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RE: Submission to the Inquiry into children affected by parental incarceration
Legislative council Legal and Social Issues Committee, Parliament of Victoria

Dear Committee Chair,

I make a submission to the 'Inquiry into children affected by parental incarceration' as an academic who has undertaken research on vulnerable women in contact with the child protection and the criminal legal system. The views represented here are my own, based on my research, as well as national and international evidence.

While the focus of my research has been on the experiences and service needs of pregnant women, I believe that much of the work that I am currently undertaking has relevance for the Committee's Inquiry and fits within the terms of reference. It is important to recognise that impacts of parental incarceration commence even prior to a child's birth, and therefore, discussion of the way pregnancy is managed within correctional settings is also critically important.

I hope that the information contained here proves useful to the Committee's deliberations.

Best wishes,

Tatiana Corrales

Maternal incarceration during pregnancy or shortly after birth: Impacts on women and their children

Pregnant women, and mothers of infants should not be in prison. Prison is a relentlessly stressful environment that can cause significant harm to mothers and the developing foetus. Pregnant women not only have to deal with the anxiety of pregnancy while incarcerated, but also with the stressors inherent to the prison environment (Kuhlik & Sufrin, 2020; Paynter et al., 2019). The fear, uncertainty, and anxiety, experienced by many women in prison is compounded for pregnant women, who report being constantly preoccupied with their health and safety and consequently, the health and safety of their unborn baby (Abbott et al., 2020; Wismont, 2000). In addition, for many women, the birth of their baby is accompanied by immediate separation – whether planned by the mother or through statutory removal by child protection. The anticipated grief associated with being separated from their infant is a significant and recurrent theme in the literature on pregnancy in prisons (Abbott et al., 2021; Chambers, 2009; Wismont, 2000). In combination, these factors increase the risk of poor maternal and neonatal outcomes, including through an increased risk of maternal and infant mortality, gestational complications, traumatic births, premature births, low birth weight babies, and low APGAR scores at birth (Dowell et al., 2018; Sufrin et al., 2019; Paynter et al., 2019; Walker et al., 2014;). For the mothers, being pregnant in prison, giving birth in prison, or entering prison shortly after birth increases the risk of mental ill-health, including through increased self-harm and suicide (Stanton & Rose, 2020; World Health Organisation (WHO), 2009).

Given that the majority of incarcerated women in Victoria have been convicted of non-violent crimes and are sentenced to relatively short sentences (Walker et al., 2019), community-based alternatives should be the first sentencing option. Pregnancy and recent childbirth should also be considered a significant mitigating factor against incarceration.

1. Pregnancy in prison

Internationally it has been estimated that between 5% and 15% of women are pregnant in prison (Abbott & Lockwood, 2020; Sufrin et al., 2019). Discussing the 'data gaps' in the United States, Bronson and Sufrin (2019, p. 575) state "data on pregnancy among incarcerated women are both outdated and, when available, often limited to prevalence estimates and births".

In Australia, there is a complete absence of *systematic* data on the prevalence of pregnancy and childbirth in prison, or pregnancy-related outcomes, including live births, stillbirths, and miscarriages. Similarly, there is no systematic data on neonatal outcomes, including birthweight, APGAR scores, utilisation of special care nurseries or intensive care nurseries.

While the Australian Institute of Health and Welfare's (AIHW, 2020) *The health and welfare of women in Australia's prisons* provides an estimate of the number of women who were pregnant and gave birth in prisons throughout 2018, these data are limited by:

- The fact that New South Wales, the most populous state in Australia, does not contribute to the National Prisoner Health data Collection (NPHC), and therefore is excluded from calculations of 'prevalence'
- The information contained in the NPHC only represents a snapshot of prisoners for whom data is collected

- The methodology used in the NPHC (convenience-based sampling) means that information contained in this publication cannot be generalised to a) all women in prison or b) individual states and territories, as data is aggregated at the national level (AIHW, 2020).

