



New South Wales

# Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Firearms Act 1996* (the *principal Act*) as follows—

- (a) to create a new offence of knowingly taking part in the unauthorised manufacture of firearms or firearm parts and to provide that the offence will include being in possession of certain matter (referred to as a *firearm precursor*) for the purposes of manufacturing a firearm or firearm part,
- (b) to confer seizure powers on police officers in relation to the new offence,
- (c) to require firearms prohibition orders to be reviewed every 10 years by the Commissioner of Police,
- (d) to provide that the power of a police officer to search a person who is subject to a firearms prohibition order for firearms or firearm parts may also be exercised in relation to any other person who is present on the subject person's premises,
- (e) to make it clear that the powers of a police officer in connection with firearms prohibition orders (including search powers in relation to persons other than the subject person) may only be exercised if reasonably required to determine whether the subject person has committed an offence arising out of the making of the order,
- (f) to make other miscellaneous amendments in connection with the operation and enforcement of firearms prohibition orders, including enabling firearms prohibition orders under the law of another jurisdiction to be enforced in this State.

The Bill also amends the *Weapons Prohibition Act 1998* to create a similar offence of taking part in the unauthorised manufacture of prohibited weapons or parts of prohibited weapons.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## Schedule 1 Amendment of Firearms Act 1996 No 46

### Offence of taking part in unauthorised manufacture of firearms or firearm parts

**Schedule 1[1] and [2]** make it clear that the authority conferred by a firearms dealer licence includes the manufacturing of firearm parts for those firearms to which the licence applies.

**Schedule 1[3]** makes it an offence (with a maximum penalty of imprisonment for 20 years) for a person to knowingly take part in the manufacture of a firearm or firearm part knowing that the manufacture of the firearm or firearm part is not authorised by a licence or permit under the principal Act. The term *takes part* includes the possession of a firearm precursor for the purposes of manufacturing a firearm or firearm part. A *firearm precursor* is defined as any object, device, substance, material or document used or capable of being used in the process of manufacturing a firearm or firearm part (including computer software or plans). The offence will apply regardless of whether a firearm or firearm part is actually manufactured and double jeopardy provisions are included to ensure that a person is not liable to be convicted of both the new offence and another manufacturing offence under the principal Act that relates to the same or substantially the same act.

**Schedule 1[3]** also authorises a police officer to seize and detain any firearm, firearm part or firearm precursor (including a computer or data storage device on which a firearm precursor is held or contained) that may provide evidence of the commission of the new offence and to require persons to provide assistance or information in accessing the information held or contained in the thing seized. The forfeiture provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* will apply in relation to anything seized under proposed section 51K.

**Schedule 1[10]** provides that the new offence of taking part in the unauthorised manufacture of a firearm or firearm part is to be prosecuted on indictment only.

### Firearms prohibition orders

**Schedule 1[4]** requires the Commissioner of Police to review a firearms prohibition order after the order has been in force for 10 years and provides that the review is to be completed within 6 months.

**Schedule 1[6]** provides that the powers of a police officer under section 74A of the principal Act (including any search powers) may only be exercised if reasonably required to determine whether a person who is the subject of a firearms prohibition order has committed an offence arising out of the making of the order against the person and may be exercised immediately following service of the order on the person, but only if the person has been given an opportunity to surrender all firearms, firearm parts or ammunition lawfully in the person's possession.

**Schedule 1[7]** amends section 74A of the principal Act to make further provision with respect to the powers of a police officer to search for firearms, firearm parts or ammunition. The amendment authorises a police officer to search persons other than the subject person who are present on the premises occupied by or under the control or management of the subject person and to search any vehicle, vessel or aircraft situated on those premises and not just those occupied by or under the control or management of the subject person. The provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* relating to the conduct of personal searches will apply to the searching of persons for firearms, firearm parts or ammunition under section 74A of the principal Act. The amendment also requires the police to announce that they are authorised under that section to enter premises and to give any person who is present an opportunity to allow entry. **Schedule 1[5]** makes a consequential amendment to the heading to section 74A.

