



# Submission to Legal and Constitutional Affairs Legislation Committee on the Criminal Code Amendment (Firearms Trafficking) Bill 2015 — from Dr John Coyne

*This submission does not reflect an Australian Strategic Policy perspective but is the opinion of the author Dr John Coyne, Senior Analyst, Border Security Program, ASPI.*

## Overview

This submission addresses the Legal and Constitutional Affairs Legislation Committee terms of reference on the inquiry into the Criminal Code Amendment (Firearms Trafficking) Bill 2015. This submission addresses four specific issues:

1. Qualitative contextualisation of the Australia's illicit firearm market;
2. Support of the Bill's mandatory minimum sentencing;
3. The need to consider deactivated and replica weapons in the definitions of 'firearms' contained within the *Criminal Code Act 1995*; and
4. The need for a new offence relating to the disclosure of illicit firearms sales details before and after trial.

## Qualitative contextualisation of Australia's illicit firearm market

There should be no argument that the illicit firearms market in Australia represent a clear danger to communities. But in dealing with this problem there is a need for the legislature and bureaucracy to approach the challenge in a manner that sets aside the moral panic and emotive media reporting, so often associated with the illicit firearms market.

Although illicit firearms are used by Australia's organised and serious crime figures, their use should not be considered endemic. During a recent interview with a senior Australian police officer, of commissioned rank, it was clearly articulated that gun ownership amongst criminals was relatively restricted due in part to the limited availability of illicit firearms in Australia as well as the associated costs and risks.

Anecdotally, the use of firearms is not a significant element of organised criminal activity in Australia: nor a regular enabler to protect interests and commit violence. Instead, the ownership of illicit firearms in Australia, especially quality pistols and semi-automatic long arms, is likely related to their value as a status symbol in light of their high cost and limited availability in this country.

As a result, illicit firearm ownership is cost prohibitive for most criminals. During a recent research interview another senior police officer stated that '*even good crooks have a hard time getting quality firearms in Australia*'.<sup>1</sup>

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<sup>1</sup> '*Good criminals*' can be defined as established criminals or organised crime groups.

Ironically, it is the high prices of illicit firearms that make them an attractive illicit commodity for traffickers. With high prices comes high profit margins. While this does not change the need for this legislation, it does need to be considered in the development and prioritisation of counter illicit firearm policy more broadly.

### Support of the Bill's mandatory minimum sentencing

This submission strongly supports the introduction of mandatory minimum sentences for firearms trafficking: from a crime prevention perspective. Whilst minimum sentences do not always have a deterrent effect, they are taken into consideration by some in the planning of criminal activities. Regardless, the Bill sends a powerful message to criminals and the general public that reinforces two decades of strong gun control in Australia.

### Deactivated and Replica Weapons

At present, the *Criminal Code Act 1995* uses the definition of a firearm contained within the *Customs (Prohibited Imports) Regulations 1956*. The *Customs (Prohibited Imports) Regulations 1956* defines firearms as:

*'a device designed or adapted to discharge shot, bullets or other projectiles by means of an explosive charge or a compressed gas, whether that device is fitted with a magazine or other feeding device designed to be used with it or not'*

The *Customs (Prohibited Imports) Regulations 1956* definition of firearms does not include references to deactivated or replica firearms, each is defined separately within the regulations.

The intent of the proposed Bill is to make amendments that reflect the seriousness with which the government views gun crime, and the gravity of supplying firearms and firearm parts to the illicit market. As gun crime involves both the use and threat of violence, deactivated and replica firearms should be considered in scope as both have the capacity to cause fear in Australian communities.

As such, it is recommended that a wider definition of '*firearm*' be included in the Criminal Code Amendment (Firearms Trafficking) Bill 2015. The Bill should amend the *Criminal Code Act 1995 (Criminal Code)* so that the trafficking of replica and deactivated firearms is included in Divisions 360 and 361. Furthermore, the proposed minimum sentences for the following offences should be applied to the trafficking of replica and deactivated firearms:

- Trafficking firearms and firearms parts within Australia (in Division 360 of the Criminal Code), and
- Trafficking firearms and firearms parts into and out of Australia (in Division 361 of the Criminal Code).

### Disclosure of illicit firearms sales details

Illicit firearms that are trafficked into, and within, Australia present an enduring threat to communities. Firearms can, and do, remain within the illicit market for many years. Police experience in Australia and abroad has illustrated how some firearms are passed from criminal to criminal and used in the commission of a number of crimes.

The Criminal Code Amendment (Firearms Trafficking) Bill 2015 is being proposed to ensure that firearms traffickers can be held responsible for the consequences of supplying firearms into the illicit market from both domestic and international sources. Unfortunately even with the successful prosecution of these offences, all illicit firearms sold or traded by an offender will not be recovered. The amendment Bill does not offer any incentive to encourage alleged or sentenced offenders to divulge the sales and distribution details of previous illicit firearms transactions.

It is recommended that the Legal and Constitutional Affairs Legislation Committee consider further development of the Criminal Code Amendment (Firearms Trafficking) Bill 2015 to create a new criminal offence. This new offence should sentence illicit firearm trafficking offenders to additional custodial punishment for not disclosing the details of historic sales and distribution of illicit firearms, including the details of guns and clients.