

**AUGUST 2019**

**SUMMARY REPORT**

Imprisonment and Recidivism



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# Foreword

In September 2018, the Queensland Government directed the Queensland Productivity Commission to undertake an inquiry into imprisonment and recidivism. This report summarises our findings and recommendations.

Despite declining crime rates, imprisonment rates in Queensland are increasing. Imprisonment rates for Aboriginal and Torres Strait Islander peoples are high and growing, and the rate of imprisonment of women is also growing. These matters are not unique to Queensland and reflect wider Australian trends.

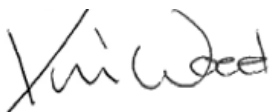
Imprisonment is an expensive response to crime and directly costs the Queensland community almost one billion dollars annually. Incarceration has profound impacts on prisoners, their families and the community. Our findings challenge the notion that community safety is best served by continuing the current approach. We propose a comprehensive suite of recommendations which we believe will improve outcomes, reduce costs and keep communities safer.

Our report makes the case for a narrowing of the scope of criminal offences. We argue for some crimes to be punished with non-custodial options. We propose a greater role for restitution and restorative justice. We recommend widening the sentencing options available to the courts. We conclude that better rehabilitation and reintegration would reduce recidivism. We recommend an expansion of diversionary options. We consider the overrepresentation of Indigenous people and provide recommendations.

We understand that some of the recommendations in this report may not be implemented without wide community agreement and political will. Further consideration will be necessary for some reforms. This will take time and should not be rushed. Nevertheless, we believe it is important to present our analysis and recommendations and hope that this is a catalyst for further debate leading to improved outcomes.

This report would not have been possible without the contributions of some 600 stakeholders, representing ordinary Queenslanders, government agencies and statutory bodies, victim peak bodies, prisoner advocates, unions, the judiciary, corrections officers, prisoners, Indigenous peak bodies, advocacy organisations and academics. We applaud the willingness of stakeholders to seek better outcomes for victims, offenders, and the community and thank all individuals and organisations who participated in the inquiry.

Finally, we thank the staff of the Commission for their commitment and professionalism in the preparation of this material. The Commissioners wish to thank inquiry leader Matthew Clark and executive director Kristy Bogaards, without whose contribution this report would not have been delivered to the level of quality achieved. A full list of the Queensland Productivity Commission staff who contributed to this inquiry is listed inside the back cover.



**Kim Wood**  
Principal Commissioner  
1 August 2019



**Bronwyn Fredericks**  
Commissioner

## Key points

- The rate of imprisonment—the number of prisoners per head of population—has increased by more than 160 per cent since 1992.
  - This increase has primarily been driven by policy and system changes and a focus on short-term risk, not crime rates.
  - The median prison term is short (3.9 months) and most sentences (62 per cent) are for non-violent offences—30 per cent of prisoners are chronic but relatively low harm offenders.
  - Each month, over 1,000 prisoners are released back into the community. Over 50 per cent will reoffend and return to prison or to a community correction order within two years.
  - Social and economic disadvantage is strongly associated with imprisonment. Around 50 per cent of prisoners had a prior hospitalisation for a mental health issue and/or were subject to a child protection order—for female Indigenous prisoners, this figure climbs to 75 per cent.
- At the margin, the costs of imprisonment are likely to outweigh the benefits, with increasing imprisonment working to reduce community safety over time:
  - It costs around \$111,000 per year to accommodate a prisoner, with indirect costs in the order of \$48,000 per person, per year.
  - Prisons are not effective at rehabilitation, and can increase the likelihood of reoffending.
  - Without action to reduce growth, the government will need to build up to 4,200 additional cells by 2025. This will require investments of around \$3.6 billion.
- Given the scale of policy reforms required, an essential first step will be to overhaul the decision-making architecture of the criminal justice system, including establishing an independent Justice Reform Office to provide a greater focus on longer-term outcomes and drive evidence-based policy-making.
- Many offending behaviours can be addressed outside of the criminal justice system through a victim restitution and restoration system, targeted community-level interventions and greater use of diversionary approaches.
- A lack of sentencing options constrains the ability to effectively deal with offending behaviours and makes the system costlier than it needs to be. More sentencing options are required including:
  - more flexible community corrections orders supported by effective supervision and treatment
  - supervised residential options that allow treatment to address offending behaviours.
- After many decades of operation, illicit drugs policy has failed to curb supply or use. The policy costs around \$500 million per year to administer and is a key contributor to rising imprisonment rates (32 per cent since 2012). It also results in significant unintended harms, by incentivising the introduction of more harmful drugs and supporting a large criminal market. Evidence suggests moving away from a criminal approach will reduce harm and is unlikely to increase drug use.
- High Indigenous incarceration rates undermine efforts to solve disadvantage—currently an Indigenous male in Queensland has an almost 30 per cent chance of being imprisoned by the age of 25. Long-term structural and economic reforms that devolve responsibility and accountability to Indigenous communities are required. Independent oversight of reforms is essential.
- These reforms, if adopted, could reduce the prison population by up to 30 per cent and save around \$270 million per year in prison costs, without compromising community safety.

# 1 What is the inquiry about?

Across Australia and other developed countries, governments are contending with rising imprisonment and high levels of recidivism. In Queensland, the rate of imprisonment has risen by more than 160 per cent since 1992 and by around 61 per cent between June 2012 and March 2019.

Infrastructure has not kept up with this growth, with prisons currently holding around 37 per cent more prisoners than they are designed to hold.

More than half of prisoners reoffend and are given a new sentence of imprisonment or community supervision within two years of their release. The rate of imprisonment for Aboriginal and Torres Strait Islander people continues to outstrip the rate for the rest of the population, and imprisonment rates for women have been increasing faster than for men.

The growth in prisoner numbers has significant social and economic implications for the Queensland community, affected individuals and their families, and the Queensland Government.

In September 2018, the Queensland Government asked the Commission to undertake an inquiry into imprisonment and recidivism in Queensland. The terms of reference for this inquiry ask us to examine how government resources and policies can be best used to reduce imprisonment and recidivism and improve outcomes for the community over the medium to longer term. The terms of reference ask us to consider:

- trends in imprisonment and recidivism and the causal factors underlying these trends
- factors affecting imprisonment for Aboriginal and Torres Strait Islander people, women and young people
- the benefits and costs of imprisonment, including its social effects, financial costs and effectiveness in reducing/preventing crime

- the effectiveness of programs and services to reduce the number of people in prison, including prevention and early intervention approaches, non-imprisonment sentencing options, and the rehabilitation and reintegration of prisoners
- the efficacy of adopting an investment approach, whereby investments in prevention, early intervention and rehabilitation deliver benefits and savings over the longer term.

The terms of reference require that our recommendations are consistent with the Queensland Government Policy on the Contracting-out of Services.

## Our approach

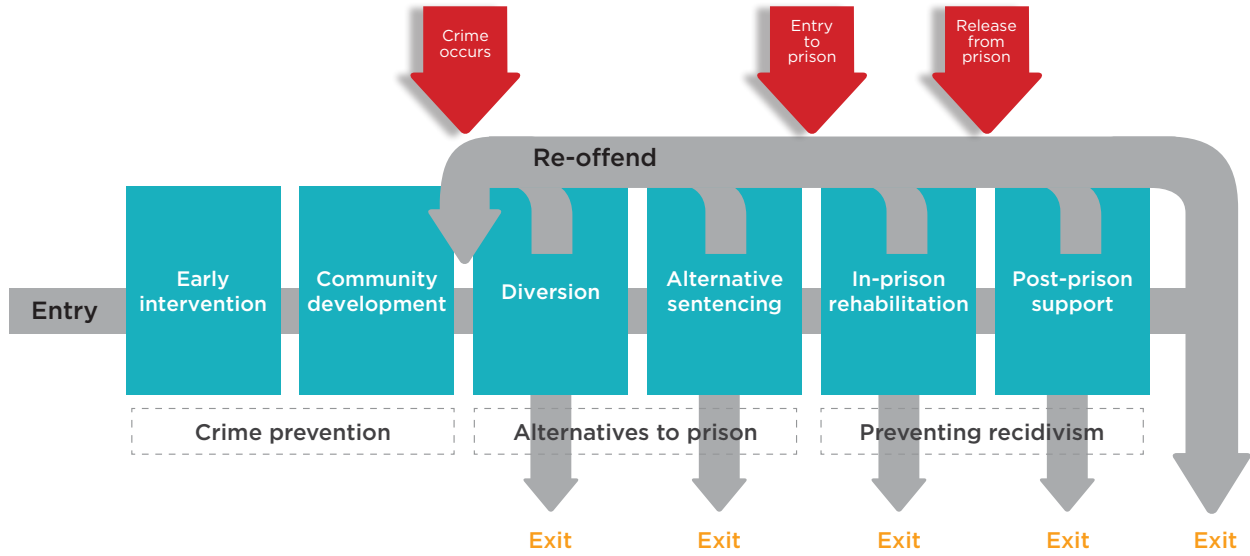
There are many factors that influence imprisonment and recidivism. The scope of this inquiry therefore encompasses a broad set of issues and areas—from early intervention to post-prison support (Figure 1).

Given the broad scope of this inquiry, it was not possible for the Commission to conduct a detailed operational review of the Queensland criminal justice system (Box 1) or every program, policy or action that affects imprisonment.

Our approach to this inquiry reflects that at least 10 major reviews have looked at aspects of the criminal justice system in Queensland over the last decade. Many of their recommendations are still being implemented. The inquiry has built on, rather than revisited, the issues covered by these reviews.

The Commission has concentrated on the key policy and institutional changes that are likely to provide the greatest net benefit to the community. The Commission has taken a community-wide approach to assessing options—where possible, assessing the costs and benefits of reform options and examining whether there were more effective and efficient ways of doing things.

Figure 1 The scope of the inquiry



The terms of reference for this inquiry asked us to consider ways to reduce the number of people flowing through the prison system, including for women, youth and Aboriginal and Torres Strait Islander people. We have examined and reported on trends in offending and imprisonment data for each of these groups wherever this was possible.

In most cases, the reforms proposed in this report will help reduce offending and imprisonment for all demographic groups. This is reflected in our recommendations, which are, generally not targeted to specific demographic groups.

The Commission has, however, developed specific recommendations to address the overrepresentation of Aboriginal and Torres Strait Islander people in Queensland prisons. This approach reflects the intractability of the underlying causes of Indigenous imprisonment.

Finally, it was not possible for the Commission to develop conclusive findings and recommendations across all issues that affect imprisonment and recidivism. For those issues, we have identified areas for further review. These should form a body of priority work for the Queensland Government.

### Box 1 The Queensland system

Several institutions make up the Queensland criminal justice system, including law enforcement agencies; courts; agencies responsible for detaining, supervising and rehabilitating offenders (including prisons); a range of advocacy and oversight bodies; and agencies involved in prevention and intervention.

There are over 11,000 sworn police officers, 200,000 criminal lodgements dealt with by the courts each year and 9,000 prisoners managed in custody (11 high security prisons, 6 low security prisons, and 13 work camps). In 2017–18, the budgetary cost of the criminal justice system in Queensland (police, the courts and corrections) was around \$3.5 billion.

Many other stakeholders play a role in the system—from oversight or advisory bodies like the Crime and Corruption Commission and the Queensland Sentencing Advisory Council, to legal services, service providers, representative groups and the media.

## Consultation

The Commission operates on a public inquiry model, underpinned by open and transparent consultation.

This final report presents the Commission's findings and recommendations based on its analysis of the evidence provided by a broad range of stakeholders from across the judiciary, unions, legal advocates, peak bodies, Indigenous and non-Indigenous advocacy groups, service providers, prisoners, academics, government and members of the public.

To prepare the final report, we consulted on our issues paper (released September 2018) and draft report (released February 2019).

### The Commission met with over **600 stakeholders**

#### PUBLIC HEARINGS AND FORUMS

The Commission received **25 PRESENTATIONS** through public hearings in Cairns, Townsville and Brisbane. **Public forums** were held in Cairns, Brisbane, Townsville, Rockhampton & Mount Isa.



#### SUBMISSIONS



The Commission received

**89 written SUBMISSIONS**

(46 on the draft report + 43 on the issues paper)



The Commission held over

**150 MEETINGS**

with **stakeholders including** two expert workshops



#### SITE VISITS

The Commission undertook site visits to:

**EIGHT correctional facilities**—Lotus Glen, Helena Jones, Borallon, Aurthur Gorrie, Townsville, Capricornia, Brisbane and Brisbane Women's

**the Drug and Alcohol, Magistrate and Murri courts**

**service providers**—seven crisis accommodation centres

#### DIRECT CONSULTATION

**with Aboriginal and Torres Strait Islander communities**



The Commission held public forums and additional one on one meetings in **Hope Vale, Aurukun** and **Napranum**.

Further meetings were also held in **Yarrabah**.

Copies of all submissions, and transcripts and recordings of the public hearings can be accessed through the Commission's website, [www.qpc.qld.gov.au](http://www.qpc.qld.gov.au)

# What stakeholders told us

## The system is not achieving desired outcomes

*Prison/detention does not prevent offending. Research consistently shows that prisons are ineffective in rehabilitating offenders and preventing re-offending. Imprisonment is therefore a poor use of public money. (Balanced Justice sub. 1, p. 33)*

*[W]hen governments talk about community protection as a reason, they only focus on the short term when offenders are actually in prison, and very little focus on community protection in the long term, e.g. post release. (Erikson, Monash University sub. 5, p. 5)*

*We learn nothing of use in prison and spend our lives in a place that reinforces how worthless we are. (Anonymous prisoner sub. DR40, p. 2)*

*Despite falling crime rates, record numbers of our most marginalised Queenslanders have been imprisoned. (Sisters Inside sub. 39, p. 3)*

*Recidivism rates ... for First Nation people and ... for non-First Nation people point to a system failure in the important area of rehabilitation. This failure, as evidenced by the recidivism rates, is catastrophic and is a significant driver of crime. (Hamburger sub. 14, p. 13)*

## Prisons are overcrowded, and this is impacting rehabilitation

*Double ups are occurring in every state-run centre (other than the low security centres), in some there are insufficient facilities for all prisoners to sit down to eat at the one time and access to scarce industry programs designed to assist in rehabilitation is further reduced. (Together Queensland sub. 29, p. 1)*

## Issues are broader than the prison system

*Rehabilitation is of little assistance when gaol offers a more inviting environment than the communities to which they must return. (Families Responsibilities Commission sub. 23, p. 1)*

## Addressing Indigenous incarceration requires a long term, community-led focus

*[A]ny real improvements in the headline imprisonment rates will forever be elusive unless there is a clear focus on empowerment and developing 'human capital' so that Indigenous people, over generations, have the means to lift themselves out of poverty. (Cape York Partnerships sub. 6, p. 2)*

## Offending behaviours are often the result of many complex factors

*There is a significant body of evidence documenting the links between mental health issues and incarceration, as well as between childhood trauma and future psychosocial problems. (The Royal Australian & New Zealand College of Psychiatrists, sub. 31, p. 5)*

## There are no quick fixes

*Investing in programs addressing offending behaviour is not an easy sell, however, if we are serious about preventing crime and increasing the safety of our children, young people and communities, we must look into investing in long term solutions, not short term perceived 'fixes'. (Bravehearts sub. 40, p. 1)*

*Queensland, like the rest of Australia, relies heavily on the criminal justice system to respond to alcohol and other drug use despite recognition that alcohol and other drug use is better framed as a health issue. (Queensland Network of Alcohol and Other Drug Agencies sub. 30, p. 3)*

## Solutions require bipartisan support

*This cannot be a political issue. (Queensland Victim's Homicide Support Group sub. 18, p. 3)*

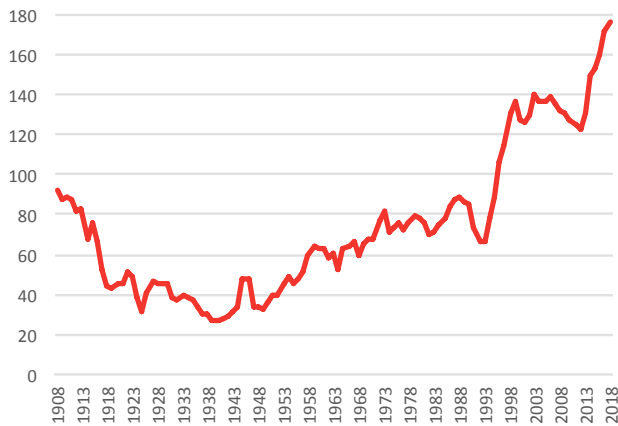


# 2 Imprisonment is a growing problem

## Imprisonment rates are increasing, despite falling crime rates

Imprisonment is growing much faster than the population—the rate of imprisonment in Queensland is currently higher than at any time since 1900. The prison population grew rapidly during two periods. From 1992 to 1999, the rate of imprisonment roughly doubled. It increased rapidly again from 2012 to 2018—growing by 44 per cent.

