

COVID-19: Risks and Impacts for Prisoners and Communities

This document collates published information and research in relation to the COVID-19 pandemic which may be relevant to sentence and bail proceedings, law reform and policy decisions. The purpose of this document is to collate and complement the growing number of resources available which address the risks and impact of COVID-19 on prisoners and the community.

The NSW Public Defenders website provides a comprehensive resource collating updated COVID-19 material for practitioners, including case law – <http://publicdefenders.nsw.gov.au/Pages/c19resources.aspx>

A note on usage: Practitioners seeking to rely on this document in court may wish to extract only the sections relevant to the proceedings in lieu of handing up the full-length document. The headings and subheadings in the table of contents below are hyperlinked to the relevant sections of the document to allow for speed and ease of access.

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Background and Developments in the COVID-19 Pandemic

- 1 COVID-19 is a respiratory illness with symptoms including fever, coughing, a sore throat and shortness of breath.¹ It is highly contagious and is a fatal disease for a small proportion of people infected. The serious and critical symptoms of COVID-19 are especially pronounced for people with pre-existing conditions and the elderly.²
- 2 On 30 January 2020, the World Health Organization ('WHO') declared the novel coronavirus outbreak a public health emergency, and on 11 March 2020 it deemed COVID-19 a pandemic due to its spread across all regions of the world.³ Three weeks after Australia confirmed its first case of COVID-19 on 25 January 2020, the Australian Government activated the Emergency Response Plan for COVID-19 and on 18 March 2020 a Human Biosecurity Emergency Declaration was made.⁴
- 3 As at 7 February 2022, a total of 2,385,020 cases of COVID-19 had been reported in Australia, including 4,247 deaths, and approximately 289,342 active cases.⁵ The active cases were predominantly in New South Wales, followed by Victoria and Queensland.
- 4 WHO notes that 'infection may present with mild, moderate or severe illness ... While about 80% of cases manifest as a mild illness (i.e. non-pneumonia or mild pneumonia), approximately 20% progress to a more severe illness, with 6% requiring specialist medical care, including mechanical ventilation.'⁶
- 5 People who are at higher risk of serious illness if they contract COVID-19 include:
 - people who have not been vaccinated against COVID-19;
 - Aboriginal and Torres Strait Islander people and those in remote communities;
 - people with disability;
 - older people, particularly those over 70 years old;
 - people with [chronic medical conditions](#) including heart disease, diabetes, chronic renal failure, severe mental health conditions, and poorly controlled blood pressure; and
 - people with compromised immune systems.⁷
- 6 COVID-19 spreads between people in several different ways:

Current evidence suggests that the virus spreads mainly between people who are in close contact with each other, for example at a conversational distance. The virus can spread from an infected person's mouth or nose in small liquid particles when they cough, sneeze, speak, sing or breathe.

¹ Department of Health (Cth), '[What You Need to Know About Coronavirus \(COVID19\)](#)' (Web Page, 11 August 2021).

² Department of Health (Cth), '[COVID-19 – Frequently Asked Questions](#)' (Fact Sheet, 1 April 2020) 4.

³ World Health Organization, '[Statement on the Second Meeting of the International Health Regulations \(2005\) Emergency Committee Regarding the Outbreak of Novel Coronavirus \(2019-nCoV\)](#)' (Web Page, 30 January 2020); World Health Organization, '[WHO Director-General's Opening Remarks at the Media Briefing on COVID-19](#)' (Web Page, 11 March 2020).

⁴ Department of Health (Cth), '[Australian Health Sector Emergency Response Plan for Novel Coronavirus \(COVID-19\)](#)' (23 April 2020); Howard Maclean and Karen Elphick, '[COVID-19 Human Biosecurity Emergency Declaration Explainer](#)', *FlagPost – Parliamentary Library Blog* (Web Page, 19 March 2020).

⁵ Department of Health (Cth), '[Coronavirus \(COVID-19\) at a Glance – 7 February 2022](#)' (Web Page, 17 September 2021).

⁶ World Health Organization, '[Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention](#) (Interim Guidance, 20 March 2020). [Updated Interim Guidance dated 8 February 2022](#) is also available. In a report titled [Report on Coronavirus and Immigration Detention](#) (17 March 2020), Emeritus Professor of Public Health Professor Richard Coker indicated that '[m]ost cases of COVID-19 are not severe. But many patients with COVID-19 suffer critical illness': 4. **Note:** Emeritus Professor Coker has since published a report on the novel coronavirus in prisons in England and Wales, dated 31 March 2020 and available [here](#).

⁷ Department of Health (Cth), '[Advice for Groups at Greater Risk](#)' (Web page, 19 January 2022). See also Nellie Pollard-Wartron et al, '[Indigenous Australians at increased risk of COVID-19 due to existing health and socioeconomic inequities](#)' (July 24, 2020).

Another person can then contract the virus when infectious particles that pass through the air are inhaled at short range (this is often called short-range aerosol or short-range airborne transmission) or if infectious particles come into direct contact with the eyes, nose, or mouth (droplet transmission). The virus can also spread in poorly ventilated and/or crowded indoor settings, where people tend to spend longer periods of time. This is because aerosols can remain suspended in the air or travel farther than conversational distance (this is often called long-range aerosol or long-range airborne transmission). People may also become infected when touching their eyes, nose or mouth after touching surfaces or objects that have been contaminated by the virus.⁸

7 The Delta variant of COVID-19 was classified as a variant of concern by WHO on 11 May 2021 and became the dominant strain circulating globally. Delta spread more easily than earlier strains of the virus and was responsible for more cases and deaths worldwide.⁹ There were already high rates of transmission in prisons with earlier variants, with the infection rate in the United States prisons 5.5 times the rate of the general population.¹⁰

8 On 26 November 2021, the Omicron variant was designated a variant of concern by WHO:¹¹

Omicron has a significant growth advantage over Delta, leading to rapid spread in the community with higher levels of incidence than previously seen in this pandemic.’ Despite a lower risk of severe disease and death following infection than previous SARS-CoV-2 variants, the very high levels of transmission nevertheless have resulted in significant increases in hospitalization, continue to pose overwhelming demands on health care systems in most countries, and may lead to significant morbidity, particularly in vulnerable populations.

Responses by Government Authorities

9 The Department of Health has published the Communicable Diseases Network Australia (‘CDNA’) [National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia](#).¹² The NSW Department of Communities and Justice has made general information about the Corrective Services NSW Service Delivery Plan available on its [website](#).¹³

10 On 24 March 2020, the [Crimes \(Administration of Sentences\) Act 1999](#) was amended to grant the Commissioner of Corrective Services a power ‘to release certain inmates early on parole in response to COVID-19’.¹⁴ Eligible inmates include those ‘whose health is at higher risk during the COVID-19 pandemic because of an existing medical condition or vulnerability’.¹⁵ To date, no inmates have been released to parole under this arrangement.¹⁶

⁸ World Health Organization ‘[Coronavirus disease \(COVID-19\): How is it transmitted?](#)’ (Web page, 23 December 2021).

