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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

13 January 2023

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane Qld 4000

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

Dear Committee Secretary,

Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022

Sisters Inside welcomes the opportunity to provide the following response to the Legal Affairs and Safety Committee on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022.

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 their families, and provides services to address their individual needs. We believe that prisons are an irrational response to social problems that serve to alienate socially marginalised groups in our communities. Our submission is informed by 30 years of work advocating for the collective human rights of criminalised women and girls. We daily see the realities of prison life for women and girls in Queensland and the wider consequences of policies and practices within the Queensland criminal legal system through our services that support criminalised women and children.

About this submission

We have had the benefit of viewing the submissions provided by Queensland Law Society, the Human Rights Commission and the Queensland Advocacy for Inclusion and are supportive of the sentiments contained in their submissions.

The current inspection framework for prisons in Queensland is deeply inadequate. It is highly concerning that in October 2022, the Subcommittee was denied access to places

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of detention in Queensland.¹ In our experience, Queensland's current inspection bodies are neither independent nor transparent. Sisters Inside, therefore, supports the Australian Government's decision to implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). We do not believe, however, that the bill goes far enough in enabling the Subcommittee to fulfil its obligations of monitoring places of detention. The bill in its current form provides too many opportunities for restricting access, thus nullifying the concept of unrestricted access.

Summary of Main Points and Recommendations

- **Clause 4** – The definition of 'places of detention' must be amended to ensure that all places of detention in Queensland are monitored. The bill should define 'places of detention' as any place where persons may be deprived of their liberty in accordance with Article 4 of OPCAT. The bill should also be explicit in ensuring that the 'places of detention' accessible to the Independent National Preventive Mechanism (NPM) are not limited to the places listed in clause 4.
- **Clause 9** – We recommend removing clause 9 as it is contrary to the policy objective of the bill, which is to facilitate visits by the United Nations Subcommittee on Prevention of Torture to places of detention in Queensland.
- **Clause 10** – We strongly recommend the removal of clause 10. In our experience, the carceral system continuously attributes the 'good order and management of the place of detention' as a reason to restrict access.
- **Clause 14** – We strongly recommend the removal of section 14 as it limits the ability for the subcommittee to effectively monitor places of detention.
- **Clause 16** – We recommend the removal of clause 16.
- **Clause 18** – The bill should implicitly include that interviews must be held in a private room that is not recorded and can not be overheard.
- **Clause 19** - We encourage the Committee to reconsider the definition of 'detriment' as it does not encompass the reprisals faced by women in places of detention.

1. Clause 4 – Meaning of place of detention

Article 4(1) of OPCAT defines places of detention as 'any place under [a state's] jurisdiction and control where persons are or may be deprived of their liberty, either by

¹ Office of the United Nations High Commissioner for Human Rights "UN torture prevention body suspends visits to Australia citing lack of co-operation", 23 October 2022.

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virtue of an order given by a public authority or at its instigation or with its consent or acquiescence'.² The bill should explicitly ensure that the “places of detention” accessible to the independent National Preventive Mechanism (NPM) are not limited to the places listed in clause 4. We are concerned that the definition of “detention” is currently too focused on the traditional sites of detention rather than taking the broader perspective of ‘places of detention’ where the reality is that many people experience multiple, intersecting forms of deprivation and control.

We consider it may be useful to identify “places of detention” based on carceral practices used on a day-to-day basis by and within public institutions or institutions performing public functions. In our view, all places where adults or children are coercively kept against their will are “places of detention” and should be subject to periodic visits by an NPM. OPCAT defines ‘site of detention’ as anywhere that deprivation of liberty occurs’³ and this must be included in the bill.