**Figure 2 Adult imprisonment per 100,000 population, Queensland**



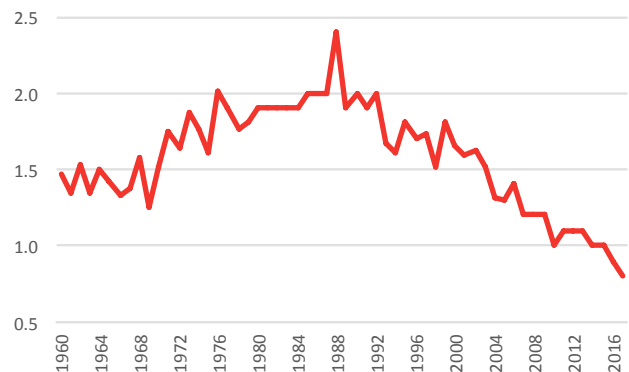
Source: ABS 2018k, 2019a; OESR 2009.

Similar trends are occurring in the rest of Australia.

Measuring changes in underlying crime rates is challenging, because the rate at which crimes are reported change over time. This may reflect changing community attitudes—for example, in relation to domestic and sexual violence—but can also reflect changes in policing effort or focus.

Over the longer term, the most reliable indicator of crime levels are homicide rates (since most cases are reported). While homicide rates increased slightly during the 1970s, they have declined approximately two-thirds from their peak in the 1980s.

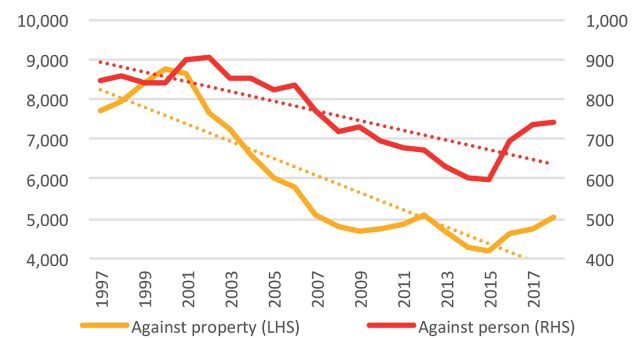
**Figure 3 Homicide rate per 100,000 population, Australia**



Source: ABS 2018l; Bricknell 2008; Neill & Leigh 2008.

Queensland data suggest a similar trend. Reported crime rates—those offences which are reported, or policed—have trended downward for the past two decades.

**Figure 4 Reported offence rate per 100,000 population, Queensland.**



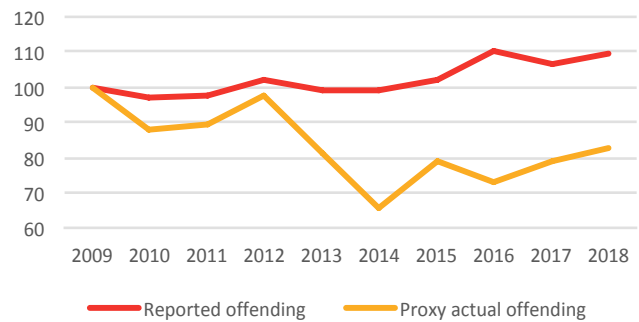
Note: The increase in reported offences against the person from 2015 appears to be largely due to additional reporting of offences rather than an increase in the underlying crime rates.

Source: QPS 2019c.

The *reported* offence rate can be a misleading indicator of the underlying rate of crime, since it can be affected by changes in reporting and policing effort—both of which seem to have increased significantly. Adjusting for these factors suggests that **actual offending rates may have declined by as much as 20 per cent over the last decade** (Figure 5).<sup>1</sup>

Despite the decline in underlying crime rates, surveys show that most Australians believe that crime is increasing (Box 2).

Figure 5 Reported and proxy actual offending rates.



Rates are presented as indexes to allow comparisons of change over time. Index: 2009=100.

Source: QPC calculations; ABS 2019d, 2019g.

## Box 2 Do public perceptions match the reality?

Crime is a key concern for Australians. This is for a good reason. Victims of serious offences can suffer trauma that severely reduces their quality of life. For others, fear of crime can limit their participation in the community.

While Australians' perception of safety has improved on some measures<sup>a</sup>, most Australians believe that crime rates have increased over the last few years, and about a third believe that crime has increased a lot.<sup>b</sup> This is similar in other countries, where people commonly believe crime rates are rising, when in fact the opposite is occurring.<sup>c</sup>

Similarly, the community often feel the judiciary is 'out of touch' or that sentences are too lenient and inconsistent. However, research shows that when given the full facts about a case, members of the public typically choose sentences that are on par with, or more lenient than, the imposed sentence.

**Public anxiety about crime is what drives state government investment in law enforcement. It is this investment, not underlying trends in crime, which has played the dominant role in shaping demand for criminal justice resources over the last ten years. (Weatherburn 1993)**

<sup>a</sup> For example, in 1996, females were almost twice as likely to avoid public transport and one and half times less likely to walk home alone after dark than they are today. ABS 2017, *Personal Safety, Australia*, cat. no. 4906.

<sup>b</sup> *Essential Research 2018, The Essential Report*, January.

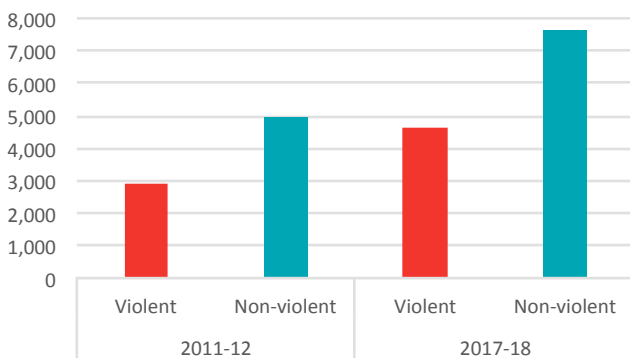
<sup>c</sup> Davis, B & Dossetor, K 2010, *(Mis)perceptions of Crime in Australia, Trends & Issues in Crime and Criminal Justice*, no. 396, Australian Institute of Criminology, July.

<sup>1</sup> Note: Underlying offending rates are a weighted bundle of four offences: physical assault, theft, property damage and unlawful entry. Reported offending rates include property and personal offences.

### Prison terms tend to be short, and used for non-violent offending

Most prison sentences are short. **The median prison sentence is only 3.9 months.** Often the whole sentence, or most of it, is served on remand—where opportunities for rehabilitation are limited. Non violent offenders accounted for over 60 per cent of all prisoners in 2017-18.

Figure 6 Prison sentences, Queensland

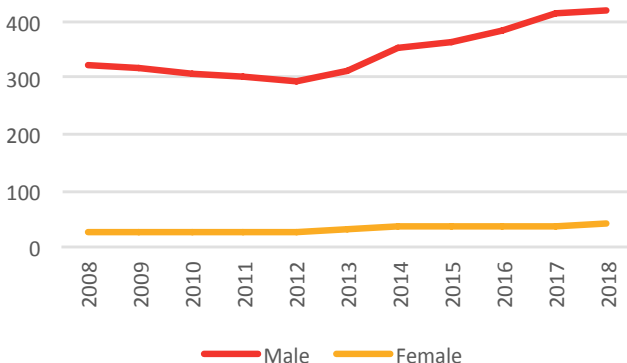


Source: ABS 2019e.

### Women are imprisoned at much lower rates than men, but rates are growing

The rate of imprisonment for women is around ten times lower than it is for men. However, it has increased by more than 60 per cent over the last decade.

Figure 7 Imprisonment rates, Queensland

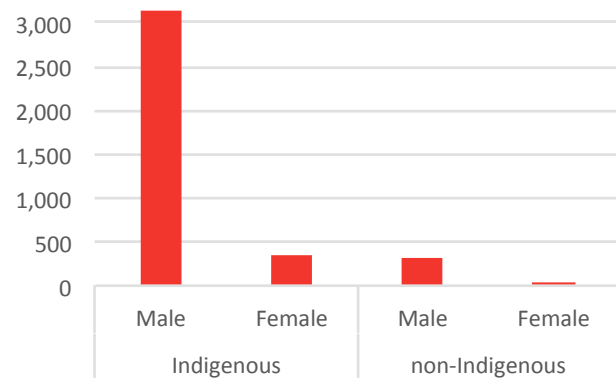


Source: ABS 2018k.

### Aboriginal and Torres Strait Islander people are overrepresented...

Indigenous imprisonment rates are around ten times the non-Indigenous rate. For Indigenous men, the rate of imprisonment is over 3,000 persons per 100,000 population.

Figure 8 Age-standardised imprisonment rates, levels, per 100,000 population

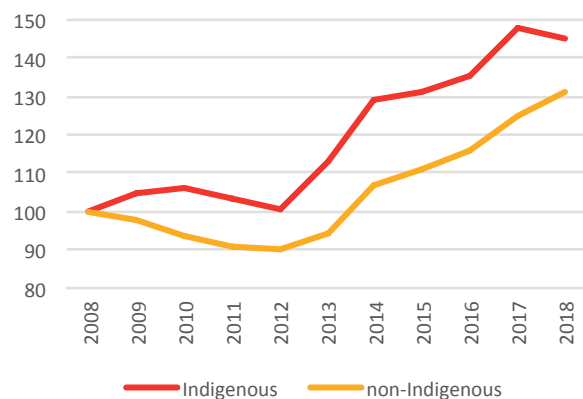


Source: ABS 2018k.

### ...and rates are growing over time

Indigenous imprisonment rates increased by 45 per cent between 2008 and 2018. This growth was around 50 per cent faster than for non-Indigenous people.

Figure 9 Age-standardised imprisonment rates, indexed growth



Source: ABS 2018k.

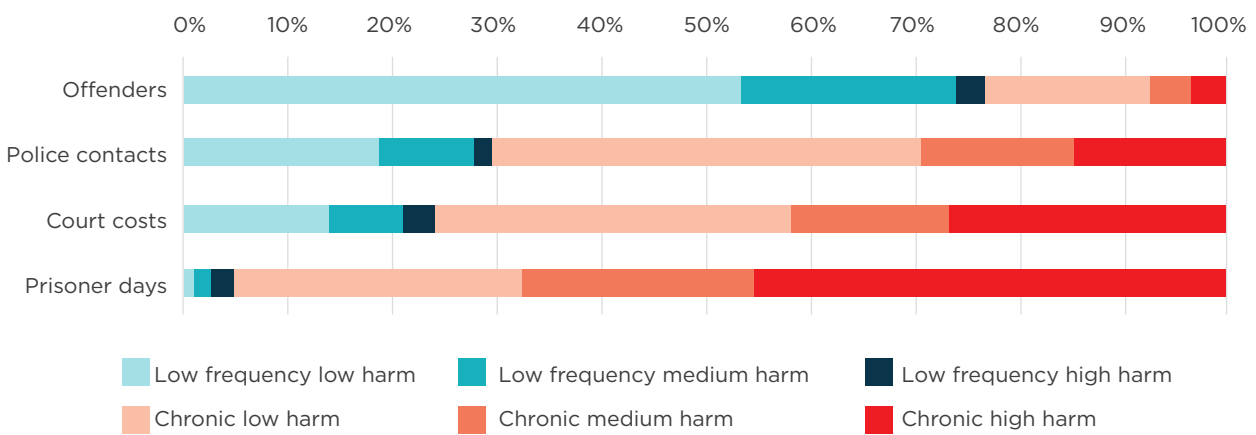
# Risk factors are associated with imprisonment

## Chronic offending

Although prison is supposed to be an option of last resort (*Penalties and Sentencing Act 1992*), many individuals are imprisoned for non-violent or less serious offences. This is usually because the individual has committed several other offences prior to imprisonment.

The Commission estimates that **around 30 per cent of the burden of imprisonment is borne by chronic, but low harm offenders** (Figure 10).

Figure 10 Police contacts, court costs and prisoner days attributable to offender groups, Queensland



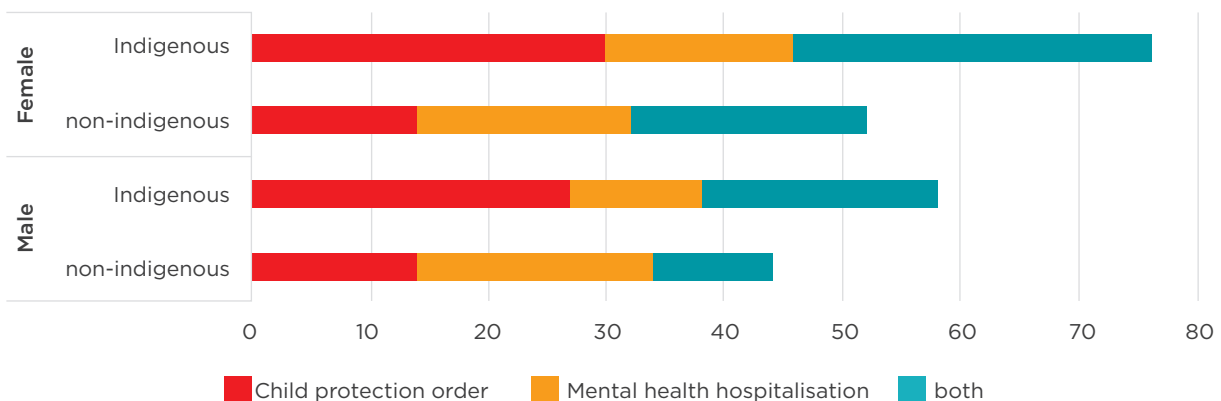
Source: QPC analysis of a cohort of offenders born in 1990. Chronic offenders are those who have been found guilty of at least five offences.

## Exposure to risk factors

Many risk factors interact with one another and become compounded over time—for example, a cognitive disability may increase the risk of substance abuse, which in turn further inhibits executive function. These risk factors are exacerbated by socio-economic disadvantage.

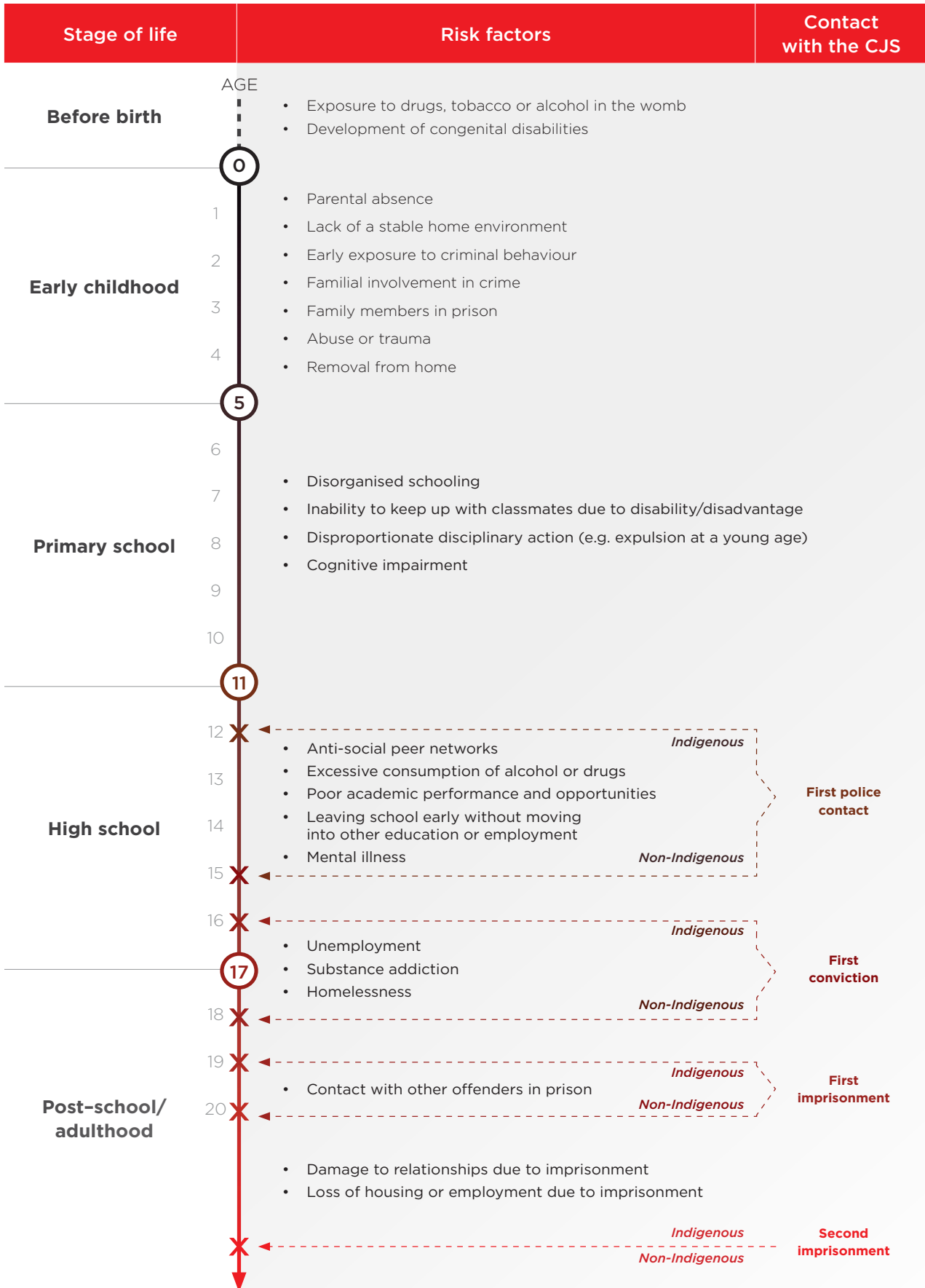
Research shows that **almost half of all Queensland prisoners are likely to have been previously hospitalised for mental health issues and/or have a history of child protection** (Figure 11).

