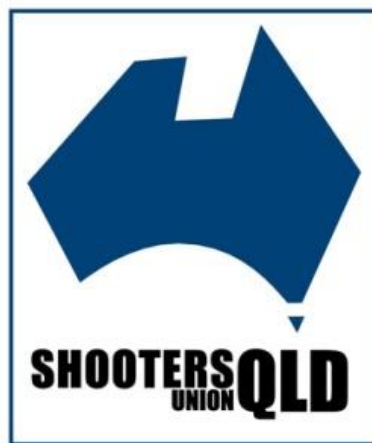


SUBMISSION

Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019



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1. General Comment

- 1.1 The current Labor Minister for Police and Corrective Services formed a Ministerial Forum to which representatives of interested stakeholders were invited. The Forum meets on an irregular basis to discuss items of concern for the shooting groups and other interested parties.
- 1.2 The Minister for Police in the previous LNP government formed a Ministerial Advisory Panel early in his term with interested stakeholders being asked for comment on proposed legislative amendments and other matters of concern.
- 1.3 It is clear, therefore, that such a group has value both to the government and to the various stakeholder groups themselves. It is to this Forum that the current Bill should have been presented prior to presentation to Parliament. Failure to do so relegates the proposals to an act of political expediency for reasons unknown (but guessed at), rather than a genuine attempt to improve legislation and the legislative process. There was, therefore, no genuine stakeholder consultation, no notice was given of the Bill, and no attempt was made to seek advice from those with the expertise to advise on the good points and pitfalls of the proposed legislation.
- 1.4 Had there been consultation, many of the issues in this submission would have been addressed prior to drafting and much better and more meaningful legislation would have resulted. Further, there are far more inconsistencies, traps, potential misinterpretations and misrepresentations in existing legislation that should have been addressed, had the real intention been to propose workable sensible realistic legislation. Current legislation has little to do with the criminal misuse of firearms and everything to do with unduly restricting the lawful activities of the very people who do not need the kind of legislation that is difficult, confusing and downright ridiculous in many cases.
- 1.5 Whilst we have some appreciation for any attempt to make gun laws better, this Bill falls far short of what is required.

2. Authors

Jan Linsley on behalf of Shooters Union Queensland Pty Ltd Executive Committee
Phone: [REDACTED]

3. Intended Audience

Legal Affairs and Community Safety Committee
Executive members Shooters Union Qld Pty Ltd

4. Background and authority to comment

- 4.1 Shooters Union of Qld Inc was formed in 2005, obtaining Weapons Licensing club approval in that year. In 2018, the organisation was restructured to become a proprietary company limited by guarantee because of rapidly increasing membership numbers. Shooters Union Queensland Pty Ltd is the second largest shooting organisation in Queensland.
- 4.2 Shooters Union Australia Inc was formed in 2013 in answer to requests by members in other states. The organisation was changed to a company limited by guarantee in 2018, again because of rapidly increasing membership Australia-wide.
- 4.3 Shooters Union has been represented at all Ministerial Advisory groups since formation, both in Queensland and in other states.

5. Amendments to the Criminal Code

5.1 Insertion of new ss 317AA and 317AB

The Criminal Code already says in section 317:

Acts intended to cause grievous bodily harm and other malicious acts

(1) Any person who, with intent—

(a) to maim, disfigure or disable, any person; or

(b) to do some grievous bodily harm or transmit a serious disease to any person; or

(c) to resist or prevent the lawful arrest or detention of any person; or

*(d) to resist or prevent a public officer from acting in accordance with lawful authority—
either—*

(e) in any way unlawfully wounds, does grievous bodily harm, or transmits a serious disease to, any person; or

(f) unlawfully strikes, or attempts in any way to strike, any person with any kind of projectile or anything else capable of achieving the intention; or

(g) unlawfully causes any explosive substance to explode; or

(h) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or

(i) causes any such substance or thing to be taken or received by any person; or

(j) puts any corrosive fluid or any destructive or explosive substance in any place; or

(k) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person;

is guilty of a crime, and is liable to imprisonment for life.

