

**Sisters Inside Inc.**  
ABN 94 859 410 728

P.O. Box 3407  
South Brisbane Qld 4101

Ph: (07) 3844 5066  
Fax: (07) 3844 2788

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



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

4 July 2024

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
[by email: legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Secretary

We welcome the opportunity to make a submission about the *Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill 2024* ('the Genocide Bill'). As an abolitionist organisation, we urge the Australian Parliament to implement more holistic options than simply criminalising individuals to prevent genocide from occurring. The colonial racial capitalist foundations of the Australian state must be transformed so that no group of people is scapegoated and oppressed to the extent that genocide or other atrocities are committed against them.

However, given that the offences created by Division 268 of the *Criminal Code 1995* (Cth) are the only mechanism in the Australian legal system currently available to facilitate truth-telling and accountability about genocide and other atrocity crimes, we support the Genocide Bill in its efforts to remove any real or perceived political interference with the ability to pursue accountability under these offences.

#### **About Sisters Inside Inc.**

Sisters Inside Inc. is an independent community organisation that exists to advocate for the collective human rights of women and girls in prison and provides unique services to meet the needs of criminalised women, girls, and their families. We have more than 30 years' experience supporting criminalised women and girls, and advocating for an end to the racial gendered violence that underpins the carceral system. All our work is directly informed by the wisdom of criminalised women and girls. Aboriginal and Torres Strait Islander women have been central in the formation and drive of Sisters Inside, and their knowledge, experience and input directs all

our work. We privilege the voices of criminalised women as the authorities on all matters pertaining to them and our submission is informed by the experiences and knowledge of formerly incarcerated women at Sisters Inside, and our observations of the experiences of incarcerated and formerly incarcerated women and girls that we support.

### **Genocide as a historical and ongoing tool of the Australian state**

The Human Rights and Equal Opportunity Commission labelled the Stolen Generations as genocide in its 1997 *Bringing Them Home* report: ‘The Australian practice of Indigenous child removal involved both systematic racial discrimination and genocide as defined by international law. Yet it continued to be practised as official policy long after being clearly prohibited by treaties to which Australia had voluntarily subscribed.’<sup>1</sup>

While the policies that created the Stolen Generations are no longer officially in force, the alarmingly high number of Aboriginal and Torres Strait Islander children in out-of-home care today shows that these policies have effectively been continued through the systemic racism embedded in the ‘child protection’ system. The highest number ever recorded of Aboriginal and Torres Strait Islander children in out-of-home care in Australia – 22,328 – is very recent history, occurring in 2022. As SNAICC reports, ‘Most disturbingly, Aboriginal and Torres Strait Islander children are 10.5 times more likely than non-Indigenous children to be in out-of-home care.’<sup>2</sup> SNAICC also records that Stolen Generation descendants are significantly more likely to be criminalised than Aboriginal and Torres Strait Islander people who were not removed from their families.<sup>3</sup>

This disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system and the enduring legacy of the Stolen Generations is closely intertwined with the criminalisation of Aboriginal and Torres Strait Islander women. Aboriginal and Torres Strait Islander women make up one-third of the population of women’s prisons, being imprisoned at 20 times the rate of non-Indigenous women. With 80 per cent of women in

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<sup>1</sup> Human Rights and Equal Opportunity Commission, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, April 1997, <https://humanrights.gov.au/our-work/projects/bringing-them-home-chapter-13>

<sup>2</sup> SNAICC, *Family Matters Report 2023*, p 5, <https://www.snaicc.org.au/wp-content/uploads/2023/11/Family-Matters-Report-2023.pdf>

<sup>3</sup> SNAICC, *Family Matters Report*, p 47.

prison estimated to be mothers, and many of these the primary or sole caregivers,<sup>4</sup> forced separation due to imprisonment often triggers the removal of children from their families. Given the extreme and rising rates of Aboriginal and Torres Strait Islander women in prison, it is not surprising to see the continued over-representation of Aboriginal and Torres Strait Islander children in the child protection system.

This continuing and increasing removal of Aboriginal and Torres Strait Islander children is occurring through the government agencies of Australian states and territories, which raises a real concern that the Attorney-General may use their fiat to block attempts under the *Criminal Code* (Cth) to expose the truth of this situation and seek to hold those responsible for this ongoing genocide accountable.

### **Genocides occurring worldwide**

We stand in solidarity with the victims of the horrific genocide and other atrocity crimes currently being committed around the world, including against civilians in Palestine, Sudan and the Democratic Republic of Congo.<sup>5</sup> We demand the Australian Parliament take whatever actions it can to stop these genocides from continuing.

In the case of the genocide that Israel is committing against Palestinians, the Australian Parliament has provided both public and material support to Israel to continue these atrocities.<sup>6</sup> This political support for genocide also raises real concerns that the Attorney-General would use their fiat to prevent attempts to hold those responsible accountable.

For these reasons we support the passing of the Genocide Bill, and we urge the Australian Parliament to take further, more substantive actions to meet Australia's obligations to fully

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<sup>4</sup> Cat Woods, 'Women in Prison', *Law Society Journal*, 17 January 2023, <https://lsj.com.au/articles/women-in-prison/>; Anti-Discrimination Commission Queensland, *Women in Prison Consultation Report*, 2019, [https://www.qhrc.qld.gov.au/data/assets/pdf\\_file/0003/17139/2019.03.05-Women-In-Prison-2019-final-report-small.pdf](https://www.qhrc.qld.gov.au/data/assets/pdf_file/0003/17139/2019.03.05-Women-In-Prison-2019-final-report-small.pdf).

<sup>5</sup> United Nations Office on Genocide Prevention and the Responsibility to Protect, public statements 2023–24, <https://www.un.org/en/genocideprevention/public-statements.shtml>

<sup>6</sup> Birchgrove Legal, *Conduct of members of the Parliament of Australia, in relation to the situation in Gaza, Palestine: Accessorial Liability for genocide*, Communiqué to the Office of the Prosecutor of the International Criminal Court under Article 15 of the Rome Statute, 4 March 2024, [https://birchgrovelegal.com.au/wp-content/uploads/2024/03/ICC-Referral-Australian-Government-Ministers-and-Opposition-Leader-04032024\\_BLG.pdf](https://birchgrovelegal.com.au/wp-content/uploads/2024/03/ICC-Referral-Australian-Government-Ministers-and-Opposition-Leader-04032024_BLG.pdf)

implement the United Nations *Convention on the Prevention and Punishment of the Crime of Genocide*.

Kind regards,

Debbie Kilroy  
CEO