

PROPOSAL FOR DRAFT OFFENCES RELATING TO ILLEGAL MANUFACTURE OF FIREARMS

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PROPOSAL FOR OFFENCES RELATING TO ILLEGAL MANUFACTURE OF FIREARMS

INTRODUCTION

Background

In November 2015, the Police Ministers' Council [then part of the LCCSC] agreed to a desktop review of existing manufacturing offences, which would assess them against new technologies and report on outcomes to the FWPWG.

The review recommended that the FWPWG support an alternative to creating new manufacturing offences every time a new 'device' is created; it proposed rather to provide a mechanism by which the term 'manufacturing' would have a broader application and new technologies be added to a schedule of articles. A new, broader offence provision would provide a national manufacturing offence standard and, through a "take part in" manufacturing offence, address issues such as: financing, providing premises, equipment and materials of illegal manufacturing. These recommendations were accepted by LCCSC, which gave NSW the further task of developing specific proposals for draft offences.

Jurisdictions have provided comments via the FWPWG; in addition Victoria Police, South Australian Police and the NSW Police Force have contributed to specific sections.

As directed, this paper sets out some proposed draft offences; but it does not include 'model laws' nor is it expected that the example provisions (found in the blue boxes) should be followed to the letter. Each jurisdiction will determine its own drafting instructions and Parliamentary Counsels (or equivalent) will determine the legislative language. The provisions are provided in this format to assist with developing a consistent approach. The proposals assume that Police Ministers and Cabinets will make their own decisions about how to proceed.

Jurisdictions were originally given the option of adopting either the common provision to standardise illegal manufacturing offences, or adding to or amending their existing provisions for each element of manufacturing to achieve a national consensus. The consensus provision was to proceed with one provision to present to Police Ministers.

Approach

The proposal is to create a common provision to standardise illegal manufacturing offences by providing for the offence of 'take part in' illegal manufacture of firearms. This provision will not apply to firearms dealers or armourers or those commercial enterprises that are permitted to manufacture firearms under existing legislation

There is no proposal to amend the current definitions of firearm; however, the manufacturing offence has been constructed so that any future amendment to the definition of a firearm would not also require amendment to the manufacturing offence.

Definitions of "parts" within jurisdictions' respective legislation should complement the manufacturing provisions. There may be value in extending the definition of "parts" to include the following:

- a barrel or portion of barrel
- breech including breech bolt or block
- pistol slide
- pistol frame or receiver
- rifle or shotgun frame or receiver
- revolver firearm cylinder
- trigger mechanism
- operating mechanism
- magazine

Consideration could also be given to including the stock or grip, grip plates or part of the furniture as, while it may be argued the furniture is not the working part of the firearm, its presence along with some other component part could trigger the offence.

While not a “part” as such, the offence should also include equipment for manufacture and electronic firing mechanisms or railgun technology. The advantage of the broad offence is that future creativity of criminals would be captured regardless of the materials used.

The penalties for the manufacturing offence is developed with a consideration for those jurisdictions that do include a prohibited, controlled or prescribed firearm for which an offence attracts a higher penalty. If a jurisdiction’s legislation does not encompass this distinction, a lower penalty may be more appropriate in that jurisdiction.

Developing an offence which also encompasses technology related matters has been challenging. Downloading blueprints, templates or instructions on firearms manufacturing is freely available on the surface web, and such actions are not prohibited in most jurisdictions. In the event that gaining access, possession, and publication etc. of such material is criminalised, there is a risk that this behaviour will move into the Darknet; but this issue is included to future proof the offence provisions as far as possible. Both the surface web and the Darknet should be the focus of legislative efforts.

