



New South Wales

Firearms and Criminal Groups Legislation Amendment Bill 2013

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Firearms Act 1996* (the *principal Act*) as follows:

- (a) to empower police officers without warrant to enter premises or a vehicle occupied by a person who is subject to a firearms prohibition order, and to conduct searches for firearms, firearm parts and ammunition, for the purposes of determining whether the person is complying with the order,
- (b) in addition to the existing prohibition on possessing or using a firearm, to prohibit a person who is subject to a firearms prohibition order from acquiring or possessing firearm parts or ammunition, from residing at premises where there are firearms and from attending certain other places such as gun shops and shooting ranges,
- (c) to make other amendments in relation to firearm prohibition orders,
- (d) to modify existing offences in relation to the sale and purchase of firearms, firearm parts and ammunition so that they apply instead to the supply (ie the transfer of ownership by sale, gift or otherwise) and acquisition (ie accepting or receiving by supply) of those things,
- (e) to create a new offence of giving possession (which would include lending) of a firearm or firearm part to a person who is not authorised to possess it,
- (f) to provide that any person who attempts to commit an offence under the principal Act is liable to the penalty for that offence.

The Bill also amends:

- (a) the *Restricted Premises Act 1943* to increase penalties under that Act for offences relating to reputed criminals attending premises declared by the Supreme Court or the District Court

- under that Act and to empower police officers without warrant to enter such premises and to conduct searches for firearms, and
- (b) the *Crime Commission Act 2012* to enable the Crime Commission to investigate matters relating to the criminal activities of a specified criminal group without the need for the matter to relate specific offences or individuals.

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.

Schedule 1 Amendment of Firearms Act 1996 No 46

Firearms prohibition orders

At present under Part 7 of the principal Act, the Commissioner of Police may make an order prohibiting a person from possessing or using a firearm if the Commissioner is of the opinion that the person is not fit, in the public interest, to be permitted to have a firearm. **Schedule 1 [39]** substitutes that Part to expand the prohibitions resulting from the making of a firearms prohibition order and to make other changes in relation to such orders. Under the new Part:

- (a) a firearms prohibition order will take effect when a copy of it is served on the person against whom it is made (referred to below as a *relevant person*), and
- (b) it will be an offence by a relevant person to acquire, possess or use a firearm or to acquire or possess a firearm part or ammunition (currently it is only an offence if the relevant person possesses or uses a firearm) and the penalty for acquiring, possessing or using a firearm is increased to 14 years imprisonment if it is a pistol or prohibited firearm, and
- (c) the existing offence of selling a firearm to a relevant person (which will become an offence of supplying under other amendments made by the proposed Act) or of giving possession of a firearm to a relevant person is extended to the supply or giving possession of firearm parts and ammunition and the penalty for supplying or giving possession of a firearm to a relevant person is, if it is a pistol or prohibited firearm, increased from 10 years imprisonment to 14 years imprisonment, and
- (d) it will be an offence for a relevant person to reside at premises where there is a firearm, firearm part or ammunition or to attend premises such as gun shops or shooting ranges, and
- (e) the Commissioner will be able to exempt a relevant person from any of the prohibitions that apply as a consequence of the making of a firearms prohibition order, and
- (f) police officers will have the power, for the purposes of determining whether a relevant person is complying with a firearms prohibition order, to detain a relevant person, enter any premises occupied by a relevant person or stop and detain any vehicle occupied by a relevant person, and search for any firearms, firearm parts or ammunition, and
- (g) the Ombudsman will be required to monitor and report on the exercise of such entry and search powers during the first 2 years of their operation.

Schedule 1 [17] and [18] provide for the automatic revocation of a firearms permit held by a person if the person becomes subject to a firearms prohibition order. The principal Act already provides for the automatic revocation of a firearms licence in such an event.

Schedule 1 [40] provides that a person who is otherwise disqualified from being issued with a firearms licence or permit is not entitled to apply to the Administrative Decisions Tribunal for a review of a decision of the Commissioner to make a firearms prohibition order against the person. However, any such decision in the case of such a person is required to be internally reviewed by the police.

Schedule 1 [41] provides that the functions of the Commissioner in relation to firearms prohibition orders may be delegated only to a commissioned police officer (ie an officer of or above the rank of inspector).

Schedule 1 [43] is consequential on the substitution of section 74 of the principal Act by the proposed Act and the creation of new summary offences under that section.

Schedule 1 [44] provides that the amendments made by the proposed Act extend to existing firearms prohibition orders.

Offences relating to supply, acquisition and giving possession of firearms

A number of existing offences under the principal Act relate to the sale or purchase of firearms, firearm parts and ammunition. **Schedule 1 [1]–[9], [11]–[16], [19]–[26], [28]–[34] and [36]–[38]** modify these existing offences so that they apply instead to the supply of firearms, firearm parts or ammunition or to the acquisition of those things, and make a number of consequential amendments (including new definitions). The definition of *supply* will cover not just selling but transferring ownership by gift or otherwise. *Acquire* will mean accept or receive supply of.

Schedule 1 [27] creates a separate offence of giving possession of a firearm or firearm part (eg by way of lending) to a person who is not authorised to possess it. **Schedule 1 [42]** provides that the offence may be prosecuted on indictment.

Miscellaneous

Schedule 1 [10] reverses the order of the expression “prohibited firearm or pistol” that is used in the principal Act to make it clear that the expression covers all pistols and not just prohibited pistols.

Schedule 1 [35] provides that a person who attempts to commit an offence under a provision of the principal Act will be liable on conviction to the same penalty applicable to that offence.

Schedule 2 Amendment of Restricted Premises Act 1943 No 6

Schedule 2 amends the *Restricted Premises Act 1943* as follows:

- (a) to enable the Supreme Court or the District Court, in declaring premises to be premises to which Part 2 of the Act applies (Disorderly houses), to state that the declaration is made on the basis that reputed criminals attend the premises or control or manage the premises (a *reputed criminal declaration*),
- (b) to provide that a *reputed criminal* will include a person who has been convicted of an indictable offence (including the offence of consorting with convicted offenders), is engaged in an organised criminal activity or is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*,
- (c) to provide that, if a reputed criminal declaration is made in respect of premises, the penalty for an offence under the Act relating to the ownership or occupation of the premises will be 150 penalty units or imprisonment for 3 years, or both (the penalty for offences relating to declared premises is currently 50 penalty units or imprisonment for 6 months, or both),
- (d) to enable police officers without warrant to enter declared premises and search for, and seize, weapons or explosives,
- (e) to require the Ombudsman to monitor and report on the exercise of such entry and search powers and on the new offence provisions relating to reputed criminal declarations.

Schedule 3 Amendment of Crime Commission Act 2012 No 66

Schedule 3 amends the *Crime Commission Act 2012* to provide that the Crime Commission Management Committee may refer to the Crime Commission, and that the Commission may investigate, matters relating to the criminal activities of a specified criminal group (within the

meaning of the *Crimes Act 1900*) without the reference having to identify the actual offences and individuals to be investigated.

**Schedule 4 Consequential amendment of Criminal Procedure
Act 1986 No 209**

Schedule 4 makes consequential amendments to provisions of the *Criminal Procedure Act 1986* that deal with the procedure for prosecuting indictable offences.