

FIREARMS BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

- Prohibited Weapons Bill 1988;
- Crimes (Firearms) Amendment Bill 1988.

The objects of this Bill are—

- (a) to repeal the Firearms and Dangerous Weapons Act 1973 (the “1973 Act”);
and
- (b) to replace its provisions regulating the lawful possession and use of pistols, rifles, shotguns and other firearms with new provisions that simplify firearms controls.

The proposed Act will also substantially increase the maximum penalties for offences involving firearms.

(The provisions of the 1973 Act prohibiting the possession of dangerous weapons and articles are intended to be replaced by the proposed Prohibited Weapons Act 1988. Certain other provisions of the 1973 Act are intended to be inserted in the Crimes Act 1900.)

PART 1—PRELIMINARY

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 defines certain terms used in the proposed Act.

Clause 4 states that the proposed Act will bind the Crown, with certain exceptions (such as members of the Police Force or prison officers acting in the course of their employment as such).

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PART 2—REGULATION OF FIREARMS

Clause 5 makes it an offence for a person to possess or use a firearm unless authorised to do so by a licence or permit. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or, if the firearm was a pistol, imprisonment for 10 years or, in any other case, imprisonment for 5 years (on conviction on indictment).

Clause 6 makes it an offence for a person to buy a firearm unless authorised to have possession of it by a licence or authorised to buy it by a permit. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or, if the firearm was a pistol, imprisonment for 10 years or, in any other case, imprisonment for 5 years (on conviction on indictment).

Clause 7 makes it an offence for a person to buy or take possession of a firearm from another person unless the other person is authorised by a licence or permit to possess, sell or otherwise give possession of the firearm and the person buying or taking possession of the firearm (except from the holder of a dealer's licence) sights the licence or permit.

The clause also makes it an offence for a person to sell or give possession of a firearm to another person unless the other person is authorised by a licence or permit to possess or to buy or take possession of the firearm and the person selling or giving possession of the firearm (except to the holder of a dealer's licence) sights the licence or permit. The maximum penalty in each case is a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 8 makes it an offence for a person, in carrying on a business, to manufacture, buy, sell, transfer or repair firearms or to possess them for those purposes without a licence. A licence would not be required to authorise the buying, selling or trading of firearms on infrequent occasions so as not to amount to the carrying on of a business. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or imprisonment for 7 years (on conviction on indictment).

Clause 9 makes it an offence for a person to possess a spare barrel for a pistol unless the person is authorised to possess the pistol or barrel by a licence. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 10 requires a person who is carrying a firearm to produce it and any licence or permit authorising possession of it for inspection on (or in certain cases, to produce the licence or permit as soon as practicable, but not more than 6 hours, after) a demand for their production by a member of the Police Force. An appropriate caution must be given by the member. The maximum penalty for not complying is a fine of \$2,000 or imprisonment for 1 year, or both.

Clause 11 requires a person who has or comes into possession of a firearm or a substantial part of a firearm, and who ceases to be or is not authorised to possess it, to surrender the firearm or part to a member of the Police Force or to a person who is so authorised. The maximum penalty for not complying is a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 12 requires a person who possesses a firearm or spare barrel for a firearm to take all reasonable precautions for its safekeeping. The maximum penalty for not complying is, if the firearm was a pistol, a fine of \$5,000 or imprisonment for 2 years, or both, or, in the case of any other firearm or a spare barrel, a fine of \$2,000 or imprisonment for 1 year, or both.

Clause 13 makes it an offence for a person to sell or give possession of an unsafe firearm to another person without warning the other person appropriately. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

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A member of the Police Force is authorised by this clause to seize a firearm in a public place if it is suspected on reasonable grounds to be unsafe.

Clause 14 makes it an offence for a person to shorten a firearm (other than a pistol or an unrifled air gun) or to possess, sell or give possession of such a firearm without being authorised to do so by a licence or permit. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or imprisonment for 10 years (on conviction on indictment).

Clause 15 makes it an offence for a person to shorten a firearm so as to convert it into a pistol unless a licence authorises possession of the pistol. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or imprisonment for 10 years (on conviction on indictment).

Clause 16 makes it an offence for a person to handle or use a firearm while under the influence of alcohol or another drug. A person must not sell or transfer a firearm to another person if the other person is under the influence of alcohol or another drug or appears to be mentally ill. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or imprisonment for 5 years (on conviction on indictment).

