

**Submission
No 27**

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

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The Secretary
Committee of Inquiry
NSW Legislative Council

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By Email

Honorable Members

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

I am a legal practitioner of thirty-six years standing, I have a background in Family Law, Criminal Law and Administrative Law, but spent ten years with the Commonwealth Government as a Senior Regulatory Lawyer. For the last five years I have practiced solely in Firearms Law and Regulation.

I have a post graduate qualification in Public Sector Management with my area of interest and dissertation being in the area of achieving consistency in government decision making.

I have been an active shooter for the past fifty-two years, and have an active interest in, and study and research firearms, hunting, gunsmithing, silencers, firearm law & criminality, forensics, military and firearms history.

I am regular contributor of articles in the area of Firearms Law and Regulation that are published by *Sporting Shooter Magazine* and have written a number of technical firearms reviews published in the *Australian Shooters Journal*. I regularly Blog on Firearms Law and Regulatory matters.

The above Amendment Bill causes me considerable concern.

BUSINESS CASE

The first point I wish to make is what is the business case for this legislation? And to what extent are policy officers and Police seeking to protect the community from their imaginations?

This is a serious question. Firearms laws have proliferated to the point where even the relevant Minister, the Hon David Elliot, made a critical mistake of using a prohibited weapon on a Ministerial visit.

If a Minister responsible for the relevant portfolio cannot understand, or appreciate the consequences of the law, what chance does a common man have?

This would not be such a problem if the general community was subject to the same approach by Police as the Honourable member. Unfortunately, they are not. As a result of the 'zero tolerance approach on gun crime' edict of a former Commissioner, ordinary people, charged with even the most minor of firearms transgressions, are typically prosecuted.

Care must be taken so as not to craft laws which consider unreality and in so doing create over regulation. The world is no safer today with our thousands of pages of statute than it was with the ten tablets God gave Moses in the desert, indeed, in the case of God's approach, the people knew what their obligations were, and that is no longer the case.

The sheer weight, number and complexity of laws in Australia are predicated on the whim of Parliamentarians and Bureaucrats creating a new designer law, when the isolated incident could typically be dealt with by the application of other, existing laws.

In preparing this submission I have relied upon my own experience, which is largely in the field of legal, regulated firearms, but which involves an active interest in all firearms, and I have spoken to two highly experienced barristers who practice solely in Criminal Law and an armourer who is Canberra based, licenced and works on the cutting edge of lawful weapons development, having a patent for a silencer development.

One Barrister has fifty -one year's post admission experience that has included countless drug and gang cases, including a leading role in the Milperra Massacre defence, and the other forty-one years. One had seen only one matter in his entire career involving an illicitly manufactured firearm, and the other had come across a small number because he has acted for a number of illegal armourers.

Both advised that the market for this type of firearm was very small, because the illicit market was awash with firearms, the vast majority having entered through Australia's porous borders.

The one who had acted for illicit armourers remarked that the Police were seeking to regulate the un-regulatable, because the type of firearm concerned

can rely upon common place componentry that does not meet the traditional firearm paradigm.

Such a firearm may for example use a mobile telephone or electronic remote casing in place of a stock, an un-rifled ceramic pipe that one would not ordinarily regard as a firearm barrel, and be fired by electrical impulse from a battery activated by button, rather than the traditional approach of a trigger releasing a main spring and firing pin, as is the case with a firearm.

Such a firearm, would probably be built for a specialist market and designed to optimise concealability. It is likely to be of a single use nature, and designed for use at short range, and that therefore do not need a metallic rifled barrel or sights, a gun stock and the usual recognisable elements of a firearm.

A firearm, purportedly manufactured in Eastern Europe, was recovered in NSW some years ago that met many of these characteristics, incorporating multiple barrels and built into casing that either was from, or had the appearance of, a mobile telephone casing.

This is consistent with my own view and also with simple logic. Why manufacture firearms when everybody knows illicit commercially manufactured firearms are easy to come by and we have porous borders?

This type of firearm is the type of thing the boffin M manufactures in James Bond movies, or that was made for Special Operations Executive ('SOE') in the back room of a bike shop in Welwyn Hertfordshire during WW2 for use by its operatives, and also the resistance in France.

Indeed, one is left speculating to what extent James Bond and Hollywood has shaped the desire for these amendments.

Then, there is the enthusiast, who down loads plans from the internet, and sets out to build a 3D printed firearm with no intention to use the item to injure or rob, and where the criminality is simply in the manufacture of the item.

