

**FEBRUARY 2019**

**SUMMARY REPORT**

Inquiry into 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 early findings and nominates areas where further information is sought.

Despite declining crime rates, the imprisonment of Queenslanders is escalating. Concerning trends include the growth in the rate of imprisonment of women, which doubled the rate of men over the last ten years, and the significant and growing over-representation of Aboriginal and Torres Strait Islanders. These matters are not unique to Queensland and reflect wider Australian and international trends.

In direct financial terms, imprisonment costs the Queensland community almost a billion dollars every year. Its social costs, although harder to measure, are much greater. Incarceration has profound impacts on prisoners, their families and the community—loss of employment, housing, relationships, as well as mental health problems and potential criminogenic effects—all of which increase the risk of reoffending.

In this report, we ask whether community safety is best served by continuing the current approach. Is there a case for some crimes to be punished with non-custodial options? Could better outcomes be achieved with greater attention to rehabilitation and reintegration? Would some offences be better treated as medical issues than criminal offences? Should victims be empowered by building in restitution and restoration options? Early indications are that the community may actually be made safer by reforming current practices, and we are seeking further information to allow us to complete the inquiry.

This report reflects the contributions of over 400 stakeholders, representing a broad cross-section of Queenslanders—government agencies, victim peak bodies, prisoner advocates, unions, the judiciary, corrections officers, prisoners, Indigenous peak bodies, and academics. We applaud the willingness of stakeholders to seek better outcomes for victims, offenders, and the community.

Finally, we would like to thank the staff of the Commission for their commitment and professionalism in the preparation of this material.



**Kim Wood**  
PRINCIPAL COMMISSIONER  
(Presiding Commissioner)



**Bronwyn Fredericks**  
COMMISSIONER

February 2019



# Imprisonment and recidivism: Have your say

The Treasurer has directed the Queensland Productivity Commission (the Commission) to undertake an inquiry into imprisonment and recidivism in Queensland.

This draft report provides an opportunity for consultation on the issues raised by the inquiry—and, in particular, on our preliminary analysis, findings and recommendations.

The final report will be prepared after further consultation and will be provided to the Queensland Government in August.

## Make a submission

The Commission invites all interested parties to make a submission on the draft report.

Submissions are due by close of business 17 April 2019. They can be lodged online or via post:

### **Imprisonment and recidivism inquiry**

Queensland Productivity Commission  
PO Box 12112  
George St QLD 4003

Submissions are treated as public documents and are published on the Commission's website. If your submission contains genuinely confidential information, please provide the confidential material in a clearly marked separate attachment.

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## Contacts

Enquiries regarding this project can be made by telephone (07) 3015 5111 or online at [www.qpc.qld.gov.au/contact-us](http://www.qpc.qld.gov.au/contact-us)

### Key dates

Issues paper released  
**13 September 2018**

Initial consultation  
**September–October 2018**

Draft report released  
**1 February 2019**

Submissions due  
**17 April 2019**

Final report submitted to the  
Queensland Government  
**1 August 2019**

The Queensland Productivity Commission is an independent statutory body that provides policy advice on complex economic and regulatory issues.

The Commission has an advisory role and operates independently from the Queensland Government—its views, findings and recommendations are based on its own analysis and judgments.

Further information on the Commission and its functions can be obtained from the Commission's website [www.qpc.qld.gov.au](http://www.qpc.qld.gov.au)

## Key points

- The rate of imprisonment in Queensland—the number of prisoners per head of population—has increased by 44 per cent between 2012 and 2018.
  - This increase is being driven by behavioural, policy and system changes, not underlying rates of crime, which have been falling steadily for the last 20 years.
  - The median prison term is short (3.9 months) and most (65 per cent) are for non-violent offences.
- Imprisonment is expensive:
  - It costs around \$107,000 to accommodate a prisoner for a year.
  - Imprisonment also has indirect costs on prisoners, their families and communities. These costs are difficult to estimate, but could be around \$40,000 per prisoner per year.
  - At the current rate of growth, Queensland will require an additional 4,600 to 5,800 additional prison cells by 2025—this will require around \$5.2 to 6.5 billion in infrastructure costs alone.
- Imprisonment benefits the community where it incapacitates and deters offenders, particularly where it prevents high-harm offences. However, preliminary analysis suggests that:
  - for a material portion of Queensland's prison population, the costs of imprisonment outweigh the benefits to the community
  - for a further portion, lower cost alternatives would provide greater benefits to the community.
- Every month over 1,000 prisoners are released back into the community. Many receive limited rehabilitation or support to reintegrate. Over 50 per cent will be back in prison or under community supervision within two years.
- There are no easy policy solutions. Options that will have a meaningful impact on the prison population will require significant and politically challenging changes to the way things are done. Four priority areas for reform are most likely to improve outcomes for the community.

### 1. Adopt more effective ways to deal with offending

- Redefine offences currently classified as crimes where the costs of criminalisation outweigh the benefits (possible offences include some regulatory, illicit drug and public nuisance offences).
- Establish a victim restitution and restoration process.
- Increase non-prison sentencing options, including home detention, monetary penalties and community-based orders, and remove unnecessary restrictions on these options.

### 2. Break the cycle of reoffending

- Reconfigure rehabilitation and reintegration through an effective service delivery model of throughcare. Remove regulatory and other barriers to reintegration and employment.

### 3. Reduce interactions with the criminal justice system

- Increase diversionary options, including cautions.
- Fill the gaps in prevention and early intervention.

### 4. Build a better decision-making architecture

- Change the way funding and policy decisions are made, by establishing a separate justice reform office that is accountable for criminal justice system outcomes.

# 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 *number* of people in prisons has risen by around 58 per cent between 2012 and 2018. The *rate* of imprisonment—the number of prisoners per head of population—increased by 44 per cent. 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.

## 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).

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

The terms of reference ask us to consider:

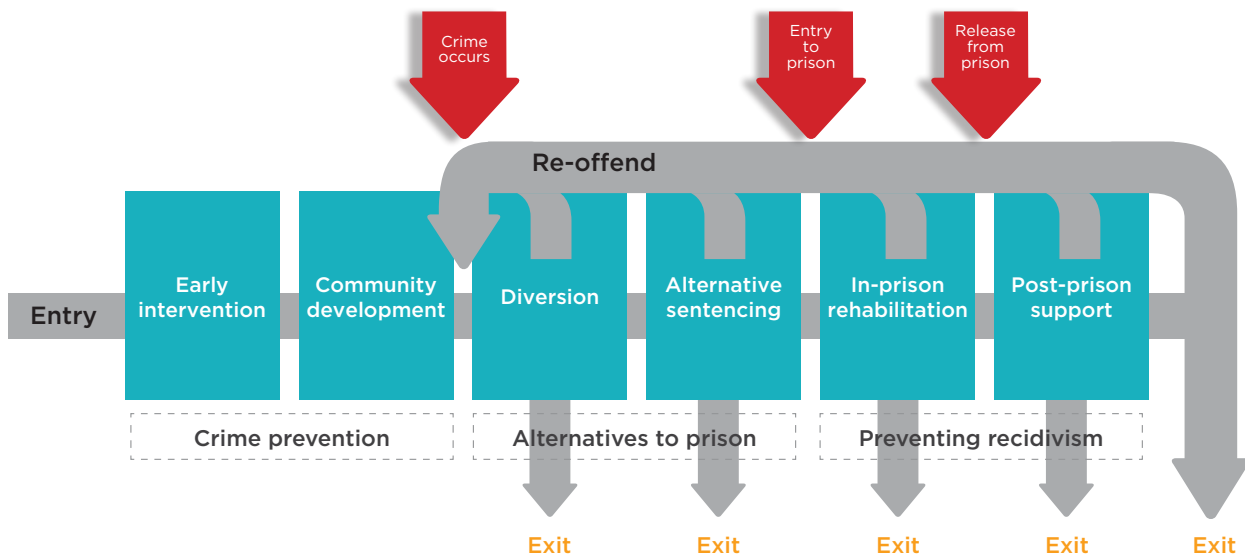
- trends in imprisonment and recidivism and the causal factors underlying these trends
- factors affecting imprisonment for Aboriginal and Torres Strait Islander people, women and young people
- the benefits and costs of imprisonment, including its social effects, financial costs and effectiveness in reducing/preventing crime
- the effectiveness of programs and services in Australia and overseas to reduce the number of people in prison and returning to 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, which states that there will be no contracting-out of services currently provided by the Queensland Government unless it can be clearly demonstrated to be in the public interest.

