Submission
No 23

SUPPORT FOR CHILDREN OF IMPRISONED PARENTS IN NEW SOUTH WALES

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Submission to the Inquiry into Support for Children of Imprisoned Parents in New South Wales

My name is Karleen Gribble. I am an Adjunct Associate Professor in the School of Nursing and Midwifery at Western Sydney University. My expertise includes children's rights; the impact of breastfeeding on child health and maternal behaviour; child-caregiver and caregiver-child attachment; and the treatment of infants and young children within the child protection, immigration detention, and criminal justice systems. I have published research on these subjects in peer-reviewed professional psychological, social work and health journals. I have engaged in the training of health professionals, social workers, and humanitarian workers on these subjects. I am a respected, and internationally recognised, academic in the infant nutrition and child care fields. I would like to comment on the situation of infants and young children whose mothers are incarcerated and the support or undermining of their health and wellbeing in the justice system. For the purposes of this submission, infants are children from birth until their first birthday and young children are those from their first birthday until three years of age.

Part 1 of this submission will discuss:

- Number of mothers of infants and young children incarcerated in NSW
- The importance of breastfeeding for child health and maternal caregiving
- The impact of maternal separation on infant mental health
- Impact of incarceration on infants and young children where infants are separated from their mother
- Impact of maternal incarceration on infants and young children where infants are able to reside with their mother
- Avoiding incarceration
- Responsibility of the Department of Communities and Justice to the infants and young children of prisoners
- Recommendations

Part 2 of this submission will present some case studies of infants whose mothers have been imprisoned or were at risk of imprisonment. I am requesting that Part 2 be kept confidential for reasons of privacy for the women and children involved.

Part 1: Public Submission

Number of mothers of infants and young children incarcerated in NSW

- Data on the number of children impacted by maternal incarceration in NSW is not published but hundreds of infants and young children are likely impacted.
- Likely one third or more of children impacted by maternal incarceration are Aboriginal.

As far as I have been able to determine, data on the children of incarcerated women is not systematically collected, or if it is collected it is not published. It is therefore not possible for me to say how many infants and young children have their mothers incarcerated in NSW. Western Australian research identified that over a 26 year period (1985-2011), 5033 children from birth until four years experienced their mother being incarcerated[1]. Extrapolating this data to NSW would suggest that there are more than 250 children a year in NSW from birth to four years of age who experience their mother being incarcerated[2]. Likely more than one third of these children would be Aboriginal due to their mother or father's Aboriginality[2].

Breastfeeding is important to the health and development of children

- International and national recommendations are that infants be breastfed
- Premature cessation of breastfeeding results in increased infectious disease, non-infectious disease, and SIDS as well as impaired cognitive development
- Children hold rights in relation to breastfeeding under the United Nations Convention on the Rights of the Child
- The National Breastfeeding Strategy states that breastfeeding should be facilitated in the justice system including with incarcerated mothers

Breastfeeding supports the optimal health, growth and development of children and for this reason the World Health Organization and UNICEF recommend that infants be exclusive breastfed for six months and then continue to be breastfed, with the addition of appropriate complementary foods, for up to two years or more [3]. Australian national recommendations similarly recommend that all infants be exclusively breastfed for around six months and continue breastfeeding into their second year [4]. Not being breastfed places children at a health and developmental disadvantage. In developed country contexts like Australia, children who are fed infant formula in preference to being breastfed are three to five times more likely to be hospitalised in infancy due to infections as compared to children who are fully breastfed [5-7]. It has been calculated that half and one third of hospitalisations of infants in the UK are due to gastrointestinal disease and lower respiratory tract infections resulting from early cessation of

breastfeeding [7]. Rates of infection are highest in children living in impoverished households [8]. The use of infant formula is also associated with an increased risk of non-infectious diseases such as otitis media, allergic diseases, type 1 and 2 diabetes and childhood leukaemia [9]. In addition, early cessation of breastfeeding is associated with impaired cognitive development [10] and obesity [11]. Most alarmingly, infants that are not breastfed are at increased risk of death in the first year of life due to infections and SIDS [12-14].

