



Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019

Report No. 53, 56th Parliament
Legal Affairs and Community Safety Committee
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Legal Affairs and Community Safety Committee

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Abbreviations

Bill	Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019
committee	Legal Affairs and Community Safety Committee
Criminal Code	<i>Criminal Code Act 1899</i> (Qld), schedule 1
FDAQ	Firearms Dealers Association - Queensland Inc.
FLP or FLPs	fundamental legislative principle or fundamental legislative principles
FPO or FPOs	firearms prohibition order or firearms prohibition orders
Legislative Standards Act	<i>Legislative Standards Act 1992</i> (Qld)
OQPC	Office of the Queensland Parliamentary Counsel
PHAA	Public Health Association of Australia
POQA	<i>Parliament of Queensland Act 2001</i>
QLS	Queensland Law Society
WLSQ	Women's Legal Service Queensland
Shooters Union	Shooters Union Queensland Pty Ltd
Weapons Act	<i>Weapons Act 1990</i> (Qld)

Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank Mr Trevor Watts MP, Shadow Minister for Police and Counter-Terrorism and Shadow Minister for Corrective Services, and our Parliamentary Service staff.

I commend this report to the House.



Peter Russo MP

Chair

Recommendation

Recommendation

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The committee recommends that the Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019 not be passed.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility are:

- Justice and Attorney-General
- Police and Corrective Services
- Fire and Emergency Services.

The POQA provides that a portfolio committee is responsible for examining each bill in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles.²

The Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019 (Bill) was introduced into the Legislative Assembly by Mr Trevor Watts MP, Member for Toowoomba North, Shadow Minister for Police and Counter-Terrorism and Shadow Minister for Corrective Services, and referred to the committee on 1 May 2019. The committee is to report to the Legislative Assembly by 1 November 2019.

1.2 Inquiry process

On 3 May 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. Nine submissions were received by the committee. See Appendix A for a list of submitters. The committee received written advice from Mr Watts MP dated 8 August 2019 in response to matters raised in submissions.

The committee received a public briefing about the Bill from Mr Watts MP on 13 May 2019.

On 19 August 2019, the committee held a public hearing on the Bill. See Appendix B for a list of witnesses.

The submissions, the correspondence from Mr Watts MP, and the transcripts from the briefing and the hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The policy objectives of the Bill are to strengthen the legislative framework pertaining to weapon and firearm crime by:

- increasing current penalties for certain weapon and firearm offences
- introducing new offences
- introducing a new legislative framework to prohibit high risk individuals from acquiring, possessing or using a firearm.³

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

² *Parliament of Queensland Act 2001*, s 93(1).

³ Explanatory notes, p 1.

The policy objectives would be achieved by amending schedule 1 of the *Criminal Code Act 1899* (Qld) (Criminal Code), the *Police Powers and Responsibilities Act 2000* (Qld) and the *Weapons Act 1990* (Qld) (Weapons Act).⁴

During the Introduction speech, Mr Watts MP provided the following additional background to the Bill:

*Queensland is falling behind the majority of Australian jurisdictions when it comes to firearm legislation designed to protect our community. The community cannot continue to live in fear and suffer at the hands of violent offenders. It is the primary objective of any competent government to keep its citizens safe. No member of the Queensland community should be living in fear and suffering at the hands of violent offenders. In other states, there are strong and workable laws that have been in place for many years. That is why the LNP is introducing these strong laws to ensure we have a framework that offers the strongest protection for the Queensland community.*⁵

1.4 Private Member consultation on the Bill

The explanatory notes provide that consultation with external stakeholders was undertaken on the Bill. However, no additional information was provided in the explanatory notes or during the public briefing.

A number of submitters raised concern that they were not consulted on the Bill. For example, the Firearms Dealers Association of Queensland Inc. (FDAQ) stated:

*... we are disappointed that there was no consultation with us prior to presentation to the Queensland Parliament.*⁶

Additionally, the Shooters Union Queensland Pty Ltd (Shooters Union) commented:

There was ... no genuine stakeholder consultation, no notice was given of the Bill, and no attempt was made to seek advice from those with the expertise to advise on the good points and pitfalls of the proposed legislation.

*Had there been consultation, many of the issues in this submission would have been addressed prior to drafting and much better and more meaningful legislation would have resulted. Further, there are far more inconsistencies, traps, potential misinterpretations and misrepresentations in existing legislation that should have been addressed, had the real intention been to propose workable sensible realistic legislation.*⁷

During the public hearing a number of witnesses also referred to there being a lack of consultation on the Bill. For example, Mr Graham Park, President of the Shooters Union, re-iterated his concerns in this regard during the public hearing:

*The Shooters Union Queensland fully supports the stated intent of this proposed legislation; however, we believe that, due to a lack of consultation with stakeholders with technical ability to give some clarity to certain areas, it misses the mark in certain areas and could well have been a vastly better bill in its writing, because we believe that it is open to unintended consequences.*⁸

Ms Angela Lynch AM, Chief Executive Officer from the Queensland Women's Legal Service (QWLS), also stated that she was not consulted on the Bill prior to it being introduced.⁹

⁴ Explanatory notes, p 1.

⁵ Queensland Parliament, Record of Proceedings, 1 May 2019, p 1338.

⁶ Submission 4, p 3.

⁷ Submission 6, p 3.

⁸ Public hearing transcript, Brisbane, 19 August 2019, p 1.

⁹ Public hearing transcript, Brisbane, 19 August 2019, p 5.

Mr Jade Cleaver, President of the FDAQ, advised during the public hearing that the organisation had been called just prior to the Bill being introduced but there was no consultation.¹⁰

Mr Stephen Bendle, Advocacy Manager of the Alannah & Madeline Foundation also stated that he was not aware of any consultation on the Bill.¹¹

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation

The committee recommends that the Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019 not be passed.

¹⁰ Public hearing transcript, Brisbane, 19 August 2019, p 7.

¹¹ Public hearing transcript, Brisbane, 19 August 2019, p 9.