Figure 11 Child protection orders and mental health hospitalisations for Queensland prisoners



Source: Unpublished research by Griffith University's Criminology Institute.

Figure 12 Risk factors and contact with the criminal justice system, Queensland



Source: QPC analysis.

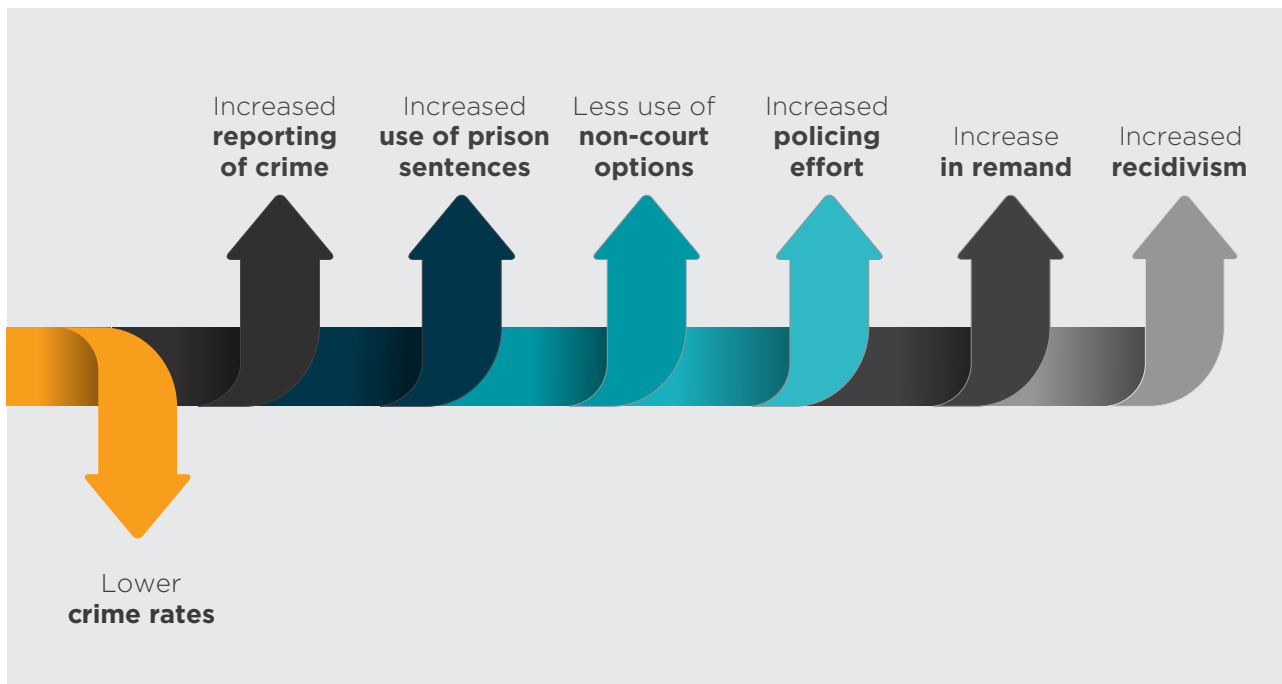
## Rising imprisonment rates are driven by system changes, not crime rates

It is difficult to precisely break down the changes in imprisonment rates over the last few decades into its key components. Nevertheless, the evidence suggests that the key factors driving the change in imprisonment are:

- increased reporting of crime—the reporting rate for physical assault increased 45 per cent between 2008–09 and 2017–18
- an increase in the use of prison sentences over other options—the proportion of sentences involving prison has risen for both violent and non-violent offences
- an increase in recidivism rates—the proportion of prisoners returning to prison with a new sentence within two years increased from 29 per cent in 2006–07 to 43 per cent in 2017–18
- an increase in policing effort—clearance rates for reported offences against the person and offences against property have increased since 2008–09
- an increased propensity for police to use court action—the proportion of offences (other than public order) dealt with through court action increased from 83.7 per cent to 87.5 per cent between 2008–09 and 2016–17, with police less likely to use non-court options such as cautions, conferencing and penalty notices
- a significant increase in the proportion of unsentenced (remanded) prisoners in the last five years—while difficult to measure, this appears to have resulted in a sizeable number of prisoners serving a longer time in prison than they otherwise would have.

Changes in sentence lengths have had little impact on imprisonment rates.

Figure 13 Key drivers of the increase in the imprisonment rate



## The costs of imprisonment are high

### Imprisonment is costly, and this cost is borne by the community

On average, it costs \$111,000 to keep an adult in prison for a year. In 2017–18, the total cost of running Queensland’s prisons was \$960 million. These costs are increasing. From 2011–12 to 2017–18, real net operating expenditures on prisons increased by around 29 per cent, significantly more than the increase in general government expenditures.

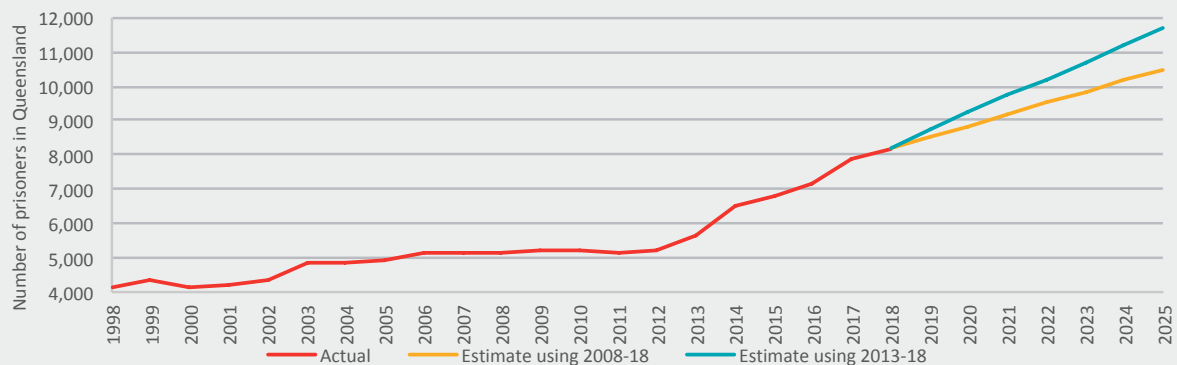
Queensland prisons are overcrowded—across all prisons, capacity is currently at 130 per cent. Without efforts to reduce demand, a significant expansion of capacity will be required (Box 3).

#### Box 3 The cost of housing Queensland’s growing prison population

In September 2018, the high security prisoner population exceeded the original design capacity<sup>a</sup> of prisons by 30 per cent, or nearly 2,000 prisoners.

The Queensland Government has announced new cell capacity of nearly 1,400 prison cells by 2023, at a total cost of \$861 million. Despite this, without further investments or changes to policy, prisons are likely to remain significantly overcrowded based on their original design capacity.

In the absence of any investments or policy change, the Commission projects the high security prison population will exceed design capacity by between 3,000 and 4,200 prisoners by 2025. To keep prisons within their original design capacity will require investments of between \$1.9 billion and \$2.7 billion beyond the \$861 million already announced.



<sup>a</sup> To allow for prisoner movement, 'total design capacity' refers to 95 per cent cell occupancy.  
Sources: 2018k; Queensland Government sub. 43, p. 72; Ryan 2019c.

### Prison imposes additional costs on offenders and their families

Although prison is intended to punish offenders, costs extend beyond the direct effect on the prisoner during the term they serve. These indirect costs can include forgone employment, as well as higher rates of unemployment, social exclusion, homelessness and poor mental health following release. Prison disrupts parent-child relationships, alters the networks of familial support and places new burdens on government services such as schools and family support services. Studies suggest that the indirect costs of imprisonment may be in the order of \$48,000 per year for each prisoner.

## There is little evidence that more imprisonment is beneficial for the community

### How prison affects offending

At a general level, prisons do reduce crime. While an offender is in prison, they are unable to commit further offences. The prospect of prison can also deter others from offending and can deter prisoners from reoffending.

There is no research for Queensland that quantifies how prison deters individuals from committing crime or prevents offending through incapacitation. The limited Australian evidence suggests that:

- There are diminishing returns from the use of imprisonment—that is, the additional benefit (through a reduction in crime) declines significantly as more people are imprisoned.
- Increasing policing effort has a much greater impact on crime than increasing the severity of punishment—increases in sentence length do little to prevent crime.
- Well-designed community corrections can reduce recidivism without compromising community safety.

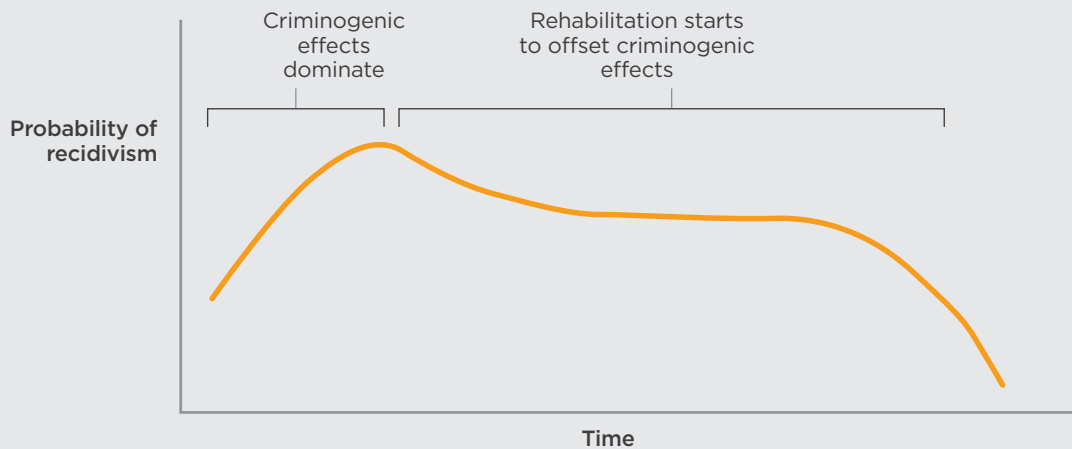
Research suggests that factors such as rising income has a much greater impact on reducing crime than the increase in imprisonment.

Beyond those findings, it is also important to consider what happens after prisoners exit from prison, and the extent to which prison rehabilitates or criminalises prisoners. If prisons simply turn prisoners into more effective criminals, they are likely to make the community less safe over time (Box 4).

#### Box 4 Does imprisonment make reoffending more likely?

The relationship between imprisonment, rehabilitation and the criminogenic effects of prison is poorly understood and likely to vary considerably depending on the prison environment, including the level of overcrowding. Nevertheless, research suggests that during the first year of a prison term the criminogenic effects of prison override any benefits arising from rehabilitation or from deterring the prisoner from offending again.

Figure 14 Possible effects of prison on recidivism



Source: Adapted from Mears et al. 2016.



## Increasing imprisonment may impose net costs on the community

The Commission has undertaken a preliminary, illustrative analysis of the costs and benefits of imprisonment for a range of offences. We estimate that, at the current rate of imprisonment, incarcerating an additional prisoner is likely to prevent (through deterrence and incapacitation) around 14.3 crimes for property offences, and around 1.4 crimes for violent offences.

These benefits can be compared against the direct costs of imprisonment, by assessing the harms that would be avoided by preventing property and violent crimes.

Table 1 provides sample results from the Commission’s analysis. It shows that incarcerating an additional person for a homicide would provide a large net benefit to the community (since the harm of offending is high); however, the costs from incarcerating an additional burglar (where harm is much lower) would outweigh the benefits.

This result does not suggest that we should never imprison anyone for burglary, but rather that **increasing the use of prison, particularly for less serious offences, is likely to impose a net cost on the community.**

Even where there is a net benefit from imprisonment, it may not be the best option—evidence suggests that alternatives to prison, for at least some offences, can provide greater net benefits to the community.

While this analysis is subject to a number of important limitations, it suggests that, while it is beneficial to imprison offenders who impose high harms on the community, in the case of many other offences, imprisonment is likely to impose net costs on the community. Furthermore, it is likely that lower cost options, such as community corrections orders, would provide greater benefits to the community. These conclusions are consistent with emerging research in other jurisdictions.

Table 1 Illustrative net benefits of imprisonment

Offence	Offences avoided	Harm avoided	Prison cost	Net benefit
Homicide	1.4	\$4,142,168	\$800,978	\$3,341,190
Burglary	14.3	\$35,396	\$111,247	-\$75,851

*Harm avoided is the average harm associated with the offence (from 2014 Australian Institute of Criminology harm estimates) multiplied by the offences avoided.*

*Prison costs are the average sentence length multiplied by \$111,200. Sentence length is the average sentence length sourced from ABS, Prisoners in Australia, cat. no. 4517.0.*

*The net benefit is the harm avoided less the prison cost.*

*Note: Estimates exclude costs on offenders or their families.*

# A plan to reduce imprisonment

## Where are we now?

Imprisonment rates are the highest they have been since Federation and have been growing at an increasing rate. Today, there are 80 per cent more Aboriginal and Torres Strait Islander people in prison than there were 10 years ago. Prisons are more than 30 per cent above their original design capacity, and the judiciary and probation and parole workers have the highest caseloads in Australia.

### What is the aim?

A system that has the support of the community, uses resources efficiently and effectively, and works to reduce the harms from crime over time by:

- addressing the causal factors behind offending behaviours
- deterring and preventing criminal activity
- imprisoning only those who present an unacceptable risk to the community
- reducing the risks of future harm by effectively rehabilitating and reintegrating offenders.

### How to get there?

Achieving a meaningful reduction in imprisonment will require reforms across the criminal justice system. This will require:

- 1 More diversionary and prevention activities that address offending behaviours and avoid unnecessary and expensive interactions with the criminal justice system.
- 2 Reductions in the scope of crime, including through reforms to illicit drug policy that move away from a reliance on criminal law to reduce harms.
- 3 More flexible sentencing options that allow offending behaviours to be addressed and provide opportunities for victim restitution and restoration.
- 4 More effective rehabilitation and reintegration by increasing accountability for outcomes, building the right infrastructure, and better equipping prisoners to reintegrate back into the community.
- 5 Addressing entrenched social and economic disadvantage in Indigenous communities by investing in community-led interventions, including the transfer of decision-making and accountability to discrete Indigenous communities.

These reforms will need to be underpinned by a better decision-making architecture that provides clear guidance to agencies on managing risk and enables evidence-based policy-making.

### What are the benefits?

If implemented, the reforms are likely to result in significant reductions in future prison populations. If reforms were implemented today, the Commission estimates the prison population would be between 20 to 30 per cent lower in 2025 than it otherwise would be. This would save between \$165 and \$270 million in annual prison costs and avoid \$2.1 billion in prison investments.

