

COMMONWEALTH OF AUSTRALIA

CRIMES ACT 1914

APPLICATION FOR EARLY RELEASE ON LICENCE

EARLY RELEASE

Under the *Crimes Act 1914* there are two mechanisms in which prisoners may be released earlier than the release date set by the Court, if certain circumstances are met. These are early release on licence, and up to 30 days early parole. The attached application form is for early release on licence. If you wish to apply for up to 30 days early parole, please see information at the end of this information sheet.

EARLY RELEASE ON LICENCE—GENERAL INFORMATION

What is an early release on licence?

Under section 19AP of the *Crimes Act 1914* the Attorney-General or their delegate is permitted to grant a licence for a federal offender to be release from custody before the date set by the sentencing court, if he/she is satisfied that exceptional circumstances exist which justify the granting of a licence for early release.

All applications for early release are judged on a case by case basis. A copy of section 19AP of the Crimes Act 1914 is attached.

Early release on licence is only available to federal offenders serving a federal sentence of imprisonment (with or without a non-parole period) or a recognizance release order.

It is important to note that an early release on licence under section 19AP of the Crimes Act is dealt with differently to applications for 30 day early parole under subsection 19AL(1) or (2). A copy of section 19AL is also attached.

An application for early release on licence may be dealt with at any time during a prisoner's sentence. An application for 30 days early parole will generally be dealt with at the same time as consideration of parole.

What is the process for an Early Release on Licence?

Applications for early release on licence must be in writing and the exceptional circumstances, on which the offender is relying, to justify their release, should be included. An application form is attached. A completed application should be submitted with all additional documentation attached to support the offender's application.

Once the application form is completed and all documentation has been received, the offender's

case will be submitted to the Attorney-General or their delegate for consideration. The offender will be advised of the decision in due course.

As the Department may need to make further enquiries to substantiate the offender's claims and may rely on other agencies to provide information, an estimated timeframe for a decision cannot be provided.

What is considered by the Attorney-General or their delegate when making a Licence for Early Release?

The Crimes Act does not define 'exceptional circumstances', but the relevant extract from the Explanatory Memorandum to Part 1B states:

'Exceptional circumstances' is generally intended to cover matters that occur after a prisoner has been sentenced and that significantly affect a federal offender's circumstances. Such circumstances may include extensive cooperation with law enforcement agencies or development of a serious medical condition which cannot be adequately treated within the prison system. Excellent conduct, remorse or contrition, or family hardship (unless of an extreme kind) would not normally constitute exceptional circumstances.

Each application for early release will be assessed on its own merits.

Medical Grounds

If the offender is relying on medical grounds to justify their early release application, the Department may seek medical records on the offender's behalf. Should the Department require the offender's medical records the offender will be asked to sign a consent form authorising the release of their medical records. This form advises the relevant medical service that the offender gives permission for the Department to have access to their medical records. An authority to release medical records is attached.

In some cases, the Department will seek other reports to substantiate the claims made in the offender's application. This request may seek specific comment from the prison medical service and/or specialist medical services as to the conditions claimed in the application. The Department will also request information regarding the treatment that is being provided and whether the medical conditions are able to be adequately treated within the prison system.

Please be advised that when relying on medical grounds for an early release on licence application, your medical condition must be of such a serious nature that it cannot be managed within the prison system. In previous cases where a person has been granted early release on licence based on

medical grounds, their medical condition has been deemed as terminal and they were not able to be managed by the prison system. In these cases the person was released from prison, but was moved to a high care facility for treatment.

Family hardship

If the offender is applying for early release based on a family member suffering a serious medical condition, please provide medical reports to substantiate your claims. This should include the seriousness of the family member's condition, if the condition is terminal and an assessment as to the life expectancy of the family member.

Generally, family hardship (unless of an extreme kind) does not constitute exceptional circumstances. If an offender is basing an application on family hardship, the Department may need to make enquiries with the relevant family services in the applicable State or Territory.

Cooperation with law enforcement agencies

Post-sentence cooperation arises where a person provides information to law enforcement agencies and/or gives evidence in court after the person themselves have been sentenced. Due to the sensitivities of these cases, they are only submitted to the Attorney-General or the Minister for Justice for a decision to be made.

In cases of post-sentence cooperation, the Department will seek reports from the appropriate law enforcement agencies regarding the information the offender has provided. The agencies will be requested to provide comment on the type of cooperation, the usefulness of the information and whether the information led to an arrest, prosecution or conviction.

If an appeal is pending on the offender's own case, the early release application based on the post-sentence cooperation will only be considered once the appeal has been finalised.

Issues that may prevent an application for early release being processed

Under subsection 19AP(5) the Attorney-General or their delegate is not required to consider more than one application for early release on licence per year. Generally, subsequent applications will be reconsidered if the federal offender's circumstances have changed or new information or grounds are included.