**Schedule 1[8]** authorises a police officer to seize and detain any firearm, firearm part or ammunition found in conducting a search under section 74A of the principal Act that the officer suspects on reasonable grounds may provide evidence of the commission of an offence relating to a firearms prohibition order. The amendment also provides that the provisions of the principal Act that relate to the enforcement of firearms prohibition orders will apply to firearms prohibition orders made under a provision of the law of another jurisdiction prescribed by the regulations.

**Schedule 1[9]** provides that the Commissioner's function to review firearms prohibition orders may only be delegated to a police officer of or above the rank of inspector.

## **Schedule 2      Amendment of Weapons Prohibition Act 1998 No 127**

**Schedule 2** amends the *Weapons Prohibition Act 1998* to create an offence of taking part in the unauthorised manufacture of prohibited weapons and parts of prohibited weapons along the same lines as the offence of taking part in the unauthorised manufacture of firearms or firearm parts.

## **Schedule 3      Amendment of Firearms Regulation 2017**

**Schedule 3** amends the *Firearms Regulation 2017* to prescribe the provisions of the laws of other jurisdictions under which firearms prohibition orders are made so that those orders may be enforced in this State as if they were orders made under the principal Act.



New South Wales

# Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020

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New South Wales

# Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020

No. \_\_\_\_\_, 2020

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## **A Bill for**

An Act to amend the *Firearms Act 1996* and the *Weapons Prohibition Act 1998* to create offences of taking part in the unauthorised manufacture of firearms, firearm parts, prohibited weapons and weapon parts and to make further provision with respect to firearms prohibition orders; and for other purposes.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Firearms and Weapons Legislation Amendment (Criminal Use) Act 2020*.

3

4

**2 Commencement**

5

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

6

<b>Schedule 1</b>	<b>Amendment of Firearms Act 1996 No 46</b>	1
<b>[1]</b>	<b>Section 8 Licence categories and authority conferred by licence</b>	2
	Insert “and firearm parts for those firearms” after “to which the licence applies” wherever occurring in the matter relating to firearms dealer licences in section 8(1) other than in the heading to that matter.	3 4 5
<b>[2]</b>	<b>Section 8(1)</b>	6
	Omit “(and blank cartridges for those firearms)” from the matter relating to firearms dealer licences.	7 8
	Insert instead “to which the licence applies (and firearm parts and blank cartridges for those firearms)”.	9 10
<b>[3]</b>	<b>Sections 51J and 51K</b>	11
	Insert after section 51I—	12
<b>51J</b>	<b>Offence of taking part in unauthorised manufacture of firearms or firearm parts</b>	13
(1)	A person who—	14
(a)	knowingly takes part in the manufacture of a firearm or firearm part, and	15
(b)	knows, or ought reasonably to know, that the manufacture of the firearm or firearm part is not authorised by a licence or permit,	16 17
	is guilty of an offence.	18
	Maximum penalty—imprisonment for 20 years.	19
(2)	For the purposes of this section, a person <i>takes part</i> in the manufacture of a firearm or firearm part if—	20 21
(a)	the person takes, or participates in, any step, or causes any step to be taken, in the process of that manufacture, or	22 23
(b)	the person provides or arranges finance for any step in that process, or	24
(c)	the person provides the premises in which any step in that process is taken, or suffers or permits any step in that process to be taken in premises of which the person is the owner, lessee or occupier or of which the person has the care, control or management, or	25 26 27 28
(d)	without limiting paragraph (a)—the person possesses a firearm precursor for the purposes of manufacturing a firearm or firearm part.	29 30
(3)	In this section and in section 51K—	31
	<i>firearm precursor</i> means any object, device, substance, material or document used or capable of being used in the process of manufacturing a firearm or firearm part, including (but not limited to) the following—	32 33 34
(a)	moulds for making firearm parts,	35
(b)	milling, casting or rifling equipment,	36
(c)	digital blueprints within the meaning of section 51F,	37
(d)	computer software or plans.	38
(4)	This section applies in relation to a person regardless of whether a firearm or firearm part is actually manufactured.	39 40
(5)	This section does not apply in relation to a person who is acting in the course of the person’s duties as a member (other than a police officer) of the Police Force.	41 42 43