⁹ World Health Organization, ‘[Coronavirus disease \(COVID-19\): Variants of SARS-COV-2](#)’, (Web Page, 4 December 2021).

¹⁰ Brendan Saloner et al, ‘[COVID-19 Cases and Deaths in Federal and State Prisons](#)’ (2020) 324 *JAMA* 602.

¹¹ World Health Organization, [Enhancing Response to Omicron SARS-CoV-2 Variant](#) (Technical Document, 21 January 2022).

¹² Department of Health (Cth), [CDNA Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia](#) (7 October 2021).

¹³ Corrective Services NSW, ‘[COVID-19 \(Coronavirus\) Response](#)’ (Web Page, 27 January 2022).

¹⁴ New South Wales, [Parliamentary Debates, Legislative Assembly, 24 March 2020](#), 2230 (Mark Speakman, Attorney-General). See *Crimes (Administration of Sentences) Act 1999 (NSW) s 276*. See also ‘[Extraordinary Measures to Release NSW Prisoners Is All about Safety](#)’, UNSW Newsroom (Web Page, 27 March 2020).

¹⁵ Crimes (Administration of Sentences) Amendment (COVID-19) Regulation 2020 s 330(1). See also [Explanatory Note](#), Crimes (Administration of Sentences) Amendment (COVID-19) Regulation 2020 (NSW) 1.

¹⁶ NSW Department of Communities and Justice, ‘[COVID-19 \(Coronavirus\) Response – Corrective Services](#)’ (Web Page, 27 January 2022).

COVID-19 Cases in NSW Correctional and Youth Justice Centres

Case numbers: as at 8 February 2022

- 11 The Justice Health and Forensic Mental Health Network ('Justice Health') currently publishes weekly COVID-19 statistics for the NSW custodial population.¹⁷
- 12 On 8 February 2022, the Network reported 610 active cases in public and privately operated centres in NSW, with 492 cases detected in the past 7 days.¹⁸ These high numbers are matched with significant outbreaks in prisons in Queensland and the Northern Territory in 2022.¹⁹
- 13 On 7 February 2022, NSW Health reported 901 locally acquired COVID-19 cases in correctional settings in the past 4 weeks.²⁰

Chronology of reported outbreaks in NSW custodial settings

- 14 On 25 March 2020, Justice Health confirmed that two of its employees had tested positive for COVID-19 at its Forensic Hospital, located within the Long Bay Correctional Complex.²¹ NSW Corrective Services stated that on 28 March 2020 'the first case of COVID-19 in a NSW prison was confirmed, a health care worker at Long Bay Hospital'.²²
- 15 On 30 July 2020, the Department of Communities and Justice confirmed that an inmate at Parklea Correctional Centre had tested positive.²³
- 16 On 11 August 2021, [ABC News](#) reported that Bathurst Correctional Centre had been forced into precautionary lockdown after a recently released remand prisoner returned a positive test.²⁴ On 17 August 2021, [ABC News](#) reported that four inmates at the Metropolitan Remand & Reception Centre ('MRRC') at Silverwater Jail tested positive for COVID-19.²⁵ On 30 August 2021, it was reported that there were 42 positive cases in managed isolation at the MRRC.²⁶
- 17 On 19 August 2021, Corrective Services NSW [confirmed to media](#) that a worker at Cobham Youth Justice Centre had tested positive for COVID-19.²⁷

¹⁷ Justice Health and Forensic Mental Health Network, '[COVID-19 \(Novel Coronavirus\)](#)' (Web Page, 8 February 2022).

¹⁸ Ibid.

¹⁹ Keira Jenkins, '[NATSILS Calls for Release of Prisoners as COVID-19 Spreads](#)', *NITV News* (online, 1 February 2022).

²⁰ NSW Health, '[Locally Acquired COVID-19 Cases and Tests – Up to 4pm 7 February 2022](#)' (Web Page, 7 February 2022).

²¹ Thalia Anthony, '[Explainer: How Will the Emergency Release of NSW Prisoners Due to Coronavirus Work?](#)', *The Conversation* (online, 25 March 2020).

²² Corrective Services NSW, '[COVID-19 \(Coronavirus\) Response](#)' (Web Page, 29 June 2021).

²³ Department of Communities and Justice (NSW), '[Fresh Custody Inmate in Isolation with COVID-19](#)' (Media Statement, 30 July 2020).

²⁴ Xanthe Gregory, Mollie Gorman, and Lucy Thackray, '[Walgett COVID-19 Case Triggers Widespread Western New South Wales Lockdowns](#)', *ABC News* (online, 12 August 2021). See also Nino Bucci, '[NSW Inmate Released on Bail before Prison Received Positive Covid Test Result](#)', *The Guardian* (online, 12 August 2021).

²⁵ ABC News, '[Sydney News: Silverwater Jail Inmates Test Positive to COVID](#)', *ABC News* (online, 17 August 2021). See also Greta Stonehouse and Angelo Rizzo, '[NSW COVID-19 Cases "Disturbingly High"](#)', *The Canberra Times* (online, 16 August 2021).

²⁶ Michael McGowan, '[NSW Locks Down Prisons over Covid Fears but Refuses to Reveal Inmate Vaccination Rates](#)', *The Guardian* (online, 30 August 2021).

²⁷ Greta Stonehouse and Luke Costin, '[NSW Has 681 New COVID-19 Cases](#)', *Australian Associated Press* (online, 19 August 2021).

