

Submission
No 182

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

Name: Name suppressed
Date Received: 11 August 2020

Partially
Confidential

Provisions of the Firearms and Weapons Legislation (Criminal Use) Bill 2020
SSAA SYDNEY BRANCH INC.

POSITION PAPER & ADVICE FOR MEMBERS AND
LAW ABIDING FIREARMS OWNERS

“The broad nature of the definitions contained within the proposed Bill, along with the removal of a person’s fundamental rights under the Common Law are of concern.

Amendments need to be made to the Bill as the impact upon LAFOs will be significant if the Act is amended in accordance with the Bill in its current form.”

Overview:

An Upper House committee is conducting an inquiry into the provisions of the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020. The Bill aims to amend the Firearms Act 1996, the Weapons Prohibition Act 1998 and the Firearms Regulation 2017, to strengthen the provisions relating to illegal manufacture of firearms or prohibited weapons and to clarify police powers when conducting firearms prohibition order searches.

The committee conducting the inquiry includes the following individuals.

Chair: Deputy Chair: Members:

Borsak, Robert (SFF, LC Member) Shoebridge, David (GRNS, LC Member) Jackson, Rose (ALP, LC Member)

Khan, Trevor (NAT, LC Member) Maclaren-Jones, Natasha (LIB, LC Member) Ward, Natalie (LIB, LC Member)

The Committee Chair, the Hon Robert Borsak MLC, said "This inquiry will be an important part of the legislative process as it will examine the provisions of the Bill and take into account stakeholder and

1

Submissions are open until 14 August 2020 and can be lodged via the committee's website.

(<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2590#tab-members>)

SSAA Sydney Branch strongly encourages all members and licenced firearms owners to make a submission to ensure that law abiding firearms owners are not adversely affected by the proposed changes to the Firearms and Weapons Legislations Amendment (Criminal Use) Bill 2020.

This document serves to provide members with an overview of the significant issues with the proposed amendments as identified and supported by legal opinion sourced by SSAA Sydney Branch.

This document provides a clear synopsis of the issues for your review and action. There are two (2) key areas of the proposed amendment that will have serious implications to law abiding firearms owners should they remain unchanged.

As they currently stand Sections 51J and 51K are of significant concern.

1 INQUIRY INTO PROVISIONS OF THE FIREARMS AND WEAPONS LEGISLATION (CRIMINAL USE) BILL 2020. MEDIA RELEASE 7 April 2020
community concerns'.

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.

Section 51J 2 (a)-(c) has several significant issues in the way in which the amendment is written. SSAA Sydney Branch believe that this could potentially be open to misinterpretation by the police. A financier or landlord could potentially be in breach of the Act for providing/arranging finance or for providing premises.

The Bill proposes a new offence pursuant to Section 51J of " Taking part in unauthorised manufacture of firearms or firearm parts. " Sub-section (2) of the proposed section defines the circumstances under which a person "takes part" in the manufacture of a firearm or firearm part. This includes a person participating in any step or causes any step to be taken in the process of that manufacture; provides or arranges finance for any step or provides premises or allows a premises to be used in any step of the manufacture whether they be the owner, lessee, occupier or person with control or management over the premises. These provisions are contained in Sub-section 51J(2)(a-c).

The concern regarding this part of the proposed Bill is that as presently drafted, these provisions are open to misinterpretation by the Police. It could be argued that a financier for providing a loan or a landlord for providing premises unbeknownst to what their tenant was doing in those premises could be in breach of this section of the Act.

Section 51J(2)(d) provides that a person possesses a firearm precursor for the purpose of manufacturing a firearm or firearm part. This presumes that a person takes part in the manufacture of a firearm or firearm part merely by possessing a firearm precursor. Again, the presumption that a firearm precursor is possessed for the purpose of manufacturing a firearm or firearm part is open to misinterpretation by the Police.

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

(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.

The definition of 'firearm precursor' is too broad and ambiguous and again open to misinterpretation by the Police. Given the ambiguity of the definition it is open to include materials such as a piece of metal or devices such as a drill, lathe or even something as simple as a screwdriver; whilst substances could be viewed as a lubricating oil such as WD-40. All of these materials and objects can be found in any workshop or garage across Australia.

