

**SUBMISSION BY KEITH HAMBURGER AM
TO THE SENATE LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE
Inquiry into Australia's youth justice and incarceration system**

The terms of reference for the inquiry (TOR):

1. Australia's youth justice and incarceration system, with particular reference to:
 - a) the outcomes and impacts of youth incarceration in jurisdictions across Australia;
 - b) the over-incarceration of First Nations children;
 - c) the degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention;
 - d) the Commonwealth's international obligations in regard to youth justice including the rights of the child, freedom from torture and civil rights;
 - e) the benefits and need for enforceable national minimum standards for youth
 - f) justice consistent with our international obligations; and
 - g) any related matters.

Publication of my submission

2. I have no objection to my submission being published.

Brief biography

3. I was Queensland's first Director General of the then Queensland Corrective Services Commission (QCSC) 1988 - 1997. Responsible to the QCSC Board I led successful implementation of the *Kennedy Commission of Inquiry Reform Agenda*. For a period, youth detention facilities were the responsibility of QCSC. I was a member of the Queensland Parole Board for eleven years. I have visited and studied adult and juvenile corrections in Germany, Holland, England, Singapore, Solomon Islands, PNG, USA and New Zealand.

In private practice since 1997, I have led corrections consulting projects in all Australian jurisdictions, New Zealand, the Solomon Islands and Papua New Guinea. I appeared as an Expert Witness before the Royal Commission into the Protection and Detention of Children in the Northern Territory, 2016.

Since 2016 I have worked with First Nations people in QLD to develop a unique approach to rapidly reduce the over incarceration of First Nations juveniles and adults. This approach involves empowering First Nations and other disadvantaged communities to deliver holistic community strengthening and primary crime prevention initiatives at family and community levels as well as culturally appropriate justice services to rehabilitate youth and adult offenders.

I am a QLD Patron of the *National Justice Reform Initiative*. I have a Bachelor of Arts, University of Queensland, majoring in Government and Sociology, including criminal justice studies. I am a Member in the General Division of the Order of Australia, for Public Service (AM).

Key points I wish to emphasise in relation the Inquiry's Terms of Reference

4. **TOR a): The outcomes and impacts of youth incarceration in jurisdictions across Australia.**
The Qld Family and Child Commission (QFCC) says, "*Our current model of detention does not work. We are spending millions of taxpayers' dollars on a machine that is working less than five per*

cent of the time. It is the most expensive, and least effective, solution to youth crime that we have designed. In April 2023, the QFCC commenced this review based on evidence that:

- *In 2020-21, 91.26 per cent of children who were released from detention were returning to sentenced detention within 12 months of release; and*
- *In 2023 the percentage of young people who reoffended within 12 months following release from Queensland youth detention centres was between 84 per cent and 96 per cent¹;*

The QFCC says, *“Queensland’s existing approach to rehabilitation and reintegration, and therefore preventing reoffending, is largely ineffective, or that there is an unjustified assumption about the rehabilitative prospects of detention”*.²

5. Your Senate Inquiry will have data from all Australian jurisdictions demonstrating failures relevant to your TOR a) through d). A consequence of these failures is the impact on victims of crime. In Queensland we have well documented cases of loss of life and serious injuries to innocent citizens in their own homes, in shopping centres and on the streets occurring due to lack of effective holistic responses to the causes of juvenile crime and failure to appropriately detain and treat offenders. Due to these failures, stakeholders are exploring options for *class actions* against government on behalf of victims and offenders.
6. Sadly, the tragic outcomes in Queensland could have been averted had government not ignored solutions advanced by experts and researchers in medical and social science and First Nations Elders and practitioners who provided an innovative reform model. A key recommendation by the Qld Productivity Commission³ has not been implemented and best international practice ignored.
7. Most juvenile offenders are also victims. They have suffered neglect and abuse in dysfunctional families, have few if any pro-social adult role models, are mostly functionally illiterate and many suffer FASD. Australian juvenile justice sentencing, and detention centre operational and infrastructure models are incapable of treating these deficits. Most of these children will spend many years in the criminal justice system, as ultimately will their children, an awful outcome of a failed and broken system. I am advised that one in four children in detention have at least one parent in adult prisons. In a recent visit to a Youth Detention Centre in Qld I was told that less than 4% of inmates received visits from family members. An awful situation.
8. The purpose of this brief paper is to summarise a reform approach I have developed working with First Nations people, in consultation with Peak Bodies, members of the judiciary, social justice organisations, researchers and practitioners. Should this approach be adopted, I assert that many of the failures inherent in matters covered by your Inquiry’s TOR b) through f) will be addressed.

