

Portfolio Committee No. 5 - Legal Affairs

**Inquiry into the Provisions of the Firearms and Weapons Legislation
Amendment (Criminal Use) Bill 2020**

Inquiry hearing: Wednesday 28 October 2020
Macquarie Room, Parliament House, Sydney

**QUESTIONS TAKEN ON NOTICE
WITH ANSWERS**

(NSW Police Force)

1. Question, p3

The CHAIR: Why does this bill not have the same exemptions that appear in the South Australian Act to which the police submission talks about and even referenced at the bottom of page 5 "exemptions apply"? Why would that be omitted?

Acting Deputy Commissioner WALTON: I am unaware of why that was omitted.

The CHAIR: Will you take that on notice?

Acting Deputy Commissioner WALTON: Yes.

Answer

The NSW Police Force submission to the Committee received on 14 August 2020 noted on page 5 that that proposed amendments in relation to manufacture of firearms are similar to provisions in the South Australian Firearms legislation.

The reference in the question quoting "exemptions apply" relates to a footnote to this statement which cites section 37 of the South Australian *Firearms Act 2015*.

It is recognised that the NSW provisions were influenced by, but did not exactly mirror, the South Australian legislation and have been adapted to suit the NSW licensing scheme and NSW legislative drafting conventions.

The South Australian *Firearms Act 2015* provides a person is guilty of an offence if the person manufactures a firearm, firearm part or sound moderator (Section 37 (1)). This extends in section 37(2) to include persons who for example knowingly participated in a step in the process of manufacture of the firearm, firearm part or sound moderator, knowingly arranged finance for a step in the process of manufacture, or who knowingly provided a premises in which a step in the process of manufacture of the firearm, firearm part or sound moderator was taken.

These provisions are similar to clause 51J of the Bill.

In relation to exemptions, section 37(3) of the South Australian *Firearms Act 2015* relevantly provides that the offence under section 37 does not apply to the manufacture by a person of a firearm or firearm part in accordance with a licence held by the person. Categories and special conditions of licences are dealt with in the South Australian Firearms Regulation 2017. For example, Category 12 (miscellaneous) licences can authorise a licensee to possess a firearm for the purpose of the business of a firearms manufacturer (clause 25(1)). Section 37(4) of South Australian *Firearms Act 2015* also sets out defences, including where the firearm part was for a firearm registered in the name of the person who manufactured the firearm part.

The approach taken in this Bill is that a person is only guilty of an offence under clause 51J if they know, or ought reasonably to know, that the manufacture of the firearm or firearm part is not authorised by a licence or permit.

More broadly the NSW Police Force would not want to pursue a blanket exemption to the proposed offence in clause 51J of the Bill for all licence holders as it may create a pathway for organised crime to stand up 'clean skins' as individual licence holders and facilitate manufacture of firearms by them.

Question, p5

Mr DAVID SHOEBRIDGE: Can you see that there might be a concern about the disproportionate maximum penalty for intending to print part of a weapon having four times the maximum penalty of actually illegally possessing the entire weapon?

Acting Deputy Commissioner WALTON: I can understand the proportionality test there, yes.

Mr DAVID SHOEBRIDGE: You were telling us about the intent of the bill. Was that considered in the drafting of the bill—that disproportionate impact?

Acting Deputy Commissioner WALTON: I am not aware of that. I would have to take that on notice.

2. Question, p6

Mr DAVID SHOEBRIDGE: And I want to stress again that my party believes that there is a case made out for extending the Firearms Act to include printing or possessing parts of weapons and even intentionally having blueprints with the intent to print or create part of a weapon. It is just a question of proportionality and we want to ensure that our firearms laws, you know, have that appropriate proportionality. I would be interested if you could come back on notice about the thinking behind that.

Acting Deputy Commissioner WALTON: Certainly.

Answer to questions on p5 and p6

The penalty thresholds assigned to unauthorised manufacturing were considered against existing penalties for other offences and were scaled according to the seriousness and the level of organised criminality involved in the offence.

Firearms Act 1996

Offences and penalties where proportionality was considered:

- Section 7 penalty is 14 years (unauthorised possession of a pistol or prohibited firearm)
- Section 7A penalty is 5 years (unauthorised possession of a firearm)
- Section 50A(1) penalty is 10 years (unauthorised manufacture of firearms)
- Section 50A(2) penalty is 20 years (unauthorised manufacture of pistol or prohibited firearm).

