

CRIMES (FIREARMS) AMENDMENT BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Firearms Bill 1988.

The object of this Bill is to amend the Crimes Act 1900 so as—

- (a) to insert into that Act certain offences and other provisions currently contained in the Firearms and Dangerous Weapons Act 1973 (the "1973 Act") which is intended to be repealed by the proposed Firearms Act 1988; and
- (b) to increase the maximum penalties for certain of those offences.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Crimes Act 1900.

Clause 4 provides that firearms and other dangerous articles seized by the police under certain provisions of the 1973 Act are to be dealt with as if they had been seized under corresponding provisions intended to be inserted into the Crimes Act 1900 by the proposed Act.

SCHEDULE 1—AMENDMENTS

Offence of possessing firearms and certain other weapons or articles for criminal purposes

Schedule 1 (2) amends section 33B of the Principal Act which presently prohibits the use of weapons for certain criminal purposes. The amendments will make it an offence punishable by penal servitude of up to 12 years if a person possesses an offensive weapon (such as a firearm) with intent—

- to commit an indictable offence; or
- to prevent a lawful arrest; or
- to resist a member of the Police Force carrying out his or her duty.

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The section as amended replaces the offence provided by section 58 of the 1973 Act.

Offences where danger created with firearms or spear guns

Schedule 1 (3) inserts into the Principal Act proposed sections 93F-93H as Part 3B (Offences Relating to Firearms etc.). Of the proposed sections:

Section 93F defines "firearm" for the purposes of proposed Part 3B.

Section 93G (Causing danger with firearm or spear gun) relates to having or using a loaded firearm or loaded spear gun in a public place (or anywhere, if the consequence is to endanger anybody). The maximum penalty for an offence will be imprisonment for 10 years.

Section 93H (Trespassing with firearm or spear gun) relates to trespassing with a firearm or imitation firearm or spear gun on fenced land or in a building or firing a firearm or spear gun on to any such land or into any building. The maximum penalty for an offence will also be imprisonment for 10 years.

The proposed sections restate with minor modifications offences presently set out in sections 43 and 44 of the 1973 Act.

Searching for, and seizure and disposal of, firearms and other dangerous articles

Schedule 1 (4) and (5) insert into the Principal Act proposed sections 357 and 358B. Of the proposed sections:

Section 357 (Searching for and seizing firearms etc.) empowers members of the Police Force to search for and seize firearms and other dangerous articles reasonably suspected of having been used in the commission of indictable offences, certain offences under the Principal Act or offences under the proposed Firearms Act 1988 or Prohibited Weapons Act 1988 (or during the course of taking action to prevent domestic violence offences).

Section 358B (Disposal of seized firearms etc.) allows a Local Court to make an order for the return of anything seized under proposed section 357 and provides for its forfeiture to the Crown in other cases.

The proposed sections restate the substance of sections 75, 77 and 78 of the 1973 Act.

Summary proceedings for proposed new indictable offences

Schedule 1 (6) inserts into Chapter 3 of Part 14 (Offences Punishable by Justices and Procedure before Justices Generally) of the Principal Act proposed section 496A (Indictable offences punishable summarily without consent of accused: dangerous weapons) which will enable offences against proposed section 93G or 93H (described above) to be prosecuted in a Local Court constituted by a Magistrate as an alternative to proceeding by way of indictment. The maximum penalty for a conviction in a Local Court for such an offence will be imprisonment for 2 years or a fine of \$5,000, or both.

Schedule 1 (7) amends section 497 (General provisions regarding indictable offences punishable summarily without consent of accused) of the Principal Act so as to make it clear that a Local Court may decline to deal with an offence against proposed section 93G or 93H and that such an offence may be dealt with on indictment.

The above references to provisions of the Principal Act relating to summary proceedings are references to those provisions as to be amended or inserted by the proposed Crimes (Amendment) Act 1988. (It is intended to commence those amendments before the proposed firearms legislation.)

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Offence of possession of dangerous article in public place

Schedule 1 (8) inserts into the Principal Act proposed section 545E (Possession of dangerous articles other than firearms) which makes the possession in a public place of such articles as smoke bombs, teargas capsules, fuses or detonators an offence. The maximum penalty for any such offence will also be imprisonment for 2 years or a fine of \$5,000, or both. Proceedings for such an offence can only be taken in a summary manner in a Local Court constituted by a Magistrate.

The proposed section restates the offence provided by section 57 of the 1973 Act.

Consequential amendments

Schedule 1 (1) amends section 1 (Short title and contents of Act) of the Principal Act as a consequence of the intention to insert into that Act the additional provisions mentioned above.