Adding sections 317AA and 317AB is, therefore, redundant. It is already illegal to use a firearm to resist arrest.

5.2 Amendment of Criminal Code - Amendment of s398 (punishment of stealing)

The Criminal Code already says in section 398:

S398.15 Stealing firearm or ammunition

If the thing stolen is a firearm or ammunition, the offender is liable to imprisonment for 10 years.

We see no reason to increase this penalty. There may be circumstances where this could result in a person being sent to gaol for 14 years for trying to do the right thing, eg collecting ammunition left at the range after everyone else has gone home.

6. Amendment to the Police Powers and Responsibilities Act 2000

6.1 Amendment of s30 (Prescribed circumstances for searching persons without warrant)

Section 30 now says:

30. Prescribed circumstances for searching persons without warrant. The prescribed circumstances for searching a person without a warrant are as follows—

(a) the person has something that may be—

(i) a weapon, knife or explosive the person may not lawfully possess, or another thing that the person is prohibited from possessing under a domestic violence order or an interstate domestic violence order; or

Whilst we understand that sometimes a situation may require a more urgent action than would be possible if police had to wait for a warrant to be issued and signed, we believe this should be the exception rather than the rule. We have a general perspective that police should not be empowered with search without warrant provisions. We are particularly concerned that this section applies to antique firearms. It is difficult to envisage a circumstance where the use of an antique firearm (as defined by legislation) could possibly require an urgent search without warrant.

6.2 Amendment of s32 (Prescribed circumstances for searching vehicle without warrant)

We restate our previous comment that police should not search without warrant unless the circumstances are exceptional and a failure to search could lead to a violent or criminal attack.

6.3 Insertion of new s808AA - Review of additional powers for firearms prohibition orders

Section 808AA deals exclusively with firearms prohibition orders and refers to a report on police officers use of powers to enter and remain on premises that would otherwise

constitute trespass, search without warrant and search of a vehicle without warrant. We believe this is a good thing. However, the report is only required once within the first 3 years after commencement of the added police powers. There should include a requirement for an ongoing annual report.

7. Amendment of Weapons Act 1990

7.1 Amendment of s57 (Particular conduct involving a weapon in a public place prohibited)

Amendment of s 57 lifts the maximum penalty in sub sections 3 and 4 below from 2 years and 4 years to 10 years. In general terms, that is not unreasonable, but what is unreasonable is the definition of a public place.

From the Act:

public place means any place that the public is entitled to use, is open to the public, or used by the public, whether on payment or otherwise.

- (1) In this section— public place includes a vehicle that is in or on a public place. weapon includes— (a) an antique firearm, spear gun, longbow or sword; and*
- (b) a replica of a weapon; and*
- (c) a replica of a thing mentioned in paragraph (a); and*
- (d) a slingshot or shanghai.*
- (2) A person must not, without reasonable excuse, carry a weapon exposed to view in a public place. Maximum penalty—40 penalty units or 6 months imprisonment.*
- (3) A person must not, without reasonable excuse, carry in a public place a loaded firearm or a weapon capable of being discharged. Maximum penalty—120 penalty units or 2 years imprisonment.*
- (4) A person must not, without reasonable excuse, discharge a weapon in, into, towards, over or through a public place. Maximum penalty—200 penalty units or 4 years imprisonment*

Because of the way the definition is termed, a public place could include a shooting range or private property where it is legal to carry a firearm.

7.2 Insertion of new 57a - Firing at dwelling houses, buildings or vehicles

This section makes it illegal to disregard the safety of any person when firing a firearm at a house, building or vehicle, but particularly during a public disorder or an organised criminal activity. We question this insertion. It appears to be nonsense and there is no definition of *reckless disregard*. There are far more important areas of legislation that should be amended than this.

7.3 Insertion of new ss67A and67B

This section refers to a digital blueprint for manufacture of a firearm and the device that could be used to manufacture the firearm from the blueprint (except of course for armourers and police). It seems that to offend, the person must have both the blueprint AND the machine to qualify for 14 years in gaol.

