



Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

Systems and Legal Advocacy for vulnerable people with Disability

25 October 2018

Dear Madam/Sir

Re: Queensland Productivity Inquiry into Imprisonment and Recidivism

Thank you for accepting our submission,

Yours sincerely,

Michelle O'Flynn, Director

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QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC

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About QAI

Queensland Advocacy Incorporated (QAI) is a member-driven and non-profit advocacy NGO for people with disability. Our mission is to promote, protect and defend through advocacy, the fundamental needs, rights and lives of the most vulnerable people with disability in Queensland.

Our Human Rights and Mental Health services offer legal advice and representation: the first, on guardianship and administration and the latter on mental health matters. Our Justice Support and NDIS Appeals programs provide non-legal advice and support to people with disability in the criminal justice system and to participants in NDIS Appeals. This individual advocacy informs our campaigns at state and federal levels for changes in attitudes, laws and policies, and it assists us to understand the challenges, needs and concerns of people who are the focus of this submission.

QAI's constitution holds that every person is unique and valuable, and that diversity is intrinsic to community. People with disability comprise the majority of our Board; their wisdom and lived experience of disability is our foundation and guide.

Recommendations

- The Queensland Government explores problem-solving court models
- The Department of Justice and Attorney-General provides targeted funding for trialling such courts
- The Attorney-General tasks the Queensland Law Reform Commission (QLRC) to make recommendations on a framework for problem-solving courts which outlines:
 - practices and procedures
 - sentencing options
- Diversion always be preferred to incarceration for people with capacity impairments, subject to ensuring the safety of the person and the community.
- Develop more magistrate diversion programs which:
 - are available to all and do not set out to identify defendants with mental health and intellectual and cognitive disabilities
 - divert from Criminal Justice System
 - expedite early intervention by establishing:
 - Day programs to support court orders
 - Community-based programs emphasising prevention and rehabilitation.¹
- Amend the Department of Justice and Attorney-General's Disability Service Plan 2017-20 to include specific goals for NDIS engagement in relation to suspects, defendants and offenders who have cognitive impairment
- Publicise the Department of Justice and Attorney General's NDIS Transition Strategy
- Justice and Attorney-General to develop a Disability Justice Strategy
- As part of a Disability Justice Strategy, QLRC investigates and makes proposals for the coordination of post-release services for ex-prisoners with disabilities.
- The National Disability Insurance Agency (NDIA) implements recommendation 23 in the report *The provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition* by the Joint Standing Committee on the NDIS, namely, that the NDIA establishes an NDIA unit specialising in the interaction of the Scheme with the criminal justice system

¹ Compare K Vanny, M Levy & S Hayes. 2008. 'People with an Intellectual Disability in the Australian Criminal Justice System' *Psychiatry, Psychology and Law* 15(2):261-271.

- Amend the Queensland Corrective Services (QCS) Strategic Plan 2018-2022 to include:
 - Support, including financial support, for in-prison NDIS assessments
 - Prisoner NDIS Access Requests and pre-planning
- QCS makes a recurrent budget allocation to ensure that prisoners are able to engage allied health practitioners who are familiar with NDIS-ready functional assessments.
- QCS builds on the learnings from the Plan to develop a 'best practice' model for NDIS engagement
- QCS develops a specific strategy to deliver culturally appropriate services for Aboriginal and Torres Strait Islander people with disabilities who are in the criminal justice system
- More training for QCS staff in working with people with an intellectual disability, cognitive impairment or mental illness
- QCS acquire inclusive offender programs designed to cater to people with all levels of ability.
- QCS increase its commitment to:
 - Culturally appropriate prevention
 - Employ more indigenous staff
 - Adopt models that acknowledge cultural values
 - Non-indigenous awareness of Aboriginal and Torres Strait Islander needs.
- QCS and the National Disability Insurance Agency (NDIA) coordinate on prison based support
- QCS and Department of Housing and Public Works (DHPW) cooperate to pilot a comprehensive program of housing and support for exiting prisoners with disabilities (The NSW Justice Support Program may provide a useful example.)
- QCS and DHPW cooperate to provide:
 - Prisoners the option to maintain public or community housing for a reasonable time while they serve in prison
 - Prisoners who apply for public or community housing eligibility for priority housing on release from prison.

- Fund the Forensic Mental Health Service (FMHS) to provide additional psychological services, including therapeutic services to people with intellectual disability and other capacity impairments with mental illness in prison
- Fund the Forensic Disability Service to provide habilitation, rehabilitation, education and training programs to prisoners with intellectual and or cognitive impairments
- Fund FMHS or another service to provide addiction treatment services in prisons and to others subject to correctional orders
- NDIA support packages available to people subject to custodial orders

.....

1. Overrepresentation of People with Cognitive Impairment in Prisons

2%	People with intellectual disability — general population ²
9.8%	People with intellectual disability — Qld prisons ³
10%	People with intellectual disability — Qld criminal justice system ⁴
30%	People with intellectual disability — former prisoners ⁵
13.6%	People with learning disability — general population ⁶
28.6%	People with learning disability — Qld prisons ⁷

A disproportionate number of people charged with criminal offences, particularly ‘street’ and other minor offences, have intellectual or psychiatric impairments,⁸ and people with disabilities are overrepresented across the offending spectrum and throughout the justice system as victims, suspects, defendants and offenders. According to a Queensland Corrective Services

² The figure varies from 1.5 – 3% depending on the source. In the DSM-V intellectual disability is defined as < IQ70 and deficits in adaptive functioning. IQ relative to a population, not absolute; and <IQ70 means that the test-taker's score is more than 2 standard deviations below the median score in the test-taker's age group. Unlike many physical disabilities, there is no bright line that divides people with intellectual impairments from those who do not. The important question is not ‘What is this person's disability?’ but ‘What is this person's support need/s?’.

³ Queensland Department of Corrective Services. 2002. *Intellectual Disability Survey, 2002*.

⁴ This figure is an inference drawn from a collation of all studies: F Parton, A Day & J White. 2005. ‘An Empirical Study on the Relationship Between Intellectual Ability and an Understanding of the Legal Process in Male Remand Prisoners’, in *Disability and the Criminal Justice System: Achievements and Challenges*. Rydges Hotel, Melbourne.

⁵ In NSW: S Hayes & D McIlwain. 1988. *The Prevalence of Intellectual Disability in the New South Wales Prison Population: An Empirical Study*. Sydney.

⁶ Ibid.

⁷ Ibid. ‘Learning disability’ is roughly synonymous with ‘mild’ intellectual disability i.e. IQ in the 70-84 range.

