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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

The Research Director
Inquiry into a Human Rights Act for Queensland
Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000

By email: lacsc@parliament.qld.gov.au

15 April 2016

Dear Committee Members

Summary of Main Points

- Sisters Inside asserts that current laws and processes for protecting human rights in Queensland have been manifestly inadequate in protecting the human rights of the most marginalised and disadvantaged members of our community, particularly criminalised women and their children.
- Sisters Inside strongly supports introduction of a Human Rights Act (HR Act) in Queensland.
- Sisters Inside proposes that the HR Act should serve to uphold all international human rights law and United Nations instruments to which Australia is a signatory.
- Sisters Inside further proposes that the HR Act should be constructed in such a way that it can determine and remedy individual, collective and legislative breaches of human rights.

About Sisters Inside

Sisters Inside exists to advocate for the human rights of women in the criminal justice system. We also provide services in response to the unmet human rights and needs of criminalised women. We believe it is critical that the human rights of this cohort are expressly protected: that criminalised women do not become invisible within generalised descriptions (such as *socially disadvantaged groups*) in a Human Rights Act (HR Act).

Criminalised women and their children are highly marginalised, and are one of the most disadvantaged cohorts in the Queensland population. The human rights of this group are currently being routinely breached in Queensland. Aboriginal and Torres Strait Islander women are highly disproportionately, and increasingly, being criminalised in Queensland and are particularly vulnerable to breaches of their human rights at all levels in the criminal justice system and more widely. Indigenous people are over-policed, particularly in remote communities. Compared with both non-Indigenous women and criminalised men, Indigenous women are more likely to be charged with an offence, less likely to be granted police bail, more likely to be imprisoned on remand, more likely to receive a prison sentence, and less likely to be released on parole. Indigenous women are the fastest growing prison population in Australia.

The vast majority of women prisoners are convicted of minor, non-violent offences. (This is clearly evidenced by the 2015 average period of imprisonment across all women prisoners in Queensland - less than 5 weeks.) Most criminalised women come from backgrounds of poverty, homelessness, and family and domestic violence. A significant proportion of women also have cognitive disabilities. As a result, most criminalised women face physical health, mental health and/or substance abuse issues. All these factors contribute to women's criminalisation and imprisonment – in particular, the appalling rate of imprisonment of women on remand (currently approximately 30% of all women prisoners) and for, often minor, breaches

of parole typically associated with their disadvantage (currently approximately 25% of women prisoners).[1] The human rights of their children are also regularly breached – both directly and indirectly.

Sisters Inside believes that a HR Act is the best way to protect the human rights of Queensland residents, including criminalised women, into the future.

Problems associated with current laws and processes

In 2006, the Anti-Discrimination Commission Queensland (ADCQ) reported on their comprehensive review of the imprisonment of women in Queensland[2]. The ADCQ report identified many breaches and possible breaches of women prisoners' human rights on the basis of gender, race and disability. The report raised serious concerns about possible indirect and/or systemic discrimination against women in general, and against Indigenous women and women with disabilities in particular (in contravention of the *Anti-Discrimination Act 1991* and a myriad of international human rights instruments).

Areas of concern raised by the ADCQ across the Report's 71 recommendations included:

- Over-classification and use of inappropriate/male-based instruments to classify women prisoners
- Over-restrictive prison environments and limited access to low security facilities for prisoners with physical, cognitive and psychiatric disabilities
- Over-accommodation of women classified as low security in high security facilities
- Over-use of mandatory/routine strip searching – particularly amongst low security prisoners located in high security facilities (including returning to BWCC for medical treatment), women in crisis support units, and during inter-prison visits
- Inadequate oral and written information for newly imprisoned women, including use of interpreters and provision of information in their own language for women from culturally and linguistically diverse (CALD) backgrounds
- Limited access to culturally appropriate programs and conditional release for Indigenous women
- Lack of rehabilitation and substance abuse programs designed to match the criminogenic profile and social reintegration needs of women prisoners, particularly women with intellectual, cognitive or learning disabilities, and women from CALD backgrounds
- Exclusion of women on remand or short sentences from rehabilitation and substance abuse programs
- Identification of women as (former) prisoners through use of the prison has their home address on educational attainment documents
- Limited access to job-relevant industry opportunities and possible discrimination in payment of women prisoners (compared with male prisoners) for work
- Limited access for women in some geographical areas to alternate sentencing courts (e.g. Drug Court)
- Inadequate rates of diversion from prison amongst women with mental health issues, due to failures across government systems (e.g. health, housing, police)
- Inadequate identification, support, treatment and intensive care services for women with cognitive and psychiatric disabilities
- Limited access to supports which mitigate women's risk of self-harm and suicide, including serious over-use of the crisis support unit for at-risk women
- Inadequate resources and failure to make use of external expertise to address the substance abuse, mental health and sexual assault needs of women prisoners
- Failure to provide adequate breast screening services for women prisoners
- Continuing imprisonment of 17 year olds in adult prisons
- Inadequate accommodation of the differing needs (including dietary needs and religious observances) of women from CALD backgrounds
- Inadequate consideration of alternatives to imprisonment for mothers of dependent children

