

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

**Organisation:** NSW Firearms Dealers Association  
**Date Received:** 14 August 2020

---

# Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020

## SUBMISSION



**NEW SOUTH WALES FIREARM DEALERS ASSOCIATION  
INCORPORATED**

NSW FIREARMS DEALERS ASSOCIATION PO Box 4031 Kotara East NSW 2305

On behalf of the NSW Firearms Dealers Association please accept our submission on the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020

The object of this Bill is to amend the Firearms Act 1996 (the principal Act) as follows— (a) to create a new offence **section 51J** 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,

It would appear that the sole purpose of these changes are to give the police wide ranging powers to combat the criminal activities of outlaw motorcycle gangs and their criminal enterprise.

There already exists an offence for the unauthorised manufacture of firearms under **section 50A** of the **Firearms Act 1996**.

The current Act states that only Firearms Dealers, Club Armourers and Theatrical Armourers can manufacture firearms as authorised by their licence, therefore anyone not licenced manufacturing a firearm would be subject to prosecution under the current Act.

This should be sufficient in addressing the criminal manufacture of firearms and firearms parts however it does require the police to have evidence that a crime was in fact taking place.

Manufacturing of firearms parts under the proposed new offence makes no distinction between a licenced firearms owner making a simple non registrable component for the maintenance of their registered (legal) firearm, and firearms parts being manufactured by someone unlicensed as a part for an unregistered (illegal) firearm.

Licensed firearms owners are fearful that by simply being in possession of spare parts for their legally owned firearms, may be perceived that they are manufacturing firearms.

There is also the presumption that a person is guilty of the offence of manufacturing firearms or firearms parts simply by being in possession of a what is defined as a firearms precursor even though no criminal offence had occurred.

The definition of a firearms precursor *“any object, device, substance, material or document used or capable of being used in the process of manufacturing a firearm or firearm part ( including computer software or plans)”*.

This definition is extremely broad and has some wide ranging implications and unintended consequences. These precursors by definition would be found in most home garages and could be purchased at any hardware store.

For example the following ordinary everyday items, may be determined as precursor.

A screw could be classified as an “object”



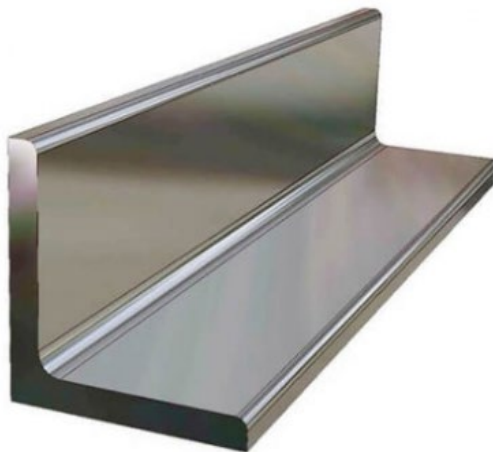
A hacksaw could be classified as a “device”



A bottle of lubricating oil could be classified as a “substance”



A piece of steel could be classified as “Material”



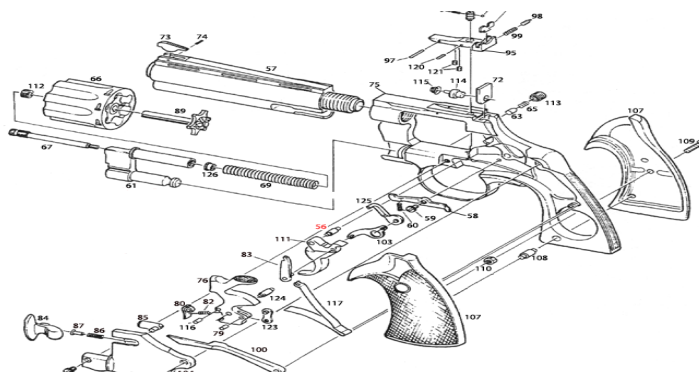
A computer drawing program such as CAD could be classified as a “computer software”

Ad · [www.cad.com.au/](http://www.cad.com.au/) ▼ (02) 9973 4499

**CAD Australia Official Site - Easy to Learn CAD**

Choosing **CAD software** made easy with our expert information and free advice. **CAD with...**

A parts schematic could be classified as a “document”



see note below

Please note a parts schematic such as the one pictured above would typically be used to order replacement firearms parts and in some cases are provided with the firearm in the user's manual.

