

PRISONER ISOLATION AND COVID-19 IN QUEENSLAND

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'Medical segregation' is being used extensively to limit the possibility of infection and spread of COVID-19. However, there is a real risk that medical segregation may amount to 'de facto solitary confinement.' Research around the world has demonstrated that placing prisoners in solitary confinement, even for short periods of time, can cause serious psychological harm which may be irreversible. It is also a serious encroachment on prisoners' human rights. Queensland's Human Rights Act has recently come into effect and this has legal implications for COVID-related responses in correctional settings. We argue here that the incursions on prisoners' human rights that have occurred in Queensland during COVID have, at times, been disproportionate to the risks posed.

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I INTRODUCTION

COVID-19 created an emergency situation unprecedented in our lifetimes. Pandemic conditions pose particular challenges in closed environments such as prisons. Since social distancing is not practicable in over-crowded prison settings, ‘medical segregation’ is being extensively used to limit the possibility of infection. However, there is a real risk that medical segregation may amount to ‘de facto solitary confinement,’¹ and research around the world has demonstrated that placing prisoners in solitary confinement, even for short periods of time, can cause serious psychological harm that may be irreversible.²

¹ ‘Coronavirus: Healthcare and human rights of people in prison’, *Penal Reform International* (Briefing Note, 16 March 2020) 8.

² Stuart Grassian, ‘Psychiatric Effects of Solitary Confinement’ (2006) 22 *Washington Journal of Law & Policy* 325, 332; Terry Kupers, ‘What To Do With the Survivors? Coping With the Long-Term Effects of Isolated Confinement’ (2008) 35(8) *Criminal Justice and Behaviour* 1005, 1006.

In this paper, we present a series of case studies to illustrate the conditions experienced by Queensland prisoners who were placed in medical isolation during COVID-19. We argue that the incursions on prisoners' human rights that occurred during this time were sometimes disproportionate to the risks posed, and that less restrictive alternatives are available.

II LEGISLATIVE POWERS TO DECLARE A 'STATE OF EMERGENCY' AND ISOLATE PRISONERS

In Queensland, legislative powers exist under the *Corrective Services Act 2006* (Qld) to enable restrictions on prisoner movement to be imposed, and visits and access to privileges to be limited, in response to COVID-19. Under Section 263 of the *Corrective Services Act 2006* (Qld) (*Corrective Services Act*), the Chief Executive (that is, the Commissioner) is made responsible for 'the security and management of all corrective services facilities' and 'the safe custody and welfare of all prisoners,' and is given the power to 'do all things necessary or convenient' in the performance of these functions. Section 268 of the *Corrective Services Act* allows the Commissioner to 'declare that an emergency exists' in relation to a prison in circumstances where the security, good order or safety of a person in the prison is threatened. The declaration may restrict activity in or access to the prison, and order the withdrawal of privileges.

The Commissioner made a series of declarations that an emergency exists in relation to all prisons in 2020. In his first declaration in March, the Commissioner stated that all visits would cease, although visits by certain professionals could still occur subject to approval.³ The restriction on personal visits was lifted in July but was then re-introduced for South-East Queensland prisons following new recorded cases of COVID-19 in the community. Initially, a separate declaration was made in respect of Wolston Correctional Centre because a staff member had tested positive to COVID-19, so higher level restrictions were imposed, involving the suspension of 'all activities in the prison' and the withholding of all prisoner privileges unless the Commissioner approved otherwise. Contact tracing was undertaken and no prisoners tested positive, so three days later it was announced that Wolston Correctional Centre would be brought into line with the other prisons.

³ Specifically, visits from accredited visitors, government visitors, commercial visitors, religious visitors, professional visitors (health and psychological), and cultural visitors (elders, respected persons and spiritual healers).

