

[Act 2002 No 47]



New South Wales

Firearms Amendment (Public Safety) Bill 2002

Explanatory note

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

The *Summary Offences Amendment (Public Safety) Bill 2002* is cognate with this Bill.

Overview of Bill

The objects of this Bill are as follows:

- (a) to authorise the use of dogs by police officers for the purpose of detecting offences in relation to firearms and explosives and for the purpose of carrying out random detection of firearms and explosives in public places,
 - (b) to create a separate offence of manufacturing firearms without a licence or permit under the *Firearms Act 1996*,
 - (c) to create a separate offence, designed to target illegal trafficking in firearms, of unauthorised possession of 3 or more unregistered firearms,
 - (d) to modify provisions relating to firearms dealers,
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- (e) to provide mandatory grounds for refusing to issue a licence or permit on the basis of criminal intelligence held in relation to the applicant,
- (f) to make other miscellaneous amendments (including amendments of a consequential nature) to the *Firearms Act 1996* and the *Criminal Procedure Act 1986*,
- (g) to include devices (known as “brass catchers”) that catch ejected cartridges as things that are prohibited weapons under the *Weapons Prohibition Act 1998*.

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 Schedules 1 and 2.

Clause 4 is a formal provision giving effect to the amendments to the Acts and the regulation set out in Schedule 3.

Schedule 1 Amendment of Firearms Act 1996

Use of dogs to detect firearms and explosives

Schedule 1 [15] inserts a new Part 6A in the Act that will authorise police officers to use dogs for the purpose of detecting offences relating to the unlawful possession or use of firearms or explosives, and to use dogs for the purpose of carrying out general (ie random) firearms or explosives detection in public places without a warrant. The provisions are based on similar powers under the *Police Powers (Drug Detection Dogs) Act 2001* in relation to prohibited drugs, although general firearms or explosives detection can be carried out without a warrant in any public place.

Manufacturing of firearms and provisions relating to firearms dealers

Schedule 1 [12] creates a specific offence of manufacturing firearms without a licence or permit. Even though firearms manufacturing is presently regulated, the existing offence under section 43 of the Act is directed at firearms dealers who are

carrying on a business. The new offence will operate regardless of whether the unauthorised person is manufacturing a firearm in the course of carrying on a business.

Schedule 1 [1] replaces the definition of *firearms dealer* in section 4 (1) to more accurately reflect the activities that are carried on by firearms dealers and club armourers. **Schedule 1 [2], [3] and [5]** are consequential amendments.

Schedule 1 [4] enables the regulations to prescribe sub-categories of firearms licences and to specify the authority conferred by each such sub-category.

Schedule 1 [11] restates the offence provision requiring persons who carry on activities as firearms dealers to be licensed as firearms dealers.

Unauthorised possession of multiple firearms

Schedule 1 [13] creates a new offence of being in possession of more than 3 unregistered firearms without the authority of a licence or permit. The offence is designed to target illegal suppliers who are in possession of multiple firearms.

Restrictions on issuing firearm licences and permits

Schedule 1 [6] provides for the mandatory refusal of an application for a licence on the grounds that the Commissioner of Police, having regard to any criminal intelligence report or other criminal information in relation to the applicant, is of the opinion that the applicant is a risk to public safety. **Schedule 1 [9]** makes the same amendment in relation to the issuing of permits, and **Schedule 1 [7], [8] and [10]** are consequential amendments.

Schedule 1 [16] provides that certain provisions of the *Administrative Decisions Tribunal Act 1997* (eg the requirement to provide the applicant with reasons for decisions) do not apply to an application to the Tribunal for a review of a decision to refuse to issue a licence or permit on the grounds referred to above. The Tribunal is also required, if an application for review of the decision is made, not to disclose the existence or content of any criminal intelligence report or criminal information that formed the basis of the refusal to issue the licence or permit.

Schedule 1 [17] provides that the Commissioner's functions in relation to the refusal to issue a licence or permit on the grounds of the applicant being a risk to public safety cannot be delegated.

Other miscellaneous amendments

Schedule 1 [14] creates 2 new offences in connection with converting firearms. Proposed section 63 (3) prohibits a person from altering the construction or action of a non-prohibited firearm so as to convert it into a prohibited firearm (these are listed in Schedule 1 to the Act and include any self-loading (ie semi-automatic) rifle or self-loading or pump action shotgun). Proposed section 63 (4) prohibits a person from providing another person with any information or thing that the person knows is to be used for the purpose of altering the construction or action of a firearm if the other person is not authorised to possess a firearm of the kind to which it is capable of being so altered.

Schedule 1 [18] and [19] clarify the manner in which offences under the Act are to be dealt with. As presently provided, a number of indictable offences are, in accordance with the *Criminal Procedure Act 1986*, to be dealt with summarily unless the prosecution elects otherwise.

Schedule 1 [20] enables regulations of a savings or transitional nature to be made as a consequence of the proposed Act. **Schedule 1 [21]** provides that the amendments relating to the mandatory refusal to issue a licence or permit on the grounds of the applicant being a risk to public safety extend to existing applications. The amendment also extends the duration of firearms dealer licences that are due to expire before the end of 2002 for a further 6 months.

Schedule 2 Miscellaneous amendments to Firearms Act 1996 to clarify operation of existing penalties

Schedule 2 contains a number of amendments that merely restate (but do not increase) the existing penalties for certain indictable offences under the Act and in some cases restate the existing offence to take into account the fact that a higher penalty is currently applicable when a prohibited firearm or pistol is involved. The purpose of these amendments is to clarify the existing arrangement in which certain indictable offences under the Act are, in accordance with the *Criminal Procedure Act 1986*, to be dealt with summarily unless the prosecution elects otherwise. However, certain indictable offences (such as the existing offence under section 51B of selling firearms on an ongoing basis, or the new offence under section 50A (2) of unauthorised manufacture of a prohibited firearm or pistol) can only ever be prosecuted on indictment (see **Schedule 1 [19]** which replaces section 84 (3) of the *Firearms Act 1996*).

Schedule 3 Amendment of other legislation

Schedule 3.1 [2] amends the *Criminal Procedure Act 1986* to provide that the indictable offence under section 33B (1) of the *Crimes Act 1900* (relating to the use or possession of an offensive weapon or instrument, or threatening injury to any person or property, with intent to commit an indictable offence or to resist arrest) is to be dealt with summarily unless the prosecution or the person charged elects otherwise.

Schedule 3.1 [1] amends the *Criminal Procedure Act 1986* to specify the penalty for certain indictable offences under the *Firearms Act 1996* when they are dealt with summarily. **Schedule 3.1 [3]** also amends that Act to specify the indictable offences under the *Firearms Act 1996* that are to be dealt with summarily (unless the prosecution elects otherwise).

Schedule 3.2 amends the *Weapons Prohibitions Act 1998* to add “brass catchers” to the list of things that are prohibited weapons under that Act.

Schedule 3.3 amends the *Weapons Prohibition Regulation 1999* to exempt licensed shooters from the requirement to have a permit to possess or use a brass catcher.