

ACKNOWLEDGEMENT OF COUNTRY AND ELDERS PAST AND PRESENT

This submission has etched within its text a deep respect for and acknowledgement of generations of Elders and all First Nations people whose lives have been marred by the imposition of colonial policies which have helped to embed within the justice system, a punitive spirit that has contributed to inter-generational trauma, over incarceration, subjugation of communities and child removal. The authors also pay homage to the non-Indigenous people who have acknowledged the consequences of ongoing punitive practices within the justice system at all levels; and resolved to work with First Nations people in a spirit of reconciliation and respect to give life to government policies that value more humane and proactive practices, bi-cultural collaboration, and justice reform.



BIDGERA 'LOST CITY' – SACRED PLACE – PHOTO USED WITH PERMISSION OF BIDGERA ELDERS

PROPOSED FIRST NATIONS JUSTICE REFORM PARTNERSHIP WITH QUEENSLAND AND FEDERAL GOVERNMENTS TO ADVANCE JUSTICE REINVESTMENT IN QUEENSLAND COMMENCING WITH COMMUNITY TRIALS IN PARALLEL WITH *TREATY - VOICE AND TRUTH TELLING*

THESE TRIALS WILL DEMONSTRATE A REFORM MODEL WHERE LOCAL COMMUNITIES' CULTURAL AUTHORITY IS RESPECTED AND SUPPORTED TO:

- DEVELOP AND CHAMPION HOLISTIC RESPONSES TO ACHIEVE ECONOMIC SUSTAINABILITY AND HEALTHY, STRONG FAMILIES WITHIN A SAFE AND LAW-ABIDING FAMILY AND COMMUNITY ENVIRONMENT; AND**
- WORK WITH FAMILY, CHILD SUPPORT AND JUSTICE AGENCIES TO DELIVER LOCAL RESTORATIVE JUSTICE AND JUSTICE RE-INVESTMENT INITIATIVES.**

THIS SUBMISSION ALERTS DECISION MAKERS TO SIGNIFICANT 'DUTY OF CARE' FAILURES IN JUVENILE AND ADULT CORRECTIONS THAT REQUIRE IMMEDIATE ATTENTION AS WELL AS TO ASSERTIONS RELATING TO WASTE OF PUBLIC FUNDS THAT ARE RECOMMENDED FOR REFERRAL TO THE AUDITOR GENERAL FOR INVESTIGATION.

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AUTHORS

LEAD AND COORDINATING AUTHOR

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AUTHORS BRIEF CV'S

KEITH HAMBURGER AM: Former Director General, Queensland Corrective Services Commission, now Managing Director, Knowledge Consulting Pty Ltd and a QLD Patron of the National *Justice Reform Initiative*. As Director General, Queensland Corrective Services Commission (QCSC), 1988-1997, responsible to the Board of QCSC, he led implementation of the recommendations of the 1988 Kennedy Commission of Inquiry into the then Queensland Prison Service. During this period QCSC Productivity Commission Reports show QCSC was one of the most cost-effective Corrections Services in Australia. This was due to a range of diversionary initiatives including First Nations Out Stations, the Western Outreach Camp Scheme, 24/7 supervised community hostels in urban areas, significant involvement by First Nations people in delivery of cultural programs and a strong focus on '*phased supported release*' from Correctional Centres. This resulted in closure of the Woodford Prison and reductions in recidivism.

He was a member of the Queensland Parole Board for 11 years. Keith's experience in adult and juvenile corrections extends from the 1970's. He has worked extensively with First Nations people over many years in development of alternatives to ineffective processes of the criminal justice and social systems that are destroying the life chances of First Nations adults and children.

He has visited Northern Europe to study best practice in adult and juvenile corrections, including holistic whole of government and community responses to social breakdown and crime. He has visited and studied correctional practices in the USA, Singapore and New Zealand. He was Team Leader of a '*root and branch*' review of Northern Territory Corrections, including Juvenile Detention Centres. He was an Expert Witness to the *Royal Commission into the Protection and Detention of Children in the Northern Territory*, 2017. He has conducted major corrections consulting projects in all Australian jurisdictions, New Zealand, Solomon Islands and PNG.

CONTRIBUTING FIRST NATIONS AUTHORS

PROFESSOR, AUNTY BONI ROBERTSON: A proud Kabi Kabi woman has had 37 years' experience working in senior academic, professional and advisory positions in Higher Education and Government at all levels. She currently holds a Professorial Adjunct position with Macquarie University and is on the Senior Executive of the World Indigenous Nations University. Professor Robertson has also held senior representative positions for First Nations people in Australia, the Pacific and Internationally in areas pertinent to justice and higher education. She is a previous member of QLD Parole Board, member of a number of committees working for advancement and protection of First Nations People.

UNCLE MICK GOODA: A PROUD descendant of the Gangulu people of Central Queensland. He had a distinguished public service career including serving as Aboriginal and Torres Strait Islander Social Justice Commissioner of the Australian Human Rights Commission from 2009 to 2016 and Co-Commissioner of the Royal Commission into Protection and Detention of Children in the Northern Territory from 2016 to 2017.

He was appointed as a member of the Expert Panel on Constitutional Recognition of Indigenous Australians by Prime Minister Julia Gillard in 2010 and appointed to the Referendum Council in 2015 by Prime Minister Malcolm Turnbull. In 2015 he was appointed the Chair of the Queensland Government Stolen Wages Reparations Taskforce. In 2018 he was appointed the inaugural First Nations Housing Advisor to the Queensland Government. In 2019 he was appointed to the Eminent Panel for the Queensland Government's Indigenous treaty-making process. In November 2019, it was announced that Gooda would be one of 20 members of the Senior Advisory Group to help co-design the Indigenous voice to government set up by Ken Wyatt, the Minister for Indigenous Australians.

AUNTY RACHEL ATKINSON, Chairperson: The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP), Bachelor of Social Work, JCU. As an Aboriginal, Yorta Yorta woman, Rachel Atkinson has dedicated her whole working life to improving the lives of her people. She has extensive lived experience working in rural, remote and urban Aboriginal and Torres Strait Islander communities and is determined to support the empowerment of Aboriginal and Torres Strait Islander people nationally.

Rachel has over 25 years' experience as a CEO of non-government Aboriginal and Torres Strait Islander organisations, including her current position as CEO of the Palm Island Community Company. She has presented at numerous local, interstate and international conferences and forums on topics including the over-representation of Indigenous Australian children in the child protection system. As a current member of the **SNAICC** National Executive, Rachel has also been pivotal in highlighting issues for Aboriginal and Torres Strait Islander families through media and parliamentary representation.

In addition to her role as Chair of QATSICPP, Rachel is also the Co-Chair of Family Matters Queensland and was previously a representative of the Aboriginal and Torres Strait Islander Child Protection Reform Committee. She has also been a past President of the Queensland Aboriginal and Islander Health Council and Chair of the Partnership for Queensland Aboriginal and Torres Strait Islander Child Protection Peak.

REVEREND AUNTY ALEX GATER: A highly respected Elder, a proud descendent of the KOA people (her mother), Winton and the KUKA Imagery Clan (Grandfather), Cooktown region. In 2005 Aunty Alex was the only Aboriginal woman from Australia to be one of 1000 women worldwide to be nominated for a Noble Peace Prize. In 2005 Aunty was also conferred with the NAIDOC Female Elders Award in recognition of her many years of work to fighting for human rights and justice for First Nations people.

She is widely acknowledged as an Advocate for First Nations rights at the local, state, national and international level. She was the first Aboriginal woman appointed as a fully ordained Minister and her counsel and advice has been sought by political, education, Spiritual, community and industry leaders on matters pertinent to the development of policies and programs for First Nations people. Aunty Alex was on the initial Justice Group to service the MURRI Court in Brisbane. She has worked with young people in the youth justice system and has been a cultural and spiritual figurehead for women of all social backgrounds for the past many years.

AUNTY KEELAN MAILMAN AM: A proud Bidjara woman from Western Queensland. She has managed and cared for Mt Tabor station, on her Traditional Lands, for 24 years, and was recognised in 2005 by the Queensland Museum as the first Aboriginal woman to hold such a role in Australia. Aunty Keelen's

leadership in the Aboriginal and wider Australian community has been recognised by numerous awards: 2007 Queensland finalist in the Australian of the Year; 2016 State and National awardee of Bernados Mother of the Year; 2021, awarded the Order of Australia for her commitment and contribution to her community and her culture. 2009 Keelen undertook a Rural Leadership course;

She is an Author: *The Power of Bones* her life story. She has overcome poverty, abuse, casual racism, and was surrounded by alcoholism. She reared her siblings as a teenager. She has three children and raised her sister's five children. Together with Aunty Sheryl Lawton, Aunty Keelen was instrumental in developing the *Bidjara Community and Goorathuntha Traditional Owners, Market Led Proposal for Healing and Rehabilitation Centres, 2017*.

