



Sisters Inside Inc.

Submission to Independent Review of Youth Detention in Queensland

October 2016

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Sisters Inside acknowledges the Turrbal and Jagera people, the traditional owners of the land where we work in Brisbane, and we pay respect to their Elders, past and present. We also acknowledge the continuing sovereignty of all Aboriginal and Torres Strait Islander people and stand in solidarity with the ongoing struggles for social and economic justice in Australia.

We acknowledge all of the girls and women in prison, and affirm their resilience and strength in the face of ongoing trauma and violence. We look forward to a world without prisons.

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About Sisters Inside

Established in 1992, Sisters Inside is an independent community organisation that advocates for the collective human rights and interests of women and children affected by the criminal justice system, and works alongside women and children to address their immediate, individual needs.

Our work is guided by our underpinning *Values and Vision*¹. We believe that prisons are an irrational response to social problems that serve to further alienate socially marginalised groups in our communities, especially Aboriginal and Torres Strait Islander women and girls. Over the past 24 years, Sisters Inside has developed a unique model of service² and highly successful programs. All of our work is directly informed by the wisdom of criminalised women and, wherever possible, Sisters Inside employs staff with lived prison experience.

Sisters Inside is uniquely placed to contribute to this consultation. We daily see the realities of prison life for women and girls in all (adult and children's) prisons throughout Queensland. We also work with women and girls following their release from prison. We see the wider consequences of policies and practices within the Queensland criminal justice system through our support services with the children and wider families of women and girls in prison.

About this submission

... the 200-year history of white Australia has given us blueprints for present concerns and dilemmas about juvenile detention. There is the ebb and flow between crime control and child-saving philosophies and practices (or justice and welfare), and the tension generated through the polarisation of the debate. There is the failure of punitive detention to impact on recidivism or to address at an individual or systemic level the underlying issues which have propelled many of these young people into the justice system and into custody over 200 or so years ...

There is also the shifting nexus between the public and private sector in the control of juveniles. The growing involvement of the private sector in juvenile corrections today is an issue which should be placed clearly on the agenda for discussion and debate.

Finally, we can note the tradition of ignoring the reality and needs of girls in detention, and linking their rehabilitation with the acquisition of domestic expertise.³

This submission focuses on the experiences of girls and young women in Queensland's youth and adult prisons. It is informed by interviews conducted with 6 young women (of whom 4 were Aboriginal and Torres Strait Islander young women and 2 are or were in State care) about their experiences of imprisonment. Each of the young women is referred to by a different alias they chose for the purpose of having their story included in this submission.

In criminal justice contexts, girls and women are routinely constructed as 'uncontrollable' and 'troublesome', which has justified the use of imprisonment predominantly to address mental health or 'welfare' problems⁴. However, the youth and criminal justice systems, particularly through the use of imprisonment, are not an appropriate response to girls' and women's lived experiences of racism, violence and economic marginalisation.

¹ Sisters Inside Inc., 'Values and Visions'. Available at: www.sistersinside.com.au/values.htm

² Sisters Inside Inc., 'Inclusive Support: A Responsive Alternative to Case Management' (2010). Available at: www.sistersinside.com.au/reports.htm.

³ Lynn Atkinson, 'An overview of juvenile detention in Australia' in Lynn Atkinson and Sally-Anne Gerull (eds), National Conference on Juvenile Detention: Proceedings of a conference held 10-13 August 1993 (Australian Institute of Criminology, 1994) 1, 3-4. Available at: <http://www.aic.gov.au/publications/previous%20series/proceedings/1-27/25.html>.

⁴ See e.g. Stephen Stathis, 'An historical account of Youth Detention Centres in South East Queensland and their relationship to adolescent forensic psychiatry' (2012) 21(9) *Queensland History Journal* 585, 592-593.

By highlighting the gendered nature and impacts of imprisonment, we seek to show how prisons and other coercive institutions ignore the effects of hetero-patriarchal and colonial violence on women, and simultaneously replicate these forms of violence.

In making this submission, we do not wish to diminish issues in relation to the imprisonment of boys and men, and in particular the over-representation of Aboriginal and Torres Strait Islander boys in children's prisons. Our fundamental belief is that no child should be in prison.

Language use

Unless otherwise stated, we use the words *prison* and *imprisonment* in this submission to refer to both youth prisons (*detention centres*) and adult prisons (*correctional centres*). In general, we prefer the word *prison* to 'softer' language that belies the realities of imprisonment (e.g. *detention*, *corrections*).

We use *Indigenous* to refer to Aboriginal and Torres Strait Islander people. We acknowledge that this does not adequately reflect the diverse identities of Australia's First Nations peoples.

Who are the girls and young women in prison in Queensland?

Aboriginal and Torres Strait Islander women and girls are the fastest growing prison populations in Australia.⁵

Child/Youth Prisons

There are two youth prisons in Queensland:

- Brisbane Youth Detention Centre (BYDC) in Brisbane; and
- Cleveland Youth Detention Centre (CYDC) in Townsville.

Over the past six years, the number of girls aged 10-17 years old in youth prisons in Queensland has exploded. Between 2011-12 and 2014-15, the number of girls in prison on an average day almost tripled from 13 to 31 girls. Note in particular an extreme rise in the number of Aboriginal and Torres Strait Islander girls in prison over a single year, from 69 in 2011-12 to 109 in 2012-13⁶:

	2010-11	2011-12	2012-13	2013-14	2014-15
Indigenous girls	8	6	17	22	22
Non-Indigenous girls*	5	5	9	10	8
Total girls	13	11	25	32	31
Indigenous boys	72	83	91	99	88
Non-indigenous boys*	53	44	46	52	53
Total boys	125	127	138	152	141

Table 1: Number of 10-17 year olds in youth prison in Queensland on an average day, by sex and Indigenous status⁷ (*Includes numbers where Indigenous status was not stated)

⁵ See Debbie Kilroy, 'The over-representation of Aboriginal and Torres Strait Islander women in prison' (2013) at: www.sistersinside.com.au/media/Papers/The%20Stringer%20April%202013%20Over%20Representation%20of%20Aboriginal%20Women%20in%20Prison.pdf.

⁶ Australian Institute of Health and Welfare (AIHW), 'Youth Justice in Australia 2014-15' (2016) AIHW Bulletin No. 33, Cat no AUS 198, Supplementary tables, Table S89b. Available at: <http://www.aihw.gov.au/publication-detail/?id=60129554714>. Referred to throughout the rest of the submission as AIHW, 'Youth Justice in Australia 2014-15' (2016).

⁷ Compiled from AIHW, 'Youth Justice in Australia 2014-15' (2016) Supplementary tables, tables S86a and S89a.

Overall, girls comprised around 22% of the total young people in youth prisons during the year in 2014-15⁸. On an average day in 2014-15, Indigenous girls were:

- 71% of the total number of girls in prison⁹;
- 33 times as likely to be in prison as non-Indigenous girls in Queensland¹⁰; and
- 5 times as likely to be in prison as non-Indigenous boys in Queensland¹¹.

In 2014-15, Indigenous girls spent on average 65 days in prison during the year, while non-Indigenous girls spent on average 39 days¹². In contrast, Indigenous boys spent on average 78 days in prison and non-Indigenous boys spent on average 66 days. The longer periods of time that Indigenous girls are spending in prison is comparable to both Indigenous and non-Indigenous boys, highlighting their intersecting vulnerabilities and systemic discrimination against them.

Since 2011, there also appears to have been an increase in the number of Indigenous girls sentenced to imprisonment in Queensland. As set out in the table in the Appendix, on an average night in the June 2011 quarter, Indigenous girls represented 5% of the total sentenced children in Queensland's prisons. On an average night in the June 2015 quarter, Indigenous girls represented 19% of the total sentenced children. The number of Indigenous girls in sentenced imprisonment on an average night peaked in the December 2014 quarter, surpassing the number of non-Indigenous boys for the only time during the period (9 Indigenous girls vs 5 non-Indigenous boys).

The AIHW's quarterly data is consistent with the data from the Childrens Court of Queensland Annual Report, which shows that 15 girls were sentenced to imprisonment in 2013-14 and 25 girls were sentenced to imprisonment in 2014-15.¹³

The increase in girls being sentenced to imprisonment, especially during the period between 2013 and 2015, may be explained by changes to the *Youth Justice Act 1992* (Qld) in 2014 to remove the principle of imprisonment as a last resort¹⁴. We note the principle of imprisonment as a last resort has recently been re-instated by the current government¹⁵ but we remain concerned that the gendered use of harsher sentences may continue in light of the recent trends.