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

2.1 Firearm prohibition orders

2.1.1 Proposed amendments

The Bill proposes to insert a new Part 5A 'Firearms prohibition orders' (FPOs) into the Weapons Act. Under these provisions, the Weapons Act will be amended to include a new legislative framework aimed at preventing a 'high risk person from acquiring, possessing or using a firearm'.¹² Under the framework, the commissioner may make a FPO against a person if, in the opinion of the commissioner the person is not fit, in the public interest, to have possession of a firearm, or the person is a participant in a criminal organisation. The Bill sets out in detail the effect of a FPO including:

- a person subject to a FPO must not acquire, possess or use a firearm or ammunition, and must not have any firearms or ammunition kept at their place or residence
- a person subject to a FPO must immediately surrender to a police officer all firearms and ammunition in that person's possession
- a person subject to a FPO cannot attend a licensed firearm dealer, shooting range or club, arms fair or approved historical society
- a person must not supply or give possession of a firearm to another person with knowledge that that person is subject to a FPO
- a person who has possession of a firearm must not, without reasonable excuse, be in the company of a person subject to a FPO.¹³

The Bill also sets out a range of offences with a range of prison sentences with a maximum penalty from 4 to 15 years upon the breach of a FPO.¹⁴

2.1.2 Issues raised by stakeholders

A number of submitters supported the new FPO provisions.¹⁵ For example, the WLSQ stated that it supported the Bill 'as it relates to the introduction of firearms prohibition orders in Queensland'.¹⁶ The Public Health Association of Australia (PHAA) noted that:

*... the creation of FPOs will bring legislation in Queensland into alignment with New South Wales, Victoria, South Australia and Tasmania, thereby increasing national consistency in firearms regulation.*¹⁷

The Catholic Women's League Queensland Inc submitted that it fully supported the Bill in relation to the provision of the commissioner with the power to make FPO assessments.¹⁸

However, the Queensland Law Society (QLS) raised concerns about the breadth of the powers conferred on the commissioner to impose FPOs. The QLS suggested that the FPO regime be amended

¹² Explanatory notes, p 1.

¹³ Clause 15.

¹⁴ Clause 15; explanatory notes, pp 1-2.

¹⁵ See submissions 2, 7, 9.

¹⁶ Submission 2, p 1.

¹⁷ Submission 7, p 5.

¹⁸ Submission 9, p 3.

such that a FPO is ‘imposed by a judicial officer at the request of police, supported by appropriate evidence.’¹⁹

Similar concerns were raised by the Shooters Union who submitted that ‘applications for a FPO should be taken to a court or tribunal for approval, rather than [the] police, even the Commissioner, having authority to approve’.²⁰

The FDAQ also submitted that it had ‘serious concerns’ about the police commissioner being able to make a FPO without recourse to a court or tribunal:

*We understand an emergent situation may require quick action, but even in that case, confirmation by an independent justice process must be included. We further believe that an appeals process for decisions of police must be a part of any legislation relating to firearms.*²¹

The QLS also noted the requirement that a person subject to a FPO must immediately surrender to a police officer all firearms, prohibited things and ammunition for any firearm in possession of the person ‘is not practicable if the person is not served at their home or other place at which they store firearms’.²² The QLS proposed that:

*... the more appropriate wording would be ‘as soon as practicable but no longer than one day’ unless the person is served at home, in which case the requirement to surrender immediately is appropriate but should also make allowance if the person has a reasonable excuse for not doing so.*²³

The QLS also pointed out that:

*FPOs may be imposed on persons with appropriate licences who have acquired weapons lawfully and who have not necessarily committed an offence. Requiring that the weapons be forfeited for no compensation is an arbitrary deprivation of lawfully acquired property. The potential imposition on individual rights is potentially even more egregious if the person subject to the FPO earns their living in some way related to weapons and has previously been appropriately licensed to do so but is then served with a FPO.*²⁴

Another issue of concern to the QLS related to the effect on an individual’s business while a review is pending:

*While QLS recognises that FPOs are only intended to be imposed on perceived ‘high risk individuals’ who, in most cases, would presumably not have been granted a dealer’s licence, armourer’s licence or theatrical ordnance supplier’s licence, the inability of these people to carry on business while awaiting review if they are served with a FPO has a significant effect on their rights. This reinforces the need for proper oversight of the imposition of FPOs, including by ensuring that the drafting of FPO powers is clear and that FPOs are granted by judicial officers. Proper provision also needs to be made for the status of surrendered property.*²⁵

The Shooters Union also noted in its submission that ‘there is no mention of what happened with the person’s property pending the review’.²⁶

¹⁹ Submission 8, p 2.

²⁰ Submission 6, p 7.

²¹ Submission 4, p 7.

²² Submission 8, p 6.

²³ Submission 8, p 6.

²⁴ Submission 8, p 7.

²⁵ Submission 8, p 7.

²⁶ Submission 6, p 8.

The FDAQ submitted that rather than require the surrender of all firearms, prohibited things and ammunition to a police officer immediately:

*... it would make more sense and be more consistent with other parts of the Act where a person is applying for a review of the decision, to be permitted to specify a licensed firearm dealer or other licensed person to whom the firearms and other paraphernalia should be delivered to hold them or sell them if the FPO is made permanent. If it's revoked on application for review, the person can then take back possession of his property.*²⁷

The QLS also highlighted that there was no provision in the Bill for the following:

- expiry of the FPO
- removal of the FPO where its imposition was based on a control order being in place and the control order has lapsed (control orders lapse after 5 years)
- removal of the FPO based on being a participant in a criminal organisation and the person ceases to be a participating in a criminal organisation
- removal of the FPO on application of the person to which it applies.²⁸

WLSQ suggested that 'consideration should be given to creating an offence for the person who received or holds weapons in their possession on behalf of a person who is seeking to defeat a firearms prohibition order'.²⁹

Rape & Domestic Violence Services Australia suggested that a Firearms Prohibition Order Register be established:

*... where all firearms prohibition orders can be centrally recorded, and this information can easily be accessed by law enforcement officials and interagency departments. This would be of particular benefit when a domestic violence order is first made, and Police may be able to access this Register to see if the respondent is subject to a Firearms Prohibition Order.*³⁰

In addition to a FPO Register, Rape & Domestic Violence Services Australia also 'encouraged the Queensland Government to take the proactive step in further developing the National Firearms Identification Database'.³¹

The Shooters Union made a similar suggestion:

*This legislation must, in our opinion, include a prohibited persons register AND the ability of clubs, dealers and armourers to enquire of Weapons Licensing Branch about people with FPOs. Although the onus is on the person with the FPO, in the case of a dangerous person, failure to provide the information to these people/groups may put them in a dangerous position, should they refuse entry. After all, people with a FPO should, by definition, be violent or untrustworthy or mentally unstable people who are likely to constitute a danger if they are allowed access to firearms.*³²

The Shooters Union also raised concerns about the proposal under the Bill that a person subject to a FPO may not attend ranges, dealers, armourers' premises or an arms fair:

²⁷ Submission 4, p 7.

²⁸ Submission 8, p 8.

²⁹ Submission 2, p 3.

³⁰ Submission 5, p 3.

³¹ Submission 5, p 3.

³² Submission 6, p 8. The FDAQ also made a similar point in its submission (submission 4, p 7).

