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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

To: Senate Community Affairs References Committee

Re: Inquiry into imprisonment of people with cognitive impairment

Date: Tuesday 5 April 2016

Dear Committee members,

Sisters Inside is appalled at the prevalence and increasing use of imprisonment, including indefinite detention, of people with cognitive and psychiatric disabilities in Australia. This represents a fundamental breach of Australia's human rights obligations, as detailed in a variety of international documents including the International Covenant on Civil and Political Rights and the Convention on the Rights of Persons with Disabilities.

According to a recent study, 12% of the NSW prison population had an IQ below 70, with up to 30% having an IQ between 70 and 80, indicating substantially higher representation of intellectual disability and borderline intellectual disability than in the general population¹. A recent study by Victoria Corrections found that 42% of male prisoners and 33% of women prisoners have an Acquired Brain Injury, compared with a rate of 2% in the general population². The evidence suggests that prisoners are 2-3 times as likely as those in the general population to have a mental illness and are 10-15 times more likely to have a psychotic disorder, with 1/3 people taken into police custody likely to be receiving psychiatric treatment at the time³.

Further, Aboriginal and Torres Strait Islander Australians with cognitive and psychiatric disabilities are being disproportionately imprisoned, in clear contravention of the International Convention on the Elimination of All Forms of Racial Discrimination, and the United Nations Declaration on the Rights of Indigenous Peoples. Women with cognitive and psychiatric disabilities are also over-represented in the prison population, in contravention of the Convention on the Elimination of All Forms of Discrimination Against Women, and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). And, Indigenous women with cognitive and psychiatric disabilities are the most affected cohort, and are being (almost arbitrarily) imprisoned at horrifying rates.

Endless studies have found that between 50% and 84% of women prisoners had a psychological or psychiatric disability⁴. Recent data indicates that 52% of Aboriginal women prisoners in NSW (compared with 44.5% of male Aboriginal prisoners) had a psychiatric history, 88% of Aboriginal women (and 83% of Aboriginal men) were diagnosed with an *Affective Disorder*, and 37% of Aboriginal women (compared with 23% of Aboriginal men) had attempted suicide⁵. The Queensland Forensic Mental Health Service⁶ found that the majority of Indigenous women prisoners suffer from mental health issues: most commonly, Post-Traumatic Stress Disorder (PTSD) which affected almost half the women prisoners they assessed. They also found that PTSD was influenced by *unique cultural, historical and social factors* (most commonly untimely deaths and being a victim of serious violence, including childhood sexual abuse), very few of the women had received a diagnosis or treatment for PTSD, and that PTSD in these women *often had its onset in adolescence, was debilitating and chronic, and was complicated by the presence of other mental health conditions such as depression, psychosis and alcohol and cannabis dependence*. Further, they identified clear links between the extremely high rates of mental disorder

amongst Indigenous women, and limited access to appropriate/*culturally-capable* mental health services both in the community and in prison.

It is critical that the prevalence of women prisoners with mental health issues is viewed in the context of its potential long term ramifications. Heffernan et al⁷ have summarised key consequences of the over-imprisonment of people with mental health issues, particularly criminalised Indigenous women, very aptly:

Among the leading causes of death among recently released prisoners is suicide, highlighting the pivotal role of mental health in shaping post-release outcomes for vulnerable ex-prisoners. Drug-related deaths are also common, particularly in the weeks immediately following release from custody. For example, the rate of unnatural death among people released from Victorian prisons between 1990 and 1999 was found to be 10 times the rate of unnatural deaths in the general population, with most deaths due to drug overdose and suicide.

Similarly, in a retrospective cohort study of over 85,000 people leaving NSW custody from 1988 to 2002, it was found that the risk of death due to mental and behavioural disorders was elevated by a factor of 13.2 for men and 62.8 for women. Among the 9,353 Aboriginal and Torres Strait Islander ex-prisoners in the cohort, the risk of death from suicide was 2.9 times higher among men and 6.5 times higher among women, than among age and sex-matched members of the NSW community. The mortality excess in the cohort was greater for Aboriginal and Torres Strait Islander peoples.

Baldry et al, in their recent landmark study, demonstrated the double disadvantage of Indigenous women with cognitive and psychiatric disabilities. Of the total cohort of prisoners with mental and cognitive disabilities in NSW:

... Indigenous women in the cohort experienced the highest rate of complex needs. Indigenous women were significantly more likely than non-Indigenous women to have been in out-of-home care as children. They experienced their first police contact at a younger age and had a significantly higher number of police contacts and convictions across their lives than non-Indigenous women. Indigenous women were more likely than non-Indigenous women to have been in custody as juveniles. They had significantly more remand episodes and custodial episodes over their lifetime. Indigenous women with complex needs in particular have significantly higher convictions and episodes of incarceration than their male and non-Indigenous peers. They were more likely to have been homeless and to have been victims of crime than non-Indigenous women in the cohort.⁸

Some additional context is critical here. The vast majority of women prisoners (and many male prisoners) are imprisoned for minor, non-violent crimes – they pose no threat of harm to others in the community. This is strongly supported by the evidence from Queensland. Here, the average period of imprisonment across all women prisoners is only 4.96 weeks! Approximately 30% of women prisoners in Queensland in 2015 were imprisoned on remand, with a further 30% being imprisoned for (often minor) breaches of parole. One of the most significant causes of women's failure to be granted bail, or fail to meet parole conditions, is their untreated mental health issues – with homelessness and untreated substance abuse issues being the other primary drivers. In other words, women are being penalised for the failure of Commonwealth, state and territory systems to deliver assessment and early intervention, appropriate accommodation, treatment evaluation, training and personnel, and specialist support and programs.

