Sisters Inside Inc.
ABN 94 859 410 728

P.O. Box 3407
South Brisbane Qld 4101

Ph: (07) 3844 5066
Fax: (07) 3844 2788

Email: admin@sistersinside.com.au
Web: www.sistersinside.com.au

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

19 November 2021

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

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

Dear Committee Secretary

Working with Children (Indigenous Communities) Amendment Bill 2021

I write to you in relation to the Working with Children (Indigenous Communities) Amendment Bill 2021 (the Bill). Sisters Inside welcomes the opportunity to provide a submission to the Queensland Legal Affairs and Community Safety Committee regarding the Bill.

About Sisters Inside

Established in 1992, Sisters Inside is an independent community organisation that advocates for the collective human rights of women and girls in prison, and their families, and works alongside criminalised women and girls to address their immediate, individual needs. Our work is guided by our underpinning Values and Vision.[1] All of our work is directly informed by the wisdom of criminalised women.

The existing WWCC system

According to public reporting by the Department of Justice and Attorney-General for the 2020-21 period, 3,552 individuals were prevented from working with children due to their criminal histories. This is up from 2,199 in 2016-17.[2] Sisters Inside has directly witnessed the significant barriers the Working with Children Clearance (WWCC) system presents for criminalised women. In our experience, virtually any criminal history is considered grounds to deny an individual a positive WWCC, even where it is not a 'serious' or 'disqualifying' offence under the Act. This prevents women from accessing many opportunities which would better their lives, such as obtaining employment or becoming a volunteer at their child's school. It also prevents women from becoming kinship carers for member of their own family. In effect, the system excludes

[1] Sisters Inside Inc., 'Values and Visions'. Available at: www.sistersinside.com.au/values.htm.
[2] https://www.justice.qld.gov.au/publications-policies/reports/annual-report

Sisters Inside Inc.
ABN 94 859 410 728

P.O. Box 3407
South Brisbane Qld 4101

Ph: (07) 3844 5066
Fax: (07) 3844 2788

Email: admin@sistersinside.com.au
Web: www.sistersinside.com.au

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

women with criminal histories from being able to participate fully in society.

This issue is so widespread that Sisters Inside has employed a Blue Card Advocate to support women through the application and appeal process. In the past year, we have supported 35 women. During that time, only one woman received a positive notice from the chief executive. Two women reached final hearing at QCAT and both successfully had the chief executive's decision set aside. In this context, we have observed that there are exceptionally long wait times to get a decision from the chief executive – usually in the vicinity of 8 – 9 months. It generally then takes a further 1 – 1.5 years to get a final decision from QCAT on review. During this wait period, applicants are often prevented from commencing suitable employment, which may have significant negative affects on their lives and wellbeing. The women we support have described the WWCC system as an instrument in the 'forever punishment' criminalised people experience in our society.

Sisters Inside actively prioritises employment of staff with lived prison experience and recognises their unique contribution to our work with and for criminalised women and their children. The restrictiveness of the WWCC system means, however, that we are often unable to employ individuals with lived experience. Social work academics have identified that exclusion of individuals with lived experience of institutionalisation is a serious issue affecting many community service and support organisations.[3]

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 (such as Department of Child Safety and Domestic Violence Order 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 is committed to the safety and wellbeing of all children. In this context, we wish to

[3] See Angella Duvnjak, Victoria Stewart, Peter Young and Leah Turvey, 'How does Lived Experience of Incarceration Impact Upon the Helping Process in Social Work Practice?: A Scoping Review' (2021) *British Journal of Social Work*; Peter Young, Clare Tilbury & Melanie Hemy, 'Child-related Criminal History Screening and Social Work Education in Australia' (2019) 72(2) *Australian Social* Work 179.