This definition is very broad and could include many everyday items found in a residential garage. For example, a piece of metal (object), drill or screwdriver (device) or lubricating oil (substance). Once again, the definition of firearm precursor is open to misinterpretation by the Police.

In his second reading speech, the Minister stated; " this Bill does not criminalise legitimate firearms holders", however this is not explicitly stated in the Bill.

The Bill should be amended to include provisions which make it clear that licensed firearms owners who have a legitimate need to make a part or make minor modifications to a registered firearms or a firearm not required to be registered, are not captured by this Bill.

In addition, it should be amended to confirm that the mere possession of everyday items and hardware possessed by LAFOs is not an offence under this Bill. This could be addressed by the insertion of the words " without reasonable excuse" into the Bill.

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.

The term “reasonable grounds” is open to interpretation. What one police officer determines to be reasonable grounds may not constitute reasonable grounds by a second police officer.

The Bill also proposes this new section to give a Police Officer additional powers to 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.

What constitutes "reasonable grounds" by one officer may not constitute it by another and this is particularly so, in past experiences, by more junior officers. The Bill, in its present form applies to both licensed and unlicensed firearm owners, registered and unregistered firearms, including firearms that are not required to be registered under the Act.

It is well known that there are lengthy delays at present in the finalising of internal reviews and other firearm related decisions by the Firearms Registry. Poor decision making by Police Officers inappropriately seizing registered firearms, firearm parts and firearm precursors can have major consequences, particularly for Primary Producers and Professional Shooters. For these reasons, any decision to seize firearms, firearm parts or firearm precursors should not be left to inexperienced or misinformed Police Officers.

It is the legal opinion that an officer of or above the rank of Inspector should only be allowed to make the decision to seize and must justify, in writing, the basis of any such decision.

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

(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

The proposed new Section 51K(2) and (3) compels a person to provide assistance or information to Police. This breaches the Common Law principle of a person's right to silence. This Common Law principle has been enshrined in Section 89 of the Evidence Act 1995, which states that no adverse interest can be drawn against a person if that person fails or refuses to answer any questions put to them by a Police Officer investigating the commission, or possible commission of an offence.

Every citizen has this fundamental right to silence and should not be coerced by the threat of a 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 to protect this fundamental right to silence.

Sample Submission 1:

Dear Ministers,

I am writing to you as a licensed shooter and Law-abiding firearm owner. I have significant concerns over the “Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020”, currently before the NSW Parliament.

I passionately believe that the provisions of this Bill are too ambiguous and open to police misinterpretation and abuse of power. As it stands the Bill creates a serious threat to all licensed firearm owners and other persons. People who own and possess everyday tools which could now be perceived as firearm precursors used to make firearm parts, could be significantly negatively impacted by this Bill.

The Bill does NOT differentiate between licensed firearm owners and criminals. The Bill entitles police to act on suspicion of an offence or without probable cause. Changes required to the Bill are: (Select/Delete as appropriate to you)

1. Remove the presumption that persons who rent premises, supply finance, materials or equipment are actually involved in the manufacture of firearms or firearm parts. (Section 51 J (2) (a)-(c))
2. Remove the presumption that materials and equipment are firearm precursors, where police have no evidence of firearms or parts being manufactured. (Section 51 J (2) (d))
3. Decisions to confiscate firearms and equipment suspected of being firearms precursors, should only be made by police of the rank of Inspector and above, and only after careful consideration and such decision must be documented in writing.
4. Remove Section (51 K (2)) which breaches common law.
5. Add a requirement that internal reviews of decisions involving firearms matters have to be completed within a reasonable, defined period of time.
6. Amend the bill to make it perfectly clear that (a) the mere possession of everyday items or tools, published materials and other instructional materials in any form, by license firearm owners is not an offence under this bill; (b) licensed firearm owners who have a legitimate need to make a part or minor modification to a registered firearm, or a firearm that is not required to be registered under the Act, are not captured by this Bill.
7. Remove section (51 K (2) & (3)) which compels a person to provide assistance or information to police, as this breaches the right to silence under common law.

Yours Faithfully, NAME

Sample Submission 2:

Dear Members,

Thank you for the opportunity to provide feedback. As a law-abiding firearms licence holder I support legislation that helps to prevent the criminal use of firearms.

