

To: Queensland Productivity Commission

From: Civil Liberties Australia (CLA)



We congratulate the Queensland Productivity Commission (QPC) and the Queensland Government (QG) on the initiative of the 'Inquiry into imprisonment and recidivism'. It is also refreshing for a public authority and government to provide a goodly amount of time for input to inquiries such as this, and for responding to draft reports. The process and the outcomes will be enhanced by such a welcome approach.

While people speak about "prisons", the real issue is what happens at the time a prisoner exits after serving a prison sentence. For 99.9% of prisoners, there will come a time when they exit prison to live back in the community, usually under some form of parole or ongoing supervision. That is the key time on which to focus.

Our concept of the key prison exit issue is that preparing for it starts from the moment a prisoner enters jail:

- firstly, there should be a health and a separate mental health assessment. This area of major concern in relation to prisons and prisoners does not appear to be covered in the QPC consultation paper. We comment further on this issue in Addendum 1.
- secondly, the 'life skills' training that we propose begins immediately on entry. They could be very basic, just enough 'training/learning' for a prisoner to "buy" the first half of his/her ticket of leave. Or, the upskilling could morph into a medium or full-on, TAFE-style qualification, for say carpentry, hairdressing or cooking. Longer-term prisoners should have the option of degrees, including Masters and PhDs.
- thirdly, and very importantly, our proposals include the training of Corrections officers as part of the above training, starting with extensive training in computer skills. It is highly likely that major reforms throughout the prison system will be founded on electronic communications and enhanced use of computers and e-learning.

As CLA sees it, Corrections officers are also captive to the prison system: the job is generally considered to rank towards the lower end of society's work spectrum, with prisoners of course at or near bottom. Changing the system must involve improving the learning, skills and status of the officers, in CLA opinion: until change is occurring among prison officers, they are highly unlikely to be skilled and qualified, as well as motivated, to change the ways prisons operate and open up similar opportunities for prisoners.

The root of all change should begin with a wholesale re-evaluation of the role and promise of e-technology for all involved in corrective services. To get an idea of where we could head, what would be wrong with Queensland (and other) prisons being the places where new apps are developed for phones and computers, ring tones are written, websites are designed, etc, etc. There exists a captive audience with time on their hands: prisoners are perfectly placed to work creatively with their minds...but until now, not many people (if any) has considered exploring such options.

Yours truly

Dr Kristine Klugman OAM

04 April 2019

President

Comments and proposals and suggestions by CLA on the QPC draft:

Queensland Productivity Commission draft report questions:

Reduce the scope of criminal offences

DRAFT RECOMMENDATION 1

The Queensland Government should seek to remove those activities from the Criminal Code Act 1899 and other relevant legislation, for which the benefits of being included do not outweigh the costs. This reform should focus on, but not be limited to, acts that do not have an obvious victim, including:

- public order offences
- illicit drugs offences
- regulatory offences.

When assessing whether an activity should be redefined, consideration should be given to:

- the extent to which the activity causes harm to others
- the costs that criminal sanctions impose on offenders and whether these costs are proportionate to the harm caused to others
- the extent to which criminal sanctions deter harmful offending
- whether criminalisation has unintended consequences that result in greater harm
- whether criminalisation undermines public perception of the legitimacy of the law.

Reco 1: Civil Liberties Australia (CLA) comment:

Civil Liberties Australia (CLA) agrees entirely with this approach. We congratulate the Queensland Productivity Commission (QPC) on its enlightenment. We recommend:

- a. the Queensland Government (QG) adopts the above as policy immediately;
- b. the QG takes on the role of “national champion” for the concepts above in COAG and Ministerial Councils, as well as in parliament and national/international parliamentary forums and in the media; and
- c. greater emphasis or importance is put on the ‘downstream’ harm done to others (partners, children, relatives, etc).

DRAFT RECOMMENDATION 2

To support any changes to the use of criminal law, the Queensland Government should develop alternative policy approaches where required, including:

- incentives to reduce undesirable behaviours, such as civil remedies, tax and regulatory regimes and other non-criminal sanctions
- education and information provision, to highlight potential harms from newly decriminalised acts
- health responses, such as those that address mental health and drug problems.

Information request

The Commission is seeking further information on the following issues:

- What current offences do not warrant being defined as an offence? What current offences do not warrant being defined as an offence if imprisonment is a potential punishment?
- What offences, if any, are candidates for downgrading from a criminal offence or misdemeanour to a simple offence or to a regulatory offence?
- Is there scope for greater use of the civil law, and for which offences?
- Does criminalisation impede a health-based response to the problem of illicit drug usage?
- Are there approaches to drug reform that offer significant net benefits?

Reco 2: CLA proposes:

The 21st C equivalent of the stocks be used as punishment: that is, methods of public identification for wrongdoing via social media be developed; these to include the ability to bar an offender from using social media for periods (say 1-12 months at various intervals).



Queensland magistrates be tasked to identify appropriate offences for changed punishment/rehabilitation methods.

These should include public order offences, drugs, regulatory matters and some online/digital actions.

Specialist health and mental health “prison” facilities be built to a 20-year strategic plan. As these facilities are being built, specialist staff be recruited and trained via university and TAFE and given specialist skills to meet the needs of a new type of prison. Existing prison guards be given first opportunity to re-train.