Sisters Inside Inc.
ABN 94 859 410 728

P.O. Box 3407
South Brisbane Qld 4101

Ph: (07) 3844 5066
Fax: (07) 3844 2788

Email: admin@sistersinside.com.au
Web: www.sistersinside.com.au

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

highlight that 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 or criminalisation in residential care facilities. Routine forms of violence by or on behalf of the State are not subject to oversight by the WWCC system.

The amendments

We understand that the central function of the amendments is to make it such that individuals in Indigenous communities who were convicted of certain 'assessable' 'serious offences' – stealing with violence, burglary, unlawful entry of a vehicle, trafficking in dangerous drugs – can apply for a 'restricted working with children clearance'. The application will then be decided by the relevant local Community Justice Group, who are able to consider a broader range of factors, including whether withholding the recommendation would have a negative impact on the social or economic wellbeing of the community area's inhabitants. This restricted clearance would enable the individual to work in their Indigenous community – and only that community – in circumstances where they would have ordinarily been issued a Negative Notice.

Additionally, when the Community Justice Group is initially notified of the application by the Chief Executive, they may make a binding recommendation to the Chief Executive that an 'interim restricted working with children clearance' is issued. This would enable the applicant to work in their community prior to the final decision of the Community Justice Group being made. The same considerations that apply to the decision about the final 'restricted working with children clearance' apply to the 'interim' clearance. The intention of this amendment is to remove the barrier to employment which exists while an application is being assessed by the chief executive and Community Justice Group.

Our view

We support the Bill and consider that it will positively advance the implementation of 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), which recommended a number of reforms to support Aboriginal and Torres Strait Islander people and

Sisters Inside Inc.
ABN 94 859 410 728

P.O. Box 3407
South Brisbane Qld 4101

Ph: (07) 3844 5066
Fax: (07) 3844 2788

Email: admin@sistersinside.com.au
Web: www.sistersinside.com.au

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

build cultural capability in the WWCC system. We believe that the Bill will alleviate the issues created by the WWCC system in the Indigenous communities to which the Bill will apply.

However, we consider that the issues identified in Mr Katter MP's Explanatory Speech extend beyond regional Indigenous communities. In particular, the significant time it takes to receive a decision from the chief executive impacts on all criminalised applicants, not just those in regional communities. In our view, legislative amendments beyond that in the Bill are necessary to fulfil recommendation 73 for all Aboriginal and Torres Strait Islander people. It is not sufficient to rely on a non-legislated Strategy and Action Plan to address the negative impact of the current WWCC system on Aboriginal and Torres Strait Islander people. We believe that extensive legislative change to the WWCC system is required to address its discriminatory and exclusionary effects and improve the functioning of the system for the benefit all Queenslanders.

Further feedback and suggestions

Funding for advice and support services

We consider that individuals in the Indigenous communities to which these amendments would apply must be able to access quality advice and support prior to submitting an application for a 'standard' or 'restricted' working with children clearance. The WWCC system and legislation is increasingly complex consider that without this advice and support, these amendments will not be effective. We consider that the Government must therefore commit to providing further funding for community support and legal centres in Indigenous community areas.

In particular, we are concerned that in many instances individuals would be better placed applying for a 'restricted' working with children clearance even where they have a non-'serious offence', due to the incredibly high numbers of applicants with non-'serious offence' conviction who are issued a Negative Notice by the chief executive.[4] This is particularly so where the individual only wants to work in their community area. However, due to a lack of helpful information available to applicants, these individuals may apply for a 'standard' clearance, believing that 'restricted' clearance applications are only appropriate where they were convicted

[4] See *Working with Children (Risk Management and Screening) Act 2000*, s 221(2). Under this provision, the chief executive may only issue a Negative Notice to an individual with a conviction for a non-serious offence if the chief executive is satisfied that it is an 'exceptional case' where it would not be in the best interests of children to issue a positive clearance. We find that nearly criminal convictions will result in a Negative Notice being issued.

