

[Act 1996 No 46]



New South Wales

Firearms Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The underlying principles of the proposed Act are:

- (a) to confirm firearm possession and use as being a privilege that is conditional on the overriding need to ensure public safety, and
- (b) to improve public safety by imposing strict controls on the possession and use of firearms, and by promoting the safe and responsible storage and use of firearms, and
- (c) to facilitate a national approach to the control of firearms.

The objects of the proposed Act are as follows:

- (a) to prohibit the possession and use of all automatic and self-loading rifles and shotguns except in special circumstances,
 - (b) to establish an integrated licensing and registration scheme for all firearms,
 - (c) to require each person who possesses or uses a firearm under the authority of a licence to prove a genuine reason for possessing or using the firearm,
 - (d) to provide strict requirements that must be satisfied in relation to licensing of firearms and the acquisition and sales of firearms,
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- (e) to ensure that firearms are stored and conveyed in a safe and secure manner,
- (f) to provide for compensation in respect of, and an amnesty period to enable the surrender of, certain prohibited firearms.

This Bill replaces the *Firearms Act 1989* with a legislative scheme that gives effect to the resolutions of the Australasian Police Ministers' Council of 10 May 1996 concerning firearms prohibition, regulation and control. For example, the Bill implements APMC resolution 1 (b) banning prohibited firearms for the purposes of competitive shooting. While giving effect to those resolutions, this Bill maintains the existing New South Wales law in such cases where it applies a stricter standard than that required by the Ministers' resolutions.

One particular aspect of this Bill is to bring those firearms that are presently listed as prohibited weapons under the *Prohibited Weapons Act 1989* (eg machine guns and military style semi-automatic rifles) under the regime of the proposed Act. The new list of prohibited firearms in the proposed Act will include all self-loading (ie rapid fire or semi-automatic) rimfire and centre-fire rifles and shotguns (regardless of their calibre or design).

A number of provisions contain bracketed notes in headings, drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions of the *Firearms Act 1989* (“1989 Act”), the *Firearms Regulation 1990* (“1990 Reg”) and the *Prohibited Weapons Act 1989* (“PW Act”), and to the resolutions of the Australasian Police Ministers' Council of 10 May 1996 concerning national firearms prohibition, regulation and control (“APMC resolutions”). The information is a guide only and does not purport to provide a comprehensive comparison with the existing law.

Outline of provisions

Part 1 Preliminary

Part 1 (clauses 1–6):

- specifies the name (also called the short title) of the proposed Act
- provides for the commencement of the proposed Act on a day or days to be proclaimed
- sets out the principles and objects of the proposed Act (as stated in the above overview)
- defines certain words and expressions used in the proposed Act

- enables the list of prohibited firearms in Schedule 1 to be added to by the regulations
- provides that the proposed Act will bind the Crown (but will not apply to police officers, prison officers, military personnel and certain other categories of persons while acting in the ordinary course of their duties).

The term *firearm* is widely defined. It means a gun, or other weapon, that is capable of propelling a projectile by means of an explosive (and it includes air guns and blank fire firearms). The term *Commissioner* refers to the Commissioner of Police who will be the licensing authority under the proposed Act.

Part 2 Licences and permits

Part 2 (**clauses 7–32**) establishes a licensing and permit scheme that requires any person who uses or possesses a firearm to be authorised by a licence or permit under the proposed Act.

Clause 8 sets out the new licence categories, and specifies the kinds of firearms to which each licence category applies and the authority that the licence confers. The headings to licence categories C and D are descriptive only and follow the APMC resolutions. The firearms referred to in licence category C will be restricted to primary producers, and those referred to in licence category D will be restricted to professional contract shooters and government authorised shooters engaged in controlling feral animals.

