



**THE HON NICOLA ROXON MP
ATTORNEY-GENERAL
MINISTER FOR EMERGENCY MANAGEMENT**

11/20978, AG-MC12/02037

23 APR 2012
12 APR 2012

Mr Graham Perrett MP
Chair, Standing Committee on Social Policy and Legal Affairs
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Perrett

Graham

I refer to your letter of 1 March 2012 on behalf of the House of Representatives Standing Committee on Social Policy and Legal Affairs concerning the *Crimes Legislation Amendment (Powers and Offences) Act 2012* (the Act). I would like to take this opportunity to thank the members of the Committee for their work in reporting on the Act, and to respond to the Committee's request for a response to recommendations 3, 8, 9 and 10 of its report, which were not specifically dealt with during passage of the Act.

Recommendation 3 – Audit of Coercive Powers

The Committee's Advisory Report recommends that I undertake an audit of the investigative and coercive powers available to security and law enforcement agencies in order to identify the scope of those powers, their possible impact on a person's privacy, and whether any recent or further expansion of those powers is necessary or justified.

The Government carefully considers the privacy implications and justifications for any new law enforcement powers when they are introduced into Parliament. In addition, my Department and other agencies review these powers regularly, including in response to judicial decisions and operational experience. These practices will continue. I have asked my Department to provide me with advice on options for supplementing these existing practices to address the Committee's recommendation.

Recommendation 8 – Removing the retrospective application of Schedule 7 of the Act

The Act proposes that automatic parole be abolished to address concerns that the current arrangements necessitate the automatic release of federal offenders who are not considered suitable for release on parole. This is especially critical for serious sex offenders and terrorism offenders. Rather than automatically being obliged to release an offender on parole at the end of their non-parole period, I will be able to consider relevant matters, such as the offender's criminal history and the need to protect the safety of the community. I will be able to refuse parole, where for example, I receive a report from a State or Territory corrective services agency advising that a prisoner has displayed consistently poor custodial behaviour and has refused to participate in rehabilitation programs.

These amendments are scheduled to commence on a date to be proclaimed, which will be no later than six months after Royal Assent of the Act. It is appropriate and in the interests of public safety, that all parole decisions made after the commencement of the amendments be discretionary. This period will give federal offenders who are eligible for parole, for whom a parole order has not been made, sufficient notice of the changes relating to federal parole.

Importantly, if I am considering refusing a prisoner's release on parole, the prisoner will be informed of this and the reasons why such a decision is being considered. The prisoner will be given the opportunity to make a submission about their release on parole. I will take this submission into account when deciding whether or not to release an offender on parole.

These amendments will *not* affect federal offenders in relation to whom a parole order has already been made.

The Committee's Advisory Report recommends amendments to the provisions in the Act that would make the decision to grant parole to federal offenders discretionary for those sentenced to imprisonment for less than 10 years so that they would only apply to persons who are sentenced *after* the Act commences. If this recommendation was implemented, I would have no discretion to refuse release on parole to current federal offenders serving sentences of less than 10 years imprisonment, even when they are clearly unsuitable for reintroduction into the community. For the reasons outlined above, I cannot accept this recommendation.

Recommendation 9 - Establishing a Federal Parole Board

The Committee's Advisory Report recommends that the Government give further consideration to establishing a Federal parole board. I accept this recommendation. The issue is already being examined by my Department as part of its review of sentencing and administration of federal offenders.

Recommendations 10 – Explanation regarding retrospective application of amendments in Schedule 8

The Committee also recommends that an explanation by the Minister for Justice be provided to the House of Representatives regarding the need for the retrospective application of amendments proposed in Schedule 8 of the Act.

Schedule 8 allows State and Territory fine enforcement agencies to directly enforce Commonwealth fines through non-judicial enforcement action. The amendments aim to clarify the operation of existing law, and how State and Territory fine enforcement agencies can enforce Commonwealth fines. The amendments in Schedule 8 provide retrospective authority for past actions taken by State and Territory fine enforcement agencies to enforce or recover Commonwealth fines by way of garnishment of debt, wage or salary, a charge or caveat on property, seizure or forfeiture of property (or similar penalties) without first applying for a court order.

The scope of retrospectivity is limited to a bare conferral of authority for actions taken, and does not extend to treating an invalid action as a valid action. It remains possible for any affected person to challenge a past fine action on the basis that there has been some other defect in the process, other than a lack of authority on the part of the State or Territory fine enforcement agency. The Act will not change the position that the fine itself must always be imposed by a court, and the application of these amendments to past and existing orders is appropriate because the amendments aim only to clarify the operation of the existing law.

I hope this information is of assistance to you.

If you wish to discuss these matters further, please contact Lorna Clarke in my office on [REDACTED]. Alternatively, the officer responsible for these matters in my Department is Sarah Chidgey, who can be contacted on [REDACTED].

Yours in friendship

A handwritten signature in black ink, appearing to be 'Nicola Roxon', with a long horizontal flourish extending to the right.

NICOLA ROXON