



Federation of Hunting Clubs

Hunters representing hunters

NSW Productivity Commission
NSW Treasury
52 Martin Place
Sydney NSW 2000

30 September 2020

Dear Commissioner Achterstraat

Re: Productivity Commission Green Paper

The Federation of Hunting Clubs Inc. (the Federation) welcomes the opportunity to follow up from our earlier submission on the discussion paper *Kickstarting the Economy* with comment on the Green Paper. The following comments relate to Draft Recommendation 4.19 of the Green Paper regarding the creation of a best practice regulatory policy framework.

The Federation holds serious concerns about the NSW government's regulatory policy framework. Specifically, that NSW Treasury's *Guide to Better Regulation* provides exemptions which allow regulatory proposals regarding police powers to escape proper scrutiny.ⁱ

The Federation can see no logical reason for any government regulatory proposal to be exempt from providing quantitative and qualitative data, being supported by a Regulatory Impact Statement (RIS) or requiring stakeholder feedback. The Federation submits there should be *no* exemptions for *any* regulatory proposal to comply with the requirements set out in the *Better Regulation Guidelines*.

During the recent NSW Parliament inquiry, *Making of Delegated Legislation in New South Wales*ⁱⁱ, chair of the Law Society of New South Wales's Public Law Committee, Mr Andrew Chalk outlined how the legislative process and proper scrutiny can be circumvented:

“...what in one circumstance may be a procedure that is designed to achieve fairness can easily be turned into a situation where it causes or aggravates injury or is used abusively to harm the interests of individuals.”

Similarly, Michael McHugh, Senior Vice President of the New South Wales Bar Association said:

“... appropriate safeguards must be in place to ensure the regulation does not impermissibly erode human rights.” and

“...delegated legislation, ought to be checked, as, indeed, all legislation should be, against what are internationally agreed human rights.”

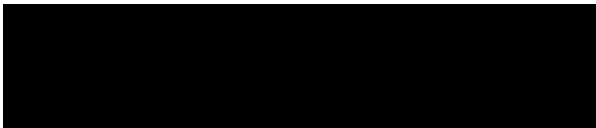
Circumvention of proper scrutiny of legislation proposed by NSW government has been recognised as a growing problem in recent years. In 2016, Chief Justice of New South Wales, the Honourable Tom Bathurst wrote critically of the legislative encroachment on common law rights, including presumption of innocence and privilege against self-incrimination.ⁱⁱⁱ His Honour's review of NSW legislation found on a conservative estimate there were at least 397 legislative encroachments on three basic common law rights.^{iv}

The Federation is extremely concerned with the legislative encroachments on NSW citizens' common law rights in the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020.^v This bill did not undergo proper scrutiny simply because it was a bill regarding "police powers".

The extreme proposals in this bill have attracted strong criticism not only from hundreds of licensed, law-abiding firearm owners in this state, but also the Law Society of New South Wales^{vi} and the New South Wales Bar Association.^{vii}

Commissioner, in the interest of achieving the Green Paper's Draft Recommendation 4.19 - creating a best-practice regulatory policy framework - we urge you in the strongest possible terms to facilitate amendment of NSW Treasury's *Better Regulation Guidelines* to ensure that *all* regulatory proposals, without exception, undergo proper scrutiny and otherwise comply with the Better Regulation Principles.

Yours sincerely



for



ⁱ NSW Government Guide to Better Regulation. [NSW Treasury TPP19-01, January 2019](#).

ⁱⁱ Inquiry into making of delegated legislation in New South Wales. Parliament of New South Wales. <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2581>

ⁱⁱⁱ The Nature of the Profession; the State of the Law. *Judicial Officers' Bulletin*, March 2016, Vol. 28 No. 2.

^{iv} Chief Justice Tom Bathurst warns of threat to basic legal rights. *Sydney Morning Herald* 4 February 2016.

^v Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020. <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3733>

^{vi} New South Wales Bar Association. Submission 263, NSW Parliamentary Inquiry, Provisions of the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020. <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2590#tab-submissions>

^{vii} The Law Society of New South Wales. Submission 100, NSW Parliamentary Inquiry, Provisions of the Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020. <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2590#tab-submissions>