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# Sisters Inside

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## Submission to the Child Protection Inquiry 2012

Sisters Inside is pleased to have the opportunity to be involved in the current Child Protection Inquiry and inform the Commissioner of the Inquiry of the issues pertinent to our work with incarcerated women and their involvement with the child protection system. The following submission will provide a brief outline of three major issues which we believe should form part of the inquiry. The first issue relates to whether there is an appropriate level of service delivery by the Department of Child Safety to incarcerated mothers whose children are in state care. The second issue relates to the increasing criminalisation of children in care, particularly for those who are placed in residential care facilities. The final issue highlights the need to review the pathway between the child protection system and the adult criminal justice system. An outline of the issues and recommendations for the Inquiry are provided below.

### **Incarcerated mothers**

It is estimated that up to 85% of incarcerated women are mothers of dependent children or single parent families (Anti-Discrimination Commission Queensland, 2006). In the 2006 Women in Prison report, the Anti-Discrimination Commission Queensland highlighted the need for the Commission for Children, Young People and Child Guardian to assess the impact of maternal incarceration on children. However this research is yet to be undertaken and Sisters Inside believe that the current Inquiry should investigate the relationship between maternal incarceration and the child protection system. First, we believe that accurate data is required to scope the extent and nature of the issue. Following this, consideration must be given to how the General Principles of the *Child Protection Act (Qld) 1999* are upheld for children who have incarcerated mothers. Finally, the Inquiry should assess what other systemic factors may negatively impact on children of incarcerated mothers. These issues are elucidated below.

### *The scope of the issue*

To fully comprehend the relationship between maternal incarceration and the child protection system, it is important that accurate data is obtained which outlines how many women in prison have children in the care of the state. It would be instructive to determine how many of these children are in care as a direct consequence of the imprisonment of their mother as their sole caregiver. Furthermore, it is important that data is collected to determine how many mothers regain custody of their children upon release. The general principles of the *Child Protection Act (Qld) 1999* highlight that "a child's family has the primary responsibility for the child's upbringing, protection and development [and] the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family" (*Child Protection Act (Qld) 1999, s5B*). Therefore where mothers do not regain immediate custody of their children, data should be obtained to determine the reasons for this and whether this may have been circumvented with adequate service provision and support while the mother was still incarcerated. The Anti-Discrimination Commission report flagged this issue in their report on Women in Prison:

*Research shows that most mothers intend to reunite with their children upon release, and it is suggested that the strengthening and improving the interactions of a mother and her children should be a priority. Women with children who are leaving prison should be provided with transitional assistance after release from prison, particularly in securing appropriate accommodation, financial support, employment and in accessing health and welfare services. (Anti-Discrimination Commission Queensland, 2006)*

Sisters Inside believes that in reviewing the “tertiary child protection interventions, case management, service standards, decision making frameworks ...” (Commission of Inquiry Order (No. 1) 2012, s3(c)(iii)) the current Inquiry should specifically consider the intersection of service delivery by the Department of Child Protection and the Department of Corrections to incarcerated mothers and their children.

### *General Principles of the Child Protection Act*

Consistent with need to review the service delivery by the Department of Child Protection, it is important that the Inquiry identify if the general principles of the *Child Protection Act (Qld) 1999* are being appropriately upheld for children of incarcerated mothers. It is suggested that the Inquiry specifically consider if case management plans adequately ensure:

**“If a child is removed from the child’s family, support should be given to the child and the child’s family for the purpose of allowing the child to return to the child’s family if the return is in the child’s best interests;”** (*Child Protection Act (Qld) 1999, s5B(f)*)

- Are incarcerated mothers supported to be involved in all Family Group Conferences, Case Plan meetings and other decision making in regards to children for which they retain guardianship?
- Are incarcerated mothers given access to programs while incarcerated which may be prerequisites for them to regain custody of their children upon release?
- Do case plans ensure that reunification can occur as soon as possible upon the mother’s release, through the timely coordination of services such as accommodation and financial support?

**“A child should be able to maintain relationships with the child’s parents and kin, if it is appropriate for the child;”** (*Child Protection Act (Qld) 1999, s5B(l)*)

- Do case plans allow for adequate contact between children and incarcerated mothers, which is both regular and in the most appropriate format ie personal or phone?
- Are adequate resources provided to facilitate the appropriate amount of contact between incarcerated mothers and their children? This may include:
  - Resources to support Foster Carers or other child protection workers to transport children and/or supervise contact
  - Appropriate facilities and an environment which allows meaningful interaction between the mother and child and minimises the potential negative impact of the contact occurring within a prison.
  - Where a child may have both parents incarcerated, are opportunities provided for family contact with both parents present where it may be appropriate?

