



Queensland Advocacy Incorporated

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

Systems and Legal Advocacy for vulnerable people with Disability

18 April 2019

Dear Sir/Madam

Re: The Queensland Productivity Commission: Inquiry on Imprisonment and Recidivism

QAI is happy to make a submission on the Draft Report.

Yours sincerely,

Michelle O'Flynn, Director

Ph (07) 3844 4200 or 1300 130 582 Fax (07) 3844 4220 Email qai@qai.org.au Web www.qai.org.au

2nd Floor, South Central, 43 Peel Street, STH BRISBANE QLD 4101

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

Patron: His Excellency The Honorable Paul de Jersey AC

About QAI

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

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

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

Recommendations

- Recommend in the QPC Final Report: Imprisonment and Recidivism that we need Queensland research into effective supports for people with disabilities while they are in prison, and transitioning from prison, and on the effects that such supports have on recidivism.
- Amend the Department of Justice and Attorney-General's Disability Service Plan 2017-20 to include specific goals for NDIS engagement in relation to suspects, defendants and offenders who have cognitive impairment
- Amend the Queensland Corrective Services (QCS) Strategic Plan 2018-2022 to include:
 - Support, including financial support, for in-prison NDIS assessments
 - Prisoner NDIS Access Requests and pre-planning

Acronyms and Abbreviations

QCS – Queensland Corrective Services

NDIS – National Disability Insurance Scheme

QPC – Queensland Productivity Commission

NDIA – National Disability Insurance Agency

Draft Report - Queensland Productivity Commission, 2019. *Draft Report: Inquiry into Imprisonment and Recidivism*

Final Report - QPC Final Report: Imprisonment and Recidivism

Prisoners and the NDIS

The glaring omission from the QPC Draft Report is that it overlooks the potential for NDIS-funded supports in prison and in transition to reduce the likelihood that people will return to prison. The Draft Report does not canvass, let alone make recommendations about getting NDIS supports into prisons, yet we know that:

- 10 – 30% of prisoners have intellectual impairments¹
- recidivism of prisoners who have intellectual disability is about twice that of prisoners without intellectual disabilities²
- the *Principles to Determine The Responsibilities of the NDIS and Other Service Systems*³ state that **supports for people subject to custodial sentences** or other custodial orders (including people on remand) include:
 - aids and equipment;
 - allied health and other therapy directly related to a person’s disability, including for people with disability who have complex challenging behaviours;
 - disability specific capacity and skills building supports which relate to a person’s ability to live in the community post-release;
 - supports to enable people to successfully re-enter the community; and
 - training for staff in custodial settings where this relates to an individual participant’s needs.

Numerous government inquiries have highlighted the lack of therapeutic, disability-specific supports to this group, and the inevitable costs to them, their families and communities. The 2016 Senate report on indefinite detention, for example, expressed concern for, “the lack of therapeutic support in this environment [which] unnecessarily exposes them (prisoners with disabilities) to physical risk and to isolation—both within the prison and from the community”.

NDIS-funded disability supports beyond reasonable adjustment required by the *Disability Discrimination Act 1992* (Cth) must be provided to Queensland prisoners, yet the Draft Report does not look at this, and in particular, it does not look at the presumptive causal link between prisoners with disabilities, the absence of in-prison behaviour support, offending behavior and the likelihood of a return to prison.

We say ‘presumptive’ because this is new territory. To our knowledge, no one has conducted thorough, well-designed research that supports the contention that behaviour support and other kinds of interventions with prisoners who have disabilities will reduce recidivism, let alone behaviour support funded by the NDIS. There may be no hard evidence, but only because those or any other kinds of intervention have not yet been tested or even tried in Australian

¹ See QAI. 2018. Submission to QPC Inquiry into Prisoners and Recidivism in Queensland.

² Ibid.

³ <https://www.coag.gov.au/sites/default/files/communique/NDIS-Principles-to-Determine-Responsibilities-NDIS-and-Other-Service.pdf>

prisons. Sofronoff, for example, found that 'no evaluations of the effectiveness of QCS programs, with the exception of the 2010 evaluation of sexual offending programs and a 2010 review of Indigenous treatment, have been published'.⁴

The importance of behaviour supports to prisoners with disabilities *in prison* and exiting prison was hardly on the QCS radar until the Queensland Audit Office looked at the issue. In 2017, the Queensland Audit Office report on the National Disability Insurance Scheme⁵ reviewed 12 parole reports prepared by QCS officers about disabled prisoners (including those identified with a possible cognitive impairment) who were eligible for parole since 1 July 2016.

The report found that none of the parole reports noted prisoners' disability needs as part of their community support/re-entry requirements to manage risk of re-offending, even though one report identified that the prisoner's disability was linked to their offending behaviour. None of the 12 reports specifically addressed NDIS eligibility for prisoners where they were intending to be released into regional areas that had already transitioned to the NDIS.

We need to find out what sorts of interventions and supports will work in prisons, and then we need to develop standardized, evidence-based programs to reduce recidivism. We already know that evidence-based programming that targets criminogenic needs of general prison populations, such as courses in cognitive behavioral therapy, reduces the risks of recidivism. In the US:

research⁶ shows that inmates who participate in correctional education programs have lower odds of returning to prison than those who do not, and that every dollar spent on prison education saves four to five dollars on the costs of re-incarceration.⁷

In the UK, 20-30% of offenders have learning difficulties or learning disabilities are at risk of re-offending because of unidentified needs and consequent lack of support and services, but, according to Louks, they're unlikely to benefit from conventional programs designed to address offending behaviour.⁸

QAI and AFDO Prison Project

As the National Disability Insurance Scheme (NDIS) moves to full rollout, the NDIA is developing a Complex Care Participant Pathway. Integral to that pathway must be an effective model of support that will reduce the costs of fragmented or non-existent specialist and mainstream services for detainees. Consequently, QAI has co-designed a prison support project plan with

⁴ Sofronoff, 2016. *Queensland Parole System Review. Final Report, November 2016.*

⁵ Queensland Audit Office. 2017. *The National Disability Insurance Scheme - Report 14* page 55.

⁶ See for example Edward J. Latessa Ph.D. Christopher Lowenkamp Ph.D. 2006. 'What Works in Reducing Recidivism?' *University of St Thomas Law Journal*. Vol 3: 3: 520-535.

⁷ Deputy Attorney General Sally Q. Yates Delivers Remarks at Harvard Law School on Sentencing and Prison Reform Cambridge, MA ~ Monday, January 9, 2017 - <https://www.justice.gov/opa/speech/deputy-attorney-general-sally-q-yates-delivers-remarks-harvard-law-school-sentencing-and>

⁸ Dr Nancy Loucks. 2006. NO ONE KNOWS: offenders with learning difficulties and learning disabilities. The prevalence and associated needs of offenders with learning difficulties and learning disabilities.

the Australian Federation of Disability Organizations. The plan aims to get NDIS-funded supports to Queensland prisoners with disabilities while they are in custody.

For people in a custodial setting (including remand), NDIS-funded supports are limited to aids and equipment; allied health and other therapy; capacity and skills building supports for living in the community after release; transition supports, and training for staff. Like other potential NDIS participants, the challenge for those who live in secure facilities is to establish their eligibility and design a support plan, but with the enormous additional challenge to implement it while living in a secure facility that is risk averse and unaccustomed to allowing access. The 'Prisons Project' will establish, map and model the 'way in' for some of the NDIS's most isolated participants. QAI and AFDO have already approached QCS about this project, and we are happy to keep the QPD updated on further developments.

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