

OUR REFERENCE

DIRECTOR'S CHAMBERS

YOUR REFERENCE

DATE

6 May 2015



Committee Secretary
Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra
ACT

By Email: legcon.sen@aph.gov.au

Dear Ms Dunstone

Inquiry into the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015

Thank you for the invitation to make a submission on the above Bill. I only wish to comment on two aspects of the Bill.

The first relates to Schedule 6, and the proposed amendments to section 360.3 of the *Criminal Code* in respect of the introduction of a mandatory minimum sentence for the offences of Cross border disposal or acquisition of a firearm (s360.2) and Taking or sending a firearm across borders (s360.3). Attached to this letter is a copy of a submission I made on 1 August 2014, to the Committee in respect of the same amendments as proposed in the *Crime Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014*. I maintain my opposition to this amendment.

The second relates to the information sharing provisions in Schedule 9. I note that Directors of Public Prosecutions and state prosecution agencies are defined as *relevant persons* in the amendments and clause 20BZA (4) requires that I must provide information, that may be requested orally or in writing, as soon as practicable after a request is made. This request applies “despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten)” (20BZA (5)). The Explanatory Notes to the Bill deals with right to privacy implications, but it appears that the clause’s scope is much broader than privacy. The clause would for instance preclude a claim of legal professional privilege and compliance with non-publication orders.

It remains to be seen how this provision would work in practice and how often it would be utilised, however I am concerned about the breadth of this provision. It appears to me that in practice that in any exchange of information between this agency and the Commonwealth, that each request should be considered on its merits and that the form and content of the information should be negotiable, not least of which to preserve orders made to protect an individual’s safety or uphold legitimate claims of privilege.

Yours faithfully

Lloyd Babb SC
Director of Public Prosecutions