*Arms fairs these days often don't have a lot of firearms and ammunition. They do have lots of militaria (badges, patches etc), binoculars and scopes, collectibles, antiques of all sorts, furniture, jewellery etc etc. Many people go to an arms fair with no interest at all in firearms. It is unreasonable to prevent someone in this situation from attending an arms fair on pain of a 10 year gaol term. If he does not mention to his house-mate or potential house-mate that he has a FPO, he can go to goal for 4 years.*³³

In relation to the requirement under proposed new s 141D(8)(e) that a person who is subject to a FPO must not attend, without reasonable excuse, the premises of an approved historical society, the FDAQ stated:

*This clause is overly restrictive and may mean that people with a FPO cannot attend an RSL. Veterans who are not seen to be fit and proper for a Weapons Act license because of PTSD, can no longer attend a RSL where inert service firearms are on display?*³⁴

In relation to proposed new s 808AA which deals with the review of additional powers for FPOs, the FDAQ noted that the review report is only required within the first 3 years after commencement of the operation of the powers for FPOs. The FDAQ suggested in its submission that:

*... the Minister should receive the public interest monitor report within the first 2 years of the commencement of the operation of the powers, with a requirement for an ongoing annual report.*³⁵

2.1.3 Response from Mr Watts MP

In response to the submissions made in respect of the proposed FPO framework, Mr Watts MP stated:

The Bill inserts a new Part 5A 'Firearms prohibition orders' into the Weapons Act 1990. The overriding objective of the FPO legislative framework is to prevent a high-risk person from acquiring, possessing or using a firearm.

As outlined in the Bill, the commissioner may make an order (FPO order) against a person if, in the opinion of the commissioner the person is not fit, in the public interest, to have possession of a firearm or the person is a participant in a criminal organisation.

With respect to the making of an FPO order, the LNP established a framework based on elements contained in other Australian jurisdictions for the purpose of achieving consistency. In particular, in New South Wales, the Commissioner may make an FPO against a person if, in the opinion of the Commissioner, the person is not fit, in the public interest, to have possession of a firearm. In South Australia, the Registrar may issue an FPO order against a person who is or has been a member of, or a participant in, a criminal organisation.

*I acknowledge the feedback with respect to aspects of the FPO framework and will consider the recommendations made by stakeholders.*³⁶

2.2 Insertion of new offences

2.2.1 Proposed amendments

The Bill proposes to insert the following new offences in the Weapons Act:

³³ Submission 6, p 7.

³⁴ Submission 4, p 8.

³⁵ Submission 4, p 5.

³⁶ Mr Trevor Watts MP, correspondence dated 8 August 2019, p 2.

Firing at dwelling houses, buildings or vehicles (proposed new s 57A)

This new offence imposes a maximum penalty of 14 years imprisonment for any person who fires a firearm at a dwelling house, another building or a vehicle with reckless disregard for the safety of any person. A maximum penalty of 16 years imprisonment would apply to any person who, during a public disorder or in the course of an organised criminal activity, fires a firearm at a dwelling-house, another building or a vehicle with reckless disregard for the safety of any person.³⁷

The following rationale for this new offence was provided by Mr Watts MP at the public briefing:

*The LNP also recognises a need for the specific offence of firing at houses, buildings or vehicles being targeted due to the ongoing threat posed by outlaw motorcycle gangs and other organised criminal gangs. The drive-by shooting offence reflects the New South Wales offence and carries a maximum penalty of 14 years imprisonment, which is increased to 16 years if the offence is committed during a public disorder incident or in the course of organised criminal activity.*³⁸

Possession of digital blueprints for manufacture of firearms (proposed new ss 67A and 67B)

This new offence imposes a maximum penalty of 14 years imprisonment for any person who possesses both a digital blueprint for the manufacture of a firearm and a 3D printer, electronic milling machine or other device capable of manufacturing the firearm. The offence does not apply to a person who is authorised by an armourer's licence to manufacture the firearm concerned or is acting in the ordinary course of the person's duties as a member, other than a police officer, of the Queensland Police Service.³⁹

Section 67B contains the following list of defences for the offence:

- the defendant did not know, and could not reasonably be expected to have known, that the defendant possessed the digital blueprint concerned
- the digital blueprint concerned came into the defendant's possession unsolicited and the defendant, as soon as the defendant became aware of its nature, took reasonable steps to get rid of it
- the conduct engaged in by the defendant was of public benefit and did not extend beyond what was of public benefit
- the conduct engaged in by the defendant was necessary for, or of assistance in, conducting scientific, medical, educational, military or law enforcement research.⁴⁰

At the public briefing, Mr Watts MP provided the following background on these provisions:

*The bill also proposes to insert an offence of possession of digital blueprints for manufacture of firearms. The offence is modelled largely on the New South Wales offence but, unlike the New South Wales offence, it requires the offender to not just be in possession of a blueprint but also have possession of equipment capable of manufacturing the firearm. The purpose of that is so that we do not capture an over-inquisitive person who has no intent but is specifically interested in the digital printing process. The LNP considers that the additional element is an important measure to ensure that people who download a digital blueprint merely out of genuine interest and have no intention of manufacturing a firearm are not caught under this offence. This new offence will apply to those who have the intent to manufacture.*⁴¹

³⁷ Explanatory notes, pp 2-3.

³⁸ Public briefing transcript, Brisbane, 19 August 2019, p 2.

³⁹ Explanatory notes, p 3.

⁴⁰ Explanatory notes, p 3.

⁴¹ Public briefing transcript, Brisbane, 19 August 2019, p 2.

Intent to resist arrest (proposed new ss 317AA and 317AB)

The Bill also inserts the following new offence provisions specifically targeted at the discharging of a firearm or use or possession of a weapon with the intent to resist or prevent the lawful arrest or detention of the person or another person:

- Section 317AA: Discharging firearm or other loaded arms with intent to resist arrest which carries a maximum penalty of 25 years imprisonment.
- Section 317AB: Use or possession of offensive weapon or instrument to resist arrest which carries a maximum penalty of 15 years imprisonment. The penalty is increased to 18 years imprisonment if the person commits an offence in company of 1 or more persons.⁴²

2.2.2 Issues raised by stakeholders

General comments regarding proposed new offences

The QLS raised the following concerns regarding the need for the proposed new laws and the stipulated penalties:

New offences should only be created where there is evidence that existing laws are inadequate. There are existing provisions in Queensland law applicable to the conduct intended to be addressed by the above proposed new offences and some of the new offences relating to FPOs (so far as that conduct is undertaken by persons who are not appropriately licensed). QLS is not aware of any evidence to suggest that new specific offences are required. Additional offences will complicate the statute book and add complexity to the work of the police.

If the concern is that existing laws do not contain sufficient penalties to account for specific aggravating circumstances (such as participation in a criminal organisation), then amendment of the existing provisions would be a more appropriate course. In any event, whether introducing new offences or amending the penalties for existing offences, parliament must ensure that penalties are proportional to the conduct being punished and that the law allows appropriate scope for the court to take into account the facts of each case. There are several instances within the Bill where the proposed maximum penalties may be excessive in the absence of evidence suggesting that existing penalties are not properly reflecting community expectations or acting as a sufficient deterrent. QLS urges that any changes to offences and penalties be based on appropriate evidence.⁴³

Firing at dwelling houses, buildings or vehicles (proposed new s 57A)

The FDAQ raised the following concerns about this proposed new provision:

Subsection 2 talks about firing a firearm at a house, another building or a vehicle with reckless disregard for the safety of any person during a public disorder, which is defined as a riot or other civil disturbance that gives rise to a serious risk to public safety but it could be argued that the section could refer to police firing at a house, other building, vehicle etc. Subsection 3 specifically clarifies that it is not police, saying "A person must not, in the course of an organised criminal activity" ...

