



Sisters Inside Inc.

Submission to OPCAT in Australia Consultation

July 2017

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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 25 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 in Queensland's prisons. Women on parole are a central part of our management committee and other governance structures. We see the wider consequences of policies and practices within the Queensland criminal justice system through our services that support criminalised women and children.

About this submission

Sisters Inside supports the Australian Government's decision to implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**).

Sisters Inside is a prison abolitionist organisation. Our submission is informed by our belief that no person should be in prison and we seek to support strategies that reduce the number of people in prisons or coming into contact with the criminal legal system.

This submission focuses on our experience working with and for women in Queensland's adult prisons, and girls in Queensland's child prisons. The unique issues related to the imprisonment of women and children are often neglected, despite the rising numbers of women and girls in prison in recent decades. Sisters Inside is particularly concerned by the extreme and ongoing over-representation of Aboriginal and Torres Strait Islander women and girls.

In making this submission, we do not wish to diminish issues in relation to the imprisonment of men and boys, and in particular the over-representation of Aboriginal and Torres Strait Islander men and boys in prison.

Language use

In this submission, we generally use the words *prison* and *imprisonment* to refer to all places where adults and children are detained without their consent under the coercive authority of the State (*public and private adult prisons, child prisons, work camps, watch houses, locked mental health wards, immigration detention centres, etc*). We prefer the word *prison* to 'softer' language that masks the harsh realities of imprisonment (e.g. *detention, corrections, rehabilitation, 'care'*).

We refer to all under 18 year olds throughout as *children*, in recognition of their legal status and right to extra protections (particularly, as detailed in the UN Convention on the Rights of the Child).

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.

1. What is your experience of the inspection framework for places of detention in the state or territory where you are based, or in relation to places of detention the Australian Government is responsible for?

Based on our experience, the current inspection framework for prisons in Queensland is deeply inadequate. Queensland's current inspection bodies are neither independent nor transparent.

The *Corrective Services Act 2006* (Qld) (the **CS Act**) provides for the Commissioner of Queensland Corrective Services (**QCS**) to appoint a Chief Inspector as well as inspectors for specific incidents. The Office of the Chief Inspector therefore operates under and reports to the Commissioner of QCS.

All inspectors hold powers to enter and inspect prisons, interview prisoners and staff members, and review the operation of prisons and the services offered at prisons. If an incident involves an Aboriginal and Torres Strait Islander person, one of the inspectors appointed to investigate the incident must be Aboriginal or Torres Strait Islander. There is no requirement for the Chief Inspector to undertake regular inspections of prisons in Queensland. Reports of inspections or incidents are not made publicly available.

The Chief Inspector is also responsible for coordinating official visitors appointed under the CS Act. Official visitors are responsible for investigating complaints made by individual people in prison, as well as some decisions under the CS Act. Official visitors may enter prisons and speak with individual prisoners about complaints. Official visitors are appointed by the Commissioner of QCS and assigned to particular prisons.

Section 263(4) of the *Youth Justice Act 1992* (Qld) (the **YJ Act**) requires the Chief Executive of the Department of Justice and Attorney-General (**DJAG**) to inspect each children's prison at least once every 3 months. DJAG has established the Youth Detention Inspectorate to undertake these inspections. The Youth Detention Inspectorate publishes summary reports of its work online; however, detailed information about its findings and systemic issues is not available.

The Office of the Public Guardian coordinates a community visitors program for children in child prisons, adult prisons, and residential care and mental health facilities. Community visitors have obligations to inspect and report on the appropriateness of children's accommodation and treatment in prisons.

Sisters Inside has no direct experience with either the Office of the Chief Inspector or the Youth Detention Inspectorate. This is likely as a result of their lack of independence and transparency – the current inspection framework is not designed to receive or respect input from non-government organisations or individuals with direct, lived experience who are no longer in prison. Nor is the current system designed to take a preventative role in identifying systemic issues or practices which may place vulnerable prisoners at risk of torture or other cruel, inhuman or degrading treatment or punishment.

Similarly, the women and girls we work with and for do not report using the official visitor or community visitor mechanisms to make complaints about their treatment in prison. Individualised complaints mechanisms are inadequate and inappropriate to resolve systemic and structural problems. Additionally, most women and girls do not have trust or confidence in these mechanisms.