AUNTY SHERYL LAWTON: A proud Bidjara woman. She has been the Chief Executive Officer of Charleville Western Areas Aboriginal Torres Strait Islander Health Services Ltd. (CWAATSICH) for the past 20 years. Previous to her becoming the CEO, Sheryl was employed in many positions of influence within Aboriginal affairs and Aboriginal Community control services, spanning Aboriginal Legal Services, Aboriginal Social Housing, Aboriginal Land Council and Aboriginal Childcare.

Throughout Sheryl's career she has been instrumental in the establishment of the Aboriginal Child Care Agency (ACCA) of South West Queensland and importantly the ongoing development and growth of CWAATSICH. Sheryl has also been an avid representative of Aboriginal Affairs at both the Regional, State and National levels. Together with Aunty Keelen Mailman, Aunty Sheryl was instrumental in developing the *Bidjara Community and Goorathuntha Traditional Owners, Market Led Proposal for Healing and Rehabilitation Centres, 2017*.

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EMERITUS PROFESSOR ROSS HOMEL AO: Is Foundation Professor of Criminology and Criminal Justice at Griffith University in Brisbane, Australia. Professor Homel has published three monographs and six edited books, as well as more than 150 peer-reviewed papers and numerous high impact government reports. He has won many awards for his research on the prevention of crime, violence and injuries and the promotion of positive development and wellbeing for children and young people in socially disadvantaged communities. His accomplishments were recognised in January 2008 when he was appointed an Officer in the General Division of the Order of Australia (AO) 'for service to education, particularly in the field of criminology, through research into the causes of crime, early intervention and prevention methods.'

In May 2008 he was recognized by the Premier of Queensland as a 'Queensland Great', 'for his contribution to Queensland's reputation for research excellence, the development of social policy and justice reform and helping Queensland's disadvantaged communities.' In December 2008 he was shortlisted for 2009 Australia of the Year, in 2009 he received a Distinguished Service Award for Alumni, Macquarie University; in 2010 he received the Sellin-Glueck Award from the American Society of Criminology for criminological scholarship that considers problems of crime and justice as they manifest outside the United States; and (with Dr Kate Freiberg and Dr Sara Branch) won the Norman Smith Publication in Social Work Research Award for the best paper in Australian Social Work in 2014.

He has served as Director of the Key Centre for Ethics, Law, Justice and Governance, he was founder and director of the Griffith Institute for Social and Behavioural Research (now the Griffith Social and Behavioural Research College); he has served as Head of the School of Criminology and Criminal Justice; as a Commissioner of the Queensland Criminal Justice Commission; and in the early 2000s worked with Fiona Stanley and others to establish the Australian Research Alliance for Children and Youth and its associated ARC research network. He is a former Board member and Vice-President of the Council for Humanities, Arts and Social Sciences, and is a Fellow of the Academy of Social Sciences and former member of the Academy executive committee.

DR MARK RALLINGS: Is a founder and co-director of Making Good Alliance. In his varied career he has been a psychologist, small business owner, research assistant, police officer, and Commissioner of Queensland Corrective Services. Mark completed a PhD in psychiatry at the University of Queensland on the effects of occupational trauma on police. He is a Queensland Patron of the Justice Reform Initiative and holds Adjunct Professor appointments at Griffith University, the University of Queensland and Swinburne University of Technology. He was previously on the board of directors of the Australian Community Support Organisation (ACSO) and McCormack Housing.

MR MERVYN LANGFORD: A health professional for over 50 years. Mervyn is Convenor, Bardon Consultative Group of non-First Nations and First Nations people working for social justice. He has worked in an extensive range of health facilities and high security facilities, in Australia and the UK – including four Australian juvenile detention centres as well as multiple adult correctional centres in Australia and the UK. From early childhood he learned that no-one should be shackled by the colour of their skin - the antithesis of Australian judicial practice. He has worked extensively with First Nations people, including on the approach recommended in this submission.

DR WAYNE SANDERSON: Is an experienced Independent Consultant with a demonstrated history of working in the mental health care industry. Skilled in Non-profit Organizations, Government, Facilitation, International Relations, and Philanthropy. Has graduate qualifications from University of Qld; University of Canberra; Monash University and University of California @ Berkeley; AICD (grad).

Wayne is a member, Queensland Management Committee, Australians for Native Title and Reconciliation, February 2013 to present and Independent Consultant (Policy Research and Advocacy), Re-Imagine Associates May 2008 to present. He has undertaken public policy analysis Advocacy with government Leadership in the Youth Justice Reform Campaign. He has worked extensively to support reform for betterment of First Nations people's circumstances.

MR JOHN HOCKEN: A former Director General of the Department of Emergency Services and Office of Sport and Recreation and Chairman of the Board for the Queensland Fire and Rescue Authority, Chairman of the Board of the Queensland Ambulance Service and Board member of the Queensland Academy of Sport and the Lang Park Trust. Now a Director of Knowledge Consulting Pty Ltd and has significant experience in working on developmental projects with First Nations people. A past foundation Board Member of Silver Lining Foundation Australia Ltd, a First Nations educational organization that establishes schools specifically targeting disengaged First Nations young people and reconnects them back to traditional culture and an alternative learning environment.

MR JULIAN FOLEY: Julian has worked in central agencies in the Commonwealth Public Service and in Aboriginal employment in Canberra and Sydney. In 1989 he returned to Queensland to work in the newly-established Aboriginal and Islander Affairs Department and as Director, Office of Disability, he managed the process of reform of the State's institutions for people with intellectual disability. Julian subsequently worked for eight years in the Foundation for Aboriginal and Islander Affairs. In the community sector, his work covered the domestic violence, youth employment and development of case management software. Since retirement in 2020, he has continued to be involved in community issues, including ecosystem restoration, education and social justice for First Nations people.

MR MARCO KORN - Workplace Consulting and Leadership Coaching: Mr Marco Korn BA Hons (Psych), Some 32 years' experience, including working as a senior psychologist in Qld Corrective Services Commission correctional centres and in providing professional services to the Probation and Parole Service.

DR TERRY HUTCHINSON: Appointed an Adjunct Professor within the School of Law and Justice at Southern Cross University in November 2017. Prior to this, she held the position of Associate Professor in Law at Queensland University of Technology. Dr Hutchinson's research revolves around a sound use of the evidence base particularly in relation to children and youth justice, and she recently completed a funded Australian Institute of Criminology project (CRG 19/16-17: Examining Process: Court appearances via video link for young people in detention in Queensland). She is a on the Youth Advocacy Committee Management Committee, the Children's Court Committee and the QLS Children's Committee.

MS PAULINE KENNEDY PSM: Pauline holds a Masters in Social Welfare Administration and Planning (1999). She has held various positions in the Queensland public sector in Communities and Housing as well as positions in the community sector. She has spent her career leading change through community development, undertaking evaluations, research projects, policy reviews, and policy and program development.

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SUMMARY OF RECOMMENDATIONS

Recommendation 1 – Page 23

That a Review Team is established to urgently review the assertions made in this submission relating to a ‘duty of care’ crisis in youth detention centres and in adult prisons; and if this crisis is confirmed, then to advise the Queensland Government on immediate short-term risk mitigation steps to avoid loss of life and infrastructure. This Review Team to be led by an independent, suitably qualified person, supported by independent child and adult rehabilitation experts, health and nutrition professionals, correctional security professionals and include departmental officers.

That the Terms of reference for this review are developed in consultation with the authors of this submission.

Recommendation 2 – Page 24

That the report of this Review Team is provided to the Solicitor General for opinion as to whether Ministers and Directors General and other administrators are at risk of adverse legal consequences by existing circumstances in youth detention centres and in adult prisons due to ‘duty of care’ failures and whether risk mitigations proposed by the Review Team are adequate to obviate adverse legal consequences.

Recommendation 3 – Page 24

That the assertions made in this submission relating to the ongoing waste of public money in the current capital works programs for youth and adult corrections are urgently either self-referred by Queensland Corrections and Youth Justice or by a central agency of government to the Auditor General for investigation. These assertions are founded in the evidence presented in this submission relating to incorrect specification of the objectives for these projects, departments ignoring best practice in crime prevention and offender treatment and ignoring evidence-based reform proposals.

Recommendation 4 - Page 26

That the Queensland Government establish an independent statutory body - The Justice Reform Office - (JRO), to improve the efficiency and effectiveness of the criminal justice system as recommended by the Queensland Productivity Commission in its 2019 Report: Inquiry into Imprisonment and Recidivism; and that the resources of the First Nations Justice Office and the Criminal Justice Innovation Office are rolled up into this JRO. The JRO should have appropriate First Nations representation on its Board, desirably including an eminent First Nations person as Co-chair.