In addition, the bail system in Queensland is broken (both for children and adults). The number of children in Queensland's prison who are unsentenced has increased from 66% in 2011-12 to 80% in 2014-15¹⁶.

⁸ Calculated from AIHW, 'Youth Justice in Australia 2014-15' (2016) Supplementary tables, table S89b.

⁹ Cf overall Indigenous girls represented 61% of the total number of girls in prison during the year. AIHW, 'Youth Justice in Australia 2014-15' (2016) Supplementary tables, table S89b.

¹⁰ Ibid, table S91a. The rate of imprisonment is 12.37 for Indigenous girls and 0.38 for non-Indigenous girls.

¹¹ Ibid. The rate of imprisonment is 12.37 for Indigenous girls and 2.28 for non-Indigenous boys.

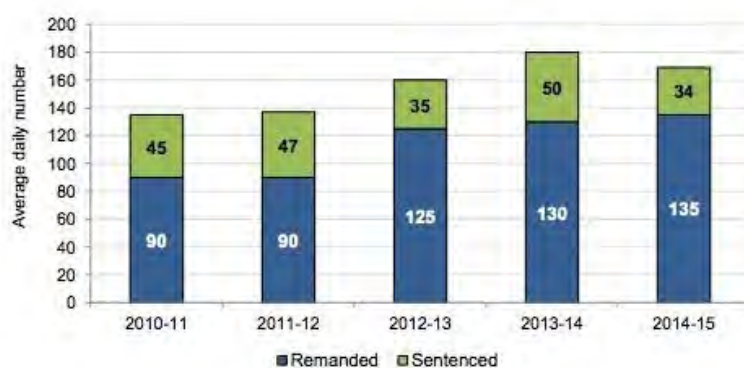
¹² Ibid, table S104.

¹³ Childrens Court of Queensland, *Annual Report 2014-15* (2016), 52 (table 8). Note, a person is counted more than once if sentenced more than once during the reference period. Also note 1 girl was also sentenced to imprisonment by the Supreme or District Court (at 55, table 11). However, we did not 'count' this girl as we understand she was over 17 years old at the time the matter was finalised (see 53, table 9).

¹⁴ *Youth Justice and Other Legislation Amendment Act 2014* (Qld), ss 9, 12, 25 and 34. These amendments entered into force on 28 March 2014. See further, Explanatory Notes, *Youth Justice and Other Legislation Amendment Bill 2014* (Qld) 5-6; Jodie O'Leary, 'Out of step and out of touch: Queensland's 2014 Youth Justice amendments' (2014) 26(2) *Current Issues in Criminal Justice* 159, 162-165 and Terry Hutchinson, 'Making the fun stop: Youth justice reform in Queensland' (2014) 19(2) *Deakin Law Review* 243, 260-263.

¹⁵ See *Youth Justice and Other Legislation Amendment Act (No. 1) 2016* (Qld), ss 16, 26, 56 and 61. These amendments entered into force on 27 June 2016.

¹⁶ Childrens Court of Queensland, *Annual Report 2014-15* (2016), 40.



Source: Youth Justice Services, Department of Justice and Attorney-General

Figure 1: Average daily number of young people in youth detention, by legal status¹⁷

Based on comparable AIHW quarterly data for the same 3 year period, we understand that girls have increased from 10% of the unsentenced population in 2011-12 to 17% of the unsentenced population in 2014-15 on an average day.¹⁸

Queensland also imprisons the most 10-13 year olds of any jurisdiction in Australia. In 2014-15, the age breakdown for 10-13 year olds was:

Age	No. of young children in prison
10	4
11	11
12	48
13	96

Table 2: Number of 10-13 year olds in youth prisons in Queensland during 2014-15¹⁹

According to data obtained by Amnesty International, during this same period (2014-15) a total of 63 children aged 10-12 years were in prison. Of these, 71% (45 of 63) were Indigenous children, and 16% (10 of 63) were girls.²⁰

The significant increase in the number of girls in prison (as well as the overall increase in child prisoners) means that both BYDC and CYDC now operate almost permanently over accepted safe capacity levels²¹. In 2013, these youth prisons operated over their built capacity for 106 days of the year²².

It is also important to note that before late January 2015, CYDC did not accommodate girls and all girls in youth prison (either on remand or sentence) were imprisoned in BYDC²³. This practice

¹⁷ Reproduced from Childrens Court of Queensland, *Annual Report 2014-15* (2016), p 40.

¹⁸ See Appendix.

¹⁹ AIHW, 'Youth justice in Australia 2014-15' (2016), Supplementary tables, table S74b.

²⁰ Amnesty International Australia, "Heads held high": *Keeping Queensland's kids out of detention, strong in culture and community* (August 2016), 17.

²¹ An operating capacity of 85% or less than built capacity is considered best practice for safe and secure management of young people in youth detention. See Department of Justice and Attorney-General (DJAG), *Youth Detention Centre Demand Management Strategy 2013-2023* (undated draft), 8 (footnote 12) and DJAG, *Annual Report 2015-16* (2016), 106 and 111 (footnote 38).

²² DJAG, *Youth Detention Centre Demand Management Strategy 2013-2023* (undated draft), 9 (footnote 12).

²³ Victoria Nugent, 'Detention centre goes unisex', *Townsville Bulletin*, 23 January 2015, 4

meant that girls were further separated from their communities for the duration of their imprisonment, which was obviously disruptive and not supportive of reintegration efforts²⁴.

The practice of transferring girls to BYDC also generated at least one negative media story, when a member of the [redacted] became aware that the State government had transferred a girl to BYDC at [redacted]. The girl was refused bail [redacted] and was transferred to [redacted] on a chartered flight because commercial airlines declined to transport her due to a 'risk of violence'. [redacted], we understand the girl's alleged offence related to assault of care workers. This coverage highlights the disadvantaged position of girls in the criminal justice system. It shows the pervasive nature of narratives that girls who come into contact with the criminal justice system are 'violent' and a 'waste of money'. It also demonstrates the vulnerable position of children in the child protection system, who often have no suitable accommodation options other than in the residential care system where they are at risk of being criminalised.

Girls in adult prisons

There are a number of adult women's prisons in Queensland. This submission makes particular reference to:

- Brisbane Women's Correctional Centre (BWCC) in Brisbane; and
- Townsville Women's Correctional Centre (TWCC).

By imprisoning 17 year olds in adult prisons, Queensland is clearly in breach of Article 37(c) of the Convention on the Rights of the Child, which states that 'every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so'²⁶. We also note that there is a body of case law in Queensland which is critical of the treatment of 17 year olds as adults in the criminal justice system²⁷.

There is no public information about the number of 17 year old girls in Queensland's adult prisons. From data provided by Queensland Corrective Services for this submission, we understand that as at 1 October 2016, there were 40 young people age 17 in adult prisons, comprising 2 girls and 38 boys. Throughout this year, there have been as many as 12 young 17 year old women in adult prisons in Queensland at once. In fact, it appears that 2016 has seen the highest numbers of 17 year old girls in adult prisons (for the period between 2013 and 2016).²⁸ We note that the remand rate for women in adult prisons is also high²⁹, reflecting the trends amongst children, and we are aware of 17 year olds being remanded in custody.

As in youth prisons, we note that the experience of girls in Queensland's adult prisons is uniquely cruel and inhumane, compared with boys, because they are subject to more frequent use of routine and arbitrary strip searching³⁰. A significant proportion of 17 year old girls have a history of childhood sexual assault therefore, as acknowledged by the Anti-Discrimination Commission Queensland (ADCQ) 10 years ago, these searches typically have a greater impact on women

²⁴ On 23 July 2013, 8 girls would have been eligible for transfer from BYDC to CYDC: Youth Detention Inspectorate (DJAG), 'Executive summary: BYDC June Quarter 2013' (undated). Available at: <https://publications.qld.gov.au/dataset/15c205a2-5b6f-4f4f-99c4-013c6cb3d601/resource/a444dd8e-23b5-423c-9076-ef942aa858a4/download/executivesummaryjune2013bydc.pdf>.

²⁵ [redacted]

²⁶ See also *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, GA Res 45/113, UN GAOR, 45th sess, 68th plen mtg, Supp No 49, UN Doc A/RES/45/113 (14 December 1990), rule 29.

²⁷ See, eg *R v Lovj* [2012] QCA 24, [47] (Atkinson J); *R v Loveridge* [2011] QCA 32, [5]-[7] (McMurdo P); *R v GAM* [2011] QCA 288, [50]-[51] (McMurdo P).

