

28th February 2022

Re: Open Letter regarding COVID in prisons

To Chief Justice Helen Winkelmann;
Minister of Corrections Kelvin Davis;
Minister of Justice Kris Faafoi;
Minister of Police Poto Williams;
Minister of COVID-19 Response Chris Hipkins;
Attorney-General David Parker; and
Solicitor-General Una Jagose

Tēnā koutou,

Over the last two years, a crucial piece of the government response to the COVID-19 pandemic has been implementing health measures to contain and minimise the spread of the virus. This response has been met with widespread support because, as a country, we have understood that the health and wellbeing of every person in Aotearoa New Zealand is worth protecting. We address this letter to you now out of serious concern over the news of the spread of COVID-19 in prisons in Aotearoa. We call on you to apply a common sense health-based approach to better protect incarcerated people from COVID-19.

This matter is urgent. As we are seeing, an Omicron outbreak within New Zealand prisons could easily overwhelm prison health-care services and put pressure on the rest of the healthcare services.

Incarcerated people cannot meaningfully practice social distancing or have to forfeit what limited opportunity they have for leisure and social interaction to do so. The ongoing practice of double-bunking makes this even more difficult. Family or whānau visits are similarly restricted under the current Covid Protection Framework settings, adding further pressure and stress.

The spread of COVID-19 in prisons particularly puts the health of older people, pregnant people, and those with relevant pre-existing health conditions (including COPD, respiratory illnesses and those with compromised immunity) at risk.

There is an unacceptably high risk to Māori in prison, prison staff, whānau and communities from COVID-19. The Government must honour its obligations under Te Tiriti O Waitangi, and prevent this pandemic from further entrenching existing inequities for Māori. Reducing the number of people pulled into the justice system and being held in our prisons is essential to avoid further harm caused to Māori communities, individuals and frontline workers in the courts and prisons. This would also demonstrate the Government's commitment to partnership and long-term wellbeing as promised in the Police strategy Te Huringa O Te Tai and the Department of Corrections strategy Hōkai Rangī.

We call on the government to take action to protect people in the justice system from COVID-19, including through reducing the prison population, and ensuring effective health and safety measures are being implemented.

We are calling on the Chief Justice, as well as the Ministers of Corrections, Justice and Police, the Attorney-General and Solicitor-General in consultation with other relevant agencies to implement the following recommendations:

For the Chief Justice, the Attorney-General and Solicitor-General and for the Minister of Justice:

1. The Justice Sector COVID-19 Working Group must issue new guidance for bail decisions that recognises the risk of viral spread in prisons, prioritises release of people into the communities, and does not encourage criminal justice system actors to illegitimately invoke the COVID-19 context to remand people in custody or resist bail applications.
2. The Working Group should also focus on how the Government can address the practical difficulties created by COVID-19 conditions on granting bail and handing down community-based sentences by providing accommodation and transport. This is an equity issue and likely to disproportionately impact on Māori.
3. Where an individual is not currently remanded in custody and a custodial sentence is the most likely outcome, encourage judges to use the provisions already set out in the Sentencing Act to defer the start date of a sentence. Further, advise Judges that the current COVID-19 conditions in prisons should be taken into account in sentencing.
4. Encourage the judiciary to consider risk to the health of individuals, their whānau and the wider community as a factor weighing against the imposition of a short term of imprisonment, and counting towards the imposition of non-custodial alternatives.
5. Use s25 of the Parole Act to designate a “class of offenders” who have not reached their parole eligibility date who could be considered by the Board for early release, for example people with underlying health conditions that put them at greater risk of harm from COVID-19.
6. Expedite parole hearings for all eligible prisoners.
7. Identify and put in place temporary changes to bail requirements that could safely reduce the number of people held on remand.

For the Minister of Corrections:

1. Direct all prison managers that COVID-19 is a matter that affects eligibility for parole and ask them to consider additional people to be referred to the Parole Board, per

s26 of the Parole Act. This is urgent given the implications for parole eligibility for those who have had rehabilitation programmes cancelled or deferred.

2. Prioritise the release or transfer to alternative facilities of older people, pregnant people, and those with relevant pre-existing health conditions (including COPD, respiratory illnesses and those with compromised immunity).
3. Ensure that people in prison have access to AVL rooms to communicate privately with legal representation and continue with steps to improve access to AVL facilities and other options for prisoners to remain in contact with family or whānau who cannot visit in person.
4. Direct the Chief Executive to provide advice to you as to whether any legislative changes are required to ensure the safe custody and welfare of prisoners through an immediate modification order under the Epidemic Preparedness Act 2006. This advice should include the impact of the suspension of rehabilitation programmes and effective 23 hour cell lockdowns on the health and well-being of people in prisons.
5. Deny recall to prison applications by the probation service for breaches of release conditions that do not involve undue risk to the public.
6. Direct the Department to provide assistance in finding accommodation and transport for those on bail, community-based sentences, or release conditions, and prioritise the allocation of available accommodation (e.g motels) for these people to increase supported bail/release options for people being bailed, sentenced and paroled and as an alternative to being held in custody.
7. Any additional capacity resulting from a shift in focus in the health sector should be directed towards providing additional mental health and addiction support to parolees and as an alternative to incarceration.
8. Ensure that, at all times, incarcerated people have equitable access to the standard of PPE recommended by Ministry of Health guidelines.
9. Address sanitation issues in prisons, in particular the many reported instances of poor ventilation.
10. Provide air purifiers, prioritising prisons and blocks within prisons that have been identified to have poor ventilation.
11. Ensure Corrections officers are not working across different units, to minimise the opportunity for spread of COVID-19 between units.
12. Continue with efforts to ensure unvaccinated people in prisons have the information, confidence and assurances they need to accept COVID-19 vaccination when offered.

For the Minister of Police:

1. Use existing Police discretionary powers and support from AWHI to prioritise diversion over criminal prosecution, where that is consistent with public safety.
2. Ensure additional funding is available for programmes and support services offered by iwi and hapu through Pae Oranga/Iwi Community panels as soon as they resume, to help tackle the drivers of offending.

Please feel free to contact us if you would like to discuss any of the above recommendations further.

Ngā mihi,



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[Amnesty International Aotearoa New Zealand](#)



[People Against Prisons Aotearoa](#)