

Submission
No 232

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

Organisation: Newcastle District Hunting Club

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Submission

Firearms and Weapons Legislation
Amendment (Criminal Use) Bill 2020



AUGUST 12, 2020
NEWCASTLE DISTRICT HUNTING CLUB

Please accept our submission on the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020

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

And while we fully support the Government and police in their efforts to stop any criminal activity involving firearms. We are of the view however that the legislation is poorly thought out leaving far too many discretionary powers in the hands of the police.

The unfortunate unintended consequence of this bill in its present form is it will put law abiding firearms owners and the firearms industry under unnecessary scrutiny along with a lot of people who have nothing to do with firearms. The home handyman workshop is by definition now a precursor as would every other manufacturing facility that has metal working machinery such as lathes and milling machines – this could very well include school and TAFE workshops.

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.

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

The current Act states that the manufacture of firearms and firearms parts can only be undertaken by someone authorised by licence or permit. Anyone not authorised 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.

Under the proposed bill there is no distinction made 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.

Our club members 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 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)*".

These precursors by definition would be found in most home garages and could be purchased at any hardware store. Our members fail to see how any logical person could jump to the conclusion that these ordinary everyday items used for a multitude of tasks around the home must be being used for some type of illegal activity.

It appears that the interpretation and judgement on what constitutes a precursor will be at the discretion of the police rather than a prescriptive definition. The way that these proposals have been drafted could very well 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*" He 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.

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.

While I encourage legislators to do everything at their disposal to eliminate the curse of Biekie Gangs it should not be at the expense of carrying on your hobby in a workshop in your own backyard. Having a lathe is not the same as having a tonne of pseudoephedrine.

People would surprised and perhaps even shocked to learn that a law existed that would prosecute them for being in possession of ordinary everyday items purchased on the weekend at Bunnings.

The drafting of the legislation could mean that anyone charged for being in possession of a firearms precursor could very well need to engage in expensive legal proceedings to prove their innocence for a problem that should not exist.

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 interpreted by the police that we are going to charge a bank Manager for providing a business loan or a landlord for renting a property?

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 officer to officer so there would be no consistency with the application of this section.

(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 person employed as a 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?

Why should a person be 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

Section 51K introduces a penalty for a person for failing to assist the police with their enquiries. It is our belief this is a breach of an individual's legal right to remain silent and not incriminate themselves during a police investigation.

Our members believe the desire that the Government and police have to keep the public safe by reducing the opportunities that criminals have at accessing and using firearms should not put law abiding firearms owners where they can be unfairly prosecuted 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 onus of having to provide satisfactory evidence.

Submitted by:

Treasurer

Newcastle District Hunting Club