Sisters Inside Inc.
ABN 94 859 410 728

P.O. Box 3407
South Brisbane Qld 4101

Ph: (07) 3844 5066
Fax: (07) 3844 2788

Email: admin@sistersinside.com.au
Web: www.sistersinside.com.au

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

of an 'assessable' 'serious offences' and would be unable to avail themselves of the benefits of a 'restricted' application.

Limited geographical application of the clearance

We submit that the clearance should not only be valid for the specific Indigenous community area in which the individual applied. In effect, this will mean that individuals will be forced to go through the protracted application process all over again if they move out of their community. We worry that this may be a considerable disincentive for individuals to move residence or continue in employment in they do move. For example, the limited geographical range of the clearance may dissuade a woman from moving out of a community to further her career, or, more concurringly, escape domestic violence.

Additionally, we worry that some individuals may not understand that their clearance is only valid for certain geographical areas and may consequently be criminalised for working in regulated employment outside of that area. This gives further weight to the need for improved advice and support services for WWCC applicants.

List of 'assessable' 'serious offences'

We consider that it is appropriate to include manslaughter (s 300 of the Criminal Code) as one of the 'assessable' 'serious offences' to which the amendments would apply. Sisters Inside believes that Community Justice Groups ought to be able to decide whether it is appropriate and desirable for an individual to hold a 'restricted working with children clearance' where they have a conviction for manslaughter. There are many, varying circumstances in which manslaughter may have been committed, including in a domestic violence self-defence/self-preservation context. We consider therefore that it is an appropriate offence to be assessable by a Community Justice Group.

Kinship and foster carers

The Explanatory Note does not discuss the requirement under the *Child Protection Act 1999* for kinship and foster carers to hold a WWCC.[5] This is clearly pertinent to Indigenous communities, given the high rates of Aboriginal and Torres Strait Islander children in out-of-home care

[5] *Child Protection Act 1999* (Qld), s 135.

Sisters Inside Inc.
ABN 94 859 410 728

P.O. Box 3407
South Brisbane Qld 4101

Ph: (07) 3844 5066
Fax: (07) 3844 2788

Email: admin@sistersinside.com.au
Web: www.sistersinside.com.au

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

placements.[6] Finding a placement for a child within their own family or kinship group is of the utmost importance. This is reflected in the Aboriginal and Torres Strait Islander Child Placement Principle, which the Government is currently attempting to legislate to strengthen.[7] The WWCC system, for the reasons discussed already, therefore poses significant barriers for Aboriginal and Torres Strait Islander people in becoming carers.

The Bill, however, will only enable a person holding a 'restricted working with children clearance' to 'undertake regulated employment in the community area'. It will not enable them to be a carer in their community area. Accordingly, we consider that the Bill ought to be amended to allow an individual holding a 'restricted working with children clearance' to be a carer in their community area, to further improved compliance with the Aboriginal and Torres Strait Islander Child Placement Principle.

Recommendations for further reform of the WWCC system

As stated above, we consider that the issues identified in Mr Katter's Explanatory Speech affect all criminalised Queenslanders, not merely Aboriginal and Torres Strait Islander people in regional communities. Sisters Inside proposes that the following legislative amendments are made to the Act to address the wide-ranging issues created by the WWCC system.

Limiting discretion to issue a Negative Notice for non-serious offences

We submit that the finding of an 'exceptional case' by the chief executive as grounds to issue an applicant a Negative Notice where the applicant has a non-'serious offence' conviction should have to meet a higher threshold.[8] As discussed above, the chief executive is presently overly cautious and risk averse in finding that an 'exceptional case' exists. We believe that the Department is acting erroneously in routinely coming to these decisions. There is a substantial body of QCAT decisions to support this position.[9] This creates significant issues for individuals,

