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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

10 December 2018

Committee Secretary
Education, Employment and Small Business Committee
Parliament House
George Street
BRISBANE QLD 4000

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

Dear Committee Secretary

Working with Children Bills

Sisters Inside welcomes the opportunity to provide a submission to the Education, Employment and Small Business Committee regarding both the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 (the **Government Bill**) and the Working with Children Legislation (Indigenous Communities) Amendment Bill 2018 (the **Private Members Bill**).

About Sisters Inside

Sisters Inside is an independent community organisation that exists to advocate with and for women and girls affected by the criminal legal system. We also work alongside women and girls to address their immediate, individual needs.

This submission is informed by the experiences of Sisters Inside staff and participants with the 'working with children check' (WWCC) system.

Sisters Inside is committed to the safety and wellbeing of all children. 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 police watch houses, which we consider to be sexual assault by the State. Routine forms of violence by or on behalf of the State are not subject to oversight by the WWCC system.

Rather, 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 (for example, child safety information). As a result of colonisation, and ongoing dispossession, poverty and intergenerational trauma, many Aboriginal and Torres Strait Islander adults and children are criminalised. 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.

Our feedback on the Bills

Government Bill

Guideline 7 of the Australian Human Rights Commission's *Guidelines for the prevention of discrimination in employment on the basis of criminal record* states:

The relevance of a job applicant's or employee's criminal record should be assessed on a case-by-case basis against the inherent requirements of the work he or she would be required to do and the circumstances in which it has to be carried out. A criminal record should not generally be a bar to employment of a person.

In our experience, many organisations are already very reluctant to employ adults with a criminal history, either on a paid or voluntary basis. Sisters Inside does not support the 'No Card No Start' amendments as, in our view, it effectively establishes a presumption against employment for criminalised women and Aboriginal and Torres Strait Islander people.

According to the Explanatory Notes to the Government Bill, the 'No Card, No Start' amendments "reduce risks" to children by preventing people with "concerning histories" from being able to work with children while their application is assessed (p 14). It is complex determination of law, fact and judgement to determine whether a person's criminal history affects their ability to undertake the inherent requirements of child-related employment; therefore, this amendment is likely to severely disadvantage people who proactively disclose any criminal history to a prospective employer.

This amendment discourages employers from prioritising employment of adults with lived experience that is highly relevant to working with and for criminalised children, as those applicants are unlikely to be able to commence employment within a short timeframe. In Sisters Inside's experience, staff members with lived experience of criminalisation or imprisonment are often the most successful in building effective support relationships with criminalised women, girls and their families.

We are also concerned that the 'No Card, No Start' requirement also applies to people whose clearance expires while they are continuing in regulated employment. This requirement is likely to have a disproportionate impact on people with a criminal history who may simply forget to renew their clearance prior to its expiry. It assumes a level of organisational support that may not be available for people employed in small community services with limited resources. The WWCC process should not tip people into unemployment and criminalisation due to administrative error or oversight.

Although the Government Bill introduces an option to apply for a WWCC card in advance of regulated employment, we note that the application fee would not be waived unless a person is employed as a volunteer (proposed new section 189). In our experience, many criminalised women and Aboriginal and Torres Strait Islander people lack the financial resources to apply for a WWCC card *before* securing paid employment. Additionally, we note criminalised women and many Aboriginal and Torres Strait Islander people are discouraged from applying as they are often required to undertake an extensive application process (i.e. required to respond to 'show cause' requests and make written submissions).

We are further concerned that the Government Bill proposes an automatic 'stay' of QCAT decisions, in circumstances where QCAT overturns a 'negative notice decision' by Blue Card Services. The effect of this provision is that people who receive a positive WWCC decision from QCAT will be delayed from taking up regulated employment at least until the appeal period has expired. This seems to be unreasonable in circumstances where the decision is not appealed by Blue Card Services and especially if person has access to immediate employment.

The Government Bill imposes significant new obligations for people applying for WWCC authorities. However, it does not provide for any corresponding legislative guidance to support criminalised adults or Aboriginal and Torres Strait Islander people. Recommendation 73 of the Queensland Family and Child Commission's report *Keeping Queensland's children more than safe: Review of the blue card system* (2017) recommended developing guidelines to embed an appropriate consideration of culture in working with children check decisions, and considering ways to empower communities to be involved in decisions about their community. In our submission, these mechanisms should have a legislative basis and must be implemented at the same time as amendments that significantly tighten the WWCC system.

Private Members Bill

According to the Explanatory Note, the Private Members Bill identifies the limitations of the current blue card system for Aboriginal and Torres Strait Islander communities, and seeks to provide a new framework for decision-making led by communities.

As noted above, recommendation 73 of the Queensland Family and Child Commission's report relating to the blue card system recommended a number of reforms to support Aboriginal and Torres Strait Islander people and build cultural capability in the WWCC system.


We see value in the amendments proposed by the Private Members Bill. Based on our review of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984* (Qld) and the relevant Regulation, we understand the amendments would be limited to certain regional or remote

Aboriginal and Torres Strait Islander communities. In our view, all Aboriginal and Torres Strait Islander people in Queensland must be eligible for support within the WWCC system to respond to the history of colonisation and criminalisation.

We believe it would be appropriate for the Government Bill to be amended to include mechanisms that support Aboriginal and Torres Strait Islander-community led decisions about children's safety and the suitability of criminalised Aboriginal and Torres Strait Islander people to work with children.

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

Yours faithfully

A handwritten signature in blue ink, appearing to read "D. Kilroy".

Debbie Kilroy
Chief Executive Officer
Sisters Inside Inc