

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

Organisation: Southern Riverina Hunting Club
Date Received: 13 August 2020



SOUTHERN RIVERINA

HUNTING CLUB INC.

Affiliated with: - Federation of Hunting Clubs
NSW Firearms Registry Approval No: - 406554839
Victorian Firearms Registry Approval No: - 85022050H



PO Box 206
Mulwala NSW 2647

Mob

Jeremy Dickins (Treasurer)
Email: t

Brian Knuckey (Chairperson)
Email

David Kuschert (Vice Chairperson)

Glenn Altoft (Secretary)
Email

Legislative Council

Portfolio Committee No. 5 – Legal Affairs for inquiry and report

To the Messers,

Please find following the findings and comments regarding the **Firearms and Weapons Legislation (Criminal Use) Bill 2020** from the Southern Riverina Hunting Club Committee

The Club Committee comprises of 14 Members, three Executive, 10 Committee and the Public Officer representing a Membership of approximately 360 Financial Members.

The Club began back in 1998 after the introduction of the Firearms Act 1996 when things began to change for the rights of citizens. Over the years the Club has strived to help and support their Membership and will continue to do so.

We hope the Portfolio Committee No 5 shall take on board our thoughts as outlined below.

Some of these changes are of particular concern due to Members past expensive and unpleasant experiences with Police through no fault of the Members or the Police involved. Police especially those not involved or experienced in firearm laws and legislation cannot be expected to be aware of the nuances and technicalities, but the ramifications caused by undue actions can be devastating for members in the long and short term effects especially expense.

Our Club and Members are and always have been supportive of the Police and overly concerned with criminal misuse of firearms especially where violence is concerned.

Re: - **Firearms and Weapons Legislation (Criminal Use) Bill 2020**

This bill is to amend the Firearms Act 1996 No 46 and the Weapons Prohibition Act 1998 No 127

Overview of Bill The object of this Bill is to amend the Firearms Act 1996 (the principal Act) as follows—

(a) to create a new offence of knowingly taking part in the unauthorised manufacture of firearms or firearm parts and to provide that the offence will include being in possession of certain matter (referred to as a firearm precursor) for the purposes of manufacturing a firearm or firearm part,

****The understanding that a Firearm Precursor being any tools, diagrams, literature, moulds, oils, metal lathes, pieces of steel.**

A search of a citizens shed being an unlicensed Firearm owner or licensed Firearm owner would turn up many of these items.

****The naming of the Firearms Precursor should be more definite.**

(b) to confer seizure powers on police officers in relation to the new offence,

(d) to provide that the power of a police officer to search a person who is subject to a firearms prohibition order for firearms or firearm parts may also be exercised in relation to any other person who is present on the subject person's premises,

(e) to make it clear that the powers of a police officer in connection with firearms prohibition orders (including search powers in relation to persons other than the subject person) may only be exercised if reasonably required to determine whether the subject person has committed an offence arising out of the making of the order

****This will grant to Police more powers to search an owner of a premise and any other person at the premise to also seize Firearms, Firearms parts or Firearm Precursors connected with illegal manufacturing of Firearms or Firearms parts at that persons address who is named on a Firearm Prohibition order from the Commissioner.**

This search and seizure can only be carried out if police can reasonably determine if the named person on the order has committed a crime written in the order.

**** Would this Policeman be trained enough to determine that an offence has been committed and be able to make the decision to do seizure**

2.

(c) to require firearms prohibition orders to be reviewed every 10 years by the Commissioner of Police,

**** Seems to be straight forward.**

(f) to make other miscellaneous amendments in connection with the operation and enforcement of firearms prohibition orders, including enabling firearms prohibition orders under the law of another jurisdiction to be enforced in this State.

Schedule 1 **Amendment of Firearms Act 1996 No 46**

[1] Section 8 Licence categories and authority conferred by licence Insert “and firearm parts for those firearms” after “to which the licence applies” wherever occurring in the matter relating to firearms dealer licences in section 8(1) other than in the heading to that matter.

[2] Section 8(1) Omit “(and blank cartridges for those firearms)” from the matter relating to firearms dealer licences. Insert instead “to which the licence applies (and firearm parts and blank cartridges for those firearms)”.

**** General Changes that would be needed if amendment is passed in its entirety.**

[3] Sections 51J and 51K Insert after section 51I—

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

(1) A person who— (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, is guilty of an offence. Maximum penalty—imprisonment for 20 years.

**** Again, who determines that the owner of premise or persons at that address knowingly or ought to reasonably know they are committing an offence - i.e have a firearm precursor in their possession.**

3.

(2) For the purposes of this section, 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.

**** (2) may not be interpreted correctly by the Police that are processing the Prohibition order.**

**** (2) (b) being written this way could involve financial institutions or other lenders not knowingly what finance is to be used for.**

**** (2) (c) in the case of a Lessee or Occupier or Management of premises could involve the Lessor or Real Estate Agent.**

**** (2) (d) this is presuming a person in possession of a Firearm Precursor is manufacturing illegally again determination of a Firearm Precursor.**

(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.

**** This again comes down to the definition of a Firearms Precursor.**

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

(5) This section does not apply in relation to a person who is acting in the course of the person's duties as a member (other than a police officer) of the Police Force.

Note. Police officers are already exempt from the operation of this Act—see section 6(2)(a).

(6) A person who has been convicted of an offence under this section is not liable to be convicted—

(a) of a manufacture offence, or

4.