⁸ For example, see Howard Posner, Assistant Director - Legal Aid Criminal Law Services. 2012. *Five Criminal Law Issues Raised By Recent Appellate CJS Cases*. Legal Aid Queensland,

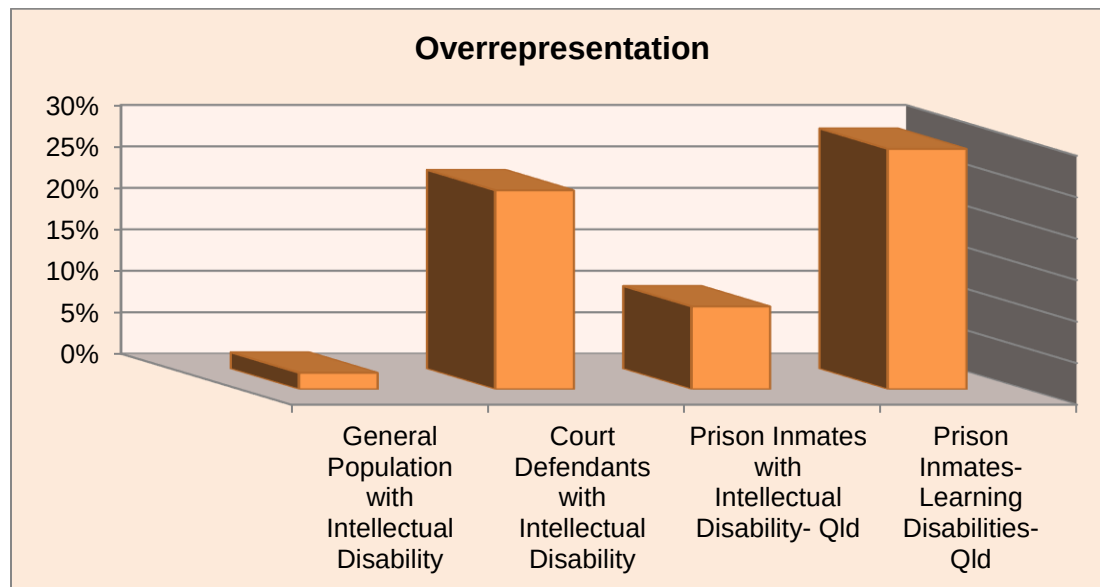
<https://elo.legalaid.qld.gov.au/webdocs/dbtextdocs/internal/irregseries/cle/2012/fivecriminal.pdf>; S Hayes, M Levy, K Vanny & D Greenberg. 2008. ‘The evidence from Magistrates Courts - the prevalence of accused persons with intellectual and cognitive disabilities’. Paper presented at the Australasian Society for the Study of Intellectual Disability 43rd Conference. S Hayes & G Craddock. 1992. *Simply Criminal*. 2nd edition, p 46. An accurate estimate is difficult. In NSW prisons 12.9 percent of the inmate population were within the intellectual disability (IQ < 70 = 2.4 percent) or borderline (IQ 70–80 = 10.4 percent) ranges S Hayes & D McIlwain. 1988. The prevalence of intellectual disability in the New South Wales prison population – An empirical study. Report to the Criminology Research Council, Canberra. A later study confirmed that inmates with intellectual disability comprise up to 20 percent of the NSW prison population- S Hayes. 1996. ‘Early intervention or early incarceration’. 44(3&4):311; J Tomasoni & E Arnold. ‘The statewide forensic program – A treatment model for offenders with an intellectual disability’. Unpublished Manuscript; 1996. Given that approximately 1.85 percent of Australians have intellectual disability (W Xingyan. 1997. The definition and prevalence of intellectual disability in Australia. Canberra: Australian Institute of Health and Welfare), the rate of imprisonment is at least tenfold in NSW correctional facilities (NSW Law Reform Commission. 2001. Sentencing young offenders- Sentencing by courts. Issues Paper 19; www.lawlink.nsw.gov.au/lrc).

survey in 2002, ~ 10% of people in Queensland prisons had intellectual disability.⁹

Approximately 85% of these individuals have IQs within the mild intellectual disability range.¹⁰

Australia-wide research published in 2016 confirmed this proportion, indicating that ~ 9-10% of prisoners approaching release had an intellectual disability.¹¹ The prevalence of intellectual disability in the general population stands at ~ 1–2%. The courts, then, imprison people with intellectual disability at 5 to 10 times the rate that they imprison the general population.

Many prisoners have other kinds of disability. Acquired brain injury is more common, even endemic to prison populations:¹² approximately 44% of men and 33% of women in prison have an acquired brain injury.¹³ The national prisoner health census determined that 33% of people in Australian prisons had a mental illness,¹⁴ while other sources put the figure as high as ~46%.¹⁵ These figures are double the generally accepted ~20% of the general population; however, for clarity, focus and brevity, we largely will confine our comments on recidivism to people with cognitive impairments.



⁹ Based on figures from the most recent comprehensive survey (Corrective Services Queensland. 2002. *Intellectual Disability Survey*) and on comparable data from a number of NSW studies.

¹⁰ W Xingyan, 1997. 'The definition and prevalence of intellectual disability in Australia'. Canberra: Australian Institute of Health and Welfare.

¹¹ Australian Institute of Criminology 2016 p. 2 available at: [file:///qai-dc/homes\\$/volunteer2/Downloads/tandi528.pdf](file:///qai-dc/homes$/volunteer2/Downloads/tandi528.pdf)

¹² At least 42 percent of Victoria's male prisoners have an Acquired Brain Injury: Ibid.

¹³ Former Victorian Attorney-General Robert Hulls. *The Law Report*. Radio National. 16 Sept 2014.

¹⁴ Australian Institute of Health and Welfare. 2011. *The Health of Australia's Prisoners 2010*. Australian Institute of Health and Welfare.

¹⁵ Former Victorian Attorney-General Robert Hulls. *The Law Report*. Radio National. 16 Sept 2014.

2. Recidivism

Prisoners with cognitive disabilities are also disproportionately more likely to return to jail. We have no Queensland figures, but in NSW, general recidivism in 2002 stood at 38%, while 68% of prisoners with intellectual disability returned to jail.¹⁶ The recidivism rate for prisoners with intellectual impairments with no prior convictions was more than twice that of the total inmate population rate (60%:25%).¹⁷ For inmates with prior convictions, the rate for those with intellectual disability was still 1.48 times higher than that of the total inmate population (72%:49%).¹⁸

Recidivism is a substantial issue for those with intellectual disability. Cockram¹⁹ suggests this may be because released prisoners with intellectual disability are younger and more likely to be unemployed and/or subject to increased criminal justice system surveillance.²⁰ Transition from prison to the community is challenging, and all prisoners are at increased risk of both self-harm and suicide compared with the general population.

The risk of suicide after release from prison is three times greater than for those still incarcerated.²¹ One study determined that following release from prison, one in 15 ex-prisoners presented to an emergency department due to self-harm, within an average of 2.6 years of release.²² These presentations could provide opportunities for suicide prevention, particularly for those with a history of mental disorder.

Other research indicates a greater need for support to address homelessness, literacy and general health problems of people with cognitive disabilities after release from prison.²³ Shaping effective strategies to reduce recidivism, however, requires a holistic understanding of the life

¹⁶ A Langford. 2002. *Setting the scene. Forging the links: A symposium on making the difference for offenders with a disability*. Joint initiative of NSW Department of Corrective Services & the Commonwealth Department of Family and Community Services, Sydney, February 27–28.

¹⁷ A Langford. 2002. *Setting the scene. Forging the links: A symposium on making the difference for offenders with a disability*. Joint initiative of NSW Department of Corrective Services & the Commonwealth Department of Family and Community Services, Sydney, February 27–28.

¹⁸ NSW Department of Corrective Services. 2002. *Recidivism and offences of prisoners with and without intellectual disability*. Data supplied to CDDS by the Department of Corrective Services for the period 1990–1998. Sydney.