²⁸ Received via email Vanessa Hollis, A/Manager, Performance and Reporting, Queensland Corrective Services on 27 October 2016. (Reference Code: TASK0020595)

²⁹ See, eg Queensland Ombudsman, *An investigation into the action taken by Queensland Corrective Services in response to overcrowding at Brisbane Women's Correctional Centre*, Tabled Paper No 1587 (September 2016), 44-46 for the situation in BWCC.

³⁰ See further Sisters Inside, 'Age does matter: Sisters Inside Submission to the *Juvenile Justice Amendment Bill 2001* consultation' (July 2001). Available at <http://www.sistersinside.com.au/media/juvenilejustice.pdf>

prisoners. We suggest that, as discussed by the ADCQ, the nature and frequency of strip searches in Queensland women's prisons raises questions of possible discrimination.³¹

Further, the Queensland Ombudsman recently confirmed that Brisbane Women's Correctional Centre (BWCC) is the most overcrowded prison in Queensland³². Overcrowding raises tensions in prison, and exacerbates existing problems of structural violence. In our experience, this has a particularly damaging impact on children:

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- Nali, 19 years old

Many 17 year old women prisoners in Queensland are put in protective custody *for their safety*. This can lead to other prisoners believing they must be informers. This, in turn, they end up spending their whole sentence in protection - in *a prison within a prison*, with less freedom and facilities than the general prison population. This includes less access than other women prisoners to education and development opportunities. Transfers to protective custody for young prisoners are inappropriate, especially for long periods of time, as they severely reduce the young woman's human contact and access to external services.

Sisters Inside currently has a practice in place where Head Office of QCS notifies Sisters Inside when a 17 year old girl comes into custody. Since March 2016, Sisters Inside has been able to assist two young women to successfully apply for bail through its Supreme Court Bail Program.

One of the young women we assisted was only in prison for a few days before she was assaulted by another prisoner due to her age. The young woman was transferred to protective custody for her safety. Sisters Inside assisted the young woman to apply for bail within less than a week of her imprisonment. The young woman may have languished in protective custody if Sisters Inside had not been notified of her presence.

Over-representation of disadvantaged girls and young women

Almost all girls and women in prison in Queensland come from socially and economically marginalised backgrounds and experience significant trauma due to lived experiences of violence and abuse. This means that almost all girls and women in Queensland are themselves victims of violent crime.

A draft consultation paper prepared by the Department of Justice and Attorney-General, which was released to the ABC under right to information laws in 2014³³, states that 'almost all' girls in prison

³¹ Anti-Discrimination Commission Queensland, *Women in Prison: A report by the Anti-Discrimination Commission Queensland* (March 2006), 73-74. Available at: <https://www.adcq.qld.gov.au/human-rights/women-in-prison-report>, pp 73-74

³² See generally Queensland Ombudsman, *An investigation into the action taken by Queensland Corrective Services in response to overcrowding at Brisbane Women's Correctional Centre*, Tabled Paper No 1587 (September 2016).

³³ See Matt Wordsworth, 'Qld youth detention centres operating 'permanently over safe capacity' and system in crisis, draft report says', *ABC News (online)*, 17 September 2014. Available at: <http://www.abc.net.au/news/2014-09-17/crime-boom-overwhelms-youth-detention-centres-in-queensland/5751540>.

have been sexually assaulted and suffer Post-Traumatic Stress Disorder³⁴. The paper also states that 75% of children are presenting in prison with 'mental health and behavioural problems'³⁵. These statements are consistent with local and international research, and our experience.

According to research conducted by Sisters Inside with women in adult prisons, 98% of women have experienced physical abuse and 89% have experienced sexual abuse, 70% emotional abuse and 16% ritual abuse prior to imprisonment. Significantly, the majority of the women experienced this abuse during childhood and 37% before the age of 5. The abuse was at the hands of family members both immediate and extended.³⁶

A key NSW study of children and young people in prison found that young women were significantly more vulnerable than young men in a number of key areas:

- 92% of young women had two or more diagnosed psychological disorders, compared with 70% of young men;
- 81% of young women reported a history of abuse, compared with 57% of young men. 61% of young women reported being physically abused, and 39% reported being sexually abused;
- 71% of young women who smoked were significantly more likely to smoke 20 or more cigarettes a day, compared with 42% of young men;
- 40% of young women had a history of out-of-home care, compared with 25% of young men;
- 35% of young women reported having a disability or illness which bothered them for six months or more, compared with 20% of young men;
- 18% of young women had problems with accommodation before entering prison, compared with 4% of young men;
- young women were also more likely to have psychological distress, to have attempted suicide or self-harmed, and to have been admitted to a psychiatric unit.³⁷

The same report also found that Aboriginal and Torres Strait Islander children and young people were more likely to have been in out-of-home care, have had a parent in prison and have used alcohol and/or drugs. Indigenous young people were also more likely to have had their first period of imprisonment at a younger age.³⁸

Nexus between the child protection and justice systems

The intersection between the child protection and youth justice systems is particularly significant for girls. Studies have found that *any* child protection placement, not just unstable placements, increased girls' risk of coming into contact with the criminal justice system.³⁹

Katherine McFarlane examined 111 NSW Childrens Court criminal files from a six-month period in 2009. 34% of the young people in that sample were, or had recently been in, out-of-home care. Young women comprised 26% of the overall sample as well as 26% of the cohort who had been in care. McFarlane observed that:

The young women in care were aged from 11 through to 17 years of age at the time of the offence, and their alleged offences ranged from offensive language through to robbery in company; their criminal histories varied from first time offender through to those who had had

³⁴ DJAG, *Youth Detention Centre Demand Management Strategy 2013-2023* (undated draft), 4.

³⁵ Ibid.

³⁶ Debbie Kilroy, 'When will you see the real us? Women in prison' (Paper presented at the Women in Corrections: Staff and Clients Conference, Adelaide, 31 October – 1 November 2000) 4. Available at: <http://www.sistersinside.com.au/media/whenwillyouseetherealus.pdf>.

³⁷ Devon Indig et al, *2009 NSW Young People in Custody Health Survey: Full Report* (2011). Available at: <http://www.justicehealth.nsw.gov.au/publications/ypichs-full.pdf>.

³⁸ Ibid. Unfortunately, the data is not presented to highlight the intersecting vulnerabilities experienced by Indigenous girls.

³⁹ Judy Cashmore, 'The link between child maltreatment and adolescent offending: Systems neglect of adolescents' (2011) 89 *Family Matters: Australian Institute of Family Studies* 31, 35 (citing Widom's research in the USA).

multiple episodes before the court. Many had been refused bail, or had bail conditions imposed which proved too onerous to meet, resulting in them spending periods in juvenile detention on remand. They shared a common background of homelessness and abandonment, with periods in refuges and on the streets, group homes and detention centres. Most offended in the company of others, generally siblings, cousins or other residents of welfare group homes.⁴⁰

Recent data compiled and analysed by AIHW shows that girls in prison are more likely to be involved in the child protection system. 55% (33 out of 60) Indigenous girls and 60.98% (75 out of 123) non-Indigenous girls in youth prisons during the year in 2013-14 were also in the child protection system. In comparison, only 46.48% (99 out of 213) of Indigenous boys and 40.29% (222 of 551) of non-Indigenous boys in youth prisons were involved with child protection⁴¹. This data also shows that children subject to their first instance of youth justice supervision at a younger age were more likely to be in the child protection system⁴². For example 70% of the children aged 10 years old at the time of their first youth justice supervision were in the child protection system.

Based on our experience, these trends are similar in Queensland, in particular for girls in residential care facilities:

The ones in resi care, that's a big issue. One, they probably wouldn't be in detention if they weren't in resi care. Two, they wouldn't want to stay in detention if they weren't in resi care. Resi care is sometimes worse than detention, which is horrible to think.

Resi care kids are always in contact with the criminal justice system younger. 14-15 year olds is the average age for most others. But for resi care kids, it's always younger, like 11 years old. And they're the kids that need the most ... it just makes you so sad. It's not their choice to be in those situations, and they get criminalised because of it at an early age.

- Sisters Inside youth worker

I was in care from when I was 6 years old. I first went into resi when I was about 11 years old. I only started getting in trouble after I was in resi. I did a lot of short stints [in youth detention]. I was in and out all the time for 4 years.

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From when I went into resi, everything changed. It made me very uncomfortable. I ran away from home a lot. I think if they didn't put me in resi, half of my criminal history wouldn't have happened.