Independent bodies such as the Queensland Ombudsman and the Anti-Discrimination Commission of Queensland have investigated and published reports relating to systemic issues in Queensland's prisons and made preventative recommendation³. Both bodies can also investigate and respond to

³ Sisters Inside made a complaint to the Anti-Discrimination Commission of Queensland in 2004 regarding discriminatory treatment of women in prison. As a result of this complaint, the ADCQ conducted a detailed investigation and published its Women in Prison report in 2006, highlighting significant systemic issues for women in prison. The ADCQ is currently undertaking a 10 year review, with input from Sisters Inside and other key organisations.

individual complaints. However, without unrestricted and unannounced access to prisons, these bodies are not able to provide effective oversight of prisons.

Clearly, the existing inspection framework in Queensland falls far short of the standards required to meet the OPCAT. Should the Australian Government adopt a 'mixed/difuse model' for implementation of the OPCAT, substantial changes would be required in the Queensland system to meet accountability requirements and to take on a preventative role.

2. How should the key elements of OPCAT implementation in Australia be documented?

Despite the Australian Government's current position, we consider the key elements of OPCAT should be incorporated in Australian law by legislation. Model legislation could be drafted to ensure consistent powers and privileges in each jurisdiction, especially as the functions of the National Preventive Mechanisms (NPMs) may be incorporated into existing bodies.

If legislation is not developed to implement OPCAT, we consider there must be a formal, public agreement that sets out the roles, responsibilities and powers of the national coordinating mechanism and the NPMs. We support robust powers for the NPMs, including unrestricted access to all prisons; public reports of inspections and associated systemic changes required; and enforcement powers. A national agreement is also an important safeguard to ensure the independent, consistent and transparent operation of the NPMs in each jurisdiction, including through adequate funding.

The role and involvement of non-government organisations should not be documented or prescribed in a national agreement.

3. What are the most important or urgent issues that should be taken into account by the NPM?

The majority of women prisoners were primary carers for their children (and sometimes other dependents) prior to imprisonment. Imprisonment of women has a profound wider (often multi-generational) effect, particularly on children and families. The massive increase in imprisonment amongst women and girls can be expected to have a long term social impact, particularly since women generally leave prison in worse mental and/or physical health than when they entered.

Sisters Inside contends that some current prison practices are in clear contravention of the CAT (and other UN human rights instruments) and must be addressed as a matter of urgency by the NPMs.

Strip searching

Sisters Inside has continuously advocated to end the practice of strip searching women and girls in prison. We consider strip searching is sexual assault by the State and, as such, cruel, inhuman or degrading treatment.

Almost all women in prison are survivors of sexual assault, and a majority of women in prison have also experienced child sexual abuse. It has been widely recognised that strip searches are likely to re-traumatise women and girls, exacerbating existing trauma and associated mental health concerns.

The main justification for strip searches is to prevent illicit drugs and other prohibited items from entering prisons⁴. In Queensland, women are routinely strip searched after contact visits with their children, family members and loved ones, and after returning from court.

Sisters Inside recently requested records regarding strip searches for adult women's prisons and youth detention centres between 2014 and 2016⁵. In 2016, women were strip searched a total of 12,170 times at Queensland's largest (and most overcrowded) women's prison, Brisbane Women's Correctional Centre (**BWCC**). Women at BWCC were strip searched 3,376 times after visits. The only contraband found after visits was three cotton buds and a non-prison issued singlet. Contraband was also rarely detected upon reception – there were 5,090 reception strip searches at BWCC in 2016 and the only recorded contraband was: 1 x mobile phone, 1 x SIM card, lighter, approx. 54 tablets, 1 x Seroquel tablet and a lip piercing (all found separately). Whilst the evidence indicates that drugs and other illicit contraband regularly enter women's prisons, these records suggest that strip searches are completely ineffective as a prevention mechanism.

In its 2006 report on Women in Prison, the Anti-Discrimination of Queensland reported that a number of women in prison elected not to have contact visits with their children due to their strong objections to being strip searched⁶. More recently, in 2014, the Queensland Ombudsman found that the strip searching practices of highly vulnerable women receiving S8 medication at Townsville Women's Correctional Centre (**TWCC**) was unlawful and unreasonable⁷.

