

Submission
No 106

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

Name: Name suppressed
Date Received: 3 August 2020

Partially
Confidential

Submission to the Parliamentary Committee considering the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020

Proposed section 51J (Offence of taking part in unauthorised manufacture of firearms or firearm parts)

No requirement for licence or permit to authorise manufacture of firearm parts

1. Proposed section 51J to be inserted in the *Firearms Act 1996* (the **FA Act**) is drafted on the assumption that a licence or permit is required to authorise the lawful manufacture of a firearm or firearm part.
2. While this is true of the manufacture of a firearm (see s.50A of the FA Act) it is NOT true of the manufacture of a firearm part.
3. This is a critical point to understand: there is NO requirement in the FA Act for a licence or permit to authorise the manufacture of a firearm part and the Bill does not impose such a requirement. The amendments proposed to be made by the Bill wrongly assume that a licence or permit is required to authorise the manufacture of a firearm part.
4. There are sections of the FA Act that regulate the supply and acquisition of firearm parts (ss. 50AA, 50B, 51BA, 51BB, 51H, 74) but none that regulate the manufacture of firearm parts.
5. There will of course be cases where a person has, as a result of manufacturing a sufficient variety of firearm parts, effectively succeeded in manufacturing a firearm but the fact remains that the manufacture of a firearm part in isolation does not constitute the manufacture of a firearm and does NOT require the authority or a licence or permit.
6. This produces the bizarre result of the Bill making it an offence to participate in the manufacture of a firearm part if that manufacture is not authorised by a licence or permit when in fact there is no requirement for a licence or permit to authorise the manufacture of a firearm part.
7. The Bill contains an amendment to s.8 of the FA Act to add the manufacture of firearm parts to the list of activities authorised by a firearm dealer licence. This amendment is not sufficient to require a person to hold a firearm dealer licence to be authorised to manufacture a firearm part. The proposed amendment to s.8 is otiose in the context of the manufacture of firearm parts because the Act does not require a licence or permit to authorise the manufacture of firearm parts. Why do firearm dealers need their licences to authorise this?
8. This is a serious problem with the Bill and needs to be investigated by the Committee. It should not just be dismissed with a “nah, that can’t be right”. It is right.

Taking part in manufacture requires manufacture to occur

9. Paragraphs (a)-(c) of the definition of “takes part” in proposed s.51J(2) replicate the definition of that term in s.6 of the *Drug Misuse and Trafficking Act 1985*. In that Act it is apparent that the activity in which the offender “takes part” must have actually occurred or be occurring. The defined term “takes part” is used because it (correctly) suggests involvement in a process that is actually occurring or has occurred.

10. In the Bill, proposed s.51J(4) makes the ambiguous statement that the section applies “regardless of whether a firearm ... is actually manufactured”. This could be interpreted to mean “regardless of whether manufacture was ever commenced” and this is not appropriate for paragraphs (a)-(c) of the definition of “takes part”. What proposed s.51J(4) should be dealing with is the inherent ambiguity in the concept of manufacture. Does it mean the process of manufacture (with its multiple steps) or the completion of that process. Proposed s.51J(4) should be drafted in terms of “regardless of whether manufacture of a firearm was completed”.
11. If in fact the policy position is that a person can be considered to take part in firearm manufacture without any manufacture ever actually occurring then this needs to be made a lot clearer. It is not made clear by the ambiguous s.51J(4).

Possession of firearm precursors

12. Paragraph (d) of the definition of “takes part” in proposed s.51J(2) deals with the possession of firearm precursors. It is wrong to characterise the possession of a precursor as taking part in manufacture. Paragraph (d) is trying to catch possession of a precursor that is preliminary to and preparatory for the future manufacture of a firearm whether or not that manufacture ever takes place. It is wrong and confusing to characterise this as taking part in something (manufacture) that may never itself occur.
13. The correct way to provide for precursor possession is by creating a separate offence as has been done in s.24A of the *Drug Misuse and Trafficking Act 1985* in the case of possession of drug precursors and drug manufacturing apparatus.

Proposed section 51K (Power to seize firearms, firearm parts and firearm precursors)

14. Proposed section 51K(2) authorises a police officer exercising a power under s.51K(1) to require a person to provide a password or code to enable access to information held on a computer/phone seized in the belief that it may provide evidence of a s.51J offence.
15. This power to demand an access code is unprecedented in NSW law. Various NSW laws give authorised officers under those laws the power to seize and detain property that may provide evidence of an offence but no Act gives police or anyone else the power to compel the release of a computer/phone access code. Police do not have this power when they seize a computer that is believed to be evidence of a murder or a terrorism offence. How can such a power be justified for the obscure offence of taking part in the unlawful manufacture of a firearm?
16. If police require this power (and there may be a valid argument that it is required) it should be conferred by means of an amendment to the *Law Enforcement (Powers and Responsibilities) Act 2002*, promoted by the Attorney General and debated in Parliament on its merits. It should not be conferred for a single obscure offence in the FA Act. What happens in practice is that police succeed in sneaking a power like this past Parliamentary scrutiny and then, with the precedent established in one Act, set about extending the power to all other legislation that provide for police powers. Before anyone realises it, the power has become ubiquitous even though its appropriateness has never been properly considered.
17. Sections 21 and 22 of the *Law Enforcement (Powers and Responsibilities) Act 2002* give police power to search for and seize firearms and evidence of any offence under the FA Act.

Those sections appear to make the proposed s.51K wholly unnecessary and merely duplicative of those sections. Why is section 51K in the Bill at all?

Proposed amendments to the Weapons Prohibition Act 1998

18. The comments above also apply to the parallel amendments proposed to be made by the Bill to the *Weapons Prohibition Act 1998*.