¹⁹ J Cockram, 2005a. People with an Intellectual Disability in the Prisons. *Psychiatry, Psychology and Law* 12(1): 163–173 & 2005b. Careers of offenders with an intellectual disability: the probabilities of rearrest. *Journal of Intellectual Disability Research* 49(7): 525–536.

²⁰ Ibid.

²¹ Rohan Borschmann, Emma Thomas, Paul Moran. 2016. Self-harm following release from prison: A prospective data linkage study. *The Australian and New Zealand Journal of Psychiatry*.

²² Ibid.

²³ Holland S & Persson P 2011. Intellectual disability in the Victorian prison systems: characteristics of prisoners with an intellectual disability released from prison in 2003–2006. *Psychology, Crime & Law* 17(1): 25–41.

circumstances that funnel people with cognitive disabilities into the criminal justice system in such disproportionate numbers.

3. Why overrepresentation?

Justice should be blind, but equal treatment of the unequal may render injustice.²⁴ Prisoners with diminished capacity, for example, are by definition criminals *and* among the most vulnerable and disadvantaged groups in our society, yet the justice process tends to be systemically if not deliberately careless of the criminogenic²⁵ factors that lead to their imprisonment at more than five times the rate of the general population.²⁶

Criminogenic factors include the totality of the offender's life circumstances from birth, and particularly the person's living arrangements at the time of the offence. For example, people with intellectual impairment are at risk of offending because many lack adequate support to live in the community.²⁷ They are over-represented amongst the homeless and are more vulnerable than other homeless and unemployed populations, are often 'invisible' to government services that rely on service users to approach them,²⁸ have health needs that often are greater yet inadequately met;²⁹ and are more at risk for criminal victimization than the general population.³⁰

People with intellectual and psychiatric impairments are in watch houses, courts, remand centres, jails and forensic facilities because they are disadvantaged in myriad ways.

International³¹ and Australian research³² confirms that offenders with intellectual or psychiatric impairments are more likely to have experienced childhood neglect or abuse, to be

²⁴ '[T]here is no greater inequality than the equal treatment of unequals': Frankfurter J in dissent in *Dennis v United States* (1950) 339 US 162.

²⁵ Criminogenic means causing or likely to cause criminal behaviour.

²⁶ People with intellectual disability make up approximately 2% of the population.

²⁷ National Research Council. 2001. *Crime victims with developmental disabilities: report of a workshop*. Washington DC: National Academy Press.

²⁸ M O'Connor & A Coleman. 1995. 'Particularly Vulnerable': Homeless Young People with an Intellectual Disability' *Interaction* 9(1): 8-14.

²⁹ K Van Dooren, R Ware, K Brooker & N Lennox. 2012. *Out of sight, out of mind: People with intellectual disability in public health research*. 2012 IASSID World Congress, Halifax, Nova Scotia, 749.

³⁰ T Nettlebeck & C Wilson. 2002. 'Personal vulnerability to victimization of people with mental retardation' *Trauma, Violence and Abuse* 3(4): 289-306.

³¹ William Glaser & Kristen Deane. 1999. 'Normalisation in an Abnormal World: A Study of Prisoners with an Intellectual Disability' *International Journal of Offender Therapy and Comparative Criminology*. 43(3): 338.

³² See, for example, S Hayes. 2005. *Prison Services and offenders with intellectual disability – the current state of knowledge and future directions*. 4th International Conference on the Care and Treatment of Offenders with a Learning Disability, 2005 April 6-8, University of Central Lancashire, Preston, UK.

unemployed,³³ to be poor and/or from an indigenous minority, to have limited social and communication skills, and to have behavioural and/or psychiatric conditions.

The circumstances in which people with disability become enmeshed in the criminal justice system are bound up with the ways in which *impairments* become *disabilities* in a competitive society that values and rewards excellence and high achievement and often has no place for people at the other end of the spectrum. Offending must be understood in that context.

4. A Descending Life-path

Educational institutions typically are disabling; they reward those who succeed and stigmatize those who do not.³⁴ Special education classes and special schools send a powerful message of exclusion and set many people with intellectual or psychiatric impairments on a descending life-path.³⁵

Children with intellectual impairments are denied the social benefits that mainstream education provides: the sense of belonging, the friendships, and an understanding, however incomplete, of our civic systems of government, law and democracy. The 2016 report of the *Australian Senate Education and Employment References Committee on access to learning for students with disability*³⁶ received several submissions on gatekeeping practices in mainstream schools, resulting in minimized school enrolment and reduced participation in classrooms, as well as several reports of the use of gatekeeping practices.³⁷

The barriers include direct refusal to enrol students with disability, making them or their family feel unwelcome, offering a part-time enrolment or limited service provision, asking the family to supplement resourcing, educating the student in isolation from their peers, limiting access to curriculum or extracurricular activities, or the use of restraint or seclusion. Poed *et*

³³ Unemployment for people with intellectual or psychological disabilities is high compared with other disability groups, regardless of severity, according to ABS data. Those with moderate or mild intellectual disability (20%) or psychological disability (18.9%) had higher unemployment rates than those with moderate or mild physical disability (8.8%) or the general population (5.5%). These figures reflect the unique barriers that people with intellectual or psychological disabilities face in accessing education and work. Australian Bureau of Statistics. *Australian Social Trends*. 4102.0; March Quarter 2012.

³⁴ How many school mottos, for example, purport to value students for themselves, as opposed to extolling excellence, achievement, knowledge etc.?

³⁵ In Queensland, according to 2016 figures, 14.3 percent of students with disabilities attend special schools⁴ and the rate of student number growth in these schools is alarming: approximately 5 percent per annum over 2011 to 2016, compared to an average 6 percent growth in numbers of students who do not have disabilities. While there has been a modest drop in the proportion of students with disability in special schools, enrolment in special schools still outstrips general population growth.

³⁶ Commonwealth of Australia (2016). *Access to real learning: the impact of policy, funding and culture on students with disability*. Senate Standing Committee on Education and Employment.

³⁷ Poed, S., Cologon, K., & Jackson, R.. 2017. Restrictive practices by Australian mainstream schools: results of a national survey. Paper delivered at the Inclusive Education Summit.

a/ highlighted that across Australia, these practices are widespread, with over 70% of Australian families responding to a recent survey stating their child had been subject to one or more of these practices.³⁸

We shunt children with cognitive impairments from one segregated environment to the next. When we allow them to participate at all,³⁹ children with disabilities are expected to graduate from special schools and special education units to sheltered workshops (known now as ‘social firms’) and group homes. The bigotry of low expectations shapes their lives.

People with intellectual impairments miss out not only on mainstream schooling and later, employment, but also on the learning of essential life-skills. We treat people with intellectual impairments as eternal infants. In Queensland, people with intellectual impairments rarely get sex education, yet without it, they may be unfamiliar with dating and courting conventions, vulnerable to sexual predation, unsafe sex practices and unwanted pregnancies, and are unprepared for parenthood. In Queensland, it is still unlawful for any person to have intimate relations with someone who has ‘impairment of the mind’,⁴⁰ which the *Criminal Code Act* (1899) defines broadly to include many people who have no cognitive impairment at all.

5. In Prison

Correction has a number of purposes, including punishment and the immediate protection of victims and the community. Correction’s great contradiction is that these important goals are achieved at the prisoner’s and their family’s expense, and in the long-term, at the expense of the communities into which prisoners eventually will be released. Incarceration erodes skills and causes further trauma, and often the better approach is not to imprison people in the first place.