In April 2020, Queensland's corrective services facilities began implementing 'medical segregation' measures — that is, certain prisoners were isolated to limit the risk of COVID-19 infection.⁴ Between April and June 2020, there were four different groups of prisoners in Queensland who were subjected to COVID-19 isolation measures:

1. New admissions: People who entered prison from a police watch house.
2. Transfers/returns: People who were transferred between prisons or who had returned from a temporary absence from prison, such as a hospital appointment or court appearance.
3. COVID-19 contact: People who were identified as having contact with a correctional officer who tested positive to COVID-19 at a particular prison.
4. Vulnerable prisoners: Defined by the Australian Health Protection Principal Committee (AHPPC) as:
 - a. Aboriginal and Torres Strait Islander people 50 years and older with one or more chronic medical conditions;
 - b. people 65 years and older with chronic medical conditions;
 - c. people 70 years and older; and
 - d. people with compromised immune systems.

New policies relating to the medical segregation of prisoners have been introduced, adapted, withdrawn and re-introduced over time in response to the assessed risk of transmission. For example, the 'Managing Prisoner Receptions and Transfers' policy, which was introduced on 8 April, required that all new admissions and transferred prisoners be subjected to health and temperature checks and held in isolation in high security centres for 14 days. Transfers between centres were only to occur where essential, however transfers from reception and remand facilities to placement facilities continued to take place. Queensland Corrective Services (QCS) reported that isolated

⁴ 'High Level Summary of QCS Management of COVID-19 within Correctional Centres: Current 23/04/2020', *Queensland Corrective Services* (Summary, 23 April 2020) <https://corrections.qld.gov.au/wp-content/uploads/2020/04/QCS-Stakeholder-information_lr.pdf>.

prisoners would be provided with access to medical assessment and treatment, including specialist mental health services, and would receive activities such as books, drawing and writing materials. In addition, access was to be provided to normal mail processes, calls with legal representatives and facilitated telephone calls and/or videoconference connections with families.

Initially, prisoners were required to restart their isolation period if they were transferred between centres or required to leave their cell to attend an essential appointment during their 14 days of isolation. From 2 May, this policy changed and isolation periods became cumulative: prisoners who were transferred between centres or required to leave their cells would not be required to restart their 14 day isolation period unless they were transferred into police custody, a court or watchhouse, or they undertook a leave of absence. Vulnerable prisoners were grouped together in accommodation areas to minimise their contact with the broader prisoner population and staff, but they were no longer isolated in their cells.

QCS acknowledged that these policies significantly departed from usual procedures but all measures were described by QCS as ‘responsive and proportionate’ to the goal of preventing COVID-19 from entering Queensland prisons.⁵ Of course, policy documents are not always reflective of actual practice, and during the COVID-19 lockdown, lawyers and family members received reports from prisoners that isolation measures were being conducted in a manner that seemed unduly restrictive and sometimes illogical.

III COVID-19 AND QUEENSLAND PRISONS IN PRACTICE

Reporting on the current circumstances within prisons is challenging in Queensland. Section 132 of the *Corrective Services Act 2006* (Qld) states that a person must not interview or obtain a written or recorded statement from a prisoner without written approval from the Chief Executive.⁶ In light of this, our analysis draws on a series of hypothetical case studies based on lawyers’ observations in the course of their work between April and June 2020. Each case study describes the conditions experienced by

⁵ Queensland Government, ‘Changes to Isolation Policies for New and Transfer Prisoners’, *Queensland Corrective Services* (Media Release, 1 May 2020).

⁶ Prisoner is defined to include people subject to parole orders: *Corrective Services Act 2006* (Qld) sch 4; see further Tamara Walsh, ‘Suffering in Silence: Prohibitions on Interviewing Prisoners in Australia, the US and the UK’ (2007) 33(1) *Monash University Law Review* 72.

prisoners held under the four different categories of isolation listed above: newly admitted prisoners; prisoners who have returned or been transferred from somewhere external; prisoners who had contact with an officer who was diagnosed with COVID-19; and vulnerable prisoners.

A Case Study 1: New Admission

'David' was placed into isolation immediately upon his admission into prison. He was told by correctional staff that he was being isolated for 14 days because of COVID-19, however he was not given any documents relating to his isolation or confirmation of when his 14 days would expire. When David needed to leave his cell for an appointment, his isolation period had to recommence and he spent a total of 20 days in isolation. During his isolation, David was locked in his cell for 24 hours each day. His cell contained a bed, bedding, toilet, sink, shower, dustpan, and television. The toilet could only be flushed six times a day. At times, there was human waste sitting in the toilet because the flush allowance had been used.

