

## **SUPPORT FOR CHILDREN OF IMPRISONED PARENTS IN NEW SOUTH WALES**

**Organisation:** Keeping Women Out of Prison Coalition (KWOOP)

**Date Received:** 28 February 2020



**KWOOP**  
**Keeping Women Out of Prison**  
**COALITION**

**28 February 2020**

**INQUIRY INTO SUPPORT FOR CHILDREN OF IMPRISONED PARENTS IN NSW**

**The Keeping Women Out of Prison Coalition (KWOOP)** welcomes this Inquiry and is pleased to provide a submission. We note and express our concern that many of the 97 Recommendations from the 1997 *Standing Committee on Social Issues A Report into Children of Imprisoned Parent*<sup>1</sup> chaired by the late Honourable Ann Symonds MLC remain unimplemented. Many of those recommendations remain relevant today.

The KWOOP Coalition NSW comprises individuals and organisations, service providers, philanthropic and not for profit organisations, universities and women with lived experience of the criminal justice system.

The purpose of KWOOP is to influence systems, policy and practice in order to reduce the number of women in prison and to minimise the impacts on their families and children. The KWOOP Coalition NSW works collaboratively with policy and law makers. Our Vision is for better outcomes for women and children affected by the NSW criminal justice system

KWOOP is auspiced by the Sydney Community Foundation and members include:

- The Sydney Community Foundation (SCF) through its Keeping Women out of Prison Fund (KWOOP), By My Side Fund and Sydney Women's Fund (SWF)
- Community Restorative Centre (CRC) through The Miranda Project
- Dress for Success Sydney
- SHINE for Kids
- Women's Justice Network
- Zonta Club of Sydney
- UTS Australian Centre for Public and Population Health Research
- Corrective Services NSW
- Justice NSW
- Kathleen York House
- UNSW School of Social Sciences
- Individual academics and experts

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## Overview

This submission addresses the stated Terms of Reference of the Inquiry and gives recommendations for additional support for the children of imprisoned parents. Whether a child resides with his or her biological parent, other family or extended family – the welfare and well-being of the child is inexorably linked and affected by a custodial sentence of the parent.

This submission draws on the extensive experience of KWOOP, particularly in relation to women in prison and more specifically to mothers in custody in NSW prisons. KWOOP's first Position Paper (2016) underlined that children whose parents are imprisoned are a highly vulnerable group. We listed as one of our key areas of concern the:

*High social cost on children, families and community – children of fathers in custody are generally in the care of their mothers in the community, however imprisoned mothers' children are not in the care of their fathers, but other familial care or out of home care. Parental incarceration increases the likelihood of children's future contact with the criminal justice system, and perpetuates transgenerational disadvantage.*

We called for:

*Appointment of a specific officer in each of the departments of Education, Justice, Police, Health and Social Services, to work together with Corrective Services and children's agencies such as SHINE for Kids, to facilitate effective support for children when their parent goes to prison or enters the criminal justice system.*

There is ad hoc service provision and a lack of clarity in law and policy as to how to respond to the children of prisoners and ensure their rights and needs are met. Currently there is no accurate count of how many children there are whose parents are in custody. With many women serving short sentences, and the high turnover of women entering prison within a 12 month period, there is constant disruption to these children's lives, schooling, care arrangements, health and welfare.

Within NSW correctional centres, more than [one in two](#) imprisoned women are mothers, and [5-10% are pregnant](#). A custodial sentence for these women may mean the loss of custody of children, employment and/or accommodation.

The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) were adopted by the UN General Assembly December 2010 (Resolution A/RES/65/229) after a unanimous vote from 193 countries, including Australia. By voting for the Bangkok Rules, Australia acknowledged that women in the criminal justice system have gender-specific characteristics and needs, and agreed to both respect and meet them. The 70 rules give guidance to policy makers, legislators, sentencing authorities and prison staff to reduce unnecessary imprisonment of women, and to meet the specific needs of women who are

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imprisoned. There is a recognition that distinct considerations apply in relation to women and an emphasis on preferring non-custodial measures for pregnant women and primary carers:

*Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.*

*This is reflected in the Regulation which requires that on reception to a centre, an inmate must be notified of their rights and obligations and the particulars of an inmate's domestic circumstances (including children or other dependents to be recorded).<sup>2</sup>*

