

REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 5 - LEGAL AFFAIRS

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

UNCORRECTED

At Macquarie Room, Parliament House, Sydney, on Wednesday 28 October 2020

The Committee met at 9:15 a.m.

PRESENT

The Hon. Robert Borsak (Chair)

The Hon. Mark Buttigieg

The Hon. Rose Jackson

The Hon. Trevor Khan

The Hon. Taylor Martin

Mr David Shoebridge (Deputy Chair)

PRESENT VIA TELECONFERENCE

The Hon. Lou Amato

The CHAIR: Welcome to the first public hearing of Portfolio Committee No. 5 – Legal Affairs for the 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's hearing is the first of two we propose to hold for this inquiry. Today we will hear from representatives of the NSW Police Force, the NSW Firearms Registry, the Australian Gun Safety Alliance and the NSW Bar Association. We will then hear evidence from GameCon, Shooters Union Australia, the NSW Firearms Dealers Association and the Federation of Hunting Clubs.

Before we commence I make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and 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. Parliament House is now open to the public. All visitors, including witnesses, are reminded that they must register their attendance in the building via the Service NSW app. Please see the secretariat if you need assistance with that and remember to maintain appropriate physical distancing at all times. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. I remind everyone here today that committee hearings are not intended to provide a forum to make adverse reflections on others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily.

There may be some questions that a witness could answer only if they had more time or with certain documents to hand. In those circumstances witnesses are advised that they can take a question on notice and provide an answer within 21 days. Any messages should be delivered to Committee members through the Committee secretariat. To aid the audibility of the hearing, I remind witnesses to speak into the microphones. The room is fitted with induction loops compatible with hearing-aid systems that have telecoil receivers. In addition, several seats have been reserved near the loudspeakers for persons in the public gallery who have hearing difficulties. 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.

ANTHONY BELL, Commander, NSW Firearms Registry, affirmed and examined

MARK WALTON, Acting Deputy Commissioner, Investigations and Counter Terrorism, NSW Police Force, affirmed and examined

The CHAIR: Would either of you like to start by making a short opening statement?

Acting Deputy Commissioner WALTON: Thank you for the opportunity to appear before the Legislative Council Portfolio Committee No. 5 - Legal Affairs Inquiry into Provisions of the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020. The NSW Police Force submission to the Committee in August 2020 outlines the strategic context and national agenda leading to the bill. The intent of the amendment is to improve public safety by targeting serious criminals and those who support them. As the name of the bill sets out, the amendment is focused on preventing and disrupting criminal use of firearms and weapons. Beyond the submission, I believe it is important to highlight that expanding the manufacturing offence to include the concept of "knowingly takes parts in" will enable ancillary actors to be prosecuted for illegal manufacturing.

Ancillary actors include those who finance, lease or participate in the manufacture of firearms and firearm parts. This recognises that the act of illegal manufacturing is complex and, particularly when conducted by sophisticated criminal entities, may involve multiple parties beyond those specifically providing the manufacturing function. To balance the fact that the offence potentially captures a broad-ranging group of people, the threshold to prove the offence is high in that two legal tests must be established: the accused must be a person who knowingly takes part in the manufacture of a firearm or firearm part; and knows, or ought reasonably to know, that the manufacture of the firearm or firearm part is not authorised by a licence or permit. The two-element test means that persons authorised to manufacture under a licence or permit will not be captured and persons who contribute to manufacturing without the knowledge that they are taking part in an illegal activity will not be captured. The inclusion of "firearms parts" in the offence means that prosecutions can be successful in the absence of whole or operable firearms.

This is important to pursue to enable a prosecution where only parts of the firearm are present, or where the item clearly contributes to the making of a firearm. The proposal introduces the new concept of a "firearm precursor", which is conceptually based on drug precursors. A firearm precursor is a component that may be used in the manufacture of a firearm and helpfully captures items that are not defined as firearm parts. The inclusion of possession of a firearm precursor in the manufacturing offence is only a contributor if the two-element legal test is available. In no way does the bill propose that mere possession of a firearm precursor is an offence in and of itself. Possession is only considered part of the offence if the person possesses a firearm precursor for the purpose of manufacturing a firearm or firearm part. The proposal in no way targets authorised dealers acting within the authority of their licence. Equally, the proposal in no way targets people who, without their knowledge, possess firearm precursors, as the offence requires two elements of "guilty knowledge": the person must know that they are taking part in the manufacture of firearms.

The CHAIR: Thank you. I will table three documents for the witnesses to look at. The first is the NSW Bureau of Crime Statistics and Research [BOCSAR] criminal court statistics from 2011 to 2020, dealing with the basic descriptions of manufactured firearm licence, permit, et cetera, in four different categories. What we see is that the issue of the manufacture of firearms is not material at all in New South Wales. The second is part of the Australian Criminal Intelligence Commission's report on illicit firearms in Australia. The back of it shows that domestic manufacturers are, if not the smallest, one of the tiniest problems that needs to be confronted in Australia. The third is an extract of the South Australian Act, relating to and referred to in your police submission as being an example of what and how this should be done. Highlighted, of course, are all the sections exempting or abiding firearms owners from committing an offence by doing work on firearms they own as a licensed firearms owner on a registered firearm. None of those exemptions appear in the draft bill at all, and I note that in your opening address you did not exclude the possibility of law-abiding, licensed firearm owners from being subject to or targeted by police in that process. Commissioner Walton, would you agree that firearms, like motor vehicles and any other mechanical device, need to be kept in good working order?

Acting Deputy Commissioner WALTON: Yes.

The CHAIR: You do? Thank you. You have also agreed that minor adjustments to mechanical devices such as motor vehicles and firearms may be required from time to time as parts wear out or need replacing.

Acting Deputy Commissioner WALTON: Adjustments, yes.

The CHAIR: Adjustments, that is right. Are you aware of the—and I can hand you a copy—*Firearms (Longarms) Users Guide: Rights, Wrongs And Responsibilities*? We will table it. If you go to chapter 6, "Modifying a Firearm or Ammunition", there is an extensive section there:

What components of my firearm can I change?

Unless you are authorised by a permit you must not:

- Shorten any firearm (other than a pistol) to less than the dimensions prescribed in the Regulation;
- Possess any such firearm that has been shortened;
- Sell or give possession of any such firearm that has been shortened to another person; or
- Alter the construction or action of a pistol or firearm so as to convert it into a prohibited pistol or firearm.

What if my firearm breaks or needs repairs?

Every shooter has a duty of care to regularly maintain their firearm. ...

Can I alter the appearance of my firearm?

You must not:

- Alter the construction or action of a pistol or firearm so as to convert it into a prohibited pistol or firearm ...

Can I increase the magazine capacity of my firearm?

You may be able to increase the magazine capacity of your firearm if your firearm still falls within the category of licence for which you are authorised.

It goes on and on. The guidelines clearly allows for the repair, maintenance and, in some cases, modification of firearms as long as they remain within the law. Do you agree with that?

Acting Deputy Commissioner WALTON: Yes.

The CHAIR: And that this is a police document dated 2006 or thereabouts. Do you agree that this bill now would make all of that redundant?

Acting Deputy Commissioner WALTON: No.

The CHAIR: Will you explain why not?

Acting Deputy Commissioner WALTON: The maintenance elements that have just been outlined relate to licensed firearms and licensed shooters. The intent of this bill is outside of those, that are involved in criminal activities.

The CHAIR: Where in the bill does it say that?

Acting Deputy Commissioner WALTON: It is captured through the intent of the bill, in my mind.

The CHAIR: Why does this bill not have the same exemptions that appear in the South Australian Act to which the police submission talks about and even referenced at the bottom of page 5 "exemptions apply"? Why would that be omitted?

Acting Deputy Commissioner WALTON: I am unaware of why that was omitted.

The CHAIR: Will you take that on notice?

Acting Deputy Commissioner WALTON: Yes.

The CHAIR: I want to know why the NSW Police Force see it necessary not to be able to exempt law-abiding firearms owners doing law-abiding things? It just does not sit well with me, I have got to say. South Australia has balanced its Act by putting it in black and white in the Act about how and what law-abiding firearms owners can do. We have a *Firearms (Longarms) Users Guide* in New South Wales that has been around since 2006, which has become the Bible, really, for what people can and cannot do in relation to their firearms. And then we saw this draft bill with draconian powers being delivered to the police, and no exemption whatsoever for law-abiding citizens who use, own and have registered firearms. Is it right that you do not have an explanation for that? You just do not know why that would be left out when South Australia is the template you are referring to, you even mention that there are exemptions in South Australia but somehow or other they just do not make it to the draft bill.

Acting Deputy Commissioner WALTON: It has not been put in there because it was not determined necessary.

The CHAIR: It is not determined necessary so every law-abiding firearms owner, if he is accused of doing something, has to go to court to defend himself to get the same level of protection if they are lucky, have their firearms licence immediately pulled, have all their firearms removed and then go through a whole process just to show that they have done something correctly in relation to what this bill should or should not allow.

Acting Deputy Commissioner WALTON: In accordance with the submission, and what I have indicated previously, the balance of the offence is that there is that two legal text in relation to establishing whether those parts would be captured by these amendments.

The CHAIR: Who will determine that?

Acting Deputy Commissioner WALTON: The police officers would be determining that at a time they have involvement in any investigation relative to that matter.

The CHAIR: If I decided I needed to change the stock on my firearm and reduce it by half an inch from the top, by rasping off some of the wood, I would be breaching this Act?

Acting Deputy Commissioner WALTON: I do not believe so, no.

The CHAIR: What if a police officer decided to take a view that it was and wanted to prosecute me? How do I stop that other than being able to say "I have no statutory defence whatsoever" as in the South Australian bill. I have to have my firearms' licence removed, all my firearms confiscated and then be dragged through court to defend myself.

Acting Deputy Commissioner WALTON: I do not envisage a time where a police officer would take that action against a lawful firearms owner.

The CHAIR: You do not think that law-abiding firearms owners get accused of not doing the right thing when, in fact, they are doing the right thing?

Acting Deputy Commissioner WALTON: I was making my statement in relation to the example you provided.

Superintendent BELL: May I add something to that answer?

The CHAIR: Yes.

Superintendent BELL: Just quoting chapter 6 "What components of my firearm can I change?" the last dot point clearly says that they are not entitled or allowed to "Alter the construction or action of a pistol or firearm so as to convert it into a prohibited pistol or firearm". Throughout the document there is reference to the licence holder to take their firearm to a licensed dealer or manufacturer to have it repaired under "needs or repairs". On page 26 under "What should I do if my firearm malfunctions ... " it refers the licence-holder to take their firearm for repair to a "club armourer, licensed dealer, or the manufacturer."

The CHAIR: That is right.

The Hon. TREVOR KHAN: I have no investment in this but is it illegal for a licensed firearm owner with a registered firearm to do any repairs to their firearm themselves? Is that what I conclude by the parts that you have read out? There is no issue with regards to changing the weapon into a prohibited weapon—

The CHAIR: That is right; that is exactly it.

The Hon. TREVOR KHAN: Nobody would argue that. In terms of just as ridgy-didge firearm that is registered, the licence holder has the correct licence for it, and there is some defect or something that happens, is it illegal for the firearm owner to undertake his or her own repairs?

Superintendent BELL: Not repairs, no. Minor repairs.

Mr DAVID SHOEBRIDGE: There is no issue with minor repairs or maintenance, as you understand it?

Superintendent BELL: No. Repairs to the Committee obviously repairs, is totally different to manufacturer.

Mr DAVID SHOEBRIDGE: Before we get into the nitty-gritty of the bill it might be useful if you could give us some perspective about why this legislation was necessary, the extent to which these offences are prevalent or increasing. I can tell you now that the perspective of my party, The Greens, is that we are concerned about the potential for blueprints and 3D printing of weapons and we would want more, sort of, fit-for-purpose so

that it is not a way to subvert the Firearms Act. From my perspective the question here is about proportionality and fitness for purpose. Can you tell us about why this is needed? What the numbers are showing? What is your criminal intelligence is telling us?

Acting Deputy Commissioner WALTON: Despite the opportunity to prosecute people for blueprints and 3D printing the weakness currently is the offence of manufacture requires proof that the whole firearm has been manufactured. So we have some recent cases where some quite dangerous weapons, even automatic weapons, have been manufactured and the prosecution has failed because those parts, the manufacture of those components was clearly with the intent to manufacture a firearm, could not meet the threshold of a whole firearm. Mr David Shoebridge, I think the point there around technology is a good one. We had no perception of 3D printing, I would suspect, up to 10 years ago but that is a technological disruptor that this bill intends to overcome where portions, pre-cursors, elements of firearms that are being manufactured with an intent to create illicit firearms allow police to disrupt, detect and prosecute people.

Mr DAVID SHOEBRIDGE: I am persuaded about the need to have laws that apply to the manufacture of part of a firearm but one of the concerns that is raised by the Law Society and the Bar Association is that the 20-year maximum penalty applies to the manufacture of part of a submachine gun—which may or may not be right but you can see an argument for it—but it also applies to the manufacturing of part of a crossbow and it also applies to manufacturing part of a nunchaku and there is no differentiation between what I think the community would see as extremely dangerous weapons and dangerous weapons. What is the rationale to apply in the 20-year maximum to all firearms and prohibited weapons—just an undifferentiated maximum?

Acting Deputy Commissioner WALTON: We are talking about the scale, though, that is involved in what is clearly prohibited weapons and firearms. Like any penalty, that would be subject to the determination of the court in relation to the criminality and risk that is involved in that manufacture of the offence.

Mr DAVID SHOEBRIDGE: Well, again, the Bar Association and the Law Society point to the fact that you could potentially get 20 years under this bill—a maximum of 20 years under this bill—for intending to print off part of a crossbow, for example. I am not suggesting that is not without some danger. There is some danger to that but you only get five years maximum if you actually possess a firearm. Section 7A of the Firearms Act says the maximum penalty for possessing a firearm, an entire gun, without a permit is five years but this bill is proposing a 20-year maximum for the intent to print part of a crossbow.

The Hon. TREVOR KHAN: That very same weapon.

Mr DAVID SHOEBRIDGE: Yes, well, part of that same weapon. What is the rationale between those two differentiated maximums?

Acting Deputy Commissioner WALTON: I do not have anything further to offer on that point.

Mr DAVID SHOEBRIDGE: Can you see that there might be a concern about the disproportionate maximum penalty for intending to print part of a weapon having four times the maximum penalty of actually illegally possessing the entire weapon?

Acting Deputy Commissioner WALTON: I can understand the proportionality test there, yes.

Mr DAVID SHOEBRIDGE: You were telling us about the intent of the bill. Was that considered in the drafting of the bill—that disproportionate impact?

Acting Deputy Commissioner WALTON: I am not aware of that. I would have to take that on notice.

The Hon. TREVOR KHAN: Can I take it that you were not the person who generated the drafting instructions for the preparation of the bill?

Acting Deputy Commissioner WALTON: Correct, sir.

The Hon. TREVOR KHAN: This is—I am not being rude—the hospital pass exercise of this. You are presented with a piece of legislation that you hope does the job but you are not the one who is the creator of it.

Mr DAVID SHOEBRIDGE: Yes.

Acting Deputy Commissioner WALTON: I have come into this recently and been briefed and understand the material.

The Hon. TREVOR KHAN: Look, I am not being critical in any way.

Acting Deputy Commissioner WALTON: Certainly.

Mr DAVID SHOEBRIDGE: And I want to stress again that my party believes that there is a case made out for extending the Firearms Act to include printing or possessing parts of weapons and even intentionally having blueprints with the intent to print or create part of a weapon. It is just a question of proportionality and we want to ensure that our firearms laws, you know, have that appropriate proportionality. I would be interested if you could come back on notice about the thinking behind that.

Acting Deputy Commissioner WALTON: Certainly.

The CHAIR: Are you aware that, and you mentioned before about—

The Hon. ROSE JACKSON: It sounds as though The Greens are trying to water down the penalty.

Mr DAVID SHOEBRIDGE: Is that your point, Rose? Do you want to put that on the record?

The CHAIR: You were talking earlier about the manufacture of parts of firearms. But unless it was a whole firearm it could be prosecuted or the police were not successful in being able to prosecute. But are you aware under the Firearms Act that any part of a firearm is by definition, even by itself, a firearm under the Firearms Act? If I have a barrel by itself it must be separately registered.

Acting Deputy Commissioner WALTON: By definition those parts, yes, that are outlined.

The CHAIR: That is right. I just do not understand what protections they are and why we need to tighten this up even further in relation to precursor items? How does the analogy to precursors in the drug side of things, we have certain types of precursor drugs in your possession, they are not ordinary things that people find in their shed or a company would find in its tool room. It is easy to put your hand on them and say, "Well, if you have precursors for making methamphetamine, you probably are going to make methamphetamine." But if you have precursors, which could be almost anything to build firearms or make firearms, there is no other reason that they could be in your possession. We have to rely solely on the judgement of a police officer at the time.

Acting Deputy Commissioner WALTON: I do not think that the test is that you do not have any other reason for those being in your possession. The test again goes back to knowingly takes part in the possession, in the manufacture, of the firearm and then, equally, knows or ought reasonably to know the manufacture of the firearm part is not authorised. So those items being present just as they are as precursors in many instances relative to the manufacture of drugs do not in themselves make it an offence. I think the reality of police investigating and prosecuting in these circumstances is not going to be an incidental stumbling across some elements that would form precursors. These are significant investigations targeting serious criminals that are known to be linked via intelligence and other evidence-gathering methods involved in the intent to manufacture firearms.

The CHAIR: The Minister in his second reading speech says:

As a result of this bill there will be no requirement for law enforcement to provide evidence that a functioning firearm would result from this manufacturing process.

Acting Deputy Commissioner WALTON: And that goes to the point that currently we are failing because the functioning whole firearm is the test in the manufacture of the firearm. Regardless of the level of evidence around the intent to manufacture the firearm, a failure to essentially complete the process is the current test.

The CHAIR: Well then, I ask you again: Why would you not, as the South Australians have done, insert automatic exemptions for law-abiding firearms owners with registered firearms?

Acting Deputy Commissioner WALTON: I would need to take that on notice as to why that has not been inserted in the current bill.

The Hon. TREVOR KHAN: Could I just ask this: You referred—this is my terminology—to a number of failed prosecutions that have arisen. Are you able to, on notice, provide us with some details as to those failed prosecutions?

Mr DAVID SHOEBRIDGE: Or if you have any details now, Deputy Commissioner.

Acting Deputy Commissioner WALTON: I was briefed yesterday on a matter on the Central Coast and I do not have the exact details around dates, but it did relate to the manufacture of what would have been automatic or semiautomatic firearms. There were charges in relation to that. My recollection is the Director of Public Prosecutions [DPP] withdrew the matter based on the failure to meet that threshold. That, Mr Khan, is something that we could provide further details of on notice.