As this is a forward-looking inquiry, we have not assessed the extent to which additional prison infrastructure is required to address current levels of overcrowding, nor have we conducted an operational review of each element of the criminal justice system. Rather, we have focused on policy areas where change is most likely to provide the largest benefits for the community.

The inquiry is predominantly concerned with the adult corrections system. In this context, the Commission has considered the youth justice system as an important pathway into the adult corrections system. Further, the Queensland Government has only recently completed its Youth Justice Strategy for 2019–23 following the 2018 *Report on Youth Justice* (the Atkinson report). For this reason, the Commission has not conducted a review of the youth justice system for this draft report.

**Figure 1 The scope of the inquiry**



This draft report represents the first stage of the inquiry. It presents initial findings and recommendations based on the evidence received so far.

To prepare this draft report, we released an issues paper (September 2018) and consulted with more than 400 stakeholders through:

- public forums in Brisbane, Townsville, Cairns and Rockhampton
- individual meetings with a wide range of stakeholders including the judiciary, unions, legal advocates, peak bodies, Indigenous and non-Indigenous advocacy groups, service providers, academics and government
- visits to drug and Murri courts
- site visits to four correction centres.

We also received 43 written submissions, which have been incorporated in our analysis.

The policy areas under consideration for this inquiry are complex and potentially controversial, and the evidence is not always clear or settled. For some areas, the Commission is still analysing the evidence to understand why imprisonment levels in Queensland have been rising, particularly for women and Aboriginal and Torres Strait Islander peoples. The Commission is also yet to fully analyse the costs and benefits of potential reform options.

As a result, the analysis in this report should be considered as preliminary—the purpose of this draft report is to seek further comment on the findings and recommendations. The Commission intends to release supporting papers for consultation during 2019, which will examine trends in imprisonment and recidivism. Following a second round of consultation, we will develop final findings and recommendations and deliver a final report to the Queensland Government by 1 August 2019.

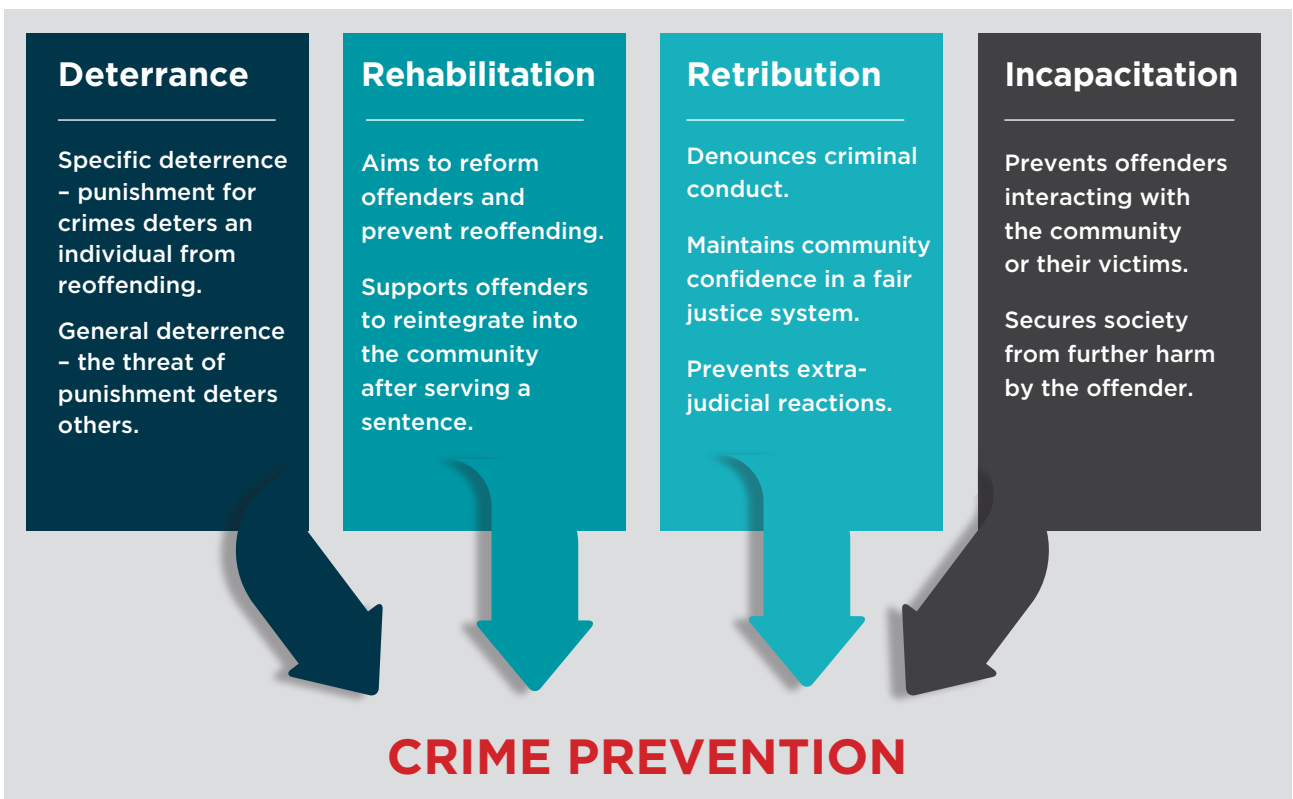
## The Queensland system

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, over 200,000 criminal lodgements dealt with by the courts each year and around 9,000 prisoners managed in custody (11 high security prisons, 6 low security prisons, and 13 work camps). In 2016–17, the cost of the criminal justice system in Queensland represented by police, the courts and corrections was \$3.6 billion, or \$728 per capita.

Prisons have a key role (Figure 2). As established in the *Corrective Services Act 2006*, their purpose is to keep the community safe by preventing crime through the humane containment, supervision and rehabilitation of offenders. When making sentencing choices, courts must consider how prisons deter, incapacitate and rehabilitate offenders (*Penalties and Sentencing Act 1992*).

Figure 2 Role of prisons



A wide range of programs and activities aim to reduce crime. These include policing effort to better detect and deter crime, strategies to encourage reporting and enforcement of offences (such as domestic and sexual violence) and broader whole of government efforts to address the underlying causal factors that drive offending behaviour.

New systems of alternative justice procedures to address offending behaviours are emerging within the court system—examples include the Drug and Alcohol and Murri Courts. Also, there is a stronger focus on rehabilitation in corrections—for example, the recently opened Borallon Training and Correctional Centre provides a new approach to prison rehabilitation. Box 1 provides a small sample of policies and programs in Queensland.



## BOX 1 A SAMPLE OF POLICIES AND PROGRAMS IN QUEENSLAND

### Borallon Training and Corrections Centre

The Borallon Training and Corrections Centre is Queensland's first dedicated training prison with an emphasis on education and employment outcomes. It opened in 2016 as a training facility where prisoners are encouraged to 'earn and learn'.

As of June 2018, nearly half of the 387 prisoners were employed in prison industries. Borallon has partnered with TAFE Queensland South West to develop and provide this training with an onsite campus, teachers and IT services. It offers courses such as horticulture, engineering, welding, automotive, construction and tertiary education. Other programs at the centre include mental health services and psychological interventions to support transitioning back into the community.

The prison is taking a positive approach to rehabilitation and transformation of prisoners; however, a formal evaluation is yet to be completed.

### Project Booyah

Project Booyah is a program for at-risk 15- to 17-year-old children. It seeks to re-engage children with their family, community and the education system to reduce their risk of offending. The 17-week program focuses on vocational pathways, employability skillsets, and adventure-based activities to build confidence, self-worth and resilience.

Since 2016, a total of 345 people were accepted into the program, with 83 per cent successfully graduating, 82 per cent obtaining a Certificate I or II in Hospitality, 70 per cent becoming re-engaged in education, 25 per cent gaining employment and 33 per cent starting further vocational training or pathways.

A review found that the project reduced recidivism by 62.5 per cent over the three years. Victimization by participants also fell by 84 per cent post program (Queensland Government sub. 43, p. 60).

