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*Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system*

29 September 2021

Committee Secretary
Community Support and Services Committee
Parliament House
George Street
BRISBANE QLD 4000

By email only: CSSC@parliament.qld.gov.au

Dear Committee Secretary

**Child Protection Reform and Other Legislation Amendment Bill 2021 (Bill)**

Sisters Inside welcomes the opportunity to provide a submission to the Queensland Community Support and Services Committee regarding the *Child Protection Reform and Other Legislation Amendment Bill* (the **Bill**). We do not wish to comment on every aspect of the Bill, rather we address the specific amendments to the *Working with Children (Risk Management and Screening) Act 2000* (the **WWC Act**) and *Child Protection Act 1999 (*the **Child Protection Act**) about which we have concerns and feedback.

**About Sisters Inside**

Sisters Inside is an independent community organisation that exists to advocate for the collective human rights of women and girls in prison, and provide services to meet the needs of women, girls and their families. Established in 1992, Sisters Inside has over 25 years experience supporting criminalised women and girls. Our submission is informed by our experience supporting women and girls in the criminal legal system through our programs and services.

**Amendment of the Working with Children (Risk Management and Screening) Act 2000**

As it currently operates, the WWCC system individualises violence through its process of individual assessment of a person's criminal history and other relevant information. As a result of colonisation, and ongoing dispossession, poverty and intergenerational trauma, Aboriginal and Torres Strait Islander adults and children are criminalised at a much higher rate than the rest of the population. In our experience, the WWCC system does not adequately contextualise the criminalisation of Aboriginal and Torres Strait Islander people, and related experiences of systemic violence.

Sisters Inside has directly witnessed the significant barriers the Working with Children

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Clearance (WWCC) system presents for criminalised women. In our experience, virtually any prior criminal history is considered grounds to deny an individual a positive WWCC. This prevents women from obtaining employment for which they are qualified and becoming volunteers at their children's school. It also prevents women from becoming kinship carers for member of their own family. Generally, the system excludes women with criminal histories from being able to participate fully in society. This issue is so widespread Sisters Inside has employed a Blue Card Advocate to support women through the process.

Sisters Inside is committed to ensuring the safety, wellbeing, and best interests of children. However, we consider that the Bill, specifically, the two amendments discussed below, would only aggravate the exclusionary and discriminatory effects of the WWC Act.

**Domestic violence information sharing**

We submit that expansion of the powers of the chief executive to enable them to request domestic violence information from the Queensland Police Commissioner will result in further social exclusion of vulnerable women. We hold these same concerns in relation to the proposed amendments to the *Disability Services Act 2006*.

There is a significant body of research which indicates that women are routinely being misidentified as perpetrators of DFV and named as respondents on protection orders. The most comprehensive Australian research on this issue – the Australian National Research Organisation for Women's Safety (ANROWS) study 'Accurately identifying the 'person most in need of protection' in domestic and family violence law' – identified that misidentification is a particular issue in Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse communities.[1] This is, amongst other reasons, a result of these women being unable to effectively advocate for themselves with police at the scene of an incident and not fitting the 'ideal victim' stereotype.[2] This is intimately tied to the history of colonial violence in this country. Moreover, these women often do not have the resources to challenge domestic violence orders. More generally, in most Australian jurisdictions, including Queensland, Aboriginal and Torres Strait Islander peoples are over-represented as respondents on DFV protection orders.[3] They are also over-represented in charges for breaching DFV protection orders. This disproportionality is consistent with the well-researched over-representation of Aboriginal and Torres Strait Islander people in the legal system overall.[4]

[1] Nancarrow et al, 'Accurately identifying the "person most in need of protection" in domestic and family violence law' (Research report, 23/2020, ANROWS); see also Heather Douglas, *Women, Intimate Partner Violence, and the Law* (OUP, 2021).
[2] Ibid 96 – 97.
[3] Ibid 53-54.
[4] See Douglas and Fitzgerald, 'The domestic violence protection order system as entry to the criminal justice system for Aboriginal and Torres Strait Islander people' (2018) 7(3) *International Journal for Crime, Justice and Social Democracy*, 41; Australian Law Reform Commission, 'Pathways to justice—