To reduce demand at the entry point, the QG adopts the ‘Portugal’ approach to drug reform as a matter of the highest priority.

Provide options for victim involvement

DRAFT RECOMMENDATION 3

The Queensland Government should introduce victim-focused restitution and restoration into the sentencing process. This system should:

- give victims the option of engaging in a process of restitution and restoration with the offender prior to sentencing
- provide victims and offenders with a wide range of options for achieving restoration for harms inflicted, including financial and non-financial compensation
- reflect and enforce, through the sentencing process, agreements that are reached between the victim and offender
- provide mechanisms to ensure that courts consider any residual public interest in final sentencing
- allow normal court processes to proceed where victims choose not to pursue restitution or restoration or where victims and offenders cannot reach agreement
- include appropriate protections for victims and offenders.

Victim-focused restitution and restoration should be made available for any offence where a victim is identifiable.

Information request

The Commission is seeking information on the design of a victim restitution and restoration system, including:

- key design features such as:
 - the principles that should guide the residual public interest test
 - mechanisms to minimise the risk of unnecessary delays
 - any processes needed where offenders do not fulfil their agreed obligations
- whether restoration principles should be included as a sentencing purpose in the Penalties and Sentencing Act 1992
- how restitution and restoration may best meet the needs of Indigenous communities
- key risks, costs and benefits, including potential unintended consequences.

Reco 3: CLA suggests:

As part of a methodology for involving other states/territories and spreading the enlightened QG reform nationwide, that the QG engages with two governments (ACT and SA, for example) in a small task force to design such a system, parts of which already operate interstate. If engagement is not to be undertaken, then the lessons of interstate operations that lead in various areas of corrections should be learned and utilised.

The task force should include Indigenous representative(s) with suitable education, training and experience of 'restitution & restoration' in the other jurisdictions.

Restorative justice should focus on victim participation, not compensation or an unfettered say in sentencing.

Increase the range of non-custodial sanctions

DRAFT RECOMMENDATION 4

The Queensland Government should reform sentencing legislation to:

- make sentences involving home detention available to courts
- allow courts to impose custodial sentences in low security correctional facilities
- remove restrictions on the use of monetary penalties, community service and community-based orders, or the combination of these orders with other sentences.

To encourage the appropriate use of non-custodial sentencing, the Queensland Government should:

- establish a mechanism to allocate resources to community corrections to support changing court sentencing practices
- amend section 9(2) of the Penalties and Sentences Act 1992 to include a consideration of the costs of sentencing options, including the financial costs imposed on the community
- review legislated restrictions on judicial discretion to check if they are serving their intended purpose.

To ensure sentencing options support community safety and rehabilitation, the Queensland Government should introduce pre-sentence assessment of offenders who may be facing prisons terms.

Reco 4: CLA says and suggests:

The above proposals are all eminently sensible, and the QG should adopt them.

CLA suggests that the QG, via TAFE/Unis, develops specialist training courses, perhaps of 2-5 days duration, to train the RECIPIENT organisations (eg, businesses, tradies, NGOs) in how to best, or better, use people sentenced to community service, for the benefits of the sentenced individuals and the recipient organisations.

CLA understands that sex offenders are banned from low security prisons such as farms, no matter how exemplary their behaviour has been in maximum security prisons. Such “absolutes” in prison management need addressing across the board. For example, as part of rehabilitation, all prisoners – and certainly including sex offenders – should gradually progress towards leading a more “community” existence as their parole date approaches.

CLA notes that there are very few low security jails in Qld.

DRAFT RECOMMENDATION 5

To strengthen community confidence in sentencing, the Queensland Government should:

- expand the role of the Queensland Sentencing Advisory Council in producing and communicating an evidence base for sentencing and assessing sentencing in Queensland against this evidence
- introduce judicial self-monitoring, independent external review or other appropriate mechanisms to improve the consistency of sentencing outcomes for lower level offences where appeals mechanisms are infrequently used.

Information request

The Commission is seeking further information on:

- the extent to which the proposed changes to sentencing would result in ‘net widening’, whether this would be desirable, and, if not, ways that it can be managed
- the consistency of sentencing outcomes and appropriate ways for sentencing consistency to be monitored in the Magistrates Court
- whether victims of crimes should be given the right to instruct the Director of Public Prosecutions to seek leave to appeal against a sentence handed down by a District or Supreme Court.

Reco 5: CLA says

The Sentencing Advisory Council needs to be split into different ‘levels’ of operation: eg, the current SAC for major crimes, with one or two “junior” SACs for lower-level offending. The new SACs would have commensurately less formal, letter-of-the-law operations, and membership would be drawn from a wider section of the community than the current SACs.

There will be a need for a number of “corrections/health” oriented “junior” SACs to deal with those in the proposed specialist health and mental health “prison” facilities.

There should be monitoring and evaluation systems for all magistrates and judges in Queensland, compiled in aggregate rather than in identifying individual judicial officers, but clearly identifying outlier behaviour in the courts so it can be evaluated as an appropriate or inappropriate future direction for rehabilitative imprisonment.

