain central to all efforts to improve crime and justice outcomes for Aboriginal and Torres Strait Islander people in Queensland.

Where is the evidence that this insight has been heeded and this is occurring in Queensland? Indigenous people continue to be alienated from the system of authority. Indigenous communities must be enabled to take greater control and ownership for crime and community safety initiatives including through institutional structures that support Indigenous ownership of by-laws and other Indigenous law making powers, for enforcement and community policing, and for community dispute resolution.

Conclusion

Although the drivers of Indigenous offending and incarceration are complex and multidimensional, none of these factors can be considered to lie beyond the scope of this inquiry if it is to have an impact. To overcome the extreme and stubborn disadvantage that characterises Queensland Indigenous communities, a complete paradigm shift is required—one that finally abandons the objectives of protection and management that continue to dominate the government's relationship with Indigenous communities, to instead enable Indigenous agency and authority to take power and to lead. The right enabling environment must be created so that change can occur. The current public economy of communities, in which there is nothing other than government service delivery and welfare support, is far from the right enabling environment. Reforms must overcome passive welfare, and provide economic and employment opportunities. It is only by pursuing a comprehensive strategy for empowerment and development, of which service delivery reform is merely one part, that communities can achieve a functioning level of social, economic and cultural health to reverse the crises in Indigenous child protection, incarceration and suicide.

If the QPC and its Commissioners are serious about reducing Indigenous incarceration, the QPC's final report for this inquiry must go further than the draft report to address Indigenous incarceration. In particular, the QPC must address:

1. The fundamental questions of what must be done to reverse the pattern of Indigenous incarceration? And, why have all previous efforts only seen the situation worsen? The failure of the Royal Commission and the legacy of its reform approach must be



confronted. Thirty years on and the gross overrepresentation of Indigenous people in incarceration is a problem that has continued to grow.

2. The weaknesses of the Queensland Government response to the QPC's previous report. To do otherwise is to allow simply serve a political purpose and allow this inquiry to be used to avoid the real issue of tackling the reforms that are required, and that the QPC has articulated in its previous report.
3. The risk averse nature of our current failing system and the clear need for more innovation, led by Indigenous people themselves.