Mr DAVID SHOEBRIDGE: Does the current law allow for backup charges? Did the entire prosecution fail in that case or were there alternative offences that were prosecuted?

Acting Deputy Commissioner WALTON: Again, I do not have the detail of that whole investigation. It is likely there would have been other offences attached to that matter.

Mr DAVID SHOEBRIDGE: Because if this relates to the manufacture charges, which are seen as more serious than the possession charges—is that right?

Acting Deputy Commissioner WALTON: Yes.

Mr DAVID SHOEBRIDGE: If you could provide us with details of that, what the backup charges were or if that meant that that activity went without any criminal sanction.

Acting Deputy Commissioner WALTON: We could provide details on that matter.

The Hon. TAYLOR MARTIN: So this is a recent case? This has actually happened?

Acting Deputy Commissioner WALTON: Yes.

The Hon. TAYLOR MARTIN: Yes.

Mr DAVID SHOEBRIDGE: You said you were not sure about the timing.

Acting Deputy Commissioner WALTON: I do not know the date.

The Hon. TAYLOR MARTIN: But it was not years ago.

Acting Deputy Commissioner WALTON: No. I think it is within the last couple of years, that prosecution.

Mr DAVID SHOEBRIDGE: Okay. I asked before about the criminal intelligence about this manufacturing of weapons but I do not think you gave any great detail about it. What is police intelligence telling you, and therefore you can tell us, about this as a public safety risk?

Superintendent BELL: I guess the key thing for us in this legislation is, obviously as Mr Walton said, there are the two proofs in regards to being an approved manufacturer. In regards to knowingly take part in manufacture, police are not going to go into someone's shed and find—

Mr DAVID SHOEBRIDGE: Superintendent, separately I will ask some questions about how section 51J works but I am asking about what the criminal intelligence is that says that this is a public safety risk.

Acting Deputy Commissioner WALTON: Again it is something that I would need to get some detail on as to how many matters have been referred to the police or investigated and what threshold they have got to in relation to information. I do not have details on how prevalent the issue is, which I think is what you are asking.

The Hon. ROSE JACKSON: But just in general terms, I suppose we are wondering whether bikie gangs or other serious criminal organisations from whom we want to keep the public safe are looking to manufacture their own illegal weapons, or are they just getting them off the black market or something like that? Is the manufacture of illegal firearms for use by criminal organisations against members of the public something that we should be concerned about?

Acting Deputy Commissioner WALTON: Yes, it is something that we should be concerned about. Yes, there have been instances of parts being found by outlaw motorcycle gang members that could potentially lead to the manufacture of firearms. There is a real risk and problem of illicit firearms in the hands of criminals. We unfortunately see that quite frequently.

The Hon. ROSE JACKSON: Presumably it is a growing risk as the technology changes. In years past, if those criminal organisations wanted to get their hands on guns then they would most likely have to try to acquire them from the black market. With technological change, there is this growing problem of them being able to manufacture those weapons themselves here in New South Wales.

Acting Deputy Commissioner WALTON: Unfortunately it is like a lot of things that the internet has brought to us. It has made experts of people that would have no capability to engage in a lot of criminal activity including the risk of manufacturing firearms, particularly around that 3D printing element. But even with polymer 3D printed weapons, other parts that can be manufactured would be added to improve the reliability of those firearms. There has certainly always been a capability from people with knowledge, intent and ability to create their own firearms. That threshold has lowered commensurate with the technological age of information.

The Hon. MARK BUTTIGIEG: What is qualitatively different about the previous methodology, which as my colleague pointed out was the black market, compared to a plethora of manufacturing that gets facilitated by technology? The endpoint is the assembly and possession, right? Why not concentrate on that part of the process and enforce that? Why is the emphasis so heavily on manufacturing? In theory as long as you are enforcing assembly and possession then that should stop the demand, whether it is via technology or the black market. I am just curious what sort of intel there is on that.

Acting Deputy Commissioner WALTON: It is fair to say—and the data that Mr Borsak has provided says—that the illicit firearm industry is from weapons that are stolen, weapons preceding the Howard period that were not handed in and clearly the risk of weapons coming on shore illicitly. But what we are talking about here is that, as more pressure comes to bear on those sources of firearms, technology as an enabler to manufacture firearms is an increased risk that this bill is trying to address.

Mr DAVID SHOEBRIDGE: The last time that I saw reports on polymer-based weapons would be a couple of years ago. Two years ago, I think this issue was in the media attention. Most of the reporting seemed to suggest that a home-printed polymer weapon was more of a risk to the person holding it than to the person they were pointing it at because of the nature of the technology. I am not minimising the risk, but has that changed?

Acting Deputy Commissioner WALTON: The volume and availability of blueprints for polymer weapons continues to increase. In my substantive role in counterterrorism, there is a matter that is to be finalised before the court where one of our targets had literally thousands of files in relation to the creation of a 3D weapon. You are quite right that the risk of any manufactured backyard weapon causing harm to the user is very high, but it does not abrogate the risk to the community if it is properly used. As technology improves, other manufactured parts that improve the liability of a polymer weapon would be captured by this. If those parts are, say, a firing pin or a barrel that improve the capability of that polymer weapon then that is the element that we are looking at with this bill.

The Hon. TREVOR KHAN: I think that answers my question. Is the problem the wholesale manufacture of weapons, or is the real problem the manufacture of parts that alter otherwise acquired weapons and therefore make them more lethal?

Superintendent BELL: No.

Acting Deputy Commissioner WALTON: No. In my mind, these are not weapons that are purchased and have a serial number. That is not the intent of the capture. It is the illicit manufacturing market, which is supported by technology, and potentially that 3D printed polymer market.

The CHAIR: You are talking about the 3D polymer market there. Manufacturing firearms on 3D printers is already illegal.

Acting Deputy Commissioner WALTON: Yes.

The CHAIR: And the possession of blueprints for those is also already illegal. Why do you need to extend beyond that to every possible known precursor that may be involved in the creation of a firearms part—or indeed a firearm itself?

Acting Deputy Commissioner WALTON: As I have outlined, other parts would enhance or contribute to the manufacture of that weapon beyond the polymer weapon itself and the blueprints involved.

Mr DAVID SHOEBRIDGE: Is it the concern—as I understand it—that there may be some highly refined elements of a weapon that require precision engineering that will be manufactured using 3D printing and will then be attached to other, less refined parts of the weapon that will be produced using more traditional methods? Is that what your concern is?

Acting Deputy Commissioner WALTON: Correct.

Mr DAVID SHOEBRIDGE: Can you explain if there are cases or incidents, either locally or internationally, that make that the concern?

Acting Deputy Commissioner WALTON: I do not have particular examples at the moment. I can take that on notice and provide some further information.

Mr DAVID SHOEBRIDGE: But that is the concern.

Acting Deputy Commissioner WALTON: That is the concern.

Mr DAVID SHOEBRIDGE: It is this composite weapon that is partly made with the precision elements that are printed and partly made with more traditional methods, to make a more robust and dangerous weapon. That is the concern.

Acting Deputy Commissioner WALTON: Correct. As I say, these are not weapons with a serial number that goes back to a licensed dealer or owner.

The Hon. TAYLOR MARTIN: But is it fair to say that this is actually happening and these are being manufactured?

Acting Deputy Commissioner WALTON: Yes.

The Hon. TAYLOR MARTIN: This is not a hypothetical problem.

Acting Deputy Commissioner WALTON: No.

The Hon. TAYLOR MARTIN: Is it fair to say that we should not wait until we have many cases that the DPP says are too hard to prosecute—we should not wait until that point?

Acting Deputy Commissioner WALTON: Precisely. This is a current risk.

Superintendent BELL: This is the gap, as Mr Walton said. Mr Chair, you mentioned that we have firearms parts and whole firearms in the legislation. The gap is these precursors—those people that have parts of a firearm and are making parts themselves. They are making—not just through 3D printers but in their garages with machinery—pieces of metal and the parts of a firearm that they need to now make a whole firearm. It includes people who rebirth firearms with parts taken from jetskis and cars. They break a number of them up and turn them into something else, but they might be missing a component. Where people are manufacturing a rod or a piece of metal or whatever it is to turn it into that component that they could normally buy from a firearms dealer, but it is something that they can make in their garages themselves, this legislation addresses that part. The precursors cover what is not a firearm part or a firearm that is registered and manufactured officially. It is all of those other elements that go towards someone being able to manufacture it themselves. It is not just those blueprints. It is the equipment, the tools and the chemicals that are used. All of those ingredients come together to prove manufacture.

The Hon. MARK BUTTIGIEG: In terms of a practical example and to take up Mr Borsak's point, though, if you are in a shed and you are lathing a cylinder that long then how would a police officer determine whether the intent was to have that manifest itself in a firearm or some other mechanical device? How would you determine that sort of thing? Presumably you would go to the source of the demand and then link the two, and there has to be a solid trail of knowledge.

Acting Deputy Commissioner WALTON: There would always have to be evidence intelligence that links that potential precursor to the intent to manufacture a firearm. It would not reach the first threshold if it is an item that has other purposes.

The Hon. MARK BUTTIGIEG: But is that explicitly required in this bill?

The Hon. ROSE JACKSON: Presumably section 51J (1) (b), "knows or reasonably ought to know that it is part of a not authorised firearm", would immediately either disqualify a prosecution against that person or, indeed, a legal firearms owner who was making minor modifications. Forget the teenage kid making a cylinder in their backyard. That has nothing to do with weapons at all. They are completely out by parts one and two. But even someone who owns guns legally and who makes modifications and refinements on them would not possibly meet the threshold for part two of "knowing or reasonably ought to know" that it was the manufacture of an illegal firearm.

Acting Deputy Commissioner WALTON: Precisely. That is the safeguard in the legislation.

The Hon. ROSE JACKSON: And how familiar in your experience—

The Hon. TREVOR KHAN: Just let him finish.

Acting Deputy Commissioner WALTON: It just does not get to first base without those elements being satisfied. I suspect every one of us has got things that could be considered precursors in our garage. That does not mean that the police are incidentally going to start to investigate you without any other evidence intelligence connection to a suggestion that you are involved in the manufacture of firearms.

The Hon. ROSE JACKSON: I suppose the concern would be for someone who legally owns weapons, who does meet the first point, who does indeed make modifications or who takes part in the manufacture, which is broadly defined, who does indeed do the physical act. I am interested in that person who has no intention of

engaging in criminal use or in illegal activity at all, but who does indeed make modifications to weapons that they own. In terms of section 51J (1) (b), "knows, or ought reasonably to know, that the manufacture of the firearm or firearm part is not authorised," what level of knowledge in your experience do legal firearms owners have of what is authorised or unauthorised? If you are a firearms owner and you are making modifications to weapons, is it fair enough for them to say, "I had no idea that I was going to make these modifications and it was going to be not authorised"? I suppose that is my concern, that they genuinely would not know, or is it quite likely that they are fully across their legal obligations?

Superintendent BELL: My experience, having been at the registry now for over two years, is that the majority of licensed firearms holders in New South Wales understand their obligations and comply with the law. They are doing the right thing. That is the point.

The Hon. TREVOR KHAN: But the test is not what a licensed firearms owner would argue. In section 51J (1) (b), it is "ought reasonably to know". I do not think that is limited to a licensed firearms owner of 20 years. It must be some other test.

Superintendent BELL: No, but to answer the honourable member's question, the point is that you are asking about the firearms licence holders with their lawful firearms and doing things to it. My belief is that the majority of them know the limitations of what they can and cannot do, which is in this guideline. But I do not know in my time there of laying charges against any licensed firearms holder for acting outside of what their obligations and abilities are.

The CHAIR: No, because precursors have not been illegal.

Superintendent BELL: That is the point of this legislation.

The CHAIR: And law-abiding firearms owners in many particular cases, certainly range shooting 7.62 down at the Anzac Rifle Range, they do small modifications and manufacture of triggers, firing pins, springs and things like that all the time. Prima facie, with no exemptions, they are actually breaking the law.

Superintendent BELL: Again, Mr Borsak, we are talking about the precursors.

The CHAIR: But they are knowingly involved in the manufacture of a firearm part. Using precursor equipment that they have, they are law-abiding firearms owners making modifications and repairs to the firearms themselves. They would be made into criminals under this bill.

Superintendent BELL: Manufacture is different to modification, as long as they are not—

The CHAIR: Who is going to draw the line? You can easily manufacture a spring if you break a spring, for example. You know how difficult it is to get anything done in New South Wales, especially if you are a competitive sporting range shooter or a big bore shooter. Getting anything done at all through a registered gunsmith—you have to wait years to get things done because of the licensing tightening up that has been going on in New South Wales for the last 10 years. Small licensed home operations are being cracked down on by your registry on a regular basis. This will now make small repairs and small manufacture by unlicensed repairers, but licensed firearms owners, also knowingly involved in illegal manufacture of precursors. How are you going to address that when those charges are being brought by some police officer? What is the excuse going to be?

Superintendent BELL: Sir, in my time at the registry I am not aware of what you are claiming, of clamping down on people. I make it clear that I am not aware of any of that happening, nor have I initiated police proactive action in that regard.

Mr DAVID SHOEBRIDGE: Do I understand it is not your intent for the bill to cover those kinds of modest repairs, but you are going to get back to us on notice about how this interacts with the other provisions of the Firearms Act to ensure that it does not unintentionally criminalise those kinds of minor repairs? Is that the position?

Superintendent BELL: It is not our intention that this legislation would do that to the law-abiding licence holders who are within their rights to do certain things with their firearms in terms of maintaining—

The Hon. MARK BUTTIGIEG: Would a specific exemption along the lines of the South Australian Act help to make it abundantly clear?

Superintendent BELL: Yes, any information we can take on notice and then get back to you.

Mr DAVID SHOEBRIDGE: Come back to us on that.

Acting Deputy Commissioner WALTON: I think that was a point we take on notice to consider why the South Australia Police—

Mr DAVID SHOEBRIDGE: Yes, that is my understanding.

The Hon. TREVOR KHAN: In the South Australian legislation it seems to be section 37 (3) and (4). I think those are the two provisions.

The CHAIR: When read in conjunction with definitional—

Mr DAVID SHOEBRIDGE: I do not pretend to be on top of the South Australian legislation, so I think we do not limit what is taken on notice to that. Could I ask about how section 51J works? I suppose when I say 51J, it is mirrored in 25P of the Weapons Prohibition Act. It is about how somebody gets roped in if they have firearm precursors. Can you just take me through it? Maybe I will give you my understanding of how it works and you can tell me if it is right or wrong. For example, let us say someone has milling or casting or rifling equipment. That is a broad array of equipment, meaning there would be many legitimate reasons outside of firearms manufacture to have them. Are we agreed on that?

Acting Deputy Commissioner WALTON: Yes.

Mr DAVID SHOEBRIDGE: For example, under section 51J (2) (c), if somebody "provides the premises in which any step in that process is taken, or suffers or permits any step in that process to be taken in premises of which the person is the owner, lessee or occupier or of which the person has the care, control or management, if it is their premises, if it is their mill", if any of those acts happen on their premises, they are defined under (2) (c) to take part in the manufacture. So they do not have to do it, they just have to provide the premises and they take part in the manufacture. Is that right?

Acting Deputy Commissioner WALTON: However, that knowledge—

Mr DAVID SHOEBRIDGE: So that satisfies 51J (1) (a). That first point is taken. Even if they do not know it is happening, if they have provided the premises they satisfy the "knowingly takes part in the manufacture" element. But, as I understand it, you say that the check and balance is that they also have to satisfy 51J (1) (b), is that right, to "know or reasonably ought to know that the manufacture of the firearm or firearm part is not authorised by a licence or permit"? They would then have to both know that there was an intent to manufacture firearms and that there was no licence?

Acting Deputy Commissioner WALTON: Yes.

Mr DAVID SHOEBRIDGE: All of those things would have to be satisfied.

Acting Deputy Commissioner WALTON: Correct.

Superintendent BELL: I think the key there, sir, is that part 2—51J (2)—it says "For the purposes of this section, a person takes part", so that is the examples there. What defines taking part? The key element there is that we need to prove that they knowingly took part in those activities or what is outlined there in subsection 2.

The Hon. ROSE JACKSON: Yes. So if the head of the Comancheros comes and says "Can we just use your barn over there with all of your milling equipment? We are just going to make kids play toys," it is not reasonable to say "I had no idea that they would be potentially modifying or manufacturing weapons".

The Hon. TREVOR KHAN: No, that is not caught by (b).

Mr DAVID SHOEBRIDGE: I do not think that is how it works.

The CHAIR: No. That is not how it works.

Mr DAVID SHOEBRIDGE: You would not satisfy (b).

Acting Deputy Commissioner WALTON: Yes.

The Hon. ROSE JACKSON: But what I was suggesting is, if you knew that the person who was asking to lease your barn was involved in a criminal enterprise, you would be caught.

The Hon. TREVOR KHAN: No, they have to know specifically that the manufacture of the firearm is not authorised by licence or permit.

Mr DAVID SHOEBRIDGE: So it is a higher test.

The Hon. ROSE JACKSON: We should make it broader.

The Hon. TREVOR KHAN: It is more specific.

Mr DAVID SHOEBRIDGE: And that is what you say, as I understand it.

The Hon. ROSE JACKSON: Not broad enough.

Mr DAVID SHOEBRIDGE: That is what you say is the check and balance.

Acting Deputy Commissioner WALTON: Knowledge is a very high—it is not "should have known". It is not "reasonable person test". It is knowledge.

Mr DAVID SHOEBRIDGE: It is a reasonable person test.

The Hon. TREVOR KHAN: It is.

Acting Deputy Commissioner WALTON: Sorry. Yes.

The CHAIR: It is a reasonable person test.

Superintendent BELL: But Mr Shoebridge, if I may add: To be able to prove that knowing, there is a high burden of proof there on us being able to establish a matter that that person knew, and as Mr Walton said earlier, it is not just about walking into a shed and finding something. These people we are targeting are highly organised groups. There is other intelligence. There might be surveillance. There is electronic means of evidence that we are looking for. We are looking for the whole package to prove evidence that this person actively knew and were taking part and that they knew what they were doing was wrong—was an illegal activity.

The Hon. TREVOR KHAN: But Superintendent that is actually not what (b) says.

Mr DAVID SHOEBRIDGE: It does not say that.

The Hon. TREVOR KHAN: It gives "knows", which is the test under the parallel drug offences, but then goes on and says "or ought reasonably to know". So that does not require actual knowledge. That requires that they should have known. I am not saying that is a bad thing. It is two tests: one is knowledge, which you have referred to—more strength to your arm—the other one is that the person essentially has been in some way blind to what they should have recognised was going to lead to the manufacture of illegal firearms or parts for illegal firearms.

The Hon. MARK BUTTIGIEG: Jeez, Gladys would be gone.

