

[Act 2001 No 24]



New South Wales

Firearms Amendment (Trafficking) Bill 2001

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Firearms Act 1996* (*the Principal Act*) regarding the regulation and control of firearms and, in particular, the control of trafficking in firearms and the registration of firearm frames and firearm receivers.

The Bill also amends the *Criminal Assets Recovery Act 1990* in relation to firearm trafficking.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Firearms Act 1996* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Criminal Assets Recovery Act 1990* set out in Schedule 2.

Schedule 1 Amendment of Firearms Act 1996

Amendments relating to firearms trafficking

Schedule 1 [1], [3], [7], [11], [18] and [19] make various amendments to the Principal Act to provide for stricter regulation of the sale and purchase of firearms. These amendments, among other things:

- (a) expand the definition of what constitutes a purchase or sale of a firearm, and
- (b) provide that it is an offence not only to sell a firearm to a person not authorised to possess the firearm, but to knowingly take part in such a sale, and
- (c) require purchasers and sellers of firearms to produce and inspect each other's firearms licences and permits before allowing a sale to take place, and
- (d) increase the penalties for an unauthorised sale or purchase of a firearm if the firearm concerned is a prohibited firearm or a pistol, and
- (e) establish a new offence of unauthorised selling of firearms on an ongoing basis (that is, the unauthorised sale of a firearm on 3 or more separate occasions during any period of 30 consecutive days), and
- (f) establish a new offence of conspiring, within New South Wales, with another person or persons to commit an offence outside New South Wales that corresponds to an offence under a provision of the Principal Act or to aid, abet, counsel, procure, solicit or incite the commission of such an offence outside New South Wales.

The amendments are specifically explained below.

Schedule 1 [1] inserts expanded definitions of *purchase* and *sell* into the Principal Act. The proposed new definition of *purchase* includes purchase by wholesale, retail, auction or tender, obtain by barter or exchange and cause or allow any of those things. The proposed new definition of *sell* includes to sell by wholesale, retail, auction or tender, dispose by barter or exchange, offer, receive for sale, have in possession for sale or expose or exhibit for sale, conduct negotiations for sale, consign or deliver for sale and cause or allow any of those things. **Schedule 1 [3], [7], [11], [18] and [20]** are consequential amendments.

Schedule 1 [19] omits section 51 of the Principal Act and replaces it with two proposed sections (sections 51 and 51A) dealing with the sale and purchase of firearms. The provisions of section 44 of the Principal Act (omitted by **Schedule 1 [12]**) dealing with the sale and purchase of firearms by licensed firearms dealers are also incorporated into these proposed new sections.

Proposed section 51 (1) makes it an offence for a person to sell or knowingly take part in the sale of a firearm unless the purchaser is authorised to possess the firearm by a licence or permit and the seller has seen the purchaser's licence or permit and (unless the purchaser is a licensed firearms dealer) the purchaser's permit to acquire the firearm (or the equivalent under the law of another State or Territory). Proposed section 51 (2) provides that a person (other than a licensed firearms dealer) must not sell, or knowingly take part in the sale of, a firearm to a person who is not a licensed firearms dealer unless the sale has been arranged through a licensed firearms dealer or, if a licensed firearms dealer is not reasonably available, the sale is witnessed by a police officer authorised by the Commissioner.

Proposed section 51 (3) provides that a person *takes part in* the sale of a firearm if:

- (a) the person takes, or participates in, any step, or causes any step to be taken, in the process of that sale, or
- (b) the person provides or arranges finance for any step in that process, or
- (c) the person provides the premises in which any step in that process is taken, or suffers or permits any such 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.

The maximum penalties for a conviction under section 51 are as follows:

- (a) on summary conviction—50 penalty units (currently \$5,500) or imprisonment for 2 years, or both,

- (b) on conviction on indictment—imprisonment for 20 years (if it is established beyond reasonable doubt that the firearm concerned was a prohibited firearm or a pistol), or imprisonment for 5 years (in any other case).

Proposed section 51A (1) makes it an offence for a person to purchase a firearm from another person unless the seller is authorised to possess the firearm by a licence or permit and the purchaser has seen the licence or permit. Proposed section 51 (2) provides that a person (other than a licensed firearms dealer) must not purchase a firearm from another person who is not a licensed firearms dealer unless the sale has been arranged through a licensed firearms dealer or, if a licensed firearms dealer is not reasonably available, the sale is witnessed by a police officer authorised by the Commissioner.

The maximum penalties for a conviction under section 51A are as follows:

- (a) on summary conviction—50 penalty units (currently \$5,500) or imprisonment for 2 years, or both,
- (b) on conviction on indictment—imprisonment for 14 years (if it is established beyond reasonable doubt that the firearm concerned was a prohibited firearm or a pistol), or imprisonment for 5 years (in any other case).

