

OPEN LETTER CALLING FOR SAFE RELEASE OF ADULTS AND CHILDREN FROM PRISONS AND YOUTH DETENTION CENTRES AND PROTECTION OF THEIR RIGHTS AND HEALTH IN THE COVID-19 PANDEMIC

AUGUST 2020

Recent positive COVID-19 cases in prisons and youth detention centres in Queensland, Victoria and New South Wales signal the growing threat of this virus to the lives of detained people across Australia. It demonstrates that attempts by Australian governments to prevent COVID-19 entering youth detention centres and prisons have been unsuccessful. The risk of a serious COVID-19 prison outbreak is real and imminent. Measures to release people from correctional centres and reduce incarcerated populations need to be implemented with urgency. This is necessary to protect the lives of people in prisons and youth detention centres, to ensure there are necessary hospital beds for all who need it and to prevent the further spread of COVID-19 to the community. The Communicable Diseases Network Australia [guidelines](#) for the prevention, control and public health management of COVID-19 recommend governments implement ‘measures to protect vulnerable inmates’ that include ‘early release or alternative accommodation’.

The threat to lives in prison is particularly glaring for First Nations people, people with chronic illness, and other vulnerable people. In April 2020, First Nations [families](#) of loved ones who died in custody identified the high risk of First Nations adults and children dying in prison and youth detention. The over-representation of First Nations people in prison and youth detention centres, the systemic racism in healthcare, including in correctional settings, as well as the high rates of chronic illness, mean that First Nations people will be disproportionately impacted by an outbreak of COVID-19 in prisons and are at increased risk of deaths in custody. This risk is already extremely high with three Aboriginal deaths in custody in the past two months.

Evidence from [US](#) prisons provides a chilling warning. People in prison are five times more likely to contract COVID-19 and three times more likely to die than in the general population. Black people constitute [48%](#) of deaths in US prisons.

Australian governments owe a duty of care to the health and wellbeing of people in prison. The [National Guidelines](#) for controlling COVID-19 are failing to fulfil this duty. This failure was recognised by the Supreme Court of Victoria in the case of *Rowson* on 1 May 2020. While the Court reserved making any findings of fact at the interlocutory stage of that case, the Judge found that there was a *prima facie* case that the prison authorities have breached their duty of care to take reasonable care for Mr Rowson’s health.

The [Joint Statement](#) of international human rights bodies – the UNODC, WHO, UNAIDS and OHCHR – has resolutely called for the release of people in prison:

We urge political leaders to consider limiting the deprivation of liberty, including pretrial detention, to a measure of last resort, particularly in the case of overcrowding, and to enhance efforts to resort to non-custodial measures. These efforts should encompass release mechanisms

for people at particular risk of COVID-19, such as older people and people with pre-existing health conditions, as well as other people who could be released without compromising public safety, such as those sentenced for minor, non-violent offences, with specific consideration given to women and children.

In the last few months, there have been lockdowns in prisons and youth detention centres. Restricting rights and isolating people and children are not the answer to protecting lives. These restrictions have a deleterious effect on the mental health of adults and children inside and exacerbate existing vulnerabilities. They also may be ineffective in stopping the transmission of COVID-19.

Given lockdowns, overcrowding, loss of education and other services as well as restricted access to family and other visits, there has also been unrest in prisons across Australia, including in NSW, Queensland, Victoria, Western Australia and the Northern Territory. Since COVID-19 restrictions were imposed, there have been seven deaths in prisons in Australia (three in Queensland, three in Western Australia and one in the Northern Territory).

This letter calls for the rights to life and health of people in prison and youth detention centres to be respected by the release of people and the provision of safe housing and suitable post-release services, where needed. In particular, children and young people, like those who have recently been in lockdown at Victorian and Queensland youth detention centres, should also be prioritised so that they can be with, and be supported by, their families and communities during this ongoing public health emergency.

First Nations [families](#) whose loved ones have died in custody in a March [open letter](#) called for release of people from prison and a moratorium on warrants and arrests. We support these First Nation families and urge that a strategy for release must go hand in hand with much needed changes to strategies on policing and decarceration in a pandemic. These are urgent and necessary steps to promote diversion, including access to health, social security, employment, financial services, family restoration and culturally appropriate support services.

Organisations that provide direct services to women affected by the justice system are concerned to emphasise that the organisations to which prisoners may be released urgently need additional resources as they all currently have waiting lists of clients needing their support.

We believe the release of the people from prison should not be done in a way that increases the risk of infection for those released, while also not being limited to those who have a better chance of avoiding risk. To address this, allocation of resources should ensure release is done fairly and there are supports to provide for health, economic, cultural and wellbeing needs of people who are released.

Our first two open letters to Australian governments in [March](#) and [April](#) called for the release of people from prisons to address the overcrowding that makes prisons ripe for the rapid

transmission of COVID-19. In the second open letter, detailed information was provided on state responsibilities for information, independent monitoring and release of people in prison.

