



The Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

7th July 2021

RE: INQUIRY INTO THE PURPOSE, INTENT, AND ADEQUACY OF THE DISABILITY SUPPORT PENSION

We welcome and appreciate the opportunity to make a submission in relation to the inquiry on the Purpose, Intent and Adequacy of the Disability Support Pension.

Preliminary Consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 24 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander people.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by four and a half decades of legal practise at the coalface of the justice arena and we therefore believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

OVERVIEW

We have selected one key issue to bring to the Inquiry's attention, that being the current rules and administration of the Disability Support Pension as it affects those who have been on the Disability Support Pension and who then have been incarcerated. The present over-representation of the mentally unwell in the criminal justice system is a significant problem, the over-representation of the mentally unwell in the re-incarceration figures is a greater problem with many contributing causes¹ but the problems with re-establishing the DSP in our experience is a significant problem. Unfortunately, failure to successfully re-establish some stability in post-release living conditions for a mentally unwell parolee sets them up for failure and high rates of re-incarceration.

BACKGROUND

As noted by the Queensland Productivity Commission in their inquiry on Incarceration and Reincarceration,

*"The Commission estimates that around 30 per cent of the burden of imprisonment is borne by chronic, but low harm offenders (Figure 10)."*²

¹And we note the recent reviews done in Queensland, most notably the Queensland Productivity Commission *Inquiry into Imprisonment and Recidivism*, Final Report available at <https://qpc.blob.core.windows.net/wordpress/2020/01/FINAL-REPORT-Imprisonment-Volume-I-.pdf> and W. Sofronoff QC, Queensland Parole System Review Final Report, ("The Sofronoff Report") available at <https://parolereview.premiers.qld.gov.au/assets/queensland-parole-system-review-final-report.pdf>

² Queensland Productivity Commission *Inquiry into Imprisonment and Recidivism*, Summary Report ("QPC

Many risk factors interact with one another and become compounded over time—for example, a cognitive disability may increase the risk of substance abuse, which in turn further inhibits executive function. These risk factors are exacerbated by socio-economic disadvantage. Research shows that almost half of all Queensland prisoners are likely to have been previously hospitalised for mental health issues and/or have a history of child protection (Figure 11).³

The Queensland Productivity Commission Report highlighted that rising imprisonment rates are driven by system changes, not crime rates and further there is very little impact from changes in sentence lengths.⁴ Similar observations were identified in the Queensland Parole System Review carried out in 2016.⁵

As well as the estimated cost to the public purse of incarceration of prisoners⁶ the Queensland Productivity Commission pointed to the additional costs on offenders and their families and service providers.

“Although prison is intended to punish offenders, costs extend beyond the direct effect on the prisoner during the term they serve. These indirect costs can include forgone employment, as well as higher rates of unemployment, social exclusion, homelessness and poor mental health following release”⁷

The Throughcare Program delivered by ATSILS supports prisoners and youth detainees (pre and post release), is to support clients to transition successfully back into the community and support the changes needed in their lives that can greatly reduce the prospects of them returning to prison.⁸ Ultimately the goal of the Throughcare program is to help our clients turn their lives around and in so doing, create safer communities.

Summary Report”) p12 available at <https://qpc.blob.core.windows.net/wordpress/2020/01/SUMMARY-REPORT-Imprisonment-.pdf>

³ QPC Summary Report, p12

⁴ QPC Summary Report p 14

⁵ W. Sofronoff QC, Queensland Parole System Review Final Report, (“The Sofronoff Report”) available at <https://parolereview.premiers.qld.gov.au/assets/queensland-parole-system-review-final-report.pdf>

⁶ Estimated at of \$110,000 per year, QPC Summary Report p 15.

⁷ Studies suggest that the indirect costs of imprisonment may be in the order of \$48,000 per year for each prisoner. *above* p 15.

⁸ This service is delivered against a backdrop of over-representation of Aboriginal and Torres Strait Islander peoples. As noted by the QPC on the over-representation issue, Indigenous imprisonment rates are around ten times the non-Indigenous rate and the growth in Indigenous imprisonment rates increased by 45 per cent between 2008 and 2018, around 50 per cent faster than for non Indigenous people. QPC Summary Report p 11.

The impact of the mentally unwell offender losing parole is that they are re-removed from the community and important factors that militate against reoffending are put at jeopardy. The loss of protective factors, such as housing and access to rehabilitative services, hinders reintegration and adversely impacts community safety and the efficacy of the correctional system.⁹

DSP AND THE MENTALLY UNWELL AND INCARCERATED

The re-instatement of DSP for the mentally unwell person who lost their benefits while in jail is an important first step to reintegrate that person back into the community where they can access a greater range of medical support and services than they could on the inside. From the re-establishment of benefits flows the ability to secure accommodation, the ability to buy food, and to acquire basic clothing and toiletries.