Mr DAVID SHOEBRIDGE: It is not just you who makes the mistake. The Bar Association points out the Minister made the same mistake in the second reading speech, where the Minister said "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". Perhaps the Minister did not understand the law—that would not surprise me—but I think that is putting it higher than the actual proposed law is.

Acting Deputy Commissioner WALTON: My reading of it is there are two elements there. So you have got "knowingly takes part in the manufacture of a firearm" and "knows, or ought reasonably to know, that the manufacture of the firearm is not authorised". So it is the authorised element in part (b) that makes the variation.

The Hon. TREVOR KHAN: That is right but if you go to 2: you knowingly take part if you finance or lease. To satisfy 1, under subsection 2 you do not have to actually know of the manufacture of the firearm or a part, you just have to lease etc.

Acting Deputy Commissioner WALTON: That could be an element, yes.

The Hon. TREVOR KHAN: That gets you over that first hurdle. The knowledge is the leasing not the knowledge of the manufacturer under 1.

Mr DAVID SHOEBRIDGE: The negligence test—the "ought reasonably be aware"—does not impugn any actual knowledge.

The Hon. TREVOR KHAN: No.

Mr DAVID SHOEBRIDGE: It is just you might have been foolhardy.

The Hon. TREVOR KHAN: And that might be fine, but that is what the effect of it is.

Mr DAVID SHOEBRIDGE: 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.

Acting Deputy Commissioner WALTON: Certainly.

The Hon. ROSE JACKSON: Are there any reasons for the necessity of the extension of the Firearm Prohibition Order search powers to individuals not covered by a Firearm Prohibition Order but in the same premise? Those Firearm Prohibition Orders are obviously relatively punitive. They confer arbitrary search power on police for people who are subject to those orders, which are pre-existing—I understand—but this bill extends the power of police to search other individuals, without a warrant, who are not subject to a Firearm Prohibition Order but are in the premises. An arbitrary search without a warrant is something that we might be concerned about. Can you provide us with some examples or illuminations as to why that would be necessary? That might be useful in making the case for that particular provision.

Acting Deputy Commissioner WALTON: The amendment is intended to capture the risk of when those searches are being conducted other people that are there with the person subject of the order essentially may have an opportunity to hide that weapon on their person. That provision came in response to the Ombudsman's review, where the Ombudsman recognised the risk of police searching those third parties where there is not an explicit power to do so, and the Ombudsman indicated that was a weakness. I would not say the Ombudsman stepped to a point of recommending this amendment, but pointed out that weakness and equally—I would use the terms—highlighted the sensible test there to be able to have confidence, in relation to that order, that police are able to, with a reasonable test, search that person also.

The Hon. ROSE JACKSON: That situation you described where others are present, police are arriving and weapons are being concealed—Is that happening? Is that something that is a genuine occurrence that your officers are encountering?

Acting Deputy Commissioner WALTON: The people that we are doing these searches on, the premises that we are doing these searches on, are people that are actively colluding in relation to their criminal conduct and the possession of firearms. I must say, these prohibition orders certainly do give police some significant powers but quite frequently—in fact, even yesterday during the execution of a search on a relatively new order a Glock pistol and two magazines were located on the premise during that search. We understand that this is a serious power to address a serious risk to the safety of the community.

Mr DAVID SHOEBRIDGE: The Ombudsman recommended that Firearm Prohibition Orders [FPOs] should have a maximum duration of five years, and therefore, if the concern remains, require police to issue a fresh prohibition order after five years. That has not been picked up by these amendments. What was the thinking behind projecting the Ombudsman's position?

Acting Deputy Commissioner WALTON: As we considered the practical elements and our review of the orders that we had, 10 years was considered to be a more appropriate length of term for the review to then be enacted.

Mr DAVID SHOEBRIDGE: But if the police just don't do the review, nothing happens. The Firearm Prohibition Order just continues. There is a requirement to do a review but it is a requirement without any penalty if the review is not done or if it is done in a summary fashion. What was the rationale behind not saying "Unless the review supports the maintenance, the Firearm Prohibition Order should cease after ten years"? Why no sting in the tail?

Acting Deputy Commissioner WALTON: What we know on the data we have on firearms prohibition orders is that we are getting it right. These are targeted at criminal entities, individuals. We have our own process to determine where the orders should be issued. Around 18 per cent of applications are declined by those authorised to review the orders, so there is a reasonable quality assurance process there. Again, in my mind we are getting it right. There have been 49 matters since 2013 that have gone to the NSW Civil and Administrative Tribunal [NCAT] appealing the commissioner's decision.

The Hon. TREVOR KHAN: Sorry, how many?

Acting Deputy Commissioner WALTON: Some 49 out of—my recollection is—

Superintendent BELL: It is around 6,000.

Acting Deputy Commissioner WALTON: Out of 6,000 orders. One matter has been essentially overturned at NCAT on the commissioner's decision.

Mr DAVID SHOEBRIDGE: I do not think there is any doubt that firearms prohibition orders have been a useful tool in dealing with illegal firearms, but the question is why would you allow them to continue indefinitely and, if you are going to have a review, why not insist the review be meaningful? A person's life can substantially change over the course of 10 years, and all this bill does is have a kind of—it is almost like a request of the police to do a review, but no requirements about the content of the review and no meaningful requirement to revisit the firearms prohibition order.

Acting Deputy Commissioner WALTON: My understanding of the proposed review at that 10-year point would be to overlay the test for actually obtaining an order. The same framework would be used. You are right: Over the passage of 10 years some people may have no risk, and at that point the orders could be revoked.

The Hon. TREVOR KHAN: I am unsympathetic to—I cannot see the problem with the order remaining in place. But does a person who has had some "journey on the road to Damascus" moment have the capacity, after nine years, say, to take the matter to NCAT at that point in time, or do they have to exercise the right to appeal against or review the commissioner's decision early on in the process?

Superintendent BELL: It is initially upon service. They have got a time period there by which they can lodge an appeal, and it goes directly to NCAT. As Mr Walton said, we do not have that many appeals, because the people who are subject of the FPOs are the good crooks.

The Hon. TREVOR KHAN: Yes, I get that.

Superintendent BELL: To answer Mr Shoebridge's concerns there in regards to the 10 years, good crooks do not become good people overnight. The argument is, there is 10 years to travel to Damascus and be a good person rather than five, because we know—it is similar with bail: someone is on bail; once the bail is not applicable they go and do something wrong again. That was the whole idea with the 10 years. There is the 10-year period there. It is a requirement, if this legislation is assented to, that we review all FPOs. FPOs have been issued since 1973.

The Hon. TREVOR KHAN: Really?

Superintendent BELL: Under previous legislation. It is only recently—

Mr DAVID SHOEBRIDGE: They did not have anything like the effect that—

Superintendent BELL: With the search powers—you are correct. But the FPOs are all issued by the Firearms Registry by one person in the State, and we have a rigorous process and benchmarking. But it is my view—and I totally agree with the 10-year benchmark, because good crooks do not become good people overnight. They have got 10—

The Hon. TREVOR KHAN: They might have had a holiday during that period.

Superintendent BELL: If this legislation is assented to there will be challenges and there will be tests that need to be set. If someone has been of good character and has not come under police notice for serious matters that led to the FPO being issued—as per the existing tests for its issuance in the first instance—then the FPO should be null and void from that point.

The Hon. TREVOR KHAN: If this legislation goes through, how many orders are going to have to be reviewed?

Superintendent BELL: If it is assented—and that is why there is the extension for those at the point of assenting to the legislation—

The Hon. TREVOR KHAN: Yes, for 12 months, I think it is.

Superintendent BELL: Yes. At the moment it is around 1,400 that will require review within the first 12 months.

Mr DAVID SHOEBRIDGE: There are a number of options that could have been done for the review. One is to allow a person the subject of a firearms prohibition order to bring an application after 10 years to NCAT if they can persuade that there has been a substantial change of circumstances or the like. But it is just there is no sting in the tail if the review is not done, and there are no details about what the review will be. The real concern for a firearms prohibition order is the fact that once someone is on it they can be constantly stopped and searched without warrant. For that to happen indefinitely in someone's life without any kind of formal, meaningful review process is one of the concerns that has been raised by a number of submissions.

Acting Deputy Commissioner WALTON: I would maintain that the review that we are proposing is a meaningful review at that 10-year point.

Superintendent BELL: If I may add, Mr Shoebridge, the test will be the same tests that have brought about the issuance of that first FPO.

Mr DAVID SHOEBRIDGE: It does not state that, though.

Superintendent BELL: No, but that is—based on this legislation being assented to, it is up to us to work out the framework of how we will conduct this review. This is new business—we all agree—but we need to establish an appropriate framework. My view, and our discussions internally, is that the framework should be the same test that led to those high powers being granted to police for that individual in the first instance.

Mr DAVID SHOEBRIDGE: Why not have the legislation state that, as to whether or not the review must be completed within the period of six months and is to determine whether or not the basis for issuing the firearms prohibition order remains valid? Why not state that?

Superintendent BELL: That is a good point, Mr Shoebridge.

The Hon. TREVOR KHAN: But if the legislation does not go through there is no review at all. They just continue on—

Superintendent BELL: I am sorry? If the—

The Hon. TREVOR KHAN: If the legislation does not go through then—

Superintendent BELL: It continues on as is.

The Hon. TREVOR KHAN: It just continues on.

Mr DAVID SHOEBRIDGE: You could do the review anyhow, if you think it is the right thing to do. This does not really tell you what to do with the review; it just sort of says it would be nice if you did. You could do it anyhow.

The CHAIR: Just referring to the New South Wales Bar Association's submission, it states:

... in the first 22 months of the review—

and they are talking about the NSW Ombudsman's review—

only 2 per cent of searches resulted in police finding firearms, ammunition or a firearm part.

It states that the Minister's second reading speech suggests:

... that FPO searches suppress firearm possession and the circulation of firearms. However, the fact that in 98 per cent of search events no firearms, firearms parts or ammunition were found suggests that the balance of public interest does not support the continued availability of FPO searches—

Or the extension of FPO searches. What have you got to say to that?

Acting Deputy Commissioner WALTON: It depends on your lens: 98 per cent might be a very good success rate, in that those people have been suppressed and disrupted from firearms—

The CHAIR: I think that is the point of what I am saying. Why do you need to be able to search people in the presence? Where is the evidence for that?

Superintendent BELL: I guess it is also based on those finds. Those statistics reflect whether something was found or not at the time the search was done. There is nothing to say that—it is all about timing. It is about the time of the search and what was found on the person. It could be a good statistic to show that these FPOs are a deterrent and they are breaking that cycle of engagement in firearms-related crime.

The CHAIR: Why do we need to extend those powers of search to people and associates who may be in the same house, in the same place, standing around? Where is the evidence for that? That 98 per cent statistic does not demonstrate that we should lose more public interest freedoms to support a wider power under the FPO laws for searches.

Acting Deputy Commissioner WALTON: I do not know that statistics are going to support us there at all, because we do not have the power to arbitrarily or with reasonable suspicion to engage in searching those other people. We do not know what we do not know—

The CHAIR: We should give you the power to search other people in case they have something on them because they are an associate or a relative or a child? Or you should be able to force them to answer questions?

Acting Deputy Commissioner WALTON: Experience and intelligence would tell us—

The CHAIR: I do not see the evidence for it.

Mr DAVID SHOEBRIDGE: I think you have to let the witness finish.

Acting Deputy Commissioner WALTON: Experience and intelligence would tell us that those people, if they are associated with that person, would also be a risk of being in possession of firearms or weapons.

Mr DAVID SHOEBRIDGE: Can you talk to us about how that is intended to work? For example, section 51K: You would have seen that there are concerns about abrogating the privilege against self-incrimination, and it applies not just to the person who is the subject of the firearms prohibition order but other persons who are present. How is that intended to work?

The Hon. ROSE JACKSON: Specifically in 51K (2) police have the power to direct individuals to provide information.

Mr DAVID SHOEBRIDGE: Any person.

The Hon. ROSE JACKSON: Any person. It says, "including a password or code".

So, individuals are not able to exercise a right to silence or a right against self-incrimination under that provision.

Acting Deputy Commissioner WALTON: It is an intent to provide an opportunity there on reasonable grounds during the investigation of what would already be people that are found with those weapons, precursors or otherwise, to gather evidence that would be available but is not accessible due to the technological barriers in interrogating electronic devices.

Mr DAVID SHOEBRIDGE: Let us say that there is a factory somewhere where the police believe that there are weapons being manufactured. There may be good criminal evidence to suggest that, but there may be 20 or 30 people working at the factory. Is the intent to allow the police to go in and require everybody to unlock their phone?

Acting Deputy Commissioner WALTON: No. It is linked to, again, what is being seized. Reasonable grounds would need to be established in relation to the connection of the investigation and those locked electronic devices.

Mr DAVID SHOEBRIDGE: But it is to provide assistance or information that may be reasonably required to enable the officer to access any information. I mean, there are just so many elements in it. What is the scope? Is it only about passwords and pass codes?

The Hon. TREVOR KHAN: That is all that (2) covers.

Mr DAVID SHOEBRIDGE: That is what I am testing, because it says:

... to provide assistance or information (including a password or code) ...

The Hon. ROSE JACKSON: It is not limited to that.

Mr DAVID SHOEBRIDGE: So, what else is it intended to gather?

The Hon. TREVOR KHAN: No, no, because you need to go down to:

... that may be reasonably required by the police officers to enable the officer to access any information held or contained in the thing that has been seized.

Mr DAVID SHOEBRIDGE: Mr Khan, that is what I am trying to ask these two witnesses to tell me about. Is it intended to be a password or a code? You have got the phrase "including a password or code". What else are you intending to cover?

Acting Deputy Commissioner WALTON: I am not aware of another element there.

Superintendent BELL: It could be something locked. A key—access. I guess the key element there is the thing that we are seizing as part of hoping to prove that there is a criminal enterprise involvement in firearms manufacture. Generally these days it is a password and being able to access. It could also be files, records, keys

and access to documentation evidence that is there, that provides evidence that they are knowingly, actively involved in this criminal enterprise.

Mr DAVID SHOEBRIDGE: So, this is not intended to require someone to give information about their involvement or somebody else's involvement in alleged criminal activities? Is it your understanding that it is extremely limited to information to allow, say, a locker to be opened—where the key is for a locker—or a phone to be opened or a computer to be unlocked? Is that your very clear understanding?

Superintendent BELL: Yes, and my key point there is the last four or five words: "The thing that has been seized." It is in relation to providing information or access or other items in relation to the thing that has been seized, by which allowing the police—

Mr DAVID SHOEBRIDGE: But it is to access any information. So, access is the key initial limiter.

Acting Deputy Commissioner WALTON: Yes. It is to access information in relation to that matter.

The CHAIR: What of information that does not relate to the seizure of firearms, parts or precursors that is discovered on a computer, or discovered on a mobile phone or other device that has been forcibly opened under section 51K (2)? What happens if there is private information of no evidence whatsoever in relation to this?

The Hon. TREVOR KHAN: That is always a problem in terms of seizure of information. I think that is a matter of common law with regards to information seized for one purpose that actually discloses the commission of another offence. I now cannot remember what the answer to that is, but it is a court-decided position in regards to that.

The Hon. ROSE JACKSON: Is that your understanding?

The Hon. TREVOR KHAN: You would treat that the same as material seized under a search warrant.

Acting Deputy Commissioner WALTON: Yes, and the same as under the child protection provisions.

The Hon. TREVOR KHAN: Yes, indeed.

Mr DAVID SHOEBRIDGE: Could I go back to the proportionality issue, particularly for 51J? I will give you the most extreme example. If a mum and dad have a teenage son who is downloading blueprints on the internet and they come in and they see the downloaded blueprints on the internet and they say, "What is that about?" He says, "It's just some gun stuff," or something. They say, "Well, I don't think you should do that. You should stop." Anyhow, that conversation happens, and then a week later the police come in and they have been following these internet searches. They find out what happens. They understand that that conversation happened with the mum and the dad. Would the mum and dad, in those circumstances, be liable for a maximum of 20 years imprisonment for knowingly taking part because they provide the premises and for reasonably knowing that there was no authorised licence or permit? Would they be liable for a maximum of 20 years in jail?

Acting Deputy Commissioner WALTON: The blueprint offence in itself is already covered in the Act.

Mr DAVID SHOEBRIDGE: I am talking about 51J and whether or not the mum and dad in that circumstance would be up for a maximum of 20 years.

Acting Deputy Commissioner WALTON: Again, I go back to the elements:

... knowingly takes part in the manufacture of a firearm ...

Mr DAVID SHOEBRIDGE: Yes. In this case they provided the premises, so that is a tick.

The Hon. TREVOR KHAN: So, it gets over (1) or (a).

Mr DAVID SHOEBRIDGE: They know that their 14-year-old son does not have a licence or permit, or they ought reasonably know, so that gets over (b). Do they face 20 years?

Superintendent BELL: Is the son engaged in manufacture at that point?

Acting Deputy Commissioner WALTON: I do not know that the downloading of blueprints would be captured alone by this element. That is already captured in the Firearms Act.

The Hon. TREVOR KHAN: You would have to read the two subsections separately.

Mr DAVID SHOEBRIDGE: Indeed.

Superintendent BELL: I guess the key element there, Mr Shoebridge, is: Is that son at that point engaged in the manufacture?

The CHAIR: How would they know that he is?

Mr DAVID SHOEBRIDGE: What if he had, separately to that, printed off a part for a crossbow from a 3D printer—just one part of it? The mum and dad did not—he had printed off part of the crossbow.

The Hon. TAYLOR MARTIN: But why do we want people printing off crossbow parts?

Mr DAVID SHOEBRIDGE: I am not suggesting you do. I am just asking about the proportionality—

The Hon. TAYLOR MARTIN: This hypothetical is getting ridiculous. We actually heard a real story earlier of manufacturing guns on the Central Coast, which is currently happening. That is the gap we are trying to fill.

Mr DAVID SHOEBRIDGE: I am asking about proportionality about the 20 years.

The Hon. TAYLOR MARTIN: You want to let kids print guns?

Mr DAVID SHOEBRIDGE: You know I do not, and you know that is offensive, and you know it is stupid, and you know it is pointless.

The Hon. TAYLOR MARTIN: Why are you putting this forward, Mr Shoebridge? This is getting ridiculous.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: You know it is pointless. If you are not actually interested in proportionality then that is a matter for you. You have got your own time for questions.

The Hon. TAYLOR MARTIN: We have had plenty of time.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: I am asking about proportionality.

Acting Deputy Commissioner WALTON: In my mind the proportionality always occurs at the time matters are before the court.

The CHAIR: Why should it come to court in the first place?

Mr DAVID SHOEBRIDGE: What troubles me again is that you go back to the current provisions about the actual manufacture of a firearm and section 50A of the Firearms Act, which I support, says that the unauthorised manufacture of a gun—

The CHAIR: It is already illegal.

