



**Firearms and Weapons Prohibition Legislation Amendment Bill 2015
Security Industry Amendment (Regulation of Training Organisations) Bill 2015 (Proof)**

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Extract from NSW Legislative Council Hansard and Papers Tuesday 17 November 2015 (Proof).

Second Reading

Mr SCOT MacDONALD (Parliamentary Secretary) [5.09 p.m.], on behalf of the Hon. Duncan Gay: I move:

That these bills be now read a second.

I seek leave to have the second reading speeches incorporated in *Hansard*.

Leave granted.

The amendments to the Firearms Act 1996 and the Weapons Prohibition Act 1998 give effect to the recommendations of the joint Commonwealth and New South Wales Martin Place Siege Review Report to strengthen the laws relating to illegal firearms.

The aim of this bill is to impose strict controls on the use, supply and manufacture of illegal firearms and to improve public safety.

Some firearms have characteristics that present a greater risk to public safety or are more likely to be used for a criminal purpose. In New South Wales, the maximum penalties currently available for offences involving such firearms are often set at a higher level than for other firearms, but there has not been a consistent approach across offences or the penalties imposed for such offences.

Nor is there, surprisingly, an offence for the possession of a stolen firearm.

Stolen firearms present a significant risk to public safety. Around 700 firearms are stolen each year in New South Wales.

The majority of firearm thefts appear to be opportunistic; however, there are still many thefts that are found to be targeted.

The recovery of stolen firearms is historically low, and analysis of recovered stolen firearms indicates that a single firearm can circulate within the illicit market for between 10 and 20 years.

In the wrong hands, these firearms pose a very high risk to the community. Therefore, the Firearms and Weapons Prohibition Legislation Amendment bill 2015 creates a new offence for the possession of a stolen firearm, which would carry a maximum penalty of 14 years imprisonment.

The new offence would include a defence to prosecution that the defendant did not know and could not reasonably be expected to have known that the firearm was stolen.

Aside from stolen firearms, other firearms are recognised in legislation as posing a greater risk to public safety or of being used for a criminal purpose.

For example, the Firearms Act currently provides for higher maximum penalties for the illegal possession of a pistol or prohibited firearm (which carries a maximum penalty of 14 years imprisonment), compared to any other type of firearm (which generally carries a maximum penalty of five years).

Separate penalties also apply for firearms that are unregistered, or which have had their identifying serial numbers removed. These offences and the penalties they carry are, however, inconsistent and do not reflect the serious risk that such firearms are most likely to be used in the commission of serious crimes.

Accordingly, this bill will amend key firearms offences to provide a consistent maximum penalty of 14 years imprisonment for the possession, use, supply or acquisition of a firearm, where the firearm involved is a pistol, a prohibited firearm, defaced (that is, has its identifying marks or numbers removed), unregistered, stolen, or not authorised by licence or permit to be in possession of that person.

As with the proposed new offence for possession of a stolen firearm, the amended offence for a

defaced firearm includes a defence to prosecution that the defendant did not know and could not reasonably be expected to have known that the firearm was defaced.

This bill will deliver some of the strongest penalties for illegal firearm possession and supply in Australia.

In detail, the Firearms and Weapons Prohibition Legislation Amendment bill 2015 includes the following amendments.

Sections 10 and 30 will be amended to provide that section 12 of the Criminal Records Act 1991 does not apply in relation to an application for a firearms licence or an application for a permit to acquire.

This will enable the Commissioner of Police to consider a spent conviction, along with other matters, when determining if a person is fit and proper to be granted a firearms licence or a permit.

A number of firearms offences will have penalty increases from 10 years imprisonment to 14 years. These include:

Section 36 (1), the supply, acquisition, possession or use of an unregistered firearm;

Section 50, the acquisition of firearms without a licence or permit if the firearm is a pistol or a prohibited firearm;

Section 50AA (2), the acquisition of firearm parts that relate to a pistol or prohibited firearm without a licence or permit;

Section 51BA (2), the restrictions on the supply of firearm parts, specifically, where the part relates to a pistol or prohibited firearm, unless the supplier or the other person is authorised by licence or permit;

Section 62 (1), the offence of shortening of firearms (other than a pistol), possess a shortened firearm or supply or give possession of a shortened firearm to another person;

Section 63, concerning the conversion of firearms such as: In to a pistol or altering the construction or action of a pistol to so as to convert it to a prohibited pistol; and

Section 70, relating to the making of false or misleading applications under the Act.