Around two-thirds of the women in prison in Australia are the mothers of dependent children. Participants in a Victorian study indicated that the needs of dependent children were not taken into account when sentencing their mothers.<sup>3</sup> Women suffer significant distress and difficulties reuniting with children without concerted programs to ensure contact is maintained and meaningful.<sup>4</sup> Fathers tend not to shoulder the burden of child care responsibilities when a woman is imprisoned or the subject of a community order that conflicts with child care arrangements. The consequences for children are appalling. Children who are separated from a parent due to prison suffer multiple problems associated with their loss. Disruption of the attachment bond between mother and child is particularly deleterious.<sup>3</sup>

It follows that Courts have an obligation to consider the best interests of the child and the mother and to recognise that the imprisonment of a mother or the effective removal of a mother from a family home due to the requirements of an onerous community order can have a fundamental effect on what is the appropriate disposal. In a threshold case, the impact on a dependent child can tip the scales and a proportionate sentence can become disproportionate. There is no standard or normative adjustment for dependent children but their best interests ought to be a primary consideration.<sup>4</sup>

In the Inspector of Custodial Services report: *Women on Remand (February 2020)* the Inspector notes:

*Around 60 per cent of women on remand had at least one child in both 2016-17 and the 2017-18 period. Of these women:*

- *15 per cent (2016-17) and 17.2 per cent (2017-18) reported their children were living with them*
- *51 per cent (2016-17) and 48.2 per cent (2017-18) reported their children were not currently living with them prior to entering custody*
- *just over 5 per cent in 2016-17 or almost 8 per cent in 2017-18 had children living in out-of-home care*
- *a small proportion of women (4% in 2016-17 and 3.2% in 2017-18) were pregnant while on remand.*

*Women on remand identified maintaining contact with their families as one of the major issues they experienced whilst incarcerated. Even though the majority of women who enter custody on remand are likely to spend short periods of time in custody, experiences of incarceration*

*can be very disruptive for them and their dependent children. In particular, women who have children in their care are at risk of their children entering the out-of-home care system.<sup>5</sup>*

Dr Kath McFarlane, Centre for Law and Justice, Charles Sturt University, stated in her submission to the Queensland Productivity Commission Inquiry: *Imprisonment and Recidivism (2019)*:

*Limited research undertaken in NSW has also identified significant differences between Indigenous prisoners with OOHC [Out of Home Care] experience and the general Indigenous prison population. For example, Indigenous prisoners removed from their families as children:*

- *experienced significantly worse outcomes with regard to mental health;*
- *were significantly more likely to have been gaoled more than five times;*
- *were significantly more likely to have been victims of child sexual assault; and*
- *were significantly more likely to have attempted suicide than Indigenous prisoners who had not been removed.<sup>6</sup>*

Research has also established that:

*Prisoners with care-experience are:*

- *disproportionately represented amongst NSW inmates with complex support needs; and*
- *are significantly more likely to have earlier and more police contacts than those with no care-experience.*

The Queensland Productivity Commission Inquiry into Recidivism and Imprisonment, January 2019 reports similar findings.

In the Farmer Review for Women (UK, June 2019) it states that:

*Over half of women in custody have dependent children: if mothers are to be enabled to continue to shoulder these responsibilities, and encouraged to do so where necessary, we need to know who and where their children are.*

*We cannot underestimate the practical and emotional difficulties that ‘mothering’ from inside prison entails and recent estimates from Crest Advisory suggest as many as 17,000 children per year are affected by maternal imprisonment. I welcome the emphasis in the Female Offender Strategy on keeping women out of prison, given how damaging short sentences are to their family life and, typically, their well-being. There are also significant savings to be made to the public purse if vulnerable women can be effectively rehabilitated in the community instead of prison, and if we can reduce the number of their children who follow them into a life of crime.<sup>7</sup>*

## **PROGRAMS CURRENTLY RUN BY CORRECTIVE SERVICES NSW (CSNSW)**

The NSW Inspector of Custodial Services reported that:

CSNSW’s aim is to maintain the relationship between incarcerated women and their children. The strategy identifies four main points around female offenders and their children, referring specifically to the provision of programs that support women to parent their children and residential options for children within prison.

