

COVID-19: Risks and Impacts for Prisoners and Communities

This document collates published research, government and parliamentary committee reports, and academic commentary in relation to COVID-19 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>

- 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 15 August 2021, a total of 39,096 cases of COVID-19 have been reported in Australia, including 958 deaths, and approximately 7,000 active cases.⁵ The active cases are predominantly in New South Wales, although there is currently a growing cluster in Victoria. The Australian Government Department of Health publishes [daily case updates](#).⁶
- 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),

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 – 15 August 2021](#)' (Web Page, 16 August 2021).

⁶ Department of Health (Cth), '[Coronavirus \(COVID-19\) Case Numbers and Statistics](#)' (Web Page, 12 August 2021).

approximately 20% progress to a more severe illness, with 6% requiring specialist medical care, including mechanical ventilation.⁷

5 According to the [Department of Health](#), people who are, or are more likely to be, at higher risk of serious illness if they contract COVID-19 are:

- people who have not been vaccinated against COVID-19;
- Aboriginal and Torres Strait Islander people 70 years and older with one or more chronic medical conditions;
- people 65 years and older with chronic medical conditions;
- people diagnosed with chronic medical conditions;
- people 70 years and older; and
- people with compromised immune systems.⁸

6 According to WHO, 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, typically within 1 metre (short-range). A person can be infected when aerosols or droplets containing the virus are inhaled or come directly into contact with the eyes, nose, or mouth.

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 remain suspended in the air or travel farther than 1 metre (long-range).

People may also become infected by touching surfaces that have been contaminated by the virus when touching their eyes, nose or mouth without cleaning their hands.⁹

7 The wider community is now subject to significant restrictions which are enforceable under state and territory legislation.¹⁰

8 The Delta variant of COVID-19 is more transmissible and severe than earlier variants of the virus.¹¹ There have been 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.¹²

Responses by Government Authorities

9 The Australian Government Department of Health has published the Communicable Diseases Network Australia ('CDNA') [National Guidelines for the Prevention, Control and Public](#)

⁷ World Health Organization, [Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention](#) (Interim Guidance, 15 March 2020). 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](#).

⁸ Department of Health (Cth), '[COVID-19 – Frequently Asked Questions](#)' (Web page, 21 July 2021). 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).

⁹ World Health Organization '[Coronavirus disease \(COVID-19\): How is it transmitted?](#)' (Web page, 13 December 2020)

¹⁰ See, eg, [Public Health \(COVID-19 Restrictions on Gathering and Movement\) Order 2020 \(NSW\)](#). Updates from each jurisdiction are published on the [Law Council of Australia website](#).

¹¹ Yale Medicine, '[5 Things to Know about the Delta Variant](#)' (Web Page, 12 August 2021).

¹² Brendan Saloner et al, '[COVID-19 Cases and Deaths in Federal and State Prisons](#)' (2020) 324 *JAMA* 602.

[Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia](#).¹³

- 10 [Corrective Services NSW](#) has made general information available on its website.¹⁴
- 11 On 24 March 2020, the *Crimes (Administration of Sentences) Act 1999* was amended by Parliament to ‘to give the Commissioner of Corrective Services the flexibility to release certain inmates early on parole in response to COVID-19’.¹⁵ The [Explanatory Note](#) to the amending instrument states that the Commissioner ‘may release an inmate on parole if the inmate belongs to a class specified in this Regulation and if the Commissioner is satisfied that it is reasonably necessary because of the risk to public health or to the good order and security of correctional premises arising from the COVID-19 pandemic’.¹⁶ Inmates prescribed as eligible for release by the Regulation include inmates ‘whose health is at higher risk during the COVID-19 pandemic because of an existing medical condition or vulnerability’ and inmates ‘whose earliest possible release date is within 12 months’.¹⁷

COVID-19 Cases in NSW Prisons

- 12 On 25 March 2020, the NSW Justice Health and Forensic Mental Health Network (‘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.¹⁸ 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’.¹⁹ On 30 July 2020, the Department of Communities and Justice confirmed that an inmate at Parklea Correctional Centre had tested positive for COVID-19.²⁰
- 13 On 11 August 2021, [ABC News](#) reported:

Health authorities say a man who returned a positive COVID test is from Walgett, 230 kilometres east of Bourke, and was in Dubbo and Bathurst during his infectious period ... The ABC understands the Walgett case is a 27-year-old man whose positive test also forced the Bathurst Correctional Centre into precautionary lockdown on Wednesday afternoon.