These sections appear to simply make it more illegal than it already is to fire at a building or vehicle, by referring to a public disorder or criminal activity while doing the firing. Such things are already illegal, therefore the insertion of these sections is not required.⁴⁴

The Shooters Union also was concerned about the necessity of this proposed new provision:

⁴² Explanatory notes, p 3.

⁴³ Submission 8, p 2.

⁴⁴ Submission 4, p 6.

*This section makes it illegal to disregard the safety of any person when firing a firearm at a house, building or vehicle, but particularly during a public disorder or an organised criminal activity. We question this insertion. It appears to be nonsense and there is no definition of reckless disregard. There are far more important areas of legislation that should be amended than this.*⁴⁵

The QLS raised similar concerns about whether this provision is necessary:

*Once again, QLS is not aware of any evidence to suggest that further laws are required where there are already laws in place regarding misuse of firearms. The conduct intended to be addressed by the proposed new law is already unlawful according to section 56 to 58 of the Weapons Act, though amendment would be required if parliament is concerned about increasing penalties for conduct committed in particular circumstances.*⁴⁶

The QLS also commented on the drafting of the proposed provisions:

*In terms of drafting, QLS queries the use of 'fire a firearm' given that the term used throughout the Weapons Act is 'discharge'. Clarity would be promoted by the consistent use of language. QLS is also concerned about the inclusion of 'reckless disregard for the safety of any person' given that 'reckless disregard' is an undefined concept within the criminal law in Queensland.*⁴⁷

In terms of the proposed penalties under the Bill, the QLS noted the following:

*QLS notes that the proposed maximum penalties are particularly high compared to others in the Weapons Act. We reiterate that punishments must be proportional to the proscribed conduct.*⁴⁸

Possession of digital blueprints for manufacture of firearms (proposed new ss 67A and 67B)

Firearm Owners United raised the following issues with these proposed provisions:

Our primary concern with this legislation is the prohibition of what are termed as 'digital blueprints' of firearms. The bill as drafted has a broad definition of what constitutes a digital blueprint, and this will undoubtedly capture activities of licensed shooters of a non-nefarious nature.

It is not uncommon for licensed shooters to hold digital files that detail the designs of firearms they own, where these files are often kept as part of assembly/break down documentation as well as for the measurement of critical tolerances to determine wear and serviceability.

It must be noted that the definition of a firearm in the Weapons Act includes major components of such, thus a drawing of a firing pin for example, when held in paper would be unregulated, but when scanned would become regulated. It is not uncommon for more obscure firearms for licensed shooters to measure and generate component drawings with the required specifications, then send those specifications to a licensed armourer to be manufactured. Were that shooter to then co-incidentally own an 'electronic milling machine' or '3d printer' that would be capable of making the part then they would commit an offence. Considering this would be irrespective of their intent to manufacture firearms or components illicitly, we feel this would be unjust.

Furthermore, we have been contacted by people involved in the industry who are currently entertaining the prospect of entering the market to produce firearms for civilian usage. Presently they do not possess an armourers license, and as such constrain themselves to activities they may legally undertake without such a license. However they intend when they have their designs ready for production to negotiate the red tape and substantial expense to obtain the required

⁴⁵ Submission 6, p 6.

⁴⁶ Submission 8, p 5.

⁴⁷ Submission 8, p 5.

⁴⁸ Submission 8, p 5.

*license to actually commence prototyping and production. This bill would criminalise their actions and force them into the untenable situation of destroying their existing design work, then obtaining an armourers license at significant expense before restarting the design process. Or as a workaround, they would have to move away from CAD software and design their projects on paper. Neither of these solutions would be economically viable.*⁴⁹

Firearm Owners United provided the following suggested changes to the Bill:

Our suggestion would be to scrap this aspect of the legislation completely, given that the NSW legislation on the matter (as referenced in the explanatory notes) has so far only been used to prosecute a young man for the production of regulated replica firearms for use in his costumes. Hardly a serious menace to public safety, and furthermore was adequately dealt with by the legislation regarding unlawful manufacture of regulated items.

The illicit manufacture of firearms is already adequately captured under the terms of the Weapons Act, and we do not believe that this change will be of any use in actually preventing the unlawful manufacture of firearms. The designs for firearms will remain readily available on the internet regardless of what occurs in Australia, and with technologies like VPNs and TOR the ability of law enforcement to monitor who downloads these files is borderline non-existent.

Our final suggestion on the matter, would be if the legislation were to be introduced the term 'digital blueprint' is significantly refined. Instead of capturing all digital drawings of firearms we would suggest that it instead capture computer code capable of being used in a machine for the production of a firearm.

*CNC manufacturing machines universally do not accept random digital models or drawings and faithfully reproduce that design. Instead they must be programmed with code specific to that machine and manufacturing technology. This code is generically called G-code, for 3D printers it can be produced in a reasonably automated fashion using speciality programs; but for more advanced machine like lathes and mills it requires significant expertise in machining to produce usable code, even with the latest software tools.*⁵⁰

The Shooters Union also raised concerns with this aspect of the Bill:

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

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

The penalty is ridiculous and the legislation is unnecessary.

There are defences against the offence, which is at least an attempt to mitigate the possibility of an innocent or accidental offence. However, the defendant has to PROVE his mitigating

⁴⁹ Submission 1, p 1.

⁵⁰ Submission 1, p 2.

*circumstances. We believe the reversal of the onus of proof, wherever it occurs, is a very dangerous thing, no less here.*⁵¹

The FDAQ submitted that ‘since it is already illegal to manufacture a firearm without a licence, the legislation is unnecessary.’⁵² Similarly, the QLS noted that ‘it is already an offence for a person who is not a licensed armourer to manufacture a weapon (section 68)’.⁵³

In relation to the defences provided in proposed new s 67B, the FDAQ commented:

*There are defences against the offence, which is at least an attempt to mitigate the possibility of an innocent or accidental offence, however the defendant has to PROVE his mitigating circumstances. To enforce a penalty here there needs to be some **intent** for misuse of these items combined.*

Collectors collect media and drawings and a lot [of] the collector firearm books now have blueprints of firearms and how they are made or were made in the past. These drawings are now available digitally. The Lithgow Museum even sells such hard copy books, and posters of their original firearm blueprints for our iconic 303.