Mr DAVID SHOEBRIDGE: The entire manufacture of a gun carries a 10 year imprisonment. But under this, if you manufacture a part of a firearm, you get 20 years imprisonment. I do not understand how manufacturing an entire gun gets you 10 years but manufacturing a part of a gun gets you 20 years.

Acting Deputy Commissioner WALTON: I understand your argument and it is something we would need to take on notice as to how we came to that provision.

Mr DAVID SHOEBRIDGE: Section 50A has a useful division. It says that if you manufacture a firearm and it is proven, the maximum penalty is 10 years. But if you manufacture a more dangerous weapon, like a pistol or a prohibited firearm, then the maximum goes to 20 years so there is a differentiation in the existing law but there is no differentiation in this law.

The Hon. TREVOR KHAN: Is the problem that if you are manufacturing parts for a firearm, that you do not know necessarily that you can categorise what the nature of that firearm was simply by the parts that have been manufactured? Could that be the rationale that has been applied? I am not being critical—

The Hon. MARK BUTTIGIEG: It sounds like there was no rationale, it is an error.

The Hon. TREVOR KHAN: No, no, no.

Mr DAVID SHOEBRIDGE: This is why I am asking the question on notice because I do not know.

Acting Deputy Commissioner WALTON: Again, I would have to take notice.

The Hon. TREVOR KHAN: There might just be an evidential proof issue that meant subdividing into categories was problematic.

Mr DAVID SHOEBRIDGE: I want to be clear. The Greens are probably the party most on record as saying we want laws fit for purpose. We want to make sure there are laws that make it clearly illegal to manufacture firearms. We want to make laws that make it illegal to manufacture crossbows, which are extremely dangerous. We want to make laws that make it illegal to manufacture nunchacks and other dangerous weapons. I suppose we just want to make sure that the laws fit together well and that the existing proportionality, which has community support, is maintained in these provisions.

Acting Deputy Commissioner WALTON: I understand, yes.

The Hon. ROSE JACKSON: I wanted to ask about the blueprints issue because I think that is quite significant. There is a difference, you would accept, between someone possessing blueprints for the production of an illegal firearm who is a known associate of people involved in criminal gangs and criminal enterprises and—the circumstance that my colleague described—a young person who is immature and interested in firearms, who decides they have a fascination with guns. In both of those instances, the possession of the blueprints does meet the threshold in A—

Acting Deputy Commissioner WALTON: Yes.

The Hon. ROSE JACKSON: —because that is the possession of a firearm precursor. Probably in both of those instances, even the young person ought reasonably know that you are not allowed to go around with blueprints for guns or 3D printing elements for guns. So how do you differentiate between those two circumstances which both arguably meet both the provisions of 51J (1)?

Acting Deputy Commissioner WALTON: As we would in any circumstance with what is known about those people and the evidence in relation to what they have done and what their intent was.

The Hon. ROSE JACKSON: Are most of the people involved in the manufacture, from the experience you have had, active elements of the criminal enterprise or is it more likely that they are at arms length of the gang? Are they perhaps receiving money for the work they are doing but other than the manufacture of firearms parts, they are not active members of the criminal enterprise? In your experience, what are the types of relationships that exist there?

Acting Deputy Commissioner WALTON: I think your broad description is an accurate one. These are people that are in the business with criminal entities for profit.

The Hon. ROSE JACKSON: Yes.

The CHAIR: I note, Deputy Commissioner, that in the Minister's second reading speech he says that law enforcement agencies have continued to see a growth in the domestic manufacture of improvised firearms. The statistics I provided to you do not support that. If those statistics are not right can you provide the Committee with data that refutes the BOCSAR stats or the Australian Criminal Intelligence Commission stats that support your position?

Acting Deputy Commissioner WALTON: I would have to take that on notice.

The Hon. ROSE JACKSON: I have a question in relation to what you said, Superintendent Bell, about the resourcing of the Firearms Registry. You mentioned in relation to firearms prohibition orders that there was one person who was responsible for that. Perhaps that was an active decision of yours as Superintendent to only assign one person but is there a resourcing challenge in the Firearms Registry? It seems maybe some of the concerns raised are not deliberate but perhaps the fault of administrative or human error as there is a lot of work going on and a lot of provisions that you need to keep across. Are you receiving adequate resourcing to do all of the work you are required to do under existing legislation and now potentially 1,400 reviews?

Mr DAVID SHOEBRIDGE: I think that 1,400 reviews in the first 12 months is a real issue because we have seen—and we are not going to revisit—the evidence before the inquest. We are not going to go back the evidence about a substantial amount of vacancies in the Firearms Registry to date but it is a fair question. Are there resources in place? Is there a strategy in place to ensure that there are the resources to do, in addition to your current work, 1,400 reviews?

Superintendent BELL: There are a couple of sub-answers to that question. The FPO space at this point in time under the legislation and the authority to authorise the making of an order is delegated to one person in the State. That is a lot of work but that unit is supported by a number of clerks, who compile the information, and those applications for an FPO come in from specialist agencies—often the criminal group squads. That is where most of our work comes from because they have been involved in watching these people for a considerable time. All that product comes before us. We have a team within the registry that vets that product and assesses it as to

its validity, what is in the application and does it meet the test? We look at NCAT rulings. It needs to be an appropriate test. Does it meet the test to apply this order and therefore confer those powers for police on that individual?

Mr DAVID SHOEBRIDGE: Is that same poor sod going to have to do 1,400 reviews? You said you were going to apply the same test.

Acting Deputy Commissioner WALTON: I think it is fair to say new work always requires us to consider how we will meet that work. We would need to resource that appropriately.

Superintendent BELL: When we heard about this proposed change to legislation and this new work—it is a lot of work and in the writing of the legislation, they acknowledge the existence of FPOs that would hit that milestone if the legislation was assented tomorrow. We have raised the issue of resourcing to ensure that we can meet those requirements.

Mr DAVID SHOEBRIDGE: I hear you say you have raised it and you acknowledge the need of it but is there a commitment clearly in place to ensure there will be the additional resources. What we do not want is people being taken off other important work in the registry—

The Hon. ROSE JACKSON: That was my concern.

Mr DAVID SHOEBRIDGE: —and being diverted to this. Has that commitment been given?

Acting Deputy Commissioner WALTON: These are moment in time elements to and that surge works. We may need to put a certain number of resources there which would be less as time goes on.

Mr DAVID SHOEBRIDGE: Perhaps you could give us an answer on notice about whether or not the commitment has been given for those resources? Deputy Commissioner, can you take that on notice?

Acting Deputy Commissioner WALTON: Yes.

The Hon. ROSE JACKSON: I am concerned about that element particularly. I am also concerned, Superintendent Bell, about even existing resourcing because I know that this matter is still ongoing. For example, in relation to the colonial inquest into the John Edwards matter there seemed to be some suggestion on the evidence received—and I appreciate that we have not had a final report and this is not intended as a criticism of the Firearms Registry—that there is a lot of different work that is required to make checks in relation to people who have firearms. Perhaps more resources, not even to meet the work that is newly required under this legislation, are needed in general to ensure that the Firearms Registry has enough people to give the community confidence that you are able to ensure that every person in possession of a firearm should be in possession of a firearm—to ensure that their circumstances have not changed in such a way that could pose a risk.

Mr DAVID SHOEBRIDGE: As much as I would have liked to have gone down this line of questioning—because unlike you I do have a great deal of criticism about what I saw happen in the Edwards coronial and the lack of resourcing—I do think it falls outside the terms of reference of this inquiry which is about this bill other than is there a current lack of resources that will be exacerbated by this? I think that would be a fair question.

The Hon. ROSE JACKSON: That is essentially what I am getting to. It would be good to receive information in relation to a commitment for additional resources, specifically in relation to the firearms prohibition order reviews. But in general I am interested in ensuring that the Firearms Registry is adequately resourced to do the work that it is required to do.

Acting Deputy Commissioner WALTON: I take the point that, if this new work comes, resourcing is not always just about more people at a particular location. It is resources and efficiency as to how that material is managed. Do those resources need to be centrally located? Can the work be done for the surge period at another location? Is the ongoing work appropriately done and dispersed?

Mr DAVID SHOEBRIDGE: Not everything has to be in Murwillumbah. The evidence we had that was given in answers—there was a 25 per cent vacancy rate at the Firearms Registry as recently as two years ago. You cannot hide that data. It is real.

Acting Deputy Commissioner WALTON: I just did not want to give the impression that more work equals 3.4 people to cover that work at Murwillumbah at the Firearms Registry. The options as to how that task and commitment is delivered need to be considered.

Mr DAVID SHOEBRIDGE: You will give us that detail on notice.

Acting Deputy Commissioner WALTON: Yes.

The CHAIR: Superintendent Bell, were you or any of your staff consulted when this bill was being prepared?

Superintendent BELL: Yes. I believe this bill has been in the works for a considerable amount of time, potentially before my appointment to the Firearms Registry.

The CHAIR: So is that a yes?

Superintendent BELL: Yes.

The CHAIR: Can you outline how the Firearms Registry was consulted and what input it had in relation to this particular matter?

Superintendent BELL: I believe it was sent out to stakeholders across the police force. Obviously, it is not just the Firearms Registry that is a stakeholder in this space. In regard to the key one for us, it is obviously the FPO space. The precursors, the criminal groups and all those components, which are a large proportion of the changes, relate to our squads and crime squads who are targeting these organised groups. But in respect to technical components relating to firearms, identification of parts, the FPOs and so on, we were sent the proposed drafts and we were asked to provide a response.

The CHAIR: Since the primary concern of the Firearms Registry, as far as I am informed, is making sure that firearms owners are properly licensed, firearms are properly registered and that process is maintained, why wouldn't the Firearms Registry have made representations for proper exemptions for law-abiding citizens who have firearms? Why would that be completely omitted?

Superintendent BELL: I do not agree that it has been completely omitted, by choice or out of making that the case. We do know that—and I am sure you would agree—there are sometimes firearms licence holders who commit crime and may be involved in these organised groups.

The CHAIR: I accept what you say, but that is not the crux of my question. The question is why would a representation from the Firearms Registry not seek that a proper balance in relation to law-abiding citizens who own firearms be put into the bill similar to what the South Australian arrangement has come to. Why would that just be completely omitted?

Superintendent BELL: I am not familiar with the South Australian legislation, Mr Borsak.

The CHAIR: That is what I handed to you earlier. Those relevant sections are in front of you.

Mr DAVID SHOEBRIDGE: I think they have agreed to take that on notice already.

The CHAIR: Not in relation to submissions.

The Hon. MARK BUTTIGIEG: In terms of the dialogue that you have with what you could term as "stakeholders"—in the sense that licensed firearm holders have to be on the register—is there or has there been any consultation process with them on this particular bill? I imagine that, if there would have been, those concerns that my colleague has raised would have been raised by them and therefore you would have fed that back through into submissions to the legislation.

Superintendent BELL: Other than that I understand there are submissions from other stakeholders within the industry here before this Committee today—I guess we need a starting point with the legislation. That is why there is consultation occurring now with licence holders, stakeholder groups, peak associations and so on about their view of potential impacts that they see this legislation may have on them.

The Hon. MARK BUTTIGIEG: But there was no independent consultation process, like a conduit between your, if you like, department, the Firearms Registry, and those licensed firearm holders.

Acting Deputy Commissioner WALTON: Not that I am aware of, no.

The CHAIR: The Firearms Registry used to have a number of functioning consultative committees. Do they still operate?

Superintendent BELL: They will operate. They are being reviewed, as you know, Mr Borsak, starting with—now we are waiting on the results and the outcomes of the review of the peak associations, who we see are a large and influential group of people who we have not had a consultation group formed with. They are at this level, as you know. Once we understand that space, what will come from that review and further consultation with

those groups, including yourself, is the formation of—"enhanced" would be the word—enhanced consultation groups that are more strategic and feed into a higher group or a firearms board of key stakeholders.

Mr DAVID SHOEBRIDGE: Just to be clear, this bill is not intended—and you have made it clear from the outset—to criminalise the current lawful maintenance and repairs of weapons.

Superintendent BELL: Not at all.

Mr DAVID SHOEBRIDGE: It was produced with that intent in mind.

Superintendent BELL: We are talking about organised crime here.

Mr DAVID SHOEBRIDGE: As I understand it, what you are talking about and the primary concern is the current state of technology—this kind of mixed technology, where critical parts are being printed and the balance is being manufactured in traditional means. At the moment the law is not allowing that to be prosecuted successfully for manufacture.

Superintendent BELL: That is right.

Mr DAVID SHOEBRIDGE: That is the gap you are trying to fill.

Acting Deputy Commissioner WALTON: Yes.

The Hon. TAYLOR MARTIN: You mentioned stakeholder consultation. What were some of the issues raised, particularly around community safety and the need for this bill?

Superintendent BELL: As Mr Shoebridge just said, we know through the key stakeholders here that have been focusing on these criminal groups and entities that are slipping through the cracks—it not the lawful firearms licence holders. Those involved and that have links with those groups—also the prosecutions branch and other jurisdictions, those involved at all stages, the investigators, those that compile the briefs, those that take it to court, those that defend the matters in court or prosecute the matters in court, I should say—all of those people have identified there is a clear loophole. There is a clear gap. It is allowing organised criminal groups to get away with the fact that they have these precursors. There is a gap in the existing legislation outside of a firearm or a firearm part. It is those precursors where good crooks are getting off at this point in time. They are clearly engaged in criminal activity and manufacturing firearms.

Acting Deputy Commissioner WALTON: Mr Martin, perhaps to go more concisely to why this bill is being brought forward, it is implementing the findings of a review of legal manufacturing offences undertaken by the national Firearm and Weapons Policy Working Group on behalf of the Ministerial Council for Police and Emergency Management across the country. This is something that was raised at that strategic level previously. That brings these amendments and bill before us.

The Hon. TAYLOR MARTIN: Would it be fair to say that in recent years we may have seen more local manufacturing of weapons because of crackdowns on imported firearms and parts and whatnot? Is that a fair assumption to make?

Acting Deputy Commissioner WALTON: I do not know whether I could be clear on numbers and increase, but I am confident we are talking about risk. The risk is definitely increasing in our technological age.

Mr DAVID SHOEBRIDGE: It is about getting ahead of the curve on that technology risk.

Acting Deputy Commissioner WALTON: Ideally, yes. That is where we should be.

The CHAIR: Superintendent Bell, your website now publishes data on firearms prohibition orders.

Superintendent BELL: That is correct. It has been for probably the last year.

The CHAIR: Yes, the last year or so. Where did you get that information from?

Superintendent BELL: The statistics come from our database in the Firearms Registry, being the sole point of application, review and refusal or making of an order.

The CHAIR: Are you aware that there is an increase in the number of FPOs being issued in the last few years?

Superintendent BELL: Yes, there have been.

The CHAIR: What would be your view on why those numbers are increasing?

Superintendent BELL: For one—and it is a positive—it is the additional resources that the commissioner, through the Minister, has put into those proactive squads. The Strike Force Raptors have been increased and now there are more resources dedicated to identifying these criminal groups, gathering intelligence, information and targeting these groups. That is one key factor.

Acting Deputy Commissioner WALTON: It is a focus on where we see value and success. These orders are a very positive tool and appropriately applying for, obtaining and targeting those orders at criminal entities is a very clear strategy.

The CHAIR: I note you have taken a number of questions on notice. In these circumstances you have 21 days to respond to those questions on notice. The secretariat will be in contact with you in relation to those. Thanks very much for coming.

(The witnesses withdrew.)

(Short adjournment)

STEPHEN BENDLE, Convenor, Australian Gun Safety Alliance, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome, Mr Bendle. Are you aware of the fact that parliamentary privilege does not apply to you in Victoria?

Mr BENDLE: Yes.

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

Mr BENDLE: Sure, thank you. Good morning, Mr Chair, Mr Deputy Chair and members of the Committee. Thank you for the invitation to attend this morning. Sorry I cannot be there, being in COVID central, Melbourne, though we do see some light in our tunnel. My name is Stephen Bendle, I am the convenor of the Australian Gun Safety Alliance and I am also the advocacy manager for the Alannah & Madeline Foundation. The Australian Gun Safety Alliance is a coalition of like-minded organisations focused on firearm safety in our community. Our members come from a wide range of sectors, including in public health, primary and specialist medical services, family violence, faith organisations, injury prevention, children's services, teachers and emergency services.

We recognise that most firearm owners and users in Australia are law-abiding people and we respect their recreational sporting and collecting pursuits. However, we also recognise that every jurisdiction in Australia, including New South Wales, has agreed to the principles of the National Firearms Agreement. That states very clearly that firearm possession and use is a privilege that is conditional on the overriding need to ensure public safety. We are working with all jurisdictions on issues associated with firearm policy, legislation and regulations in an effort to uphold the expectation of the overwhelming majority of the Australian public who expect their firearm laws to keep them safe. We do not support the banning of all firearms. However, we do support initiatives by governments to strengthen firearm legislation and regulation.

The firearm industry is constantly changing in terms of technology, accessibility and mobility of firearms, and jurisdictions need to be able to respond accordingly. We also support efforts by the Ministerial Council for Police and Emergency Management to harmonise laws and regulations where possible. This may mean a greater compliance burden on licensed firearm owners, which is unfortunate. However, we believe governments must honour the fundamental principle that firearm possession and use is a privilege, and with that comes the burden of regulatory compliance. We have said that some of the wording in this bill might be improved for clarity. However, we do not really have the legal resources to provide you with alternative wording.

We believe that, in general, the amendments suggested in the bill do clearly state the new offences apply to those with intent; for example, where a person knowingly takes part in the unauthorised manufacture of firearms or firearm parts, or when a person is in possession of a firearm precursor for the purposes of unauthorised manufacture of firearms or firearm parts. We do not believe that a reasonable person, of which we believe New South Wales police to be, would accept that anyone with a piece of steel or an oily rag in their garage would be guilty of an offence. We can see no evidence that this bill is targeting licensed firearm owners and we certainly see no evidence that any member of the general public should be unduly concerned about the bill. In fact, they should feel safer. Thank you.

Mr DAVID SHOEBRIDGE: I have one question to kick off. Thank you so much for your submission from the Australian Gun Safety Alliance. We heard from the police earlier today that one of their primary concerns for the bill is where one part of a weapon, perhaps a more precision part of the weapon, is manufactured using 3D manufacturing and then the balance of the weapon may be manufactured using more traditional means. The intent of the law was to capture the manufacturing of those individual parts, rather than having to prove the manufacture of the entire weapon. Are there other States and Territories that have similar provisions to criminalise the manufacture of part of a weapon?

Mr BENDLE: I am sorry, I am not too sure who asked that.

Mr DAVID SHOEBRIDGE: It is David Shoebridge.

Mr BENDLE: Thank you, Mr Shoebridge. I must say, off the top of my head I cannot say exactly which other jurisdiction. I know that Queensland and Victoria have both amended the legislation over the last couple of years regarding 3D printing of parts. I am assuming that that would cover the part that you have raised. I am not exactly sure about the other jurisdictions at this stage.