Schedule 1 [19] also inserts proposed sections 51B and 51C into the Principal Act.

Proposed section 51B makes it an offence to sell a firearm in contravention of proposed section 51 (relating to the unauthorised sale of firearms) on an ongoing basis. Under the proposed section, a person will be guilty of an offence if the person contravenes proposed section 51 on 3 or more separate occasions during any period of 30 consecutive days. The maximum penalty on conviction for this offence is imprisonment for 20 years.

Proposed section 51C makes it an offence for a person in New South Wales to conspire with another person or persons to commit an offence, that corresponds to an offence under a provision of the Principal Act, outside New South Wales, or, in New South Wales, to aid, abet, counsel, procure, solicit or incite the commission, outside New South Wales, of such an offence. The maximum penalty on conviction for this offence is the same punishment, pecuniary penalty and forfeiture that the person would be subject to if the offence concerned had been committed in New South Wales.

Amendments relating to licensed firearms dealers and their close associates

Schedule 1 [5], [9] and [12] make a number of amendments to the Principal Act to ensure that the holder of a firearms dealer licence is the actual person primarily responsible for the management of the firearms business concerned and is not merely a “front” person managing the business for another person who is not eligible for a licence.

The amendments are specifically explained below.

Schedule 1 [5] inserts proposed section 4B into the Principal Act to define a close associate of a firearms dealer. A *close associate* of an applicant for, or the holder of, a firearms dealer licence is defined as a person who:

- (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the licence applicant or licence holder, and by virtue of that interest or power is or will be able to exercise a significant influence over or with respect to the conduct of that business, or
- (b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the licence applicant or licence holder.

Schedule 1 [9] inserts proposed section 17B into the Principal Act to provide that the Commissioner of Police must refuse to issue a firearms dealer licence if the Commissioner is of the view that:

- (a) a person who (in the opinion of the Commissioner) is or will be a close associate of the applicant is not a fit and proper person to be a close associate of the holder of a firearms dealer licence, or
- (b) the applicant is not the person who will be primarily responsible for the management of the firearms dealing business concerned.

Schedule 1 [12] inserts two proposed sections into the Principal Act.

Proposed section 44 will require applicants for firearms dealer licences to disclose the names and addresses of their close associates. Holders of firearms dealer licences will be under an obligation to notify the Commissioner of Police within 7 days if they become aware that their close associates (if any) have changed. Further, the Commissioner will have the power to require a licensed firearms dealer to submit, at any time specified by the Commissioner, a notice confirming that the close associates of the firearms dealer have not changed or providing updated information regarding the names, addresses and details of each close associate.

Proposed section 44A provides that if a licensed firearms dealer employs a prescribed person in the business that is authorised by the licence or permits a prescribed person to act as an agent for, or participate in the management of, that business, then both the firearms dealer and the prescribed person are guilty of an offence. A *prescribed person* is a person who:

- (a) has, within the preceding 10 years, had his or her firearms dealer licence revoked by the Commissioner for any reason, or
- (b) has, within the preceding 10 years, been convicted in New South Wales or elsewhere of an offence prescribed by the regulations for the purposes of this proposed section, whether or not the offence is an offence under New South Wales law, or
- (c) has, within the preceding 10 years, had his or her application for a licence or permit refused by the Commissioner, or had his or her licence or permit revoked, for either or both of the following reasons:
 - (i) the Commissioner was not satisfied that the person was a fit and proper person and could be trusted to have possession of firearms without danger to public safety or to the peace,
 - (ii) the Commissioner considered that issue of the licence or permit to the person would be contrary to the public interest, or
- (d) is subject to an apprehended violence order, or
- (e) is subject to a good behaviour bond, whether entered into in New South Wales or elsewhere, or
- (f) is subject to a firearms prohibition order.

The maximum penalty on conviction for this offence is imprisonment for 14 years. It will be a defence for a licensed firearms dealer prosecuted for an offence under this section if the firearms dealer proves that he or she did not know, and could not reasonably be expected to have known, that the person employed or permitted to act as an agent for, or to participate in the management of, the firearms dealer's business was in fact a prescribed person.

Amendments relating to the regulation of firearms frames, receivers and firearms parts in general

Schedule 1 [2], [13]–[17] and [24] make various amendments to the Principal Act to provide that:

- (a) licensed firearms dealers must make and keep records of the purchase, receipt, sale or transfer of firearm frames and receivers, and

- (b) police officers are to have the power to demand the production of all firearms and firearm parts in the possession of a licensed firearms dealer, and may require a licensed firearms dealer to furnish information concerning all firearms and firearm parts that have been manufactured, purchased or received by the firearms dealer, are or have been in the licensed firearms dealer's possession or have been sold, transferred or repaired under the authority of that person's licence, and
- (c) firearm frames and firearm receivers that do not form part of a registered firearm are to be separately registered.