Clause 17 makes it an offence for a person to sell firearm ammunition unless the buyer is the holder of a licence or the seller is authorised to sell it to someone who does not hold a licence. It is also an offence for a person to buy firearm ammunition unless the person is the holder of a licence or authorised to buy it by a permit. The maximum penalty is a fine of \$2,000.

Clause 18 makes it an offence for a person to deface or alter any identifying mark on a pistol or barrel for a pistol or to possess a pistol or barrel for a pistol on which any identifying mark has been defaced or altered. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or imprisonment for 5 years (on conviction on indictment).

Clause 19 makes it an offence for a person to possess, sell or transfer a firearm designed to tranquillise, immobilise or administer vaccines or medicines to animals unless authorised by a licence or permit. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 20 makes it an offence for a pawnbroker to take a firearm or spare barrel for a firearm into pawn. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

PART 3—LICENCES AND PERMITS

Division 1—Provisions relating to licences

Clause 21 ensures that licences will be available to authorise activities that were licensed under the Firearms and Dangerous Weapons Act 1973.

Clause 22 enables regulations to be made prescribing the types of licences that may be issued for the purposes of the proposed Act.

Clause 23 provides that applications for licences are to be made in accordance with the regulations under the proposed Act.

Clause 24 provides for the Commissioner of Police to issue or refuse licences and prevents a licence from being issued until a period fixed by the regulations has expired.

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Clause 25 sets out some of the circumstances in which a licence is not to be issued. For example, a licence is not to be issued to a person who has been convicted of a prescribed offence and a licence to authorise the use of a pistol is not to be issued to a person who does not have good reason for holding it. The Commissioner of Police must be satisfied as to the good character of the applicant. Regulations may be made providing other grounds for refusing a licence. The Commissioner may refuse to issue a licence if of the belief that its issue would be contrary to the public interest.

Clause 26 enables conditions to be prescribed for licences and empowers the Commissioner of Police to impose conditions not inconsistent with the prescribed conditions.

Clause 27 states that a licence expires at the end of the term specified in it.

Clause 28 provides that a licence cannot be transferred.

Division 2—Provisions relating to permits

Clause 29 indicates the matters that are to be authorised by permits.

Clause 30 enables regulations to be made prescribing the types of permits that may be issued under the proposed Act.

Clause 31 provides that applications for permits are to be made in accordance with the regulations under the proposed Act.

Clause 32 declares that the Commissioner of Police may refuse to issue a permit if of the belief that its issue would be contrary to the public interest.

Clause 33 enables conditions to be prescribed for permits and empowers the Commissioner of Police to impose conditions on permits. The term of a permit may be prescribed or be determined by the Commissioner.

Division 3—Provisions relating to licences and permits

Clause 34 provides that the regulations are to prescribe the authority conferred by a licence or permit and makes that authority subject to the conditions of the licence or permit.

Clause 35 enables the Commissioner of Police to suspend a licence and allows regulations to be made providing for suspension of permits.

Clause 36 enables the Commissioner of Police to revoke a licence or permit on a ground set out in the clause or for any prescribed reason.

Clause 37 requires the holder of a licence or permit (if in possession of it) to produce it for inspection or to state the holder's name and address, on demand by a member of the Police Force. An appropriate caution must be given by the member. The maximum penalty is a fine of \$2,000 or imprisonment for 1 year, or both.

Clause 38 requires the holder of a licence or permit to surrender it as soon as it is suspended or revoked. The maximum penalty is a fine of \$2,000 or imprisonment for 1 year, or both.

PART 4—FIREARMS PROHIBITION ORDERS

Clause 39 allows the Commissioner of Police to make an order prohibiting a person from possessing firearms if it is not in the public interest for the person to possess firearms.

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Clause 40 makes it an offence for a person to possess a firearm in contravention of a firearms prohibition order. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or, if the firearm was a pistol, imprisonment for 10 years or, in any other case, imprisonment for 5 years (on conviction on indictment).

A person must not sell or transfer a firearm to another person knowing that the other person is subject to such an order. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or, if the firearm was a pistol, imprisonment for 10 years or, in any other case, imprisonment for 5 years (on conviction on indictment).