Based on above, the proportionality for the penalty of section 51J being 20 years (taking part in unauthorised manufacture of firearm or firearm parts) is reasonable given that the charge will be considered in circumstances where the manufacture is being undertaken by a complex and organised criminal network. There must be substantial evidence to meet the two-element test prescribed in the offence, which would mean that the basic unauthorised manufacture offence (section 50A) would be the likely charge to be laid where a firearm was identified. Reliance would be put on proposed section 51J in circumstances where a firearm cannot be identified (and firearm components / precursors were present), or where there were multiple actors involved in the activity. The latter suggests that the illegal manufacturing activity is organised, complex, sophisticated and networked. Because of these features and that the intent of the proposed offence is to target organised crime networks, it is not considered that the penalty is disproportionate.

Weapons Prohibition Act 1998 (Weapons Act)

Offences and penalties where proportionality was considered:

- Section 7 penalty is 14 years (unauthorised possession of a prohibited weapon)
- Section 25A(1) penalty is 14 years (unauthorised manufacture of a prohibited weapon)
- Section 25A(2) penalty is 20 years (unauthorised manufacture of a military-style prohibited weapon)

Argument could be made that the penalties in the Weapons Act for unauthorised possession of a prohibited weapon, being handcuffs for example, is high at 14 years; being 9 years more than the unauthorised possession of a firearm. However, this is not a matter for consideration as part of this Bill; rather, it should be investigated separately. The same arguments, therefore, for proportionality made for the Firearms Act will apply to the Weapons Act.

3. Question, p6-7

The CHAIR: Well then, I ask you again: Why would you not, as the South Australians have done, insert automatic exemptions for law-abiding firearms owners with registered firearms?

Acting Deputy Commissioner WALTON: I would need to take that on notice as to why that has not been inserted in the current bill.

The Hon. TREVOR KHAN: Could I just ask this: You referred—this is my terminology—to a number of failed prosecutions that have arisen. Are you able to, on notice, provide us with some details as to those failed prosecutions?

Mr DAVID SHOEBRIDGE: Or if you have any details now, Deputy Commissioner.

Acting Deputy Commissioner WALTON: I was briefed yesterday on a matter on the Central Coast and I do not have the exact details around dates, but it did relate to the manufacture of what would have been automatic or semiautomatic firearms. There were charges in relation to that. My recollection is the Director of Public Prosecutions [DPP] withdrew the matter based on the failure to meet that threshold. That, Mr Khan, is something that we could provide further details of on notice.

Mr DAVID SHOEBRIDGE: Does the current law allow for backup charges? Did the entire prosecution fail in that case or were there alternative offences that were prosecuted?

Acting Deputy Commissioner WALTON: Again, I do not have the detail of that whole investigation. It is likely there would have been other offences attached to that matter.

Mr DAVID SHOEBRIDGE: Because if this relates to the manufacture charges, which are seen as more serious than the possession charges—is that right?

Acting Deputy Commissioner WALTON: Yes.

Mr DAVID SHOEBRIDGE: If you could provide us with details of that, what the backup charges were or if that meant that that activity went without any criminal sanction.

Acting Deputy Commissioner WALTON: We could provide details on that matter.

Answer

Since 2003, 49 out of 96 charges for unauthorised manufacture of a firearm or a prohibited firearm/pistol have not progressed. Of these, some would have been the subject of plea bargaining and resulted in a lesser or different conviction, such as unauthorised possession of a firearm or prohibited firearm/pistol.

4. Question, p7

Mr DAVID SHOEBRIDGE: Superintendent, separately I will ask some questions about how section 51J works but I am asking about what the criminal intelligence is that says that this is a public safety risk.

Acting Deputy Commissioner WALTON: Again it is something that I would need to get some detail on as to how many matters have been referred to the police or investigated and what threshold they have got to in relation to information. I do not have details on how prevalent the issue is, which I think is what you are asking.

Answer

The criminal space is ever-changing, and criminals and crime networks are highly responsive to new and emerging technologies, and, are oftentimes early adopters of new technology. The proposed manufacturing offence is a proactive policy response to this matter. In addition to our proactive response, NSW Police is being reactive to existing criminal intelligence around the manufacture of home-made and improvised items, and other items such as pen guns. While pen guns are one-shot, small calibre items, they remain lethal. Also, their concealability and the ease at which they can be manufactured makes them a highly desirable lethal option.