It is ironic that, in the current *economically rational* environment, governments continue to prefer to lock women up (according to the Productivity Commission with immediate imprisonment costs alone of \$296 per night in 2014-15⁹ in Queensland), rather than provide adequate mental health services in the community. And, this does not take account of the costs to other government systems. Even a short

period in custody can result in women becoming homeless, losing custody of her children, having reduced access to employment, and being retraumatised by the experience of imprisonment. And, her children also face a significantly increased risk of mental health issues. Further, we know that imprisonment itself is criminogenic, and a period of imprisonment of a mother increases the risk of both her and her children being imprisoned at a later date. Over the long term, imprisonment of women with cognitive and psychiatric disabilities can generate significant costs to the legal, mental health, criminal justice, juvenile justice, income support, housing, child protection and education systems.

And, this irony is extended by governments' increasing failure to fund genuine community organisations which are grounded in their community of interest and are perceived as 'safe' by women with cognitive and psychiatric disabilities. Mainstream (mainly church-based) NGO's are ill-equipped to respond to this specialist cohort, and are rarely willing to actively advocate for women within the criminal justice and juvenile justice systems (particularly when taking on a public role would threaten their pseudo-government role and consequent funding). With the increasing reallocation of funds from specialist community organisations with a strong commitment to advocacy, to these mega-NGO's and statutory authorities, most women with cognitive and psychiatric disabilities have limited access to justice.

Most women with cognitive and/or psychiatric disabilities do not need to be 'managed' (that is, controlled) by health, disability or correctional systems. Most are survivors of domestic and family violence which has played a significant role in their disability and imprisonment. Most have an adverse history in terms of life opportunities, including access to housing, employment and education. Most simply need the means to access quality, appropriate services and support on a voluntary basis. Too often, however, women are offered a *Clayton's Choice* – to be fully compliant with the (often arbitrary requirements of) a state or NGO system, or have no access to services at all (and face the risk of imprisonment).

There is clear evidence of the success of existing models in diverting people with cognitive and psychiatric disabilities from the criminal justice system. However these are generally very insecure: demonstrably successful diversionary courts are at constant risk of closure, and most genuine community organisations with a successful history of diverting people from the system operate on a shoestring budget. An example of a successful program was the Special Circumstances Court (SCC) Diversion Program - a specialist Magistrates Court which operated in Queensland from 2007 to 2010. The Court provided a voluntary alternative to imprisonment for people who were homeless and/or facing mental health issues, facilitating their access to housing and mental health services. The Sisters Inside SCC Program, ran for 3 years in partnership with the Court. Of the 240 women who chose to have their cases heard before the SCC and engage with the Sisters Inside program, 239 (99.6% of participants) had a reduced rate of offending and only 4% returned to prison (mainly for earlier offences outside the jurisdiction of the SCC)¹⁰. Sadly, despite overwhelming evidence of the success of both the SCC and the Sisters Inside program in diverting women from prison, both were defunded under the Queensland LNP Government.

With the demise of this diversionary court, a critical pathway out of the criminal justice system was closed to women (and men) with cognitive and psychiatric disabilities. Too often, the women who would previously have had access to the SCC are now imprisoned – either in women's prisons, or other secure facilities. Imposition of coercive, restrictive penalties such as these only serve to exacerbate women's pre-existing problems and further diminish their capacity to reintegrate into the community following release.

Sisters Inside particularly commends two significant pieces of work on possible solutions to this problem. Heffernan et al (2014)¹¹ and Baldry et al (2015)¹² have each produced documents focused on the prevalence and impact of imprisonment of Indigenous people with mental health issues and cognitive disabilities. Most of the proposed principles and practices of their proposed response is equally

applicable to non-Indigenous women. We strongly support the justice reinvestment and other principles underpinning their responses including (collective) self determination, person-focused support, holistic and flexible approach, service integration and culture/disability/gender-informed practice. Baldry et al also propose concrete changes in the key systems and service providers impacting this cohort – both within the criminal justice system and more widely (e.g. housing, schools and child protection).