- 18 On 31 August 2021, [NSW Health](#) reported:
- Forty-three cases of COVID-19 were reported at Parklea Correctional Centre to 8pm last night, bringing the total number of cases since 18 August to 75, including one healthcare worker.
- There has also been one new case linked to the Bathurst Correctional Centre to 8pm last night, bringing the total number of cases there to seven – all are staff members.²⁸
- 19 On 1 September 2021, [NITV News](#) reported that ‘NSW prison authorities have now recorded at least 116 positive COVID-19 cases – 61 in Parklea, eight cases in Bathurst Correctional facility, 50 confirmed cases in Silverwater men's prison, and at least one case in Silverwater women's prison’.²⁹
- 20 On 9 September 2021, [The Guardian](#) reported that there ‘are now 166 Covid-19 positive inmates across the NSW prison system, with about a quarter of those Aboriginal’, including two women.³⁰
- 21 On 17 September 2021, [a parliamentary inquiry heard](#) that there were ‘now more than 300 Covid-positive inmates across the state's prisons, including 84 Indigenous people.’³¹ The inquiry also heard that there were ‘more than 40 corrections and justice health staff across publicly run prisons who have tested positive, including some who have been hospitalised.’³²
- 22 On 25 January 2022, [The Guardian](#) reported that more than 1000 prisoners and correctional officers in NSW had tested positive for COVID-19 in the previous month.³³ The report stated that ‘[a]lmost 150 prisoners tested positive over the past week alone – up from 11 in the week to Christmas, and just one case the week prior ... In the five weeks to 17 January, 847 custodial staff also returned positive Covid tests. Before 12 December, just 75 had tested positive.’³⁴
- 23 On 3 February 2022, [it was reported that](#) a prisoner at Junee Correctional Centre had died after testing positive for COVID-19 the previous day, however the cause of death is not yet known.³⁵

Prisoner unrest in response to COVID-19 risks and restrictions

- 24 Professor Thalia Anthony considers that prisons have become increasingly unsafe environments due to an increase in unrest related to COVID-19 restrictions, and prisoners' anxiety about contracting the disease.³⁶ This culminated in several protests within custodial settings during 2020 and 2021, including at Parklea Correctional Centre on 12 July 2021.³⁷

²⁸ NSW Health, ‘[COVID-19 \(Coronavirus\) statistics - 31 August 2021](#)’ (Web Page, 31 August 2021).

²⁹ Sarah Collard, ‘[Fear for Loved Ones inside as COVID Spread Worsens in NSW Prisons](#)’, *NITV News* (online, 1 September 2021).

³⁰ Michael McGowan, ‘[NSW Corrections Officials Concede Vaccine Rollout Hampered by Limited Pfizer Access](#)’, *The Guardian* (online, 9 September 2021).

³¹ Michael McGowan, ‘[NSW Youth Corrections Officer Dies from Covid as Prison Cases Surge](#)’, *The Guardian* (online, 17 September 2021).

³² *Ibid.*

³³ Tamsin Rose, ‘[NSW Prisons Urged to Use Emergency Release Powers as Covid Cases Surge](#)’, *The Guardian* (online, 25 January 2022).

³⁴ *Ibid.*

³⁵ Emily Wind and Rex Martinich, ‘[Man Dies after Being Found Unresponsive in Junee Prison Cell](#)’, *The Daily Advertiser* (online, 3 February 2022).

³⁶ Thalia Anthony, ‘[Coronavirus is a Ticking Time Bomb for the Australian Prison System](#)’, *The Guardian* (online, 26 March 2020).

³⁷ Daniella White, ‘[Inmates Climb onto Roof at Western Sydney Prison](#)’, *Sydney Morning Herald* (online, 12 July 2021)

Vaccination Rates in NSW Correctional Centres

- 25 Vaccination rates in adult prisons and youth detention centres are lower than in the general population.
- 26 At 8 February 2022, Justice Health reported that 82.3% of all adults in correctional centres and 70.7% of all young people (12+) in Youth Justice centres had received two doses of a COVID-19 vaccine.³⁸ 89% of adults and 80.8% of young people had received one dose.³⁹
- 27 With respect to vaccination rates in the general population, data published by the Australian Government Department of Health showed that, at 6 February 2022, 94.09% of people aged 16 and above in NSW had received two doses of a vaccine, and over 95% had received at least one dose.⁴⁰
- 28 On 1 September 2021, Justice Health provided the following information to media regarding vaccination rates in NSW correctional centres at that date:
- 21% of prisoners are fully vaccinated; 42% have had one dose.
 - 75% of Justice Health Network staff are fully vaccinated; 84% have had one dose.
 - 41.3% of Corrective Services NSW staff are vaccinated; 53.5% have had one dose.⁴¹
- 29 On 17 September 2021, Justice Health informed a parliamentary inquiry that 70% of prisoners had received a first dose of a vaccine.⁴² Figures reported by Justice Health did not include vaccination data for privately managed correctional centres – Junee, Clarence and Parklea.⁴³
- 30 At that date, data published by the Australian Government Department of Health showed that 52.65% of the eligible non-prisoner population in NSW had received two doses of a COVID-19 vaccine, and 82.23% of the eligible NSW population had received one dose of a vaccine.⁴⁴
- 31 The [Kirby Institute](#) for infection and immunity in society at UNSW Sydney states that ‘risk of transmission, hospitalisation, and death occurs disproportionately among those unvaccinated’ and considers that ‘[v]accination coverage of incarcerated persons and prison-based staff is a critical factor’ impacting the risk of infection in custodial settings.⁴⁵

³⁸ Justice Health and Forensic Mental Health Network, ‘[COVID-19 \(Novel Coronavirus\)](#)’ (Web Page, 8 February 2022).

³⁹ Ibid.

⁴⁰ Department of Health (Cth), ‘[COVID-19 Vaccine Rollout Update – Jurisdictional Breakdown – 7 February 2022](#)’ (Presentation, 7 February 2022) 6.

⁴¹ @mariemcinerney (Marie McInerney) ([Twitter, 1 September 2021, 9:34am AEST](#)); Sarah Collard, ‘[Fear for Loved Ones inside as COVID Spread Worsens in NSW Prisons](#)’, *NITV News* (online, 1 September 2021); Hannah Ryan and Tiffanie Turnbull, ‘[Calls to Release inmates after 112 NSW Prisoners Contract COVID-19 at Parklea Correctional Centre, Silverwater](#)’, *7 News* (online, 1 September 2021).

⁴² Michael McGowan, ‘[NSW Youth Corrections Officer Dies from Covid as Prison Cases Surge](#)’, *The Guardian* (online, 17 September 2021).

⁴³ See Michael McGowan, ‘[NSW Corrections Officials Concede Vaccine Rollout Hampered by Limited Pfizer Access](#)’, *The Guardian* (online, 9 September 2021).

⁴⁴ Department of Health (Cth), ‘[COVID-19 Vaccine Rollout Update – Jurisdictional Breakdown – 19 September 2021](#)’ (Presentation, 19 September 2021) 6.

⁴⁵ Paul L Simpson et al, [Updated Report on the Impact of the COVID-19 Virus on the New South Wales Prisoner Population](#) (Report, Kirby Institute, 9 September 2021) 6.

