

**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](mailto:admin@sistersinside.com.au)  
Web: [www.sistersinside.com.au](http://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*

30 June 2023

National Children's Commissioner  
Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2001

**By email:** [youthjusticereform@humanrights.gov.au](mailto:youthjusticereform@humanrights.gov.au)

To Ms Anne Hollands,

### **Youth Justice and Child Wellbeing Reform across Australia**

Sisters Inside welcomes the opportunity to provide a written submission to the National Children's Commissioner regarding the state of "youth justice" and related systems, and necessary changes to be made to ensure the protection of human rights.

### **About Sisters Inside**

Sisters Inside is an independent community organisation that advocates for the human rights of women and girls in the adult and child criminal legal systems. For more than 30 years we have offered support and services to criminalised girls, women and their children in prisons and the community throughout Queensland, and advocate for their rights nationally and internationally. Our frontline experience working with children in the criminal legal system and removed by the family policing system, and those who have also subsequently been criminalised as adults, makes us uniquely placed to provide insights into these systems. Support is largely provided to address their actual or potential homelessness, re-engage with education, training, and family and community, and also includes access to healing, advocacy and social and creative group activities.

### **Contextualising our submission**

Through experience and observation, we know that carceral responses to social problems further subjugate and isolate already marginalised groups and communities. Australian prisons are filled with children and adults that have experienced homelessness or uncertain housing, have been removed from their families and communities, have limited employment or educational attainment, are living with mental health conditions and disabilities, and who have

experienced systemic and interpersonal trauma. Carceral responses to these experiences - child removal, policing, prisons - are underpinned by racist capitalist policy and ideology, which ensures Aboriginal and Torres Strait Islander children and adults are criminalised and imprisoned at the greatest number and rate. In order to illustrate the inextricable nature of the “youth justice” system and the fortification of the Prison Industrial Complex, we take an opportunity to explicitly make connections between carceral logic and the use of language; the State and carceral systems; carceral systems and “youth justice” and “child protection”; and the net-widening of the carceral system through reform.

[A note on language: we employ ‘child’ throughout; refer to “youth justice” only in reference to the system as it is named, otherwise ‘(child) criminal legal system’; ‘child prison’; ‘family policing system’ or ‘child removal’; any other language we do not employ in our practice is placed in quotation marks.]

### **Disentangling our approach from a carceral logic**

In order to effect any change, we must put an end to the implementation of and reliance on systems, policies and practices that are carceral in their logic and approach. A carceral logic is underpinned by the belief that there are people that are “bad” and pose a risk of harm to people who are “innocent”. The “innocent” must be protected by an authority - the State, the police, the family policing system, the prison - who surveilles, regulates, removes and punishes the “bad”. Change must be explicitly anti-racist, as the carceral logic is fundamentally racist. In order to even begin to attempt ending the incarceration of children, we must recognise, acknowledge and address the systemic, systematic and individual racist ideologies and practices.

We note here the importance of recognising the loaded language that accompanies the carceral logic in its ascriptions of innocence and vulnerability, and pathology and criminality: “youth” as opposed to “child” when ascribing responsibility, pathology or criminality, as in the use of “youth detention/justice/training/therapeutic centres” rather than “child prisons”; and “child protection” and “child safety” as opposed to “family policing” and “child removal”, when ascribing vulnerability and innocence.

By definition “youth justice” systems exist to implement punishment and control children that have been criminalised, and are fundamental to a State and society reliant on carceral responses. “Youth justice” systems and the family policing system are carceral and punitive in nature, in that they are State authorities and powers that pathologise and punish. They create a narrative that they protect the ‘innocent’, and regulate and punish those who are perceived as potentially harmful. In practice this is done through policing, criminalisation and incarceration, and surveillance, orders and child removals. These systems cannot be reformed as they are fundamental to, and inextricable from, the criminal legal system, the policing system, the prison system, and the political system of a State.