Children hold rights in relation to breastfeeding under three clauses of Article 24 of the United Nations Convention on the Rights of the Child (UNCRC). First, the UNCRC states that: *"State parties recognize the right of the child to the enjoyment of the highest attainable standard of health." (Article 21(1))* As previously described, optimal health is only possible where infant are breastfed as recommended as infants that cease breastfeeding early are at increased risk of infections and impeded development. Second the UNCRC requires states to take appropriate measures to *"combat disease and malnutrition…through the provision of adequate nutritious foods" (Article 24(2c))*. In developed countries like Australia, arguably the most serious form of malnutrition is obesity [15]. There is a growing body of evidence that formula feeding alters the trajectory of infant growth and predisposes individuals to obesity [16, 17]. Therefore supporting breastfeeding must be considered to be a requirement of this clause of the UNCRC. Finally, states have the responsibility under Article 24(2e) to *"ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding"*. Thus, the UNCRC is explicit in stating that mothers should be supported to breastfeed their children. In Australia, this support is largely through the health system. However, other government systems, including the justice system and the child protection system, as instruments of government, also have responsibilities under this article.

In 2019, the Council of Australian Governments published the Australian National Breastfeeding Strategy. The strategy exists to shape and inform Commonwealth, state and local government policy and programs and includes specific direction regarding the justice system. It states as an action plan that states should *"Provide breastfeeding and lactation support and maternal health care to families in exceptionally difficult circumstances…[and] Ensure skilled breastfeeding and lactation support is available to mothers, infants and young children… in the justice system (e.g. incarcerated mothers)."*

Breastfeeding assists mothers in care giving

- Breastfeeding supports mothers to provide their best possible care
- Vulnerable mothers who do not breastfeed or who breastfeed for only a short

period are more likely to abuse and neglect their children
- Breastfeeding should be actively supported for women in the justice system who are disproportionately vulnerable because of their history of trauma

Breastfeeding affects the physiology and physical circumstances of mothers in such a way as to assist them to sensitively care for their children [18]. Hormones that are released in response to breastfeeding act on the central nervous system of mothers to promote maternal behaviour [19-22], maintain maternal proximity [23] and reduce women's response to physical and emotional stress [24, 25]. Research has indicated that mothers who are not breastfeeding exhibit dampened responses in brain regions associated with maternal sensitivity as compared to breastfeeding women [26]. Mothers who are not breastfeeding are (as a group) less responsive and sensitive to their babies than women who are breastfeeding [27-33].

The absence of the physiological and physical influences associated with breastfeeding may therefore hamper mother-child attachment, maternal responsivity and reduce quality of care giving, in vulnerable dyads, to the point of neglect or abuse. This was demonstrated in a high quality Australian study, where it was found that women who did not breastfeed or breastfed for a short duration were 4.8 times more likely to abuse or neglect their children than women who breastfed their children for a longer duration [34]. This prospective study of nearly 6000 Australian women and their children examined substantiated cases of child maltreatment over 15 years. Even after adjustment for confounding factors, it was found that children who were not breastfed or breastfed for a short duration, were 2.6 times more likely to be maltreated by their mothers than children breastfed for a longer duration. It should also be noted that as a group, incarcerated mothers are at risk of difficulties with parenting because many of them have had past experiences, including childhood abuse or neglect, that can make caring for children challenging [35]. It is clear that in situations where there may be concerns about maternal caregiving capacity, breastfeeding should be actively supported not just because of its impact direct upon the health and development of the child, but because of the impact on the mother.

Maternal separation and infant mental health

- Children's experiences in the first three years of life profoundly impact their long-term psychological wellbeing and ability to function and contribute to society
- Separation from their mother is very traumatic for infants and young children
- Trauma associated with maternal separation has been linked to adverse consequences including poor mental health, maladaptive behaviours, delinquency, and criminality.

