

INQUIRY INTO PROVISIONS OF THE FIREARMS AND WEAPONS LEGISLATION (CRIMINAL USE) BILL 2020

Name: Mr Robert Whiter

Date Received: 6 May 2020

Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020

Submission tendered by Mr Robert Thomas Whiter

Preamble to the Submission

The proposed amendment seeks modify the existing NSW Firearms law as follows:

The object of this Bill is to amend the Firearms Act 1996 (the principal Act) as follows:

- (a) to create a new offence of knowingly taking part in the unauthorised manufacture of firearms or firearm parts and to provide that the offence will include being in possession of certain matter (referred to as a firearm precursor) for the purposes of manufacturing a firearm or firearm part,
- (b) to confer seizure powers on police officers in relation to the new offence,
- (c) to require firearms prohibition orders to be reviewed every 10 years by the Commissioner of Police,
- (d) to provide that the power of a police officer to search a person who is subject to a firearms prohibition order for firearms or firearm parts may also be exercised in relation to any other person who is present on the subject person's premises,
- (e) to make it clear that the powers of a police officer in connection with firearms prohibition orders (including search powers in relation to persons other than the subject person) may only be exercised if reasonably required to determine whether the subject person has committed an offence arising out of the making of the order,
- (f) to make other miscellaneous amendments in connection with the operation and enforcement of firearms prohibition orders, including enabling firearms prohibition orders under the law of another jurisdiction to be enforced in this State. The Bill also amends the Weapons Prohibition Act 1998 to create a similar offence of taking part in the unauthorised manufacture of prohibited weapons or parts of prohibited weapons.

Tendered Submission

The current definition of a “precursor” is excessive.

The current proposal includes a definition of “precursor” that is so wide as to allow any material or tool used in servicing, restoration, and repair of a firearm as illegal if the police “reasonably suspect” that those precursor tools and materials are being used in breach of the Firearms Act. (In most cases that breach would be to fit or install a change to a firearm that affects its Type or Classification under the act)

The changes proposed potentially criminalise anyone engaged in manufacturing of any firearms or firearms parts should that person fall under police suspicion, and indeed this could reasonably be extended to anyone operating a modern machine shop for any kind of mechanical metal manufacturing.

- Current precursor definition Ref - *A firearm precursor is defined as any object, device, substance, material or document used or capable of being used in the process of manufacturing a firearm or firearm part (including computer software or plans)*

General commentary on the potential effect of the proposed changes

The purpose of good law is to allow for objective evidence based prosecution of those engaged in criminal activity as this has the highest rate of successful prosecutions. As we have seen recently in the Cardinal Pell case, poorly drafted legislation even when of the very best intention does NOT contribute toward better outcomes in law, indeed it often contributes to lesser outcomes as subjectivity in law when tested in the higher courts is rarely sustained.

The purpose of this amendment appears to seek to broaden the definition of “illegal manufacture” of a firearm by expanding that definition to include the concept of a “precursor” to be so ill defined as to be almost anything at all. In its current form the definition could and will include:

1. Any material metal or otherwise that can be shown to be useable in firearms
2. Any tool that can be shown to be used in the repair modification or mechanical working of a firearm
3. Any combination of the above

As such there would be many home workshops equipped with a Lathe with tooling able to cut firearm grade steel that would fall foul of this definition. Any gunsmiths workshop must be definition fall foul of this as well as would any metal working business with computer driven CNC systems. (Engine repair, heavy equipment etc etc)

As such the proposed changes and especially the definition of a precursor as it stands appear to be intended to empower the police with “drag net” that when combined with the subjectivity of “reasonable suspicion” act to snare almost anyone who works in the firearms servicing and repair trade and indeed many outside the trade whose lawful businesses have nothing ordinarily to do with firearms or their manufacture or modification.

As it stand this proposed modification presents as lazy legislative work designed more to avoid due process, than to correct legality that should in fact be illegal under the intent of the primary Act. It risks creating complexity in prosecution through excessive reliance on police “suspicions” verses properly acquired evidence of a criminal act or criminal venture. (By example the discovery of weapons modified to change their class to one that is considered prohibited verses the discovery of tooling that “might be used” to undertake such work)

Lastly in my opinion the amendment continues the current and lamentable trend of wielding the blunt and often blind weapon of prohibition as a panacea to all social ills, irrespective of the obvious historical evidence to show beyond all doubt that prohibition in all its forms has a woeful track record and a penchant for creating and funding criminality at scale.

Yours Faithfully

Robert Whiter