



Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

31 December 2015

Dear Committee Secretary

Thank you for your invitation to provide a submission addressing the Criminal Code Amendment (Firearms Trafficking) Bill 2015 which was referred by the Senate on 3 December 2015 to the Legal and Constitutional Affairs Legislation Committee (Committee) for inquiry and report.

Civil Liberties Australia does not support the amendments to the *Criminal Code Act 1995 (Criminal Code)* set out in the Bill that would set new mandatory minimum penalties for the offences relating to the trafficking of firearms and firearms parts in Divisions 360 and 361 of the Criminal Code.

In general, Civil Liberties Australia (CLA) does not support mandatory minimum penalties. The disadvantages of such regimes have been described comprehensively and convincingly, for example, in the 2014 Policy Paper of the Law Council of Australia. In brief:

- Mandatory minimum sentences (MMS) **contravene the separation of powers**. The legislature's role is to proscribe certain conduct through laws; the judiciary's role is to apply those laws to individual cases and determine what penalty should apply for contravening them.
- There is **little or no evidence that mandatory minimum sentences have any impact on reducing crime**. Some Australian studies demonstrate MMS can actually increase the incidence of crime. It is misleading for the government's explanatory memorandum to assert that these amendments will achieve "reductions in gun-related crime" without any evidence from Australian or overseas experience to justify such an assertion.
- Mandatory minimum sentences **lead to harsh and unjust punishments** by forcing courts to apply an inflexible standard with no consideration for the real world, the specific facts of a case and the circumstances that are involved. There are many tragic examples around Australia of disproportionate penalties being applied, including to minors, for low-level offences as a result of MMS.
- Mandatory minimum sentences are **contrary to human rights principles** including those set out in the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CROC). Overseas and Australian experience also show they disproportionately affect poor, minority and disadvantaged groups in

society. It is deeply disappointing that the government's explanatory memorandum states that the limitations on the rights and freedoms of Australians set out in this Bill are "reasonable, necessary and proportionate to achieving reductions in gun-related crime" while at the same time providing no evidence that these measures will achieve any such reduction.

- Mandatory minimum sentences have **counter-productive side-effects**. For example: they reduce the incentive for offenders to plead guilty, leading to an increased caseload for the courts; bail will more commonly be refused given the prospect of a custodial sentence with the high cost that this involves; juries may become reluctant to convict where they consider that a mandated sentence would be an unfair outcome, meaning more instances of justice not being done.
- Other **comparable jurisdictions are moving away from mandatory sentences**. In the United States, the current Administration, in partnership with states, has started to wind back this approach, especially for drug and firearms related offences, where it has led to high rates of incarceration – particularly among the poor and minority groups – with little or no deterrent effect.

The Committee should consider carefully the detrimental effects of minimum mandatory sentencing and the evidence (or lack of it) for any reduction in crime. CLA urges the Committee to recommend that the Parliament not pass the amendments set out in the Bill.

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Civil Liberties Australia is a not-for-profit association which reviews proposed legislation to help make it better, as well as monitoring the activities of parliaments, departments, agencies, forces and the corporate sector to ensure they match the high standards Australia has traditionally enjoyed, and continues to aspire to.

We work to help keep Australia the free and open society it has traditionally been, where you can be yourself without undue interference from 'authority'. Australians' civil liberties are all about balancing rights and responsibilities, and ensuring a 'fair go' for all.