Within CSNSW, there are programs in place for mothers in custody which include:

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- A. **Mothering at a Distance**, a parenting program for mothers in custody which is a joint development by CSNSW and Tresillian Family Care Centres. This program has a particular emphasis on Aboriginal mothers/care-givers who, when released, will have significant parenting responsibility for children aged 0 - 5 years.  
<https://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/programs/women-offenders/women-programs.aspx#RUSHprogram>
- Also see UTS//CSNSW research studies *Mothering at a Distance: what incarcerated mothers value about a parenting programme (2015)* and *When parenting does not 'come naturally': providers' perspectives on parenting education for incarcerated mothers and fathers (2018)*
- B. **Mothers and Children's Program accommodates** children up to school-age full-time with their mothers or primary care-givers in the purpose-built minimum-security Jacaranda Cottages adjacent to Emu Plains Correctional Centre and at Parramatta Transitional Centre. Children of school age up to 12 years are able to be accommodated at weekends and during school holidays. CSNSW is considering ways to expand this program.
- C. **Miruma** is a CSNSW residential, diversionary program in Cessnock for women with mental health problems and drug and alcohol issues.
- D. **CSNSW Women's Advisory Council (WAC)** was developed as a recommendation of the 1985 NSW Women in Prison Task Force Report. WAC members are appointed by the Commissioner of Corrective Services NSW to provide advice on improving outcomes and experience of women in the criminal justice system. This includes women in custody and those at risk of entering the system. The WAC is comprised of senior officers within the NSW public sector, non-government organisations and academics. 'Recognising gender difference – A strategy for the program and service provision to women offenders' was released by CSNSW in 2014.
- E. **CSNSW Women's Strategy was developed** in consultation with the WAC to be implemented in 2020. CSNSW has established the Women's Innovation Change Committee to oversee strategic and operational issues for women in custody across NSW. The Committee led by a senior officer has responsibility for the implementation of the Women's Strategy.
- F. **Caring and Working: Aboriginal Mothers and Children's Pilot Program**  
CSNSW has secured funding under the Commonwealth Government's Indigenous Advancement Strategy to establish a two-year pilot program to provide customised support, education and employment readiness services to remand and sentenced Aboriginal mothers. The pilot program is in response to the 2016 Council of Australian Governments (COAG) *Prison to Work Report* that highlighted the need to improve employment pathways for Aboriginal mothers.
- G. CSNSW held a series of Forums on Women as Parents in Prison at the end of 2019 to develop action plans in this area.

## NOT FOR PROFIT ORGANISATIONS

- A. SHINE for Kids** Founded in 1982, SHINE for Kids provides crucial support to children and young people with a parent in prison. SHINE's programs provide positive opportunities and trauma-informed support to reduce the likelihood of these children transitioning into child protection and justice systems, help avoid family fragmentation and intergenerational offending, and reduce both juvenile and adult recidivism. SHINE for Kids programs operate in secure, open custody, and transitional correctional facilities throughout NSW, ACT, VIC and QLD, and encompass mentoring, children's transport, education support, Aboriginal programs, onsite engagement through its child and family centres, supported prison visits, intensive family casework, parenting programs and carer support.
- B. The Salvation Army** and the **Samaritans** mid north coast offer post-release services, i.e. accommodation, rehabilitation programs, homelessness support.
- C. The Miranda Project**, a project of the Community Restorative Centre, provides support to women who are at risk of involvement in the criminal justice system.
- D. The Community Restorative Centre (CRC)** also offers family advice, information, support and referrals through Family Casework, Travel and Accommodation Assistance for families in hardship to visit family members in custody and Video Prison Visits from Sydney-based families to family members incarcerated outside the metro area.
- E. Throughcare Jigsaw Group** is a collaboration of organisations providing broad-based services for the benefit of offenders, ex-offenders and their families.

