

31 March 2020

Disability Royal Commission  
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Dear Commissioners

Australia and the world face a public health emergency in coronavirus (COVID-19), and we understand that the Royal Commission is concerned about the wellbeing of people with disability living within closed residential facilities, including prisons, at this time.

In response to government calls to restrict the spread of the virus, prisons and other closed residential facilities have gone into 'lockdown' and visits have been cancelled. These new measures also include severe restrictions on movement within these facilities and a reduction in programs and services. It is also inevitable that solitary confinement will become a primary tool to try and manage the spread of COVID-19. Prisons often respond to public health crises in this way. As people with disability, particularly cognitive or psychosocial disability, are overrepresented in Australian prisons, they will be disproportionately impacted by the increased use of such measures.

As set out in the **enclosed** submission, international law prohibits the use of solitary confinement on people with disability when their condition would be exacerbated by such measures. Increasingly, it is accepted that solitary confinement, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment because it can cause a severe exacerbation of a previously existing mental condition, or the appearance of a mental illness where none had been observed before.

The use of solitary confinement as a primary means to prevent the spread of COVID-19 is inappropriate. It is a fundamentally harmful practice that is known to inflict long term and irreversible harm. Each of the elements inherent in solitary confinement – isolation, lack of stimulation and loss of control over daily activities – is distressing on its own. When put together, they are “a potent mix”.<sup>1</sup>

At this time, Government's across Australia should be focused on reducing the number of people trapped in prisons, particularly those living with disability. This is because solitary confinement is not only harmful, but is also an ineffective means of containing the spread of COVID-19. The very nature of prisons means that they are the perfect breeding ground for COVID-19 because people are in close proximity to others at all times. This means that once one person is infected on the inside, it will spread like wildfire throughout the prison system. The use of solitary confinement in response to this is flawed because it does not solve the issue of the daily churn of people being funnelled through the criminal legal system, nor does it address the daily influx of staff going in and out of prisons.

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<sup>1</sup> Sharon Shalev, *A sourcebook on solitary confinement* (2008) Solitary confinement, 17  
<[http://solitaryconfinement.org/uploads/sourcebook\\_web.pdf](http://solitaryconfinement.org/uploads/sourcebook_web.pdf)>.

Increased use of solitary confinement also puts people in prison – particularly Aboriginal and Torres Strait Islander people – at greater risk of dying in custody because they will not be able to easily alert prison staff if they develop symptoms of COVID-19, or if their condition worsens.

In addition to the recommendations made in our submission that the use of solitary confinement in prisons be prohibited, we ask the Royal Commission to recommend that people with disability (who do not pose a specific and immediate risk to the physical safety of another person) be granted leave from prison for the duration of the COVID-19 pandemic.

Yours sincerely

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