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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*

26 November 2018

Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

**By email only:** [LACSC@parliament.qld.gov.au](mailto:LACSC@parliament.qld.gov.au)

Dear Committee Secretary

## Human Rights Bill 2018

Sisters Inside welcomes the opportunity to provide a submission to the Queensland Legal Affairs and Community Safety Committee regarding the Human Rights Bill 2018 (the **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.

Girls and women in youth, adult and immigration prisons, police watch houses, psychiatric units and other closed environments, as well as those subject to surveillance and intervention by or on behalf of the State, experience significant and ongoing human rights violations. At present, there is no effective or independent human rights framework in Queensland to respond to issues affecting criminalised and imprisoned women and girls.

Human rights legislation is one mechanism to respond to the violence that women and girls experience in public institutions. However, human rights legislation does not necessarily require structural changes that will reduce the number of women and girls in prison. For example, the Bill does not require the State to take practical steps to shut youth prisons (for example, by raising the minimum age of criminal responsibility). Additionally, the Bill does not specifically prevent prison expansion or privatisation by the State.

Sisters Inside will continue to advocate for the Queensland Government to shut youth prisons and to implement decarceration strategies to reduce the number of women and girls in prison, alongside human rights protections that are enacted in legislation.

### Key issues

Sisters Inside has identified the following key issues for comment in the Bill.

#### **A standalone cause of action and effective remedies**

In our submission, the Bill must be amended to include a standalone cause of action for unlawful breaches of human rights. Additionally, clause 59(3) must be removed and the Bill must provide for possibility for complainants to be awarded damages.

A standalone cause of action is essential to ensure the meaningful, timely and accessible protection of human rights in Queensland.

The Australian Capital Territory's *Human Rights Act 2004* (ACT) includes as a standalone cause of action for unlawful breaches of human rights.

The 2015 Young review of Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Vic) identified issues with the requirement to 'piggyback' human rights arguments in proceedings based on other causes of action, including that<sup>1</sup>:

- providing protections for human rights without corresponding remedies sends mixed message about the importance of those rights; and
- this model leads to 'contortions in litigation' in order to present a human rights argument, alongside other (unsuccessful) grounds.

Based on these findings, the Young review recommended amending the Charter in line with the ACT legislation, to enable a complainant to apply either to the Victorian Civil and Administrative Tribunal for a remedy, or rely on the Charter in any legal proceeding (recommendation 27(a)).

For adults and children in prison, it is essential to have various options for independent scrutiny of human rights issues and the actions of public entities. The ability to commence standalone proceedings for unlawful breaches of human rights is consistent with the main objects of the Bill. Public consideration of human rights law in a court or tribunal is important to clarify the scope of human rights protected in the Bill.

The ability for a court or tribunal to award damages will ensure the Bill offers an effective remedy for egregious breaches of human rights. It is appropriate for the Bill to allow courts and tribunals the discretion to award damages in situations where unlawful conduct is proven.

We note clause 95 of the Bill provides for a review as soon as practicable after 1 July 2023. Rather than waiting until after the 2023 review, the Queensland Parliament ought to include a standalone cause of action in the original version of the Bill.

### **Complaints to the Human Rights Commission**

We support the establishment of the Human Rights Commission and the procedure for the Commission to resolve complaints.

We note clause 65 of the Bill does not allow for direct complaints to the Human Rights Commission, unless the complainant has first made a complaint to the relevant public entity and 45 days has elapsed since the internal complaint was made. In exceptional circumstances, the Commission may consider complaints before the 45 day internal complaint period has elapsed.

In our submission, women and girls in prison experience significant difficulties making complaints and raising issues about human rights violations. The requirement to make an internal complaint may unreasonably limit the Commission's flexibility and ability to consider important complaints from adults and children in prison.

We recommend the Bill is amended to allow complaints by adults and children in youth and adult prisons and police watch houses to be raised directly with the Commission, without the need for an internal complaint first. This would recognise the uniquely vulnerable position of people in these situations and the need for a prompt, flexible and independent mechanism to address emerging issues.

Alternatively, the timeframe for a response to an internal complaint must be significantly reduced from 45 days; the timeframe must be aligned with decision making timeframes for Government agencies in other legislation (generally between 21-28 days).

The Commission must be resourced to consider and resolve complaints.

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<sup>1</sup> Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (2015), 127. Available at: [https://www.justice.vic.gov.au/sites/default/files/embridge\\_cache/emshare/original/public/2018/08/0b/e9a8d9ca9/report\\_final\\_charter\\_review\\_2015.pdf](https://www.justice.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2018/08/0b/e9a8d9ca9/report_final_charter_review_2015.pdf).

**Additional right to housing**

Access to affordable and appropriate housing is essential to reduce imprisonment and for women and girls to live safely and independently.

In our experience, women and girls experience significant barriers to accessing and maintaining housing. Women and girls we support have been negatively affected by public housing policies, including the 'Fair Expectation of Behaviour Policy' (previously called the 'Anti-Social Behaviour Policy') as well as policies that limit women's ability to maintain their tenancies as a result of imprisonment.

We recommend the Bill is amended to include an additional right to housing, to guide social housing decision makers to exercise their discretion in a manner that is consistent with the human rights of women and girls, and their children.

**Consequential amendments to *Youth Justice Act 1992 (Qld)* and *Corrective Services Act 2006 (Qld)***

In the past two decades, imprisonment rates have continued to rise in Queensland and nationally. In particular, the number of Aboriginal and Torres Strait Islander women and girls in prisons has exploded. Increased criminalisation, as well as the evisceration of social services that address poverty, homelessness and health issues, has driven the massive imprisonment of women and girls.

As a result of the rise in the rate of imprisonment, more adults and children are affected by human rights violations that occur in closed environments with impunity. International human rights law and the Bill recognise the uniquely vulnerable position of people in prison and watch houses, by providing specific and additional protections for 'people deprived of liberty'. In fact, several rights are only enlivened when people are deprived of liberty.

We do not want to see the Bill or human rights discourse used to justify prison expansion in Queensland. We also do not support spending significant resources to make prisons 'human rights compliant'; the focus must be on reducing the number of women and girls in prisons.

In our view, the consequential amendments are unnecessary. Clause 13 of the Bill, read alongside the *Youth Justice Act 1992 (Qld)* or the *Corrective Services Act 2006 (Qld)*, and relevant policies, procedures and directives, ought to be sufficient to ensure that operational requirements of youth and adult prisons can be met within the human rights framework.

To ensure the rights of women and girls are fully protected, it is essential that the application of the Bill is not further limited by the consequential amendments.

Thank you for considering this submission. Please contact me on (07) [REDACTED] if you would like to discuss anything further.

Yours faithfully



Debbie Kilroy  
Chief Executive Officer  
**Sisters Inside Inc**