- Maternal separation is a risk factor for poor maternal attachment and child maltreatment

Infancy and early childhood (0-3 years) is the most important time of a child's life in terms of brain development [36]. During these years, the brain triples in size with the rapid development of the regions dealing with cognitive and social/emotional functioning. This development is largely dependent upon the care that a child receives. In particular, it is during the first three years of life that the child develops the pattern of attachment to their primary caregiver that will influence their perception of themselves, their relationships with others, and their mental health into the long-term [36, 37]. The mental health of an infant or young child is dependent upon the quality of the relationship that they have with their primary caregiver.

Children may develop secure, insecure or disorganised attachments with their primary caregiver. A secure attachment is associated with stress resilience; educational and relationship success; and good mental health [36]. In contrast, insecure or disorganised attachments place children at risk of poor stress resilience; poor educational and relationship outcomes, poor mental health and social dysfunction [37]. The development of a secure attachment relationship requires proximity [38, 39]. Even separations of short duration can have a negative impact. For this reason, the Australian Association for Infant Mental Health recommends that overnight separations (in cases of parental separation/divorce) should not occur until children are at least three years old [40]. One of the reasons why separations are potentially so damaging to infants and young children is because they do not fully developed object permanence until at least two years of age. Object permanence is the ability to hold representations of things and people when they are not in their presence. This means that when infants and young children are separated from their primary caregiver they have limited ability to hold the memory of them in their minds [41]. Separations of any duration, before children have developed object permanence and have an understanding that maternal absence does not constitute abandonment, can be terrifying for children and adversely impact the relationship between child and mother even if they are reunited [42]. The deleterious impact of the separation of caregiver and child on the quality of child-caregiver attachment is strongly associated with compromised psychological development with lifelong implications [39]. As described by Kenny, *"separations of infants and young children from their mothers for relatively short periods of time can have repercussions that reverberate across the lifespan"* [39].

Early research on the impact of separating infants or young children from their mothers identified that children go through the stages of protest, despair, and detachment/denial when they are separated from their mother [43]. The stage of protest can last from a few hours to several days. During this time children experience confusion, fear and grief and

may exhibit frantic maternal seeking behaviour. As time passes, the stage of despair replaces grief and children cry less. However, reduced crying does not indicate reduced distress but increased hopelessness as they give up on their mother ever returning to them. Children appear listless and apathetic and there is no way to explain maternal absence to an infant and so no way to provide comfort. The final stage is detachment/denial. In this stage children can appear to be happier but when they are reconnected with their mother they may ignore her and show no signs of distress when separated from her again. Such behaviour is a sign that the child has experienced a severe psychological trauma, the impact of which may be persistent [44].

Research has identified a variety of adverse mental health and developmental consequences associated with separating a child from their primary caregiving mother. Children who have previously been securely attached can move to an insecure or disorganised attachment as a result of a short separation from their mother[45]. In addition, mother–child separation of a week or longer within the first two years of life is correlated with higher levels of child negativity and aggression [46]. Separations from a primary caregiver of more than a week in early childhood were found in one study to be negatively associated with reading ability at eight years of age with separations that occur in the first year of life having the greatest impact [47]. Childhood traumas (including maternal separation) predispose the individual to a variety of psychiatric disorders in adulthood such as depression, bipolar disorder, generalized anxiety disorder, panic disorder, phobias, posttraumatic stress disorder, schizophrenia, eating disorders, and personality disorders [48]. Specifically, separation of more than a month in early childhood has been found to be linked to increased rates of, and severity of symptoms of, borderline personality disorder in adolescence and adulthood [49]. Finally, maternal separation is an *"incarceration specific risk"* that has been linked to the maladaptive behaviours in children that are a risk factor for delinquency and criminality. It likely accounts for a proportion of the more than double increase incidence of involvement in the criminal justice system of the children of women who have spent time in gaol [50, 51].

