



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
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Submission Cover Sheet

Inquiry into Penalties for Minor Offences and Vulnerable People

Submission Number: 004

Date Authorised for Publication: 19 April 2023



AFPA

Australian Federal
Police Association

Consultation – Inquiry into Penalties for Minor Offences and Vulnerable People

Justice and Community Safety Directorate

Submission by the Australian Federal Police Association

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Introduction

The Australian Federal Police Association (AFPA) welcomes the opportunity to make a submission regarding penalties for minor offences and vulnerable people.

The AFPA

The AFPA is a registered organisation and an autonomous sub-branch of the Police Federation of Australia. The AFPA represents the industrial, political, and professional interests of members of the Australian Federal Police ("**the AFP**"), law enforcement officials in the Australian Criminal Intelligence Commission, and members of the Department of Parliamentary Services.

Our members provide an essential service to Australia. They are the backbone of the Commonwealth's principal law enforcement agency, performing crucial investigative, intelligence and national security functions.

The AFP is responsible for:

- providing community policing services to the Australian Capital Territory and other territories, including Christmas Island, Cocos (Keeling) Islands, Norfolk Island and Jervis Bay,
- enforcing Commonwealth laws that combat complex, transnational, serious and organised crime, child exploitation, fraud, corruption, and cybercrime,
- protecting Australians and Australian interests from terrorism and violent extremism,
- removing wealth and property from criminals that have been illegally obtained,
- protecting Commonwealth infrastructure, including designated airports, Parliament House, and embassies,
- protecting domestic and foreign dignitaries, including the Governor-General, Prime Minister, and ambassadors,
- protecting at-risk individuals,
- representing Australian police and law enforcement at an international level, and
- developing unique capabilities and exploiting advanced technology to support Australia's national interests.

AFPA Response

The AFPA has been campaigning for over ten years to have offence provisions created and implemented in the ACT that would better support vulnerable community members, as well as protect Australian Federal Police (AFP), ACT Policing (ACTP) officers, and frontline community service providers.

In response to the invitation from the Justice and Community Safety Directorate via email on 7 March 2023, the AFPA can provide the following advice:

The Committee is especially interested in the impact of penalties for minor offences on vulnerable people, including Aboriginal and Torres Strait Islanders, young people, detainees, welfare recipients, the homeless and people with disabilities and/or mental health issues.

The AFPA has had a long history of representing and assisting community policing members in relation to their interactions with vulnerable community members in the ACT. The AFPA's members are especially aware of the common effects of financial penalties on:

- Persons experiencing severe financial hardship.
- Persons living with such disabilities and/or mental illnesses that may preclude their earning a median-level income.
- Persons from a Culturally or Linguistically Diverse (CALD) background. A CALD background could equate to difficulty with reading, writing and speaking English.
- Persons identifying as Aboriginal and/or Torres Strait Islander.

Subsection 1 – Aboriginal and Torres Strait Islander people living in the ACT.

Approximately 1.9% of ACT residents identify as Aboriginal and/or Torres Strait Islander, yet they are over-represented in the adult prison population by a factor of ten (24%)¹².

Aboriginal and Torres Strait Islanders can and do experience significantly poorer and more dangerous social outcomes as a result of defaulting on financial penalties.

The Australian Government's Closing the Gap policy platform defines its core goals as being:

- To reduce the overall rates of incarceration of Aboriginal and Torres Strait Islander adults by 15% by 2031,
- To increase the proportion of Aboriginal and Torres Strait Islander people aged 25-64 who are employed to 62%, and
- To increase the proportion of Aboriginal and Torres Strait Islander people living in appropriately sized (not overcrowded) housing to 88%

by 2031³.

¹ <https://www.aihw.gov.au/reports/australias-welfare/profile-of-indigenous-australians>

² <https://www.pwc.com.au/indigenous-consulting/assets/indigenous-incarceration-may17.pdf>

³ <https://www.closingthegap.gov.au/national-agreement/targets>

The AFPA thus advises that any existing provisions for financial penalties not aligned with or otherwise preventing the goals of Closing the Gap from being achieved by 2031 **should be reviewed with a view to implementing alternate pathways** for people identifying as Aboriginal and/or Torres Strait Islander.

The Association's position is very heavily influenced by our relationship and engagement with members of the Ngunnawal community, as well as the members of the AFP's Mallunggang Indigenous Officers Network (MION).

For this reason, we unconditionally defer to these specific community groups to describe and suggest alternate pathways for Indigenous peoples which would be more aligned with all of the targets of Closing the Gap.

