

Open letter to Australian governments on COVID-19 and the criminal justice system

We the undersigned are seeking your immediate action to reduce the risk of transmission of COVID-19 in the Australian criminal justice system, especially prisons and youth detention centres.

We know that COVID-19 spreads quickly in closed spaces and prisons are commonly [epicentres for infectious diseases](#). This is particularly a concern where there is overcrowding, with most Australian prisons operating at [over 100% of their design capacity](#). The World Health Organisation (WHO) has identified [overcrowding](#) as a structural problem that contributes to the spread of infections in prisons.

In addition, many people who are incarcerated also have [chronic conditions](#), such as diabetes, cardiovascular disease and asthma, which makes them vulnerable to more severe forms of COVID-19. [Research](#) on other diseases, such as tuberculosis (TB) and hepatitis, shows rates of infection among incarcerated populations are up to 100 times higher than outside of prisons.

It is only a matter of time before COVID-19 breaks out in our prisons and youth detention centres. This will then have a substantial flow-on effect to the community. People are continually churning in and out of prisons and then being released to their communities. Significantly, [77% of people entering and 33% of people in prison are unsentenced](#) and [30% of sentenced prisoners are expected to serve less than 12 months](#).

Failing to deal with COVID-19 in the criminal justice system will dramatically increase the epidemic curve. It will have a disproportionate effect on vulnerable populations over-represented in prisons, namely [Aboriginal and Torres Strait Islander peoples](#); people from low socio-economic backgrounds; people experiencing homelessness; and people with disabilities.

Prisons experience a daily influx of correctional staff, health care workers, lawyers, educators, non-governmental support workers and visitors — all of whom can carry viral conditions at the prison back to their homes and communities and return the next day carrying them from home. In the current circumstances, it is unviable to preclude incarcerated people becoming infected with COVID-19 and spreading the virus beyond prison walls.

Healthcare in prisons is already overstretched – which creates a risk that people living and working in prisons will not be monitored regularly enough. Symptoms need to be addressed quickly. Isolating people suspected of having the virus will also be a major challenge.

People in prisons also may not be able to regularly wash their hands, which may promote the spread of disease. Hand sanitiser, which contains alcohol, may be considered contraband. Prisoners share bathrooms, laundry and areas where food is consumed. Most toilets do not have lids. Many cells are doubled-up and prisoners share rooms and cottages in low security prisons. Air circulation can be poor, as many windows do not open. Soap may only be available at a cost and many prisoners have no prison employment and no money for this.

To prevent prisons becoming COVID-19 [hotspots](#), the only logical response is decarceration. This emergency measure is necessary to protect the health and well-being of prisoners and

the wider community. As the pandemic has widened, international measures have included Iran's release of [85,000 prisoners](#), [Ireland's proposal](#) to release prisoners with less than 12 months to serve and the [proposed release of high-risk inmates from Rikers Island](#) and elsewhere in the [United States](#) and [United Kingdom](#).

Prisons are the remaining sphere of Australian society that is denied the protection of infection control standards. Prisoners are forced into a possible site of contagion with no choice over the prison facility, or cell mates with whom they will be detained. Imprisonment should not involve forced subjection to a deadly infection. Overcrowded prisons are simply incapable of quarantining people. [Policies need to be directed to releasing prisoners, and laws governing police, prosecution and judicial discretion need to be changed to prevent further imprisonment.](#)

We are therefore calling on Australian governments to, as a matter of urgency:

- Ensure prisoners are informed on the status of COVID-19 and their rights;
- Ensure compliance with international laws and the standards for health treatment of prisoners, including the [UN Standard Minimum Rules for the Treatment of Prisoners](#) (Rule 24) and the [Basic Principles for the Treatment of Prisoners](#) (Rule 9);
- Adopt, to the extent possible, best-practice sanitation (including alcohol-based sanitisers if necessary) and social distancing techniques to promote prisoner and staff safety;
- Support not-for-profit and government agencies to work with prisoners and their families to find them safe accommodation when they are released;
- Minimise the impact of restrictions on prisoners (e.g., frequent opportunities to communicate with family online, in the absence of face-to-face visits; increased access to and availability of phones; judicious approach to the use of solitary confinement);
- Minimise the use of resources on the detection and prosecution of non-violent offences that do not pose a significant risk to the community;
- Support bail and non-custodial penalties for all defendants who do not present a *very high risk* that cannot be managed in the community (eg, through electronic monitoring), noting that stringent restrictions on daily movement are likely;
- Legislate to require bail and sentencing courts to consider the risk that a current pandemic will present to the prisoner and their community upon release, with a view to promoting community-based options;
- Facilitate remote supervision of bail and community corrections;
- Provide additional support to victims, noting the likely increased risk of [family violence](#) for those in home quarantine conditions;
- Resource community legal centres, legal aid, Aboriginal legal services and prosecution agencies to facilitate remote interaction;
- Provide for the early release of prisoners, including:
 - those at high risk of harm from COVID-19, including those with pre-existing health conditions and older people;
 - children and young people;
 - those detained for summary offences (eg, unlawful driving; public disorder; fine default); property crimes; common assault; and breach of justice procedures; and
 - those who are likely to be released in the next six months.