### Drug and Alcohol Court

Queensland has re-established a Drug and Alcohol Court to divert offenders with substance-abuse-related offences away from prison. The Court provides an intensive program to address offender's dependencies and criminal thinking. It aims to improve public safety by rehabilitating offenders so that they can reintegrate into the community as productive members of society. The Court does this through regular random drug testing, regular court appearances to ensure they stay on track, and incentives to encourage offenders to engage with treatment.

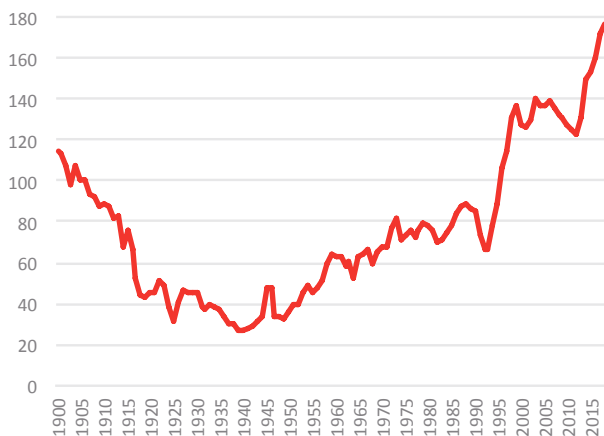
Evaluations of the former Queensland drug court, and drug courts in New South Wales, Victoria and international jurisdictions, have demonstrated a reduced likelihood that participants will reoffend, as well as improved social stability, housing and employment outcomes. The Queensland Government undertook a review to ensure the drug court was evidence-based and cost-effective prior to its implementation. The court is scheduled for evaluation (Queensland Courts 2018).

## 2 Imprisonment: a growing policy problem

### Imprisonment rates are increasing, despite falling rates of crime

Imprisonment is growing much faster than 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 the present—growing by 44 per cent.

**Figure 3 Adult imprisonment per 100,000 population, Queensland**



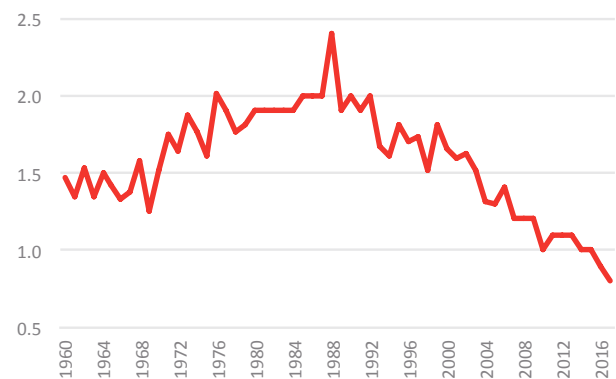
Source: ABS 2018c, 2018a; OESR 2009

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.

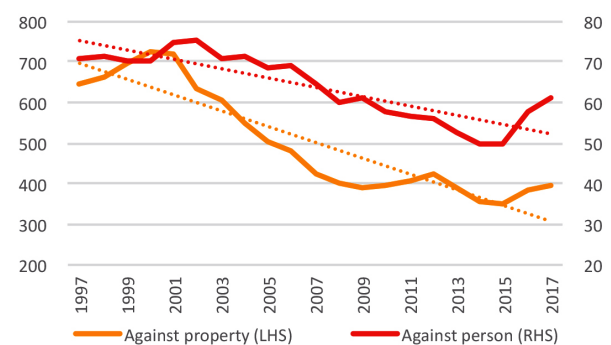
**Figure 4 Homicide rate per 100,000 population, Australia**



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

Queensland data suggest a similar trend. Reported crime rates have trended downward for the past two decades. Moreover, analysis suggests that the more harmful crimes have fallen faster than less serious crimes.

**Figure 5 Reported offence rate per 100,000 population, Queensland**



Note: The increase in reported offences against the person from 2015 appears to be due to additional reporting and policing (largely of domestic and family violence) rather than an increase in the underlying crime rates.

Source: QPS 2018.

Reporting and policing of crime has increased significantly—implying that the underlying crime rates have fallen by more than the reported rates shown in Figure 5.

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

## BOX 2 DO PUBLIC PERCEPTIONS MATCH THE REALITY?

Crime is one of the key concerns for people in the community. This is for 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>1</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>2</sup> This is similar in other countries, where people commonly believe crime rates are rising, when in fact the opposite is occurring.<sup>3</sup>

Similarly, it is frequently reported that community members 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 sentence actually imposed.

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**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)**

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<sup>1</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*, Catalogue no. 4906.0.

<sup>2</sup> Essential Research 2018, *The Essential Report*, 16 January 2018.

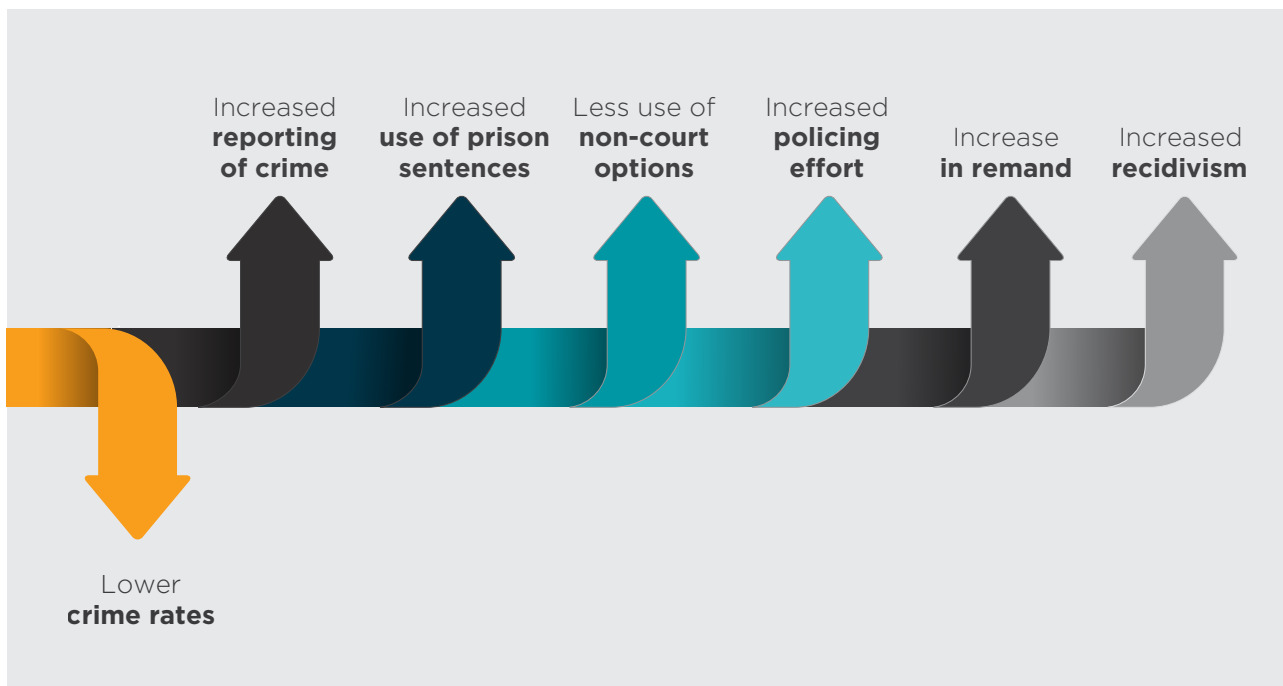
<sup>3</sup> Davis, B & Dossetor, K 2010, *(Mis)perceptions of Crime in Australia*, Trends & Issues in Crime and Criminal Justice, no. 396, July, Australian Institute of Criminology.

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

The Commission is yet to develop a complete picture of the reasons for the increase in the rate of imprisonment. Nonetheless, it appears that the key reasons are:

- increased reporting of crime—the reporting rate for physical assault increased 41 per cent between 2008–09 and 2016–17
  - 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 40 per cent in 2016–17
  - 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 longer time in prison than they otherwise would have.
- Changes in sentence lengths have had little impact on imprisonment rates.

Figure 6 Key drivers of the rising rates of imprisonment





## Increasing imprisonment can make the community less safe

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

However, there are diminishing returns from the use of imprisonment—that is, the additional benefit (through a reduction in crime) declines as more people are imprisoned.

Research from the United States has demonstrated that at some point increased use of prison can result in more crime.

This occurs because prisons can have criminogenic effects on individuals and the communities they come from (Box 3).

