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18th September 2026

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

By email: legcon.sen@aph.gov.au

Dear Committee Secretary,

Re: Crimes Amendment (Prohibiting Shackling During Childbirth) Bill 2026

Thank you for the opportunity to provide comments on the Crimes Amendment (Prohibiting Shackling During Childbirth) Bill 2026 (**Bill**) which proposes to prohibit the shackling of women while giving birth, while in labour, immediately before entering labour or immediately after giving birth in all jurisdictions pursuant to the Commonwealth's powers under section 51(xxix) (external affairs) of the Commonwealth Constitution. In this submission, we have expressed our support for a legislative prohibition on the shackling of women during labour, childbirth and after birth on the basis that such would be consistent with relevant international human rights instruments and that a prohibition on this practice is already recognised within Queensland's independent detention oversight framework which demonstrates that the practice is considered to be inconsistent with appropriate custodial practice.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality

legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Comments

De-identified case example

We offer the following de-identified case example of a client who was shackled and handcuffed in a Queensland correctional centre in early 2026 during labour, the administration of an epidural and post-emergency caesarean section.

De-identified case example

Our client was pregnant at the time that she was remanded into custody at a correctional facility. During her time in custody, she was transferred to a local hospital for the purpose of inducing her labour following medical concerns regarding the growth of her unborn child. During the first period of her admission in hospital, she was not handcuffed or shackled. She remained under constant supervision at the maternity ward and cooperated with all directions given by correctional and medical staff.

Sometime following the induction, our client entered active labour. There was a change of shift of corrective services officers that assumed responsibility for our client's escort. One of the officers advised our client that she was going to cuff her. Our client was shocked and questioned why restraints were suddenly being applied given she had attended hospital unrestrained the preceding two days. Notwithstanding, our client was placed in handcuffs and leg shackles. She advised that the restraints were applied so tightly that they caused visible bruising to her wrists and

arms, that she was unable to place her hands on her abdomen or lower back to assist with pain management during contractions and that she was unable to move freely around the room. The leg restraints significantly restricted her mobility and forced her to shuffle rather than walk normally.

Despite our client's repeated requests for an explanation as to why she had been restrained and requests to speak with a supervisor regarding the matter, her requests were either refused or ignored. She was informed that the restraints were required because of "the paperwork", although she had already spent a significant period in hospital unrestrained and had not been informed of any change in her security classification or risk assessment. When the supervisor did attend, she was advised that she would remain handcuffed and shackled.

Our client remained handcuffed and shackled throughout active labour and during intimate obstetric examinations. She underwent internal examinations whilst restrained and the restraints impeded her ability to safely reposition herself during those examinations, causing physical pain and discomfort. In addition, she was refused privacy to use the bathroom, i.e., despite being allowed to close the bathroom door in preceding days, the officer physically prevented her from closing the bathroom door to use the toilet.

During labour, the baby went into foetal distress resulting in our client being rushed to theatre for an emergency caesarean section. Our client had significant concerns that the stress and discomfort of being cuffed and shackled during labour along with the treatment by officers contributed to distress of her unborn baby. When she was rushed to surgery, she remained handcuffed while receiving an epidural. Her restraints were only removed once the anaesthetic had taken effect and she could no longer feel or control her legs. As soon as she was moved from surgery into recovery the restraints were immediately re-applied.

Our client advised that the birth of her daughter should have been one of the most important and joyful moments of her life. Instead, she described the experience as traumatic, degrading and emotionally devastating. She advised that she was unable to properly hold, comfort or bond with her newborn child because she remained restrained. Our client was informed that she could not safely hold her baby because the handcuffs posed a danger to the infant. At the same time, the restraints themselves were not removed. She pleaded for an opportunity to hold her baby, kiss her and spend time with her. She was denied this opportunity.

Shortly thereafter, Child Safety officers attended the hospital and informed her that she would not be permitted further contact with her newborn child and removed the child.

Our client was also denied the opportunity to establish breastfeeding and provide her newborn child with colostrum and breastmilk in the immediate post-partum period. No information was provided about expressing breastmilk, preserving breastmilk for the child, or facilitating breastfeeding in circumstances where direct contact was being restricted. The immediate period following birth is recognised as critical for maternal bonding, the establishment of breastfeeding and the provision of colostrum to a newborn infant. Even if one were to disregard the breaches of a mother's human rights in this scenario, there should be consideration of what is in the best interests of the child.

Compounding the aforementioned concerns regarding the handcuffing and shackling of our client during childbirth was the fact that she was denied access to her nominated support person during childbirth.

