



New South Wales

Firearms Amendment (Prohibition Orders) Bill 2013

Explanatory note

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

Overview of Bill

The object of this Bill is to make further provision in relation to the effect of firearms prohibition orders. Such orders are made by the Commissioner of Police if the Commissioner is of the opinion that the relevant person is not fit, in the public interest, to be permitted to have possession of a firearm.

At present under the *Firearms Act 1996*, a person against whom a firearms prohibition order is made is prohibited from possessing or using a firearm and is disqualified from being the holder of a firearms licence or permit. The Bill inserts additional provisions to prohibit persons subject to firearms prohibition orders from:

- (a) acquiring or possessing firearm parts or ammunition, and
- (b) being in the company of persons in possession of firearms, and
- (c) residing at premises where there are firearms, firearm parts or ammunition, and
- (d) being present at places where firearms, firearm parts or ammunition are made, sold and dealt with as part of a business, and
- (e) being members of, or being present at the premises of, firearms clubs or shooting ranges, and
- (f) participating in firearms training courses (or being present at premises where such courses are conducted).

The Bill also prohibits other persons from supplying firearm parts or ammunition to persons who are subject to firearms prohibition orders. This prohibition is in addition to the current prohibition

on selling or giving possession of a firearm to another person, knowing that the other person is prohibited from possessing firearms by a firearms prohibition order.

The Bill provides that the Commissioner of Police cannot delegate his or her functions in relation to firearms prohibition orders and provides for the Commissioner to exempt persons from any of the offences relating to such an order.

The Bill also empowers police officers, without a warrant, to detain persons, enter premises and stop and detain vehicles and conduct searches for the purposes of ensuring compliance with firearms prohibition orders.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Firearms Act 1996 No 46

Schedule 1 makes the amendments described in the above Overview.

Schedule 2 Amendment of Criminal Procedure Act 1986 No 209

Schedule 2 makes consequential amendments to provisions of the *Criminal Procedure Act 1986* that deal with the procedure for prosecuting indictable offences.



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Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Firearms Act 1996 No 46	3
Schedule 2 Amendment of Criminal Procedure Act 1986 No 209	7



New South Wales

Firearms Amendment (Prohibition Orders) Bill 2013

No. , 2013

A Bill for

An Act to amend the *Firearms Act 1996* to make further provision with respect to the effect of firearms prohibition orders and to authorise police officers to conduct searches for the purposes of ensuring compliance with such orders.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Firearms Amendment (Prohibition Orders) Act 2013*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Firearms Act 1996 No 46	1
[1] Section 73 Making of firearms prohibition orders		2
Omit “an order prohibiting a person from having possession of or using any firearm” from section 73 (1).		3 4
Insert instead “a firearms prohibition order in relation to a person”.		5
[2] Section 73 (4)		6
Insert after section 73 (3):		7
(4) The Commissioner cannot delegate any of the Commissioner’s functions under this Part.		8 9
[3] Sections 74 and 74A		10
Omit section 74. Insert instead:		11
74 Effect of firearms prohibition orders		12
(1) Prohibition on persons subject to orders acquiring, possessing or using firearms, firearm parts and ammunition		13 14
A person who is subject to a firearms prohibition order must not acquire, possess or use a firearm.		15 16
Maximum penalty:		17
(a) imprisonment for 10 years (if the firearm concerned is a prohibited firearm or pistol), or		18 19
(b) imprisonment for 5 years (in any other case).		20
(2) A person who is subject to a firearms prohibition order must not acquire or possess a firearm part or ammunition.		21 22
Maximum penalty: imprisonment for 5 years.		23
(3) Without limiting the generality of subsection (1) or (2), and for the purposes only of those subsections, a firearm, firearm part or ammunition found in or on any premises is, in the absence of proof to the contrary, taken to be possessed by any person subject to a firearms prohibition order who at the time of the finding or recently to that time was in or on or in occupation of the premises.		24 25 26 27 28
(4) Prohibition on persons subject to orders being in company of person in possession of firearm		29 30
A person who is subject to a firearms prohibition order must not be in the company of a person who has a firearm on or about his or her person or under his or her immediate physical control.		31 32 33
Maximum penalty: imprisonment for 5 years.		34
(5) It is a defence to a prosecution for an offence under subsection (4) for the accused person to prove that he or she did not know, and could not reasonably be expected to have known, that the other person had a firearm on or about his or her person or under his or her immediate physical control.		35 36 37 38
(6) Prohibition on persons subject to orders residing at premises where there are firearms		39 40
A person who is subject to a firearms prohibition order must not reside at premises on which there is a firearm, firearm part or ammunition.		41 42
Maximum penalty: imprisonment for 5 years.		43

