REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 5 - LEGAL AFFAIRS

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

CORRECTED

At Macquarie Room, Parliament House, Sydney on Thursday, 10 December 2020

The Committee met at 10:07 am

PRESENT

The Hon. Robert Borsak (Chair)

The Hon. Rose Jackson
The Hon. Trevor Khan
The Hon. Natasha Maclaren-Jones
The Hon. Taylor Martin
The Hon. Shaoquett Moselmane
Mr David Shoebridge (Deputy Chair)

The CHAIR: Welcome to the second hearing of the Portfolio Committee No. 5 inquiry into provisions of the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land. I pay respects to the Elders past, present and emerging of the Eora nation, and extend that respect to other Aboriginal people present. Today is the second of two hearings we will hold for this inquiry. Today we will hear from representatives of the Law Society of NSW and the New South Wales branch of the Sporting Shooters' Association of Australia. We will also hear from a number of individual firearms lawyers and owners.

Before we commence, I will make some brief comments about the procedures for today's hearing. Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with broadcasting guidelines, media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about comments they may make to the media or others after they have completed their evidence. Committee hearings are not intended to provide a forum to make adverse reflections on others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. If witnesses are unable to answer a question today and want more time to respond, they can take a question on notice. Written answers to questions taken on notice are to be provided by Monday 18 January 2021. If witnesses wish to hand up documents, they should do so through the Committee staff. To aid the audibility of the hearing, I remind both Committee members and witnesses to speak into the microphones. For those with hearing difficulties who are present in the room today, please note that the room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. Finally, would everyone please turn off their mobile phones or set them to silent for the duration of the hearing. I now welcome our first witnesses.

RICHARD LEARY, Representative, Law Society of NSW, affirmed and examined

JANE SANDERS, Representative, Law Society of NSW, affirmed and examined

The CHAIR: Would you like to start by making a short opening statement? Please keep it to a few minutes.

Ms SANDERS: Yes, I will do that. Obviously the Committee has the Law Society's submission. We will not be repeating that. Our primary concern is not with access to firearms. The Law Society is of the view that it is very proper that access to firearms is restricted and that heavy penalties may apply in appropriate circumstances for unauthorised use. Major concerns are with ensuring consistency between offence provisions. We see that there is currently perhaps some inconsistency in terms of the range of penalties among different offences. Another major concern of ours is with the police powers that attach to firearms prohibition orders. The exercise of those police powers has, of course, been reviewed by the Ombudsman, who made a number of recommendations. We would like to see more of those recommendations taken up. Our other major concern is with the impact of firearms prohibition orders on children and the lack of review and appeal mechanisms for children. That is all we need to say by way of opening statement. Thank you.

Mr DAVID SHOEBRIDGE: I just wanted to ask about proportionality. As a member of The Greens, I have got to tell you that I have a strong urge to protect the Firearms Act to actually ensure that the national agreement is enforced. Of course, we are concerned about making sure that people cannot print part of a firearm or the like. But I think one of the issues you and the Bar Association raised is proportionality in terms of the offences. If you can get 20 years for printing part of a firearm but only seven years for actually possessing the entire illegal firearm. The proportionality question seems quite difficult. In fact, it arguably does not appear a proportionate offence.

Mr LEARY: Yes, our view is that the 20-year penalty provided by section 51J is disproportionate.

Mr DAVID SHOEBRIDGE: We had an answer from the police about proportionality that I have tried hard to understand. Have you seen the answers to questions on notice from the police?

Mr LEARY: No.

Mr DAVID SHOEBRIDGE: It is quite long and confused, but I will read it to you and maybe you can give some meaning to it. I asked on notice about that proportionality and they said:

> The penalty thresholds assigned to unauthorised manufacturing were considered against existing penalties for other offences and were scaled according to the seriousness and the level of organised criminality involved in the offence.

They then set out the various offences under the Firearms Act 1996:

- Section 7 penalty is 14 years (unauthorised possession of a pistol or prohibited firearm)
- Section 7A penalty is 5 years (unauthorised possession of a firearm)
- Section 50A(1) penalty is 10 years (unauthorised manufacture of firearms)
- Section 50A(2) penalty is 20 years (unauthorised manufacture of pistol or prohibited firearm).

They then said:

> Based on above, the proportionality for the penalty of section 51J being 20 years (taking part in unauthorised manufacture of firearm or firearm parts) is reasonable given that the charge will be considered in circumstances where the manufacture is being undertaken by a complex and organised criminal network. There must be substantial evidence to meet the two-element test prescribed in the offence, which would mean that the basic unauthorised manufacture offence (section 50A) would be the likely charge to be laid where a firearm was identified. Reliance would be put on proposed section 51J in circumstances where a firearm cannot be identified (and firearm components/precursors were present), or where there were multiple actors involved in the activity. The latter suggests that the illegal manufacturing activity is organised, complex, sophisticated and networked. Because of these features and that the intent of the proposed offence is to target organised crime networks, it is not considered that the penalty is disproportionate.

It seems to me that they are saying that some discretion in police charging will fix all of this, but I could be wrong.

Ms SANDERS: In a different context, for example, the intent of the consorting laws was to target gangs and organised crime networks—at least according to the second reading speech.

The Hon. TREVOR KHAN: You might well be speaking to the converted on this.

Ms SANDERS: Yes, indeed. Some of us here know that consorting laws are generally used to target young people, homeless people, Indigenous people and people with cognitive impairments. They are rarely used to target organised crime and gangs.

The Hon. TREVOR KHAN: You will have difficulty convincing me that they are rarely used, but the majority of the circumstances have in fact been with the Aboriginal community.

Ms SANDERS: Yes, "rarely" is perhaps the wrong word but that is the minority of its uses. I would suggest that there is nothing in this proposed provision that requires the manufacture to take place in the context of a criminal group. In the Crimes Act 1900 there are criminal group traditions—take part in criminal group, organise criminal group et cetera—and I can see nothing in this proposed provision that requires it to be part of a sophisticated operation. I would be sceptical about whether police discretion on its own will be sufficient to ensure that the appropriate charges are laid.

The Hon. TREVOR KHAN: It indeed creates difficulty for a judicial officer who is confronted with the charge because in the process of determining an appropriate penalty, one of the first things that they would have to do is look to the penalty under the legislation. Is that not right? In getting a sense of the proportionality of the charge, very early on in the process they will start by looking at the 20 years and saying—

Mr DAVID SHOEBRIDGE: This is a most serious offence, is it not?

The Hon. TREVOR KHAN: —"This is a most serious offence."

Ms SANDERS: Yes. I would have to concede that it is not totally unprecedented. Of course there are many offences in our statutes that can encompass a wide variety of circumstances. For example, common assault could be a simple shove or it could be holding a knife to someone's throat and terrorising them for an extended period.

The Hon. TREVOR KHAN: That is true, but common assault does not carry 20 years.

Ms SANDERS: It does not carry 20 years and where one has such a high maximum penalty, it is more appropriate to separate out offences and prescribe lower maximum penalties for those less serious circumstances.

The Hon. TREVOR KHAN: Was it the South Australian legislation where they break down the penalties for the offences into the category of firearm to which the manufacture relates? Is that a way of doing it? Manufacturing parts for a machine gun or a semiautomatic would potentially carry a different penalty than manufacturing parts for a .22.

Mr LEARY: The current Firearms Act 1996 does that.

The CHAIR: The current Firearms Act 1996 prohibits manufacture.

The Hon. TREVOR KHAN: Yes.

Mr LEARY: Yes, but it provides a 10-year penalty for manufacture of a firearm and a 20-year penalty for manufacture of a pistol or a prohibited firearm.

Mr DAVID SHOEBRIDGE: And there is the same differentiation on possession: five years for possessing a firearm and 14 years for unauthorised possession of a pistol or prohibited firearm. It has the differentiation.

Mr LEARY: Yes.

The Hon. TREVOR KHAN: Without using a pun, that would be a more targeted approach to penalties.

Mr LEARY: I would think so.

Ms SANDERS: That would be a start, along with separating out things such as possessing a precursor for the purpose of manufacture. I think most reasonable minds would think that is of a less serious order than taking part in subsequent steps.

The Hon. TREVOR KHAN: Would that apply in terms of drug penalties—that simply the possession of a precursor is going to be less?

Ms SANDERS: Yes, the Drug Misuse and Trafficking Act 1985 contains a separate offence of possessing a precursor with a much lower penalty. I am happy to stand corrected if I am wrong because I have not looked at this in great detail recently, but I believe that knowingly taking part in the manufacture of prohibited drugs encompasses more than simply possessing a precursor.

Mr DAVID SHOEBRIDGE: You also proposed that there should be an express exclusion for children. Do you want to explain that?

Ms SANDERS: I think we are talking about an exclusion from firearms prohibition orders.

Mr DAVID SHOEBRIDGE: Correct, yes.

Ms SANDERS: Yes. A child is obviously a disqualified person when it comes to obtaining a firearms licence or permit so they cannot lawfully possess a firearm. We have no issue with children being prohibited from owning or possessing firearms. Our issue with the firearms prohibition orders, of course, is the very broad search powers that come with them. We know that of course that encompasses entry to premises without warrant and search of a person or premises without that requisite reasonable suspicion. It is unclear. One of the things that the bill tries to address and that the Ombudsman grappled with is that the power to search is as reasonably required to determine whether the person has firearms in their possession in breach of the order. The courts have held that that does not require reasonable suspicion. Our major concerns with children are twofold. Firstly, children generally do not reside on their own. They are not head tenants, owners or primary occupiers of premises. Children would normally live with their families, or possibly they live in a refuge or a group home or something like that if they are in care.

Power to enter and search premises in relation to a child who is subject to a firearms prohibition order [FPO] inevitably is going to affect other family members. We have had clients who are children who have been subject to FPOs, and their entire family home has been entered and searched on a regular basis, affecting the younger siblings, affecting nan and mum and everybody in that house. That is a situation—of course, if an adult who is subject to an FPO lives with a spouse or children, of course the FPO will impact on their family as well, but a child has a lot less choice in terms of where they reside, and the impact that it is going to have on their family. So that is one concern that we have. The general overriding concern is, of course, that children are vulnerable. That, in other contexts when it comes to police powers, children have special protections, such as when it comes to questioning or being in custody at the police station for investigation. When it comes to strip searches, there are entitlements to support persons and the like. The powers in the FPO do not differentiate between adults and children, and it does leave children more vulnerable, and also their entire family is more liable to be impacted.

The Hon. TREVOR KHAN: Sorry, can I just break there. We break down the two, one is being the subject of the FPO and then being essentially in the premises that are being searched, pursuant to an FPO on somebody else.

Ms SANDERS: Well, that is another concern, but the primary concerns that I am talking about here are children who are subject to FPOs. Another concern that we have about—

The Hon. TREVOR KHAN: Sorry, I apologise for breaking in.

Ms SANDERS: Not at all.

The Hon. TREVOR KHAN: When you speak of children, what are you speaking about definitionally?

Ms SANDERS: Definitionally I am talking about anyone under 18.

The Hon. TREVOR KHAN: Really?

Ms SANDERS: Yes. When I am talking about a child, I am talking about someone who is under 18. And, as I said, we have no issues with under-18s being prohibited from having firearms. What we do have issues with is these same very broad police powers of search and entry—we have problems with those being applied to under-18s in the same way as they are to over-18s.

Mr DAVID SHOEBRIDGE: What is the youngest child that you are aware of that has been the subject of an FPO?

Ms SANDERS: I do not know. I do not know if there is any records or statistics on that, I have not checked. But in terms of our clients, I would say maybe about 15 or 16.

The Hon. SHAOQUETT MOSELMANE: That is when they can apply for a licence, I think—15 or 16.

The CHAIR: A minor's permit can be issued at the age of 12.

Mr DAVID SHOEBRIDGE: But that does not permit you to possess a weapon.

The CHAIR: That does not permit you to own the firearms, but it permits you to participate in shooting.

Ms SANDERS: Yes.

The Hon. TREVOR KHAN: I suppose I have got some sympathy with the proposition if it were beneath the age of 16. I would have thought you have got a real possibility—in the context of if we call it "gang environment"—that you are going to have 16- or 17-year-olds actively involved in those gangs, and, in fact, possessing and using firearms.

Mr DAVID SHOEBRIDGE: They might be used as the bunny, is that your concern?

The Hon. TREVOR KHAN: No. In the context of criminal enterprises, I do not think you can draw a line at 18 and say they are simply bunnies.

Ms SANDERS: I do concede that and I do accept that is a real concern. If I could just outline our other major concern about children being subject to FPOs and then address that concern, and perhaps suggest a way forward.

The Hon. TREVOR KHAN: Sure.

Ms SANDERS: Another major problem is that there are internal review and administrative review mechanisms for people who are subject to FPOs. So if an FPO is made against you, there is the mechanisms under the administrative decisions Act to go to the NSW Civil and Administrative Tribunal [NCAT]. Now, that Act initially provides for an internal review, which effectively is just writing to the commissioner of police seeking a review. If that review is denied, you then can go to NCAT for administrative review. However, you have no right of review to NCAT if you are a disqualified person, which includes a person under 18. So a person under 18 cannot—other than an internal review to the commissioner, which, let's be frank about it, will likely be refused—apply to NCAT.

The Hon. TREVOR KHAN: Unlikely, yes.

Ms SANDERS: Once they turn 18, if the FPO is still in force, they are no longer a disqualified person, but by that time the time limit for seeking review and appeal to NCAT has passed. I think there may be mechanisms in the Act to apply to NCAT out of time, but you have to jump through lots of hoops. So our concern is—and my view is this is probably just something that has not been thought of. Unfortunately, children often are not taken into consideration when it comes to legislation and—

Mr DAVID SHOEBRIDGE: They were not even mentioned when the legislation went through Parliament.

Ms SANDERS: Yes, indeed, and so there is unintended consequences. We understand that there may well be situations such as the one that Mr Khan has outlined when there are children who really are actively involved in possessing and using firearms in a very dangerous way. So I do agree that there are situations in which it may be appropriate to make an FPO against a child. However, we really need to look at those appeal and review mechanisms to make sure that children are being accorded the same procedural fairness that adults are. Because the issue is not so much with children not being allowed to possess firearms—that is fine—but the issue is with the very draconian search powers—the consequences.

Mr LEARY: The consequences of an FPO.

The CHAIR: Can we turn to your submission in relation to the power of seizure 51K and 25F, especially as it relates to subsections (2) and (3) of 51K and 25F (2) and (3).

The Hon. TREVOR KHAN: Sorry, after they have done that, can we come back to the FPOs?

The CHAIR: Sure.

The Hon. TREVOR KHAN: Because I am interested in the view—I will lay it on the table now—about what we do with children who are in premises that are being searched and then become the subject of search. I will just lay that and we will put it to one side.

The CHAIR: And that also happens in relation to this search and seizure. The third paragraph of your section there dealing with the privilege that this bill attempts to get rid of—and does get rid of—the privilege against self-incrimination and the right to silence. You say:

> We are unaware of any other NSW legislation that gives police this power.

Do you want to talk to this section?

Mr LEARY: First of all, if I could just say that I am aware that Mr Rogers and the Bar Association are of the view that the without reasonable excuse provision of that section preserves the privilege against self-incrimination, and also perhaps other privileges such as legal professional privilege, and any others that might exist. And it may well be that what we have said in our submission about it abrogating the right is incorrect, however it is perhaps not entirely beyond dispute. And secondly, from a practical point of view, a person confronted with a demand that they hand over a password or whatever is not necessarily in a position where they are aware of any privileges that they might have to decline to proceed with the demand. So I will just make those comments about that provision.

The Hon. ROSE JACKSON: Would it perhaps not be useful—I mean, that was the evidence that the Bar Association provided, and also the police too, indicating it was really strictly limited to situations where, for example, they wanted to access a computer, a locked safe perhaps or a password to—if we are going to proceed with that provision—at least clarify that "reasonable excuse" does indeed include those privileges against self-incrimination and legal professional privilege. So it is actually in the Act that that term is to be interpreted in that way. That does not resolve the issue that you have raised around people not being aware of that, but at least if it was in the legislation a court would be able to very clearly reach that conclusion. Do you think that might be useful?

Mr LEARY: Yes, I do.

The Hon. TREVOR KHAN: I am an enthusiastic "no" on that one. The problem is that smartphones have changed the game. Ten years ago when you had your mobile phone they could crack it; they cannot now. So much intercourse occurs, particularly on mobile phones, whether it be text messaging or other things. It is very problematic in police investigations—God, I am amazed I am saying this—if they cannot get access to what is on those phones.

Mr DAVID SHOEBRIDGE: It is time you left this place, Trevor; it has obviously got to you.

The Hon. TREVOR KHAN: I have come to that view anyway. It just does worry me because this is a power that exists in other circumstances, does it not? It may not under New South Wales legislation but under some Commonwealth legislation.

Ms SANDERS: In Commonwealth legislation there is that kind of power. The counterargument of course is: exactly because there is so much information on our mobile phones and that if police are given the password they can instantly have access to every bit of information about our life, which in pre-smart phone days they would have had to get a number of warrants and use them very extensive enquiries together that kind of information. So, obviously there has got to be a balance. I accept that this power is not completely unprecedented and does exist at a Commonwealth level, but there does need to be some added level of protection.

Mr DAVID SHOEBRIDGE: I cannot understand why it could not be overseen by an order from a court because you can seize the phone and go and see a magistrate.

Ms SANDERS: Yes—get a warrant.

Mr DAVID SHOEBRIDGE: You can seize the computer and you can go and see a magistrate. I do not see why it has to be a decision made in the heat of the moment, putting someone under the pressure of making their reasonable excuse.

The Hon. TREVOR KHAN: I know.

Ms SANDERS: Yes.

The CHAIR: How is someone in those circumstances going to know what a reasonable excuse is—

Ms SANDERS: Indeed.

The CHAIR: —under pressure from the police at that moment?

Ms SANDERS: Yes.

Mr DAVID SHOEBRIDGE: Assuming there is a valid basis for it—and you can see arguments for there being at least a valid policing basis—I do not see why it should not be overseen by a court.

Ms SANDERS: Yes, and it is very much practicable. They can seize the phone or the computer or whatever, secure it—as you say—and then go to the court for a warrant or other appropriate order. That would seem to strike a more appropriate balance.

The Hon. TREVOR KHAN: We saw in the Cunneen exercise, ICAC grabbed a phone under a notice to produce.

The Hon. TAYLOR MARTIN: Yes, that was interesting.

Mr DAVID SHOEBRIDGE: Nine times out of 10 they probably would not need to do anything anymore, anyhow; they just point it at your face and it will unlock.

