

SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE

Value of a justice reinvestment approach to criminal justice in Australia

Queensland Network of Alcohol and Other Drug Agencies Ltd

This submission has been prepared by the Queensland Network of Alcohol and Other Drug Agencies (QNADA). The content of this submission has been informed by interviews with member organisations who provide treatment services in Queensland, as well as a review of literature relating to diversion initiatives.

There are many underlying causes of crime and a complex array of factors impact an individuals' vulnerability with regard to interaction with the criminal justice system. Substance misuse and dependence is one such factor and QNADA believes that justice reinvestment is crucial if we are to break the cycle of crime and address its underlying causes.

Despite a growing evidence base supporting the effectiveness of justice reinvestment, nearly 75% of illicit drug-related government spending in Australia is directed to law enforcement¹. QNADA cannot emphasise strongly enough the importance of rebalancing this investment to equally support the implementation of evidence-based demand and harm reduction measures as a means to reduce levels of criminal behaviour associated with substance misuse and dependence.

Efforts to support individuals to recover from dependence must include access to treatment inside our prison system, in addition to programs which divert offenders from the prison system to treatment programs. Recently, Queensland Chief Justice Paul de Jersey, reflected on the long-established principle of sentencing² that courts must exhaust non-custodial responses before imprisoning offenders and that:

“Actual imprisonment bespeaks a real criminal orientation and a real risk of re-offending...ultimately the best chance of avoiding that situation is to ensure an optimal rehabilitative effort during incarceration³.”

The evidence regarding the cost benefit to society of rehabilitation and diversion programs is indisputable. However, as countries such as the USA⁴ and New Zealand delve further into the drug diversion arena, QNADA is concerned that, in Queensland at least, there appears to be a concerted push towards a strong law enforcement approach, to the detriment of the evidence-based public health approaches to addressing the harms associated with substance misuse and dependence.

The truth is that AOD diversion programs don't just reduce long-term costs to the community, they provide immediate financial relief, by relieving pressure on the criminal justice and corrective services systems.

The time for a frank conversation has arrived. In 2012, prior to his retirement, Queensland Police Commissioner, Bob Atkinson AO, noted:

¹ Moore T., *What is Australia's Drug Budget? The policy mix of illicit-drug related government spending in Australia*, DPMP Monograph 1.

² *Penalties and Sentences Act 1992* Qld s9.

³ Viellaris R., *Early Parole not working with re-offending rife*, Courier Mail 2 March 2013
www.couriermail.com.au/news/queensland/early-parole-not-working-with-re-offending-rife/story-e6freoof-1226588791703

⁴ see for example *Outside Box, Federal Judges Offer Addicts a Free Path* 1 March 2013
www.nytimes.com/2013/03/02/nyregion/us-judges-offer-addicts-a-way-to-avoid-prison.html?hpw

it was time Australia had a more honest debate about alcohol and drugs, and what drove people to abuse those substances and, in many cases, develop mental illness and break the law⁵.

Mr Atkinson's views echo those of other prominent law enforcement veterans such as Mick Palmer, who have publicly acknowledged that the 'war on drugs' or a 'tough on drugs' policy has been largely ineffective in restricting access to, or limiting the harms associated with substance misuse and dependence.

We owe it to future generations to be realistic; to be prepared to listen and consider these commentaries and to examine the facts and the options⁶.

The time for action is now.

Individuals experiencing substance misuse are over-represented in the criminal justice system

Like all Australian States and Territories, Queensland Aboriginal and Torres Strait Islander peoples are over-represented within the Queensland justice system and are best served by culturally secure programs, such as Murri Court and the Queensland Indigenous Alcohol Diversion Program.

In light of research which estimates that between 70% and 80% of imprisoned offenders (both indigenous and non-indigenous) report using illicit substances in the months immediately preceding incarceration⁷, we believe a justice reinvestment approach would benefit all members of the Queensland community and ideally should be accessible to all, regardless of their ethnicity, socio-economic status or post code.

The Queensland Context

Successive Queensland drug strategies and action plans have adopted a whole-of-government approach. These include the *Queensland Drug Strategy 2006-2010*, the *2011-2012 Queensland Drug Action Plan*, *Queensland Just Futures Strategy 2012-15* and the *Queensland Corrections Social Responsibility Charter*. As some of these strategies were developed under the former Bligh Government, their current status as government policy is unclear.

The non-government alcohol and other drug sector (NGO AOD) currently receives \$23.6M from the total state AOD treatment service investment of approximately \$100M (including the public AOD sector). The \$23.6M investment in the NGO AOD sector is estimated to provide savings to the Queensland criminal justice system of up to \$165M⁸.