Higher Risk of Infection in Prisons

- 32 In April 2020, Legal Aid NSW commissioned an [expert report](#) which addresses issues relating to the spread of COVID-19 in prisons and the potential impacts of the infection and change to conditions for prisoners.⁴⁶ An [updated report](#) was made available in September 2021.⁴⁷
- 33 Research suggests that COVID-19 places people in custody at high risk:⁴⁸

Where widespread community transmission of COVID-19 is occurring, there are legitimate concerns of this spreading to prisons. The outbreak of any communicable disease presents particular risks for prisons due to the vulnerability of the prison population and not least because of the difficulties in containing a large outbreak in such a setting. People detained are vulnerable for several reasons, but especially due to the proximity of living (or working) so closely to others – in many cases in overcrowded, cramped conditions with little fresh air.⁴⁹

Higher Spread of Infection in Prisons

- 34 WHO identifies overcrowding as a structural problem that contributes to the spread of infections in prisons. It acknowledges that an outbreak of disease in prisons threatens people outside prisons.⁵⁰
- 35 Research indicates that the spread of infections of other diseases is higher in the prison population compared to the general community: in Australian prisons, the prevalence of Hepatitis C is up to 30%;⁵¹ and, overall, communicable diseases are a much more significant issue in prisons than in the general population.⁵²

Risks to Prisoners' Health

- 36 The Australian Government identifies correctional centres and detention facilities as 'high risk settings'.⁵³ A [2020 report](#) by the Kirby Institute suggested that, as the COVID-19 pandemic progresses in the wider community, the risks of a case entering a correctional centre will be high, and correctional centres with high levels of spatial density will likely be challenged in containing a COVID-19 outbreak.⁵⁴
- 37 An [updated Kirby Institute report](#), dated 9 September 2021, suggests that 'the higher transmissibility and severity of the Delta variant, and the continuous movement of prison staff and detained persons between prisons and their communities, the risks of any potential index

⁴⁶ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, Kirby Institute, 16 April 2020).

⁴⁷ Paul L Simpson et al, [Updated Report on the Impact of the COVID-19 Virus on the New South Wales Prisoner Population](#) (Report, Kirby Institute, 9 September 2021).

⁴⁸ [World Health Organization](#); United Nations Office of the High Commissioner for Human Rights, '[Urgent Action Needed to Prevent COVID-19 "Rampaging through Places of Detention" – Bachelet](#)' (Web Page, 25 March 2020); [Coker](#); [Anthony](#); Stuart A Kinner et al, '[Prisons and Custodial Settings Are Part of a Comprehensive Response to COVID-19](#)' (2020) *The Lancet Public Health* 188.

⁴⁹ Penal Reform International, '[Coronavirus: Healthcare & Human Rights of People in Prison](#)' (Briefing Note, 16 March 2020) 2.

⁵⁰ World Health Organization, '[Prisons and Health](#)' (Web Page, 2014).

⁵¹ NSW Government Agency for Clinical Innovation, '[Elimination of Hepatitis C in a Prison Setting](#)' (Web Page, 21 June 2018).

⁵² Australian Institute of Health and Welfare, [The Health of Australia's Prisoners 2018](#) (Report, 30 May 2019).

⁵³ Department of Health (Cth), '[COVID-19 – Frequently Asked Questions](#)' (Web Page, 11 August 2021).

⁵⁴ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, Kirby Institute, 16 April 2020) 7.

case entering a correctional centre is very high and will remain so until community transmission reduces significantly and community cluster outbreaks are absent.⁵⁵

38 Prisoners are at a greater risk from COVID-19 due to:

- overcrowding in detention centres and the consequent lack of capability to enforce protective measures such as physical distancing;⁵⁶
- prisoners' heightened vulnerability as a result of underlying health conditions;⁵⁷ and
- lack of access to public health screening and treatment.⁵⁸

Relevance of overcrowding in prisons

39 Professor Richard Coker outlines the environmental factors that would increase the likelihood of COVID-19 spreading in prisons:

Overcrowding, unsanitary conditions, poor ventilation in a detention centre would likely increase the speed with which an epidemic unfolded even if the number of cases cumulatively remained unchanged. Poor access to health care facilities, slow procedures to diagnose, isolate, and treat patients, or quarantine contacts would further reduce the time to peak incidence.⁵⁹

40 In its 2020 report, the [Kirby Institute](#) noted that COVID-19 poses a threat in overcrowded NSW prisons.⁶⁰ These observations also relate to youth detention.⁶¹ The report states that 'crowding and prison cell spatial density are relevant to COVID-19 transmission as they have been linked to adverse health outcomes, including the transmission of infectious diseases.'⁶² In its [September 2021 report](#), the Kirby Institute refers to studies which 'found that increased crowding was associated with increased incidence rates of COVID-19' in USA prisons.⁶³

41 Despite the introduction of the Prison Bed Capacity Program in 2016, the [Auditor-General's Performance Audit](#) in 2019 concluded that '[t]he prison system is crowded and operating close to available capacity.'⁶⁴

42 [Professor Richard Coker](#) states that '[o]vercrowding in congregate settings should be avoided if possible. The virus spreads in congregate settings and, where poor sanitation, poor ventilation, and overcrowding exist the virus can overwhelm a population, particularly a population with co-morbidities or that is elderly.'⁶⁵ [Butler et al](#) note that '[s]tatistics indicate a clear trend towards increased numbers of older prisoners in Australian prisons.'⁶⁶

⁵⁵ Paul L Simpson et al, [Updated Report on the Impact of the COVID-19 Virus on the New South Wales Prisoner Population](#) (Report, Kirby Institute, 9 September 2021) 6.

⁵⁶ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, Kirby Institute, 16 April 2020) 12.

⁵⁷ Ibid 6.

⁵⁸ Australian Institute of Health and Welfare, [The Health of Australia's Prisoners 2018](#) (Report, 30 May 2019) 111.

⁵⁹ Richard Coker, [Report on Coronavirus and Immigration Detention](#) (17 March 2020).

⁶⁰ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, Kirby Institute, 16 April 2020) 14.

⁶¹ Ibid 7.

⁶² Ibid 8.

⁶³ Paul L Simpson et al, [Updated Report on the Impact of the COVID-19 Virus on the New South Wales Prisoner Population](#) (Report, Kirby Institute, 9 September 2021) 7.

⁶⁴ NSW Auditor-General, [Managing Growth in the NSW Prison Population](#) (Report, 24 May 2019) 9.

⁶⁵ Richard Coker, [Report on Coronavirus and Immigration Detention](#) (17 March 2020) 15.

⁶⁶ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, Kirby Institute, 16 April 2020) 8.

