13 January 2022

The Honourable John Robertson

Queensland Sentencing Advisory Council

GPO Box 2360

Brisbane QLD 4001

Dear Mr Robertson

Thank you for the opportunity to provide a submission to the current review of the serious violent offences scheme in the *Penalties and Sentences Act 1992* (Qld). The Queensland Network of Alcohol and other Drugs (QNADA) submission is attached.

QNADA represents a dynamic and broad-reaching specialist network within the non-government alcohol and other drug (NGO AOD) sector across Queensland. We have 58 member organisations, representing the majority of specialist NGO AOD providers. This submission is made following consultation with QNADA members.

QNADA is pleased to provide further information, or discuss any aspect of this submission. Please don't hesitate to contact me [redacted]

Yours sincerely

[redacted]

Rebecca Lang

CEO

Submission to the serious violent offences (SVO) scheme review

January 2022

This submission has been prepared by the Queensland Network of Alcohol and Other Drug Agencies (QNADA). Its' content is informed by consultation with QNADA member organisations providing treatment and harm reduction services across Queensland, as well as a review of relevant research and reports.

It predominantly responds to questions of most relevance to the work of QNADA and its members outlined within the Queensland Sentencing Advisory Council (QSAC) Issues Paper, *The '80 per cent rule': The serious violent offences scheme in the Penalties and Sentences Act 1992* (2021) (Attachment A).

At the outset it is important to note that there is no direct causal relationship between alcohol and other drug (AOD) use and violence perpetration. This relationship is complex, and while most people in contact with the criminal justice system may use AOD in some form, contact is not always related to their substance use. With respect to offending behaviour, contact may be for AOD related offences (such as drug possession or supply), or other offences where AOD use is a presenting or underlying issue. This pattern is similarly represented in the broad scope of cases outlined in QSAC's *Analysis of sentencing and parole outcomes* (2021), which includes a discussion on sentencing decisions for drug offences where a serious violent offence (SVO) declaration was made, as well as others in which drug use was discussed by the sentencing judge or appeals court as a contributing factor to the offending.

Data outlined in the QSAC Background Paper, *Analysis of sentencing and parole outcomes* (2021) and *Sentencing Spotlight on…trafficking in dangerous drugs* (2018) is also clear in showing that the vast majority of trafficking offences tend to be associated with other drug related offences, followed by property and traffic offences. Relatively few are associated with any violence related offending. People convicted for trafficking in dangerous drugs are also less likely to have prior sentences of imprisonment than most other offence categories[1]. Of all offences where an SVO declaration was made, trafficking in dangerous drug offences were the most likely to be subject to an appeal, with over two- thirds (68.8%) of these cases appealed; with people convicted of drug trafficking also most likely to be granted parole (75.9%) and most likely to be released as soon as they become eligible for parole comparative to all other offence categories.

It is pleasing that QSAC have noted this differing risk profile for serious drug offences within its' reports and highlighted stakeholder feedback to date which has identified the need for the removal of these types of offences from the scheme. Not only does this better reflect legislative amendments made by the Queensland Government in 2016 to remove the mandatory 80 per cent non-parole period for drug trafficking (to reduce delays and the potential for sentencing inequity), but it also aligns more closely with current community attitudes to drug use and policy.

For example, the *National Drug Strategy Household Survey 2019*[2] shows us that the patterns of, and attitudes towards, AOD use are changing in Australia. Specifically, they found that:

- more than two in five Australians have used an illicit drug in their lifetime, most commonly cannabis (11.6% of Australians in the last 12 months).

[1] Specifically, this was 13.7% for mandatory SVO declarations and 12.3% for those where no SVO declaration was made from between 2011-12 to 2018-19; second only to those convicted for maintaining a relationship with a child. By comparison the percentage of people with a prior sentence of imprisonment was: 63.6% for those convicted of malicious acts; 35% for attempted murder; and 35.1% for manslaughter.
[2] Australian Institute of Health and Welfare 2020. National Drug Strategy Household Survey 2019. Drug Statistics series no. 32. PHE 270. Canberra AIHW.

