



New South Wales

Firearms and Crimes Legislation Amendment (Public Safety) Bill 2003

Explanatory note

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

Overview of Bill

The object of this Bill is to create new offences under the *Crimes Act 1900* and the *Firearms Act 1996* to improve public safety.

The new offences under the *Crimes Act 1900* are as follows:

- (a) firing a firearm at a dwelling-house or other building with reckless disregard for the safety of any person (the maximum penalty being imprisonment for 14 years),
- (b) stealing a firearm (14 years imprisonment),
- (c) possession by an unauthorised person of an unregistered firearm in a public place (10 years imprisonment) as well as a separate offence (14 years imprisonment) in aggravated circumstances (namely, if the offence involves more than one unregistered firearm, an unregistered prohibited firearm or an unregistered pistol).

The new offences under the *Firearms Act 1996* are as follows:

- (a) selling a firearm part to an unauthorised person (5 years imprisonment) as well as a separate offence (10 years imprisonment) of selling a firearm part that relates to any kind of prohibited firearm or pistol,
- (b) selling firearm parts illegally on an ongoing basis (20 years imprisonment),
- (c) using a false document (such as a document that purports to be a firearm licence or permit) in order to obtain a firearm (10 years imprisonment).

The Bill also makes other miscellaneous amendments (including amendments of a consequential nature) to the *Crimes Act 1900* and the *Firearms Act 1996* as well as to the *Criminal Procedure Act 1986* and the *Firearms (General) Regulation 1997*.

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 that gives effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Firearms Act 1996* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the *Criminal Procedure Act 1986* and the *Firearms (General) Regulation 1997* set out in Schedule 3.

Schedule 1 Amendment of Crimes Act 1900

Schedule 1 [1] makes it clear, for the purposes of the existing offences under the Act in relation to firearms as well as for the purposes of the new offence under proposed section 93I, that being in a public place includes being in a vehicle or vessel that is in a public place.

Schedule 1 [2] creates a new offence under proposed section 93GA of firing a firearm at a dwelling-house or other building with reckless disregard for the safety of any person. The maximum penalty for the new offence is imprisonment for 14 years.

Schedule 1 [3] creates a new offence under proposed section 93I of possession by an unauthorised person of an unregistered firearm in a public place. The maximum penalty for the new offence is imprisonment for 10 years. A separate

offence is also created (imprisonment for 14 years) if the offence is committed in circumstances of aggravation (namely, more than one unregistered firearm is involved or the unregistered firearm is a prohibited firearm or a pistol).

Schedule 1 [4] creates a new offence under proposed section 154D of stealing a firearm. The maximum penalty for the new offence is imprisonment for 14 years.

Schedule 2 Amendment of Firearms Act 1996

Schedule 2 [1] inserts proposed section 50AA to make it an offence for an unauthorised person to purchase a firearm part (the maximum penalty for the offence is imprisonment for 5 years). A separate offence is also created (imprisonment for 10 years) if a person purchases a firearm part that relates to any kind of prohibited firearm or pistol that the person is not authorised to possess.

Schedule 2 [2] modifies the existing offence under section 51B of selling firearms illegally on an ongoing basis so that the 3 occasions of sale that constitute the offence may occur over any consecutive period of 12 months (rather than any period of 30 days as currently provided under section 51B).

Schedule 2 [3] inserts proposed sections 51BA and 51BB. Proposed section 51BA makes it an offence to sell a firearm part to an unauthorised person (imprisonment for 5 years). A separate offence is also created (imprisonment for 10 years) if the firearm part relates to any kind of prohibited firearm or pistol. Proposed section 51BB creates an offence of selling firearm parts illegally on an ongoing basis (ie if a person contravenes proposed section 51BA on 3 or more separate occasions over any consecutive period of 12 months). The maximum penalty for the offence under proposed section 51BB is imprisonment for 20 years (which is the same penalty for the existing offence under section 51B of selling firearms illegally on an ongoing basis).

Schedule 2 [4] omits the existing offence of forging or fraudulently altering a firearms licence or permit (which has a maximum penalty of 50 penalty units or imprisonment for 2 years, or both). **Schedule 2 [5]** inserts a note that refers to the existing offence under section 300 of the *Crimes Act 1900* of making a false document (such as a forged firearms licence or permit) which has a maximum penalty of imprisonment for 10 years.

Schedule 2 [6] inserts proposed section 71A to make it an offence to use a false document (such as a forged or fraudulently altered firearms licence or permit) with the intention of obtaining a firearm. The maximum penalty for the offence is imprisonment for 10 years.

Schedule 2 [7] and [8] provide for the manner in which the new offences are to be dealt with.

Schedule 2 [9] will enable the Commissioner of Police to delegate the Commissioner's function of providing certificate evidence of certain matters in the ordinary manner.