Increased vulnerability of prisoners due to underlying conditions

43 It is well established that co-morbidity is a risk factor for increased severity of COVID-19:

Around one out of every five people who are infected with COVID-19 becomes seriously ill and develops difficulty breathing. Older people, and those with underlying medical problems such as high blood pressure, heart problems or diabetes, are more likely to develop serious illness ... In addition to demographic characteristics, people in prisons typically have a greater underlying burden of disease and worse health conditions than the general population, and frequently face greater exposure to risks such as smoking, poor hygiene and weak immune defence due to stress, poor nutrition, or prevalence of coexisting diseases, such as bloodborne viruses, tuberculosis and drug use disorders.⁶⁷

44 Professor Richard Coker explains:

Severe disease necessitating hospital admission [for COVID-19 infection] is associated with comorbidity, with hypertension being the most common, followed by diabetes, and coronary heart disease, chronic obstructive airways diseases (this refers to chronic asthma, chronic bronchitis, and emphysema), carcinoma (cancer), and chronic kidney disease.⁶⁸

45 The Australian Institute of Health and Welfare notes that '[p]eople in the prison system are some of the most vulnerable in our society, and often experience these risk factors to a higher degree than people in the general population.'⁶⁹ The 2018 National Prisoner Health Data Collection (NPHDC) survey found that '[a]lmost one-third (30%) of prison entrants said they had a history of at least 1 of the following chronic physical health conditions – arthritis, asthma, cancer, cardiovascular disease, or diabetes.'⁷⁰

General health care access and hygiene

46 According to the [Australian Institute of Health and Welfare](#), in 2018 '[a]lmost 3 in 10 prison entrants reported they did not see a health professional in prison in the previous 12 months, despite needing to.'⁷¹ The report concluded that the 'health of people in prisons is much poorer compared with the general community.'⁷²

47 The [NSW Inspector of Custodial Services](#) has acknowledged that '[t]he inmate population has a much poorer health profile than that of the general population',⁷³ and that the growth of NSW's inmate population has increased pressure on the custodial health system, resulting in longer wait times and lack of individual attention.⁷⁴ The report noted that inmates recall a lack of health care as the biggest issue in all three of the inspected correctional centres.⁷⁵

⁶⁷ World Health Organization, [Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention](#) (Interim Guidance, 15 March 2020) 2.

⁶⁸ Richard Coker, [Report on Coronavirus and Immigration Detention](#) (17 March 2020) 5.

⁶⁹ Australian Institute of Health and Welfare, [The Health of Australia's Prisoners 2018](#) (Report, 30 May 2018) 57.

⁷⁰ *Ibid.* vi.

⁷¹ *Ibid.* 117.

⁷² *Ibid.* vi.

⁷³ Inspector of Custodial Services (NSW), [Full House: The Growth of the Inmate Population in NSW](#) (Report 2015) 11.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

Impacts on Prisoners Resulting from Changes to Conditions of Detention

- 48 In a [psychiatric report](#) prepared for Legal Aid NSW on 9 April 2020, forensic psychiatrist Dr Andrew Ellis opined that the COVID-19 pandemic ‘will have mental health effects [on persons in custody] by two main mechanisms’.⁷⁶ In a [further psychiatric report](#) considering the potential impact of the delta variant on the mental health of prisoners, Dr Ellis stated:

The first will be direct contribution to development of new psychiatric conditions in individuals by infection with a virus. The second will be the effects of social changes such as isolation, quarantine or service reconfiguration used to combat population wide infection.⁷⁷

Changes to conditions in adult correctional centres in NSW

- 49 On Thursday 24 June 2021, in-person visits were suspended at all correctional centres in NSW, a decision ‘made in response to the growing cluster of COVID cases in the Sydney Metropolitan area.’⁷⁸
- 50 In-person visits to the Forensic Hospital in Malabar recommenced on 1 November 2021 ‘under strict conditions, including that visitors are fully vaccinated, undergo screening procedures on entry and use PPE and follow COVID-19 hygiene rules.’⁷⁹ In-person family visits for prisoners in the general prison population have yet to resume, as outlined below.
- 51 On 27 January 2022, the NSW Department of Communities and Justice ‘[Corrective Services: Coronavirus Response](#)’ web page was updated to state:

All new inmates entering our system are quarantined for a 10-day period. Previously, inmates were cohorted and could interact with a small group of other inmates also in quarantine. Due to the transmissibility of the Delta and Omicron strains, inmates are now housed by themselves or with one other person (depending on specific needs) for this 10-day period. During the quarantine period inmates are closely monitored, they are also tested for COVID-19 when they first arrive at the centre and on day-6 and then again on day 10 before being cleared to join the main population. Essential services are still available to inmates during the quarantine period and our staff work hard to ensure these inmates have regular access to phones and support services.

- 52 The web page describes the current measures implemented by Corrective Services, including:

Isolation: If an inmate develops cold or flu like symptoms, they are immediately isolated in-situ, assessed by a clinician, and tested if needed. The inmate will be monitored and will not return to their normal routine until the health provider is confident, they pose no COVID-19 risk.

Management of COVID positive inmates: All COVID positive inmates are transferred to a designated area of the Metropolitan Remand and Reception Centre (MRRC) in Silverwater. Female inmates who test positive for COVID-19 are transferred and managed at Silverwater Women’s Correctional Centre. Inmates are closely monitored and receive the appropriate health care. Any inmate who requires acute care is transferred to a public hospital.

Staging process for inmates being transferred from metropolitan reception centres: To further reduce risk, CSNSW has introduced a 7-day staging process that will ensure inmates transferred

⁷⁶ Andrew Ellis, [COVID-19 and Mental Health Issues for NSW Prisoners: Report to Legal Aid NSW](#) (Expert Report, 9 April 2020) 2.

⁷⁷ Ibid.

⁷⁸ Corrective Services NSW ‘[Contact and Visit Inmates: COVID-19 UPDATE](#)’ (Web Page, 24 July 2021).

⁷⁹ Justice Health and Forensic Mental Health Network, ‘[COVID-19 \(Novel Coronavirus\)](#)’ (Web Page, 8 February 2022).

from reception centres in metropolitan Sydney are quarantined from the main population in a regional facility for 7-days with a test on day 5 prior to being cleared to join the main population ...

Visits: Due to the risk of transmission and high level of community cases of COVID 19, in-person visits are suspended at this time. CSNSW is currently working on a plan to resume visits while mitigating the risk of introduction and transmission of the virus ...

Legal/professional visits: In person visits for legal and professional visitors resumed on 15 November 2021. However, video visits are strongly encouraged at this time for all legal and professional visitors ... While video visits are available at all correctional centres, there may be times where due to the level of demand for the service or local logistical issues, service may be delayed ...

Support for inmates: Health and other support services continue to operate. Staff hold regular briefings with inmates and provide resources and advice regarding hygiene, COVID-19 and vaccination information to inmates. Hand sanitiser, soap and disinfectant supplies are closely monitored and replenished as needed. Inmates can seek advice from Services and Programs Officers, Justice Health or the medical provider in privately operated prisons, and can contact the Customer Service Line if they have a complaint.

