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

Royal Commission into Institutional Responses to Child Sexual Abuse
By email: criminaljustice@childabuseroyalcommission.gov.au

6 October 2016

Dear Commissioners

Re: Response to Criminal Justice Consultation Paper

Sisters Inside exists to advocate for the human rights of women and girls in the criminal justice and juvenile justice systems. We also provide services in response to the unmet human rights and needs of criminalised women and girls, and their children. We work alongside criminalised women themselves in addressing these issues and are therefore acutely aware of the impact of institutional child sexual abuse on our participants.

Up to 98% of women prisoners are, themselves, victims of crime and this has often contributed to their offending. Most have a history in the child 'protection' and/or juvenile 'justice' systems, and many have reported experiences of abuse, including sexual abuse, in associated institutions including foster care and residential care. The limited studies available indicate that over 40% of women prisoners have experienced childhood sexual assault, generally in either institutional or familial settings.

The vast majority of women prisoners are convicted of minor, non-violent offences – as indicated by an average period of imprisonment of less than 5 weeks in South East Queensland in 2015[1]. Aboriginal and Torres Strait Islander women are massively over-represented, accounting for 1/3 of all women prisoners in Queensland on 30 June 2015. Most criminalised women and girls come from backgrounds of poverty, homelessness, and domestic and family violence. A significant proportion of women prisoners 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).[2]

Accordingly, Sisters Inside sees this Royal Commission as essential to addressing one of the many violations of criminalised women and girls' human rights – institutional child sexual abuse. We particularly commend the Royal Commission for its' acknowledgement of criminalised women in this Consultation Paper, through:

- Recognising the particular needs of prisoners and those with criminal records and proposing strategies to encourage them to report allegations of institutional child sexual abuse. We support the proposal that *police should provide channels for reporting that can be used from prison and do not require a former prisoner to report at a police station* (Chapter 3).
- Noting the importance of training police (Chapter 3), prosecution staff (Chapter 8) and other legal practitioners and judges (Chapter 11) to understand that many victims/survivors of child sexual abuse have a criminal record and may display behaviours they find difficult due to substance abuse or mental health issues. We strongly support the proposal that police and prosecution staff should be non-judgmental, and focus on *the complaint* rather than *the complainant* (Chapters 3 & 8).

[1] The average period of imprisonment for all women prisoners, including long term sentenced prisoners, was 4.96 weeks.
[2] All data from Queensland Corrective Services and ABS.

Aboriginal & Torres Strait Islander Victims/Survivors

Aboriginal and Torres Strait Islander women are massively over-represented within the criminal 'justice', juvenile 'justice' and child 'protection' system, at all levels. 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. Aboriginal and Torres Strait Islander women are the fastest growing prison population in Australia.

We note the attention paid to Aboriginal and Torres Strait Islander victims/survivors in the Consultation Paper, including:

- Acknowledging the additional barriers to reporting institutional child sexual abuse faced by Aboriginal and Torres Strait Islander victims/survivors (Chapter 3).
- Proposing ensuring that Witness Assistance Services include staff trained to provide a culturally appropriate service for Aboriginal and Torres Strait Islander victims/survivors (Chapter 8).

Any strategy which may encourage more effective police responses to Aboriginal and Torres Strait Islander victims/survivors and their communities is worthy of consideration. Whilst acknowledging the value of police developing *good relationships* with communities, and providing *channels for reporting outside of the community* such as telephone numbers and online reporting forms (Chapter 3), these alone are unlikely to be adequate measures to optimise reporting by (criminalised) Indigenous women and girls in the current context.

Aboriginal and Torres Strait Islander people are over-policed, particularly in remote communities. Even where so-called *good relationships* exist between police and communities, Indigenous women continue to be massively over-criminalised simply due to the high police presence in their community. Many women avoid any contact with police due to outstanding warrants or fines. In short, Indigenous women and girls are unlikely to be willing to directly report child sexual abuse to the police.