David did not receive any access to exercise or fresh air and could not go outside. He was provided with a small number of photocopied pages of puzzles (including crosswords and word searches) to occupy his time. Several times a day, correctional staff would walk past the cell and call out asking if he needed anything. They would write down if he needed essentials, such as soap, which was later delivered through a hatch that opened in the door of the cell.

David was offered one telephone call on his admission to prison but was not able to make any telephone calls to friends or family during his isolation. He did not have access to the prison Arunta telephone system⁷ so he could not call professional agencies such as Legal Aid or Prisoners Legal Service. The lack of access to a lawyer meant that David's criminal charges were delayed for a period of two weeks because he was not able to arrange legal representation or apply for bail. He was not offered the opportunity to talk to an external

⁷ The Arunta Prisoner Telephone System is a prisoner telephone system that operates in prisons around Australia. It allows prisoners to place calls to up to 20 nominated phone numbers free of charge including Legal Aid and other legal services (including Prisoners Legal Service), ombudsmen and other independent monitors.

agency or an official visitor.⁸ The Cultural Liaison Officer came and spoke to him once but the conversation was brief and perfunctory. David did not see or speak to a doctor, psychologist or counsellor while he was in isolation. He was not provided with access to the medication he had been taking in the community prior to his incarceration.

B Case Study 2: Returning from a Temporary Absence

'Jess' was placed in isolation after she returned to prison from an external appointment. She was told by correctional staff that she was being isolated for 14 days because everyone who temporarily leaves the prison must isolate because of COVID-19, but she was not informed as to when this period would end. During her isolation, Jess was locked in her cell for 24 hours each day. She had no access to fresh air.

A psychologist employed by the prison came to speak to her every day to do a welfare check. Her lawyer attempted to arrange a telephone link but was informed by correctional staff that this would require Jess to exit her cell and restart her 14-day isolation period. As such, her lawyer waited to arrange a telephone link until the isolation period ended. This caused delays in Jess providing instructions to her lawyer about her criminal charges. Jess was given access to a headset in her cell to call her family two times while she was in isolation, but the calls were limited to approximately 15 minutes each.

She was not offered the opportunity to talk to an external agency or an official visitor. She was not offered a test for COVID-19.

C Case Study 3: COVID-19 Contact

'Peter' was placed in isolation after it was discovered he had come into contact with a correctional officer who had tested positive for COVID-19. Medical staff came to his unit and took his temperature along with a number of other prisoners. He was tested for COVID-19. The following day, he was told that he needed to be isolated because he had come into contact with a correctional officer who had tested positive, but he was not informed as to when this period would end.

⁸ Official visitors are members of the community appointed under the *Corrective Services Act* for the purpose of visiting prisoners to investigate, manage and resolve complaints.

Peter was moved from the residential unit to the secure unit within the prison, together with approximately 20 other prisoners. The secure unit is a more restrictive area than the residential unit and it is perceived by many sentenced prisoners as the 'punishment unit'.

During his isolation, Peter was doubled up in a cell with another prisoner who had also been in contact with the correctional officer who tested positive. They were locked together in the cell for 24 hours each day. Peter did not receive any access to exercise and could not go outside during his isolation. He had difficulty getting access to sufficient food and drink.

Peter was not provided access to any telephone calls in isolation. He was not offered the opportunity to talk to an external agency or an official visitor. Peter did not see or speak to a doctor, psychologist or counsellor while he was in isolation. After several days of isolation, he received test results stating that he was negative for COVID-19. The following day, he was released from isolation and returned to the residential unit.

D Case Study 4: Vulnerable People

'James' falls into one of the categories of vulnerable prisoners who is at a higher risk of serious illness if infected with COVID-19. In mid-April 2020, he was moved into medical isolation with several other prisoners who also fall into the one of the categories of vulnerable prisoners, but he was not informed as to when this period would end.