Vaccinations: JH&FMHN commenced rolling out vaccinations for staff and inmates in March 2021 and the vaccination program continues across the state. Vaccinations are voluntary but strongly encouraged.

Supporting vulnerable inmates: Just like in the wider community, there are inmates who are at greater risk if they contract the virus. CSNSW is working with Justice Health to ensure that the needs of those more at risk are considered. Justice Health has identified and is closely monitoring inmates at increased risk from infection, including those with a history of chronic illness and the aged.⁸⁰

- 53 Current limitations on the availability of criminogenic programs in custodial settings are outlined on the Corrective Services NSW website.⁸¹

Changes to conditions in youth detention centres in NSW

- 54 On 8 September 2021, a [letter from Youth Justice NSW to the President of the Children's Court](#) set out the following changes imposed 'in response to the emerging risk posed by the spread of COVID-19 in NSW':⁸²

1) A **quarantine process** across all YJ Centres for new admissions and those showing signs and symptoms of COVID-19. Based on Justice Health advice, these young people are isolated for 14 days and regularly tested to minimise the risk of infection in centres. Whilst they are in quarantine, young people:

- a. do not have access to face to face learning in Education
- b. may not mix with young people in the main units
- c. have limited opportunity to socialise with their peers (e.g. having meals in their rooms instead of sharing it in a common area)

⁸⁰ NSW Department of Communities and Justice, 'COVID-19 (Coronavirus) Response – Corrective Services' (Web Page, 27 January 2022). The web page also includes information about personal protective equipment requirements for staff and inmates, screening processes, the introduction of rapid antigen testing, and

⁸¹ Corrective Services NSW, 'Impact of, and Response to, Ongoing COVID Restrictions on Custody-Based Criminogenic Programs' (Web Page, 6 January 2022).

⁸² [Letter from Youth Justice NSW to the President of the Children's Court](#), 8 September 2021. **Note:** The Youth Justice NSW Covid-19 Management Plan was updated 19 August 2021, and outlines procedures for the management of new admissions and COVID-19 suspected or confirmed cases. This document is available, upon request and upon an undertaking not to distribute or publish it, to lawyers acting for children in criminal proceedings – contact Paul O'Reilly, Executive Director, Youth Justice NSW, Paul.OReilly@justice.nsw.gov.au.

- d. are restricted from accessing centre facilities that may result in the virus being spread (e.g. swimming pool)
 - e. do not have access to face to face visits but have access to video visits
 - f. have less time out of their room compared to the mainstream units. Whilst YJ works towards providing a minimum of six hour out of room time for this group, this is dependent on the number of “batches” of young people in quarantine units (e.g. a young person admitted on Tuesday is in a different batch than one admitted on Wednesday) due to limited space and resources
 - g. movements across units are restricted except for extraordinary circumstances. This includes replacing young people’s access to the AVL suite with phone calls for Court appearances
- 2) A dedicated Covid+ accommodation unit (Uralba Unit Hub) was established at Cobham Youth Justice Centre on Monday 6th September 2021. This is a State-Wide facility.
- a. Young people are subjected to 14 days lockdown/ self-isolation with 30 minutes out of room time in the morning and 30 minutes in the afternoon every day. This Unit has significant input from Justice Health and Population Health for infection control.
 - b. Once these young people complete their 14 days, and are medically discharged by Justice Health, they return to normal routines. When another young person (s) test positive for Covid they are moved into this unit and the cycle starts again.
- 55 On 8 February 2022, an updated letter from Youth Justice to the President of the Children’s Court replaced paragraph (2) above with the following:

- 2) A dedicated Covid+ accommodation unit (Uralba Unit Hub) was established at Cobham Youth Justice Centre on Monday 6th September 2021. This is a State-Wide facility.
- a. young people are subjected to 10 days lockdown/ self-isolation with a minimum of 30 minutes out of room time in the morning and 30 minutes in the afternoon every day. Time out of rooms is impacted by the number of young people housed on the unit each day. This Units routines were developed in consultation with Population Health and the CEC to ensure adequate measures in place to manage infection control.
 - b. Justice Health staff monitor young people admitted to the unit and their health needs daily. Additional Justice Health interventions are provided where necessary to ensure the health and wellbeing of the child.
 - c. Once these young people complete their 10 days, and are medically discharged by Justice Health, they return to normal routines.
 - d. When another young person (s) tests positive for Covid-19, they are moved into this unit and the cycle starts again.⁸³

⁸³ Letter from Youth Justice NSW to the President of the Children’s Court, 8 February 2022.

Impacts of restrictions on family visits

56 Prohibitions on family and social visits can adversely impact prisoners' mental health and welfare.⁸⁴ Recent Australian data indicates that '40 per cent of new prisoners and 37 per cent of discharged prisoners report being diagnosed with a mental health condition (including addiction disorders), with more than one in five (21 per cent) prison entrants reporting a history of self-harm'.⁸⁵

57 [Stewart et al](#) highlight the distress caused by isolation:

Strategies to isolate cases from other people in prison may result in additional stressors depending on how people are isolated. Isolation practices may bear similarities, or be perceived as similar, to solitary confinement, with psychological consequences especially damaging for people with preexisting mental illness. The absence of meaningful social contact, environmental stimuli and engagement in purposeful activities through solitary confinement increases the likelihood of severe psychological distress and adverse outcomes post-release.⁸⁶

58 A [2007 World Health Organization report](#) states:

Poor social and family support, prior suicidal behaviour (especially within the last one or two years), and a history of psychiatric illness and emotional problems are common among inmate suicides. Family visits may also be used as a means to foster social support, as well as a source of information about the risk for suicide of an inmate.⁸⁷

59 A [2008 study](#) on the role of loneliness in prison suicide emphasised the importance of visits and contact with family to protect against suicide and mental health issues:

Protective factors are vital components of the pathway model, especially for prisoners who may be vulnerable and are experiencing prison induced stress. Visits and contact with family, support from inmates, Samaritans, staff and prison visitors are examples of contacts that may be protective, although it is likely that it is perceptions of loneliness and social support that are most important. It appears that family members are one of the most important forms of support available to prisoners.⁸⁸

60 A [2005 study](#) found that 'less frequent face-to-face contact with children during maternal incarceration was associated with mothers' symptoms of depression, highlighting the importance of current relationship processes for women's psychological well-being'.⁸⁹

⁸⁴ [Australian Institute of Health and Welfare](#), 14; World Health Organization, [Preventing Suicide in Jails and Prisons](#) (Report, 2007) 7, 16; Alison Liebling, 'Suicides in Young Prisoners' (1993) 17 *Death Studies* 381, 393; Samantha Brown and Andrew Brown, 'The Role of Loneliness in Prison Suicide Prevention and Management' (2008) 47 *Journal of Offender Rehabilitation* 443; Alison Liebling, 'Prison Suicide and Prisoner Coping' (1999) 26 *Crime and Justice: A Review of Research* 283; Kathryn C Monahan, Asha Goldweber and Elizabeth Cauffman, 'The Effect of Visitation on Incarcerated Juvenile Offenders: How Contact with the Outside Impacts Adjustment on the Inside' (2011) 35 *Law and Human Behaviour* 143; Julie Poehlmann, 'Incarcerated Mothers' Contact with Children, Perceived Family Relationships, and Depressive Symptoms' (2005) 19 *Journal of Family Psychology* 350, 355.