The high rate of return to prison of people with disability demonstrates the failure of imprisonment as a mechanism for individual rehabilitation and even social protection.

³⁸ Exclusion practices – dubbed “gatekeeping” – include: advising parents to send their child to another school that could better support them; allowing a child to attend a school only on the days that funding is available; and asking parents to pay more so the school can employ support staff or purchase equipment. A report obtained under RTI indicates that many children with disabilities are deterred from schooling by disciplinary practices, too: *School Disciplinary Absences by Reason and Type 2017 Suspensions and Exclusions by School/Campus*

³⁹ Australia-wide, more than 70 per cent of students with disabilities have had their enrolment discouraged by principals of mainstream schools, according to Kathy Cologon and Robert Jackson. 2017. *Gatekeeping and restrictive practices with students with disability: results of an Australian survey*: Paper delivered at the Inclusive Education Summit, Adelaide.

⁴⁰ Section 216 *Criminal Code Act 1899* (Qld).

- Prison and forensic detention erode everyday communication and living skills and self-esteem.
- Incarceration increases prisoners' and forensic patients' feelings of alienation and fosters their identification with prison and outlaw subcultures.
- Prison is a training ground for anti-social behaviour.
- Inadequate monitoring and lack of support contribute to re-offending.
- Offender programs delivered in a community setting are more successful in reducing reoffending in contrast to those delivered in a custodial setting, partly because prison programs are not always suitable for people with limited literacy and other learning skills.⁴¹
- Peer abuse is widespread and under-recognised.⁴²
- Mental and physical abuse, disciplinary problems and the likelihood of regression in prison leads many prisoners with intellectual disabilities to spend their time in maximum security.⁴³

Some prisoners with disability have had no choice but to rely on other prisoners for their disability supports: a Port Douglas woman, for example, who is a prisoner at the Townsville Women's Correctional Centre, and has a degenerative health issues and requires daily personal care. She was remanded in custody after a Cairns Supreme Court jury found her guilty of attempting to import a border controlled substance into Australia. Ms Skinner does not have access to a trained or qualified carer at Townsville Women's Correctional Centre, and another prisoner was employed full time as her carer to help with showering, dressing, moving about the complex and sometimes feeding.⁴⁴

QAI refers the Queensland Productivity Commission to Human Rights Watch. 2018. *"I Needed Help, Instead I Was Punished" - Abuse and Neglect of Prisoners with Disabilities in Australia* for first-hand accounts of abuse and mistreatment in Queensland prisons.

⁴¹ Hayes S. 2005. 'A review of non-custodial interventions with offenders with intellectual disabilities'. *Current Issues in Criminal Justice* 17: 69-78.

⁴² S Hayes, 2005. 'A review of non-custodial interventions with offenders with intellectual disabilities'. *Current Issues in Criminal Justice* 17(1): 69-78.

⁴³ J Cockram. 2005. 'Equal Justice? The experience and needs of repeat offenders with intellectual disability in Western Australia'. Activitv Foundation Inc. <http://www.correctiveservices.wa.gov.au/_files/about-us/statistics-publications/students-researchers/equal-justice.pdf>

⁴⁴ Janessa Ekert. 2017. "Inmates employed as personal carers for other prisoners with health issues" *The Cairns Post* August 18.

6. Identification of Prisoners with Cognitive Impairment

Ex-prisoners commonly express the view that it is not in their interests to disclose their intellectual disability to anyone while in jail. One of the researchers QAI approached noted that some former prisoners lost interest in her research once she mentioned a test to establish intellectual disability.⁴⁵

Corrective Services needs to be clear about why they would test for any particular intellectual impairment. QAI's position is that impairment labels such as intellectual disability, Foetal Alcohol Spectrum Disorder or Acquired Brain Injury are generally unhelpful, and with respect to rehabilitative prison programs, counter-productive if used as a basis for exclusion.

QAI generally opposes intellectual impairment-specific programs in prisons, favouring inclusive curricula and program delivery. Where possible, program curricula should cater to the spectrum of cognitive capabilities so that prisons do not need to single out people with intellectual impairments. QAI understands that a prisoner with an intellectual disability has successfully argued against an IQ cut-off for rehabilitation programs.⁴⁶ People with intellectual impairments can participate without prison authorities singling them out.⁴⁷ People may of course need targeted one-off services in prison, such as assistance with parole applications, and NDIS Access Requests, as well as person-specific NDUS supports.

7. In-Prison and Transition Support: The NDIS

Despite ever-decreasing crime rates, Queensland's current strategy appears to be to build more prisons and imprison more people, even though each new prisoner costs up to \$300 per day.⁴⁸ For people with cognitive impairments, the better approach is to support them outside of prison.

⁴⁵ She was referring to a test such as the HASI (Hayes Ability Screening Index)- Personal communication, Kate Van Doren Queensland Centre for Intellectual and Developmental Disability.

⁴⁶ Corrective Services responded by adapting an existing sex offender program: Matilda Alexander. Prisoners Legal Service. <http://www.sistersinside.com.au/media/matildaalexander.pdf>

⁴⁷

⁴⁸ Productivity Commission. 2018. "Corrective Services" in *Report on Government Services*.

Prison is not a normal or natural environment, and one of the worst places to learn positive life skills, but prisons are an opportunity to offer some behaviour supports that would be more difficult to deliver once detention is over. For all prisoners with disabilities, particularly prisoners with cognitive impairments, the best strategy is to identify prisoners' needs and provide in-prison and post-prison supports that reduce the likelihood of offending,⁴⁹ the costs of which would be recovered by a reduction in recidivism and a consequent reduction in expenditure.⁵⁰

QAI is firmly of the view that the NDIS has the legislative and policy framework needed to provide in-prison supports to eligible prisoners with disabilities. The *Principles to Determine the Responsibilities of the NDIS And Other Service Systems* state that prisoners are entitled to –

- Aids & equipment
- Behaviour therapy and support for capacity and skills building directly related to disability
- Support coordination.
- Staff training
- Transition support

While in prison, NDIS-eligible people with disabilities at least are entitled to behaviour supports beyond those that the prison is already required to provide according to the *Disability Discrimination Act 1992* (Cth) principle of 'reasonable adjustments'. QAI notes that the Queensland Corrective Services ('QCS') *NDIS Engagement Plan 2018-2020* ('the Plan') includes (in principle) the 'Actions', 'Measures', 'Timeframes' and allocation of responsible parties ('Responsible areas') necessary to enable the delivery of in-prison supports.

For example, Item 10 of the Plan states that QCS Strategy and Governance will 'Develop a communication plan to ensure staff are aware of the NDIS implementation and the potential changes impact service delivery', and Item 13 states that 'NDIA officers and NDIS registered service providers are granted approval to access correctional centres'

⁴⁹ *Enabling Justice: A Report on Problems and Solutions in relation to Diversion of Alleged Offenders with Intellectual Disability from the New South Wales Local Courts System*. 2008.

⁵⁰ Law Reform Commission Discussion Paper 35. 1994. *People with an Intellectual Disability in the Criminal Justice System: Courts and Sentencing issues*.