There is evidence from a 2002 trial in Victorian prisons, put in place after sustained advocacy by prison activists, that reducing the number of strip searches leads to a reduction in women using drugs in prison (inferred from a reduction in urine positives). Additionally, the Victorian trial found there was a reduction in 'incidents' in the prison – staff assaults, prisoner assaults and self-harm incidents – and women who were involved in 'incidents' generally had significant mental health issues. The level of contraband seized remained unchanged.⁸

Strip searching is an outdated, ineffective and degrading practice. It should be a priority for the NPMs to end this practice in Australia.

Prison overcrowding & associated human rights breaches

Most Australian prisons are overcrowded or operate very close to capacity. In 2015-16, average prison utilisation across Australia was 99.4% in open prisons and 115.9% for secure prisons⁹.

In September 2016, the Queensland Ombudsman released a report on overcrowding at BWCC, which was tabled in the Queensland Parliament¹⁰. The Queensland Ombudsman found that BWCC is the most overcrowded prison in the State.

⁴ See reference to QCS policy in Anti-Discrimination Commission Queensland, *Women in Prison: A report by the Anti-Discrimination Commission Queensland* (March 2006), 71. Available at: <https://www.adcq.qld.gov.au/human-rights/women-in-prison-report>.

⁵ Sisters Inside Right to Information Request, Department of Justice and Attorney-General (Ref: 171000), submitted on 1 February 2017.

⁶ Ibid, 73.

⁷ Queensland Ombudsman, "The Strip Searching of Female Prisoners Report: An investigation into the strip search practices at Townsville Women's Correctional Centre" (September 2014), see Opinions and Recommendations at x.

⁸ Jude McCulloch and Amanda George, 'Naked power: Strip searching in women's prisons' in Phil Scraton and Jude McCulloch (eds), *The Violence of Incarceration* (Routledge, 2009) 107, 119.

⁹ Productivity Commission, *Report on Government Services* (2017), 8.15. Available at: <http://www.pc.gov.au/research/ongoing/report-on-government-services>.

¹⁰ Queensland Ombudsman, "Overcrowding at Brisbane Women's Correctional Centre: An investigation into the action taken by Queensland Corrective Services in response to overcrowding at Brisbane Women's Correctional Centre" (September 2016).

Queensland Corrective Services data from 10 March 2017 shows that both of the State's secure prisons for women are severely overcrowded¹¹. BWCC in South-East Queensland has a built capacity of 267 women and at that date accommodated 396 women. TWCC in North Queensland has a built capacity of 154 women and at that date accommodated 195 women. BWCC remains the most overcrowded prison in Queensland, operating at 148% capacity. Overcrowding in all of Queensland's secure prisons exceeds the national average. Conversely, Queensland's low-security prisons are under-utilised and have more capacity than the national average – especially to accommodate women. The Helana Jones Centre and Numinbah Correctional Centre, low-security prisons in South-East Queensland, were operating at 62% capacity and 83% capacity respectively.

The key driver of overcrowding is the increasing number of women prisoners on remand. 42% of women prisoners in BWCC and 50% of women prisoners in TWCC are on remand – largely for minor, non-violent offences. Refusal of bail by police or magistrates is largely driven by women's homelessness and untreated mental health or substance abuse issues. In short, it reflects the failure of the state to meet women's fundamental human rights such as affordable housing and health care.

Queensland continues to imprison 17 year old children in adult prisons. As at 1 March 2017, there were 65 x 17 year olds in Queensland's prisons¹². Data we obtained from QCS shows that between January and October 2016, there were on average 52 x 17 year olds in Queensland's adult prisons and, in the same period, on average 7 x 17 year old girls¹³.

Queensland's youth prisons now operate almost permanently over accepted safe capacity levels¹⁴ and the majority of children and young people in prison are on remand (unsentenced).

Overcrowding is a serious problem and has significant consequences for the safety and treatment of women and children in prison. In his September 2016 report, the Queensland Ombudsman found there was inadequate health care and programs for women in prison as a result of overcrowding. Women and girls, including pregnant prisoners, continue to be forced to sleep on mattresses on the floor in cells which are prone to flooding with raw sewerage from toilet overflows. Women prisoners also report inadequate quality and quantity of food. The Queensland Ombudsman also acknowledged there was a rise in self-harm and other violent incidents in the prison, which we believe is directly linked to overcrowding.

A national approach is required to address overcrowding and, in our view, the best way would be to reduce the number of adults and children entering and returning to prison. Given the potential for overcrowding to create the conditions for cruel, inhuman and degrading treatment, it is appropriate for the NPMs to focus on this issue as a matter of priority.

