

# Dissenting Report of the Australian Labor Party

1.1 While Labor Senators agree with the report's commentary in relation to increased penalty provisions, we have serious concerns about the introduction of mandatory minimum sentences for those convicted of firearm trafficking offences.

1.2 The Australian Labor Party maintains its position that the introduction of mandatory minimum sentences for firearms trafficking offences should be avoided. We note that these provisions have now been considered three times and rejected by Parliament, including by this Parliament in relation to the *Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015*. The government has, for a fourth time, failed to justify the need for such provisions.

1.3 Noting evidence provided to this committee during the last inquiry into this bill, Labor Senators believe that effective deterrence is achieved by increasing penalties applicable to the most serious firearms offenders, rather than by imposing prison terms on the least serious offenders. Labor Senators have previously made this point in relation to the *Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015*. At that time, Labor recommended that mandatory minimum sentences for firearms trafficking offences be replaced with increased penalty provisions.

1.4 Increasing maximum penalties for firearms trafficking reflects community concern about the consequences of serious firearms offences, and mirrors the regime of penalties proposed by Labor when it was in Government. It would send a strong message to serious criminals about the consequences of firearms trafficking.

1.5 The explanatory memorandum offers no evidence to support the idea that mandatory minimum sentences for firearms trafficking will enhance or sustain Australia's firearms control regime by deterring potential offenders. Labor Senators note that there is evidence suggesting that imposing mandatory minimum penalties in fact has the opposite effect.<sup>1</sup>

1.6 Furthermore, the introduction of mandatory minimum penalties would impinge on the judicial discretion to impose appropriate sentences with regard to the unique circumstances of each case, and would not effectively deter potential offenders.

1.7 Considering the increased burden on the justice system from the introduction of mandatory minimum sentences, the Law Council of Australia (LCA) has previously warned of:

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1 See, Legal and Constitution Affairs Legislation Committee, *Criminal Code Amendment (Firearms Trafficking) Bill 2015 [Provisions]*, February 2016, Australian Human Rights Commission, *Submission 6*, p. 12.

[P]otentially increasing the likelihood of recidivism because prisoners are inappropriately placed in a learning environment for crime. This reinforces criminal identity and fails to address the underlying causes of crime. This has particular relevance to young and first time offenders.<sup>2</sup>

1.8 State prosecutors and the LCA have previously raised concerns with this committee that introducing mandatory minimum sentences for firearms offences could 'lead to unjust results'.<sup>3</sup> The LCA specified that these results will be 'particularly for vulnerable groups within society: indigenous peoples, young adults, juveniles, persons with a mental illness or cognitive impairment and the impoverished'.<sup>4</sup> Labor Senators do not consider that non-legislative changes can adequately mitigate the potential impact of the bill on vulnerable groups, or the risk of a miscarriage of justice.

1.9 Accordingly, in restating Labor's commitment to stronger penalties for firearms trafficking offences, Labor Senators would support the passage of the Bill without the harmful and unnecessary inclusion of mandatory minimum sentences.

### **Recommendation 1**

**1.10 Labor Senators recommend that the bill be amended to remove the provisions for mandatory minimum penalties.**

### **Recommendation 2**

**1.11 Labor Senators recommend that, subject to recommendation 1.10, the bill be passed.**

**Senator Louise Pratt**  
**Deputy Chair**

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2 Senate Legal and Constitutional Affairs Committee, *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014*, September 2014, Law Council of Australia (LCA), *Submission 4*, p. 4.

3 Senate Legal and Constitutional Affairs Legislation Committee, *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014*, September 2014, LCA, *Submission 4*, p. 4.

4 Senate Legal and Constitutional Affairs Legislation Committee, *Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014*, September 2014, LCA, *Submission 4*, p. 4.