This is all new territory for QCS. There is not a lot of precedent for third parties coming into Queensland prisons and delivering supports to particular prisoners with disabilities. It did not happen under the Disability Services Queensland disability support system, apart from some case-management in-reach by the Queensland Government's Forensic Mental Health Service.

There were some services, however, setup to provide from-prison transition support. Interact's offender reintegration service 'Bridging the Gap' concluded in 2012. It involved working with offenders and ex-offenders with cognitive impairments for up to six months while in custody and then up to another nine months post-release, establishing social supports, housing, legal, financial and personal support systems.

Now, the CREST program is run by various QCS partners such as Open Minds and ACSO, but CREST is not disability specific. Nor has CREST had much success connecting transitioning prisoners with the NDIS. QAI has interviewed CREST services and other prison support services that together have identified the following NDIS Access barriers for prisoners with disabilities.

1. Confusion about whether NDIS covers people in prison

The NDIA staff do not offer a consistent message about this. Anecdotally, an NDIA employee has stated 'We will support a person from 6 weeks post-release'.

COAG's *Principles to Determine the Responsibilities of the NDIS And Other Service Systems* state:

'The NDIS will fund specialised supports to assist people with disability to live independently in the community, including supports delivered in custodial settings (including remand) aimed at improving transitions from custodial settings to the community, where these supports are required due to the impact of the person's impairment/s on their functional capacity and are additional to reasonable adjustment'.

Some support coordinators (e.g. Ipswich) also believe that NDIS is not available to people in prison.

2. Identification of Potential NDIS participants

Many prisoners have not heard of the NDIS, so the onus is on prison management proactively to identify potential NDIS participants. Prisoners face a double bind when they consider whether

to declare impaired capacity. They may require extra services but in disclosing any impairment they run the risk of stigma, lowered expectations and the possibility that prison staff or other prisoners may exploit their vulnerability.⁵¹

We understand (and support) that QCS currently is using the HASI test to identify potential NDIS participants for further assessment and, depending on the results, assistance with an NDIS Access Request.

3. Difficulty proving diagnosis and functional capacity

Unless already with a guardian or through child safety, it is difficult or impossible for a prisoner to get the evidence needed for an NDIS Access Request. Many prisoners with disabilities are illiterate, do not have evidence of a current diagnoses or any assessment of functional capacity. To get them, the prisoner needs to have ID, information from Queensland Health and access to allied health professionals.

4. No Money for Allied Health Assessments

OTs and GPs cannot get Medicare to cover prison visits. QAI understands that as part of their NDIS Engagement Strategy, QCS has set aside some money for allied health assessments, but that this soon will run out.

5. No capacity for assessments thru prison health staff

A prisoner can wait nine months to see a prison doctor who in any case is likely just to have met the prisoner and is in no position to make a functional needs assessment for the purposes of an NDIS Access Request. Prison health staff are too busy/overrun with appointments to do medical/functional assessments anyway.

6. Queensland Corrective Services has limited commitment to support NDIS Access Requests

- Queensland Corrective Services has appointed one person to support prisoners with or facilitate access requests.

⁵¹ A culture of hierarchy and coercion can dominate the structure of correctional systems and be mirrored in the subculture of prisoners themselves. PE Mullen. 2001. *A review of the relationships between mental disorders and offending behaviours and on the management of mentally abnormal offenders in the health and criminal justice services*. Criminology Research Council. <<http://www.aic.gov.au/crc/reports/mullen.html>>; G Denkowski & K Denkowski. 1985. 'The Mentally Retarded Offender in the State Prison System: Identification, Prevalence, Adjustment, and Rehabilitation'. *Criminal Justice and Behavior*. 12(1): 55-70.

- There is no physical space at prisons to do, for example, OT functional assessments.

QAI supports QCS' *NDIS Engagement Plan 2018-2020*, but we recommend that:

- QCS budgets to ensure that prisoners are able to engage allied health practitioners who are familiar with NDIS-ready functional assessments.
- QCS builds on the learnings from the Plan to develop a 'best practice' model for NDIS engagement.

For all prisoners with disabilities not receiving NDIS or other individual behavioural supports, QAI supports inclusive rehabilitation, including the modification of existing prison programs so that they are delivered as effectively to the mainstream as they are to people with physical, sensory, psycho-social or intellectual impairments.

Any program may be geared to a broad spectrum of learning styles and capabilities. This is no different to inclusive primary education. QAI is opposed to special education in schools and to special-schools because they perpetuate the notion that people with intellectual impairments are different, 'other', 'less-than'. Such separations are also often painful and discouraging for people with intellectual impairments themselves.

Any curriculum and its delivery can be tailored so that no one, no matter what their level of skill, knowledge, capacity or cognition is excluded from the learning process. There is more to education and training than learning. They are social processes that generate community. Exclusion on any basis is discriminatory, breeding misunderstanding, stereotyping and stigma.

8. Getting Parole

People with disability face specific problems when it comes to parole, including:

1. Difficulties applying for parole when parole applications must be hand-written, and this can pose difficulties for some people with an intellectual or cognitive disability that impacts on their ability to read and write.

2. Prejudicial attitudes by members of the Parole Board, based on stereotypes linking disability or mental illness with a propensity to violence.

3. People with disabilities often have difficulty satisfying the Parole Board that they have appropriate accommodation to go to upon release. While there is no causal link between disability and crime, there is a strong causal link between disability and incarceration and this is partly attributable to heightened difficulties people with disability can face in having access to appropriate support networks and appropriate accommodation to go to upon release from prison.

Research informs us that prisoners with intellectual disabilities tend to get fewer outside visitors, due to a lack of strong family and friendship networks outside prison. This not only results in heightened risk of social isolation and difficulties reintegrating into society upon release from incarceration, it also raises additional hurdles when trying to qualify for parole. Lack of support and appropriate accommodation prejudices parole applications and extends the term of imprisonment. In order to gain parole, the applicant must provide the Parole Board with an address which the Board then assesses for suitability. Many prisoners with capacity impairments have no home to go to.

4. Increased difficulty completing prison programs. Successful completion of prison programs can be a means to early release, yet these programs are rarely designed to meet the needs of prisoners with an intellectual or cognitive disability, with the result that it is not uncommon for prisoners with intellectual or cognitive disability to find it difficult or impossible to complete these programs. Participation in general criminogenic rehabilitation programs offered by Corrective Services requires that participants be 'responsive', making it difficult for some prisoners with intellectual impairments to take part in those programs, gain early release and transition back to the community when they are released.

5. Increased likelihood of being placed in separate maximum security units for their protection, denying them the opportunity to have the least restrictive environment and to participate in rehabilitation programs (as would happen in a lower grade security setting)

9. Upon release - The need for a coordinated approach to exit

It can be theorized that many in these groups with complex needs become locked, early in their lives, into cycling around in a liminal, marginalised community/criminal justice space, a space that is neither fully in the community or fully in the prison. They do not fall through cracks, they are directed into the criminal justice conveyor belt. This suggests it is important to recognise the different space & need for different disability and rehabilitative interventions and supports at many points along these persons' pathways.⁵²

Offenders with intellectual disability re-entering the community face a number of prejudices to community placement that may result in re-institutionalisation.⁵³ The critical time is at about five weeks out. One source has described prison release as comparable to the soldier returning from battle.⁵⁴ Reintegration is more challenging for ex-prisoners with intellectual disability.