Definition of manufacture and take part in manufacture

The concept of a manufacture offence should cover all elements, including:

- participating in the manufacturing
- assemblage
- the acquisition, possession, use or supply of:
 - equipment
 - electronics, including digital blueprints or plans
 - or materials
- for a firearm or a firearm part

Taking part in manufacture should also include:

- financing
- providing premises as part of the process

None of the above is contingent on the end-product being a functioning firearm or imitation firearm. In this way there is no need to distinguish in legislation between a firearm and a prohibited firearm and any proofs of the offence do not include what type of firearm or imitation is expected to be manufactured. This also accounts for setting the proposed penalty at the higher end of the scale, which is consistent with penalties for prohibited or prescribed firearms.

BROAD PROVISION – OFFENCE OF TAKE PART IN THE UNAUTHORISED MANUFACTURE OF A FIREARM

The draft provision is broader than the current definitions of manufacture in most jurisdictions and has been based on the meaning of “take part in” found within the *Firearms Act 2015* (SA) and the *Drug Misuse and Trafficking Act 1985* (NSW), to cover all the elements related to manufacturing:

- participating in the process
- financing
- supplying, providing or using equipment, electronic devices, digital blueprints or plans or materials (and potentially)
- providing premises

Takes part in unauthorised manufacture of firearms

A person other than a licensed firearms dealer (armourer or commercial enterprise) must not knowingly **take part in** the manufacture of a firearm or a firearm part.

A person **takes part in** the manufacture of a firearm or firearm part if the person:

(a) **takes a step, participates in a step or takes part in, a step, or causes a step to be taken, in the process of the manufacture;** and/or

(b) **provides or arranges finance** for any step in the process; and/or

(c) **supplies, provides or uses equipment, electronic devices or technology, or materials** for any step in the process; and/or

(d) **provides the premises** in which any step in that process is taken, or suffers or permits any step in that process to be taken in premises of which the person is the owner, lessee or occupier or **of which the person has the care, control or management.**

For the purposes of this offence, the process of manufacture is taken to occur regardless as to whether the firearm can be used, is imitation or capable of being fired.

This section does not apply to a person who is:

(a) *acting in the ordinary course of the person’s duties as a member (whether sworn or unsworn) of the Police Force and is authorised to take part in firearms manufacture*

Proposed maximum penalty: 14 years imprisonment.

A broad offence of ‘take part in the unauthorised manufacture of a firearm’ is beneficial for covering new emerging firearms technology. It includes materials to capture such items as a fingerprint-proof polymers and electronic devices to capture electronic firing mechanisms or potential railgun technology.

As to what mental element of the offence should be included, ‘knowingly’ is suggested here, but, drawing on various existing offences, alternative options for jurisdictions to consider include: ‘reckless as to whether’; ‘ought to reasonably know’; ‘is aware that or there is a substantial risk of use for’ etc.

The ability of the firearm to be safely fired at the end of the process, or whether it is an imitation or ‘real’ firearm, or if it meets the definition of firearm (“capable of propelling a projectile”), are also not relevant to the manufacturing offence.

While jurisdictions may already have provisions similar to the NSW provision¹ regarding component parts, this proposed provision does NOT require that there is a final product (either functioning or non-functioning) that would meet the definition of firearm in that it fires a projectile. Having component parts would potentially be enough to constitute the offence, even when those parts could not be put together as they were to make a ‘firearm’.

Possible Defence

In developing the offence relating to 3D printing, NSW had significant discussions on managing unintended consequences, such as capturing the conduct of schools downloading 3D digital blueprints for a project. Section 51G of the NSW Act provides the defences for offences under section 51F. These include: innocent production, dissemination or possession; public benefit and approved research. Jurisdictions may wish to develop similar defences where appropriate for the manufacturing offences.

Other defences may include: that the person is authorised by a licence or permit to manufacture the firearm concerned, or is acting in the ordinary course of the person’s duties as a member (other than a police officer) of the Police Force.

There may also be a defence available to a person who is the owner or manager of a legitimate premise if that legitimate premise is used to illicitly manufacture a firearm without the owner or manager’s knowledge.