¹ Qld Family and Child Commission, report, page 4, Exiting Youth Detention - Preventing crime by improving post- release support, June 2024

² Qld Family and Child Commission, report, page 24, Exiting Youth Detention - Preventing crime by improving post- release support, June 2024

³ Qld Productivity Commission August 2019 FINAL REPORT Inquiry into Imprisonment and Recidivism, recommendation to create a Statutory Justice Reform Office

Proposed approach to reform Australia's youth justice systems

9. A Key imperative to ensure youth and adult crime minimisation is acceptance that the current system for sentencing and incarceration requires '*root and branch reform*'. It is a failed and inhumane model creating more victims, further criminalises children and entrenches most to years in the criminal justice system – see recidivism rates and progression rates to adult jails.
10. Concerning need for *Root and branch reform*', the Qld Family and Child Commission says, "We must address the root causes of offending in a child's life. This requires intensive and sustained programs that work with the family across a multitude of human service portfolios. Until we do that, we will continue to see detention as some form of magical solution that keeps the community safe when all the evidence shows us that it is not". And "what young people need to stay out of detention is, "specific, individualised, intensive, and holistic support over the long-term, and that this support works best when it is provided by trusted workers who communicate well and will not give up on them".⁴
11. Also relevant is the work of Professor Tony Vinson often referred to as "*The Post Codes of Disadvantage*"⁵ where he argues for a *community-by-community empowerment approach* to reduce disadvantage and crime. Building upon Professor Vinson's work, my experience with Northern European approaches, my work with First Nations people in Qld communities, and my experience in working in adult and juvenile corrections and with victims of crime, I have developed *a community empowerment model* for First Nations communities to improve quality of life, reduce crime and their terrible overrepresentation in the criminal justice system.
12. This model provides a basis for *root and branch reform*' of the current failed siloed social support and juvenile and adult justice systems delivered by government and large *not for profit* agencies that disempower local communities. It provides for current service delivery to be largely replaced by *not-for-profit* vehicles owned and operated by these communities to deliver holistic local joined up responses to social and justice needs and family and community strengthening via enterprise development (*local jobs*) supported by *justice reinvestment*. The model will see existing large inhumane, non-therapeutic, costly and ineffective prison complexes for juvenile and adult offenders phased out.
13. For juvenile offenders there will be, in proximity to communities, a range of small local community owned and operated control and rehabilitation responses. These will include small secure therapeutic facilities for serious problematic offenders. For less problematic offenders there will be appropriately controlled environments offering education, health services, pro-social activities, cultural training and back to community transition programs and services. 'Bush camps' and adventure experiences will form part of this approach. There will be an enhanced *Kinship Caring System* and joined up therapeutic options involving both young offenders and their families and or significant others to support transition to community.

⁴ Qld Family and Child Commission, report, page 4, Exiting Youth Detention - Preventing crime by improving post- release support, June 2024

⁵ Professor Tony Vinson, Report for Jesuit Social Services – Unequal in Life, August 1999

14. For adult offenders some small high security jails are required for dangerous and heinous offenders. For large numbers of offenders, we need small locally owned appropriately supervised *Healing and Rehabilitation* options where they can be placed under Probation Orders with residency and program conditions imposed. Relevant to this approach is that some 60% of adult offenders currently in high security cells are non-violent offenders. The average sentence length in Qld is 3.9 months. These facilities are an ideal option to reduce First Nations imprisonment.
15. Demonstrably, recidivism and crime will be reduced, families and communities will be strengthened, significant progress will be made in achieving *Closing the Gap* aspirations and billions of dollars will be saved in the out years in prison infrastructure and operations. The model provides for the *“specific, individualised, intensive, and holistic support over the long-term”* for offenders and for stronger families and communities that the Qld Family and Child Commission is seeking.

