

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

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# Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020

## Key Points

### 51J Offence of taking part in unauthorised manufacture of firearms or firearm parts

- (2) A person **takes part** in the manufacture of a firearm or firearm part if—
- (a) the person takes, or participates in, any step, or causes any step to be taken, in the process of that manufacture, or
  - (b) the person provides or arranges finance for any step in that process, or
  - (c) the person 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, or
  - (d) without limiting paragraph (a) – the person possesses a firearm precursor for the purposes of manufacturing a firearm or firearm part.

#### Comment

Sections 51J(2)(a)-(c) as they are written could potentially see a broker (for organising finance) or a landlord/estate agent (for merely leasing premises) in breach of this section of the Act. Section 51J(2) is open to misinterpretation by police.

Section 51J(2)(d) presumes that a person **takes part** in the manufacture of a firearm or firearm part merely by possessing a firearm precursor. The presumption that a firearm precursor is possessed for the purpose of manufacturing a firearm or firearm part is open to gross misinterpretation by police.

- (3) In this section **firearm precursor** means any object, device, substance, material or document used or capable of being used in the process of manufacturing a firearm or firearm part, including (but not limited to) the following—
- (a) moulds for making firearm parts,
  - (b) milling, casting or rifling equipment,
  - (c) digital blueprints within the meaning of section 51F,
  - (d) computer software or plans.

#### Comment

The definition of **firearm precursor**<sup>1</sup> is too broad and includes any **object** (e.g. a billet piece metal in any machine shop), **device** (e.g. screwdriver, pliers, electric drill, lathe, mill or any other object that can be legitimately owned and used for legally applied professions and hobbyists) or any **substance** (e.g. can of wd40 or can of machine oil) found in any residential garage or workshop in NSW. The definition of **firearm precursor** is open to gross misinterpretation by police.

While the Minister for Police stated in his second reading speech “this bill does not criminalise legitimate firearms owners” this is **NOT** explicitly stated in the bill. It is therefore extremely important that the bill be amended to include safeguard provisions by making it perfectly clear that:

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<sup>1</sup> 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). The offence will apply regardless of whether a firearm or firearm part is actually manufactured and double jeopardy provisions are included to ensure that a person is not liable to be convicted of both the new offence and another manufacturing offence under the principal Act that relates to the same or substantially the same act.

- (a) licenced firearm owners who have a legitimate need to make a part undertake minor modifications or repairs to a registered firearm, or a firearm that is not required to be registered under the Act, are not captured by this Bill; and
- (b) The mere possession of everyday items or hardware by licenced firearm owners is not an offence under this bill; and
- (c) Licenced firearms owners who own and use hardware or machinery for other legitimately legal purposes will not be faced with vexatious precursor claims by police for merely owning any said items of machinery or tooling which is legally legitimate to own and operate for other lawful purposes.

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## 51K Power to seize firearms, firearm parts and firearm precursors

- (1) This section provides that a police officer may seize and detain any firearm, firearm part or firearm precursor that the officer suspects on *reasonable grounds* may provide evidence of the commission of an offence under section 51J.

### Comment

We saw from the Law Enforcement Conduct Commission (LECC) inquiry into strip searches that NSW Police have poor understanding and application of the '*reasonable grounds*' test under the Law Enforcement (Powers and Responsibilities) Act 2002.<sup>2</sup>

Given the extremely lengthy delays in obtaining internal reviews of decisions involving firearm matters, the consequences of inappropriately seizing registered firearms, firearm parts and precursors from licensed firearm owners are profound.

As it currently stands the bill (a) applies to both licenced and un-licenced firearm owners and (b) registered (and firearms that do not need to be registered under the Act) and un-registered firearms. Any decision to seize firearms, firearm parts or firearm precursors under section 51K(1) should only be made by an experienced policer of the rank of Inspector or above, and only after careful consideration.

- (2) In exercising a power under subsection (1), a police officer may direct any person whom the police officer believes on reasonable grounds to be in charge of or otherwise responsible for the thing that has been seized to provide assistance or information (including a password or code) that may reasonably be required by the police officer to enable the officer to access any information held or contained in the thing that has been seized.
- (3) A person must not—
  - (a) without reasonable excuse, fail to comply with a direction under subsection (2), or
  - (b) in purported compliance with a direction under subsection (2), provide any information knowing that it is false or misleading in a material respect.

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<sup>2</sup> During the LECC strip search inquiry the Hon M F Adams QC, Chief Commissioner, was critical of decisions made by police officers based on 'reasonable grounds': "I mean, what is a reasonable suspicion? Courts continuously quote a particular judgment, which, when you look at it, does not in fact advance knowledge very far. And that is because, in a way, how long is a piece of string? There is no bright line here."

### Comment

The requirement in section 51K(2) compelling a person to provide assistance or information to police breaches the common law right to silence. *Every person has the right to silence and should not be coerced by threat of penalty to make any comment or provide assistance or information to police without first obtaining independent legal advice.*

Sections 51K(2) and (3) should be amended to provide appropriate safeguards and protect the fundamental right to silence.