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AFP

AUSTRALIAN FEDERAL POLICE



Crimes Amendment
(Remissions of Sentences)
Bill 2021

September 2021

Submission by the
Australian Federal Police

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Introduction

1. The Australian Federal Police (AFP) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Legislation Committee on the Crimes Amendment (Remissions of Sentences) Bill 2021 (the Bill). The AFP supports the reforms proposed by the Bill.

Proposed Reforms

2. The Bill proposes to repeal s19AA of the *Crimes Act 1914* (Cth). This will prevent remissions or reductions of sentences, granted under State/Territory laws, from applying to federal sentences.
3. Since the beginning of the COVID-19 pandemic, federal offenders in Victorian prisons have been granted significant remissions or reductions to their sentences, due to 'Emergency Management Days' (EMDs). An EMD can result in reductions in sentences in circumstances such as when someone has demonstrated good behaviour while suffering disruption or deprivation, during an industrial dispute or emergency, or in circumstances of an unforeseen and special nature. EMDs due to COVID19 restrictions imposed in prisons have increased the number of sentence reductions issued, resulting in offenders either serving significantly shorter sentences or being immediately released at the time of sentencing. The Bill aims to address such outcomes.

Implications for the AFP

4. The AFP is supportive of the Bill as it will ensure that federal offenders serve their sentence and are not released prematurely. Ensuring that offenders serve their sentence without remissions and reductions is essential to community safety.
5. The sentencing process takes into account a range of factors that balance risk, the nature of offending and the circumstances of the offender. Premature release, due to schemes such as EMDs, can detract from this calculus. This can result in sentences that are not proportional to the gravity of the offence committed or the risk to the community.
6. Frequent reduction of sentences during the COVID period can detract from the deterrent effect of sentencing on potential perpetrators. Sentence length can also serve to signal to the community the seriousness of an offence.
7. The incarceration of offenders limits their movements to a prison setting, removing the threat to the community for the duration of their sentence. It also provides the offender with the opportunity and time to go through appropriate programs and pathways towards rehabilitation, minimising risk to the community upon their expected release.
8. Alternative methods of managing risk once an offender is released are limited depending on the type of offender, severely limiting the ability of law enforcement to mitigate the risk posed by an offender to the community upon release. Where alternatives are

available, such as control orders in the case of terrorism offenders, it is necessary for the AFP to make a formal application to the Federal Court following the consent of the Minister for Home Affairs.

9. The AFP is particularly concerned at the possibility of early release for convicted terrorist offenders noting the risk this poses to the Australian community. The AFP believes this risk is best mitigated through terrorist offenders serving their head sentence, a position consistent with a presumption against parole and bail for offenders of this nature.
10. In the event that a convicted terrorist offender is released into the community early, circumstances may arise which prevent the AFP being in a position to apply for and have the court consider a control order. In this circumstance there is a heightened risk to the community during the period of time between release and the imposition of a control order, where the offender cannot be managed to the full extent proportionate to the risk they pose to community safety.
11. The case study below demonstrates the risk to the community that premature release can precipitate. While in this case the risk was minimised through the prior planning of law enforcement and security agencies, the Bill is likely to ensure that in the future, sentence lengths and release times are more certain and the full suite of risk management measures can be put in place prior to release.

Case Study – Adam Brookman

12. On 23 June 2021, Mr Brookman was sentenced to 6 years and 8 months imprisonment, with a non-parole period of 5 years, after pleading guilty to the charge of performing services in Syria in support or promotion of the commission of an offence against the *Crimes (Foreign Incursions and Recruitment) Act 1978* (Cth). But for his guilty plea, Mr Brookman would have been sentenced to imprisonment for 8 years and 6 months with a non-parole period of 7 years. At the time of sentencing, Mr Brookman was expected to serve an additional 9 months in custody (noting he had been in custody on remand for 5 years and 11 months). It is important to note that the sentencing judge, in her remarks, already considered and accounted for hardship caused by the COVID-19 pandemic.
13. On 23 June 2021, the same day Mr Brookman was sentenced, the AFP was advised that Mr Brookman had been granted a total of 342 EMDs pursuant to s 58E of the *Corrections Act 1986* (VIC), resulting in a reduction of Mr Brookman's overall sentence and his release into the community late on the evening of 23 June 2021. The time between sentencing and Mr Brookman's release was a matter of hours. As a high risk terrorist offender, Mr Brookman was a risk to community safety.
14. The AFP is always prepared for the possibility that a terrorist offender could be released on the basis of time served upon sentencing. As such, the AFP and its partners were well positioned to respond when Mr Brookman was released that evening as a result of the EMDs, minimising any potential threat to the community. However, from the time of his release till 6 July 2021, when an interim control order application was determined by the Federal Court of Australia, there was a short period of time where a control order was

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not in place against Mr Brookman. So, there was no formal legal framework providing for prohibitions, restrictions and obligations on Mr Brookman, having regard to the risk posed to the community.

Conclusion

15. For the reasons above, the AFP is supportive of the Crimes Amendment (Remissions of Sentences) Bill 2021.

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