*So if someone is a collector or a firearms enthusiast with a normal license and is also an engineer is he in breach of the Weapons Act? He has no intent to break the law but by his normal occupation and digital library is made a criminal.*⁵⁴

The issue of intent was also discussed by the QLS in its submission:

*The proposed offence is committed merely by possessing both the blueprint and the means of manufacture, without any element of knowledge or intent and without a reasonable excuse qualification. While the proposed defence in new section 67B does take account of the possibility that the defendant was not aware that they possessed the digital blueprint, this places the onus on the defendant to prove a lack of knowledge. QLS considers that it would be more consistent with fundamental legislative principles for the offence to include knowledge and intent as elements to be proved by the prosecution.*⁵⁵

In relation to the proposed penalties, the QLS commented as follows:

*The proposed offence carries a high maximum penalty of 14 years imprisonment. If the new offence is to be enacted, its penalty should be proportional to the conduct committed and to the penalties provided for similar charges. In circumstances where the most serious manufacture of a weapon offence under section 68 carries a maximum penalty of 10 years imprisonment or 500 penalty units, a maximum penalty of 14 years imprisonment for mere possession of the means to manufacture a weapon is excessive.*⁵⁶

Intent to resist arrest (proposed new ss 317AA and 317AB)

The FDAQ submitted that the addition of proposed new ss 317AA and 317AB was redundant because of existing s 317 of the Weapons Act which states that it is illegal to use a firearm to resist arrest.⁵⁷

The QLS raised similar concerns about the need for these provisions and also discussed the level of penalties proposed:

⁵¹ Submission 6, p 7.

⁵² Submission 4, p 6.

⁵³ Submission 8, p 5.

⁵⁴ Submission 4, p 6.

⁵⁵ Submission 8. P 5.

⁵⁶ Submission 8, p 5.

⁵⁷ Submission 4, p 4.

As set out above, new offences should only be created where there is evidence that existing laws are inadequate. There are other provisions in Queensland law applicable to assaulting or obstructing police officers carrying out their duties and to the misuse of weapons. QLS is not aware of any evidence to suggest that new specific offences are required to address the conduct. If, however, parliament is minded to enact the new offences, QLS offers the following comments.

It is unclear why the language in relation to arrest in the proposed paragraph 317AB(1)(a) 'lawful apprehension or detention' is different to both the name of the section and to the proposed section 317AA, which both refer to 'arrest'. Drafting should be consistent unless there is a reason for the use of different language.

The penalty for the proposed new 317AA (maximum penalty 25 years imprisonment) is very high and brings the offence within the highest category of maximum sentences in the Criminal Code apart from life imprisonment. It also brings the offence within the category of offences that fall within the exceptions to double jeopardy. Parliament needs to carefully consider whether the maximum sentence is proportional to the crime.

The maximum penalties for the proposed new section 317AB (15 years imprisonment or 18 years if committed in company of 1 or more persons) are not in line with any other maximum sentences in the criminal code. Parliament ought to carefully consider whether the maximum sentences should align with other crimes of similar seriousness.⁵⁸

2.2.3 Response from Mr Watts MP

Mr Watts MP responded as follows regarding the concerns raised about the proposed new offence of possession of digital blueprint and device for manufacture of firearms:

The offence does not apply to a person who is authorised by an armourer's licence to manufacture the firearm concerned or is acting in the ordinary course of the person's duties as a member, other than a police officer, of the Queensland Police Service.

The LNP replicated the definition of 'digital blueprint' as contained in the Firearms Act 1996 No 46 [NSW] to achieve consistency with other Australian jurisdictions.

I acknowledge feedback from the Firearms Owners United concerning the definition of 'digital blueprint' and the feedback from the Firearms Dealers Association in relation to the need to include intent as an element of the offence.⁵⁹

2.3 Increasing current penalties for certain weapon and firearm offences

2.3.1 Proposed amendments

The Bill proposes to increase the current penalties for the following weapons and firearm offences.

Punishment of stealing firearm or ammunition

Currently, s 398 of the Criminal Code deals with the 'Punishment of stealing' and also sets out the punishment in relation to 15 special cases of stealing. Clause 15 of s 398 relates to 'Stealing firearm or ammunition' and currently provides for imprisonment for 10 years in the event that the thing stolen is a firearm or ammunition. Under the Bill, the maximum penalty for stealing a firearm or ammunition is increased from 10 years imprisonment to 14 years imprisonment.⁶⁰

During the Introduction speech, Mr Watts MP explained the rationale for this increase in penalty:

Theft from licensed individuals and firearm dealers is one of the most commonly used contemporary methods to move firearms and firearm components from the legal domestic

⁵⁸ Submission 8, p 3.

⁵⁹ Mr Trevor Watts MP, correspondence dated 8 August 2019, pp 1-2.

⁶⁰ Clause 4; explanatory notes, p 4.

*market on to the illicit firearm market. As reported by ACIC [Australian Criminal Intelligence Commission], it is likely that stolen firearms come into the possession of organised crime groups. However, the total number is unknown. ... The intent of increasing the maximum penalty is to deter firearm theft from legitimate owners and, ultimately, hamper the number of legally owned firearms entering the illicit firearms market.*⁶¹

Particular conduct involving a weapon in a public place prohibited

The Bill also increases the penalties for existing offences under ss 57(3) and (4) of the Weapons Act:

- Section 57(3) provides that a person must not, without reasonable excuse, carry in a public place a loaded firearm or a weapon capable of being discharged. The Bill amends the current maximum penalty of 120 penalty units or 2 years imprisonment to 10 years imprisonment.
- Section 57(4) provides that a person must not, without reasonable excuse, discharge a weapon in, into, towards, over or through a public place. The current maximum penalty is increased from 200 penalty units or 4 years imprisonment to 10 years imprisonment.⁶²

Mr Watts MP, during the Introduction speech, explained that these provisions are ‘to bring Queensland in line with other states’.⁶³

2.3.2 Issues raised by stakeholders

General comments regarding increase of penalties

Regarding the increase of penalties for certain firearms and weapons offences generally, the QLS noted concern that the proposals ‘are not justified by sufficient evidence that the current law is not meeting the needs of the community’.⁶⁴

Punishment of stealing firearm or ammunition

In relation to the proposed increase in penalty for stealing a firearm or ammunition, the QLS noted that this amendment:

... would render the maximum sentence in relation to stealing firearms or ammunition identical to the maximum sentence for stealing a firearm intending that it be used to commit an indictable offence (clause 14 of the special cases for section 398).

*Parliament ought to carefully consider whether there should be differentiation between the maximum sentences for the two special cases of stealing. If parliament considers that an identical punishment is appropriate, clause 14 of the special cases ought to be removed as it will be redundant.*⁶⁵

The FDAQ indicated in its submission that although it had ‘requested special penalties for stealing firearms, separate consideration should be given to penalties for stealing ammunition’.⁶⁶ The FDAQ provided the following example to illustrate the point:

For example, Range Operators may be accused of stealing ammunition when collecting ammunition left at a range after everyone else has gone home. This is common practice for Range Operators who hold the ammunition until someone claims it or until the owner is identified. The penalty as suggested is excessive, even at 10 years, for what may well be normal

⁶¹ Queensland Parliament, Record of Proceedings, 1 May 2019, p 1339.

⁶² Explanatory notes, p 4.

