

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

Organisation: Preservation of Life - Community Protection Research Group
Date Received: 7 May 2020

Partially
Confidential

Point 1:

Schedule 1[3] makes it an offence (with a maximum penalty of imprisonment for 20 years)

Response 1:

As a result of our research a lady contacted me, and I spoke to over the telephone about her situation. I will call this woman Eve. I believe this person is a victim of rape and that for reasons best known to herself has constructed with the help of a friend a “slam fire” single shot firearm for personal protection.

During our conversation I cautioned Eve about possessing this illegal homemade firearm.

Because what Eve told me had the “ring of truth” I do not feel compelled as a retired police officer to report the conversation to operational police for the following moral reasons.

“The best division of right, one kind to be natural, and the other voluntary calls it a lawful right in the strictest sense of the word law, and sometimes an instituted right. Of this kind is the evil of certain actions compared with the nature of a reasonable being.” Aristotle

In Eve’s case the details of her matter be interpreted as follows:

It is not a natural right to disarm a victim and thereby afford an advantage to an armed criminal in specific circumstances. Nor is it the nature of a reasonable being to use a weapon against another person other than for the purpose of self-defence.

Her rapist was armed, and NSW legislation prohibits her from possessing a firearm for personal protection.

NSW Legislation and official correspondence relevant to your inquiry:

- NSW Police reference no. *“[...] it is important that you understand that the legislation prohibits you from possession or using firearms for the purpose of personal protection.”*
- Crimes Amendment (Self-defence) Act 2001/ Division 3 Self-defence. 418 Self-defence—when available states: *(1) A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in self-defence.*

A “natural right” must always prevail other an “instituted right” of the State because if it does not the legislation that is based on an instituted right will result in abnormal outcomes that do not serve the needs of the people the State is supposed to serve.

The following analogy of Eve’s possible future will illustrate why laws that contain no criminal intent as an element of an offence are viewed by society as “witch-hunt” laws.

Eve takes refuge in a rented house in country NSW. Her stalker has learnt where she lives, and the police have been unable to locate this person who has a history of violent rape.

- The maximum penalty for rape in NSW is 14 years.

- The proposed maximum penalty for knowingly taking part in the manufacture of a firearm is 20 years.

Criminal intent is not an element of the offence of taking part in the manufacture of a firearm.

Under Section 418 it may be argued that Eve is not criminally responsible for the taking part in making a firearm if her intention can be proven to be in self-defence. Eve is prohibited from possessing a firearm for legitimate personal protection and whilst 20 years is something, that Eve should “fear” what she fears far more is being “raped”.

The likelihood of a rape charge becoming a successful conviction in NSW as it is in other States is very low. The lowest percentage being Victoria with a conviction rate of less than 5% and NSW conviction rates unfortunately are not much better. That aspect could be the subject of another inquiry? In Eve’s mind her rapist has a far better chance of escaping justice than she has of being judged fairly for her illegal action of manufacturing a weapon for her personal protection.

In fact, we can take this one step further.

Eve take refuge in a rented house in country NSW. Her stalker who has done time for rape tracks her down and learns where she lives. During the early hours of the morning he attempts to gain entry to the back door of Eve’s house using a knife. Eve hears the noise and telephones the police who are over an hour away.

She then locks herself in the bedroom and stands in the corner with her illegally made slam fire single shot firearm. The known and armed rapist kicks in the bedroom door and Eve shouts, “Take one more step and I will fire.” The knifeman is deterred and leaving the house in his car runs a red light and has a collision with another car. He is arrested by the police. Eve is also arrested for possession of illegal firearm that she has manufactured.

Because the known rapist did not take that one more step the charge, he faces carries a far less maximum penalty than the charge that Eve faces.

Aristotle was correct in saying there are instituted rights. Of this kind is the evil of certain actions compared with the nature of a reasonable being.

Eve’s action contravenes an instituted right of the State. However, the State does not recognise her “natural right” to have an effective capacity for self-defence (as a deterrent) against being raped.

Possession of a firearm in Eve’s case is not evil in and of itself.

Point 2:

Schedule 1[3]

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).

Response 2:

A gun is a simple mechanical device made up of component parts that are used in many other mechanical devices that are not guns.

For example, a “Z-spring” may be used in a magazine device for a handgun or it can be used in a modeller’s steam engine.

Because “criminal intent” is not an element of the offence under the Bill, all model engineers building a model steam engine in possession of a “Z-spring” are criminals.

Point 3:

Schedule 1[3]

A firearm precursor is defined used in the process of manufacturing a firearm or firearm part [...] (including computer software or plans)

Response 3:

A gun is a simple mechanical device made up of component parts defined by a drawing that are used in many other mechanical devices that are not guns.

- A. Is it the intent of Bill that the interpretation of a drawing for purposes other than manufacturing a firearm are also to be considered illegal? OR
- B. Is it the intent of the Bill that using a drawing to produce a firearm is illegal?

If it is (A) than approximately 2.2 million Australians that are legally in possession of a firearm for sport, pest control, security and other lawful reasons who have plans for firearms are now deemed criminals. If it is (B) than the Bill needs to be amended that “criminal intent’ is an element of an offence.

The police raiding a known suspected terrorist and find plans for a firearm along with details of a planned terrorist attack that uses firearms is a case in which criminal intent can be claimed. However, the police carrying out a routine inspection of a sporting shooters that has a genuine interest in the mechanics or firearms and their history find plans of a firearm in his safe than no criminal intent can be claimed.

A sporting shooter and others of a like kind must not be treated the same as a suspected terrorist with an agenda.

The definition given in the Bill may be considered “Witch-hunt” legislation because criminal intent is not an element of the offence.

END OF SUBMISSION BY POL-CP-RG