Victims of crime should be able to formally and publicly request the DPP to mount appeals, but not to “instruct”.

If restorative justice processes are properly constructed, victims will have already been involved in sanctions.

Reduce the use of remand

DRAFT RECOMMENDATION 6

To encourage confidence in, and greater use of bail, the Queensland Government should:

- develop evidence-based risk assessment tools to assist police and courts when considering bail applications
- make available, through legislative amendment, a greater range of non-custodial options to courts, including the use of electronic monitoring and home detention
- establish a mechanism to allocate resources to support any changes in the use of community-based supervision
- trial remand accommodation options for homeless offenders, including bail hostels and low security custodial facilities
- consider extending the operations of Court Link and QMERIT to more locations.

Reco 6: CLA agrees and proposes

We agree with introducing/considering all the above options, particularly new forms of electronic or digital monitoring of alleged offenders.

As well, we propose that alternatives to locking up people who fail to meet bail conditions be considered in legislation. For example:

- someone not reporting to police twice a week could have two days added to the ultimate sentence for each non-reporting day or, better still, some form of social media/digital penalty could be imposed;
- similarly, a person absconding outside a restricted area within the state might risk the ultimate penalty being increased by 25%; and
- someone who flees interstate or overseas might have the ultimate penalty increased by 50%.

The type and balance of any extra punitive measures along these lines needs to be carefully considered.

DRAFT RECOMMENDATION 7

The Queensland Government should assess whether there are opportunities to reduce time spent on remand by reducing court delays and increasing time for bail hearings.

Reco 7: CLA agrees and proposes

CLA agrees with the proposals.

CLA proposes that e-technology be introduced so that communication with alleged offenders “on remand” can occur without the need for the “remand” prisoner to be physically detained (bracelets/home detention/etc might be options for non-physical detaining; email and/or social media apps could be used).

CLA proposes that the QG looks to private sector models for handling many people with the same or similar issues in the same time frame: for example, Apple Centres allow e-

bookings for consultations which, roughly, take about the same time as a bail hearing. QG and the magistrates court should trial an “on-demand” model where people due for hearings can make appointments and, when they arrive, their “paperwork” comes up on the screen of the next-available “magistrate”.

CLA proposes that, as well, QG should consider adopting a “magistrates-in-training” concept for the next people in line for appointment to full magistracy. These people, likely of a younger generation and more familiar with e-business, could staff the ‘on demand’ role described above. This would be an ideal program to demonstrate the QG’s lead in innovation in prison reform.

(QG could consider partnering with one or more states/territories to develop the above, at least to pilot stage in each jurisdiction. The NT and WA might be the more appropriate jurisdictions if any joint approach was preferred).

DRAFT RECOMMENDATION 8

To provide greater guidance to courts, the Queensland Government should insert ‘guiding principles’ into the Bail Act 1980, based on the following principles:

- maximising the safety of the community and persons affected by crime
- taking account of the presumption of innocence and the right to liberty
- taking account of the cost of imprisonment to the community
- promoting transparency and consistency in bail decision-making
- promoting public understanding of bail practices and procedures.

Information request

The Commission is seeking further information on:

- the causes of the growth in the remand prisoner population
- the causes for delays in court proceedings and possible remedies
- any changes to court procedures that could improve decision-making
- bail support services and non-custodial options that would improve the effectiveness of, and confidence in, non-remand options
- how police and courts should consider risk when assessing bail applications.

Reco 8: CLA agrees and proposes

CLA agrees with developing “guiding principles” in relation to bail.

CLA proposes that these could be developed alone by the QG, or in a partnership with another state as a first step toward a national bail act (and guidelines). We suggest Victoria would be an ideal partner.

CLA proposes that the QG champions the concept of a national bail act and guidelines through COAG.

CLA proposes that development of the guiding principles be done by involving Qld (and partner state) schoolchildren aged about 16-17 which would help promote important concepts for discussion/understanding by the students:

- presumption of innocence and right to liberty;
- cost of imprisonment to the community;

- transparency and consistency in decision-making; and
- public understanding of bail practices and procedures.

CLA proposes that police officers undertake risk management training as part of their formal police college courses. The training should involve bail risk, but also the risk of community harm by poor police practices, for example car chases and stun gun abuse. The training should be provided by the private sector, not by government: government almost invariably believes risk management = taking no risk whatsoever, which is a fundamental error of understanding of the concept.

In passing, CLA notes that the virtual elimination of police discretion in minor cases/incidents should be assessed. It is our understanding that the lack of discretion has led to large increases in charges, court time and prison numbers (particularly remandees).

Improve rehabilitation and reintegration

DRAFT RECOMMENDATION 9

The Queensland Government should modify legislation, policy and operational procedures to include a clear and specific objective of rehabilitation and reintegration of prisoners.

DRAFT RECOMMENDATION 10

To improve rehabilitation and reintegration of prisoners, and to reduce recidivism, the Queensland Government should introduce an effective throughcare model into the adult criminal justice system. The features of this model should include:

- clear objectives to rehabilitate and reintegrate prisoners
- adequate resourcing to meet these objectives
- a focus on individual rehabilitation needs of prisoners
- coordinated service delivery
- sufficient delegation of authority
- transparency and accountability mechanisms that would encourage continuous improvement
- incentives to reduce reoffending.