⁶³ Queensland Parliament, Record of Proceedings, 1 May 2019, p 1339.

⁶⁴ Public hearing transcript, Brisbane, 19 August 2019, p 14.

⁶⁵ Submission 8, p 3.

⁶⁶ Submission 4, p 4.

*practice. Either the reference to ammunition in this section should be removed completely or separate penalties should apply for stealing ammunition, with recourse to appeal.*⁶⁷

The Shooters Union submitted that it saw ‘no reason to increase this penalty’.⁶⁸ The Shooters Union went on to provide the following example to support its view:

*There may be circumstances where this could result in a person being sent to gaol for 14 years for trying to do the right thing, eg collecting ammunition left at the range after everyone else has gone home.*⁶⁹

Particular conduct involving a weapon in a public place prohibited

In relation to the proposal to increase the penalties for existing offences under ss 57(3) and (4) of the Weapons Act, the QLS submitted:

*This is a significant increase in penalty where no justification has been given in the explanatory notes to suggest that the existing penalties have been inadequate. Further, removal of the court’s ability to impose a fine is a significant change that has not been sufficiently justified.*⁷⁰

The FDAQ submitted that it had no objections to the amendment of the maximum penalty to 10 years; however, it was concerned about the existing definition of public place in the Weapons Act. The FDAQ submitted that the definition of public place should be drafted to ‘exclude a range or private property with the appropriate licences and permissions’.⁷¹

The Shooters Union also raised a similar concern:

*Because of the way the definition is termed, a public place could include a shooting range or private property where it is legal to carry a firearm.*⁷²

2.3.3 Response from Mr Watts MP

In his response to the submissions generally, Mr Watts MP concluded with the following explanation of the objective of the Bill:

As articulated in the Explanatory Speech, the overarching policy objective of the Bill is to strengthen the legislative framework in relation to weapon and firearm crime. This Bill sends a strong message to criminals and organised crime groups that Queensland will not tolerate threatening and intimidating behaviour. This Bill reinforces community safety and deters individuals from committing weapons offences and other associated crimes.

*The proposed provisions in this bill will not only recognise the challenges of modern policing but assist police officers in tackling criminals and organised crime groups.*⁷³

⁶⁷ Submission 4, p 4.

⁶⁸ Submission 6, p 5.

⁶⁹ Submission 6, p 5.

⁷⁰ Submission 8. P 4.

⁷¹ Submission 4, pp 5-6.

⁷² Submission 6, p 6.

⁷³ Mr Trevor Watts MP, correspondence dated 8 August 2019, p 2.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (Legislative Standards Act) states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the FLPs to the Bill. It is considered that cls 3, 11, 12, 13, 14 and 16 of the Bill raise matters of FLP. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 *FPOs - Clauses 14 and 16*

Clause 14 allows the commissioner to make a FPO, which imposes obligations on a person the subject of a FPO, or people interacting with them.

Clause 16 prevents a person the subject of a FPO from carrying on a business.

The rights and liberties of a person, both subject to a FPO and interacting with a person the subject of a FPO, are affected, as significant burdens are imposed on them. The people affected will be prevented from doing certain things, possessing certain items, attending certain places and will also be required to inform others that they are the subject of a FPO. Accordingly, a FPO imposes significant burdens on a person subject to the FPO and also imposes burdens on people who have interactions with a person subject to a FPO.

Fairness and reasonableness

Former committees considered the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.

The explanatory notes recognise this breach of FLP, stating:

While this may be considered particularly coercive in the case of individuals who require firearms for their employment, it is considered justified to ensure the commissioner can respond [to] persons who pose a high risk to the safety of Queenslanders.⁷⁴

The QLS commented in particular on the prohibition on a person subject to a FPO from carrying on a business pending review. The QLS commented:

While QLS recognises that FPOs are only intended to be imposed on perceived ‘high risk individuals’ who, in most cases, would presumably not have been granted a dealer’s licence, armourer’s licence or theatrical ordnance supplier’s licence, the inability of these people to carry on business while awaiting review if they are served with a FPO has a significant effect on their rights.⁷⁵

⁷⁴ Explanatory notes, p 4.

⁷⁵ Submission 8, p 7.

3.1.1.2 *Penalties - Clauses 3, 11, 12, 13 and 14*

As discussed above, the Bill introduces a number of new penalties as well as increasing the penalty for some existing offences.

A penalty should be proportionate to the offence. The OQPC Notebook states, 'Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other'.⁷⁶

Some of the more relevant and significant new and increased penalties introduced under the Bill are set out in the table below.

Clause/Provision	Offence	Penalty
<i>Criminal Code</i>		
Clause 3 Section 317AA	Discharging firearm or other loaded arms with intent to resist arrest	Maximum 25 years imprisonment
Section 317AB	Use or possession of offensive weapon or instrument with intent to resist arrest or prevent investigation	Maximum 15 years imprisonment; or maximum 18 years if in company of 1 or more persons
<i>Weapons Act</i>		
Clause 11 Section 57 (3) and (4)	Carrying in a public place a loaded firearm or weapon capable of being discharged; or Discharging a weapon in, into, towards, over or through a public place	Maximum penalty – 10 years imprisonment [previous penalty was 120 penalty units or 2 years imprisonment or 200 penalty units or 4 years imprisonment respectively]
Clause 12 Section 57A	Firing at dwelling houses, buildings or vehicles: (a) firing at a dwelling house, another building or a vehicle with reckless disregard for the safety of any person (b) firing during a public disorder at a dwelling house, building or vehicle (c) firing in the course of an organised criminal activity at a dwelling house, building or vehicle	(a) maximum 14 years imprisonment (b) maximum 16 years imprisonment (c) maximum 16 years imprisonment
Clause 13 Section 67A	Possession of digital blueprint and device for manufacture of firearms	Maximum penalty – 14 years imprisonment

⁷⁶ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 120.

<p>Clause 14 Section 141D</p>	<p><u>Effect of FPO</u></p> <p>(1) person subject to FPO must not acquire, possess or use a firearm</p> <p>...</p> <p>(3) a person subject to an FPO must immediately surrender all firearms, prohibited things and ammunition in their possession to police</p> <p>(4) a person must not knowingly give a firearm to another person subject to an FPO</p>	<p>(1) maximum 15 years imprisonment</p> <p>(3) maximum 500 penalty units or 10 years imprisonment for a firearm</p> <p>(4) maximum 15 years imprisonment</p>
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Proportion and relevance

Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. The OQPC Notebook states ‘the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy’.⁷⁷

The explanatory notes provide the following justification in relation to the offences imposed in the Criminal Code:

... new section ss 317AA ‘Discharging firearm or other loaded arms with intent to resist arrest’ and section 317AB ‘Use or possession of offensive weapon or instrument with intent to resist arrest or prevent investigation’ and the increase in penalty to section 398 ‘Punishment of stealing’ are considered justified because they are required to enhance community safety in response to the significant risks imposed by weapons crime.’⁷⁸

The QLS made specific comment on the introduction of these provisions into the Criminal Code:

The penalty for the proposed new 317AA (maximum penalty 25 years imprisonment) is very high and brings the offence within the highest category of maximum sentences in the Criminal Code apart from life imprisonment. It also brings the offence within the category of offences that fall within the exceptions to double jeopardy. Parliament needs to carefully consider whether the maximum sentence is proportional to the crime.