- rates of substance use are falling among younger generations and most Australians are giving up or reducing their alcohol intake, driven by health concerns.
- smoking rates increase with socio-economic disadvantage, but rates of illicit drug use are highest in the most advantaged areas.
- Australians are increasingly supportive of legalising cannabis use, most support pill-testing and there has been a decline in support for policies aimed at reducing problems associated with excessive alcohol use (such as reduced trading hours)[3].

Not only are community attitudes changing, so is the evidence of what works in responding to AOD use and related harms. It is important that our legislative and policy responses continue to evolve alongside this shift in community expectations and the growing evidence base. This includes the increasing momentum for decriminalisation in Queensland, as recommended by the Queensland Productivity Commission in its' *Inquiry into imprisonment and recidivism* (2019)[4]. Evidence is also clear in demonstrating that health-based responses to illicit drug use and possession avoid the adverse social consequences of contact with the justice system and provide a more efficient and cost-effective opportunity to identify the people most in need of treatment.

While the inclusion of drug offences within the scheme is arguably inconsistent with community expectations and current evidence, it also acts to perpetuate stigma and discrimination in relation to illicit drug use.

According to the World Health Organisation, illicit drug use is the most stigmatised health condition globally. The Queensland Mental Health Commission explored issues pertaining to the stigma and discrimination faced by people who use drugs in their report *Changing attitudes, Changing lives* (2018)[5]. This report found that experiences of stigma and discrimination were common among people with a lived experience of problematic AOD use and that this created barriers to seeking help, compounded social disadvantage, led to social isolation, and detrimentally affected a persons' mental and physical health.

As outlined within a review completed by the Drug Policy Modelling Program to inform this report, the way in which legislation, legal practices, rules, definitions, and processes are implemented and operationalised can enable the development and embedding of certain stereotypes of people who use drugs[6]. To address these concerns, *Changing Attitudes, Changing Lives* recommended the introduction of processes to require an assessment of potentially discriminatory provisions as part of law reform and legislative review projects, alongside the introduction or inclusion of processes and/or training for legislators and policy makers to ensure that due consideration is given to ways to reduce the potentially stigmatising and discriminatory effects of legislation[7].

[3] See more here
[4] https://www.qpc.qld.gov.au/inquiries/imprisonment/
[5] Queensland Mental Health Commission (2018) *Changing attitudes, Changing lives: options to reduce stigma and discrimination for people experiencing alcohol and other drug use*.
[6] Lancaster, K., Seear, K., & Ritter, A. (2017) *Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use*, Drug Policy Modelling Program, National Drug and Alcohol Research Centre: University of New South Wales
[7] See more here

Question	Response
1. Do the principles adopted by the Council for the purposes of reviewing the operation and efficacy of the SVO Scheme provide an appropriate framework for reform?	Yes. In particular QNADA welcomes the recognition given to the value of parole in helping people successfully and safely reintegrate into the community (Principle 4); the need to take into account the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal justice system (Principle 6); and the importance of judicial discretion in the sentencing process (Principle 7).
2. Is the SVO scheme, as it is currently being applied, targeting the right types of offences and offenders?	No. QNADA notes the disproportionate number of people who have been convicted for serious drug offences who are subject to the provisions of the scheme[8], and supports the position outlined within the Issues paper and by other stakeholders that serious drug offences should be completely removed from the scheme. In the absence of their full removal, the automatic inclusion for sentences over ten years should be revoked, with judicial discretion to apply the scheme dependent upon the circumstances of the individual offending (as opposed to the offence itself). While acknowledging that serious drug offences were originally included as part of the establishment of the scheme as a way for the government of the day to reflect the community and societal harms caused by drug use, ideas about what constitutes community based harms have changed, as has community expectations and the growing evidence base of what works in addressing AOD related harm. This includes the prioritisation of health responses and the need to address the broader social determinants of health to achieve longer term, more meaningful change.

[8] Specifically, SVO declarations for trafficking offences (MSO) were the third most common offence (14.8%), second only to maintaining a relationship with a child (20.8%) and rape (16.2%); and above manslaughter (10.9%), attempted murder (10.7%) and torture (4.8%).