Despite representing a small number of the overall female prison population, this group also represents a particularly vulnerable cohort. The World Health Organisation endorses the position that "imprisoned women who are pregnant constitute a high-risk obstetric group, that is, both mother and foetus are more likely to have problems during pregnancy and, subsequently, to have poorer outcomes" (van den Bergh et al., 2014, p. 162).

Considering the growing body of evidence of the harmful effects of incarceration during pregnancy or shortly after giving birth – for both the mother and the infant – it is important to fundamentally reconsider the role of prisons in the punishment, containment, and control of predominantly non-violent women. Further, it is difficult to comprehend how a system that has been specifically designed to contain and punish could be responsive to the unique physical, emotional, hormonal, and psychological needs that accompany pregnancy, childbirth, and early motherhood. The use of restraints on pregnant women, women in childbirth and post-birth recovery is a particularly salient example of the way the prison system prioritises risk, security and 'good order' over women's health and wellbeing. The Victorian Ombudsman highlighted this issue following an inspection of the Dame Phyllis Frost Centre ahead of the implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (Victorian Ombudsman, 2017). It has also been raised in international literature (Kuhlik & Sufrin, 2020; Thomas & Lanterman, 2019), and in my own research which is currently underway.

The use of restraints

Despite federal and state-level guidance against the use of restraints during late stages of pregnancy and during childbirth, pregnant women, women who are in active labour, and women recovering from labour in maternity settings continue to be shackled/restrained. This practice is dangerous, unjustified and contravenes the requirements set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the *Nelson Mandela Rules,* United Nations Office on Drugs and Crime (UNODC), 2015) and the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the *Bangkok Rules,* UNODC, 2011*)*, both of which Australia has endorsed.

The use of restraints on pregnant women, women in labour and women recovering from childbirth must stop. Not only does it represent a danger to the pregnant woman and the unborn child, particularly during childbirth, it is fundamentally degrading. It also reflects the prioritisation of 'security' and 'good order' over women's health and wellbeing, which can have a deleterious (and sometimes fatal) impact on the unborn child.

Shackles during pregnancy

This is medically unsafe due to changes to women's centre of gravity, particularly during later stages of pregnancy. It also makes it difficult for medical procedures (prenatal ultrasounds for example) to be undertaken. As most antenatal appointments are undertaken at external locations the use of shackles is also degrading and humiliating for women. Incarcerated women already have a number of visual signifiers of their status as prisoner. The

use of restraints adds another, highly visible layer and signifies to others that these women are 'dangerous.' This experience can be deeply humiliating and can lead women to avoid accessing antenatal care. This in turn can lead to gestational complications and/or poor birth and health outcomes for both the mother and the newborn child.

Shackles during childbirth

This is medically unsafe, is contrary to human rights treaties on the rights of women prisoners and internationally is opposed by peak medical bodies. It is interesting to note that in Australia, neither the Australian Medical Association (AMA) nor the Australian College of Midwives have released public statements condemning this practice. This may reflect the invisibility of incarcerated women as a vulnerable group within our society.

Shackling during childbirth poses significant health and psychological risks to mothers including a) a heightened level of discomfort during childbirth, b) increased risk of birth complications through the restriction on the mother's movements, and c) increased risk of poor birth outcomes, particularly where emergency caesarean sections are required. There are no grounds under which the shackling of women during childbirth is ever justified.

Shackles following birth

This is psychologically damaging and again, degrading for the mother who will typically be sharing a room with other women. In this setting, being restrained to a bed again sends a powerful, visual signal to others of dangerousness and risk. Incarcerated women are further degraded in having to request permission to be unshackled to have a shower or go to the bathroom.

Whether a woman has given birth vaginally or via caesarean section, her ability to 'flee' in the hours (and days in the case of a caesarean) following birth is limited. Where there is a significant and verifiable risk that a woman may attempt to leave the maternity hospital, with or without her child, this is mitigated by the presence of correctional officers who are stationed either outside, or quite often, inside maternity rooms, for the duration of the woman's stay in hospital.