⁵ Parnell S., *Palm Island riots 'worst of times' for retiring cop*; The Australian 23 October 2012 <http://www.michaelsmithnews.com/2012/10/all-the-best-in-your-retirement-bob-atkinson-police-commissioner-queensland.htm> (accessed 4 March 2013).

⁶ Palmer M., *After 33 years I can no longer ignore the evidence on drugs*, Sydney Morning Herald 7 June 2012 www.smh.com.au/opinion/society-and-culture/after-33-years-i-can-no-longer-ignore-the-evidence-on-drugs-20120606-1zwpr.html

⁷ Kevin 2010 quoted in Jones C, *Intensive judicial supervision and drug court outcomes: Interim findings from a randomized controlled trial* (November 2011) Crime and Justice Bulletin, NSW Bureau of Crime Statistics and Research.

⁸ United States National Institute on Drug Abuse 2009, 13. www.drugabuse.gov/publications/principles-drug-addiction-treatment/frequently-asked-questions/drug-addiction-treatment-worth-its-cost

A long history of collaboration between the Queensland Magistrates Court, the Department of Justice and Attorney-General, Queensland Health, the Queensland Police Service and the NGO AOD sector has seen the availability of a number of innovative diversion programs including:

- Drug Courts (Cairns, Townsville, Southport, Ipswich and Beenleigh);
- Illicit Drug Court Diversion Program (QIDDI) (statewide);
- Queensland Magistrates Early Referral Into Treatment (QMERIT) (Maroochydoore and Redcliffe);
- Queensland Indigenous Alcohol Diversion Programs (QIADP) (Cairns, Townsville, Rockhampton, outreach – Yarrabah, Palm Island and Woorabinda); and
- Under the Limit⁹, a drink driving rehabilitation and education program (statewide).

A description of each program can be found on the Queensland Health website¹⁰.

The timing of this Inquiry is particularly fortuitous, given change of government in Queensland in 2012. The Newman government recently applied a 5% 'efficiency dividend' to NGO AOD contracts, announced the closure of a range of special circumstance courts (including Drug Court) and commenced a review of Alcohol Management Plans in place in nineteen Aboriginal and Torres Strait Islander communities. In addition, the government has indicated an intention to review all alcohol and drug diversion programs¹¹.

Recent government action should be considered in the context of the following:

- In Queensland, substance users are six times more likely than dealers or traffickers to find themselves facing action in the criminal justice system (17,540 of 20,396 drug related arrests in 2010-11)¹²;
- in 2011-12, 3,410 Queenslanders were admitted to a drug diversion program with over 2,700 successfully completing their program¹³;
- drug-related offences account for around 84% of sentenced criminal offences in the Queensland Supreme Court¹⁴; and
- the utilisation rate of Queensland prisons is 87%, below the national average of 101%¹⁵ and within the optimum rate of prison utilisation rate of 85-95%¹⁶.

The Qld NGO AOD sector is well placed to support an expansion of diversion and rehabilitation measures.

Effectiveness of Queensland AOD treatment and rehabilitation as an alternative to imprisonment

Whilst it is not ideal that an individual's decision to seek treatment should require an initial interaction with the criminal justice system, whether via the Queensland Police Service, courts, or community justice groups, these programs have been proven to provide a significant reduction in recidivism rates, which in turn contributes to reducing ongoing harm to individuals, families and communities.

⁹ UNDER THE LIMIT Drink Driving Rehabilitation Program, Qld University of Technology www.carrsq.qut.edu.au/utl

¹⁰ Alcohol, Tobacco and Other Drugs at www.health.qld.gov.au/atod/

¹¹ Queensland State Budget 2012-13.

¹² Australian Crime Commission: *Illicit Drug Data Report 2010-11* (May 2012).

¹³ Australian Crime Commission: *Illicit Drug Data Report 2010-11* (May 2012).

¹⁴ *Sentencing Profile: Queensland Court Outcomes 2006-2010*: Sentencing Advisory Council

¹⁵ Steering Committee for the Review of Government Service Provision 2012.

¹⁶ Steering Committee for the Review of Government Service Provision 2010.

The Drug Court Program has been the subject of several evaluations since its introduction in 2002, including a longitudinal study of the first 100 graduates of the program which found an 80% reduction in recidivism rates for participants, rising to 94% for property related offences alone¹⁷.

The Magistrates Court of Queensland best articulated this success when it noted:

Because graduates have persevered...the community has been saved the cost of resources equivalent to 588 years of actual imprisonment time¹⁸.