Mr DAVID SHOEBRIDGE: I assume the Australian Gun Safety Alliance supports the concept of criminalising the production of parts of weapons and having an appropriate penalty attached to them, without licence or permit?

Mr BENDLE: Yes, and I was about to say without the authorisation, licensing or permits. We think that the licensing framework enables appropriate people to manufacture those parts as required. To my understanding this bill also enables those with appropriate authorisation and licensing to continue doing what they are currently doing. It does not preclude them from continuing their business or their hobby. There is a framework under which people can be authorised and licensed to do that.

Mr DAVID SHOEBRIDGE: The Australian Gun Safety Alliance does not have any difficulty with the current laws that allow for people who are registered firearm owners to do the existing lawful maintenance of their firearms?

Mr BENDLE: As I said, we support licensed firearm owners and users and we support the framework in which they are able to use their firearms, maintain them and collect them, and in most jurisdictions there is the appropriate licensing framework to enable that to happen. We continue to support that.

Mr DAVID SHOEBRIDGE: One of the concerns that has been raised in other submissions, which on the face of it has some validity, is the parity between these new offences, all of which—pretty much all of which; the substantive ones—carry a maximum 20 years penalty for the manufacture of part of a weapon, when the current Firearms Act, for example, provides a penalty for the manufacture of an entire firearm. Having that penalty at 10 years and only having it under the current laws, the manufacture of a weapon only carries a maximum 20 year penalty when it is a pistol or a prohibited weapon. There is that differentiation under the current law. Have you had a look at the fact that the current bill does not differentiate between pistols, prohibited weapons and other firearms?

Mr BENDLE: Yes, we note that and we understand that was clearly a cause of some consternation. We would be happy for that to be aligned. We do not have a strong view on the penalty regime because that often is dependent, as you have said, on other or similar offences. It would seem that—and in the original explanatory notes it seemed that—a lot of these amendments are aimed at a particular cohort of, for example, unauthorised outlaw motorcycle gangs and I think most jurisdictions are coming down as heavy as they can on those activities. We would be happy for a more streamlined alignment of those penalties.

Mr DAVID SHOEBRIDGE: Yes, so just ensuring these amendments adopt the current classification of seriousness about weapons that exist in the current Firearms Act so that we have uniformity across the firearms laws.

Mr BENDLE: I think that makes sense and for the firearm community that would make some sense as well, I am sure.

The CHAIR: Mr Bendle, thanks very much for coming to us from the southern parts of Victoria—hopefully it will open soon. You say in your submission and now just in your evidence that you support the lawful ownership of firearms and the lawful use of firearms, but you do not comment on the fact that there are no exemptions in this particular proposed bill for law-abiding firearms owners and their registered firearms. Why is that?

Mr BENDLE: Mr Chairman, my understanding is that the bill allows for those authorised and licensed firearm owners and users to continue their business. So I do not believe that there should be exemptions for someone who owns a firearm to be able to do something outside the framework, which enables others to do that appropriately. I do not see any reason for exemptions just because someone owns a firearm that they would be able to manufacture parts or a firearm.

The CHAIR: Yes, but with due respect, that is not my question. We do not believe that should happen either.

Mr BENDLE: Sorry I misunderstood.

The CHAIR: Yes, the bill does exempt firearms manufacture by gunsmiths, for example, or licensed firearms manufacturers. In fact, we have a licensed, large-scale small arms factory here in New South Wales at Lithgow that makes lots and lots of firearms—quite legally of course and also for the armed forces of Australia. What I am getting at is that there is a large potential in the way this bill is worded to prevent, stop, or criminalise even if police see fit to press charges even the most minor creation of small parts for repairs and other activities

around registered firearms by licensed firearms owners. You are saying that you do not support them being able to do anything. Is that your evidence?

Mr DAVID SHOEBRIDGE: I do not think that is his evidence.

The CHAIR: It sounded like that to me. He can answer his own question.

The Hon. TREVOR KHAN: Yes, stop interfering.

The CHAIR: Stop interfering.

Mr DAVID SHOEBRIDGE: I have been doing it all day.

The CHAIR: Is that your evidence?

Mr BENDLE: What I thought I said was that I think if a licensed firearm owner wishes to manufacture parts, manufacture parts for a firearm or a firearm, they need to be appropriately authorised and licensed to do that. So I am not sure that is inconsistent with your question.

The CHAIR: It is inconsistent with the question, but we will carry on.

The Hon. ROSE JACKSON: Is there a growing problem of gun manufacture or part manufacture in Australia, particularly because of technological change? Obviously some time ago, people who wanted to acquire weapons for ill intent essentially had to try and find a way to purchase them from the black market or steal them, whereas these days, because of technological change, it seems as though there is a growing problem with people manufacturing parts or entire illegal weapons themselves or being able to find people relatively easy over the internet who can do that for them. Is that something that your organisation has picked up on? Are you concerned about the impact of technological change on the capacity of people to make or modify their own weapons in a way that they could not before?

Mr BENDLE: The evidence of that is somewhat difficult to explore. The Australian Institute of Criminology has some reports, recently, on the illegal or illicit firearm market. There are media reports of that. I think that it is inevitable that technology advances will continue to provide those opportunities, and I think that jurisdictions, such as New South Wales, need to prepare their legislation framework for those inevitabilities rather than react to them once it occurs. We know that the file for the printing of 3D firearms is freely available on the internet. We do know, I think even through New South Wales police, that they are not particularly successful but inevitably they will be enhanced and improved, and I think that this proactive approach to stop that or giving the police the powers to be able to protect the community from that is one of the advantages of this bill. Our organisation does not have the resources to do that research. We are reliant upon the reports from jurisdictions and others as much as anyone at this stage.

The Hon. ROSE JACKSON: Following up on Mr Shoebridge's question on national consistency and harmonisation between the laws and a particular element on this legislation, do you have any views on where New South Wales stands in regard to the other jurisdictions on firearms? I think there has been some suggestion of greater coordination between firearms registries nationally. Do you have any views on that?

Mr BENDLE: Yes, so we consult with the Commonwealth on some matters and certainly have been interested in the Australian firearms identification network. I was meeting with the Minister a couple of weeks ago and my understanding is that New South Wales and all jurisdictions will be compliant with that by mid next year. That will be a great advantage for police, mainly, to look at registered firearms. That will be the first time that will be an integrated network of databases. There is a great deal of compliance—and also inconsistencies amongst jurisdictions—when it comes to firearms regarding licence periods, when it comes to things such as grace periods for the renewal of firearm licences. There is a whole range of things. Not only do we have most jurisdictions not fully compliant with the National Firearms Agreement but we have a great deal of inconsistency. I am sure the firearm community is equally as disappointed that every jurisdiction has a different set of rules—

The CHAIR: I am not disappointed at all by that.

Mr BENDLE: Surely it makes it impossible for—

The CHAIR: It is such an ephemeral document that it can be anything to anybody. The interpretations that come in under it—the administration of the law in each State is different and the requirements for each community group are different. That is the reality of it.

Mr DAVID SHOEBRIDGE: Is that a question, Mr Borsak?

The CHAIR: No, it is statement from the Chair.

The Hon. ROSE JACKSON: My last question, Mr Bendle: I just wanted you to reflect a little bit on where you thought the social licence of firearm ownership and use was up to in Australia.

The Hon. TREVOR KHAN: Do we want to go there?

The CHAIR: "Social licence"?

The Hon. ROSE JACKSON: One of the things that we have to consider when we are considering legislation like this is what community expectations are and where the community is at in terms of firearm ownership, firearm use and how punitive—how strict, how heavy-handed, in some ways—our legislation should be in relation to the regulation of firearms. I wondered if you could give us a sense of where you think the community is up to on those issues?

Mr BENDLE: The only times that we have seen the Australian population surveyed on firearms—even with the introduction of the gun reforms in 1996 and as recently as 2018 in an Essential survey about 90 per cent of the Australian population feel our gun laws are about right; about 30 per cent of those people think they could be tighter. There is clearly a small group that wants to water down firearm laws, but the vast majority of the Australian population supports our current gun reforms, especially when we reflect in the window of the media reports from the USA. People see that as the alternative, rightly or wrongly. Our organisation—

The CHAIR: I would say it is wrong, but anyway.

Mr BENDLE: —supports the rights of licensed firearm owners and users. We do not think that the abolition of firearms is to anyone's benefit, but we do think that the regulatory burden lies with the owners and the users of the firearms. We think that when it comes to the consideration of legislation, regulations or amendments that the burden must be on the need for public safety. That is the measure on which we should be considering changes to laws.

The Hon. MARK BUTTIGIEG: Mine is a related question. The evidence we heard this morning from the NSW Police Force was largely that the bill is targeted towards criminal gangs—organised crime, in other words—and the ease with which they could potentially now manufacture weapons. The bill is largely trying to address that. From your perspective, is part of this a concern that with the advent of advanced technology you will just get a plethora of weapons in the community that would not otherwise be there through other means—in other words, black market and all that sort of thing? You end up having a lot more guns in there community, and therefore the odds are that things are going to happen, whether they be the sort of things we have seen in the United States or organised crime. That has not actually been touched on until now. What is your view on that?

Mr BENDLE: We do not really share the view that there is a doomsday horizon with regards to firearms. We do not really believe that we are on the threshold of firearms being printed off and distributed through the community. But we do think that it makes sense for governments to take a forward-looking view about where the risks to the community are. It is becoming harder and harder to steal a firearm with good storage; with national amnesties and firearm registrations it is becoming harder. We should try to restrict those who are hell-bent on getting a firearm for illegal purposes however which way we can. I think this bill is one way of being able to give the police more power to protect the community from that. We do not really share the view that we are on that threshold of anarchy, but we do think there is the opportunity to strengthen the legislative framework.

Mr DAVID SHOEBRIDGE: Yes, it is about thinking ahead, is it not, Mr Bendle?

Mr BENDLE: That is right. There is no use being reactive to situations where all of a sudden bikie gangs are printing off firearms and the legislative framework does not provide the opportunity to protect the community first.

Mr DAVID SHOEBRIDGE: Mr Bendle, could I ask you on notice to have a look at—I think the Chair raised it with the deputy commissioner—the South Australian provisions involving the manufacture of firearms, firearms parts and the like? On notice, could you have a look at section 37 (3) of the South Australian Firearms Act 2015 and section 37 (4) of that Act? Section 37 (3) provides that the manufacturing offences do not apply to:

- (a) the manufacture by a person of a firearm or firearm part in accordance with a licence held by the person ...

That seems fairly uncontroversial. But section 37 (4) states:

- (4) It is a defence to a charge of an offence—

under the substantive provision if they can—

prove that, in the case of a firearm part—

- (a) the firearm part was for a firearm registered in the name of the person who manufactured the firearm part ...

I ask that you have a close look at that, Mr Bendle, and then provide the Committee your response. I think you have 21 days.

Mr BENDLE: Okay. We can do that. Thank you. I was not aware of that particular clause, but we can follow that up and respond accordingly.

Mr DAVID SHOEBRIDGE: Including whether or not, if that section 37 (4) defence was to be put into the bill, it was appropriate to limit it to the replacement of a broken or defective part, so as you do not have a sort of "open window" to just manufacture endless parts but it is for the replacement of a broken or defective part.

Mr BENDLE: Yes, I understand.

Mr DAVID SHOEBRIDGE: I am not asking—if you have an opinion now by all means give it, but it might be better to go and have a look at it and come back with a considered view on it.

Mr BENDLE: I will do that, rather than comment at the moment before reading it.

The CHAIR: Mr Bendle, the Australian Medical Association [AMA] is a supporter of your organisation, is that correct?

Mr BENDLE: Sorry?

The CHAIR: The Australian Medical Association.

Mr BENDLE: Correct.

The CHAIR: In a media release announcing the formation of your organisation in 2018 the AMA president at the time, Dr Bartone, stated, "most gun-related deaths in Australia are within the families of gun owners." Do you support that statement?

Mr BENDLE: Mr Chair, I cannot support it without just reviewing the evidence on that. It would not surprise me, but I have to review the evidence upon which that was based.

The CHAIR: That leads to my second question: Can you tell me then, on notice, where the information that informs that—

The Hon. ROSE JACKSON: Point of order: I am not entirely sure it is fair for Mr Bendle to answer for the statements of someone else.

The CHAIR: I am asking him to research it and then come back.

Mr DAVID SHOEBRIDGE: I think Mr Bendle has taken the first point. I think Mr Bendle has indicated that—

The CHAIR: It is not quite different to what he was just asked to do in relation to the proposed South Australian amendments.

Mr DAVID SHOEBRIDGE: To the point of order: If Mr Bendle wants to provide a position on notice then he is entitled to, but I do not think you can ask Witness A to justify the comments of a third party—in this case, another organisation.

The CHAIR: With due respect, the AMA is a key organisation in the structure of this organisation and is a key, I would believe, opinion leader in this organisation.

The Hon. ROSE JACKSON: With respect, Mr Chair, if you wish to call the AMA to give evidence to this inquiry, you are entitled to do so.

The CHAIR: We might very well do that. You may take that on notice if you so desire, Mr Bendle. Thank you very much. I note that you have also taken a number of other questions, including mine, on notice. You have 21 days in order to respond and the secretariat will be in contact with you. Thanks very much for attending.

(The witness withdrew.)

STEPHEN ODGERS, Co-Chair, Criminal Law Committee, NSW Bar Association, affirmed and examined

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

Mr ODGERS: Yes, thank you. On behalf of the Bar Association I would like to thank the Legislative Council's Portfolio Committee No. 5 – Legal Affairs for the opportunity to make a submission. You would have received a written submission on behalf of the Bar Association. Two aspects of that submission—the first aspect related to concerns that the association has regarding the terms of and sentences for the new firearms offences proposed in the bill. The other aspect is changes to firearms prevention orders. In respect of the first matter, in paragraph three of the written submission the association has referred to a number of concerns: concerns about the potentially broad operation of the offences; a concern about the strict liability or negligence component, or fault element, of the provisions; and thirdly, a concern about the blanket maximum penalty of 20 years.

I can talk to those in due course if that is of assistance. In respect of the firearms prohibition orders, the Committee would be aware that the Bar Association in 2013 expressed opposition to the introduction of those kinds of orders. Our position has not changed. Even with the proposed changes—which, to a large extent, implement recommendations by the NSW Ombudsman—the position of the Bar Association is to maintain its general opposition to these kinds of orders. Nonetheless, given that section 74A of the Firearms Act is likely to be retained, the association supports the proposed amendments or at least does not oppose them. The only points I would make are that the proposed section 73A provides for a review of a FPO after 10 years.

Our understanding is that the ombudsman recommended that an FPO should expire after five years. At the very least our submission is that there should be a review after five years. We also support what was recommended by the ombudsman—that there should be a review of the legislation itself, partly because of concerns relating to the initial inadequacy in terms of the police keeping records related to the searches, but more generally because it is a potentially problematic area in terms of balancing public interests and private interests. We support the view that there should be an evaluation every five years and that that should be included in the legislation. Those are my introductory comments and I am happy to take questions.

Mr DAVID SHOEBRIDGE: Thanks for the submission. I was asking the police this morning about the rationale in the bill where the two principle offences, being partial manufacture under the Firearms Act of all or part of a weapon and manufacture under the Prohibitive Weapons Act, they carry an undifferentiated 20 year maximum penalty, which seems at odds with the existing provisions in the Firearms Act which differentiate at a minimum between regular firearms and pistols and prohibited weapons. Did you want to speak to that briefly?

Mr ODGERS: In paragraph 15 of the written submissions, we refer to that very incongruity if I can use the language of the submission. We cannot see any justification for a blanket 20 years for taking part in manufacture when, if you are charged with actual manufacture, there is a differentiation of the type you have just referred to.

Mr DAVID SHOEBRIDGE: Would a refinement in the bill that identified the offence by reference to the type of firearm, as currently exists in the Firearms Act, be the answer to that? So if it is taking part in the manufacture of a regular firearm then you pick up the existing 10-year maximum but if it is taking part in the manufacture of a pistol or a prohibited weapon, you pick up the existing 20-year maximum in those circumstances.

Mr ODGERS: That would seem to solve that particular problem. If you adopted the same method in the current Firearms Act provision relating to manufacture, where you have the two different maximum penalties depending on whether or not it is a "pistol or prohibitive firearm" in respect of the manufacture under 50A or reference to a military style weapon in respect to the Weapons Prohibition Act, then that would remove that apparent incongruity. That is assuming that you think you should have the same maximum penalties for—

Mr DAVID SHOEBRIDGE: Manufacturing part as—

Mr ODGERS: —taking part as compared with actual manufacture.

The Hon. TREVOR KHAN: Do you know of any offence carrying a maximum penalty of 20 years that could potentially be dealt with in the local court? It would seem with a 20-year penalty at best you would be running any matter in the district court.

Mr ODGERS: Yes, it is inconceivable to me that a 20-year maximum would be something that could be dealt with the local court.

The Hon. TREVOR KHAN: So what potentially would be a relatively minor offence under this Act could tie up a heck of a lot of time in the district court where, from a practical point of view, it is a relatively minor matter and should have been dealt with in the local court.

Mr ODGERS: Yes, quite. Of course there are jurisdictional limits on penalties in the local court and if you are in the local court you would not be getting 20 years.

The Hon. TREVOR KHAN: I would hope not. The magistrate has truly gone off the reservation.

Mr DAVID SHOEBRIDGE: Unless you did it 10 times in a row. Is it your understanding that this is an offence where the prosecution may elect to have it dealt with summarily?

Mr ODGERS: It is not my understanding but that means I am not sure. I would be surprised if it would be something that could be dealt with summarily but I may be wrong about that.

The Hon. TREVOR KHAN: Whereas if you actually had a gradation of penalties there may be the capacity of an election to be dealt with summarily at least for the lesser offence categories.

Mr ODGERS: Yes. There is a table in the Criminal Procedure Act which lists offences. You would find the answer very rapidly. If I had it in front of me I could tell you but I do not.

Mr DAVID SHOEBRIDGE: We know that there is no amendment in this bill to include that in the table so therefore I suppose that answers that.

Mr ODGERS: Yes.

Mr DAVID SHOEBRIDGE: I probably could have had that logical thought myself before I asked the question. I am sorry. The other aspect is there is the same penalty proposed for intentionally taking part in the manufacture of a weapon as recklessly taking part, if I could summarise it, in the manufacture of a weapon.

The Hon. TREVOR KHAN: The subjective as opposed to the objective.

Mr ODGERS: I would avoid the language "recklessly" with respect. Recklessly is a subjective state of mind and the proposal is that you are guilty if—

Mr DAVID SHOEBRIDGE: You ought reasonably to have known.