Question	Response
3. How, if at all, should a person's criminal history and other personal circumstances factor into whether an SVO declaration is made?	Consideration of a person's criminal history and other personal circumstances should be taken into account when a SVO declaration is made. This would allow for judicial discretion to be exercised specific to the offending behaviour (irrespective of sentencing length and the type of offence) and opportunities for rehabilitation.
4. How well are prison and post-prison rehabilitation or reintegration measures working for people who have been declared convicted for an SVO? How can they be improved?	QNADA notes positively recent investments by the Queensland Government to improve access to rehabilitation and treatment services for people who use AOD who are in contact with the criminal justice system. While not being able to comment specifically on how prison and post-prison rehabilitation or reintegration measures are working for people who have been declared convicted of an SVO, generally speaking there are known service gaps for AOD treatment and harm reduction services across Queensland (both public and non-government). While most people who use AOD never require treatment or support, for those that do need it these services are not always available, accessible, or acceptable in Queensland. This is problematic as ensuring timely access to treatment through increased investment works for both individuals and the broader community. It can help to reduce a persons' experiences of substance related harm, reduce AOD use and improve a person's capacity to understand and manage their health and wellbeing. It also helps to reduce current demand and resourcing pressures across other agencies and sectors, such as the criminal justice system. In addition, for people who require treatment, research shows

Question	Response
	that for every dollar invested in AOD treatment and harm reduction services, there is a seven dollar return.[9] The Queensland Drug and Alcohol Services Planning Model (QDASM) is a tool that can be used to support planning for service access and availability by estimating the number and type of specialist AOD services required in communities across Queensland. We note the recent service planning process undertaken by the Mental Health, Alcohol and other Drugs Branch within Queensland Health included consideration of this data and express our hope that the next Statewide services plan commits to expanding access to high quality, evidence based services.
5. Is the current guidance and the information provided to courts on the making of a discretionary declaration sufficient? If not, what additional guidance or information is required?	Generally speaking, evidence based training and guidance for judicial officers about AOD use in the community would be beneficial in enhancing understanding of how, why, and when people who use drugs come before the court for AOD related offending. For example, global research indicates that 88-89% of people who use illicit drugs do not experience dependence or require a treatment intervention,[10] which means that for many people who use illicit drugs, the risk of harm to both themselves and community productivity is increased primarily as a consequence of involvement in the justice system, not the substance use.
6. Should the distinction for the SVO scheme between sentences at or above 10 years and below 10 years be retained?	No, it should be removed. The automatic application of the scheme for sentences over ten years appears to be a primary driver for the inclusion of

[9] Alison Ritter et al., "New Horizons: The Review of Alcohol and Other Drug Treatment Services in Australia," in *Final Report* (Sydney: University of New South Wales, 2014).
[10] United Nations Office on Drugs and Crime. World Drug Report 2017. accessed March 1, 2019 https://www.unodc.org/wdr2017/field/Booklet_2_HEALTH.pdf

Question	Response
	people convicted for trafficking offences[11]; who would correspondingly benefit most from longer parole periods (particularly for those experiencing problematic substance use) and generally have a lower risk profile than other offences captured by the scheme.
7. If retained, should the discretion for the scheme to be applied to a listed offence for sentences of imprisonment of 5 to 10 years be retained, or should this apply to a sentence of any length where a listed offence is dealt with on indictment?	A shift to a discretionary scheme would be preferential overall to ensure that it is applied in those circumstances where it is most warranted, such as for offence/s which involved the use, counselling or procuring the use of serious violence against another person (or conspiring or attempting to use it); or resulted in serious harm to another person) irrespective of whether a person was concurrently convicted of drug offences.
8. If the SVO scheme is retained in some form, should a court have the ability to depart by setting either (a) lower non-parole period; and/or (b) a higher non-parole period?	Yes, with respect to lower non-parole periods. The QSAC Background Paper, *Analysis of sentencing and parole outcomes* (2021) provides a number of compelling examples of where longer parole periods would have been desirable.
9. If a court has the ability to depart from the scheme's mandatory application, is any legislative guidance required to a court in the setting of a: (a) lower non-parole period; and/or (b) a higher non-parole period; and what form should this take.	Yes, generally speaking guidance to support consistency in decision-making is beneficial for judicial officers, and it should be informed by the current evidence-base (as also discussed at Question 7).
10. Is the current list of offences to which the scheme can, or must, be applied (depending on the sentence length) as listed in Schedule 1 of the PSA appropriate? (a) Are there any offences	QNADA notes the disproportionate number of people who have been convicted for serious drug offences who are subject to the provisions of the scheme, and supports the position outlined within the Issues paper that serious drug offences

