

Crimes Amendment (Firearms and Other Offensive Weapons or Instruments) Bill 1998

Explanatory note

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

Overview of Bill

The object of the Bill is to amend the *Crimes Act 1900* to make it an offence to be in possession of a firearm or other offensive weapon or instrument at the time of committing or attempting to commit certain specified offences or to aid, abet, counsel or procure the commission of such an offence. The Bill also creates an offence that imposes a further penalty if a weapon is discharged at the time either of the other new offences is committed.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the proposed Act to commence 3 months after the date of assent, unless commenced sooner by proclamation.

Clause 3 is a formal provision that gives effect to the amendment to the *Crimes Act 1900* set out in Schedule 1.

Schedule 1 Amendment

Proposed section 93I makes it an offence:

- (a) to be in possession of a firearm or other offensive weapon or instrument at the time of committing or attempting to commit certain specified offences (proposed section 93I (2)), or
- (b) to aid, abet, counsel or procure the commission of such an offence (proposed section 93I (4)).

The specified offences include assault, breaking and entering, and committing a felony. Further offences may be added by the regulations to those already specified (the Table to proposed section 93I).

The offences are to be punishable by terms of imprisonment that are not less than those imposed in respect of the specified offences and which are to be served cumulatively.

The proposed section defines ***offensive weapon or instrument*** to make it clear that the term includes a syringe or broken bottle or other instrument adapted for use for causing injury to a person. The term also covers firearms, prohibited weapons listed in Schedule 1 to the *Prohibited Weapons Act 1989* (for example, machine guns, certain self-loading shotguns and flick knives), prohibited articles within the meaning of that Act (for example, certain handcuffs), spear guns and certain knives and knife blades and imitations or replicas of these items.

The proposed section also creates an offence that imposes a further penalty (to be served cumulatively) if a weapon is discharged at the time either of the other new offences is committed (proposed section 93I (6)).

Under the proposed section, it will be sufficient to prove that the alleged offender had the offensive weapon or instrument in his or her possession at the time of committing or attempting to commit the

specified offence—the offender need not actually inflict or threaten harm through the use of the weapon or instrument.

A person will not be guilty of an offence under proposed section 93I (2) if he or she satisfies the court that he or she had a reasonable excuse for having the offensive weapon or instrument in his or her possession or had it in his or her possession for a lawful purpose (proposed section 93I (3)).

An accomplice will not be guilty of an offence under proposed section 93I (4) if he or she satisfies the court that the principal offender had such a defence or if the accomplice:

- (a) had terminated his or her involvement in the commission of the offence before it was committed or attempted, or
- (b) did not know and could not reasonably be expected to have known that the other person would have or had an offensive weapon or instrument in his or her possession at the time of committing or attempting to commit the offence, or
- (c) took all reasonable steps to prevent the other person from carrying the offensive weapon or instrument (proposed section 93I (5)).

The proposed section excludes the operation of section 442 (Provision for passing sentences of less duration than those fixed) in respect of sentences imposed in respect of the new offences (proposed section 93I (7)).

Provision is also made to ensure that the proposed section will not take away the liability of a person to be prosecuted for or found guilty of any of the specified offences referred to in the Table to the section or affect the punishment that may be imposed for such an offence (proposed section 93I (8)).