This may also apply to provide adequate safeguards for people whose legitimate businesses are infiltrated or coerced into illegal manufacturing of firearms by criminal groups, such that they ‘know’ this is occurring but under threat. Standard criminal defences such as duress (for example in Victorian *Crimes Act 1958*, section 322O,) could be specifically referred to, or replicated in any ‘defence sub-section’ included in this provision.

322O Duress

(1) A person is not guilty of an offence if the conduct was carried out by the person under duress.

(2) A person carries out conduct under duress if—

(a) the person reasonably believes that—

¹ The NSW position on component parts states, in summary: *For the purposes of this Act: anything that would be a firearm if it did not have something missing from it, or a defect or obstruction in it, is taken to be a firearm (or prohibited firearms) ... and any collection of the component parts of a thing that if assembled would be a firearm or prohibited firearm (or would be a firearm or prohibited firearm if it did not have something missing from it, a defect or obstruction in it or something added to it) is taken to be a firearm or prohibited firearm (as appropriate)...*

(i) subject to subsection (3), a threat of harm has been made that will be carried out unless an offence is committed; and
(ii) carrying out the conduct is the only reasonable way that the threatened harm can be avoided;
and

(b) the conduct is a reasonable response to the threat.

(3) A person does not carry out conduct under duress if the threat is made by or on behalf of a person with whom the person is voluntarily associating for the purpose of carrying out violent conduct.

There may also be value in including an explicit statement that it is NOT a defence that the component parts could not form a functioning firearm.

Proposed maximum penalty of 14 years imprisonment

Jurisdictions will make their own decisions about the penalty regime. However, the penalty regime for the proposed “take part in” manufacturing offence has been modelled on the NSW 3D printing offence with a maximum penalty of 14 years imprisonment. Alternatively, the SA provision has a maximum penalty of 15 years (prescribed firearm) or 10 year (Cat C, D or H) or 7 years for other firearms. Other jurisdictions have a similar sliding scale, depending whether they prescribe or prohibit certain firearms.

Not having to specify whether it is prohibited or not-prohibited firearms would assist in prosecuting the offence, as the type of firearm or the end product of the manufacture may not be known at the time of arrest and charge. As it is recommended that those jurisdictions without 3D printing provisions include this in the broad provision, this also raises issues about the penalty regime.

The scaling of the penalty provision is therefore not recommended for two reasons:

- (a) not scaling the penalty means that the prosecution will not have to determine what category of firearm the offender was manufacturing if, at the time of seizure, there was no “*finished product*”;
- (b) the nature of 3D printing/additive manufacturing technology is such that various firearm parts can be designed and manufactured to be interchangeable between various weapons/firearms, which may ‘cross-over’ between the ‘scaled’ categories, meaning that, in a prosecution for such an offence, defence would likely seek a lower penalty on the basis of the lowest category of firearm with which the part is compatible.

One aspect that may be worth considering when jurisdictions consider the appropriate penalty is that the threshold for telecommunications interception is 3 years penalty for derived use and 7 years for a warrant. Keeping the manufacturing offence at the higher will have the effect that a TI warrant could be obtained, giving another option in dealing with criminal groups engaged in this activity.

Definitions

It is proposed that definitions encompass a broad sweep of items including: material, devices, equipment and that these be set in a manner that can provide for future technologies or inventions. This may be best achieved by the definitions being in a schedule of articles under the legislation or included in the regulations. Amendments could therefore be made in a relatively simple manner. For those jurisdictions with the power for the Commissioners of Police to make declarations, this could also include the definitions of items under the manufacturing offence.

Proposed definitions include:

Equipment means any type of machinery, hand grip or other moulds, or objects that can be used in the production of a firearm or a firearm part.

Electronic devices or technology should include the content of technology and/or software, as well as 'physical' items used in the production. This would be either an alternative to a separate technology-based offence, as discussed later in this paper, or an addition to such an offence. This should then provide for the offence of "having access to, custody or control of software or technology". An offence of gaining access to, or disseminating the content of software, analogous to 'dissemination of child abuse material' is therefore not provided for, as such dissemination would not be used in the process of manufacture. Extending the offence in this way is not proposed as part of the 'take part in' offence.