Prison disconnects individuals from communities, jobs and housing, and can even train them to be better criminals. This can turn low-harm offenders into more serious offenders.

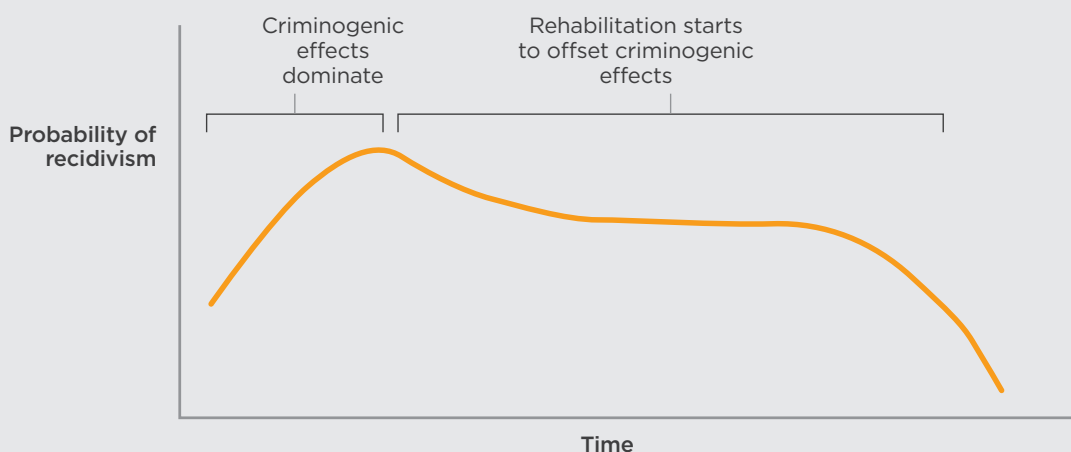
For communities with very high imprisonment rates, the removal of individuals can undermine social cohesion, and if parents are removed from families, it can result in intergenerational problems. These problems are evident in some Indigenous communities, where violent crime remains stubbornly high, despite high levels of incarceration.

### BOX 3 DO PRISONS MAKE REOFFENDING MORE LIKELY?

While prisons may keep the community safe during the time a prisoner is incapacitated, it is important to consider what happens after prisoners exit from prison, and the extent to which prison rehabilitates or criminalises prisoners. For example, if prisons turn prisoners into more effective criminals, prisons may make the community less safe over time.

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 7).

Figure 7 Possible effects of sentence length and recidivism



Source: Adapted from Mears, D, Cochran, J, Bales, W & Bhati, A 2016, 'Recidivism and time served in prison', *Journal of Criminal Law and Criminology*, vol. 106, no. 1, pp. 81-122.

## The costs of imprisonment are high

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

On average, it costs \$107,000 to keep an adult in prison for a year.<sup>1</sup> In 2016–17, the total cost of running Queensland's prisons was \$872 million.

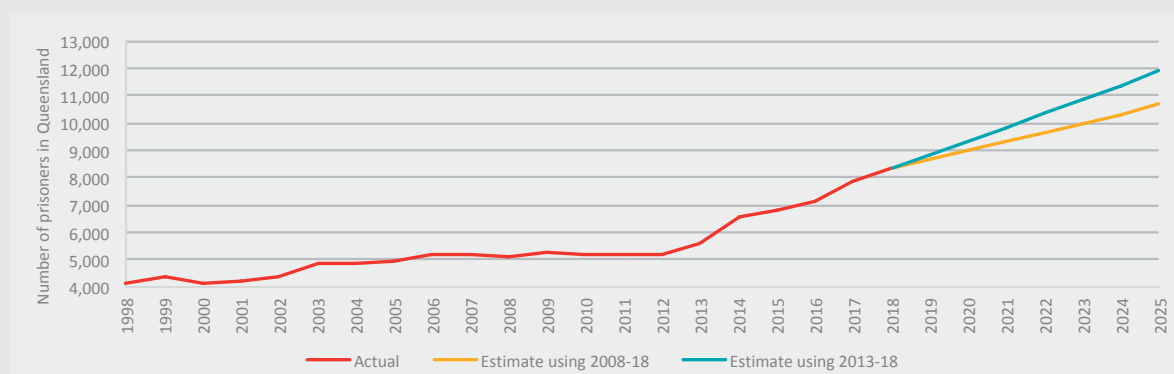
These costs are increasing. From 2011–12 to 2016–17, real net operating expenditures increased by around 22 per cent, significantly more than the increase in general government expenditures.

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 4).

#### BOX 4 THE COST OF HOUSING QUEENSLAND'S GROWING PRISON POPULATION

Queensland's prison population is growing rapidly, increasing from 6,079 to 9,021 in the past five years. In September 2018, the number of prisoners exceeded the design capacity<sup>a</sup> of all high security prisons by 37.3 per cent, or 2,264 prisoners. Increasing capacity to meet this shortfall would cost around \$2.5 billion.

If current trends continue, by 2020 the high security prison population will exceed capacity by between 2,900 and 3,300 prisoners. The construction of additional infrastructure to house these prisoners, and to address existing shortfalls, is projected to cost approximately \$3.5 billion. By 2025, the high security prison population could exceed current capacity by between 4,600 and 5,800 prisoners, requiring government expenditures totalling \$5.2 billion to \$6.5 billion in infrastructure costs alone.



<sup>a</sup> To allow for prisoner movement, 'total design capacity' refers to 95 per cent cell occupancy.  
Sources: ABS 2018; Queensland Government sub. 43, pp 72; Iliffe 2011; Commission estimates.

### Prison imposes additional costs

Although prison is intended to punish offenders, costs extend beyond the direct effect on the prisoner during the term they serve. These costs 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 \$40,000 per year for each prisoner.

<sup>1</sup> Productivity Commission 2017, Report on Government Services.

## Queensland's prison population

Research shows that people who are most likely to experience deep and persistent disadvantage are the same people that are overrepresented in the prison population.

**Table 1 Prisoner characteristics, Queensland**

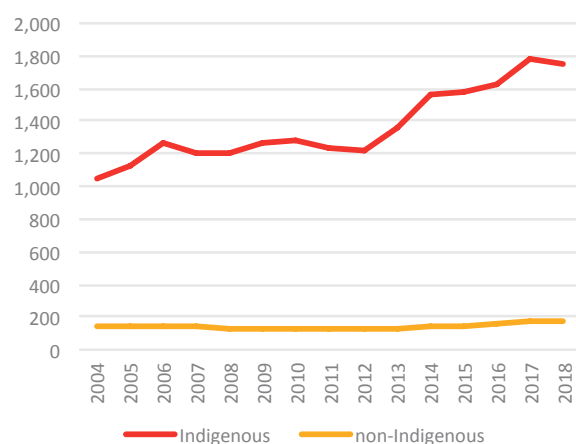
Characteristic	Prisoners	General population
Completed Year 12	17%	62%
Used illicit drugs in last 12 months	64%	16%
High levels of psychological distress	27%	12%
Unemployed in 30 days prior to imprisonment	49%	6%
Homeless	23%	0.5%

Source: ABS 2015, 2018d, 2018b; AIHW 2015, 2018.

### Indigenous Queenslanders are overrepresented

Around 32 per cent of prisoners identify as Aboriginal or Torres Strait Islander, and imprisonment rates are currently more than 13 times higher than the non-Indigenous rate.

**Figure 8 Age standardised imprisonment rate per 100,000 adults, Queensland**

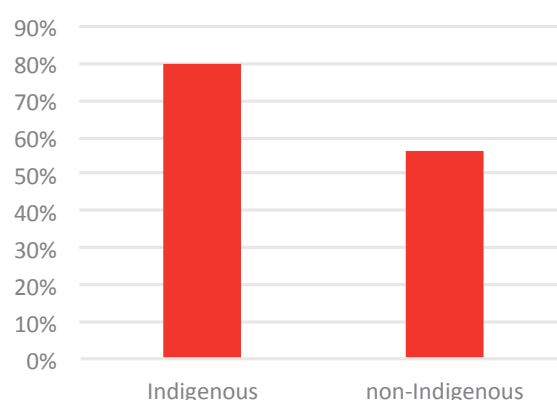


Source: ABS 2018b.

Imprisonment rates for Indigenous Queenslanders are increasing faster than for the general population.