More broadly, both federally and in Victoria, the justification for the use of restraints during pregnancy, childbirth and the postpartum recovery period is couched in the language of security, good order and possible 'flight risks.' This points to a culture within corrections that is fundamentally antithetical to the health and wellbeing of pregnant women and new mothers. The prioritisation of security, while understandable given the function of the prison system, nevertheless creates an environment where the potential risks posed by pregnant women and new mothers often take precedence over their health and social care needs.

2. Separation from infants shortly after birth

As with pregnancy and childbirth, there is limited, publicly available data on the number of women who are separated from their newborns and infants due to incarceration. In Victoria, there is some evidence that the Mother and Baby Units at both Dame Phyllis Frost and Tarrengower Prison are underutilised (Walker et al., 2021). However, given the lack of transparency on the issue of pregnancy, childbirth, and mothering in Victoria's prison system, it is not clear how much demand there is for the Mother and Baby Units. Further, there is very limited information on the application of eligibility criteria for the Living with Mum Program which is run at both women's prisons.

Participants in my research have stated that the Mother and Baby Units at the Dame Phyllis Frost Centre are 'reserved' for foreign national women who are facing deportation at the completion of their sentence. Additionally, participants have indicated that pregnant women are typically transferred from Dame Phyllis Frost to Tarrengower prior to their expected due date; however, I do not have hard data to confirm this.

National and international evidence on the issue of mother-infant separations highlights the detrimental impacts on women associated with either forced or voluntary separation at or shortly after birth (see for example Abbott et al., 2021; Rodriguez, 2019; Wismont, 2000). As discussed in the previous section, the anticipated grief of separation at birth significantly contributes to poor maternal mental health (Abbott et al., 2021). Research points to two main issues that impact on maternal and infant wellbeing: attachment and maternal wellbeing, and the practical and logistical barriers faced by incarcerated women when statutory child protection intervention results in the removal of children from incarcerated mothers.

The impact of separation on the attachment process and maternal wellbeing

Attachment theory tends to be misunderstood and misapplied, particularly in child protection and correctional settings. The presumption that young children need to be removed from their parents and that contact needs to be limited to ensure 'secure' attachments can form with alternative caregivers is misguided and reflects a complete lack of understanding of attachment as a concept, and as a process.

In the prison setting, removal of infants at or shortly after birth has implications primarily for the mother, who may feel that she will 'lose' attachment to her child due to prolonged separations. This can cause significant distress and increasing mental health problems, self-harm and suicidal ideation, increased risk of relapses into substance use, and for some women, increases in aggressive and/or disruptive behaviour within the prison, which often results in punitive responses (Powell et al., 2020) that further compound women's mental health difficulties. The trauma of separation is compounded by the trauma of incarceration and the risk of statutory child protection involvement (Wismont, 2000).

Statutory child removal and the impacts on reunification

The introduction of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act, 2014* included provisions to limit the amount of time that children spend in out-of-home care. One such provision includes strict time-limits on reunification that are not subject to judicial discretion or override. Families now have 12 months to demonstrate to child protection that the safety concerns that resulted in a child being removed have been addressed. In 'exceptional' circumstances this can be extended to 24 months.

While the former Department of Health and Human Services commissioned the Permanency Amendments Longitudinal Study in 2018 to explore the impacts of the changes, the final report has not been publicly released[1]. Anecdotally, we know that the service system was already stretched to capacity prior to the COVID-19 pandemic, and that may parents experienced significant delays in accessing the services and supports required by child protection to demonstrate their capacity to safely parent their children.

[1] I participated in the qualitative data analysis for some elements of the study, including interviews with key stakeholders across the judiciary, community service organisations and child protection. As the report has not been publicly released, I am unable to discuss the findings that I had access to in this submission.

Further, there is no guidance within the legislation on whether incarceration is considered an 'exceptional' circumstance that warrants an extension of time to achieve reunification. In light of this, and the fact that incarcerated women may be constrained in their ability to access services/supports (particularly post-release) to assist with reunification, there is a risk that incarceration is a *de facto* risk factor for a child's permanent removal from their family of origin. Currently, there is no publicly available data that can provide insights into this matter.