Provision of the proposed alternate reporting channels can also be expected to have limited value for this cohort. Many Aboriginal and Torres Strait Islander women have little access to private phone calls or internet due to poverty and associated issues such as domestic and family violence, and housing overcrowding. For some, English is their 2nd or 3rd language, and many others have limited English literacy due to poor education. Further, many (particularly criminalised) Indigenous women are extremely cautious about disclosing any personal information in writing, given their experiences of written material being used by authorities against their interests.

Most criminalised Aboriginal and Torres Strait Islander women have lived with high rates of state intervention in their lives. They are understandably resistant to voluntarily engaging with authoritative or mainstream services. This includes mainstream agencies such as Witness Assistance Services – *cultural appropriateness* training is unlikely to be perceived as providing sufficient safety for (criminalised) Indigenous women and girls to make use of these services.

If the Royal Commission seeks to increase rates of reporting institutional child sexual abuse by Aboriginal and Torres Strait Islander women, it is essential that reporting and support pathways are well outside the very systems which have too often governed their own and their children's lives. Similarly, Indigenous women and girls are much more likely to access community-controlled Witness Assistance Services than those which appear to be associated with the criminal justice system or mainstream social services.

Sisters Inside recommends that the Royal Commission propose dedicated funding support to develop Aboriginal and Torres Strait community-controlled pathways for reporting and ongoing support. Possible host services for institutional child sexual abuse support services include Aboriginal Family Violence Prevention and Legal Services, Indigenous Community-controlled Health Services, and/or (member) agencies recommended by peak Indigenous child protection and child care bodies. We recommend that the Commission negotiate the most appropriate location for these support services with Indigenous community Elders and leaders.

Witness Assistance Services

Sisters Inside agrees that Witness Assistance Services *are particularly important in keeping victims (and their families) and survivors informed and ensuring that they are put in contact with relevant support services* and that these services *should be funded and staffed to ensure that they can perform this task* (Chapter 8).

As detailed above, criminalised women and girls are highly disproportionately victims/survivors of child sexual abuse, including abuse experienced in institutions. Like Aboriginal and Torres Strait Islander women, non-Indigenous criminalised women and girls (and their children) are unlikely to make use of mainstream Witness Assistance Services, particularly if these are perceived to be associated with the criminal justice system.

If the Royal Commission wants to increase reporting rates and appropriately support criminalised victims/survivors (who are particularly likely to experience complex, interrelated needs), it is essential that specialist, community-driven services are provided with dedicated funding to provide wrap-around support – from disclosure to conclusion. Services such as Sisters Inside (Qld), Flat Out (Vic) and Seeds of Affinity (SA) are well-placed to provide this type of specialist support, and already have trust-based relationships with large numbers of criminalised women and girls, and their children. In other states and territories, advice on suitable locations for support services could be accessed through key advocacy bodies such as Women in Prison Advocacy Network (NSW) and the Bandyup Action Group (WA).

Victim/Survivor Evidence

The Commission's account of the retraumatising effect of the criminal justice system on victims/survivors of child sexual assault (Chapter 9) is entirely consistent with Sister Inside's experience. Women have consistently reported feeling *daunted* by the system, feeling like *they are the ones on trial* and *finding cross-examination as bad as the child sexual abuse* itself. We strongly support any strategy that reduces the number of times women are required to revisit their abuse. We support the principle of treating victims/survivors consistent with provisions available to other *vulnerable witnesses*, including pre-recording of all of a witness's evidence, cross-examination and re-examination (Chapter 9) and use of this recording, rather than re-appearance, in any appeal (Chapter 13).