Overview of elements in model for primary crime prevention in families and community and to control and rehabilitate child and adult offenders

Some fundamental considerations

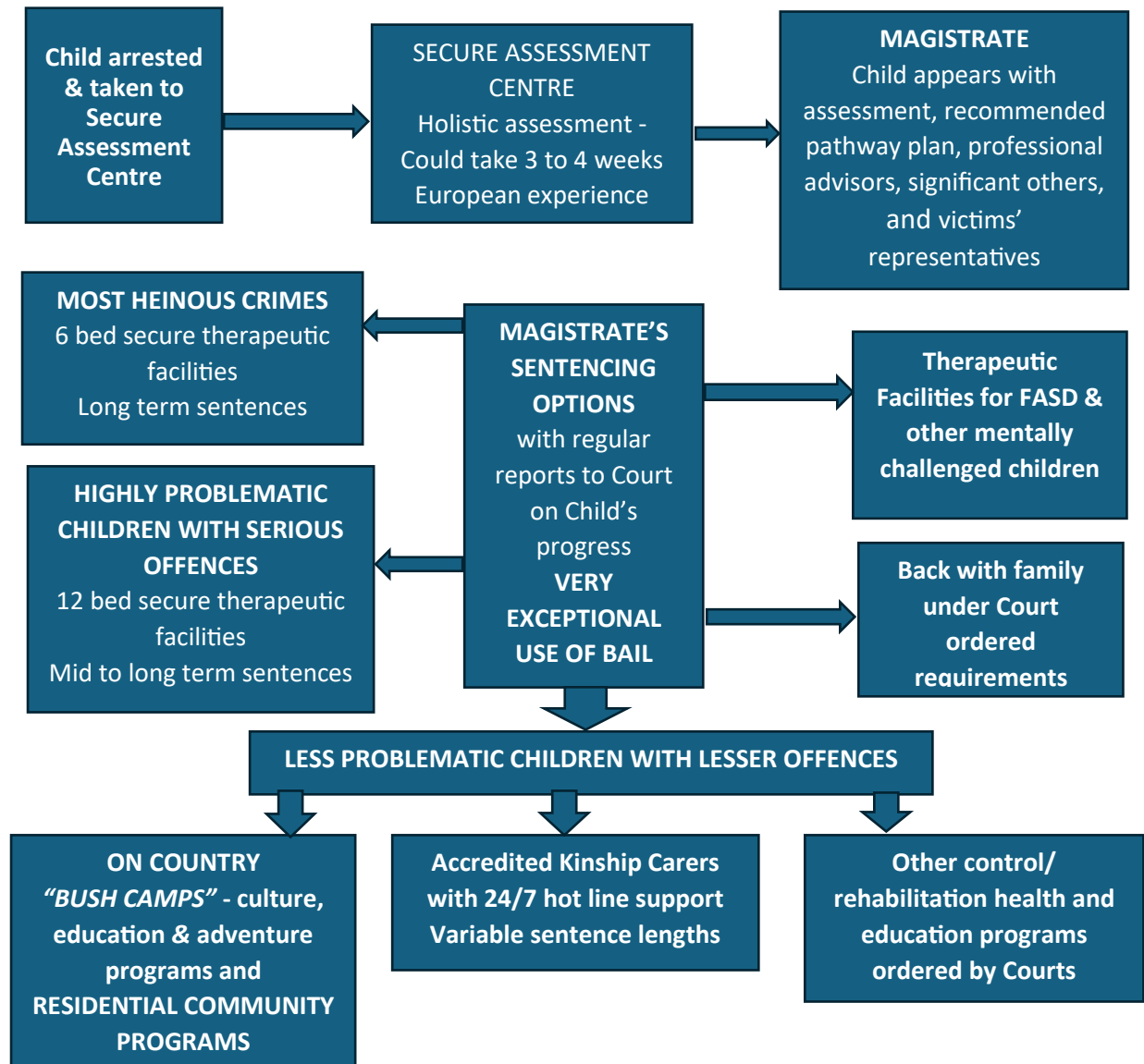
16. Literature and experience show that large high security jails located remote from juvenile and adult offenders' communities are a failed concept. Most incarcerated children have complex needs requiring holistic treatment in concert with their adverse family and community circumstances. They require individual attention in small groups, 6 or 12 children, in therapeutic environments in proximity to community so treatment programs can include family members and or significant others and allow for supported transition programs back to community⁶.
17. Arrested children must not be placed in police watchhouses. This is damaging for the child and a breach of the child's human rights. Children need to be placed in secure *Assessment Centres*⁷ for holistic assessment of mental and physical health, offending history, education level, skills and aptitudes, family and community circumstances, pro-social needs, etc. This assessment results in a report with *'pathway plan'* for the child for Court consideration.
18. Courts to apply sentences to implement the *'pathway plan'* under *restorative justice* principles i.e. *restore something to the victim or to the community and restore the child to prosocial lifestyle while ensuring community protection during the rehabilitation process.*
19. For adult prisoners in Queensland, some 11,000, some 50% could be accommodated in *Healing and Rehabilitation Centres* and a range of other community-based options⁸. Savings in cell costs alone would be around \$5.5 billion. Alternative infrastructure for the proposed options will be a fraction of this cost. Operational savings will accrue, recidivism and crime will be greatly reduced, together with a significant reduction in incarceration of First Nations people in prisons.