<b>Note.</b> Police officers are already exempt from the operation of this Act—see section 6(2)(a).	1 2
(6) A person who has been convicted of an offence under this section is not liable to be convicted—	3 4
(a) of a manufacture offence, or	5
(b) of a separate offence under this section,	6
on the same, or substantially the same, facts as those relied on as evidence of commission of the offence in respect of which the person has been convicted.	7 8
(7) A person who has been acquitted of an offence under this section is not liable to be convicted—	9 10
(a) of a manufacture offence, or	11
(b) of a separate offence under this section,	12
on the same, or substantially the same, facts as those relied on as evidence of commission of the offence in respect of which the person has been acquitted.	13 14
(8) A person who has been—	15
(a) convicted of a manufacture offence, or	16
(b) acquitted of a manufacture offence,	17
is not liable to be convicted of an offence under this section on the same, or substantially the same, facts as those relied on as evidence of commission of the manufacture offence.	18 19 20
(9) Subject to subsections (6) and (7), this section does not—	21
(a) remove the liability of any person to be convicted of a manufacture offence, or	22 23
(b) affect the punishment that may be imposed for a manufacture offence.	24
(10) In subsections (6)–(9), <i>manufacture offence</i> means an offence under section 50A or 51F.	25 26
<b>51K Power to seize firearms, firearm parts and firearm precursors</b>	27
(1) A police officer may seize and detain any firearm, firearm part or firearm precursor (including a computer or data storage device on which a firearm precursor is held or contained) that the officer suspects on reasonable grounds may provide evidence of the commission of an offence under section 51J.	28 29 30 31
(2) In exercising a power under subsection (1), a police officer may direct any person whom the police officer believes on reasonable grounds to be in charge of or otherwise responsible for the thing that has been seized to provide assistance or information (including a password or code) that may reasonably be required by the police officer to enable the officer to access any information held or contained in the thing that has been seized.	32 33 34 35 36 37
(3) A person must not—	38
(a) without reasonable excuse, fail to comply with a direction under subsection (2), or	39 40
(b) in purported compliance with a direction under subsection (2), provide any information knowing that it is false or misleading in a material respect.	41 42 43
Maximum penalty—50 penalty units or imprisonment for 2 years, or both.	44



(4)	Division 1 of Part 17 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to anything seized under this section as if it had been seized under that Act.	1 2 3
<b>[4]</b>	<b>Section 73A</b>	4
	Insert after section 73—	5
<b>73A</b>	<b>Review of firearms prohibition orders</b>	6
(1)	The Commissioner is to review a firearms prohibition order after the order has been in force for 10 years.	7 8
(2)	The review must be completed within the period of 6 months of that 10-year period.	9 10
(3)	In the case of a firearms prohibition order in force immediately before the commencement of this section and that has been in force for more than 10 years, the review is to be completed within 12 months of that commencement.	11 12 13
(4)	For avoidance of doubt, a firearms prohibition order that is subject to review remains in force unless it is revoked by the Commissioner under section 73.	14 15
<b>[5]</b>	<b>Section 74A, heading</b>	16
	Omit “ <b>possession of person subject to</b> ”. Insert instead “ <b>connection with</b> ”.	17
<b>[6]</b>	<b>Section 74A(1)</b>	18
	Omit the subsection. Insert instead—	19
(1)	The powers of a police officer under this section—	20
(a)	may only be exercised if reasonably required to determine whether a person who is subject to a firearms prohibition order has committed an offence under section 74, and	21 22 23
(b)	may be exercised immediately following the service of a firearms prohibition order on a person but only if the person has been given an opportunity to surrender all firearms, firearm parts or ammunition lawfully in the person’s possession.	24 25 26 27
<b>[7]</b>	<b>Section 74A(2A)–(2F)</b>	28
	Insert after section 74A(2)—	29
(2A)	A police officer who enters premises under subsection (2) may also conduct a search—	30 31
(a)	of any other person who the officer reasonably suspects is in possession of a firearm, firearm part or ammunition and who is present on those premises, or	32 33 34
(b)	of any other vehicle, vessel or aircraft situated on those premises, for any firearms, firearm parts or ammunition.	35 36
(2B)	Division 4 of Part 4 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> extends to the search of a person conducted under this section.	37 38
(2C)	Before entering premises under subsection (2), a police officer must—	39
(a)	announce that the officer is authorised to enter the premises, and	40
(b)	give any person who is present on the premises an opportunity to allow entry.	41 42

