

OUR REFERENCE

**DIRECTOR'S CHAMBERS**



YOUR REFERENCE

DATE

1 August, 2014

Committee Secretary  
Legal and Constitutional Affairs Legislation Committee  
Parliament House  
Canberra  
ACT

By Email: [legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

Dear Ms Dunstone

**Inquiry into the Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014**

Thank you for the invitation to make a submission on the above Bill.

I only wish to comment on the potential impact of the proposed amendments to section 360.3A of the *Criminal Code* in respect of the introduction of a mandatory minimum sentence for the offences in that Division of Cross border disposal or acquisition of a firearm (s360.2) and Taking or sending a firearm across borders (s360.3).

The Office of the Director of Public Prosecutions (NSW) (ODPP) is responsible for the prosecution of serious criminal offences in the higher courts in NSW. It is not unusual for a prosecution to involve a combination of Commonwealth and State offences. The ODPP and the Commonwealth Director of Public Prosecutions (CDPP) have a protocol whereby we resolve which agency will prosecute matters involving a combination of offences. Generally speaking the agency with the jurisdiction over the more serious conduct/offences will assume responsibility for the matter.

The offences in this Division are the type of offences that are likely to be charged by police in connection with other serious NSW offences and therefore are matters that the ODPP is likely to prosecute. For instance the offences could arise in connection with the discharge of a firearm causing death or serious injury. My concern about this amendment relates to the possible impact that these mandatory minimum sentence offences may have on NSW court and prosecutorial resources.

It was the experience in NSW when there were a number of people smuggling cases before the NSW Courts that the accused did not enter pleas of guilty because of the mandatory minimum sentence and all the trials ran the full course. This had a significant impact on the District Court to dispose of other work and on the resources of the CDPP. I refer to the Law Council of Australia, Policy Discussion Paper on Mandatory Sentencing<sup>1</sup> for a summary of the impacts of mandatory sentencing on the criminal justice system and the experience in NSW with people smuggling cases. Additionally trials with a mixture of Commonwealth and State offences by

<sup>1</sup> Law Council of Australia, Policy Discussion Paper on Mandatory Sentencing May 2014 at pages 28 - 29

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reason alone of the combined effect of State and Commonwealth provisions are more complex cases to prosecute. The inclusion of a mandatory minimum sentence in this mix will add to the overall complexity.

In the time available to consider this issue and prepare this submission I have not been able to assess the likely frequency of these offences being charged, nor do I have any information from the CDPP about how often they have preferred charges under this Division to date. I simply note that there are currently increasing delays in matters being disposed of in the District Court of New South Wales and even a modest increase in complex defended matters will have an adverse impact.

I have also raised these concerns with the Attorney General for New South Wales.

Yours faithfully

**Lloyd Babb SC**  
**Director of Public Prosecutions**