The barriers are poverty, inferior education, unemployment, homelessness, drug or alcohol dependency, lack of social support and loss of family ties.⁵⁵ The risk of recidivism increases when services are not available. Commonwealth and state government services are difficult to access, in part because they are coordinated poorly at the policy level.⁵⁶

The work of the Prisoners' Legal Service, the Catholic Prison Ministry⁵⁷ and the Queensland Centre for Intellectual and Developmental Disability demonstrates that ex-prisoners are most likely to reoffend in the first fraught weeks out of jail. Ex-prisoners often have nowhere to live, little money, few friends or supporters and scant prospects. For some, a return to prison is an alternative to poverty, loneliness and homelessness.

⁵² E Baldry, L Dowse & M Clarence. 2011. People with Mental Health and Cognitive Disability: Pathways into and out of the criminal justice system. Background Paper for the National Legal Aid Conference. Darwin, 16.

⁵³ J Cleur & D Coyne. 1994. *Behaviour, crime and life: Issues for people with an intellectual disability in contact with the criminal justice system in NSW*. Paper presented to the Third Inter jurisdictional Conference on Guardianship and Administration. Western Australia.

⁵⁴ E Ogilvie. 2001. *Post-release: the current predicament and the potential strategies*. Canberra: Criminology Research Council. <http://www.aic.gov.au/crc/reports/ogilvie.html.html>.

⁵⁵ E Baldry & M Borzycki. 2003. *Promoting integration: the provision of prisoner post-release services. trends and issues in crime and criminal justice*. Canberra: Australian Institute of Criminology.

⁵⁶ V Catherine Riches, T Parmenter, M Wiese & R Stancliffe. 2006. 'Intellectual disability and mental illness in the NSW criminal justice system'. *International Journal of Law and Psychiatry* 29: 386–396.

⁵⁷ M Alexander & D Martin. 2013. *Queensland Prison Report 2013*. Prisoners' Legal Service & Catholic Prison Ministry.

- Piecemeal changes are not enough: the first step is for government to initiate a coordinated cross-government approach to post-release services to ex-offenders with disabilities so that they are better equipped to reintegrate and live fulfilling lives.

10. Post-release income

The immediate payment from Centrelink on release from prison is equivalent to two weeks of the eligible payment, usually the 'Newstart' Allowance, or if the ex-prisoner has a diagnosed disability, possibly the Disability Support Pension. (Rent assistance is available if the prisoner is able to secure accommodation.) From that amount, the ex-prisoner must pay for accommodation, food, medication, clothing and sundry expenses.

11. Post-release Accommodation

'Up to 28 per cent of exiting prisoners find themselves on the street'.⁵⁸

The most serious problem for ex-prisoners with disability is the lack of adequate accommodation on release.⁵⁹ For people with intellectual disability the lack of accommodation 'makes their chances of integration slim'.⁶⁰ Ex-prisoners have disproportionately high rates of homelessness – about one per cent of the general population is homeless yet for ex-prisoners the figure is around 28 per cent.⁶¹ A visit to any of the larger men's homeless shelters in Brisbane will confirm that people with intellectual disability and other capacity impairments are represented disproportionately amongst homeless ex-prisoners.

Australian governments have a responsibility to provide 'appropriate and affordable accommodation to all individuals'.⁶² In order to gain parole, the prisoner must provide the

⁵⁸ E Baldry & Australian Housing Urban Research Institute. 2003. *Ex-prisoners, and accommodation what bearing do different forms of housing have on social reintegration?* Canberra.

⁵⁹ V Catherine Riches, T Parmenter, M Wiese & R Stancliffe. 2006. 'Intellectual disability and mental illness in the NSW criminal justice system'. *International Journal of Law and Psychiatry* 29: 386–396.

⁶⁰ E Baldry, L Dowse & M Clarence. 2011. *People with Mental Health and Cognitive Disability: Pathways into and out of the criminal justice system*. Background Paper for the National Legal Aid Conference, Darwin, 6-7.

⁶¹ E Baldry & M Borzycki. 2003. *Promoting integration: the provision of prisoner post-release services: Trends and issues in crime and criminal justice*. Canberra: Australian Institute of Criminology.

⁶² Ibid.

Parole Board with an address which the Board then assesses for suitability. Many prisoners with capacity impairments simply have no home to go to.

Many do not own their own homes and cannot afford the up-front cost to get into the private rental market. Housing is not just a necessity for its own sake: it is the foundation for the ex-prisoner's future prospects. Private rentals and even mortgages rarely survive a prison term. Prior to February 2014 a person could retain their Department of Housing property if they were absent for up to 12 months on the condition they continued to pay a reduced amount of rent. This is no longer the case.⁶³

The private rental market is difficult to access for those without employment and references. Defaulting private tenants, such as prisoners whose lease was interrupted by jail, will usually be 'blacklisted' on the TICA database. The listings are permanent and the majority of agents Australia-wide will not accept an offer from an applicant on the TICA database. The only solution is to move into state or non-government housing, to purchase if this is financially feasible, to stay with friends or family or to move into a boarding house.

Anyone seeking to enter a residential tenancy agreement must be able to afford a bond and two weeks rent in advance— amounting to six weeks' rent. That is beyond most, so the alternative is rooming accommodation— hardly a suitable alternative for a person wanting to avoid old habits vis-à-vis drugs and alcohol. Recent research confirms a correlation between persons who struggle to find accommodation or who are homeless upon their release and the likelihood that they will later commit another crime.⁶⁴

For those without a job or money and with no palatable explanation for their recent whereabouts, the only options are boarding houses, hostels and the street, where they are likely encounter other ex-prisoners and drug users, making it difficult for them to avoid further offending. Recent research confirms the correlation between prisoners who struggle to find accommodation and/or are homeless upon their release and their likelihood of committing another crime.⁶⁵

⁶³ Prisoners Legal Service. 2014. *Queensland Prisons Report 2013*.

⁶⁴ A Mills, D Gofkovic, R Meek & D Mullins. 2013. 'Housing Ex-Prisoners: The Role of the Third Sector'. *Safer Communities* 12: 38-49.

⁶⁵ A Mills, D Gofkovic, R Meek & D Mullins. 2013. 'Housing ex-prisoners: the role of the third sector'. *Safer Communities* 12: 38-49; E Ogilvie. 2001. *Post-release: the current predicament and the potential strategies* Canberra: Criminology Research Council.

Ozcare Supported Parole Program has two facilities that accept male ex-prisoners in South Brisbane and in Townsville, but supply does not approach demand.⁶⁶ It is not uncommon for parole applications to be approved but not activated until a vacancy arises at an Ozcare facility – which can sometimes be a matter of years.⁶⁷ If Ozcare is deemed unsuitable as a release address, either by the parole board or by Ozcare itself, the prisoner is left with no options. For someone serving a long sentence it may result in years being spent in prison instead of being outside and supervised on parole. Ozcare does not accept women prisoners and lack of appropriate housing options results in prisoners remaining imprisoned past their possible release date.

QAI recommends:

- QCS and Department of Housing and Public Works (DHPW) cooperate to pilot a comprehensive program of housing and support for exiting prisoners with disabilities (The NSW Justice Support Program may provide a useful example.)
- Prisoners who apply for public or community housing must be eligible for priority housing on release from prison.
- QCS and DHPW should cooperate to give prisoners the option to maintain public or community housing for a reasonable time while they serve in prison.