3. Women living with infants in prison

There is a growing body of research, including in Australia, on the impacts of having infants and young children living with their mothers in prison. Overall, there is mixed evidence on the impact for children of living in prison with their mother's. In general, however, the consensus appears to be that children who live in prison with their mothers do not experience poorer outcomes (see for example, Bauer, 2019; Fritz & Whiteacre, 2016; Shlonsky et al., 2016).

While this topic is beyond my area of expertise, I will comment on the way the Living with Mum Program is structured in Victoria, and the possible impacts for mothers and their children.

As with the previous points, there is almost a complete absence of publicly available information on the utilisation rate of the mother and baby units at both prisons. Recent research has identified that eligibility criteria for these units operate in a way to effectively deny First Nations women access (Walker et al., 2020). While this is not articulated in the policy, it does appear that First Nations women struggle to gain access to this program. It is also unclear what supports are in fact available to women who participate in the program.

There are some concerning elements to the Living with Mum (LWM) Program (Corrections Victoria Commissioner, 2021) that require further attention. For example, Section 5.45 (Searches of children) includes following provisions:

- A mother participating in the LWM Program cannot withhold consent to her child's property being searched. If the mother withholds consent, her participation in the LWM Program may be reviewed.

- In line with public prison Deputy Commissioner's Instruction 1.05 - Searches and Patrols, searching of children participating in the LWM Program must only be undertaken in extreme cases and only with expressed written approval from the General Manager. Children should not be subjected to a full search requiring removal of all clothing at once or visual inspection of body areas where contraband may be concealed.

- Searching of a child or a child's property (e.g., toys, pram and external clothing that has been removed) may only be conducted in the presence of the mother. Any removal of the child's clothing should be undertaken by the mother in the presence of staff and requires consent to be obtained from the mother prior to the procedure taking place.

- All children wearing nappies are required to have their nappy replaced each time they are received into the prison.

These provisions are problematic for two main reasons. First, children participating in the Living with Mum Program are **not** incarcerated. In fact, the policy makes it clear that children are *participants* in the program. They should not be subjected to searchers, regardless of whether these are full body and cavity or property searchers. Second, the provisions assume that mothers will utilise their babies to smuggle contraband into the prison. Women are therefore cast as a risk – not just due to their criminal actions but also to the 'good order' and security of the prison. The stereotypes and judgements that inform these provisions run counter to the Victorian Government's stated policy, articulated in the *Strengthening Connections* document (Victorian Government, 2017) of providing 'trauma-informed' therapeutic milieux that explicitly acknowledge the high prevalence of interpersonal and relational trauma experienced by women.

Finally, these provisions force women to consent to and facilitate the search of their children. It is difficult to comprehend how such a regime is conducive to women addressing their trauma, and thereby being able to provide safe and secure relationships for their children.

4. Additional areas requiring attention

There are a range of issues that require further attention, but I will focus specifically on two that have wide ranging implications for the health and wellbeing of incarcerated mothers and their children: the provision of culturally appropriate antenatal and postnatal care for First Nations women and appropriate assessments and supports for postnatal depression and postnatal psychosis.

Culturally appropriate prenatal and postnatal care for First Nations women

It is widely recognised that First Nations women in Australia experience significant barriers, directly linked to systemic and structural racism, in their access to appropriate antenatal and postnatal care (see for example, Kendall et al., 2020). It is also widely recognised that incarceration is a form of colonial violence that disproportionately impacts First Nations people, particularly women (Baldry & Cunneen, 2014). These two factors increase the risk that First Nations women who are pregnant or give birth in prison, or have recently given birth before entering prison, will experience poor outcomes. Australian research shows that First Nations children born to mothers who were incarcerated at the time of pregnancy, or at any point in the child's first two years of life, have higher mortality rates that non-Indigenous children (Dowell et al., 2018).

Consistent with the absence of data on pregnancy and childbirth in prison, there is no publicly available information on the number of First Nations women who are pregnant, give birth or enter prison shortly after having given birth. There is also an absence of information on the antenatal and postnatal care provided to these women, whether this care is commensurate with community standards and expectations, and whether it is culturally safe and appropriate. Given this absence of data, it is not clear how the unique antenatal and postnatal needs of First Nations women are being addressed.