Clause 9 provides that the authority conferred by a licence to possess a firearm extends to such things as taking it to a licensed firearms dealer to have it repaired, and provides limits on what a licence can authorise (eg you cannot possess a prohibited firearm for the purposes of a firearms collection). **Clause 10** specifies the eligibility criteria for applicants (eg must be over 15), and **clause 11** specifies mandatory and discretionary grounds for refusing to issue licences (eg the applicant must be a fit and proper person and not be subject to an apprehended violence order). **Clause 12** requires an applicant to state and prove a genuine reason for having a firearm before a licence can be issued, and **clauses 13–17** require a special need to be proven in the case of the more high powered firearms, self-loading firearms (as restricted to primary producers and professional contract shooters) and pistols.

Clauses 18–27 deal with other licensing matters such as the form of a licence (it is envisaged that a licence can be in both a photo-card form and a more detailed paper form), the conditions to which a licence is subject, how long licences are in force (5 years, or less if prescribed by the regulations), the grounds for suspending or revoking a licence, the surrendering of firearms if the licence is suspended or revoked, and the recognition of interstate licensees for limited purposes such as shooting competitions.

Clauses 28–32 deal with the issuing of permits, for example, permits that authorise persons to acquire firearms (such a permit is required if you want to purchase a firearm), that authorise minors to possess or use firearms under supervision (for training or target shooting purposes), and that authorise the possession or use of firearms in circumstances prescribed by the regulations. The eligibility criteria for permits are similar to the criteria applying to licences, and permits can be revoked for the same reasons for which a licence can be revoked.

Part 3 Registration of firearms

Part 3 (**clauses 33–38**) provides a registration scheme for all firearms that will be integrated with the proposed licensing and permit scheme. A Register of Firearms is to be maintained and it is to contain particulars of each registered firearm and the person in whose name it is registered, along with particulars of the person's licence or permit. The Register is to be linked to interstate firearms registers. The registration scheme provides for the Commissioner to issue a notice of registration to the person in whose name the firearm is registered, and for cancellation of registration on certain grounds. It will be an offence to sell, purchase, possess or use an unregistered firearm.

Part 4 Safe keeping of firearms

Part 4 (**clauses 39-42**) provides that reasonable precautions must be taken to ensure the safe keeping of firearms. Specific requirements are provided in respect of the different licence categories (eg prohibited firearms and pistols must be stored in steel safes when not being used). Non-compliance with the safe keeping requirements can result in the seizure of the firearms concerned by the police.

Part 5 Firearms dealers

Part 5 (**clauses 43–49**) requires firearms dealers who carry on a business to be licensed, and provides that dealers can only sell firearms to persons who are authorised to have a firearm. Firearms dealers will be required to keep records of all their firearms transactions and dealings, and these records are to be sent to the Commissioner so that the Register of Firearms can be updated. They are also required to provide quarterly returns and comply with a number of other requirements that are designed to ensure the security and responsible safe keeping of firearms. Licensed firearms dealers are authorised to purchase firearms from interstate dealers.

Part 6 Miscellaneous offences

Part 6 (**clauses 50–72**) contains a number of firearms related offences, most of which are taken from the *Firearms Act 1989* and the regulations under that Act. The offence provisions are summarised as follows:

- **clause 50** prohibits a person from buying a firearm without a licence to possess it and a permit to acquire it
- **clause 51** in effect prohibits the selling and buying of firearms privately (ie you can only buy or sell a firearm through a dealer, or if the sale is witnessed by a police officer in circumstances where a dealer is not reasonably available)
- **clause 52** prohibits the sending or receiving of firearms in New South Wales through the mail
- **clause 53** allows only licensed firearms dealers to send firearms interstate through the mail and only if sent to other licensed firearms dealers
- **clause 54** allows only licensed firearms dealers to advertise firearms for sale
- **clause 55** requires firearms to be delivered in person only
- **clause 56** prevents firearms being transported with ammunition
- **clause 57** restricts the transporting of prohibited firearms and pistols
- **clause 58** prohibits the possession of spare barrels without authority
- **clause 59** provides for the on-the-spot inspection of firearms by the police
- **clause 60** requires unauthorised persons to surrender firearms that come into their possession