(b) of a separate offence under this section, on the same, or substantially the same, facts as those relied on as evidence of commission of the offence in respect of which the person has been convicted.

(7) A person who has been acquitted of an offence under this section is not liable to be convicted—

(a) of a manufacture offence, or

(b) of a separate offence under this section, on the same, or substantially the same, facts as those relied on as evidence of commission of the offence in respect of which the person has been acquitted.

(8) A person who has been—

(a) convicted of a manufacture offence, or (b) acquitted of a manufacture offence, is not liable to be convicted of an offence under this section on the same, or substantially the same, facts as those relied on as evidence of commission of the manufacture offence.

(9) Subject to subsections (6) and (7), this section does not—

(a) remove the liability of any person to be convicted of a manufacture offence, or

(b) affect the punishment that may be imposed for a manufacture offence.

(10) In subsections (6)– (9), manufacture offence means an offence under section 50A or 51F.

****It was noticed in the above not the word “person” was used in a general way, it was not made clear if Bill is saying illegal Firearm owners or legal Firearm owners or general public as written Legal Firearm Owners will be made criminals.**

****It needs to be made clear also if a legal Firearm Owner wishes to make minor modifications to their firearm which are registered or not needed to be registered under the Act are not made criminals. Also that Firearm owners who are licensed and in possession of a Firearm Precursor (as described i.e. any house hold or shed implements) are not charged with an offence.**

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.

**** It has been the Clubs experience of Police seizing Firearms have a poor understanding of the Firearms Regulations.**

An incident quite a few years ago involving a Club Member after being stopped for a traffic offence ended up having his Firearms seized for having the ammunition in a locked container in the boot with the firearms. When he was asked where he was

heading and on saying he was going hunting on a property up the road, he was then asked if any Firearms were in the car after answering yes, his car was searched.

Following this there was a long court case and he finally had his Firearms returned.

This whole debacle was because the Police even at higher levels, had misinterpreted the Legislation on carrying of Firearms.

****The misinterpretation of Legislation is always happening and with this new bill it would keep on happening in many cases.**

****When seizure of Firearms is necessary it is the feeling of many that a higher-ranking Officer who has a greater understanding of the Legislation be in attendance.**

(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.

****This sounds threatening and if subject speaks, he shall be held accountable if not actually guilty or guilty, subject has a right to be silent.**

****The Police Officer needs to be a higher- ranking Officer**

****The Bill needs to be rewritten to include all have a right to silence and Police need to let subject know this at time of entering premise.**

(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.

Maximum penalty—50 penalty units or imprisonment for 2 years, or both

****Discarded if rewritten to announce right of silence.**

(4) Division 1 of Part 17 of the Law Enforcement (Powers and Responsibilities) Act 2002 applies to anything seized under this section as if it had been seized under that Act.

****There is no mention of a firearm precursor in this division.**

[4] Section 73A Insert after section 73— 73A Review of firearms prohibition orders

(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.

(4) For avoidance of doubt, a firearms prohibition order that is subject to review remains in force unless it is revoked by the Commissioner under section 73.

**** okay**

[5] Section 74A, heading

Omit “possession of person subject to”. Insert instead “connection with”.

****see comment below**

[6] Section 74A (1)

Omit the subsection. Insert instead—

(1) The powers of a police officer under this section—

(a) may only be exercised if reasonably required to determine whether a person who is subject to a firearms prohibition order has committed an offence under section 74, and

(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.

**** Connection implies that the subject on the Prohibition Order in any way is presumed to have a connection (not be in possession) at all to what is laid out in the Firearm Prohibition Order then this can be used in a broader sense by Police if not having correct understanding of the regulations.**

[7] Section 74A(2A)–(2F)

Insert after section 74A (2)—

(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.

**** How can a Police Officer reasonably decide if another person other than the subject is in possession of items. Or is this done by association laws ie just being on the premise.**

(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.

(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.

**** How can Police Officer know of danger to any person on the premises, are they trained enough to make this decision.**

(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.

[8] Sections 74AA and 74AB

Insert after section 74A—

74AA Power to seize firearms, firearm parts and ammunition A police officer may seize and detain any firearm, firearm part or ammunition found in conducting a search under section 74A that the officer suspects on reasonable grounds may provide evidence of the commission of an offence under section 74.

74AB Recognition of firearms prohibition orders of other jurisdictions

Sections 74, 74A and 74AA apply to and in respect of a firearms prohibition order (however described) in force under a provision of the law of another jurisdiction prescribed by the regulations as if it were a firearms prohibition order made under this Act.

[9] Section 81 Delegation

Omit “73 or 74” from section 81(2A). Insert instead “73, 73A or 74”.

[10] Section 84 Proceedings for offences

Omit “or 51D (2)” from section 84(3). Insert instead “, 51D(2) or 51J”.

CONCLUSION

The Bill seems to be infringing further into the rights of individuals, legal citizens.

Important things the Club feels need to be investigated are –

1. Firearm Precursor definition needs to be made clearer.
2. Individuals that need to be defined and included or not included into Act i.e
Unlicensed Firearm owners, Licensed Firearm owners, Financial Institute, Landlord etc.
3. A individuals right to silence needs to be stressed.
4. If a Higher-Ranking Police Officer is unable to attend a search and seizure then it
must be made sure that Officer doing this completely understands the Regulations with recompense
if incorrect ruling or damage to reputation or finance.

Yours Sincerely

On behalf of - The Southern Riverina Hunting Club Committee