Submission No 218

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

Organisation: Nepean Hunters Club Inc.

Date Received: 13 August 2020

Honourable Members

On behalf of the Nepean Hunters Club I write this submission regarding the Firearms and Weapons Amendment (Criminal Use) Bill 2020.
Nepean Hunters Club was formed in 1970 is one of the largest hunting clubs in NSW, with a membership of approximately 650.

There a number of areas within this report that are of concern, some of these concerns are under Section 51K. This amendment (51K -pg4) takes away a traditional right and freedom and also a privilege against self-incrimination. This area of concern is re-produced as follows;

(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.

"(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".

Section 1 "reasonable grounds" is open to interpretation by individual Police Officer, what constitutes "unreasonable grounds". This statement is non-specific.

Section 2 of the amendment goes against the common law principle of privilege against self-incrimination and a basic human/individuals right to silence, privacy, dignity and freedom. It lends itself to victimisation and is ambiguous as it is written in the amendment by virtue of the statement "reasonable grounds". What is reasonable grounds, and should it not be confirmed by a written statement by a Senior Police Officer of rank Superintendent or above, outlining and committing the concerns in a written statement?

Further, the information below is provided by the report "Traditional Rights and Freedoms – Encroachments by Commonwealth Law" Australian Law Reform Commission – Report 129 Dec 2015 is further evidence of the common law principle mentioned above. Section 51K is in contravention of this report.

11.1 The privilege against self-incrimination allows a person to refuse to answer any question, or produce any document or thing, if doing so would tend to expose the person to conviction for a crime.

11.2 A statutory form of the privilege is available in the Uniform Evidence Acts. The statutory protection is only available to resist disclosure of information in a court proceeding. The common law privilege is available to persons subject to questioning in

both judicial and other proceedings.
11.3 A number of rationales have been said to underpin the privilege. In recent judgments, it has been said to be necessary to preserve the proper balance between the powers of the state and the rights and interests of citizens, to preserve the presumption of innocence and to ensure that the burden of proof remains on the prosecution. At other times, the courts have described the privilege as a human right, necessary to protect the privacy, freedom and dignity of the individual.
11.4 The privilege places barriers in the way of investigations and prosecutions, particularly where information is peculiarly within the knowledge of certain persons who cannot be expected to share that information voluntarily. Parliament has, at times, considered that the public interest in the full investigation of matters of public concern outweighs the public interest in the maintenance of the privilege. Many Commonwealth statutes give government agencies—including the Australian Crime Commission (ACC), the Australian Competition and Consumer Commission (ACCC), the Australian Security Intelligence Organisation (ASIO), and the Australian Securities and Investments Commission (ASIC)—the power to compel a person to answer questions, and provide that the privilege against self-incrimination does not excuse a person from answering questions. These powers are intended to facilitate the timely exposure of wrongdoing and prevent further harm.

11.5 Laws abrogating the privilege usually provide use immunity regarding the answers given—that is, they provide that the answers given are not admissible against the person in a subsequent proceeding. Some laws also provide derivative use immunity—that is, they provide that evidence obtained as a result of a person having made a statement is not admissible against the person in a subsequent proceeding. Other statutory safeguards against incrimination may also be provided, including restrictions on sharing the information obtained with law enforcement agencies. The courts also have inherent powers to exclude evidence that would render a trial unfair.

11.6 There have been several reviews of the privilege against self-incrimination and the availability of use immunities to protect witnesses who are compelled to answer questions or produce documents. These reviews largely concluded that use immunities are an appropriate safeguard of individual rights and may, therefore, appropriately justify laws that exclude the privilege against self-incrimination. However, there have been recent developments in the area, including the use of compulsory powers to question a person subject to charge. The High Court has said that such questioning has the potential to 'fundamentally alter the accusatorial judicial process'.[1] The Court has also expressed concern about the publication of transcripts of examinations to prosecutors.[2]
1 X7 v Australian Crime Commission (2013) 248 CLR 92, [124] per Hayne and Bell JJ, Kiefel J agreeing.
2 Lee v The Queen [2014] HCA 20 (21 May 2014).

Section 51J is open to mis-interpretation by the police, as evidenced by inclusion in this submission of **Kraus v Commissioner of Police [2020] NSWCATAD 152 ,** while in a perfect world the Police will be fully aware of the law within the ACT, not withstanding this, 51J is ambiguous and open to mis-interpretation either through ignorance or malfeasance.

1) The idea of a firearms precursor, could be any item in a general workshop, it is a very broad and generalistic statement. It also presumes that a person takes part in the manufacture of a firearm, or firearm part by possessing a firearms precursor – this is subject to Police interpretation and too broadly defined.

2) As Section 51J has been written, a financier or a landlord, with no control or management over how the premises to be used could be in breach for providing and/or arranging finance or the premises.

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.
(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

Even on the applicant's version of the facts, however, a contravention had taken place. Daniel, then aged 17, was not licensed, and on any view had access to the upper compartment where ammunition was kept. The applicant did not appear to dispute that. As the keys to both compartments were on the same ring, it could be said that Daniel had access to the firearms compartment as well, even if he did not unlock it, though perhaps only for a period of about 20 minutes. An aggravating factor in relation to all three violations, as the respondent pointed out, is that as a serving police officer, the applicant should have been aware of the legal requirements relating to firearms and complied with them

Kraus v Commissioner of Police [2020] NSWCATAD 152
Hearing dates: 4 June 2020
Date of orders: 17 June 2020
Decision date: 17 June 2020
Jurisdiction: Administrative and Equal Opportunity Division
Before: Emeritus Prof GD Walker, Senior Member

In concluding this submission, I note that it does define between a between a licensed firearm owner or criminal, and entitles a Police officer to act upon suspicion of an offence without just cause.
Thank you for consideration in reading this submission

Yours Faithfully

Lloyd Moran
Immediate Past President
Nepean Hunters Club