The reforms are also likely to make the community safer, shift resources away from organised criminal networks and deliver economic benefits (such as increased employment). These broader benefits are difficult to estimate, however, proposed drug reforms alone are likely to deliver more than \$2 billion in net benefits to the community.

## 3 Reform options

### Build a better decision-making architecture

This inquiry has identified ways to improve the management of offending behaviour, which would both increase community safety and reduce the burden that crime imposes on the community, including the cost of imprisonment.

However, without change to the underlying decision-making architecture that drives the operation of the criminal justice system, the benefits of reforms are less likely to be realised, and problems are likely to re-emerge over time.

The decision-making architecture can be improved in three key ways:

- Establishing objectives, guidance and accountabilities to drive how agencies operate, including how they should balance immediate risks against activities that would be expected to improve community safety over time.
- Building the evidence base and mechanisms to support evidence-based decision-making.
- Embedding a whole-of-system approach, both in terms of funding and decision-making, and from the perspective of individuals moving through the various stages of the criminal system.

#### Setting the objectives

The overarching objectives of the criminal justice system help to guide decision-making across the system—from the way that police officers exercise discretion on the street, to how corrective services manage prisoners back into the community after their sentence has been served.

The Queensland Government has established that a key objective for the criminal justice system is to 'keep communities safe'. This objective is established as one of six priorities under the 'Our Future State' plan.

However, this objective can be interpreted in a variety of ways. For instance, that the community safety objective implies that agencies should prioritise activities that incapacitate or otherwise prevent those who may present a risk from interacting with the community.

Over the longer term, however, community safety may be best achieved by addressing the factors that lead to offending behaviours. For example, while prison can be used to mitigate short-term risk (by incapacitating an offender), it can risk long-term safety outcomes if it exposes individuals to criminogenic effects and/or fails to tackle the root causes of offending.

Individuals on the front-line of service delivery confront the management of these risks on a day-to-day basis. For example:

- Police must choose whether to arrest, caution or divert offenders.
- Judges must decide what sentence to give.
- The Parole Board must decide whether to grant parole.
- Corrections must choose how to reintegrate offenders.

Without clear guidance, there will always be a tendency to shift offenders into the criminal justice system, give harsher sentences or use imprisonment, since it is natural for individual agents in the system to use available options to avoid short-term risks or to shift risks to others in the system.

Similarly, when viewed through the prism of an individual agency, the 'keep communities safe' objective is likely to result in the prioritisation of effort to deliver immediate requirements without consideration for effectiveness or impacts on the rest of the system.

This implies that the overarching objectives for the criminal justice system need to provide greater guidance on long-term outcomes.

To this end, the Commission recommends that the government establish an explicit, overarching objective for the criminal justice system:

*Improve community well-being over time by reducing the harms from crime.*

To provide more specific guidance to those developing and implementing criminal justice policy, this overarching objective should be supported by five operational objectives.

*The criminal justice system should efficiently and effectively aim to:*

- *address the causal factors behind offending*
- *deter criminal activity*
- *incapacitate individuals who present an unacceptable risk to the community*
- *reduce the risk of future offending through rehabilitation and reintegration*
- *maintain the legitimacy of the system.*

While it is important that the broad ideas behind these objectives are embedded in legislation, the government will need to provide more specific guidance to agencies on how they expect agencies to manage these objectives.

This guidance should be provided to agencies in the form of public statements of intent to each of the core agencies in the criminal justice system. These statements of intent should set out the performance expectation of each agency and how this performance will be assessed against the government's objectives.

## Designing a new approach to decision-making

Policy decisions for the criminal justice system cover some of the most complex and challenging issues facing government. Over many decades, however, the decision-making architecture has been based on a 'siloed', or by function, decision-making process. The result is that:

- The costs, benefits and potential unintended impacts of policies are rarely considered fully.
- Decisions made for one part of the system do not consider impacts on other areas.
- There are few mechanisms or incentives for reinvesting funds across agencies in ways that might improve outcomes for the community.
- Evidence and data reside in individual agencies, making it difficult to assess the impacts of policy change.

Decision-making could be improved by taking a system-wide approach and introducing a greater level of independence and transparency.

This can be achieved by establishing a statutorily independent body—the Justice Reform Office—with four key functions:

- Endorsing and approving agency policy and budget submissions for cabinet and cabinet committee review.
- Providing independent expert advice on system-wide issues.
- Overseeing justice system reforms and reporting on those reforms.
- Leading and supporting evidence-based policy making.

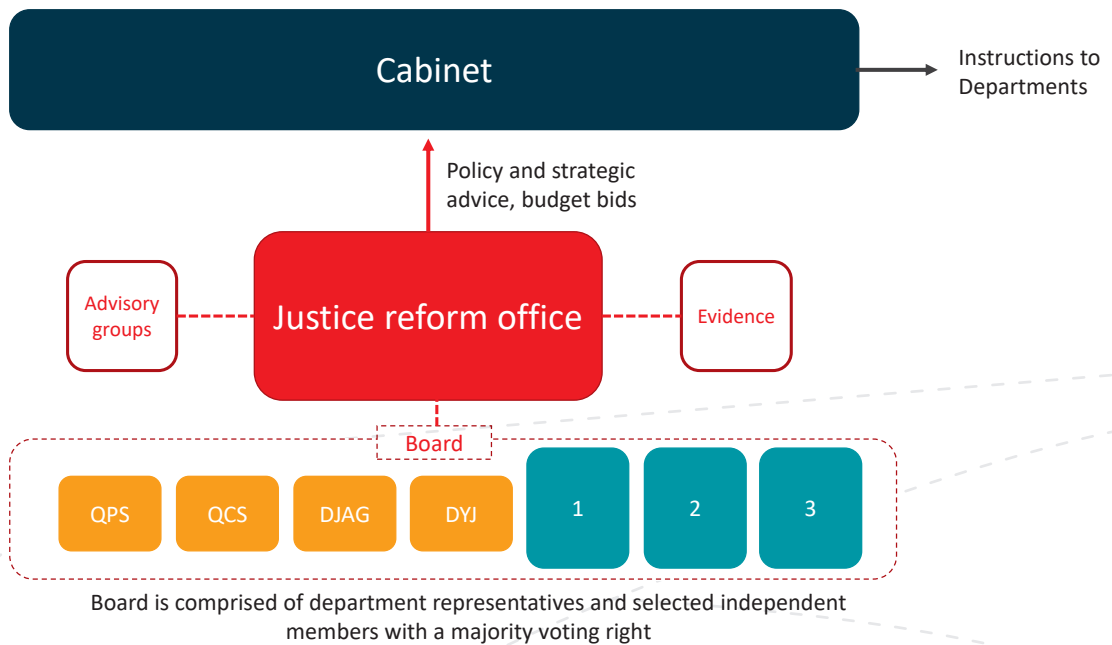
To be effective, the office will need to work with agencies but remain at arms-length from their day to day operations. It should have some level of accountability to agencies but should also be able to exert influence over them.

To this end, the Commission recommends that the Justice Reform Office should be responsible to a board that includes senior executives from the core criminal justice agencies.<sup>2</sup> To ensure independence, the board should also have independent members with a majority voting right (Figure 15). The board should receive advice from advisory groups of experts on specialist issues.

The Justice Reform Office should largely be funded by reallocating existing resources to support its key functions.

To make more informed policy, the Commission also recommends that the government establish a formal process for assessing the costs and benefits—including any unintended consequences—of policy or legislative changes that would have sizable impacts on the community. This process—a justice impact test—should be undertaken by the Justice Reform Office and require formal public consultation and reporting.

Figure 15 The proposed Justice Reform Office



<sup>2</sup> The proposed structure and operating model would be similar to Building Queensland.

# Reduce the scope of criminal offences

## Reduce the scope of criminal offences

Criminal sanctions are only one option for dealing with harmful behaviours. Many activities that are known to be harmful, such as smoking, are dealt with in other ways including through measures such as public health campaigns and regulation without criminal sanctions.

It is difficult to assess the extent to which the scope of criminal law has expanded, since this is determined by both the number of offences, which has increased by almost 70 per cent since 1970, and how they are enforced.

The criteria for determining whether an activity should be a criminal offence, or whether an existing offence should be removed from the reach of the criminal law, include:

- the extent to which the activity causes harm to others
- the extent to which criminal sanctions deter harmful offending or prevent harmful offending through incapacitation
- the costs that criminal sanctions impose on offenders, those close to them, and the community more broadly
- whether these costs are a proportional response to the harm caused by the offender
- whether criminalisation has unintended consequences that create harm
- whether criminalisation undermines public perception of the legitimacy of the law
- whether there are alternative regulatory or other measures that can address the behaviour (including a criminal law of lesser scope), and that provide greater net benefits than criminalisation.

Offences with the strongest rationale for criminalisation tend to be the traditional common law crimes of murder, rape, assault and theft. These offences involve direct harm to another person in a way that violates that person's rights. They also tend

to be relatively high-harm offences as ranked by both public opinion and judicial sentencing decisions.

However, many behaviours that are criminalised do not have such a strong rationale, particularly those that do not involve a victim, result in indirect or unintended harm, or are simply seen as offensive.

These include illicit drugs possession offences, motor vehicle and some driving offences, regulatory offences and public nuisance offences. In total, these offences contribute around 30 per cent of the prison population.

Illicit drug offences have the most scope for reform and are discussed in the next section. For other offences the reform options are not so clear.

Imprisonment for these offences is less likely to provide net benefits (although this will not be true in all cases). Further, removing these offences from criminal law may reduce pathways to prison.

However, it is possible that removing some offences would remove an important discretionary tool for police that allows them to avoid charging individuals with more serious offences (including those that might result in imprisonment).

The Commission has insufficient information to assess whether there are offences, other than drug related offences, that should be removed from criminal law. Nevertheless, there is enough evidence to suggest that further action is warranted.

For this reason, the Commission recommends that a suitable body, such as the Queensland Law Reform Commission, be tasked with assessing whether there are opportunities to reduce the scope of criminal offences.

This assessment should focus on reviewing the benefits and costs of removing regulatory and public nuisance offences from legislation that defines these acts as criminal. In reviewing these offences, consideration should be given to alternative approaches for minimising the social harms caused by these offences.

## Illicit drug reform

Drug use, both illicit and legal, is associated with significant harm, such as:

- impacts on users and their families
- drug-related property theft and violence.

Currently, the main approach to minimising harms from illicit drugs is through a policy of criminalisation.

All available evidence suggests that the policy has not been effective in restricting use and supply. Despite this, the Queensland Government spends around \$500 million enforcing drug laws and imprisons around 1,840 people per year.

Today, drugs are prevalent and easy to source. As noted by Mick Palmer, former AFP Commissioner:

*'Despite our best endeavours over many years,*

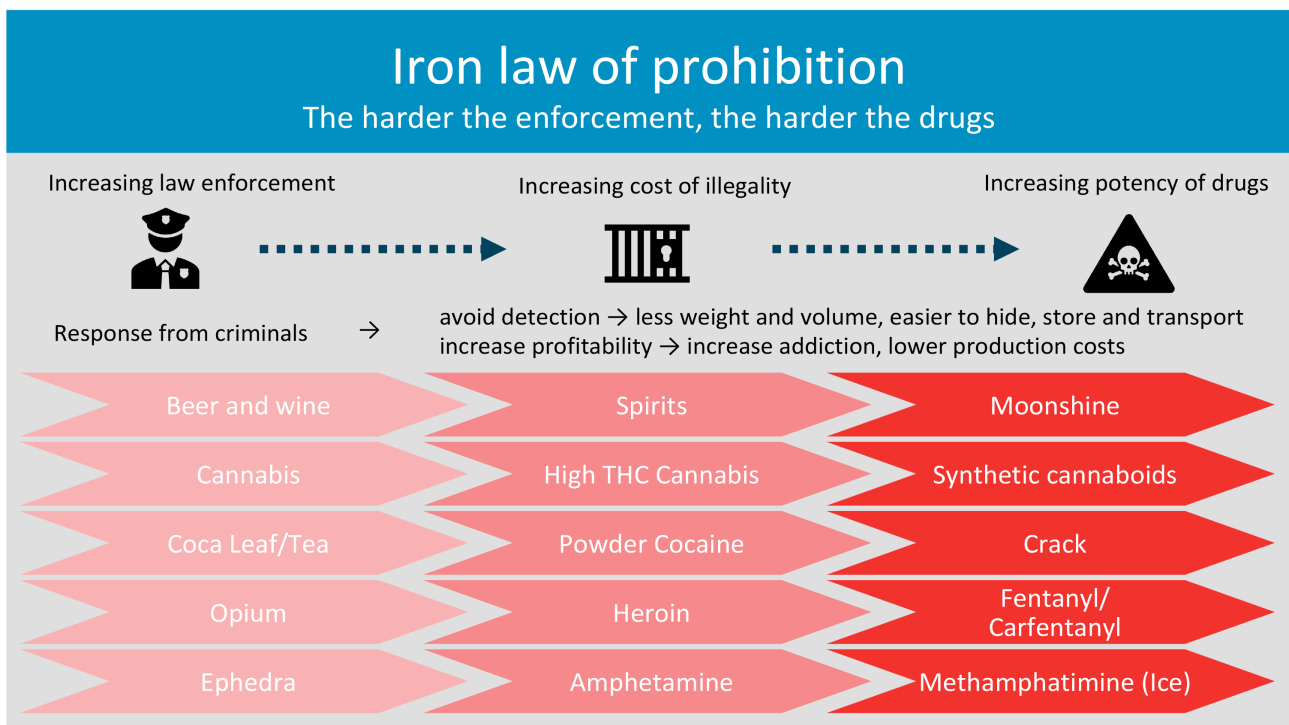
*drugs are as readily available now as they have ever been. [There is] an ever-widening array of, increasingly dangerous, drugs available for use.'* (sub. DR023, p. 3)

In Queensland, around 1 in every 6 people have recently used an illicit drug—and usage has increased over the last decade. The price of illicit drugs has fallen relative to income, and obtaining drugs is easier than ever.<sup>3</sup>

Where other jurisdictions have relaxed the criminalisation of drug usage, there has been little effect on usage rates.<sup>4</sup> Even in those jurisdictions where supply has been legalised, most evidence suggests there has been no long-term increase in usage or drug-related harms.

The criminalisation of drug use has also resulted in unintentional harms. These harms arise largely because criminalisation encourages the creation of more harmful and dangerous drugs (Figure 16).

Figure 16 Prohibition encourages supply of more harmful and addictive substances



Source: Modified from the Global Commission on Drug Policy 2018.

<sup>3</sup> A recent global drug survey found that home delivery of illicit drugs sourced online was growing, with users citing they could 'get cocaine delivered faster than pizza'. A 2018 survey by the Australian Institute of Health and Welfare reported that 94 per cent of users said methamphetamine was 'very easy' or 'easy' to obtain.

<sup>4</sup> The best evidence comes from Portugal, which decriminalised all drug use. There is no evidence that the reforms led to increased drug use, while drug-related harms and criminal justice system costs seem to have declined.

Harms also arise because the profitability of illicit drugs<sup>5</sup> creates enormous incentives for organised crime to enter into illegal markets.

In an illegal market, unregulated criminal operations are unlikely to be concerned with the harms they cause to users or the broader community and are most likely to focus on distribution methods that will generate the most profits—that is, drugs which cost little to manufacture and for which a market can be created (by encouraging addiction if necessary).

Currently, the most profitable and growing market appears to be methamphetamine (commonly known as ice), a drug associated with very high levels of community harm.

The criminalisation of drug usage also appears to inhibit health-based responses. This is evident in the statistics, which show that the rate of drug-related accidental deaths has increased (by 144 per cent since 1997), with illicit drugs now responsible for more deaths than road accidents in Queensland.