Separation from their child also has an impact on mothers. Primary caregivers must develop a strong attachment to their children in order to be able to provide them with the care that they require to be able to develop a secure attachment [52]. Separation of mother and child can have an impact on the mother's ability to attach to them by preventing the proximity, interaction and caregiving that is necessary for attachment development [38]. At its most extreme, lack of caregiver attachment can result in abuse, neglect or abandonment [52]. Keeping mothers and babies together assists in protecting against child maltreatment over the whole of childhood, particularly for vulnerable women.

The Impact of maternal incarceration on infants and young children

The impact of maternal incarceration on infants and young children varies dependent on whether the child is separated from their mother or not, how mother-baby programs are managed in prison and what support is available to mothers in prison mother-baby programs.

Where infants and young children are separated from their mothers

- Maternal separation due to incarceration is severely traumatic for infants and young children and usually results in the termination of breastfeeding
- Maternal caregiving capacity is undermined by maternal separation
- The long-term health, development and wellbeing of infants and young children is negatively impacted by maternal separation due to incarceration

Infants and young children separated from their mother will experience this separation as a severe trauma. Their young age and stage of development means that they are not be able to hold a concept of their mother in their minds nor understand that separation is temporary. It causes emotional harm. Repair of the relationship between infants and young children and their mothers can be difficult and children's development and mental health may be adversely impacted in the long term. It needs to be considered that children's timeframes are not adult timeframes and for example, just one month separation for a two month old baby is half their life, it is not a short time.

Separation of infants from their mothers because of incarceration lasting weeks or months will, in the vast majority of cases, mean that babies under six months of age will not be able to have breastmilk as their only food as recommended by health authorities. While some women may be able to maintain partial breastmilk feeding for their babies, in most cases, the difficulty of maintaining expressing of breastmilk in the prison environment, will result in the full formula feeding for infants after a period of time. The deprivation of exclusive or any breastfeeding for infants increases the risk of adverse health outcomes for them in the short and long-term.

Separation from their infants and termination of lactation, also makes it more difficult for mothers to care for their children when they are reunited. Particularly where women have experiences of trauma themselves, or experience poverty, poor mental health, or high levels of stress, this undermining of maternal caregiving capacity will be enough to result in some women not being able to provide good enough care for their children. The high rates of trauma, poor mental health, and poverty in the population of women who are incarcerated makes the undermining of maternal capacity particularly impactful for this group. Maternal separation because of incarceration thus places infants and young children at risk of abuse and neglect by their mothers with associated

negative flow ons including being taken into the out of home care system and future criminality.

Where infants and mothers are not separated

- Maternal separation can be avoided through the use of prison mother-baby programs
- The most important thing for infants is to be able to maintain proximity to their mother and for her to be responsive to them
- The institutional environment of prisons can work against mothers providing responsive caregiving in mother-baby programs
- Programs that provide individual support for mothering in prison can have a profound impact on maternal caregiving and infant mental health

Maternal separation can be avoided where mothers and their infants and young children reside in mother and baby units in prison. Prison mother and child programs exist in recognition that children should not be punished or avoidably disadvantaged as a result of the wrongdoing of their mother [39]. Within a human rights framework, the circumstances and vulnerabilities of the child, justify specific efforts by governments to ensure conditions for adequate pregnancy care, birth support and post-birth care of the children of incarcerated mothers [53]. As a result, the stated central factor in decision making concerning prison mother and child programs is the best interests of the child[53].