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Additionally, the Queensland Domestic and Family Violence Death Review and Advisory Board identified that, of domestic violence-related deaths reviewed for the period 2015–17, in just under half (44.4%) of the female adult cases the woman had been identified by police as a respondent on at least one occasion, and nearly all of the Aboriginal family violence homicide victims had a prior history of being recorded as both respondents and aggrieved parties.[5] Research has suggested that in some cases cross-applications and orders are extensions of the abuse perpetrated by men against women.[6]

The expansion of the chief executive's powers to enable them to obtain and take into consideration domestic violence in making WWCC decisions will inevitably have a negative impact on vulnerable women who have been identified as DFV perpetrators. As discussed above, women with criminal histories are already prevented or experience immense difficulties in obtaining a positive clearance. The proposed amendment will only worsen this issue and make the lives of women who have experienced trauma and victimisation even more difficult. Aboriginal and Torres Strait Islander people will be most affected by these amendments because of their disproportionate involvement in the domestic violence and criminal legal systems. It will therefore be discriminatory in its effect.

**Participation in the WWCC National Reference System (WWCC NRS)**.

We understand that under the proposed amendments, a cardholder who is issued with a negative notice/cancellation in another jurisdiction while holding a WWCC in Queensland will have their Queensland WWCC cancelled, and an applicant who is the holder of a negative notice/cancellation in another jurisdiction will have their application automatically withdrawn in Queensland. There will be no right of review or appeal. Additionally, a cardholder whose interstate WWCC is suspended will have their Queensland WWCC suspended, and the chief executive will not be required to consider lifting their suspension until the suspension in the other jurisdiction ends.

Whilst we appreciate the policy objective of achieving greater national transparency and consistency of WWCCs, we submit that the proposed amendments deny Queensland applicants and cardholders procedural fairness. The common law recognises a duty to

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An inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples' (Final report no. 133, 2017).

[5] Queensland Domestic and Family Violence Death Review and Advisory Board. (2017). 2016–17 *Annual Report.* Brisbane: Queensland Government.

[6] Jane Wangmann, 'Gender and Intimate Partner Violence: A Case Study from NSW' (2010) 33 University of New South Wales Law Journal 945; Douglas and Fitzgerald, 'Legal process and gendered violence: Cross-applications for domestic violence protection orders' (2013) 36(1) *University of New South Wales Law Journal* 56.

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accord a person procedural fairness before a decision that affects them is made.[7] This is a well established and important component of the rule of law. It is plainly procedurally unfair for a Queensland cardholder's WWCC to be cancelled because of the operation of another jurisdiction's decision-making process, without any independent assessment of the circumstances by the chief executive, nor any opportunity for review or appeal afforded to that person. There is no justification made in the Bill or Explanatory Note as to why there should be no right of review for these decisions. We would therefore submit these proposed amendments are contrary to fundamental principles of law. This will have the greatest impact on criminalised women, particularly Aboriginal and Torres Strait Islander women, who often have little resources or capacity to challenge adverse WWCC decisions.

## Amendment of the Child Protection Act 1999

For context, Sisters Inside works with children who have been criminalised through our Yangah Program, which aims to reduce the number of 10 – 17 year old girls being held on remand and/or police watch houses in the Greater Brisbane Area. Our Yangah Workers improve the likelihood of a successful bail application, through ensuring girls' access to safe, secure accommodation, community-based services and support; legal representation; and individual and family support. The program also provides post-release support via outreach to enable girls to continue to meet their bail conditions. We also run an Art Group and Youth Skills Program.

Most of these girls we work alongside are currently, or have previously been, subject to child protection orders.[8] Almost all these girls are Aboriginal and Torres Strait Islander, which reflects the structural racism that sees our young women and their families pipelined into systems of social control, particularly the child protection system and youth prisons.

### Broader purpose

Sisters Inside supports the proposed amendment to the purpose of the Child Protection Act. The Department ought to focus on providing support for families. However, we consider the major issue with the Act is lack of adherence to these frameworks, rather than flaws in their expression. It is vital to ensure that when families present with unmet needs, there is access to voluntary services that can assist them in addressing the underlying issues. In our view, this remains inadequately addressed and should be prioritised. Families must have access to independent support services and this requires adequate funding to be provided by the

[7] Australian Law Reform Commission, *Traditional Rights and Freedoms—Encroachments by Commonwealth Laws* (ALRC Final Report 129, 2015) 391.
[8] This is supported by national statistics, see Australian Institute of Health and Welfare, 'Young people in child protection and under youth justice supervision 2018-149 (2019).

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Government to these services.