Schedule 2 [10] and [11] provide for matters of a savings and transitional nature.

Schedule 3 Amendment of other legislation

Schedule 3.1 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 and also to specify the indictable offences created under the proposed Act that are to be dealt with summarily (unless the prosecution elects otherwise).

Schedule 3.2 [1] amends the *Firearms (General) Regulation 1997* to require a licence or permit holder to notify the Commissioner of the address where the holder keeps his or her firearms and also to notify the Commissioner of any change to that address.

Schedule 3.2 [2] is a consequential amendment.



New South Wales

Firearms and Crimes Legislation Amendment (Public Safety) Bill 2003

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Crimes Act 1900 No 40	2
4 Amendment of Firearms Act 1996 No 46	2
5 Amendment of other legislation	2
Schedule 1 Amendment of Crimes Act 1900	3
Schedule 2 Amendment of Firearms Act 1996	5
Schedule 3 Amendment of other legislation	11

Firearms and Crimes Legislation Amendment (Public Safety) Bill 2003

Contents

Page

Contents page 2



New South Wales

Firearms and Crimes Legislation Amendment (Public Safety) Bill 2003

No. , 2003

A Bill for

An Act to amend the *Crimes Act 1900* and the *Firearms Act 1996* to create additional offences in relation to firearms; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Firearms and Crimes Legislation Amendment (Public Safety) Act 2003</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Crimes Act 1900 No 40	8
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	9
4 Amendment of Firearms Act 1996 No 46	10
The <i>Firearms Act 1996</i> is amended as set out in Schedule 2.	11
5 Amendment of other legislation	12
The Act and the regulation specified in Schedule 3 are amended as set out in that Schedule.	13 14

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 93F

Omit the section. Insert instead:

93F Interpretation

(1) In this Part:

firearm, *pistol* and *prohibited firearm* have the same meanings as in the *Firearms Act 1996*.

unregistered firearm means a firearm that is not registered under the *Firearms Act 1996*.

(2) For the purposes of this Part, a person who is in a vehicle or vessel in a public place is taken to be in that place.

(3) In subsection (2), *vehicle* includes a caravan or anything else constructed to be drawn by a vehicle or animal.

[2] Section 93GA

Insert after section 93G:

93GA Firing at dwelling-houses or buildings

(1) A person who fires a firearm at a dwelling-house or other building with reckless disregard for the safety of any person is liable to imprisonment for 14 years.

(2) In the prosecution of an offence under this section, it is not necessary to prove that a person was actually placed in danger by the firing of the firearm.

(3) If, on the trial of a person for an offence under this section, the jury is not satisfied that the accused is guilty of the offence but is satisfied on the evidence that the person is guilty of an offence under section 93G or 93H, it may find the person not guilty of the offence charged but guilty of an offence under section 93G or 93H, and the accused is liable to punishment accordingly.

[3] Section 93I	1
Insert after section 93H:	2
93I Possession of unregistered firearm in public place	3
(1) A person who:	4
(a) possesses an unregistered firearm in a public place, and	5
(b) is not authorised under the <i>Firearms Act 1996</i> to possess the firearm,	6
is liable to imprisonment for 10 years.	7
(2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 14 years.	8
(3) For the purposes of subsection (2), an offence under subsection (1) is committed in <i>circumstances of aggravation</i> if the offence involves the possession:	9
(a) of more than one unregistered firearm, or	10
(b) of an unregistered firearm that is a pistol, or	11
(c) of an unregistered firearm that is a prohibited firearm.	12
[4] Section 154D	13
Insert after section 154C:	14
154D Stealing firearms	15
(1) A person who steals a firearm is liable to imprisonment for 14 years.	16
(2) In this section:	17
<i>firearm</i> has the same meaning as in the <i>Firearms Act 1996</i> .	18

Schedule 2 Amendment of Firearms Act 1996

(Section 4)

[1] Section 50AA

Insert after section 50:

50AA Purchase of firearm parts

- (1) A person must not purchase a firearm part unless the person:
- (a) is the holder of a licence or permit for the kind of firearm to which the firearm part relates, or
 - (b) is authorised by a permit to purchase the firearm part.

Maximum penalty: imprisonment for 5 years.

- (2) A person must not purchase a firearm part that relates to any kind of prohibited firearm or pistol unless the person:
- (a) is the holder of a licence or permit for that kind of prohibited firearm or pistol, or
 - (b) is authorised by a permit to purchase the firearm part.

Maximum penalty: imprisonment for 10 years.

- (3) If, on the trial of a person for an offence under subsection (2), the jury is not satisfied that the accused is guilty of the offence but is satisfied on the evidence that the person is guilty of an offence under subsection (1), it may find the person not guilty of the offence charged but guilty of an offence under subsection (1), and the accused is liable to punishment accordingly.

