

30 March 2022

Firearms trafficking mandatory minimum sentencing undermines the rule of law

The Law Council of Australia remains opposed to the introduction of mandatory minimum sentences as proposed in the Criminal Code Amendment (Firearms Trafficking) Bill 2022.

“While the Law Council recognises the importance of appropriate sentences for serious offences such as firearms trafficking, the introduction of mandatory minimum sentencing is not the answer and will only serve to undermine the rule of law,” Law Council of Australia President, Mr Tass Liveris said.

The Bill, which is scheduled to come before the Senate today, introduces mandatory minimum penalties of at least five years' imprisonment for firearms trafficking offences committed by adult offenders.

Mr Liveris said, “Mandatory sentencing regimes impose unacceptable restrictions on judicial discretion and independence and can diminish confidence in our system of justice.

“Mandatory sentencing laws are, by definition, arbitrary and can limit an individual’s right to a fair trial by preventing judges from imposing an appropriate penalty based on the unique circumstances of each offence and offender. They are also costly and there is a lack of evidence as to their effectiveness, either as a deterrent or in reducing crime.

“While the Bill does not seek to remove a court’s discretion in relation to non-parole periods, mandatory minimum sentencing would still require that a person be subject to a penalty for that period, whether they are incarcerated or on parole.

“We are pleased the Bill gives courts the capacity to partially reduce the minimum sentence when taking into account whether an accused has pled guilty to the offence or cooperated with law enforcement agencies, but believe this limited discretion is inadequate and must be broadened.”

The Law Council’s concerns are shared by the Senate Standing Committee for the Scrutiny of Bills and the Parliamentary Joint Committee on Human Rights, which have consistently noted that mandatory minimum penalties undermine the discretion of judges to ensure that penalties imposed are proportionate in light of the individual circumstances of particular cases.

Contact: Kristen Connell, P. 0400 054 227, E. kristen@talkforcemedia.com.au