Working with Women Alliance

Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Crimes Amendment (Prohibiting Shackling During Childbirth) Bill 2026

Dear Committee Secretary,

The Working with Women Alliance strongly supports the *Crimes Amendment (Prohibiting Shackling During Childbirth) Bill 2026* and its prohibition on restraining people during labour, childbirth and the period immediately following birth.

There is no credible safety basis for shackling a person during childbirth. A person in active labour is not reasonably capable of fleeing custody. Shackling creates a serious medical risk in response to a security risk that has not been demonstrated.

Childbirth is an inherent medical risk, and where shackling occurs, pregnant women are especially likely to experience negative health outcomes. Many survivors of sexual violence experience recurring trauma during childbirth due to feelings of powerlessness, lack of bodily control, and invasive procedures.[i] This is pertinent as 70-90% of women in custody have experienced domestic, family or sexual violence.[ii] Shackling during childbirth is also a threat to the physical health of both mother and baby. Restraints make it difficult for mothers to maintain balance and react to falls, to reposition during painful contractions or emergencies, and for clinicians to perform examinations and procedures.[iii]

Shackling also has a disproportionate impact on Aboriginal and Torres Strait Islander women. Of the 67 pregnant women held in Western Australian custody between 2014 and 2018, 80 per cent were Aboriginal women.[iv] While this data is limited to one jurisdiction, it illustrates how the over-incarceration of Aboriginal and Torres Strait Islander women translates to disproportionate exposure to restraint during pregnancy and maternity care. Shackling during childbirth must be understood within the broader history of state control over First Nations women's bodies and families.

Only a statutory prohibition can prevent restraint from remaining the default practice. The current policy approach allows for discretionary exemptions from shackling. However, a 2020 review by the Western Australian Office of the Inspector of Custodial Services found that this approach is ineffective. Pregnant women were routinely restrained despite

presenting a reduced risk of escape or harm.[v] Medical information determining restraint use can be inaccurate or unavailable to escorting staff, leading to restraint where an exemption may otherwise have applied.[vi] The review found that where policies rely on staff to seek and implement an exemption, inconsistent application is inevitable and restraint remains the default. Although this review predates the Bill, its findings expose the fundamental weakness of a policy-based approach: an exemption from shackling is not a protection if the system routinely fails to apply it.

A statutory prohibition on restraints would ensure clinical decisions are determined by medical practitioners and people giving birth, and not by corrections officers. This aligns with international human-rights standards including the Bangkok Rules which state that women in detention retain the right to appropriate healthcare, dignity during pregnancy and childbirth, and trauma-informed treatment.[vii] The Mandela Rules similarly state that restraints should never be used on women during labour, childbirth or immediately after childbirth.[viii]

Shackling during labour or childbirth is not a legitimate custodial practice. It is an act of institutional violence that places the person giving birth and their baby at risk, interferes with the provision of healthcare and strips women of their human rights at one of the most vulnerable moments of their life. Imprisonment should not extinguish a person's right to adequate healthcare and safety, bodily autonomy, or dignity. The prohibition must therefore be clear, absolute and enforceable. It should apply throughout labour and childbirth and during the period immediately following birth, including transfers, examinations and emergency treatment.

The Working with Women Alliance urges the Committee to recommend that the Senate pass the *Crimes Amendment (Prohibiting Shackling During Childbirth) Bill 2026* without weakening its protections. No person should be restrained while giving birth.

Yours sincerely,

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[v] Human Rights Law Centre, (2020). *Pregnant women routinely restrained in Western Australian prisons*, https://www.hrlc.org.au/news/2020-6-23-pregnant-women-routinely-restrained-in-western-australian-prisons/

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