

**Submission  
No 170**

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

**Organisation:** Sporting Shooters' Association of Australia Sydney Branch Inc.  
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# SSAA (NSW) SYDNEY BRANCH INC

## RE: Provisions of the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020

Dear Members,

Thank you for the opportunity to provide feedback. As the largest sporting shooters club in NSW we write to voice the concerns of over 33,000 members to the current draft legislation.

Unfortunately, the current legislation draft has several deficiencies that are certain to cause unintended consequences and significantly impact on Law Abiding Firearms Owners. We call on changes to be made to ensure that the Bill does not discriminate against and cause significant consequences to Law Abiding Firearms Owners.

There are particular concerns relating to Sections 51J and 51K of the Bill. These concerns are identified below.

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

*(2) 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.*

Section 51J 2 (a)-(c) has several significant issues in the way in which the amendment is written. SSAA Sydney Branch believe that this could potentially be open to misinterpretation by the police. A financier or landlord could potentially be in breach of the Act for providing/arranging finance or for providing premises.

The Bill proposes a new offence pursuant to Section 51J of "Taking part in unauthorised manufacture of firearms or firearm parts." Sub-section (2) of the proposed section defines the circumstances under which a person "takes part" in the manufacture of a firearm or firearm part. This includes a person participating in any step or causes any step to be taken in the process of that manufacture; provides or arranges finance for any step or provides premises or allows a premises to be used in any step of the manufacture whether they be the owner, lessee, occupier or person with control or management over the premises. These provisions are contained in Sub-section 51J(2)(a-c).

Section 51J(2)(d) provides that a person possesses a firearm precursor for the purpose of manufacturing a firearm or firearm part. This presumes that a person takes part in the manufacture of a firearm or firearm part merely by possessing a firearm precursor. Again, the presumption that a firearm precursor is possessed for the purpose of manufacturing a firearm or firearm part is open to misinterpretation by the Police.

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

*(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.*

The definition of 'firearm precursor' is too broad and ambiguous and again open to misinterpretation by the Police. Given the ambiguity of the definition it is open to include materials such as a piece of metal or devices such as a drill, lathe or even something as simple as a screwdriver; whilst substances could be viewed as a lubricating oil such as WD-40. All of these materials and objects can be found in any workshop or garage across Australia.

In his second reading speech, the Minister stated; *"this Bill does not criminalise legitimate firearms holders"*, however this is not explicitly stated in the Bill.

The Bill should be amended to include provisions which make it clear that licensed firearms owners who have a legitimate need to make a part or make minor modifications to a registered firearms or a firearm not required to be registered, are not captured by Bill.

In addition, it should be amended to confirm that the mere possession of everyday items and hardware possessed by LAFOs is not an offence under this Bill. This could be addressed by the insertion of the words *"without reasonable excuse"* into the Bill.

### **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.*

The term "reasonable grounds" is open to interpretation. What one police officer determines to be reasonable grounds may not constitute reasonable grounds by a second police officer.

The Bill also proposes this new section to give a Police Officer additional powers to seize and detain any firearm, firearm part or firearm precursor that the Officer suspects on

reasonable grounds may provide evidence of the commission of an offence under Section 51J.

It is well known that there are lengthy delays at present in the finalising of internal reviews and other firearm related decisions by the Firearms Registry. Poor decision making by Police Officers inappropriately seizing registered firearms, firearm parts and firearm precursors can have major consequences, particularly for Primary Producers and Professional Shooters. For these reasons, any decision to seize firearms, firearms parts or firearm precursors should not be left to inexperienced or misinformed Police Officers.

It is the legal opinion that an officer of or above the rank Inspector should only be allowed to make the decision to seize and must justify, in writing, the basis of any such decision.

### **51K Power to seize firearms, firearm parts and firearm precursors**

*(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*

The proposed new Section 51K(2) and (3) compels a person to provide assistance or information to Police. This breaches the Common Law principle of a person's right to silence. This Common Law principle has been enshrined in Section 89 of the *Evidence Act 1995*, which states that no adverse interest can be drawn against a person if that person fails or refuses to answer any questions put to them by a Police Officer investigating the commission, or possible commission of an offence.

Sections 51K(2) and (3) should be amended to provide appropriate safeguards to protect this fundamental right to silence.

On behalf of our 33,000 members we ask that serious consideration be given to removing or amending these clauses so that there is no further impact on Law Abiding Firearms Owners.