The maximum penalties for the proposed new section 317AB (15 years imprisonment or 18 years if committed in company of 1 or more persons) are not in line with any other maximum sentences in the criminal code. Parliament ought to carefully consider whether the maximum sentences should align with other crimes of similar seriousness.’⁷⁹

In relation to the amendments to the Weapons Act, the explanatory notes provided the following justification:

... new section 57A ‘Firing at dwelling houses, buildings or vehicles’, section 67A ‘Possession of digital blueprint and device for manufacture of firearms’ and part 5A ‘Firearms prohibition orders’ are considered justified because they are required to enhance community safety in response to the significant risks imposed by weapons crime.’⁸⁰

⁷⁷ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 120.

⁷⁸ Explanatory notes, p 4.

⁷⁹ Submission 8, p 3.

⁸⁰ Explanatory notes, p 4.

The QLS made the following observation in relation to carrying a loaded firearm in a public place (cl 11):

*This is a significant increase in penalty where no justification has been given in the explanatory notes to suggest that the existing penalties have been inadequate. Further, removal of the court's ability to impose a fine is a significant change that has not been sufficiently justified.*⁸¹

The QLS also commented on the new offence in cl 12 relating to firing at dwelling houses, buildings or vehicles:

*QLS notes that the proposed maximum penalties are particularly high compared to others in the Weapons Act. We reiterate that punishments must be proportional to the proscribed conduct.*⁸²

The QLS further commented on the introduction of a new offence in cl 13 for possession of digital blueprints and devices for manufacture of firearms:

*The proposed offence carries a high maximum penalty of 14 years imprisonment. If the new offence is to be enacted, its penalty should be proportional to the conduct committed and to the penalties provided for similar charges. In circumstances where the most serious manufacture of a weapon offence under section 68 carries a maximum penalty of 10 years imprisonment or 500 penalty units, a maximum penalty of 14 years imprisonment for mere possession of the means to manufacture a weapon is excessive.*⁸³

3.1.2 Administrative power

Clause 14 introduces new s 141C into the Weapons Act. This provision allows the commissioner to make a FPO against a person, if in the commissioner's opinion:

- the person is not fit, in the public interest, to have possession of a firearm, or
- the person is a participant in a criminal organisation within the meaning of the *Penalties and Sentences Act 1992* or is subject to a control order under that Act.

Potential FLP issues

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined. The OQPC Notebook states:

*Depending on the seriousness of a decision made in the exercise of administrative power and the consequences that follow, it is generally inappropriate to provide for administrative decision-making in legislation without providing criteria for making the decision.*⁸⁴

Former committees have taken issue with provisions that did not sufficiently express the matters to which a decision-maker must have regard in exercising a statutory administrative power.⁸⁵

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The OQPC Notebook states:

Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process.

⁸¹ Submission 8, p 4.

⁸² Submission 8, p 5.

⁸³ Submission 8, p 5.

⁸⁴ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 15.

⁸⁵ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 15.

*If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*⁸⁶

Former committees have, in particular circumstances, found provisions removing review under the *Judicial Review Act 1991* unobjectionable if it considered that an adequate alternative review mechanism was provided.⁸⁷

Section 141C of the Weapons Act provides the commissioner with the power to make a FPO against a person. Under the Bill, the commissioner is granted a broad discretion to impose a FPO on a person. The Bill is silent on how the commissioner would receive information to form an opinion and how a person of high risk would come to the attention of the commissioner. The Bill does not provide for more detailed information to be sought in regulations.

The QLS, in its submission, regarded this grant of power unfavourably:

*QLS is concerned that the proposed discretion conferred on the commissioner to impose FPOs is very broad and will allow the commissioner to impose FPOs on persons other than the 'high-risk individuals' referred to in the explanatory notes. The conferral of power on the commissioner, a non-judicial officer, to impose orders based on the undefined notion of 'not fit, in the public interest' or their opinion that the person is a participant in a criminal organisation is not consistent with the rule of law or fundamental legislative principles, which require legislation to have proper regard to the rights and duties of individuals.*⁸⁸

In relation to the criteria, 'not fit, in the public interest, to have possession of a firearm', the QLS provided the following comment:

*QLS notes that the phrase 'not fit, in the public interest' has been adopted from the New South Wales Firearms Act 1996. The phrase is not commonly used and appears to be peculiar to that particular item of legislation. QLS queries why the more common formulation of 'not fit and proper' or 'not in the public interest' (as are used elsewhere in the Weapons Act) have not been adopted.*⁸⁹

This leaves this power undefined, particularly in relation to the criteria that the person is 'not fit, in the public interest, to have possession of a firearm'.

3.1.3 Natural justice

Clause 14 introduces new s 141C of the Weapons Act and allows the commissioner to make a FPO against persons who, in the commissioner's opinion:

- are not fit to have possession of a firearm; or
- are participants in a criminal organisation.

The FPO takes effect when personally served by a police officer on the person. The FPO may be revoked by a commissioner at any time, for any, or no, stated reason.

There is no provision under the Bill for the reasons for a decision to be provided to a person when a FPO is imposed and there are no internal review rights provided for.

Potential FLP issues

⁸⁶ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 15.

⁸⁷ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 19, citing Alert Digest 2004/8, p 8, paras 21-24; Alert Digest 2003/6, p 6, paras 46-48.

⁸⁸ Submission 8, p 2.

⁸⁹ Submission 8, p 6.

Legislation should be consistent with the principles of natural justice which are developed by the common law and incorporate the following three principles:

- something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker
- the decision maker must be unbiased
- procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.⁹⁰

During the public briefing, the committee enquired about the reasons why a person would be subject to a FPO.⁹¹ Mr Watts MP took the question on notice. In his written response, he stated:

*There are no provisions in the Bill which require the commissioner to provide details of the reasoning for issuing a FPO. However, a person aggrieved by the decision may apply, as provided under the QCAT Act, to QCAT for a review of the decision.*⁹²

A person receiving a FPO does not receive reasons for the decision, nor an opportunity to present their case or have the decision reviewed by the decision maker (although an external QCAT review is available). This absence of an internal review is a substantive erosion of natural justice for the person.