Electronic devices includes electronic firing mechanisms (which are already available in retail electronic outlets) or potential railgun technology or remote control devices such as drones. Drones are further discussed below as a stand-alone offence, but should be captured under the 'take part in' offence.

Note: The definition of "technology" should also encompass the situation regarding possession of digital blueprints for the unauthorised manufacture of firearms on a 3D printer or an electronic milling machine. NSW is currently the only jurisdiction that has a separate provision for this, but specifies "*3D printers or electronic milling machines*". It is possible that, in future, technology will evolve to such a degree that these two particular types of items will not sufficiently cover the field. Consideration could be given to alternative wording such as "*additive manufacturing processes or other computer aided manufacturing techniques*".

Materials means substances, materials such as fingerprint-proof polymers or components that can be utilised in the production of a firearm or a firearm part.

If further definitions are required, the following may prove useful models in relation to technologies or software:

Digital blueprint means any type of digital (or electronic) reproduction of a technical drawing of the design of an object.

Possession (or access, custody and control), of a digital blueprint, includes the following:

- (a) possession on a computer or data storage device holding or containing the blueprint or of a document in which the blueprint is recorded
- (b) access or control of the blueprint held on a computer that is in the possession of another person (whether the computer is in this jurisdiction or outside this jurisdiction).

Financing and providing premises for the unauthorised manufacture of firearms

The inclusion of "financing and providing premises" within the manufacturing offence accommodates third party culpability in the commission of the offence. SA and the ACT already have similar provisions to the proposed inclusion.

It is noted that there may be situation where the premises have legitimately been used for the manufacture of items, but are then used for illegal manufacture.

This may form part of the defence to the offence if legitimate premises are used to illicitly manufacture a firearm without the knowledge of the person who owns or controls the property.

An offence of 'attempt' to manufacture

One other additional proposal is worthy of consideration for those jurisdictions that are not inclined to adopt the 'take part in' offence.

The inclusion of 'attempt' manufacture offences would cover situations where the process may not be completed and thus manufacture may not be made out at law, for example, where the process was interrupted or incomplete due to the manufacturer not having sufficient skill to finish the process. If the manufacture provision requires or assumes a completed product, as for example, in South Australia's section 38—Alteration of firearms offence, inclusion of an attempt section could be beneficial.

Suggested wording, depending on drafting advice is: *A person who attempts to commit an offence against (earlier alteration subsections) is guilty of the offence of attempting to commit that offence.*

It is considered that the 'take part in' offence should capture such an 'attempt' provision as there is no requirement that there is a complete and/or functioning firearm at the end of the process. Taking part in any step in the process should be equivalent to attempting.

Parliamentary Counsels or equivalent will be able to advise whether the 'take part in a step' covers attempt to manufacture.

Access, possession, publication and dissemination of technology for the illegal manufacture of firearms

None of the jurisdictions have existing provisions relating exclusively to the acquisition or publication of technology, software or program for the illegal manufacture of firearms. There is no legislative coverage for accessing this type of technology from the web, where persons can download instructions or templates etc. for the manufacture of firearms.

Technology, software and programs cannot be outlawed in and of themselves, it is the subject matter or content to which the illegality must attach. The target of the offence, therefore, has to be the content of the files, rather than the technology, software or programs enabling the files to be read.

Consideration may also be given to defining technology and software according to existing definitions in each jurisdiction. However, defining these terms may mean that the offences only provide limited 'future proofing'.

For example, NSW is considering other 'digital-evidence' powers and provisions and cybercrime offences for which consistency with the firearms regime may be an issue.