During the first 11 weeks of isolation, James was locked in his cell for 22 hours each day. There was a window in his cell but it did not open, so he had no access to fresh air in the cell.

James received access to two hours of exercise outside of his cell each day. All of the medically vulnerable prisoners in the unit were able to access an outside exercise area at the same time. The exercise area has a concrete floor, exercise equipment and access to the Arunta telephone system. However, not everyone was able to telephone friends and family as it depended on whether they had money on their telephone account and the time of day they were permitted exercise (for example family members with commitments that conflicted with the exercise yard time could not be contacted).

After approximately six weeks of isolation, James and the other medically vulnerable prisoners were provided with weekly access to an iPad to have scheduled video calls with family.

After approximately 11 weeks, James was removed from isolation. He remained in the same unit with other vulnerable prisoners, some of whom came in and out of the unit without being tested for COVID-19.

IV WERE PRISONERS' RIGHTS REASONABLY LIMITED?

A Solitary Confinement and Human Rights

Prisoners in medical isolation in Queensland are being held in effective solitary confinement. United Nations agencies have defined solitary confinement as being locked down in a cell for at least 22 hours a day with limited or no association with other prisoners and limited access to privileges.⁹ It is well-established that placement in solitary confinement conditions can result in serious psychological harm which may be irreversible. Recent research of ours suggests that people in solitary confinement can display symptoms of psychosis after only a short period of time.¹⁰ They also frequently engage in disordered and obsessive behaviour as well as acts of self-harm.¹¹

Courts around the world have found conditions in solitary confinement to breach prisoners' human rights to life, liberty and security of person, humane treatment when deprived of liberty, and freedom from cruel, inhuman and degrading treatment.¹² Each of these rights is protected in Queensland's new *Human Rights Act 2019* ('*Human Rights Act*').¹³ The *Human Rights Act* came into effect in January 2020. Under this Act, public entities, including QCS,¹⁴ are required to act and make decisions in a way that is

⁹ United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN Doc A/RES/70/175 (8 January 2016, adopted 17 December 2015) rule 44 ('*The Nelson Mandela Rules*').

¹⁰ Tamara Walsh et al, 'Legal Perspectives on Solitary Confinement in Queensland', *University of Queensland School of Law* (Report, 2020) 45-50; See also Juan Mendez, Special Rapporteur, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc A/66/268 (5 August 2011) 16.

¹¹ Walsh et al (n 10) 45-50.

¹² *Ibid.*

¹³ *Human Rights Act 2019* (Qld) ss 16, 17, 30, 37. Of course, cultural rights of Aboriginal and Torres Strait Islander peoples and the right to non-interference with family may also be relevant: *Human Rights Act 2019* (Qld) ss 25, 28.

¹⁴ *Human Rights Act 2019* (Qld) s 9(1).

compatible with human rights, and in making decisions, give proper consideration to relevant human rights.¹⁵ The Act recognises that rights may be limited, but only where they are reasonable and demonstrably justified.¹⁶ When deciding whether or not a limit is reasonable and justified, factors to be considered include the nature and purpose of the limitation, whether there are any less restrictive ways of achieving the purpose, and the importance of both the limitation and the right.¹⁷

Of course, in the context of COVID-19, certain limitations on human rights may well be reasonable and justifiable. There is clearly a legitimate purpose in preventing the spread or risk of infection, so some degree of segregation may be justified on medical grounds. However, in order to be human rights compliant, QCS is required to turn its mind to whether any less restrictive alternatives exist to achieve the same purpose. The WHO has stated that medical isolation should only occur as a matter of 'medical necessity' and that, even in the context of COVID-19, human rights protections still apply.¹⁸ Based on the case studies above, we argue that options for less restrictive limitations on human rights were available and total isolation was not always a proportionate response to the risk of infection.