No specific explanation has been provided regarding not providing reasons for issuing a FPO, although a general explanation has been set out in the explanatory notes:

*The power of the police commissioner to impose a firearms prohibition order also potentially departs from the fundamental legislative principles by impacting on the rights and liberties of the individuals. While this may be considered particularly coercive in the case of individuals who require firearms for their employment, it is considered justified to ensure the commissioner can respond [to] persons who pose a high risk to the safety of Queenslanders.*⁹³

The QLS submission noted that cl 15 provides for a review to QCAT and that an information notice with reasons for decision accompanies that review right:

*QLS recognises that clause 15 proposes to insert a new paragraph (g) into subsection 142(1) of the Weapons Act which will allow a person aggrieved by the imposition of a FPO to apply to the Queensland Civil and Administrative Tribunal (QCAT) for review of the decision. QLS agrees that this is an appropriate review mechanism and notes that designating the decision as a reviewable decision means that those persons served with FPOs must also receive an information notice stating the reason for the decision to impose the FPO.*⁹⁴

3.1.4 Reversal of onus of proof

Firearms prohibition order

Clause 14 introduces new section 141D of the Weapons Act. This section sets out the effect of a firearms prohibition order.

Subsection 141D(8) states that a person who is subject to a FPO must not, without reasonable excuse, attend:

⁹⁰ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 25.

⁹¹ Public briefing transcript, Brisbane, 13 May 2019, p 5.

⁹² Letter in response to question taken on notice by Mr Watts MP dated 29 May 2019, p 1.

⁹³ Explanatory notes, p 4.

⁹⁴ Submission 8, p 7.

- a place at which a licensed dealer carries on business under the licence
- a place at which a licensed armourer carries on business under the licence
- a range for weapons target shooting
- the premises of a shooting club
- the premises of an approved historical society
- an arms fair; or
- any other premises of a type prescribed by regulation for this paragraph.

Under subsection 141D(11) a person who has physical possession of a firearm must not, without reasonable excuse, be in the company of a person subject to a FPO.

Possession of digital blueprint and device for manufacture of firearms

Clause 13 introduces new section 67B of the Weapons Act. This section provides defences for s 67A offences (possession of digital blueprint and device for manufacture of firearms).

Subsection 67B(3) states that it is a defence to a prosecution for an offence against section 67A(1) if the defendant proves the conduct engaged in by the defendant:

- was of public benefit; and
- did not extend beyond what was of public benefit

Potential FLP issues

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence. The OQPC Notebook provides:

*For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.*⁹⁵

Generally, former committees opposed the reversal of the onus of proof.⁹⁶

The explanatory notes are silent on providing an explanation for these onus reversals.

The committee notes that while subsection 141D(8) imposes obligations on a person subject to a FPO, subsection 141D(11) imposes an obligation on a person that is not subject to a FPO and requires them not to be in the company of a person subject to a FPO, while the first mentioned person is in physical possession of a firearm.

These provisions prevent a person subject to a FPO from attending certain places without a reasonable excuse or prevent a person in possession of a firearm, without a reasonable excuse, being in the company of a person subject to a FPO.

With regard to the digital blueprint provisions, a defendant is required to prove their conduct was of public benefit and did not extend beyond what was of public benefit.

3.1.5 Compulsory acquisition of property

Clause 14 inserts new s 141D of the Weapons Act. Under subsection (3), a person subject to a FPO must immediately surrender to a police officer all firearms, prohibited things and ammunition.

⁹⁵ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 36.

⁹⁶ Alert Digest 2002/4, p 27, para 10.

Potential FLP issues

Legislation should provide for the compulsory acquisition of property only with fair compensation.⁹⁷ The OQPC states, 'A legislatively authorised act of interference with a person's property must be accompanied by a right of compensation, unless there is a good reason'.⁹⁸

A person who is subject to a FPO will be required to surrender all firearms, prohibited things and ammunition for any firearm that is in the possession of the person. There is no mention of compensation for the person.

The QLS provided this commentary in their submission:

*Provision needs to be made for the fate of the surrendered weapons or other things. FPOs may be imposed on persons with appropriate licences who have acquired weapons lawfully and who have not necessarily committed an offence. Requiring that the weapons be forfeited for no compensation is an arbitrary deprivation of lawfully acquired property. The potential imposition on individual rights is potentially even more egregious if the person subject to the FPO earns their living in some way related to weapons and has previously been appropriately licensed to do so but is then served with a FPO.*⁹⁹

The explanatory notes do not provide any specific justification for the compulsory acquisition of property without compensation.

3.2 Explanatory notes

Part 4 of the Legislative Standards Act relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

⁹⁷ Legislative Standards Act 1992, s 4(3)(i).

⁹⁸ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 73.

⁹⁹ Submission 8, p 7.

Appendix A – Submitters

Sub #	Submitter
001	Firearm Owners United
002	Women’s Legal Service Queensland
003	Alannah & Madeline Foundation
004	Firearm Dealers Association – Queensland Inc.
005	Rape & Domestic Violence Services Australia
006	Shooters Union Queensland Pty Ltd
007	Public Health Association of Australia
008	Queensland Law Society
009	Catholic Women’s League Queensland Inc.

Appendix B – Witnesses at public briefing and public hearing

Public briefing held on 13 May 2019

- **Mr Trevor Watts MP, Member for Toowoomba North, Shadow Minister for Police and Counter Terrorism; Shadow Minister for Corrective Services**

Public hearing held on 19 August 2019

Shooters Union Queensland Pty Ltd

- Graham Park, President

Womens' Legal Service

- Angela Lynch AM, Chief Executive Officer

Firearm Dealers Association Qld Inc

- Jade Cleaver

Alannah & Madeline Foundation

- Stephen Bendle, Advocacy Manager

Firearm Owners United

- Kirk Yatras, Vice President

Queensland Law Society

- Bill Potts, President
- Ken Mackenzie, Deputy Chair, Criminal Law Committee
- Hayley Stubbings, Policy Solicitor

Statement of Reservation

The LNP members support the objectives of this important Bill, which aims to crack down on gun crime across the State.

For obvious reasons, violent people should be stripped of their privilege to own and access weapons. Organised crime has surged in areas such as the Gold Coast ever since Labor watered-down the LNPs tough anti-bikie laws. This is reinforced by the number of criminal gang shootings that have escalated this year, and it will only be a matter of time before an innocent member of the public is caught in the crossfire.

This Bill will fill gaps in the Criminal Code by introducing new offences such as the 'Firing at dwelling houses, buildings or vehicles' to respond to escalating gun crime occurring across the state. Additionally, the Firearms Prohibition Orders framework (FPO) will work to drive down gun crime. For example, a review conducted by the NSW Ombudsman in 2016, three years after the FPO framework was implemented, found that shootings had reduced from 2013 by 36% and offences involving discharging of a firearm into premises was reduced by 20%. Interestingly, NSW reported the lowest number of shootings on record.

As pointed out by a number of domestic violence and women's advocacy groups, gunshot wounds are the third most common cause of death for Australian victims of domestic homicide and access to firearms by a perpetrator is associated with more serious domestic violence.

A Bill that strives to protect vulnerable people such as victims of domestic violence and which cracks down on gun crime is a Bill that must be supported.



James Lister MP
Deputy Chair
Member for Southern Downs



James (Jim) McDonald MP
Member for Lockyer