⁶ Authors experience, psychological and literature evidence

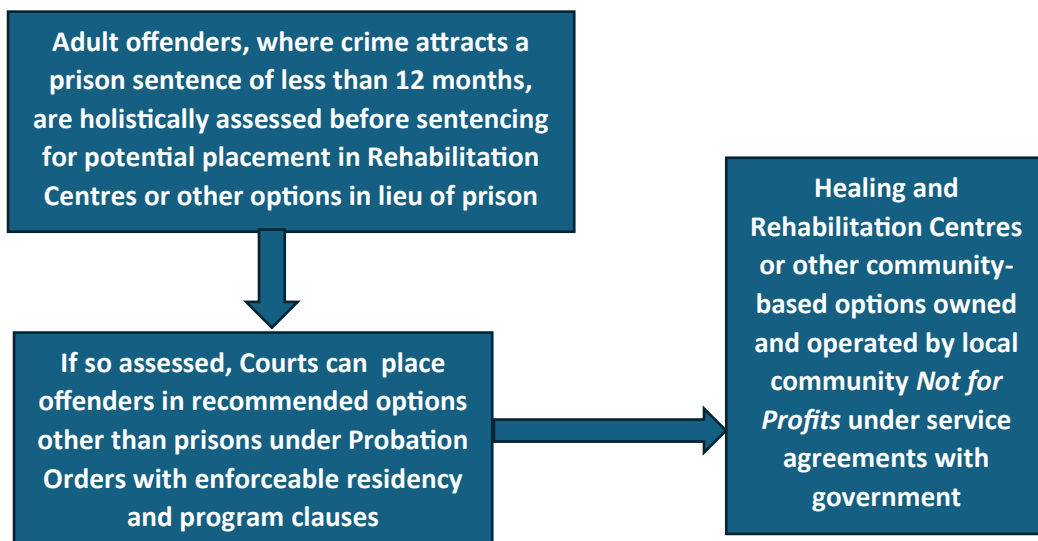
⁷ Northern European approach I saw in the early 1990's

⁸ Authors experience and having regard to number of non-violent offenders in secure cells, experience with the Western Outreach Camps scheme in Qld and supervised community hostels, advice from Magistrates, knowledge of community programs and the capacity of First Nations communities to provide alternatives to prison cells

Overview of elements in model to control and rehabilitate child offenders



Overview of elements in model to control and rehabilitate adult offenders



Conclusion

20. This holistic community strengthening, crime prevention and offender rehabilitation model has been available to the Qld Government for some years for trial. Communities would be empowered to co-create with expert practitioners and public servants locally owned *public benefit corporations* to contract with government to deliver the initiatives summarised in text and charts above. **Note:** *In Qld there are 17 Aboriginal Shire Councils. I am currently working with one of these Councils to be the agency that the Qld Government would contract to provide community support and justice services. This approach, across the 17 Shire Councils, would significantly reduce incarceration of First Nations children and adults, reduce recidivism and youth crime and strengthen families via culturally appropriate responses.*
21. The model, with adjustments, is applicable to non-First Nations disadvantaged communities and empowers and rewards all communities for success in crime reduction via local employment in service delivery and contract provisions for '*justice reinvestment*' of savings into community strengthening initiatives. It provides for community owned joined up services, eliminates siloed service delivery with the role of government agencies becoming one of *enabling and empowering communities* and responsibility for auditing KPI's for contracted service delivery.
22. The first step is to achieve funding to develop business cases for the reform model co-designed with three (3) Trial Communities. The common theme from First Nations Elders across Queensland where inter-generational trauma, under employment, mental health issues, poverty and helplessness are rife, is:
 - a) *We are not empowered or resourced to meet the needs of our families in crisis and or to divert our at-risk young people and adults into pro-social lifestyles. Our children, our young adults, our future Elders are taken far away from our communities into inhumane, ineffective detention centres and prisons. The system is tearing the hearts out of our communities. And*
 - b) *We are deprived of self-determination for us to apply culturally appropriate solutions to the challenges faced by our children, families and communities – things are mostly 'done to us and for us' by outside services when more cost-effective outcomes would be achieved by locally owned First Nations services.*

Thank you for considering this submission.

Keith Hamburger AM
Former Director General, Qld Corrective Services Commission
7 October 2024