Recommendation 5 – Page 27

That the LTC Joint Coordinating Committee, reporting to the Justice Reform Office, becomes the vehicle to advance trials and the subsequent potential roll out of the reform model proposed in this submission across Queensland.

Recommendation 6 – Page 27

That a Working Party is established to report to the LTC Joint Coordinating Committee and undertake Business Case development for the selected Trial Communities. This Working Party to have Co-leadership by a First Nations person and an independent appropriately qualified person, with representatives from Trial Communities and include departmental officers. The Business Case will encompass: (See paragraph 68)

Recommendation 7 - Page 29

That architecture involving the LTC Joint Coordinating Committee and Working Party to undertake Business Case development in selected Trial Communities to prove the reform program proposed by this submission, is raised with the Federal Minister for Indigenous Australians for consideration for Justice Reinvestment seed funding in partnership with the Queensland Government to advance Justice Reinvestment in Queensland.

Conclusion– Page 30

A representative group of the authors of this submission would greatly appreciate the opportunity to discuss this submission, including recommendations, with relevant Directors General and then, with Queensland Government Ministers and with the Federal Minister for Indigenous Australians and her Officers.

INTRODUCTION

- 1. This submission to Directors General and Ministers details the current crisis in the criminal justice system devastatingly impacting on First Nations people. It recommends an approach to save billions of dollars, make First Nations and disadvantaged communities safer and productive, restore *justice* in application of the criminal law, place Queensland at the forefront in *Closing the Gap* and recommends steps to avoid a *Class Action, Coronial Inquiry or a Royal Commission*.**
2. The *Acknowledgement of Country* on the cover page speaks “of the generations of Elders and all First Nations people whose lives have been marred by the imposition of colonial policies which have helped to embed within the Australian justice system, a punitive spirit that has contributed to inter-generational trauma, over incarceration, subjugation of communities and child removal”. This submission speaks for these generations of First Nations people by drawing attention to:
 - The awful failures in Queensland’s economic, social and justice systems that condemn First Nations people to being *commodities of the criminal justice system*, known as the *Injustice System* to First Nations people;
 - The disregard for First Nations *cultural authority* and their capacity, via *Cultural Agency* to implement reform to solve the destructive economic and social issues destroying their families and communities;
 - The systemic failures where a sensible balance is not achieved between, preventative primary interventions at the family and community level with the need for humane systems to control and where possible, rehabilitate offenders through *joined-up* processes with services to strengthen families and communities. This results in criminalisation of children and adults, tears families and communities apart, causes increased crime and wastes billions of dollars on not fit for purpose, ineffective operations and infrastructure within the criminal justice system;
 - That Queensland, Australian and international *best practice* is not being applied to resolve these systemic failures, even though this *best practice* is and or should be known to decision makers. This raises questions relating to the quality of information flow to Ministers and or to the process of government policy development that results in best practice being ignored;
 - The dreadful ‘*duty of care*’ failures within child and adult prisons that further criminalise children and adults and places lives of imprisoned children and adults and supervising staff at risk;

- The potential legal consequences for Government Ministers, Directors General and senior Operational Managers should these dreadful *'duty of care'* failures result in loss of life causing scrutiny via a Coronial Inquiry and or a Royal Commission into policy, risk management and operational failures that they were and or should have been aware of; and
 - The evidence of ongoing waste of public money in past and current Capital Works programs for youth and adult corrections in construction of **unnecessary and not fit for purpose** infrastructure that should be referred to the Auditor General for investigation.
3. This submission deals with the need for ***recognition that reform of our approach to social breakdown and crime generally is urgently required and particularly for First Nations people***, the need for ***consensus as to what should be done***, the need for ***architecture*** to drive reform and the ***strategic decisions*** required to achieve desired reform.
4. **We respectfully commend this submission to Ministers and Directors General for consideration. This submission is confronting. However, the issues require frank and fearless advice.**

FIRST STEP IN THIS REFORM PROGRAM

To achieve consensus that current policies and practices are not working and that key stakeholders and decision makers have a sense of urgency that things have got to change.

Key Stakeholders

5. For this reform model the Key Stakeholders are:
- First Nations families, communities and their representative organisations who are devastatingly impacted by current policies and practices that are not working, are inhumane, are a gross waste of public funds and they want things to change urgently;
 - Sociologists, criminologists and related professions who have studied and or created best practice, who know that current policies and practices are not best practice, are not working, are inhumane, are a gross waste of public funds and they want things to change urgently;
 - Front line government and non-government officers who work at the *bleeding edge* of broken families and communities and neglected and abused children E.g., Courts, police, adult and youth corrections, child and family services, housing, health, education, not for profit welfare services. They are mainly of the view that current policies and practices are not working, are inhumane, are a gross waste of public funds and they want things to change urgently;
 - QLD and Federal Governments who each year are made well aware of failed outcomes across a range of *Key Indicators* relating to crime, social justice, social and economic outcomes, including government expenditure on ineffective policies and practices and lack of progress towards *Closing the Gap*. These governments know that current policies and practices are not working and they want things to change urgently; and
 - The **wider community** via their personal experience with crime and the **Media** who shape and or reinforce community perceptions by daily reporting of crime, also know that current policies and practices are not working and they want things to change urgently.

Accepting the above evidence, we believe there is consensus that current policies and practices are not working and there is a sense of urgency that things have got to change. – **Sense of urgency is elaborated upon in paragraph 36 through 55.**

SECOND STEP IN THIS REFORM PROGRAM

To achieve consensus among key stakeholders on what we should do.

Consensus does not exist across key stakeholders on what we should do

The various positions can be summarised as follows:

Key Stakeholder: First Nations families, communities and their Representative Organisations

6. A dominant view by First Nations people is that their proposed solutions for a way forward are largely disrespected by governments as demonstrated by non-responsiveness to their well-developed proposals for reform. They feel this is driven by lack of regard for their *cultural authority* and capacity to implement required reform. They say this is founded in *Institutionalised Racism* that denies First Nations people *Cultural Agency* to solve the destructive economic and social issues destroying families and communities. They point to:
 - Policy and system responses to social breakdown and crime that are not holistic, not culturally appropriate, not translated into local place-based action and drive high imprisonment and recidivism rates; and
 - A Justice System that entrenches *injustice* in First Nations communities via inhumanely imprisoning children in non-therapeutic settings resulting in most becoming adult criminals and many taking their own lives when back in the community; adults, most of whom were imprisoned as children, then being imprisoned as adults, once again in non-therapeutic environments, resulting in continuing offending creating many victims and also suicide by many offenders on return to community; families devastated by all of this; communities, through young people being criminalized being deprived of future leaders;
7. The view regularly expressed by wise and thoughtful First Nations Elders is that their people have been turned into a '*commodity by the criminal justice system*'. That is, by continuing to apply policies and practices that entrench economic and social disadvantage and thus criminality in First Nations families and communities, governments and bureaucracy are unthinkingly providing jobs in law enforcement, building and service industries for prisons and the non-First Nations not-for-profit sector doing things *to and for* First Nations people.
8. A former QLD State Government Minister announced the building of a new prison to Parliament by speaking at length about the number of jobs it would create and the benefit for the economy of the region in which it was to be located. Similar employment announcements relating to job creation are made relating to increasing the capacity of Courts, increasing the numbers of police and correctional officers and all of the other disciplines that control and or support criminalised First Nations and non- First Nations people who are mostly socially and economically disadvantaged.

9. It would be wonderful to hear Ministers announcing a genuine commitment to reducing the use of prisons via reform proposals as in this submission and the community-based employment that this would generate, particularly for First Nations people, while creating a safer society and saving billions of dollars of public expenditure.

10. In summary, First Nations people say ‘what we should do’ is: *For governments and bureaucracy to provide them with cultural authority, resources and agency to implement community driven solutions where they own and deliver the services necessary for effective economic, social and justice outcomes, thus largely removing the criminal justice system from their lives, as applies in the wider community. They want this to occur in agreed partnerships with government, bureaucracy and others.*

Key Stakeholder: Sociologists, Criminologists and related professions

11. These people fully understand that current policies and practices are not working and the need for urgency in achieving change. They feel extremely frustrated that international and Australian best practice in crime prevention, *Restorative Justice*, *Justice Re-investment* and including community strengthening initiatives owned and delivered by local communities, is largely ignored by the QLD Government and its agencies. This frustration is compounded by the fact that in QLD and Australia we have internationally acclaimed professionals in this field, including First Nations professionals who can add best practice to a *justice reform program*.