### **Dismantling, not reforming**

Reviews of existing literature must be done with an understanding that the majority of literature and expert recommendations reproduce carceral responses, even when driven by benevolent intentions. Reform is not effective in dismantling harmful and unsuccessful systems of the State,

rather it net-widens by changing and expanding methods of social control. We see increased surveillance, restriction, policing, and implementation of often unattainable sentence requirements leading to further criminalisation, usually in already criminalised communities. Common reform includes alternative sentences and “community based corrections”. Net-widening occurs when community based alternative sentences, intended for individuals who would otherwise be sentenced to imprisonment, are imposed on individuals who were never at risk of being sentenced to terms of imprisonment, effectively increasing and extending the social control these children are subjected to. Reform is often rooted in carceral logic and continues to control and subjugate children rather than address the systemic and systematic mechanisms that criminalise children.

We note that policy reform lends itself to political dog-whistling. With reform, it can be argued that fewer children are imprisoned and for a shorter time, demonstrating the supposed benevolence of the system for those dissenting to child imprisonment, while simultaneously demonstrating that the State maintains a firm hand on “bad” children for those concerned about the “youth crime problem”. We see this in Queensland, with frenzied media reports and political grandstanding about the “youth crime crisis” while simultaneously there is no end to reports of abuse in watchhouses and prisons. We know that dismantling these systems, and changing our communities’ reliance on these systems, does lead to less criminalisation, and safer, healthier, stronger and capable communities.

#### Factors contributing to criminalisation of children and their families

The nexus between criminalisation and social and economic marginalisation is well documented, however State responses to this continue to be carceral. The resistance to enacting initiatives that support and uplift children and communities is underpinned by carceral logic that relies on prison as a solution. While social and economic stratification is correlative with criminalisation, the hyper-individualisation of responsibility is also tenet of the carceral response. Instead of placing responsibility on the system and the State, individuals are criminalised and punished for behaviours that are in direct response to an accumulation of systemic and systematic marginalisation, harm, trauma and disadvantage. This is particularly grotesque when considering the criminalisation of children who have far less autonomy in affecting change in their circumstances.

#### **Family policing to prison pipeline**

We observe an explicit cycle of criminalisation and child removal, pipelining children from family police control to prison:

1. A large proportion of adults in prison, and especially Aboriginal and Torres Strait Islander adults and women, have dependent children and family members (AIHW 2019).
2. A significant number of adults entering prison have had a parent or carer that was imprisoned during their childhood (AIHW 2019).
3. The criminalisation of women, especially Aboriginal and Torres Strait Islander women, ripples out to affect the children and family members they care for, increasing the number of children under the control of the family policing system, and then further

increasing the likelihood of their criminalisation. The majority of criminalised children have at some point been subject to contact with or been under orders of the family policing system (AIHW 2022a). We find that the family policing system is central to the criminalisation of children - through compounding and unaddressed trauma, fracturing of familial and community relationships, and carceral and punitive responses to children's behaviour in foster and residential care.

4. There is a stark contrast in the prevalence of removal of Aboriginal and Torres Strait Islander children as opposed to non-Indigenous children (Australian Law Reform Commission).
5. We see the mass incarceration of Aboriginal and Torres Strait Islander children in prison and in community-based "supervision" (AIHW 2022b).

Simply put, the majority of women in prison have dependent children, the separation from whom is fundamentally traumatising for both. Children with imprisoned parents are more likely to be under the control of the family policing system, and are then more likely to be criminalised as children. Criminalised children are more likely to be criminalised as adults, and in this way the carceral feedback loop is maintained.

The perpetual removal of Aboriginal and Torres Strait Islander children and the fragmentation of familial, community and cultural relationships is commonplace in the family policing system. The majority of Aboriginal and Torres Strait Islander children removed from their families are 'case-managed' by and placed with non-Indigenous managers and carers, and a great deal are separated from their families and split from their siblings (Australian Law Reform Commission). In addition to the social, emotional and cultural harm of initial removal, children exhibiting behaviours at odds with social expectations of victimhood and vulnerability are often moved between foster homes, and into residential care. The rate of criminalisation and punitive brutality in residential care cannot be overstated, as we illustrate in the case study and attachments.