Unfortunately, the current legislation draft has several deficiencies that are likely to cause unintended consequences. Section 51J establishes the offence of “take part in the manufacture a firearm or firearm part”. Subsequent paragraphs explain the meanings of “Take Part” and what constitutes a “precursor” but they do not determine what constitutes “manufacture”.

Select those that apply to you

- Does the machining of a handgun slide to adapt different sights constitute manufacture?
- Does the threading of a barrel or the machining of sight mounting surface constitute manufacture?
- Does the alteration of a stock to allow the fitting of a cheek support or a bipod constitute manufacture?
- If I alter or adapt a component that allows me to fit, for example, a modern telescopic sight to an older firearm is that illegal “manufacture of a part” under this proposed legislation?
- If I modify a screw to secure the sight or grip to my firearm, because an original component is not available, am I guilty of illegal “manufacture of a part” under this proposed legislation?

These are common options on legal firearms as used for sport and target competition and are not currently illegal, but could be under this proposed legislation. As written this could easily lead to misinterpretation.

Section 51J, (2), (d) establishes the intent that “the person possesses a firearm precursor for the purposes of manufacturing a firearm or firearm part” but does not differentiate between legal (by licenced firearms users, as mentioned above) or illegal possession. As mentioned above, there are many alterations/additions/parts/substances that are commonly used legally on firearms by licenced users and pose no increased public risk.

Yours Sincerely

Sample Submission 3

Dear Ministers,

I am writing to you as a licensed shooter and Law-abiding firearm owner. I have significant concerns over the “Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020”, currently before the NSW Parliament.

The listing of “computer software and plans” as precursors could be troublesome. Most firearms owners are students of their development and history. A lot of computer files and books have been published many of which show drawings or plans to explain the workings of firearms with the primary purpose of educating users on their safe operation and maintenance.

Having full information of the method of operation and maintenance of a firearm is critical to using it correctly and safely. As written this proposed bill could easily lead to misinterpretation.

The proposed bill needs to specify that licenced firearm users who have a legitimate need to make a part or make minor modifications to a registered firearm, are not captured by this Bill; and the mere possession of everyday items or hardware by licenced firearm users is not an offence under this proposed bill. This proposed legislation could have the unintended effect of making any published material on firearms and their maintenance a “precursor” to illegal activity.

Furthermore, the requirement in section 51K (2) compelling a person to provide assistance or information to police could very well breach 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 to provide assistance or information to police without first obtaining independent legal advice. I hope the above comments will help in improving the feedback on this proposed legislation.

If I can help further, please let me know. Yours sincerely,

Principal

Stephen Mainstone LL.B. Our Ref: SM:20/025

Your Ref:

MAINS TONE LAWYERS

P.O. Box 834

SYLVANIA SOUT GATE NSW 2224

"The Promenade"

Level 1, 4 - 6 Kingsway CRONULLA NSW 2230

Sporting Shooters Association of Australia (NSW) Sydney Branch Inc. PO Box 742

PENNANT HILLS NSW 1715

RE: FIREARMS AND WEAPONS LEGISLATION AMENDMENT (CRIMINAL USE)
BILL 2020

I have been asked to provide a review and advice pertaining to the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020 (the Bill). In particular, I have been asked to advise on the implications of the amending Bill on Law Abiding Firearm Owners (LAFO) seeking to repair or modify their firearms. Additionally, I have been asked to advise on the implications of Section 51K as it pertains to the use of firearm precursors.

Implications on LAFOs repairing, modifying, etc. their firearms

Before embarking on the implications of the proposed Bill Section 8 of the Firearms Act 1996 (the Act) sets out firearms licence categories and the authority conferred by the licence. Within that section the only authority conferred by licence to, amongst other things, manufacture, convert, repair, maintain or test a firearm is a firearm dealer licence. On a strict reading of Section 8, licensees who do not hold a firearm dealer licence are prohibited from doing those things.

This is further entrenched in the Act by Section 9, which provides additional matters pertaining to the authority conferred by licence. That section provides that a licensee is authorised to have possession of a firearm while taking it to a firearms dealer for the purpose of, amongst other things, having it converted, maintained, tested or repaired.