¹¹ Hannah Busch, "Queensland prisons holding 1600 inmates above capacity", *Fraser Coast Chronicle (online)*, 13 March 2017. Available at: <https://www.frasercoastchronicle.com.au/news/queensland-prisons-overcrowded/3153671/>.

¹² Queensland Corrective Services, Custodial offender snapshot as at 01.03.2017. Available at: <https://data.qld.gov.au/dataset/custodial-offender-snapshot-statewide>.

¹³ Received via email Vanessa Hollis, A/Manager, Performance and Reporting, Queensland Corrective Services on 27 October 2016. (Reference Code: TASK0020595).

¹⁴ 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).

Other prison practices in contravention of the CAT and other UN instruments

Sisters Inside is also deeply concerned about the ongoing use of mechanical and chemical restraints on women and child prisoners. The vast majority of women prisoners have committed minor, non-violent offences and are generally imprisoned for short periods of time (in Queensland in 2015, an average of 4.96 weeks) as a result of poverty or other breaches of their human rights. Yet, we receive repeated reports of shackling and other forms of mechanical restraints of women prisoners in Queensland. Similarly, we receive repeated allegations of the over-medication of women and children with (supposed) mental health issues – too often with outdated pharmaceuticals which are no longer prescribed in the wider community.

Conversely, Sisters Inside also receives repeated reports of health care substantially below community standards for women prisoners. Women with pre-existing medical conditions are often refused treatment whilst in prison or have existing treatment regimes replaced with sub-standard pharmaceuticals. Many women with chronic conditions have reported a significant deterioration in their health following (even a short) period of imprisonment. For example, a woman with advanced respiratory disease has reported that the prison health service refused to provide her with oxygen for the duration of her 6 months' imprisonment.

Solitary confinement and seclusion, too, continue to be regularly used as a behaviour management tool in women's prisons throughout Australia. Generally, the conditions under which women are kept in solitary confinement as punishment for breaches of discipline (e.g. *Detention Units*) are indistinguishable from those confined in response to mental health issues (e.g. *Crisis Support Units*, or *Wet Cells*). Too often, women are punished for the most minor infractions of prison rules. Too often, women threatening self-harm or suicide are isolated in contravention of medical advice that seclusion is contra-indicated in these circumstances.

Employment of male officers in women's prisons is in contravention of many UN instruments, including the *Standard Minimum Rules for the Treatment of Prisoners* (Section 52) and, more recently, the *Bangkok Rules*. Given that the vast majority of women prisoners are survivors of male violence, continuing employment of male officers in women's prisons places women prisoners at serious risk of retraumatisation and, we contend, constitutes ongoing cruel, inhuman or degrading treatment or punishment.

Given the long term harm which often results from these practices, addressing all these systemic issues should be a high priority for the NPMs.

Mistreatment of Aboriginal and Torres Strait Islander women and children in police watch houses

Police violence, especially against Aboriginal and Torres Strait Islander people, is a systemic problem in Australia. Sisters Inside has repeatedly heard anecdotal reports of serious violence against Aboriginal and Torres Strait Islander women and children by police, especially in regional and remote areas. To date, very few reports of police violence have been adequately investigated. If reports of violence are investigated, the investigations are not conducted by an independent body. Too often, allegations of harm are "not substantiated".

Over 25 years ago, the Royal Commission into Aboriginal Deaths in Custody proposed mandatory notification arrangements for Aboriginal and Torres Strait Islander people arrested by police (see Recommendations 223 and 224) as well the establishment of a free, independent and confidential body to investigate complaints against police (Recommendation 225).

We are concerned that the Queensland Government recently rejected an Australian Government proposal to implement a mandatory custody notification service¹⁵. Additionally, we note that it

¹⁵ See Rachel Riley, 'State Government rejects legal support hotline', *Townsville Bulletin* (online), 6 June 2017. Available at: <http://www.townsvillebulletin.com.au/news/state-government-rejects-legal-support-hotline/news-story/eac2376926a05930ddec04ca0c879b91>.

appears that no action has been taken nationally to implement these recommendations of the Royal Commission.

Given the serious potential for abuses of power by police in watch houses, we consider this should be a priority issue for the NPMs.