### Case Study

The experiences of one family supported by Sisters Inside illustrate exactly the interconnected and harmful nature of the family policing and criminal legal systems. Mum is a criminalised Aboriginal woman with two daughters. When mum was imprisoned, the older of the two, a young teen, was placed in residential care, while her infant sister was placed with foster carers. In residential "care" her behaviour - typical teenage behaviour compounded by the trauma of her separation from her family - was pathologised and criminalised. On one occasion a scheduled prison visit with her mother was cancelled by a youth worker as punishment for a heightened emotional response the girl had to an item of clothing not fitting her comfortably, which the youth worker was unequipped to understand or deescalate. In retaliation and devastation at not being permitted to see her mother, she took a car from the residence to make her own way there. The police were called and a chase ensued, which resulted in the young girl losing control of the car and dying in the wreckage. While attending her first daughter's funeral, mum was met with the family police who proceeded to remove her infant daughter from her care. Her second daughter, now a young teen similar in age to her sister when she passed away, is currently self placing and is criminalised, sleeping rough, using drugs and engaging in

survival sex work. The trajectories of this family demonstrates a fundamental failure and lack of care by the State and its systems at every single interaction and intervention.

### **The perpetuation of criminalisation and re-criminalisation**

It is simply the case that criminalised children are more likely to be continually re-criminalised. The great majority of children that are sentenced, including to community-based sentences, go on to be sentenced to some form of supervision (AIHW 2021). Children sentenced to terms of imprisonment are extraordinarily likely to be sentenced to imprisonment again, for many within a year (AIHW 2021). As discussed above, there is also a clear causal link between early childhood contact with the criminal legal system and adult criminalisation, which pipelines criminalised children into adult prisons.

Of particular concern is the extent of control “youth justice” systems have over children that have not yet been sentenced. The majority of imprisoned children on any one day are held on remand, the majority of who will not be sentenced to a term of imprisonment. We continue to hear accounts from children and see media reports about the conditions of children's prisons (The Guardian recently published *Written Off*, a collection of accounts), and refer to recommendations made by the 2016 Royal Commission about the human rights violations occurring in children's prisons and watchhouses. We have also recently even been privy to the misconduct of the Queensland Police Service in their practices of arresting children, inadvertently advertised by their own media campaign.

In our work in Queensland we see the effects of the harsh and violating legislative amendments made to the *Youth Justice Act*, involving human rights suspensions, presumption against bail, dangerous discretionary powers granted to police, and a string of children pleading guilty to offences they did not commit in order to avoid being held on remand.

### **Necessary changes and initiatives that work**

A person is neither “good” nor “bad, rather human behaviour is circumstantial, environmental, transformable and fallible, and largely driven by seeking to have a need met. The reliance on “youth justice” systems does little to fundamentally address the underpinnings of children’s “bad” behaviour, as does the reliance on the family policing system to “protect” children from their “bad” families. In order to decrease the number of children “in contact” with “youth justice” systems there must be an end to the reliance on punitive punishment and the pathologising and vilification of children and their families, and a preference to holistically support families and their communities.

### **Funding families**

A central strategy to interrupting the cycle of child removal and criminalisation, is to address the needs of families at risk of having their children removed. Interventions by the family policing systems are usually in response to perceived “negligence”, which in reality are families’ circumstances of poverty and other forms of cultural marginalisation (racism, mental health conditions, substance use, disabilities, effects of criminalisation, culturally diverse familial

practices that may be pathologised such as cohabiting, etc), which could largely be mitigated through improved financial access. The costs associated with keeping children in residential care amount to hundreds of thousands of dollars per child per year, and enormous sums are allocated to the private and religious organisations managing them. The lack of financial support provided to families stands in particularly stark contrast to the funding received by individual foster ‘carers’, companies, organisations or religious groups that are funded to provide ‘support’ to removed children. What we often see is career foster ‘carers’ that profit from fostering multiple children in living arrangements that are otherwise pathologised by the family policing system, and residential care youth workers in positions of authority over children without appropriate training, often leading to the criminalisation of children for behaviour that is deemed risky or “bad”. The carceral cycle that affects the criminalisation of children is a profitable industry, and funding is habitually allocated to the surveillance and control of children and their families, as opposed to direct financial support of individuals, families and communities.