The Hon. ROSE JACKSON: If we have finished discussing that section, can we go back to the issue that Mr Khan raised because I was quite interested in that as well. I appreciate that you, Ms Sanders, have suggested that this is not your primary concern but it is something that I think we are concerned about—which is children of people who are subject to firearm protection orders and the impact of the broadening of the search power to essentially encompass other people, too. This was recommended in a way by the Ombudsman, but as you mentioned that was probably because that is what the police were doing and it was unclear whether it was legal or not, so now they are clarifying that it is legal. Again, we know that in a circumstance where they are going into a gang environment in a clubhouse and there are plenty of people there, it sort of seems reasonably obvious to the police that they are all involved in criminal activity. That is quite different to entering someone's house where their dependent children are present, and potentially the impact of arbitrary search on them, particularly younger children, could be quite significant.

Ms SANDERS: Yes, I would have to say please do not assume that I am not concerned about this. It was more that is just not what I happened to be talking about at the time—we are concerned. The answer to that is: My understanding of the bill is that the power to search other people on the premises is subject to there being a reasonable suspicion. So, the police have to suspect on reasonable grounds that that person is in possession of something—firearms or parts or whatever—so that is no different. Unless I am incorrect on this, but I thought that was what the bill provided.

The Hon. ROSE JACKSON: It does, but I think—

The Hon. TREVOR KHAN: That might be right, but the search—

Ms SANDERS: But the thing is, they are already in your house.

The Hon. TREVOR KHAN: Yes.

Ms SANDERS: The thing is that section 21 of the Law Enforcement (Powers and Responsibilities) Act 2002 [LEPRA] already provides, of course, that police may stop and search anyone whom they suspect on reasonable grounds of possessing illicit drugs, stolen property, weapons etc.—to paraphrase. Kids are stopped and searched every day of the week under that provision—sometimes lawfully and sometimes unlawfully—but the point is the power is there. The power to search other individuals on the premises not subject to an FPO is subject to reasonable suspicion. If police enter premises under a search warrant, they have a power to search anyone on the premises if they have a reasonable suspicion in relation to that individual. So in my mind it is no different to the situation when police are lawfully executing a search warrant or police come into premises which is public. The problem is they are already in your house and that may be the difference, and I do not know how to resolve that. Or am I missing something?

The Hon. TREVOR KHAN: I suppose the concern I have got is that my understanding is that the making of the FPO is sufficient grounds for a search.

Ms SANDERS: Of the person subject to the FPO and of the premises.

The Hon. TREVOR KHAN: Right, but that would not extend to the third parties.

Ms SANDERS: But a search of another individual on the premises has to be subject to a reasonable suspicion attaching to that individual which has got to be more than their dad has got an FPO against them.

Mr DAVID SHOEBRIDGE: If the police have a reasonable suspicion that somebody is in possession of a firearm, firearm part or ammunition—absent this law—I would have thought that would be sufficient grounds for a search.

Ms SANDERS: Well, it is.

Mr DAVID SHOEBRIDGE: I am having trouble understanding what the rationale of putting an express power in is.

Ms SANDERS: Maybe it is just to remind the police that you cannot just automatically search anyone who is on the premises, you have to have a requisite reasonable suspicion. I mean, it is in the search warrant

provisions in part 6 of LEPRA as well—that when executing a search warrant police may search anyone on the premises for whom they have a reasonable suspicion is in possession of anything named in the warrant. That would seem to be, in most cases, redundant because they already would have a search power under section 21. So, maybe it is redundant but I am not sure that it—

Mr DAVID SHOEBRIDGE: It would be wrong to think police read the Act; that would be a major error, Ms Sanders.

Ms SANDERS: I know. Yes.

The Hon. ROSE JACKSON: I am not entirely sure that that reasonable suspicion clause is in the Act. My reading of section 74A 2A is that:

> A police officer who enters premises … may also conduct a search—
>
> (a) of any other person—

Oh, yes—

> who the officer reasonably suspects …

Ms SANDERS: Yes.

The Hon. ROSE JACKSON: Sorry, I was looking for an additional subsection but it was in subsection (a).

Ms SANDERS: Yes, it is there.

The Hon. ROSE JACKSON: One option could be to, again, consider a specific amendment in relation to when that person is a child and some kind of additional protections around that. I am not entirely sure what that could mean. It certainly could not mean a warrant because, in fact, that undermines the entire purpose of the firearm prohibition orders, but perhaps some additional record keeping or an indication that if that person is a child that police should be particularly mindful—obviously that is not legislative language. I am interested to ensure that there is some additional consideration of the different circumstance of a personal search of a child. Even the police being in the house will be challenging and could be traumatic in a way—that is unavoidable—but the personal search of a child in those circumstances, I think, should potentially be subject to some kind of higher threshold.

Ms SANDERS: I agree, and I agree with that and I know Mr Shoebridge would agree—I presume he would—that personal searches of children in any circumstances in my view need to be more tightly regulated. Currently we do have particular protections for children being strip searched in that they are entitled to a support person, although if it is urgent then that can be overridden. More broadly than in this context, we would certainly like to see more protection afforded to children for personal searches generally, including perhaps a positive obligation on police to explain things, to explain the young person's rights, to allow them to access legal advice—a quick phone call to the Legal Aid under-18s hotline for example. Those are things that I think are all worth considering, not just in this context but in the context of personal searches of children more generally.

Mr DAVID SHOEBRIDGE: I think I have just recalled what the rationale was for including that search power. It is because section 21 of the LEPRA Act—when it comes to searching on reasonable suspicion of a dangerous article, which includes a firearm—is limited to those searches being in a public place. I think it is to overcome the public place limitation in section 21.

Ms SANDERS: It may well be. Generally section 21—yes. I was not sure that section 21 was limited only to public places.

Mr DAVID SHOEBRIDGE: It is 21 (1) (c).

Ms SANDERS: It may be, actually. That is quite right.

Mr DAVID SHOEBRIDGE: It says:

> … the person has in his or her possession or under his or her control in a public place a dangerous article …

Ms SANDERS: That is right. Yes, indeed.

Mr DAVID SHOEBRIDGE: So, that might be the rationale for that.

Ms SANDERS: You would be right about that.

Mr DAVID SHOEBRIDGE: Given that, what is the Law Society's view about expressly extending that search power into a private premise if the private premise is subject to an FPO?

Ms SANDERS: Speaking for myself, I do not have a major problem with that, as long as there really is a reasonable suspicion. If the entry was pursuant to a search warrant then police would have that power to search individuals on private premises. We all know an FPO allows entry without a search warrant, so it is a lower threshold. Maybe we would have to take that on notice, actually, and consider our position a little bit more.

Mr DAVID SHOEBRIDGE: Yes, and consider the evidence that I think all of us are aware of—that sometimes that search happens at 10 o'clock in the evening, then midnight, then 2.00 a.m., then 4.00 a.m.

Ms SANDERS: But one could easily conceive of a situation where the person who is subject to the FPO hears a knock on the door and very quickly plants all of their ammo on their child or spouse or flatmate or whatever. One can very easily conceive of a situation where other people on the premises can be used to circumvent the effect of the FPO. So, there needs to be some sort of meaningful power to search other people on the premises, but it needs to be—

The Hon. ROSE JACKSON: One other option could be potentially—it is outside the specific scope of the amendments that are before us, but it could be considered as a recommendation—to require magistrates to consider the presence of dependent children in the household of someone who the police are applying to be subject to an FPO.

The Hon. TREVOR KHAN: It is not through them.

Ms SANDERS: It is not through a magistrate. It is the commissioner of police who makes—

The Hon. ROSE JACKSON: Apologies. Would you apply the person making the determination in relation the FPO to have consideration about the presence of dependent children? Police could still search that premise in other circumstances—for example, if they got a warrant—if they were genuinely concerned. But it may just provide some protection against people who are living in premises, particularly with young children, being subject to orders that could allow them to have police to entering that premise quite regularly.

The Hon. TREVOR KHAN: These FPOs, once put in place, will move with the person. When the FPO is put in place, the person may be in no relationship at all. Suddenly, 12 months—

The Hon. SHAOQUETT MOSELMANE: Non-family members could be there.

The Hon. TREVOR KHAN: Yes.

Mr LEARY: And the duration can be almost endless.

Ms SANDERS: Or they could have children. They can marry or partner up with someone and acquire stepchildren. So, there is a variety. But certainly if there are dependent children at the time that the order is being made or reviewed, those circumstances should be required to be considered by the decision-maker, definitely.

The Hon. SHAOQUETT MOSELMANE: Ms Sanders, can I just ask a question with regards to your response to Mr Khan's comment about the age of a child under 18? You have agreed somehow that 18 can be 16—there is a potential. Are you now varying your proposition?

Ms SANDERS: Well, I think our primary position is that we would like to see FPOs not being made against children under 18. That would be my primary position. But as we live in the real world—and I do understand that there may be older kids, such as 16 or 17-year-olds, who are involved in serious criminality not just as bunnies but perhaps in their own right—

The Hon. TREVOR KHAN: Look, under LEPRA we make a differentiation with regards to age. Children and young people's—

Ms SANDERS: Yes. We make differentiations at 14 for some purposes and at 16 for other purposes. If FPOs can be made against children under 18 we would like to see—and the Law Society, in our submission, has set out a proposal that it would need to be an order specifically made by the Children's Court. It is imperative if FPOs are going to be made against children under 18 that they cannot just be made unilaterally by the commissioner. There has to be some judicial oversight of that, whether by the Children's Court or whether by NCAT or some other body. Taking, perhaps by way of analogy or a different context, forensic procedures—so the Crimes (Forensic Procedures) Act allows police to perform forensic procedures on an adult with their consent.

So taking a buccal swab, hair sample to get your DNA, photographs—other kinds of intimate and non-intimate forensic procedures. Adults in most circumstances can consent to a forensic procedure. Children

cannot. The legislature has quite rightly drawn a line in the sand. If you want a forensic procedure on a child, you file an application to the Children's Court with an affidavit and setting out the grounds. Children's courts routinely deal with those forensic procedure applications. It is not a massive hurdle for the police to overcome, but it just affords an appropriate level of judicial oversight. Now, in terms of making FPOs against children, if they are going to be capable of being made against children then that is the least that we should expect.

The Hon. SHAOQUETT MOSELMANE: Is there an age limit in terms of—I know you say under 18 is a child. What about if the child is 14?

Ms SANDERS: That would be for the legislature to decide where it lies. I would think 10, which is the current age of criminal responsibility, is way too young. Possibly 14 may be an appropriate age. That is the age at which the presumption of doli incapax ceases to apply. That is the age which many people are advocating the age of criminal responsibility be raised to. That is the age at which, if a child is a suspect at a police station, they get to choose their own support person and things like that. So, 14 would seem to be an age that is perhaps—

The Hon. SHAOQUETT MOSELMANE: I do not subscribe to it, but I am just asking.

Ms SANDERS: If FPOs can be made against kids, 14 might be an appropriate age or 16 might be an appropriate age. But for anyone under 18, we are strongly of the view that an FPO should have to be made only by the Children's Court or NCAT or another appropriate body, not unilaterally by the Commissioner. That has got precedent in the forensic procedures legislation. Another thought—and, again, this may just be a thought bubble and not very well developed. Given that an FPO essentially allows police to enter premises whenever they want, as often as they want, no matter who is present—I do not know how this would operate in practice—maybe there could be some thought given to a limitation. This is not necessarily only where children are concerned—a limitation being placed on the FPO to limit the number of times that police can exercise these powers within a 24-hour period or a seven-day period or whatever.

That is not completely unprecedented. Looking at the context of bail, if a person on bail the subject to a curfew condition—adults on bail are sometimes subject to curfews. But most commonly these curfews are imposed on children on bail, to reside at whatever address are not to leave that address between 8.00 p.m. and 6.00 a.m. A court can additionally impose an enforcement condition which says, effectively, "To present myself at the front door at any time, if called upon to do so by the police." That means that police are authorised to come knocking on your door in the middle of the night to do a bail check, to check that you are home in compliance with your curfew.

The provisions in the Bail Act say that the court can specify a maximum number of times that police are allowed to do bail checks within a certain period, and that police doing bail checks in pursuance of one of those enforcement conditions must—I cannot remember the wording—act reasonably. They must not conduct those checks more than what is reasonable. So maybe some kind of consideration to a similar kind of requirement being imposed on an FPO to prohibit the abuse of that entry and search power.

Mr DAVID SHOEBRIDGE: But the police regularly turn up and do bail checks—

Ms SANDERS: They do.

Mr DAVID SHOEBRIDGE: —regardless of whether they have the order. In fact, they resist having orders made because they do not want to concede the court has the power to limit them.

Ms SANDERS: Yes, they do. However, that is reliant on consent. The police can come and knock on your door but you do not have to answer the door. And I know we live in the real world, and a lot of people do not understand that, or they just think pragmatically, "We might as well answer the door, or they will never go away." But the difference is: You can write to the police and you can withdraw your implied licence, which we do on behalf of our clients. We say, "We withdraw our implied licence for police to attend the premises, and please do not attend the premises for bail checks. We won't be answering the door." So I know that; I appreciate that. But where there is a power of entry or a power of search, particularly if there are children involved, maybe there could be something built into a firearms prohibition order in appropriate circumstances to limit the number of times they can do it. Now, that does not, of course, take away from the randomness of it. Police can still search and enter at random times, but it may just protect against the abuse of it.

Mr DAVID SHOEBRIDGE: We have run out of time, but there is just one other question on which I would be grateful for the views of the Law Society. It is about the issue of strict liability in the offence. It is a matter that the New South Wales Bar Association's submission deals with. Again, if you could give us some assistance with what I find to be the somewhat baffling answer that the police have given to a question on notice. I will read you the question and the answer from Acting Deputy Commissioner Walton. I put to him:

> Again, I will ask if you could provide on notice whether or not the Minister's proposition in the second reading speech accurately reflects 51J (1) (b), where he says "For the new offence to apply, the person must be aware that the manufacture is illegal, that it is not authorised under a firearms dealer's licence". That statement from the Minister seems to be in error, but I would be interested if you would respond to that on notice.

The Acting Deputy Commissioner responds:

> The legislation provides that a person must knowingly or ought to have known that the manufacture is illegal.

Then we get this:

> The rationale for the introduction of 'ought to have known', i.e. the introduction of a strict liability or 'negligence' fault element is because there is an absolute test in firearms manufacturing in that either a person is licensed or not – which requires a baseline enquiry in order to establish this fact.

I do not know what that means, but perhaps you could shed some light on it.

Mr LEARY: Neither do I. I think when the Bar Association made its submission, it was, in effect, talking about a negligent basis for liability "ought reasonably to know"—

Mr DAVID SHOEBRIDGE: Which, at least, is admitted by the police.

The Hon. TREVOR KHAN: Let him answer, David.

Mr LEARY: A negligent basis "ought reasonably to know". Our submission did not deal with that issue but, having recently discussed it, we think that "maybe should've made inquiries and didn't", or something similar, is not really a basis for a maximum penalty of 20 years.

Mr DAVID SHOEBRIDGE: Would you mind taking on notice responding to that proposition by the police? Because, to be honest, I have read it multiple times, and I still do not understand it.

The Hon. TREVOR KHAN: It does not really matter what the police say, David. The thing says what it says, and we can make up our mind.

Mr DAVID SHOEBRIDGE: No, but the rationale. They have a rationale there. There may be some meaning in that rationale. I just cannot conceive of it.

The Hon. ROSE JACKSON: But you would support the Bar Association's submission, which was that in relation to the "reasonably ought to have known" element—

The Hon. TREVOR KHAN: There should be a separate penalty.

Mr LEARY: Yes.

The Hon. ROSE JACKSON: That should be a separate offence.

Mr LEARY: Yes, with a lesser maximum penalty.

The Hon. ROSE JACKSON: So you would support that proposition?

Mr LEARY: Yes.

The CHAIR: We will call it a day there. Thank you very much for coming. I note you have not taken anything on notice, so that is good. Or am I wrong? There is one, sorry.

Mr DAVID SHOEBRIDGE: Would you mind taking on notice if you have an explanation—shed some light upon the police's explanation? The secretariat will provide it to you.

Mr LEARY: Thank you. If I can have that opportunity, that would be great.

The CHAIR: You have until 18 January to respond to questions on notice. The secretariat will be in contact with you. Thank you very much for coming.

(The witnesses withdrew.)

(Short adjournment)

JAI ROWELL, Chief Executive Officer, Sporting Shooters Association of Australia (NSW), sworn and examined

LANCE MILLER, President, Sporting Shooters Association of Australia (NSW), affirmed and examined

The CHAIR: We are starting five minutes late. We will finish five minutes late before the next witness. Welcome, Mr Miller and Mr Rowell. Would either of you like to make a short opening statement?

Mr ROWELL: Thank you very much, Mr Borsak and inquiry members. Thank you for having us here today. I will make an opening statement and then I will hand over to Mr Miller. Thank you for giving us the opportunity today to participate in this important inquiry. My name is Jai Rowell. I am the CEO of the Sporting Shooters Association of Australia (NSW) [SSAA NSW]. I am representing our 58,000 members here today with Lance Miller, our National President and State President of the Sporting Shooters Association of Australia (NSW), to raise the concerns of our association with the proposed Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020.

SSAA NSW has been overwhelmed with concerns from our members and other legal firearm owners who believe that this bill would unfairly convert law-abiding firearm owners into criminals. The bill will have a detrimental effect on our members participating in activities that contribute to sustainable wildlife management and a legitimate and recognised Olympic and international competitive sport. Before handing over to Mr Miller to discuss the concerning, unintended consequences of the bill in detail, I want to start by introducing our association and the vital work that we do across the State in promoting safe and legal firearm usage and conservation.

SSAA NSW is the peak body dedicated to promoting, protecting and preserving the shooting sports in New South Wales. With over 58,000 members and 136 branches and affiliated clubs across the State, the association represents the safe, fun, and all-inclusive range of sports shooting available today. SSAA NSW is an essential contributor to tailored educational programs and training for sport shooting, and legal and ethical hunting. SSAA NSW provides a statewide, cross-discipline membership coverage that enables members to participate in the sport across the State in various disciplines without the need to join multiple clubs. SSAA NSW manages over 18 shooting disciplines and represents clubs that actively participate in regular local, State and national competitions.

The association also facilitates and promotes responsible wildlife management, with a large proportion of members involved in recreational hunting and pest management activities. SSAA NSW works in conjunction with State and local government authorities to achieve sustainable outcomes for the people of New South Wales and support our regional and farming communities. Among others, we partner with the National Parks and Wildlife Service, the Department of Primary Industries and Local Land Services. SSAA NSW is also in the final stages of establishing a registered training organisation that focuses solely on providing approved vocational education and training courses relating to the use of firearms in different industries. All training programs provided by SSAA NSW meet the needs of the sport and industry. Our training programs are also regularly reviewed for legal compliance to ensure that our members are meeting all legal and ethical requirements.