12. In Other Jurisdictions

Difficulties associated with obtaining appropriate accommodation upon release from prison is common across Australia. NSW trialled a case management approach to supporting offenders with intellectual disability upon release from prison. They established that obtaining adequate

⁶⁶ Prisoners Legal Service and Catholic Prisons Ministry. 2013. *Queensland Prisons Report*.

⁶⁷ Ibid.

accommodation was the most serious issue. As the NSW Council for Intellectual Disability notes in the Framework Plus 5 Report:

It is a sad indictment of the community services available in this state that people with intellectual disabilities who come into contact with the criminal justice system often end up in jail for want of other appropriate facilities in which to house them.

It was noted at the National Legal Aid Conference in Darwin that in many Australian jurisdictions, the lack of appropriate accommodation for released prisoners with mental health disorders and cognitive disability 'makes their chances of integration slim'. In Victoria, the Department of Human Services is vested with responsibility for providing emergency accommodation for 'people with a disability who are in crisis associated with offending behaviour'. This normally involves the provision of short-term accommodation for people whilst on bail. Further measures are provided by Victorian non-governmental organisations for post-release accommodation, which includes short-term and permanent accommodation. Assistance is provided by the Victorian Department of Housing in securing permanent accommodation.

13. Post-release Employment

There is a well-established link between unemployment and recidivism,⁶⁸ but for ex-prisoners with capacity impairments the need to get a job is as urgent as the prospect is low.

The interruption to a person's life that results from their incarceration is abrupt and absolute, presenting challenges to inmates who had responsibilities to an employer. For those remanded in custody there may be no opportunity to tie up loose ends or part on amicable terms with an employer.

"...which made it hard for me to do things like get a job and all that, because you know, once they find out who I am they think, 'no, hang on, aren't you the fellow that was busted for that cocaine?' And I go, 'yeah, I was'".

...Gareth, male ex-prisoner, 25-34 years, non-Aboriginal, rural prison

⁶⁸ L Gideon. 2010. *Substance Abusing Inmates: Experiences of Recovering Drug Addicts on their Way Back Home*.

Prison impacts on the ability of an ex-prisoner to secure employment once released. Prisoners who disclose their prison history are acutely aware that it will likely have a negative impact on their employment prospects, but also know that failing to explain their absence from the workforce will be counterproductive too. For some ex-prisoners, disclosing their criminal history is both a condition of their parole and a condition of job applications.

Discrimination on the basis of an inmate's prior criminal record is a major cause of unemployment among ex-prisoners in the UK.⁶⁹ Almost 60 percent of British employers would 'probably not' employ a person with a criminal history; another survey established that only 12 percent of employers would knowingly hire ex-prisoners.⁷⁰ This is particularly true in small towns, even if a job application form does not require that an ex-prisoner discloses their record. (Under the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld), a person is not required to disclose a conviction once the rehabilitation period of ten years⁷¹ has passed).⁷²

Ex-prisoners face numerous contradictory challenges. They cannot secure accommodation because they have no employment and they cannot get a job because they have no fixed address (and cannot explain their absence from the workforce). Exiting prisoners are of course unemployed and there are few programs to assist ex-prisoners to find work.

Ex-prisoners are Centrelink-assessed 'Stream 4' clients. They are entitled to the highest level of jobseeker support. Catholic Prison Ministry's 'Reintegration Support Program' has shown that about 30 percent of its clients have achieved an 'employment outcome' compared to 12% of other ex-prison jobseekers. We have no statistical information about persons with intellectual disability or other capacity impairments within that group. Given that the overall labour force participation rate for persons with intellectual disability was 40.9 percent in 2009, compared with

⁶⁹ H Metcalf, T Anderson & Rolfe. 2001. *Barriers to Employment for Offenders and Ex-offenders*. Department of Work and Pensions Report No. 155. Leeds: CDS

⁷⁰ C Visher, S Debus-Sherrill & J Yahner. 2010. 'Employment After Prison: A Longitudinal Study of Former Prisoners'. *Justice Quarterly* 28: 698-718; J Graffam, A Shinkfield & L Hardcastle. 2008. 'The Perceived Employability of Ex-Prisoners and Offenders'. *International Journal of Offender Therapy And Comparative Criminology* 52: 673-685.

⁷¹ Section 3 of the Act defines rehabilitation period, In relation to a conviction upon indictment recorded against a person who in relation to that conviction was not dealt with as a child:

(i) a period of 10 years commencing on the date the conviction is recorded; or
(ii) where an order of a court made in relation to the conviction has not been satisfied within that period of 10 years—a period terminating on the date the order is satisfied; whichever period is the later.

⁷² *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld), s 6. Discrimination on the basis of a criminal record is unlawful under the *Australian Human Rights Commission Act 1986* (Cth). The *Australian Human Rights Commission Regulations 1989* (Cth) extended the definition of discrimination in the Act to include criminal record (reg. 4(a)(iii)).

78.6 percent for all people, the participation rate for ex-prisoners with intellectual disability and other capacity impairments is likely to be proportionately low.

14. Post-release other- health and drug dependency

Drug dependency is as common amongst prisoners with intellectual disability or other capacity impairments as amongst the general population. Baldry's NSW study established that more than a third of prisoners with intellectual disability or borderline intellectual disability had a history of substance use.⁷³ Between 34 and 52 percent of male prisoners used illegal drugs prior to imprisonment; approximately 10 percent of prisoners have committed drug-related offences.⁷⁴

Drug use is common post-release.⁷⁵ An Australian study determined that of 372 post-prison deaths, 50.8 percent were caused by drug overdoses within 12 months of release. Homelessness or housing transience, domestic violence, unemployment and loss of social opportunities are associated with drug use soon after exiting prison. Ex-prisoners who died of drug-related causes commonly experienced social and economic disadvantage: most were unemployed (81.8 percent) and one-third were homeless (33.8 percent). According to coronial records, 25.1 percent had a general health condition and 32.6 percent had a mental health problem.⁷⁶

If prisoners are not supported to radically change their pre-prison lifestyle they will of course resume that lifestyle.⁷⁷ Life stresses such as homelessness or housing transience, domestic violence, poverty, unemployment and a loss of other 'social opportunities' can all be precursors to drug abuse. In 2012, drug courts were closed in Queensland after 12 years of diverting people from prison. The court operated under the *Drug Rehabilitation (Court Diversion) Act 2000*. Drug court participants had their sentencing suspended for up to eighteen months while

⁷³ E Baldry. 2011. *Background paper for the national legal aid conference Darwin 2011: People with mental and cognitive disabilities: Pathways into prison*. UNSW Arts and Social Sciences.

⁷⁴ E Ogilvie. 2001. *Post-release: the current predicament and the potential strategies*. Canberra: Criminology Research Council. <http://www.aic.gov.au/crc/reports/ogilvie-html.html>.

⁷⁵ CJS Carcach, & Australian Institute Of Criminology. 1999. *Imprisonment In Australia: Trends in Populations & Imprisonment Rates 1982-1998*.

