27 March 2020

The Hon Corey Wingard MP
Minister for Correctional Services
GPO Box 668
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By email: david.brown3@sa.gov.au

Dear Minister

Early release of prisoners

1. The Society is writing to urge you to consider the current measures being adopted by other Australian jurisdictions, most notably NSW, to provide for the early release of inmates to mitigate against a potential Coronavirus (COVID-19) outbreak in South Australian correctional facilities.

2. The Society is aware of a number of precautionary measures that the Department of Correctional Services (“the Department”) is taking at this time, including restrictions on personal and professional visitors. The Society remains in regular contact with the Department during this time regarding measures being taken by the Department with respect to prisoner health and safety.

Unfortunately, while the Department is taking a number of necessary measures, it appears likely an outbreak of COVID-19 in a correctional facility would not be able to be controlled, due to the very serious issue of overcrowding. Overcrowding will continue to be exacerbated by the suspension of new jury trials (i.e. people facing longer waits in remand etc) and other delays in the justice system caused by COVID-19.

3. An outbreak of COVID-19 not only has significant consequence for inmates and corrections staff but ultimately the community, as precious and limited health resources will have to be redirected from the community in order to address an outbreak in a correctional facility at a time when we are expecting them to already be severely strained.

4. Correctional facilities, as you would appreciate by their closed nature and design provide the perfect conditions for the spread of infectious diseases. This is further compounded by the overcrowding of prisoners. An outbreak in a correctional facility is likely to have fatal consequences given the large number of inmates with chronic health conditions, and will have a disproportionate impact on over-represented groups in prisons, such as Indigenous Australians.

5. Although measures have been taken to reduce the number of visitors to prisoners, there are still corrections staff, legal practitioners, health workers and other support workers required to work in prisons, which may lead to the spread of COVID-19 both inside correctional facilities and into the wider community.
6. The Society understands the early release of prisoners is not a matter that should be taken lightly. However, given the extraordinary and unprecedented circumstances we find ourselves in as a state and country presently, there is a need for drastic action to be taken. Your colleagues interstate have taken such actions.

7. The Society notes the Legislation Amendment (Emergency Measures) Bill 2020 (NSW) (“the Bill”) which recently passed the NSW Parliament (a copy is enclosed for your information). The Bill seeks to amend a number of pieces of legislation to deal with the implications of the COVID-19 outbreak. In particular, the Bill:

7.1 Creates a power for the Governor to make Regulations determining a class of offenders for potential release on parole; and

7.2 Allows the Commissioner of Corrective Services to prioritise vulnerable offenders and others who pose a low risk to the community for consideration for conditional release.

8. Such matters that are considered in determining a class of offenders include the age, health and vulnerability of a prisoner; the offence committed by a prisoner; and time remaining before the expiry of a sentence or non-parole period.

9. Furthermore, key factors such as the risk to community safety of releasing the inmate; the impact of the release of an inmate on any victim (including specifically a victim of domestic violence if the inmate is likely to reside with the victim on release); and the availability of accommodation if the inmate is released, must be considered before an order is made.

10. The Society understands that any conditional release under the NSW legislation would be subject to strict parole conditions, as well as any other requirements the Commissioner considers appropriate, including home detention, pre-approved schedule of movements and electronic monitoring.

11. The Society strongly supports the adoption of such measures in South Australia. The legal profession remains very concerned as to the likelihood of an outbreak of COVID-19 in a South Australian correctional facility and the impact this will have on the corrections system and the wider community.

12. The Society is asking that you seriously consider the option of early release on parole and conditional release, of suitable low-risk South Australian prisoners with strict conditions. The NSW legislation provides an appropriate model for the Department to enable it to mitigate against and reduce the impact of a COVID-19 outbreak in South Australian corrections system.

The Society would be pleased to discuss these matters with you.

Yours sincerely

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