

Introduced by the Hon Robert Borsak, MLC

First print



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)).