



## **NSW Government Submission**

**Senate Legal and Constitutional Affairs Committee (Committee) inquiry  
into the *Crimes Amendment Legislation (Organised Crimes and Other  
Measures) Bill 2012***

## **Introduction**

The NSW Government notes the Commonwealth's efforts to address international and interstate firearms trafficking through the *Crimes Amendment Legislation (Organised Crimes and Other Measures) Bill 2012* (Bill). This submission raises two concerns about the formulation of the new offences of aggravated trafficking, including the approach to trafficking in firearm parts and the level at which the threshold for the aggravated offences has been set.

### **Threshold number of firearms or parts for aggravated trafficking**

In relation to the offences of aggravated trafficking in sections 360.2(2), 360.3(1A), 361.2(2) and 361.3(2) of the Bill, the Committee should consider whether 50 firearms is an appropriate threshold for an aggravated offence, and whether six months is an appropriate timeframe.

In particular, the Committee should consider what threshold for an aggravated offence will create an effective deterrent and result in prosecutions to deal with the most serious cases. Such consideration should be based on any evidence available to the Committee about the incidence of firearms trafficking within Australia, and into Australia from overseas, and the numbers of firearms involved. The Committee could, for example, consider the numbers of firearms or parts involved in proven cases of trafficking and select a threshold for aggravation based on the upper end of the most serious of these cases. It does not appear, from the Explanatory Memorandum to the Bill, that this exercise has been undertaken.

The proposed new offence of aggravated trafficking requires proof of a breach of a "firearm law", including the NSW *Firearms Act 1996*. As such, it is relevant to consider the NSW statistics for the offence of the ongoing sale of illicit firearms, involving three instances of sales over 12 months (s51B *Firearms Act 1996*), when considering the level at which the threshold for an aggravated offence should be set.

In prosecutions commenced for the ongoing sale of firearms in NSW since 2008, the maximum number of firearms involved was 25, and the average was seven. These were sold over a period of twelve months, rather than six months. None of these cases would have been captured as an aggravated offence under the proposed new Commonwealth provisions.

NSW is concerned that, unless the threshold for aggravated offences is set at a substantially lower level than 50 firearms, the provisions may not result in any prosecutions. The period should also be extended from six months to 12 months to ensure that the offence captures serious cases.

## Formulation of offence – aggravated trafficking in parts

The formulation of the proposed aggravated firearm offences in Schedule 2 to the Bill is problematic.

The proposed subsection 360.2(2)(d) will make it an aggravated offence, punishable by imprisonment for life, to deal in:

- (i) 50 or more firearms
- (ii) 50 or more firearm parts that might be used to constitute one or more firearms
- (iii) a combination of firearms and firearm parts such that the sum of the actual firearms and the firearms that might be constituted by the parts is 50 or more.

As the Bill is currently drafted, it appears possible for a person who commits a trafficking offence involving parts which combine to make up only a few whole firearms to face the same penalty as someone who commits the same offence involving 50 whole firearms.

Subsection (i) sets a threshold of 50 actual firearms. Subsection (ii) in contrast, contemplates that the offence is made out if there are 50 separate parts that could make up only one or two guns. 'Firearm part' is defined in the Bill to mirror the definition of 'firearm part' in the law of the State or Territory in which the underlying offence occurs. Common pistols can be separated into six to 10 parts for cleaning/maintenance. Broken down further, a single pistol is capable of being made up of over 50 components.

Subsection (ii) could thus apply a much lower threshold than subsection (i) in terms of numbers of whole firearms. This inconsistency is undesirable and could result in outcomes which are disproportionate to the criminality involved.

In addition, subsection (iii) is ambiguous. There are three possible interpretations of subsection (iii):

1. The offence is made out where, for example, there is one whole firearm, plus hundreds of parts that when combined *with each other* make up 49 other whole firearms.
2. The offence is made out where, for example, there is one whole firearm and 49 trafficked parts that are all the same, such that they could make up 49 other firearms when combined with other parts that were not trafficked.
3. The offence is made out where, for example, there is one whole gun, and another gun taken apart into 49 parts (i.e. one whole firearm and one dismantled firearm), but where each part of the dismantled firearm could be used in combination with other parts that have not been trafficked to make up 49 other guns. If this interpretation is correct, then subsection (iii) raises the same concerns as subsection (ii) in relation to potential outcomes which are disproportionate to the criminality involved.

The Explanatory Memorandum to the Bill suggests the second interpretation is correct, but it is important that the provision itself be clarified. Further, whether the threshold is met under (ii) and (iii) may depend on how 'firearm part' is defined in the relevant jurisdiction, which could produce inconsistent results.

The same concerns apply to the proposed aggravated offences in sections 360.3(1A), 361.2(2) and 361.3(2) of the Bill. Greater consistency might be achieved if subsection (ii) (and its equivalents in sections 360.3, 361.2 and 361.3) made it an offence to deal in "firearm parts that might be used to constitute 50 or more firearms".