In particular, prior to our client's admission to hospital, arrangements had been made through Queensland Corrective Services (QCS) for the child's father to attend the hospital and be present during the birth. All necessary paperwork had been completed, and approval had been communicated well in advance of the admission. Throughout her pregnancy, she understood that the child's father had been approved by QCS as her support person and would be permitted to attend when labour commenced.

During her admission, requests were made for QCS staff to contact the child's father and keep him informed of the progress of labour so that he could attend at the appropriate time. At some stage during the admission, she was informed that he would not be permitted to attend. No explanation was provided for this decision. Despite repeated enquiries, she was never informed why an approval that had previously been granted was no longer being honoured.

It is understood that the child's father attended the hospital while she was in labour. Rather than being permitted access in accordance with the approval previously granted, he was refused entry and directed to leave. No meaningful explanation was provided to him or our client. Our client was not informed that the father had attended the hospital, nor was she advised that family members were present or seeking information regarding her welfare.

Accordingly, instead of being supported by a nominated support person during one of the most significant events of her life, our client was left to endure labour whilst handcuffed, shackled and under constant guard. The exclusion of her approved support person occurred at a time when she was experiencing severe pain, anxiety and physical vulnerability. The resulting sense of isolation and distress was compounded by the fact that she was unaware that family members had attended the hospital to check on her.

Whilst we appreciate that the Bill specifically relates to making the practice of shackling pregnant mothers during childbirth unlawful, we also take this opportunity to raise broader systemic concerns regarding the lack of adequate medical care post birth.

In our client's situation, serious questions were raised as to whether adequate regard was given to our client's post-operative needs, pain management, medication, mobility, wound care, bowel function, psychological wellbeing and monitoring for surgical complications.

Post the birth, but before leaving the hospital, corrective services officers would not unshackle the client in order for her to be able to remove her clothes and shower. After expressing that she could not take her clothes off to have a shower while she was shackled and handcuffed, they finally agreed to free her just so that she could remove her clothes, but then promptly re-shackled and handcuffed her so that she had to shower with restraints on. Additionally, she was offered no privacy during her shower with the door open in full view of a corrective services officer.

Despite the undeniably traumatic birthing experience that the client endured, including an emergency caesarean section, she was discharged from hospital within approximately 24 hours of birth. Concerns were raised that the decision to discharge her at that time was influenced by custodial convenience rather than her clinical needs and recovery requirements. Notably, she had not yet had her first bowel movement following surgery, which is routinely a matter that is monitored post caesarean section due to the risk of post-operative complications.

Upon her return to prison, she was placed on a safety order and enhanced management measures, resulting in her being confined to her cell by herself and significantly limiting her mobility during the crucial post-operative recovery period. For the first several days following her return, she struggled to get out of bed. Meals were delivered through the cell hatch and she was denied basic comforts like hot

water. We were advised that the other women in her unit were placing hot water under her cell door in plastic bags in an effort to assist her.

While she initially received pain relief, her pain management was reduced after only a few days to Panadol despite her ongoing recovery from major surgery.

The restrictions associated with the safety order and enhanced management measures also significantly limited her ability to seek support from other prisoners and she was not provided with any formal psychological support.

In our view this recent example demonstrates in detail, how abhorrent, inhumane and degrading the practice of shackling a woman during labour, epidural and post birthing can be.

International human rights law instruments

In our view, the following international human rights law instruments are relevant to the subject matter of this Bill.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

Australia has signed and ratified the CAT[1].

We note Article 16(1) of the CAT which provides:

> *Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture[2] as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture*

[1] Signature date – 10 December 1985; Ratification date – 8 August 1989.
[2] For convenience, Article 1 of the CAT defines "torture" as follows: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

> *of references to other forms of cruel, inhuman or degrading treatment or punishment.*

International Covenant on Civil and Political Rights (**ICCPR**)

Australia has signed and ratified the ICCPR[3].

We note the following relevant articles of the ICCPR:

(a) Article 7 of the ICCPR which provides:

> *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*

(b) Article 10(1) of the ICCPR which provides:

> *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (**Bangkok Rules**)

We note with specific emphasis that Rule 24 of the Bangkok Rules states as follows:

> *Instruments of restraint shall never be used on women during labour, during birth and immediately after birth.*

United Nations Standard Minimum Rules for the Treatment of Prisoners (**Nelson Mandela Rules**).

Rule 49(2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (**Nelson Mandela Rules**) states as follows:

> *Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth.*

[3] Signature date – 18 December 1972; Ratification date – 13 Aug 1980.

Convention on the Rights of the Child (**CRC**)

Australia has signed and ratified the CRC[4].

Article 3 of the CRC relevantly provides:

> *1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
>
> *2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.*
>
> *3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.*

Application of International Human Rights Law instruments

The practice of shackling women during labour, childbirth and after childbirth is inconsistent with Australia's obligations under the CAT, the ICCPR and the CRC, each of which Australia is a party to.