Around 80 per cent of Indigenous prisoners have been in prison before—compared to less than 60 per cent for non-Indigenous prisoners.

**Figure 9 Proportion of prisoners who have been in prison before, Queensland, 2018**

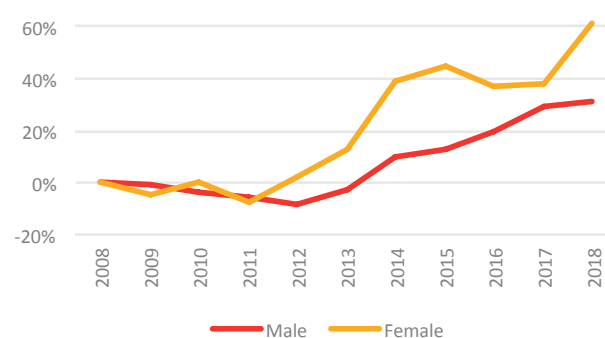


Source: ABS 2018b.

### A growing female prison population

While women make up a relatively small proportion of all prisoners, female imprisonment has grown significantly faster than for men (Figure 10). Since 2008, the rate of female imprisonment has increased by 62 per cent.

**Figure 10 Cumulative growth in imprisonment rates, Queensland**



Source: ABS 2018b.

# 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, particularly as the building, maintaining and staffing of detention centres or prisons is very costly. (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. (Associate Professor Anna Erikson, Monash University sub. 5, p. 5)*

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

*Large number of prisoners receiving very short sentences, weeks or months, create a costly churn factor -- occupying expensive secure cells and they receive little or no rehabilitation programs. (Keith Hamburger sub. 14, p. 27)*

## 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)*



### 3 A framework for assessing options

The Commission has used an economic framework to assess various options that might address the problems relevant to this inquiry.

These options are assessed against the overarching objectives of the system, which, in simple terms, is to keep communities safe. Achieving this objective should:

- keep the community safe *over time*—there may be little justification for actions today if they jeopardise public safety in the future
- maintain the legitimacy of the system—any changes to the system need to satisfy the community's expectations about justness and fairness, including the community's tolerance for loss of liberty, and desire for retribution and denunciation of acts considered unacceptable.

The goal of community safety must be seen in context. For example, social welfare will only be enhanced if the benefits of improving community safety outweigh the costs. Take the example of road safety—higher levels of road safety could be achieved by limiting the use of private motor vehicles, but that would impose prohibitive costs on the broader community.

Equally, it is unlikely that absolute community safety can be achieved as this would involve costs that most in the community would find unacceptable. Attempts to achieve 'no harm' or 'zero tolerance' often have large unintended consequences.

Resource constraints are another limiting factor in achieving community safety. More public money spent on community safety means less resources to fund schools, hospitals and roads. Beyond some point, there are also diminishing returns from efforts to increase safety.


Viewed through this lens, the Commission has asked four key questions:

- What are the right roles for government? While the Queensland Government has a clear part to play in achieving community safety, it can adopt many different approaches.
- Do current policies and programs keep the community safe over time? Policies and actions should be consistent with the objective of keeping communities safe and should be implemented in a way that ensures they meet this objective.
- Are there more effective and efficient ways of achieving community safety? The most effective and efficient policy options should be used to keep communities safe, and these should be improving over time.
- Are there ways to improve decision-making across and within government, and encourage innovation to improve efficiency and effectiveness? Decision making should be informed by robust evidence, ensure coordination across the system and encourage continuous improvement.

# Overview of reforms

## RATIONALE FOR CHANGE

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



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



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



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



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



High rates of reoffending are compromising community safety



## OPTIONS FOR CHANGE



### Adopt more effective ways to deal with offending

- Increase the range of, and support for non-custodial sanctions
- Introduce victim restoration and restitution
- Reduce the scope of criminal offences



### Break the cycle of reoffending

- Deliver an effective model of throughcare
- Remove regulatory and operational impediments to rehabilitation and reintegration
- Ensure prison facilities support rehabilitation



### Reduce interactions with the criminal justice system

- Address gaps in intervention and prevention
- Expand the use of diversionary options



### Build a better decision-making architecture

- Clarify objectives for the criminal justice system
- Enhance transparency and accountability
- Ensure evidence-based funding and policy decisions

## 4 Policy options to improve outcomes

### Adopt more effective ways to deal with offending

The prison population is not a homogenous group. Prisoners have committed different types of offences, some very serious and some relatively low-harm. They come from different backgrounds and have offended under different circumstances. Some respond to conditioning in prison; others not. Therefore, the costs and benefits of imprisonment vary considerably across different offenders.

In this context, prison can be a blunt instrument for dealing with offending behaviours.

**Most prison sentences are short.** The median prison sentence is 3.9 months. Often the majority or whole sentence is served on remand. In these circumstances, there are limited opportunities for rehabilitation but potential for remandees and less serious offenders to be exposed to the criminogenic effects of prison.

**Prisons are increasingly used for non-violent crimes.** The majority of custodial sentences are for non violent crimes, and this share is increasing (Figure 11).

This can be seen in types of offences that are attracting prison sentences (Figure 12).

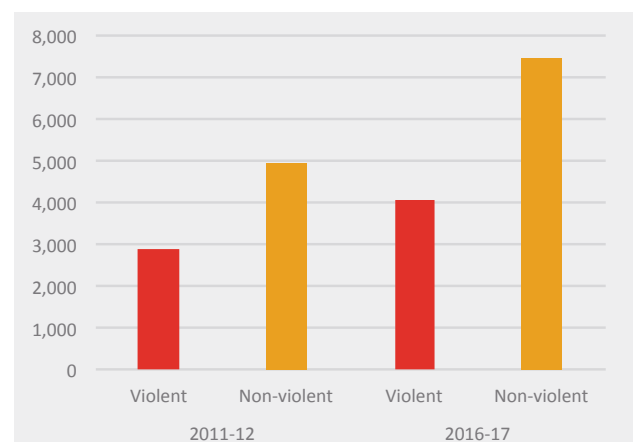
Drug offences made the largest contribution to the growth in the prison population (32 per cent) between 2011-12 and 2017-18.

Offences against justice procedures, theft and unlawful entry offences contributed a further 29 per cent of all growth over the same period.

These offences tend to be non-violent, relatively lower harm or are 'victimless'.

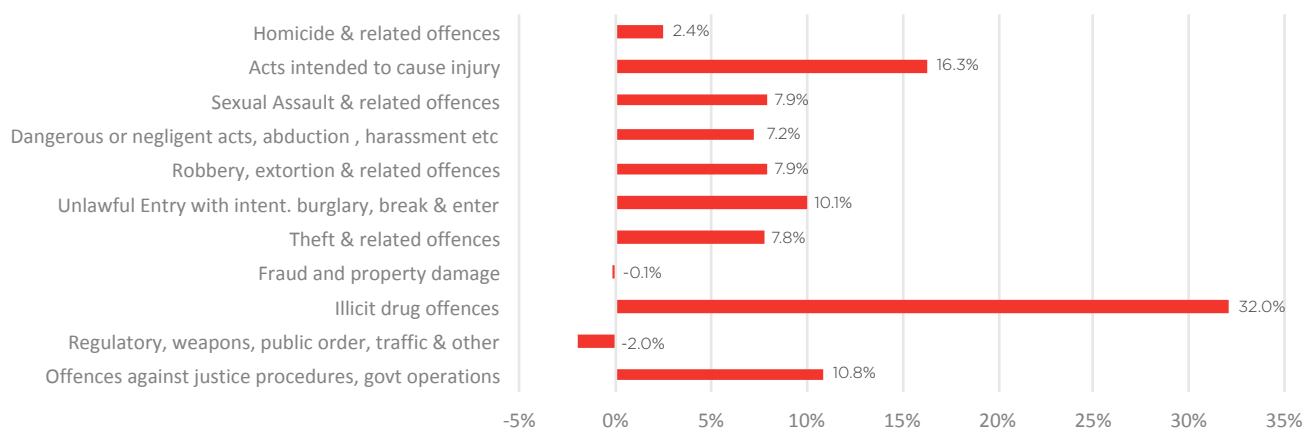
Acts intended to cause injury contributed 16.3 per cent, however, the most serious categories (such as grievous bodily harm) did not contribute to growth.