Naturally, to strictly read and apply Sections 8 and 9 of the Act in this manner is completely impractical, however I felt the need to address it given the scope of the advice sought.

Section 51J

The Bill proposes a new offence pursuant to Section 51J of "Taking part in unauthorised manufacture of firearms or firearm parts." Sub-section (2) of the proposed section defines the circumstances under which a person "takes part" in the manufacture of a firearm or firearm part. This includes a person participating in any step or causes any step to be taken in the process of that manufacture; provides or arranges finance for any step or provides premises or allows a premises to be used in any step of the manufacture whether they be the owner, lessee, occupier or person with control or management over the premises. These provisions are contained in Sub-section 51J(2)(a-c).

THE LAW SOCIETY OF NSW ---- PROFESSIONAL STANDARDS SCHEME

Liability limited by a scheme approved under Professional Standards Legislation

Phone: 9531 0322

Fax: 9527 0493

Email: info@mainstonelawyers.com.au

Web: mainstonelawyers.com.au

-2-

The concern regarding this part of the proposed Bill is that as presently drafted, these provisions are open to misinterpretation by the Police. It could be argued that a financier for providing a loan or a landlord for providing premises unbeknownst to what their tenant was doing in those premises could be in breach of this section of the Act.

Section 51J(2)(d) provides that a person possesses a firearm precursor for the purpose of manufacturing a firearm or firearm part. This presumes that a person takes part in the manufacture of a firearm or firearm part merely by possessing a firearm precursor. Again, the presumption that a firearm precursor is possessed for the purpose of manufacturing a firearm or firearm part is open to misinterpretation by the Police.

Section 51J(3) provides a definition of what a firearm precursor is and 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-

. moulds for making firearm parts.

o milling, casting or rifling equipment,

. digital blueprints within the meaning of Section 51F' . computer software or plans.

This definition is very broad and could include many everyday items found in a residential garage. For example, a piece of metal (object), drill or screwdriver (device) or lubricating oil (substance). Once again, the

definition of firearm precursor is open to misinterpretation by the Police.

In his second reading speech, the Minister stated; "this Bill does not criminalise

legitimate firearms holders", however this is not explicitly stated in the Bill. In my view, the Bill should be amended to include provisions which make it clear that licensed firearms owners who

have a legitimate need to make a part or make minor modifications to a registered firearms or a firearm not required to be registered, are not captured by Bill. In addition, it should be amended to confirm that the mere possession of everyday items and hardware possessed by LAFOs is not an offence under this Bill. This could be addressed by the insertion of the words "without reasonable excuse" into the Bill.

Section 51K

The Bill also proposes this new section to give a Police Officer additional powers to 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'

What constitutes „reasonable grounds" by one officer may not constitute it by another and this is particularly so, in my experience, by more junior officers. The Bill, in its present form applies to both licensed and unlicensed firearm owners, registered and unregistered firearms, including firearms that are not required to be registered under the Act.

It is well known that there are lengthy delays at present in the finalising of internal reviews and other firearm related decisions by the Firearms Registry. Poor decision making by Police Officers inappropriately seizing registered firearms, firearm parts, and firearm precursors can have major consequences, particularly for Primary producers and Professional Shooters. For these reasons, any decision to seize firearms, firearms parts or firearm precursors should not be left to inexperienced or misinformed Police Officers. In my view, an officer

-3 -

of or above the rank Inspector should only be allowed to make the decision to seize and must justify, in writing, the basis of any such decision.

The proposed new Section 51K(2) and (3) compels a person to provide assistance or information to Police. This breaches the Common Law principle of a person's right to silence. This Common Law principle has been enshrined in Section 89 of the Evidence Act 1995, which states that no adverse interest can be drawn against a person if that person fails or refuses to answer any questions put to them by a Police Officer investigating the commission, or possible commission of an offence.

Every citizen has this fundamental right and should not be coerced by the threat of a 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 to protect this fundamental right to silence.

Conclusion

The broad nature of the definitions contained within the proposed Bill, along with the removal of a person's fundamental rights under the Common Law are of concern. In my view, amendments need to be made to the Bill as the impact upon LAFOs will be significant if the Act is amended in accordance with the Bill in its current form.

If you have any queries regarding this advising, please do not hesitate to contact me.

Yours faithfully