The first problem we would highlight is the cancellation rather than suspension of DSP for a prisoner who has been in jail for a length of time. The impact on a prisoner is twofold, first that they must go through the extended process of reassessment and re-establishment of the Disability Support Pension. By the very nature of their disability with the compounding effects of dislocation from previous supports pre-jail and difficulties with post=jail conditions (such as poorer accommodation options and transport difficulties) they are not the best equipped to navigate their way through this process again and often find it overwhelming.

It is hard to understand the policy reason to cancel rather than suspend the DSP for a prisoner. Few prisoners who leave jail do so in an improved state of health. And their mental conditions are generally worse when they leave jail. They may receive some level of treatment in jail but there are a number of factors arising from time spent in prison, especially overcrowded prisons, that generally lead to a prisoner leaving jail far more unwell than when they entered. The requirement to obtain an assessment is often too overwhelming for the very people who need to be supported by the DSP, both for them individually and for the broader society in which they live.

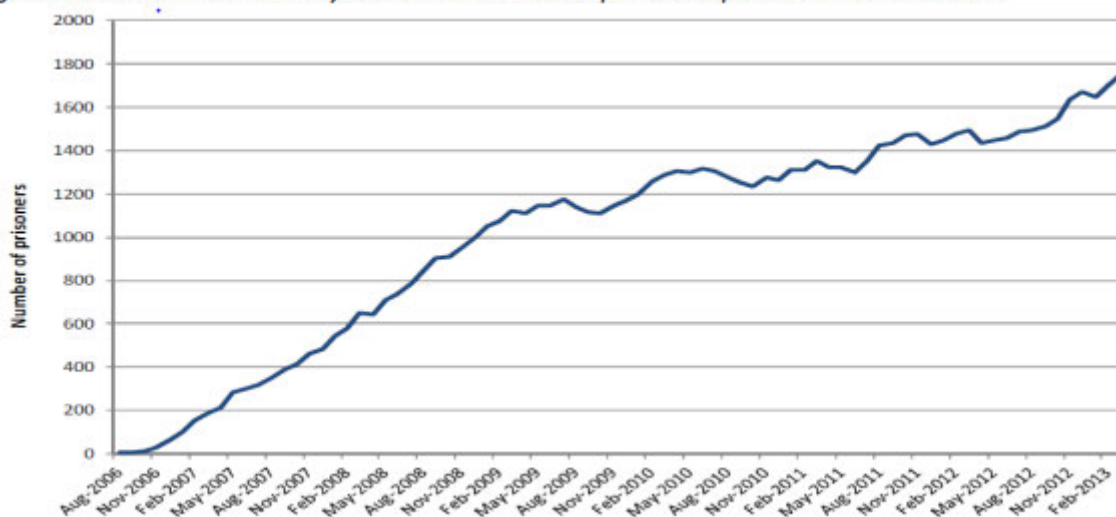
The second issue that is raised for prisoners is that even when arrangements are put in place to reinstate benefits, a prisoner generally will apply for an advance payment in order to secure accommodation. The amounts are not large and often there is little money left over for food if accommodation is the necessary

⁹ Factors drawn from the discussion around paras 388-389 contained in *The Sofronoff Report*.

priority. That means that further assistance to prisoners on release must then often be sourced such as obtaining non-perishable foodstuffs for the parolee to keep in their boarding room. The advance payment is then automatically deducted from the next payment thus leaving the prisoner to survive on one weeks benefit to last for two weeks and also putting them behind on their accommodation payments. This system seems designed to set them up to fail. As loss of accommodation is a risk factor for parole, the effect can be devastating for a mentally unwell parolee attempting to remain in the community and to rebuild lost supports.

Our concerns about the re-incarceration vulnerabilities of the mentally unwell is set against the backdrop of escalating re-incarceration levels of the general prison population.¹⁰

Figure 4.5: Prisoners in custody due to court ordered parole suspension or cancellation



Any stumbling block for the mentally unwell is likely to further entrench their disadvantage and have a disproportionate effect on their ability to transition successfully back into the community and gain the supports they need to greatly reduce the prospects of them returning to prison.

CONCLUSION

In our submission to the inquiry, we would seek that DSP is suspended not cancelled for the mentally unwell who become incarcerated and that an advance payment should be just that and not a sum to be clawed back immediately against those who are in immediate post-prison

¹⁰ On 2015-2016 figures, of the 8,000 or so prisoners currently incarcerated in the State, between 17 per cent and 20 per cent are there because their parole has been suspended: *Sofronoff Report*, para 9. Of the offenders who complete a court ordered parole order (that is, did not have their parole order cancelled), approximately 50 per cent receive at least one parole suspension and many receive multiple suspensions, *Sofronoff Report*, para 383.

release and vulnerable to losing accommodation and supports. These two changes to the rules and administration of DSP would help stop the revolving door syndrome for services and the human cost of unnecessary incarceration of vulnerable members of the community whose very condition makes them vulnerable to increased participation in the criminal justice system.

Yours faithfully,

Gregory M. Shadbolt
Principal Legal Officer
Acting Chief Executive Officer