## WHAT MORE IS NEEDED TO SUPPORT THE CHILDREN OF MOTHERS IN CUSTODY BY CORRECTIVE SERVICES, AND THE COMMUNITY?

1. KWOOP reiterates its call for the appointment of a specific officer in each of the departments of Education, Justice, Police, Health and Social Services, to work together with Corrective Services and children's agencies such as SHINE for Kids, to facilitate effective support for children when their parent goes to prison or enters the criminal justice system and returns from prison. An IDC of these officers should meet twice yearly to review policy and practice across government agencies in relation to the support of the children of prisoners
2. Accurate data on the number of dependent children of women in custody should be maintained and made available to relevant service providers. We are aware that CSNSW asks a number of questions and records data on dependent children, carers, numbers of visits etc. These have been printed in past years by CRES and regular updates of this publication should be available.
3. Even if women are detained for only a short period on remand, there can be a devastating effect on families, tenancy arrangements and the ability to provide for their families. Therefore, a woman's status as a primary carer, and the impact of remand on dependents should be considered in any bail decision.



4. Increased and sustained triennial funding for diversionary programs to reduce the number of women on remand and short sentences to avoid short and disruptive periods of incarceration. Funding to enable support programs across the state, in regional and remote communities.
5. Increased and sustained triennial funding should be available to contract non-government agencies who facilitate children visiting and maintaining contact with their parent while in prison.
6. The Family Court should consider the importance of maintaining the relationship between mother and child when determining orders to facilitate access visits by children to mothers in prison.

Within correctional centres and post-release, there exist opportunities to develop best practice policies, programs and services for the children of imprisoned mothers. These include:

1. Increasing women and child-friendly centres for those women serving custodial sentences, similar to centres operating in the UK.
2. The expansion of the Mothers and Children's Program to enable all women of higher classifications to participate in all prisons. A Mothers and Children's Program is urgently needed at Silverwater Women's Correctional Centre to accommodate new receptions and remandees due to give birth and other higher security mothers to have their children with them. This would complement the existing program at Jacaranda Cottages that accommodates women of lower security levels.
3. Expansion of Alcohol and Other Drugs (AOD) and gambling rehabilitation programs throughout all NSW women's prisons.
4. Expansion of mental health programs in all NSW women's prisons.
5. Parenting and life skills development programs accessible to all women in all NSW prisons.
6. Review of education and training courses while women are in custody to assist them to obtain employment upon release.
7. The work opportunities currently on offer to women within correctional centres do not reflect the employment they will seek upon release. This should be reviewed and work opportunities within prisons be expanded for women.
8. Information to be provided to all women exiting a custodial sentence relating to culturally appropriate through-care programs and services prior to release. These programs and services should include safe and stable accommodation, prompt access to physical and mental health care, job support, economic security.



9. Culturally appropriate programs for all women and their children in custody, taking into account the diversity of cultures and nationalities within NSW correctional centres, e.g. Aboriginal and Torres Strait Islander, LGBTI, women from non-English speaking backgrounds.
10. Specialised, sensitively-trained case managers for children and young adults living apart from their mothers. This group may include children/young adults whose mothers are in long term custody; who may live with another parent, grandparents, other relatives or friends. Early intervention into areas of concern, especially if the child is disadvantaged financially, may be 'at risk' or has behavioural issues. Such support can prevent future contact with the criminal justice system.
11. NFP organisations to be encouraged to provide higher education and/or coaching sponsorships for individual children/young adults whose parents are in prison (similar to Smith Family program).
12. Corrective Services staff wear plain clothes when working with children. The wearing of a uniform can appear to be negative and/or frightening to children.
13. More than 70% of women in NSW prisons have experienced sexual abuse as children and/or incidents of domestic violence. Strip searching should become exceptional rather than routine. Installation of x-ray machines similar to those being trialed in UK and US prisons.
14. A Case Review of children removed from primary carers when they entered prison to ensure that decisions taken are always in the best interests of children. The review should examine social work practice, including the role of support services in keeping families together.
15. Review of implementation of recommendations from the Social and Cultural resilience and Emotional wellbeing of Aboriginal Mothers in prison (SCREAM) project in NSW, funded by the National Health and Medical Research Council. Also see 'Aboriginal mothers in prison in Australia: a study of social, emotional and physical wellbeing', 2019 by Professor Elizabeth Sullivan, Professor Juanita Sherwood et al.
16. KWooP supports the recommendations made by Jane Walker, Research Fellow, University of Technology Sydney, Eileen Baldry Professor of Criminology, UNSW and Elizabeth Sullivan, Deputy Head of the Faculty of Health and Medicine, University of Newcastle in their key research – 'Residential programs for mothers and children in prison: Key themes and concepts for NSW women's prisons to provide :

- Improved access to Mothers and Children's residential programs for Indigenous women.
- Introduction of child care policies throughout all women's prisons for residents with children. These plans should include policies on child nutrition.
- Nursery or crèche facilities in NSW women's prisons should be run by qualified childcare workers.<sup>8</sup>

## SUMMARY

The recommendations above include suggested changes for all women in NSW correctional centres. Many of these women come from disadvantaged backgrounds, are victims of domestic violence and sexual assault, have mental health as well as alcohol and other drugs issues.