Drug reform options need to be assessed by considering the potential costs and benefits to the Queensland community. To this end, the Commission has conducted a cost-benefit analysis of a range of reform options, which found:

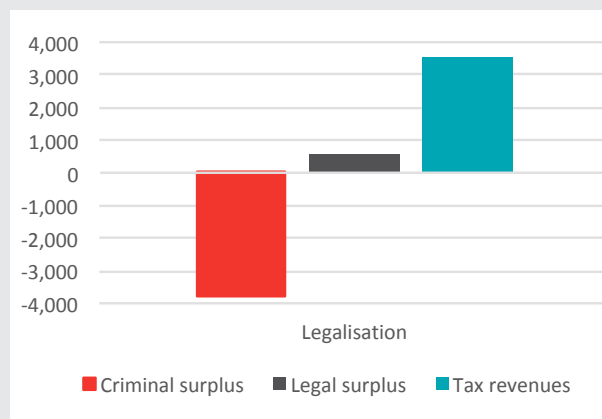
- There are large net benefits (around \$850 million) from decriminalising the use and possession of cannabis.
- These benefits would be higher (around \$1.2 billion) if the government chose to fully legalise and regulate the supply of lower harm drugs such as cannabis and MDMA.
- Legalisation of lower harm drugs would also move around \$4.0 billion out of illegal markets, significantly curtailing criminal activity (Box 5).
- Decriminalising other illicit drugs, while more uncertain<sup>6</sup>, is also likely to generate net benefits (around \$700 million).

### Box 5 Benefits from legalisation of cannabis and MDMA

One of the key benefits from legalisation of illicit drugs is that it moves production from illegal markets to legal ones. Rather than money being channelled into profits from criminal activity, surpluses from production (profits) can be taxed and used for public good.

Under a legalisation scenario for cannabis and MDMA, the Commission estimates that around \$4.3 billion of funds currently being channelled through criminal markets could be made available to fund legitimate activities.

Figure 17 Changes to producer surplus, cannabis and MDMA, net present values



Source: QPC estimates.

<sup>5</sup> Research from the Australian Bureau of Statistics suggests that wholesale and retail margins to operators in the drug market range from 46 per cent for cocaine to 91 per cent for amphetamines—direct wholesale and retail margins are less than 2 per cent for beer, wine and spirits.

<sup>6</sup> Mainly because there is less of evidence on how consumption of higher harm drugs such as heroin and methamphetamine would be affected as fewer jurisdictions have embarked on reforms to decriminalise or legalise higher harm drugs.



The Queensland Government should adopt a more effective approach for managing the supply and use of illicit drugs. This approach should aim to:

- reduce harms from drug use
- substantially reduce organised crime in Queensland
- establish strong regulatory approaches to manage drug use and supply
- reduce costs that drug use places on the criminal justice system, including through imprisonment.

While the ultimate destination for reform is clear, the design, implementation and sequencing of changes will be critical. Based on the available evidence, the Commission has developed a staged process for reform.

The first stage should be to decriminalise the use and possession of lower harm illicit drugs, such as cannabis and MDMA. Consideration will need to be given to the regulatory framework around use, including, for example, the regulation of use in public places.

At the same time, the government should expand the provision of health support and drug treatment services to reduce drug harms.

The next stage should establish a regulatory framework for the supply of low harm drugs.

As for other potentially harmful activities (such as liquor and gaming), the framework should establish the arrangements for supply, including licensing for production and retail, and regulation of licenced premises, with a regulator, to oversee this framework.

The final stage of the reforms should be to legalise the use and regulated supply of cannabis and MDMA.

The government should also move to adopt a regulatory approach to other illicit drugs. However, given the complexities in approaches to managing higher harm drug use, a reform pathway will need to be developed. This should consider:

- removing imprisonment as an option for use and possession
- implementing health-based approaches to minimise harmful drug use
- reducing supply from illicit markets
- developing options for regulating use and supply.

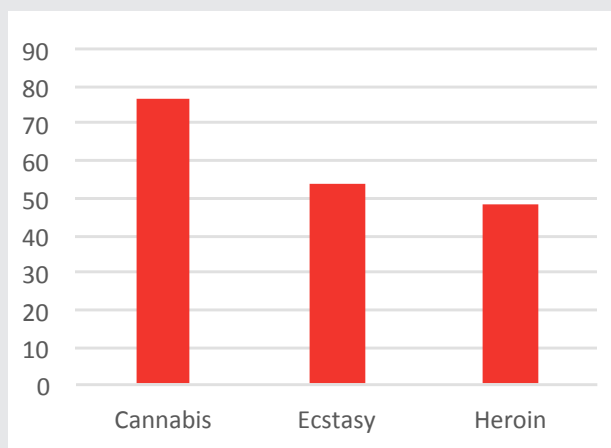
The government should establish a taskforce to oversee the implementation of reforms. This taskforce should monitor and assess the impacts at each stage of reform and report to parliament on their effects.

### Box 6 Growing support for drug reform

There is a growing international trend towards drug liberalisation. Canada and Uruguay have recently legalised cannabis, and in the United States half of states have legalised or decriminalised cannabis. Cocaine has been decriminalised in several countries and prescription opiate treatments adopted in others. Many jurisdictions are reconsidering prohibition—Luxembourg announced legalising cannabis and New Zealand will hold a referendum on the issue in the 2020 general election.

Data from the National Drug Strategy Household Survey 2016 show that over 50 per cent of the population of each state, including Queensland, supports the decriminalisation of cannabis and ecstasy.

Figure 18 Support for drug decriminalisation



Source: AIHW 2017c.

## Deal with offending in better ways

### Focus more on victims

The criminal justice system mainly focuses on criminals, not on the victims of crime.

In criminal matters, the state is currently the litigant and victims largely play a passive role in the process. The offender's 'debt' is paid to the state, often in the form of a prison sentence. The victim plays no role in the setting of the sentence and typically receives no compensation from the offender for the harm done and there is little opportunity for restoration.

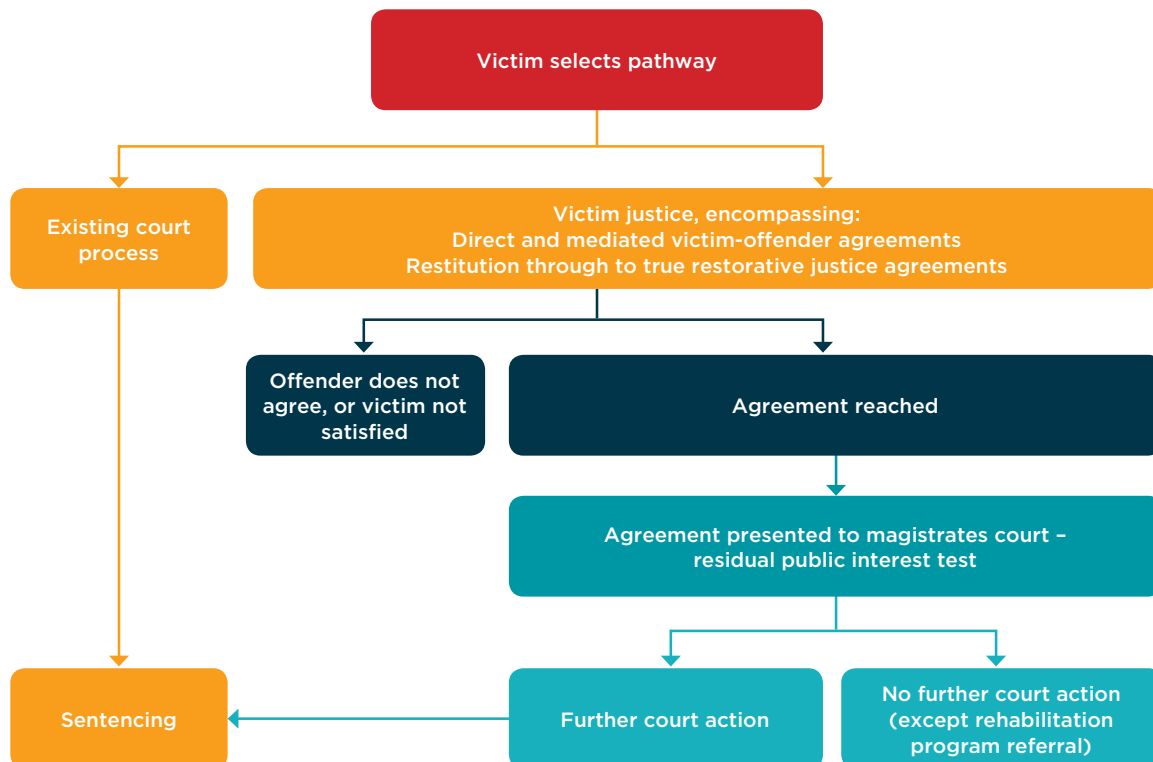
Beyond the direct impact on victims, the indirect impact has been to entrench a high-cost approach to community safety, with ongoing pressure for further legislative and other interventions in an attempt to address community concerns. The result, at least anecdotally, is that such interventions have not always met the needs of victims and more offenders are in prison than is necessary.

Under a victim-focused system, victims can be provided with an option to choose a sentencing

pathway that focuses on victim restitution and restorative justice, rather than the standard sentencing process. Where the victim chooses direct involvement in the process, the offender's debt is in effect paid to the victim prior to any state consideration. This could involve both financial and non-financial assistance to victims.

These approaches are typically associated with a reduction in the use of imprisonment because they provide acceptable alternatives to prison (through compensation, rehabilitation requirements and victim-offender restoration). For low harm offences, restorative justice can substitute for court sanctions, including imprisonment. For more serious offences, the court may need to consider any residual state interest. That is, final sentencing should consider genuine attempts toward victim restoration, as well as any residual need to protect the community, including by deterring others. In other words, the offender's 'punishment' is the sum of her or his efforts towards victim restoration plus the residual sanction imposed by the courts.

Figure 19 A victim-focused sentencing process



Where victims and offenders are suited to restorative justice practices, there is solid evidence that these practices can reduce recidivism. Evidence also indicates that victims are more satisfied with outcomes under restorative justice practices compared to normal court sentencing.

The victim-focused approach to sentencing is perhaps most advanced in New Zealand, where the requirement to provide for the interest of victims is enshrined in legislation—for example, sentencing purposes include both restoration and reparation to victims.

The Commission recommends that a victim restitution and restoration system be adopted in Queensland, including that a victim-focused approach be included in the *Penalties and Sentencing Act 1992*.

The Commission estimates that this reform, if implemented fully, could reduce the prison population by around 450 persons by 2030–31, with net savings of around \$40 million annually with further benefits to victims.

## Use more cost-effective sentencing options

The judiciary has a range of restrictions on the types of sentences they can give to offenders. These restrictions include limitations on the types of penalties available (such as limitations on home detention), the length of probation and the flexibility with which penalties can be combined.

These restrictions mean that a prison sentence is often the only satisfactory option available to the judiciary, even though it may not be the best option for protecting the community or rehabilitating the offender. As a result, sentencing outcomes can make the system more expensive than it needs to be and makes the community less safe over time.

For the judiciary to apply sentences that are the most effective and efficient, they must have access to:

- options that allow sentencing to be matched to actions that will remedy an individual's offending behaviour
- information on the availability and suitability of these options.

This will require a wider set of sentencing options than currently available.

To provide a greater range of sentencing options, a new community corrections order should

be introduced. This order should allow for a combination of community-based options including:

- home detention and other community-based supervision
- monetary fines, community service, and options for victim restoration and restitution
- referral to treatment or other options to address offending behaviours.

To make these community-based sentences a viable alternative to imprisonment, restrictions on their duration and combination with other penalties should be removed.

The new community corrections orders should also be supplemented by greater supervision, including through technological measures, such as electronic monitoring.

Community corrections orders like this have been implemented in other jurisdictions. The emerging evidence shows they can often substitute for prison terms without compromising community safety, and when complemented with rehabilitation programs, are associated with significant reductions in recidivism.<sup>7</sup>

For many offenders requiring greater supervision—such as those with mental health issues, cognitive impairments or drug dependence, or where remoteness makes it difficult to restrict offender movements—in the absence of other alternatives, prison will remain the go-to option even if even it is not suitable for addressing the causal factors driving offending.<sup>8</sup>

To address this gap, the Commission recommends that a residential supervision order be introduced into the sentencing mix. A residential supervision order should only be used for those offenders who would otherwise have received a short prison term and are likely to benefit from residential supervision.

Under this option, offenders would be accommodated in small, low security facilities that provide treatment or other services to address offending behaviours. Although offender supervision may need to be undertaken by QCS, the operations of residential facilities should be managed outside of the corrections system.

Although these facilities should form part of the 'correction's estate', there should be opportunities for these facilities to be initiated from outside of the corrections system, including by community and non-government entities.

<sup>7</sup> While prison is effective in preventing crime in the community by physically incapacitating offenders, there is little evidence that community corrections, used appropriately, are less effective at deterring offending behaviour (Sydes et al. 2018; Trevena & Poynton 2016; Trevena & Weatherburn 2015). There is also emerging evidence that they are more effective than prison terms at breaking the cycle of reoffending.

<sup>8</sup> Under current sentencing arrangements, the only way an offender with a mental health issue or a cognitive impairment can avoid prison is to receive a forensic health order. This is generally only used in exceptional circumstances and is rarely lifted.

Currently, limited resourcing is provided to support the supervision of offenders in the community—although 70 per cent of individuals being supervised by QCS are under a form of community-based order, this cohort attracts only 10 per cent of the corrections budget (the remainder is spent on prisons).<sup>9</sup>

Redirecting funding to community-based supervision options is likely to result in lower overall spending, since it would encourage substitution of expensive prison sentences for less costly community-based orders.

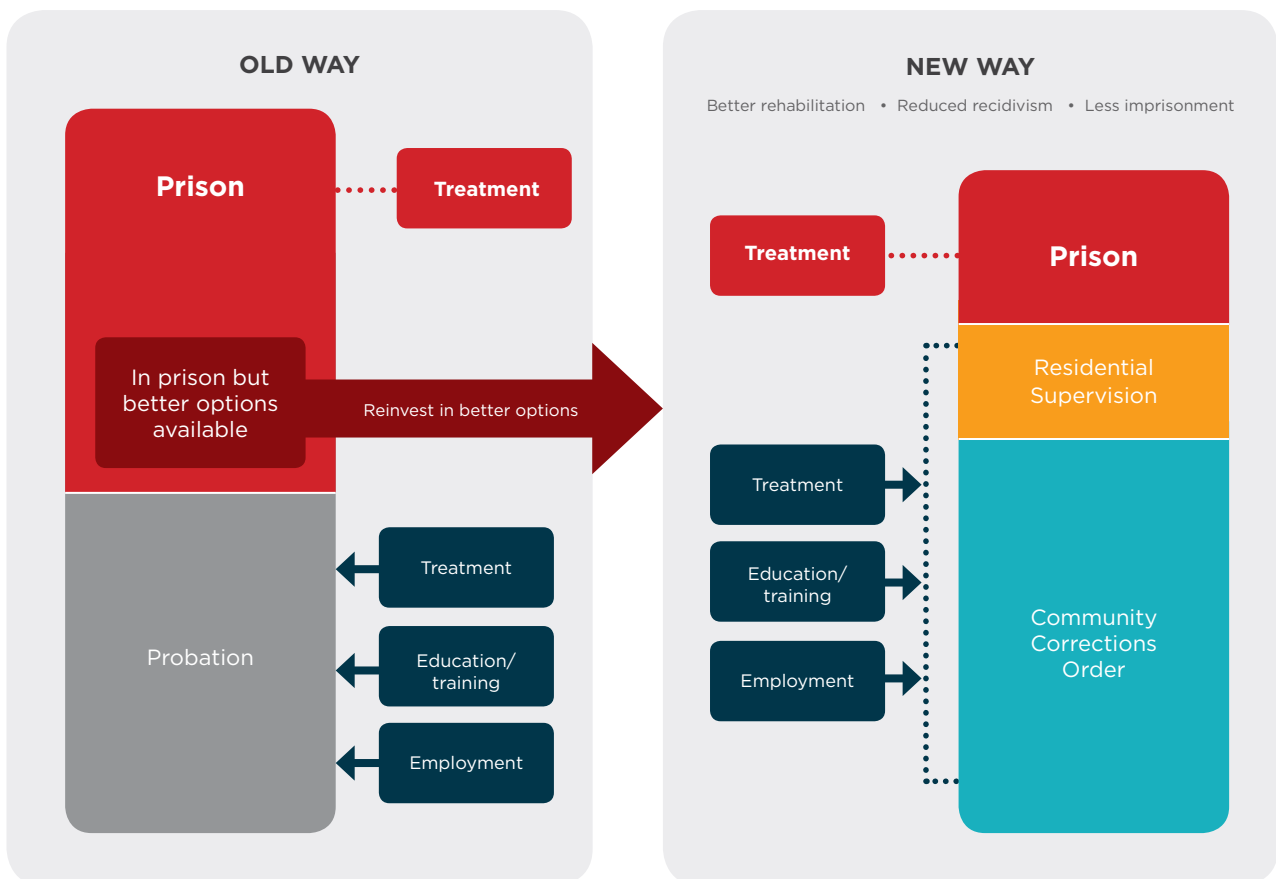
It is difficult to assess the extent to which community-based sentencing could substitute for imprisonment, since every prisoner has a unique set of circumstances, which would make them more or less suitable for a community corrections order.