(2D)	A police officer is not required to comply with subsection (2C) if the officer believes on reasonable grounds that immediate entry is required to ensure the safety of any person or to ensure that the effective execution of the search powers conferred on the officer under this section is not frustrated.	1 2 3 4
(2E)	If premises are entered under subsection (2) while the occupier is not present, a police officer is, as soon as reasonably practicable, to notify the occupier of that entry.	5 6 7
(2F)	A police officer may, in exercising a power conferred by subsection (2) to enter premises, use such force as is reasonably necessary to enter the premises.	8 9
<b>[8]</b>	<b>Sections 74AA and 74AB</b>	10
	Insert after section 74A—	11
<b>74AA</b>	<b>Power to seize firearms, firearm parts and ammunition</b>	12
	A police officer may seize and detain any firearm, firearm part or ammunition found in conducting a search under section 74A that the officer suspects on reasonable grounds may provide evidence of the commission of an offence under section 74.	13 14 15 16
<b>74AB</b>	<b>Recognition of firearms prohibition orders of other jurisdictions</b>	17
	Sections 74, 74A and 74AA apply to and in respect of a firearms prohibition order (however described) in force under a provision of the law of another jurisdiction prescribed by the regulations as if it were a firearms prohibition order made under this Act.	18 19 20 21
<b>[9]</b>	<b>Section 81 Delegation</b>	22
	Omit “73 or 74” from section 81(2A). Insert instead “73, 73A or 74”.	23
<b>[10]</b>	<b>Section 84 Proceedings for offences</b>	24
	Omit “or 51D(2)” from section 84(3). Insert instead “, 51D(2) or 51J”.	25

<b>Schedule 2</b>	<b>Amendment of Weapons Prohibition Act 1998 No 127</b>	1
		2
<b>[1] Section 8 Permit categories and authority conferred by permit</b>		3
	Insert “and parts for those weapons” after “of the kind specified in the permit” in the matter relating to weapons dealer permits in section 8(1).	4 5
<b>[2] Section 8(1)</b>		6
	Insert “and parts for those weapons” after “specified in the permit” in paragraph (a) of the matter relating to theatrical weapons armourer permits.	7 8
<b>[3] Sections 25E and 25F</b>		9
	Insert after section 25D—	10
<b>25E Offence of taking part in unauthorised manufacture of prohibited weapons or weapon parts</b>		11 12
(1)	A person who—	13
(a)	knowingly takes part in the manufacture of a prohibited weapon or part of a prohibited weapon, and	14 15
(b)	knows, or ought reasonably to know, that the manufacture of the prohibited weapon or part is not authorised by a permit,	16 17
	is guilty of an offence.	18
	Maximum penalty—imprisonment for 20 years.	19
(2)	For the purposes of this section, a person <i>takes part</i> in the manufacture of a prohibited weapon or part of a prohibited weapon if—	20 21
(a)	the person takes, or participates in, any step, or causes any step to be taken, in the process of that manufacture, or	22 23
(b)	the person provides or arranges finance for any step in that process, or	24
(c)	the person provides the premises in which any step in that process is taken, or suffers or permits any step in that process to be taken in premises of which the person is the owner, lessee or occupier or of which the person has the care, control or management, or	25 26 27 28
(d)	without limiting paragraph (a)—the person possesses a weapon precursor for the purposes of manufacturing a prohibited weapon or part of a prohibited weapon.	29 30 31
(3)	In this section and in section 25F—	32
	<i>weapon precursor</i> means any object, device, substance, material or document used or capable of being used in the process of manufacturing a prohibited weapon or part of a prohibited weapon, including (but not limited to) the following—	33 34 35 36
(a)	moulds for making parts,	37
(b)	milling or casting equipment,	38
(c)	digital blueprints within the meaning of section 25B,	39
(d)	computer software or plans.	40
(4)	This section applies in relation to a person regardless of whether a prohibited weapon or part of a prohibited weapon is actually manufactured.	41 42