[11] As outlined within the QSAC Background Paper, *Analysis of sentencing and parole outcomes* (2021) no SVO declaration was issued for the vast majority (2,236) of people convicted for trafficking offences. For the 65 cases sentenced with an SVO declaration, 60 were mandatory and the remaining five discretionary. Serious drug offences attracted the lowest proportion of discretionary SVO declarations of all relevant offence categories.

Question	Response
not included in Schedule 1 that should be? (b) should any offences be removed?	should be removed completely. In the absence of their full removal their automatic inclusion (for sentences above ten years) should be removed, with judicial discretion to apply it dependent upon the circumstances of the individual offending (as opposed to the offence as currently occurs). The inclusion of drug offences within the scheme is arguably not reflective of the evidence regarding drug related offending and shifting community expectations of how government should respond to illicit drug related harms. Indeed, the Queensland Productivity Commission's *Inquiry into Imprisonment and Recidivism* (2019) went so far as to recommend that consideration be given to the benefits of legalisation for low harm illicit drugs, accompanied by supporting regulatory and health reforms, to better address the harms associated with unregulated market supply (including those associated with organised crime).
11. Is the current SVO scheme compatible with rights protected under the *Human Rights Act 2019* and other human rights instruments? If it not compatible, are any existing limitations reasonable and demonstrably justifiable?	The *International Guidelines on Human Rights and Drug Policy (2019)* recognise that responding to the harms associated with drug use and the illicit drug trade is one of the greatest social policy challenges of our time, and that all aspects of this challenge have human rights implications. In particular they highlight measures that should be undertaken (or avoided) to comply with human rights obligations and concurrent drug control conventions[12]. Specific to the criminal justice system, the guidelines recognise that drug legislation and policy tends to have disproportionate and compounding impacts for lower socio-economic and marginalised populations. Significantly, the guidelines also highlight the potential compatibility between the promotion of human rights and the stated object and purpose of drug control conventions, specifically the promotion of the health and welfare of people. They further

[12] Such as the 1961 Single Convention on Narcotic Drugs; the 1971 Convention on Psychotropic Substances; and the 1988 United Nations Convention against Illicit Traffic on Narcotic Drugs and Psychotropic Substances.

Question	Response
	recognise that while a person's involvement in drug-related offending may affect the enjoyment of some rights, in no case are human rights entirely forfeited.
12. What reforms could be made to the scheme to improve its compatibility with and/or to meet the test of being 'reasonably and demonstrably justifiable?	Within the context of the scheme consideration should be given to ensuring compatibility with the intent of the International Guidelines on Human Rights and Drug Policy, particularly with respect to ensuring: • that people deprived of their liberty for drug related offending have access to voluntary and evidence-based health services, including harm reduction and drug treatment services, as well as essential medicines, including HIV and Hep C services, at a standard that is equivalent to that in the community, • organise such drug-related and other health care services in close parallel with general public health administration, taking into account the specific nature of individuals' detention, and design services to ensure the continuity of harm reduction, drug treatment and access to essential medicines through transitions of entering and exiting a detention facility, as well as transfer between institutions, • that drug-related and other health care services for these populations are provided by qualified medical personnel able to make independent, evidence-based decisions for their patients, and • the provision of training for health care professionals and other staff working in prisons and other closed settings and places of detention on drug treatment, harm reduction, and other medical conditions that require the use of controlled substances for medical purposes.