If the offender has an appeal pending, for example, the offender is appealing against their conviction and/or the length of their sentence, the offender's application for early release cannot be progressed until an outcome on the appeal has been received. Once the outcome of the offender's appeal is known and the Department has been notified, the offender's application will be processed.

If the offender is relying on medical grounds and does not complete and sign the medical authorisation form, this will delay the processing of the application.

An application for early release on licence cannot be processed until all documentation has been received. Failure to complete the application form and attach supporting documentation, will delay the processing of this application.

Review

The Attorney-General or their delegate's decision is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*

How do I apply?

Please note that the Department does not provide legal advice to an applicant in relation to their application.

It is recommended that you use the attached application form as it will prompt you to provide the information required for your case to be considered. However, letter applications are also accepted.

Once you have completed your application and attached all supporting documentation, please send to:

Principal Legal Officer
Federal Offenders Unit
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

19AP ***Release on licence***

- (1) Where a person is serving a federal sentence (whether or not a non-parole period has been fixed, or a recognizance release order made, in relation to that sentence), the Attorney-General may grant a licence under this subsection for the person to be released from prison.
- (2) A person who is serving a federal sentence of imprisonment (whether or not a non-parole period has been fixed, or a recognizance release order made, in relation to that sentence), or another person acting on that person's behalf, may apply to the Attorney-General for a licence under this subsection for the first-mentioned person to be released from prison.
- (3) An application under subsection (2) must:
 - (a) be in writing; and
 - (b) specify the exceptional circumstances relied on to justify the grant of the licence.
- (4) The Attorney-General must not grant a licence under this section unless he or she is satisfied that exceptional circumstances exist which justify the grant of the licence.
- (5) The Attorney-General is not required to consider an application under subsection (2) in respect of a person if an application has been made under that subsection in respect of that person within one year before the first-mentioned application.
- (6) A licence in relation to a person:
 - (a) if the person is subject to a federal life sentence—must specify the day on which the licence period ends, being a day not earlier than 5 years after the person is released on licence; and
 - (b) if it is proposed that, for any part of the licence period, the person should be subject to supervision—must specify the day on which the supervision period ends, being a day fixed in accordance with the requirements of the definition of *supervision period* in subsection 16(1).
- (7) A licence:
 - (a) is subject to the condition that the offender must, during the licence period, be of good behaviour and not violate any law; and
 - (b) if, under subsection (6), the day on which a supervision period ends is fixed in the licence—is subject to the condition that the offender must, during the supervision period, be subject to the supervision of a person specified in the licence and obey all reasonable directions of that person; and
 - (c) is subject to such other conditions (if any) as the Attorney-General specifies in the licence.
- (8) The Attorney-General may, at any time before the end of the licence period, by order in writing,

amend a licence by varying or revoking a condition of a licence or by imposing additional conditions on a licence or by any or all of those means.

- (9) An amendment of a licence does not have effect until notice of the amendment is given to the offender, being notice given before the end of the licence period.
- (10) A licence directing that the offender be released from prison is sufficient authority for the release.

AUTHORITY
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TO:

I, <name>, HEREBY AUTHORISE and direct you to release records and reports relating to my medical condition to the Federal Offenders Unit, Criminal Justice Division, Attorney-General's Department, Robert Garran Offices, Barton ACT 2600.

I understand that the information will only be used in considering my application for early release from prison on medical grounds.

(signature)

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EARLY PAROLE—GENERAL INFORMATION

What is 30 days early parole?

Under paragraph 19AM(1)(a)(ii) of the Crimes Act, the Attorney-General or delegate may approve a prisoner's early release on parole up to 30 days before the expiry of the non-parole period.

Delegates have generally only granted early parole in cases where a specific event directly related to the prisoner's rehabilitation is scheduled to occur in the 30 days before the expiry of the prisoner's non-parole period. If a federal offender considers that they may be eligible for up to 30 days early parole, supporting documentation must be attached evidencing the claim.

How to apply for up to 30 days early parole

Applications for early parole are normally considered at the same time as the decision on whether to release the offender on parole. Prisoners seeking up to 30 days early parole should write to the delegate no later than four months before their earliest eligible parole release date, setting out any grounds they wish to put forward. All applications for 30 day early parole are judged on a case by case basis.

19AM Release on parole—when is a person released

(1) A person must be released from prison on parole in accordance with a parole order on whichever of the following days is applicable (subject to subsections (2) and (3) and 19AZD(2)):

(a) for a parole order made before the end of the non-parole period—the earlier of the following days:

- (i) the last day of the non-parole period;
- (ii) an earlier day (if any) specified in the parole order for the purposes of this subparagraph (not being earlier than 30 days before the end of the non-parole period).