Nevertheless, the Commission estimates that in the order of 20–30 per cent of the current prison population may be suitable for a community corrections order.

The benefits of these reforms (Figure 20) include:

- making available a wider array of sentencing options that will allow courts to better fit sentences to the offence and the circumstances, to better meet the sentencing purposes
- delivering better rehabilitation and reintegration outcomes and helping offenders to avoid the criminogenic effects associated with prison, such as the loss of housing and employment. This will assist in reducing the current high rates of reoffending
- lowering the current costs of the criminal justice system by facilitating the greater substitution of lower cost non-custodial options for imprisonment
- reducing the future costs of the criminal justice system by stopping offenders from cycling in and out of the system.

Figure 20 Reduce reoffending by better matching sentencing outcomes to offenders



<sup>9</sup> Queensland has the lowest expenditures on community supervision in Australia, and the highest ratio of offenders to community corrections staff.

To maintain community confidence in these changes, the community needs to be assured that sentencing is being used in the most appropriate way. The Queensland Sentencing Advisory Council (QSAC) should continue to strengthen the community's confidence in sentencing outcomes, by producing and communicating evidence on sentencing and assessing this against community expectations.

## Improve monetary fines

In theory, monetary fines are the most efficient sentencing option<sup>10</sup> and are widely used. In practice, however, the effectiveness of monetary fines is constrained by their design and the ability of an individual to pay.

This limitation could be addressed in two ways:

- Backing fines with non-monetary options (such as community service).
- Setting fines to an effective level (for example, as a proportion of income).

The State Penalties and Enforcement Register (SPER) has introduced a system of work and development orders<sup>11</sup> to provide non-monetary options for fines—it should continue to develop cost-effective options to allow offenders to repay debts to society.

Income-based monetary fines have been introduced in several countries, including Germany, which successfully used income-based fines to reduce their reliance on imprisonment.<sup>12</sup> Similar proposals have been examined in New South Wales but have been rejected because of concerns about the complexity and potential administrative costs.

Given the complexity of the issues, the Commission has not been able to arrive at a firm conclusion on income-based fines. Nevertheless, this is an issue worthy of further investigation, as are other options to make monetary fines more effective. To this end, the Sentencing Advisory Council or another suitable body should be appointed to investigate further, and report back to the government.

## Reduce remand

Remanded prisoners are those who have been refused bail but are yet to be convicted of a crime.

The number of remanded prisoners held in custody has more than doubled since 2012. Currently, around 30 per cent of all prisoners are on remand.

There is no single factor behind the growth in remand. Rather, there appears to be a combination of legislative changes, policy and practices which, together, reduce the chance of bail being granted, or if it is granted, increases the chance of it being breached.

Remand in custody has negative impacts on the defendant—such as loss of accommodation and employment and exposure to hardened criminals—that can increase the probability of reoffending.

Typically, remanded prisoners do not have access to rehabilitation programs, further exacerbating the criminogenic effects of imprisonment.

There are opportunities to reduce the use of remand in custody by:

- making bail decision-making more robust, through the use of a more evidence-based and transparent risk management framework
- facilitating the defendant staying in the community through the greater use of non-custodial options, addressing accommodation needs and providing rehabilitation opportunities
- reducing court delays—implementing other recommendations in this report, such as decriminalising certain offences, and supporting restitution, restorative justice and diversion options, would assist in reducing court workloads.

The negative, often criminogenic, effects of remand in custody should also be mitigated by giving defendants greater access to rehabilitation opportunities.

<sup>10</sup> In theory, a system of deterrence based on monetary fines will be more efficient than imprisonment, since imprisonment is a costly form of punishment and consumes resources, while monetary fines transfers resources between the offender and the victim or the state. In practice, fines only act as a deterrent when set at a level that has a meaningful impact on the offender. For instance, if individuals do not have the ability to pay, it is unlikely to work as a deterrent to offending.

<sup>11</sup> Under a work development order, an offender can perform community service or undertake treatment to pay down their SPER debt.

<sup>12</sup> Restricting short sentences and introducing day fines reduced the number of short prison terms in Germany by 80 per cent.

## Improve rehabilitation and reintegration

Over 1,000 prisoners are released back into the community every month—over half of these will return to prison or corrective services within two years.

Although the Queensland system provides for a rehabilitation and reintegration throughcare approach 'on paper', evidence presented to this and previous inquiries suggests many prisoners receive limited rehabilitation, and many are released back into the community with minimal support. This makes the community less safe than it otherwise could be.

There are many different options for improving rehabilitation and reintegration, including increasing resources for programs, or reforming the way services are delivered. However, these options are unlikely to be effective without first reforming the foundational governance arrangements that incentivise performance and provide accountabilities for outcomes.

### Improve accountability arrangements for QCS

Under the current arrangements, Queensland Corrective Services (QCS) has few incentives for providing effective throughcare to prisoners. QCS does not suffer consequences if an offender is not rehabilitated and has few responsibilities beyond the prison gate. They do, however, pay a high price if prisoners escape.

These incentives tend to focus correctional activities on containment, with the result that there is an undersupply of effective rehabilitation and reintegration.

To overcome these problems, new governance arrangements need to be introduced to give QCS clearer guidance for prioritising rehabilitation and reintegration (relative to its containment and supervision objectives) and to provide the right incentives to achieve those outcomes.

To this end, the government should improve performance indicators on rehabilitation and reintegration. It should publicly report against these indicators, which should also be introduced into performance frameworks for individual prisons and contracts for senior executive employment.

An Office of the Chief Inspector was established to monitor prison conditions and respond to complaints. This inspectorate sits in QCS and has not publicly reported since 2012.

Greater transparency and accountability would be achieved through the establishment of a properly resourced independent Inspectorate of Prisons. It should have information-gathering powers and be required to publish its reports.

### Better rehabilitation

Prisons are currently more than 30 per cent over their original design capacity. This impedes the effectiveness of prisons in achieving rehabilitation outcomes.

While overcrowding is largely outside QCS's control, work practices could be improved to better utilise existing infrastructure in providing prisoners with greater access to work and educational opportunities that prepare them for release.

There are also opportunities to improve case management, widen eligibility for in-prison programs, ensure prisoners are assessed for NDIS eligibility and better tailor rehabilitation programs and services to address the needs of prisoners.

QCS is reviewing its approach to these issues following previous reviews. This review process needs to be more transparent, with public reporting on progress and outcomes.

### Better reintegration services

The period immediately following release from prison is a difficult and challenging period for many prisoners.

Many prisoners (including those paroled) are released with little notice, and without the basic tools for release into the community. Further, a large proportion of prisoners appear unprepared for release, even when release dates are known.

To lower offending immediately after release, QCS should be assigned responsibility for the provision of a minimum standard of post-release support. This standard should include:

- short-term housing for prisoners who do not have accommodation on release
- adequate documentation for proof of identity to open bank accounts and apply for other services, and a Medicare card to access health services
- assistance to establish an email account and procure a mobile phone
- information on support services available to assist with their reintegration
- financial supports for the first week of release
- appropriate transport to their accommodation.

The Queensland Government should require QCS to regularly report against this standard.

QCS also provides reintegration services through contracted arrangements with NGO providers. These services provide access to case managed support to prisoners assessed to have a high risk of reoffending.

To ensure value for money, and to assess whether reintegration support is adequate, QCS should commission an independent public evaluation of its contracted reintegration services.

## Increase support for parole

Most prisoners are released on parole so that their reintegration into the community can be supervised. This is an important component of a prisoner's sentence, since it provides the community with a small window in which an ex-prisoner is still under some form of coercive power. It is likely that the outcomes during this window can be significantly improved.

The expenditures on supervising prisoners in the community are small. Queensland probation and parole workers have the highest caseloads of any state. This means the focus of these workers must be on basic compliance, including technical breaches. To improve matters, the Queensland Government should:

- reassign expenditures to community supervision
- ensure directions on technical breaches of parole are consistent with objectives in relation to reintegration and rehabilitation.

## Introduce work release options

Improvements can be made to allow QCS to provide opportunities for prisoners to engage in real-world activities that would assist their reintegration.

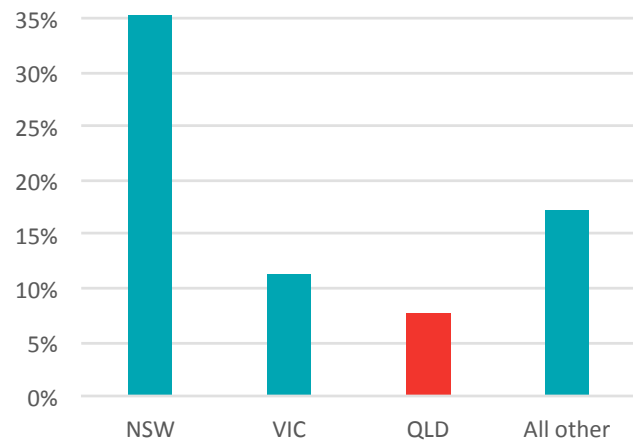
Work, education and other release arrangements have been used successfully in the past in Queensland and are used in many jurisdictions around the world. These arrangements should be reintroduced in Queensland. To support their use, the relevant Minister should provide direction to QCS on how, and under what circumstances, these arrangements should be used.

## Improve the capital portfolio

Correctional infrastructure is Queensland is predominantly designed for incapacitation.

Queensland has the lowest proportion of prisoners held in low security settings than any other jurisdiction (Figure 21).

**Figure 21 Prisoners held in open custody**



Source: SCRGSP 2019d.

The capacity, composition and design of correctional facilities shape the outcomes of the prison system. Given their long lives, the composition of prison assets changes slowly, and needs to be formed and evolved through a long-term strategy.

A different infrastructure strategy is necessary if the government wants to focus on constraining the growth in the number of prisoners and pay more attention to rehabilitation and reintegration.

This strategy would require less capacity expansion, more investment in prison design and a change to the composition of infrastructure, to manage all the factors that drive offending behaviour.

The recommendations in this report provide ways for reducing future prisoner numbers and should allow government to consider more innovative options for future investments (such as facilities for residential supervision by non-government entities).

Regardless of whether the government accepts the recommendations in this report, or stays with the status quo, it needs to set out a long-term infrastructure strategy that supports its overall approach to the corrections system.

This strategy needs to:

- align infrastructure objectives with the objectives of the broader criminal justice system
- ensure infrastructure keeps up with demand
- consider a broad range of options and be open to innovation
- provide opportunities for the community sector to be involved in managing low security correctional assets, particularly those with a rehabilitation focus.

## Target prevention and early intervention

As noted by many stakeholders, getting the right social and economic conditions in place in the longer term (many of which are broader than this inquiry) are likely to provide the most long-lasting and effective outcomes.

Within this, however, is a more direct consideration of whether and how prevention and early intervention can be used to address the causal factors that may lead to imprisonment.

The causal factors behind offending are complicated and include a range of factors, such as cognitive impairments, mental health issues, exposure to trauma and childhood maltreatment—all of which are more prevalent in the prison population than in the general population.

There is strong evidence that addressing these risk factors can reduce crime and deliver future savings through avoided prison expenditure and justice system costs. However, it does not follow that early intervention and prevention *programs* will necessarily deliver these results. They can be risky investments, because they can involve large costs with uncertain outcomes.

For this reason, evidence-based programs targeting high-risk individuals and communities are likely to be the most cost-effective.

Although interventions can occur at any time, the evidence suggests that earlier interventions (whether early in life or early in pathways to adult offending) can provide high returns when they are effective.

The Commission notes there have been several recent inquiries and recommendations that focused efforts on prevention and early intervention in a range of various areas, including youth justice and child safety.<sup>15</sup>

The Commission has not revisited areas covered by these inquiries and has instead focused its analysis on a small number of areas identified by stakeholders.

### Target community level interventions

Queensland data show that a small number of chronic offenders who begin offending early in life account for a large proportion of all offending and imprisonment. Identifying these individuals prospectively, however, has proven challenging.

Data show that chronic offenders tend to be concentrated in a small number of geographic areas. These tend to be communities where there are high levels of entrenched social and economic disadvantage. In Queensland, this includes Indigenous communities predominantly located in regional, remote and very remote locations.

Effective interventions in these locations are likely to generate large benefits.

Interest in early intervention investment strategies, such as justice reinvestment that empowers community development, is growing and early results are promising. Evaluations of the Maranguka Justice Reinvestment Project in Bourke suggest crime reductions can be achieved through evidence-based, community-led approaches.

However, the government must ensure frameworks are in place to drive evidence-based policy-making and program selection, improve coordination across government and non-government agencies, and deliver robust program evaluations.

The government should prioritise investments in community-led prevention and early intervention in communities with high levels of entrenched disadvantage.

Given the levels of offending in many Indigenous communities, the initial focus should be to establish projects that aim to reduce Indigenous offending.

<sup>15</sup> Several recent inquiries that have recommended reforms to youth justice and child protection, and many of their recommendations are still being implemented or evaluated. These include the Queensland Child Protection Commission of Inquiry, the Atkinson Report on Youth Justice, and the Independent Review of Youth Detention.

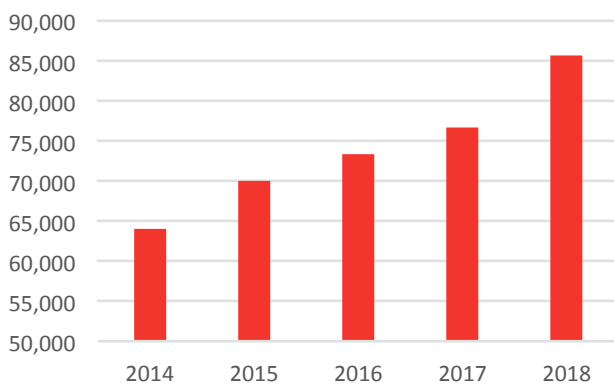


## Improve incentives for educational engagement

Stakeholders raised concerns that disconnection from the school system is a key risk factor for offending behaviours. This is evident in data that show that educational attainment for prisoners is far below the population average.<sup>14</sup>

While the government is focusing efforts to address student engagement, the rising incidence of school disciplinary absences (Figure 22) suggests a significant number of students are at risk of disengagement from the school system.<sup>15</sup>

**Figure 22 Student disciplinary absences in Queensland state schools, 2014–2018**



Source: Department of Education 2019.

It is important that perverse incentives, such as might arise from school performance reporting, do not encourage excessive use of student disciplinary absences. To this end, the Commission recommends improving transparency around school-level efforts to promote student engagement and re-engagement.

Schools should also receive more tools to help manage problem behaviours. As a first step, the Department of Education should work with universities to improve behavioural management training for pre-service teachers, focusing on the identification and management of students at risk of disengaging from education. Other opportunities to improve the identification and support of at-risk children through the school system should also be explored, including opportunities for improving referrals to the National Disability Insurance Scheme.

## Address barriers to access

Stakeholders raised concerns about barriers that prevent some individuals from accessing services to help prevent offending behaviours. These focus around the absence of support for services that aim to prevent child sex offences. Given the high costs these offences impose on the community, and the high level of stigma around them, the government should consider supporting services that prove to be effective at preventing child sexual offending. This should be a priority of the government's Sexual Violence Prevention Framework.

## Improve support for children of prisoners

Children and young people with incarcerated family members are known to be at greater risk of engaging in antisocial behaviour; effective intervention may prevent intergenerational transmission of criminal behaviour. To improve matters, the government should amend prisoner admission processes to better identify these children and ensure that supports are available for them.

Further, the government should explore ways in which the operation of correctional facilities can better help maintain family relationships.

<sup>14</sup> Only 17 per cent of Queensland prisoners completed Year 12, compared to 62 per cent for the general population.

<sup>15</sup> In 2018, more than 3,700 student disciplinary absences were issued to children in the first two years of primary school, and more than 27,000 were issued to students in the first two years of high school.

## Expand diversionary options

### Diversion is underutilised

For many low harm or minor offences, police enforcement and court proceedings impose costs on offenders that exceed the harm of their offending. Further, this initial interaction can result in an escalation of interactions with the criminal justice system.

