

Supreme Court rules Victorian Government breached duty of care to person in prison in their response to COVID-19 pandemic

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In a landmark decision, the Supreme Court of Victoria has found that the Victorian Government has prima facie breached their duty to take reasonable care for the health of people behind bars during the COVID-19 pandemic.

The case, an urgent injunction brought by Fitzroy Legal Service and the Human Rights Law Centre, on behalf of a person in Port Phillip Prison with acute health needs, argued that people in prison are sitting ducks for COVID-19, and that it will only take one case to enter the prison for there to be an outbreak, which could not be stopped even if responsive measures are taken.

The case successfully argued that the Victorian Government had prima facie breached their duty of care to safeguard the health of people in prison, and that the Government must act compatibly with the Victorian Charter of Human Rights.

Monique Hurley, Senior Lawyer with the Human Rights Law Centre, said that this decision shows that the Victorian Government isn't doing enough to safeguard people in prison against COVID-19.

“Everybody deserves to be safe during a pandemic. But prisons are overcrowded and have substandard hygiene practices at the best of times. Right now, they are a COVID-19 tinderbox. This case is an important win for the rights of people behind bars in Victoria who want what we all want - to be safe. Ultimately, the Victorian Government should be looking to responsibly release certain groups of people from prison. The evidence is clear - once COVID-19 enters a prison, it will spread like wildfire,” said Hurley.

Expert evidence was given during the case showing that if COVID-19 enters the prison, it will spread more quickly than in the community, like it has in other closed environments including cruise ships, migrant worker’s dormitories and nursing homes.

The Supreme Court heard that no risk assessment of Port Phillip Prison has taken place in relation to COVID-19. While the Court did not order the release of the client, the Court ordered that a risk assessment examining the COVID-19-related risks to people in prison be carried out at Port Phillip Prison, and that any recommendations made as a result of that assessment should be implemented.

The case paves a potential pathway for people at heightened risk of COVID-19 to argue for their release in future.

Karen Fletcher, Managing Lawyer, Fitzroy Legal Service said that the Victorian Government and private prison operators have a duty to protect the people in their prisons from this pandemic.

“It is not enough to have elaborate policies on paper, they must be implemented on the ground. There is an obligation under Victorian law and international human rights law to provide the same level of healthcare in prisons as available in the community. Our client’s evidence is that the reality is that this is not happening in prisons,” said Fletcher.

In addition to the court ordered risk assessment at Port Phillip Prison, the Andrews Government must now make COVID-19 testing available to all people in prison as part of the current testing “blitz” of people in Victoria.

The Human Rights Law Centre and the Fitzroy Legal Service are calling for all Australian governments to reduce the number of people trapped in prisons by:

- Granting leave to those most at risk of COVID-19, including people with underlying health conditions, and working with those people to ensure they have safe accommodation;
- Granting early release to people in prison who are close to the end of their sentence;
- Granting parole to people in prison who have been convicted of low level offending and who pose a low risk to the community if released; and
- Allowing people on remand – who are yet to be found guilty of any criminal offending – to more easily access bail.

[Read the Human Rights Law Centre’s explainer on Prisons and COVID-19.](#)

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