[1] All data from Queensland Corrective Services.

[2] Anti-Discrimination Commission Queensland (2006) **Women in Prison: A Report by the Anti-Discrimination Commission Queensland**, ADCQ, Brisbane at http://www.adcq.qld.gov.au/human-rights/women-in-prison-report

- Failure to consider the best interests of the child as a factor in sentencing mothers of dependent children and management of family contact opportunities
- Inadequate living space, play space and activities for children accommodated with their mother in prison, and insufficient places in mothers and children's units
- Inadequate post-release support (e.g. accommodation, income, employment) for mothers of dependent children and women with mental health issues
- Failure to consistently locate transgender prisoners in prisons of their gender-identification and provide services to address their medical needs
- Inadequate training of prison officers in areas such as unlawful discrimination, sexual harassment, Indigenous issues, the needs of people from CALD backgrounds and responding to women with mental health issues
- Use of male prison officers in observation units, and to inspect women at night
- Failure to employ sufficient Indigenous female staff in women's prisons
- Failure to produce adequate research and statistics on women prisoners in areas including gender, race, disability and parental responsibilities
- Insufficient independent scrutiny of prison standards and operational practices

Over the subsequent 10 years, progress has been observed in ONLY TWO of these areas. Reform in strip-searching policy has reduced the number of mandatory strip searches imposed on some women prisoners. Strip searching (particularly in the presence of a male prison officer) can have a severe re-traumatising effect on women prisoners with a history as a victim of violence (that is, the majority of women prisoners). Further, evidence obtained by Sisters Inside under freedom of information provisions has demonstrated that strip searching is a patently ineffective tool in detecting contraband[3]. Accordingly, we believe that there is no justification for strip searching of women, and that, consistent with findings in international jurisdictions, strip searching amounts to *cruel* and *degrading treatment* as defined in the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*. The ONLY other improvement is that the address of the prison has been removed from the TAFE certificates of women prisoners.

Apart from these TWO MINOR improvements, the situation for women prisoners has substantially worsened since 2006. The rate of imprisonment of women, particularly Indigenous women, has increased exponentially, with dramatic increases in the number of women imprisoned on remand and for (often minor, poverty-driven) breaches of parole. Too often, women's imprisonment is due to failures of other State systems to respond to their human rights (particularly, in relation to safety, shelter and/or access to health services). The resulting overcrowding of women's prisons throughout Queensland has further reduced women's access to programs and services and escalated tensions within women's prisons.

Further, the ADCQ report recommended legislative changes to better protect women prisoners' rights. Only one of the four pieces of relevant legislation has been amended over the intervening decade. The relocation of the Chief Inspector of Prisons under Queensland Ombudsman was a welcome reform, albeit with limited outcomes for women prisoners to date. However, proposed amendments to the *Corrective Services Act 2000* to ensure remand prisoners' access to programs and severely restrict use of seclusion facilities for women at risk of self-harm or suicide (to those who pose a threat to others only) has never been enacted. Similarly, proposed amendments to Section 9 of the *Penalties and Sentences Act 1991* to include the principle that the best interests of the child be a factor to be considered when sentencing a person with a dependent child has also never been implemented.