- (5) This section does not apply in relation to a person who is acting in the course of the person's duties as a member (other than a police officer) of the Police Force. 1  
**Note.** Police officers are already exempt from the operation of this Act—see section 6. 2  
3
- (6) A person who has been convicted of an offence under this section is not liable to be convicted— 4  
(a) of a manufacture offence, or 5  
(b) of a separate offence under this section, 6  
on the same, or substantially the same, facts as those relied on as evidence of 7  
commission of the offence in respect of which the person has been convicted. 8  
9  
10
- (7) A person who has been acquitted of an offence under this section is not liable to be convicted— 11  
(a) of a manufacture offence, or 12  
(b) of a separate offence under this section, 13  
on the same, or substantially the same, facts as those relied on as evidence of 14  
commission of the offence in respect of which the person has been acquitted. 15  
16
- (8) A person who has been— 17  
(a) convicted of a manufacture offence, or 18  
(b) acquitted of a manufacture offence, 19  
is not liable to be convicted of an offence under this section on the same, or 20  
substantially the same, facts as those relied on as evidence of commission of 21  
the manufacture offence. 22
- (9) Subject to subsections (6) and (7), this section does not— 23  
(a) remove the liability of any person to be convicted of a manufacture 24  
offence, or 25  
(b) affect the punishment that may be imposed for a manufacture offence. 26
- (10) In subsections (6)–(9), *manufacture offence* means an offence under section 27  
25A or 25B. 28
- 25F Power to seize prohibited weapons, weapon parts and weapon precursors** 29
- (1) A police officer may seize and detain any prohibited weapon, part of a 30  
prohibited weapon or weapon precursor (including a computer or data storage 31  
device on which a weapon precursor is held or contained) that the officer 32  
suspects on reasonable grounds may provide evidence of the commission of 33  
an offence under section 25E. 34
- (2) In exercising a power under subsection (1), a police officer may direct any 35  
person whom the police officer believes on reasonable grounds to be in charge 36  
of or otherwise responsible for the thing that has been seized to provide 37  
assistance or information (including a password or code) that may reasonably 38  
be required by the police officer to enable the officer to access any information 39  
held or contained in the thing that has been seized. 40
- (3) A person must not— 41  
(a) without reasonable excuse, fail to comply with a direction under 42  
subsection (2), or 43  
(b) in purported compliance with a direction under subsection (2), provide 44  
any information knowing that it is false or misleading in a material 45  
respect. 46

Maximum penalty—50 penalty units or imprisonment for 2 years, or both.	1
(4) Division 1 of Part 17 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to anything seized under this section as if it had been seized under that Act.	2 3 4
<b>[4] Section 43 Proceedings for offences</b>	5
Omit “or 25A(2)” from section 43(3). Insert instead “, 25A(2) or 25E”.	6

<b>Schedule 3</b>	<b>Amendment of Firearms Regulation 2017</b>	1
<b>Clause 159</b>		2
Insert after clause 158—		3
<b>159</b>	<b>Recognition of firearms prohibition orders of other jurisdictions</b>	4
	For the purposes of section 74AB of the Act, the following provisions are prescribed—	5
	(a) Part 4A of the <i>Firearms Act 1996</i> of Victoria,	6
	(b) Part 8 of the <i>Firearms Act 2015</i> of South Australia,	7
	(c) Part 8 of the <i>Firearms Act 1996</i> of Tasmania.	8
		9