Mistreatment of pregnant women in prison

During 2014, there were 179 pregnant women in prison across Australia (excluding New South Wales)¹⁶. There is no public, national data on the number of women who give birth in prison each year.

There are serious issues with women's access to adequate pre-natal and ante-natal health care in prison. Additionally, for women who give birth in Queensland's prisons, there is a very high likelihood that their children will be removed from their care by child protection authorities – too often, within the hours immediately post-birth. Overcrowding limits the ability of women and their newborn/infant children to remain together in prison. Child removals from prison are more likely to affect Aboriginal and Torres Strait Islander mothers and perpetuate multigenerational trauma in their families and communities.

Once a child is removed from their mother's care, women face significant difficulties enabling their children to access breast milk (particularly immediately post-birth) and policies to support breastfeeding are fragmented and inconsistent between prisons and child protection authorities.

Overall, policies and practices in relation to pregnant women in prison (including the effects of overcrowding detailed above) could constitute cruel, inhuman and degrading treatment (and may also represent a failure to meet the rights of their child/ren). This is an important issue for the NPMs to address at the outset of their operation.

Systemic mistreatment of children in prison

Systemic mistreatment of children and young people in prison has recently attracted national attention.

The release of Four Corners' episode on the Don Dale Youth Detention Centre was the catalyst for the establishment of the Royal Commission into the Protection and Detention of Children in the Northern Territory to investigate systemic failures in the Northern Territory's child prisons and child protection systems.

Following similar media coverage in Queensland, the Queensland Government established an Independent Review of Youth Detention. The Independent Review did not have the scope, time or resources to determine whether or not there was systemic mistreatment of children and young people in Queensland's youth prisons but suggested more work was required to investigate abuses. The Queensland Government initially released a heavily redacted version of the report of the Independent Review and only released more pages of the report following significant public pressure.

In Victoria, 'riots' by young people in youth prisons at youth detention centres in Parkville and Malmsbury, and the Victorian Government's extreme decision to transfer a small group of children to an adult prison¹⁷, has raised serious concerns about the systemic mistreatment of children and young people in prison.

¹⁶ Australian Institute of Health and Welfare, 'The health of Australia's prisoners' (2015), Cat. No. PHE 207, 76.

¹⁷ This decision was challenged in the Supreme Court of Victoria twice before the Victorian Government agreed to move the children to a youth detention centre.

Similarly, significant public and professional concerns have been widely raised about the treatment of children in residential care and the role of the residential care system in criminalising children. Whilst systemic abuse within the residential care system as a whole may fall outside the scope of the OPCAT, residential care premises frequently function as a bail accommodation services. Some of the more severe abuses of children in residential care are reported when they are locked within residential care services and/or are under curfew. In these situations, their treatment clearly falls within the OPCAT's scope.

A national approach is required to prevent the systemic mistreatment of children in prisons and under other forms of confinement, including addressing the issues that lead children to come into contact with the criminal legal system. We recommend the NPMs should focus on this issue, especially in relation to the potential for national implementation of findings from the Queensland Independent Review of Youth Detention and the Northern Territory Royal Commission.

4. How should Australian NPM bodies engage with civil society representatives and existing mechanisms (e.g. NGOs, people who visit detention etc.)?

Successful implementation of OPCAT will require meaningful and ongoing input from the non-government sector. It will be important for each NPM and the national coordinating mechanism to allow for regular and open communication with non-government organisations.

NGOs, particularly specialist community-driven organisations, can play a valuable role in identifying systemic and ongoing issues (agenda setting/prioritising), contributing experience-based expertise to deliberations of specific issues, and providing a supportive pathway for contribution by (or on behalf of) people with lived experience of imprisonment. A clear legislative framework or document outlining the powers of the NPMs will be important to ensure non-government organisations have clarity about how they can work with the NPM process to resolve ongoing issues.

In our view, it is most important that the NPMs implement processes to allow for direct contributions by 'experts with experience', i.e. adults and children with direct experience of imprisonment. Loss of autonomy is fundamental to the prison experience. Sisters Inside strongly supports the idea that nothing should be done to or for women and girls in prison without their input – 'Nothing about us, without us'.