SSAA NSW always welcomes the opportunity to work with the New South Wales Government, and we certainly have a long history of supporting tougher laws on criminal activities and the illegal use of firearms. We appreciate the opportunity to be here today to share our members' concerns. We do, however, wish to express disappointment that the bill was introduced without any industry consultation. We would like to discuss a consultation pathway going forward with regards to amending the bill to avoid all the unintended consequences through the establishment of a ministerial advisory committee.

SSAA NSW supports the intended purpose: that the bill is not intended to "criminalise legitimate firearms owners." However, as it is currently written, the proposed bill does just that. The bill effectively makes it illegal to undertake many simple tasks that are essential for the safe usage of firearms, as Mr Miller will detail. Committee members, obtaining a firearms licence is a thorough and challenging process. Police initiate background checks for all licence applications and peak associations also conduct a competency training program to ascertain the suitability of applicants. SSAA NSW supports this process by way of additional training for licensees to promote safety and engagement in our sport.

We provide facilities and ranges to contribute to the ongoing training competency of all members, as well as providing safe and controlled ranges for legal firearms owners to participate in the sport. SSAA NSW actively improves upon the safety, training and firearms ethics of the person accepted by the NSW Police Force

as legal firearm owners in New South Wales. On behalf of our 58,000 members and legal firearms owners in New South Wales, I once again thank you, Mr Chairman, and all Committee members here today, for the opportunity to speak and for undertaking this important inquiry to ensure that legal firearms owners are not unfairly disadvantaged by the bill. Thank you for your time to read our detailed submission and hearing from us today.

We stand by all of our written recommendations and, in particular, today highlight the following: First, ensuring that legal firearm owners are written into the bill so that they are specifically recognised as law-abiding and not covered by the bill; second, that the ministerial advisory committee be set up to ensure greater dialogue on important matters and to avoid unintended consequences on relevant legislation; third, that legal firearm owners are afforded the same rights as everyone else in the community; and, fourth, that consideration be given to the establishment of a firearms commissioner with certain powers and responsibilities to support legal firearms owners. It is our contention that it is much easier to rectify the unintended consequences at this stage than it is after it becomes legislation. As our president, Mr Miller, will highlight, at least one other jurisdiction already has the protection for legal firearms owners already operating at law. In conclusion, SSAA NSW is willing to work with the New South Wales Government and this inquiry in good faith to ensure that the final draft of the bill achieves the intended objective without unintentionally criminalising legal firearm owners.

The CHAIR: Thank you. Mr Miller?

Mr MILLER: Mr Chairman and honorary inquiry members, my name is Lance Miller and, as stated, I am the National President of the Sporting Shooters Association of Australia and the SSAA NSW President. We have over 200,000 paid-up members nationally and over 58,000 of those are members in New South Wales. Our membership represents 24 per cent of the 240,000 legal firearms owners in New South Wales. Firearms owners represent only about 3 per cent of the population of New South Wales, which is a minority. However, that 3 per cent are legally required to be 100 per cent engaged in their sport. This is by way of annual mandatory attendances and this prerequisite ensures that our membership remain committed participants in their sport and that they are reactive to any legislative change that impacts their involvement. The current draft of the bill threatens to not only criminalise our sport but also remove basic civil liberties contained in the New South Wales legal system.

To identify the ways in which the bill criminalises legal firearms owners, it is first necessary to distinguish between a legal firearm owner and a criminal. Within Australia, firearms are not to be used in self-defence, protection or to attack. Under Australian law, aggression with a firearm is a crime, making the use of a firearm as a weapon a criminal act. Legal firearms owners in Australia use firearms for shooting sports or, in the case of farmers and ethical hunters, a tool. A legal firearms owner is not a criminal and is not a criminal in waiting. In their hands, a firearm is not a weapon. SSAA NSW also supports the intended purpose of this bill, "to be responsive to illegal firearms and those who make the buying, selling and making of illegal firearms a main focus of their criminal business", as stated by the Minister for Police and Emergency Services, the Hon. David Elliott, MP, in his second reading speech on the bill.

We agree with the Minister that the bill is not and should not be to "criminalise legitimate firearms owners". The current draft of the bill, however, does not provide for the legitimate activities of legal firearms owners; instead, it unintentionally places criminals and legal firearms owners within the same classification. We are here today to ensure that the bill achieves its intended purpose of specifically targeting criminals, rather than law-abiding firearms owners, sports shooters, farmers and conservationists. Our first concern of the current bill is its potential to deny basic civil liberties. This bill removes the fundamental principles of the criminal justice system by encroaching on the right of the presumption of innocence. The bill does not require the police to provide evidence that a functioning firearm could result from the manufacturing process. Instead, it reads that the person accused would have to prove that it was not. The right to the presumption of innocence is a common law principle that is entrenched in the English legal system and contained in article 14.2 of the International Covenant on Civil and Political Rights, to which Australia is a signatory.

The bill also requires firearms owners to provide assistance or information, removing the right to silence, as further contained in that international covenant. No citizen should be coerced or threatened by a penalty to relinquish their right to silence, nor be compelled to self-incriminate. This is a fundamental right for all citizens and should not be removed. We note The Law Society of New South Wales' position on the bill and agree that it is wrong that you could be sentenced to a maximum of five years imprisonment for actual firearms parts possession, but up to 20 years for possession of a picture of how to make one—and I draw your attention to an example of an exploded parts diagram, for parts that are compulsory for repair. Equally, we share the same concerns as the New South Wales Bar Association regarding the broad operation of the new offences and the

adoption of a strict liability or "negligence" fault element, which concerns us when it is coupled with the unintended consequences of the bill. We believe it would have devastating consequences to law-abiding citizens. Sighting in is a required safety practice that needs to be regularly checked by a firearms owner. This is also true of the cleaning and maintenance of a firearm.

The New South Wales Firearms Registry has a memorandum dealing with the expectation of sighting in a firearm as well as a memorandum dealing with the expectation of cleaning a firearm. They are essential safety acts for all responsible, legal firearms users. Under the bill, sighting in and cleaning becomes a criminal activity—it is not the sighting in and cleaning but because we use modifications, precursors and tools to disassemble and reassemble a firearm for cleaning and modifying the sights, et cetera. These items have now become precursors and not acceptable within the bill. Competition shooting, especially Benchrest and long-range precision shooting, require the utmost accuracy from a competitor's rifle. To achieve this, the legal firearms owner and competitor will often own multiple barrels and their own cartridge chamber reamer, the purpose being to ensure consistency from barrel to barrel to match their hand-prepared ammunition. The barrels are chambered by a gunsmith and are registered. This is all legal. If the competitor wants their own specific tolerance chamber reamer, rather than using the gunsmith's unknown tolerance and worn reamer, the competitor is considered to own a precursor.

That is black and white in this bill. Under that proposed amendment, it is illegal. This automatically criminalises the legal firearms owner and competitor under the proposed bill. Further, this would criminalise our sports shooters competing at local, State, national and international competitions such as the Olympics and World Competitions. SSAA NSW has significant concerns regarding the bill's impact on legal firearms owners, especially farmers and those in rural and remote communities. The machining equipment and materials used to create or repair a functional firearm are not unique; most are readily available for many other legitimate uses. Tool shops, different types of businesses, volunteer organisations like men's sheds and training organisations all have legitimate need to have what the bill considers firearms precursors. In conclusion, SSAA NSW supports the intention of the bill to target criminal activity, but the bill requires significant revision to avoid the overextension of police powers and the erosion of the civil liberties, as currently proposed against legal firearms owners.

We know that legal firearms owners are law-abiding because they have been vetted by the police, they complete regular safety training and they comply legally with all required participation in their sport. We ask that legal firearms owners are written into the bill and that their legal and legitimate activities are recognised as such to avoid any inadvertent or misdirected targeting. At the very minimum, we would point the committee to sections 37 (3) (a) and 37 (4) (a) of the South Australian Firearms Act 2015. We believe that a ministerial committee is the best path forward for consultation. SSAA NSW, if consulted, can advise on the unintended consequences with any proposed firearms regulation or legislation amendments.

We are certain that our contribution via a ministerial committee will ensure that strengthening the laws to target criminals can be accomplished without criminalising the legal firearms owners, farmers and sport shooters. SSAA (NSW) would also like to petition this Committee to further protect legal firearms owners by appointing a firearms commissioner to ensure that the basic legal rights of New South Wales citizens are equally applied to legal firearms owners. To summarise, please ensure that legal firearms owners are differentiated from criminals and not automatically criminalised as this bill is currently written. Please ensure that the peak bodies for legal firearms owners are represented on a ministerial level committee to support effective firearms legislation. Please ensure that legal firearms owners receive the same civil rights as all New South Wales citizens and, finally, that the basic lawful rights of legal firearms owners are supported by the appointment of a firearms commissioner. I thank you all for listening.[1]

The Hon. ROSE JACKSON: Obviously, as you know, this is the second day that we have had hearings, so we are in some ways aware of the issue that you have raised, which is that you are concerned for the unintended consequences. The suggestion is that 51J (1) (b)—the second element of the test, as it were, that someone knows or reasonably ought to know that the manufacture that they are doing is not authorised under a licence or permit—is protection for the concerns that you have raised. In order to be guilty of an offence under this Act, a person must do the manufacture act and, as you say, there can be various legal things that that would cover, but they must know or reasonably ought to know that what they are doing is not allowed. I obviously take from your submission and your contributions that you are not satisfied by that, but why not? Why is it not legitimate to say that, yes,

[1] In correspondence to the committee dated 27 January 2021 Mr Jai Rowell, Chief Executive Officer and Executive Director, Sporting Shooters' Association of Australia (NSW) clarified the evidence of Mr Lance Miller, President, Sporting Shooters Association of Australia (NSW).

you can do upkeep or works on your firearms legally, but you are not allowed to do it if it is not authorised? How is that protection not there under 51J (1) (b)?

Mr MILLER: I think the primary issue is the precursor issue. The example I gave is absolutely specific in that. The reamer for a barrel—all our top shooters and our benchrest shooters use them. They have to have a heavy barrel and a light barrel for their competition. They change barrels at half-time effectively. Those barrels shoot obviously very carefully prepared ammunition. At 200 metres they are trying to put all their bullets in one hole. It is tough. I have tried to do that. It is not possible in my case. But they are shooting in the 0.1 of an inch category and there is wind. It is the butterfly effect. You know, there is a butterfly in Japan and there is a little breeze across a rifle range in New South Wales somewhere. The precursor is the problem. The precursors for the items needed and the ability to search for—so a blank piece of metal is mentioned regularly around this. It is a tube of metal. It is not a barrel, but it could look like one. That is not a precursor but, as the bill is currently written, a police officer can assume it is a precursor.

The Hon. ROSE JACKSON: Indeed, and I think the issue that you raised about the tools and other things that people use in the legal maintenance and modification of their firearms is valid. I guess the issue is, when people are doing that modification and maintenance and it is authorised by their licence, that is fine because that is not "knowing or reasonably ought to know" that that is not authorised. I am interested a little, as I said, in how that is—

Mr MILLER: I find it open to interpretation too much. That is why we are asking that the legal firearms owner be represented beneath the category for dealers and gunsmiths.

The Hon. TREVOR KHAN: The South Australian amendment is what you want.

The Hon. ROSE JACKSON: Yes, I was going to get to that.

Mr MILLER: Ideally, something along those lines. It is going to be a New South Wales amendment if we get it, not a South Australian—

The Hon. TREVOR KHAN: Yes, but you know what I mean.

Mr MILLER: Yes, that is what we are looking for. Something like that just to mention us and give us a little bit of security against unintended—

The CHAIR: Just to clarify Ms Jackson's question, does the category A or B licence allow you to actually do what you are talking about doing, or does it just allow possession?

Mr MILLER: That is the problem. We are unsure of our position under the National Firearms Agreement and under New South Wales regulations, but we do accept that, because registry has said that you should clean your firearm and you should sight in your firearm, it is acceptable practice. This bill now puts a cloud over that particular space that registry allow us.

Mr DAVID SHOEBRIDGE: I thought last time we were here there was a pretty strong argument made for the defence provisions in the South Australian Act.

The Hon. TREVOR KHAN: I have not heard anything that moved me back from that position yet.

Mr DAVID SHOEBRIDGE: But the idea that the entire replacement of a barrel would fit in the South Australian amendments troubles me. That is not where I thought it was going.

The CHAIR: Well, if the barrel is registered, it would.

Mr DAVID SHOEBRIDGE: I am just saying that the entire replacement of a barrel seems to go beyond minor repairs. If you wanted to do that, you may have to go and see a firearms dealer.

Mr ROWELL: Mr Shoebridge, in that specific example that you give, that is in relation to competition and, as Mr Borsak just said, those barrels are registered and already known and those licences have been issued by police. But, coming back to Ms Jackson's and Mr Khan's comments, that South Australian model very easily dealt with the issues that we are seeking to address here. I think it is very easy to put that into the New South Wales context, amend this bill now, and avoid those unintended consequences.

Mr MILLER: I might further add that the rules and regulations around competition are quite strict. They have been presented to registry and approved by registry. In those rules, the switching of barrels between light and heavy for the different competitions is accepted. It is a legal thing that we have had checked. We have requested that in our rules and regulations.

Mr DAVID SHOEBRIDGE: I thought that, if there is a reasonable repairs provision—and we may not agree entirely on where the boundaries of that are—there is a defence. Given all the other requirements before the offence can be made out under 51J, that would effectively resolve your concerns.

Mr MILLER: The issue I face is that I do not want to be having to defend my actions. I do not want to be arrested because I am cleaning a firearm because we have already passed all the tests. It is legal that we own a firearm. It is legal that we use that firearm in the appropriate conditions. I honestly believe that legal firearms owners do stick in that space. We have a zero tolerance policy in SSAA. It is legit. We will defend our members tooth and nail if they are doing the right thing. If they are not, they are cast to the winds. That is the place for the police to come in. I believe it is important that I do not feel, as a firearms owner, that I can be arrested, targeted or questioned about cleaning or sighting-in a firearm. They are basic things.

The Hon. TREVOR KHAN: Mr Miller, I struggle to see how cleaning a firearm comes within—I see that there is a problem, but I cannot see that cleaning falls within the concept of having a precursor for the purposes of manufacturing.

Mr MILLER: It could come down to the individual police officer's opinion.

The Hon. TREVOR KHAN: But that is always the case. You get cops who get it wrong all the time.

The Hon. SHAOQUETT MOSELMANE: If you break the gun apart, then you are cleaning it. What are you doing with it?

The Hon. TREVOR KHAN: Well, you are not manufacturing.

The CHAIR: He also said earlier—take away the cleaning. Talk about a chamber reamer. Do you know what that is?

The Hon. TREVOR KHAN: I have a reasonable idea.

Mr DAVID SHOEBRIDGE: But that is when we are talking about modest repairs and the like. But can we take cleaning off the table? It does not feature anywhere in this Act. If it does, show me where.

Mr MILLER: I cannot show you where because it is not in the National Firearms Agreement that we are allowed to clean the firearm.

Mr DAVID SHOEBRIDGE: Show me where in the bill. If you think cleaning is seriously an issue, show me where in the bill it has been—

The Hon. ROSE JACKSON: The word "manufacture" is the operative word and it is almost impossible to see how cleaning a firearm could be in any way construed as a manufacturing act.

Mr DAVID SHOEBRIDGE: But I am open to be persuaded if you can show me a section in the bill that we are looking at that deals with cleaning, Mr Miller.

Mr MILLER: I have already identified that I believe the precursor issue is the major issue with cleaning. The tools required for manufacture are often similar to those required for cleaning and adjustment. Then there is the modification. Putting different sights on a rifle or a shotgun, for example, is a modification to a firearm. Under the extreme writing of this current bill, that is a modification. Modifications are forbidden. We just want the latitude to handle things that we currently have from the Firearms Registry written into this bill. I do not think that is difficult or confrontational.

Mr DAVID SHOEBRIDGE: I think the case is better made out, though, when you are sticking to actual issues that are raised in the bill. There are some actual issues in the bill and your case is better when you stick to them.

Mr MILLER: Okay, I appreciate that. Thank you.

The Hon. ROSE JACKSON: Can I just clarify—apologies, I am obviously not particularly familiar with firearms licences. Within your firearms licence or permit, does that document spell out what cleaning or modification you are allowed to do? Is that spelt out in that document?

Mr MILLER: No. It is certainly an expectation from the Firearms Registry but it is not written into the licence.

The Hon. ROSE JACKSON: When you say "expectation," is that mostly verbal or do they have policies?

Mr MILLER: No, it is a memorandum.

The Hon. ROSE JACKSON: They have memorandums, right. I actually think that in a way we are in agreement. There is an understanding that because it is not referenced in the licence or permit, it is not clear that that is allowed. References to those other documents are not contained in this Act or in the amendment that specifically provided as protection or defence that people who were operating within the purviews of those memorandums would be allowed. We are concerned to ensure that it is limited to that and that we do not provide additional defences that people who are doing the wrong thing can hide behind.

Mr MILLER: We also have zero tolerance within our organisation. Mr Shoebridge has already mentioned that he is unsure about barrel switching. That is very a common practice in competition. The ability to write us into the bill at a lower level—we are not asking for what a dealer or gunsmith can do—gives us the confidence that we can do these things. As I said before, the National Firearms Agreement does not manage cleaning and sighting in. That is left to the State regulations to pick up. The State regulations are not clear on that either, so the Firearms Registry having their memorandum is a very useful thing for us. This bill competes a little bit with that. It has not taken it into account. I will not say that it competes but I think it has not taken it into account properly.

The CHAIR: In your evidence you talk about a firearms commissioner. Do you want to elucidate a little bit on that?

Mr MILLER: We note that in some instances firearms users are perhaps not afforded the same basic civil rights as all citizens in New South Wales. We are specifically asking for that. A firearms commissioner is something along the lines of an ombudsman to sort out the issues that could come up if police have one idea and the firearms owner has another. As long as it is not a black-and-white piece of space like zero tolerance—we have said that—that person needs protection not just from their own lawyer but from government. We are looking for that type of thing. We understand that we cannot ask for an ombudsman.

The Hon. TREVOR KHAN: Protection from their lawyer? I can think of circumstances where some of my clients needed protection.

Mr MILLER: We are not asking for an ombudsman because our industry is just not that big. That is irrelevant. Let us get the telcos sorted out first. But we would like some representation and a place to go if we feel that we have been unfairly treated.

Mr DAVID SHOEBRIDGE: You have the NSW Civil and Administrative Tribunal.

Mr MILLER: Yes, we have. If there is a place where we are not feeling fairly treated, we would like somewhere to go.

Mr ROWELL: I think it is broader than that as well. The Government has a long and well-established route of establishing commissioners for all sorts of industries and issues, whether it is the children's commissioner or the recent one in the drug debate, to look at processes and practices. This would be another opportunity. A commissioner for firearms that would not be a sworn police officer, that would be outside of that, can look at those issues to ensure that there is fairness and that those issues are resolved.