The challenge when drafting this type of new offence is the breadth of technology to which it would apply. An issue would arise if the offence captured the use of the content of software, technology etc. that has a legal application will be an issue. If the technology or software is agnostic, and the content

can be used for a multitude of purposes, attaching illegality to the manufacture of firearms will be the key.

To achieve this, using language such as “relating to” may not create a strong enough nexus with the manufacture of firearms. However, language such as “For the purposes of manufacturing a firearm” may provide adequate clarity.

Therefore, an alternative approach to that proposed above of simply including technology in the ‘take part in’ manufacturing offence, is to create a technology-based offence alongside the manufacturing offence that may also sit more comfortably with cybercrime offences or replicate those provisions.

The *Defence Trade Controls Act 2002* (Cth) - Section 14A was used as a starting point to consider how such technology based offences are couched:

Section 14 A

(1) A person commits an offence if:

(a) either:

(i) the person publishes [Defence and Strategic Goods List] technology to the public, or to a section of the public, by electronic or other means; or

(ii) the person otherwise disseminates DSSL technology to the public, or to a section of the public, by electronic or other means; and

(b) the person does not hold an approval under this section authorising the publication or dissemination of the DSSL technology.

Penalty: Imprisonment for 10 years or 2,500 penalty units, or both.

While it is recommended that the ‘take part in’ offence should be broad enough to encompass these issues, an alternative stand-alone example of a possible technology related offence is proposed in the blue box below.

Regardless of which approach is adopted these offences should also include the following two powers:

Demand powers

Any offence for the access, possession, publication or dissemination of firearms ‘technology’ needs to have a workable password demand power or requirement to assist law enforcement bypass encryption attached to the password or device. Without such powers, police have limited ability to properly investigate or prosecute the offence.

Seizure powers

South Australia also has provision for seizure and forfeiture powers when police suspect a firearms manufacture offence has been committed, is being committed or is to be committed. Adopting seizure powers wording may be useful to take into account the seizure of computers or other data storage devices with blueprints etc, hardcopy documentary blueprints, lathes and anything suspected of being used for unlawful manufacture or alteration of firearms. The South Australian provision is:

Section 59 —Seizure and forfeiture of equipment etc

(1) If a police officer suspects on reasonable grounds that an offence against [section 37](#) or [38](#) has been committed, is being committed or will be committed, the officer may seize any equipment, device, object or

document reasonably suspected of being used, or intended for use, for, or in connection with, the commission of the offence.

(2) If equipment, a device, an object or a document is seized under [subsection \(1\)](#), the Registrar may institute proceedings for forfeiture of the equipment, device, object or document before a court of summary jurisdiction.

(3) If, in proceedings under [subsection \(2\)](#), the court is satisfied that the equipment, device, object or document was used or intended for use for, or in connection with, the commission of an offence against [section 37](#) or [38](#), the court may order that the equipment, device, object or document be forfeited to the Crown, or make such other order for the disposal of the equipment, device, object or document as it thinks appropriate.

(4) If a court finds a person guilty of an offence against [section 37](#) or [38](#) and the court finds that any equipment, device, object or document was involved in the commission of the offence, the court may order that the equipment, device, object or document be forfeited to the Crown or be disposed of in such manner as the court directs.

(5) If a police officer suspects on reasonable grounds that equipment, a device, an object or a document has been forfeited to the Crown by order of a court, the police officer may seize that equipment, device, object or document.

(6) Equipment, a device, an object or a document seized under this section may be held—

(a) until— (i) proceedings are instituted for—

(A) an order under this section; or

(B) an offence against [section 37](#) or [38](#) for which, or in connection with which, the equipment, device, object or document is alleged to have been used, or a decision is made not to institute such proceedings; or

(ii) the expiration of 12 months after the equipment, device, object or document was seized, whichever first occurs; or

(b) if proceedings of either kind referred to in [paragraph \(a\)\(i\)](#) are instituted within 12 months after the equipment, device object or document was seized—until those proceedings are finally determined

(7) The Registrar may sell or otherwise dispose of equipment, a device, an object or a document forfeited to the Crown under this section.