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[3] According to the results of a Freedom in Information request by Sisters Inside, over a 3 year period in the early 2000's, a total of 41,728 strip searches were conducted on women in Queensland prisons. These included both routine strip searches and strip searches instigated on the basis of suspicion. Only 2 found any drugs at all - and we do not know whether even these were illicit or pharmaceutical drugs, or a quantity of drugs of any significance. We do not know whether any drugs were discovered as a result of mandatory strip searching. Similarly, at Dame Phyllis Frost Centre in Victoria in 2001-2 each woman was strip searched an average of 93 times with only 1 item of contraband being found, whereas at Barwon Prison, each male prisoner was strip searched an average of 43 times, with 21 items of contraband being found (cited in Cerveri et al (2005) ***Request for a Systemic Review of Discrimination Against Women in Victorian Prisons***, The Federation of Community Legal Centres and The Victorian Council of Social Service, Melbourne, p16)

And, in blatant contravention of a number of international human rights instruments (centrally, the Convention on the Rights of the Child), Queensland continues to be the only jurisdiction in Australia which imprisons 17 year old *children* in adult prisons. These 17 year olds are disproportionately Indigenous *children*, who generally enter prison at a younger age than non-Indigenous women. These *children* are often placed in protective custody, where they are not separated from adult prisoners. In Protection, these children are particularly disadvantaged: they are effectively in *a prison within a prison,* with less freedom, education, programs, activities, work, access to family/visitors and facilities than the general prison population. The ADCQ found that placing a 17 year old in Protection is *prima facie* direct discrimination on the basis of her age. Being in Protection can stigmatise any prisoner, because they may be assumed to be an informer. This, in turn, means *children* who enter prison aged 17 often end up spending their whole sentence in Protection. This is an appalling situation which, as recommended by the ADCQ 10 years ago (Recommendation 48), must be address as a critical human rights priority.

Approximately 80% of women prisoners were the primary carer of dependent children prior to imprisonment – a reality that is largely invisible in a system primarily designed for men, where parental status is not even routinely documented by prison authorities. Even a very short period of imprisonment can lead to homelessness, loss of employment and accumulated debt. At best, the woman's children are dislocated (e.g. placed with family whilst their mother is in prison and moved between schools) or disadvantaged (e.g. through staying with their mother in prison and experiencing reduced educational, recreational and health facilities and loss of wider family life). At worst, children are severely emotionally damaged (e.g. through lack of bonding for babies who are removed immediately post-birth, or as a result of extended placement in care well beyond the mother's time in prison) and this trauma leads to intergenerational trauma not dissimilar to the impact of the Stolen Generations. Despite the *Penalties and Sentences Act 1992* stating that a prison should be imposed as a last resort, mothers continue to be imprisoned for extremely minor offences and/or for being poor (e.g. for not having a residential address for the purposes of bail). The impact of mother/child separation has been well documented, and imprisonment of mothers functions *as double-punishment* – both for the mother and her children. That is, the same sentence applied to a woman with dependent children will have a greater effect than for another person. It is, in practice, a heavier sentence for the same offence. The ADCQ Report paid significant attention to the adverse impact of mothers' imprisonment on their children and the need for sentencing reform to better protect the rights of children. Yet, again, the situation for the children of criminalised women has worsened considerably over the past 10 years.

Every Queenslander is entitled to have their human rights upheld without discrimination. As is clear from the outcomes of the ADCQ report over the past 10 years, (despite the ADCQ's best efforts) having an anti-discrimination body with a largely advisory role has been patently ineffective in upholding the human rights of women and children affected by the criminal justice system.

Proposed objectives of the Human Rights Act

Sisters Inside believes that it is critical that the human rights of all Queenslanders are enshrined in law. It is clear that the *name and shame* approach taken since the *Anti-Discrimination Act 1991* was enacted has been largely ineffective in generating change in response to breaches of human rights for disadvantaged Queenslanders. The current advisory role of the ADCQ has not provided sufficient imperative for powerful stakeholders to take responsibility for their treatment of the most powerless members of our society.

We believe a single overarching Human Rights Act (HR Act) is the best way to provide the necessary incentive for any breaches of individual and collective human rights to be redressed. The HR Act would detail the responsibilities of government and the community in relation to human rights protections and provide a consistent compliance framework. This would both generate a culture of respect for human rights across the Queensland community, and work toward guaranteeing all Queenslanders a just future, free of violations of their rights.

The HR Act should primarily aim to ensure that Queensland meets all principles and rights protection statements referenced in international human rights law and UN Declarations.