12. They point to the many Australian Commissions of Inquiry with recommendations not implemented, and in particular to the lack of meaningful action in relation to key recommendations of the *Royal Commission into Aboriginal Deaths in Custody* and the *QLD Productivity Commission’s 2019 Report into Imprisonment and Recidivism* and to under performance in relation to *Closing the Gap* desired outcomes. They are on the same page with First Nations people’s concerns relating to the apparent lack of regard for First Nations people’s *cultural authority* and capacity to implement required reform.

13. In summary, Sociologists, Criminologists and related professions say ‘what we should do’ is: *For governments, bureaucracy and independent skilled professionals in justice, criminology and community development to partner with First Nations people to develop and implement Trial Programs to prove this reform program championed by First Nations people – that is, there is consensus between First Nations people and this key stakeholder group.*

Key Stakeholder: Front line government and non-government officers working at the ‘bleeding edge’ in First Nations communities, in police, correctional services, child safety, family services, education, health, etc

14. As stated in paragraph 5 above, these officers are mainly of the view that current policies and practices are not working, are inhumane, are a gross waste of public funds and they want things to change urgently. However, it is fair to say, based on the experience of the authors over many years, that in terms of desired solutions to perceived system failures, views held by these officers are fragmented between those engaged in therapeutic social, health and educational responses and those with responsibility for law enforcement.

15. Those involved in front line law enforcement are largely of the view that strong law enforcement practices and punishment of offenders by incarceration is essential to maintain law and order and

to deter offending. However, within the law enforcement group there is a cohort at the community level, especially in regional communities E.g., police and community corrections officers, where their views tend to be more aligned to those of the therapeutic professionals possibly driven by their own local community relationships. That is, knowledge of offender's families and of their circumstances.

16.Industrial organisations working to advance and protect the rights and conditions of police and correctional officers hold strongly to the position that strong law enforcement practices and punishment of offenders by incarceration is essential to maintain law and order and to deter offending. This is understandable given the very negative perceptions they have of offenders driven by the often traumatic and dangerous circumstances their members face on a daily basis in dealing with such people. What follows is not a criticism, just stating a fact, that industrial organisations also have a vested interest in increasing their membership and reforms that would result in less police and corrections officers are potentially not welcome initiatives for them.

17.Nevertheless, we all wish to live in a safe, law-abiding society and where officers of the law should not go to work in fear of their lives. Therefore, industrial organisations must be closely engaged in the reform program proposed by First Nations people and their partners such that genuine concerns held by these organisations can be respectfully and meaningfully addressed.

18.Officers involved in front line therapeutic social, health and educational responses are largely of the view that it is impossible to punish social dysfunction and crime away and that a variety of joined up responses is required across a continuum of initiatives. Their thinking in relation to 'solutions' is in line with those proffered by First Nations people and sociologists, criminologists and related professions.

19.*In summary, Front Line Workers views as to 'what we should do': are split along daily work experience lines. However, for community trials of this proposed reform initiative, there is strong evidence that community based front line workers would support the operational model outlined later in this submission. However, law and order industrial organisations must be respectfully and closely engaged in development of the proposed initiative.*

Key Stakeholders: Queensland and Federal Governments

20.In QLD individual politicians and Ministers in discussion with proponents of the reform proposal outlined in this presentation, from as far back as 2006 and up to the present day, have evidenced support for the proposal as have Directors General and Commissioners. In 2017 the Market Led Proposals Secretariat, QLD Corrections, QLD Treasury and DATSIP supported Business Case development for trial of an earlier version of the reform program covered in this submission. Funds were set aside in QLD Corrections and DATSIP's budgets for this work.

21. However, a Cabinet Budget Committee submission that had the support of Heads of Departments and Ministers was never progressed to Cabinet Budget Committee. First Nations Traditional Owners who presented the MLP were not afforded the courtesy of an explanation for this.

22.The above outcome has contributed to the now grossly overcrowded youth detention centres and adult prisons, increased crime, unnecessary loss of life, continued unnecessary social and economic

dysfunction in First Nations communities and to the waste of billions of dollars building unnecessary and not-fit for purpose youth detention and prison infrastructure.

23.As noted in paragraph 5 above, governments are well aware of failed outcomes across a range of Key Indicators relating to crime, social justice, social and economic outcomes, including government expenditure on ineffective policies and practices and lack of progress towards *Closing the Gap*. In private discussions there is consensus across the political divide that the system is broken, that *root and branch* reform is required and that the reform proposal in this submission has merit, beginning with trials. However, politicians from all sides of politics in private discussions have advised of being fearful of being ‘wedged’ by being labelled ‘soft on crime’ by their political opponents, by law enforcement industrial organisations and by the media.

Officers who report to the Federal Minister for Indigenous Australians have been briefed on this First Nations reform proposal and have evidenced support. We are hopeful of a meeting with the Federal Minister in the near future.

24.*In summary, governments views as to ‘what we should do’: Are mixed. First Nations people feel disrespected by years of delay in consideration of their proposals and say: “We believe we have not been meaningfully engaged with in relation to government decisions that have entrenched our parlous circumstances. We continue to be appalled at our treatment by criminal justice system and other agencies dealing with our social and economic circumstances. It is beyond our comprehension that our reform model to address our circumstances in meaningful partnership with government has been ignored, even though it has had support from relevant Ministers and Directors General.*

Key Stakeholders: The Wider Community and Media

25.The overwhelming majority of Queenslanders are fair minded and will support initiatives that are well thought through, sensible, safe and cost effective.

26.First Nations and non-First Nations proponents of the *reform partnership* proposed in this submission have spoken at numerous public meetings and in the media to explain the need for reform and the potential benefits. Response has been overwhelmingly positive. In recent times senior members of the Judiciary have commented that they *can’t understand why the Government has not acted to trial the reform*. These community members and the Judiciary are responding in a situation where they have been informed and or are knowledgeable of the underpinning facts that drive the reform model, thus their positive responses to the logic of the model.

27.Some underpinning facts that attract interest from community members in presentations are that the QLD Productivity Commission (QPC) in its 2019 report said the median prison sentence in QLD for adult prisoners is only 3.9 months and 60% of offenders are in prison for non-violent offences¹. Yet thousands of these prisoners are in high security cells (*\$1 million each*) and Queensland Corrective Services (QCS) is building more cells, even though low-cost 24/7 supervised, effective alternatives known to QCS since 2006 can be provided under this reform proposal.

¹ Qld Productivity Report: Inquiry into Imprisonment and Recidivism, August 2019, Overview, Page xvii

28. A First Nations submission to the QLD Parliament's Community and Support Services Committee considering changes proposed by a Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021, recommended the Auditor General investigate this unnecessary expenditure on secure cells. QPC estimates that around \$3 billion is needed for more secure cells by 2025 if policies don't change. This reform proposal can avoid much of this cost and save billions over the next decade. The QPC's report also made a range of recommendations aimed at reducing prisoner numbers.

29. However, there is a narrative that runs counter to the reform model that is largely driven by mainstream print and television media and utilised by opposition political parties to attack governments. *This narrative is that crime is out of control, that punishment of offenders is inadequate and that harsher punishment will deter criminals and reduce crime.*

Nightly commercial television news programs have turned crime into *reality television* by featuring each night, vision from police cameras, interestingly labelled as *exclusively obtained*, showing violent crime incidents, including car chases, in QLD and Australia and also USA footage. This leads to a prevailing community view that Courts are *soft and out of touch* and that governments have ineffective policy and operational settings relating to law and order. In terms of *'what should we do about this'*, the voices given *mega-phones* via the media are those calling for harsher sanctions, that is the flawed position that we *'can punish crime away'*.

30. However, the conclusion promoted by the above narrative that Australian governments have ineffective policy and operational settings relating to law and order is correct. This has placed Courts in the position where the key sanctions they have available are ineffective youth detention centres and prisons. They don't have appropriate, safe, secure sanctions available where offenders, youth and adult, can be rehabilitated via therapeutic programs as part of joined up services that also deal with family and community circumstances that cause crime.

31. Those who offer harsher penalties as the solution to ineffective policies and operational settings have made an illogical and uninformed leap to the wrong solution. Such a solution is not founded in the *'science'* of crime prevention, takes no account of Australian and international best practice in community strengthening and crime prevention, including the outstanding cost-effective outcomes in Northern Europe over many decades, the accepted principles of *Restorative Justice* and *Justice Re-investment* and the highly effective Maranguka Justice Reinvestment Project, Bourke NSW, in contrast to the demonstrably ineffective systems of juvenile and adult corrections in Australia that fail to rehabilitate or strengthen families and communities.