- **clause 61** prohibits the sale of unsafe firearms and allows the police to seize unsafe firearms
- **clause 62** prohibits the shortening of firearms (eg sawn off shotguns)
- **clause 63** prohibits the conversion of a firearm into a pistol or so as to turn a prohibited firearm into a non-prohibited firearm
- **clause 64** prohibits the handling of firearms when under the influence of alcohol or other drugs
- **clause 65** regulates the sale, purchase and possession of ammunition
- **clause 66** prohibits the altering of serial numbers and other identification marks on firearms
- **clause 67** prohibits the pawning of firearms, firearm parts or ammunition
- **clause 68** requires licensees and permit holders to produce their licences or permits when requested by a police officer
- **clause 69** requires licensees and permit holders to notify the Commissioner if they change their address
- **clause 70** prohibits the making of false or misleading applications for licences or permits
- **clause 71** prohibits the misuse of licences and permits
- **clause 72** deals with altering or falsifying records required to be kept under the proposed Act.

Part 7 Firearms prohibition orders

Part 7 (**clauses 73 and 74**) allows the Commissioner to make an order prohibiting a person from possessing firearms if it is not in the public interest for the person to have firearms. It is an offence to possess a firearm in contravention of such an order, and it is also an offence to sell or transfer a firearm to another person knowing that the other person is subject to a firearms prohibition order.

Part 8 Appeals

Part 8 (**clauses 75–77**) provides for appeals to a Local Court about licensing, permit and registration decisions by the Commissioner. An appeal is to be dealt with by way of a new hearing and the Local Court is not to be bound by the rules of evidence.

Part 9 Miscellaneous provisions

Clause 78 provides for compensation to be paid for surrendered self-loading rifles and shotguns. These guns will be classified as prohibited firearms under the proposed Act and only limited classes of people will be able to possess or use them lawfully. Consequently, the compensation provision is designed to be an incentive for these guns to be surrendered to the police.

The money for surrendered guns will be supplied by the Commonwealth through the Medicare levy. The Commonwealth has introduced legislation (the *Medicare Levy Amendment Bill 1996* and the *Income Tax Assessment Amendment Bill 1996*) in order to raise the necessary funds.

Part 9 also contains provisions (**clauses 79–87**) that:

- enable medical practitioners to disclose opinions about patients who are not suitable to have firearms
- deal with the disposal of surrendered or seized firearms
- enable the Commissioner to delegate functions to police officers and other authorised persons
- provide for parents to be also liable for offences committed by children under 18
- deal with machinery matters such as offences committed by corporations, how proceedings for offences are to be dealt with, when an information for an offence must be laid, service of notices by post, and certain certificate evidence being admissible in proceedings.

The rest of Part 9 (**clauses 88–92**) contains machinery provisions that enable the Governor to make regulations for the purposes of the proposed Act, repeal the *Firearms Act 1989* and the regulations under that Act, give effect to Schedule 2 (Amendment of other Acts) and Schedule 3 (Savings and transitional provisions) and provide for the proposed Act to be reviewed by the Minister after 3 years.

Schedule 1 lists the firearms that are prohibited firearms for the purposes of the proposed Act. The list includes machine guns (these are currently prohibited weapons under the *Prohibited Weapons Act 1989*) and all self-loading (ie semi-automatic or rapid fire) rifles and shotguns (regardless of whether they are military style and regardless of their calibre and magazine capacity).

Schedule 2 contains amendments to the *Prohibited Weapons Act 1989* so as to remove from that Act the legislative control over those weapons that are to be dealt with as prohibited firearms under the proposed Act. The Schedule also amends the *Criminal Procedure Act 1986* consequentially.

Schedule 3 contains savings and transitional provisions, including a power to make regulations of a savings and transitional nature consequent on the enactment of the proposed Act. In particular, the Schedule provides for a 12 month amnesty period in respect of the possession of certain prohibited firearms. Existing licences and permits will be continued under the proposed Act for 12 months (except if they relate to prohibited firearms), and all existing permits under the *Prohibited Weapons Act 1989* relating to prohibited firearms will be automatically revoked.