Key international instruments which should be explicitly included are:

- Universal Declaration of Human Rights
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination Against Women
- Declaration on the Elimination of Violence Against Women
- International Convention on the Elimination of All Forms of Racial Discrimination
- United Nations Declaration on the Rights of Indigenous Peoples
- Convention on the Rights of Persons with Disabilities
- Convention on the Rights of the Child

It is critical that criminalised women, girls and their children do not become invisible within generalised descriptions (such as *socially disadvantaged groups*) in the HR Act. International agreements which address the rights of criminalised people should also be expressly recognised within the HR Act. These include:

- Basic Principles for the Treatment of Prisoners
- Standard Minimum Rules for the Treatment of Prisoners
- Body Of Principles for the Protection of All Persons under any Form of Detention or Imprisonment
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (*The Bangkok Rules*)
- Standard Minimum Rules for the Administration of Juvenile Justice (*The Beijing Rules)*
- United Nations Standard Minimum Rules for Non-custodial Measures (*The Tokyo Rules*)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[4]
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Proposed functions of the Human Rights Act

Sisters Inside further proposes that the Human Rights Act (HR Act) should have the capacity to determine and remedy individual, collective and legislative breaches of human rights.

Essentially, the HR Act should serve to redistribute social power. It should challenge abuse of authority by the powerful against the powerless and require those with authority to change their behaviour where this is in contravention of Queenslanders' human rights. It is reasonable to expect that those with more power will be unlikely to readily give this up. Accordingly, it is crucial that the HR Act institute a substantially resourced body which is independent of the Queensland Parliament, which has the power to determine breaches of human rights, and the legal authority to direct remedy of any laws or behaviours which are abusive or contravene Queenslanders' human rights. This would include:

- Providing a system of independent oversight over human rights compliance in the public sector.
- Ensuring the Queensland Parliament is legally bound by the principles in the HR Act.

It is important that **individuals** who have experienced breaches of their human rights can seek remedy under the HR Act. This includes direct remedy against breaches by public or private authorities. It is essential that provision is made to address power imbalances between parties (e.g. the State and private citizens). Individuals seeking remedy under the HR Act should have access to legal and administrative support commensurate with the resources of the systems against which they are making claim. The ADCQ

[4] Too often, women and children's experience as a victim of childhood or adult criminal violence is a key contributor to their later offending. In many cases, the State's failure to recognise and respond to victim's rights following these criminal acts actively contributes to their criminalisation. Further, it can be readily demonstrated, that most criminalised women and children are victims of State abuse of power in the meaning of this Declaration.

or another third party independent of parliament and government, should be adequately resourced to provide advocacy services, free of charge, for all claims they deem to be reasonable. Limited time, competencies and finances should not be a barrier to seeking remedy under the HR Act.

Similarly, the HR Act should include provision for **collective remedy**. Groups of claimants, or their advocates, should be supported (by an adequately resourced ADCQ or another third party) to address systemic human rights failures and threats to their human rights.

Legislative and judicial compliance with the HR Act should also be central to its design. Parliament should be required to take human rights into account when passing laws, and existing legislation should be reviewed for its compliance with international human rights obligations. The Act should include stringent scrutiny processes for new Bills and legislation and a process for assessing systematic implementation of this legislation (e.g. regulations and practices). Where necessary, an independent authority should have the authority to direct state bodies to remedy any failure to respond to Queenslanders' human rights at a practice level, and the capacity to impose consequences on any public authorities that breach human rights. Courts should be directed to interpret all legislation in a manner which is compatible with international human rights obligations.

In short, the HR Act should be much more than a statement of what ought to be … the Act should have legal force. It should underpin the law and policy development process in Queensland. It should generate a greater awareness of human rights within public bodies, and hold them accountable for their policies and actions. Over time, this should improve decision-making in public authorities and more widely across the Queensland community.

Conclusion

In 2009, Sisters Inside submitted a comprehensive submission to the National Human Rights Consultation, much of which remains current. This 93 page document detailed specific issues related to the treatment of criminalised women and girls and their children, and the particular clauses in the international instruments which each circumstance or practice contravenes. Please treat this document as part of our submission to this Inquiry. It is available under the heading *Human Rights Submissions* at http://www.sistersinside.com.au/reports.htm.

This submission has been approved by the Management Committee of Sisters Inside Inc.

Yours sincerely

Debbie Kilroy OAM
Chief Executive Officer
Sisters Inside Inc.
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