Figure 11 Prison sentences by type of offence, Queensland



Source: ABS 2018a.

Figure 12 Sentenced prisoners, contributions to growth, 2011-12 to 2017-18, Queensland



Source: QCS unpublished data.

### For some offences, the benefits from imprisonment do not outweigh the costs.

The benefits of prison mainly arise from the deterrence of harmful acts. The deterrence effect of prison declines as more people are imprisoned; however, the best estimates from the literature suggests that, with the current rate of imprisonment, incarcerating an additional prisoner prevents around 13 crimes for property offences, and around 1.3 crimes for violent offences. These benefits need to be assessed against the direct and indirect costs of imprisonment.

The Commission has undertaken a preliminary, illustrative analysis of the costs and benefits of imprisonment for a range of offences. A simple example (Table 2) shows that prison provides a

large net benefit to the community for homicide offences (where the harm of offending is high), but the benefits are less clear for burglary (where harm is much lower).

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

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

**Table 2 Illustrative net benefits of imprisonment**

Offence	Harm avoided <sup>a</sup>	Sentence length <sup>b</sup>	Prison cost <sup>c</sup>	Net benefit <sup>d</sup>
Homicide	\$3,861,126	7.2 years	\$772,560	\$3,088,566
Burglary	\$30,795	1 year	\$107,300	-\$76,505

<sup>a</sup> Harm avoided is the average harm associated with the offence (from 2014 Australian Institute of Criminology harm estimates) multiplied by the offences avoided.

<sup>b</sup> Sentence length is the average sentence length sourced from ABS Prisoners in Australia (cat. no. 4517.0).

<sup>c</sup> Prison costs are the average sentence length multiplied by \$107,300.

<sup>d</sup> The net benefit is the harm avoided less the prison cost.

### Reduce the scope of criminal offences

Criminal sanctions are only one option for dealing with behaviours currently defined as a criminal offence. 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.

Decisions about whether to criminalise an activity should depend, among other things, on the costs that criminalising it imposes on society, and whether there are better ways of dealing with the activity. Among the costs to consider are the unintended consequences of addressing the activity through the criminal code—for example, there may be harms associated with illicit drug markets, such as increased gang violence and property crimes.

For some offences, the use of criminal sanctions appears to impose large and unnecessary costs or unintended consequences on the community. Dealing with these offences in ways that do not involve the criminal justice system is likely to result in less imprisonment and provide a net benefit to the community.

Consideration should be given to reducing the scope of behaviours that are dealt with under the criminal justice system. Some of the offences that could potentially be excluded are:

- regulatory offences
- drug offences
- public nuisance offences.



Criteria for determining the types of activities that should be removed from the criminal code could include:

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

If some crimes are removed from the criminal code, then further consideration will need to be given to how the harms from these offences are best dealt with.

### BOX 5 THE PORTUGUESE EXPERIENCE—DECRIMINALISATION

In 2001, Portugal decriminalised the purchase and possession for personal use of all drugs. The change went beyond depenalisation, which removes custodial sentencing as an option for low level drug offenders but did not amount to legalisation. Trafficking, supplying and possessing large quantities of an illicit drug remain criminal offences. Low-level offenders are now dealt with administratively by an informal 'Dissuasion Commission' which determines an appropriate non-custodial sanction. The purpose of the commission is not to punish the offender but to encourage treatment and rehabilitation. The commission is not able to mandate treatment but can suspend a penalty on the condition that an offender agrees to be treated.

There is no evidence that the reforms led to increased drug use in Portugal, while drug-related harms, and criminal justice system costs seemed to have declined. It is difficult to determine the extent to which the reforms affected imprisonment<sup>a</sup>; however, the Portuguese incarceration rate declined after the reforms and then grew from this lower base.

<sup>a</sup> It is difficult to determine the impacts on incarceration without a counterfactual forecast—that is, what would imprisonment rates have done in the absence of reforms?

Sources: Gonçalves, R, Lourenço, A & da Silva, SN 2015, 'A social cost perspective in the wake of the Portuguese strategy for the fight against drugs', *International Journal of Drug Policy*, vol. 26, pp. 199–209; Greenwald, G 2009, *Drug decriminalisation in Portugal: lessons for creating fair and successful drug policies*, Cato Institute.

### Give more focus to victims

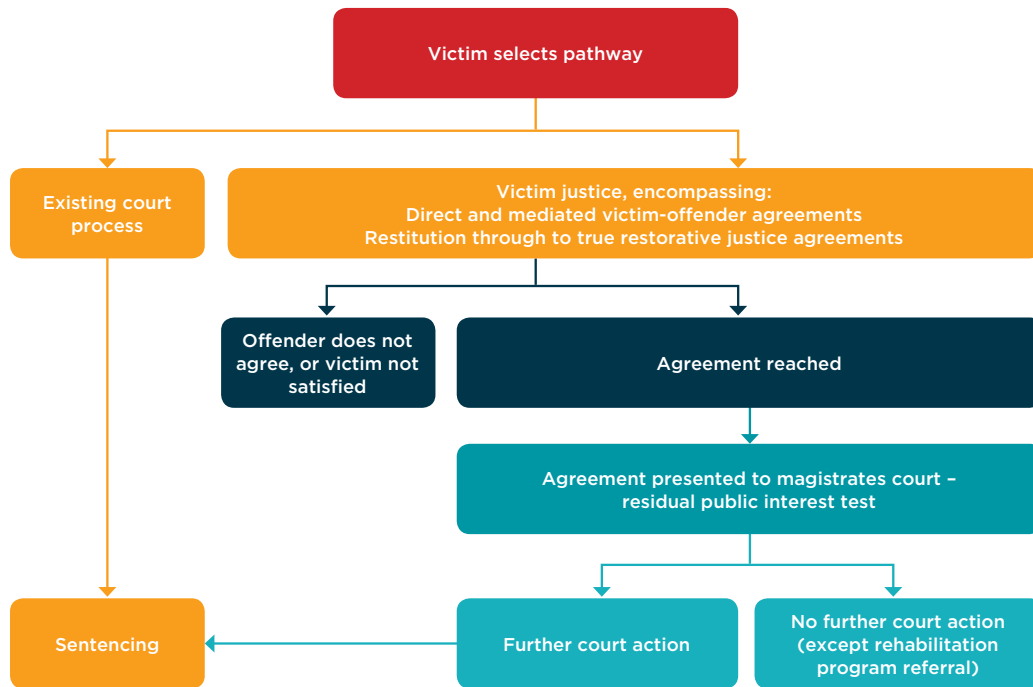
The criminal justice system focuses on criminals; not on the victims of crime.

Currently, in criminal matters the state is the litigant and the victim plays a largely 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.

Beyond the direct impact on victims of this approach (with limited opportunity for restitution or restoration), the indirect impact has been to entrench a high-cost approach to community safety, with ongoing pressures for further legislative and other interventions in an attempt to address community harm. 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.

**Figure 13 A victim-focused sentencing process**



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.

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*.

## Use more cost-effective sentencing options

For at least some offences, the use of prison imposes costs on the community that appear to outweigh the benefits provided. For these offences, it is likely that the use of other, non-custodial options would better achieve the purposes of sentencing, and, from a cost-benefit perspective, be a better option than imprisonment for less serious crimes.

The greater use of non-custodial options could apply to:

- less serious and/or non-violent crimes
- victimless crimes
- more serious offences if offenders have a mental illness or have experienced trauma.

Non-custodial options could also be used for unsentenced prisoners, who would otherwise be remanded.

The evidence suggests that, effectively supported, the greater use of non-custodial sentences is unlikely to compromise community safety and will better support rehabilitation. Non-custodial options also cost significantly less than custodial options—it currently costs \$5,000 to supervise an offender in the community, compared with \$107,000 to keep them in prison for a year.

Removing some of the existing sentencing restrictions would allow courts to impose effective and efficient sentences. In particular:

- Non-custodial sentences such as monetary penalties, community service, restitution and compensation could be used more frequently to substitute for imprisonment.
- Community-based sentences could be attractive substitutes for imprisonment if restrictions on their duration and combination with other penalties are removed, and if they are supplemented by approaches such as electronic monitoring and home detention.
- Courts should be able to impose custodial sentences on low risk offenders that are served in low security facilities.

For these sentencing options to be an effective alternative, they would need to be appropriately supported.

