

Introduced by the Hon J S Tingle, MLC

First print



New South Wales

# **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.

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## 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.

Explanatory note

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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)).

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New South Wales

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

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New South Wales

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

No. , 1998

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## **A Bill for**

An Act to amend the *Crimes Act 1900* in relation to the possession of firearms or other offensive weapons or instruments when committing or attempting to commit certain offences; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Crimes Amendment (Firearms and Other Offensive Weapons or Instruments) Act 1998*.

**2 Commencement**

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This Act commences 3 months after the date of assent, unless commenced sooner by proclamation.

**3 Amendment of Crimes Act 1900 No 40**

The *Crimes Act 1900* is amended as set out in Schedule 1.

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## Schedule 1 Amendment

(Section 3)

### Section 93I

Insert after section 93H:

- 93I Committing or attempting to commit offence while possessing a firearm or other offensive weapon or instrument** 5
- (1) **Definitions**  
In this section:
- offensive weapon or instrument* includes: 10
- (a) a firearm (within the meaning of the *Firearms Act 1996*), or
  - (b) a prohibited weapon or prohibited article (within the meaning of the *Prohibited Weapons Act 1989*), or 15
  - (c) a spear gun, or
  - (d) a syringe, or
  - (e) a glass bottle or other instrument adapted for use for causing injury to a person, or
  - (f) a knife or knife blade (other than a knife or knife blade of a kind or class prescribed by the regulations), or 20
  - (g) an imitation or replica of anything referred to in paragraph (a), (b), (c), (d), (e) or (f).
- syringe* means a hypodermic syringe and includes anything designed for use or intended to be used as part of such a syringe and a needle designed for use or intended to be used in connection with such a syringe. 25
- (2) **Possessing offensive weapon or instrument when committing or attempting to commit offence** 30  
A person is guilty of an offence under this subsection if, at the time of committing or attempting to commit an offence referred to in the Table to this section, the person

- has in his or her immediate personal possession an offensive weapon or instrument. A person convicted of an offence under this subsection is liable to penal servitude for a specified term of not less than the term imposed in respect of the commission or attempted commission of the offence referred to in that Table, which is to be served cumulatively on the term of any sentence imposed in respect of the commission or attempted commission of that offence. 5
- (3) **Defences** 10  
 A person is not guilty of an offence under subsection (2) if the person 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. 15
- (4) **Accomplices**  
 A person who aids, abets, counsels or procures the commission or the attempted commission by another person of an offence referred to in the Table to this section is liable to penal servitude for a specified term of not less than the term imposed in respect of the commission or attempted commission of the offence referred to in that Table if the other person commits the offence while having an offensive weapon or instrument in his or her possession. The term of the sentence is to be served cumulatively on the term of the sentence imposed in respect of aiding, abetting, counselling or procuring the commission or attempted commission of that offence. 20 25
- (5) **Accomplice's defences**  
 A person is not guilty of an offence under subsection (4) if the person satisfies the court: 30
- (a) that the person had terminated his or her involvement in the commission of the offence referred to in the Table to this section before the offence under subsection (4) was committed or attempted, or 35
- (b) that the person 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 referred to in the Table to this section.  
or

- (c) that the person took all reasonable steps to prevent the other person from carrying the offensive weapon or instrument. or 5
- (d) that the other person had an offensive weapon or instrument in his or her possession with reasonable excuse or for a lawful purpose. 10

(6) **Aggravated offence**

A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) or (4) and the offensive weapon involved in the offence is discharged at the time of committing or attempting to commit the offence. A person convicted of an offence under this subsection is liable to penal servitude for a term of 5 years, in addition to any sentence imposed under subsection (2) or (4), which is to be served cumulatively on the term of imprisonment imposed under subsection (2) or (4). 15  
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(7) **Sentences**

Section 442 (Provision for passing sentences of less duration than those fixed) does not apply to a sentence imposed under this section. 25

(8) **Table offences**

This section does not take away the liability of a person to be prosecuted for or found guilty of any offence referred to in the Table to this section or affect the punishment that may be imposed for such an offence. 30

**Table**

- (a) An offence under the following sections of this Act:

- 6I Common assault prosecuted by indictment
- 6II Sexual assault 35
- 6IJ Aggravated sexual assault
- 6IK Assault with intent to have sexual intercourse

Schedule 1      Amendment

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- 94 Robbery or stealing from the person
- 95 Same in circumstances of aggravation
- 109 Entering with intent, or stealing etc. in dwelling-house and breaking out
- 111 Entering dwelling-house 5
- 112 Breaking etc into any house etc and committing felony
- 113 Breaking etc into any house etc with intent to commit felony
  
- (b) Any other offence by or under any law (including the common law) prescribed by the regulations. 10