Mr ODGERS: —you know. Yes, and that is an objective test. So it is strict liability. It is what I would call a negligence-based test. There are examples in the Crimes Act of provisions where one offence can be composed of either knowledge or recklessness or, indeed, an objective test and I am thinking of sexual intercourse without consent because under that offence the fault element could be either you know there is no consent or you are reckless as to lack of consent or you did not have any reasonable grounds for believing that there was consent. That is an example of a provision which the NSW Bar Association think is bad.

We think it is bad to do that because usually—in both State and Federal law—while it is very common to have one offence which can be satisfied either by, on one part, knowledge or intention or recklessness on the other, that is not a problem. We accept that is perfectly reasonable. However it is generally the case that for most offences, where there is an alternative basis of fault element of a subjective test or an objective test, that you have different offences and different maximum penalties. That is almost invariably the case and we believe that is desirable.

The Hon. TREVOR KHAN: Can you point to any examples where serious offences have that—

Mr ODGERS: Murder and manslaughter are the pretty obvious one. I think we have given other examples. Excuse me if I just have a quick look.

Mr DAVID SHOEBRIDGE: That is the distinction between recklessness and intent, between murder and manslaughter.

Mr ODGERS: No, no. Sorry, no, it is not because negligent manslaughter—

Mr DAVID SHOEBRIDGE: Negligent manslaughter is also—

Mr ODGERS: Recklessness. You would be guilty of murder where you were reckless or indifferent to human life. Murder can be satisfied either by an intention to inflict grievous bodily harm or by recklessness. But manslaughter is negligence but with a different maximum penalty. There are many examples of other offences where that distinction is drawn. I thought there was something in the written submission where we referenced that you can do it intentionally or alternatively you can do it negligently. They are different offences and different

maximum penalties. That is the norm in criminal law that where you have a potential liability based on an objective fault element, it will be a different offence with a different lower maximum penalty.

The Hon. TREVOR KHAN: Because there is a lower level of moral opprobrium—

Mr ODGERS: Because the premise is—basic criminal law 101—that the maximum penalty is appropriate for the worst case of that kind of offence and the premise is that if you were liability turns simply on failure to meet an objective standard, then the worst case would not justify that maximum penalty. But there is another reason, which is also a good policy reason, which is because these will be usually jury trials a sentencing judge simply will not know the basis upon which the jury convicted. The jury might take the view that this person honestly believed that they were entitled to do what they did and that it was not prohibited or whatever but they failed to meet the objective test. But a sentencing judge will not know that because you will have—

Mr DAVID SHOEBRIDGE: Using the verdict on the one offence.

Mr ODGERS: You only have the verdict of guilty or not guilty, so the judge is then the one who is determining the facts. Some people say, "Well, that is not a problem", but it might be incongruous that you have a situation where a jury convicted on one basis and the judge does not know, and the judge then convicts sentences for a much more serious basis of liability because the judge makes that finding which that jury did not.

Mr DAVID SHOEBRIDGE: But that would be easily resolved by having a lesser but still significant penalty for that negligent breach.

Mr ODGERS: Yes, exactly. That would solve the problem. If you have two discrete offences, then you know what the jury's verdict is.

The Hon. TREVOR KHAN: You would have to allow the jury to find in the alternative—is that right?

Mr ODGERS: Yes, of course. The prosecutor might bring both charges. One would be in the alternative and the jury would say, "Not guilty of the more serious, guilty of the less serious. Sentence accordingly."

Mr DAVID SHOEBRIDGE: That would allow the differentiation between moral culpability of somebody who was foolish but genuinely thought that what they were doing was legitimate and lawful, even though it was foolish and the jury thinks it is foolish and fanciful—that is a different moral culpability to someone who intends to break the law.

Mr ODGERS: Quite. I would go so far as to suggest that even the person who does not even think about it, does not know and would not do it if they knew should again be regarded as less morally culpable since it is not, as I recall, proposed that there be a recklessness aspect. One option would be to say that this should not be an offence based on objective liability because, as I understand it for firearms, the existing manufacturing offence does not—you do not have liability on an objective standard. You have to effectively either know it was prohibited or be reckless as to that. It is incongruous in our view to make a person liable on an objective standard. Indeed, we would say as a matter of policy that it is problematic.

We gave the scenario of the young person experimenting with 3D printing and whatever, which is in our written submission. Certainly, it makes sense that, if a person knows that it is prohibited, that is fine. If they do not care or indifferent as to whether it is prohibited, that is fine. But if they are just foolish and they do not think about it or they actually positively believe it is not prohibited, our view would be that it is not appropriate to criminalise that conduct at all. That is a matter of policy. Ultimately whether or not negligence-based crimes are created is a matter for the legislature. Whether it is necessary is in the public interest, but we would query that it is. But if it is going to exist, then it should be in a discrete, lesser offence with a lower maximum penalty.

Mr DAVID SHOEBRIDGE: 50A currently provides:

A person who manufactures a firearm is guilty of an offence under this subsection unless the person is authorised by a licence or permit to manufacture the firearm.

Mr ODGERS: Yes. I assume that the defence of honest and reasonable mistake would apply. I am just not certain. Certainly, when you talk "manufactures a pistol or prohibited firearm", there would be a fault element in respect to the fact that it is prohibited. The actual legal position is not necessarily completely clear. But I think in our submission we have suggested that, in relation to 50A and manufacturing prohibited firearms under the current law, it is likely that you would have to advert to it being prohibited and either be aware that it is prohibited or not be reckless about that.

Mr DAVID SHOEBRIDGE: It seems to just say a person who manufactures a firearm is guilty of an offence.

Mr ODGERS: No. I am looking at subsection (2).

Mr DAVID SHOEBRIDGE: But that is the higher—if you read subsection (4), it allows the alternative charges to proceed.

Mr ODGERS: Yes. Looking at the alternative, in respect of the "unless the person is authorised by a licence or permit to manufacture the pistol or prohibited firearm"—if you mistakenly believe that you did have a permit, you would not necessarily be guilty. There may be a fault element in respect to even that question. But, look, I understand your point. I am focusing on subsection (2) and the prohibited firearm aspect of it.

The CHAIR: Are you aware of the fact that quite often licensed firearm owners make alterations and may build small parts on their registered firearms?

Mr ODGERS: I am not an expert in the field, but I have come across that happening in my experience as a criminal lawyer, yes.

The CHAIR: Reading your submission where you discuss section 51J (1) (b), do you think that, there being no exemption for licensed firearms owners working on their registered firearms in this particular bill, they fall foul of that particular section?

Mr ODGERS: I am sorry. I am reluctant to express opinion at that level of detail as to how it would be construed. I just do not think I can answer that.

The CHAIR: Would you like to take it on notice?

Mr ODGERS: Sure.

Mr DAVID SHOEBRIDGE: Of course, there are a number of express legislative prohibitions on certain alterations to firearms, such as shortening a barrel.

The CHAIR: There are existing prohibitions,.

Mr DAVID SHOEBRIDGE: Section 63 comes to mind.

The CHAIR: I am talking in relation to this particular bill and the way it is going to work.

Mr ODGERS: As I understand it and looking at 51J (1), if the manufacture of a firearm or firearm part is not authorised and you ought reasonably at the very least to have known that, then pretty much taking any step in manufacturing it will make you guilty of this offence with a maximum penalty of 20 years. Even if you were a licensed manufacturer or dealing or whatever it is, if it just so happens that the particular activity you were engaging in was taking part in the manufacture of a firearm or firearm part where that was not authorised or there simply was not a licence or permit in relation to that and you ought reasonably to have known that, then you will be guilty. Does that answer your question?

The CHAIR: I think it does because in previous evidence we talked about an exemption coming out of the South Australian bill of a similar nature which provides—I can hand it up to you now, but you are not going to get your head around it in five minutes. It is not a fair thing to ask you to do. It actually attempts to get around these issues of manufacture and modification of firearms used and owned by licensed firearms owners, especially in relation to them being used for their own purposes only. This bill does not seem to go there. You have just confirmed that.

Mr ODGERS: Yes. There is a protection for police officers in subsection (5), but I do not see any other category of person being presented.

Mr DAVID SHOEBRIDGE: The police's response was that the way 51J is intended to operate, you continue to be permitted to do anything you are permitted to do under your current firearms licence following this bill. Because of 51J. Therefore, that would apply to firearms owners' maintenance of their firearms, for example.

Mr ODGERS: Yes, that sounds—at the end of the day the question is: What does the licence or permit permit you to do? This provision would have the effect that, if you have gone outside the terms of that, then you are committing a very serious criminal offence.

Mr DAVID SHOEBRIDGE: The issue may be that there are a whole lot of express prohibitions on certain alterations to firearms in the Firearms Act but nothing expressly prohibiting or making unlawful minor repairs of a firearm. Therefore, if there is nothing expressly authorising it in a licence, that area which the law is currently silent on may have been inadvertently criminalised. Does that make sense?

Mr ODGERS: Yes.

The Hon. ROSE JACKSON: I think partially because "take part in manufacture" is so broadly termed, even possessing, for example, plans or blueprints that would allow for modifications that were not authorised, whether or not those modifications were done and undertaken, would fall foul of this.

Mr DAVID SHOEBRIDGE: I think that is a different point. I think everyone is concerned about possessing blueprints, but this is more—

The CHAIR: That is a slightly different point there. I think what Mr Shoebridge is saying is right. This is what is catching in between.

Mr DAVID SHOEBRIDGE: I do not know if it does or does not. I suppose that is the question to you, Mr Odgers.

Mr ODGERS: The language of the provision is that it is not authorised. If the person did have some kind of licence or permit, the prosecutor would have to establish that the licence or permit did not encompass or authorise what was done.

Mr DAVID SHOEBRIDGE: Whether or not the routine maintenance and minor repairs were covered by the current licence.

Mr ODGERS: It would entirely turn on a construction of the licence or permit.

Mr DAVID SHOEBRIDGE: As I understand it, the police's position is that that is covered already. It does not intend to criminalise that behaviour, but there may be some uncertainty there.

The CHAIR: I think it is unclear.

Mr ODGERS: Yes.

The Hon. ROSE JACKSON: In relation to section 51K (2), which relates to the search and seize powers, we heard evidence from the police this morning that this section, which essentially requires an individual to provide information or assistance, including a password or code—that is taken from the provision. Their intention or understanding was that this section was only in relation to accessing evidence on equipment that they believed was relevant to this particular provision. But obviously there have been concerns raised that the construction could be broader than that and would require individuals to cooperate with police in a way that would potentially infringe their otherwise important rights against self-incrimination or to silence. I just wanted your reflection on that particular provision.

Mr ODGERS: I think the self-incrimination or silence might be answered by subsection 3. There is a "reasonable excuse" provision. If you have a reasonable excuse for failing to comply with the direction, then you are not committing an offence. If it is privilege against or for accommodation, let us assume, or legal-professional privilege or something like that, then that would undoubtedly be a reasonable excuse. In response to your initial question, it is a provision which is expressed in fairly broad terms in that providing assistance or information that may reasonably be required by the police officer to access any information held or contained—I mean clearly that would apply to a computer or a mobile phone or something like that. Potentially it might go beyond that. I think, practically speaking, it is going to be in those kinds of—I am struggling to think of cases. Maybe opening a locked door—

The Hon. ROSE JACKSON: Or some kind of safe.

Mr ODGERS: Yes. But, as I say, I think the reasonable excuse provision does provide some safeguard there.

The Hon. ROSE JACKSON: My next question relates to the amendments to the operation of the firearm prohibition orders. Obviously I accept your initial position that they should be repealed, but that is not proposed by this legislation. It is in fact a very unlikely outcome of this process. One of the things that this amendment does is extend the powers of police in relation to those orders to other individuals who are on the premises of someone who is subject to a firearms prohibition order. The arbitrary search powers—so no warrant—include people who are on the premises with someone who is subject to a firearms prevention. The evidence from the police was that, when they are dealing with these criminal enterprises, there is often a number of individuals in these premises together and weapons can be concealed by taking them away from someone subject to the order and given to someone else, et cetera. I wanted your reflections on that. They are obviously particularly difficult tools that the police use to search people without warrant. Then to extend that other people who happen to be on the premises is potentially slightly concerning.

Mr ODGERS: My understanding is that this was recommended by the Ombudsman.

The Hon. ROSE JACKSON: I think it was recommended by the Ombudsman because—I may be wrong—the police were essentially undertaking these searches of other people on the premises without any clear legal basis, so I suppose it is obviously preferable, if it is going to occur, for there to be a clear legal basis. The other alternative is that, if the police wish to search someone, they either obtain a warrant in relation to that search or they make that person subject to a firearm prohibition order.

Mr ODGERS: To be quite blunt about it, we have not opposed that provision. That is probably because the requirement of reasonable suspicion which applies in respect of other people is consistent by and large with general search powers of the police in a range of circumstances. Given that requirement of reasonable suspicion, the NSW Bar Association did not think it appropriate to oppose it.

The Hon. TREVOR KHAN: The cops will always say they had a reasonable suspicion.

Mr ODGERS: Yes, but it can be reviewed—

The Hon. TREVOR KHAN: True.

Mr ODGERS: —by a court and it is a pretty common statutory basis for search. Speaking for myself, one can see some public policy justification for the adoption of that approach.

Mr DAVID SHOEBRIDGE: We are in 51K here.

The Hon. ROSE JACKSON: Yes.

Mr DAVID SHOEBRIDGE: The Law Society of New South Wales has a concern not so much with the fact that there is reasonable suspicion to do the search but with subsection (3).

Mr ODGERS: I actually do not have that in front of me.

Mr DAVID SHOEBRIDGE: Subsection (3) says that a person must not—

Mr ODGERS: I do apologise. I thought we were looking at the search powers and now we are looking at 51K.

Mr DAVID SHOEBRIDGE: This is the seize and detain and then direct a person who is present who the officer "believes on reasonable grounds to be in charge of or—

Mr ODGERS: Sorry, we are not going back to the search of the other people. We are now directing that person to provide assistance or information. You are saying that The Law Society had concerns about subsection (3).

Mr DAVID SHOEBRIDGE: Yes, because it breaches the common-law protection against self-incrimination.

Mr ODGERS: I think I have answered that by saying my understanding of reasonable excuse is it might well extend to provide a reasonable excuse.

Mr DAVID SHOEBRIDGE: You think if somebody says that that would breach their right to—

Mr ODGERS: Not to incriminate themselves. Statutory provisions are generally, unless they are explicit—unless they are clear that they are overriding basic civil liberties and common-law protections, it will be read in a way consistent with that. I would have thought reasonable excuse would extend that. I suspect there is authority which supports the proposition. That is me talking off the top of my head. I may be wrong, but that is my understanding of the law.

Mr DAVID SHOEBRIDGE: But in any event what has been directed to be given is limited to information that allows access to a device?

Mr ODGERS: Correct. It is pretty narrow.

Mr DAVID SHOEBRIDGE: The summary of it is, with a couple of tweaks and amends to address those concerns about ensuring the appropriate penalty, that would address the bulk of the Bar Association's concerns?

Mr ODGERS: As I said, our preference would be you do not adopt an objective test.

The Hon. TREVOR KHAN: Always.

Mr ODGERS: And we cannot see a public policy reason why you really should in this context, given the maximum penalty we are talking about and the circumstances.

Mr DAVID SHOEBRIDGE: But if it is to be retained, if that objective test is to be retained?

Mr ODGERS: If that objective test is to be retained it should definitely be an offence with a lower maximum penalty.

The CHAIR: Thank you for coming, Mr Odgers. I think you took one question on notice.

Mr ODGERS: Well, I think I answered it.

The CHAIR: Maybe you actually answered it.

Mr ODGERS: I think I did.

The CHAIR: I think you did. We will leave it at that.

Mr ODGERS: Thank you for the opportunity.

(The witness withdrew.)

(Luncheon adjournment)

CRAIG GOLDING, New South Wales State Coordinator, Shooters Union Australia, sworn and examined

DOUGLAS SHUPE, Chairman, GameCon, sworn and examined

The CHAIR: Would either or both of you like to make a short opening statement?

Mr GOLDING: Yes, I would. The Shooters Union Australia thanks the Committee for the opportunity to appear today. The Shooters Union Australia is extremely concerned with the proposals detailed in this bill, as we believe it has far-reaching impact on, not only the 300,000 or so New South Wales law-abiding firearm owners we represent but also the wider law-abiding New South Wales community. Mr Chairman, The Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020 is a loose, poorly written and heavy-handed bill that is far too broad in its definition of a "firearms precursor", and in the search and seizure powers it gives to the NSW Police Force. In its current form the bill criminalises almost any tool commonly found in tool boxes, workshops and households across the country. The proposed amendments to the Firearms Act fail to properly distinguish the lawful maintenance of a firearm by a licensed firearm owner from the unlawful criminal manufacture of a firearm.

Shooters Union Australia supports all police activity against criminals and criminal intent, but this bill fails to differentiate clearly between criminal elements and the law abiding, and in doing so allows for the potential loose interpretation of the bill by overzealous or inexperienced police officers. The search and seizure, or search without warrant, powers that would be afforded New South Wales Police under this bill are more reminiscent of a police State and not that of a liberal western democracy. Allowing the Commissioner of Police to play prosecutor and judge in relation to the review of firearm prohibition orders is inappropriate and unacceptable and the 10-year review period of a firearm prohibition order firmly "stacks the deck" against anyone falsely issued such an order.

In its current form the bill potentially criminalises not only the law-abiding firearm owner but also every home handyman, engineering business, tradesperson or motor mechanic who has access to common household items or workshop machines such as lathes, drill presses, cordless drills or angle grinders, not to mention everyday items such as lubricants, screws and springs. Members of the Committee, you cannot make an already illegal activity anymore illegal simply by defining everyday items as firearm or weapons precursors, nor does such terminology prevent criminal behaviour. Shooters Union Australia believes this bill is as outrageous as it is unworkable. Thank you.

Mr SHUPE: I would like to thank the Committee for the invitation. Members of GameCon appreciate it. As everyone else, we have no objection to legislation designed to fight organised crime, and welcome any attempts to do it. But we do have serious concerns with this legislation because we think it is so loosely written that licensed individuals who have been working on their firearms legally are more than likely to soon find those activities to be now illegal. To me at some point we have to ask ourselves: Do we really have the world's best firearm legislation or do we not? Upon coming to the Committee I read some of the submissions. I noted one where it said there has been over 100 amendments, which I was unaware of. At some point we have to reach a point where the law diminishing returns starts to apply and commonsense would dictate that continually increasing regulation increases the risk of unintended consequences and fewer and fewer actual benefits being realised.

It is my understanding that there has been no evidence produced that the ammunition bill reduced criminality or solved crimes or prevented crimes. What we do know is that the ammunition bill created extra work for small businesses, increased costs to the small business owner, increased costs to people buying ammunition, and it also provided a ready shopping list for criminals to break into establishments and use the list to go find places to break into and steal firearms. Many hunters and shooters make adjustments to improve accuracy in their firearm and they typically work on the stock or the trigger, stopping vibration in the barrel, things like that, reshaping the stock.