We would also add that we believe the child protection system fails to achieve its purpose to protect children because it operates in a fundamentally biased way. The child protection system ignores harm experienced by children (and their parents) at the hands of the State, as well as harm caused by systemic failures of public institutions. On the other hand, the system operates to "flag" women in prison, Indigenous women and women in marginalised situations as inadequate parents and, in our experience, children are removed and their parenting is scrutinised as a matter of course.

**Aboriginal and Torres Strait Islander Child Placement Principle**

Sisters Inside supports the amendments that are aimed improving active compliance with the Aboriginal and Torres Strait Islander Child Placement Principle. However, we do not consider the proposed amendments go far enough in addressing the ongoing intergenerational trauma caused to Indigenous communities by the child protection system. We consider the Department should have an obligation to identify family members with responsibility for an Indigenous child (as well as Aboriginal or Torres Strait Islander entities) and facilitate their involvement in the child's protection and decisions by the Department. Additionally, the Act does not recognise that systemic failures in health, education, housing, and the criminal justice system bring women and children into contact with child protection system and operate as a barrier to full realisation of the principle.

The disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system and the enduring legacy of the Stolen Generations is closely intertwined with the criminalisation of Aboriginal and Torres Strait Islander women. By conservative estimates, 80-85% of women in prison have children.[9] Most women were the sole and primary caregivers for their children before entering prison.[10] Forced separation due to imprisonment often triggers the involvement of the Department. Given the extreme and rising rates of Aboriginal and Torres Strait Islander women in prison,[11] it is not surprising to see the continued over-representation of Aboriginal and Torres Strait Islander children in the child protection system. The relationship between the imprisonment of these women and involvement of the Department in their children's lives must be addressed if the purported objective of reinforcing children's rights is to be accomplished. There is no coordinated

[9] Anti-Discrimination Commission Queensland, Women in Prison (March 2006), 119.
[10] See Anti-Discrimination Commission Queensland, Women in Prison 2019: Women in prison 2019: a human rights consultation report (March 2019), ch 5.
[11] In the ten-year period from 2006 to 2016, while the incarceration of women in prison in Queensland increased significantly, the incarceration rate of Aboriginal and Torres Strait Islander women had the most dramatic increase from 26% to 35% of the prison population – see Anti-Discrimination Commission Queensland, Women in Prison 2019: Women in prison 2019: a human rights consultation report (March 2019), 64.

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response at the departmental level or policy level for these women and children. Amendments to the Act must recognise and address the needs of criminalised women and their children.

Importantly, due to the requirement for foster and kinship carers and Aboriginal or Torres Strait Islander delegates to hold a positive WWCC, we submit that the proposed amendments to the WWC Act concurrently make it more difficult for Aboriginal and Torres Strait Islander people to become carers for Aboriginal and Torres Strait Islander children. We are also concerned that the expansion of the criminal history information which may be obtained and used by chief executive in making placement decisions under the proposed new ss 142E and 142F, and the creation of a carers' register under the proposed new s 148F, will unduly prevent criminalised Aboriginal and Torres Strait Islander people from becoming carers. Therefore, we consider these amendments are counter-productive to the objective of improving fulfilment of the Aboriginal and Torres Strait Islander Child Placement Principle. We would support amendments that provide appropriate exemptions or conditional blue cards for kinship carers or extended family members with criminal records

**Strengthening the voices of children and their rights**

Sisters Inside supports the amendment of ss 5E and 7 aimed at strengthening the participation principles framework and improving systemic participation of children in policy and program design. Additionally, we support the expansion of the Charter of rights for a child in care contained in schedule 1 of the Act. We particularly support enshrining the right for a child to make a complaint to the chief executive if the child considers that this their rights is not being complied with.

However, we consider there is a chronic lack of funding for legal assistance services in the child protection jurisdiction. Independent legal representation, as well as peer advocacy support services, is essential to ensuring children are genuinely able to participate in these decisions and/or raise complaints about their care by the Department. It is our strong submission that this lack of funding be addressed as a matter of priority to ensure that the best interests of Queensland children and young people and their families are protected and promoted.

**Expanding the existing reviewable decisions framework**

Sisters Inside is supportive of the amendment of s 51V to expand the existing reviewable case plan decisions framework. We consider that all children should have the ability to have greater input into their case plans. However, as discussed above, we consider that meaningful participation requires children to have access to free legal representation and peer advocates to support them throughout this process. We note that significant additional

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funding would be required for ATSILS, Legal Aid Queensland, and community legal centres. In the absence of such funding, it is unlikely that the aim of this amendment – improving the involvement of children in decisions that affect them – would be achieved.

