



NSW Council for Civil Liberties Inc.

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6 January 2016

Ms Sophie Dunstone
Committee Secretary
Senate Legal and Constitutional Affairs Committee
Commonwealth of Australia
By email: legcon.sen@aph.gov.au

Dear Ms Dunstone,

Inquiry into the Criminal Code Amendment (Firearms Trafficking) Bill 2015

1. We refer to your email dated 14 December 2015. NSWCCCL appreciates the opportunity to make this submission to the Committee.

The New South Wales Council for Civil Liberties

2. The NSW Council for Civil Liberties (**NSWCCL**) is committed to protecting and promoting civil liberties and human rights in Australia.
3. NSWCCCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006). CCL was established in 1963 and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive power by the State against its people.

Criminal Code (Firearms Trafficking) Amendment Bill 2015

4. The Bill proposes to: (1) increase the maximum penalties for intra-state and international firearms trafficking; and (2) impose mandatory minimum sentences (**MMS**) for these offences. NSWCCCL is opposed to both these propositions, though it is the MMS clauses which cause the greater concern.

Mandatory minimum sentencing

5. NSWCCCL is in principle opposed to MMS. MMS is inconsistent with Australia's obligations under international law, including: Article 9(1) of the International Convention on Civil and Political Rights (**ICCPR**), which prohibits arbitrary detention;

and the requirements that prison sentences must in effect be subject to appeal as contained in Article 14(5) of the ICCPR, see: *Law Council of Australia, Mandatory Sentencing Policy, May 2014*.

6. There is no evidence that MMS has a deterrent effect. For those willing to risk a 10- or 20-year sentence of imprisonment it is in NSWCCCL's view unlikely that an MMS will have such an effect. Instead, it will bind the courts into making potentially unjust decisions. It is evident, for example, that air rifles and BB guns are included within the definition of firearms, see: **AIC Report 116**¹ (at p.24). If a young adult takes a single BB gun across state lines to sell it to a friend, s/he may face the risk of a binding minimum 5-year sentence. Such a sentence might ruin a person's life. NSWCCCL does not find the idea that a court might impose a non-parole period of little or no imprisonment, as canvassed in the Notes on Clauses in the Explanatory Memorandum (at [21]), in such an instance to be persuasive. A non-parole period does not bind a parole authority to give parole to such a person. Indeed, even being subjected to parole restrictions can have deleterious effects on a person's freedom of movement, and therefore on his or her ability to find gainful employment or to reintegrate into the community. MMS incurs on the proper authority of courts to consider specific cases, and to apply just outcomes in those cases.
7. MMS will have the effect of increasing the cost of criminal proceedings: suspects charged with the offence will consider they have little to lose by pleading not guilty and attempting to beat the charge. The mitigating effect of an early guilty plea, which has the effect of saving significant state resources, will be lost.

Increase in sentences

8. NSWCCCL is also opposed to the increased penalties proposed in the Bill. A maximum sentence of 10 years is a serious punishment and one that is commensurate with the offence. Increasing the penalty for firearms trafficking equates that crime with the crimes of murder and the like. That is not appropriate in NSWCCCL's view. In its brief review of relevant case law, the sentencing of offenders under the current provisions seems suitable. There is no suggestion in any of the available material that the courts are treating firearms trafficking without the requisite seriousness.

General

9. Relatedly, it is unclear to NSWCCCL at what real or imagined problem the current proposal is aimed. The earlier Bills Digest in respect of the *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014*, which

¹ Samantha Bricknell, *Firearms Trafficking and Serious and Organised Crime Gangs*, Australian Institute of Criminology, Report 116, Canberra, 2012.

contained identical provisions in respect of firearms trafficking, identifies as its main source of information the AIC Report 116.² That report makes clear that the main sources of illicit firearms in Australia are: (a) in respect of restricted and non-restricted long-arms, the “grey market” of guns that were not handed back during the gun buy-back of 1996³; and (2) in respect of handguns, from lost or stolen registered weapons.⁴ International or intra-state trade of such weapons is hardly the issue to be concerned about: a person is apparently readily able to find such weapons in his or her home state should he or she wish to do so.

10. The NSWCCCL urges the government to consider effective means of controlling such weapons including:

- a. an amnesty and/or moratorium on the prosecution of possession of such weapons, coupled with an attractive buy-back scheme;
- b. getting clubs and sporting associations involved in the safe-keeping of such weapons, by:
 - i. supporting clubs and associations which offer training and educational initiatives to members on ensuring guns are not lost or stolen;
 - ii. encouraging or if necessary regulating such clubs to allow or require them to take appropriate action against members who lose weapons, whether by accident or theft;
- c. separately, creating the power to remove the licence and firearms of persons who lose such weapons, or have them stolen (in circumstances where there is an element of negligence relating to the theft);
- d. opening up the possibility of tortious civil actions by victims and family members affected by violent crimes involving such weapons, and thereby allowing those persons to hold the person who negligently lost the weapon, or enabled it to be stolen, to be held liable for the harm ultimately caused by that weapon.

² See:

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillsdgs%2F3410959%22> (at [77]) <last accessed 6 January 2016>

³ Bricknell, op.cit., p.41. The grey market accounted for 92% of restricted long-arms and 86% of non-restricted long-arms. Trafficked long-arms accounted for a tiny minutiae of such weapons, possibly none at all.

⁴ Ibid, pp.41-43. Lost or stolen handguns accounted for 31% of restricted and 50% of non-restricted handguns.

NSWCCL considers that the above initiatives will be much more effective at reducing the illicit gun market in Australia.

Conclusion

11. The current Bill will have little or no effect on firearms trafficking. It will, however, encroach on the proper domain of the courts; increase the costs of the administration of justice; and ultimately undermine the rule of law. It should be opposed.
12. The NSWCCL may be available to attend a hearing in respect of this issue, should that be suitable to the Committee.

Regards,

(sent electronically)

Jackson Rogers

Convenor

Police, Justice & Mental Health Action Group

NSW Council for Civil Liberties