32. We stress however, that our reform model is not proposing that dangerous offenders, many of whom commit heinous crimes, should not be locked in secure prisons for long periods. Some arguably should never be released. As the QPC report² shows, these are the minority of prisoners. Our reform model is aimed at the majority of offenders, young people and adults, where interventions need to be in place to stop their cycle of offending from commencing and or developing to the heinous stage – that is a primary prevention model.

² Qld Productivity Report: Inquiry into Imprisonment and Recidivism, August 2019

33.Proponents of harsher penalties also ignore the unique adverse circumstances impacting on First Nations families and communities that this reform program will address. The anti-reform narrative summarised above has paralysed Australian governments through fear of losing *political capital* should they depart from the current ineffective policies and operations. They have become locked into more of the same *'failed solutions'* that demonstrably cause increased crime, loss of life, shattered families and communities and waste of billions of dollars of public funds each year.

34.*In summary, the wider community and media: is open to supporting considered, well presented arguments for reform of the criminal justice system. This was demonstrated following the 1988 Kennedy Commission of Inquiry into the QLD Prison System. There is evidence that this First Nations reform proposal will be well received by the QLD community. It will require leadership from the QLD and Federal Governments, with support, which will be readily forthcoming, from high profile, highly credible Queenslanders to articulate the reform case and benefits via the media. A strategy for this follows later in this submission. See Paragraph 69*

Summary of Findings relating to the second step in this reform program – Achieving consensus on what we should do.

35.Key Stakeholders where there is **consensus in support** of this First Nations Reform Model:

- First Nations families, communities and their representative organisations;
- Sociologists, criminologists and related professions;
- Front line government and non-government officers;
- Relevant Directors General;
- Some Ministers have expressed private support; and
- Officers who report to the Federal Minister for Indigenous Australians.

Yet to be persuaded:

- The wider community and the media – but evidence exists they can be persuaded by evidence of community safety and economic benefits; and
- The Queensland and Federal Governments – For the Queensland Government, from evidence of private support by Ministers, should they receive *Frank and Fearless* support for the reform proposal from Directors General there is potential for government support. For the Federal Government, from discussions with officers there is indication that the Federal Minister for Indigenous Australians may support the reform proposal.

NEED FOR SENSE OF URGENCY BY KEY DECISION MAKERS THAT THINGS HAVE GOT TO CHANGE

36.In paragraph 5 above we concluded that consensus existed across Key Stakeholders, including *Decision Makers*, that current policies and practices are not working and *there is a sense urgency that things have got to change.*

37.This presentation is intended for the highest-level decision makers, Ministers and Directors General. **Therefore, it is important that it contains *frank and fearless advice* relating to the need for urgency, so there is no misunderstanding as to the need for urgency, due to the awful consequences that could arise due to currently active risks relating to:**

- Prisons and juvenile detention centres being dangerously overcrowded creating a ‘duty of care’ crisis. Design capacity has been **exceeded** placing inmates and staff at physical and mental health risk, **even though safe alternatives were available for implementation**. Current overcrowding means these risks **cannot be mitigated to a standard acceptable under law**. This exposes Senior Administrators and Ministers to potential **severe legal consequences in the event of a catastrophe involving loss of life**. They have been formally advised of this via submissions. Senior administrators should be aware of this risk from their professional experience;
- Rehabilitation programs in these overcrowded, not fit for purpose adult prisons and youth detention centres are either impaired or non-existent and inadequately staffed health services are under significant pressure infringing human rights. **All of this adds to ‘duty of care’ risks and contributes to recidivism and more crime;**
- **Further to ‘duty of care’ risks in Juvenile Detention Centres**, *“First Nations advocates are calling for an urgent investigation into Queensland’s youth detention centres after figures revealed 84% of children placed in solitary confinement over a 12-month period were Indigenous. The statistics, tabled in state parliament this month, showed while Indigenous children account for 62% of Queensland’s youth detention population, they made up 84% of those placed in solitary confinement between July 2021 to June 2022.*

There were more than 25,800 separations involving Indigenous children, with tens of thousands of children across the state held in solitary confinement for up to 12 hours, according to the figures. About 80% of children in detention in Queensland are on remand, meaning they are being held in custody while awaiting trial or sentencing.

Cheryl Axleby, co-chair of the Aboriginal-led coalition of advocacy groups Change the Record, said the “appalling” figures show an investigation is desperately needed. “We know that locking children up in isolation for any amount of time causes them harm,” Axleby said. “To learn that dozens of those children were isolated because they threatened self-harm is extremely disturbing. These children need our help and support, not punishment.”

Maggie Munn, an Indigenous rights campaigner for Amnesty International Australia, called on the state government to ban the “shameful” practice of solitary confinement on children. Munn’s demand comes three decades after the 1991 royal commission into Aboriginal deaths in custody recommended solitary confinement be prohibited when used for punishment or behaviour management”. And in the same article:

“Siyavash Doostkhah, director of Youth Affairs Network of Queensland, said the separation of children during vulnerable periods of their development was “particularly concerning” and would do little to change their behaviour. We’re talking about children that come from neglect and abuse backgrounds. Abusing in this way further in these facilities is just reigniting those traumas ... it becomes a perpetual cycle.” And the departmental response in the same article

“A department spokesperson said young people can be placed in solitary confinement as a response to emergencies or “health, safety and security requirements”, such as contraband searches.

“Separations are an essential option to ensure the safety, security and good order of youth detention centres and ensure the welfare of all, including other young people and staff. Separations are subject to strict approvals, supervision protocols, time limits and record keeping, ensuring they are reasonable and justified and meet legislative requirements.”³

The above statistics are appalling in many ways and point to inhumane treatment with associated ‘*duty of care*’ risks. To those of us who have worked in juvenile detention Centres, have studied best practice in dealing with young people who offend and or who personally know young people in detention in Queensland, **the departmental response above is very concerning**. It is lacking any knowledge of best practice in the treatment, rehabilitation and protection of this cohort of young people.

Should a *worst-case* scenario occur, loss of life of a young person in detention, then the above statement will be forensically examined in any Coronial Inquiry or Royal Commission, in conjunction with evidence from *Expert Witnesses*, that will likely prove devastating for departmental officers;

- Failure by juvenile and adult corrections to have in place effective community owned and driven offender control and rehabilitation initiatives, including 24/7 supervised and or supported diversionary programs for Courts to use in lieu of prisons. **This failure results in unacceptably high imprisonment and recidivism rates, unnecessary crime, including loss of life and waste of public funds on not fit for purpose infrastructure, that is secure cells costing around 1 million dollars each.**

38.It is realistic to opine that should loss of life occur in a Youth Detention Centre or in a prison due to the above existing circumstances, then this will result in either a **Coronial Inquiry or in a worst case a Royal Commission of Inquiry**. There is significant documented evidence before Ministers and Directors General warning of this potential horrific outcome and consequences that would be investigated and ruled upon by such Inquiries. Potential also exists for ***Class Actions*** by prisoners on the basis of inhumane treatment and lack of rehabilitation programs that impacts adversely on their capacity to achieve parole, etc.

39.**Government policy and operational changes should never need to be driven by Coronial Inquiries or Royal Commissions. Particularly when in relation to the current parlous situation there are recommendations from numerous inquiries, First Nations and other proposals that would have averted the current situation, but have not been acted upon.**

40.Given that the above has been reported previously to Directors General and Ministers with no visibility of urgent response, we feel the need once again to stress the **NEED FOR URGENT ACTION**. This action should involve **MITIGATION OF EXISTING RISKS** while **CONCURRENTLY** implementing the steps covered below to trial this First Nations reform model that will **rapidly reduce the number of prison incarcerated children and adults**, while commencing to **STRENGTHEN THE ECONOMIC AND SOCIAL CIRCUMSTANCES OF FIRST NATIONS PEOPLE**.

³ Guardian Newspaper article, Wednesday 28 September 2022

41.In terms of **NEED FOR URGENT ACTION** another critical matter is the current Capital Works programs for youth and adult corrections that are incurring an ongoing waste of public money due to construction of **UNNECESSARY** and **NOT FIT FOR PURPOSE** infrastructure. The QPC 2019 report says the median prison sentence in QLD for adult prisoners is only 3.9 months and 60% of offenders are in prison for non-violent offences⁴.

