

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

**Organisation:** Shooters Union Australia Ltd

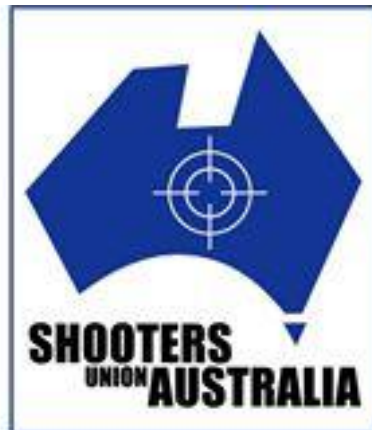
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# SUBMISSION

on

## Proposed New South Wales Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020



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## **1. Introduction**

- 1.1 The purpose of this document is to provide comment and information in relation to the proposed *Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020* as it applies to Shooters Union members in New South Wales.
- 1.2 Authors –  
Professor Ross Grantham and Mrs Jan Linsley on behalf of Shooters Union Australia Ltd Executive Committee.

## **2. Intended Audience**

Portfolio Committee No. 5 - Legal Affairs  
Mr Robert Borsak (LC Member)  
Members and Branches Shooters Union Australia Inc

## **3. Authority to comment**

- 3.1 Shooters Union Australia Inc was formed consequent to the formation of Shooters Union organisations in several states, the first of which was Queensland in 2005. Shooters Union New South Wales was initially formed as an Incorporated Association in 2006, transitioning to a registered company in 2019.
- 3.2 The Shooters Union movement has grown rapidly and is now one of the largest shooting organisations in Australia.
- 3.3 Shooters Union has been represented at several intrastate advisory groups over recent years and is represented on the Commonwealth Firearms Advisory Council.
- 3.4 Members of Shooters Union New South Wales Pty Ltd have held firearms licences for as long as licences in New South Wales have been required.
- 3.5 Shooters Union Australia is grateful for the opportunity to comment on the proposed legislation.

#### **4. Amendments of *Firearms Act 1996***

We limit our comments to those items which have the potential to negatively impact our members.

As outlined below, our principal concern is with the breadth of reach of the new provisions. The proposed amendments to the Firearms Act fail to properly distinguish the lawful maintenance of a firearm by a licensed owner from unlawful manufacture. The result is that the possession of almost any tool commonly found in the toolboxes of any home in the State would be rendered unlawful.

Generally, the Bill reflects a very heavy-handed approach that does not strike an appropriate balance between public safety and private rights. The definition of 'firearms precursor' is so broad that it potentially includes every home handyman, engineering business, motor vehicle mechanic in the State, not to mention every hardware store and Bunnings. The search and seizure powers are Draconian and more consistent with a police state than a liberal western democracy. As such, the Bill is both outrageous and unworkable

##### **4.1 Definition of a firearm part:**

*firearm part* means 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

##### **4.2 Section 51J (2)(a)**

For the purposes of this section, a person takes part in the manufacture of a firearm or firearm part if -

- (2) (a) the person takes, or participates in any step, or causes any step to be taken, in the process of that manufacture.

We believe this proposal should be amended to say:

*(2)(a) the person knowingly takes, or participates in any step, or causes any step to be taken, in the process of that manufacture.*

The process of manufacturing firearm parts as defined by the existing legislation involves the manufacture of all sorts of minor parts, eg screws, springs, washers, tubes, bands etc that could quite conceivably be ordered from a legitimate supplier or manufacturer of such items. The manufacturer may not be aware of the end use of those items and could be caught up quite innocently by this proposal.

##### **4.3 Section 51J (2)(c)**

- (2)(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.

We believe this proposal should be amended to say:

*(2)(c) the person knowingly 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*

It would be rare, we believe, for a landlord of industrial premises to keep such close interest in the activity of the tenants that he would know if firearm parts were being made illegally.

#### **4.4 Section 51J (3)**

- (3) In this section and in section 51K—  
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.

Whilst we understand the intention of these provisions is to prevent the criminal intent of firearms manufacture, as written the provisions have the potential to capture quite lawful activities and experimentation. In particular, the term "firearm precursor" is far too broad and potentially criminalises the possession of a vast range of items and tools. For example, a home handyman could easily make or cast trigger parts for the repair of a broken part of his own firearm. He may replace a broken firing pin spring which is a part of a bolt mechanism, sometimes by using springs manufactured for other purposes. Springs and screws in particular, are items readily available from Australian businesses and overseas businesses and are easily and readily replaceable by many home workshops, all without any criminal intent.

A milling machine is common to many home handymen. Casting equipment is likewise common to home handymen, who may cast a variety of household parts, eg plumbing parts, mechanical parts etc.