Financial autonomy and administrative support is vital for children in foster and residential “care”, and especially those who self-place. Access to Centrelink and other financial support mitigates a number of factors that lead to the children’s criminalisation, as does access to support services (housing, employment, transport etc) that are centralised and completely independent of the family policing system and “youth justice” (AHRC 2020).

We must also note the often overlooked hurdles that kin face when advocating for children to be placed in their care, one of which is the difficulty many people, and especially people who have been criminalised, face in their Blue Card applications and carer assessments (AHRC 2020).

### **Child-centred approaches and targeted consultation with children and families**

Addressed in a previous parliamentary submission regarding the *Youth Justice and Other Legislation Amendment Bill 2021* in Queensland (see attached), a child-centred, human rights approach to early ‘offending’ can play a key role in helping children break out of family and community cycles of criminalisation. Respecting and meeting children’s rights is essential to both short-term and sustained community safety, and there is substantial evidence that investing in early intervention and prevention services for at risk children and their families contributes toward greater community safety over both the short and long term.

For the purpose of this project, we advocate for targeted consultation to be held with children that are targeted by carceral systems, in order to really unpack the issues and root causes that are imprisoning them.

### **Indigenous specific and lead programs and support**

Communities hold the knowledge of how to best care for their own children, and when financially and administratively supported without paternalistic intervention, community programs and initiatives prove successful in shaping strong, safe and resilient children and families. We see the success Indigenous conceived, run and controlled programs and initiatives have in Australia and abroad. We refer the Commissioner to programs such as the Deadly Inspiring Youth Doing Good and Club Fight Back that are successfully supporting children in

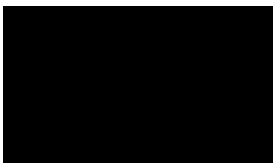
north Queensland, and the success of Indigenous led advocacy and programs in Hawaii which have kept girls out of prison.

### **Bail and social support programs**

Established in 2018, Sisters Inside's Yangah Program supports girls in watch-houses and on remand in South East Queensland to secure bail and meet their bail conditions, and has proved extremely successful in directing girls away from further criminalisation. The community-built program is delivered by culturally competent, skilled youth workers, who effectively support girls' access to bail and offer ongoing support to ensure their compliance with bail conditions. The program works holistically and in a non-punitive manner to improve the likelihood of a successful bail application, and does this by ensuring girls' access to suitable and stable community based services and support, including legal representation, accommodation, health services, social connection, cultural healing, and employment, education, and training opportunities. The success of Yangah is attributable to the way in which it is embedded in the framework of a values based and driven organisation. This means while being accountable to and informed by the values and practices of the organisation, it is also proactive in the kinds of services it offers as opposed to being responsive and supporting girls in a 'case management' manner. Yangah is based on an Inclusive Support model that interacts with girls as equals, autonomous in their decision making, and experts on their own lives. We welcome the Commissioner to engage with us about the model and success of the Yangah program.

Thank you for considering our submission, please do not hesitate to contact me on (03) 3844 5066 if you wish to discuss our submission or our programs further.

Yours sincerely,



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

References:

Australian Human Rights Commission. (2020). *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*.

Australian Institute of Health and Welfare. (2019). *The health of Australia's prisoners 2018*. Canberra: AIHW

Australian Institute of Health and Welfare. (2021). *Young people returning to sentenced youth justice supervision 2019–20*. Canberra: AIHW.

Australian Institute of Health and Welfare. (2022a). *Young people under youth justice supervision and their interaction with the child protection system 2020–21*. Canberra: AIHW

Australian Institute of Health and Welfare. (2022b). *Youth Justice in Australia 2020–21*. Canberra: AIHW

Australian Law Reform Commission. (2017). *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Final report No 133*

*Written Off*. (2023). The Guardian. <https://www.theguardian.com/australia-news/series/written-off>

Attached are the following Sisters Inside Inc. submissions:

Sisters Inside's submission in relation to the Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021

Sisters Inside's submission in relation to the Youth Justice and Other Legislation Amendment Bill 2019

Sisters Inside's response to Discussion Paper 2, Women's Safety and Justice Taskforce, Queensland, *Women and girls' experience of the criminal 'justice' system*