2. Clause 9 & 10 – Restricting access to places of detention

Queensland’s prison system has been in crisis for decades, and conditions have been continuing to deteriorate for people in prison. In the past two years, an extremely high number of people have died in police and prison custody in Queensland. Of extreme concern is that there have been 527 Indigenous deaths in custody since the Royal Commission.⁴ In our experience, everyday practices of violence and human rights violations occur in Queensland prisons and youth prisons including forced restraints, strip searching, disciplinary action, use of force and solitary confinement. It is also clear that Queensland is a state of hyper-criminalisation, especially the criminalisation of women and children which is at a significant cost to the state through spending on policing, the courts, and corrective services.

Whilst the introduction of this bill is one mechanism to respond to human rights abuses, the bill must provide unrestricted access to ensure that the United Nations Subcommittee can undertake their work in order to effectively monitor places of detention to prevent torture and other ill treatment of persons who are detained. As the bill currently stands, there is no complete ‘unrestricted access’. Given the purpose of the bill is to facilitate visits to places of detention to the United Nations Subcommittee the bill must go further than what currently exists.

² Article 4 (1), OPCAT.

³ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment, Article 4 (2).

⁴ Australian Institute of Criminology, Deaths in custody in Australia
<https://www.aic.gov.au/statistics/deaths-custody-australia>.

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We recommend that legislation also mandates the minimum frequency of visits to places of detention. The bill must ensure that the NPM is able to make regular, unannounced visits without restriction in order to effectively monitor places of detention, in accordance with OPCAT.⁵

We are particularly concerned about s10 and strongly recommend its removal. In our experience, the carceral system continuously uses the 'good order and management of the place of detention' as a reason to restrict access. In particular, the system often attributes this as a reason to deny access to programs, medical and psychological care, and to excuse harmful practices such as lockdowns, solitary confinement, and strip searching. Furthermore, we are particularly concerned that the NPM may be prevented from visiting because of the 'good order and management of the place of detention' because of issues with governance, such as a staff shortage or lockdowns. It is moments when the system is under pressure that the people detained are most at risk, it is more important that the NPM have access at these times. It also ensures that the NPM can witness how the place of detention actually responds to critical incidents in order to effectively monitor the treatment of people in detention.

It is also imperative that visits be completely unannounced to ensure that the Subcommittee witnesses the authentic and genuine workings of the detention facility. Further, if the visit is announced there is the risk that the facility will be able to control the narrative. It is known that torture tends to occur 'behind closed doors' and that monitoring directly addresses the problem that torture is conducted in secret and flourishes in the absence of scrutiny.⁶ We strongly recommend the removal of clause 10 to ensure that the places of detention are genuinely unrestricted.

3. Clause 14 - Access to Identifying information

Clause 14 is particularly problematic as it prohibits access to information about a person in a place of detention. Access to relevant information may be essential when monitoring the conditions of a detention place where access may be restricted under s9 and s10.

In circumstances such as the Subcommittee being referred information that expresses concern within places of detention it would be prudent for the information to be provided prior to the visit to allow them to identify areas of concern with ease and greater efficiency. It is also important to note that detainees are transferred between places of detention and it is essential that the NPM can continue to investigate even when the detainee is transferred to a facility that has not yet been visited. We agree with the

⁵ Article 19(2), OPCAT.

⁶ Richard Carver and Lisa Handley, *Does Torture Prevention Work* (Liverpool: Liverpool University Press, 2016), 94.

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comments made by the Human Rights Commission that clause 14 contradicts the requirements of OPCAT.⁷

As a comparison, currently the Queensland Ombudsman has broad powers to investigate complaints and can compel an agency to produce documents or witnesses under oath without having to attend in person.⁸ Given the subcommittees important role in monitoring torture and inhumane treatment of persons in detention it is vital that the bill implements necessary features to expose violence within detention places. We therefore strongly recommend the removal of this section.

4. Clause 16 – Subcommittee may interview any person

We agree with the sentiments contained in the submission of Queensland Advocacy Incorporated that clause 16 is redundant. As outlined in their submission, 'being able to consent' raises concerns regarding capacity. It is particularly concerning that if an individual's legal guardian does not consent to the interview then the person detained may be prohibited from the opportunity to discuss relevant issues that are relevant to the monitoring of places of detention.