(8) Subject to this Act and the regulations, the proceeds of the sale or disposal of equipment, a device, an object or a document under this section must be paid into the Consolidated Account.

Access, possession, publication and dissemination of firearms technology

A person commits an offence if, for the purpose of manufacturing a firearm:-

(a) either:

- (i) The person creates or develops firearms technology by electronic or other means; and/or
- (ii) the person accesses firearms technology by electronic or other means; and/or
- (iii) the person possesses firearms technology by electronic or other means; and/or
- (iv) the person publishes firearms technology to the public, or another person, by electronic or other means; and/or
- (v) the person otherwise disseminates firearms technology to the public, or another person, by electronic or other means; and

(b) the person does not hold an approval to acquire, possess, publish or disseminate firearms technology.

(c) The Police Commissioner may approve a person acquiring, publishing or disseminating specified firearms technology to the public or to a person if he or she is satisfied that it is in the public interest to do so.

Maximum penalty: imprisonment for 10 years

Firearms technology may be defined as including digital blue prints, technology, instructions, templates and content of software relating to the manufacture of firearms.

Program is a sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer

Possession (or Access, Custody and Control) of firearms technology is defined as being in a person's access, custody or control on a premises or on a computer, data storage device, remote computer or portal (whether the server is in the jurisdiction or outside the jurisdiction).

Dissemination of firearms technology means

- (a) send, supply, exhibit, transmit or communicate firearms technology to another person, or
- (b) make firearms technology available for access by another person, or
- (c) enter into any agreement or arrangement to do so.

Such a provision should also include relevant exceptions for those who are duly authorised by licence or permit, or for other specified purposes etc.

Sound moderators (silencers) and other accessories

Certain accessories to firearms may also be captured by the manufacture provision. However, it may be neater to simply add 'manufacture' to an existing provision. These accessories are not defined as 'parts' but may be manufactured with a firearm or form part of the components.

As an example, the Tasmanian *Firearms Act 1996* at section 118 provides:

A person must not use, keep, possess, sell or manufacture any implement designed to suppress the sound caused by the discharge of a firearm, whether or not the implement forms part of the firearm or can be attached to, or removed from, the firearm.

South Australia has addressed the issue by including a sound moderator in the general manufacturing provision at section 37 of their Act:

*A person is guilty of an offence if the person manufactures a firearm, firearm part or **sound moderator**.*

Accessories are also not required to make a firearm. If the purpose of a manufacturing offence is to ensure there are as few illegally manufactured firearms as possible, and the penalty is set at the maximum for a prohibited firearm offence, then manufacturing an accessory does not imply the same lethality nor level of penalty.

On balance, it is recommended that jurisdictions consider including ‘accessories’ in existing provisions relating to that particular accessory or the general manufacturing provisions, rather than including accessories in the ‘take part in’ offence.

Remote controlled possession and use of firearms

NSW is currently the only jurisdiction that has a specific provision covering remote controlled firearms. While not strictly a manufacturing offence, this provision has been included as another aspect of potential firearms manufacturing legislation.

Remote controlled possession and use of firearms

(1) A person who possesses or uses a firearm by remote control is guilty of an offence under this subsection unless the person is authorised by a permit to possess or use the firearm by remote control.

Maximum penalty: imprisonment for 5 years.

(2) A person who possesses or uses a pistol or prohibited firearm by remote control is guilty of an offence under this subsection unless the person is authorised by a permit to possess or use the pistol or prohibited firearm by remote control.

Maximum penalty: imprisonment for 14 years.

Definition - a person possesses a firearm by remote control when the person has the firearm in or on any vehicle, vessel, aircraft or other device that is being operated by the person by remote control. A person uses a firearm by remote control when the person operates the firearm by remote control.