He was tested on Saturday while in custody at the prison in a routine screening procedure for new inmates.

He was released on bail on Monday and was confirmed as a positive result on Wednesday.

¹³ 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](#) (10 June 2021).

¹⁴ Corrective Services NSW, ‘[COVID-19 \(Coronavirus\) Response](#)’ (Web Page, 29 June 2021).

¹⁵ 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)

¹⁶ [Explanatory Note](#), Crimes (Administration of Sentences) Amendment (COVID-19) Regulation 2020 (NSW) 1.

¹⁷ Crimes (Administration of Sentences) Amendment (COVID-19) Regulation 2020 s 330(1).

¹⁸ Thalia Anthony, ‘[Explainer: How Will the Emergency Release of NSW Prisoners Due to Coronavirus Work?](#)’, *The Conversation* (online, 25 March 2020).

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

²⁰ Department of Communities and Justice (NSW), ‘[Fresh Custody Inmate in Isolation with COVID-19](#)’ (Media Statement, 30 July 2020). This was later confirmed by Justice Health: ‘[COVID-19 \(Novel Coronavirus\)](#)’ (Web Page, 31 July 2020). At time of writing, the Justice Health website does not appear to have been updated to reflect cases associated with the current outbreak.

Corrective Services NSW said a number of inmates who may have come into contact with the man are in isolation.

The department is now tracing any staff who may have also been exposed.²¹

- 14 On 17 August 2021, [ABC News](#) reported that four inmates at the Metropolitan Remand & Reception Centre ('MRRC') at Silverwater Jail have tested positive for COVID-19.²² Other media reports state that two of the cases were 'uncovered over the weekend. Their source of infection is being investigated'.²³
- 15 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.²⁴

Higher Risk of Infection in Prisons

- 16 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.²⁵
- 17 Research suggests that COVID-19 places people in prisons and youth detention centres at high risk.²⁶ As noted by Penal Reform International:

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.²⁷

- 18 WHO states that '[p]eople in prisons and other places of detention are not only likely to be more vulnerable to infection with COVID-19, they are also especially vulnerable to human rights violations'.²⁸

²¹ 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).

²² ABC News, '[Sydney News: Silverwater Jail Inmates Test Positive to COVID; Woman Dies in Caravan Fire](#)', *ABC News* (online, 17 August 2021).

²³ Greta Stonehouse and Angelo Rlso, '[NSW COVID-19 Cases "Disturbingly High"](#)', *The Canberra Times*

²⁴ Thalia Anthony, '[Coronavirus is a Ticking Time Bomb for the Australian Prison System](#)', *The Guardian Australia* (online, 26 March 2020).

²⁵ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, 16 April 2020).

²⁶ [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.

²⁷ Penal Reform International, '[Coronavirus: Healthcare & Human Rights of People in Prison](#)' (Briefing Note, 16 March 2020) 2.

²⁸ [World Health Organization](#), 8.

Higher Spread of Infection in Prisons

- 19 The World Health Organization 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.²⁹
- 20 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%;³⁰ and, overall, communicable diseases are a much more significant issue in prisons than in the general population.³¹

Risks to Prisoners' Health

- 21 The Australian Government identifies correctional centres and detention facilities as 'high risk settings'.³²
- 22 A report by experts affiliated with the Kirby Institute for Infection and Immunity in Society at UNSW suggests 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.³³
- 23 Prisons are at a greater risk of contracting serious cases of COVID-19 due to:
 - overcrowding in detention centres and the consequent lack of capability to enforce protective measures such as physical distancing;³⁴
 - prisoners' heightened vulnerability as a result of underlying health conditions;³⁵ and
 - lack of access to public health screening and treatment.³⁶

Relevance of overcrowding in prisons to COVID-19 risks

- 24 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.³⁷

- 25 The Kirby Institute's [Report on COVID-19 and the Impact on New South Wales Prisoners](#) notes that COVID-19 poses a threat to overcrowded NSW prisons and prison cells, with acute

²⁹ World Health Organization, '[Prisons and Health](#)' (Web Page, 2014).

³⁰ NSW Government Agency for Clinical Innovation, '[Elimination of Hepatitis C in a Prison Setting](#)' (Web Page, 21 June 2018).

