

Submission  
No 96

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

**Organisation:** Shoalhaven Hunting Club Inc

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

## Submission by Leonard White – Secretary of Shoalhaven Hunting Club

### Background

As explained in the Second Reading Speech, the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020 (the Bill), is intended to rectify a current enforcement issue surrounding the inability of police to charge illegal organisations with any offences relating to unauthorised manufacture of firearms or prohibited weapons unless the offending item is actually manufactured.

*Firstly, the new offence for "taking part in the manufacture of firearms" will ensure that any person who plays any part in producing an illegal firearm will be subject to a criminal offence. Under the existing "unauthorised manufacture of firearms" offence provisions, if police find an outlaw motorcycle gang clubhouse filled with machining equipment and materials, they may not be able to take action unless they could prove that a functioning firearm was the end result.*

Minister for Police, Hon. David Elliot, Second Reading Speech, para 1.

It is submitted that this reform is a necessary enhancement of public safety in response to various reports including the main precursor to this Bill presented by the Firearms and Weapons Policy Working Group. Increasing availability of online plans, demonstration videos and availability of international mailing options likely leads to the possibility that a larger percentage of the population would be able to manufacture unauthorised firearm parts than before than would have been possible in previous decades. Amending the firearms legislation to provide an enforcement solution against these changes is entirely warranted.

Nevertheless, a fine balance needs to be maintained between the protection of the community from serious criminal activity and the protection of innocent individuals against undue prosecution.

I argue that this Bill does not adequately achieve that balance in its current form.

### Operation of the Offence of Unauthorised Manufacture

The proposed s 57J of the Firearms Act 1996 creates an offence where a person:

- (a) knowingly takes part in the manufacture of a firearm or firearm part, and
- (b) knows, or ought reasonably to know, that the manufacture of the firearm or firearm part is not authorised by a licence or permit.

'Takes part' is then defined to include various items that involve the offender actually taking some active or passive step to manufacture or facilitate the manufacture of unauthorised firearm part.

However, the proposed s 51J(2)(d) includes the possession of a 'firearm precursor for the purposes of manufacturing a firearm or firearm part' in the definition of 'takes part' in the manufacture of unauthorised firearms of firearm parts. Firearm precursor is then defined in broad terms that would clearly include many tools and equipment present in many home workshops and freely available for

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purchase in most hardware or tool shops. The Minister was clearly aware of the potential nuisance this would create including the possibility that entirely innocent members of the community could be caught by the provisions.

*A firearm precursor is a new concept in the Act to describe those things: components, materials, equipment, moulds, hardware, downloads, software which are not defined as firearm parts, but which are used in the manufacture of firearms, especially in the "homemade" versions. Mere possession of "household items" or hardware found in anyone's garage is not intended to be an offence. However, if these items are knowingly used for the purposes of illegal manufacture they could form part of the broader "take part in" offence. This is similar to existing provisions for drug paraphernalia. A meth lab may have buckets and plastic hoses that in themselves are innocent and may be possessed but added together with all the other items needed to make drugs could result in "knowingly take part in" the manufacture of a prohibited drug offence. (emphasis added).*

Minister for Police, Hon. David Elliot, Second Reading Speech, para 9.

Nevertheless, the Bill does not actually limit the offence to a situation where a person possesses firearms precursors with an *intent* to take part in the manufacture of an unauthorised firearm or firearm part.

For example, a person may:

1. Possess milling or casting equipment, computer design software, various tools, etc and
2. Know that they could use that equipment to manufacture unauthorised firearms or firearm parts.

Even though they have no intention to use those firearms precursors for unauthorised manufacture, they still technically have committed an offence. By possessing the firearms precursors (which falls within the 'takes part' definition) and knowing that they could be used for unauthorised manufacture, they fall foul of the provisions. Section 51J(4) confirms this by clearly stating that no unauthorised manufacture needs to actually occur before the offence is made out.

### Definition of Manufacture

The Firearms Act 1996 and Regulations do not currently provide a definition of 'manufacture'. Section 50A currently prohibits the unauthorised manufacture of firearms but does not extend to firearm parts. Other sections of the Act require firearm parts to be authorised by permit but the Bill will make the first direct offence of unauthorised manufacture of firearms parts as versus the current offences of unauthorised possession.

A significant issue is the scope of 'manufacture' within the new provisions. Section 4 of the Act defines 'firearm part' as 'a barrel, breech, pistol slide, frame, receiver, cylinder, trigger mechanism, operating mechanism or magazine designed as, or reasonably capable of forming, part of a firearm.' However, many of these firearm parts are made of smaller components. Springs, bolts, screws, pivot joints etc are all combined to form each of these 'firearm parts'. Even a barrel is made up of a steel tube which is not a firearm part within the current definition until it is rifled. Under the current definitions, possession of the components of a firearm part is not an offence unless the components have been assembled into a firearm part within the definition.

The proposed offence of manufacture of firearm parts does not adequately differentiate the extent to which a part has the potential to be manufactured. For example, a firearms licence holder may

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have an authorised trigger mechanism that is in need of repair. If that person then manufactures components such as internal springs, a new firing pin release mechanism, etc without actually changing the overall nature of the mechanism, they have nevertheless manufactured *components* of a firearm part.

The proposed amendments therefore create the potential for even a licenced holder of registered firearms to commit an offence by simply possessing the precursors needed to conduct legal repairs on registered firearms parts simply because 'manufacture' of firearms parts is not defined with reference to the components of firearms parts. The lack of a clear definition leaves open the possibility that the knowledge of how to manufacture components of firearms parts will be an offence even if the components are for genuine repairs only.

### Proposed Changes

Two changes to the Bill are suggested. These are proposed for the amendments to the Firearms Act 1996 and the equivalent amendments to the Weapons Prohibition Act 1998.

1. Add a subsection 51J(1)(c) to include a third element of intention to manufacture or to enable another to manufacture an unauthorised firearm or firearm part to the offence.
2. Add a subsection to s 51J to clarify that no part of the section prohibits a licenced individual from manufacturing components of an authorised firearm part provided the function and operation of the firearm part has not been substantially altered.

The first proposed change would eliminate the possibility that a person in possession of firearms precursors who know that they could be used to create unauthorised firearms or firearms parts could be subject to prosecution. Adding an element of intention would ensure that the amendments are more appropriate to preventing organised crime as stated in the Second Reading Speech without adversely exposing innocent individuals to prosecution.

The second proposed change would clarify the ongoing legal ability of licenced individuals to conduct repairs to their registered firearms or firearm parts without being caught by the new 'manufacture' of firearms parts offence.

I would be more than happy to make further submissions and to discuss the Bill further.

Kind regards,

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