- Louise, 18 years old

Resi is like a prison. You have to get up at 9am - you can't go back to your room until 3pm. You have to sit with a carer you don't know and do school work. If you leave, they report you missing and police come get you.

I spent a week in [youth detention] for breaking cling wrap.

- Beyonce, 16 years old

It is also important to understand that girls' and boys' responses to violence and patterns of offending are different. Research has found that girls are 'more likely to respond to maltreatment with aggression that is focused inward such as depression, self-blame, suicidal

⁴⁰ Katherine McFarlane, 'From care to custody: Young women in out-of-home care in the criminal justice system' (2010) 22(2) *Current issues in criminal justice* 345, 346-347.

⁴¹ AIHW, 'Young people in child protection and under youth justice supervision 2013-14' (2016), Data linkage series no 21, Cat no CSI 22, Supplementary Tables, tables S6a, S6b and S6c. This data relates to Victoria, South Australia, Tasmania and the Australian Capital Territory only.

⁴² Ibid, tables S8a, S8b and S8c.

ideation/behaviours, and disordered eating'⁴³. Disturbingly, for many girls, the experience of imprisonment itself exacerbates mental health issues:

When I went in, I would just scratch [my wrists]. I started self-harming in there. Then since I've come out, it's been my coping mechanism.

- Louise, 18 years old

We believe that, taking into account the significant trauma that most children, and especially girls and young women, experience before, during and after imprisonment, prison is an unjustifiable policy response to addressing crime.

The Queensland Government should commit to ending youth imprisonment

There is growing recognition in the United States that youth prisons are ineffective and should be shut down⁴⁴. Similarly, in Europe there is increasing focus on best practice alternatives to imprisonment for children⁴⁵. According to Angela Davis:

Imprisonment has become the response of first resort to far too many of the social problems that burden people who are ensconced in poverty. These problems often are veiled by being conveniently grouped together under the category "crime" and by the automatic attribution of criminal behavior to people of color. Homelessness, unemployment, drug addiction, mental illness, and illiteracy are only a few of the problems that disappear from public view when the human beings contending with them are relegated to cages.

Prisons thus perform a feat of magic. Or rather the people who continually vote in new prison bonds and tacitly assent to a proliferating network of prisons and jails have been tricked into believing in the magic of imprisonment. But prisons do not disappear problems, they disappear human beings. And the practice of disappearing vast numbers of people from poor, immigrant, and racially marginalized communities has literally become big business.⁴⁶

As detailed earlier in this submission imprisonment is, in and of itself, criminogenic. Continuing to increase the number of imprisoned girls and young women can be expected to generate parallel increases in the number of adult women in prison into the future – with all the associated issues for themselves and their children, and at great cost to the Queensland Government. Although it will be important to ensure initiatives to end youth imprisonment do not recreate the violence of the carceral state via welfare or community-based mechanisms, the move to end youth imprisonment is a positive development in international youth justice policy.

As part of this Independent Review, we consider it is timely for the Queensland Government to make a policy commitment to end the imprisonment of all children under 18 years old. At the very least, a commitment to not build or any new children's prisons or extend any current youth prisons ought to be at the heart of Queensland's youth justice policy.

⁴³ Kimberly Bender, 'Why do some maltreated youth become juvenile offenders? A call for further investigation and adaptation of youth services' (2010) 32 *Children and Youth Services Review* 466, 467.

⁴⁴ Patrick McCarthy et al, 'The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model' (New Thinking in Community Corrections, October 2016). Available at: <https://www.ncjrs.gov/pdffiles1/nij/250142.pdf>.

⁴⁵ See, eg Ursula Kilkelly et al, 'Alternatives to detention for juvenile offenders: Manual of good practices in Europe' (International Juvenile Justice Observatory, February 2016).

⁴⁶ Angela Davis, 'Masked Racism: Reflections on the Prison Industrial Complex' (2000) 4(27) *Indigenous Law Bulletin*, 4.

In the meantime ... reduce the number of girls and young women in prison

Decarceration, put simply, is the reduction of prisoner numbers. Governments that choose to adopt a policy of reducing prisoner numbers do so for a variety of reasons including community safety, cost savings, impact on local communities and public opinion. The resulting reduction in recidivism lessens the burden on the criminal justice system at all levels, and the cost of community supervision is low compared to the cost of incarceration.

A variety of methods can bring about the reduction in prisoner numbers. The effectiveness of these methods depends on the context and the extent to which a commitment is made to adopting a holistic rather than singular departmental approach. Tools that are utilized in governmental attempts to reduce numbers include front end options, shorter sentences, back end options and a firm commitment to building no additional prisons.⁴⁷

We believe there are a number of strategies that the Queensland Government should adopt to get children and young people out of prison.

Increase the minimum age of criminal responsibility

In Queensland (as in other Australian jurisdictions), a person under 10 years old cannot be held criminally responsible for any act or omission⁴⁸. In addition, there is a rebuttable presumption (known as *doli incapax*), which provides that children under the age of 14 years are not criminally responsible unless it is proved by the prosecution that they had capacity at the time of the alleged offence to know that they ought not to do the act or make the omission⁴⁹.

Our very low age of criminal responsibility is inconsistent with international guidance and with other laws in Queensland and Australia, including criminal laws, designed to protect children.⁵⁰

In its General Comment on children's rights in juvenile justice, the United Nations Committee on the Rights of the Child states:

... a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower [minimum age of criminal responsibility] to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level. [...] A higher [minimum age of criminal responsibility], for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40(3)(b) of CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected.⁵¹

⁴⁷ INCorrections Network (Queensland), 'Decarceration: An argument for reducing prisoner numbers in Queensland' (2006). Available at: <http://www.sistersinside.com.au/reports.htm>.

⁴⁸ Criminal Code, s 29(1) (Schedule 1 to the *Criminal Code Act 1899* (Qld)).

⁴⁹ *Ibid*, s 29(2).

⁵⁰ Eg, a child under 12 years old is incapable of giving consent for the purposes of the criminal offence of rape: Criminal Code, s 349(3), and it is an aggravated offence of indecent dealing if a child is under 12 years old: Criminal Code, s 210(3). Consider also the *Marriage Act 1961* (Cth), which does not allow children under 16 years to be married. All children aged 16 and 17 years old must have a Magistrates Court order and parental consent in order to be able to marry: ss 11-13.

⁵¹ Committee on the Rights of the Child, *General Comment No 10 : Children's rights in juvenile justice*, 44th session, UN Doc CRC/C/GC/10 (25 April 2007), 11. See also *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)*, GA Res 40/33, UN GAOR, 40th sess, 96th plan mtg, Sup no 53, UN Doc A/RES/40/33 (29 November 1985), rule 4.

In subsequent deliberations, the Committee has considered age limits below 14 years as too low an acceptable standard in relation to imprisonment.⁵²

Determining the minimum age of criminal responsibility involves moral, political and legal judgements about the nature of criminal culpability, children's developmental stages and capabilities, and children's lived experiences of trauma⁵³.

There is now general acceptance that children aged between 10-14 years are undergoing significant hormonal, physical and emotional development⁵⁴. Additionally, we know that children who experience trauma during childhood are more vulnerable to contact with the criminal justice system when abuse and neglect continue through to adolescence⁵⁵.

The Queensland Director of Youth Justice Policy, Research and Partnerships recently highlighted the need to consider options other than imprisonment for 10-13 year olds:

*One of the strategies that we need to look at is whether in fact there are ways in which we can manage the numbers of 10- to 13-year-olds. Are there options for them outside of being in detention? One of the first priorities of the remand reduction strategy is to look at 10- to 13-year-olds who are remanded in custody. Are there alternatives? Are there community based, supervised residential centres, for example, that would be better placed to look after those 10- to 13-year-olds? Those are all the sorts of options that are on the table, because we are very mindful of the risks that I think you are alluding to in terms of mixing 17-year-olds with 10-year-olds.*⁵⁶

Given the high rates of unsentenced children in prison (discussed further below), we must increase the minimum age of criminal responsibility in line with the age that we deem it appropriate to expose children to imprisonment. Specifically, if we accept that imprisonment is inappropriate for children under the age of 14 years, we must seriously consider whether these children should be involved in the formal youth justice system at all.

This position is consistent with the fundamental principles outlined in the Riyadh Guidelines, which state that juvenile justice prevention policies should 'avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others' and measures should take into account that 'youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process'⁵⁷.

At a minimum, we recommend the Queensland Government should amend the Criminal Code to increase the age of criminal responsibility from 10 to 12 years old, in line with international best practice. However, we would prefer to see the age of criminal responsibility increased from 10 to 14 years old (or even higher).