⁸⁵ Cameron Stewart et al, '[COVID-19 and Australian Prisons: Human Rights, Risks, and Responses](#)' (2020) 17 *Bioethical Inquiry* 663.

⁸⁶ Ashleigh Stewart et al '[The response to COVID-19 in prisons must consider the broader mental health impacts for people in prison](#)' *Australian & New Zealand Journal of Psychiatry* (2020) 54(12). See also, Cameron Stewart et al, '[COVID-19 and Australian Prisons: Human Rights, Risks, and Responses](#)' (2020) *Journal of Bioethical Inquiry*.

⁸⁷ World Health Organization, [Preventing Suicide in Jails and Prisons](#) (Report, 2007) 7, 16 (citations omitted). See also Alison Liebling, '[Suicides in Young Prisoners](#)' (1993) 17(5) *Death Studies* 381, 393. This study reported that prisoners who had attempted suicide had less contact with the outside world than the control group.

⁸⁸ Samantha Brown and Andrew Brown, '[The Role of Loneliness in Prison Suicide Prevention and Management](#)' (2008) 47 *Journal of Offender Rehabilitation* 443.

⁸⁹ Julie Poehlmann, '[Incarcerated Mothers' Contact with Children, Perceived Family Relationships, and Depressive Symptoms](#)' (2005) 19 *Journal of Family Psychology* 350, 355 (citations omitted).

Impacts of extended lockdowns

61 Extended lockdowns may adversely affect mental health and welfare outcomes for prisoners:⁹⁰

[T]he reduction of opportunities for meaningful and structured activities for prisoners such as exercise, education, training, work, informal socialising, and the real or perceived chance of being subject to long term cell confinement ('lockdowns') will impact on prisoner's mental health and well-being. The idea of a new 'deadly virus' entering the prisoner population will also not sit well for many prisoners. These factors increase the likelihood of expressions of prisoner resistance, including riots as has been witnessed internationally and locally.⁹¹

62 In [2007](#), WHO found that levels of self-harm and suicide are higher in solitary confinement:

Three main factors are inherent in all solitary confinement regimes: social isolation, reduced activity and environmental input, and loss of autonomy and control over almost all aspects of daily life. Each of these factors is potentially distressing. Together they create a potent and toxic mix ... Levels of self-harm and suicide, which are already much higher among prisoners than in the general population, rise even further in segregation units.⁹²

Impacts of restrictions on in-person visits with lawyers

63 A [2008 report](#) by the Law and Justice Foundation of New South Wales found that 'communication with external providers of legal services can be disrupted by lockdowns' in prisons,⁹³ and that lockdowns can have substantial impacts 'on inmates meeting their legal needs as they cannot attend the prison library, make telephone calls, and, at times, not be able to meet with their legal representatives during lockdown'.⁹⁴

64 Although audio-visual links ('AVL') may be available in place of face-to-face legal visits:

... [Prisoners] revealed strong preferences for face-to-face meetings and a number of important drawbacks of AVL compared with face-to-face interactions ... An increased concern about the use of AVL for communication between lawyers and incarcerated clients is the dearth of studies evaluating the efficacy of AVL legal assistance, particularly for disadvantaged populations with complex needs ... AVL inherently alters the means by which lawyers obtain instructions from their clients, and the loss of face-to-face communication may have a greater impact on Indigenous and non-English-speaking prisoners. The physical dislocation affects opportunities for privileged discussions and restricts non-verbal communication, blocking the lawyer's assessment of the client's emotional and psychological state. As such, the technology presents challenges in establishing empathy.⁹⁵

⁹⁰ See, eg, WHO, [Preventing Suicide in Jails and Prisons](#) (Report, 2007) 16, 28; Alison Liebling, 'Suicides in Young Prisoners' (1993) 17 *Death Studies* 381, 393; Paolo Roma at al, 'Incremental Conditions of Isolation as a Predictor of Suicide in Prisoners' (2013) 233 *Forensic Science International* e1; Senate Select Committee on Mental Health, Parliament of Australia, [Inquiry into the Provision of Mental Health Services](#) (First Report, 30 March 2006) [13.108]–[13.110].

⁹¹ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, Kirby Institute, 16 April 2020) 12.

⁹² WHO, [Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention](#) (Interim Guidance, 15 March 2020) 28 (citations omitted).

⁹³ Anne Grunseit, Suzie Forell and Emily McCarron, [Taking Justice into Custody: The Legal Needs of Prisoners](#) (Report, July 2008) 192.

⁹⁴ *Ibid* 163.

⁹⁵ Carolyn McKay, 'Face-to-Interface Communication: Accessing Justice by Video Link from Prison' in Asher Flynn and Jacqueline Hodgson (eds), *Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need* (Bloomsbury Publishing, 2017) 103, 111.

Risks to the Community

Interaction between prisons and communities

- 65 [Kinner et al \(2020\)](#) highlight the connection between prisons and the broader public health response:
- Infections can be transmitted between prisoners, staff and visitors, between prisons through transfers and staff cross-deployment, and to and from the community. As such, prisons and other custodial settings are an integral part of the public health response to coronavirus disease 2019 (COVID-19). With an estimated 30 million people released from custody each year globally, prisons are a vector for community transmission that will disproportionately impact marginalised communities.⁹⁶
- 66 The [Australian Institute of Health and Welfare](#) states that ‘the prison population is fluid, with people constantly entering, and being released from prison. With more than 65,000 people cycling through prison each year, the health concerns of people in prison are also the health concerns of the general community.’⁹⁷
- 67 According to the [Australian Bureau of Statistics](#), in September 2019, 42,987 adults were in Australian prisons, with 13,660 prisoners in NSW.⁹⁸ Of the national total, 33% were unsentenced.⁹⁹ At the end of the March 2020 quarter, 9,014 prisoners in adult custody in NSW were serving sentences while 4,511 were on remand.¹⁰⁰ In the June quarter in 2019, there were 949 young people and children in detention on an average night across Australia.¹⁰¹
- 68 The [Australian Institute of Health and Welfare \(2018\)](#) noted that prisoners are at a greater risk of homelessness than the general population, finding that ‘[m]ore than half (54%) of prison discharges expected to be homeless, or didn’t know where they would stay, once released’.¹⁰²
- 69 Homelessness and COVID-19 guidelines published in March 2020 by the [Department of Communities and Justice \(NSW\)](#) state that ‘[p]eople experiencing homelessness may be at particular risk of contracting COVID19 due to crowded accommodation and potential lack of access to hygiene facilities such as showers and laundries, as well as stressed immune systems, and close contact with highly transient persons.’¹⁰³

⁹⁶ Stuart A Kinner et al, ‘[Prisons and Custodial Settings Are Part of a Comprehensive Response to COVID-19](#)’ (2020) *The Lancet Public Health* 188, 188.

