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Senate urged to reject mandatory sentences in bills

The Law Council of Australia is urging Senators to reject new mandatory minimum sentences included in bills to be debated this week, due to the very real risk of unintended consequences with potentially life-shattering outcomes.

The bills, targeting sex crimes against children and firearms trafficking, are intended to better protect the Australian community from the dangers of such grievous conduct.

Law Council of Australia President, Fiona McLeod SC, said that while these aims were laudable, mandatory sentencing has been shown to have no effect on crime rates, while undermining the independence of the judiciary and creating unjust and unintended consequences.

“Sex crimes and gun trafficking are all patently serious offences and it is absolutely appropriate that harsh maximum sentences are available to our courts,” Ms McLeod said.

“But mandatory sentencing is always likely to trigger unintended consequences that are at odds with the intention of the laws and fundamental principles of justice.

“The idea of a standardised mandatory sentence may be appealing on a theoretical level, but in practice, mandatory sentences can see people doing life-shattering stints in prison for actions that might have significant mitigating circumstances.

“For example, a 15 and 17-year-old might be sharing sexual images with each other in a consensual relationship, yet the day the older partner turns 18, under this legislation that 18-year-old would be looking at an automatic five-year sentence,” Ms McLeod said.

“Teenage years can often be marked by rash decisions and regrettable mistakes. A blunt instrument like a mandatory minimum sentence will not take this into account.”

In the case of the firearms bill, Ms McLeod pointed to other potential unintended consequences.

“Former Victoria Police Chief Commissioner, Simon Overland, inadvertently carried a magazine containing live rounds of ammunition on a flight from Melbourne to Canberra in 2010. Prior to travelling, Mr Overland had removed a firearm from his bag, but forgot to take out the magazine. Under the proposed laws he could be facing a mandatory five-year jail term,” Ms McLeod said.

“Judicial discretion is a core principle of our justice system for a very good reason.

“When you take away the ability of a judge to take into account the seriousness of the offence, the degree of culpability of the offender, their personal circumstances or the explanation for offending, you generate disproportionate and, often, unconscionable outcomes.

“Furthermore, there is no evidence that mandatory sentencing is effective at driving down crime, but ample evidence of its long-term criminogenic effect. The US and other jurisdictions are winding back mandatory sentencing regimes because they don’t work.

“Mandatory sentences actually make it harder to prosecute criminals, by removing the incentive for anyone to plead guilty or to provide information to the police. There is every incentive to fight on and appeal against convictions,” Ms McLeod said.

You can read the Law Council’s submissions here ([sex crimes](#) / [firearms trafficking](#)).

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