

11 September 2015

Ms Catherine Smith
Assistant Secretary
Criminal Justice Division
3-5 National Circuit
BARTON ACT 2600

By email: NationalFirearmsAgreement.Submissions@ag.gov.au

Dear Ms Smith,

NATIONAL FIREARMS AGREEMENT REVIEW 2015

1. The Law Council welcomes the opportunity to provide the Attorney-General's Department (**Department**) with this submission as part of its review of the National Firearms Agreement 1996 (**NFA**).
2. This submission focuses on addressing the following terms of reference for the Department's review of the NFA:

Martin Place Siege Review Recommendation 9

The Commonwealth and the States and Territories should give further consideration to measures to deal with illegal firearms.

3. The Law Council supports the continuation of the NFA, which assists in ensuring that handguns, automatic and semi-automatic weapons are possessed, used and stored in a lawful manner. Appropriate restrictions through the NFA are necessary to ensure the safety of the Australian community. However, the NFA is almost 20 years old and should now be updated to enable law enforcement authorities to respond to technological advances in gun technology and the way in which criminal enterprises operate.
4. The Law Council supports consideration being given by the Government to implementing the recommendations of the Senate Legal and Constitutional Affairs Committee (the **Committee**) [Report](#) on the *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community* (April 2015) as a step towards addressing the Martin Place Siege Review Recommendation 9.

National Consistency

5. The Law Council supports the adoption of consistent firearms legislation in all Australian jurisdictions to ensure a uniform national approach to the regulation of firearms. While the Australian Government has constitutional power to legislate in relation to the importation of firearms,¹ States and Territories are responsible for regulation of the use, possession and sale of firearms within their jurisdictions.

¹ *Australian Constitution*, s51(i) (trade and commerce power).

6. The Martin Place Siege review highlighted the importance of improving national consistency to restrict the movement of firearms to the illicit market. The Committee recommended that the NFA be updated to implement nationally consistent regulation in the following areas:
 - firearms, firearm parts and firearm accessories;
 - ammunition; and
 - the storage of firearms.²
7. Uniformity in these areas remains a worthy goal endorsed by the Law Council.

Amnesty

8. One obvious strategy for further measures to deal with illegal firearms would be to hold another nationwide firearms amnesty from prosecution for the surrender and registration of unregistered firearms during the amnesty period. Indeed, the Committee recommended that an ongoing, Australia-wide gun amnesty be implemented, with consideration given to ways in which this can be done without limiting the ability of police to pursue investigative leads for serious firearm-related crimes.³
9. The recent firearms amnesty in Queensland in 2013 may provide a useful model for considering a nationwide amnesty. The reported 8,500 firearms that were handed in during the amnesty⁴ serves as a testament to the success of the scheme in assisting to prevent 'grey market' firearms ending up in the illicit market.
10. A nationwide amnesty would encourage members of the public to hand back and surrender for destruction, or registration, unregistered firearms and other weapons. Appropriately licenced persons could be encouraged to register previously unregistered firearms through firearms dealers, armourers, firearms sporting clubs as well as police stations. In addition, unlicenced owners should be able to apply for a licence and anyone should be able to surrender their unregistered firearm to be destroyed or sold to a firearms dealer.
11. Unregistered firearms should be able to be surrendered during the amnesty without prosecution for its possession. Consideration should be given to not requiring personal details or reasons for the possession.
12. The national amnesty could be run as part of a broader national marketing campaign to raise awareness and encourage those with 'grey market' guns to register or surrender them.
13. Consideration should also be given to ensuring that costs and administrative requirements associated with maintenance of licences and registration of firearms do not act as a deterrent to ongoing compliance.

Appropriate penalties

² Senate Legal and Constitutional Affairs Committee, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, April 2015, Recommendation 3.

³ Ibid, Recommendation 5.

⁴ See Emma Sykes with Neroli Roocke, 'Amnesty unearths over 8.500 firearms', *ABC Brisbane*, 1 May 2013 at <http://www.abc.net.au/local/stories/2013/05/01/3749029.htm>.