It is suggested that manufacturing a drone as an integral part of a firearm would be captured under the ‘take part in’ offence. Attaching a firearm to an existing drone would be covered by the offence as set out in NSW legislation.

It is recommended that jurisdictions pursue this path of ensuring that manufacturing a drone is included in the 'take part in' offence, along with other technologies or equipment such as railguns or electronic triggers, under the electronic devices.

RELATIONSHIP OF THE PROPOSED “TAKE PART IN” PROVISION WITH ORGANISED CRIME LEGISLATION

Anti-organised crime and confiscation legislation is a key strategy for disrupting serious and organised criminal activity. By providing an additional means by which to disrupt their activities, the manufacturing offences clearly assist in target criminal groups which are found with firearms manufacturing equipment or materials.

The other advantage of linking illegal manufacturing offences with serious or organised crime legislation is that it highlights to the community that the new offences are not intended to target legitimate dealers or licence holders.

The adoption of a comprehensive “take part in” provision in relation to illegal manufacturing with a maximum penalty of 14 years satisfies the threshold of a serious crime offence for the purposes of organised crime legislation and proceeds of crime legislation across the jurisdictions.

It is proposed that each jurisdiction consider or ensure that the manufacturing offences already meet the definitions in their criminal organisation and confiscation provisions or can be included in these definitions if adopted.

In NSW, as in many jurisdictions, the criminal organisation legislation is administered by the Attorney General. The Police Minister administers the principal confiscation legislation. However, there is value in seeking Police Ministers’ support prior to each jurisdiction raising these issues with their Attorneys General.

Criminal organisation search warrants

Unlike most jurisdictions, NSW has criminal organisation search warrants. The powers conferred by criminal organisation search warrants are the same as for other search warrants, but the threshold for applying is the applicant's "reasonable suspicion", (rather than belief) and warrants are available for a period of seven days.

The lower threshold enable police to cut through existing practices of systematic concealment and collusion often associated with organised crime offences. Similarly, the longer warrant duration is reflective of the fact that investigations into organised criminal activity often demand considerably higher levels of planning and logistical organisation.

This power may be useful if the evidence for illegal manufacturing of firearms offences or the separate elements of the manufacturing offence are suspected of being located at separate locations and undertaken by multiple parties.

In summary, an eligible Police applicant may apply for a criminal organisation search warrant in respect of premises if there are reasonable grounds to suspect that there is, or within 7 days there will be, in or on the premises a thing connected with a searchable offence in relation to the warrant.

The new “take part in” provision in relation to illegal manufacturing would be included in the list of applicable offences.

Confiscation Legislation

A key component of criminal organisation legislation is the concept of ‘serious criminal related activity’ or ‘serious crime related offence’ or ‘serious and organised crime’ or varieties of these.

It is proposed that the ‘take part in’ offence would meet the threshold for such definitions.

The best example of this is confiscation legislation as all jurisdictions share a confiscation provisions which reference offences under their respective firearms acts.

It appears therefore that jurisdictions already have suitable provisions in which to include the new ‘take part in’ offence. This is consistent with existing firearms offences that are listed as applicable offences:

Criminal Assets Recovery Act 1990 (NSW)

A serious criminal activity is defined as:

(e) an offence under section 50A, 51, 51B, 51BA or 51BB of the Firearms Act 1996 (NSW).

The new “take part in” provision in relation to illegal manufacturing would be included in this list of applicable provisions.

Confiscation Act 1997 (VIC)

A serious criminal activity is defined as:

(iii) an offence against section 7C, 59, 93, 94 or 96 of the Firearms Act 1996 (VIC)

The new “take part in” provision in relation to illegal manufacturing would be included in this list of applicable provisions.

Criminal Proceeds Confiscation Act 2002 (QLD)

A serious criminal offence is defined as:

(1) An offence is a serious criminal offence if it is

(a) an indictable offence for which the maximum penalty is at least 5 years imprisonment;

The new “take part in” provision in relation to illegal manufacturing with the proposed 14 year penalty regime satisfies the threshold.