42.Yet thousands of these short-term and or non-violent prisoners *churn through* high security cells (*\$1 million each*) annually, receiving little or no rehabilitation programs thus contributing to recidivism. And, in spite of this prisoner demographic, QCS is building more of these cells, even though lower-cost 24/7 supervised, alternatives with effective rehabilitation programs could be activated relatively quickly, as demonstrated by the former QLD Corrective Services Commission and as recommended in First Nations proposals below

- In 2006 a 24/7 supervised *Healing and Rehabilitation Centre* approach, in lieu of prisons for defined categories of First Nations offenders, was presented by Keith Hamburger AM and Ms Debbie Kilroy OAM to a *Parliamentary Public Works Committee Inquiry* into the need for a proposed high security prison at Gatton. The proposed model would have diverted large numbers of short term, non-dangerous offenders from prisons to lower cost more effective 24/7 supervised accommodation on *Traditional Lands* and in other places. **This approach would have obviated the need for the proposed Gatton prison.**

This All-Party Committee was favourably impressed by the proposal and recommended that it be subject to a cost-benefit analysis before the Government committed to building of the Gatton prison. **This recommendation was ignored by the then government and building of the first stage of this prison proceeded.**

- In 2017 a Market Led Proposal (MLP) for Healing and Rehabilitation Centres on Traditional Lands from Bidjara and Goorathuntha people, Charleville – Augathella region, that QCS, QLD Treasury and DATSIP supported. **This proposal, when implemented State-wide, would have diverted literally thousands of First Nations offenders direct from Courts to these centres, greatly reducing recidivism and saving billions of dollars in prison infrastructure and operations over the years following 2017.** Even though relevant Director’s General supported this MLP and QCS and DATSIP set aside funds for Business Case development, it did not proceed to Cabinet Budget Committee for approval to proceed.

This MLP was supported by the then Chief Magistrate, the Deputy Chief Magistrate and the Murri Court Magistrate. The Deputy Chief Magistrate had served as the Magistrate at Charleville for 2 years. He commented that had this model been in place then, he could think of only 2 offenders over the 2 years that he would have sent to prison. All the others would have been diverted from Court to the Healing and Rehabilitation Centre, saving not only infrastructure costs but significant operational costs of transporting prisoners, reception and processing and supervision costs in prisons. Also, recidivism rates would have been reduced.

⁴ Qld Productivity Report: Inquiry into Imprisonment and Recidivism, August 2019, Overview, Page xvii

- A submission from Keith Hamburger AM to the QPC Inquiry into Imprisonment and Recidivism 2019 recommending the Bidjara and Goorathuntha Market Led Proposal (MLP), together with other initiatives, should be implemented to limit the use of high security cells to dangerous and long-term adult prisoners. Others adult offenders to be accommodated in a variety of other appropriately supervised options that would reduce recidivism and crime and make our community safer. **The QPC Report of its Inquiry supported a trial of this approach, yet this support was not acted upon by government;**
- A 2021 submission to the Community Support and Services Parliamentary Committee concerning The Criminal Law (Raising the Age of Criminal Responsibility) Amendment Bill by COOEE Indigenous Family and Community Education Centre et al, that recommended significant reform to sentencing and rehabilitation of juvenile and adult First Nations offenders. This reform would greatly reduce the use of secure cells through use of 24/7 supervised community-based options, joined up with family and community strengthening initiatives. **The recommendations in this submission have not been acted upon by government.**

The reforms for sentencing of adult offenders were those proposed in the MLP above. For Juvenile offenders, **the reforms would see phasing out of the not fit for purpose, inhumane Juvenile Detention Centres, replaced by:**

- **Secure 24/7 supervised Reception and Assessment Centres** – Children apprehended for offending or who are at risk, placed here for professional holistic assessment and a Treatment Plan for Court Consideration. **These would be small facilities operated by Child Safety Department, with First Nations support staff;**
- **Secure 24/7 supervised Therapeutic professionally staffed Treatment Facilities** - Where Courts place problematic children requiring intensive specialised treatment – maximum number of beds 6; **Owned and operated by First Nations Public Benefit Corporations (PBC's), under long term contracts with government;**
- **Kinship Caring System** – where selected First Nations people, receive training and accreditation and are paid for their services and they provide accommodation and care for children placed with them directly by the Courts. 24/7 on call professional support to be available to Kinship Carers; **System functions under the auspice of first Nations PBC's, under long term contracts with government;**

The above architecture would see:

- Courts receiving regular feedback on each child's progress and able to adjust the **Control Order** on the basis of the child's progress or regression. No child will be dealt with under criminal law;
- Supervised Assessment Centres and Therapeutic Treatment Facilities located across the State in appropriate locations, conducive to child and family therapy needs. Infrastructure and operations will be provided by First Nations' PBC's **under long term contracts with government;**

- All therapeutic programs to these facilities auspiced by First Nations PBC's and delivered holistically involving family members where appropriate;
- This model, with adjustments can be adapted for non-First Nations children;

This model will allow Juvenile Detention Centres to be phased out potentially within 3 years. Financial savings will be large as well as greatly reduced crime. Concerning community safety, we can confidently assert that under the proposed reform model the current high incidence of vehicle theft crime by juveniles resulting in loss of life will largely be eliminated. This will be due to most of these young offenders having been diverted into the above closely controlled therapeutic options when they were at the risk of offending stage or early in their offending history, thus incapacitating them from committing these crimes.

Bail to their usual social and family circumstances under this model will be rarely used by Courts because of the appropriately supervised therapeutic options that will be available. Thus, breach of bail will largely become a non-issue.

The other critically important feature of the above model is that it is largely driven owned and operated by First Nations Public Benefit Corporations, where they have cultural authority and agency via a Justice Reinvestment approach to create employment and enterprise to improve the social and economic well being of their communities.

Note:

The above submissions were founded in the successful work by the QLD Corrective Services Commission in the 1990's, in implementing recommendations of the Kennedy Commission of Inquiry into the then QLD Prison Service. This work resulted in closure of the Woodford Prison and a significant reduction in recidivism. This was due to a range of diversionary initiatives including First Nations Out Stations, the Western Outreach Camp Scheme, 24/7 supervised community hostels in urban areas, significant involvement by First Nations people in delivery of cultural programs and a strong focus on 'phased supported release' from Correctional Centres. QCS would be aware of this corporate history.

43.QCS is also aware that the 2019 QPC Report of its Inquiry into Imprisonment and Recidivism estimated that in order of **\$3 billion is needed for more secure cells by 2025 if policies don't change. Yet had the proposed policy and operational changes recommended in the above submissions been enacted we would be needing less prison cells not more. The First Nations reform model summarised in this submission again raises these policy and operational changes for consideration that demonstrably will save billions of dollars over the next decade, reduce crime and make our community safer.**

44.We are advised that construction of a 1,500-bed high security prison is well advanced in South East Queensland. In the light of the evidence cited above and below in this submission, it is beyond comprehension that such a project, costing over a billion dollars, would be embarked upon.

45.Evidence from literature and best practice is that large prisons are a *failed concept* in achieving effectiveness of rehabilitation and therefore community safety. This is borne out in Queensland by high recidivism rates. Their operational practices cause inhumane treatment of prisoners. They are culturally inappropriate for First Nations people. Their location and functioning causes extreme stress to prisoners and their families in relation to family contact. They compromise development of rehabilitation pathways to community and joined up family and community strengthening initiatives. They cannot provide a holistic response to offender and family circumstances that result in offending behaviour. Staff safety is compromised. They are much less cost effective compared to well-known alternatives that keep the community safer.

46.The question has to be asked how did a project of more than a billion dollars pass the feasibility *'gateway review'* that tests the appropriateness of objectives for a construction project of this scale? That is, do the objectives address the issues that cause the problems the expenditure is aimed at solving or, as appears to have happened in this case, were they incorrectly specified to address symptoms and not causes?

47.By any test, over a billion-dollar expenditure on a 1,500-bed high security prison is treating an objective to accommodate more prisoners, that is the symptom of entrenched economic and social disadvantage, compounded by inter-generational trauma. Had objectives been correctly set to address the causes of and how to treat criminality, then solutions would have been implemented for much less cost than this prison where we would have many less prisoners, less crime, lives would be saved, as well as a significant reduction in expenditure across the criminal justice system.

48.Correctly specified objectives point to appropriate policy decisions relating to infrastructure and operational models to achieve objectives founded in best practice standards, as defined in the literature and as evidenced by Australian and international best practice.

49.Why didn't the feasibility *'gateway review'* consider the alternative more effective options outlined above that clearly demonstrate that a 1,500-cell high security prison was not the solution to the cause of the problem and recommend against this expenditure and for investment of less funds into known alternatives for far more cost-effective outcomes?

And, in the light of the evidence in this submission, why did QCS propose and recommend to government the construction of this prison?

50.Concerning Juvenile offenders, as covered in paragraph 42 above, the First Nations COOEE Indigenous Family and Community Education Centre et al submission to a Parliamentary Inquiry in 2021 recommended alternative infrastructure, control and therapeutic treatment models for juvenile offenders that will make the existing inhumane, ineffective and not fit for purpose youth detention infrastructure obsolete, with the benefits of reduced crime, a safer community and millions of dollars of savings. These recommendations have not been enacted.