The new bill also creates new sections. The first two, sections 51F and 51G relate to digital blueprints: Section 51F provides that a person must not possess or control a digital blueprint for the manufacture of a firearm on a 3D printer or an electronic milling machine. The maximum penalty will be imprisonment for 14 years.

For the purposes of this section, digital blueprint means any type of digital (or electronic) reproduction of a technical drawing of the design of an object.

Possession of a digital blueprint includes possession of a computer or data storage device holding or containing the blueprint or of a document in which the blueprint is recorded. Possession also includes control of the blueprint held in a computer that is in the possession of another person (whether the computer is in this jurisdiction or outside this jurisdiction)—for instance, where the blueprint may be held in a "cloud" or on a server outside of New South Wales or Australia.

Section 51G deals with the defences to these offences.

It is a defence in proceedings for an offence if the defendant can prove that:

the defendant did not know, and could not reasonably be expected to have known, that he or she possessed the digital blueprint concerned;

the digital blueprint concerned came into the defendant's possession unsolicited and the defendant, as soon as he or she became aware of its nature, took reasonable steps to get rid of it;

the conduct engaged in by the defendant was of public benefit and did not extend beyond what was of public benefit such as enforcing or administering the law, monitoring compliance with, or investigating a contravention of a law those jurisdictions, or the administration of justice.

The question of whether a person's conduct is of public benefit is a question of fact.

It is also a defence that the conduct engaged in by the defendant was necessary for or of assistance in conducting scientific, medical, educational, military or law enforcement research.

The research must be approved by the Attorney General in writing and not contravene any conditions of that approval.

This will ensure that, with the Attorney General's approval, research can still be conducted about these emerging and changing technologies to ensure law enforcement can keep pace.

The other new provisions relate to stolen and defaced firearms.

The new section 51H provides that a person must not use, supply, acquire or possess a stolen firearm or firearm part or give possession of a stolen firearm or firearm part to another person. The maximum penalty is imprisonment for 14 years.

It is a defence to a prosecution for an offence under this section if the defendant proves that the defendant did not know and could not reasonably be expected to have known, that the firearm or firearm part concerned was stolen.

This section will apply in relation to a stolen firearm or firearm part regardless of whether it was stolen before or after the commencement of this section.

This will ensure that if a firearm is found to be stolen months from now, but the person in possession of the firearm is aware that it is stolen, once this bill is enacted, they will be captured under this provision and could be subject to 14 years maximum imprisonment. There is no good reason why someone should have a stolen firearm in their possession, and if they do there is now a very harsh penalty for this serious offence.

Section 66 has been redrafted to better reflect the seriousness of defacing a firearm. Section 66 provides that a person must not, unless authorised by the Commissioner to do so, deface or alter any number, letter or identification mark on any firearm or a firearm part.

The amended section 66 will go even further and make it illegal for a person to use, supply, acquire or possess a defaced firearm or a defaced firearm part or give possession of such a firearm or firearm part to another person.

The maximum penalty for these offences will be 14 years imprisonment.

The defence to a prosecution for an offence under this section will require the defendant to prove that they did not know and could not reasonably be expected to have known that the firearm or firearm part was defaced.

The amended section 66 will now also include what a defaced firearm or firearm part is, which includes a firearm or firearm part on which any number, letter or identification mark has been defaced or altered.

The new sections—sections 51F and 51H—will also be included in section 84 (2) of the Firearms Act concerning the election of proceedings in court.

The bill also amends the Weapons Prohibition Act 1998 to duplicate the offences for digital blueprints of firearms to also include weapons.

The new section 25B in the Weapons Prohibition Act will provide for the possession of digital blueprints for prohibited weapons. A person must not possess or control a digital blueprint for the manufacture of a prohibited weapon on a 3D printer or an electronic milling machine.

In this section, digital blueprint means any type of digital (or electronic) reproduction of a technical drawing of the design of an object.

For the purposes of this section, possession of a digital blueprint includes:

possession of a computer or data storage device holding or containing the blueprint or of a document in which the blueprint is recorded, and

control of the blueprint held in a computer that is in the possession of another person (whether the computer is in this jurisdiction or outside this jurisdiction).

The same penalty that will apply to the manufacture of firearms using digital blueprints will also apply to weapons that are made using digital blueprints—a maximum of 14 years imprisonment.