In developing this model, consideration should be given to ways to foster markets and community involvement in services that support rehabilitation and reintegration.

Information request

The Commission is seeking evidence from stakeholders on:

- the arrangements that would best encourage continuous improvement and effective and efficient rehabilitation and reintegration of prisoners
- the appropriate starting point for throughcare in the adult corrections system.

Recos 9 & 10: CLA agrees with the recommendations, and proposes

The rehabilitation and reintegration (r&r) of prisoners means equipping them firstly with important foundational life skills by providing basic courses. Typically, these courses might be half-day, in a suitable location within the prison/facility, or in a new part of the facility purpose-built for training and/or for supply of services/products to local communities.

Note: To achieve effective, modern r&r, it will be necessary for prisons and like facilities in Queensland to adopt a new regime around use of computers and e-technology.

Developing this new policy is a foundational task of any prison reform program. Adapting the prison environment to the e-environment IS the “appropriate starting point for throughcare in the adult correction system”.

The basic course should come from these, or similar:

- literacy and numeracy
- eating for health
- buying food for healthy eating as cheaply as possible
- cooking basics
- cooking beyond basics
- budgeting and planning cash in and out
- running a home, including money and maintenance
- cleaning skills: for the home and high-rise/office buildings
- basic gardening, mowing, garden tool maintenance
- plant and tree identification, cuttings, transplanting skills
- basic carpentry, electricity, air-conditioning servicing
- water management around the home
- how to fill in forms, hard copy and online
- social media use and misuse
- email basics, including etiquette and anti-bullying and non-trolling
- hairdressing, grooming and similar courses
- researching online (and/or in libraries)
- how to write a report after researching
- how to write applications to government authorities (eg appeals, formal requests, etc)
- how to access government services (eg legal aid, etc)
- how to analyse a business opportunity and how/where to seek government support
- first aid courses
- car maintenance and tools/tool maintenance
- driving skills
- driving for a living: trucks, fork lifts, etc
- boats, boat licensing, boat driving, boat maintenance
- care for horses and animals
- fishing equipment
- fishing skills

(Note: Some of these courses are suited to having a specialist Indigenous component).

Successfully completing a number of these courses should gain credits for the prisoner, for example by counting towards early release.

The courses should be designed so that the evaluation measures after each course help identify prisoners for more effective streaming into higher-level courses, based on either “advanced” courses from the above, or based on higher and more formal education.

For example, an Indigenous prisoner who shows a passion for learning about boats, driving, maintenance, etc might transition from basic coastal coxwain learning to studying how to use GPS location equipment, underwater radar and scanners, as well as to traditional position-establishing via sextant and/or traditional Indigenous navigation and weather knowledge. A person doing hairdressing who shows great aptitude and application might go on to a basic business course which could help someone set up a hairdressing salon/barber shop.

Successful completion of the basic courses should result in the awarding of a certificate which sits somewhere on the scale of Certs 1-2 in competence.

Some new “prison” facilities might be located near TAFEs and/or near, say, hospitals so as to facilitate further training.

A coordinated, 20-year plan for facilities/course availability needs to be developed.

One option in all in-house training should be for longer-term prisoners to become qualified trainers by undertaking higher-than-basic courses, and doing a form of teaching qualifications.

In establishing all such courses, the option of providing goods and/or services to the local community should be kept in mind.

Where prisoners are responsible for producing income, they should share fairly, even generously, in the income generated to encourage a positive attitude.

CLA notes that this entire area must undergo a major overhaul. It is quite clear that Queensland prisons cannot cope with supplying the current courses required by prisoners. Prisoners have their parole release days lengthened as they have not been able to complete courses because of a lack of teaching/training staff. As a high priority, the resource implications and effectiveness of courses should be assessed. This applies especially to sex offending courses: with the rise in number of convicted sex offenders, there are substantial problems in appropriate course delivery, timing and impact, CLA believes.

DRAFT RECOMMENDATION 11

When Queensland Corrective Services develops its capital program for building new corrections centres or when modifying existing facilities, it should assess options to make infrastructure more effective for prisoner rehabilitation. Consideration should be given to:

- the best available international evidence on the effect of infrastructure on rehabilitation
- cost-effective options to improve rehabilitation of prisoners.

Information request

The Commission is seeking information on:

- completion rates of in-prison programs and the evidence from evaluations or other studies of the contribution of in-prison programs to reducing recidivism in Queensland
- how QCS considers the impact on rehabilitation when designing its capital program
- the incentives for:

- prison managers, to encourage prisoners to participate in and complete programs within prisons and to engage in meaningful employment
- prisoners, to participate in and complete programs within prisons and to engage in meaningful employment
- course providers, to encourage prisoners to participate in and complete programs within prisons
- changes to governance arrangements that would improve rehabilitation and reduce recidivism.

Reco 11: CLA agrees and comments

For some incentive programs for managers, guards, prisoners, simply invite proposals from the private sector to develop such schemes. Best submission gets paid to develop and implement management of the schemes for, say, 5-10 years.