⁹⁷ Australian Institute of Health and Welfare, [The Health of Australia’s Prisoners 2018](#) (Report, 30 May 2018), 4.

⁹⁸ Australian Bureau of Statistics, [Corrective Services Australia December Quarter 2019](#) (Catalogue No 4512.0, 12 March 2020).

⁹⁹ Ibid.

¹⁰⁰ NSW Bureau of Crime Statistics and Research, [NSW Custody Statistics 2020](#) (Report, March 2020).

¹⁰¹ Australian Institute of Health and Welfare, [Youth Detention Population in Australia 2019](#) (Bulletin No 148, February 2020).

¹⁰² Australian Institute of Health and Welfare, [The Health of Australia’s Prisoners 2018](#) (Report, 30 May 2018), 13.

¹⁰³ Department of Communities and Justice (NSW), [Guidelines: Homelessness Accommodation and COVID-19](#) (Report, March 2020) 3.

Risks to Aboriginal and Torres Strait Islander people and communities

- 70 Aboriginal and Torres Strait Islander people and people living in remote communities have been identified as being at a higher risk of serious infection from COVID-19 than the rest of the population.¹⁰⁴
- 71 As a group, Aboriginal and Torres Strait Islander people experience poorer health outcomes than non-Indigenous people, including lower life expectancy,¹⁰⁵ and higher rates of child mortality.¹⁰⁶
- 72 The Kirby Institute found that ‘[h]istorically, during pandemics, indigenous peoples have had higher infection rates, and more severe symptoms and death than non-indigenous populations.’¹⁰⁷ The [Australian Health Sector Emergency Response Plan for Novel Coronavirus \(COVID-19\)](#) states that ‘Aboriginal and Torres Strait Islander people are at a higher risk from morbidity and mortality during a pandemic and for more rapid spread of disease, particularly within discrete communities’.¹⁰⁸

Aboriginal and Torres Strait Islander peoples experience a high burden of chronic disease and are susceptible to infectious diseases other than non-COVID-19 that require ongoing high quality primary health care and, in some cases, specialist services, to manage ... A high prevalence of comorbidities place some individuals and communities at risk of contracting more severe cases of COVID-19. In addition, older Aboriginal and Torres Strait Islander people (over 50) and children who have experienced reduced quality of nutrition may also present as immunocompromised. This underscores why Aboriginal and Torres Strait Islander peoples are highly vulnerable, necessitating dedicated response and preparedness planning.¹⁰⁹

- 73 The 2015 [Network Patient Health Survey \(NPHS\) – Aboriginal People’s Health Report](#) found that the ‘majority of participants reported having been diagnosed with a mental illness by a clinician. A higher proportion of Aboriginal participants (men, 66.3%; women, 80.5%) had a diagnosis compared to non-Aboriginal participants’.¹¹⁰

This report clearly illustrates that the health needs of Aboriginal and non-Aboriginal patients can be markedly divergent. It is consistent with research from across the country which shows Aboriginal people are particularly vulnerable to range of diseases and experience an enduring social and economic disadvantage.¹¹¹

¹⁰⁴ Department of Health (Cth), ‘[Coronavirus \(COVID-19\) Advice for Aboriginal and Torres Strait Islander Peoples and Remote Communities](#)’ (Web Page, 30 April 2020).

¹⁰⁵ Department of the Prime Minister and Cabinet, Commonwealth of Australia, [Closing the Gap Report 2020](#) (12 February 2020). In 2015–2017, life expectancy at birth was 71.6 years for Indigenous males (8.6 years less than non-Indigenous males) and 75.6 years for Indigenous females (7.8 years less than non-Indigenous females): 75.

¹⁰⁶ Ibid. In 2018, the Indigenous child mortality rate was twice the rate for non-Indigenous children: 15.

¹⁰⁷ Paul L Simpson et al, [Updated Report on the Impact of the COVID-19 Virus on the New South Wales Prisoner Population](#) (Report, Kirby Institute, 9 September 2021) 10.

¹⁰⁸ Department of Health (Cth), [Australian Health Sector Emergency Response Plan for Novel Coronavirus \(COVID-19\): Management Plan for Aboriginal and Torres Strait Islander Populations](#) (March 2020) 4.

¹⁰⁹ Ibid 7.

¹¹⁰ Justice Health and Forensic Mental Health Network, [Network Patient Health Survey – Aboriginal People’s Health Report](#) (November 2017) xiii.

¹¹¹ Ibid 41.

International Human Rights Protections for Prisoners

- 74 International instruments provide protection for health standards for prisoners.
- 75 Article 12 of the [International Covenant on Economic, Social and Cultural Rights](#) provides that everyone has a ‘right to the highest attainable standard of physical and medical health’.¹¹²
- 76 Rule 24 of the United Nations [Standard Minimum Rules for the Treatment of Prisoners](#) prescribes that prisoners should ‘enjoy the same standards of health care that are available in the community.’¹¹³
- 77 This non-discriminatory right is similarly stated in Rule 9 of the [Basic Principles for the Treatment of Prisoners](#).¹¹⁴
- 78 The [2003 report](#) of the United Nations Special Rapporteur on the Question of Torture stated that the right to the highest standard of health protection extends to ‘persons deprived of their liberty’.¹¹⁵

¹¹² [International Covenant on Economic, Social and Cultural Rights](#), opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12.

¹¹³ [GA Res 70/175](#), UN Doc A/RES/70/175 (8 January 2016) r 24.

¹¹⁴ [GA Res 45/111](#), UN Doc A/RES/45/111 (14 December 1990) r 90.

¹¹⁵ Theo Van Boven, [Report of the Special Rapporteur on the Question of Torture](#), UN Doc E/CN.4/2004/56 (23 December 2003).