I am a retired industrial arts teacher and when I was reading this I started thinking, I wonder if the people who wrote it understand how many people enjoy doing things with their hands, how many people have a workshop, how many people spend tens of thousands of dollars buying lathes and milling machines and things like that. They are not doing illegal acts, they are just having fun making their firearm more usable and more accurate. I would also like to point out that hobbies help people with their mental health: People who are involved in hobbies are a lot more happier than people who are not. I was a bit interested in—I just read over it and it did not hit me at first and then I started thinking about it. In the police submission they highlighted a pistol grip mould as an example of an item that they wished to classify as a precursor. There are all sorts of moulds. You can spend thousands of dollars on an injection mould that you get a mould maker to make or we can make a mould with a gouge and a mallet, and gouge out a depression in a block of wood and then laminate fibreglass in it. Year 8 students have been taught how to do fibreglass laminating.

The point I am making is that I do not understand why a pistol grip needs to be something that is controlled. You could make a pistol grip out of electrical tape or duct tape or a chunk of wood—anything to wrap around the frame of a pistol that does not have a pistol grip. It is no problem to fire the firearm; it is just as deadly with or without a fancy pistol grip as it is with one out of an injection moulded one. I do not think it is reasonable to believe public safety will be improved by regulating pistol grip moulds. Criminals are opportunists and they will exploit any opportunity to achieve their objective. The interpretation of "firearm precursor" is open to misinterpretation and abuse by police and also in the police submission may intimate that the only people that should be working on firearms are gunsmiths. Number one: Gunsmiths are expensive. There are not many of them around and they are very busy. So, if someone can do something on the farm that is legal, that is not going to change it into a prohibited firearm and save themselves \$500 or \$600 and six months waiting time, well, I think they should have the freedom to do it.

Anyone with metal machining skills that knows how to work in tenths of a millimetre and hundredths of a millimetre, knows how to run an engine lathe safely without losing fingers or eyes—I think they have the skill to cut a centimetre off a barrel and still have a safe rifle when they are finished. I do not understand why the bill does not have something that excludes licensed people from doing normal work on their firearms. We are assured that we are not the target and that organised criminals are the target, but I do not understand why they cannot just be added in the legislation to make clear. Once something has been seized, we hear no procedures or talk or explanation about how they are going to get back. I have heard of people who wait months to get things back, have to hire a lawyer, it costs them thousands of dollars, and then suddenly the firearm reappears, but if you do not do anything, it does not reappear. Thank you.

The Hon. TREVOR KHAN: Do I take it that if there were inserted into the bill a provision such as that a firearm part was for a firearm registered in the name of the person who manufactured the firearm part, that would meet some of your concerns?

Mr GOLDING: Provided the firearm part was manufactured as per the current firearms Act, yes, I think it goes a long way to clarifying the bill, certainly.

Mr SHUPE: I was also on the Commonwealth Firearms Advisory Council and one of the things that they did there was a very positive thing. When a part came across the border and it was a part for a category C semiautomatic rifle, they were declaring it category C instead of A or B. They change that to where it would automatically cascade to a lower classification instead of a higher one. You do have parts that can go in semiautomatic rifles and parts that can go in bolt action. The point is that if you are licensed to have that firearm—that firearm is registered to you—you should be able to work on it.

The Hon. TREVOR KHAN: I think the proposed defence has been, in a sense, advanced by Mr Borsak, and would essentially allow a person to work on their own firearm, which is the essential point, is it not?

Mr SHUPE: That would be terrific, yes.

The Hon. ROSE JACKSON: I suppose I do not have a problem with the idea of clarifying that, but the current provisions already say that modifications or any changes are allowed if they are authorised. It is only a breach of section 51J, if the activity is not authorised by a licence or a permit. Perhaps it is my ignorance because I am not that familiar with firearm licences or permits. Do they not specify already what you can do? You can do these things. These are the kinds of modifications you can do. Is that already not spelt out in licences and permits?

Mr SHUPE: That is what sent out the rockets with me originally. I just thought if I change the scope on my rifle, things like that, did a little bit of wood work on the stock, there was no problem. But, the way this was written, I started to think, wait a second, if you are going to all this trouble to explain what is illegal, why do you not explain what is not illegal? My licence does not say I can maintain a firearm on it. It says I can hunt and I can target shoot.

The Hon. ROSE JACKSON: Right, so current licences and permits are silent on the types of minor modifications that you are talking about?

Mr SHUPE: Yes, it was all just sort of understood. There was no issue, and then this comes up and makes you start to think.

The Hon. MARK BUTTIGIEG: This is really important because the authorisation, which my colleague just pointed out, is meaningless if the licence has not got specifications in it?

Mr GOLDING: That is correct, and who authorises it. One of the things that astounds me is that we have a long and proud military history here in Australia and it is quite common to have a .303 Lee-Enfield,

Australian made or English made, in our gun safes. It is part of Australian history. Like the guys who use those firearms, those firearms are getting on in years and they require further maintenance to maintain them. The bill in its current form is so loose, so where can you start and stop. You know, screws, trigger guards, all the basic things—it is very loose as to what you are doing whether it is right or wrong. That is our biggest concern.

The CHAIR: Just to clarify, is it the case—I think Mr Shupe was saying that—that ordinary licence, say, category A or category B, which 90 per cent of the shooters in the State have, are only for the use of either hunting and vermin control or target shooting, that is it.

Mr GOLDING: Correct.

The CHAIR: Would it be true to say that those licences that are issued for repair and manufacture are usually only issued to dealers or issued to gunsmiths or club armourers and that there are not that many of them. Is that a true statement?

Mr GOLDING: Yes, it is a true statement.

The CHAIR: And the conditions of what they can and cannot do are actually listed on the licence?

Mr GOLDING: As a club armourer or a gunsmith, yes.

The Hon. ROSE JACKSON: I suppose, obviously, we are trying to find a sensible path through here. I do not think that anyone here wants to inadvertently criminalise the type of behaviour that you have described. On the other hand, the police did provide evidence that current prosecutions against organised crime elements were failing because of that, so we are trying to find a way to outlaw that growing part of organised crime syndicates where they are using 3D printers and other elements to modify their weapons in a way that does not affect the behaviour that you have described. Do you feel that an amendment along the lines that my colleague Mr Khan outlined settles that question?

Mr GOLDING: I think it goes a long way to settling the question and, in our submission, the simple words "knowingly manufacture"—I mean we could be talking about a trigger guard for a .303, or a piece of water pipe to make an illegal 12-gauge shotgun. That is knowingly manufacturing an illegal firearm, but fitting a replacement trigger guard to a .303 is not. We need to define that, and I do not think that is adequately done, as our proposal said.

The Hon. MARK BUTTIGIEG: Could I put a devil's advocate hypothetical question? There is an exemption for licensed firearm holders, and you could imagine someone gaining a licence for the purpose of target shooting or whatever, but the ultimate aim is to manufacture guns for ill-conceived purposes. What do you say to that?

Mr GOLDING: I think, regardless of whether it is a firearm or a chemist making illegal drugs, that is always a problem. Criminals will go to whatever lengths they have to complete their criminal activity. To that end—and I would not expect that person would have a clean record to start with—I would hope that they would be picked up in the licence application process.

Mr SHUPE: I anticipated that question actually, and that is what I was going to say, that in the licensing process you get a police check and a person of that nature, one would hope, who has previous criminal history—

The Hon. TREVOR KHAN: He is not going to get a licence in those circumstances.

Mr SHUPE: Yes, that is right.

Mr GOLDING: You would hope not.

Mr SHUPE: The way I understand it, we are checked every day, ran through the computer as to what we have done in the last 24 hours.

The Hon. TREVOR KHAN: The provision that I read out to you before would only allow you to manufacture parts for a registered firearm, so it is not that you can, having got a licence, go willy-nilly manufacturing parts; you have to be a licensed firearm owner firstly, and secondly you have to be manufacturing a part for a registered firearm, so you are not given carte blanche.

Mr SHUPE: I am not manufacturing an entire firearm; I am just working on one that I already have legally.

Mr GOLDING: The standard home A/B licence holder would be limited to what he could manufacture anyway. There would be very few garages of a standard home A/B firearm holder that could manufacture a barrel,

for instance, from scratch. That is the realm of the gunsmith—that is what you pay the \$500, \$600, \$700 for—but general manufacture of screws and springs and that sort of stuff—yes, that should not pose a problem.

Mr SHUPE: As a matter of fact, a year ago I got a new barrel on a rifle and the gunsmith—highly, highly qualified—could not make barrels. He had to buy the barrel in.

Mr GOLDING: Yes, most do.

Mr SHUPE: They are a very specialised item to make.

The CHAIR: There is only one barrel manufacturing facility in Australia, and that is Thales at Lithgow. They have an automatic barrel-making machine. There are only two in the southern hemisphere actually; one in South Africa and one here. That is the reality of it. They are not easy to make.

Mr SHUPE: Yes. If you want a barrel to hit something at 200 metres, that is a totally different thing than if you want a barrel that kills somebody at five metres.

The Hon. ROSE JACKSON: We have dealt in some ways with differentiating between organised criminal elements and the sort of community that you represent. I am interested also in how easy it is to modify, say, a standard A/B weapon, which as you said would be the category of weapon that 90 per cent of gun owners in New South Wales own, into something really serious that could cause a lot of damage, because you only need one deranged individual to somehow get one of those weapons and then modify it to do a lot of damage. Is it easy to turn one of those weapons into a semi-automatic weapon?

Mr GOLDING: Not a standard A/B firearm, no, you cannot. It cannot be done.

The Hon. ROSE JACKSON: Excuse my ignorance.

Mr GOLDING: No, that is okay. A semi-automatic is a self-loading rifle, for instance—a completely different firearm mechanism. It is a completely different firearm, so to answer your question, no, it is not easy. It could not be done really.

Mr SHUPE: I do not know, I do not have enough expertise to answer that. All I know is that it varies from one firearm to another as to the initial design.

The Hon. ROSE JACKSON: That, in some ways, gives me some confidence because if you were going to try to carve out somewhat of an exemption for legal firearm owners you would not want that to be exploited by, as I said, a deranged individual, but if that kind of exploitation were not really possible because physically that sort of modification was not available, I think that would be good.

Mr GOLDING: It would come back purely to, I would imagine, magazine capacity, and there are already laws in place that cater for that.

The CHAIR: Getting back to the example you talked about earlier, Mr Shupe, about a pistol grip mould—was it you who talked about that?

Mr SHUPE: Yes, that is in the police submission.

The CHAIR: The pistol grip mould itself would be illegal, but the actual pistol grip, once it is manufactured or imported and installed on a bolt-action rifle, would not be illegal. Would you agree with that?

Mr GOLDING: It is currently not illegal under the Act, that is for sure.

The CHAIR: That is right.

Mr GOLDING: The illegal aspect is if it has a detachable stock which leaves the pistol grip in place.

The CHAIR: That is right. In this situation we could end up with the creation of a pistol grip mould being illegal, but the actual pistol grip, once it is made or imported and installed on a bolt-action rifle, for example, or even a pump-action rifle, would be perfectly legal. Does that accord with your understanding?

Mr SHUPE: Yes, I get what you are saying. The actual making of it is illegal, but having it is not. Is that what you are saying?

The CHAIR: That is right.

The Hon. TREVOR KHAN: That really depends, does it not, on the wording? It may fall within the concept of a precursor, but the question is, under the test, whether the manufacturer of that part is not authorised

by the licence or permit, so it all comes back to that exemption. The definition of "precursor" does not make something in and of itself illegal; you have to look at the other part of the definition I think.

The CHAIR: That is true, but under the existing licensing arrangements nothing is allowed other than ownership and use for hunting and target shooting. That is where the problem lies because there are no conditions on those licences dealing with what you are talking about.

The Hon. TREVOR KHAN: I accept that. I am working on the basis that there is a clear exemption in place. It just seems to me that that neatly solves the issue.

The CHAIR: That is why I drew out the pistol grip example. You potentially have a precursor if you make a mould, but if you then have the actual grip and install it yourself, under current law, it is not a problem. Is that true?

Mr GOLDING: Yes, that is true.

Mr SHUPE: Yes. An interesting little story: I once had a Year 10 boy who was quite good at shooting air pistols and he wanted a better grip on his air pistol, so we made one in class. We did not even think twice about it. The gun stayed at home, it was just the grip that came to class—it was a piece of wood.

The CHAIR: That, in and of itself, would not be illegal under the current law.

Mr SHUPE: No.

The CHAIR: In your view, are existing firearm laws administered fairly by the Firearms Registry?

Mr GOLDING: Yes and no, I think.

The Hon. TREVOR KHAN: That is a degree of ambiguity.

The CHAIR: Give me examples of both.

Mr GOLDING: I have been in the firearms industry for 31 years. You will strike a period where everything seems to be going swimmingly and, all of a sudden, a spanner gets thrown into the works. I think it comes back to interpretation as the biggest issue we are facing with the Firearms Registry and the laws currently. It is also an issue we face with investigative officers doing firearms safe storage inspections. Probably the worst word that came out of the 1996 Firearms Act was "interpretation" because your interpretation is different from my interpretation.

An example, going back to 2009, were two instances where I had standing arguments with young constables doing firearms safe storage inspection. One was in relation to the bolts being in the safe with my firearm, which is perfectly legal. His interpretation was that they should not be. That was an 11.00 p.m. argument on my doorstep. By his side was a sergeant, who was also a licensed firearms owner and able to set him straight. On another occasion it was having snap caps in my expensive shotgun. A snap cap is basically just a metal device with a spring in it that allows the disengagement of the firing pin so that the firing pin does not get damaged being shot on an empty chamber.

For all intents and purposes this young bloke said that nothing should be in the gun—nothing, nothing, nothing. Again, it was solved by producing the Act, but also a phone call to his boss. For someone not as experienced in the industry as I was in that situation—a little old guy, for instance, or a new shooter—those guns would have gone to God and they would have had a hell of a time to get those firearms back. That is what we are seeing. Interpretation is a big issue and so, too, is generally dealing with the Firearms Registry. Their hard-and-fast rules do not always seem to make a lot of sense. There are probably not too many shooters around who have not had some sort of run-in with the Firearms Registry. I do not know whether that answers the question properly, but at times the application of the law does seem to be all over the place. I think it comes back to the interpretation.

The CHAIR: Mr Shupe, do you have anything to add?

Mr SHUPE: No, I cannot think of anything.

The CHAIR: We had some evidence earlier today from the police. They said that they had consulted with stakeholders and interest groups. In the end, I got out of Superintendent Bell that he did not acknowledge that they did consult with firearms organisations or bodies. Were either of your organisations consulted in relation to this particular proposed bill?

Mr GOLDING: No.

Mr SHUPE: No, and typically if we would have been, we would have been there right away.

The CHAIR: Were either of you involved in the previous consultative groups that the Firearms Registry set up some six or seven years ago?

Mr SHUPE: I have been on a couple, yes.

Mr GOLDING: No.

The Hon. MARK BUTTIGIEG: Is that consultative process—infrastructure, if you like—non-existent anymore? Does the Firearms Registry or someone consult industry stakeholders such as yourselves?

Mr SHUPE: From recollection, I think there are some that have recently been in operation. I do not know if they still are. I have not been involved for about two or three years now.

The Hon. MARK BUTTIGIEG: Was there a point in time where that just dropped off—it was happening and then it stopped?

Mr SHUPE: Yes, I think so.

Mr GOLDING: Immediately in the years following the Firearms Act 1996, consultative groups included the industry, trades—all that sort of thing. It has dropped off. Quite often you will hear that they have consulted. Quite often they will only consult with the Sporting Shooters Association of Australia (NSW), which no longer represents the majority of New South Wales shooters—they are in the business of building rifle ranges and detach themselves. But it is always a get out by legislators that they consulted with that group. Well, big deal. The fact is that the Sydney branch is the largest branch of the Sporting Shooters Association of Australia (NSW). If they did not exist, nor would Sporting Shooters Association of Australia (NSW). As I say, they do not represent us and it is a cop-out that legislators continually seek to get their opinion, which does not reflect that of GameCon, nor that of Shooters Union Australia.

The Hon. MARK BUTTIGIEG: It is somewhat surprising that a major stakeholder would not have had some sort of heads-up as to what was happening with the bill.

Mr SHUPE: I think historically we have always been very happy and very willing to be involved whenever we have been asked.

Mr GOLDING: As we pointed out, nobody has anything against the targeting of criminals. As Australians, as family members, we all want criminals brought to justice. But we do not want innocent people caught up in that legislation or regulation. It is something that seems to happen a lot when it comes to law-abiding firearms owners—inadvertently. I do not know why that is—whether it is an easy mark, I do not know.

Mr SHUPE: Just for background, when I was on the Commonwealth advisory council, our job was to go through 250 regulations as a backlog. So I do have some experience about reading regulations and understanding whether they are fair or not. What I found most interesting was that you had Federal police, customs and different agencies there, and out of the 250 regulations there was only one disagreement about how to handle it. What I am getting at is that if you have a bunch of people who know what they are talking about in a room, they tend to agree.

The CHAIR: What is your attitude in relation to public safety and firearms laws in general? Let us just talk in the context of New South Wales but, obviously, it applies across Australia.

Mr SHUPE: I think people do not realise how complicated they are and how many of them there are. Originally, the Act, from recollection, was 320 pages. A recent case I know of was a young, single mum who had her firearms confiscated because of what one of her sisters said about her. Some 15 months later, after lots of lots of stress and \$3,100 in psychiatric evaluations, she got her firearms back. But they were not forthcoming—there seems to be no genuine willingness or process to return things once they have been seized when it has been found out that they should get them back.

Mr GOLDING: On that, I have a client at the moment who was asked to hand his firearms into a South Coast dealer for safekeeping because his eldest son living at home, who had mental health issues. Willingly, the gentleman brought his guns in to us for safekeeping. Several weeks ago now that son went into respite and he will not be coming home. He is wheelchair-bound and the Firearms Registry is refusing to provide the documentation for the gentleman to have one firearm back at home. The son will not be coming home so there is no reason for those delays. When that client has gone and contacted the Firearms Registry on 30 occasions, it is just in the pile to be done. As a public service it needs work. I was interested to hear Superintendent Anthony Bell's comments on 17 September that each week there are 300 new licence applications. I am sorry that Mr Shoebridge is not here

because I think in 2018 he was quoted as saying that, at the current rate, by 2020 there would be 300,000 New South Wales firearms owners.

Mr Bell's comments on 17 September that there are 300 licence applications a week goes to what Mr Shoebridge was saying in 2018. The Firearms Registry continues to tell us that they are bogged down or that they are understaffed. This has been going on now for four years. If it was some other public service—Centrelink or the like—it would not be accepted. Yet law-abiding firearm owners in the State are forced to accept that. It is just another example of what we are faced with.