The same exclusions and defences apply in this Act as those in the Firearms Act, and will be inserted as section 25C. These include:

the defendant did not know, and could not reasonably be expected to have known, that he or she possessed the digital blueprint concerned;

the digital blueprint concerned came into the defendant's possession unsolicited and the defendant, as soon as he or she became aware of its nature, took reasonable steps to get rid of it;

the conduct engaged in by the defendant was of public benefit, and did not extend beyond what was of public benefit such as enforcing or administering the law, monitoring compliance with, or investigating a contravention of, a law those jurisdictions or the administration of justice; and

the conduct engaged in by the defendant was necessary for or of assistance in conducting scientific, medical, educational, military or law enforcement research that has been approved by the Attorney General in writing.

The new section 25B (1) will also be included in section 43 (2) of the Weapons Prohibition Act concerning the election of proceedings in court.

These amendments to the Firearms Act and Weapons Prohibition Act are part of a suite of initiatives to better control and manage illegal firearms in our state.

As members have heard today, they are not targeted at legitimate, licensed firearms owners. Rather, those criminals out there who think they can steal or modify firearms, or manufacture firearms from 3D blueprints, and skirt the law will find themselves facing some of the toughest penalties for firearms offences in this country.

I commend the bill to the House.

The aim of the Security Industry Amendment (Regulation of Training Organisations) Bill 2015 is to provide clarity and certainty as to the powers of the NSW Police Force to regulate and audit registered training organisations that offer security industry training in New South Wales.

The New South Wales private security industry is large and provides a range of key services to businesses across New South Wales.

The largest sector of the security industry, the manpower sector covers crowd controllers or bouncers, guard dog handlers, bodyguards, and armed guards. It is important that these roles are performed competently and safely and that businesses and the general public can have confidence that this is the case. A few years ago this was certainly in doubt.

In 2009 the Independent Commission Against Corruption's Operation Columba investigated reports of corrupt conduct by certain companies providing training services to the New South Wales private security industry.

Essentially, the corrupt conduct identified centred on training certificates being issued for licensing purposes without being legitimately attained.

This would mean, for example, that security industry licensees were able to present evidence of training requirements necessary for a licence without, for example, having undertaken training units in areas such as managing conflict through negotiation, protecting safety of persons, and preparing and presenting evidence in court.

The Independent Commission Against Corruption [ICAC] investigation, which spanned approximately 12 months, included covert operations as well as public hearings held during August and September 2009. In its report on Operation Columba, the ICAC made a number of recommendations including that in relation to security training assessment and certification the Commissioner of Police should assume responsibility for all integrity-related functions including fraud and corruption detection and investigation.

Police have over the past few years worked hard to implement this recommendation. This has included, for example, the establishment of a 12-person team within the NSW Police Force's Security Licensing and Enforcement Directorate dedicated to auditing and regulation of registered training organisations that provide security industry training.

In addition, over the past few years the Commonwealth has established a national training regulator, the Australian Skills Quality Authority, or ASQA.

On 1 July 2011, ASQA became the regulatory body for the vocational education and training [VET] sector for the Australian Capital Territory, the Northern Territory and New South Wales through a referral of powers.

However, the National Vocational Education and Training Regulator Act 2011, under which ASQA operates, provides provisions which allow jurisdictions to create "carve-outs", thereby allowing New South Wales and other jurisdictions to continue to regulate training providers as determined.

It was for this reason that section 6A was inserted into the Security Industry Act 1997 in 2012 to ensure that the NSW Police Force could continue with its good work in ensuring security industry training was offered in a high-integrity environment which was free from corruption. However, recently the effectiveness of section 6A has been called into question, the concern being that it may give rise to conflicts between the operation of State and Commonwealth legislation.

The bill before the House today addresses this to provide absolute clarity and certainty of the powers of the NSW Police Force to continue to regulate registered training providers to the same high standard as has been the case over the past few years.

New South Wales registered training providers will still continue to have to abide by Commonwealth legislation. Section 6A merely ensures that where there is legislative conflict New South Wales legislation will take precedence.

The bill does not seek to expand or change the currently regulatory approach merely to ensure its ongoing effectiveness and allow Police as the regulator to continue to monitor and ensure crowd controllers armed guards and other licensees have properly achieved the competencies necessary to be issued a licence.

I commend the bill to the House.