³¹ Australian Institute of Health and Welfare, [The Health of Australia's Prisoners 2018](#) (Report, 30 May 2019).

³² Department of Health (Cth), '[COVID-19 – Frequently Asked Questions](#)' (Web Page, 11 August 2021).

³³ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, 16 April 2020) 7.

³⁴ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, 16 April 2020) 12.

³⁵ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, 16 April 2020) 6.

³⁶ Australian Institute of Health and Welfare, [The Health of Australia's Prisoners 2018](#) (Report, 30 May 2019) 111.

³⁷ Richard Coker, [Report on Coronavirus and Immigration Detention](#) (17 March 2020).

risks for prison dormitories.³⁸ The observations also relate to youth detention.³⁹ 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.’⁴⁰

- 26 Despite the introduction of the Prison Bed Capacity Program in 2016, the [Auditor-General’s Performance Audit](#) concluded that ‘[t]he prison system is crowded and operating close to available capacity.’⁴¹
- 27 [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.’⁴²
- 28 [Butler et al](#) note that ‘[s]tatistics indicate a clear trend towards increased numbers of older prisoners in Australian prisons.’⁴³

Increased vulnerability of prisoners due to underlying conditions

- 29 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.⁴⁴

- 30 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.⁴⁵

- 31 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.’⁴⁶ The 2018 National Prisoner Health Data Collection (NPHDC) survey found that ‘[a]lmost one-third (30%) of prison entrants said they

³⁸ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, 16 April 2020) 14.

³⁹ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, 16 April 2020) 7.

⁴⁰ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, 16 April 2020) 8.

⁴¹ NSW Auditor-General, [Managing Growth in the NSW Prison Population](#) (Report, 24 May 2019) 9.

⁴² Richard Coker, [Report on Coronavirus and Immigration Detention](#) (17 March 2020) 15.

⁴³ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, 16 April 2020) 8.

⁴⁴ World Health Organization, [Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention](#) (Interim Guidance, 15 March 2020) 2.

⁴⁵ Richard Coker, [Report on Coronavirus and Immigration Detention](#) (17 March 2020) 5.

⁴⁶ Australian Institute of Health and Welfare, [The Health of Australia’s Prisoners 2018](#) (Report, 30 May 2018) 57.

had a history of at least 1 of the following chronic physical health conditions – arthritis, asthma, cancer, cardiovascular disease, or diabetes.⁴⁷

General health care access and hygiene

- 32 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.’⁴⁸ The report concluded that the ‘health of people in prisons is much poorer compared with the general community.’⁴⁹
- 33 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’,⁵⁰ 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.⁵¹ The report noted that inmates recall a lack of health care as the biggest issue in all three of the inspected correctional centres.⁵²

Impacts on Prisoners Resulting from Changes to Conditions of Detention

- 34 In a [psychiatric report](#) prepared for Legal Aid NSW, forensic psychiatrist Dr Andrew Ellis opines that the COVID-19 pandemic ‘will have mental health effects [on persons in custody] by two main mechanisms’:⁵³

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 or quarantine used to combat population wide infection, which may effect a wider group.⁵⁴

- 35 The Corrective Services NSW ‘Current Situation’ [web page](#) confirms that the following measures have been implemented to date:
- Corrective Services NSW introduced video visits at the beginning of the pandemic. Video visits have become a permanent fixture;
 - If an inmate develops cold or flu-like symptoms, they are immediately isolated and assessed by a clinician to determine if a COVID-19 test is required. The inmate is monitored and will not return to their normal routine until we are confident they pose no COVID-19 risk;
 - There is a 14-day quarantine period for any new inmates entering our system. Inmates are tested upon reception to the correctional facility. During the quarantine period, inmates are monitored. If they develop cold or flu-like symptoms they will be promptly assessed by a clinician to rule out COVID-19. Inmates are only placed into the general population, when cleared by our medical providers;

⁴⁷ Australian Institute of Health and Welfare, [The Health of Australia’s Prisoners 2018](#) (Report, 30 May 2018) vi.

⁴⁸ Australian Institute of Health and Welfare, [The Health of Australia’s Prisoners 2018](#) (Report, 30 May 2018) 117.

⁴⁹ Australian Institute of Health and Welfare, [The Health of Australia’s Prisoners 2018](#) (Report, 30 May 2018) vi.