Course providers can be asked to bid competitively for supplying courses in one prison, one region or throughout the state. Winner gets the job. Given that the ‘Queensland model’ being developed under the QPC proposals will lead Australia, and is likely to be world-leading, the course providers might be encouraged to work in partnership with the QG. The question of who owns copyright in the courses developed is important.

In terms of some of the (proposed) courses, there might be great attraction to a local TAFE or even high school to bid for the contract for service delivery. With some prisons/facilities, the numbers and throughput of prisoners obliged to meet mandatory qualification levels could double (or more) the size of the existing TAFE or high school cohort. The prisoners could also undertake training or study at non-traditional hours, such as nights and weekends, when such facilities are either idle, or largely idle, enhancing return on capital investment for the government and a possible extra income for existing teachers/trainers.

There may be advantages to certain TAFEs and other learning institutions, including universities, to having a ready-made cohort of “customers”. It may be possible for the QG to seek bids for co-location of training/education facilities associated with the new-style prison system.

QPC should explore the cost effectiveness of paying prisoners to stay out of jail. A prisoner might be paid \$5 to stay out of jail for a week, \$25 for a month, \$400 for a year, able to be taken by the prisoner either weekly, monthly or annually for two years. Per ex-prisoner cost is likely to be of the order of \$500 a year, including administrative costs. This should be compared with the cost to the community of the prisoner re-offending and returning to jail. A bonus payment of \$2500 for any prisoner who stays out of jail for five years might also be cost effective if the overall scheme leads to reducing re-offending by half the current rate.

DRAFT RECOMMENDATION 12

To lower reoffending, the Queensland Government should improve the likelihood of successful reintegration by:

- removing regulatory impediments to reintegration, including the lack of work release options, and uncertain release dates
- introducing measures to ensure parole workers’ caseloads support effective community supervision

- providing sufficient flexibility on release dates to allow Corrective Services to effectively prepare prisoners for release
- ensuring all prisoners, at release, have up-to-date identity documents, including a Medicare card and birth certificate, a driver's licence and bank account where required, and information on social welfare and employment services.

Information request

Further information is sought on:

- the number of prisoners receiving reintegration support from government service providers, and the costs of these services
- the number of released prisoners accessing government-funded housing each month
- the extent to which the NGO sector is supporting prisoners with accommodation (not funded by government)
- the number of prisoners released without a planned release date and any problems this creates for the delivery of reintegration services
- options for linking released prisoners to accommodation services without government funding
- the practicality and value of developing temporary release programs for prisoners in the final stage of a prison sentence.

Reco 12: CLA agrees

All the QPC statements are plain common sense, and should be happening now. Making them happen could be the first practical result of this QPC process, to be implemented by 1 January 2020. If they can't be implemented throughout the current prison system, they could be trialled at 2-3 prisons by/from that date.

Prisoners on release should be provided with a list of firms/entities that might be prepared to employ a prisoner. Such a list could be developed over time. It is likely to include the potential RECIPIENT organisations with relevant training as mentioned above (see Reco 4 suggestion).

Prisoners serving longer terms should have temporary release programs available to them. Longer-term prisoners could be asked to propose how such programs might work for them. Former longer-term prisoners should be invited to contribute to program design.

CLA notes that day release programs are virtually non-existent currently in Queensland. There needs to be a substantial effort to increase their availability in the short term, at the same time as undertaking long-term planning and changes.

We also note that there must be far more collaboration between business, community organisations and Queensland Corrections. Such collaboration was far more common two decades ago, but is now almost non-existent. To ensure future collaboration, Queensland Corrections may have to look to ensuring different skills, experience and attitudes of senior employees in the future: this may require action at the selection and ongoing training phases of human resource development.

Address gaps in prevention and early intervention

DRAFT RECOMMENDATION 13

To progress initiatives relating to the youth justice system, the Queensland Government should publish its Youth Justice Action Plan in response to the Report on Youth Justice. As

part of this response, the government should publicly report on recommendations and evaluation of programs.

Reco 13: CLA agrees

Publishing and reporting is a matter of priority, and could be another earlier implementation 'win' of the QPC process.

All QG prisons, including those provided by the private sector, should become more transparent and open. Details and information about the prisons and prisoners should be far more available. Queensland should seek to drive a "best practice" approach to the implementation of the Optional Protocol to the Convention Against Torture (OPCAT), which was recently ratified by Australia, by providing for rigorous independent monitoring of prison conditions.

Similarly, inputs to the prison – books, articles, e-communications to prisoners – should be opened up to bring the prison system into the 21st century. This will require a very large retraining program for current guards.

DRAFT RECOMMENDATION 14

In implementing the recommendations of the Service delivery to Queensland's remote and Indigenous communities report, the Queensland Government should prioritise recommendations that address the causal factors for offending, such as entrenched economic disadvantage, including:

- removing barriers to local economic activity, including ensuring that procurement and job requirements do not exclude local participation
- developing a land tenure reform plan that better supports economic development in remote communities
- reforming policies that facilitate the growth of the Indigenous private sector
- investigating ways to develop community and market initiatives in Indigenous communities including through the use of arm's length funding arrangements that devolve authority to communities.

Reco 14: CLA agrees and proposes

CLA agrees with all these points.

