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The Chair (Senator Ian Macdonald)
Senate Legal and Constitutional Affairs Legislation Committee
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Parliament House
Canberra ACT 2600 By email: mailto:legcon.sen@aph.gov.au

Dear Chair,

Thank you for your invitation to provide a submission addressing the Criminal Code Amendment (Firearms Trafficking) Bill 2016 which has been re-referred to the Committee.

Civil Liberties Australia (CLA) does not support the Bill that would set new mandatory minimum penalties for the offences relating to the trafficking of firearms and firearms parts in Divisions 360 and 361 of the Criminal Code.

CLA reaffirms the points made in our previous submission to the Committee (dated 31 December 2015) about our opposition to mandatory minimum penalties. We also support recent comments in Parliament about the need for a better process to cope with the ever-growing number of police- and security-related Bills being put before Parliament – please see later comment about a proposed 'Blue Paper' process. In brief:

Mandatory minimum sentences (MMS) contravene the separation of powers. The legislature's role is to proscribe certain conduct through laws; the judiciary's role is to apply those laws to individual cases and determine what penalty should apply for contravening them.

Mandatory minimum sentences are ineffective in reducing crime. Some Australian studies demonstrate MMS can actually increase the incidence of crime. It should be deeply disappointing to the Committee that the Government's explanatory memorandum asserts that these amendments will achieve "reductions in gun-related crime" without producing any evidence from Australian or overseas experience to justify such an assertion.

Mandatory minimum sentences lead to harsh and unjust punishments by forcing courts to apply an inflexible standard with no consideration for the real world, the specific facts of a case and the circumstances that are involved. There are tragic examples around Australia of disproportionate penalties being applied, including to minors, for low-level offences as a result of MMS. The Committee needs only to look at the Commonwealth's own regrettable experience with MMS, where in 2012 the then Attorney General had to give a direction to the Commonwealth Department of Public Prosecutions not to carry on prosecutions for people smugglings offences that attracted MMS.

Mandatory minimum sentences are contrary to human rights principles including those set out in the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CROC). Overseas and Australian experience also show they disproportionately affect poor, minority and disadvantaged groups in society. It is deeply disappointing that the Government's explanatory memorandum justifies these human rights impacts of the Bill by claiming the amendments are "reasonable, necessary and proportionate to

achieving reductions in gun-related crime" while at the same time providing no evidence that these measures will achieve any such reduction.

Mandatory minimum sentences have counter-productive side–effects. For example: they reduce the incentive for offenders to plead guilty, leading to an increased caseload for the courts; bail will more commonly be refused given the prospect of a custodial sentence with the high cost that this involves; juries may become reluctant to convict where they consider that a mandated sentence would be an unfair outcome, meaning more instances of justice not being done.

Other comparable jurisdictions are moving away from mandatory sentences. In the United States, the current Administration, in partnership with states, has started to wind back this approach, especially for drug and firearms related offences, where it has led to high rates of incarceration – particularly among the poor and minority groups – with little or no deterrent effect.

These disadvantages have been described comprehensively and convincingly by legal bodies and academic institutions. There is nothing in the amendments to the Government's explanatory memorandum that addresses any of these issues.

Furthermore, CLA wishes to note our deep concern over the timeframe for this enquiry. A timeframe in which a Bill is referred to the Committee on 13 October, the deadline for submissions is 26 October and a report is to be produced by 7 November 2016 leads us to believe that the serious matters in conjecture that are contained in this Bill are not being taken seriously. We note that the previous Government received a report (from this Committee) on the same subject matter in February 2015, but failed to act before dissolving the previous Parliament in May 2016. Given that the previous Government apparently showed no urgency to enact this Bill, it is difficult to understand what the rush was back then, and is now.

Legislation of this nature requires extra consideration, not less. CLA believes there should be a "Blue Paper" process – similar to that of the well-known Green-White papers – which would allow much more time for consultation and serious Committee consideration of bills emanating from the police and security sectors. Senator Nick McKim outlined the reasons for such a 'Blue Paper' approach to security and police legislation in Parliament on 13 Oct 2016: http://tinyurl.com/hbpzbub We also believe there should be a thorough review of all "security/police/terrorism" legislations passed since September 2001.

The Government runs the risk of losing goodwill over security and terrorism issues if they repeatedly escalate fear and demand urgency, but fail to back up the rhetoric with justification for the supposed urgency.

Yours truly,

Dr Kristine Klugman OAM, President *25 October 2016*

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