PROPOSED CRIMINALISATION OF THE POSSESSION OF A FIREARMS PRECURSOR- 51J

The law seeks to criminalise possession of a Firearms Precursor if possessed for the purpose of manufacturing a firearm (51J).

A firearms precursor is *defined as **firearm precursor** means any object, device, substance, material or document 32 used or capable of being used in*

the process of manufacturing a firearm or 33 firearm part, including (but not limited to) the following— 34

1. *(a) moulds for making firearm parts, 35*
2. *(b) milling, casting or rifling equipment, 36*
3. *(c) digital blueprints within the meaning of section 51F, 37*
4. *(d) computer software or plans.*

The bike shop in Hertfordshire used to make SOE firearms such as the Welrod pistol did not possess any special equipment over and above that of a normal workshop.

Similarly, firearms precursors would be found in many home garages, tool shops, businesses, men's sheds, and in the tool room of most farms, and the only limit to prosecution would be the imagination of a Police officer seeking both 'a result', and to protect the community from his fervid imagination.

I shall use myself as a practical example, as such an example is more useful I believe than addressing you in respect to a hypothetical.

I have been a keen shooter since the age of nine, I am a keen shooter, hunter, student of arms- not only in respect to firearms, but I also used to fence and practice archery.

I have a large library on firearms, Hunting, gunsmithing, silencers, firearm law & criminality, forensics, military and firearms history, knives, archery and fencing, swords and swordsmanship.

Amongst my electronic books is a book by Gerard Metral titled '*The do it yourself sub machine gun*' that I down loaded from Kindle.

I acquired the book because I wanted to ascertain, as a student of military firearms, how the Armia Krajowa, or Polish Resistance in Eastern Europe were able to make most parts of a sub-machine gun (the Blyskavica or Lightning), but found it more practical to have some components. (i.e. Sten Gun magazines) air dropped to them by the RAF.

The book outlines how to make a functional machine gun. The equipment he described is:

- A lathe big enough to turn longer parts (350 mm- 14 in)*
- A drill press*
- A good heavy vice*
- A vertical milling machine (helpful but not necessary)*

Tools to thread the body and plugs (it may be done on a lathe or with equipment for threading gas pipes)
Welding sets (electrical or acetylene)
A grinding machine
Files, drills, taps, hacksaw and other basic hand tools.

None of this equipment is sophisticated or specialised, all is available from a well-equipped hardware store, and most, if not all of these items would be in typical garage or men's shed, and according to the definition, all of these tools are firearms precursors- see the problem!

Simpler firearms could be made with a degree of ingenuity and little more than a drill, saw and screw driver. Witness the basic pen shaped 'zip gun' used by some gangs in the US which could be concealed in and use, a metallic torch casing, or at its most basic, a length of pipe for a barrel, and a rubber band in place of a firing pin spring, and a nail improvised for a firing pin.

I would not have the ability to make a machine gun, or indeed any other firearm, and if I were to try, the tools that I used would be more dangerous in hand, than any firearm I managed to produce, but I have a manual, and all but two of the items on that list and I own the book, so in the imagination of the local constabulary, an enthusiast like me is bound to be conspiring with one of his more mechanically able mates to make one.

This list would make an old-style weapon. When one refers to single use, concealable arms, utilising existing items such as pen cases, phone cases, un rifled ceramic pipe or tubing as a gun barrel, and computerised printed parts, equipment used to manufacture a firearm is limited only by one's imagination and expertise.

Consequently, a 'firearms precursor' becomes whatever common place item a Police Officer imagines it to be.

PRECURSOR PARTS

I assume that the concept of '*precursor parts*' has come from elsewhere.

In California for example, there is currently a bill (*California Assembly Bill 2382*) that defines as 'Firearms Precursor' part as a receiver, handgun frames, firearms barrels, finished slides, trigger groups.

This is a more practical definitive range and in NSW these parts are already regulated here as 'Firearms Parts' under the *Firearms Act 1996*.

IMAGINATION- THE NUB OF THE PROBLEM

Over the last thirty-six years of practice, I have noted a tendency, post 1996. for the bullying element in the Police Force to turn their attention away from the very sad and tragic vilification of gay men, and focus it upon shooters.

If passed into law, this legislation would give any Police Officer with an active imagination, and a desire to protect the community from it, or seek a 'result' a licence to do so, even in the absence of any real objective evidence of wrong doing.

It would give Police permission to seize and demand for example codes to access computers if they believe on reasonable grounds that they contain evidence of an offence. This is also dangerous, and there are no limitations.