⁵⁰ Inspector of Custodial Services (NSW), [Full House: The Growth of the Inmate Population in NSW](#) (Report 2015) 11.

⁵¹ Inspector of Custodial Services (NSW), [Full House: The Growth of the Inmate Population in NSW](#) (Report 2015) 11.

⁵² Inspector of Custodial Services (NSW), [Full House: The Growth of the Inmate Population in NSW](#) (Report 2015) 11.

⁵³ Andrew Ellis, [COVID-19 and Mental Health Issues for NSW Prisoners: Report to Legal Aid NSW](#) (Expert Report, 9 April 2020) 2.

⁵⁴ Andrew Ellis, [COVID-19 and Mental Health Issues for NSW Prisoners: Report to Legal Aid NSW](#) (Expert Report, 9 April 2020) 2.

- All centres are screening staff and any persons prior to entry. This includes a body temperature check. Anyone with a temperature of 37.5 degrees or above is not permitted to enter. Similarly, anyone exhibiting cold or flu-like symptoms must not return until they are symptom free;
- For any confirmed cases of COVID-19 within the corrective system, Corrective Services NSW have established dedicated isolation hubs in existing facilities across the state. If an inmate tests positive for COVID-19, they will be transferred to one of these hubs. These dedicated care facilities will ensure that inmate health and well-being can be appropriately managed; and
- A temporary hospital has been established at the Metropolitan Reception and Remand Centre to manage inmates who become acutely unwell due to COVID-19.

36 The Corrective Services NSW website states: ‘From Thursday 24 June 2021, in-person visits will be suspended at all correctional centres. This decision was made in response to the growing cluster of COVID cases in the Sydney Metropolitan area.’⁵⁵

Restrictions on family visits

37 Prohibitions on family and social visits can adversely impact prisoners’ mental health and welfare.⁵⁶

38 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’.⁵⁷

39 [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.⁵⁸

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

⁵⁵ Corrective Services NSW ‘[Contact and Visit Inmates: COVID-19 UPDATE](#)’ (Web Page, 24 July 2021).

⁵⁶ [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.

⁵⁷ Cameron Stewart et al, ‘[COVID-19 and Australian Prisons: Human Rights, Risks, and Responses](#)’ (2020) 17 *Bioethical Inquiry* 663.

⁵⁸ 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*.

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.⁵⁹

- 41 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.⁶⁰

- 42 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.’⁶¹

Extended lockdowns

- 43 Extended lockdowns may affect the mental health and welfare outcomes for prisoners.⁶²

- 44 [Butler et al](#) identify potential adverse mental health impacts from extended cell confinement due to COVID-19 and related fears:

[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.⁶³

- 45 In a [2007 report](#), WHO found 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

⁵⁹ 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.

⁶⁰ Samantha Brown and Andrew Brown, ‘[The Role of Loneliness in Prison Suicide Prevention and Management](#)’ (2008) 47 *Journal of Offender Rehabilitation* 443.

⁶¹ Julie Poehlmann, ‘[Incarcerated Mothers’ Contact with Children, Perceived Family Relationships, and Depressive Symptoms](#)’ (2005) 19 *Journal of Family Psychology* 350, 355 (citations omitted).

⁶² See, eg, World Health Organization, [Preventing Suicide in Jails and Prisons](#) (Report, 2007) 16, 28; Alison Liebling, ‘Suicides in Young Prisoners’ (1993) 17 *Death Studies* 381, 393; Paolo Roma et 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], citing Dr Tracy Schrader, *Submission 396* to Senate Select Committee on Mental Health, Parliament of Australia, [Inquiry into the Provision of Mental Health Services](#) (May 2005) 4.

⁶³ Tony Butler et al, [Report on COVID-19 and the Impact on New South Wales Prisoners](#) (Report, 16 April 2020) 12.

self-harm and suicide, which are already much higher among prisoners than in the general population, rise even further in segregation units.⁶⁴

Restrictions on in-person visits with lawyers

- 46 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,⁶⁵ 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.’⁶⁶
- 47 Although audio-visual links (‘AVL’) may be available in place of face-to-face legal visits, Carolyn McKay reports that virtual meetings may not be as effective:

Without doubt, video links offered a level of convenience for prisoners and lawyers. Yet prisoners also 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 has been found to be functional and acceptable for legal conferencing; however, the existing (albeit limited) literature in this area reveals an overwhelming preference for in person legal meetings. 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 (Kluss 2008). 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.⁶⁷

Risks to Protection of Community

Interaction between prisons and the community

- 48 [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

⁶⁴ World Health Organization, [Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention](#) (Interim Guidance, 15 March 2020), 28 (citations omitted).

