



New South Wales

# Crimes Amendment (Possession or Discharge of Firearms in Commission of Offences) Bill 2012

## Explanatory note

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

## Overview of Bill

The object of this Bill is to make it an offence to be in possession of a firearm or imitation firearm at the time of committing or attempting to commit certain specified serious offences or to aid, abet, counsel or procure the commission by another person of a specified serious offence while that person is in possession of a firearm or imitation firearm. The Bill also imposes a further penalty if a firearm or imitation firearm is discharged or used at the time that either of the 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 commencement of the proposed Act 3 months after the date of assent, unless it is commenced sooner by proclamation.

## **Schedule 1      Amendment of Crimes Act 1900 No 40**

**Schedule 1** inserts a new section into the *Crimes Act 1900*. Proposed section 93IA makes it an offence:

- (a) to be in possession of a firearm or imitation firearm at the time of committing or attempting to commit certain specified serious primary offences (proposed section 93IA (2)), or
- (b) to aid, abet, counsel or procure the commission of a specified serious primary offence by another person where that other person is in possession of a firearm or imitation firearm (proposed section 93IA (4)).

The specified serious primary offences include assault, breaking and entering, and certain sexual assaults. Further offences may be added by the regulations to those already specified in proposed section 93IA (1).

The new offences are to be punishable by terms of imprisonment that are not less than those imposed in respect of the specified serious primary offences and which are to be served consecutively. For example, the sentence for the offence of being in possession of a firearm at the time of committing an assault will commence at the end of the sentence for the assault.

The proposed section also creates an offence that imposes a further penalty (to be served consecutively) if a firearm or imitation firearm is discharged or used at the time either of the other new offences is committed (proposed section 93IA (6)).

Under the proposed section, it will be sufficient to prove that the alleged offender had the firearm or imitation firearm 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 firearm or imitation firearm.

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

An accomplice will not be guilty of an offence under proposed section 93IA (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 have reasonably been expected to have known that the other person would have or had a firearm or imitation firearm 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 being in possession of the firearm or imitation firearm (proposed section 93IA (5)).

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The proposed section excludes the operation of section 21 (General power to reduce penalties) of the *Crimes (Sentencing Procedure) Act 1999* in respect of the sentences imposed in respect of the new offences (proposed section 93IA (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 serious primary offences or affect the punishment that may be imposed for such an offence (proposed section 93IA (8)).





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New South Wales

# Crimes Amendment (Possession or Discharge of Firearms in Commission of Offences) Bill 2012

No. , 2012

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## A Bill for

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

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Crimes Amendment (Possession or Discharge of Firearms in Commission of Offences) Act 2012</i> .	3 4
<b>2 Commencement</b>	5
This Act commences 3 months after the date of assent to this Act, unless sooner commenced by proclamation.	6 7



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<b>Schedule 1</b>	<b>Amendment of Crimes Act 1900 No 40</b>	1
<b>Section 93IA</b>		2
Insert after section 93I:		3
<b>93IA</b>	<b>Committing or attempting to commit offence while in possession of firearm or imitation firearm</b>	4
		5
(1)	<b>Definition</b>	6
	In this section:	7
	<i>serious primary offence</i> means any of the following:	8
	(a) an offence under section 61 (Common assault prosecuted by indictment),	9
		10
	(b) an offence under section 61I (Sexual assault),	11
	(c) an offence under section 61J (Aggravated sexual assault),	12
	(d) an offence under section 61K (Assault with intent to have sexual intercourse),	13
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	(e) an offence under section 94 (Robbery or stealing from the person),	15
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	(f) an offence under section 95 (Same in circumstances of aggravation),	17
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	(g) an offence under section 109 (Breaking out of dwelling-house after committing, or entering with intent to commit, indictable offence),	19
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	(h) an offence under section 111 (Entering dwelling-house),	22
	(i) an offence under section 112 (Breaking etc into any house etc and committing serious indictable offence),	23
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	(j) an offence under section 113 (Breaking etc into any house etc with intent to commit serious indictable offence),	25
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	(k) any other offence under any law (including the common law) prescribed by the regulations.	27
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(2)	<b>Possessing firearm or imitation firearm when committing or attempting to commit offence</b>	29
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	A person is guilty of an offence if, at the time of committing or attempting to commit a serious primary offence, the person has in his or her immediate personal possession a firearm or imitation firearm. A person convicted of an offence under this subsection is liable to imprisonment for a specified term of not less than the term imposed in respect of the commission or attempted commission of the relevant serious primary offence, which is to	31
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	be served consecutively on the term of any sentence imposed in respect of the commission or attempted commission of that serious primary offence.	1 2 3
(3)	<b>Defence</b>	4
	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 firearm or imitation firearm in his or her possession or had it in his or her possession for a lawful purpose.	5 6 7 8
(4)	<b>Accomplices</b>	9
	A person who aids, abets, counsels or procures the commission or the attempted commission by another person of a serious primary offence is liable to imprisonment for a specified term of not less than the term imposed in respect of the commission or attempted commission of the relevant serious primary offence if the other person commits the offence while having a firearm or imitation firearm in his or her possession. The term of the sentence is to be served consecutively on the term of the sentence imposed in respect of aiding, abetting, counselling or procuring the commission or attempted commission of that offence.	10 11 12 13 14 15 16 17 18 19
(5)	<b>Accomplice's defences</b>	20
	A person is not guilty of an offence under subsection (4) if the person satisfies the court:	21 22
	(a) that the person had terminated his or her involvement in the commission of the relevant serious primary offence before the offence under subsection (4) was committed or attempted, or	23 24 25 26
	(b) that the person did not know and could not have reasonably been expected to have known that the other person would have or had a firearm or imitation firearm in his or her possession at the time of committing or attempting to commit the relevant serious primary offence, or	27 28 29 30 31
	(c) that the person took all reasonable steps to prevent the other person from having the firearm or imitation firearm in his or her possession, or	32 33 34
	(d) that the other person had a firearm or imitation firearm in his or her possession with reasonable excuse or for a lawful purpose.	35 36 37
(6)	<b>Aggravated offence</b>	38
	A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) or (4) and the	39 40

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firearm or imitation firearm involved in the offence is discharged or used at the time of committing or attempting to commit the offence. A person convicted of an offence under this subsection is liable to imprisonment for a term of 5 years, in addition to any sentence imposed under subsection (2) or (4), which is to be served consecutively on the term of the sentence imposed under subsection (2) or (4). For that purpose, <b><i>use a firearm or imitation firearm</i></b> includes holding the firearm or imitation firearm so as to cause a reasonable belief that it will be discharged, whether or not it is capable of being discharged.	1 2 3 4 5 6 7 8 9 10
(7) <b>Sentences</b>	11
Section 21 (General power to reduce penalties) of the <i>Crimes (Sentencing Procedure) Act 1999</i> does not apply to a sentence imposed under this section.	12 13 14
(8) <b>Saving</b>	15
This section does not take away the liability of a person to be prosecuted for or found guilty of any relevant serious primary offence or affect the punishment that may be imposed for such an offence.	16 17 18 19