This letter continues to call for the release of people in prisons and youth detention centres through an accountable and transparent process:

- Safe release of all vulnerable people in prisons and youth detention centres, beginning with First Nations people and people with physical and mental health conditions that make them particularly vulnerable to being infected with and/or suffering serious effects of COVID-19, and particularly impacted by the restrictive lockdown and isolation measures in youth detention centres and prisons.
- Publication of data on vulnerability in prisons and youth detention centres, including in relation to First Nations people, children and young people, pregnant women, mothers and primary caregivers, victims of family violence, people with a disability, cognitive impairment and/or psycho-social impairment, people with a chronic health condition and those normally the subject of aged care, transgender and gender-diverse people and trafficked persons.
- Disclosure of information on the arrangements for release and actual release of vulnerable people in prisons and youth detention centres.
- Use of existing legal mechanisms to reduce the number of people in prisons and youth detention centres, like granting parole, administrative leave or early release for people in prison who are most at risk of serious harm from COVID-19, or the enactment and use of new laws to release people from prison.
- Provision of a presumption in favour of bail for people who are yet to be found guilty or sentenced, with suitable conditions, supports and safe housing.
- The development and urgent implementation of policies to promote community-based sentences, instead of custody.

It is vital that responses to vulnerability in all settings and contexts are examined. The governments use of extraordinary powers must be scrutinised, to enable best practice to be identified to inform future decision-making on what can be done in future to prevent, protect and respond to rights to life and health in prisons and youth detention centres.

We further call for the provision of safe housing where needed and that release strategies ensure:

- Testing before release and proper health care when people return to community.
- Access to safe and hygienic transport to and from prison.
- Suitable and safe housing and accommodation, including mental health and rehabilitation facilities.
- Provision of protections for victims, including housing apart from victims' homes.
- The availability of disability services, including through a comprehensive strategy for targeted engagement of the National Disability Insurance Scheme (NDIS) with releasees, and the provision and implementation of individualised support plans.

- Provision of targeted mental health, wellbeing and healing services.
- Access to health, child welfare, employment and financial services and supports, and the need for family restoration.
- Consistent with the calls by First Nations families, there should be cultural, social and emotional wellbeing support for Aboriginal and Torres Strait Islander people, through proper resourcing Aboriginal-controlled organisations.
- Consultations with First Nations families and communities prior to release, so the releasee can be appropriately housed and supported

For those remaining in prisons and youth detention centres, we urge governments to promote their health, rights and wellbeing by providing:

- Comprehensive medical care, including:
 - ensuring that access to healthcare is prioritised for Aboriginal and Torres Strait Islander people and other vulnerable groups;
 - preventing discriminatory medical treatment, which has contributed to deaths in custody; and
 - access to flu vaccinations and to the COVID-19 vaccine once this becomes available.
- Widescale COVID-19 testing and urgent medical treatment for all persons who test positive, including transfers to hospitals.
- Support for the demands of National Aboriginal and Torres Strait Islander Legal Services ([NATSILS](#)) that Aboriginal and Torres Strait Islander Legal Services and family are notified immediately for all First Nations persons who test positive.
- Facilitation of ongoing welfare checks by legal services and other organisations.
- Increased and universal access to mental health and healing services, including access to NGOs that specialise in mental health and support services for prisoners and young people.
- Regular cleaning, especially in shared spaces, robust hygiene practices and the provision of sanitiser, soap, washing facilities and masks for all people in prisons and youth detention centres.
- Mandates for prison and youth detention centres staff and allied workers, including in transportation and services, to wear personal protective equipment (PPE) at all times.
- Reduced crowding of cells, instead of segregation or isolation.
- Free, regular access to audio-visual technology to communicate with people outside.
- Appropriately socially distanced visits, with PPE, between people in prisons and youth detention centres and their families and loved ones.
- Independent and specific oversight of COVID-19 responses in prisons and youth detention centres by an independent monitoring body to supplement the visitor and Ombudsmen systems during the pandemic, to independently assess human rights compliance with powers of enforcement of recommendations. Consistent with the [NATSILS](#) statement, all governments must urgently establish National Preventative Mechanisms in accordance with OPCAT to oversee the conditions of detention and treatment of people in places of detention which must comply with international human rights standards. The mechanisms need to be culturally appropriate and safe for First Nations people.

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Katrina Byrne	Organiser, Community and Public Sector Union
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Marie Gonzalez	Teachers Aid and justice advocate
Max Bimbi	Actor and justice advocate
Russell Goldflam	Lawyer
Ruth Barson	Director, Human Rights Law Centre
Michelle Bennett	Communications Director, Human Rights Law Centre
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Ally Lillian Steel	Justice advocate
Tom Davis	Actor and justice advocate
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