

# Chapter 1

## Introduction and background

### Referral

1.1 On 3 December 2015, the Criminal Code Amendment (Firearms Trafficking) Bill 2015 (the Bill) was referred to the Senate Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 2 February 2016. Appendix 5 to the Senate Selection of Bills Committee report gave the following reasons for the Bill's referral:

For further scrutiny of the Bill and an opportunity for stakeholders to raise any concerns with the introduction of mandatory minimum sentencing.<sup>1</sup>

### Conduct of the inquiry

1.2 Details of the inquiry, including links to the Bill and associated documents, were placed on the committee's website.<sup>2</sup> The committee wrote to organisations and individuals inviting submissions by 7 January 2016.

1.3 The committee received 9 submissions which are listed at Appendix 1. The committee thanks those organisations and individuals that made submissions.

1.4 The committee did not hold a public hearing.

### Purpose of the Bill

1.5 The Bill seeks to amend the *Criminal Code Act 1995* (Criminal Code) to introduce a mandatory minimum sentence of imprisonment for the offences of trafficking firearms or firearms parts within Australia and into and out of Australia. The Bill would also increase the maximum penalties for those offences.

1.6 The Bill would give effect to the Commonwealth government's election commitment to strengthen criminal penalties for gun related crime.

1.7 The Minister for Justice and Minister Assisting the Prime Minister on Counter-Terrorism the Hon Michael Keenan MP explained that the amendments were primarily intended to have a deterrent effect:

The combination of mandatory minimum penalties and increased maximum penalties will send the strongest possible message to the community that the illegal trafficking of firearms will not be tolerated and will act as a strong disincentive for people who would seek to illegally import firearms and gun parts into Australia.<sup>3</sup>

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1 Selection of Bills Committee, *Report no. 16 of 2015*, Appendix 5, p. 1.

2 [www.aph.gov.au/senate\\_legalcon](http://www.aph.gov.au/senate_legalcon).

3 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister on Counter-Terrorism, *House of Representatives Hansard*, 2 December 2015, p. 14 439.

## Overview of the Bill

1.8 The Bill would introduce a mandatory minimum five-year term of imprisonment for the existing offences of trafficking firearms or firearms parts within Australia (Division 360 of the Criminal Code) and trafficking firearms or firearms parts into and out of Australia (Division 361 of the Criminal Code).<sup>4</sup>

1.9 Proposed new sections 360.3A and 361.5 would each provide that the court must impose a sentence of at least 5 years imprisonment for a person convicted of a relevant firearms trafficking offence. Penalties would be applied unless it is established on the balance of probabilities that the person was under 18 years when the offence was committed.

1.10 The Bill would repeal penalties of imprisonment for 10 years or a fine of 5,000 penalty units or both, currently found in both divisions. It would substitute greater penalty of imprisonment for 20 years or a fine of 5,000 penalty units or both.

1.11 The proposed amendments would apply only in relation to conduct engaged in at or after the commencement of Schedule 1: the day the Act receives royal assent.

## Background to the Bill

1.12 The Commonwealth government's 2013 election commitment to introduce a mandatory term of imprisonment for Commonwealth firearms offences was included in the *Coalition Policy to Tackle Crime*, released in August 2013. The Coalition stated that it would 'send people to jail for a minimum of five years if they are caught bringing illegal firearms into Australia.'<sup>5</sup>

1.13 Since then, the government has introduced into Parliament amendments to insert a mandatory minimum sentence for firearms offences in three separate bills, followed by the removal of the relevant amendments on two occasions.

1.14 The Minister for Justice and the Minister Assisting the Prime Minister on Counter-Terrorism has explained the timely reintroduction of a mandatory minimum sentence in this Bill in the following terms:

The imperishable nature of firearms and the ongoing supply of firearms to the illicit market mean they remain a serious threat to the Australian community. Now, more than ever, we must do everything in our power to ensure the ongoing safety and security of all Australians. That is why the government is again introducing increased penalties to disrupt the illicit firearms market in Australia.<sup>6</sup>

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4 The offences of trafficking firearms into and out of Australia were introduced by the *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Act 2015*.

5 Liberal Party of Australia and the Nationals, *The Coalition's policy to tackle crime*, Coalition policy document, Election 2013, accessed 5 January 2015, p. 8.

6 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister on Counter-Terrorism, *House of Representatives Hansard*, 2 December 2015, p. 14 438.

1.15 The role of firearms in the Martin Place Siege in 2014 was referred to by the minister upon introducing the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015 during 2015. The minister stated that those amendments, which included a minimum mandatory sentence:

...reflect the Australian Government's commitment to act quickly to implement the firearms-related recommendations from the joint Commonwealth–NSW Review into the Martin Place Siege.<sup>7</sup>

### **Previous consideration by this committee**

1.16 The committee has previously considered a proposed mandatory minimum five-year term of imprisonment for firearms offences in its inquiries into the Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014 and the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015. On both occasions, the committee recommended that the Bill be passed; the provisions relating to the mandatory term of imprisonment were removed before these bills passed the Senate.

### **Consideration of the Bill by other committees**

1.17 Consideration of the Bill by the Senate Standing Committee for the Scrutiny of Bills was not available at the time of drafting this report; however, the Scrutiny of Bills committee noted in relation to the 2014 and 2015 bills that mandatory minimum sentencing 'may be considered to trespass unduly on personal rights and liberties' and left the question to the Senate as a whole.<sup>8</sup>

1.18 The Parliamentary Joint Committee on Human Rights has not considered the Bill at the time of drafting. However, the Statement of Compatibility with Human Rights in the explanatory memorandum states that the Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.<sup>9</sup> The statement of compatibility also clarifies that the mandatory minimum sentence is not intended to be used as a 'sentencing guidepost',<sup>10</sup> consistent with the Human Rights Committee's recommendations in relation to the Crimes Legislation Amendment

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7 The Hon Michael Keenan MP, Minister for Justice and Minister Assisting the Prime Minister on Counter-Terrorism, 'Tough penalties to tackle gun crime', Media release, 19 March 2015, <https://www.ministerjustice.gov.au/Mediareleases/Pages/2015/FirstQuarter/19-March-2015-Tough-Penalties-To-Tackle-Gun-Crime.aspx> (accessed 20 January 2016).

8 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 10/14*, p. 11; Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 4/15*, p. 12.

9 Explanatory Memorandum to the Criminal Code Amendment (Firearms Trafficking) Bill 2015, Statement of Compatibility with Human Rights, pp 4–5.

10 Parliamentary Joint Committee on Human Rights, *Twenty-second report of the 44th Parliament* (13 May 2015), p. 38.

(Psychoactive Substances and Other Measures) Bill 2014 and the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015.<sup>11</sup>

### **Other relevant inquiries**

1.19 The Joint Commonwealth–New South Wales Review into the Martin Place Siege (January 2015) considered mandatory minimum sentences within the Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014, commenting that the suite of amendments would 'strengthen the Commonwealth's ability to tackle illegal trafficking of firearms and firearms parts into and out of Australia'.<sup>12</sup> The report's recommendations were not on the subject of firearms trafficking, but rather addressed regulation of the firearms market more generally.

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11 Parliamentary Joint Committee on Human Rights, *Twenty-second report of the 44th Parliament* (13 May 2015), p. 38; Parliamentary Joint Committee on Human Rights, *Fifteenth report of the 44th Parliament* (November 2014), p. 32; Parliamentary Joint Committee on Human Rights, *Nineteenth report of the 44th Parliament* (3 March 2015), pp 106–7.

12 *Martin Place Siege: Joint Commonwealth–New South Wales Review*, January 2015, p. 49.