51.Very sadly, in the light of the above, we are aware of a letter of 13 September 2022 from the Department of Children, Youth Justice and Multicultural Affairs that inter-alia says: *"Our three*

youth detention centres are operating at capacity and more infrastructure will be needed into the future as our population grows and existing infrastructure ages. In order to better understand and plan for this need, the 2021–22 State Budget allocated \$5.7 million for a business case on long-term additional detention centre capacity. Future infrastructure planning will include consultation with key stakeholders, including community sector organisations, at an appropriate time in the process”.

52. We assert that. On the evidence provided in this submission, that \$5.7 million of public money will be wasted on a business case for a pre-determined inappropriate and ineffective outcome – *additional detention centre capacity* - that will continue to entrench inhumane treatment of children, turning them into adult criminals and further traumatising families and communities. Once again, spending public funds to treat a *‘symptom not the cause’*, showing incapacity to correctly define objectives for major infrastructure projects, while ignoring best practice, including the available cost-effective alternative options under this First Nations reform proposal.

53. The above First Nations submission to the *QLD Parliamentary Inquiry into raising the minimum age of criminal responsibility* recommended that the above assertions relating to waste of public money on unnecessary and not fit for purpose infrastructure in adult and youth detention should be referred to the Auditor General for investigation. There is no evidence this has occurred.

54. Should circumstances arise where a Coronial Inquiry or a Royal Commission is deemed necessary, the mechanism for such inquiries would be put in place within a very short time frame. We respectfully suggest that in the circumstances summarised above where *‘duty of care’* failures exist putting lives of staff and inmates are at risk, where lives are being lost in the community and where billions of dollars of public money are being wasted in construction of unnecessary and not fit for purpose infrastructure, action is required within a very short time by decision makers to implement initiatives to avert the need for a Coronial Inquiry or a Royal Commission of Inquiry.

55. However, we are of the view that one Inquiry that cannot be averted is the need for an Auditor General’s investigation into the above evidence that points to a large-scale continuing waste of public funds. Should this evidence be verified, then people need to be held to account for this and systems need to change.

The following recommendations provide a plan for immediate action.

RECOMMENDATIONS FOR IMMEDIATE ATTENTION BY RELEVANT QUEENSLAND GOVERNMENT AGENCIES DUE TO SERIOUS ‘DUTY OF CARE’ RISKS IN YOUTH AND ADULT PRISONS AND CONTINUING WASTE OF PUBLIC MONEY ON NOT FIT FOR PURPOSE AND INEFFECTIVE INFRASTRUCTURE

Recommendation 1

That a Review Team is established to urgently review the assertions made in this submission relating to a ‘duty of care’ crisis in youth detention centres and in adult prisons; and if this crisis is confirmed,

then to advise the Queensland Government on immediate short-term risk mitigation steps to avoid loss of life and infrastructure. This Review Team to be led by an independent, suitably qualified person, supported by independent child and adult rehabilitation experts, health and nutrition professionals, correctional security professionals and include departmental officers.

That the Terms of reference for this review are developed in consultation with the authors of this submission.

Recommendation 2

That the report of this Review Team is provided to the Solicitor General for opinion as to whether Ministers and Directors General and other administrators are at risk of adverse legal consequences by existing circumstances in youth detention centres and in adult prisons due to ‘duty of care’ failures and whether risk mitigations proposed by the Review Team are adequate to obviate adverse legal consequences.

Recommendation 3

That the assertions made in this submission relating to the ongoing waste of public money in the current capital works programs for youth and adult corrections are urgently either self-referred by Queensland Corrections and Youth Justice or by a central agency of government to the Auditor General for investigation. These assertions are founded in the evidence presented in this submission relating to incorrect specification of the objectives for these projects, departments ignoring best practice in crime prevention and offender treatment and ignoring evidence-based reform proposals.

A WAY FORWARD FOR CONSIDERATION BY QUEENSLAND AND FEDERAL GOVERNMENTS

Public Sector Architecture to drive reform of the Criminal Justice System in Queensland

56. The Qld Productivity Report (QPC) report of its *Inquiry into Imprisonment and Recidivism, August 2019* recommended establishment of a Justice Reform Office (JRO). Following are extracts from the QPC report:

“Recommendation 2: The Queensland Government should establish an independent statutory body (the Justice Reform Office) to improve the efficiency and effectiveness of the criminal justice system. Its key responsibilities should be to:

- approve policy and budget submissions from the core criminal justice sector agencies prior to submission to Cabinet and Cabinet committees*
- oversee justice system reforms*
- provide advice to government on priority criminal justice policy issues*
- lead and support evidence-based policy-making. The office should be responsible to a board that includes representation from each of the core criminal justice agencies and independent members. The independent members on the board should have a voting majority⁵ and*

“Its statutory independence from government will give it greater freedom to explore options while using its relationships with the justice agencies and the community to facilitate the delivery of reform. As it will work with and across the sector, it is less likely than an oversight body that is more distant from the sector to suffer a lack of information and understanding. A risk is that it would

⁵ Qld Productivity Report: Inquiry into Imprisonment and Recidivism, August 2019, Overview, Page xivi

have insufficient authority to drive reform in the other criminal justice agencies. However, this risk can be managed by establishing the office's functions (including to review and endorse policy and budget proposals) in legislation. The Justice Reform Office's authority can also be strengthened through:

- a strong mandate from government to pursue a reform agenda
- an independent governance structure, with representation from senior executives from the key criminal justice agencies and the community
- the responsible minister being the Premier or other senior minister⁶. and

“It is proposed that the Justice Reform Office will also perform a range of other functions. These include:

- *undertaking assessments of policy proposals*
- *establishing common performance frameworks across the criminal justice system and working with government to develop ministerial statements of intent for criminal justice agencies (Chapter 17)*
- *establishing funding arrangements to support justice reinvestments (Chapter 10)*
- *working with corrections to establish a plan for the development of future correctional infrastructure (Chapter 20)*
- *negotiating justice agreements with Indigenous communities (Chapter 22)”⁷*

57. The QPC recommended JRO was a well-researched recommendation for a powerful independent statutory authority with a mandate to drive essential reform across the criminal justice sector, which would also have impacted other key government agencies. This recommendation was not implemented by the QLD Government. As far as we are aware, there has been no disclosure by government as to the reasons for this critically important recommendation not being adopted.

58. Had it been adopted, it is highly probable that the reform model proposed in this submission would have been in place by now, given the QPC evidenced support for a trial of this First Nations reform model in its report and its proposed charter for the JRO included **“lead and support evidence-based policy-making”**. This First Nations reform model, as covered in the detailed proposals mentioned in paragraph 42 above is **‘evidence based’**.

59. **In the absence of a JRO we have seen ongoing unaddressed failures in dealing with the primary causes of crime, lives have been lost, the failed approaches to juvenile and adult rehabilitation have continued, the ongoing huge waste of public funds on not fit for purpose infrastructure in juvenile and adult corrections, the ongoing inhumane treatment of offenders in overcrowded facilities and lack of safe, secure, therapeutic and cost effective alternatives to secure prisons for Courts to use as sentencing options.**

60. All of this reflects lack of **‘evidence-based policy making’**. This failure was what the JRO was designed to prevent through its charter of **“lead and support evidence-based policy-making”**.

61. We have received information that the government is proceeding with the establishment of a *First Nations Justice Office* and a *Criminal Justice Innovation office*. It seems that some of the functions

⁶ Qld Productivity Report: Inquiry into Imprisonment and Recidivism, August 2019, Overview, Page 116

⁷ Qld Productivity Report: Inquiry into Imprisonment and Recidivism, August 2019, Overview, Page 119

of these two Offices would have been carried out by the Justice Reform Office. However, these two offices are not independent and are buried in the bureaucracy at a level where their capacity to drive needed reform across powerful agencies will be extremely minimal.

62. The establishment of these Offices ignores the advice of the QPC above that a benefit of the Justice Reform Office is, ***“Its statutory independence from government will give it greater freedom to explore options while using its relationships with the justice agencies and the community to facilitate the delivery of reform”.***

63. **It is the strong view of the authors of this submission, founded in our professional experience and in the evidence based QPC Report, that a *Justice Reform Office* is the missing piece of architecture that is essential to achieve effective reform and operation of the criminal justice system in Queensland, in conjunction with government agencies with responsibility for social well-being and economic development in First Nations and other disadvantaged communities.**

64. In submitting the recommendations below we are hopeful that after considering the above evidence, the Queensland Government will reconsider its position and act to create a Justice Reform Office with appropriate First Nations representation on its Board.

