

CRIMES (FIREARMS) AMENDMENT ACT 1989 No. 27

NEW SOUTH WALES



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CRIMES (FIREARMS) AMENDMENT ACT 1989 No. 27

NEW SOUTH WALES



Act No. 27, 1989

An Act to amend the Crimes Act 1900 as a consequence of the repeal of the Firearms and Dangerous Weapons Act 1973. [Assented to 21 April 1989]

Crimes (Firearms) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Firearms) Amendment Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

Transitional

4. Section 358B of the Crimes Act 1900, as amended by this Act, applies to an article seized and detained under section 77 of the Firearms and Dangerous Weapons Act 1973 if the article has not been disposed of under section 78 of that Act.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 1 (Short title and contents of Act)—

(a) After the matter relating to Part 3A, insert:

PART 3B—OFFENCES RELATING TO FIREARMS ETC.—ss.
93F–93H

(b) From the matter relating to Part 10, omit “ss. 357A–357E”, insert instead “ss. 357–357E”.

(c) From the matter relating to Part 10, omit “s. 358A”, insert instead “ss. 358A, 358B”.

(d) Before the matter relating to section 546, insert:

(D5) UNLAWFUL POSSESSION OF CERTAIN DANGEROUS
ARTICLES—s. 545E

(2) Section 33B (Use or possession of weapon to resist arrest etc.)

(a) Section 33B (a)—

Omit “threatens to use”, insert instead “, threatens to use or possesses”.

(b) Section 33B—

Before “with intent”, insert “with intent to commit an indictable offence or”.

SCHEDULE 1—AMENDMENTS—*continued*
(c) Section 33B—

Omit “ten”, insert instead “12”.

(3) Part 3B (sections 93F–93H)—

After Part 3A, insert:

PART 3B—OFFENCES RELATING TO FIREARMS ETC.**Definition**

93F. In this Part—

“firearm” has the same meaning as in the Firearms Act 1989.

Causing danger with firearm or spear gun

93G. (1) Any person who—

- (a) possesses a loaded firearm or loaded spear gun—
 - (i) in a public place; or
 - (ii) in any other place so as to endanger the life of any other person; or
- (b) fires a firearm or spear gun in or near a public place; or
- (c) carries or fires a firearm or spear gun in a manner likely to injure, or endanger the safety of, himself or herself or any other person or any property, or with disregard for the safety of himself or herself or any other person,

is liable to imprisonment for 10 years.

(2) For the purposes of this section—

- (a) a firearm is to be regarded as being loaded if there is ammunition—
 - (i) in its chamber or barrel; or
 - (ii) in any magazine or other device which is in such a position that the ammunition can be fitted into its chamber or barrel by operation of some other part of the firearm; and
- (b) a spear gun is to be regarded as being loaded if a spear, or an instrument or thing similar to a spear, is fitted to it.

(3) A person is not guilty of an offence under this section for possessing or doing anything referred to in subsection (1) if the person satisfies the court that he or she had a reasonable excuse for possessing it or doing it or possessed it or did it for a lawful purpose.

Trespassing with or dangerous use of firearm or spear gun

93H. (1) In this section—

“inclosed lands” has the same meaning as in the Inclosed Lands Protection Act 1901.

*Crimes (Firearms) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

(2) A person who, possessing a firearm, imitation firearm, spear gun or imitation spear gun, enters any inclosed lands or any building is liable to imprisonment for 5 years.

(3) A person who fires a firearm or spear gun on to any inclosed lands or into any building is liable to imprisonment for 10 years.

(4) A person is not guilty of an offence under this section for doing anything if the person establishes that he or she—

- (a) had the permission of the owner or occupier of the inclosed lands or building concerned to do it; or
- (b) had some other reasonable excuse for doing it or did it for a lawful purpose.

(4) Section 357—

Before section 357A, insert:

Searching for and seizing firearms etc.

357. (1) This section applies—

- (a) to any indictable offence; and
- (b) to an offence against section 545E; and
- (c) to an offence against the Prohibited Weapons Act 1989, the Firearms Act 1989 or a regulation made under either of those Acts.

(2) If a member of the police force suspects, on reasonable grounds, that a dangerous article is being or has been used in the commission of an offence to which this section applies and that it is in the possession of any person in a public place or is in any vehicle, vessel, aircraft, package or receptacle which is in a public place and is in the possession or under the control of any person, the member may, without warrant—

- (a) detain and search the person and any such vehicle, vessel, aircraft, package or receptacle; and
- (b) seize and detain any dangerous article found as a result of the search.

(3) A member of the police force who for the time being is lawfully in any premises may seize and detain any dangerous article which the member finds in those premises and in respect of which the member suspects, on reasonable grounds, that an offence to which this section applies is being or has been committed.