14. In addition to holding a nationwide amnesty, it may be beneficial to review the penalties for firearms offences to aid consistency and appropriateness across Australia. Modifying legislation where currently penalties only involve a term of imprisonment, to also include the option of a fine for offending attracting lower criminal culpability, may be worth exploring. A fine may allow a court to impose a penalty of a severity appropriate in all the circumstances of the offence and use imprisonment as a last resort.

Mandatory sentencing for firearms trafficking

15. The Martin Place Siege Review noted that the Crimes Legislation Amendment (Psychoactive Substances) Bill 2014 (Cth) 'would strengthen the Commonwealth's ability to tackle illegal trafficking of firearms and firearm parts into and out of Australia'. The Bill included a measure that would introduce a mandatory minimum five year term of imprisonment for the new gun trafficking offences and some existing offences.
16. These measures were subsequently rejected by the Parliament, but reintroduced by the Government in the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015, which is currently before the Parliament.
17. The Law Council acknowledges the potential for serious social harms associated with firearms trafficking. However, as noted in its submissions to the Senate Legal and Constitutional Affairs Committee, the Law Council unconditionally opposes mandatory sentencing as a penalty for any criminal offence on the basis that raises the potential for unintended consequences, such as:
 - the imposition of unacceptable restrictions on judicial discretion and independence inconsistent with rule of law principles;
 - the potential imposition of unjust or unduly harsh sentences;
 - the infringement of a fundamental sentencing principle that a sentence and retribution should be proportionate to the gravity of the offence, having regard to the circumstances of the case;
 - potentially increasing the likelihood of recidivism because prisoners are inappropriately placed in a learning environment for crime. This reinforces criminal identity and fails to address the underlying causes of crime. This has particular relevance to young offenders;
 - undermining the community's confidence in the judiciary and the criminal justice system as a whole. Research demonstrates that when members of the public are fully informed about the particular circumstances of a case and the offender, 90 per cent view judges' sentences as appropriate;⁵ and
 - unjust outcomes, particularly for vulnerable groups within society: indigenous peoples, young adults, juveniles, persons with a mental illness or cognitive impairment, and the impoverished.⁶
18. The Law Council's Mandatory Sentencing Policy and Discussion Paper (released in June 2014) describes in detail a number of concerns expressed by the Law Council's Constituent Bodies, the judiciary, other legal organisations, and individuals

⁵ K Warner, J Davis, M Waler, R Bradfield & R Vermeij, "Public Judgement on Sentencing: Final results of the Tasmanian Jury Study", *Trends & Issues in Crime and Criminal Justice*, Australian Institute of Criminology, February 2011, p. 3.

⁶ Law Council of Australia, *Policy Position: Mandatory Sentencing*, May 2014.

regarding mandatory sentencing. A copy of the Mandatory Sentencing Policy and Discussion Paper are attached.

19. While Australia's criminal justice system and penalties for firearms trafficking offences act as a general deterrent to offending, mandatory minimum penalties are unlikely to reduce or deter the importation of illicit firearms. As noted by the Australian Strategic Policy Institute:

...if the desired outcome is to reduce the availability of illegal firearms in Australian communities the focus needs be on strategies which increase the likelihood that a firearms trafficker will be caught. Those strategies should focus on continuing to enhance our border agencies' capabilities to detect and investigate illicit firearm trafficking at the border.

Mandatory sentencing of illicit firearms traffickers...won't deliver the desired results.⁷

20. Better outcomes would result from heightened enforcement activity, uniformity of legislation and penalties, and a broad-based amnesty.
21. Further detail about the Law Council's objections to mandatory minimum penalties for firearms trafficking is available at the Law Council's [submission](#) to the Senate Legal and Constitutional Affairs Committee (7 May 2015).
22. Thank you for the opportunity to provide these observations.
23. Please contact Dr Natasha Molt, Senior Policy Lawyer on 02 6246 3754 or natasha.molt@lawcouncil.asn.au should you require further information.

Yours sincerely,



Duncan McConnel
President

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⁷ John Coyne, Australian Strategic Policy Institute, 'Gun Trafficking and Mandatory Jail Terms', *The Strategist*, 18 March 2015 at <http://www.aspistrategist.org.au/gun-trafficking-and-mandatory-jail-terms/>