Mr DAVID SHOEBRIDGE: That seems well outside the remit of this bill or even the terms of reference for this inquiry.

Mr MILLER: I agree that it is outside the remit of the bill. I wanted to put it before this inquiry because you guys are investigating what this bill is supposed to achieve.

Mr ROWELL: Potentially in the situation where there are unintended consequences of this bill, a firearms commissioner may be an important part of dealing with some of those issues. But we would hope that this Committee would recommend to Parliament that some of those unintended consequences do get resolved and the South Australian model is a clear example of how you potentially could.

The CHAIR: Is there another jurisdiction that has something like that?

Mr DAVID SHOEBRIDGE: Apart from Texas.

The CHAIR: In Texas you do not even need a licence.

Mr ROWELL: Those issues are broadly being considered in other jurisdictions. I think this is a simple one. This is not the debate around firearm ownership; this is a debate about ensuring that civil liberties are protected and that firearm users are not treated unfairly. At the end of the day we are talking about legal firearm

users. We are not talking about criminals but people that have been legitimately background-checked by police. They have undergone all of that testing. Just a few words in this Act could certainly resolve those issues.

Mr DAVID SHOEBRIDGE: I look forward to your support for a human rights act in New South Wales—or is it only rights for firearms owners?

Mr ROWELL: I am always happy to talk to you, Mr Shoebridge.

The CHAIR: I think that is also outside of the remit of this inquiry but I would also be happy to consider it in another inquiry.

The Hon. TREVOR KHAN: I am not saying no, but isn't that actually the purpose of what this Committee is doing now? One of my concerns is that we do have commissioners in various areas. It does not actually mean that they are involved in the identification of shortcomings in legislation. It is actually the upper House committees, as opposed to the lower House committees, that seemed to do the hard work on whether a piece of legislation is up to scratch. You are actually experiencing the dynamic of lawmaking as it should be right now.

Mr ROWELL: Thank you. I will not enter the debate about which committees work harder. I think they all work very hard, Mr Khan, having served on committees with you in the past.

Mr DAVID SHOEBRIDGE: The question is which ones actually have a functional role in amending legislation. This process is designed to do exactly what you are asking: look at unintended consequences.

Mr ROWELL: I think there are some broader issues outside of just good and bad legislation: issues in terms of practice. Police do a fantastic job right across the State but unintended consequences happen on a daily basis. I am sure that everyone around this table would at least be aware of multiple cases where that may be the case.

Mr DAVID SHOEBRIDGE: You are coming back to that human rights act issue again.

Mr ROWELL: Thank you, Mr Shoebridge.

The Hon. ROSE JACKSON: We have talked about the amendments in relation to the substantive offence. But assuming that one of your members became subject to a firearms prohibition order—which obviously if they were doing the right thing you would hope would be unlikely but which nonetheless could be possible, because as you say there is a fair degree of discretion involved and mistakes are made—one of the things that this legislation does is provide automatic review of those firearm prohibition orders after 10 years. The Ombudsman recommended five years in its review. I just wondered if you had any views about that. Linked to that and considering your zero tolerance for people who do the wrong thing, what is the status of people who are subject to firearms prohibition orders within your organisation? You would imagine that if they were subject to those orders then the suggestion is that they have done the wrong thing or that there is suspicion around their activity.

Mr MILLER: We are unable to prove one way or the other. There is often a they-said, they-said argument. I am afraid that is for the police and the courts and not for us to determine. If someone feels unfairly represented in that space, though, then I would point straight back to this commissioner that we are interested in. We do find that a licensed shooter is very cautious with their licence. We all are and I can give you examples of specifics. If a relationship breaks down, the easiest way to kick a shooter is to get an apprehended violence order [AVO] of some form, because that automatically loses him or her their firearms. But it is usually a bit grey, so we cannot touch that. It is up to the police to manage that, it is up to the courts to manage that, but we would like a commissioner to help us in that space.

The Hon. ROSE JACKSON: So in your view, the firearms commissioner that you would propose would engage in individual case-by-case representation of individual firearm owners?

Mr ROWELL: Broader brushstrokes.

The Hon. ROSE JACKSON: Or would it just look at broad policy issues and system-wide issues? Would they actually get involved in the nitty-gritty of—should this person have lost their firearm licence or not?

Mr MILLER: I think the concept around the person losing their licence, not the individual, but the concept of is in that space, yes. But, again, I do not control that and I do not profess to try and control that. We are asking that you may consider it. And if there is appropriate space, and the violence orders are definitely one of those spaces, where there is a lot of conjecture about validity in each instance. Each party says something different. They are a violence order—there is conflict already—and we do not want firearms in the space where conflict occurs, we agree with that. And that is why they are securely locked away. That is why ammunition and

bolts are secured separately to a firearm in a separate locked environment. All of those things are there to protect all of us—everybody—from the misuse of a firearm. We do not want it.

Mr ROWELL: So coming back to the heart of the intended purpose of this bill—to further punish criminals doing illegal activity. We 100 per cent support that, that is why we are here today. Unfortunately, as we have said before—and I am sure you have heard it from other participants in this inquiry—there are some unintended consequences. We do note the police commissioner's and the police Minister's views about that. We do think it is a reasonably simple fix to be done, but the fact that we are here talking about potential unintended consequences, and the bulk of this time has been spent of that—we would rather be here talking about the intended purpose of the bill, which is targeting criminals, and we certainly would support that.

The CHAIR: You talk about an advisory panel to the Minister, what have you got in mind there?

Mr MILLER: If the peak bodies, the people that—there is probably four peak bodies that could be representative in that space, maybe five. They cover every gamut of the shooting sports, and they have a lot of members, and they run disciplines and hunting and all the environment that we play in. The ability to talk to a committee, which is getting their information currently from police potentially in our environment, about the little things, like this reamer that I am talking about—just put that on the table and say, "Let's fix that before it becomes legislation." Once something becomes legislation, we find it very difficult to manage. We cannot manage it obviously, that is your job. Prior to it becoming legislation, we can point out the flaws in a logical argument environment that will carry the day. Logic will win, we will get a good law. We are able then to support that law, because we know it is targeting criminals. And straightaway our members, and the 240,000 legal firearms owners in New South Wales, are satisfied because the peak bodies are saying, "Guys, this is okay—the law passes without all this going on."

Mr DAVID SHOEBRIDGE: That is back to the future with the Firearms Consultative Committee, is it not? And it is also almost certainly outside the remit of the bill.

Mr MILLER: I do not think the Firearms Consultative Committee went far enough up the totem pole.

Mr DAVID SHOEBRIDGE: And it is also almost certainly well outside the remit of this inquiry or the bill.

Mr ROWELL: Mr Shoebridge, I would probably disagree with that, with all due respect. If there was a committee that was of high level that had ministerial input or consultation, perhaps this inquiry would not have been established in the first place.

Mr DAVID SHOEBRIDGE: But you would exclude gun safety advocates, you would exclude those other bodies who would have a contrary view from that committee. It would just be a one-sided firearms committee, is that right?

Mr ROWELL: I think it is important, Mr Shoebridge, that good government is about listening to all sides of all debates.

Mr DAVID SHOEBRIDGE: But all I heard from you is that it would just be the gun lobby at the table. You would not have Gun Control Australia and others at the table?

Mr ROWELL: With respect, Mr Shoebridge, we are not the gun lobby. We are a sporting association with 58,000 members.

Mr DAVID SHOEBRIDGE: I heard the list of potential persons you are pointing forward.

Mr ROWELL: Mr Shoebridge, that would be a matter for the Minister to set up and advise the Committee and seek their views, just like all other portfolios do. We think engagement is a very important thing. The fact that we were not consulted on this bill and others—

The Hon. TREVOR KHAN: You are.

Mr ROWELL: We are now, we are through this inquiry. We would like the opportunity to maybe put that at the front of a process and contribute to that dialogue.

The CHAIR: The Firearms Registry had a number of advisory groups at various levels, did they not work in any of this?

Mr ROWELL: Mr Borsak, they had a purpose but, as Mr Miller said, it was not of sufficient capacity to really put those issues on the table in front of government or its agencies at a meaningful level.

The CHAIR: Are they still functional?

Mr ROWELL: I do not think they have met in a long time.

Mr DAVID SHOEBRIDGE: Lack of maintenance.

The CHAIR: It needs maintenance.

Mr MILLER: If I may comment also, this ministerial committee—I believe everyone should be contributing to it. So, at the moment, it should have industry—whatever the bill is about, whether it is about firearms—if it is not about firearms, we should not be on that committee. But whatever a new law or legislative change is about should have the people that are interested in it, the industry around it and the people that are opposed to it in the meeting. We are quite egalitarian in that space. We are happy to have the debate and get genuinely good legislation from that debate. And, at the moment, the highest level that we had as a review was with the head of the Firearms Registry. That is, as I said before, its not enough up the top of the totem pole when legislation is coming up.

The Hon. TREVOR KHAN: Well, I do not want to repeat myself, Mr Miller, but that is not correct. You are actually here today. There is no law in place. This is why this Committee is meeting, and why the processes of the Legislative Council were changed in the last few years—to allow bills to be sent over for consideration by committees, because the process previously was not thorough enough.

Mr DAVID SHOEBRIDGE: Even when there might be differing views amongst members about the direction or the purpose of it.

The Hon. TREVOR KHAN: There are.

Mr DAVID SHOEBRIDGE: If there are legitimate concerns raised, the practice has tended to be—not uniformly—that legitimate concerns are given this kind of opportunity. That is a change in practice.

Mr ROWELL: Mr Khan and Mr Shoebridge, we do respect this process very much, and I think it has been a welcomed addition, that there is scrutiny on many bills, not just in this area. But having been a former Minister myself, I know that good governance is about consultation with key stakeholders, and this inquiry is one of many opportunities for Government, Opposition and crossbench to engage in the process. And we would certainly hope that we would have that dialogue from our point of view with the Minister of the day, Government, Opposition, and certainly we respect this process. That is why we are here today. We do not wish to get rid of this process—we think it is really good and we do appreciate it—but good governance from any Minister is also about consultation. As Mr Borsak alluded to, there was some committees in the past. We think it probably needs to be bumped up a little bit higher so it has that level of input from decision-makers.

The CHAIR: I might just add to what Mr Khan said, that we are very appreciative of the fact that the Government now is coming along with us and making these changes to the standing orders.

The Hon. TREVOR KHAN: Kicking and screaming.

The CHAIR: Kicking and screaming, I know, but you can thank the crossbenches for this, after the last election. And, in that sense, it is about the only thing I agree on with Mr Shoebridge—we have a much better process now, and you are part of that process.

Mr ROWELL: Thank you. We very much—

The Hon. TREVOR KHAN: Actually, to be fair, the one who initiated this was Peter Phelps.

Mr DAVID SHOEBRIDGE: I do not recall that. I think that is rewriting history. That is fundamentally and rather strangely rewriting history.

The CHAIR: Order! That is a fundamental misrepresentation.

The Hon. SHAOQUETT MOSELMANE: It is becoming too political for me, Mr Chair.

The Hon. NATASHA MACLAREN-JONES: He might just have the loudest voice.

Mr ROWELL: Mr Borsak and honourable members, we will leave the politics to the politicians. I am not one, so I am very happy to appear here on behalf of our organisation.

Mr DAVID SHOEBRIDGE: I fully accept it is hard to get to Minister Elliott. He once built a hedge between my office and him to avoid any accidental consultation.

The Hon. TAYLOR MARTIN: Can you blame him?

The CHAIR: A hedge!

The Hon. TREVOR KHAN: Only a hedge?

Mr DAVID SHOEBRIDGE: He is a man who can be hard to get to.

Mr ROWELL: We are not here to make any judgement of any member of Parliament.

The Hon. TREVOR KHAN: Really?

Mr ROWELL: We are just saying that the former process of the committees in the past were probably not at a sufficient level to put some meaningful dialogue in, and we think one of those opportunities for Parliament to consider is having a ministerial advisory council, where we can put that in, contribute to that process, and we very much appreciate the fact that we are here today as well.

Mr DAVID SHOEBRIDGE: Mr Elliott, tear down that hedge.

The Hon. TAYLOR MARTIN: Wow.

Mr MILLER: I do not think we need to answer that.

The CHAIR: Mr Miller said earlier that if such a consultative committee were to be created that they would see the logic of the position. I put it to you there is not just logic involved here, there is a bit of politics, too—it is not just logic.

Mr MILLER: We accept that, but that is beyond our purview.

The CHAIR: That is right. Thank you very much for coming today. I do not think there were any questions on notice.

Mr ROWELL: Thank you very much for having us. It is always a pleasure and we genuinely do appreciate the time you have taken at this time of the year to listen to this important issue. Thank you very much.

The CHAIR: Thank you for coming.

(The witnesses withdrew.)

STEPHEN MAINSTONE, Firearms lawyer, affirmed and examined

The CHAIR: Would you like to make a short opening statement?

Mr MAINSTONE: I will, briefly. Firstly, Mr Chair and members of the Committee, thank you for the opportunity of being here today in relation to this inquiry. Just by way of background, I was a serving New South Wales police officer for 18 years, retiring at the rank of Detective Sergeant, and performed about six years of criminal investigation duty. The last 10 years of my service I was a police prosecutor and also provided legal advice to a number of the major crime squads, including the Homicide Squad, the violent major offenders unit and the firearms regulatory unit.

Since retiring from the New South Wales police I went into private practice as a solicitor for a similar period of time now—about 18 years—and for the last 15 years as principal of my own practice. A large proportion of the work that I do is criminal law. Obviously based on my background as a police prosecutor, I now work as a criminal defence lawyer and that also includes firearms-related prosecutions by the police. But I also do a large amount of work in relation to administrative law, particularly in relation to firearms licensing and have extensive experience in appearing at the NSW Civil and Administrative Tribunal in relation to those issues. I have had an opportunity to read through the bill and I believe there are some areas that concern me from working closely with licensed firearms owners, and I am happy to share my thoughts on that in relation to your inquiry today. Thank you.

Mr DAVID SHOEBRIDGE: Mr Mainstone, why do we not cut to the chase. Have you followed the discussion up to now and did you look at the last hearing we had of this?

Mr MAINSTONE: I have not had an opportunity to go through everything chapter and verse, Mr Deputy Chair, as you can appreciate, as the principal of a busy sole practice, but I am aware that there have been vigorous discussions in relation to the bill and how the amendments sought to improve the Firearms Act.

Mr DAVID SHOEBRIDGE: From my perspective—and other members may have different views—there are two issues that have kind of been crystallising. One is the proportionality in terms of the level of the offence—20 years for knowingly being part of the potential manufacturer of part of a firearm. Whereas, you only get seven years for actually possessing an entire illegal firearm—different provisions depending upon the nature of the weapon and firearm. The other one is whether or not a defence similar to what you see in South Australia for the purposes of maintenance—maintaining a firearm—is an appropriate addition. I would be interested in your views on those two things.

Mr MAINSTONE: I certainly agree in relation to the proportionality of the maximum penalty of 20 years imprisonment under 51J, and as you have alluded to, Mr Shoebridge, even a more serious offence under the Crimes Act of possessing a loaded firearm in a public place only carries 10 years. The other issue in relation to an offence under 51J of 20 years—I suppose the question is in relation to how it would be dealt with procedurally as well. Would it be a strictly indictable offence or would it be a table 1 or table 2 offence?

The Hon. TREVOR KHAN: It is a bit hard to see if it is carrying 20 years that it could be a table 1 offence, anyway. At best, it could be a table 2.

Mr MAINSTONE: I would think the other way. A table 1 offence is considered a more serious offence than a table 2 offence in my respectful submission. So it would either have to be a strictly indictable offence which meant anyone prosecuted under this section would have to go to the District Court, whether or not they pleaded guilty or not. Whereas with a table 1 at least there is the option of either the prosecution or the defence making an election whereas under a table 2 offence it is only the prosecution.

The Hon. TREVOR KHAN: Yes.

The Hon. ROSE JACKSON: Just on that, one option that has been canvassed not so much in relation to the penalties—although Mr Shoebridge has said there has been evidence in relation to them being excessive—but in relation to whether or not—

Mr DAVID SHOEBRIDGE: The provision about "ought reasonably".

The Hon. ROSE JACKSON: That is right. In relation 51J (1) (b)—for a person who ought to reasonably know that the manufacture of the firearm was not authorised—that an offence being prosecuted under that provision should certainly be carved out as an offence subject to lower penalties. That was evidence from the New South Wales Bar Association and the Law Society of New South Wales. Is that something that you would

also support? That would not deal with the proportionality to other offences, as Mr Shoebridge has raised, but it would least provide some step-down provision in relation to this offence for people of whom there is no evidence that they actually knew what they were doing was not authorised, but perhaps the suggestion is that they reasonably ought to have known.

Mr MAINSTONE: Yes, I totally agree with that submission from those bodies that that is something that needs to be taken into account.

The Hon. TREVOR KHAN: Needs to be taken into account or that there be a separate offence.

Mr MAINSTONE: The difficulty is in defining what "ought reasonably to know" means to start with. How do you define that? It is the same as the argument about reasonable suspicion that a police officer may have. One police officer's reasonable suspicion may not be another police officer's reasonable suspicion, so how is that designed insofar as legislative provisions are concerned that are going to not only facilitate what the bill and then ultimately the Act is trying to achieve but also to protect those persons who may fall foul of it.

Mr DAVID SHOEBRIDGE: But this is not about the subjective belief of a police officer. It is an objective test, is it not?

The Hon. TREVOR KHAN: Not unknown to the law.

Mr MAINSTONE: Absolutely, and we are talking about reasonable suspicion. "Reasonable" is an objective test, in my respectful submission.

Mr DAVID SHOEBRIDGE: I agree. That is what I am saying. You cannot just say, "Well, this police officer thought it, therefore it was reasonable." It is an objective test.

Mr MAINSTONE: Yes, absolutely.

Mr DAVID SHOEBRIDGE: But the proportionality arguments go together, do they not? One of the proportionality arguments is: If you are manufacturing a part of a submachine gun then maybe that is a level of seriousness that you would equate with a prohibited weapons offence. Whereas, if you are manufacturing part of a .22, that might be something that you equate with a standard firearms offence. Separate to that, the level of criminal culpability would be different if you knew that it was part of the manufacture of—well, if you knew it was illegal, as opposed to that you ought reasonably have known it was illegal.

Mr MAINSTONE: Yes.

Mr DAVID SHOEBRIDGE: So they would operate in conjunction.

Mr MAINSTONE: Yes, I agree with that. And then, that would be a matter for a court to determine in relation to any sentencing exercise.

Mr DAVID SHOEBRIDGE: And you would allow the alternative charges to run.

Mr MAINSTONE: Yes.

Mr DAVID SHOEBRIDGE: If you cannot prove "knew" but you can prove "reasonably know" then that would be an alternative charge and you would be convicted of the lesser.

Mr MAINSTONE: Yes.