Currently, limited resourcing is provided to support the supervision of offenders in the community. Queensland expenditures on community supervision are the lowest in Australia and Queensland has the highest ratio of offenders to community corrections staff. Although 70 per cent of individuals being supervised by QCS are under a form of community corrections order, this cohort attracts only 10 per cent of the corrections budget (the remainder is spent on prisons).

If courts are to be given a greater range of sentencing options, the community should be assured they are used appropriately. The Queensland Sentencing Advisory Council (QSAC) is well placed to strengthen the community's confidence in sentencing outcomes by:

- producing and communicating an evidence base for sentencing
- assessing sentencing in Queensland against this evidence and community expectations.

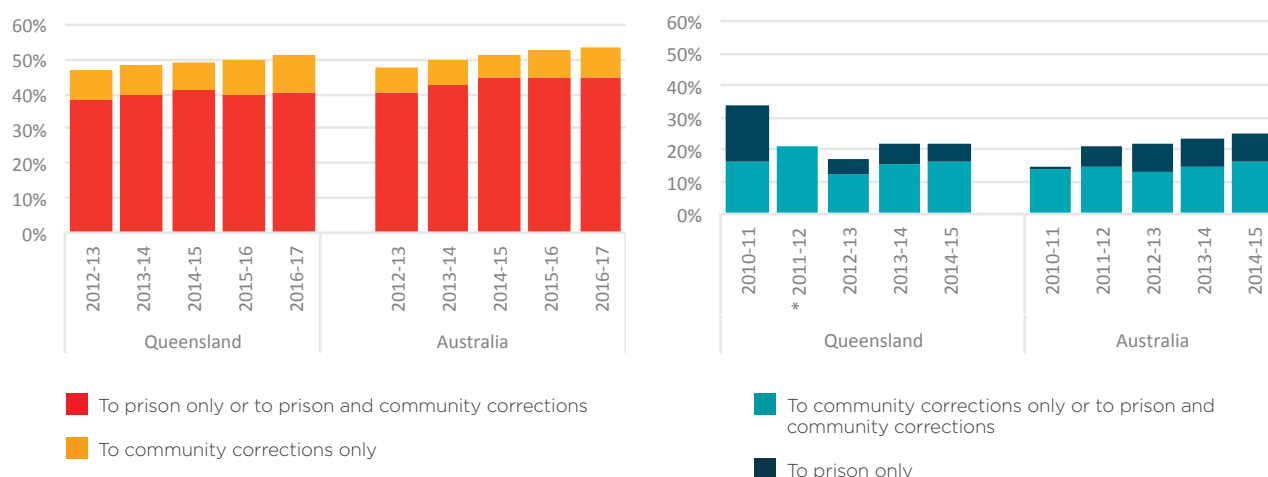
Introducing a greater range of alternatives to prison may encourage 'net widening'. This occurs when a penalty is imposed on low-harm offenders who would never have received a prison sentence. This can be a problem because the penalty can lead to a breach of conditions that may then lead to imprisonment for the offender who otherwise would never have entered the system. If new sentencing options are made available, some oversight may be required to ensure they provide benefits to the community.

It is possible that backlogs in the courts have added to the remand population in prison. To address this, any opportunities to reduce remand levels by reducing court delays and increasing time for bail hearings should be identified.

## Break the cycle of reoffending

Currently, 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 (Figure 14). Evidence available to the Commission 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.

**Figure 14 Proportion of individuals released from prison (left) and community corrections (right) returning to corrective services within two years**



*\*The proportion of 2011-12 community corrections discharges returning to corrective services within 2 years was unavailable in Queensland. Source: PC 2018.*

## Improve rehabilitation and reintegration services

Reducing the rates of reoffending will require more effective rehabilitation and reintegration of prisoners.

The evidence shows that effective programs can reduce reoffending, saving the community significant social and economic costs. However, positive results are by no means universal or large. Most successful programs are likely to have a moderate impact on reoffending.

This makes it difficult to determine the optimal level of resourcing for rehabilitation and reintegration. Nevertheless, it appears that there is underinvestment across the system, with reintegration and rehabilitation services provided for a minority of prisoners. This is exacerbated by the fact that the rehabilitation and reintegration of prisoners is not as effective or efficient as it could be, and there are few incentives to encourage improvement.

Underlying issues are impeding the efficiency and effectiveness of rehabilitation and reintegration. For example:

- although QCS has a responsibility for rehabilitation during imprisonment, no single agency is responsible for prisoner reintegration
- there are few accountability mechanisms for achieving rehabilitation and reintegration outcomes
- there is limited coordination between in-prison and post-prison rehabilitation and fragmented service delivery after prison
- a range of regulatory and operational impediments are restricting effective rehabilitation and reintegration.



To address these problems, the Commission recommends that the Queensland Government:

- better articulate the importance that the government attaches to rehabilitation and reintegration and ensure that resourcing is available to meet this commitment
- introduce reporting measures that better incentivise performance
- remove unnecessary regulatory impediments, including the inability to utilise work release orders, and excessively prescriptive release schedules
- put greater effort into rehabilitation, including during prisoner reintegration into the community
- introduce measures for coordinating the delivery of services to support prisoner rehabilitation and reintegration.

### **Introduce arrangements to encourage effective throughcare**

Throughcare is a coordinated approach to prisoner rehabilitation and reintegration that aims to reduce recidivism. It provides for continuity of care and supervision during prison and after release into the community. Throughcare approaches to prisoner rehabilitation and reintegration are generally considered as best practice.

Although the Queensland system provides for a throughcare approach 'on paper', the Commission's observation is that there is not an effective throughcare model in practice. This observation is consistent with the 2016 Queensland Parole System Review (QPSR), which included recommendations to improve throughcare to better support prisoner rehabilitation and reintegration.

The Commission's view is that introducing an effective throughcare model is likely to require a more fundamental reform than suggested in the QPSR. This is likely to require a significant change in *the governance arrangements*, not just funding or support for new services.

The Commission will explore the best options for such a model for the final report, and will consider a range of issues including:

- where throughcare should start (for example whether initial screening should occur prior to sentencing)
- the arrangements that would encourage services to meet the specific rehabilitation needs of prisoners, including women and Aboriginal and Torres Strait Islander prisoners
- how to encourage and facilitate the coordination of service delivery, including the exchange of timely information between service providers
- the extent to which authority to make decisions can be devolved
- the best ways to incentivise performance, including performance measures, outcomes-based funding and oversight mechanisms
- how to encourage community-led and market-led solutions.

### **Get the capital mix right**

The prison system in Queensland is overwhelmingly focused on high security prisons—around 90 per cent of prisoners are held in high-security facilities, significantly higher than the national average.

High security prisons are not designed for rehabilitation and often result in institutionalisation, particularly for prisoners with complex mental health or trauma issues. Further, they are an expensive way to deal with prisoners, particularly for low-risk offenders.

When developing its capital program for building new prisons or modifying existing ones, the Queensland Government should consider cost-effective opportunities to improve facilities' contribution to rehabilitation, including those that:

- draw on the best available evidence about how facilities affect rehabilitation
- provide greater opportunities for rehabilitation
- allow a more 'normalised' environment
- provide opportunities for prisoners to recover from past trauma (particularly Indigenous prisoners), drug addictions and/or mental health issues.

## Reduce interactions with the criminal justice system

### Ensure that the right diversionary options are available and used

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. Diverting these offenders can avoid unnecessary impacts for the individual and save costs across the criminal justice system.

Options for police to divert offenders away from the criminal justice system are limited. Apart from a caution/diversion for minor drug possession, there

is limited scope for adult cautioning in Queensland. This is reflected in proceedings. In 2016-17, the police made just under 170,000 proceedings against offenders, sending most to court.<sup>2</sup> 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 3). With few non-court options, the risk of mismatching the response to the crime increases.

**Table 3 Non-court proceedings, 2016-17**

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

Source: ABS 2018c.

Adding an adult caution, as well as specific cautions for minor drug offences, will slow the escalation of people through the criminal justice system into prison. To reduce recidivism, the cautioning process should also provide appropriate diversion to effective treatment and support to prevent reoffending.

These changes will give the police a greater and more active role in preventing crime. To provide guidance on how discretion should be used, a simple public interest should be introduced to police practice.

