

Crimes Amendment (Remissions of Sentences) Bill 2021

Submission to the Senate Legal and Constitutional
Affairs Legislation Committee

13 September 2021

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Comments on Crimes Amendment (Remissions of Sentences) Bill 2021

1. The ALA welcomes the opportunity to have input into the Senate Legal and Constitutional Affairs Legislation Committee's review of the Crimes Amendment (Remissions of Sentences) Bill 2021 ('the Bill').
2. This Bill amends the *Crimes Act 1914* (Cth) ('the Crimes Act') to repeal section 19AA, which applies remissions or reductions granted under state or territory laws to federal sentences. Most States and Territories have abolished remissions in the form dealt with under subsections 19AA(1), (1A) and (4) of the Crimes Act. Victoria is the only jurisdiction with laws providing significant remissions or reductions that are applicable to a federal offender's sentence under these subsections.
3. The ALA notes the following from the Bill's Explanatory Memorandum:

Following the use of restrictions necessary to prevent COVID-19 outbreaks in prisons since the beginning of the pandemic, emergency management days (EMDs) have been granted under the Victorian laws to federal offenders in much higher numbers than ever before (the highest so far being 342 days for one federal offender). As a result, federal offenders incarcerated in Victoria, including terrorists, child sex offenders and drug traffickers, are receiving substantial discounts off the sentence expiry date set by the sentencing court.

4. The ALA submits that the Bill should not proceed at this time, as EMDs provide an important basis for managing the spread of COVID-19 in Victorian correctional centres. Moreover, it provides a mechanism by which the number of people in Victorian prisons can be reduced.
5. The ALA is deeply concerned that there is currently a serious COVID-19 outbreak in NSW prisons, especially at Parklea Correctional Centre in Sydney's north-west at the time of writing, and access to vaccines for prisoners has faced challenges, including a lack of access to doses of Pfizer.² There is a real and imminent risk that this will also occur in Victorian prisons. This virus presents as a serious threat to the lives of detained people across Australia. It

² Michael McGowan, 'NSW corrections officials concede vaccine rollout hampered by limited Pfizer access', *The Guardian* (online, 9 September 2021) <<https://www.theguardian.com/australia-news/2021/sep/09/nsw-corrections-officials-concede-vaccine-rollout-hampered-by-limited-pfizer-access>>.

demonstrates that attempts by governments across Australia to prevent COVID-19 entering youth detention centres and prisons have been unsuccessful.

6. The ALA submits that the prison system promptly needs higher rates of vaccination and access to rapid testing, and that the number of people in the system also needs to be reduced. In 2020 the ALA, along with over 200 organisations, signed an open letter to all Australian Governments calling for the urgent implementation of measures to release people from correctional centres and reduce incarcerated populations.
7. The ALA is concerned about the reliance on lockdowns and EMDs as tools to manage COVID-19 outbreaks in detention settings, noting that in March 2021 the Department of Criminology at Oxford University reported the serious adverse impact of lockdowns on prisoners' families, particularly children. The report noted:

This loss of contact has negatively impacted children's relationships with their imprisoned parents and their mental and physical health and wellbeing. Children may not understand why contact has stopped and may blame themselves. The effects of this loss of contact and disruption to family relationships are likely to be long term and will affect family reunification and resettlement after imprisonment.³

8. The ALA submits that, where EMDs are employed as a measure to manage COVID-19 outbreaks in detention settings, it is appropriate and fair that prisoners who are the subject of such measures are eligible for any remissions as provided by State laws. The ALA submits that this also facilitates the recommended outcome of reducing prison population, which is the most effective way to avoid a serious outbreak of COVID-19 in our prison system and to ultimately protect inmates, prison staff, as well as the broader community.

Conclusion

9. While the ALA recognises the different position of Victoria to other States/Territories in relation to EMDs, the ALA submits that it is not appropriate to remove the ability of Victorian Correctional facilities to manage the outbreak of COVID-19 in correctional settings by granting EMDs to federal offenders. Accordingly, the ALA is opposed to the Crimes Amendment

³ Shona Minson, 'The impact of COVID-19 prison lockdowns on children with a parent in prison' (Report, Centre for Criminology, University of Oxford, March 2021) 3 <<https://www.law.ox.ac.uk/content/impact-covid-19-and-prison-lockdown-children-imprisoned-parent-uk>>.

(Remissions of Sentences) Bill 2021. The ALA is available to provide further assistance to the Committee on the issues raised in this submission.

Graham Droppert SC

President

Australian Lawyers Alliance