

**Submission
No 231**

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

Name: Mr Nicolas Craddock

Date Received: 14 August 2020

Submission to inquiry into the provision of Provisions of the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020

1 Overview

The *Firearms Act 1996* (NSW) (the ‘Act’) currently contain provisions relating to manufacture of firearms that potentially criminalise innocent everyday actions of legitimate firearms users. The proposed bill compounds the problem by expanding the scope of activities potentially caught up in this net.

I implore the Committee to take this opportunity to correct these problems.

2 Current Situation

Section 50A of the Act makes it an offence to manufacture a firearm without an appropriate licence or permit. There are several significant problems with this section and other parts of the Act as they relate to the offence of manufacturing.

2.1 ‘Manufacturing’ Not Defined

Section 50A sets out the offence of manufacturing and provides for penalties of up to twenty years of imprisonment but no definition of ‘manufacturing’ is provided. It is a terrible situation that the Act provides for such significant penalties for an offence but gives very little guidance on what constitutes the offence.

2.2 Manufacturing includes ‘Assembly’

Section 50A provides that “manufacture a firearm includes assemble a firearm from firearm parts”. ‘Assemble’ is not a defined term so we have to assume that its normal meaning was intended. This provision criminalizes a large number of normal everyday activities of licensed firearms owners. I will illustrate this with some examples.

2.2.1 Removal of the Bolt form a Bolt action rifle

The largest category of firearms owned by licence holders in NSW would be bolt action rifles.

Normal maintenance procedures for this type of firearm require removal of the bolt to facilitate cleaning and lubrication of the barrel, bolt and receiver. In addition, some shooting ranges in NSW require that bolts be removed from bolt action rifles when entering or exiting the range. It is also

common practice to remove the bolt to ensure the barrel is clear of obstructions before firing or to facilitate clearing of the rifle.

Section 50A of the Act may make it an offence for ordinary users to install the bolt in a bolt action rifle. This would mean that every time the bolt is removed from a bolt action rifle for cleaning or safety purposes, the user would need to have a licenced firearms dealer or other appropriate licence or permit holder reinstall it for them. This is not practical.

The definition of 'Firearm Part' in the Act includes an 'operating mechanism'. The term 'operating mechanism' implies a part with moving sub-parts that performs some form of operation. Given that the bolt and trigger mechanism are the only parts of a bolt action rifle that contain moving parts and that 'trigger mechanism' is separately included in the definition of 'Firearm Part', it is reasonable to assume the bolt is the 'operating mechanism' of a bolt action rifle and is a 'firearm part' for the purposes of the Act. Assembly of a bolt with other firearm parts to form a firearm would therefore constitute an offence of unauthorised manufacture of firearms pursuant to section 50A.

Whether an offence is committed in the situation described may depend on whether a bolt action rifle with the bolt removed is considered a firearm or a collection of firearm parts and other parts for the purposes of the Act. The definitions of 'firearm' and 'firearm part' provided by the Act do not make this distinction clear and I am not aware of any judicial interpretation of the Act that provides any assistance in this regard. The question revolves around the stage of disassembly at which an object ceases to be a 'gun' and becomes a collection of parts and the answer is certainly not clear to me.

Taking into account all the considerations outlined above, it appears quite possible that installation of a bolt in a bolt action rifle constitutes unauthorised manufacture of firearms and an offence pursuant section 50A.

Given that the definition of 'firearm part' also includes a 'magazine', the same concerns as those outlined above apply to the removal and installation of firearm magazines.

2.2.2 User Replaceable Barrels

An increasing number of firearms available in Australia include barrels that are designed to be removed and replaced by the user. An example is the CZ 457.

The CZ 457 is a popular bolt action rimfire rifle that can be purchased with multiple interchangeable barrels chambered for different rimfire cartridges. The rifle is designed to allow quick and easy changing of barrels by the user with minimal tools. In order to change barrels the user is required to disassemble the rifle into a bolt, receiver, barrel, magazine and stock, substitute the barrel and reassemble the parts. It is almost beyond doubt that, in the state of disassembly required, the firearm has been broken down into what would be considered a collection of firearm parts for the purposes of the Act. Reassembly of these parts would be assembly of a firearm from firearm parts and, if done by a person without a licence or permit authorising this, would constitute the offence of unauthorised manufacture of firearms pursuant to section 50A.

This problem is going to continue increasing. Modern manufacturing tolerances have eliminated the need for gunsmiths to be involved in process of fitting a barrel to a firearm. There is an increasing trend towards user 'drop-in' barrels that are intended to be fitted by the user.

2.2.3 Reassembly of a Pistol

The majority of self loading pistols that I am familiar with are required to be broken down into components comprising a barrel, slide and frame to facilitate routine cleaning and maintenance. Each of these components is a 'firearm part' for the purposes of the Act and, in my view, it is virtually certain that reassembly of a pistol following such disassembly would constitute manufacturing and be an offence pursuant to section 50A(2) of the Act.

Impact of the Definition of 'Firearm' and Section 4(2)

The definition of 'firearm' in the Act includes a gun or weapon that was in the past capable of propelling a projectile.

Section 4(2) of the Act provides that anything that would be a firearm but for some defect is to be considered a firearm for the purposes of the Act.

The impact of these provisions on the offence of manufacturing by assembly is unclear.

If a firearm is disassembled, is it a firearm or a collection of firearm parts for the purposes of the act? Is it both?

A disassembled firearm was capable of propelling a projectile in the past. But for the defect of being in a disassembled state, it would be considered a firearm.

The implications of these questions for the offence of manufacturing by assembly are very confusing. How can you assemble a firearm from something that is already a firearm for the purposes of the Act.

If a person brings together a collection of firearm parts, have they already manufactured a firearm? How close together do the parts need to be?

3 The Impact of the Amendments

As discussed above, there are multiple very serious problems with the concept of manufacture in the current provisions of the Act.

The proposed amendments compound these problems by building on the existing foundation and dramatically expanding the potential impacts of the existing poorly designed concept of manufacturing.

4 Recommendations

4.1 Define Manufacturing

The concept of manufacturing needs to be defined in the Act. It is unreasonable to make an activity such a serious offence and not clearly outline what constitutes the activity.

The definition should only include situations where a firearm or firearm part is created from materials that were not a firearm or firearm part.

The definition should exclude 'assembly' from the concept of manufacturing. As discussed above, assembly is a common and legitimate activity for licensed firearm owners. I do not believe that it is possible to include assembly within the concept of manufacturing without unintentionally criminalizing legitimate activities.

If the Parliament wishes to punish criminals who assemble firearms, this could be done by adding aggravating factors to the offence of possession of unregistered firearms.

By definition, if a criminal assembled a firearm, they also possessed that firearm. Providing an increased penalty for possession of unregistered firearms that were assembled by the offender would serve to punish criminals without criminalizing legitimate users.

4.2 Exclude Activities of Legitimate Licensed Users

The definition of manufacture and the provisions on manufacturing offences should include wording designed to exclude the unintentional capture of the activities of legitimate licensed firearm users.

One way to do this would be to harness the concept of registration. The provisions on manufacturing offences could provide that, if a firearm or part was registered correctly in compliance with the law immediately before or after an activity, then that activity should not be considered manufacturing for the purposes of the Act.

4.3 Clarify the Definition of 'Firearm' and 'Firearm Part'

In increasing number of offences set out in the Act rely on the concepts of 'firearm' and 'firearm part' and the distinction between them.

The definition of 'firearm' in section 4(1) and the wording of section 4(2) need to be amended to make it clear exactly how the two are distinguished.