The NZ policing excellence program (2009-2014) illustrates how setting appropriate targets, in conjunction with a plan to achieve them, can have an impact on police operations, performance and ultimately community safety. The five-year program achieved a 20 per cent reduction in recorded crime and over 40 per cent reduction in prosecutions. In light of those outcomes, adopting a similar approach in Queensland would be consistent with the objectives for this inquiry. Further information is sought on the extent and types of change in policing objectives and practices that would be required and the costs of making such a change.

<sup>2</sup> These are proceedings against those aged 10 years and over, and any proceeding may include several offences.

Queensland is increasing the diversion available through the Drug and Alcohol Court and Court Link. These referral-based diversions are based on sound models and are scheduled for evaluation. But Queensland is a late adopter compared to other states, where those models and referrals are already embedded, and it will need to grow the referral

structure to match a more graduated system of proceedings.

The Murri court, Community Justice Groups and local mediation initiatives are highly valued by stakeholders. The Murri court evaluation, due in February 2019, will be considered in the final report.

## Address gaps in prevention and early intervention

Prevention and early intervention measures can help people avoid the behaviours that lead to crime and imprisonment. While evidence suggests they can reduce crime, these approaches can be risky investments because they can involve large costs with uncertain outcomes. Further, benefits from early interventions typically provide benefits beyond those that affect imprisonment and recidivism—these are beyond the scope of this inquiry.

Several recent inquiries have recommended reforms based on targeted early intervention:

- Carmody Inquiry into the child protection system
- Report on Youth Justice
- Inquiry into service delivery in remote and discrete Aboriginal and Torres Strait Islander communities
- Townsville Community Champion on Youth Crime Report
- Independent Review of Youth Detention Queensland.

While these reports have made many recommendations, it is not always clear whether, how and when the government will implement and evaluate them. The Commission recommends that the government publicly report on the status of reforms and proposed responses.

Given the number of review recommendations still being implemented, the Commission has not investigated operational issues in regards to youth justice or child protection. Further, given the wide scope of possible early interventions, it has not been possible for the Commission to fully consider many

of the relevant issues, particularly those relating to youth justice or child protection, in the time available.

Nonetheless, the Commission has identified some gaps in prevention and early intervention.

Addressing the high levels of Indigenous incarceration will require the rebuilding of social norms in many communities. This is particularly true in remote Indigenous communities where rates of offending are much higher than in the rest of the state. Key to addressing these issues is to enable communities to develop solutions for themselves. To achieve this, the government should make a clear commitment and progress the reforms outlined the Commission's inquiry into remote and discrete Aboriginal and Torres Strait Islander communities. Lessons from this inquiry should be extended to other Indigenous communities where relevant.

Many stakeholders raised concerns that disconnection from the school system is a key risk factor for offending behaviours. While further analysis is required to develop solutions, more could be done to support at-risk children identified through the school system. This is likely to require more innovative mechanisms than are currently available.

Stakeholders also raised concerns about barriers that prevent some individuals from accessing services to help prevent offending behaviours. These include a lack of support for services that aim to prevent highly stigmatised offences such as sexual offending. The Commission will explore these issues further in the final report.

## Improve the decision-making architecture

The recommendations proposed in this report aim to reduce imprisonment and recidivism and improve outcomes through a wide range of policy reforms. However, without change to the policy and funding decision-making architecture, the benefits of reforms may not be realised, and problems will re-emerge over time.

The decision-making architecture that supports the criminal justice system could be improved through:

- more effective coordination across the various institutions that make up and support the criminal justice system
- better data sharing, modelling and program evaluation to support evidence-based decision-making
- more robust policymaking processes
- funding mechanisms to provide resources across the system to where they are most needed.

Weaknesses in these areas have, at least in part, contributed to bottlenecks and overcrowding across the system and limited the ability of the government to lead the conversation on the need for reform of the criminal justice system.

To move forward, the criminal justice system needs to move to a system where agencies are pursuing common objectives to support outcomes. To achieve this there needs to be a system where the decision-making architecture:

- ensures that all costs and benefits are considered in policymaking, including those that cut across individual agencies
- establishes sufficient accountability and authority to ensure that policy and funding reforms are achieved.

While there are a range of options that might be considered, the Commission considers progress may be best achieved by establishing a justice reform office that is at arm's length from the criminal justice system, but responsible for leading change across the system.

The office needs to have a governance structure that enables it to consider the perspectives of each of the core agencies responsible for delivering the criminal justice system, as well as those services that surround the system. The office will also need sufficient expertise and authority to get things done.

The Commission will continue to explore the best arrangements; one option is for the justice reform office to be responsible to a board comprised of the chief executives of each of the core criminal justice agencies and independent experts.

The justice reform office's key functions should be to:

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

# Draft recommendations

The draft recommendations outline the key reforms the Commission considers will reduce the use of imprisonment and reduce reoffending in the medium to long term. The Commission's view is that the draft recommendations are unlikely to compromise community safety and, by addressing many of the issues that drive offending are, instead, likely to make the community safer over the longer term.

However, the policy areas under consideration for this inquiry are complex and potentially controversial, with evidence that is not always clear or settled. For some areas, the Commission is still analysing the evidence, including data from Queensland Government agencies.

Therefore, each of these proposed reforms will require more analysis to ensure they can be implemented in a way that will deliver the best outcomes for the community.

The Commission is seeking further comments from stakeholders on each of these recommendations.

## Reduce the scope of criminal offences

### DRAFT RECOMMENDATION 1

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

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

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

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

## DRAFT RECOMMENDATION 2

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

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

### Information request

The Commission is seeking further information on the following issues:

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



## Provide options for victim involvement

### DRAFT RECOMMENDATION 3

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

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

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

### Information request

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

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

## Increase the range of non-custodial sanctions

### DRAFT RECOMMENDATION 4

The Queensland Government should reform sentencing legislation to:

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

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

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

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

### DRAFT RECOMMENDATION 5

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

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

### Information request

The Commission is seeking further information on:

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

## Reduce the use of remand

### DRAFT RECOMMENDATION 6

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

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

### DRAFT RECOMMENDATION 7

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

### DRAFT RECOMMENDATION 8

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

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

### Information request

The Commission is seeking further information on:

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

## Improve rehabilitation and reintegration

### DRAFT RECOMMENDATION 9

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

### DRAFT RECOMMENDATION 10

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

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

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

### Information request

The Commission is seeking evidence from stakeholders on:

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

## DRAFT RECOMMENDATION 11

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

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

### Information request

The Commission is seeking information on:

- completion rates of in-prison programs and the evidence from evaluations or other studies of the contribution of in-prison programs to reducing recidivism in Queensland
- how QCS considers the impact on rehabilitation when designing its capital program
- the incentives for:
  - prison managers, to encourage prisoners to participate in and complete programs within prisons and to engage in meaningful employment
  - prisoners, to participate in and complete programs within prisons and to engage in meaningful employment
  - course providers, to encourage prisoners to participate in and complete programs within prisons
- changes to governance arrangements that would improve rehabilitation and reduce recidivism.

**DRAFT RECOMMENDATION 12**

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

- removing regulatory impediments to reintegration, including the lack of work release options, and uncertain release dates
- introducing measures to ensure parole workers' caseloads support effective community supervision
- providing sufficient flexibility on release dates to allow Corrective Services to effectively prepare prisoners for release
- ensuring all prisoners, at release, have up-to-date identity documents, including a Medicare card and birth certificate, a driver's licence and bank account where required, and information on social welfare and employment services.

**Information request**

Further information is sought on:

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



## Address gaps in prevention and early intervention

### DRAFT RECOMMENDATION 13

To progress initiatives relating to the youth justice system, the Queensland Government should publish its Youth Justice Action Plan in response to the *Report on Youth Justice*. As part of this response, the government should publicly report on recommendations and evaluation of programs.

### DRAFT RECOMMENDATION 14

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

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

### DRAFT RECOMMENDATION 15

The Queensland Government should:

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

### Information request

The Commission is seeking further information on:

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

## Expand diversionary options

### DRAFT RECOMMENDATION 16

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

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

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

### Information request

The Commission is seeking information on:

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

## Build a better decision-making architecture

### DRAFT RECOMMENDATION 17

The Queensland Government should establish a justice reform office to:

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

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

### DRAFT RECOMMENDATION 18

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

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

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

### Information request

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

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

## Recidivism—trends and measurement

### Information request

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

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

## Cost and benefits of imprisonment

### Information request

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