5. Clause 18 – Interviews to be held in private

Though the legislation deals directly with protection from reprisals, in our experience women and girls are resistant to speaking to people in positions of power because of the fear of reprisals from police and prison officers. Clause 18 should implicitly include that interviews must be held in a private room or area that is not recorded by the detention facility and can not be overheard or witnessed by detention staff. In the small instances when there may be security concerns for the NPM, independent security should be provided to ensure the confidentiality and privacy of people who are detained.

6. Clause 19 – Reprisal and grounds for reprisals

"You never spoke to the Official Visitor or Ombudsman because the officers would see you speaking to them, and would know when the report was made who had spoken to them. They would then find a way to punish you. There was nowhere to speak quietly, or privately. You always knew the people who had made complaints because they were given the worst chores, and their rooms were checked more. You could never ask for help. It was a

⁷ 5 Article 14, OPCAT.

⁸ Ombudsman Act 2011 (Qld) s 27-34.

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permanent state of working on eggshells.” Alexis, formerly incarcerated woman.*

Reprisals from staff, and the institution, in general, are a dangerous reality in places of detention. Sisters Inside assert that the definition of ‘detriment’ does not encompass the reprisals faced by women in places of detention.

Women have very little power in detention and we routinely hear stories of abuse of power by detention staff, including increased surveillance, room searches, harassment by detention staff, threats to cancel visits with family, removal of children from imprisoned mothers, and changes to security classifications. Stories that may not fit the narrow view of prejudice to the person’s safety but have serious consequences to the experiences of detention. We encourage the Committee to reconsider the definition of ‘detriment’ as it does not encompass the reprisals faced by women in places of detention.

7. Other relevant information

People in detention need accessible communication to understand their human rights and access to appropriate complaint mechanisms. Culturally appropriate and disability-informed dialogue with people in detention must be a priority of the NPM.⁹ We recommend that the legislation should go further in enabling vulnerable people in places of detention to make a complaint. For example, complaints should be made through a representative body within the prisons, the representative body would be made up of people in prison to engage with the visiting bodies to raise issues to ensure that all human rights violations are being monitored.

Furthermore, we would encourage formal collaborations with people with lived experience of detention in monitoring activities. It is pertinent that people with lived experience and civil society panels should be included in those discussions with the NPM from various places of detention to allow them insight and knowledge into places of detention. Civil Society panels can help strengthen the mandate of the NPM by exchanging information, working together and forming formal coalitions. We call for the formal integration of Civil society organisations into a Queensland NPM, including collaborations on monitoring activities. This integration needs to include funding to participate in OPCAT monitoring and prepare a shadow report to parliament.

⁹ Letter from Queensland Advocacy for Inclusion, Sisters Inside, Prisoners Legal Service, Aboriginal and Torres Strait Islander Legal Service, Aged Care and Disability Advocate Australia, Caxton Legal Centre, FPDN, Mackay Advocacy, QCOSS, Speaking up for you, Steve Caruana, Uniting Church of Australia to Attorney General and Minister for Justice, 12 December 2022, 5.

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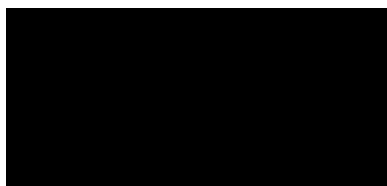
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Conclusion

The current inspection framework for prisons in Queensland is deeply inadequate. It is of particular importance that our recommendations be made to the bill in order to successfully monitor places of detention. This is fundamental in exposing human rights violations and violence within prisons and other forms of detention.

We are willing to provide further information or clarification of any of the matters raised in this submission upon request, and we consent to the publication of our submission. If you would like to discuss anything or require further information, please contact me on (07) 3844 5066.

Yours faithfully



Debbie Kilroy
Chief Executive Officer
Sisters Inside Inc