⁵² William Schabas and Helmut Sax, 'Article 37: Prohibition of Torture, Death, Penalty, Life Imprisonment and Deprivation of Liberty' in Andre Alen et al (eds), *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, 2006), 57. This appears to be in the context of the Committee discussing UK practice.

⁵³ See Claire McDiarmid, 'An Age of Complexity: Children and Criminal Responsibility in Law' (2013) 13(2) *Youth Justice* 145. See also all other articles in that issue of *Youth Justice* for a comprehensive discussion about the minimum age of criminal responsibility from different perspectives. Cf Erica Meiners' critique of "neurolaw" in a racialised criminal justice system: Erica R Meiners, 'Trouble with the *Child* in the Carceral State' (2013) 41(3) *Social Justice* 120, 124-126.

⁵⁴ Megan Mitchell, 'Keynote address' (Presented at Jesuit Social Services National Justice Symposium, Melbourne, 18 September 2013) (and references). See also, Jesuit Social Services, *Too much too young: Raise the age of criminal responsibility to 12* (October 2015), 4-5.

⁵⁵ Judy Cashmore, 'The link between child maltreatment and adolescent offending: Systems neglect of adolescents' (2011) 89 *Family Matters: Australian Institute of Family Studies* 31, 33-34

⁵⁶ Evidence to Education, Tourism, Innovation and Small Business Committee, *Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old-persons) Amendment Bill 2016*, Queensland Parliament, Brisbane, 21 September 2016, 8 (Mark Lynch).

⁵⁷ *United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)*, GA Res 45/112, UN GAOR, 45th sess, 68th plen mtg, Supp No 49, UN Doc A/RES/45/112 (14 December 1990), para 5(g).

If the minimum age of criminal responsibility was increased to 12 years old, based on 2014-15 figures, this could reduce the number of children in prison by 1.6% (15 out of 918)⁵⁸. If it was increased to 14 years old, based on 2014-15 figures, this could reduce the annual number of children in prison by around 18% (159 out of 918)⁵⁹.

We also recommend that the Queensland Government funds independent, community-based, initiatives that provide ongoing support to 10-14 year olds and their families. It is essential that young people's participation in such programs is fully voluntary (otherwise, we are at risk of replicating the demonstrably ineffective imprisonment model at a community level). Sisters Inside's Crucial Connections program, which supports young people with a criminalised mother who are homeless or at risk of homelessness, is an example of a successful program that provides ongoing advocacy and support for young people.

Fix the broken bail system

It is a fundamental right recognised in international law that people should not be kept in prison on remand⁶⁰. As well as international rules of general application to people or children, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) state that:

*Institutionalization of children in conflict with the law shall be avoided to the maximum extent possible. The gender-based vulnerability of juvenile female offenders shall be taken into account in decision-making.*⁶¹

As stated above, the bail system in Queensland is broken⁶². There is no clear or simple explanation for why the system has failed. In our view, the most significant contributing factors for children and young people are:

- inadequate and inappropriate housing, especially for children in residential care facilities and adults for whom there are no affordable housing options. When children have no safe place to go, they are not able to comply with the requirement to provide an address or with curfew or residential conditions;
- lack of dedicated funding for lawyers to assist and represent children and young people to apply for bail;
- breaches of bail due to inappropriate conditions and over-policing;
- lack of social support for children and young people to stay in the community safely, and a corresponding tendency to imprison children for their own "welfare"; and
- significant delays in the finalisation of matters in the Childrens Court.⁶³

⁵⁸ AIHW, *Youth detention in Australia 2014-15* (2016), Supplementary table, table S74b. Note this total figure includes 17 year olds. We understand this data was provided by Youth Justice services in Queensland and does not include 17 year olds imprisoned in adult prisons. 17 year olds may be included because they were briefly in custody during the year in 2014-15 or due to way the young person's age was calculated.

⁵⁹ Ibid.

⁶⁰ See, eg *International Covenant on Civil and Political Rights*, opened for signature on 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), article 9(3); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), article 37(c); *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)*, GA Res 40/33, UN GAOR, 40th sess, 96th plen mtg, Sup no 53, UN Doc A/RES/40/33 (29 November 1985), rule 13.1 and 13.2; *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, GA Res 45/113, UN GAOR, 45th sess, 68th plen mtg, Supp No 49, UN Doc A/RES/45/113 (14 December 1990), rules 17 and 18.

⁶¹ *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, GA Res 65/229, UN GAOR, 65th sess, 71st plen mtg, Sup no 49, UN Doc A/RES/65/229 (21 December 2010), rule 65.

⁶² Remand is a longstanding issue. The Forde Inquiry recommended that alternative placement options be developed for young people on remand in order to reduce the number placed in juvenile detention centres: Queensland, Commission of Inquiry into Abuse of Children in Queensland Institutions, *Final Report* (1999) 191.

⁶³ For more information about structural issues with bail in Queensland, see Amnesty International Australia, *"Heads held high": Keeping Queensland's kids out of detention, strong in culture and community* (August 2016), ch 6; Kelly Richards and Lauren Renshaw, 'Bail and remand for young people in Australia: A national research project' (AIC Reports, Research and Public Policy Series, No. 125, 2013); Paul Mazerolle and Jennifer Sanderson, 'Understanding

I didn't want to get out of [youth detention] because I didn't have anywhere to go. I refused to go back to resi from 12 years old because I knew that I would just get into more trouble.

- Beyonce, 16 years old

I would get in trouble for breaching my bail a lot. I had a curfew and sometimes I would get back to the resi two minutes late, because the workers wouldn't help me with transport. The workers would call the police and they would put me in detention again. Sometimes the police and detention workers made it difficult for me to call my lawyer after I was picked up. [...] I swear [the resi workers] just hate me.

CII

[REDACTED]

- Louise, 18 years old

I refused bail once. It was easier to be inside. It was fun, because there was no bullshit. And I didn't have to see people I didn't want to see. I got fed.

- Denessa, 18 years old

I didn't really want bail. It was just easier to serve more of your time than do probation and parole. Easier than going to their office.

- Felicia, 19 years old

We know of young women who've been left inside on remand for 8 or 9 months. They just get forgotten.

- Sisters Inside youth worker

In our view, it is indicative of serious systemic failures when children consider it is better or easier to spend time in prison than in community. Similarly, it is unacceptable that children are routinely criminalised as a result of being in State care.

While it is obvious that there is a need for significant reform, we are wary of measures that extend state surveillance into the homes and lives of young people, effectively "widening the net" of sanctioned children"⁶⁴.

As an initial step, we encourage the Queensland Government to immediately implement a plan to remove all unsentenced children and young people from prison by Christmas 2016. Funding for legal and non-legal support should be made available to assist in this process, as well as to stop further children and young people from being remanded in custody.

Longer term changes should focus on:

- building more public housing so children and young people have genuine short and long-term accommodation options;
- ending the care-to-prison pipeline by overhauling the residential care system, including clarifying the position in relation to insurance for 'incidents' in residential care;

remand in the juvenile justice system in Queensland' (Griffith University, March 2008); Australian Law Reform Commission, *Seen and heard: priority for children in the legal process* (ALRC Report No. 84, 1997), ch 18.

⁶⁴ Committee on the Rights of the Child, *General Comment No 10 : Children's rights in juvenile justice*, 44th session, UN Doc CRC/C/GC/10 (25 April 2007). 21.

- funding independent legal and non-legal services to work with young people who come into contact with the youth justice system, including implementing a notification procedure so that young people are not left to languish in prison; and
- reviewing the *Bail Act 1980* (Qld) and relevant provisions of the *Youth Justice Act 1992* (Qld) to outline a clear decision-making framework for bail in Queensland.

Sisters Inside's Supreme Court Bail Program which currently operates for women in adult prisons shows that it is possible for women to successfully apply for and comply with bail when they have appropriate support. Since March 2016, we have assessed 1,002 women prisoners for their eligibility for Supreme Court bail and assisted 25 eligible women to make an application. Every application but one has been successful.

And ... end torture, cruel, inhuman and degrading treatment in youth and adult prisons

Stop strip searching

Strip searching is currently lawful and routinely used in Queensland prisons⁶⁵. In our view, strip searching is sexual assault by the State and a serious violation of girls' and women's human rights⁶⁶.