Rifling equipment includes a deep hole drill. Such drills are used extensively in industrial manufacture for all sorts of applications. Heat treatment is a part of rifling equipment and heat treatment ovens are in use in thousands of applications.

The term **digital blueprint** is misleading and we believe, incorrect. A digital blueprint, even on internet search, is simply a blueprint that is either manufactured electronically by something like a CAD program, or is stored on electronic media.

CNC lathes and milling machines that accept CAD programs are widely used by home handymen since the cost of these machines has reduced markedly over the last few years with the manufacture of small Chinese machines that are well within

the means of home handyman, who may use them for a variety of uses, even manufacturing car parts or hobby parts.

Computer software or plans can easily refer to exploded firearms drawings which are common and often the only way in which a licensed shooter knows what parts he needs to order for his legal firearm, eg springs, screws, tubes etc.

Since it is already illegal to manufacture a firearm without a licence, these provisions are excessive and redundant.

#### **4.5 Section 51J (4)**

- (4) This section applies in relation to a person regardless of whether a firearm or firearm part is actually manufactured.

This provision makes it absolutely certain that a home handyman somewhere in New South Wales, making parts for a hobby project that is completely unrelated to firearms may commit the offence

The argument we sometimes hear that, 'Police will use their discretion and not charge the innocent handyman', in no way answers the objections raised here. It is contrary to the basic principles of the rule of law that an offence be cast in such massively broad terms and that criminal liability depend on the Police's discretion. The law must be certain in its scope and the freedom of individual must be limited only to the extent that is absolutely necessary.

#### **4.6 Section 51K - Power to seize firearms, firearm parts and firearm precursors.**

- (1) A police officer may seize and detain any firearm, firearm part or firearm precursor (including a computer or data storage device on which a firearm precursor is held or contained) that the officer suspects on reasonable grounds may provide evidence of the commission of an offence under section 51J.

Bearing in mind the extremely broad definition of 'firearm precursor' and the probability of innocent home hobbyists being caught up in offences where there was no criminal intent, it is unreasonable that a police officer may seize items at all. Firearms and firearm parts may be quite incidental to the existence of a firearm precursor at the premises of a licensed shooter. The definition of "firearm precursor" needs to be changed. It could conceivably include normal workshop or household tools, eg drills, screwdrivers, clamps etc - the list of possible precursors is endless and is clearly not the intention of the legislation.

#### **4.7 Section 73A**

- (1) The Commissioner is to review a firearms prohibition order after the order has been in force for 10 years.  
(2) The review must be completed within the period of 6 months of that 10-year period.

- (3) In the case of a firearms prohibition order in force immediately before the commencement of this section and that has been in force for more than 10 years, the review is to be completed within 12 months of that commencement.

It is inappropriate for the approval of a firearms prohibition order to lie with the Commissioner. Given the seriousness of such orders, they must be subject to judicial oversight. . In line with that view, we believe a 10 year period is much too long for review of a firearms prohibition order, and should be reduced to an annual review in all of the proposed sections.

#### **4.8 Section 75A(1)**

- (b) may be exercised immediately following the service of a firearms prohibition order on a person but only if the person has been given an opportunity to surrender all firearms, firearm parts or ammunition lawfully in the person's possession

This section contradicts itself and places unreasonable demands on police. 'Immediately' is virtually impossible in any circumstances, but especially where it involves police activities, even with the use of the term "may". The contradiction appears in the "only if...." provision. The intention of the section is to say that if someone has already had the opportunity to surrender all parts etc, then the police may immediately remove them, but that is not how it reads. A change needs to occur to iterate the proper meaning of the section.

#### **4.9 Section 74A(2A)-(2C)**

- (2A) A police officer who enters premises under subsection (2) may also conduct a search—
- (a) of any other person who the officer reasonably suspects is in possession of a firearm, firearm part or ammunition and who is present on those premises, or
  - (b) of any other vehicle, vessel or aircraft situated on those premises, for any firearms, firearm parts or ammunition.
- (2B) Division 4 of Part 4 of the Law Enforcement (Powers and Responsibilities) Act 2002 extends to the search of a person conducted under this section.
- (2C) Before entering premises under subsection (2), a police officer must—
- (a) announce that the officer is authorised to enter the premises, and
  - (b) give any person who is present on the premises an opportunity to allow entry.

This section allows search without warrant. Whilst we understand that sometimes a situation may require a more urgent action than would be possible if police had to wait for a search warrant to be issued and signed, we believe this should be the exception rather than the rule. We have a general perspective that police should not be empowered with search without warrant provisions and we believe that this is a view the general public share. We are particularly concerned that this section refers to all firearms, including antiques and all firearm parts. It is difficult to envisage a circumstance where firearm precursors that are, in fact, quite innocent items themselves and used without criminal intent, could possibly necessitate a search without warrant.