The amendments are specifically explained below.

Schedule 1 [15] amends section 45 (3) of the Principal Act to provide that licensed firearms dealers must make a record of the purchase, receipt, sale or transfer of a firearm frame or receiver.

Schedule 1 [16] and **[17]** amend section 45 (6) (b) and (c) of the Principal Act to provide that police officers are to have the power to demand the production of all firearms and firearms parts in the possession of a licensed firearms dealer, and may require the firearms dealer to furnish information in that person's possession concerning all firearms and firearm parts that have been manufactured, purchased or received by the firearms dealer, are in the firearms dealer's possession or have been sold, transferred or repaired under the authority of that person's licence.

Schedule 1 [24] inserts proposed section 93 into the Principal Act to provide that Part 3 of the Principal Act (dealing with the registration of firearms) applies to firearm frames and receivers that do not form part of a registered firearm. The new section will require firearm frames and receivers to be separately registered under that Part.

Schedule 1 [2], [13] and **[14]** are consequential amendments.

Amendments increasing various criminal penalties

Schedule 1 [6] amends section 7 of the Principal Act to increase the maximum penalty in relation to conviction on indictment for the unauthorised possession or use of a firearm (where it is established beyond reasonable doubt that the firearm concerned was a prohibited firearm or a pistol) from imprisonment for 10 years to imprisonment for 14 years.

The maximum penalty provision of section 7 will continue to operate in conjunction with section 15 of the *Crimes (Sentencing Procedure) Act 1999*. Under that section a court may impose a fine not exceeding 1,000 penalty units (currently

\$110,000) on an offender whom it convicts on indictment of an offence (except where the offence already provides for a fine to be imposed). The fine may be in addition to or instead of any other penalty imposed by the court.

Schedule 1 [21] substitutes section 72 of the Principal Act (Falsifying or altering records) to increase the maximum penalty in relation to false record keeping by licensed firearms dealers. The revised section 72 provides that a licensed firearms dealer must not, with intent to deceive, make a false or misleading entry in, or alter, a record of a transaction required to be made or kept under section 45. The maximum penalty on conviction on indictment is imprisonment for 14 years (if it is established beyond reasonable doubt that the firearm or firearm part concerned was a prohibited firearm or a pistol or part of a prohibited firearm or part of a pistol), or imprisonment for 5 years in any other case.

Other miscellaneous amendments

Schedule 1 [5] inserts proposed section 4A into the Principal Act to expand the meaning of “possession” of a firearm. The provision reverses the onus of proof in relation to firearms found on premises. Under the proposed section, in any proceedings under the Principal Act, a firearm is taken to be in the possession of a person so long as it is in or on any premises owned, leased or occupied by, or in the care, control or management of, the person, unless the court is satisfied that:

- (a) the firearm was placed in or on, or brought into or on to, the premises by or on behalf of a person who was lawfully authorised to possess the firearm, or
- (b) the person did not know and could not reasonably be expected to have known that the firearm was in or on the premises, or
- (c) on the evidence before it, the person was not in possession of the firearm.

Schedule 1 [4] makes a consequential amendment.

Schedule 1 [8] and **[10]** make statute law revision amendments.

Schedule 1 [22] amends section 84 of the Principal Act to provide that proceedings for any of the following offences must be taken on indictment:

- (a) an offence under section 51 (1) that relates to the sale of a prohibited firearm or a pistol,
- (b) an offence under section 51B (1) (in all cases).

Schedule 1 [23] inserts proposed section 88 (2) (s) into the Principal Act to provide that the Governor may make regulations for or with respect to the circumstances in which a certified copy of a licence or permit may be produced in satisfaction of the requirements of the Principal Act or the regulations under that Act instead of an original copy of the licence or permit. For example, the regulations made under this

proposed provision may provide that persons living in remote areas may, when purchasing or selling a firearm, send a certified copy of a licence to a firearms dealer rather than personally producing it to the dealer for inspection.

Schedule 1 [25] and [26] amend Schedule 3 to the Principal Act to provide for the transitional application of amendments made by the proposed Act and to allow any necessary regulations to be made as a consequence of those amendments.

Schedule 2 Amendment of Criminal Assets Recovery Act 1990

Schedule 2 [1] and [2] amend section 6 (2) of the *Criminal Assets Recovery Act 1990* to provide that an offence under proposed section 51B (Selling firearms on an ongoing basis) is a serious criminal offence for the purposes of the definition of *serious crime related activity*. The amendment will enable the criminal asset confiscation provisions of that Act to operate in relation to criminal activity surrounding the ongoing sale of firearms.