Strip searching is particularly traumatic for girls and women, given the high levels of sexual abuse many young women have experienced before entering prison. It has been widely recognised that strip searches can cause retraumatisation and an associated escalation in mental health and substance abuse issues. Some young women even report refusing visits from family members (including their children) due to the associated strip searching. This further isolates them from the social networks essential to their post-release reintegration into the community and places them at heightened risk of recidivism.

The evidence demonstrates that strip searching is clearly an ineffective means of detecting drugs and other 'contraband'. Over 3 years (August 1999 – 2002), 41,728 strip searches were conducted on women prisoners in Queensland. Only 2 found any significant contraband (unspecified quantity/type of drugs)⁶⁷. Anecdotal reports suggest no significant change in this pattern over the intervening years.

All of the young women we interviewed reported routine strip searches being conducted at BYDC on admission, every time after they returned from a court appearance and sometimes after personal visits, even for non-contact visits. We also understand strip searching is routine at CYDC and the Independent Inspector has raised concerns that these searches contravene youth justice legislation.⁶⁸

⁶⁵ *Youth Justice Regulation 2016* (Qld), s 25; DJAG, 'Youth Detention Policy – Search of a young person – YD-4-2' (Date of operation: 1 July 2013); *Corrective Services Act 2006* (Qld), ss 34-38. See also Queensland Ombudsman, *The Strip Searching of Female Prisoners Report: An investigation into the strip search practices at Townsville Women's Correctional Centre*, Tabled paper no 6082 (September 2014).

⁶⁶ See further Sisters Inside, 'A campaign to end sexual assault of women by the State' (2005) and other materials about strip searching available online at: <http://www.sistersinside.com.au/reports.htm>. See also Anti-Discrimination Commission Queensland, *Women in Prison: A report by the Anti-Discrimination Commission Queensland* (March 2006), 73-74. Available at: <https://www.adcq.qld.gov.au/human-rights/women-in-prison-report>, ch 7.

⁶⁷ Data obtained under a Freedom of Information request and reported in Debbie Kilroy, 'Submission of Sisters Inside to the Anti-Discrimination Commissioner for the Inquiry into the Discrimination on the Basis of Sex, Race and Disability Experienced by Women Prisoners in Queensland' (2004), Sisters Inside, Brisbane at www.sistersinside.com.au/media/adcs submission.pdf, 25

⁶⁸ Stephanie Small, 'Cleveland youth detainees strip-searched more than 1,200 times at detention centre, report finds', ABC News (online), 22 September 2016. Available at: <http://www.abc.net.au/news/2016-09-22/young-inmates-strip-searched-cleveland-youth-detention/7867718>.

They give us towels to wrap around us. We put the towel around us and bend over a little, do a little squat, and they make us shake out of our hair. They check our hair and behind our ears.

- Denessa, 18 years old

[Strip searching in BYDC was] a lot more full on than adult prison. If you got an Aboriginal worker, they were alright. They'd give you a towel and stuff like that. But other workers make you take your time and cough and squat, and everything. Even if you had your period, they still made you do it. If you say no, they just smash you to the floor. Three staff come in and they just hold you down and check you.

- Nali, 19 years old

My first time going in, I had my period and they still made me do it.

- KK, 18 years old

Strip searching is also routinely used in adult prisons for (young) women:

[At BWCC], they make you take your socks off when you go into visits, even non-contact visits. Then you get strip searched after always, even if it was non-contact. In S4, every time you went in, you would be strip searched because it's the unit for suicide and self-harm so you weren't allowed sharps.

- Louise, 18 years old

We know that ending strip searches has many positive benefits for women in prison. At the recent Sisters Inside conference (19-21 October), Amanda George, a community lawyer and prison abolition advocate from Victoria, reported that when strip searches have been stopped in women's prisons, there is a reduction in drug use and self-harm, and an increase in professional visitors⁶⁹.

We recommend the Queensland Government should immediately introduce legislation to amend the *Youth Justice Act 1992* (Qld) and the *Corrective Services Act 2006* (Qld) to prohibit the use of strip searches in all youth and adult prisons.

Stop managing 'misbehaviour' by force, mechanical restraints and separation

I stole a permanent marker and got caught with a few permanent markers in my room. I got a good screw. He made me put all my stuff, my pillow, my toothbrush in a box at the front of my room for three days. I was still allowed to go to class. I was lucky. If I had a different screw, it could have been a whole lot worse.

Every time I had a fight, I knew to get on the ground [when the screws were coming] so I didn't get the knees [in my back].

You got some really good ones at BYDC. You just woke up every morning hoping you got a good screw.

- Felicia, 19 years old

Physical and emotional violence in prisons is endemic. However, most public examples of violence in prison are centred on the experiences of boys and men, with the consequence that violence against girls and women is hidden.

While it is important to consider *unlawful* uses of force, it is equally important to understand that the boundaries of *acceptable* uses of force in prison are inherently 'stretchy'. In our view, the law

⁶⁹ Source unknown - willing to follow up if required.

governing the use of force and restraints in prisons operates to excuse behaviour that is unacceptable in mainstream society and creates an environment that is unsafe for children.

In Queensland, 'behaviour management' in youth prisons is governed by provisions of the *Youth Justice Regulation 2016* (Qld), 70 as well as several public policies⁷¹. Guidance about discipline and 'security' is also set out in national standards for juvenile justice administrators⁷².

Although corporal punishment and physical contact are both prohibited disciplinary strategies in Queensland, youth prison staff are still authorised to use 'reasonable force' to:

*... protect a child, or other persons or property in the centre, from the consequences of a child's misbehaviour if (a) the employee has successfully completed physical intervention training approved by the chief executive; and (b) the employee reasonably believes the child, person or property cannot be protected in another way.*⁷³

Separation is prohibited as a disciplinary strategy under the 'Behaviour development' policy. Instead, it is authorised as a protective measure for illness, self-harm or restoring 'order' to the centre. This position is inconsistent with the Australian Medical Association ethical guidance, which states that solitary confinement as a means of punishment is inhumane, as it may lead to a number of physical or mental disorders⁷⁴.

Anecdotal evidence suggests staff routinely breach the prohibitions against corporal punishment, physical contact and separation as disciplinary measures. Practically, it is difficult to draw bright lines between conduct that constitutes 'reasonable force' versus prohibited corporal punishment or physical contact. Further, staff are not adequately trained in strategies to manage behaviour that do not involve the use of force⁷⁵:

One time, I was on the top bunk and I got ripped off. [One of the screws] used to sling me around, handcuff me, bend my hands back. It was because of the things I did and said to them.

They used to call me names, run me down. All the time.

If I said something one of the screws didn't like or if I spoke about something I wasn't supposed to, I'd get put in isolation. The longest I was in there was a week. I was 13 or 14 years old. They don't check on you unless you buzz them or if it's at night. When you argue with [the teachers in youth detention], they tell the screws and put you in isolation.

-Beyonce, 16 years old

CI

And one of the guards came in, saw the camera was covered and he hit me in the back.

They put me in a sterile room. They couldn't handle me. They were cheeky to me but I always had a better comeback. You're only allowed the clothes on your back, your sheet, your pillow and the bed. You weren't allowed anything else. I was like that for about month. I had contact with the other kids during school but I just wasn't allowed to do anything else.

- KK, 18 years old

⁷⁰ See specifically, *Youth Justice Regulation 2016* (Qld), ss 15-22.

⁷¹ DJAG, 'Youth detention policy – Behaviour development – YD-1-2' (Date of operation: 1 December 2013); DJAG, 'Policy: Youth detention – Use of mechanical restraints – YD-3-7' (Date of operation: 2 August 2016); DJAG, 'Policy: Youth detention – Use of separation in response to an incident – YD-3-8' (Date of operation: 18 February 2013). We understand further procedures that are not publicly available would also govern discipline inside youth prisons.

⁷² Australasian Juvenile Justice Administrators, *Juvenile Justice Standards* (2009), section 9.

⁷³ *Youth Justice Regulation 2016* (Qld), s 16(5).

⁷⁴ Australian Medical Association, 'Medical Ethics in Custodial Settings' (2013, amended 2015), section 7.1. Available at: <https://ama.com.au/position-statement/medical-ethics-custodial-settings-2013>

⁷⁵ Youth Detention Inspectorate (DJAG), 'Executive summary to Inspection Report – Brisbane Youth Detention Centre – June quarter 2014' (undated). Available at: <https://publications.qld.gov.au/dataset/15c205a2-5b6f-4f4f-99c4-013c6cb3d601/resource/ed3756df-bc32-41f7-ae28-8e8e9bf82dba/download/executivesummaryjune2014bydc.pdf>.