B Conditions in Isolation are not Consistent with Basic Legal Protections

The *Corrective Services Regulation 2017* (Qld) establishes certain minimum requirements for prisoners subjected to separate confinement. Prisoners in solitary confinement must have access to reticulated water, a toilet and shower facilities, and they must be given the opportunity to exercise in fresh air for at least two daylight hours a day, unless a doctor or nurse has advised otherwise. As our case studies demonstrate, these minimum requirements were not always met in respect of medically isolated prisoners in Queensland. Some prisoners had limited access to food and drinking water, and restrictions on the number of toilet flushes. Neither of these conditions would seem consistent with the goal of limiting the spread of COVID-19.

¹⁵ *Ibid* s 58(1).

¹⁶ *Ibid* s 13(1).

¹⁷ *Human Rights Act 2019* (Qld) s 13(2).

¹⁸ World Health Organisation, 'Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention: Interim Guidance', *World Health Organisation Regional Office for Europe* (Report, 15 March 2020) 5.

Failing to provide prisoners with two hours out of cell time cannot be considered reasonable or demonstrably justified. Indeed, locking a prisoner down in their cell for 24 hours a day with no opportunity for fresh air or exercise may amount to cruel, inhuman and degrading treatment.¹⁹ Further, access to fresh air is vital in light of medical advice suggesting that COVID-19 is spread not only by droplets but also by aerosols.

Prisoners in isolation were often not provided with information or documentation regarding when their medical segregation period would end. *The Nelson Mandela Rules* state that a person should never be placed in indefinite solitary confinement.²⁰ The Supreme Court of British Columbia has found that not knowing when they would be released was often ‘the worst part’ of solitary confinement for prisoners.²¹

Australian courts have reduced prisoners’ sentences on the basis of the harshness of conditions in solitary confinement. For example, in *Callanan v Attendee X*,²² *Callanan v Attendee Y*,²³ and *Callanan v Attendee Z*,²⁴ Justice Applegarth stated that a sentencing judge ‘can make allowance for the fact that a person has spent part of their time in custody in unusually harsh circumstances’.²⁵ It has been confirmed in Victoria that prisoners will be able to apply for their sentence to be commuted by four days for each day spent in isolation,²⁶ and in *Scott v R*, the New South Wales (NSW) Court of Criminal Appeal reviewed the sentence of a prisoner as a result of the ‘onerous’ conditions he experienced during COVID-19 medical segregation.²⁷ Yet, the Queensland Government has made no commitment to commuting prisoners’ sentences as a result of the time they spent in medical isolation during COVID-19.

C Extreme Social Isolation and Lack of Access to Services

The WHO has acknowledged the likelihood of prisoners reacting to further restrictions differently to other members of the population, in light of the restrictions on their liberty

¹⁹ Walsh et al (n 10) 64-65.

²⁰ *The Nelson Mandela Rules* (n 9) rule 43; Mendez (n 10) 16.

²¹ *British Columbia Civil Liberties Association v Canada (Attorney-General)* [2018] BCSC 62, [159], [545].

²² [2013] QSC 340.

²³ [2013] QSC 341.

²⁴ [2014] 2 Qd R 11.

²⁵ *Callanan v Attendee X* [2013] QSC 340, [25]; *Callanan v Attendee Y* [2013] QSC 341, [25]; *Callanan v Attendee Z* [2014] 2 Qd R 11, [24].

²⁶ *Corrections Act 1986* (Vic) s 58E (Emergency Management Days).

²⁷ *Scott v R* [2020] NSWCCA 81, [166]; see also *R v KAX* [2020] QCA 218, 31.

they are already faced with.²⁸ Since contact with family members — including their children — and friends is already substantially limited, restricting contact with their support networks even further is likely to cause substantial distress.