The evidence is conclusive – Queensland alcohol and drug diversion and rehabilitation programs are a successful and cost-effective justice reinvestment strategy.

A range of other evaluations have been taken on other programs including QIDDI, QMERIT and QIADP. These evaluations all concluded that diversion and rehabilitation measures are a successful mechanism by which to reduce harm¹⁹.

A robust evidence-base exists which supports the effectiveness of diversion for reducing costs and incarceration levels within Queensland. Continuing government commitment to diversion programs is also a key component of the National Drug Strategy 2010-2015.

Encouraging the continuation and expansion of justice reinvestment policies

The dissolution of the Ministerial Council on Drug Strategy in 2011 has left a void in the successful implementation of the National Drug Strategy (NDS) and its' sub strategies. QNADA strongly advocates for its reinstatement, or as an alternative, the inclusion of the NDS on the COAG agenda. The successful progression of priority areas through national partnership agreements in areas such as the Preventative Health, Closing the Gap in Indigenous Health Outcomes and Reform of the Mental Health sector demonstrates the importance of structured cooperation across governments.

Critical demand reduction measures in accordance with the agreed *National Drug Strategy 2010-2015* including alcohol and drug diversion programs, must be elevated to the Council of Australian Governments and implemented under a national partnership agreement.

Other related matters

A thorough analysis and consideration of justice reinvestment provides an opportunity to consider the broader issue of social reinvestment. The inter-relationship of the three pillars of the NDS – demand, supply and harm reduction must remain prominent in this discussion.

In addition, the rapidly evolving political landscape in Queensland has the very real potential to negatively influence outcomes for those experiencing substance misuse and dependence. By way of example, the Queensland Government has introduced an offender levy to be applied to any offender (other than a child) sentenced in a Queensland Court on and from 21 August, 2012. The purpose of the levy is to help pay for the cost of law enforcement and administration²⁰. This policy is likely to further isolate those experiencing

¹⁷ Australian Institute of Criminology 2008 study

¹⁸ *Magistrates Court of Queensland: Annual Report 2010-11* p31

[www.courts.qld.gov.au/about/publications#Magistrates Court Annual Reports](http://www.courts.qld.gov.au/about/publications#Magistrates_Court_Annual_Reports)

¹⁹ These evaluations can be provided to the Committee on request.

²⁰ Further information is available at www.courts.qld.gov.au/representing-yourself-in-court/offender-levy.

substance misuse and dependence by increasing financial disadvantage, which in turn is likely to extend their involvement with the criminal justice system, while ignoring the underlying causes of criminality.

The majority of those seeking AOD treatment in Queensland (96%) are doing so on the basis of self-referral²¹. However, increased demand for access, expanding treatment waiting lists, lack of funding support for aftercare or continuing support programs and the application of efficiency dividends to the broader Queensland social services sector creates barriers to access into treatment and the subsequent potential for further over-representation of those with substance dependence issues in the criminal justice system.

Prevention and early intervention measures for AOD misuse must be expanded as a priority of justice reinvestment.

Any well-informed community debate on the importance of alternative approaches to imprisonment will first require a concerted, grass-roots, stigma reduction campaign to counter the increasing tendency of the media and others to liken those requiring/seeking treatment for substance dependence as either 'drug king pins'²², or as self-indulgent individuals who are somehow unworthy of support.

About the Queensland Network of Alcohol and Other Drug Agencies (QNADA)

QNADA is the peak organisation representing the views of 36 NGO AOD organisations. Through our knowledge of the sector, network of experienced members and links across complementary human service delivery sectors, QNADA is well placed to provide practical advice and front-line service delivery experiences to inform policy and program advancement for the sector.

The sector consists of organisations involved in the continuum of care for individuals and their families affected by alcohol and drug use. QNADA members provide drug education and information, early intervention, outreach, detoxification, residential rehabilitation, psychosocial and medical treatment, relapse prevention, justice diversion, and social inclusion.

In particular, our members have played an integral role in providing the alcohol and other drug rehabilitation, treatments and education and counselling under programs such as Drug Court, QIDDI, QIADP, QMERIT and drinking driving probation programs.

²¹ Australian Institute of Health and Welfare 2012, *Alcohol and other drug treatment services in Australia 2010-11: report on the National Minimum Data Set*, Drug Treatment series No. 18.

²² Robertson J., *Police target kingpins in the battle against drugs* Courier Mail 22 October 2012.

www.couriermail.com.au/news/queensland/police-target-kingpins-in-the-battle-against-drugs/story-e6freoof-1226500280339