Sisters Inside also supports the Commissioners' inclination to propose legislative changes in cases involving multiple victims, to allow *cross-admissibility of evidence and more joint trials in child sexual abuse matters* (Chapter 10). We found the Jury Reasoning Research in this area convincing. In addition to enhancing the *credibility of the complainants*, hearing evidence from others who have experienced abuse at the hands of the same perpetrator may serve to affirm witnesses' own sense of the legitimacy of pursuing their complaint; address (in small part) the sense of isolation and aloneness reported by many victims/survivors; and mitigate (in small part) the trauma associated with the court process. As detailed in the Consultation Paper, it may also protect against unjust outcomes based on individual witnesses' limited memory of details such as specific dates or locations of particular incidents of abuse.

In our experience, acquittal of a perpetrator can exacerbate the retraumatising impact of being a witness for women with a history of child sexual assault. This is particularly the case where the ill-informed prejudice of judge and/or jury, serves to discount or devalue women's credibility. It is crucial that, like police and prosecutors, judges and juries are well-informed about the possible long-term behavioural consequences of child sexual abuse – particularly in the case of historical abuse – such as criminalisation, mental health and substance abuse issues. The Consultation Paper (Chapter 11) notes the fact that judicial directions have, on occasion, been incorrect and may have led to juries working from misconceptions. The Consultation Paper raises a number of possible ways of ensuring a more evidence-based approach, including codifying judicial directions, education and training for legal professionals (including judges), and improving information for jurors. Whilst these options may be an improvement on the existing situation, they continue to rely on judges and other legal practitioners addressing their (often deep-set) assumptions. The briefly mentioned option of a standard video tutorial played to jurors before a child sexual abuse trial appears a particularly

worthwhile reform to consider, since it would reduce the risk of inaccurate assumptions (verbally or non-verbally) subtly influencing judicial directions.

Working with Children Checks

It seems ironic that, whilst sex offender eligibility for a Working with Children Check clearance following treatment was discussed at a public roundtable on adult sex offender treatment programs (Chapter 14), no mention is made of the use of these Checks with criminalised women and girls. In marked contrast to convicted sex offenders, the vast majority of criminalised women and girls have committed minor, non-violent, poverty-related, offences. Yet, most find it very difficult to get a clearance, particularly if they have been in prison.

Criminalised women and girls' difficulty clearing a Working with Children Check is a significant barrier to accessing employment. This has both individual and social consequences. All the evidence suggests that Aboriginal and Torres Strait Islander children in the child 'protection' system do best when placed with foster carers from their own cultural background. The high rate of criminalisation of Indigenous women and girls for minor offences is a key barrier to their ability to take on paid caring roles with children of their own cultural community – to the children's, their own, and their communities' detriment. Similarly, non-Indigenous women's difficulty getting clearance to work with *vulnerable* groups reduces their employment opportunities in key growth industries, such as aged care and disability support services.

Sisters Inside proposes that the Royal Commission actively advocate for the removal of barriers to working with children and other vulnerable populations, for women and girls whose criminal history involves exclusively non-violent offences. As evidenced by the alleged murder of 12-year-old Tiahleigh Palmer in Queensland, the foster care system is struggling to find suitable carers for children. To exclude a whole cohort of potential foster carers simply doesn't make sense.

Mothers' continuing exclusion from the labour market reduces the prospect of breaking key poverty-related cycles which place children at risk of institutional child sexual abuse. Increasing women and girls' access to employment can play a valuable role in overcoming the multigenerational impact of child sexual abuse, including reducing their children's risk of being placed in the child 'protection' and/or juvenile 'justice' systems.

Child-to-Child Sexual Abuse

Sisters Inside recognises that sexual abuse is committed by children on other children in institutional settings. The Consultation Paper raises concerns that, in institutional contexts, *there may be a risk that child-to-child sexual abuse is not taken as seriously as it should be.* Conversely, we are aware of situations where what would be called ordinary (sex) *play* or *experimentation* between siblings or other children living in non-institutional settings (games such as *doctors and nurses*) or *comfort sex* between traumatised children, are escalated to allegations of *sexual abuse* in institutional settings. As a result, some young people are severely damaged for life by being criminalised and, most destructively, labelled a *sex offender*. (Note that, until recently in Queensland, children's juvenile records were available to the adult criminal courts and therefore permanently placed on the public record – a situation that could be instituted in any state or territory at some time in the future.)