Prisoners in medical segregation are spending extended periods of time in complete social isolation. Since many segregated prisoners are permitted to exercise together, placement in isolation for the rest of the day seems unnecessary and inconsistent. Regardless, it is important that contact with family and friends is maintained. Our case studies demonstrate that some prisoners did not have contact with family and friends at all during medical isolation, not even by phone, either because one was not made available to them or because they did not have enough funds in their prison account. The WHO has noted the importance of maintaining human contact during medical isolation, even if this can only be done remotely.²⁹ Mobile phones, free calls on the telephone system and access to videoconferencing (through iPads and other devices) could have been rapidly provided to prisoners in medical segregation. As was seen from our case studies, after many weeks some prisoners were provided with access to devices for the purpose of virtual visits. However, this could and should have occurred as a matter of urgency, particularly for prisoners with children.³⁰

Our case studies also indicated that prisoners' access to health and psychological services was often limited in medical isolation. Prisoners were not always examined by medical practitioners, despite the relevant legislative requirements.³¹ Further to this, prisoners in medical isolation did not always have access to external monitors, including official visitors.³² *The Nelson Mandela Rules* state that the use of solitary confinement should be 'subject to independent review and only pursuant to the authorisation by a competent authority'.³³ Access to lawyers has also been restricted. Since many prisoners do not have ongoing contact with family or friends, lawyers may be the only people who are

²⁸ World Health Organisation (n 18) 1, 5.

²⁹ *Ibid* 5.

³⁰ Catherine Flynn, 'Getting There and Being There: Visits to Prisons in Victoria – the Experiences of Women Prisoners and Their Children' (2014) 61(2) *Probation Journal* 176, 178

³¹ *Corrective Services Act 2006* (Qld) ss 56-57, 63-64.

³² *Ibid* s 121.

³³ *The Nelson Mandela Rules* (n 9) rule 45(1).

advocating for their wellbeing, and legal representation enables criminal charges or parole decisions to progress which can lead to a prisoner being released.

D Release from Prison as an Alternative to Isolation

Both the case studies presented above, and the relevant policy documents, demonstrate that isolation practices were not always logical or consistent with medical advice. Not all prisoners were provided with a COVID-19 test, despite the fact that not all infections are symptomatic infections. Prisoners who were at risk of having COVID-19, including those at Wolston Correctional Centre, were doubled up in cells and prisons were significantly over-crowded. Prior to COVID-19, Queensland prisons were operating at 130% of capacity, and with the recent closure of work camps, over-crowding has increased. The Coalition for the Human Rights of Imprisoned People has described this as a 'tinderbox environment' when it comes to infection control.³⁴

All Aboriginal and Torres Strait Islander people, elderly people, pregnant women and people with chronic health conditions should be considered vulnerable to COVID-19.³⁵ In April 2020, there were 3179 prisoners in Queensland that identified as Aboriginal and/or Torres Strait Islander.³⁶ Almost one in three Australian prisoners report having a chronic health condition³⁷ and 3% of prisoners are aged over 65 years.³⁸ Therefore, a significant proportion of the prison population should be considered vulnerable.

Of course, the least restrictive alternative to medical segregation for low-risk prisoners is that they be released from prison. Many prisoners could be safely released to prevent outbreaks and protect the health and welfare of both staff and prisoners, including: prisoners on remand, prisoners serving sentences of less than six months, prisoners who are within six months of the expiration of their sentence, prisoners who are eligible for

³⁴ Coalition for the Human Rights of People Imprisoned in Australia, 'Suspending Family Visits Will Not Prevent COVID-19' (Media Release, 23 March 2020) 1.

³⁵ 'Novel Coronavirus (COVID-19)', *Queensland Government* (Web Page, 2020) <<http://conditions.health.qld.gov.au/HealthCondition/condition/14/217/838/novel-coronavirus>>; Tamara Power et al, 'COVID-19 and Indigenous Peoples: An Imperative for Action' (2020) 29(15-16) *Journal of Clinical Nursing* 2737.

³⁶ 'Custodial Offender Snapshot April 2020', *Queensland Government Open Data Portal* (Web Page, 2020) <<https://www.data.qld.gov.au/dataset/custodial-offender-snapshot-statewide/resource/ea617acb-a927-4036-b994-308d8b37dfaa>>.

³⁷ Australian Institute of Health and Welfare, 'The Health of Australia's Prisoners 2018' (Report, 30 May 2019) vii.