Mr DAVID SHOEBRIDGE: It is a bit of redrafting, but is that the kind of model you are proposing, Mr Mainstone?

Mr MAINSTONE: In relation to that, I think it allows more scope in relation to the Act.

The CHAIR: Mr Mainstone, I suppose you in your practice have represented clients from the bush?

Mr MAINSTONE: Yes.

The CHAIR: Do you have a view on the likely effects of this bill on farmers in regional communities and residents?

Mr MAINSTONE: A large proportion of my clients in relation to firearms matters are from regional areas. One of the problems in relation to when offences are investigated and whether or not persons are prosecuted—during the course of police investigations, licences generally get suspended. For primary producers and contract shooters, particularly out on the land, this causes them significant problems in relation to the time frames that are involved in relation to investigating matters and ultimately whether matters are prosecuted or not.

The suspensions always remain in place for the entire period of the investigation and the entire period of court proceedings. So for people who rely on firearms not as a piece of sporting equipment but because it is one of their tools of trade, implications for these types of things have a significant impact on them.

The Hon. TREVOR KHAN: I accept what you say, but how does that apply to this bill?

Mr MAINSTONE: If you will excuse me, I have just made some notes in relation to the specific areas that I thought you might ask me about.

The Hon. TREVOR KHAN: I think you might have heard us raise the issue that there should be an exemption along the lines of the South Australian legislation, essentially with regards to licenced firearm owners working on their own weapon.

The CHAIR: The question I was raising was in that line, but what I was asking Mr Mainstone about was—does it have a disproportionate effect on people in the bush, especially given their remoteness and their inability to get to gunsmiths and other people like that?

Mr MAINSTONE: Absolutely, it does. I heard the last part of the evidence from the two gentlemen who were before me. If you strictly read sections 8 and 9 of the Firearms Act—unless you are a firearms dealer, if you strictly read that, a licenced firearms owner is basically forbidden from manufacturing, converting, repairing or maintaining a firearm. Now, I understand that there is some leeway given by the Firearms Registry in relation to persons doing those things and that would be particularly relevant to people who are in remote locations, because they do not have access to those firearms dealers. Firearms dealers or gunsmiths may be hundreds of kilometres away.

Mr DAVID SHOEBRIDGE: That is not what section 9 does, Mr Mainstone. Section 9 provides a clear, express authority to take a firearm to a licenced firearms dealer to have it converted, maintained, tested or repaired. It does not prohibit that being done by a firearms owner. It just gives an express legal authority to take it to a firearms dealer for that purpose. It is about travelling and moving and carrying the weapon.

Mr MAINSTONE: Yes, I agree with that, but I—

Mr DAVID SHOEBRIDGE: I do not think your argument holds.

Mr MAINSTONE: I am saying that section 9 provides the additional materials pertaining to the authority of the licence, allowing them to take them to a firearms dealer for those sort of things.

Mr DAVID SHOEBRIDGE: That has no bearing upon what you might do in terms of maintaining it in your own property. It just says that if you are caught with a firearm travelling to a firearms dealer and you are travelling to the firearms dealer for one of those purposes then you are covered by your licence.

Mr MAINSTONE: Yes, I agree with that.

Mr DAVID SHOEBRIDGE: It does not do what you said, Mr Mainstone.

Mr MAINSTONE: Well, I disagree with you, but that is a matter for you.

Mr DAVID SHOEBRIDGE: Well, you have to tell me how it does do what you said.

Mr MAINSTONE: I am saying that section 8 and section 9, when read together, talk about the conditions that a person has authorised by them having their licence. I am saying that unless they are an authorised firearms dealer, if you strictly read the legislation—that was the expression that I said: "strictly read the legislation"—it would not allow a person to do things to their firearms licence, other than clean it.

Mr DAVID SHOEBRIDGE: You would have to strictly read it in a dark room by candlelight upside down to come to that conclusion, Mr Mainstone.

Mr MAINSTONE: That is a matter for you. My view is different.

The CHAIR: What has been your experience in relation to cases brought to NCAT where they are in favour of the applicant? Does the Firearms Registry—in all cases, some cases or no cases at all—reissue licences? Do they have an obligation to abide by the NCAT ruling? Put aside the fact that they might decide to appeal it, which I know they do all the time.

Mr MAINSTONE: Yes, certainly. In my experience if the NCAT make a ruling in favour of an applicant that a license be reinstated or a license be issued, generally the Firearms Registry will issue that license or reinstate that license fairly quickly—unless, of course, the commissioner gives instructions that they want to appeal that to the NCAT Appeal Panel.

The Hon. ROSE JACKSON: Have you represented any people who have appealed firearms prohibition orders?

Mr MAINSTONE: My understanding is that under section 75 of the Firearms Act you cannot take firearms prohibition orders to the NCAT. There is no avenue of appeal to the NCAT.

The CHAIR: There is no avenue of appeal?

The Hon. ROSE JACKSON: I thought that you could if it was within 28 days.

Mr MAINSTONE: No. Section 75 is very specific in relation to what matters you can take to NCAT; a firearms prohibition order is not one of them. The only way you can have a firearms prohibition order revoked is by writing to the officer—who is normally a commissioned officer of police, in regards to the one who issued the firearms prohibition order—providing reasons why they should reconsider that position. But if they say no, there is no other avenue of appeal.

The Hon. ROSE JACKSON: And have you been involved in any of those sort of internal review processes?

Mr MAINSTONE: I suppose it is still an internal review, but it is not an internal review under the process that can ultimately take you to NCAT. But I have, in the past, written to senior police officers who have issued firearms prohibition orders, made submissions on behalf of a client, and the decision has come back. "That is the decision. We are sticking by it." That is the end of the section and we have got no avenue of appeal.

Mr DAVID SHOEBRIDGE: Have you ever sought a broader administrative review?

Mr MAINSTONE: In relation to a firearms prohibition order?

Mr DAVID SHOEBRIDGE: Yes.

Mr MAINSTONE: No, I have not.

The Hon. ROSE JACKSON: In terms of clients of yours that have been subject to firearms prohibition orders and unsuccessfully sought an internal review—or however we want to describe that process—do you have any feedback on what the experience of those people has been in relation to the use of those orders? We just have not had a lot of evidence of how many times these people are being subject to arbitrary search. Once you are subject to a firearms prohibition order, how regularly are the police arriving at your house and what are they doing there? Do you have any feedback from your clients? Perhaps you do not, but if you did, it might be useful.

Mr MAINSTONE: Not necessarily from those persons themselves. But I have certainly had feedback and acted on behalf of other persons who have also been affected by the firearms prohibition order but are not subject to it. For example, a person living in the same premises—an example being a person is served with a firearms prohibition order, and then the next moment their housemate is served with a notice of a special condition being placed on their firearms licence that they can no longer store their firearms at the same premises because that would be, obviously, in breach of the firearms prohibition order. So the person who is not subject to the order is also adversely affected.

Mr DAVID SHOEBRIDGE: Mr Mainstone, can I go back to your proposition that section 75 does not include the ability to review a firearms prohibition order?

Mr MAINSTONE: Yes.

Mr DAVID SHOEBRIDGE: It was my recollection that it did. I have just gone and read it. Section 75 (1) states:

> (1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the Administrative Decisions Review Act 1997 of any of the following decisions—

Then subparagraph (f) is:

> (f) a firearms prohibition order made against the person …

Mr MAINSTONE: I do not have that Act in front of me.

Mr DAVID SHOEBRIDGE: I am just reading from it.

Mr MAINSTONE: Yes, if that is what it says. It was always my understanding that you could not appeal a firearms prohibition order to the NSW Civil and Administrative Tribunal.

Mr DAVID SHOEBRIDGE: Good news: You can. And then I think the issue is that a disqualified person cannot, and it may be that if you are dealing with a disqualified person they cannot. And children, for example, cannot. But there is definitely a general right of review under section 75.

Mr MAINSTONE: Yes, that was why, in relation to that issue of disqualified person, that is my understanding in relation to that section about not being able to apply for a firearms prohibition order. But I certainly take note of what you said, Mr Shoebridge.

The Hon. TREVOR KHAN: We are running out of time, but there are other sections of the bill that interest me, and one of them is the new section 51K provisions. I wonder if you have any comment to make with regards to new section 51K (2), that is, the capacity of the police to require the provision of information, which I will take to be information such as a password or the like. Do you have a view with regard to that?

Mr MAINSTONE: I do. My concern with that, in relation to compelling a person to provide assistance, is that it breaches the common-law principle of the right to silence, in my submission.

The Hon. TREVOR KHAN: Well, it might.

Mr MAINSTONE: Yes.

The Hon. TREVOR KHAN: I will say that it exists in some Commonwealth legislation.

Mr MAINSTONE: Yes.

The Hon. TREVOR KHAN: I think they can require it at borders or the like. So there is certainly some legislation and, quite frankly, I can understand why investigating police, when they get their hands on a mobile phone or a computer, might want access to what is on that thing. The old days of getting a search warrant and turning up with a power saw is probably in the past. It probably does interfere with it but I am just wondering beyond that. Is that the only thing that you want to observe in regard to it?

Mr MAINSTONE: I am just thinking in relation to that aspect there should be some safeguards in place to at least allow a person to be able to seek legal advice before they are simply charged with an offence to be in breach simply by exercising that right. This certainly needs to be that type of safeguard.

Mr DAVID SHOEBRIDGE: The New South Wales Bar Association's view is that the reasonable excuse provision includes you exercising your common-law rights against self-incrimination.

Mr MAINSTONE: Yes.

The Hon. TREVOR KHAN: The Law Society of New South Wales does not agree with that.

Mr DAVID SHOEBRIDGE: I would say that the Law Society was ambiguous about it. But the idea that you would be there with a police officer directing you to do something, pointing to the provision, and then somehow most people would be able to withstand that and say, "Actually, I rely upon my common-law rights that I happen to—

The Hon. TREVOR KHAN: Be well versed in.

Mr DAVID SHOEBRIDGE: That is not how the world works. Therefore, one of the options would be, as you put, Mr Mainstone, allowing yourself to get legal advice on it before they could insist upon it and potentially face a penalty. The other one would be requiring any such direction to be made by order of a magistrate.

Mr MAINSTONE: Yes, I agree. I agree that those safeguards would be important inclusions.

Mr DAVID SHOEBRIDGE: But the legal advice part might actually be a neat and simpler one.

Mr MAINSTONE: Yes, absolutely.

The Hon. TREVOR KHAN: I am not quite sure what getting the legal advice would do. I can remember years ago getting a telephone call from a client who was about to be the subject of a fairly radical internal examination. He rang up and said, "What should I do?" The only advice I could give was, "Don't struggle." So I am just not quite sure what legal advice necessarily achieves.

The Hon. ROSE JACKSON: If the Bar Association's contention is that that reasonable excuse provision does cover some privileges against self-incrimination, legal professional privilege—

The Hon. SHAOQUETT MOSELMANE: And right to silence: Do not say anything.

The Hon. ROSE JACKSON: —and legal advice could provide that information to the person who could then try to exercise those privileges, but the problem with the legal advice option is—

The Hon. TREVOR KHAN: You know what the clients do. You say, "Don't talk", and they do. They sing like a canary.

The Hon. ROSE JACKSON: —you have to know that you have it and have someone to call. I am open to suggestions that there should be protections in place but none of them are failsafe, I suppose.

Mr DAVID SHOEBRIDGE: But the advice to your client would be, "You've probably got a common-law privilege here, and you could probably exercise that. But if I'm wrong on that, you could find yourself facing criminal prosecution for up to two years", and that puts everyone—client and lawyer—in a difficult situation.

Mr MAINSTONE: It does.

Mr DAVID SHOEBRIDGE: Is that how it would play out, Mr Mainstone?

Mr MAINSTONE: Pretty much so. In relation to these circumstances where you have a person who—the police are there and there is no issue in relation to what the person has done or what the person has in their possession, the advice can be to be cooperative with the police because of the implications if you are not. It is more the situation where you perhaps have someone who may have fallen foul of the law, and I understand—

The Hon. TREVOR KHAN: Mr Mainstone, oftentimes that is the sort of clients who do ring us.

Mr MAINSTONE: Exactly.

Mr DAVID SHOEBRIDGE: There is a solid Venn diagram there, is there not?

Mr MAINSTONE: Yes, exactly.

The Hon. TREVOR KHAN: Even if you do not specifically know, you will have a suspicion in your own mind that punter could have been up to it again. I am actually sympathetic to the police being able to get access in the circumstances where they have a reasonable suspicion. But, having got access to your phone, I think the legitimate question is: What do they get access to?

Mr MAINSTONE: Yes.

The Hon. TREVOR KHAN: Do they get access to everything that is on your phone, which may have no relationship at all to the matter that gives rise to the original suspicion?

Mr DAVID SHOEBRIDGE: Or should it be like when you get a Mareva order or one of those, that there should be some independent person observing the police while they go about—or limits on it?

The Hon. TREVOR KHAN: I do not know what the answer is. It just seems to me that there are legitimate issues but there is also a legitimate forensic purpose in getting access. So if you have any thoughts, Mr Mainstone, maybe you can take it away and have a think.

Mr MAINSTONE: I can take that on notice, certainly.

Mr DAVID SHOEBRIDGE: The good news is that Parliament will not do any damage to the law until at least late February/early March, so we have got time for you to provide an answer on notice, Mr Mainstone.

Mr MAINSTONE: In relation to that section—

The CHAIR: It is due for tabling in the first sitting week.

The Hon. TREVOR KHAN: Maybe.

The CHAIR: February, unless, of course, you want to drag it out a bit longer. I am happy to have another inquiry date.

The Hon. TREVOR KHAN: No.

Mr DAVID SHOEBRIDGE: No, I think we want it sorted. Sorry, Mr Mainstone.

Mr MAINSTONE: That is okay. The other issue under 51K for me, of course—and I think I alluded to it earlier in answer to another question—is the reasonable grounds area. My view on that is that because of the implications of the legislation, as it currently is, based on reasonable grounds thought by one police officer, which might not be reasonable grounds by another police officer, my concern is that due to the implications on it before

there is any seizure or any further action in relation to that, it should be something that is dealt with by a more senior police officer, perhaps of the rank of inspector or above, because, going back to what Mr Chair asked me about—the implications on primary producers, for example—unfortunately, and I am not here to bash the police, having previously been a police officer myself, but I know at times that there are situations where more junior police officers have made what I believe to be quick decisions on the ground.

And I am not being critical of them for that because they can only rely on their own experience, but they sometimes make decisions that, looked at in hindsight, where perhaps rushed or not necessarily properly based on reasonable grounds. I think that has been evidence in other inquiries in relation to police exercising or relying on reasonable grounds for doing other things, such as searching at concerts for drugs. That concerns me about at what level decisions should be made by police that have these implications.

The Hon. TREVOR KHAN: If you look at clause 51K—and, again, you might have taken it on notice—how would you redraft clause 51K? I understand that there are circumstances where one says that certain powers should only be exercised by a senior police officer. I think there are examples of those. But 51K seems to be an example of the exercise of a power by a copper essentially on premises. You might not have an inspector of police or the like on premises at the time of doing the raid.

Mr MAINSTONE: From my experience, generally if it is done by way of a search warrant, for example—

The Hon. TREVOR KHAN: It is not.

Mr MAINSTONE: If it is not done by way of a search warrant and the police there on the ground—that is required. Every shift at every New South Wales police station has a duty officer on call who is usually a mobile supervisor or, at the very least, in the station and can get in a car and drive to the scene, and you have your senior police officer there. That is how that could be catered for, in my submission.

The Hon. TREVOR KHAN: And as a matter of practicality, if you ring up your inspector and say, "Hey boss, I need you out here, we are in the midst of a raid." I might be cynical, but when he turns up how many times will he say, "No, lad, you've overstepped the mark. Let's go home now and have a cup of tea"?

Mr DAVID SHOEBRIDGE: Would it not be more likely that if you have a raid and you think there will be a bunch of these searches happening, you bring a senior officer with you so that you have the checks on the ground?

The Hon. TREVOR KHAN: But he is going to be in full bottle with what is going on.

Mr DAVID SHOEBRIDGE: I 100 per cent agree with you; I am not disagreeing with your proposition.

Mr MAINSTONE: That is why I alluded to the practice with a search warrant. You normally have a commissioned officer present at the time.

Mr DAVID SHOEBRIDGE: Yes, exactly.

The CHAIR: Thank you very much for coming, Mr Mainstone. I think you said you were going to take something on notice, are we clear on what that was?

Mr MAINSTONE: I think there were two issues. One related to the most recent question from Mr Khan about how clause 51K of the bill could possibly be reworded to cover the problems that have been identified, and I cannot recall the earlier one.

Mr DAVID SHOEBRIDGE: I think they covered the same point.

The CHAIR: Yes, I think it might have been the same thing. The secretariat will be in contact with you anyway to confirm all of that. We will be looking for an answer by 18 January 2021.

Mr MAINSTONE: Can I just indicate that I will endeavour to have that to you by then but my office is closing on 18 December and I will not be returning until 11 January. If that information can be sent to me I will do all I can to get it to you by that date.

The CHAIR: That is fine. If you need to extend, that is also okay.

Mr DAVID SHOEBRIDGE: Would be better to get it to you as soon as possible before 18 December or do you want an extension? Because we can give you an extension now.

Mr MAINSTONE: I would prefer to have some time to look at it and an extension.

The CHAIR: Does 25 January work?

Mr MAINSTONE: That is suitable.

(The witnesses withdrew.)

(Luncheon adjournment)

GLENN KABLE, Firearms Lawyer, sworn and examined

The CHAIR: Would you like to make a short opening statement?

Mr KABLE: I will. Mr Chair, members of the Committee, thank you for allowing me the opportunity of addressing you today. I will be confining my remarks to the firearms prohibition order proposed amendments, and to that end I have a copy of these opening remarks printed for you to assist with understanding the intricacies of the legislation. Without going into the minutiae of all the sections, the gist of the Act is as follows. That is the current action. Section 73 says:

> The Commissioner may make a firearms prohibition order against a person if, in the opinion of the Commissioner, the person is not fit, in the public interest, to have possession of a firearm.

Section 74A allows for police to search, without a warrant, any place, vehicle or residents of the same address, where:

> … reasonably required for the purposes of determining whether a person who is subject to a firearms prohibition order has committed an offence under section 74 (1), (2) or (3).

Section 75 only allows for an independent review by the Administrative Review Tribunal of an order made by the Commissioner. It does not cover a refusal of a request to the Commissioner to lift an old order. This was decided by the case of *Taylor v Commissioner of Police, NSW Police* [2006] NSWADT 219. Essentially then, if a request to the Commissioner to lift an FPO is rejected, there is no pathway to have that decision reviewed. In effect, there is provision to have an internal review and an independent review by a tribunal on the making of the order, which is what that decision was saying. There is a provision in the Act to make a request to the Commissioner to lift an order. If the Commissioner refuses that request, there is no further pathway to a review of that decision.