#### **4.10 Section 74A(2D-2F)**

- (2D) A police officer is not required to comply with subsection (2C) if the officer believes on reasonable grounds that immediate entry is required to ensure the safety of any person or to ensure that the effective execution of the search powers conferred on the officer under this section is not frustrated.
- (2E) If premises are entered under subsection (2) while the occupier is not present, a police officer is, as soon as reasonably practicable, to notify the occupier of that entry.
- (2F) A police officer may, in exercising a power conferred by subsection (2) to enter premises, use such force as is reasonably necessary to enter the premises.

Section 2(D) should be the **ONLY** reason for entry and search without warrant.

It is unreasonable to allow police to enter a building when the occupier is not present and even more unreasonable to allow police to break in. The conditions of section 2D should be applied to this procedure **PRIOR** to any entry, search or seizure.

### **5. Amendment of Weapons Prohibition Act 1998 No 127**

#### **5.1 Section 25E**

We note the definition of prohibited weapons as including such items as slingshots and crossbows.

We believe there should be criminal intent to manufacture a prohibited item since the process of manufacturing parts for prohibited items as defined by the existing legislation involves the manufacture of all sorts of minor parts that may be common to other legal items, or could quite conceivably be ordered from a legitimate supplier or manufacturer of such items. The manufacturer may not be aware of the end use of those items and could be caught up quite innocently by this proposal.

As with the manufacture of firearm parts, a landlord of industrial premises does not necessarily take such close notice of the activity of the tenants that he would know if prohibited parts were being made illegally.

Whilst we understand the intention of these provisions is to prevent the criminal intent of prohibited items manufacture, as written the provisions have the potential to capture quite innocent activities and experimentation. In particular, the term "weapon precursor" is far too broad. For example, a home handyman could easily make or cast parts that are for an entirely different use. Springs and screws in particular, are items readily available from Australian businesses and overseas businesses and are easily and readily made or purchased by many home workshops, all without any criminal intent.

A milling machine is common to many home handymen. Casting equipment is likewise common to home handymen, who may cast a variety of household parts, eg plumbing parts, mechanical parts etc.

The term ***digital blueprint*** is misleading and we believe, incorrect. A digital blueprint, even on internet search, is simply a blueprint that is either manufactured electronically by something like a CAD program, or is stored on electronic media.

CNC lathes and milling machines that accept CAD programs are widely used by home handymen since the cost of these machines has reduced markedly over the last few years with the manufacture of small Chinese machines that are well within the means of home handymen, who may use them for a variety of uses, even manufacturing car parts or hobby parts.

Computer software or plans can easily refer to exploded firearms drawings which are common and often the only way in which a licensed shooter knows what parts he needs to order for his legal firearm, eg springs, screws, tubes etc.

Since it is already illegal to manufacture a prohibited item without a licence, these provisions are excessive and redundant.

## **5.2 25F Power to seize prohibited weapons, weapon parts and weapon precursors.**

- (1) A police officer may seize and detain any prohibited weapon, part of a prohibited weapon or weapon precursor (including a computer or data storage device on which a weapon precursor is held or contained) that the officer suspects on reasonable grounds may provide evidence of the commission of an offence under section 25E.

Bearing in mind the extremely broad definition of weapon precursors and the probability of innocent home hobbyists being caught up in offences where there was no criminal intent, it is unreasonable that a police officer may seize items at all. Parts and precursors may be totally unrelated to prohibited weapons. The definition of "weapon precursor" needs to be changed. It could conceivably include normal workshop or household tools, eg drills, screwdrivers, clamps etc - the list of possible precursors is endless and is clearly not the intention of the legislation.

## **6. Conclusion**

We are concerned at the wording of many of these provisions, particularly *firearm precursors* and *weapon precursors*. There is no need to make illegal activities more illegal by terming ordinary everyday items as precursors, probably involved in the manufacture of illegal weapons. Unfortunately, although the legislation is intended to ensure community safety, all it does is make criminals from honest citizens. The application of law does not prevent criminal behaviour or intent; it only defines it. By defining harmless home workshop-related activities as criminal, the legislation only serves to cripple development and innovation. With advances in computer technology, it will be possible and in fact probable, that future firearms manufacture

will involve the use of 3D printing for firearms and parts. Australia, which has a rich heritage of innovation and inventiveness, will be left far behind in this and other technology by legislation which presumes all those who use, care for, and respect their firearms, are potential criminals.