³⁸ 'Prisoners in Australia in 2019', *Australian Bureau of Statistics* (Web Page, 5 December 2019). <<https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2019>>.

parole, prisoners who are in custody on parole suspensions or cancellations, and elderly and immunocompromised prisoners. A substantial proportion of prisoners are at low risk of reoffending: 12% of prisoners in Queensland are 'low security' prisoners and 62% of sentences are for non-violent offences.³⁹ The median prison term in Queensland is 3.9 months, so a substantial proportion of prisoners are serving very short sentences.⁴⁰ Many of these offenders pose a low risk to the community and could be safely released. Further to this, 30% of prisoners in Queensland are unsentenced,⁴¹ and could be granted bail in circumstances where the court considers this appropriate, subject to conditions if necessary.⁴²

In NSW, the *Crimes (Administration of Sentences) Act 1999* (NSW) was amended to allow the NSW Commissioner to make an order releasing low-risk prisoners on parole if the Commissioner was satisfied this was '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', taking into account their vulnerability and any risk to community safety.⁴³ No direct equivalent exists in Queensland, however powers already exist under the *Corrective Services Act 2006* (Qld) that allow for the release of prisoners in certain circumstances. The Commissioner has the power to grant a prisoner leave of absence for compassionate reasons, or for any other purpose the Commissioner considers justified.⁴⁴ Also, the Parole Board of Queensland has wide discretionary powers to release prisoners on parole, including in circumstances where it is satisfied that exceptional circumstances exist in relation to the prisoner.⁴⁵

Many people are in custody for short periods due to temporary suspensions of parole orders and in many instances, prisoners' parole is revoked in circumstances where they do not pose any significant risk to the community. In 2018/19, a total of 4015 parole

³⁹ Queensland Productivity Commission, 'Inquiry into Imprisonment and Recidivism' (Report, 31 January 2020) 192.

⁴⁰ *Ibid* 40.

⁴¹ Custodial Offender Snapshot April 2020 (n 36).

⁴² *Bail Act 1980* (Qld) ss 8 (general powers relating to bail), 10(1) (availability of Supreme Court bail), 11 (bail conditions).

⁴³ *Crimes (Administration of Sentences) Act 1999* (NSW) s 276(1); *COVID-19 Legislation Amendment (Emergency Measures) Act 2020* (NSW).

⁴⁴ *Corrective Services Act 2006* (Qld) s 72(1).

⁴⁵ *Ibid* s 194(1)(a). A prisoner can apply for exceptional circumstances parole at any time: s 176.

orders were suspended⁴⁶ and 1016 of these parole suspensions were issued because a person failed to comply with a condition of their parole order.⁴⁷ Only nine parole suspensions were issued because a person posed a serious and immediate risk of harm to another.⁴⁸ Limiting the use of parole suspensions is one means by which the prison population in Queensland could be dramatically reduced during the pandemic without compromising community safety.

V CONCLUSION

The COVID-19 pandemic has created a situation in which prisoners' human rights may have to be limited to some extent. However, placing prisoners in solitary confinement — often with no opportunity for fresh air, exercise, or contact with the outside world and for prolonged periods — cannot be considered reasonable or demonstrably justified. Less restrictive alternatives are available. Many prisoners could be released safely into the community; virtual contact with family members could be facilitated; and increased access to medical and psychological support could be available. Instead, there is a reasonable likelihood that some of the prisoners who were subject to medical isolation will experience ongoing adverse effects as a result of their time in solitary confinement. There are important lessons to be learned from this period of time. While COVID-19 transmission continues to occur in Australia, medical isolation will continue to be used in prisons and it is important that we build upon these learnings.

⁴⁶ Queensland Government, Parole Board Queensland, 'Annual Report: 2018–2019' (Report, September 2019) 27.

⁴⁷ Queensland Government, Parole Board Queensland, 'Submission to Queensland Sentencing Advisory Council: Intermediate Sentencing Options and Parole', *Queensland Sentencing and Advisory Council* (Report, 31 May 2019) 6 (data current as at May 2019 for the 2018/19 financial year).

⁴⁸ An additional 1672 parole suspensions were made because a person was considered to pose an unacceptable risk to the community and 803 were made for 'multiple reasons'. *Ibid.*

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