Recommendation 4

That the Queensland Government establish an independent statutory body - The Justice Reform Office - (JRO), to improve the efficiency and effectiveness of the criminal justice system as recommended by the Queensland Productivity Commission in its 2019 Report: Inquiry into Imprisonment and Recidivism; and that the resources of the First Nations Justice Office and the Criminal Justice Innovation Office are rolled up into this JRO. The JRO should have appropriate First Nations representation on its Board, desirably including an eminent First Nations person as Co-chair.

65. The next piece of architecture, that is essential to restoring cultural authority and agency to First Nations people to drive reform of their parlous circumstances, is already in place in Queensland. That is, the Queensland Government’s *Local Thriving Communities* (LTC) model.

66. DATSIP’s web site provides the following information:

“LTC is a significant long-term reform that will embed change, resulting in a visibly different way of working alongside communities across the state to improve outcomes for Aboriginal and Torres Strait Islander Queenslanders. This approach is based on mutual respect and high expectations relationships, applying a collaborative approach to give Aboriginal and Torres Strait Islander communities a greater voice in shaping their future.

Independent decision-making bodies will begin providing a representative voice for engaging with Queensland Government to:

- *make decisions about their own future*
- *build on their strengths as a community*
- *invest in the things that will make communities stronger, that will make a difference to people’s lives*
- *create thriving communities.*

Community knowledge, research and evidence and lessons learnt over time will inform LTC, with the principles of self-determination, participation, equality and culture underpinning the initiative.

LTC will not replace existing decision-making structures”; and

“LTC is one element of Queensland’s Tracks to Treaty: Reframing the relationship with Aboriginal and Torres Strait Islander Queenslanders initiative. Another element is Path to Treaty;” and

“How the reform will be designed. *The LTC is a new way of working for both the Queensland Government and remote and discrete communities. We will apply best practice for this reform by working with Aboriginal and Torres Strait Islander communities to co-design and implement the reform and establish local decision-making bodies, through engagement with government and key stakeholders.*

This means we will seek advice and guidance from each community about how the decision-making bodies should work for their unique needs, and what needs to happen to establish them.

LTC supports Aboriginal and Torres Strait Islander Queenslanders to shape their own futures for their community.

The Joint Coordinating Committee. *The LTC reform is overseen by a [Joint Coordinating Committee](#) that meets between four and six times a year to provide advice and guidance on design and implementation”.*

67. The authors of this submission believe that to advance the First Nations reform model, as covered in the detailed proposals briefly summarised in paragraph 42 above, is to commence with Trials of the reform in selected communities, perhaps commencing with two (2) trials concurrently, expanding to a further three (3) communities once the first two Trials are in place. Success with the trials will see the concept rolled out across Queensland reaping the benefits of reduced crime and government expenditure as outlined previously in this submission.

68. The authors envisage that the *LTC Joint Coordinating Committee*, reporting to a JRO, and supported by a *Working Party*, could provide the vehicle to advance trials and the subsequent potential roll out of the reform model proposed in this submission across Queensland.

Recommendation 5

That the LTC Joint Coordinating Committee, reporting to the Justice Reform Office, becomes the vehicle to advance trials and the subsequent potential roll out of the reform model proposed in this submission across Queensland.

Recommendation 6

That a Working Party is established to report to the LTC Joint Coordinating Committee and undertake Business Case development for the selected Trial Communities. This Working Party to have Co-leadership by a First Nations person and an independent appropriately qualified person, with representatives from Trial Communities and include departmental officers. The Business Case will encompass:

- Provision of Youth and adult justice services and community and family support initiatives and programs;
- Required infrastructure, equipment, staffing and operational models for proposed initiatives;
- Costs and benefits of operations;
- Capacity building needs in the ‘trial communities’;

- How support services will be provided, E.g., health, education, rehabilitation programs, food and clothing services, emergency response, visitations, legal services, transportation needs, etc;
- Exploration of options for non-government funding streams to implement the *'trials'* and also for ultimate State-wide expansion of the initiative. Some funding options are, from industry, ILUA's, philanthropic organisations and commercial opportunities in the communities;
- Contractual arrangements required between the *'trial communities'*, the *LTC Joint Coordinating Committee* and government for service delivery including open book costing on *Fee for Service* that includes an agreed surplus for re-investment into the community and the term of contracts, desirably long term E.g., 3 years X 3years X 3 years, or longer subject to performance reviews;
- Specification of Key Performance Indicators (KPI's) for all aspects of service delivery;
- Governance arrangements for all contracts and governance and reporting arrangements between the *'trial communities'* and the *LTC Joint Coordinating Committee* and the Queensland and Federal Governments;
- Reporting requirements to State and Federal Governments;
- **An Indicative plan for potentially billions of dollars of savings over the next decade through progress of the initiative State-wide; and**
- **A plan for the initiatives in the *'trial communities'* into which operational surpluses will be invested to support creation of a resilient, healthy, safe and productive community.**

69. The objectives for the JRO and *LTC Joint Coordinating Committee* in relation to the reform program are suggested to be:

- To significantly reduce First Nations people's contact with the Criminal Justice System and their over-representation in youth detention centres and in adult prisons, driven by *Justice Reinvestment Initiatives*, where First Nations people have resources, agency and cultural authority to create resilient, healthy, safe and productive communities. This objective to be pursued in parallel with the national program of *Treaty – Voice and Truth Telling*;
- To articulate to the Queensland community via media and other channels, the need for reform of the way social breakdown and crime is dealt with and the benefits that will accrue from a new approach, as well as the need for First Nations people to have agency and resources to apply their cultural authority to create resilient, healthy, safe and productive communities; and
- To oversee the co-design process, to be developed by the proposed *Working Party* in conjunction with the *LTC Joint Coordinating Committee* and selected Trial Communities, for the First Nations community driven holistic reform model recommended via First Nations submissions. This co-design process to include communication with Peak Bodies representing non-government service delivery agencies, as well as *front line* non-government agencies, academic institutions, relevant legal services and other key stakeholders that may be identified, concerning the co-design process.

NOTE: The conceptual model advanced by this submission can be expanded, with adaptations, to non-First Nations lower socio-economic communities to strengthen those communities and reduce crime.

70. The above approach addresses the concerns of First Nations people around loss of cultural authority, lack of agency and the stifling of community driven solutions. It provides a vehicle whereby Intellectual Property (IP), resources and governance are provided to local First Nations community entities to implement community owned and driven solutions for effective economic,

social and justice outcomes. These entities will become largely self-sustaining due to the *Justice Reinvestment* model proposed.

Recommendation 7

That architecture involving the LTC Joint Coordinating Committee and Working Party to undertake Business Case development in selected Trial Communities to prove the reform program proposed by this submission, is raised with the Federal Minister for Indigenous Australians for consideration for Justice Reinvestment seed funding in partnership with the Queensland Government to advance Justice Reinvestment in Queensland.

THE VALUE OF THIS REFORM PROPOSAL TO THE QLD AND FEDERAL GOVERNMENTS TO STRENGTHEN FIRST NATIONS COMMUNITIES, REDUCE CRIME AND GOVERNMENT EXPENDITURE

71.

The value to DATSIP – Leveraging the Qld Government expenditure on the Thriving Communities program to secure the State’s full share of the new Federal funding over three years for Justice Reinvestment.

The value to other Qld Government agencies – similar approaches to Federal counterparts in Education, Employment, Health, etc. for concomitant funding.

The value to the First Nation community – the prospect of cultural authority to implement a professionalised system of community based Restorative Justice and Justice Reinvestment initiatives to reduce the level of incarceration of community members.

The value to the wider community – a well-structured, properly funded program for crime prevention, especially in the contentious area of juvenile crime, resulting in a safer community and meaningful progress towards ‘closing the gap’.

The value to Queensland Courts – having 24/7 supervised effective therapeutic and rehabilitative sentencing options available for the majority of juvenile and adult offenders, rather than costly and counterproductive prisons.

The value to the Queensland Government:

- A whole-of-government response to issues of concern to the Qld community, (and in particular, First Nations people) that are set out in various reports (most recently, the Women’s Taskforce Reports), with secured Federal funding to augment existing departmental programs; and
- Billions of dollars of savings over the next decade in infrastructure and operations by eliminating inefficiencies in juvenile and adult corrections systems and also through enhanced rehabilitation outcomes that reduce recidivism and crime.

The value to the Federal Government:

- Demonstration of a unique Justice Reinvestment initiative that works in concert with and complements the Government’s work with *TREATY - VOICE AND TRUTH TELLING*; and
- Reduces Federal Government outlays in social service payments and for other community support initiatives due to First Nations commercial enterprises creating jobs and more resilient, self-sufficient communities.

CONCLUSION

72. A representative group of the authors of this submission would greatly appreciate the opportunity to discuss this submission, including recommendations, with relevant Directors General and then with Queensland Government Ministers and with the Federal Minister for Indigenous Australians and her Officers.

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