It is crucial that NPMs recognise both the vulnerability and immeasurable expertise of women and children with lived prison experience. Mechanisms used to engage with this cohort must address the risks associated with participation. Current prisoners can be expected to have an (evidence-based) fear of retribution by prison staff, and former prisoners are at risk of re-traumatisation as they recall and recount their treatment in prison. It is therefore important that the NPMs work closely with community-based organisations to host discussions that prioritise the voices and experience of people who have been in prison. In 2017, Sisters Inside has organised and hosted roundtable discussions allowing women with lived prison experience to speak directly to the United Nations Special Rapporteur on violence against women, its causes and consequences, the Anti-Discrimination Commission of Queensland and the Queensland Parole System Review team. Accordingly, we could contribute expertise to developing the necessary safeguards to minimise the risks of participation in NPM processes.

In addition to working alongside relevant NGOs, NPMs could also ensure direct input from 'experts with experience' by:

- employing people with lived prison experience;
- hosting safe, accessible and open consultations specifically for people with lived prison experience;
- resourcing the emotional support required to facilitate participation by people with lived prison experience (e.g. advance preparation, debriefing, follow-up counselling);

- providing the practical support required to facilitate women’s participation (e.g. transport and childcare); and
- recognising the unique contribution of these organisational and individual experts (e.g. remuneration at similar levels to academic experts).

We expect that in each jurisdiction the NPMs will need to put in place arrangements to share information with existing mechanisms and to ensure there is no duplication in their work. This process is likely to require legislative amendments and, as indicated above, we support legislation to implement OPCAT.

5. How should Australian NPM bodies work with key government stakeholders?

We anticipate that engagement with government stakeholders is likely to mirror Australia’s federal system, which is why the Australian Government has opted for multiple NPM bodies. A commitment to a ‘mixed model’ and ‘harmonisation’ between government stakeholders should not come at the expense of implementation of both the spirit and letter of OPCAT in Australia. It is critical that every State and Territory system ultimately meets fundamental accountability requirements including unimpeded access to all areas of all prisons at will, independence from service delivery arms of government and transparency, including open public reporting of findings.

The NPMs’ engagement with the government stakeholders must be as transparent as possible. To ensure transparency in practice, the NPMs could publish details or minutes of meetings with key government stakeholders and/or a diary of all meetings. We consider it would also be appropriate for a representative from the national coordinating mechanism to participate in all meetings with government stakeholders to ensure that knowledge about information and issues can be centralised.

6. How can Australia benefit most from the role of the SPT?

Sisters Inside supports the UN Sub-committee on the Prevention of Torture (SPT’s) role as a further independent inspection mechanism under OPCAT. We would encourage the Australian Government to commit to publishing the SPT’s reports after each country visit. Publishing findings and recommendations is an important accountability mechanism.

7. After the Government formally ratifies OPCAT, how should more detailed decisions be made on how to apply OPCAT in Australia?

Further consultation with government stakeholders and non-government organisations will be necessary to implement OPCAT in Australia. These consultations should include development of nationally-consistent guidelines on procedural matters such as how inspections take place, minimum standards for inspection bodies and transparency of inspection outcomes.

However, consultations should not focus on ‘re-inventing the wheel’. Sisters Inside contends that development of national guidelines on prison conditions would be a time consuming, inefficient and potentially harmful exercise. In addition to the CAT, measures for acceptable prison conditions are clearly outlined in international instruments to which Australia is a signatory, including the *Standard Minimum Rules for the Treatment of Prisoners*, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)* and the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)*. Development of new Australian-specific guidelines runs the risk of being reductionist: of undermining Australia’s existing human rights obligations and losing the detail and specificity built into these international instruments. International standards alone should be the measure of acceptable practice in Australia.

Following ratification, we suggest the national coordinating mechanism should be responsible for coordinating further consultations in each State and Territory and at the federal level. Whilst consultation with government stakeholders may focus on the mechanics of OPCAT implementation, consultation with civil society bodies should focus on advising on national inspection guidelines, identifying and prioritising issues to be addressed by NPMs and contributing to thematic issues relevant to each body. Consultations with non-government stakeholders should be held separately from those with government stakeholders, in order to make the best possible use of the limited resources, particularly of small, specialist, community-driven organisations.

The national coordinating mechanism should have responsibility for making detailed decisions about the application of OPCAT in Australia, and ensuring that each State and Territory meets fundamental access, independence and transparency requirements. Whilst the mechanisms and means applied may vary between different States and Territories, it is critical that all meet these fundamental accountability requirements and achieve consistency of outcomes across States and Territories.