

## Dissenting Report by the Australian Greens

1.1 The Criminal Code Amendment (Firearms Trafficking) Bill 2016 seeks to amend the *Criminal Code Act 1995* to introduce a mandatory minimum sentence of imprisonment for the offences of trafficking firearms or firearms parts within Australia and into and out of Australia. The bill also increases the maximum penalties for these offences.

1.2 This will be the fourth time the Government has sought to legislate for mandatory minimum sentences for firearms trafficking offences.

1.3 In the previous inquiry on the 2015 bill, the majority of submissions received by the committee raised significant concerns about the mandatory minimum penalties.

1.4 The *Migration Act 1958* contains mandatory minimum sentences for certain people smuggling related offences. These are the only Commonwealth offences that currently attract a mandatory minimum sentence. There are currently no mandatory minimum penalties in the *Criminal Code Act 1995*.

1.5 During the previous inquiry into this bill, the Law Council of Australia (LCA) submitted that:

[I]ncreasing the maximum penalty to 20 years imprisonment or a fine of 5000 penalty units, or both, reflects community concern regarding the potential seriousness of the offence.<sup>1</sup>

1.6 Many submissions also acknowledged that it was appropriate to increase to increase the maximum penalties and that an increase in penalties acknowledges the gravity of firearms trafficking offences.

1.7 The Australian Human Rights Commission (AHRC) submitted that:

[T]he imposition of mandatory minimum sentences raises the real prospect that the sentence imposed will be disproportionate to the culpability of the offender or the gravity of the particular offence because it is set without regard to the individual circumstances of the offender and context of the particular offence.<sup>2</sup>

1.10 The Australian Greens acknowledge the seriousness of firearms trafficking and the need for sentences that reflect the seriousness of the offending.

1.11 The Australian Greens do not support mandatory minimum sentences for any offences.

1.12 There is no clear evidence that mandatory sentencing laws have a deterrent effect. In addition, they can result in injustice and remove the court's discretion to

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1 Legal and Constitutional Affairs Legislation Committee, *Criminal Code Amendment (Firearms Trafficking) Bill 2015*, February 2016, Law Council of Australia (LCA), *Submission 4*, p. 2.

2 Legal and Constitutional Affairs Legislation Committee, *Criminal Code Amendment (Firearms Trafficking) Bill 2015*, February 2016, Australian Human Rights Commission (AHRC), *Submission 5*, p. 5

impose a sentence that takes the individual circumstances of the offender and the offence into account.

**Recommendation 1**

**1.8 The Australian Greens recommend clauses relating to mandatory minimum sentencing be removed from Schedule 1.**

**Senator Lee Rhiannon  
Australian Greens**