Postnatal depression and postnatal psychosis

Despite widespread community awareness of postnatal depression, there is an absence of research exploring this issue among incarcerated women. There is even less information – both in general and as it pertains to incarcerated populations – on the prevalence and treatment needs of women who experience postnatal psychosis.

There is, however, evidence that mental health issues are often addressed through punitive approaches, including through isolation or solitary confinement (Franich et al., 2021; Kuhlik & Sufrin, 2020) ostensibly for the 'protection' of the person experiencing the psychotic episode. It is unclear how these issues are addressed in the Victorian prison system given the complete absence of data and/or research into this issue. More research is urgently required to ensure that the Correctional System is equipped to humanely and effectively manage the complex psychological disturbances that can often occur following childbirth.

5. Recommendations

Incarceration as a tool of punishment, deterrence, or even rehabilitation needs to be seriously reconsidered where women are pregnant or have recently given birth. As indicated at the start of this submission, most women in prison are on remand or serving short sentences for non-violent crimes. Placing these women in prison – risking their health and the health of their unborn or newborn baby – runs counter to basic human rights and principles of justice.

While women continue to be incarcerated at increasingly higher rates there is an urgent need for Correctional policy and practice to accurately reflect the unique needs that accompany pregnancy, childbirth, and early motherhood. This requires much greater transparency on the policies and practices that occur within prison, particularly in relation to pregnant women, women in labour, and women who enter prison shortly after giving birth. It also requires greater investment in, and commitment to, systematic data collection, preferably centralised and occurring on an ongoing basis, to account for the significant number of women that cycle through the prison system on remand and short sentences. These data should be routinely collected and published, possibly by the Australian Institute of Health and Welfare.

In addition to these two urgent requirements, the following recommendations are made, based on the information contained in this submission:

1. The use of restraints on pregnant women (regardless of gestational stage), women in labour, and women who have just given birth, should cease immediately. The use of restraints cannot be left to subjective interpretations of 'security' or 'flight risks.'

2. The specific role of child protection within the Living with Mum Program needs to be clarified. This includes through the publication of any protocols or Memoranda of Understanding that exists between Corrections Victoria and the Department for Families Fairness and Housing.

3. Greater transparency is needed regarding the supports in place to assist women who have children removed through statutory child protection, including the supports provided to ensure women can work towards reunification within the new timelines established by the permanency amendments.

4. There is a need for independent evaluation of the Living with Mum Program.

5. To ensure the efficacy of the program, and to better support the developmental outcomes of children living with their mothers in prison, the Living with Mum Program should employ a qualified maternal health nurse and/or early childhood nurse. This nurse should be embedded within the program on a full-time basis to ensure that the health and wellbeing

needs of children are not left to the discretion of correctional officers who lack the necessary training or skills to make medical decisions[2].

6. Investment in research into pregnancy, childbirth and parenting within the prison system is urgently needed. There is a need for research across multiple areas, including:

- The prevalence of postnatal depression and psychosis among pregnant women and new mothers in prison, how these are assessed, and what supports are available to assist women experiencing postnatal depression and/or psychosis
- The antenatal and postnatal needs of First Nations women in prison, and how to most appropriately, safely and adequately meet their needs
- The interaction between incarceration and child protection, particularly the prevalence of statutory removal, the type of orders that are placed, and the support provided to incarcerated women to meet the terms of those orders.
- The long-term impacts – on mothers and their children – of separation at or shortly after birth

[2] While women have access to the Maternal and Child Health Nurse program that operates across the state, their day-to-day parenting, health, and social care needs – and those of their children – are addressed through the correctional system. This creates several issues, not least of which is the tendency for correctional staff to minimise and/or not respond to women's concerns about the health of their children (see for example Kendall et al., 2020; Kuhlik & Sufrin, 2020). This attitude can be clearly seen in the Coronial Inquest into Veronica Nelson's death at the Dame Phyllis Frost Centre which is currently underway.

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