Prison mother and child programs seek to mitigate against the impact of maternal incarceration on children by enabling mothers to keep their children with them in order to facilitate breastfeeding and the development of a secure attachment between mother and child[39, 54]. However, the success of mother-baby units in prisons in achieving this depends greatly upon how the program is delivered. Concerns are sometimes expressed about infants and young children residing in a prison environment. However, infants are largely unaware of their physical environment. The most important thing to them is the presence or absence of their mother and her responsivity to them. If they are with their mother and she is responsive to them, then the world is a good place regardless of any other factors in the environment. There is therefore nothing inherently concerning about a baby or very young child being exposed to a prison environment. However, the prison environment can have an impact on the ability of women to be emotionally available and to provide responsive care to their infants and young children. I alert the Committee to the research by Walker et al. [55] on the experience of women of mother-baby units in Australian prisons. As noted, by these researchers, the institutional environment in mother-baby units and associated factors such as the level of surveillance and stress, can make it difficult for mothers to care for their children [55]. Unfortunately, sometimes mother-baby units keep mothers and babies together but do not take sufficient action to

mitigate against the institutional environment of prison nor mitigate against the mother's history of trauma that undermine parenting capacity. Simply housing babies and young children with their mothers in prison, is not enough.

Rather, what is needed in mother-baby units is specific support to mitigate against the institutional environment and to support mothers in their caregiving. Such support can have a truly impressive impact on maternal caregiving capacity and infant mental health. Research by Byrne et al. [56] found that infants in a prison mother-baby program that provided individualised parenting support and guidance had mental health (measured in terms of security of attachment) at rates that were comparable with low risk community samples [56]. These high rates of secure attachment were despite mothers having high rates of insecure internal attachment representation themselves. Significantly, the rates of secure attachment in infants were greater where mothers were incarcerated for longer indicating that it was the prison mother-baby unit program that fostered and enabled mothers to provide responsive caregiving to babies[56]. Such programs are lacking in Australia. Walker et al stated that no Australian prison has an attachment-focused program developed for women in prison with their children[55]. This is a missed opportunity in terms of breaking the cycle of intergenerational trauma, disadvantage and criminality for the children of incarcerated women in NSW.

Avoiding incarceration

- Avoiding incarceration of the mothers of infants and young children is the best option and has been previously recommended by a previous NSW Parliamentary Inquiry

It is generally understood that avoidance of maternal incarceration is the best option for children. A key conclusion of the 1997 NSW Parliamentary Inquiry into the Children of Prisoners was that *"A sentence of imprisonment on a primary carer of children should only be imposed when all possible alternatives have been exhausted. The courts should always seek community-based alternatives, particularly in the case of offenders who have committed non-violent offences."* It was also recommended that sentences be deferred, *"during pregnancy and further, until after breastfeeding, when admission to the Mothers' and Children's Program is not possible."* It is concerning that these recommendations, made more than 20 years ago, have not been implemented.

Responsibility of the Department of Communities and Justice to the infants and young children of prisoners

The joining of the Departments of Justice and the Department of Family and Community Services into the Department of Communities and Justice (DCJ), is significant. All government bodies have a duty of care to uphold the rights of children, but it can be argued that DCJ as the department with specific responsibility to protect vulnerable children has an increased responsibility. They therefore must ensure that processes and policies to support the wellbeing of the infants and young children of women who are incarcerated are in place and that any harm associated with mothers being incarcerated is mitigated against.

Recommendations

On the basis of my knowledge of child development and health and my experience with the justice system, I make the following recommendations:

1. The Department of Communities and Justice formally recognise their responsibility to infants and young children of women who are incarcerated and take an active role in protecting their wellbeing and mitigating against the harm of maternal incarceration.
2. Data be collected, collated, and published on whether, at the point of incarceration, women are pregnant or are mothers, the age of their children, and whether they were the primary caregiver of their children and/or breastfeeding at the time they were incarcerated. At the time women exit prison, data on the length of time of separation from their children should be included in the data set. If children were permitted to reside with their mothers in prison this information should also be included. The data should be collected in such a way as to allow the experience of the children as well as that of the mothers to be quantified and described including whether children have experienced their mother being incarcerated on multiple occasions.
3. Active steps be taken at the earliest possible stage, to identify whether a woman is the primary caregiver of an infant or young child. If possible this should occur before sentencing, and most certainly at the point of incarceration (see Recommendation 2). Where a woman is identified as the primary caregiver of a young child, this should automatically trigger a process of exploration of whether application to the Jacaranda Mother-Baby Unit is appropriate.
4. An individualised, attachment-focussed mothering program be established at the Jacaranda mother-baby unit at Emu Plains Correctional Centre with the goal of assisting women to provide responsive care to their infants and young children.