The United Nations Human Rights Committee (**UNHRC**) has expressly considered the practice of shackling detained women during childbirth and identified that it engages Articles 7 and 10 of the ICCPR. In its Concluding Observations on the United States, the Committee stated that it was concerned about "the shackling of detained women during childbirth" and recommended that the State party "prohibit the shackling of detained women during childbirth"[5]. We also respectfully draw the Committee's attention to the UNHRC's General Comment No 28 that pregnant women deprived of

[4] Signature date – 22 August 1990; Ratification date – 17 December 1990.
[5] Human Rights Committee, *Concluding Observations of the Human Rights Committee: United States of America,* UN Doc CCPR/C/USA/CO/3 (15 September 2006 [33].

their liberty must receive humane treatment and respect for their inherent dignity "at all times and in particular during birth and while caring for their newborn children"[6].

Furthermore, we consider that the proposed prohibition contained in the Bill is consistent with the obligation in Article 3 of the CRC, that the best interests of the child shall be a primary consideration, in recognition of the fact that practices which unnecessarily increase risks during childbirth or interfere with immediate post-natal care may adversely affect the health and wellbeing of newborn children. The period immediately following birth is critical for maternal-infant bonding, skin-to-skin contact and the establishment of breastfeeding, all of which are widely recognised as important to a child's physical, developmental and emotional wellbeing. The use of handcuffs, shackles or other restraints during labour and the post-birth recovery period may impede a mother's ability to safely hold, comfort and feed her newborn child, and may interfere with the development of early attachment during a formative period for both mother and child. In this way, prohibiting the use of restraints during labour, childbirth and the immediate post-partum period advances not only the rights and dignity of women in custody, but also the best interests, health and wellbeing of their children.

Other Jurisdictions

Internationally, there is increasing recognition that the shackling of women during labour and childbirth is incompatible with contemporary standards of custodial practice. Comparable jurisdictions have moved to prohibit or significantly restrict the practice.

In New Zealand, prison operational policy prohibits the use of mechanical restraints on women who are in labour, giving birth, or remaining in hospital following birth. The policy further states that should a risk of escape or another risk be identified, the risks must be managed by the approving officer using steps other than mechanical restraints.[7]

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[6] Human Rights Committee, *General Comment No 28: Equality of Rights between Men and Women (Article 3)*, UN Doc CCPR/C/21/Rev.1/Add.10 (29 March 2000) [15].

[7] Department of Corrections (NZ), *Prison Operations Manual: M.03.02.05 Temporary Removals for Women 30+ Weeks Pregnant, in Labour, Giving Birth or Post Partum*, available at < https://www.corrections.govt.nz/resources/policy_and_legislation/Prison-Operations-Manual/Movement/M.03-Specified-gender-and-age-movements/M.03.02-Pregnant-women-in-prison/M.03.02.05-Temporary-removals-for-women-30-weeks-pregnant,-in-labour,-giving-birth-or-post-partum>.

In the United States, the federal government enacted the *First Step Act 2018*, which amended the United States Code to insert an express prohibition on the use of restraints on prisoners beginning from the date on which pregnancy is confirmed by a healthcare professional and ending at the conclusion of postpartum recovery, except in narrowly prescribed exceptional circumstances (see section 301, *First Step Act 2018*; and s4322 of the United States Code).

Further, approximately 40 states across the United States have now enacted legislation restricting or prohibiting the shackling of pregnant women in custody, including during labour, childbirth and the post-partum period.

The breadth of these reforms demonstrates that a prohibition on the use of restraints during labour and childbirth is both practical and capable of being implemented within modern correctional systems without compromising safety or security. The widespread adoption of such measures internationally provides compelling support for the legislative prohibition proposed by this Bill.

Queensland legislation, regulations and practice directions

Whilst section 17 of the *Human Rights Act 2019* (Qld) enshrines an individual's right to protection from torture and cruel, inhuman or degrading treatment and provides, inter alia, that a person must not be subjected to torture or treated or punished in a cruel, inhuman or degrading way, it appears that the *Corrective Services Act 2006* (Qld) and its regulations do not explicitly prohibit the use of physical restraints during labour, childbirth or after childbirth.

The Custodial Operations Practice Directive (**COPD**) which contains the operational practice directives of Queensland Corrective Services (**QCS**) are publicly available, however, many relevant parts of the COPD, including relating to "Female Prisoners and Children" and "External Escorts" contain redactions. "External Escorts" is heavily redacted. Based on what is publicly available, it appears that the COPD does not explicitly prohibit the use of physical restraints on a woman during labour or childbirth.