Support for the women will mean support for their children.

New policies and legislation, improved women-centric facilities and programs in correctional centres will not only improve the lives and well-being of these women and their children, but the long-term benefits associated with these changes will flow through to the community.

## References

<sup>1</sup>Egger, S., and Butler, T. (2000) 'The Long-Term Factors Associated with Removal from Parents amongst Indigenous Prisoners in NSW'. *Australian and New Zealand Journal of Public Health*. vol 24, no 4.

<sup>2</sup> Toolbox on the UN Bangkok Rules on women offenders and prisoners <  
<http://www.penalreform.org/wp-content/uploads/2013/07/PRI-Short-Guide-Bangkok-Rules-2013-Web-Final.pdf>>

<sup>3</sup>Catherine Flynn, Responding to the children of women in prison: Making the invisible visible. *Family Relationships Quarterly* No. 19. AFRC Newsletter No. 19 – August 2011 <  
<https://aifs.gov.au/cfca/publications/family-relationships-quarterly-no-19/responding-children-women-prison-making-invisible>>

<sup>4</sup>National Judicial College of Australia Conference 6th and 7th February 2016

Panel: *Can sentencing of women who are victims of abuse accommodate the social problems that underpin the offending? Is enough being done to keep women offenders from returning to prison?*  
*Paper by Felicity Gerry QC*

<sup>5</sup>Inspector of Custodial Services, *Women on Remand* February 2020 ISSN: 2207 0389

<sup>6</sup>Egger, S., and Butler, T. (2000) 'The Long-Term Factors Associated with Removal from Parents Amongst Indigenous Prisoners in NSW'. *Australian and New Zealand Journal of Public Health*. vol 24, no 4.

<sup>7</sup> Lord Farmer, 'The Importance of Strengthening Female Offenders' Family and other Relationships to Prevent Reoffending and Reduce???

Intergenerational Crime' Ministry of Justice (Final Report from The Farmer Review for Women, Ministry of Justice (UK), June 2019)

<sup>8</sup> Walker JR; Baldry E; Sullivan EA, 2019, 'Residential programs for mothers and children in prison: Key themes and concepts', *Criminology and Criminal Justice*, <http://dx.doi.org/10.1177/1748895819848814>

### **Additional References**

*The intergenerational transmission of criminal offending behaviours*

Stacy Tzoumakis Melanie Burton Vaughan J Carr Kimberlie Dean Kristin R Laurens Melissa J Green

Report to the Criminology Research Council

Grant: CRG 19/14-15 **March 2019 UNSW**

### **The Impact of Incarceration on Children's Care: A Strategic Framework for Good Care Planning**

Chief Investigators: Chris Trotter, Catherine Flynn, Bronwyn Naylor, Paul Collier, David Baker, Kay McCauley & Anna Eriksson

Research team: Paula Fernandez Arias, Tess Bartlett, Phillipa Evans, Alannah Burgess & Bianca Blanch July 2015

The British Journal of Psychiatry (2018) 212, 134–136. Doi: 10.1192/bjp.2017.42

### ***Challenges and mental health needs of women in prison:*** Annie Bartlett and Sheila Hollins

Sullivan, E., Kendall, S., Sungwon, C., Baldry, E., Zeki, R., Giles, M., Wilson, M., Butler, T., Levy, M., Wayland, S., Sherwood, J., et al (2019). Aboriginal mothers in prison in Australia: a study of social, emotional and physical wellbeing. *Australian and New Zealand Journal of Public Health*, 43(3), 241-247

### **FINAL REPORT: Inquiry into Imprisonment and Recidivism© Queensland Productivity Commission 2019**

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