Crime rates in Australia have been falling since 2000. Yet, national spending on corrective services (mainly prisons) has more than trebled since 1994-85 and currently stands at \$2.6 billion annually.¹³ This is the same as the cost of putting more than 100,000 students through university for a year¹⁴ or providing every prisoner with rent, food, a small four-cylinder car and money for any degree in Australia for a year¹⁵. According to the Hon Michael Kirby¹⁶:

In a climate of fiscal restraint, where scarce governmental resources must deliver to the community the best value and outcomes in services, the time is right for a more rational, economic and humane approach to our national ways and our trend of incarceration. Our federal system is constitutionally designed to permit, and encourage, experimentation and comparative projects of innovation. Australia needs to rediscover its earlier embrace of constructive law reform.

Sisters Inside urges you to acknowledge the fundamental injustice of the current system's continuing incarceration of people with cognitive and psychiatric disabilities, and to advocate the reinvestment of funds currently wasted on prisons to a more just, community-driven approach.

Yours sincerely

Debbie Kilroy (OAM)
Chief Executive Officer
Sisters Inside

Endnotes

- ¹ Baldry, Eileen; Clarence, Melissa; Dowse, Leanne; and Troller, Julian (2013) *Reducing Vulnerability to Harm in Adults With Cognitive Disabilities in the Australian Criminal Justice System* in **Journal of Policy and Practice in Intellectual Disabilities**, Vol 10, Issue 3, pp 222-229, September (Abstract) at <http://onlinelibrary.wiley.com/doi/10.1111/jppi.12039/abstract;jsessionid=6D588DB83B9EDE13BE486D779E9E0770.f03t02>
- ² Cited by Radio National (2016) *Prisoners living with Acquired Brain Injury*, Law Report (16 February) at <http://www.abc.net.au/radionational/programs/lawreport/acquired-brain-injuries-and-the-criminal-justice-system/7167448>
- ³ Studies cited in Australian Red Cross (2016) **Rethinking Justice: Vulnerability Report 2016**, at <http://www.redcross.org.au/files/VulnerabilityReport2016.pdf>
- ⁴ Quixley, Suzi & Kilroy, Debbie (2011) **Working with Criminalised and Marginalised Women: A starting point**, 2nd Edition, (training manual), Sisters Inside, Brisbane at www.sistersinside.com.au/resources.htm
- ⁵ Heffernan, Ed; Andersen, Kimina; McEntyre, Elizabeth; and Kinner, Stuart (2014) *Mental Disorder and Cognitive Disability in the Criminal Justice System* in Dudgeon, Pat; Milroy, Helen; & Walker, Roz (eds) **Working Together Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice**, 2nd Edition, Commonwealth of Australia at <http://aboriginal.telethonkids.org.au/media/673980/wt-part-2-chapt-10-final.pdf>
- ⁶ Queensland Forensic Mental Health Service (2014) **The Family Business: Improving the understanding and treatment of Post Traumatic Stress Disorder among incarcerated Aboriginal and Torres Strait Islander women – Report**, Beyond Blue at <https://www.beyondblue.org.au/resources/research/research-projects/research-projects/the-family-business-improving-the-understanding-and-treatment-of-post-traumatic-stress-disorder-among-incarcerated-aboriginal-and-torres-strait-islander-women>
- ⁷ Heffernan et al (2014) *op cit*
- ⁸ Baldry, E.; McCausland, R.; Dowse, L.; and McEntyre, E. (2015) *A Predictable and Preventable Path: Aboriginal people with mental and cognitive disabilities in the criminal justice system*, University of NSW, Sydney at https://www.mhdcd.unsw.edu.au/sites/www.mhdcd.unsw.edu.au/files/u18/pdf/a_predictable_and_preventable_path_2nov15.pdf
- ⁹ Productivity Commission (2016) **Report on Government Services 2016** (Volume C, Chapter 8 – Corrective Services), Australian Government at <http://www.pc.gov.au/research/ongoing/report-on-government-services/2016/justice/corrective-services>
- ¹⁰ An independent evaluation of this program is available. See: Quixley, Suzi (2011) **How We Do It: The SIS SCC Program** (*Sisters Inside Special Circumstances Court Diversion Program*), Sisters Inside, Brisbane at www.sistersinside.com.au/reports.htm
- ¹¹ Heffernan et al, *op cit*
- ¹² Baldry et al (2015) *op cit*
- ¹³ Gittins, Ross (2016) *Prisons trap our money along with crooks*, The Sydney Morning Herald (16 February) at http://www.smh.com.au/comment/head-20160215-gmurmz.html?utm_source=twitter&utm_medium=social&utm_campaign=nc&eid=socialn%3Atwi-13omn1677-edtrl-other%3Annn-17%2F02%2F2014-edtrs_socialshare-all-nnn-nnn-vars-o%26sa%3DD%26usg%3DALhdy28zsr6qiq
- ¹⁴ *ibid*
- ¹⁵ Moore, Tony (2016) *Twice as much to keep prisoners 'on the inside' as prisons strain*, The Brisbane Times (28 February) at <http://www.brisbanetimes.com.au/queensland/twice-as-much-to-keep-prisoners-on-the-inside-as-prisons-strain-20160226-gn4nok.html>
- ¹⁶ In his Foreword to Australian Red Cross (2016) *op cit*