⁶⁵ Anne Grunseit, Suzie Forell and Emily McCarron, [Taking Justice into Custody: The Legal Needs of Prisoners](#) (Report, July 2008) 192.

⁶⁶ Ibid 163.

⁶⁷ 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.

year globally, prisons are a vector for community transmission that will disproportionately impact marginalised communities.⁶⁸

- 49 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.’⁶⁹
- 50 According to the [Australian Bureau of Statistics](#), in September 2019, 42,987 adults were in Australian prisons, with 13,660 prisoners in NSW.⁷⁰ Of the national total, 33% were unsentenced.⁷¹ 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.⁷² In the June quarter in 2019, there were 949 young people and children in detention on an average night across Australia.⁷³
- 51 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’.⁷⁴
- 52 Homelessness and COVID-19 guidelines published in March 2020 by the [Department of Communities and Justice \(NSW\)](#) state:

People 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.⁷⁵

Risks to Aboriginal and Torres Strait people and communities

- 53 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.⁷⁶ As a group, Aboriginal and Torres Strait Islander people experience poorer health outcomes than non-Indigenous people, including lower life expectancy,⁷⁷ and higher rates of child mortality.⁷⁸
- 54 The [Australian Health Sector Emergency Response Plan for Novel Coronavirus \(COVID-19\)](#), developed by the Aboriginal and Torres Strait Islander Advisory Group on COVID-19 and endorsed by the Australian Health Protection Principal Committee (AHPPC), states that

⁶⁸ 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.

⁶⁹ Australian Institute of Health and Welfare, [The Health of Australia’s Prisoners 2018](#) (Report, 30 May 2018), 4.

⁷⁰ Australian Bureau of Statistics, [Corrective Services Australia December Quarter 2019](#) (Catalogue No 4512.0, 12 March 2020).

⁷¹ Ibid.

⁷² NSW Bureau of Crime Statistics and Research, [NSW Custody Statistics 2020](#) (Report, March 2020).

⁷³ Australian Institute of Health and Welfare, [Youth Detention Population in Australia 2019](#) (Bulletin No 148, February 2020).

⁷⁴ Australian Institute of Health and Welfare, [The Health of Australia’s Prisoners 2018](#) (Report, 30 May 2018), 13.

⁷⁵ Department of Communities and Justice (NSW), [Guidelines: Homelessness Accommodation and COVID-19](#) (Report, March 2020) 3.

⁷⁶ Department of Health (Cth), ‘[Coronavirus \(COVID-19\) Advice for Aboriginal and Torres Strait Islander Peoples and Remote Communities](#)’ (Web Page, 30 April 2020).

⁷⁷ 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.

⁷⁸ Ibid. In 2018, the Indigenous child mortality rate was twice the rate for non-Indigenous children: 15.

‘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’.⁷⁹

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.⁸⁰

- 55 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’.⁸¹

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.⁸²

International Human Rights

- 56 International instruments provide protection for health standards for prisoners.
- 57 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’.⁸³
- 58 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’.⁸⁴
- 59 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.’⁸⁵ This non-discriminatory right is similarly stated in Rule 9 of the [Basic Principles for the Treatment of Prisoners](#).⁸⁶

⁷⁹ 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.

⁸⁰ 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) 7.

⁸¹ Justice Health and Forensic Mental Health Network, [Network Patient Health Survey – Aboriginal People’s Health Report](#) (November 2017) xiii.

⁸² Justice Health and Forensic Mental Health Network, [Network Patient Health Survey – Aboriginal People’s Health Report](#) (November 2017) 41.

⁸³ [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.

⁸⁴ Theo Van Boven, [Report of the Special Rapporteur on the Question of Torture](#), UN Doc E/CN.4/2004/56 (23 December 2003).

⁸⁵ [GA Res 70/175](#), UN Doc A/RES/70/175 (8 January 2016) r 24.

⁸⁶ [GA Res 45/111](#), UN Doc A/RES/45/111 (14 December 1990) r 90.