De-escalating these interactions or diverting these offenders can avoid unnecessary impacts for the individual and save costs across the criminal justice system—each diversion is likely to save around \$9,200 in criminal justice costs.

Options for police to divert adult offenders away from the criminal justice system are limited and, aside from a caution/diversion for minor cannabis possession, there is limited scope for adult cautioning in Queensland.

This is reflected in proceedings. Queensland makes the least use of non-court proceedings (17 per cent), compared to New South Wales, Victoria and South Australia (59, 29, and 55 per cent respectively), particularly for illicit drugs and public order offences (Table 2).

Table 2 Non-court proceedings, 2016-17

Offence	QLD	NSW	VIC	SA
Illicit drugs	20%	28%	34%	80%
Public order offences	42%	84%	90%	78%

Source: ABS 2019g.

Queensland's low use of diversion reflects limited legal and police flexibility, diversion options (for treatments), and police expertise and incentives in the use of diversion and de-escalation. Underlying this 'aversion to diversion' is a perceived high risk from adverse publicity for errors in the use of police discretion.

### Expand cautioning options

Existing police cautions are used infrequently because they can only be applied in limited circumstances and there are administrative hurdles that limit their use.

To improve matters, two new cautioning approaches should be adopted.

The first is a more usable adult caution, with fewer administrative hurdles.

The second is an expansion of cautioning for drug offences. Subject to the illicit drug reforms discussed earlier, a three-stage caution should be introduced for all illicit drugs.

This new drug caution should include:

- a simple caution
- a caution with educational material provided
- a caution with mandatory referral to face-to-face counselling.

### Introduce an option for deferred prosecution

Under a deferred prosecution agreement, the police or prosecutor consents not to prosecute an offender for an agreed period, providing they do not reoffend and adhere to any other terms (such as receiving treatment). If the offender completes their agreement, the prosecution is cancelled, avoiding court and any penalties. If the offender reoffends, proceedings are commenced for both the deferred and new offence.

Deferred prosecution provides benefits over simple cautions because it provides an offender with an incentive not to reoffend (or to seek treatment). It has advantages over court-based diversions because it avoids complex court processes and provides more certainty to the offender.<sup>16</sup>

Deferred prosecution has been used successfully in the United States, where it has been shown to substantially reduce adverse reoffending and employment outcomes.<sup>17</sup>

<sup>16</sup> Under court-based diversions, the judge retains discretion to take into account any actions an offender has taken.

<sup>17</sup> A natural experiment in Harris County in the United States showed a 56-76 per cent reduction in reoffending over ten years and a 16-20 percentage point increase in employment.

The Commission proposes that three forms of deferred prosecution be adopted:

- a simple deferred prosecution agreement that is conditional on no repeat offence within a specified period—which could be offered on the spot by police
- a deferred prosecution agreement with additional conditions/actions that relate to assessment/treatment/restoration—which would usually be negotiated by the prosecutor
- a community-deferred prosecution agreement with additional conditions/actions that relate to assessment/treatment/restoration—where the conditions are developed and agreed with a community group, such as a community justice group, who would also monitor those requirements.

## Encourage the use of diversion

Effective use of diversion can be encouraged by:

- clear direction from the Minister through a statement of intent
- an expression of support for the appropriate use of diversion, through the Queensland Police Service's operational plan and performance indicators
- training and practice manuals that support the use of diversion and de-escalation, including a simplified public interest test.

To maintain community confidence in diversion, a monitoring and evaluation framework should be established to ensure that the use of these diversion options contributes to community well-being.

## Evaluate the approach to family and domestic violence

Several stakeholders raised concerns about the policing and prosecution of domestic and family violence issues.

The current approach to domestic and family violence is enacted through the government's *Not Now, Not Ever* strategy, and assumes there is a perpetrator and a victim. This is very often the case, but stakeholders have raised concerns that situations are not always so clear-cut.<sup>18</sup>

In these cases, the approach may force individuals into contact with the criminal justice system where there are few benefits or where better approaches exist.

Given the potential for unintended consequences, and the number of domestic and family violence offences (and breaches) that result in imprisonment, the Commission recommends that the government's *Not Now, Not Ever* evaluation strategy include an assessment of:

- whether current policing and enforcement strategies, including the use of imprisonment, are working to reduce the incidence of domestic and family violence
- the extent to which the strategy has resulted in unintended consequences
- whether there are opportunities for greater use of diversion to treatment, restoration or other approaches that would reduce harms.

<sup>18</sup> For example, where both parties to a dispute had been prosecuted under domestic violence laws.

## Address Indigenous overrepresentation

Indigenous incarceration is one of the most pressing problems that Queensland faces:

- Indigenous incarceration rates are more than 10 times the non-Indigenous rate<sup>19</sup> and are amongst the highest rates of any group in the world.
- Indigenous prisoners make up around 31 per cent of the total number of people incarcerated in Queensland, despite making up only 4.6 per cent of the population.
- An Indigenous male has almost a 30 per cent chance of being imprisoned by the age of 25.
- 80 per cent of Indigenous prisoners have been to prison before.

During consultation, several stakeholders indicated that in some communities, imprisonment is no longer a deterrent—detention has simply become a rite of passage for some young people. For some, life is so difficult that time in prison may seem an attractive alternative, and an experience that they can share with already imprisoned friends and relatives.

Essentially, the rate of imprisonment has risen so high in some communities that it has become a risk factor in itself. When prison is normalised to this extent, it acts to reinforce dysfunction and disempowerment, continuing the cycle of offending and imprisonment.

Making life in the community more desirable than life in prison must be a basic objective of reform if imprisonment is to act as a real deterrent.

### Address entrenched social and economic disadvantage

The main reason Indigenous people experience higher levels of incarceration than non-Indigenous people is that they are, on average, significantly more exposed to the risk factors that lead to elevated rates of offending. These factors include high rates of unemployment, exposure to alcohol abuse and family dysfunction.

The risk factors reflect entrenched social and economic disadvantage that has its roots in historical policies.

The statistical evidence is stark. For example, research by Griffith University's Criminology Institute found that around 60 per cent of all Indigenous prisoners had previously been subject to a child protection order, hospitalised for a mental health episode or both—for female Indigenous prisoners this number rises to 76 per cent.<sup>20</sup>

Although there is a general recognition that solutions need to be developed with and by Indigenous communities, governments have not found mechanisms to put this into practice.

The Commission's previous inquiry *Service delivery in Queensland's remote and discrete Indigenous communities* provides these mechanisms. It proposed three key reforms:

- structural reforms that transfer accountability and decision-making to regions and communities
- service delivery reforms that focus more on the needs of individuals and communities, such as user-driven services and place-based models
- economic reforms that support community development, enable economic activity and make communities more sustainable.

These reforms require significant changes to the way things are done, but the principles behind these reform elements could be applied more broadly than to just the remote and discrete Indigenous communities and should underpin any plan to address Indigenous incarceration.

Stakeholders reiterated support for these reforms, and the Queensland Government provided in-principle support in 2018. However, there are emerging concerns that the reforms are not being implemented.

As a priority, the Queensland Government should implement the recommendations of the *Service delivery to Queensland's remote and discrete Indigenous communities* report. A suitable independent body should be authorised to report on progress against each of these recommendations. A report on progress should be made public within twelve months.

<sup>19</sup> Age-adjusted rates of imprisonment.

<sup>20</sup> Based on an analysis of a cohort of the population born in 1990. Rates of prior hospitalisations were more than five times higher for Indigenous prisoners than for the general population, and child protection orders were more than eight times higher.

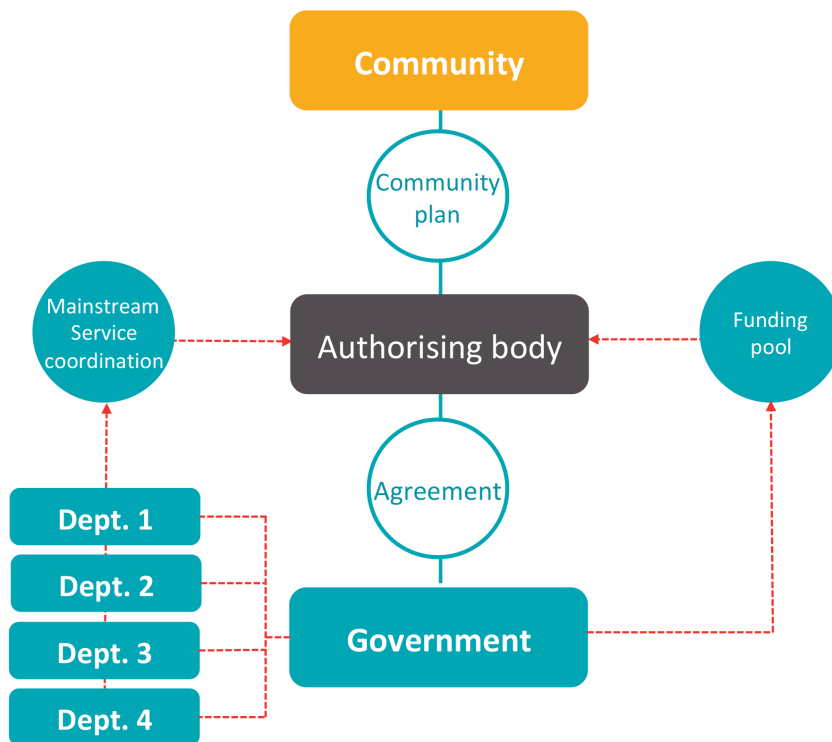
## Support changes to accountability and decision-making

Rather than directing service delivery, the government should seek to set outcomes and accountabilities through formal arrangements with communities. To put the reforms into practice, the government should negotiate local Indigenous justice agreements with those remote and discrete Indigenous communities that indicate they are ready to do so.

These agreements should include:

- the outcomes to be achieved
- the resourcing that will be transferred to communities for the commissioning of services to reduce offending and imprisonment
- the nature and delivery of government-provided services that contribute to reducing offending and imprisonment, such as policing actions and prisoner reintegration services
- opportunities for a local authority to be established, for example through the operation of community-based residential supervision facilities
- incentives for the achievement of milestones or outcomes
- rigorous monitoring and evaluation, including agreed reporting arrangements.

**Figure 23 Funding and resourcing arrangements to support the devolution of decision-making and accountability**



The lessons from this inquiry are relevant for other Indigenous communities. For Indigenous communities outside of remote and discrete areas, the Queensland Government should seek to

support similar arrangements that would encourage and foster the establishment of local Indigenous capability.

## Support service delivery reforms that create opportunities for community control

Many of the reforms proposed in this report will also help to reduce the levels of Indigenous incarceration.

These reforms should be supported through justice agreements. Where possible, the reforms should form the basis for transferring responsibility and accountability to Aboriginal and Torres Strait Islander communities.

Proposed reforms that would facilitate opportunities for greater community control over service delivery include:

- deferred prosecution agreements to allow communities greater opportunity to be directly involved in the rehabilitation of offenders
- a greater focus on community-orientated policing, which allows communities to be involved in the way their communities are policed
- restitution and restoration processes that allow communities to hold offenders to account for their actions
- residential supervision facilities that can be operated by Indigenous-controlled entities.

## Introduce economic reforms

Priority should be given to reforms that seek to address the entrenched social disadvantage that is a causal factor behind offending in many Indigenous communities. Priority actions should include:

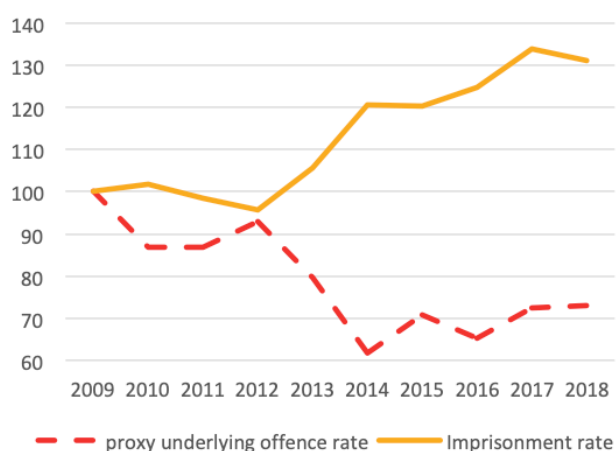
- removing barriers to local economic activity, including ensuring that procurement and job requirements do not exclude Indigenous participation
- developing a land tenure reform plan that better supports economic development in remote communities
- reforming policies that facilitate the growth of the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

## Reduce interactions with the criminal justice system

Indigenous communities have made significant efforts to reduce offending. This is evident in the statistics, which suggests that Indigenous offending rates may have fallen by as much as 25 per cent over the last decade.

Despite this, the level of Indigenous incarceration continues to rise (Figure 24).

**Figure 24 Indices of Indigenous imprisonment, and estimated offending rates**



Source: ABS 2018k, QPC.

While the factors behind this rise are similar to those affecting the broader community, Indigenous communities are most likely to be affected by a 'one-size-fits-all' approach to policy making. Further, an increasing tendency to use imprisonment is likely to compound existing problems in Indigenous communities and undermine efforts to reduce offending rates.

For this reason, it is vital that decision-makers understand the implications for Indigenous incarceration of changes to the law, policy and practice.

To help inform decision-makers, justice impact tests should include an explicit requirement to assess the impact of any proposal on Indigenous people and communities.

To improve accountability, justice targets should be included in the *Closing the Gap* framework. These should be supported by regular public reporting on criminal justice outcomes (such as offending rates, breaches of orders and imprisonment rates) at a suitable level of regional disaggregation.

# Recommendations

## Improve the decision-making architecture

### Recommendation 1

The Queensland Government should adopt a common overarching objective for the criminal justice system. This objective should be to *'improve community well-being over time by reducing harms from crime'*.

To provide guidance to those developing and implementing criminal justice policy, this overarching objective should be supported by five operational objectives.

*The criminal justice system should aim to efficiently and effectively:*

- *Address the factors behind offending.*
- *Deter criminal activity.*
- *Incapacitate individuals who present an unacceptable risk to the community.*
- *Reduce the risk of future offending through effective rehabilitation and reintegration.*
- *Maintain the legitimacy of the system.*

The government should provide specific guidance to each agency through public statements of intent, setting out the performance expectations and how this performance will be assessed against the objective. The government should also develop and release a strategy document that outlines how the criminal justice system will achieve its objectives. This strategy should be consistent with any guidance to agencies.

### Recommendation 2

The Queensland Government should establish an independent statutory body (the Justice Reform Office) to improve the efficiency and effectiveness of the criminal justice system. Its key responsibilities should be to:

- approve policy and budget submissions from the core criminal justice sector agencies prior to submission to Cabinet and Cabinet committees
- oversee justice system reforms
- provide advice to government on priority criminal justice policy issues
- lead and support evidence-based policy-making.

The office should be responsible to a board that includes representation from each of the core criminal justice agencies and independent members. The independent members on the board should have a voting majority.

### Recommendation 3

The Queensland Government should require the Justice Reform Office to undertake the following specific tasks within 24 months of its establishment:

- develop common performance objectives and indicators across the core criminal justice agencies, including targets for
  - reducing offending and reoffending rates
  - reducing Indigenous incarceration
- develop mechanisms for allocating resources to support system objectives

- develop systems to provide accurate and timely data to support decision-making, and improve transparency and accountability
- develop modelling that promotes understanding of how policy and other proposals are likely to impact across the system
- develop a framework to ensure criminal justice related programs and activities are adequately and consistently evaluated.

#### **Recommendation 4**

The Queensland Government should introduce a justice impact test to ensure that decision-makers are informed of the full impacts of policy proposals. This test should assess:

- all costs and benefits of the proposal
- impacts on key stakeholders, including community members, government and community agencies
- alternative options.

The justice impact test should be undertaken by the Justice Reform Office and should involve public consultation and reporting.

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## **Reduce the scope of criminal offences**

#### **Recommendation 5**

The Queensland Government should seek to remove those activities from the *Criminal Code Act 1889* and other relevant legislation for which the benefits of being included do not outweigh the costs.

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

- the extent to which the activity causes harm to others and the nature and level of that harm
- whether the use of criminal sanctions imposes costs on offenders that are proportionate to the harm caused to others
- whether the act of criminalisation creates more positive effects for society than negative ones—this should include an assessment of deterrence and any unintended consequences that might cause harm
- whether there are other, non-criminal options that might better prevent harm
- whether criminalisation undermines public perception of the legitimacy of the law.