[2] Section 51B Selling firearms on an ongoing basis

Omit “during any period of 30 consecutive days” from section 51B (1).

Insert instead “over any consecutive period of 12 months”.

[3] Sections 51BA and 51BB	1
Insert after section 51B:	2
51BA Restrictions on sale of firearm parts	3
(1) A person (<i>the seller</i>) must not sell, or knowingly take part in the sale of, a firearm part to another person (<i>the purchaser</i>) unless:	4
(a) the seller is authorised by a licence or permit to sell the firearm part, and	5
(b) the purchaser is the holder of a licence or permit for the kind of firearm to which the firearm part relates, and	6
(c) the purchaser's licence or permit has been produced to, and inspected by, the seller.	7
Maximum penalty: imprisonment for 5 years.	8
(2) A person (<i>the seller</i>) must not sell, or knowingly take part in the sale of, a firearm part to another person (<i>the purchaser</i>), being a firearm part that relates to any kind of prohibited firearm or pistol, unless:	9
(a) the seller is authorised by a licence or permit to sell the firearm part, and	10
(b) the purchaser is the holder of a licence or permit for that kind of prohibited firearm or pistol, and	11
(c) the purchaser's licence or permit has been produced to, and inspected by, the seller.	12
Maximum penalty: imprisonment for 10 years.	13
(3) For the purposes of this section, a person <i>takes part in</i> the sale of a firearm part if:	14
(a) the person takes, or participates in, any step, or causes any step to be taken, in the process of that sale, or	15
(b) the person provides or arranges finance for any step in that process, or	16
(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.	17
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- (4) If, on the trial of a person for an offence under subsection (2), the jury is not satisfied that the accused is guilty of the offence but is satisfied on the evidence that the person is guilty of an offence under subsection (1), it may find the person not guilty of the offence charged but guilty of an offence under subsection (1), and the accused is liable to punishment accordingly.

51BB Selling firearm parts on an ongoing basis

- (1) A person must not contravene section 51BA on 3 or more separate occasions over any consecutive period of 12 months.
Maximum penalty: imprisonment for 20 years.
- (2) For the purposes of this section, the sale of more than one firearm part to any person on a single occasion does not, in itself, constitute more than one occasion.
- (3) If, on the trial of a person for an offence under this section, more than 3 occasions of selling a firearm part are relied on as evidence of commission of the offence, all the members of the jury must be satisfied as to the same 3 occasions in order to find the person guilty of the offence.
- (4) If, on the trial of a person for an offence under this section, the jury is not satisfied that the offence is proven but is satisfied that the person has, in respect of any of the occasions relied on as evidence of commission of the offence under this section, committed an offence under section 51BA, the jury may acquit the person of the offence charged and find the person guilty of an offence under section 51BA, and the person is liable to punishment accordingly.
- (5) A person who has been convicted of an offence under this section is not liable to be convicted:
- (a) of an offence under section 51BA, or
 - (b) of a separate offence under this section,
- 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.
- (6) A person who has been acquitted of an offence under this section is not liable to be convicted:
- (a) except as provided by subsection (4)—of an offence under section 51BA, or

(b)	of a separate offence under this section,	1
	on the same, or substantially the same, facts as those relied on	2
	as evidence of commission of the offence in respect of which	3
	the person has been acquitted.	4
(7)	A person who has been:	5
(a)	convicted of an offence under section 51BA, or	6
(b)	acquitted of such an offence,	7
	is not liable to be convicted of an offence under this section	8
	on the same, or substantially the same, facts as those relied on	9
	as evidence of commission of the offence under section	10
	51BA.	11
(8)	Subject to subsections (5) and (6), this section does not:	12
(a)	remove the liability of any person to be convicted of an	13
	offence under section 51BA, or	14
(b)	affect the punishment that may be imposed for any such	15
	offence.	16
[4]	Section 71 Misuse of licences and permits	17
	Omit section 71 (b).	18
[5]	Section 71, note	19
	Insert at the end of the section:	20
	Note. It is an offence under section 300 (1) of the <i>Crimes Act 1900</i> to	21
	make a false instrument (such as a forged or fraudulently altered	22
	firearms licence) with the intention that it will be used by somebody to	23
	induce another person to accept it as genuine and (because of that	24
	acceptance) to do (or not do) some act to that other person's prejudice.	25
	The penalty for such an offence is imprisonment for 10 years.	26
[6]	Section 71A	27
	Insert after section 71:	28
71A	Using forged or fraudulently altered licence or permit to obtain	29
	firearm	30
(1)	A person is guilty of an offence under this section if the	31
	person uses a document that is, and that the person knows to	32
	be, false, with the intention of obtaining a firearm.	33
	Maximum penalty: imprisonment for 10 years.	34