Both these sections are completely redundant because it is already illegal to manufacture a firearm without a licence. Further, the term **digital blueprint** is misleading and we believe, incorrect. A digital blueprint, even on internet search, is simply a blueprint that is either manufactured electronically by something like a CAD program, or is stored on electronic media. We believe the term in this insertion means a computer program that is used by computer controlled machinery (eg a CNC lathe or milling machine) to manufacture a firearm by means of computer numeric control.

The penalty is ridiculous and the legislation is unnecessary.

There are defences against the offence, which is at least an attempt to mitigate the possibility of an innocent or accidental offence. However, the defendant has to PROVE his mitigating circumstances. We believe the reversal of the onus of proof, wherever it occurs, is a very dangerous thing, no less here.

7.4 Insertion of Part 5A - Firearms prohibition orders

It is our understanding that this is something that all states have decided they will comply with but we believe that applications for an FPO should be taken to a court or tribunal for approval, rather than police, even the Commissioner, having authority to approve.

Subsection 3 requires surrender of all firearms, prohibited things and ammunition for any firearm in the possession of the person (but apparently not ammunition for which he does not have a firearm....) to a police officer (immediately). One assumes that the police will attend to personally deliver the FPO and will take possession of the items then. However, it would make more sense and be more consistent with other parts of the Act where a person is applying for a review of the decision, to be permitted to specify a licensed firearm dealer or other licensed person to whom the firearms and other paraphernalia should be delivered to hold them or sell them if the FPO becomes permanent. If the FPO is revoked on application for review, the person can then take back possession of his property, on payment of any fees levied by the person with whom he stores them.

Subsection 6 makes it an offence for a person who is subject to a FPO if a firearm or ammunition is kept or found on premises at which the person is residing. That means the person can be charged if the person he lives with has firearms or ammunition, even if they are stored according to the law and the FPO person has no access to them, or even if they are stored elsewhere. So this section removes from the offender any freedom in his choice of living arrangements and may even be the cause of a separation of partners.

The person also may not attend ranges, dealers or armourers premises, or an arms fair. Arms fairs these days often don't have a lot of firearms and ammunition. They do have lots of militaria (badges, patches etc), binoculars and scopes, collectibles, antiques of all sorts, furniture, jewellery etc etc. Many people go to an arms fair with no interest at all in firearms. It is unreasonable to prevent someone in this situation from attending an arms fair on pain of a 10 year gaol term. If he does not mention to his house-mate or potential

house-mate that he has a FPO, he can go to gaol for 4 years. The definition of a firearm includes prohibited things, which mean an antique firearm, a silencer or a magazine.

This legislation must, in our opinion, include a prohibited persons register AND the ability of clubs, dealers and armourers to enquire of Weapons Licensing Branch about people with FPOs. Although the onus is on the person with the FPO, in the case of a dangerous person, failure to provide the information to these people/groups may put them in a dangerous position, should they refuse entry. After all, people with an FPO should, by definition, be violent or untrustworthy or mentally unstable people who are likely to constitute a danger if they are allowed access to firearms.

7.5 Amendment to section 142

This amendment allows those with an FPO to apply for review of the decision. However, there is no mention of what happens with the person's property pending the review.

7.6 Amendment to section 145

This amendment allows those with an FPO to continue in business pending a review of the FPO in the case of an appeal for review, but there is no mention of what happens to the business assets pending the review.

7.7 Amendment of Schedule 2

This amendment adds the definition of a firearms prohibition order as per section 141C(1) We do not believe the Commissioner should have the authority to apply the FPO.

8. Conclusion

We do not see any reason for any of this legislation. There are far more important sections of the Act that need amendment. We note that consultation was undertaken on the Bill with external stakeholders about the proposed amendments, but since we were not consulted and the legislation was not tabled at a Ministerial Forum, we do not believe there was any genuine meaningful consultation with the people with the expertise to review firearms legislation.