

Dissenting Report of the Australian Labor Party

1.1 While Labor Senators agree with the report's commentary in relation to increased penalty provisions, we have serious concerns about the introduction of mandatory minimum sentences for those convicted of firearm trafficking offences.

1.2 The Australian Labor Party maintains its position that the introduction of mandatory minimum sentences for firearms trafficking offences should be avoided. We note that these provisions have now twice been considered and rejected by Parliament, including by this Parliament in relation to the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015. The government has, for a third time, failed to justify the need for such provisions.

1.3 Effective deterrence is achieved by increasing penalties applicable to the most serious firearms offenders, rather than by imposing prison terms on the least serious offenders.¹ Labor Senators have previously made this point in relation to the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015 by recommending 'that the imposition of mandatory minimum sentences for firearms trafficking offences be replaced with increased penalty provisions'.²

1.4 Increasing maximum penalties for firearms trafficking reflects community concern about the consequences of serious firearms offences, and mirrors the regime of penalties proposed by Labor when it was in Government. It would send a strong message to serious criminals about the consequences of firearms trafficking.

1.5 Introducing mandatory minimum sentences for firearms trafficking, on the other hand, will make no contribution towards sustaining or enhancing Australia's firearms control regime, and as demonstrated by submissions to the inquiry from peak law organisations.³ For example, the AHRC submitted that the explanatory memorandum contains 'no evidence' that mandatory minimum sentences deter offenders from firearms trafficking and that 'empirical evidence from [other] jurisdictions... suggests the opposite'.⁴

1.6 As well highlighting the lack of evidence for their effectiveness, submitters identified a range of unintended consequences flowing from the introduction of mandatory minimum sentences for firearms offences. The LCA stated that the amendments carry risk of:

1 Law Society of NSW, *Submission 3*, p. 2; Law Council of Australia, *Submission 4*, p. 3; Australian Human Rights Commission, *Submission 5*, pp 12–13; NSW Council for Civil Liberties, *Submission 6*, p. 2.

2 Senate Legal and Constitutional Affairs Committee, *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014*, Dissenting report, September 2014, p. 28.

3 NSW Council for Civil Liberties, *Submission 6*, p. 4.

4 Australian Human Rights Commission, *Submission 6*, p. 12.

...undermining the community's confidence in the judiciary and the criminal justice system as a whole by not allowing judicial discretion to impose an appropriate head sentence.⁵

1.7 Further, considering the increased burden on the justice system from the introduction of mandatory minimum sentences, the LCA warned of:

...potentially increasing the likelihood of recidivism because prisoners are inappropriately placed in a learning environment for crime. This reinforces criminal identity and fails to address the underlying causes of crime. This has particular relevance to young and first time offenders.⁶

1.8 State prosecutors and the LCA have previously raised concerns with this committee that introducing mandatory minimum sentences for firearms offences could 'lead to unjust results.'⁷ The LCA specified that these results will be 'particularly for vulnerable groups within society: indigenous peoples, young adults, juveniles, persons with a mental illness or cognitive impairment and the impoverished.'⁸ While the report recommends changes to the explanatory memorandum in this regard, Labor Senators do not consider that non-legislative changes can adequately mitigate the potential impact of the Bill on vulnerable groups, or the risk of a miscarriage of justice.

1.9 Accordingly, in restating Labor's commitment to stronger penalties for firearms trafficking offences, Labor Senators would support the passage of the Bill without the harmful and unnecessary inclusion of mandatory minimum sentences.

Recommendation 1

1.10 Labor Senators recommend:

- **that the Bill be amended to remove the provisions for mandatory minimum penalties; and**
- **that the Bill as amended be passed.**

Senator Jacinta Collins
Deputy Chair

5 Law Council of Australia, *Submission 4*, p. 4.

6 Law Council of Australia, *Submission 4*, p. 4.

7 Senate Legal and Constitutional Affairs Committee, *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014*, September 2014, p. 24; Law Council of Australia, *Submission 4*, p. 4.

8 Law Council of Australia, *Submission 4*, p. 4.