The government should assign a suitable body, such as the Queensland Law Reform Commission, the task of reviewing the stock of criminal offences. The review should also recommend removing those offences where an alternative approach to the criminal law is likely to provide better outcomes.

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## Reform drug laws

### Recommendation 6

The Queensland Government should adopt a more effective approach for managing the supply and use of illicit drugs. This approach should aim to:

- reduce harms from drug use
- substantially reduce organised crime in Queensland
- establish effective regulatory approaches to manage drug use and supply
- reduce costs that drug use places on the criminal justice system, including through imprisonment.

The government should establish a reform taskforce as soon as practical to progress reforms. This taskforce should monitor and assess the impacts at each stage of reform and report to parliament on their effects.

### Recommendation 7

Under an overarching policy of legalised and regulated supply and possession, the Queensland Government should:

- For lower harm drugs, introduce a staged approach to reform:
  - Stage 1: Decriminalise the use and possession of lower harm drugs
  - Stage 2: Expand health support and drug treatment services to reduce drug harm
  - Stage 3: Design a regulatory framework for the supply of cannabis and MDMA
  - Stage 4: Legalise use and regulated supply of cannabis and MDMA
  - Stage 5: Subject to evaluation of evidence, extend reform to other lower harm drugs.
- For higher harm drugs, investigate and develop the optimal sequencing of further reforms to move from a criminal approach to a health-based and regulatory approach. As an initial step, imprisonment should be removed as a sentencing option for the use or possession of higher harm drugs.

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## Expand the use of restitution and restorative justice

### Recommendation 8

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 sufficient options for achieving restoration for harms inflicted, including financial and non-financial compensation
- take into account, through charging and/or 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
- be supported by inclusion of restorative justice principles in the *Penalties and Sentences Act 1992*.

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

## Increase sentencing options

### Recommendation 9

The Queensland Government should establish a community corrections order that:

- provides options for home detention
- removes restrictions on the use of community-based orders, or on the combination of these orders with other sentences, including monetary fines, community service, and options for victim restoration and restitution
- is supported by appropriate services to address the causes of offending behaviours and to minimise breaches of these orders.

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

- establish mechanisms to ensure that resources are reallocated 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.

To ensure sentencing options support community safety and rehabilitation, the government should create a presumption in favour of courts seeking pre-sentence assessment, including psychological assessment, where there is reason to believe the offender is suffering from a mental illness or intellectual disability and the court is considering imposing a prison sentence.

### Recommendation 10

To provide better rehabilitation options for offenders with cognitive impairment, mental illness, drug problems or other relevant circumstances, the Queensland Government should introduce a community corrections order with a residential supervision option. This option should be enabled by facilities that:

- have an emphasis on therapeutic treatment of offenders who would otherwise be given a term of imprisonment
- allow for the supervision of offenders by non-government providers.

Queensland Corrective Services should seek business cases from interested parties to support this proposal. These business cases should be assessed in the context of a broader infrastructure strategy (Recommendation 25).

### Recommendation 11

The Queensland Government should make monetary penalties more effective by:

- removing restrictions on the use of monetary penalties by courts
- creating more opportunities for offenders to pay down fines through community service or other work and development orders.

The Queensland Sentencing Advisory Council or another suitable body should investigate options for the introduction of income-based fines, and report back to the government.

### Recommendation 12

The Queensland Government should review legislated restrictions on judicial discretion, to ensure they are serving their intended purpose. The review should be undertaken by an independent body, such as the Queensland Sentencing Advisory Council, and be completed within 24 months.

### Recommendation 13

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, for which appeal mechanisms are infrequently used.

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## Improve the use of remand

### Recommendation 14

To encourage confidence in bail, and its efficient use, 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 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 to more locations.

### Recommendation 15

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

- Preserving the integrity of the court process.
- Preserving 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, including the defendant.
- Promoting transparency and consistency in bail decision-making.

Further, the government should amend section 16 of the *Bail Act 1980* to ensure that this section is consistent with these guiding principles.

### Recommendation 16

To reduce remand levels, the Queensland Government should investigate opportunities for reducing delays between bail hearings and sentencing.

### Recommendation 17

To assist the rehabilitation of prisoners, the Queensland Government should ensure that prisoners on remand are able to access suitable programs and other activities likely to aid their rehabilitation.

## Improve rehabilitation and reintegration

### Recommendation 18

Queensland Corrective Services should publish a statement of intent, certified by the Minister for Corrective Services as a report to parliament, which sets out ways in which it will contribute to, and be accountable for, government objectives, including ways to reduce imprisonment by improving rehabilitation and reintegration.

### Recommendation 19

Queensland Corrective Services should, within 12 months:

- establish and report against performance indicators in the statement of intent to increase accountability and report on performance
- extend its performance framework to individual prisons and negotiate service agreements with them
- include performance indicators for reducing recidivism in senior executives' performance agreements
- assist the government to establish its priorities for throughcare by ensuring that policy options are assessed within an effective risk management framework
- align its strategic and operational priorities more closely to actions that would make throughcare more effective
- publish information on its strategies for achieving its objectives including the progress and results of any reviews it is undertaking.

### Recommendation 20

Queensland Corrective Services should develop policies and procedures to minimise the impacts of overcrowding on rehabilitation outcomes. These should include changes to work practices that:

- allow prisoners greater access to work and educational opportunities
- improve infrastructure utilisation.

### Recommendation 21

To improve rehabilitation outcomes, Queensland Corrective Services should:

- ensure that prisoners have incentives to participate successfully in rehabilitation activities
- improve the measurement and reporting of in-prison rehabilitation, including performance indicators for individual prisons. It should review the impact of these indicators on incentives within two years of implementation
- work with the State Penalties Enforcement Registry, to determine within six months, whether there is a cost-effective option to make work and development orders available in prisons
- publish its implementation plan for moving individuals under its care onto the National Insurance Disability Scheme, and report regularly on its progress in implementing it
- undertake public reviews of its assessment, case management and mental health programs and publish review reports and outcomes
- develop initiatives for reducing recidivism among remand and short-sentence prisoners, by commissioning research, drawing on expert advice and developing an implementation plan
- consider a process that will help prisoners to deal with the barriers they face in addressing financial matters, particularly debt, due to their imprisonment, where that would help to reduce reoffending.

### Recommendation 22

The Queensland Government should establish a properly resourced, independent Inspectorate of Prisons. It should have information-gathering powers and be required to publish its reports.

### Recommendation 23

To improve reintegration of prisoners, Queensland Corrective Services should:

- remove regulatory impediments to reintegration, including those that impede the use of work release and day release options
- introduce measures to ensure that parole worker caseloads support effective community supervision
- investigate options for a prisoner housing program similar to the Corrections Victoria Housing Program, and report on housing outcomes for released prisoners
- establish a panel of providers who can deliver reintegration services.

To support these changes the Queensland Government should amend the *Corrective Services Act 2006* to include work release as a reason for granting a prisoner leave from prison.

### Recommendation 24

To ensure prisoners have access to mental health and substance addiction treatment services after their release, Queensland Corrective Services should be assigned the responsibility for arranging and funding treatment to ensure continuity of in-prison and post-prison treatment. The responsibility should exist until a prisoner's sentence is completed.

### Recommendation 25

To lower the risk of an offender reoffending immediately following release, Queensland Corrective Services should be assigned the responsibility for the provision of a minimum standard of post-release support. This should include:

- short-term housing for prisoners who do not have accommodation on release
- adequate documentation for proof of identity to open bank accounts and apply for other services and a Medicare card to access health services
- assistance to establish an email account and to procure a mobile phone
- copies of educational qualifications attained in prison (or obtained before prison)
- information on support services available to assist with reintegration including employment agencies and social welfare support
- financial supports for the first week of release
- appropriate transport to accommodation.

The government should require Queensland Corrective Services to regularly report against this standard.

### Recommendation 26

To ensure value for money, Queensland Corrective Services should commission an independent evaluation of its contracted reintegration services. This evaluation should assess:

- the outcomes of the services in terms of recidivism
- the value of the services from the prisoners' perspective
- benchmarking the services against similar programs interstate
- the reporting framework
- the appropriate length of time to provide reintegration services.

Queensland Corrective Services should complete this evaluation and make it publicly available by June 2021.

### Recommendation 27

The Queensland Government should provide clearer direction to Queensland Corrective Services on how it expects the service to manage technical breaches of parole. This guidance should be provided through the statement of intent.

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## Develop an infrastructure plan

### Recommendation 28

Queensland Corrective Services should develop and implement a long-term correctional infrastructure strategy in partnership with the Justice Reform Office that:

- describes how the correctional infrastructure portfolio will evolve to meet the objectives of the criminal justice system
- is based on robust forecasts of the future numbers and composition of both offenders and prisoners
- uses the best available evidence on the effect of infrastructure on rehabilitation
- considers all feasible infrastructure options
- allows for the involvement of non-government entities in developing innovative solutions to supervise and rehabilitate offenders
- sets out deliverables, timetables and accountabilities.

The Queensland Government should review and revise the correctional infrastructure strategy periodically to ensure it remains consistent with the objectives of the criminal justice system.

### Recommendation 29

Queensland Corrective Services should:

- ensure that its planning for infrastructure is closely integrated with planning across the department, which in turn needs to be integrated with planning for the criminal justice system as a whole.
- develop and publish guiding principles for infrastructure decisions, with reference to principles developed by Infrastructure Australia
- publish its forecasting model and commission regular independent reviews of it.

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## Target prevention and early intervention

### Recommendation 30

The Queensland Government should prioritise investments in community-led prevention and early intervention in communities with high levels of offending. To this end, the government should:

- identify projects that would be suitable for a justice reinvestment approach
- establish funding arrangements to support justice reinvestment projects
- facilitate access to data and establish monitoring and evaluation frameworks
- facilitate coordination and collaboration between government and non-government service providers (including police, courts and corrections) and communities
- prioritise projects aimed at reducing Indigenous offending. As a first step, the government should outline its plan for justice reinvestment in Cherbourg.

**Recommendation 31**

To prevent disengagement from the education system, the Queensland Government should:

- commission an independent assessment of student disciplinary absences (SDAs) in Queensland state schools to determine:
  - the underlying reasons for the increased incidence of SDAs, and whether SDAs are applied consistently within and between schools
  - the impacts of SDAs on student outcomes, including their impact on future criminal justice system involvement
  - whether there are opportunities to improve transparency, accountability and outcomes through governance, reporting and support arrangements .
- identify schools and regions with concentrations of at-risk and disengaged children and develop multi-agency approaches for assessing and responding to these children's needs
- prioritise the assessment of at-risk children for cognitive impairments and other disabilities and ensure there are sufficient resources in the school system to support referrals to the National Disability Insurance Scheme where appropriate
- work with universities to improve the behavioural management training for pre-service teachers with a focus on identifying and managing students at risk of disengaging from education.

**Recommendation 32**

To prioritise the prevention of child sexual abuse, the Queensland Government should assess the availability and effectiveness of preventative services for individuals who are at risk of committing child sexual abuse as it develops its Sexual Violence Prevention Framework.

**Recommendation 33**

To reduce the intergenerational impacts of imprisonment, the Queensland Government should:

- ensure prisoner admission processes identify children of prisoners and other high-risk family members
- provide information to prisoners' families and carers of their children about available support services and facilitate referrals to service providers
- assess the availability and effectiveness of existing support services that target children of prisoners and their parents/carers and address service gaps
- facilitate prisoner access to parenting support programs where appropriate
- examine options for maintaining parent-child relationships while a parent is imprisoned.

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## Expand diversionary options

### Recommendation 34

To reduce interaction with the criminal justice system, the Queensland Government should expand diversionary options by establishing:

- an adult caution for use in situations where it is a first or infrequent offence and the police are satisfied that such a caution provides sufficient action
- a multi-stage caution and diversion scheme for all drug possession that allows for a staged response and supports further reform to the legal framework for drugs
- a three-tier deferred prosecution arrangement that provides:
  - a simple agreement conditional on the offender desisting from further offending for a specified period
  - an agreement for additional conditions relating to assessment, referral and treatment to address offending behaviours
  - an agreement where additional conditions are developed and monitored by approved community groups, such as community justice groups
- local policing plans based on problem- and community-oriented policing practices, developed in partnership with community groups such as the community justice groups, for communities with high levels of offending and imprisonment.

In implementing these diversionary responses, the government should consider administrative savings for the police and courts, protections for persons from unfair agreements and net-widening.

### Recommendation 35

To incentivise the effective use of these diversion responses, the government should:

- provide clear direction to the Queensland Police Service, through a ministerial statement of intent, to encourage the effective use of diversionary options and de-escalation consistent with high-performance policing practices
- establish high-level goals and key performance measures that encourage the Queensland Police Service to implement local policing plans, diversion and de-escalation, and ensure the Queensland Police Service develop police training and practices in the use of de-escalation, discretion and diversion—including a simplified public interest test/assessment tool
- implement a monitoring and evaluation framework to ensure that the use and development of these diversion responses contribute to community safety and maintains the confidence of the community
- build and support local community capacity to engage in local policing plans and administer deferred prosecution agreements
- give police and local justice groups access to the assessment and referral network being developed for work and development orders and Court Link.

### Recommendation 36

The Queensland Government should ensure that its evaluation of the *Domestic and Family Violence Prevention Strategy* includes an assessment of:

- whether current policing and enforcement strategies are working to reduce the incidence of family and domestic violence in communities with high levels of economic and social disadvantage
- the extent to which the strategy has had unintended consequences
- whether there are opportunities for greater use of diversion to treatment, restoration or other approaches that would reduce harms.



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## Addressing indigenous overrepresentation

### Recommendation 37

As a priority, the Queensland Government should implement the recommendations of the Commission's *Service delivery in Queensland's remote and discrete Indigenous communities* report.

Implementation should prioritise:

- structural reform to transfer decision-making and accountability for service delivery to remote and discrete communities
- economic and land tenure reform to address economic and social disadvantage that contributes to offending in these communities.

A suitable independent body should be authorised to report on progress against each of these recommendations. A report on progress should be made public within twelve months.

Where appropriate, the government should extend the reforms to other Indigenous communities, with a priority focus on those communities with high levels of offending or imprisonment.

### Recommendation 38

To progress the transfer of decision-making and accountability to communities, the Queensland Government should negotiate local Indigenous justice agreements with those Indigenous communities that are ready to do so.

These agreements should include:

- the outcomes to be achieved
- the resourcing that will be transferred to communities to commission services to reduce offending and imprisonment
- the nature and delivery of government-provided services, such as policing actions and prisoner reintegration services
- opportunities for local authority to be established, for example through the operation of residential supervision facilities
- incentives for the achievement of milestones or outcomes
- rigorous monitoring and evaluation, including agreed reporting arrangements.

The Justice Reform Office should be given responsibility for negotiating agreements with local Indigenous communities. The independent body should oversee implementation of agreements and report on progress and achievement of outcomes.

The government should progressively foster decision-making capacity and negotiate local justice agreements with other Indigenous communities with high offending and imprisonment rates.

### Recommendation 39

To ensure that policy-makers are fully informed of all potential policy impacts, the Queensland Government should require that all legislative and policy changes are assessed against their impacts on Indigenous communities in remote and regional areas. This should form part of the justice impact test in Recommendation 4.

**Recommendation 40**

To improve accountability and inform policy development, the Queensland Government should provide:

- justice-related statistics at a suitable level of regional disaggregation, to monitor local progress and support local Indigenous justice agreements (reported at least biannually)
- an annual report on progress in meeting state Indigenous justice targets, including *Closing the Gap* justice targets
- regular independent assessment of progress in implementing Indigenous justice reforms
- results of evaluations, where available, of the impact of state and local reforms on Indigenous offending and imprisonment.

**Recommendation 41**

In implementing the recommendations of the *Commission's Service delivery to Queensland's remote and discrete Indigenous communities* report, the Queensland Government should prioritise those recommendations that seek to address the entrenched economic disadvantage that is a causal factor behind offending, 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.

**Recommendation 42**

The Queensland Government should finalise the review of alcohol management plans (AMPs), with a focus on:

- the overall effectiveness and efficiency of AMPs (including whether their costs outweigh their benefits)
- devolving control of AMPs to communities
- supporting community decision-making with timely information through which communities can measure the effectiveness of their strategies
- alternative strategies, such as the use of community-controlled alcohol permits.

To ensure that communities and other stakeholders are well informed, the government should publicly release the independent review of the overall effectiveness of alcohol management plans.

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