In relation to separation, there is also anecdotal evidence that it is used inappropriately by 'frontline' (non-medical) staff in circumstances where genuine mental health concerns are present:

There was a lot of restraining. I'd have a panic attack and I'd get restrained. They gave me medication to sedate me one time. They would grab me by my arms, put them behind my back and walk me to Grevillea. I was handcuffed on the floor after a panic attack once. A couple of times I was thrown in a padded cell. It's terrifying. I wouldn't let them put the suicide jacket on me so they would put me in the padded cell with nothing other than my clothes. They'd just ignore you. It was because I'd gotten upset and they didn't know how to handle it. I missed my family and wanted to go home. I couldn't understand then why I couldn't go home.

- Louise, 18 years old

The last time I went to [BYDC], I was in there for a few months. CII [REDACTED]

- Nali, 19 years old

In addition to strip searching, girls are vulnerable to other types of sexual and gender-based violence in youth prisons:

*I was actually very close to a screw in there [not the art teacher]. And now thinking about it as an adult, there was something wrong with how he would groom the young girls. I actually recall one time getting a bit weirded out because he walked into my room one morning and to tell me to get up, he slapped the part of the blanket where my bum was. But otherwise, he never came across to me in a sexual way. But if it was now, I would have been like 'f*ck off away from me'.*

- Nali, 19 years old

Some of the young women we interviewed were aware of an art teacher at BYDC who was charged with distributing child pornography in 2013⁷⁶:

Every time you'd talk to him, he would always look at your breasts. I used to just think he didn't want to make eye contact. I didn't want to think like that. Later, we found out he got arrested for child pornography.

- KK, 18 years old

These accounts demonstrate that girls in youth prisons do not get it 'easy' compared to boys.

Despite an increase in the number of 'troublesome' girls in Queensland's youth prisons⁷⁷, as well as recommendations from the Youth Justice Inspectorate to implement 'best practice' management strategies for girls (especially ahead of the reception of girls at CYDC), policies and practices

⁷⁶ 'Art teacher charged over child porn', *Brisbane Times* (online), 31 October 2013. Available at: <http://www.brisbanetimes.com.au/queensland/art-teacher-charged-over-child-porn-20131031-2wjsv.html>.

⁷⁷ The draft Youth Detention Centre Demand Management Strategy 2013-2023 stated that 'girls are causing an increasing number of incidents in youth detention' based on 2013-14 data: DJAG, *Youth Detention Centre Demand Management Strategy 2013-2023* (undated draft), 10.

remain gender-blind. At the same time, overcrowding has disrupted staff training in behaviour management on at least one occasion at BYDC⁷⁸:

They're going in to control a bunch of kids that have come from troubled lives. They don't know what's happened to these kids before they go in there. They need to train the staff to control their anger and not restrain a child over a few hurtful words. I think they need to be trained and shown a better understanding to deal with kids like that. If a child's going to youth detention, it's not like they're going to listen to what they say. They need a better understanding to deal with the kids in there, otherwise it's not making them any better. They need to know how to speak to children because if they don't, they'll ruin them.

- Nali, 19 years old

We are not aware of the direct experiences of girls in CYDC. However, we note that in 2014, the Commission for Children, Young People and the Child Guardian released a report about the use of *separation* at CYDC following a riot in 2012. We understand a draft version of the report recommended that the Department of Justice and Attorney-General contact the young people and their parents to effectively apologise for any harm or stress caused as a result of the prolonged isolation. The Commission also recommended the Department notify the families that they had a right to seek appropriate advice about legal remedies that may be available to them. Under the former government, in 2014, the Department responded to the draft report by commencing proceedings against the Commission to suppress the recommendations. The proceedings were ultimately withdrawn when the Commission agreed to change parts of the report⁷⁹.

More recently, after this independent review was announced, there were news stories about a 'riot' at CYDC, with some expressing concern that guards were ordered not to interfere or physically restrain the children involved.⁸⁰

These stories illustrate a problematic culture of violence and control at CYDC.

Although we consider it is impossible to reform the inherent violence of the prison system, we support the following specific changes to the way 'misbehaviour' and mental health are addressed in youth prisons:

- the use of excessive force, mechanical restraints and separation should be prohibited in all circumstances;
- all staff should be trained in communication and de-escalation strategies;
- risk assessment tools and frameworks should be critically reviewed in light of the criminogenic needs of girls. Vulnerabilities such as cultural background, care status and socio-economic status (by location) should not be pathologised or used as the sole basis for labelling a child as a 'risk'.

Introduce independent and transparent oversight and complaint mechanisms

Independent and transparent oversight and complaint mechanisms are important to mitigate the worst human rights abuses in the prison system.

The young women we interviewed for the review had varied awareness of, and experience with, direct complaint mechanisms (community visitors and complaints boxes) in youth prisons:

⁷⁸ Youth Detention Inspectorate (DJAG), 'Executive Summary – Brisbane Youth Detention Centre – June Quarter 2013' (undated). Available at: <https://publications.qld.gov.au/dataset/15c205a2-5b6f-4f4f-99c4-013c6cb3d601/resource/a444dd8e-23b5-423c-9076-ef942aa858a4/download/executivesummaryjune2013bydc.pdf>.

⁷⁹ Kay Dibben, 'Children's commission report critical of Cleveland Youth Detention Centre's decision to keep boys in lockdown', *The Courier Mail (online)*, 21 January 2014. Available at: <http://www.couriermail.com.au/news/queensland/childrens-commission-report-critical-of-cleveland-youth-detention-centres-decision-to-keep-boys-in-lockdown/story-fnihsrf2-1226806186306>.

⁸⁰ See, eg Chris McMahon and Kieran Rooney, 'Prison life a riot for kids', *Townsville Bulletin*, 16 August 2016, 4.

You have a little red box in your section where you can put complaints. The staff can't read them. People from outside [youth detention] come and read them and ask you what happened. CII

[REDACTED]

- KK, 18 years old

You're meant to put those in the box. I'm not a snitch. Other kids complained. The screws got their nieces and nephews to deal with it by bashing them up.

I spoke to a [community visitor] once because I had one of the screws trying to move me to another section but I didn't want to go because it was my birthday. Still got moved.

- Beyonce, 16 years old

In CII

[REDACTED]

- Louise, 18 years old

These accounts highlight the practical and 'social' barriers that prevent young people from making complaints in youth and adult prisons, as well as the negative outcomes of some direct complaints processes.

For direct complaints to be successful, children must have access to legal or advocacy assistance. However, it is equally important to ensure that there are robust oversight mechanisms does not rely on children to raise issues in order for them to be addressed.

In our experience, collective/representative complaints about systemic issues have been more effective mechanisms for incremental change in Queensland prisons. We have successfully used the oversight functions of the Queensland Ombudsman and the Anti-Discrimination Commission of Queensland to raise issues with women's imprisonment. A major benefit of investigations by these bodies is the public nature (in general) of their findings.

Although we acknowledge the efforts of the Youth Detention Inspectorate to identify and address systemic issues, ultimately we believe that prisons are public institutions and should be subject to public, democratic oversight. For this reason, we suggest that the Inspectorate should be independent from the Department of Justice and Attorney-General (or embedded within existing mechanisms, such as the Ombudsman). We also consider the quarterly reports should be tabled in Parliament, to ensure meaningful accountability for youth prisons.

We note that ratification and implementation of the measures in the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment* may offer an alternative mechanism for ensuring oversight of youth and adult prisons in Queensland.⁸¹

⁸¹ OPCAT provides for international inspections of places of detention by the United Nations Subcommittee on the Prevention of Torture and the establishment of an independent 'national preventive mechanism' to inspect all places of detention. See also, Australian Children's Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices* (April 2016), 78-80.

Other matters

Implement community-based programs that support effective transitions

There is very little public information about the range and type of programs offered to children in prison.

Several of the young women we spoke to reported positive experiences with the school programs in BYDC. None of the young women spoke about offence-based programs, but this may be because all but one were in prison on remand.

In relation to cultural programs, the Aboriginal young women we interviewed could all recall visits from Elders, especially for NAIDOC week. These young women also identified the Indigenous art program as the only cultural program at BYDC.

One young woman stated that visits with the Elders could continue after prison. Otherwise, none of the young women identified any continuity between programs offered by the prison and programs in the community. In fact, several of the young women identified challenges with their continued attendance at mainstream schools after their criminalisation. Several young women reported receiving visits from Sisters Inside workers in prison and they have continued to engage with these workers outside.