PART 5—APPEALS

Clause 41 provides that a person may appeal to a Local Court against—

- the refusal of or failure by the Commissioner of Police to issue a licence or permit; or
- a condition imposed by the Commissioner on a licence or permit; or
- the revocation of a licence or permit; or
- a firearms prohibition order; or
- the refusal of an approval under the regulations or a condition imposed on such an approval.

Clause 42 sets out procedural matters relating to appeals. An appeal is to be dealt with by way of a new hearing and the Local Court hearing the appeal is not to be bound by the rules of evidence.

Clause 43 provides that, until an appeal is determined, it does not affect any condition imposed on a licence or permit or a firearms prohibition order against which it was made.

PART 6—SUPPLEMENTARY

Clause 44 makes it an offence for a person to give false or misleading information when making an application under the proposed Act. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 45 makes it an offence for the holder of a licence or a permit to contravene its conditions. The maximum penalty is a fine of \$5,000.

Clause 46 makes it an offence for a person to—

- (a) falsely represent that he or she is the holder of a licence, a permit or an approval; or
- (b) forge or fraudulently alter a licence, a permit or an approval; or
- (c) give a licence, a permit or an approval to another person for its unlawful use; or
- (d) steal a licence, a permit or an approval; or
- (e) possess a forged, fraudulently altered, borrowed or stolen licence, permit or approval.

The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 47 makes it an offence for a person, with intent to deceive, to alter or make a false entry in records required to be kept by the regulations. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

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Clause 48 enables an application to be made to a Local Court in relation to a firearm (not being a prohibited weapon) surrendered or seized under the proposed Act. The Court may decide whether the firearm is to be forfeited, returned or otherwise disposed of.

Clause 49 enables the Commissioner of Police to delegate the Commissioner's functions under the proposed Act to a limited range of persons.

Clause 50 makes the parent or guardian of a person under 18 who contravenes the proposed Act or the regulations liable to the same penalty as that to which that person is liable, whether or not proceedings are taken against that person. A parent or guardian is so liable only if he or she knowingly authorised or permitted the contravention.

Clause 51 makes a director of a corporation or a person concerned in the management of a corporation which contravenes the proposed Act or regulations liable to the same penalty as the corporation, whether or not proceedings are taken against the corporation. Such persons are so liable only if they knowingly authorised or permitted the contravention.

Clause 52 provides that offences against the proposed Act or the regulations are to be dealt with summarily before a Local Court. A Local Court may hear and determine proceedings for an offence summarily where a penalty is provided for conviction on indictment only if the Court thinks it proper for the offence to be so dealt with. In any other case any such offence is to be dealt with on indictment.

Clause 53 provides that an offence against the proposed Act or the regulations may be dealt with summarily before a Local Court if the information is laid within 1 year of the date on which the offence is alleged to have been committed.

Clause 54 provides that, where an instrument under the proposed Act may be served on a person by post, it is sufficient to address it to the last address of the person known to the Commissioner of Police.

Clause 55 allows certain certificates given by the Commissioner of Police to be admissible in evidence.

Clause 56 enables regulations to be made by the Governor-in-Council for the purposes of the proposed Act, including regulations with respect to licences, permits, approvals, fees, training and supervision and pistol or rifle ranges. The regulations may create an offence with a maximum penalty of \$5,000.

Regulations may not be made so as to impose a registration scheme for firearms other than pistols or to require the holder of a licence authorising possession of a firearm to obtain a permit to purchase the firearm or firearm ammunition.

Clause 57 repeals the 1973 Act and the Firearms and Dangerous Weapons Regulation.

Clause 58 gives effect to Schedule 1 which contains savings and transitional provisions.

Clause 59 updates the definition of "firearms offence" in section 5 of the Search Warrants Act 1985.

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 1 contains provisions of a savings or transitional nature which convert current licences, permits, approvals and firearms prohibition orders under the 1973 Act into corresponding licences, permits, approvals and orders under the proposed Act.

Pending applications and appeals are to be treated as having been made or commenced under the proposed Act.

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Firearms surrendered or seized, or ordered to be disposed of or forfeited, under certain provisions of the 1973 Act are to be treated as having been surrendered or seized, or ordered to be disposed of or forfeited, under the proposed Act.

A provision is included enabling regulations of a savings or transitional nature to be made.
