

Additional comments by Labor Senators

1.1 Labor senators agree with the majority of the report, except for the recommendation made in respect of the proposed mandatory minimum sentences for firearms trafficking offences. We wish to draw attention to the strong opposition of the peak law organisations and state prosecutors who submitted evidence to the inquiry in this respect.

1.2 Labor senators highlight that the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, produced by the Attorney-General's Department, states that minimum penalties should be avoided. This is because they, *inter alia*:

- interfere with judicial discretion to impose a penalty appropriate in the circumstances of a particular case;
- may create an incentive for a defendant to fight charges, even where there is little merit in doing so;
- preclude the use of alternative sanctions such as community service orders that would otherwise be available in Part IB of the *Crimes Act 1914*; and
- may encourage the judiciary to look for technical grounds to avoid a restriction on sentencing discretion, leading to anomalous decisions.¹

1.3 In this particular instance, Labor senators are of the view that the imposition of mandatory minimum sentences for firearms trafficking offences should be avoided. The better approach would be to implement a regime of penalties for firearms trafficking offences reflecting that proposed by Labor when it was in Government.

1.4 In November 2012 the then Labor Government introduced the Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012 into the House of Representatives. This bill, which lapsed in the Senate at the end of the 43rd Parliament, expanded existing cross-border firearms trafficking offences in the *Criminal Code Act 1995*, introduced new international firearms trafficking offences, and introduced new aggravated offences for dealing in 50 or more firearms and firearms parts. It was intended that the new 'basic offences' would attract a penalty of 10 years imprisonment, consistent with existing firearms trafficking offences. However, it was proposed that the 'aggravated offences' would attract a higher penalty of life imprisonment, the same maximum penalty applied to drug trafficking. In the words of the then Minister for Justice, this would 'send a strong message that trafficking in firearms and the violence it creates will not be tolerated'.²

1 Attorney-General's Department, *A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, September 2011, p. 38.

2 The Hon Jason Clare MP, Minister for Justice, *House of Representatives Hansard*, 5 February 2013, p. 71.

1.5 Labor senators urge the Government to adopt a similar sentencing regime in relation to the proposed firearms trafficking offences. This would still send a strong message to serious criminals but avoid the issues associated with mandatory minimum sentences and better preserve judicial discretion.

Recommendation 1

1.6 The imposition of mandatory minimum sentences for firearms trafficking offences should be replaced with increased penalty provisions, as set out in the Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012.

Senator the Hon Jacinta Collins

Deputy Chair