*Crimes (Firearms) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued*

- (4) Where a member of the police force—
- (a) enters a dwelling-house in pursuance of an invitation (as referred to in section 357F) or in pursuance of a warrant granted under section 357G, for the purpose (in either case) of investigating whether an offence that the member of the police force suspects or believes to be a domestic violence offence has been committed or for the purpose of taking action to prevent the commission or further commission of such an offence; and
 - (b) has reasonable cause to believe—
 - (i) that a firearm (within the meaning of the Firearms Act 1989) or a spear gun is in the dwelling-house; and
 - (ii) that the firearm or spear gun has been or may be used to commit a domestic violence offence,

the member of the police force may search the dwelling-house for the firearm or spear gun and seize and detain the firearm or speargun.

- (5) In this section—
“dangerous article” means—

- (a) a firearm (within the meaning of the Firearms Act 1989) or a spare barrel for any such firearm, a prohibited weapon or prohibited article (within the meaning of the Prohibited Weapons Act 1989) or ammunition for any such firearm, prohibited weapon or prohibited article; or
- (b) a spear gun; or
- (c) an article or device, not being such a firearm, capable of discharging by any means—
 - (i) any irritant matter in liquid, powder, gas or chemical form or any dense smoke; or
 - (ii) any substance capable of causing bodily harm; or
- (d) a fuse capable of use with an explosive or a detonator; or
- (e) a detonator;

“premises” means any building, structure, vehicle, vessel or aircraft and any place, whether built on or not.

- (5) Section 358B—

After section 358A, insert:

Disposal of seized firearms etc.

358B. (1) If a dangerous article is seized and detained under section 357, a Local Court constituted by a Magistrate sitting alone may, on application made by a person claiming to be

*Crimes (Firearms) Amendment 1989***SCHEDULE 1—AMENDMENTS—*continued***

entitled to possession of the article (being an application made at least 21 days after the seizure of the article), order that the article be returned to the person, unless—

- (a) a person has been charged with an offence in respect of the article; and
- (b) the charge has not been withdrawn or finally determined by the person's having been found not guilty of the offence, or the article has been forfeited to the Crown under subsection (2).

(2) Any such article shall, at the expiration of the prescribed period, be forfeited to the Crown, unless, before the expiration of that period—

- (a) an order has been made under subsection (1) with respect to the article; or
- (b) a person has been found guilty (whether or not the person has been convicted) of an offence in respect of the article, and the court in which proceedings for the offence were taken, on the application of that or any other person, has otherwise ordered.

(3) Despite subsections (1) and (2), if a firearm or spear gun is seized and detained under section 357 (4), the Commissioner of Police shall cause the firearm or spear gun to be returned, when 21 days have expired after its seizure, to the person who was, when the firearm or speargun was seized, occupying or using the dwelling-house in which the firearm or spear gun was seized or to the person from whom the firearm or spear gun was seized unless—

- (a) the person is the subject of a firearms prohibition order under the Firearms Act 1989; or
- (b) possession of the firearm or spear gun by the person would otherwise constitute an offence; or
- (c) before those 21 days expire, a person has been charged with an offence in respect of the firearm or spear gun.

(4) The Governor may make regulations, not inconsistent with this Act, prescribing any matter required or permitted to be prescribed under this section.

(6) Section 496A—

After section 496, insert:

Indictable offences punishable summarily without consent of accused: dangerous weapons

496A. (1) Proceedings for an offence under section 93G or 93H may be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.

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(2) The penalty that a Local Court may impose for any such offence disposed of under this section is imprisonment for a maximum period of 2 years, or a fine not exceeding \$5,000, or both.

(3) The provisions of section 56 of the Justices Act 1902 do not apply to proceedings under this section.

(4) A reference in this section to an offence under a provision of this Act includes a reference to an attempt to commit an offence under the provision.

(7) **Section 497 (General provisions regarding indictable offences punishable summarily without consent of accused)—**

Omit “or 496” wherever occurring, insert instead “, 496 or 496A”.

(8) **Section 545E—**

After section 545D, insert:

(D5) UNLAWFUL POSSESSION OF CERTAIN DANGEROUS ARTICLES

Possession of dangerous articles other than firearms

545E. (1) A person who, in a public place, possesses—

(a) anything (not being a firearm within the meaning of the Firearms Act 1989) capable of discharging by any means—

(i) any irritant matter in liquid, powder, gas or chemical form or any dense smoke; or

(ii) any substance capable of causing bodily harm; or

(b) a fuse capable of use with an explosive or a detonator; or

(c) a detonator,

is liable, on conviction before a Magistrate, to imprisonment for 2 years, or a fine of 50 penalty units, or both.

(2) A person is not guilty of an offence under this section for possessing anything referred to in subsection (1) if the person satisfies the court that he or she had a reasonable excuse for possessing it or possessed it for a lawful purpose.

[Minister's second reading speech made in—
Legislative Council on 1 December 1988
Legislative Assembly on 2 March 1989]