(7)	It is a defence to a prosecution for an offence under subsection (6) to prove that the accused person did not know, and could not reasonably be expected to have known, that the firearm, firearm part or ammunition was on the premises.	1 2 3
(8)	Prohibition on persons subject to orders being at certain business premises	4
	A person who is subject to a firearms prohibition order must not be present at a place at which a person carries on the business of:	5 6
	(a) manufacturing, repairing, modifying or testing firearms, firearm parts or ammunition, or	7 8
	(b) buying, selling or hiring out firearms, firearm parts or ammunition.	9
	Maximum penalty: 50 penalty units.	10
(9)	Prohibition on persons subject to orders being at firearms clubs, shooting ranges or firearms training courses	11 12
	A person who is subject to a firearms prohibition order must not be present at:	13
	(a) the grounds of a firearms club, or	14
	(b) a shooting range, or	15
	(c) premises where a firearms safety training course is being conducted.	16
	Maximum penalty: 50 penalty units.	17
(10)	A person who is subject to a firearms prohibition order must not:	18
	(a) be, or seek to become, a member of a firearms club, or	19
	(b) be, or seek to become, a member of a shooting range, or	20
	(c) participate in a firearms safety training course.	21
	Maximum penalty: 50 penalty units.	22
(11)	Prohibition on supplying firearms, firearm parts and ammunition to persons subject to orders	23 24
	A person must not supply a firearm to a person who is subject to a firearms prohibition order or permit such a person to gain possession of a firearm.	25 26
	Maximum penalty:	27
	(a) imprisonment for 10 years (if the firearm concerned is a prohibited firearm or pistol), or	28 29
	(b) imprisonment for 5 years (in any other case).	30
(12)	A person must not supply a firearm part or any ammunition to a person who is subject to a firearms prohibition order or permit such a person to gain possession of a firearm part or any ammunition.	31 32 33
	Maximum penalty: imprisonment for 5 years.	34
(13)	It is a defence to a prosecution for an offence under subsection (11) or (12) for the accused person to prove that he or she did not know, and could not reasonably be expected to have known, that the other person was subject to a firearms prohibition order.	35 36 37 38
(14)	Exemptions	39
	The Commissioner may by order exempt a person, unconditionally or subject to conditions, from a specified provision of this section.	40 41
(15)	Interpretation	42
	For the purposes of this section, a person is taken to <i>acquire</i> a firearm, firearm part or ammunition if:	43 44

(a)	the person knowingly takes, or participates in, any step, or causes any step to be taken, in the process of acquisition of the firearm, firearm part or ammunition, or	1 2 3
(b)	the person knowingly provides or arranges finance for any step in that process, or	4 5
(c)	the person knowingly 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 an owner, lessee or occupier or of which the person has care, control or management.	6 7 8 9
(16)	For the purposes of this section, a person is taken to <i>supply</i> a firearm, firearm part or ammunition if:	10 11
(a)	the person knowingly takes, or participates in, any step, or causes any step to be taken, in the process of supply of the firearm, firearm part or ammunition, or	12 13 14
(b)	the person knowingly provides or arranges finance for any step in that process, or	15 16
(c)	the person knowingly 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 an owner, lessee or occupier or of which the person has care, control or management.	17 18 19 20
(17)	In this section, <i>premises</i> includes any structure, vehicle, vessel or aircraft or any place, whether built on or not.	21 22
74A	Powers of police to ensure compliance with orders	23
(1)	A police officer may:	24
(a)	detain a person who is subject to a firearms prohibition order, or	25
(b)	enter, at any reasonable time, any premises occupied by or under the control or management of such a person, or	26 27
(c)	stop and detain any vehicle, vessel or aircraft occupied by or under the control or management of such a person,	28 29
	and conduct a search of the person, or of the premises, vehicle, vessel or aircraft, for the purposes only of determining whether the person has committed an offence under section 74.	30 31 32
(2)	In this section, <i>premises</i> includes any place, whether built on or not.	33
[4]	Section 84 Proceedings for offences	34
	Omit “74” from section 84 (2). Insert instead “74 (1), (2), (4), (6), (11) or (12)”.	35
[5]	Schedule 3 Savings and transitional provisions	36
	Insert after Part 8:	37
Part 9	Provisions consequent on enactment of Firearms Amendment (Prohibition Orders) Act 2013	38 39
28	Operation of amendments	40
(1)	Section 74 (as substituted by the amending Act) extends to a firearms prohibition order in force immediately before the commencement of the amending Act.	41 42 43

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| (2) | Section 74A extends to a firearms prohibition order in force immediately before the commencement of the amending Act. | 1 |
| | | 2 |
| (3) | In this clause, amending Act means the <i>Firearms Amendment (Prohibition Orders) Act 2013</i> . | 3 |
| | | 4 |

Schedule 2	Amendment of Criminal Procedure Act 1986	1
	No 209	2
[1]	Section 268 Maximum penalties for Table 2 offences	3
	Omit “74” from section 268 (2) (e). Insert instead “74 (1), (2), (4), (6), (11) or (12)”.	4
[2]	Schedule 1 Indictable offences triable summarily	5
	Omit “74” from clause 7 of Table 2. Insert instead “74 (1), (2), (4), (6), (11) or (12)”.	6