From an engineering perspective it **could not** be used in the manufacture of any component as the schematic lacks the following details:

- There is no measurement or dimensional specification on any component.
- There is no specification for material or heat treatment requirements.
- There is no surface finish specifications.
- There is no machining process that should be used.

The interpretation and judgement on what constitutes a precursor will fall down to the police. The way that these proposals have been drafted could technically mean that a high percentage of people who shop at Bunnings could be charged because they have in their possession firearms precursors.

While the Minister in his second reading speech stated; “*this bill does not criminalise legitimate firearms holders*” and goes on to emphasise that the laws are designed to deal with outlaw motorcycle gang and criminal groups.

Our concern is that due to the vagueness and ambiguous wording this is not explicitly stated in the bill, and as I stated earlier there is no distinction between a law abiding firearms owner and someone participating in a criminal enterprise.

Our members believe this bill should be amended with provisions that protect licenced firearms owners and clearly state that a licenced firearms owner is not in breach of the Act or Regulations for manufacturing a replacement part for a firearm they legally possess (provided the part does not need to be registered under the Act) along with undertake minor repairs to a firearm that is registered or a firearm not requiring registration under the Act.

The Minister in his second reading made the following point; "Under the existing "unauthorised manufacture of firearms" offence provisions, **if police find an outlaw motorcycle gang clubhouse** filled with machining equipment and materials, they may not be able to take action unless they could prove that a functioning firearm was the end result".

As a civilized democratic society I would have thought that before someone was charged with a crime of any description there should be actual evidence that a crime has been committed.

I would imagine that any member of the public would find it offensive that a law existed that would prosecute them for being in possession of ordinary everyday items.

Imagine the cries of foul play if the police were to start charging everyone who consumes alcohol with a drivers licence with driving under the influence simply because they could be capable of doing so.

Anyone charged for being in possession of a firearms precursor would need to engage in legal proceeding to prove their innocence for a problem that should not exist.

Firearms precursors should be removed from the bill. By simply adding words such as "without reasonable excuse" does not amend the bill, and as I earlier stated will be subject to the interpretation of the police and may be made without the necessary knowledge or expertise.

Seeing as the current definition of a firearms precursor is so wide and ambiguous and in most cases these so called precursors can be used for purposes other than the manufacture of firearms and firearms parts it is hardly fair that they should be mentioned.

If a precursor was to exist it should be for something that was used only in the manufacture of firearms and firearms parts, they should be listed as precursor items and the definition should not include the words "including (but not limited to)".

Section 51J (2) mentions and defines the circumstances under which a person "takes part" in the manufacture of a firearm or firearms part. It mentions financing and the provisions or leasing of premises.

This could be quite easily be misinterpreted by the police are we going to charge a bank Manager for providing a business loan or a land lord for renting a property where a drug lab has been set up?

***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."*

This makes no distinction between a licenced and unlicensed person or legal and illegal firearms or parts.

Again precursors cast a wide net on objects used for other tasks.

This section will also be subject to the interpretation and discretion of the police and the decision of what constitutes "reasonable grounds" will differ from person to person so there would be no consistency with the application of this section.



For example a person is charged for not providing a computer or storage device password, even though no evidence is found on the computer or storage device that would support any charges 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."*

The interpretation and discretion of the police and the decision of what constitutes "reasonable grounds" again present problems.

The terminology seems vague, for example is a CNC machine operator going to be deemed in charge and responsible for the machine they are operating? Will they be interrogated and subjected to threats of punishment for not providing access codes to the computer programs that run and operate the machine?

The machine operator may be nothing more than an employed semi-skilled person who simply puts material into the machine and pushes a button to start it, and has no access to computer access codes.

*(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 51K introduces a penalty for a person for failing to assist the police with their enquiries or provide information when asked. This is a breach of an individual's legal right to remain silent and not incriminate themselves during a police investigation. It is absurd that someone should be forced, bullied, coerced or harassed to assist the police with their enquiries before consulting legal advice.

I would like to finish up by saying that the NSW Firearm Dealers Association fully support the Government and police in their efforts to stop any criminal activity involving firearms.

However these efforts should not unfairly prosecute law abiding firearms owners and the firearms industry due to poorly drafted legislation and regulation.

This proposed bill is a good example of poorly thought out regulation that gives the police powers and the ability to charge people without the slightest bit of concrete evidence.

The unfortunate unintended consequence of this bill is that it will unfairly prosecute law abiding firearms owners, the firearms industry along with a lot of people who have nothing to do with firearms.

Submitted by

NSW Firearms Dealers Association

PO Box 4031 Kotara East NSW 2305