Breastfeeding support should be integrated into parenting support in Jacaranda. If any such programs were to be instituted, data collection should be included in the program so as to enable evaluation of its effectiveness. Drug rehabilitation programs should available to women in Jacaranda.

5. The recommendations of the 1997 NSW Parliamentary Inquiry in the Children of Prisoners be reconsidered, in particular the recommendations concerning avoidance of incarceration for pregnant and breastfeeding women.
6. In the sentencing process, the needs of infants and young children should be represented in the court process and the likely impact of different sentencing options on infants and young children be presented to judges by suitably qualified, independent and knowledgeable experts.
7. A mechanism by which applications to the Jacaranda mother-baby unit are able to be processed before sentencing should be instituted. Alternatively, processes should be instituted to enable women who have been sentenced to a period of incarceration to remain in the community while and until, their application to the Jacaranda mother-baby unit is processed so that babies who have been born prior to their mother's sentencing are not separated from her due to procedural reasons.
8. A review of applications made to the Jacaranda mother-baby unit over the last five years should be undertaken to identify how many applications have been made, how many have been approved, how many have been rejected, and the reasons for rejection with the goal of determining how access to the unit may be improved.
9. Policy and procedures for admission to the Jacaranda mother-baby unit be reviewed with the goal of developing clear inclusion and exclusion criteria. It should be explicit in policy and procedure that the best interests of children are paramount. Such policies and procedures should be framed with an assumption that infants and their mothers will be admitted to Jacaranda unless there are compelling reasons why they should not. An appeals process where applications are refused should be implemented.
10. Procedures for processing of applications to the Jacaranda mother-baby unit be changed so that decisions regarding admission to the program be made at the earliest possible time rather than at the latest.
11. Procedures be implemented to allow mothers and babies in the Jacaranda mother-baby unit to attend Australian Breastfeeding Association (ABA) classes and meetings. The ABA conducts breastfeeding education classes and support meetings for mothers in the Penrith area and has indicated to me their willingness to provide such support to incarcerated women.
12. Policies and procedures be developed to ensure that lactating women separated from their infants and young children have access to continuing skilled lactation

support from a International Board Certified Lactation Consultant.

13. Policies and procedures be implemented to ensure that all lactating incarcerated women in all NSW prisons have easy and timely access to a breastpump, a space for expressing milk and, a freezer for the storage of expressed milk.
14. DCJ be given the responsibility for ensuring that expressed breastmilk is transported in a timely manner to the caregivers infants of incarcerated women, whether infants are in out-of-home care or not (and including those who are hospitalized).
15. Policies and procedures be developed, in conjunction with NSW Health, to facilitate the keeping mothers and infants together while babies are in the special care nursery at Nepean Hospital. These policies should recognise the importance of the mother, including her physical presence, touch and milk in treatment of drug withdrawal in infants. These policies should make clear the roles of Corrections officers and NSW Health and prevent situations such as Corrections employees refusing to transport hospitalised women to the special care nursery without good reason. Policies and procedures to facilitate the transport to women who have been returned to prison after birth to be with their infants in the special care nursery should be instituted with daily transport being the expectation and not being transported occurring only under specified exceptional circumstances.
16. An appropriate environment, including support and female supervision, be provided to mothers who wish to breastfeed their infants or young children during prison visits.

Conclusion

The infants and young children of incarcerated women are a vulnerable group and their needs, vulnerabilities and rights should be considered by governments and government departments. Every effort should be made to ensure that children are not made secondary victims of their mother's crime. This is not just for themselves but for society as a whole for how these children are treated will impact their future ability to be contributing members of society. I would like to thank the Committee for the opportunity to make a submission to the Inquiry. I am happy to answer any questions or to provide oral evidence.

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