Subsequently, there was an application in *Holdsworth v Commissioner of Police, NSW Police Force* [2019] NSWCATAD 42, which attempted to seek the leave of the tribunal to allow a review of the imposition of the order even though the statutory 28-day period had passed. In the case of Holdsworth, it had passed by some 36 years. The tribunal ultimately ruled that leave should be denied, unless there were exceptional circumstances, which is a high bar to overcome. Please remember that an application to the tribunal cannot be entertained if there are grounds to mandatorily refuse to issue a licence in the first place, which is section 75 (1A) of the Firearms Act:

> A person may not apply for a review of a firearms prohibition order made against the person if the person would be required under section 11 (5) or 29 (3) to be refused a licence or permit (a ***disqualified person***) had the person not been subject to a firearms prohibition order.

In other words, if there were mandatory grounds to refuse a licence under clause 5 of the 2017 Firearms Regulations, then there is no pathway to an independent review within that 28-day period, and now the Holdsworth decision shuts down seeking an independent review at any time down the track. Basically there is very limited scope of getting an independent review of firearms prohibitions orders which have been imposed on anybody. Really the only scope would be if somebody is not mandatorily disqualified. Then they may seek the independent review and a review by the tribunal after that.

What is proposed to be included in a new section, 73A, is a review to be performed after the order has been in force for 10 years, which is, as I indicated, the amendment which is on the table at the moment. Dealing with this proposal firstly, let be noted the Ombudsman in his 2016 report recommended a five-year review period which, given the low bar for imposing the order in the first place, would seem appropriate. I say that because—and I will probably go into a little more detail on it—section 73 as it currently stands is:

> The Commissioner may make a firearms prohibition order against a person if, in the opinion of the Commissioner, the person is not fit, in the public interest, to have possession of a firearm.

It is a subjective test by the commissioner. There are no guidelines as such as to what the opinion of the commissioner is meant. Whether it should be a 10-year or a five-year period is what I am referring to in that last paragraph on the first page of my opening statement that I have provided. What I have further added is that it is a subjective test without any guidelines in imposing an FPO in the opinion of the commissioner with somewhat limited access to an independent review—which is what I have referred to at the outset—which allows for searches of property without warrant, often imposing on other residents, including children, for a proposed 10 years. Clearly, we are in favour of a time limit for these orders. The question is whether, given the ease of imposing such an order, that time limit should be shorter or whether legislators need to consider imposing guidelines on the subjective criteria of the commissioner. Therefore 10 years would seem appropriate.

As an example, I have two clients at the moment who are subject to FPOs. The first has never seen the inside of a court room, has his own plumbing business in rural New South Wales and is married with two kids. About six years ago he buys a motorbike to do a bit of riding about with mates from the local club. That local club was considered to be an outlaw motorcycle gang [OMCG]. An FPO was served upon him. At the time he had limited finances to oppose the order. He has subsequently sold the bike and has no relationship at all with the local club, yet he could still have his property searched at any time under the order. His only course of action now is seek to ask the commissioner to lift the order. If the commissioner turns down that request, *Taylor v Commissioner of Police, NSW Police* states that decision is non-appealable, and *Holdsworth v Commissioner of Police, NSW Police Force* states he cannot seek an independent review of the original decision. I will take that a little further. He has been subject to the order for about four years. On the current amendment legislation, he would have to wait another six years before he could get that reviewed.

The CHAIR: I take it that review would be internal with the police.

Mr KABLE: This is what the proposed amendment is seeking to say. I will touch on that right at the end because my understanding of the amendment is that it does not state whether that review as proposed in the amendment would be subject to internal review and/or referral to the Administrative Decisions Tribunal. The second matter relates to an FPO being served upon my client when he was charged with the offence of conspiring to cultivate a commercial quantity of cannabis which, if found guilty, would have been a mandatory bar to a firearms licence and therefore not appealable to the tribunal. It would effectively be a bar.

This matter was before the courts for four years and ultimately the original charge was withdrawn on a plea to a far lesser charge. That lesser charge was not a mandatory bar to possessing a firearms licence but, again, there is no pathway to an independent review. This client has been subject to two searches of his premises. He was not present on either occasion. His wife and three children were burdened simply as residents of the same address. That leads onto the next proposed amendment that I want to touch on today, which is the new section 74A (1). In particular, subsection (a), which states:

> May only be exercised if reasonably required to determine whether a person who is subject to a firearms prohibition order has committed an offence under section 74 …

Again, this is a very low bar to overcome to conduct a search. It could be inferred that, of course, any search would be to ascertain if an offence has been committed. While the wording mirrors the wording from the foreword of the Ombudsman's report of August 2016 on FPOs, the last paragraph of page one, the more appropriate wording should be similar to that used in the Law Enforcement Police Powers and Responsibilities Act 2002, "May only be exercised if the police officer suspects, on reasonable grounds, that a person who is subject to a firearms prohibition order has committed an offence under section 74." There is somewhat of an obligation therefore police not just to conduct searches just on the basis that somebody has an FPO but, as I am saying, should fall in line with LEPRA, where they suspect there is reasonable grounds to undertake a search.

In summary, I have said that FPOs are too easy to impose—subjective and with no guidelines. Is 10 years for a review too long given the ease to impose them? Given the complications with obtaining an independent review, should the time limit for review be five years as the Ombudsman suggested in 2016? Should the new review provisions allow for an internal review and subsequent referral to the administrative decisions tribunal? Given the harsh consequences of an FPO—searches of people in connection with partners and children—should the legislation reflect the guidelines already in place through LEPRA and also allow for greater independent review?

The Hon. ROSE JACKSON: Thank you, Mr Kable. Your opening statement is very useful and your submission also. I just wanted to pick up on one question. You may not be able to answer this but I would be interested if you had any feedback in relation to the second client you mentioned who had two searches conducted on their premises when they were not present but the wife and children were present. Any sort of feedback that you could give about the impact of that on those other people—do you know if those other individuals, the wife and children, were subject to personal searches?

Mr KABLE: I do not believe they were subject to personal searches, but the officers did search the premises.

The Hon. ROSE JACKSON: Again, you may not be able to provide any additional information but I am interested in this question on the impact of that on those persons present.

Mr KABLE: I have spoken to the wife in relation to it. I have statements from her, written statements in relation to them. She is a particularly robust sort of woman so I do not think it affected her as much as it may

have affected other people. It was still an imposition and it was still somewhat invasive in relation to the privacy of the house and everything else. While she accepted it and got on with life, there was an imposition.

The Hon. ROSE JACKSON: Do you know roughly how long the police were at the premises for those searches?

Mr KABLE: In relation to the second one, it was only about 45 minutes. The first one I am not entirely sure of.

The Hon. TREVOR KHAN: Were they executed during daylight hours or at night?

Mr KABLE: They were daylight hours, yes.

The Hon. ROSE JACKSON: One of the questions that we have to which there is not an easy answer so I would just be interested in your feedback is about options that we might have for providing additional protection to children in those circumstances. We are conscious of the impact that those kinds of interactions with the police can have on children. They can be quite negative, potentially even traumatic. We had some conversation earlier today with witnesses from the Law Society about whether there were any options for providing additional support or protection to the children of people who might be subject to firearm protection orders. It is not an easy question to answer but I thought I would just put it to you whether anything had come across your mind.

Mr KABLE: Only probably the fact that I believe there should be a slightly higher bar to do the search—i.e., reasonably suspected of breaching the firearms prohibition order, rather than just saying to check their compliance with the order. The first example I used—he has two children. He has been subject to one search and his children were not at home at the time, fortunately, which were his words because he believed the children would have been impacted far more severely by that. That is again what I have hinted at. Well, there are a number of points I have hinted at. The ease of imposing the order—there are no guidelines for how the commissioner interprets that.

Once the order is in place there are limited pathways to having them independently reviewed. At this point in time they are for life, given that the ease of that—is 10 years too long? Should it be a five-year period? Possibly, if there is a thought to imposing guidelines on their imposition 10 years is appropriate. But now that the pathway is effectively closed on a lot of these—and the case of Holdsworth as I indicated it was 36 years that the police commissioner said, "No, I am not lifting the order." He has then spent a lot of money trying to go through the tribunal to have it assessed and was never granted leave for that to be looked at.

The Hon. TREVOR KHAN: After 37 years on the basis of the ledge, I can see why he did not get it. It is really an extension of some significance compared to the 28 days.

Mr KABLE: Correct, that is right.

The Hon. ROSE JACKSON: In relation to the five-year or 10-year question, when we put that to police in their evidence—I am paraphrasing here, although not much—there was the suggestion that people do not turn their lives around that quickly. If you are involved in criminal activity, gang activity, 10 years in their evidence was an appropriate length of time for someone who was on the wrong track to get on the right track. I am interested in relation to the first client that you mentioned who had some association with an outlaw motorcycle gang but then discontinued that association. What would be your response to that assertion from police that people get involved in these criminal gangs and extricating themselves from that life—

Mr KABLE: There is another case through the tribunal, I think it is Newman, whereby the day before the tribunal hearing he presented an affidavit stating that he handed in his colours. He was no longer a member of an OMCG. The tribunal allowed him to get his firearm licence back even though it had been one day.

The Hon. TREVOR KHAN: That is a very generous tribunal I have got to say.

The CHAIR: Did he in fact get his licence back from the FAR?

Mr KABLE: I believe he did, yes. So you are getting mixed messages from the tribunal.

The Hon. SHAOQUETT MOSELMANE: There is a point that you mention in the submission, first page down the bottom:

> Another option is for the NSW Police Force to develop guidelines regarding the meaning of 'reasonably required' …

On the next page you say at point 6 (a):

> A search should only be conducted when "Reasonably Required" …

Is there a definition of what reasonably required is and what you are saying there in 6 (a)?

Mr KABLE: What I am hinting at in my opening statement in relation to LEPRA—LEPRA states that in relation to conducting a search without a warrant that—I will just look it up—it is the law enforcement police responsibilities Act and they say, "The police officer suspects on reasonable grounds." That is a paragraph just before the summary then, so it is really the last paragraph of the opening remarks on page two before the summary. So it is just putting a condition that an officer—possibly the commissioner in this regard—suspects on reasonable grounds that a person who is subject to firearms prohibition order has committed an offence under section 74. It is not a very high bar to get over, but at least it is something other than just conducting a search to ensure compliance, in effect.

In the criminal law system, that reasonable grounds provision I do not believe gets tested all that often. But it really puts a burden on the police to make sure that if there have been searches in the past and nothing has come of those searches they haven't got any grounds unless there is some sort of intelligence report or something else that they can rely on—just to make them think before they conduct another search. As I said, it is not a high bar for the police to get over, but at least it is something more than what is proposed in the amendment.

The Hon. TREVOR KHAN: Mr Kable, are you able to tell us what sort of evidence is adduced before NCAT in these reviews within the 28-day period? What sort of evidence is adduced by essentially both sides in those to determine whether an FPO is appropriate?

Mr KABLE: At the outset, I have not conducted an FPO matter through NCAT. I have done a number of other matters but not an FPO. The law states that you cannot run a matter through the tribunal for review if there are mandatory grounds to start with. So that eliminates a lot of them. In the case of Holdsworth, he was found guilty of kidnapping in nineteen eighty whatever it was. Therefore, he would never have been able to make that application to NCAT, given that a conviction for kidnapping would have been a mandatory. So he is out.

The Hon. TREVOR KHAN: Can I say I am not that sympathetic if he has been convicted of kidnapping.

Mr KABLE: Correct. I have got copies of the case. It is worth reading because Mr Holdsworth has become a very successful businessman and has really no mandatory bar for many years in relation to him not being awarded a firearms licence. I think we have always got to keep in the back of our minds too that there is still provision by the Firearms Registry whether to issue a licence or not. Is that provision enough in a lot of these cases or do they have to go to the extra step of imposing a firearms prohibition order and the associated burdens that come with that? Getting back to your question, my first example—the plumber from a rural area—certainly would have grounds to challenge an FPO at the tribunal. The evidence would be he would have to, I suppose, disassociate himself with the OMCG. But, again, is that a bar to getting a firearms licence or should it go that step further and should an FPO be imposed upon him?

The Hon. TREVOR KHAN: That is a slightly different question. Let us suppose then that the commissioner has decided to impose an FPO because the intelligence that they have received indicates that client number one is engaged with an outlaw motorcycle gang that is engaged in, one assumes, drugs and whatever else. Your client number one within 28 days of service of the FPO seeks the internal review and then makes the application. What would be the expectation of the evidence that would then be produced to NCAT for consideration?

Mr KABLE: Good point. I have had a number of cases before the tribunal where intelligence reports are provided. We are not even allowed to sit in for them. We do not know what is presented—absolutely no idea. We have got to wait outside. That is conducted by the counsel representing them, the police commissioner and the tribunal members themselves. We have no idea what the scope of that evidence is and it is very difficult to argue against because we do not know what it is. You can only present what the instructions are from your client and what he is saying in relation to an inference of an OMCG. Again, you can only look at his past history. He has never had issues in relation to the court in any way, shape or form or criminal antecedents. His driving record was very good. He has never lost his licence as such. You can only put your best foot forward and hope that the tribunal objectively assesses that intelligence report and puts it into context.

The Hon. TREVOR KHAN: Mr Kable, the reason I ask is I practised many years ago in Tamworth. I certainly had a client who was a member of an outlaw motorcycle gang. As best as I knew, he had no criminal record, but I also acted for other clients who were involved in some fairly nasty activities for that very same outlaw motorcycle gang. So there is this interesting dynamic that seems to exist. Indeed, there was a murder in the clubhouse—well, we got it off. There was a killing—no, there was an accident. But it just seems to me the outlaw motorcycle gangs create really interesting dynamics for the cops, and I can sort of understand why the power that

exists in the commissioner's hands is written in such broad terms. I am sympathetic to some of the other parts, but I just wonder in the light of what we are dealing with there and in the light of what you describe as the performance before the tribunal, your non-involvement in that, how you would actually more effectively define the exercise of the power.

Mr KABLE: It is something I have been agonising over for a number of days when I was preparing my opening remarks. Again, I can only go back to what I have put in them in that FPOs are very straightforward to put on. There are no guidelines for imposing them. There is a very limited pathway to getting them removed. If a thought was put to making the appeal process on them easier to address, that may be an answer to that—i.e., there are opportunities given in a number of occasions for internal review and again to go to the tribunal. The tribunal is vested with that obligation to assess the evidence that is presented on the confidential basis and to make a decision on it. I think we have to have that trust in the tribunal that it is doing the right job and it is considering that, as I said, on an objective basis and making the right decisions.

The Hon. TREVOR KHAN: I do not have them before me now, but could you on notice have a look at section 75, which I think is the relevant section for the appeal. Is that right?

Mr KABLE: That is right.

The Hon. TREVOR KHAN: It clearly gives the power if you are not mandatorily disqualified or a disqualified person to make that appeal. Can you just confirm that section 75 will not provide a mechanism to challenge the review after 10 years? My gut feeling is, in terms of what this bill is, that it is purely an internal review that is being talked about in the 10-year review process and nothing more. I have also got the feeling there is no particular reason to conclude that the subject of the order would necessarily know that the review is being undertaken.

The Hon. ROSE JACKSON: I think the evidence of police as well is that if this legislation passes, all FPOs that have been in place for more than 10 years will be subject to that automatic review quite quickly because there were questions about the resourcing of that.

The Hon. TREVOR KHAN: But in terms of an individual case, I am not quite sure when the punter will know.

The Hon. ROSE JACKSON: No, I think that is right.

Mr KABLE: Correct. As I read it, too, they are not notified of the review. It just takes place.

The Hon. TREVOR KHAN: Yes.

The CHAIR: Given the evidence that we have been hearing today and that we heard from the commissioner's delegates as well, the reality is that another review by the commissioner himself after 10 years may not necessarily yield a fair result.

The Hon. ROSE JACKSON: I do not even think that the commissioner himself is doing the review.

The Hon. TREVOR KHAN: I do not think that we are at odds.

The CHAIR: No. In my experience the process of internal review with the Firearms Registry, to take that as a small example, is inevitably a 100 per cent failure. Maybe Mr Kable can confirm this but the first step when anyone comes into my office is that we say, "Have you applied for an internal review?" "No." "Go and do an internal review." I have never heard of one case where an internal review has significantly modified or reversed the commissioner's Firearms Registry judgement. The next step is to go to NCAT and we know what happens after that.

The Hon. ROSE JACKSON: Can I just clarify the current arrangements? There was some evidence from a previous witness who was also a lawyer. He objected to the use of the term "internal review" to describe at least the current arrangements in relation to requests that the order be lifted.

The Hon. TREVOR KHAN: But he sort of withdrew from that.

The Hon. ROSE JACKSON: Yes, that is right. In his view, nothing was really reviewed. I do not know whether that was just based on his own experiences. As Mr Khan says, the nature of his objection to that term was a bit unclear. What is your understanding of the current process, at least, in relation to requests for review?

Mr KABLE: That is simply it. It is not a request for an internal review but for a review at the outset. This was the case of Taylor, which I have referred to. Mr Taylor was subject to an FPO in the 1980s, so again it

had been a very long period of time. He made a request to the commissioner of police to review his FPO. That review came back negative and he then asserted that that decision was reviewable.

The Hon. ROSE JACKSON: Yes, and the NCAT matter was not.

Mr KABLE: That went before the tribunal in the Taylor case and they said that it is not reviewable. The wording under section 75 only gives the power to make the order.

The Hon. TREVOR KHAN: Yes, I think that is the problem.

Mr KABLE: Correct, that is part of the problem.

The Hon. ROSE JACKSON: My understanding is that even under the new provisions of this legislation, the commissioner of police is not actually doing the reviews. The Firearms Registry is, I suppose under delegation. You could not have the commissioner doing that many reviews, but the Firearms Registry is the one doing the reviews. Are you comfortable with that? You sort of suggest new provisions.

The Hon. TREVOR KHAN: There are thousands of these things.

The Hon. ROSE JACKSON: I am not suggesting that it should be the commissioner himself, as obviously that is not feasible, but you refer to new provisions in relation to internal reviews. If we were to think about how we might at least improve that process of internal review, what might be some of the elements that would be very important in making that internal review as comprehensive as it could be?

Mr KABLE: It is difficult to test anything without having some runs on the board. I think that you have to rely on what is there. Provided that there is a process to conduct the internal review in the first place, then you can assess over time whether or not that is effective. In relation to the present amendments, I do not believe that there is a pathway to getting an internal review of this 10-year review.

The Hon. ROSE JACKSON: No, I think that is right. They will do an automatic review at 10 years and that is that.

Mr KABLE: That is that.

The CHAIR: That will be a tick-and-flick exercise.

Mr KABLE: Exactly, which is what I am worried about.