Criminal Assets Confiscation Act 2005 (SA)

Meaning of serious offence is an indictable offence.

The new “take part in” provision in relation to illegal manufacturing with the proposed 14 years imprisonment penalty regime satisfies the threshold.

Criminal Property Confiscation Act 2000 (WA)

Confiscation offence means —

(a) an offence against a law in force anywhere in Australia that is punishable by imprisonment for 2 years or more

The new “take part in” provision in relation to illegal manufacturing with the proposed 14 years imprisonment penalty regime satisfies the threshold.

Crimes (Confiscation of Profits) Act 1993 (TAS)

A person must be convicted or has absconded after being charged with a serious crime before assets derived from the criminal activity can be confiscated.

Serious offence means —

(a) an offence against a law of Tasmania which may be dealt with as an indictable offence even though it may, in some circumstances, be dealt with summarily; or

(b) an offence against a law of another State, a Territory, the Commonwealth or a country outside Australia that would have constituted an offence referred to in paragraph (a) if it had been committed in Tasmania.

The new “take part in” provision in relation to illegal manufacturing with the proposed 14 years imprisonment penalty regime satisfies the Tasmanian threshold. The provision may bolster their approach to confiscation action.

Criminal Property Forfeiture Act 2002 (NT)

A forfeiture offence is:

(a) an offence against a law in force anywhere in Australia that is punishable by imprisonment for 2 years or more; or

(b) any other offence that is prescribed for this section.

The new “take part in” provision in relation to illegal manufacturing with the proposed 14 year penalty regime satisfies the threshold.

Confiscation of Criminal Assets Act 2003 (ACT)

A serious offence means—

(a) an offence punishable by imprisonment for 5 years or longer; or

The new “take part in” provision in relation to illegal manufacturing with the proposed 14 years imprisonment penalty regime satisfies the threshold.

CONCLUSION

The FWPWG supports an alternative to creating new manufacturing offences every time a new ‘device’ or material or technology or software is created or developed. The creativity of criminals requires a more proactive approach to new offences.

The proposal in this paper provides a mechanism by which illegal manufacture of firearms has a broader application. In the future, new technologies could be added to a schedule of articles or amended definition if required. Preferably such amendments should be done by declaration or regulation that does not necessitate an amendment to the substantive provision in the parent legislation.

A new broader provision would provide a national manufacturing offence standard and address issues such as financing, providing premises, equipment and materials of illegal manufacturing through a “take part in” manufacturing offence. This should include technology related provisions and the content of electronic devices and software. It should also have complementary demand and seizure powers attached.

The proposals in this paper are not inconsistent with the National Firearms Agreement (NFA) which focuses on the regulation, possession, carriage, use, storage and transfer of legitimate firearms, and is therefore silent on the specifics of illegal manufacture of firearms. The NFA states:

*6. Jurisdictions will ban the sale, resale, transfer, possession, **manufacture** and use of those semi-automatic long arms and pump action shotguns included in Licence Category C and D other than in the following exceptional circumstances:*

(a) military use

(b) police or other government purposes

(c) occupational categories of licence holders who have been licensed for a specified purpose, including:

i. the extermination of animals,

ii. film and theatrical armourers

iii. firearm dealers

*iv. firearm **manufacturers***

v. additional occupational needs and other limited purposes as authorised by legislation or Ministerial discretion

and

22. Firearm *manufacturers*

*(a) Jurisdictions must have regulations addressing firearm **manufacturers**.*

While outside the scope of this paper, future revisions of the NFA could include reference to illegal manufacture of firearms.

The proposals assume that Police Ministers and their Governments will make their own decisions about how to proceed, at the same time as providing a draft offence that is consistent across jurisdictions.

It is recommended the FWPWG present these findings to the National Police Senior Officers Group and thence to the Police Ministers for consideration and agreement on implementation and time frames.