CLA proposes that the QG should encourage/help one or more Indigenous individuals or Indigenous groups or communities to build and run one or more Indigenous prisons in the state. The Indigenous prisons need not be large, but might house up to 10 people for the smaller facilities to up to 100 or so people for town/regional centres.

DRAFT RECOMMENDATION 15

The Queensland Government should:

- fill gaps in preventative service delivery where stigmatisation prevents accessibility or funding (such as programs that encourage self-referrals to prevent sexual offending), and establish trials where these are suitable
- establish a trial program through schools to identify and better support at-risk children to prevent disengagement from the education system.

Information request

The Commission is seeking further information on:

- any deficiencies in prevention and early intervention strategies operating in Queensland
- options that are likely to address the underlying causes of incarceration of Indigenous Queenslanders
- options that would increase accessibility of stigmatised preventative programs
- supports that are required to keep at-risk children in schools.

Reco 15: CLA agrees with QPC recommendations, and has nothing further to add

Expand diversionary options

DRAFT RECOMMENDATION 16

To prevent unnecessary interactions with the criminal justice system, and to better treat offending behaviour, the Queensland Government should:

- review current practice and establish KPIs to encourage the efficient use of police discretion, diversion and cautions
- introduce additional diversionary options for police, including on-the-spot fines, conditional referrals and additional cautioning options
- develop a simple public interest test for police, to encourage and guide the use of discretion.

To support these changes, reporting and monitoring arrangements will need to be in place to ensure public confidence and accountability.

Information request

The Commission is seeking information on:

- other options that would be effective in reducing unproductive interactions with the criminal justice system
- issues that a simplified public interest test should consider
- whether there would be benefits from reversing the onus of the public interest test used by public prosecutors for selected low-harm or 'victimless' offences
- reporting and monitoring arrangements that would ensure public confidence and accountability on the way that police discretion is used.

Reco 16: CLA agrees and recommends

CLA agrees with what the QPC says the QG should do. We note that the use of diversion and cautions has been usurped by a philosophy of charging on nearly every occasion for minor breaches of the law (most noticeable in juvenile Indigenous cases, we believe).

CLA recommends that the QG and Queensland Police develop an incentive/reward scheme, to be contested by both police 'stations' and police districts, for the fewest combined/relative number of Indigenous people in that community who:

- have gone to jail for a first offence
- have gone back to jail

taking into account the:

- increase in cautions over the period
- increase in on-the-spot fines issues (when available)
- etc.

Build a better decision-making architecture

DRAFT RECOMMENDATION 17

The Queensland Government should establish a justice reform office to:

- coordinate and review policy and budget submissions from the core criminal justice sector agencies to cabinet and cabinet committees
- implement justice system reforms
- advise government of priority criminal justice policy issues
- lead and support evidence-based policymaking.

The office should be responsible to a suitably constituted board that includes representation from each of the core criminal justice agencies and independent experts.

Reco 17: CLA agrees and suggests

CLA suggests the QG Justice Reform Office should take a lead for Australia. At the very least, it should be staffed and funded so that constant liaison can occur with other Australian jurisdictions, and possibly some overseas.

CLA suggests that the QG seek either secondment, or funding, for one officer from each state/territory to be part of the QJRO team.

CLA suggests that the QG formally offers to COAG that it will take the lead and keep up federal reporting and encouragement for the development of national approaches to common problems in the criminal justice system.

DRAFT RECOMMENDATION 18

The Queensland Government should require the justice reform office to introduce the following specific reforms:

- common performance objectives and indicators across the core criminal justice agencies, including targets for:
 - reducing offending and reoffending rates, including for youth and women
 - closing the gap on Indigenous incarceration
- mechanisms for allocating resources to support system objectives
- systems to provide accurate and timely data to support decision-making, and improved transparency and accountability
- modelling that promotes understanding of how policy and other proposals are likely to impact across the system
- mechanisms to ensure decision-makers are informed of the full impacts of policy proposals on the criminal justice system, clients and stakeholders, such as:
 - incorporating justice system proposals into the existing regulatory impact assessment process
 - introducing a formal test to assess impacts across the criminal justice system.

These reforms are to be introduced within 24 months of the reform office's establishment.

Information request

The Commission is seeking comment on the appropriate governance mechanisms to improve policy and funding decision-making. In particular, comments are invited on what arrangements would best ensure that:

- government is advised of priority criminal justice reform issues
- justice system reforms are implemented and coordinated
- an environment conducive to evidence-based policy making is fostered.

Reco 18: CLA agrees and suggests/proposes

CLA suggests making prisons and the prison/facility section more open and transparent is an important first step in achieving all these aims. (*See Note below for further detail*).

CLA proposes that the QG publicly commits to being the leading state in Australia for criminal justice reform for the next decade, starting with prison reform.

CLA proposes that the QG annually calls by advertisement for formal input on justice reform needed in Queensland, in other states and territories, and federally. The input could be by way of submission, collation of articles/news items/docos, videos or any other means that would highlight historical, current and emerging problems...and solutions.

CLA proposes that more radical, “on the edge” entities be specifically invited to make submissions – such as bikies, tattoo parlours, tow truck drivers, prostitute collectives, bouncers, etc – as well as traditional invitees like the Law Societies/Bar Councils, magistrates, courts, etc.