So, for example in my case, a Policeman alleges that I intend to use tools to manufacture a machine gun, and seizes my computer and demands access code to enable the sub machine gun book ('Weapon precursor') to be accessed. The legislation requires that I provide the code.

They access a computer owned by a legal practitioner that is full of sensitive legal client information without first obtaining a warrant.

There are no controls imposed upon what they can do with that information; although, it is hoped that a Court, dealing with improperly obtained evidence, may choose to exclude it, there are certainly no guarantees there.

PROPOSED FIREARMS PROHIBITION ORDER CHANGES & 'SUSPECTS ON REASONABLE GROUNDS' or 'REASONABLY SUSPECTS'.

As to the proposed Firearms Prohibition Order ('FPO') changes, they seem to be leading toward a system of 10-year review and roll over or orders, but the major concern is search powers of people who are with people subject to an FPO.

This raises concerns. In my twenties, I was a delegate to the Law & Justice Sub Committee of the NSW Liberal Party State Council. Many on that Committee at that time, tended to be drawn ('as was I) from 'Sydney Big Law', the large city firms, and would have adopted a fairly elitist view that this does not impact 'good people like us', but only 'bad people' so it is OK.

So, let me give you a current example drawn from one of my matters.

I presently act for a church going, 60 something year old, with no convictions, he is an accountant / financial advisor. and also, a JP, in respect to a Law Enforcement Conduct Commission complaint, where, on my instructions, he innocently fell afoul of local Police.

His crime was to photograph a Police Officer dragging a teenager from a bull dozer that he was joy riding on, and the photographs allegedly show the Police Officer assaulting the young offender, which on my instruction, upset certain local Police.

A Firearms Prohibition Order ('FPO') was issued by a Police Officer immediately before Taskforce Raptor performed a search, rendering what would on available evidence, otherwise have been an illegal search, since there was no probable cause for a search warrant issued by a Magistrate, a lawful one.

His house was turned over by them- quite literally- every drawer was pulled +out and up ended, beds stripped and up ended, clothes were pulled out of cupboards, carpet dirtied by Police jackboots in wet weather.

Unless you have seen one, the only way one can conceptualise the outcome of a search like this is to picture the contents of a skip full of domestic items spread out over the ground.

Nothing of significance was found, and nothing can describe the sense of violation this good family feel after being molested by an agency of government which is out of control.

Under these proposals, there would be nothing stopping Police from entering premises and searching he and his clients, and enter his farm and accuse him of being in possession of 'firearms precursors' because, like every other farm, his has a workshop.

Whilst I can acknowledge a need for Police to be able to search others on premises occupied by a person subject to an FPO- to prevent evidence, such as a handgun being handed to someone who is not subject to an FPO at the time of Police entry, there need to be limits imposed in respect to this search power.

For example, such a search should be limited to running a metal detector over a person to make sure they have not been handed a firearm however, the emptying of pockets or even cavity search without very genuine 'probable cause' that goes well beyond pro S74A (2A) needs to be controlled.

Sadly, the NSW 'Police' is not a service, but rather a 'Force', its choice of name and operation is not consistent with Sir Robert Peel's model of Policing, but rather the colonial model of imposing sovereign power by Force.

This was implicitly acknowledged by the Commissioner of the NSW Police Force, when he made a media statement that wanted young people to have some 'fear' of Police.

Once cannot, when faced with that sort of culture have empowering legislation permitting a Police Officer to act, if 'they suspect on reasonable grounds', without there being some consequence applicable directly against the Officer concerned, when the Officer does not act reasonably.

A culture where Police simply pay compensation from consolidated revenue (i.e. Our pocket) with Police simply considering that 'the cost of doing business' is clearly a cost that is too high for the community to have to pay, both monetarily, and in terms of basic loss of freedom.

I would respectfully suggest that the Committee question Police in respect to situations where Police have exercised poor judgement how many disciplinary processes involving such decision making have arisen in the last decade? And what the punishments have there been? And whether appropriate behaviour consistent with the NSW model litigant policy has been followed.

From the above, I do not wish to sound overly critical of Police. They perform a valuable service, however they, as a group, contain the same variations as any group of homo sapiens, most are good, some not so, most are honest, some corrupt, most are hardworking, others shall seek to cut corners in order to get a result.

Just as laws need to be passed to protect society from its law breakers, laws need to contain necessary safeguards to prevent abuse from those whose duty it is to protect.

I would respectfully submit that this Bill fails in this regard.

If you wish to hear from me in person, kindly advise. My preference, if called would be to appear by remote means.

Yours sincerely,

Simon Munslow