### Independent entities

We support the amendments to s 5H which clarify that the family and, if appropriate, the child can consent to an independent Aboriginal or Torres Strait Islander entity facilitating the child and family's participation in a decision-making process, or participating in or attending certain other activities or events, relating to the child.

We consider that families and children must have a completely free and informed choice in deciding whether, and to what extent, to engage with an independent entity, particularly in circumstances where that entity is only participation, rather than to offer help and support. We note the concerns highlighted by Douglas and Walsh about the lack of trust in independent entities in some Aboriginal and Torres Strait Islander communities.[12] Additionally, we reiterate that families and children would benefit from the help and support of completely independent advocates (legal and/or non-legal or peer advocates) at every stage in the child protection process.[13]

### Licensed care services amendments

Sisters Inside reiterate our long-held view that residential care is failing children and ought to be abolished. In our experience, girls and young women in residential facilities are highly likely to be criminalised as a result of their placement.[14] We have worked with young women who have been charged with wilful damage for breaking locks on fridges because they were hungry, and assault for throwing blu-tac at care workers. National data from the Australian Institute of Health and Welfare shows that in 2018-19 61% of children in prison during 2018–19 had received a child protection service in the last 5 years.[15] Given the high numbers of children acquiring a criminal record whilst in the care of the state, questions must be asked

[12] Heather Douglas and Tamara Walsh 'Continuing the Stolen Generations: child protection interventions and indigenous people' (2013) *International Journal of Children's Rights* 59-87.
[13] Tamara Walsh and Heather Douglas, "Mothers and the child protection system" (2009) 23 *International Journal of Law, Policy and the Family* 211.
[14] Studies have found that any child placement, not just unstable placements, increase girls' risk of coming into contact with the criminal justice system: Judy Cashmore, 'The link between child maltreatment and adolescent offending: Systems neglect of adolescents' (2011) 89 Family Matters: Australian Institute of Family Studies 31, 35.
[15] Australian Institute of Health and Welfare, 'Young people in child protection and under youth justice supervision 2018-149 (2019); see also Katherine McFarlane, 'From care to custody: Young women in out-of-home care in the criminal justice system' (2010) 22(2) *Current issues in criminal justice* 345.

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about the quality of care and support being delivered by the State.[16]

If residential care is not phased out, we support regulations that provide robust, independent, and transparent oversight and complaints mechanisms. We support the amendments to ss 137 and 138 insofar as they go towards this objective. We do not, however, consider that extending or strengthening provisions of the WWC Act as they relate to licensed care services will remedy the substantial harm caused to children by the residential care system. The State must move away from residential care and address the fundamental failures of the child protection system by focusing on support for families.

## Conclusion

Sisters Inside considers that the WWC Act needs to be amended to remove the social and economic barriers currently faced by criminalised women because of the WWCC system. This Bill, however, will only increase the exclusion and disempowerment created by the WWCC system. This will have the greatest negative impact on Aboriginal and Torres Strait Islander communities. This will have flow on effects for who can become a carer under the Child Protection Act and inevitably make it more difficult for an Aboriginal and Torres Strait Islander children in care to be placed within their own family and community. The Bill will therefore fail to achieve its stated objective of ensuring Aboriginal and Torres Strait Islander children in the system are connected to family, community, culture and kin.

We conclude by noting that, in our experience, children often experience significant harm within institutions operated by or on behalf of the State. Often these institutions claim to operate in accordance with the best interests of the child; however routine forms of violence are standardised in their policies and operating procedures, for example, strip searching in youth prisons, or criminalisation in residential care. Routine forms of violence by or on behalf of the State are not subject to oversight by the WWCC system. Legislation that is serious about protecting children from harm must acknowledge the harm that may be caused to children and their families by State and State-funded institutions. Amendments to the Child Protection Act ought to address the intergenerational trauma caused by removal and the intersection of the child protection system with other State responsibilities such as health, education, housing, and the criminal justice system.

Thank you for considering this submission. Please contact me on [redacted] if you would like to discuss anything further.

[16] Tamara Walsh, 'From child protection to youth justice: Legal responses to the plight of 'Crossover Kids' (2019) 46(1) *University of Western Australia Law Review* 90, 91.

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Yours sincerely

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