In addition, the Drug and Firearms Squad have a number of separate examples where illegal manufacturing has been detected over the past 12 months. These charges have yet to be tested in court. As some of the items described in the charges may not fulfil the definition of a firearm in that they are unfinished or are parts of a firearm, these matters may not result in a successful prosecution.

Examples include:

- SF Myosoti 2020: Imported parts of Glocks added to 3D printed parts to make up a Glock 19 pistol
- SF Kileen: Seizure of extensive equipment used in the manufacture of firearm components, various crudely manufactured firearm components, ammunition at various stages of assembly and a computer hard drive that was being used to operate a 3D printer
- SF Virgornia: During an investigation into firearm supply, NSW Police were able to secure the controlled purchase of five (5) 3D printed firearms, and ten 3D printed barrels
- Vehicle stop resulting in search warrant: During the search warrant investigators located two assault rifle style gel blasters, a 3D Printer and 3D printed firearm parts that appear to be the POI's attempt at manufacturing a "FGC-9" which is a 3D printable semi-automatic pistol, first released in early 2020.
- Vehicle search: Police searched a vehicle and found a crudely made firearm from scrap metal parts found on the POI's property
- Premises search: Police searched a premises and found a homemade Glock style receiver, partially complete homemade silencer, .22 ammunition, homemade magazine, alloy tubing similar to parts contained within an improved explosive device, Glock-style slide, homemade 9mm rifle and homemade magazine designed for 9mm ammunition.

5. Question, p8

Mr DAVID SHOEBRIDGE: Is it the concern—as I understand it—that there may be some highly refined elements of a weapon that require precision engineering that will be manufactured using 3D printing and will then be attached to other, less refined parts of the weapon that will be produced using more traditional methods? Is that what your concern is?

Acting Deputy Commissioner WALTON: Correct.

Mr DAVID SHOEBRIDGE: Can you explain if there are cases or incidents, either locally or internationally, that make that the concern?

Acting Deputy Commissioner WALTON: I do not have particular examples at the moment. I can take that on notice and provide some further information.

Answer

I refer to the answer provided to the question on page 7 of the transcript.

In addition, the NSW Police Force's Forensic Ballistics Investigation Section (FBIS) have examined firearms made up of multiple parts from different firearms, including an item that ultimately made an M16.

FBIS have provided advice that they examine many improvised or home-made type firearms.

A recent issue of an intelligence bulletin from the United Kingdom also provides a number of recently seized examples of improvised and craft produced weapons.

6. Question, p10-11

Mr DAVID SHOEBRIDGE: Do I understand it is not your intent for the bill to cover those kinds of modest repairs, but you are going to get back to us on notice about how this interacts with the other provisions of the Firearms Act to ensure that it does not unintentionally criminalise those kinds of minor repairs? Is that the position?

Superintendent BELL: It is not our intention that this legislation would do that to the law-abiding licence holders who are within their rights to do certain things with their firearms in terms of maintaining—

The Hon. MARK BUTTIGIEG: Would a specific exemption along the lines of the South Australian Act help to make it abundantly clear?

Superintendent BELL: Yes, any information we can take on notice and then get back to you.

Mr DAVID SHOEBRIDGE: Come back to us on that.

Acting Deputy Commissioner WALTON: I think that was a point we take on notice to consider why the South Australia Police—

Mr DAVID SHOEBRIDGE: Yes, that is my understanding.

The Hon. TREVOR KHAN: In the South Australian legislation it seems to be section 37 (3) and (4). I think those are the two provisions.

The CHAIR: When read in conjunction with definitional—

Mr DAVID SHOEBRIDGE: I do not pretend to be on top of the South Australian legislation, so I think we do not limit what is taken on notice to that....

Answer

I refer to the answers provided to the questions on pages 5 and 6 of the transcript.

7. Question, p12-13

Mr DAVID SHOEBRIDGE: Again, I will ask if you could provide on notice whether or not the Minister's proposition in the second reading speech accurately reflects 51J (1) (b), where he says "For the new offence to apply, the person must be aware that the manufacture is illegal, that it is not authorised under a firearms dealer's licence". That statement from the Minister seems to be in error, but I would be interested if you would respond to that on notice.