Scope

- The AFPA's position is limited to those offences that would be considered minor, for example, minor theft, unlawful possession of stolen property, offensive behaviour, minor driving offences or public mischief.
- A selection of example offences is:
 - Criminal Code 2002: 321 - Minor theft, 324 - Unlawful possession of stolen property⁴
 - Criminal Act 1900: 391 - Fighting, 392 - Offensive behaviour, 396 - Public Mischief⁵.
 - Road Transport (Safety and Traffic Management) Act 1999: 6 - Negligent driving, 7 - Furious, reckless or dangerous driving⁶.

The AFPA also asserts that a custodial sentence must ultimately still be imposed as a last resort if financial penalties or any alternative strategies prove ineffective in deterring a particular person from repeatedly committing the same or similar crimes.

Effectiveness of diversions and pathways:

In Australia

Over the last decade, completion of community corrections orders has typically hovered around 72% Australia-wide⁷.

Overseas

In preparing this submission, the AFPA examined youth diversionary programs used in Canada and New Zealand.

Canada

⁴ <https://www.legislation.act.gov.au/a/2002-51/>

⁵ <https://www.legislation.act.gov.au/a/1900-40>

⁶ <https://www.legislation.act.gov.au/a/1999-80/>

⁷ <https://www.pc.gov.au/ongoing/report-on-government-services/2022/justice/corrective-services/rogs-2022-partc-section8-corrective-services-data-tables.xlsx>

The Youth Criminal Justice Act (YJCA) contains provisions to increase the appropriate use of extrajudicial measures for less serious offences; the YJCA requires police to consider whether these alternate provisions would be a more appropriate pathway in a particular situation⁸:

- no further action
- warnings
- police cautions
- Crown cautions
- referrals
- extrajudicial sanctions

S. 734 of the Criminal Code is especially relevant when considering the suitability of financial penalties to deter crime, determining the amount of such a penalty, and the consequences which should result from non-payment⁹:

S. 734 (2) — except when the punishment for an offence includes a minimum fine or a fine is imposed in lieu of a forfeiture order, a court may fine an offender under this section **only if the court is satisfied that the offender is able to pay the fine** or discharge it under section 736 (*s. 736 refers to work performed by the offender to settle the debt*)

S. 734 (4) — where an offender is fined under this section, a term of imprisonment.... shall be deemed to be imposed in default of payment of the fine.

New Zealand

Children and young people who are charged with an offence will generally be directed to the Youth Court. Most children and young people who allegedly commit offences will not come to the Youth Court but will be subject to police alternative action and diversion – unless their alleged offending is particularly serious or repetitive. Alternative action plans involve:

- home visits
- written or face-to-face apologies
- making reparations
- participating in projects, programs, or courses
- education
- curfews
- warnings

AFPA Recommendations

The AFPA has duly examined and considered the diversionary landscapes in Canada and New Zealand; however, as roughly a quarter of community corrections orders made in Australia are not complied with, the use of financial penalties should be supported in the ACT to help prevent recidivist

⁸ <https://www.justice.gc.ca/eng/cj-jp/yj-jj/tools-outils/back-hist.html>

⁹ <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-734.html>

crime in the primary instances (meaning, the first and second time a person re-commits the same minor offence), where alternative strategies are not suitable or not complied with.

In keeping with our view that the primary focus should be to prevent recidivism while imposing some form of deterrent, we believe that alternative strategies should be the primary means of penalising offenders. Alternative strategies could include formal warnings; curfews; unpaid work for approved organisations; education programs, and other pro-social activities.

Should alternative strategies be determined not to be suitable in the circumstances, then financial penalties could be imposed. However, fines should not be issued to children under the age of 14 or to individuals with a mental or cognitive disability.

The position of the AFPA is that financial penalties must act as a deterrent but not be outside of a person's means to pay any fine imposed. Further to this, financial penalties should not endure ad infinitum in the cases of recidivist crime continuing beyond the third instance.

The AFPA's general recommendation is a tiered approach of increasing financial penalties, calculated based on a specified percentage of the offender's weekly take-home wage:

- First reoffence – a maximum of 1% of their weekly earnings
- Second reoffence – a maximum of 5% of their weekly earnings
- Third reoffence – a maximum of 20% of their weekly earnings

If the person continues to recommit the same offence more than three times or defaults on payment at any of these three stages of financial penalty, the next step should be to assess appropriate escalation.

The AFPA understand that there may be circumstances where an offender may not be able to pay in accordance with any fine imposed. In these circumstances, options could include a deferral of repayments, a reduction in weekly payments, or a waiver of part or all of the debt.

If the above strategies ultimately prove ineffective, then punishment should shift to a custodial arrangement where it is deemed appropriate.

Conclusion

The AFPA again thanks the Justice and Community Safety Directorate for the opportunity to participate in its consultation.

If the AFPA can be of any further assistance to the Justice and Community Safety Directorate, we invite you to contact the AFPA Media and Government Relations Manager, Mr Troy Roberts, on [REDACTED]