[6] Australian Institute of Family Studies, 'Child protection and Aboriginal and Torres Strait Islander children' (CFCA Resource Sheet, January 2020) . See also Queensland Department of Children, Youth Justice and Multicultural Affairs, 'Placement of Aboriginal and Torres Strait Islander Children, https://www.cyjma.qld.gov.au/about-us/performance-evaluations/our-performance/representationaboriginal-torres-strait-islander-children/placement-aboriginal-torres-strait-islander-children.
[7] *Child Protection Reform and Other Legislation Amendment Bill 2021* (Qld).
[8] Ibid.
[9] *BEL v Chief Executive Officer, Public Safety Business Agency* [2016] QCAT 167; *NFC v Chief Executive Officer, Public Safety Business Agency* [2016] QCAT 14; *Oxlee v Chief Executive Officer,*

Sisters Inside Inc.
ABN 94 859 410 728

P.O. Box 3407
South Brisbane Qld 4101

Ph: (07) 3844 5066
Fax: (07) 3844 2788

Email: admin@sistersinside.com.au
Web: www.sistersinside.com.au

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

as they are forced to seek time consuming and costly reviews of the chief executive's decisions at QCAT.

Accordingly, we recommend amending s 221(2) of the Act to state that if the chief executive is "satisfied it is an exceptional case in which there is a real and not remote chance it would threaten the safety, interests, or wellbeing of children for the chief executive to issue a working with children clearance, the chief executive must issue a negative notice to the person". We consider this would lower the discretion the chief executive has to issue Negative Notices in circumstances where an applicant has very dated, minor, and/or non-violent criminal history.

Implementation of statutory timeframe for decision-making

Most importantly, we consider that the Act should be amended to incorporate a statutory time limit for deciding applications. As Mr Katter MP identifies in his Bill, individuals are routinely waiting for extremely long periods to get a decision and experiencing extensive hardship as a result. Administrative decisions are routinely subject to statutory timeframes and we do not consider the WWCC system should be any different. Accordingly, we propose that s 220 of the Act be amended to require the chief executive to make a decision within 8 weeks. This would align with the timeframe for the Community Justice Group to make a decision under the Bill.

Amending list of disqualifying offences

We submit that murder – or counselling, procuring, attempting, or conspiring to commit murder – be removed from the list of 'disqualifying offences' and be placed under the list of 'serious offences'. We consider that the current prohibition on an individual convicted of these offences ever even applying for a Clearance fails to take into consideration the circumstances of the offence, the individual's life circumstances, and the length of time it has been since the offence was committed.

Amending list of serious offences

We recommend that the 'assessable' 'serious offences' identified in the Bill – inter alia, stealing with violence, burglary, unlawful entry of a vehicle, trafficking in dangerous drugs – be removed from the list of 'serious offences' in the Act. 'Exceptional case' has been interpreted very strictly

---

Public Safety Business Agency [2016] QCAT 318; *FMK v Chief Executive Public Safety Business Agency* [2016] QCAT 391.

Sisters Inside Inc.
ABN 94 859 410 728

P.O. Box 3407
South Brisbane Qld 4101

Ph: (07) 3844 5066
Fax: (07) 3844 2788

Email: admin@sistersinside.com.au
Web: www.sistersinside.com.au

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

by QCAT in circumstances where an individual has been convicted of a serious offence – it requires individuals to have 'gone above and beyond living in a law-abiding manner as society expects and functioning at a level expected of a person at their stage and age in life'.[10] We consider that proving this state of affairs is extremely challenging for most individuals and is an unreasonable requirement for an individual who may have committed an entirely non-violent offence. If this amendment was made, the chief executive could still refuse an application by individual who committed one of these offences under their usual discretion to issue a Negative Notice where they consider the individual is an 'exceptional case' where it would not be in the interest of children to issue them a positive clearance.[11]

Thank you for considering this letter. If you would like to discuss this letter further, please do not hesitate to contact me on (07) 3844 5066.

Yours sincerely

Debbie Kilroy
Chief Executive Officer
Sisters Inside Inc

[10] *TAW v Director-General, Department of Justice and Attorney-General* [2021] QCAT 166 [11].
[11] *Working with Children (Risk Management and Screening) Act 2000* (Qld), s 221(2).