The Hon. TREVOR KHAN: They will probably remove orders from people who have died—I am not being silly—or are in a nursing home or something like that. I am not being too cynical but I am not quite certain what the motivation will be to remove the order at the 10-year mark unless there is some benefit in winnowing the field so that they are down to the proper stuff.

The Hon. ROSE JACKSON: Particularly if the person is not invited to provide any evidence or information. As you say, they are possibly not even notified that it is occurring.

The Hon. TREVOR KHAN: They will not be.

The CHAIR: They will not be notified because there is no requirement. They will not be notified and they will not be told of a result.

The Hon. ROSE JACKSON: We are just talking amongst ourselves now, Mr Kable, but you have prompted useful conversation.

The CHAIR: We have been exploring this for all of today and in the last hearing it was raised as well. I will make a small statement here. The reality is that in my current experience, the registry is particularly wounded over the Edwards issue. They are hypersensitive now about doing absolutely anything that could be seen to be allowing the benefit of the doubt for people who have either had AVOs dismissed and are trying to get their licences back—the answer inevitably comes back no—or in relation to those matters where there should be a different decision made. Even if an inquiry or an initial appeal back to the issuing officer is made, the answer will always be "No, we are happy with what we have done".

Mr KABLE: That is partly what I am trying to cover in my opening remarks, particularly in relation to both Taylor and Holdsworth. Both of them were in excess of 30 years but neither of them had the opportunity to show their current situation, how they had addressed their past behaviour and how they had moved forward with their lives.

The CHAIR: Even if you are a convicted criminal then you go to jail, do your time and get out on parole or whatever. At least that part of your life is over. You are not carrying that conviction and stigma around as a criminal for the rest of your life.

Mr KABLE: That is right.

The CHAIR: But if you get an FPO or if you have an AVO slapped on you in relation to firearms and other related matters, you carry that for the rest of your life. You have no ability to have it properly removed or expunged and get on with your life.

Mr KABLE: I have had other clients subject to an FPO that have been driving down the road, have been pulled over, got out of the car and the whole car has been pulled apart. That has happened on numerous occasions for one client. Over a three- or four-month period, he was subject to about half-a-dozen of these.

The CHAIR: Clearly there are good reasons for having FPOs; there is no question of that. But they are too easy to put on and impossible to get off in the majority of cases.

The Hon. TREVOR KHAN: Mr Kable, can I go to client number two?

Mr KABLE: Yes.

The Hon. TREVOR KHAN: It is my prurient interest. He is charged with cultivate a commercial quantity. Is the FPO put on at or about the time of charging?

Mr KABLE: Correct.

The Hon. TREVOR KHAN: It then takes four years to burble through the system. It gets through and a plea bargain is done on—

Mr KABLE: A lesser charge.

The Hon. TREVOR KHAN: —on a lesser charge.

Mr KABLE: It had actually had 51 days in the District Court before they withdrew and offered the plea.

The Hon. TREVOR KHAN: 51 days? Gosh, that would have cost a bomb. What did he eventually plead out to?

Mr KABLE: Concealing a serious indictable offence.

The Hon. TREVOR KHAN: That is not a mandatory disqualification.

Mr KABLE: It is not a mandatory offence under clause 5 of the Firearms Regulation 2017.

The Hon. TREVOR KHAN: But it probably would fairly ground the making of an FPO and the maintenance of the FPO post-conviction. Do you not agree?

Mr KABLE: It is one of those cases where there were no firearms involved.

The Hon. TREVOR KHAN: The serious indictable offence was allegedly—

Mr KABLE: In effect, he knew of the cultivation and did not say anything. He did not report him to the police.

The Hon. ROSE JACKSON: So there were no firearms involved in the drug concealment offence.

Mr KABLE: There were no firearms at any stage. That is right.

The Hon. TREVOR KHAN: But it is a significant drug matter.

The Hon. ROSE JACKSON: Indeed.

Mr KABLE: That is right. But again, it is one of those cases where you draw the line. But he has not even been given the opportunity to present that evidence before a tribunal and for the tribunal to assess the merits of that.

The Hon. TREVOR KHAN: I am not trying to be tricky but in the case of client number two, are you saying that there should be a review process available after he has pleaded out or after the five or 10 years or whatever the period should be?

Mr KABLE: The imposition of the FPO on charging is questionable because we could have commenced action then in the tribunal.

The Hon. TREVOR KHAN: But you would not, as a matter of preference.

Mr KABLE: It would have been adjourned and adjourned until the decision was made and the tribunal would not have entertained four years. They would have said, "Look, we have given this enough time now. We will review it on what is before us." It is mandatory and that is the end of the matter.

The Hon. TREVOR KHAN: Yes.

Mr KABLE: I am saying that he should have been entitled to some sort of independent review once the court case was finalised. He does not have that opportunity anymore.

The Hon. TREVOR KHAN: So is what you need the capacity on the making of the FPO—if it is thought appropriate—to be able to go through the exercise, lodge your application to NCAT and then for it to be stayed pending the outcome of the proceedings? Is that the way you would do it?

Mr KABLE: I do not think so, because that would burden NCAT unduly.

The Hon. TREVOR KHAN: Right.

Mr KABLE: Because in this case it took four years, so NCAT would have to have directions every six or eight months or so, and I do not think any tribunal would entertain that period of time. If they can see an answer on the horizon, they may allow six, eight, maybe even a year, but in this case it was four years. There should be an appropriate pathway to getting it reviewed independently, and that may be built into what the amendment is proposed, that is, five year or 10 year. At the moment the amendment is 10 years, but there should be notice given to the FPO person.

The Hon. TREVOR KHAN: You have probably got me on that one.

Mr KABLE: And they should be given the opportunity possibly to present an internal review and then an independent—in my opinion, given the ease that FPOs can be placed, that time limit should be five years.

The Hon. TREVOR KHAN: You might or might not have me on that one, but on your other two points I am sympathetic.

The CHAIR: Can I draw a line under it just there?

The Hon. TREVOR KHAN: Absolutely, yes.

The CHAIR: Maybe, Mr Kable, you might just give us a paragraph on the answer to the question that Mr Khan has just asked you, because I think this is an area that we have been trying to tease out all day on and off. We have run out of time—in fact, we have run well over time. Thanks very much coming. In relation to that and any other matters you have taken on notice, the secretariat will be in contact with you. We are looking for a response by 18 January 2021, please. Thank you very much coming.

Mr KABLE: Thank you very much for having me.

(The witness withdrew.)

DONALD KEITH BARTON, Individual Firearms Owner, affirmed and examined

The CHAIR: Thanks very much for coming, Mr Barton. Would you like to make a short opening statement?

Mr BARTON: I would, Mr Chairman. Although I worked for many years as a legal practitioner, I think I have a fairly unique skill set and experience that has some bearing on the matter of this bill, and therefore I would like to set out something in my personal background. As far as firearms go, I commenced full bore shooting in 1964 when I joined the Railway and Tramway Institute Rifle Club. The club constituted a civilian rifle club, pursuant to regulations made under the Commonwealth Defence Act, and shooting took place on rifle ranges established by the Australian Army under the Defence Act. Accordingly, all was within Commonwealth rather than State jurisdiction. The rifles used at the time were imperial military issue No. l Mk III short magazine Lee-Enfields [SMLEs] and No. 4 Mk I 303 rifles, albeit the former were re-barrelled with heavier barrels of military grade to improve accuracy.

The ammunition used comprised Mk VII 303 military cartridges, mostly of late 1940s and 1950s manufacture, which were provided by the Australian Army at a discount. It came in cotton bandoliers and sometimes in cotton webbing belt for Vickers machine guns, which we cut into strips of 24 cartridges for each afternoon shoot. Many competitors possessed skills and knowledge that enabled them to effect repairs and refurbishment of their rifles such as fitting and modifying triggers, adjusting headspace by lengthening or shortening the bolt, modifying the fit of the metalwork to the stock and even replacing worn barrels.

As I was at the time completing an apprenticeship as a fitter and machinist, I found that working on firearms added to the interest, besides saving paying to have such things done. It also stimulated an interest in firearm design, and since I was also very interested in engineering and physics, I developed a concept for a submachine gun which I thought could work, and probably would have. It was simply one of those acts of curiosity that engage one's mind, and I had better things to do than attempt to make a prototype. I would say at the time that I was only about 17, and I make the point that idle curiosity can be very compromising.

I have maintained a strong personal interest in bona fide legal recreational use of firearms since my days with Rail and Tram. I have always had an interest in law reform with respect to firearm issues, and fully support the need for proper regulation of access to firearms. My father was a police officer since returning from the war, and I have no illusions with regard to the potential for criminal mischief. I served the end of my apprenticeship in the New South Wales Government Railways chief mechanical engineer's design office as a cadet design assistant, which required me to enrol in and complete a four-year certificate engineering course. Some of the work required investigating various issues with failures and the manufacturing of diesel electric locomotive parts, including designing parts of our own manufacture to save cost and/or effect performance improvements and/or reliability. This took me well beyond the scope of my trade course, both as to production methods and the performance under stress of different materials—mostly widely varying grades of steel—involving machining, casting, fabricating and re-positioning the overall design of the original assembly.

Investigations were undertaken as to the original materials. At the time the railways probably had the best materials laboratory in the Southern Hemisphere. However, after two years of such work I matriculated as a private study candidate for the HSC and, with the aid of a scholarship, made a late and possibly somewhat impetuous decision to enrol in a BA in modern history, in which I paid particular attention to economic history, especially the impact of technology on society. The career change was prompted by a few factors, not least the Vietnam War, which made me wonder why we could put people on the moon but were unable to resolve international conflict without killing each other. It was a requirement of the scholarship that I enrolled in and completed a diploma in education, which I completed coextensively with my degree course.

My sensitivity to such things as State homicide was enhanced by my recreational hunting experience, and I had no illusions as to what a high velocity bullet could do to mere flesh and blood. The thought of that happening to human beings was horrific. I never lost my interest in mechanical design and production, and I have always taken the opportunity to keep abreast of such matters, reading technical articles in print and on the internet, visiting workshops and talking to individuals so engaged. I sometimes feel guilty about taking up people's time in that regard.

After teaching for some time, I completed a degree in law and was admitted to practise as a solicitor. Almost all my legal career involved work in professional disciplinary areas, first with the Department of Health and later with the Law Society of New South Wales. That employment required investigative work and litigation in relevant tribunals and in the Supreme Court. Dealing with unqualified practitioners also required criminal

investigations and criminal prosecutions in the Local Court and pursuit of injunctive remedies in the Supreme Court. Occasionally watching briefs were required in ICAC hearings and other proceedings that happened to be on foot in the Supreme Court, and very occasionally in other courts and tribunals.

Many of the cases of which I had carriage originally resulted from matters coming to light as a result of major criminal investigations by relevant authorities, from which it transpired that relevant professionals had become too involved with their criminal clients or, in the few cases in which the subject practitioner had decided that more money could be made and/or more excitement experienced, by themselves engaging in significant criminal enterprise. Accordingly, it was not uncommon to liaise with police and specialised crime agencies within New South Wales, and on one occasion police from foreign jurisdictions. I must say that it was a privilege to work with such people, and from the little I saw of their work I have no illusions as to where we would be without their service to society.

An interesting aspect of my work since first graduating with a BA and DipEd is human psychology, and this was especially so with respect to impaired practitioners, in which it was necessary to retain and conference appropriate experts. It concerns me that there is manifestly a serious deficiency of requisite expertise in such matters within the Firearms Registry, and I follow up Mr Kable's remarks earlier on decision-making as to whether there is indeed, with respect to all such matters—as to the issue of whether an applicant for a licence is a fit and proper person. I have set out my education and work record in some detail, as I believe that places me in a position to comment on a number of very disturbing aspects in this bill. There are important legal issues, but I think they have been more than adequately addressed by submissions from Mr Kable, who you just heard from, Simon Munslow, number 27 and 27a, the learned author of the shooters association's submission, number 228, and the Bar Association. So there is no need to repeat their concerns, save to observe that those concerns are real and deserving of sober contemplation.

From my knowledge and experience of manufacturing, involving machining, casting, fabricating, forging, plastics, composites and ceramics, and of the culture of workplaces engaged with such technology, I can say that the provisions of the bill have serious implications for people engaged as proprietors, managers and workers in such enterprises. First, the draconian and sweeping provisions of the bill, if enacted, will make small perks, such as producing foreign orders, a thing of the past. For many workers engaged in manufacturing enterprises, being able to use the equipment in the workplace to make or repair parts for cars, four-wheel drives, trailers and motorbikes, parts for equipment such as chainsaws, mowers and domestic appliances or parts for recreational items such as fly reels, fishing rods and camping hardware, or specialised equipment for the home workshop is a valuable adjunct to their wages. I have done all of those things in my time. I have in mind such work being effected, usually after hours, pursuant to proper permission from the proprietor or manager, and not anything nefarious, as I have sometimes observed to be the case.

Personally, I have been in employment that permitted me to make special tools required for overhaul of automotive transmissions and engines, manufacture of auxiliary equipment such as roof racks, repairs to rusted car bodies, spare parts for refurbishment or improvements to fishing tackle and firearms—for example, shortening of magazines—and ammunition manufacturing equipment such as dies and moulds—but nothing illegal under applicable law—and small pieces of kit for camping and bushwalking—not to mention the occasional thing relating to home repair or renovation. None of this is unusual for people engaged in such employment.

The effect of the provisions of the bill is such that any legal practitioner advising a client who happened to be the proprietor or manager of any manufacturing enterprise would be utterly negligent if he failed to advise the client to put an absolute stop to anything other than the essential production of the enterprise itself. It is not simply an issue as to whether there is a risk of facing criminal prosecution arising from misinterpretation of an employee's activities by some plod—and I have used the expression "some plod" because I worked for many years for the former Chief Superintendent of police who took early retirement when he realised he was not with the clique that was going to get the Commissioner's position. I often heard him use that expression to refer to the tail end of the police force where you get a rather mindless and authoritarian performance. I remember one remark he used to make was, "There are people who think the answer to a problem is to simply drop someone and let them fight their way up in the Local Court" and he would shake his head and say, "That is not the right attitude but it is too often the case." I think this is something that needs to be considered.

It is the damage caused by the breadth of the provisions as to matter that may be seized. Imagine one's expensive computer numerical control [CNC] equipment lying idle for weeks or likely many months—I have been involved in seizing equipment like hard drives and things to look for evidence, so I know how much time it can take—or the business records remain unavailable for such a time as forensic analysis requires, or specialised tooling similarly sidelined while contract deadlines fall by the wayside. Even if foreign orders or the like are

forbidden, there remains the risk of a disobedient employee discreetly taking a risk and breaching those instructions. Thus, a much higher degree of supervision will be required in every engineering business.

While the bill is said to bear only on those with guilty knowledge—page 10 of submission No. 261 by the NSW Police Force—the impact on a legitimate search and seizure to find evidence against a presumably guilty but sneaky employee can be such that the business must bear additional costs to mitigate the risk of incurring the costs imposed merely by the investigating procedures. This will especially have an impact in regional areas, where, as any viewer of *Landline* will know, there is considerable small-scale engineering enterprise. In a regional town, where everyone knows everyone else's business, it will be difficult for any worker who happens to be a recreational firearm owner to find employment in such an enterprise, however skilled he or she may be. The employer's concerns would not be guided by any question of character of the worker but the necessity for risk mitigation because of suspicions that could be raised amongst the local constabulary.

It is all very well for the New South Wales police to assert that the discovery on outlaw motorcycle gang [OMCG] premises of steel rods that can be used for making a barrel requires proof that that a business knowingly took part in illegal manufacture, but the attempts to gather such evidence can do significant harm to a business—you might like to refer to Mr Munslow's description of the outcome of a police search in submission No. 27. Furthermore, even any automotive repair business would be at risk of the harm resulting from search and seizure by that measure. A Sydney gunsmith, Don Black, used to make quite serviceable rifle barrels in his backyard shed in Sydney from broken car and truck axles. Too bad if lengths of such parts are found on OMCG premises. While no conviction might result, the business from which such material may have originated would suffer disruption and the proprietor could face significant legal fees to have charges dropped and defended—and that is often the issue as Mr Khan would well know, I think.

For the benefit of members of the Committee who may not be familiar with regional manufacturing, I will provide the example of a businessman of my acquaintance—not that far from Mr Khan's electorate, actually—who is a gifted engineer and designer, and has a significantly capitalised business capable of high-precision fabrication and machining. At one stage, for example, he was able to undercut American machine shops to get a contract to carry out all the machining required of roughcast aluminium alloy cylinder heads for racing cars, combustion chambers milled, the faces on the cylinder and camshaft sides all milled, all threaded holes and precise milling for receiving of smaller parts in the final assembly. The heads were flown in from the overseas foundry, arriving at a regional airport, picked up by truck, machined and returned in minimal time—made even more minimal by the time difference between the States and Australia.

In visiting his workshop, I was amazed at the speed and precision with which so many different complex machining procedures could be effected and rather chuffed that this was being done in regional Australia, an area mostly populated by poultry farms—in this particular area, I should say. It being a rural area, I would not be surprised if any of his employees happened to share my interest in firearms—the question at the time never arose. Apart from being found amongst poultry farms, such enterprises are to be found in most, if not all, large regional towns besides in more remote vicinities. One can well understand police concerns at the potential for misuse of tools such as CNC machines, but can one have no regard for the risks to businesses such as my acquaintance's nor to the welfare of ordinary workers employed in such enterprise or hopeful of seeking work in such enterprise?

Based on my personal experience over many years in investigative work, I can understand and even sympathise with a tendency to be overly suspicious or keen to get to the bottom of something, but equally I am aware of the harm to others that can result from becoming too subjective in such matters. I regret to say that I have known of a number of people who have been charged with offences—one involving a traffic fatality—which should never have been brought and which imposed considerable monetary and other costs on the innocent party to have the charges defended or withdrawn. In the motor vehicle fatality it was an elderly doctor. The attending police said, "There is no way you could have avoided this." A woman stepped out from behind a bus straight under his car. The view of everyone concerned was that it was a suicide. Five days later the police involved appeared on his doorstep very embarrassed and said that they had been instructed to charge him. This sort of thing does happen and it happens all too often.

I think there is a question here of fudging the real issue. From a jurisprudential point of view, the bill reflects a desire to ensure that no guilty person contributing to illicit firearms manufacture will escape unpunished. However, there appears to be scant recognition of the harm to society and to individuals arising from the unintended consequences of the search for perfection. Besides the impact on small-scale manufacturing and those employed or seeking employment in such an enterprise I outlined, there is the impact on bona fide recreational firearm owners who will need to pay more, possibly to someone of inferior technical skills. I have encountered such issues in having warranty work done. In fact, I would not let most firearm dealers or their employees, even

those claiming to be gunsmiths, within the minimum COVID-19 social distance of any firearm I value. There is a tendency by the way, I have noticed, with the registry to confound the question of legal competency with technical competency and it crops up in a number of points in reference to acquiring parts from overseas requiring a B709A document.