CLA proposes that the QG, for a period of 10 years, holds a state/national conference on criminal justice reform every second year (that is, the QG hosts such a conference for 5 evolutions, after which other states and territories would be invited to host the conference every two years in turn).

CLA proposes that one, at least, of those 5 conferences be held in Canberra so that the federal government can be actively engaged in helping to develop national solutions to criminal justice issues.

NOTE: In particular, the QG should repeal laws and rewrite regulations that ban interviews with prisoners: they inhibit public knowledge of prison conditions and prison programs. In closed systems, everything becomes foetid eventually.

From experience of having members of CLA who are/have been prisoners, and from corresponding and trying to correspond with them in prisons throughout Australia (including Queensland prisons), we can state with absolute confidence that many of the “rules” as to correspondence serve no legitimate purpose other than to frustrate prisoners and their families, friends and organisations trying to help them.

For example, CLA has had reputable and publicly-available magazines (such as Quarterly Essays, and the quarterly magazine of the National Maritime Museum of Australia) returned to us from prisons as “not acceptable”. That is the level of the pettiness and silliness of some existing “regulations”. All “regulations” of all prisons for a state should be formulated in public by a body with at least as many external representatives on it as internal Corrections representatives. There should be a suitable number of civil liberties and/or human rights representatives on the formulating body, as there should be on any prison reform committee: there should also be one or more prisoners and/or former prisoners’ representatives.

Recidivism—trends and measurement

Information request

The Commission is seeking information on approaches, technical details and challenges associated with measuring and modelling recidivism, including:

- how recidivism indicators could be used to better measure performance
- appropriate estimation approaches
- how baseline performance should be established, including any modelling challenges.

Cost and benefits of imprisonment

Information request

There are net benefits from keeping the most serious offenders in prison. For other prisoners, the picture is less clear. An illustrative analysis of the costs and benefits of imprisonment suggests that the use of prisons for less serious offences is unlikely to provide net benefits at the margin. The Commission is seeking qualitative and quantitative evidence on all types of benefits and costs associated with serving custodial sentences in prison or in the community.

IN RESPONSE to the above two requests, CLA has nothing specific to add

Addendum 1:

Health – mental health – ‘welfare’, including education status:

To enable evaluation of whether or not a prisoner has progressed – been in any way rehabilitated – during his/her time in prison, depends on taking some form of measurements on entry and comparing them with similar measurements taken on exit.

CLA proposes there be a health (including drug questions) and mental health interview, ideally within the first 24 hours of entering prison, but certainly within the first week.

There should also be a social welfare-type interview, involving details of the prisoner’s family and/or social arrangements, to check whether or to what extent they are likely to assist or prevent/impede rehabilitation efforts. Obviously, a prisoner’s privacy, and that of family or friends, may need to be taken into account in designing such an interview process.

These interviews should be on common questions for all prisoners entering Queensland prisons. Ideally, Queensland can lead the nation in this regard. Even more ideally, the same set of questions could be used for all detention facilities (including immigration) throughout Australia and on any islands where people are detained.

A similar and complementary set of questions across the same areas should be asked on exit day, or in the week leading up to exit.

Comparing the entry and exit information can provide the prisoner and the system with deep insights into whether or not, or what extent, rehabilitation is occurring.

Addendum 2:

Identify precisely the nature of what is required

What is required is a massive culture change program within the QG, Corrections, the Prison and legal/court system of Queensland.

There is a considerable danger – because this initiative is being driven by a productivity agency – that most proposed reform will be based on a change management approach. Changing how people manage will be important, but it is not the core of the problem.

The core is to change how people think. This suggests more of a public relations approach than a management approach, though both will be needed, over a considerable time.

Whatever is the recommended outcome from this initiative, it is unlikely to succeed unless the proposal contemplates at least a 10-year program of change, and more likely 20 years.

It has taken several generations to get the prison-police-legal system into the state it is in. It will take at least a generation to achieve positive, effective change.

While CLA has concentrated on the prison/corrections system, as requested, it is likely there will be concomitant change required in the police and legal systems of the state, as well.

Ends text of submission Addendum follows

ADDITIONAL INFORMATION from CLA:

1.

A.

Please see the excellent report on the ACT's Alexander Maconochie Centre, released 20 Feb 2019: <https://www.ics.act.gov.au/latest-news/articles/inspectors-first-review-of-a-correctional-service-released>

Inspector's first review of a correctional service released 20 Feb 2019

The ACT Inspector of Correctional Services has released its first review of a correctional service. This report reviews the care and treatment of remandees at the Alexander Maconochie Centre (AMC).

This review finds that although remandees are required under ACT law to be treated as innocent, there is no material difference in the way remandees are treated at the AMC as compared to convicted detainees. Key issues identified in the report are restrictions on time out of cells and the experience for women in the AMC.

For more information please see our [Media Release](#).

The report can be accessed [here](#).

B.

Human Rights Principles for ACT's jail Released 30/01/2019

The ACT now has a clear set of principles about how detainees should be supported from their initial contact with corrections through to their release.

The Government today released the *Human Rights Principles for ACT Correctional Centres* to help improve management of detainees in the ACT.

https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2019/supporting-detainees-human-rights

The principles:

https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0014/1314122/ACT-Human-Rights-Principles-in-the-AMC-booklet.PDF

C.