Based on our conversations with the young women, we are not aware of any gender-specific programs for young women offered at BYDC⁸². The failure to offer tailored programs and services for girls in prison is inconsistent with international best practice⁸³. However, American research has found 'gender responsive programming' is not necessarily helpful for all girls in prison, because not all girls present with the same needs and risk factors⁸⁴. In order to be effective, programs must be tailored to the lived experience of trauma and related health issues of each girl.

In interviews for this submission, young women identified a number of protective factors that help or would help to keep them out of prison:

- more money (Youth Allowance is not enough – it's gone on rent and debts from the fortnight before);
- family connections, especially to siblings and children;
- accessing voluntary and ongoing support through Sisters Inside;
- staying away from peers who take drugs or engage in other illegal behaviour; and
- work and study.

If you want your birth certificate or if you need to sort out Centrelink, they'll help you. But there's no general support in there. From a few of the staff members, there is. But otherwise no, they just look at you like a troubled kid. They don't help you strive to be anything else.

- Nali, 19 years old

⁸² Note, it appears from the Cleveland Education and Training Centre website that a program for girls called 'ShineGIRL' is offered through the chaplaincy program:

<https://clevelanduq.edu.au/Supportandresources/Supportstaff/Pages/School-Chaplain.aspx>.

⁸³ *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, GA Res 65/229, UN GAOR, 65th sess, 71st plan mtg, Sup no 49, UN Doc A/RES/65/229 (21 December 2010), rule 38.

⁸⁴ See Jacob C. Day et al, 'What works and for whom? The effects of gender responsive programming on girls and boys in secure detention' (2015) 52(1) *Journal of Research in Crime and Delinquency* 93.

Informed by these ideas, we submit the following general comments in relation to programs:

- International best practice is focused on diverting children from prison as a key tool in preventing crime. Similarly, the recommendations of the Royal Commission into Aboriginal Deaths in Custody focused on keeping Indigenous people out of prison. The prison should not be positioned at the centre of programs and services, including cultural programs. All programs must start from the community, be totally independent of correctional authorities, and connect with the community.
- To be effective, programs must:
 - be linked with the child's support networks;
 - focus on the child's transition from prison and address practical needs, such as housing, health, income, legal issues (such as debt) and substance use; and
 - be provided by or in conjunction with independent organisations who will continue working with the child in the community.
- Programs that focus on assisting children to identify 'offending' behaviour should be evidence-based. As appropriate, these programs should include content that seeks to address the structural issues underpinning criminalisation, such as poverty and violence.
- In order to ensure their effectiveness, all prison and post-release programs should be provided by independent NGO's with specialist, needs-based gender-specific competencies, and function independently of the prison structure and Department.

Transition of 17 year olds to the youth justice system

We are pleased that the Queensland Government is taking steps to transition 17 year olds from adult prisons and include 17 year olds in the youth justice system.

We submit the following general comments about the transition of 17 year olds to the youth prison system:

- consistent with the other recommendations in this paper, we consider all 17 year olds on remand should immediately be given the opportunity and legal support to apply for bail;
- we do not support any new capital works at existing youth prisons for the sole purpose of accommodating 17 year olds. Instead, we consider removal of young children (under 14 years) from youth prisons would facilitate the transition of 17 year olds to youth prisons;
- 17 year olds are children and should be treated as such for the purpose of all policies in youth prisons. 17 year olds should not be subject to strip searching, the use of excessive force, mechanical restraints or separation due to any perceived 'adult' status;
- fully-funded and appropriate legal representation and bail support programs and services (providing housing, transport and other supports required to meet bail conditions) should be funded and made available to all 17 year olds to address legal needs; and
- particular support should be provided to young people transitioning from State care (at 18 years old), in recognition of the disproportionate representation of these young people in the adult criminal justice system and their vulnerability at the time of this transition.

Police discrimination and violence

Although it is outside the scope of this review, many of the young women we interviewed raised concerns about police discrimination and violence. We are particularly concerned about the over-policing of Aboriginal and Torres Strait Islander children and children in out-of-home care.

In exercising their discretions to charge or caution, police make significant decisions about which children are 'funneled' into the youth justice system. There was a significant reduction in police cautions over the period between 2010-11 and 2013-14, which likely influenced the number of children coming into contact with the youth justice system and entering youth prisons.⁸⁵

⁸⁵ See Childrens Court of Queensland, *Annual Report 2014-15* (2015), 19; Childrens Court of Queensland, *Annual Report 2013-14* (2014), 18; Childrens Court of Queensland, *Annual Report 2012-13* (2013), 15; Childrens Court of

Further, Amnesty International has recently confirmed well-known concerns in the community and legal sector in relation to police compliance with legislative and practice standards for interviewing Indigenous children in custody.⁸⁶

To stem the flow of children into youth prisons, we must address police violence and discrimination.

Queensland, *Annual Report 2011-12* (2012), 18; Childrens Court of Queensland, *Annual Report 2010-11* (2011), 13; Childrens Court of Queensland, *Annual Report 2009-10* (2010), 12.

⁸⁶ Amnesty International Australia, *"Heads held high": Keeping Queensland's kids out of detention, strong in culture and community* (August 2016), 34-35.

Appendix

Number of 10-17 year old girls in (sentenced and unsentenced) in youth prisons in Queensland on an average night by sex and Indigenous status⁸⁷

	Sentenced					Unsentenced					Overall Total
	Indigenous girls	Non-Indigenous girls	Indigenous boys	Non-Indigenous boys	Total	Indigenous girls	Non-Indigenous girls	Indigenous boys	Non-Indigenous boys	Total	
June 2011	2 (5%)	1 (2%)	23 (53%)	17 (40%)	43	5 (6%)	5 (6%)	38 (45%)	36 (43%)	84	127
Sept 2011	0 (0%)	2 (5%)	22 (56%)	15 (38%)	39	2 (3%)	4 (5%)	38 (51%)	31 (41%)	75	114
Dec 2011	1 (2%)	3 (6%)	31 (58%)	18 (34%)	53	6 (8%)	3 (4%)	43 (54%)	28 (35%)	80	133
Mar 2012	2 (5%)	2 (5%)	25 (60%)	13 (31%)	42	6 (7%)	3 (3%)	56 (61%)	27 (29%)	92	134
June 2012	1 (3%)	0 (0%)	28 (72%)	10 (26%)	39	6 (6%)	3 (3%)	70 (65%)	29 (27%)	108	147
Sept 2012	1 (3%)	0 (0%)	26 (68%)	11 (29%)	38	11 (10%)	7 (6%)	62 (55%)	32 (29%)	112	150
Dec 2012	1 (3%)	0 (0%)	21 (66%)	10 (31%)	32	12 (10%)	8 (7%)	62 (53%)	34 (29%)	116	148
Mar 2013	2 (7%)	0 (0%)	16 (59%)	9 (33%)	27	17 (13%)	6 (5%)	72 (55%)	35 (27%)	130	157
June 2013	2 (5%)	0 (0%)	22 (59%)	13 (35%)	37	18 (14%)	11 (8%)	68 (52%)	33 (25%)	130	167
Sept 2013	4 (10%)	1 (2%)	24 (60%)	11 (28%)	40	13 (10%)	10 (8%)	66 (53%)	36 (29%)	125	165
Dec 2013	5 (9%)	1 (2%)	37 (65%)	14 (25%)	57	16 (13%)	8 (7%)	62 (51%)	35 (29%)	121	178
Mar 2014	5 (11%)	0 (0%)	31 (69%)	9 (20%)	45	16 (13%)	10 (8%)	61 (49%)	37 (30%)	124	169
June 2014	6 (12%)	1 (2%)	29 (58%)	14 (28%)	50	15 (11%)	9 (7%)	70 (53%)	39 (29%)	133	183
Sept 2014	5 (12%)	0 (0%)	28 (68%)	8 (20%)	41	15 (11%)	8 (6%)	60 (45%)	48 (37%)	131	172
Dec 2014	9 (21%)	1 (2%)	27 (64%)	5 (12%)	42	12 (9%)	6 (5%)	63 (49%)	48 (37%)	129	171
Mar 2015	4 (18%)	0 (0%)	13 (59%)	5 (23%)	22	16 (11%)	10 (7%)	66 (47%)	48 (34%)	140	162
June 2015	5 (19%)	0 (0%)	15 (56%)	7 (26%)	27	18 (13%)	9 (6%)	74 (54%)	38 (27%)	140	167

⁸⁷ Compiled from AIHW, 'Youth detention population in Australia 2015' (2015) AIHW Bulletin No 131, Cat no AUS 196, Supplementary tables, tables S12, S15, S22 and S25.