Mr SHUPE: Another one I can cite is a gentleman I knew many years ago, who was dying of prostate cancer. I do not know the details but he was working at St Marys target range and his handguns were stolen out of his car. He was charged with not keeping his firearms safe and it cost him \$7,500 in legal fees and things like that. Yes, he should have been looking after them, but I think there is a thing in law that there should be a relationship between the crime or the problem and what you suffer as a consequence of it. It seems that in many cases the punishment that people go through by going through the legal system—not necessarily being found guilty but having to go through the legal system—is more than enough punishment. I do not know where else you will get charged for having something stolen from you.

The Hon. ROSE JACKSON: I suppose the converse of that that some people may say is that, yes—

Mr SHUPE: Exactly.

The Hon. ROSE JACKSON: —there is a high threshold.

Mr SHUPE: Yes.

The Hon. ROSE JACKSON: It is difficult to acquire and maintain guns. We accept that but that is because the harm that could come, if they fell into the hands of the wrong person—even just one deranged individual, one wrong person—these dangerous weapons can cause unimaginable pain and suffering. I suppose, yes, it is difficult for those people who are trying to do the right thing and sometimes that is made very challenging, but the reason for that is because the consequences are being more relaxed about that stuff could also be very bad.

Mr SHUPE: Yes, see people I know when we were travelling hunting, we do not even get the car out of sight. If we go into a restaurant we park it where we can watch it. We sit by the window and do all sorts of things. You are constantly thinking about it as you are moving.

Mr GOLDING: By definition, you are under control of those firearms at all times which is what the safe storage and safe transportation of firearms regulation actually says. The problem is when you abide by those regulations, locked box secured to the body of the vehicle internally, and you cannot get stolen, and you are charged. We have gone too far in that regard.

The CHAIR: I will take the point of the Hon. Rose Jackson a bit further. Mr Golding and Mr Shupe, I am sure many others on the Committee would have read a little bit about the Coroner's inquiry into the John Edwards case and his acquisition of pistols and long arms. Are you aware of the circumstances upon which he got access to licences and firearms?

Mr GOLDING: For the most part, yes.

The CHAIR: Do you want to elucidate to the Committee how that happened?

Mr GOLDING: To obtain a New South Wales firearms' licence you have to have a genuine reason. That genuine reason can be in numerous forms—club membership, employment, farmer and so on and so forth. Mr Edwards looked to club membership as his genuine reason and went through a process of visiting numerous clubs across Sydney to get a licence. He failed in most counts but was eventually given club membership which allowed him to go through a process of getting a licence. As I have been reading the transcripts from the Coroner's inquiry that application for a firearm went through four hands at the Firearms Registry—not one of those checked his domestic violence history. Each thought it was someone else's job to do. Subsequently, Mr Edwards passed his probation at the club for a pistol licence and then he went on to commit the horrendous crime he did.

The Hon. TREVOR KHAN: He killed his two children

Mr GOLDING: Two children and himself which led to the suicide of his wife.

The Hon. TREVOR KHAN: Yes, indeed.

The CHAIR: This goes to what the Hon. Rose Jackson spoke about that no matter the best intention of the best and controlled systems, at the end of the day this was not failure of a licensed firearms owner, it was a failure of the system.

The Hon. TREVOR KHAN: Indeed, it may actually indicate—it will be a matter for the Coroner—that they should have been slower in processing his application, which runs contrary to so many arguments. I am not trying to sound short but this is well outside the leave of what this Committee is supposed to be doing at the moment. I am sympathetic to the problems but we can only do one thing, that is, deal with the bill that before us. I have already indicated I am attracted to seeing some amendments obviously to this bill that may alleviate some of the concerns that both these gentlemen have, I think, justifiably expressed but I do not think we can do anything, nor do I wish to, about the greater issue of firearms licensing in New South Wales. I think that is beyond my remit.

Mr SHUPE: I think it would go a very, very long way and make licensed shooters feel much better if there were some amendments put in there.

Mr GOLDING: Our submission is based around wording in most instances.

The Hon. TREVOR KHAN: There are various species of legislation in New South Wales that are tortured—water legislation, firearms legislation—which become specialist areas that really involves much sophistry as anything else to work out what the hell it all means. I am entirely sympathetic to all—

Mr GOLDING: But there needs to be more input from industry and individuals in general, stakeholders, not pursue those stakeholders and think they still have a grasp on firearm owners in New South Wales. It needs to be meaningful input. Sadly, we are not seeing that and despite the efforts of people to try to get that happen we are still not seeing it. Whether that is on purpose, I do not know.

The Hon. TREVOR KHAN: Mr Golding, you are here today. You have had some influence at least on one supposed member of the Government, although they may accuse me of being otherwise.

Mr GOLDING: So, our job here is done?

The CHAIR: Don't say that. When the Hon. Trevor Khan was talking about torturing people on water policy, it made me think of what I am up to.

Mr GOLDING: Can I just touch on one thing that Douglas Shupe brought up? He mentioned briefly the ammunition control bill 2012, which is eight years on now. My understanding is that bill, which was to record and control the sale of ammunition in New South Wales, has not led to one conviction. By contrast, this bill as we have discussed goes way the other way and potentially criminalises a lot of innocent people. That is the two sides of a story that we see so often.

The CHAIR: I think we have come to the end of that. I think the Hon. Rose Jackson has elucidated quite nicely, you have had some decent questions and I did not have to ask all the questions. I do not think you took any questions on notice. Keep an eye out for the second day of the inquiry and the Committee's ultimate report next year.

Mr SHUPE: I thank everyone for the opportunity.

(The witnesses withdrew.)

PAUL BRITTON, President, NSW Firearms Dealers Association, and Vice-President, National Firearms Dealers Association, sworn and examined

JOHN HOWDEN, Secretary, Federation of Hunting Clubs, and Secretary-Treasurer, NSW Firearms Dealers Association, sworn and examined

GRANT LAYLAND, Treasurer, Federation of Hunting Clubs, sworn and examined

The CHAIR: Mr Britton, would you like to make a short opening statement?

Mr BRITTON: Thank you, Chair. The NSW Firearms Dealers Association thanks the Committee for the invitation to appear today. Whilst we understand that these proposals have no impact on licensed firearms dealers, we are extremely concerned with the proposals in this bill and the impact that it will have on licensed firearms owners in New South Wales. We question how much illegal manufacture of firearms or firearms parts is actually taking place that would warrant a person to be charged for being in possession of ordinary everyday objects that could be used in the manufacture of firearms and/or firearms components. This bill will have far-reaching impact on our members and their businesses due to the interpretive nature of the bill, the automatic presumption of guilt and the loss of a person's ability to consult with legal advice when being questioned by the police.. We strongly oppose this bill.

Mr HOWDEN: The Federation of Hunting Clubs thanks the Committee for the invitation to appear today. We are extremely concerned with the proposals in this bill, and the ramifications for our members in the shooting community across the State. It is ludicrous that a criminal offence should exist for being in possession of ordinary everyday objects because they could be used in the manufacture of firearms and/or firearms components. This bill will have an impact on our members due to its discretionary and interpretive nature, the presumption of guilt and the loss of a person's ability to remain silent while being questioned by the police. We strongly oppose this bill.

The CHAIR: Thank you. Mr Layland, have you got a separate statement?

Mr LAYLAND: No.

The Hon. ROSE JACKSON: I am unsure whether you have heard some of the evidence that we have received throughout the course of earlier today. Obviously, starting off with the police, everyone has made clear that the intention of this bill is to do none of the things that you are concerned about—albeit they may be an unintended consequence of the bill. The intention of the bill is to try and keep a step ahead of technological changes, such as 3D printing and other elements, that are being exploited by organised criminals to manufacture weapons. The police provided evidence that prosecutions had failed against people who had gun parts that they believed were to be used by organised criminal elements because the current manufacture provisions were not tight enough. The suggestion has been put before most witnesses by the Chair, and given some support by others, that it should be made clear, perhaps through an amendment, that individuals who have gun licences are able to make minor modifications on their weapons to keep them in good order. If such an amendment were to be included to provide that clear assurance that they were not the intended target of prosecution, would you change your strong opposition to the bill?

Mr BRITTON: I think that I would. Based on the South Australian Act—I think there are some quite learned points we can take from that. In my involvement with the Commonwealth and Minister Wood, I have discussed at length that anyone can import firearms parts in New South Wales with a permit issued by the NSW Police Force on behalf of the Australian Border Force, and that that should be restricted to dealers who have a requirement under the legislation to say that these parts went to person X. Whereas I, as an individual licensed shooter, could import 20 trigger assemblies and then sell those said trigger assemblies to someone else with no requirements at all under the current Act. Currently dealers are bound to keep a record of every spring and everything that is sold, because in the Act it says that applies to anything related to a firearm. So yes, for sure, I would if we looked at some amendments that were sensible.

The Hon. TREVOR KHAN: You are promoting the amendments contained particularly in section 37 (4) of the Act?

Mr BRITTON: Yes, 37 (4) of South Australia's. It is actually quite sensible.

The Hon. TREVOR KHAN: For what it is worth, I think that you have got me convinced on that front.

The Hon. ROSE JACKSON: There you go!

Mr BRITTON: That is it. Easy, done!

The Hon. TREVOR KHAN: Well, not quite.

Mr BRITTON: At a Commonwealth level we discussed this at quite some length. The Commonwealth put some stuff in psychotropic drug importation legislation where firearms was included as well. They are looking at that, so that is another thing that we could look at—tightening the import controls that are there.

The Hon. TREVOR KHAN: Because I think that you have got probably all the Committee convinced—even Mr Shoebridge, who is not here—of the proposal of putting something like 37 (4) in the bill. I do not really want to speak for others on the Committee, but at least it would gain my support in terms of a recommendation in terms of this inquiry. That resolves a problem and gives an assurance. I think that even the cops, on reflection, from their evidence today probably understand that dynamic needs to be resolved. The second thing that you raised was with regard to the power of 51K (2) of the bill, which is the police requiring some information. Mr Howden, I think that is where you have raised concern as well. Is that right?

Mr HOWDEN: That is correct. Anybody who has been questioned by the police—and I am not a legal expert, so I would like the ability to consult with a legal expert before I answer their questions.

The Hon. TREVOR KHAN: What questions do you think are covered by that provision? I am not trying to be tricky here, but on my first reading I think that I had the same reaction as you. It seems to me that that provision is directed particularly towards the criminals. They have got a mobile phone and the cops want to get into that mobile phone. It really seems to be directed towards getting the password for or access to the computer or mobile phone. Some people have referred to the key to the safe, but it is limited to those style of activities and that style of information. Does that give you a cause for concern, if that is what is being demanded?

Mr HOWDEN: It does. I want to know whose judgement it is going to be to make my phone or computer important to an investigation.

The Hon. TREVOR KHAN: In many of these cases, that is probably the absolutely essential part of it in the manufacture exercise. It will be for the cops to decide whether it is relevant to their investigation. I do not think there is any doubt of that in this provision.

Mr HOWDEN: And everybody will have a different interpretation of what is important.

The CHAIR: In your experience, are police informed and educated, and do they enough when it comes to firearms-related inquiries with licensed firearms owners to get it right?

Mr HOWDEN: In my own personal experience of dealing with the police for inspections and things, there is a little bit of information lacking on their behalf. They are not au fait with firearms. They are there to do a job in a licensing capacity.

The CHAIR: Anyone want to elucidate on that?

Mr HOWDEN: I had an incident where I had a firearms inspection recently, and there was discussion on a particular firearm that I had. The information the police had about the serial numbers did not match, but I had evidence to say that they did. After I clarified it with the licensing sergeant, she had no idea how to rectify the problem. The fact is I was assured that the problem had been fixed five years before in my previous inspection, but it had not been done.

The CHAIR: That is not uncommon.

The Hon. TREVOR KHAN: Mr Britton, what do you think of the proposal, if it is restricted to getting passwords et cetera relating to an offence under 51J?

Mr BRITTON: I would have to agree with you, it is more a move towards trying to get information from the phone or contacts in relation to the investigation. We have got to put some principles around it so that there is fair and equal for anyone who is caught up in this, especially if someone is in company with someone where they might have no idea of what is going on and they are subject to search and seizure. If you are a crook, you are a crook—that is the bottom line—but I would like to see some safeguards so that they just do not grab someone's phone and say, "Oh, because you have got a schematic"—every firearm that I sell in my shop has a book in it that has a schematic diagram or a breakdown of parts. So where do we stop? If they see that they think, "Oh, okay, hang on—what have you got that on your phone for?"

The Hon. TREVOR KHAN: It has to be more. If you go into section 51J, I think it is subsection (4) that deals with precursors. But if you look at section 51J (1), I think any reasonable interpretation is that you have to have more than a schematic. It has to be involved in the manufacture of a part at its simplest.

Mr BRITTON: Yes.

The Hon. TREVOR KHAN: It may be illegal to have a blueprint under an absolutely separate section but section 51J is related to a blueprint, milling machine, mould or whatever involved in the manufacture.

Mr BRITTON: Yes.

The Hon. TREVOR KHAN: That is problematic for people you represent if you do not have the 37 (4) provision that we have talked about. But if you put the 37 (4) provision in, I think it then creates a piece of legislation that is targeted towards the crims.

Mr BRITTON: Yes, because there is a balance. At the end of the day, in my experience, the police know where all of the dealers and firearms owners are. They do not know where the crooks are but it seems that we can sometimes be an easy target.

The Hon. TREVOR KHAN: That is right. I am not one who says, "Look, the cops come along and say they are not targeting the lawful owners of firearms and that's it". We have to look towards the bill and ensure that any provision that ensures that this is targeted in the right direction is contained within the bill and not motherhood statements from coppers who we see before the inquiry, as good as they are.

Mr BRITTON: No, exactly. Yes.

The Hon. TREVOR KHAN: Those ones might be great, but you do not know who will replace them and what they will be like.

Mr BRITTON: Correct.

The Hon. TREVOR KHAN: You have me onside in that regard.

The CHAIR: You can contradict me if you like but to further what Mr Khan is saying, in many cases you experience interrogations by police in relation to firearms matters where they have no basic understanding whatsoever of the firearms themselves or the terms and conditions under which you hold them. That is not a failure of the individual police officer but of training and the Police Force itself. Were either of your organisations consulted as stakeholders in relation to the preparation of this bill?

Mr HOWDEN: No.

Mr BRITTON: No.

The CHAIR: Do you think you should have been?

Mr HOWDEN: Absolutely.

Mr BRITTON: Yes. When we had the legislative working group around this bill that the Chair championed quite some time ago we discussed repairs, maintenance and minor manufacturing. We kind of got bogged down on the word "minor" and getting some different definitions around maintenance. What becomes minor or major? What experience do you have to do those jobs? In the Act, only security companies and police are actually legislated that they have to have their firearms serviced by an approved person. It would have been good to actually get that back on the road. From my perspective, we put quite a lot of good things up but did not get over the line.

The CHAIR: Are these working groups still functioning?

Mr BRITTON: Not to my knowledge, no. We certainly have not been contacted.

The CHAIR: When did they cease?

Mr BRITTON: I think it would be two years ago now, or a year and a half.

The CHAIR: As Mr Britton said, I was actually instrumental in helping set those groups up over seven years ago for precisely this reason: proper consultation and proper discussion. I know you were involved in that, Mr Britton, and I think Mr Howden was too.

The Hon. TREVOR KHAN: He is a plant, is he?

The CHAIR: No, the whole idea of it was that there were three or four working groups looking at various aspects and advising the officer in charge of the registry. The idea was to come up with solutions in relation to these things after discussion and make recommendations. As you said—correct me if I am wrong that these discussions were had—there were various recommendations for improvements, streamlining and suggested wordings. I was not involved in any of the detail of that. I never attended it. I think apart from the first meeting or one of the presentations, I was not a party to any of those processes but my view is that they were constructive. Would you agree?

Mr BRITTON: They were. I must admit for the record that our association has quite a substantial working relationship with the registry. We have a quarterly meeting with Commander Bell and some other managers up there where we thrash out issues that we have. It is a busy place and it has not been easy sometimes but I would like to think that we have a healthy working relationship. They do listen to us and they do consult us on other matters, but I think that we need to get the working groups back on track and some of this sort of stuff could get funnelled back up. For the finer detail of it—like 37 (4), which we are talking about today—we would have come back and said, "Hang on a second; we need to look at other stuff".

The Hon. MARK BUTTIGIEG: This lack of formal consultation has been a recurring theme now through what appears to be channels that formally existed previously. What was the schism? Two years ago, what happened? Did they just write to you and say that it is not happening anymore or did they just stop communication?

Mr BRITTON: To be honest, it was just no communication. I think it was the command changeover. Obviously it is quite a busy place and there was a whole of other stuff going on. We had been heavily involved in the new dealers automation system that I have had a fair bit of input in, which is working really well. There are some very positive outcomes that we have had with the registry. There are some not so positive, but in my personal opinion the positive outcomes are streets forward in our space. Probably not in the licensing space, but in our space we are doing quite well.

The Hon. MARK BUTTIGIEG: For such a significant piece of legislation you would think that major stakeholders on the other side of the equation, so to speak, would have been co-opted in. It seems as though they were not.

Mr BRITTON: No, there was certainly no consultation with us prior to the bill being placed.

Mr HOWDEN: I think we could have given some valuable insight and experience to the drafting of the bill had we been consulted.

The Hon. MARK BUTTIGIEG: Clearly.

The Hon. TREVOR KHAN: This is not the first piece of legislation where there is criticism by stakeholders about the level of consultation. I have to tell you that if you get the Law Society or the Bar Association in, they will complain every time. If you consult with them, they will never agree with you either. But I have to say that is the nature of government. It is pretty rough-and-ready at times.

Mr BRITTON: The thing for us is that we are actually here in the tent talking to you guys about this. We are not on the outside; we are actually here working with you as licensed dealers, shooters and individuals that have a vested interest. We want the bad people out of this industry. There is no doubt that it will be a big job. But certainly I think every firearms owner would be in the same boat as me, saying that we have no time for crook dealers or crook individuals who break the law.

Mr HOWDEN: I agree with you.

The Hon. TREVOR KHAN: Can I just say that you have come at the wrong end of the day. We were convinced halfway through the day. Do not feel that it has not been worthwhile. It has been a worthwhile day.

Mr BRITTON: No, I appreciate the time, for sure.

The CHAIR: Thanks very much for coming. It has just confirmed what we thought was the situation. You can correct me if I am wrong but I am sure you will agree that in the enlightened self-interest of all law-abiding shooters, the best thing to have is a strong firearms registry that deals fairly and properly and on a timely basis with all licensed shooters—whether they be hunters, target shooters, dealers or club armourers. I think that you would also agree with me that that is not actually happening. Anyway, thank you very much for coming.

(The witnesses withdrew.)

The Committee adjourned at 15.05.