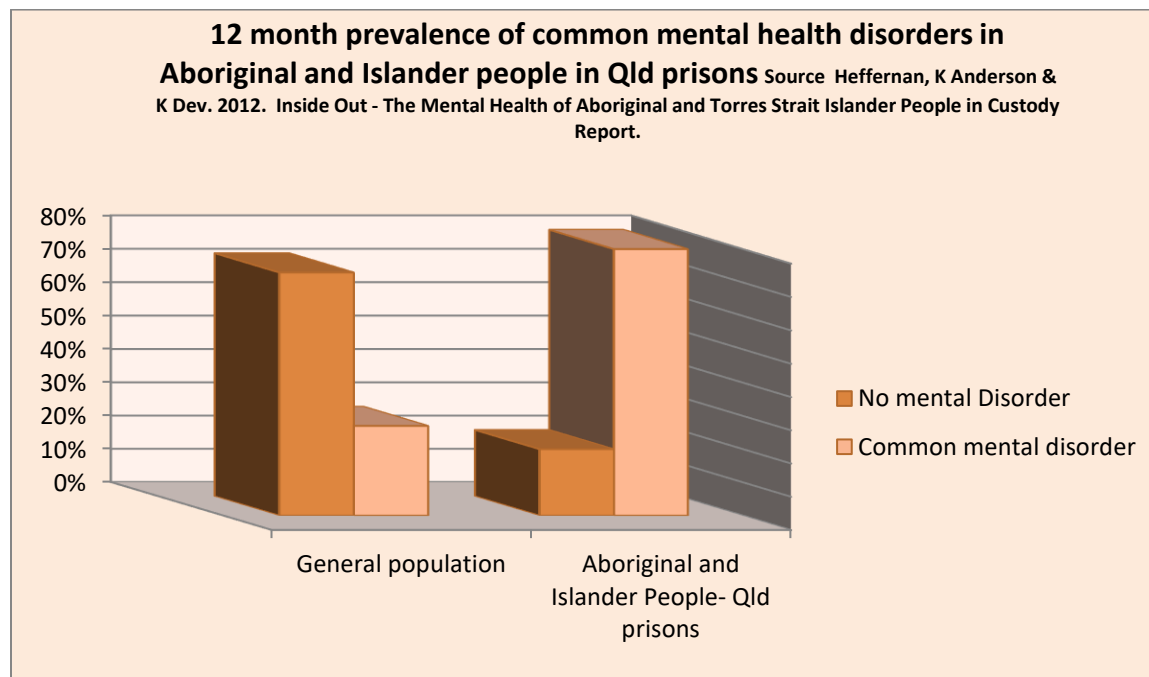
⁷⁶ J Andrews & S Kinner. 2012. *Understanding drug-related mortality in released prisoners: a review of national coronial records*. <http://www.biomedcentral.com/1471-2458/12/270>.

⁷⁷ E Ogilvie. 2001. *Post-release: the current predicament and the potential strategies*. Canberra: Criminology Research Council. <http://www.aic.gov.au/crc/reports/ogilvie-html.html>.

they were given intensive drug treatment. Completion of the program was taken into account at sentencing. Drug Courts have saved resources equivalent to 588 years of actual prison time.⁷⁸

15. Aboriginal and Torres Strait Islander Prisoners with Disabilities

In Queensland, Aboriginal and Torres Strait Islander people make up a massive disproportion of all prisoners. In 2017, Aboriginal and Torres Strait Islander people comprised 32% of Queensland's adult prisoner population.⁷⁹ This rate was 11 times the non-Indigenous imprisonment rate⁸⁰ - third only to the Northern Territory's 13 times and Western Australia's 15 times the non-Indigenous rate.⁸¹ The work of Heffernan and others from the Queensland Forensic Mental Health Service (FMHS) demonstrates the incredibly disproportionate rate of mental health disorders amongst Aboriginal and Islander prisoners in Queensland jails. In 2012, the FMHS team interviewed all but of few Aboriginal and Torres Strait Islander prisoners.



⁷⁸ B Butler. 2011. *Magistrate Courts of Queensland Annual Report*. Queensland Courts.

⁷⁹ (2,724 prisoners).

⁸⁰ 1,780 prisoners per 100,000 Aboriginal and Torres Strait Islander adult population compared to 168 prisoners per 100,000 adult non-Indigenous population.

⁸¹ Australian Bureau of Statistics. 2017. 4517.0 - Prisoners in Australia.

They found that just under three-quarters (73 per cent) of Aboriginal and Islander men in Queensland prisons and an even greater proportion of Aboriginal and Islander women (86 per cent) have ‘mental health disorders,’⁸² a term that includes people with mental illnesses such as depressive, anxiety and psychotic disorders as well as substance use disorders.

There is no direct relationship between quasi-medical diagnosis and a person’s support needs. The NDIS is set up to provide ‘reasonable and necessary supports,’⁸³ and medical diagnoses, associated with intellectual impairments and psycho-social disabilities only indicate support needs very roughly. Nevertheless, other data tends to corroborate the supposition that a disproportionate number of prisoners, and, in particular, a disproportion of Aboriginal and Torres Strait Islander prisoners, will be eligible for NDIS support packages.

The National Disability Insurance Agency’s Queensland roll-out data, for example, shows that around 9% of NDIS participants in Queensland identify as being Aboriginal and/or from the Torres Strait.⁸⁴ This is around three times the NDIS eligibility rate for non-indigenous people.

16. Conclusion: Imprisonment is costly

Queensland prisoners comprise 21% of the total national prisoner population⁸⁵ and on the night of the Prison Census, 30 June 2017, Queensland prisons held 8,476 prisoners.⁸⁶ In 2017, Queensland’s real net operating expenditure per prisoner was ~ \$190 per day, or ~\$70,000 per year.

Prisoners with intellectual disability comprise ~10% of the prison population. It costs ~ \$58 million annually in operating costs to keep them in jail, and another ~\$100 per prisoner per day in capital costs. Total Queensland expenditure on prisoners with intellectual disability is ~\$92million per year.⁸⁷

⁸² Heffernan *et al.* 2012. *The Mental Health of Aboriginal and Torres Strait Islander People in Custody Report*. Queensland Government, 11.

⁸³ Section 24, National Disability Insurance Scheme Act 2013 (Cth).

⁸⁴ The national rate is around 5% because Aboriginal and Torres Strait Islander people make up a smaller proportion of people in most other parts of Australia.

⁸⁵ *Ibid.*

⁸⁶ ABS 4517.0, released 8 December 2017

⁸⁷ Productivity Commission. 2018. “Corrective Services” in *Report on Government Services*.

That is the figure for accommodation and support in prisons. Far greater are the costs associated with lost productivity, post-prison rehabilitation, and the incalculable costs to children deprived of a parent. Preventing people with intellectual and cognitive disabilities from entering prison and preventing recidivism will reduce those costs significantly.

Studies that compare the public expenditure savings associated with early intervention and support strategies show a benefit-cost ratio ranging from 1.4 to 2.4. The cumulative savings from early intervention and proper support indicate that every dollar spent early in a person's life saves taxpayers between \$1.40 and \$2.40 later.⁸⁸ These figures do not even begin to represent the benefits that accrue to those who have avoided a lifetime of cycling through prisons.

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⁸⁸ Eileen Baldry, Ruth McCausland, Anna Cohen & Sarah Johnson. 2013. *People with mental health disorders and cognitive impairment in the criminal justice system - cost-benefit analysis of early support and diversion*. UNSW and Price Waterhouse Coopers.