(2)	For the purposes of this section, a document is false if it purports to be a licence or permit authorising the person who is using it to possess a firearm but is in fact:	1
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(a)	not a licence or permit, or	4
(b)	a licence or permit that has been altered in any respect by a person who was not authorised to make the alteration, or	5
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(c)	a licence or permit that has been issued to another person.	8
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[7]	Section 84 Proceedings for offences	10
	Omit section 84 (2). Insert instead:	11
(2)	An offence under section 7, 36, 43, 44A, 50, 50AA, 50A (1), 51 (1) or (2), 51A, 51BA, 51D (1), 51E, 58 (2), 62, 63, 64, 66, 70, 71A, 72 (1) or 74 may be prosecuted on indictment. However, Chapter 5 of the <i>Criminal Procedure Act 1986</i> (which relates to the summary disposal of certain indictable offences unless an election is made by the prosecution to proceed on indictment) applies to and in respect of an offence referred to in this subsection.	12
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[8]	Section 84 (3)	20
	Insert “, 51BB” after “51B”.	21
[9]	Section 87 Evidence	22
	Omit “(or by a person holding an office prescribed by the regulations)”.	23
[10]	Schedule 3 Savings and transitional provisions	24
	Insert after clause 1 (1) (d):	25
(e)	the <i>Firearms and Crimes Legislation Amendment (Public Safety) Act 2003</i> , to the extent that it amends this Act.	26
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[11] Schedule 3, Part 6	1
Insert after Part 5:	2
Part 6 Provisions consequent on enactment of Firearms and Crimes Legislation Amendment (Public Safety) Act 2003	3 4 5
23 Operation of amendment to section 51B	6
For the purposes of section 51B (as amended by Schedule 2 [2] to the <i>Firearms and Crimes Legislation Amendment (Public Safety) Act 2003</i>), a consecutive period of 12 months may include a period part of which occurs before the commencement of that amendment so long as that part period does not exceed 30 days.	7 8 9 10 11 12

Schedule 3 Amendment of other legislation

(Section 5)

3.1 Criminal Procedure Act 1986 No 209**[1] Section 268 Maximum penalties for Table 2 offences**

Omit “or 93H” from section 268 (2) (e). Insert instead “, 93H or 93I”.

[2] Section 268 (2) (e1)

Omit the paragraph. Insert instead:

- (e1) for an offence under section 7, 36, 43, 44A, 50, 50AA, 50A (1), 51 (1) or (2), 51A, 51BA, 51D (1), 51E, 58 (2), 62, 63, 64, 66, 70, 71A, 72 (1) or 74 of the *Firearms Act 1996*—imprisonment for 2 years, or a fine of 50 penalty units, or both,

[3] Schedule 1 Indictable offences triable summarily

Insert “154D,” after “154C,” in clause 9 of Table 1.

[4] Schedule 1, Table 2

Omit “or 93H” from clause 6. Insert instead “, 93H or 93I”.

[5] Schedule 1, Table 2

Omit clause 7. Insert instead:

7 Firearms Act 1996

An offence under section 7, 36, 43, 44A, 50, 50AA, 50A (1), 51 (1) or (2), 51A, 51BA, 51D (1), 51E, 58 (2), 62, 63, 64, 66, 70, 71A, 72 (1) or 74 of the *Firearms Act 1996*.

3.2 Firearms (General) Regulation 1997**[1] Clause 14**

Omit the clause. Insert instead:

14 Requirement to notify Commissioner of address where firearms are kept

- (1) The holder of a licence or permit must, within 7 days of acquiring any firearm, notify the Commissioner in writing of:
- (a) the address of the premises on which the firearm is to be kept when not actually being used, and

- (b) the particulars of the arrangements that have been made by the licence or permit holder for complying with the requirements of the Act and this Regulation concerning the safe keeping and storage of the firearm on those premises. 1
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Maximum penalty: 50 penalty units. 6
 - (2) If there is any change in the address of the premises on which the holder of a licence or permit keeps any firearm, the holder of the licence or permit must, within 7 days after the change occurs, notify the Commissioner in writing of: 7
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 - (a) the address of the new premises on which the firearm is to be kept, and 11
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 - (b) the particulars of the arrangements that have been made by the licence or permit holder for complying with the requirements of the Act and this Regulation concerning the safe keeping and storage of the firearm on those premises. 13
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Maximum penalty: 50 penalty units. 18
 - (3) Subclause (2) does not affect any requirement under section 69 of the Act to notify the Commissioner of a change of address in relation to a place of residence. 19
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- [2] Clause 107 Certificate evidence** 22
- Omit the clause. 23