Further, taking Mr Munslow's point as to diagrams and blueprints—by which I think the drafters of the bill mean technical drawings because a blueprint is not the same thing as a technical drawing—it will be necessary for every firearm licensee or anyone merely having a curiosity about such matters to comb through his or her notes, photocopied technical articles and textbooks to identify those pages or even whole books that will have to be burnt before the legislation commences, not to mention hours checking through one's electronic devices lest anything that looks like a technical drawing or other data of an incriminating kind may remain from a cursory web search. I know little about the internet, but I do know I have occasionally been surprised at something I thought I just looked at which has remained on my computer. It only takes a seconds glance—"I do not want to see that"—but you find it lurks unknowingly.

Indeed, those of us with a recreational interest in firearms and legislation relating to that were predicting that the 1996 Act would be merely the beginning of legislative whack-a-mole vis-a-vis criminals given the ease with which technology develops and can be adapted. That is what you are seeing with repeated amendments to the Act; it is a race between legislation and human ingenuity. Where will it end? This is because illegal firearms command a hefty premium. Going by press reports, for example, pistols imported via the Sylvania Waters post office fetched approximately eight to 10 times their value on the legitimate market. Such a high profit establishes a powerful motive to traffic illegal firearms, whether through smuggling, illegal manufacture or theft.

Contemplating means and motive would be a far more worthwhile approach to the general problem. It is worth contemplating why people are willing to and able to pay such high prices for illegal firearms. Part of the answer is, of course, that such people will virtually never be eligible for a firearms licence. Even if they were, they would not want a firearm that could be connected with them or for which they had to account, as would be the case with a registered pistol, for example. It needs to understood that for people engaged in organised crime or black market activities, illegal firearms are simply a tool of trade—an expression used by a New South Wales detective inspector with whom I was discussing the aetiology of gun crime.

A person engaged in a criminal enterprise cannot seek the assistance of the police if he believes his life to be threatened or if he has been robbed, assaulted or otherwise subjected to duress. He cannot seek remedies under trade practices legislation for unfair competition. He cannot lodge a claim seeking to recover debt and he certainly cannot engage a security firm to protect his stock or his cash—and his life—on the way to or from a drug deal. If he does not want to end up like Jamie Gao, who was murdered at Padstow in just such circumstances, the only option for an individual engaged in the criminal economy is to have ready to hand a convenient weapon; i.e. an illegal firearm. The personal risk to individuals operating amongst the gangs in the black market is very real, even if they avoid holding either the merchandise or the cash.

Of course, the illegal firearm can be both tool and stock-in-trade if an opportunity to traffic arises. In one case I recall a person was carrying an illegal pistol for some years because they had inadvertently become a potential witness in relation to a notorious interstate gangland murder. No fool, this person realised that the risk of the offenders wishing to tidy up loose ends was real and so joined a pistol club to learn how to use a pistol competently and safely. He then resigned from the club and surrendered his licence—all very law-abiding—and after a decent interval obtained a pistol on the black market. He also acted as the entrepreneur for his associates in setting up production and distribution of methamphetamines, for which he was ultimately prosecuted and convicted—as was the case also with respect to the illegal pistol, which he necessarily had to maintain in possession, or at least handy.

If there is a serious desire to minimise the manufacture or any other illegal acquisition of firearms, the obvious answer is to look to the money trail—to the ostensibly respectable people who shovel money into the black market. That is what drives Sydney's gun crime. These people are, of course, purchasers of various illicit drugs of whatever sort. The money trail is followed in respect of those in receipt of moneys when contemplating matters such as money laundering and movement but relatively little is done about the entry of money to the market. Of course, the purchasing choices of consumers provide both the motive and the means for criminals to seek illicit firearms. The motive and the means result from the large profits available from illegal trafficking of drugs and, to a much lesser extent, other illegal commodities.

To paraphrase the words of one magistrate with whom I am acquainted, it is quite remarkable that the question as to the source of the drugs found in possession, and the necessary involvement with elements of organised crime, is virtually never an issue in respect of either policy or in sentencing when people are before the

court after being caught with illicit drugs in possession. Yet one may ask why, if a plea is being entered, questions such as whether the offender has assisted police with information as to where and from whom the drugs were obtained are irrelevant to any issues such as contrition. Ironically, one suspects many individuals who would not, for example, buy a Japanese product because of their abhorrence of whaling have no problem with channelling money to evil people with which to effect evil deeds, which is what every single purchaser of illicit substances is doing.

I must say, as a licensed firearm owner, I feel that we are considered an easy target, but the people who actually provide the money to drive all this are almost treated as some kind of protected species. Sure, they will get a penalty for possession, but there is no really cogent, uniform pressure put on them—including moral pressure. The present bill appears to be an option being pursued because the root of the problem is in the too-hard basket. The academics, bankers and media folk who think it is smart to use drugs recreationally—including illegal steroids—are simply too powerful to take on, leaving others who may innocently suffer the harm which will result from the provisions of this bill. Apart from the criminal justice matters, one must ask: Where are the political leaders calling out the people who drive Sydney's gun crime?

In my searches, admittedly constrained by time, the only instance of such leadership was found overseas. Sadiq Khan, London's mayor, has asserted that recreational drug use is not a victimless crime and that he had seen evidence from authorities of the clear link between cocaine use and rising violence in the capital. I have put a URL in that you can consult at your leisure. One may also ask in respect of drug education: How much is limited to technical and moralistic or wowser issues, to the exclusion of proper contemplation of the trail of violence, corruption and misery resulting from the choices made by consumers of MDMA, cannabis, cocaine, steroids, speed and heroin, et cetera? Lots of firearm owners would love to have a semiautomatic. None that I know would ever even think of buying one because it is simply illegal. And yet the people who think there is no problem with breaking the law to buy these products drive the money in that, in turn, drives Sydney's gun crime. No problem—it is sort of naughty but nice. I will leave that thought with you.

The CHAIR: Naughty but nice. Questions?

The Hon. ROSE JACKSON: The issue of the unintended consequences on law-abiding people who have firearms and want to undertake legal maintenance, repairs or minor modifications has been one of the core things that this Committee has been looking at. The submission from police and others is that the second element of the test in relation to knowing, or reasonably ought to have been knowing, that the modifications, maintenance or manufacture—whatever the person wants to describe the action they have undertaken as—is not authorised under a licence or a permit. The police would suggest that that is adequate protection for those concerns that you have raised. The person in regional New South Wales who is doing a bit of work at a local manufacturing facility making fly reels—there is no risk that person is ever going to be charged under this legislation, because there is no way that person knows, or reasonably ought to know, that the work they are doing is in any way linked to potential illegal firearms manufacture. How would you respond to that proposition?

Mr BARTON: In many ways, all this is symptomatic of a society that has by and large turned its back on manufacturing. Back in 1996, talking with friends who had similar technical competency to myself, we were observing that it is only a matter of time until criminals realise that they can take firearm parts that will look like something utterly unrelated to a firearm and adapt those to use in a firearm. Now, this has come to pass. For example, you could take something that is the rocker arm for a model internal combustion engine—the sort that hobby makers make. By suitably tailoring that rocker arm with little extra work, it can become the hammer for a semiautomatic pistol. This is the sort of thing that happens.

Then you have the problem that there is a high degree of suspicion about anything that looks a bit unusual that is being produced, and that is the worry. It is not just suspicion by the police; it is also the concern of the proprietor of a business. Is this employee really just making something for a fishing reel or is he making something for his car? Or is it something more nefarious? Given the harsh nature of the law and the investigative procedures that would be followed, if I had such a business I would not let anybody do anything outside the strict, narrow core issues that the person is employed to do. That would be a shame because it is a goodwill thing for proprietors of such a business to let their employees do foreign orders. Equally for the employee, it can be a valuable adjunct to their work because you can make things that are simply unobtainable that are critical to doing something.

I made special tools for removing bearings from of the gearbox of my Land Rover. You just cannot go and buy those tools, but it is very hard to get the rear bearing race out of the back of the gearbox housing because it is a blind hole. I had to make up a special mandrel for it and used a slide hammer. Later on I discovered, to my horror, that the police were very suspicious of anyone with a slide hammer because at the time the criminals were using that sort of device to rip the locks out of car doors so they could steal cars. This is a real problem that has

to be faced—that you can ghost firearm parts in all sorts of ways to the point where almost any object that is a bit unusual attracts extreme suspicion by police involved in trying to deal with this problem.

The Hon. ROSE JACKSON: Yes, I appreciate that. We are trying, through this Committee, to find the right balance between giving the police the powers that they need to stop criminal gangs grabbing some young guy who wants to make a bit of money on the side to provide the technicalities to manufacture illegal weapons or modify weapons—I mean, we do not want that to happen. I appreciate that you are concerned about some unintended consequences, but we know the consequences of the manufacture of illegal firearms, and it is people being shot. So we are trying to find a balance here. One suggestion that has been put forward to try to get better balance in the way that the law has been drafted is to insert some defences along the lines of what they have in the South Australian legislation that would at least provide greater clarification that people who are firearm owners and who are doing work on their weapon within the guidelines that are provided by the firearms registries—the memorandums that they provide—are not intended to be captured by the Act. Is that something that you would be satisfied with?

Mr BARTON: I think the South Australian provisions would be a sensible measure to make things abundantly clear as far as law-abiding firearm owners are concerned. But I really think, and I have noticed this with other legislation, you get these conceptual problems. The whole idea of precursor was taken from, I think, the Poisons Act, and to manufacture illegal drugs you have a limited range of readily identifiable and unique chemicals that are precursor materials to the manufacture of illicit drugs. The problem with applying that concept to the manufacture of firearms—and this is what I have been trying to get across—is there is an extraordinary diversity of things that can be—

The Hon. ROSE JACKSON: That is true but not entirely true. For example, pseudoephedrine is available over the counter for anyone. It is just not the case that individuals who are purchasing pseudoephedrine to treat cold and flu symptoms are regularly being pursued by police for precursor drugs if they just have one or two packets. Similarly, if you have 200, the police are going to be suspicious. I think in some ways it is not a completely unreasonable comparison. The police are not going to be going after someone who just happens to have a tool in their shed. But if you have a series of equipment that could be put together to manufacture illegal firearms, and you are a known associate of an outlaw motorcycle gang, then, yes, maybe the police would be a bit suspicious of your activity.

Mr BARTON: You are right on the money when you referred to the bulk quantity required for pseudoephedrine to become an issue. You have to bear in mind that this is another example of the misplaced concept because you only need one precursor to be in trouble under this proposed legislation—just one.

The Hon. TREVOR KHAN: No, that is not correct. If you have a precursor—so that is (2) (d)—you still have to knowingly have the precursor and you do need to know, or reasonably ought to know, that the precursor is not authorised by a licence or permit. So, it is not simply the possession of the precursor that creates the offence.

Mr BARTON: You have seized on the technical point, with respect, quite correctly.

The Hon. TREVOR KHAN: That is the law.

Mr BARTON: However, you have not paid attention, I think, to the suspicion aroused. And if your investigation is then going to look into things like guilty knowledge, you then get the highly disruptive search. And this is where it would be a particular issue for any business, and that is one of the things that would worry me. I would urge the Committee, actually, to talk to people involved in small-scale enterprise about these complexities and see what they think. But I do not think they are even aware of this bill going through.

The Hon. TREVOR KHAN: I think, Mr Barton, if I take what you say, then you would say that the bill should be opposed full stop. Is that right?

Mr BARTON: I think it needs to be considered very carefully in terms of the collateral harm that may accrue to innocent people and the harm that may accrue through the kind of investigations that will be conducted because, as I said, so many different things—I think in one submission someone referred to nails being used for firing pins. But you could be making a small internal combustion engine, and the rocker arm could look suspiciously like the hammer of a semiautomatic firearm. And I know if I was a police officer with any technical knowledge, I would certainly be very suspicious of something like that and would want to satisfy myself that all was in order. And that is the grey area that you are going into then that is going to be difficult.

I think that only going a little step away from having a completed firearm in order to found a prosecution is about as far as you would want to go. And let us face it, this legislation will go through and the crims will just

find other ingenious ways of getting around it. That is not to say one should throw up one's hands and give up altogether, but I just wonder why so little is done by the people who are putting the money into this problem.

The Hon. TAYLOR MARTIN: Sorry, how do you mean? I do not follow you.

Mr BARTON: The money that motivates and provides the means for illicit firearms, motivates the possession of them and the demand for them and the money to pay for them at quite high premiums, arises from that illicit drug market. And yet most people purchase—

The Hon. ROSE JACKSON: The Government is doing some innovative work on that.

Mr BARTON: I beg your pardon?

The Hon. ROSE JACKSON: The Government has actually proposed a different approach to managing illicit drugs.

The CHAIR: Yes, the Government is promoting decriminalisation of it and a bunch of fines.

The Hon. ROSE JACKSON: I should not have said anything.

The CHAIR: Is that adequate? I do not think so.

The Hon. ROSE JACKSON: Let us stay focused. That was my fault. Apologies, Mr Barton.

Mr BARTON: I think it is more to the point to try to get people to think about the full consequences of their decisions.

The Hon. TAYLOR MARTIN: But do you have any alternative solution other than the legislation that is proposed; any other strategies, tactics that can be used to keep illegal firearms off the street?

Mr BARTON: I did not bring it with me, unfortunately: If you look at a NSW Bureau of Crime Statistics and Research report relating to illicit firearms, the numbers are not all that high. I actually question the scale of the problem in terms of firearm manufacture.

The Hon. ROSE JACKSON: I think the specific issue here that was brought to our attention when the police gave evidence was that—I mean it is currently illegal to manufacture firearms, but they suggested that there were specific cases right now where they knew that individuals were involved in the production of parts for manufacture of illegal firearms for criminal enterprises, but because they were essentially precursor elements, or elements that were not the finished product, they could not prosecute those people, and that one of the innovative ways—as you described—the gangs have gotten around this was to have a range of different people producing different elements that came together. Guns are on our streets. So, certainly the evidence that we received from police was that there were specific instances right now—I think it was on the Central Coast—where that was occurring. So, that concerns us.

Mr BARTON: That they know is occurring or that they suspect?

The Hon. ROSE JACKSON: That was the suggestion: that they knew.

Mr BARTON: They suspect.

The Hon. TAYLOR MARTIN: No, it was a known issue.

Mr BARTON: The reason I ask is I remember my father saying, "Look, we know so-and-so is guilty of this crime, but the courts demand this level of evidence that makes it impossible to get a conviction." And even as a child, I thought, "Well, hang on, if you don't have the evidence for a conviction, how do you have the evidence actually know what they are doing?" But I think if you have the intelligence, then what you look for is where the things are likely to be assembled. And that is the key point.

I cannot comment on the detail of how they amass, gather and coordinate their intelligence, but I actually think investing in good frontline policing is the way to go, rather than trying to legislate something out of being a problem. I think you can become too keen to actually—how far back do you go? For example, is there someone at the local hardware store who has sold them lengths of steel and happens to know that they wanted it for some nefarious purpose? Do we try to get those people as well? How far back do we go in the sourcing of materials and parts?

The CHAIR: I think the way that this bill is drafted is that it has no limit; it can go right back to the import of the steel.

The Hon. ROSE JACKSON: If people are importing parts and they know that it is going to be used for nefarious purposes then—

The CHAIR: No, you are talking about a part. Importing a precursor—in other words, a piece of steel—is completely different. A piece of steel has to be converted to a part through the manufacturing process. It is not like buying a latte. This is much more complicated than that.

Mr BARTON: It is the breadth of those provisions that is the concern.

The CHAIR: Yes, the breadth of them—it goes right back even to the steel importer. Should he have reasonably known that that steel rod could have been converted to a barrel? Where does it end? My company in Silverwater has a wire cutting machine and a full tool room—wire cut machine, lathes, a CNC machine. As a director, should I reasonably have known that one of our employees was turning up there at midnight, turning the machine on and perhaps making a piece of a firearm, a firearm part or a precursor? That particular machine, by definition, will be a precursor. Should I therefore have reasonably known that? Well, in my view, no. But this will put me in the gun. This is totally and completely unreasonable. From that point of view, if people are involved in these criminal activities, then the police should seek them out; not just outlaw the whole of the manufacturing precursor process. That is potentially criminalising the whole of the manufacturing industry, certainly from a steel and soft aluminium products side of things—even the making of wooden stock—at the whim of the police.

The Hon. ROSE JACKSON: But it is no different to the pharmaceutical industry and drug suppliers because—

The CHAIR: No, it is completely different. You mentioned the example of pseudoephedrine before but the reality is that you cannot get that across the counter now unless it is handed to you by a pharmacist. You cannot go and buy it over the counter, Rose. You are out of date. You cannot do that.

The Hon. ROSE JACKSON: You can if you give them your driver's license.

The CHAIR: Yes, but you cannot get 200 packets from that person. They then go and record it on their computer.

The Hon. ROSE JACKSON: In a way, that is why it is a good comparison. They have made it more difficult to access its precursor elements of legitimate pharmaceuticals because they are concerned about drugs. Similarly, it should be difficult for people who want to illegally—

The CHAIR: To own a CNC machine to make legitimate building products? Is that what you are saying?

The Hon. ROSE JACKSON: No.

The CHAIR: Well it is exactly the example of what you are saying.

The Hon. ROSE JACKSON: No, but do not purchase those machines and then get into bed with the Comancheros or the Rebels in order to make illegal guns.

The CHAIR: You do not have to get into bed with the Comancheros or the rebels—

The Hon. ROSE JACKSON: Well, you do.

The Hon. TAYLOR MARTIN: You kind of do because it has to be reasonable suspicion.

The CHAIR: —because the bill does not confine it to that. If you confine this bill to that, no-one would argue with you.

The Hon. NATASHA MACLAREN-JONES: Point of order: I think Hansard might be finding it very difficult to work out who is actually speaking.

The CHAIR: No, Hansard has it all.

The Hon. ROSE JACKSON: Apologies.

The CHAIR: This is all very interesting.

Mr BARTON: Just apropos of all that, Mr Chairman, I suggest that you consider the fact that one individual is enough to do it; you do not have to have an outlaw motorcycle gang. There was a case in South Australia about 10 years ago where an individual was making very well-made submachine guns and was only caught because the police happened to stop his car as a result of some traffic accident. The police attending, according to media reports, were very impressed with the quality of the end product. So if you are only going to target clubhouses of outlaw motorcycle gangs, you may as well go home. But, equally, that also means that every

enterprise is potentially under suspicion. That dictates the need to be careful about the ambit of some of the provisions.

The CHAIR: That is interesting. We can keep talking for hours but I do not think everyone wants to stay here that long. Thank you very much, Mr Barton. I do not think you took anything on notice. Thank you for coming.

(The witness withdrew.)

The Committee adjourned at 14.59.