Acting Deputy Commissioner WALTON: Certainly.

Answer

The legislation provides that a person must knowingly or *ought to have known* that the manufacture is illegal.

The rationale for the introduction of 'ought to have known', i.e. the introduction of a strict liability or 'negligence' fault element is because there is an absolute test in firearms manufacturing in that either a person is licensed or not – which requires a baseline enquiry in order to establish this fact.

8. Question, p18

Mr DAVID SHOEBRIDGE: What troubles me again is that you go back to the current provisions about the actual manufacture of a firearm and section 50A of the Firearms Act, which I support, says that the unauthorised manufacture of a gun—

The CHAIR: It is already illegal.

Mr DAVID SHOEBRIDGE: The entire manufacture of a gun carries a 10 year imprisonment. But under this, if you manufacture a part of a firearm, you get 20 years imprisonment. I do not understand how manufacturing an entire gun gets you 10 years but manufacturing a part of a gun gets you 20 years.

Acting Deputy Commissioner WALTON: I understand your argument and it is something we would need to take on notice as to how we came to that provision.

Mr DAVID SHOEBRIDGE: Section 50A has a useful division. It says that if you manufacture a firearm and it is proven, the maximum penalty is 10 years. But if you manufacture a more dangerous weapon, like a pistol or a prohibited firearm, then the maximum goes to 20 years so there is a differentiation in the existing law but there is no differentiation in this law.

The Hon. TREVOR KHAN: Is the problem that if you are manufacturing parts for a firearm, that you do not know necessarily that you can categorise what the nature of that firearm was simply by the parts that have been manufactured? Could that be the rationale that has been applied? I am not being critical—

The Hon. MARK BUTTIGIEG: It sounds like there was no rationale, it is an error.

The Hon. TREVOR KHAN: No, no, no.

Mr DAVID SHOEBRIDGE: This is why I am asking the question on notice because I do not know.

Acting Deputy Commissioner WALTON: Again, I would have to take notice.

Answer

I refer to the answers provided to the questions on pages 5 and 6 of the transcript.

9. Question, p19

The CHAIR: I note, Deputy Commissioner, that in the Minister's second reading speech he says that law enforcement agencies have continued to see a growth in the domestic manufacture of improvised firearms. The statistics I provided to you do not support that. If those statistics are not right can you provide the Committee with data that refutes the BOCSAR stats or the Australian Criminal Intelligence Commission stats that support your position?

Acting Deputy Commissioner WALTON: I would have to take that on notice.

Answer

The Australian Criminal Intelligence Commission (ACIC) has released a report on Illicit Firearms titled: *Illicit firearms in Australia*. That report is publicly available at:

https://www.acic.gov.au/sites/default/files/2020-08/illicit_firearms_in_australia.pdf

While the report has suggested that in 2015-16 illegal manufacture made up a small percentage of illicit firearms traced by the ACIC, it nevertheless indicates a criminal willingness and ability to exploit and expand this avenue. Given the age of the report, NSW Police hold the view that illicit manufacturing of firearms is a criminal activity with the potential to increase and is likely to maintain pace with enhancements in technology.

10. Question, p20

Mr DAVID SHOEBRIDGE: I hear you say you have raised it and you acknowledge the need of it but is there a commitment clearly in place to ensure there will be the additional resources. What we do not want is people being taken off other important work in the registry—

The Hon. ROSE JACKSON: That was my concern.

Mr DAVID SHOEBRIDGE: —and being diverted to this. Has that commitment been given?

Acting Deputy Commissioner WALTON: These are moment in time elements to and that surge works. We may need to put a certain number of resources there which would be less as time goes on.

Mr DAVID SHOEBRIDGE: Perhaps you could give us an answer on notice about whether or not the commitment has been given for those resources? Deputy Commissioner, can you take that on notice?

Acting Deputy Commissioner WALTON: Yes.

11. Question, p20-21

Acting Deputy Commissioner WALTON: I just did not want to give the impression that more work equals 3.4 people to cover that work at Murwillumbah at the Firearms Registry. The options as to how that task and commitment is delivered need to be considered.

Mr DAVID SHOEBRIDGE: You will give us that detail on notice.

Acting Deputy Commissioner WALTON: Yes.

Answer to questions on p20 and p21

The NSW Police Force will ensure this function is appropriately resourced.