In Queensland, the Inspector of Detention Services is an independent oversight body established under the *Inspector of Detention Services Act 2022* (Qld) with the role of promoting the humane treatment of detainees and the prevention of harm through reviews, inspections and independent reporting.

In August 2023, the Inspector of Detention Services published the Inspection Standards for Queensland Prisons (**IDS Standards**) which set out the standards against

which prisons and other relevant places of detention would be assessed against during inspections of those facilities.

Notably, Rule 24 of the Bangkok Rules, as outlined above, has been explicitly adopted into the IDS Standards.

In particular, Standard 33 of the IDS Standards relates to the use of restraints and provides as follows:

> *Instruments of restraint are only used in exceptional circumstances when no lesser form of control would be effective to address the risks posed by unrestricted movement. The use of restraints is proportionate in the circumstances.*

Standard 33 contains a list of Indicators. Relevantly, one of those Indicators states:

- *Restraints are never used on women during a termination, labour, childbirth or immediately after childbirth.*

Standard 140 of the IDS Standards also relates to the use of restraints and provides as follows:

> *Use of force and restraint practices are respectful and gender responsive.*

In the list of indicators for standard 140, two are particularly relevant, which are extracted below:

- *Restraints are not used on pregnant prisoners unless there are exceptional circumstances, which must be documented and approved.*
- *Female prisoners are never restrained during a termination, labour, while giving birth or immediately after delivery.*

Despite the above, pregnant women who are incarcerated continue to be routinely handcuffed/restrained, and as our recent de-identified case example (included in this submission) will show, women continue to be handcuffed and shackled during labour and post childbirth.

Comments on Bill

We support a legislative prohibition on the shackling of women during labour, childbirth and after birth on the basis that this practice is inconsistent with Australia's obligations under the CAT, the ICCPR and the CRC. Additionally, the aforementioned Standards and corresponding Indicators in the IDS Standards evidence that Queensland has already recognised within its own independent detention oversight framework that the use of restraints during termination, labour, childbirth and immediately after childbirth is fundamentally inconsistent with appropriate custodial practice. Legislating a prohibition on the practice of shackling would give those affected added legal protection and is supported.

In our view, however, the Bill should be amended to clearly identify what constitutes the period "immediately after birth". In particular, this should include a reasonable period of time to allow for recovery associated with the birth. This might be longer for a traumatic birth, for example, where a caesarean (emergency or otherwise) has taken place given this is a major abdominal surgery, or where have been perineal tear/s or organ prolapse.

In the event that government is not minded to enact a blanket prohibition on the use of restraints on women during labour, childbirth and immediately after birth in all jurisdictions in the manner proposed in the Bill (subject to our proposed amendments to what is proposed in the Bill as outlined above) due to concerns relating to risk of harm or risk of escape, an alternative option that should be carefully considered is enacting a prohibition on the use of restraints on women during labour, childbirth and immediately after birth except in truly exceptional circumstances in which the use of a restraint is considered necessary to prevent an imminent and serious risk of harm or escape.

Prior to any consideration of the "exceptional circumstances" scenario, there should be a mandatory requirement to undertake a rigorous risk assessment to establish whether any concerns regarding imminent and serious risk of harm or escape could not be managed by a less restrictive alternative. In this vein, we respectfully draw the Committee's attention to the New Zealand Department of Corrections Prison Operations Manual at section M.03.02.05 which contains a detailed risk assessment framework that could be considered, adjusted and incorporated into domestic statutes or regulations.

What constitutes exceptional circumstances should be narrowly defined and subject to strict safeguards including, but not limited to:

(a) an express provision stating that where "exceptional circumstances", as defined, exist, restraints should only be used where no less restrictive alternative is reasonably available and that restraints should only be used for the shortest possible duration;

(b) a mandatory obligation that every time a decision is made to use restraints due to "exceptional circumstances", the General Manager of the relevant correctional centre must formally report the fact of this to the relevant Minister for Corrective Services along with the reasons for this decision within a reasonable period after such has occurred;

(c) a discrete statutory obligation on QCS that clear records be kept which outline the reasons for relevant decisions being made; and

(d) a statutory requirement that there must be an *ongoing* risk assessment undertaken based on the situation (I.e., That risk is assessed at various intervals to account for the dynamic nature associated with childbirth. For example, a risk of escape would be very different for a woman in early labour in contrast with a woman in active labour or a woman who has recently undergone a caesarean section and is tethered to the bed with an intermittent pneumatic compression device which is a device that is routinely used to prevent blood clots and improve blood circulation post caesarean section).

Thank you for the opportunity to provide feedback in relation to the Bill.

Yours faithfully,

Shane Duffy
Chief Executive Officer
Executive Officer