**“A child should be able to know, explore and maintain the child’s identity and values, including their cultural, ethnic and religious identity and values;”** (*Child Protection Act (Qld) 1999, s5B(m)*)

- Do case plans recognise the interconnected family structure of Indigenous Australians and facilitate contact between incarcerated women and children who they may have had caregiver responsibilities, even if they are not their biological mother?

### *Additional systemic factors*

Sisters Inside would also like to highlight the importance of the Inquiry considering systemic factors which may exist outside the Department of Child Safety and counteract the purpose of the General Principles outlined. In their report, the Anti-Discrimination Commission highlighted that:

“For a woman who has been sexually abused, strip-searching can be more than a humiliating and undignified experience. In some instances, it can re-traumatise women who have already been greatly traumatised by childhood or adult sexual abuse. The vast majority of female prisoners who spoke to the ADCQ said strip-searching diminished their self-esteem as human beings and greatly emphasised feelings of vulnerability and worthlessness. Strip searching can greatly undermine the best attempts being made by prison authorities to rehabilitate women prisoners, through programs and counselling to rebuild self-esteem, cognitive and assertiveness skills. A number of women ... told the ADCQ they elected not to have contact visits at all because of their strong objections to being strip-searched. This is almost an impossible choice for women with children, who, in their attempts to maintain their relationships with their families, must have contact visits.”  
(Anti-Discrimination Commission Queensland, 2006)

While it may be beyond the scope of the current Inquiry to comment on the appropriateness of strip searching of women, Sisters Inside believes that it is imperative the Inquiry consider how strip searching of incarcerated mothers prior to contact with their children may negatively impact their ability to engage positively and meaningfully with their children. This may be particularly salient for women who have come from a background of child abuse.

A further systemic issue which exists for incarcerated mothers is access to legal information and representation in regards to the Child Protection system and reviewable decisions. A review conducted in 2004 “conducted by way of survey of women and girls in custody in Queensland, found low levels of satisfaction with legal services. Responses from participants showed that ... children were the biggest problem areas for participants” (University of New South Wales, 2010). It is important that the Inquiry assess whether both the Department of Child Safety and the Department of Corrections facilitate this access to ensure that incarcerated mothers are afforded the same legal rights as other mothers involved in the child protection system. Ultimately these processes are available to ensure that the best decisions can be made about what is the best interest of the child, and this needs to be made on all available evidence. Where a mother is prevented from engaging in this process and providing relevant information due to systemic factors, then it is the child who will potentially suffer from poor decision making.

### **The increasing criminalisation of children in residential care facilities**

Several Queensland studies have demonstrated that children involved in the child protection system are at higher risk of becoming involved in the criminal justice system (Stewart et al., 2008, Lynch et al., 2003). These studies emphasise the impact of trauma on offending behaviour. However, there is an increasing amount of anecdotal evidence emerging which indicates that the systemic processes within the child protection system are criminalizing children in care. This is particular in reference to children in the care of licensed residential care providers. While Sisters Inside have been advocating around this issue, we believe that it is imperative that the Inquiry investigate the current response of the Department of Child Safety and licensed residential care providers to the trauma-based behaviours of children and determine:

- How many children in care have been charged with an offence *by a care provider*? Where children are charged with an offence by a care provider, how many remained in the care of the provider?
- How frequently are care providers calling police to attend and respond to the behaviour of a young person? Are police being used as a behaviour management tool?
- What qualifications do residential care workers have and are they appropriately qualified to manage the complex needs and behaviours of children who require residential care?
- How could processes such as restorative justice youth conferences be adopted within the Department of Child Safety as an alternative to a legal response to ‘acting out behaviours’ such as wilful damage of property or minor assaults?
- For children with dual child protection and youth justice orders, what level of therapeutic support was provided to the children prior to becoming involved in the youth justice system? What level of therapeutic support is currently provided to children on dual orders?

### *The 17 year old issue*

Sisters Inside would also like to draw the attention of the Inquiry to the paradoxical situation for 17 year old children who are the subject of a care and protection order and involved in the criminal justice system. In contravention of the United Nations Convention of the Rights of a Child, these children are defined as adults in the criminal justice system, while they are defined as children in the child protection system. The Inquiry should consider how the Department of Child Safety may be limited from exercising its duty of care to these children by virtue of their lack of rights under the criminal justice system.

### **The pathway from the child protection system to the adult criminal justice system**

As highlighted above, there is a pathway from the child protection system into the criminal justice system. Sisters Inside believe that in considering “the transition of children through, and exiting the child protection system” (Commission of Inquiry Order (No. 1) 2012, s3(c)(iv)), the Inquiry should consider how many women transition from the child protection system into the adult criminal system. Specifically, the Inquiry should consider:

- How many women currently in prison were involved with the child protection system as children?
- What additional factors increased the women’s vulnerability to involvement in the adult criminal justice system and how may these be circumvented with better case planning and support for children exiting care?

## References

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