Too often, where harmful sexual behaviour is perpetrated by a child, this reflects their own experience of physical or sexual violence. Whilst treatment should be a significant priority for these children, effective treatment is rarely available within the youth and adult 'justice' systems. Sisters Inside is concerned that the criminal justice system's response to child-to-child sexual abuse has not been raised with the Royal Commission as a significant issue. We are concerned that the juvenile justice system's response to allegations of child-to-child sexual abuse appears not to have been addressed to date. We are particularly concerned at the added risk of being labelled a *sex offender*, faced by children in institutional settings. We would encourage the Commission to undertake substantial work on the criminalisation of children in relation to child-to-child sexual interaction in conjunction with the separate project on treatment for children with harmful sexual behaviour flagged in Chapter 15.

Preventing Future Child Sexual Abuse

The over-imprisonment of women and children, and the unnecessary retention of children in the child protection system, raise serious questions related to a failure to protect children.

Sisters Inside recognises that this represents a broader view of the prevention strategies detailed in Chapter 6 – that is, the possibility of creating new offences related to a *failure to protect* children by both individual professionals and institutions. However, we argue that it falls within the broad definition included in the Consultation Paper - *A failure to protect offence could apply to action taken or not taken before it is known that an offence has been committed.* As evidenced by the high rate of women prisoners with a history in the juvenile 'justice' and child 'protection' systems, it would appear that these institutions are themselves *'criminogenic', in that they are likely to cause or produce criminal behaviour, or they may contribute to offending indirectly.* We urge the Royal Commission to extend consideration of a *failure to protect* children to include reducing the number of children unnecessarily placed at risk through institutionalisation.

As recently highlighted following the Don Dale revelations, the majority of children in youth prisons are on remand. Most serve longer awaiting resolution of their cases than the likely sentence for their alleged offences, and some are found not guilty. Whilst in prison, they are at ongoing risk of abuse, including (particularly for girls) sexual abuse. Further, imprisonment of children costs the state $millions which could better be invested in addressing the causes of criminalisation, including a history of sexual abuse. Elimination of imprisonment of children for minor offences and on remand would be a valuable first step toward reducing institutional child sexual abuse.

The majority of women prisoners, including 80% of Aboriginal and Torres Strait Islander women prisoners in Queensland, were primarily responsible for the care of dependent children prior to imprisonment. Most are forced to place their children in the care of family or the state when they go to prison. This includes women with no history of concern about their children's safety, and no previous involvement with the child protection system. It includes women who only spend a brief period in prison on remand. Too often, once released, women have great difficulty regaining custody of their children from child protection authorities. Not only do their children continue to suffer the issues related to (often sudden) separation from their mother – they also face continuing risk of institutional abuse.

The most effective means to reduce the risk of harm to children is to reduce the number of mothers in prison. We know that most women prisoners have committed minor, non-violent offences. We know that the majority are either on remand or in breach of parole, rather than serving substantive sentences. A focus on diversionary sentencing could both save the state $millions and reduce children's exposure to the risk of institutional child sexual abuse.

Conclusion

Too often, responses to the needs of criminalised women and children are located in the very services, organisations and systems that perpetrated, or in which victims/survivors experienced, the original abuse. Survivors/victims are unlikely to trust these institutions to address their needs arising from child sexual abuse.

Ultimately, the only way to reduce institutional child sexual abuse is to reduce the number of children in institutions. These include institutions within the child 'protection' and juvenile 'justice' systems. In Sisters Inside's view, a durable (and cost effective) solution to ongoing abuse of children depends on reallocation of substantial funds from these (costly) institutions to organisations driven by affected community members, including Aboriginal and Torres Strait Islander community-controlled organisations. Only then, will the needs arising from abuse be effectively addressed, multigenerational impacts be avoided, and new incidents of abuse be prevented.

Your sincerely

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