Canberra's only jail is running out of cells, but the Government wants to 'build communities not prisons'

By [Jordan Hayne](#) and [Niki Burnside](#) Updated 15 Feb 2019, 11:46am

An unprecedented push to overhaul Canberra's prison system will not be aimed at expanding the ACT's crowded jail, but in keeping people out of jail altogether, the ACT Government says.

<https://www.abc.net.au/news/2019-02-15/canberra-jail-cells-at-capacity-crime-prevention/10813580>

2.

02 April 2019

G4S stripped of contract to run Birmingham prison

Most violent prison in England and Wales returned to public control on permanent basis

G4S is to be permanently stripped of its contract to run Birmingham prison after the government was forced to take control of the **failing jail**.

<https://www.theguardian.com/society/2019/apr/01/g4s-stripped-contract-run-hmp-birmingham-prison>

3.

06 Feb 2019

Nearly 65% of prisoners at women's jail 'show signs of brain injury'

Call for screening as women tell study their injuries were caused by domestic violence

<https://www.theguardian.com/society/2019/feb/06/nearly-65-of-prisoners-at-womens-jail-show-signs-of-brain-injury>

4.

12 Aug 2016

Private prisons more dangerous

<https://www.google.com/url?q=https://www.theguardian.com/us-news/2016/aug/12/private-federal-prisons-more-dangerous-justice-department>

5.

Prisoner violence at record levels, cell 'double ups' a major contributor, commissioner admits

Exclusive by Matt Wordsworth

Updated 7 Aug 2018, 1:45pm

Violence in the Queensland prison system has reached a new high, with almost 3,000 jailhouse assaults recorded last financial year.

<https://www.abc.net.au/news/2018-08-07/prisoner-violence-record-levels-cell-double-ups-major-problem/10070216>

6.

This is how **NOT** to introduce email services into prisons

Wired online journal

VICTORIA LAW BACKCHANNEL 08.03.18

CAPTIVE AUDIENCE: HOW COMPANIES MAKE MILLIONS CHARGING PRISONERS TO SEND AN EMAIL

<https://www.wired.com/story/jpay-securus-prison-email-charging-millions/>

In the outside world there are numerous companies offering free email accounts—Gmail, Yahoo Mail, Mail.com—but inside prisons companies charge a fee, a token JPay calls a “stamp,” to send each message. Each “stamp” covers only one page of writing. Want to send photos of a nephew’s graduation, a niece’s prom dress or a new baby? Each picture costs an additional stamp. A short video clip? That’ll be three stamps. With the postal service, stamp prices are fixed, but JPay’s stamp prices fluctuate. Shortly before Mother’s Day, for instance, a stamp cost 35 cents; the price rose to 47 cents the following week. For a few hundred dollars, prisoners can skip kiosk lines by buying a tablet—a relatively expensive purchase that tends to lock them into JPay’s services.

Inside prisons, e-messaging companies are quietly building a money-making machine virtually unhindered by competition—a monopoly that would be intolerable in the outside world. It’s based in a simple formula: Whatever it costs to send a message, prisoners and their loved ones will find a way to pay it. And, the more ways prisoners are cut off from communicating with their families, the better it is for business. Which means that stamp by stamp, companies like JPay—and the prisons that accept a commission with each message— are profiting from isolation of one of the most vulnerable groups in the country. And, with prisoners typically earning 20 cents to 95 cents an hour in jobs behind bars, the cost of keeping in touch most likely falls to family members and friends.

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What is CLA?

Civil Liberties Australia is a not-for-profit association which reviews proposed legislation to help make it better, as well as monitoring the activities of parliaments, departments, agencies, forces and the corporate sector to ensure they match the high standards Australia has traditionally enjoyed, and continues to aspire to.

We work to help keep Australia the free and open society it has traditionally been, where you can be yourself without undue interference from 'authority'. Australians' civil liberties are all about balancing rights and responsibilities, and ensuring a 'fair go' for all.

For more about CLA, please go to: <http://www.cla.asn.au>

Winston Churchill: What he said about prisons as UK Home Secretary in 1910:

We must not forget that when every material improvement has been effected in prisons, when the temperature has been rightly adjusted, when the proper food to maintain health and strength has been given, when the doctors, chaplains, and prison visitors have come and gone, the convict stands deprived of everything that a free man calls life. We must not forget that all these improvements, which are sometimes salves to our consciences, do not change that position. The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilisation of any country. A calm and dispassionate recognition of the rights of the accused against the State, and even of convicted criminals against the State, ... tireless efforts towards the discovery of curative and regenerating processes and an unfaltering faith that there is a treasure, if you can only find it, in the heart of every man – these are the symbols which in the treatment of crime and criminals mark and measure the stored-up strength of a nation, and are the sign and proof of the living virtue in it.

– [https://api.parliament.uk/historic-hansard/commons/1910/jul/20/class-iii - S5CV0019P0_19100720_HOC_288](https://api.parliament.uk/historic-hansard/commons/1910/jul/20/class-iii-S5CV0019P0_19100720_HOC_288)

(underline added)

ENDS