



New South Wales

Firearms and Weapons Legislation Amendment Bill 2017

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 *Weapons Prohibition Act 1998* and the regulations under those Acts as follows:

- (a) to recategorise lever action shotguns from category A to category B (for up to 5 round capacity) or category D (for more than 5 round capacity) and to provide transitional arrangements for persons in whose name a lever action shotgun is registered when the recategorisation amendments commence,
- (b) to increase from 1 to 3 the number of category D firearms that a primary producer is permitted to have under the genuine reason of vertebrate pest control,
- (c) to provide a temporary amnesty for the surrender of firearms, firearms parts, ammunition and prohibited weapons, the supply of unregistered firearms to a licensed firearms dealer and the registration of unregistered firearms,
- (d) to remove the requirement for a firearms dealer to record the address of a person to whom or from whom ammunition is supplied or acquired,
- (e) to allow police the option of not seizing a firearm or ammunition that is improperly stored if the failure has been rectified or will be rectified without delay,
- (f) to limit the regulation of ammunition to ammunition for a firearm so as to deregulate the supply and possession of ammunition for articles that are not firearms (such as explosive powered tools),
- (g) to clarify that ammunition for a firearm includes any ammunition that can be safely fired in the firearm and is not limited to ammunition of the nominal calibre of the firearm,

- (h) to prohibit the possession and use of a firearm or prohibited weapon by means of remote control unless specifically authorised by a permit,
- (i) to make it clear that references to a pistol include a prohibited pistol,
- (j) to remove the requirement for a permit to acquire a firearm when an imitation firearm is acquired from a firearms dealer,
- (k) to require an application for a licence or permit to be refused if the applicant is subject to an interim apprehended violence order or is required to be registered under the *Child Protection (Offenders Registration) Act 2000* and to prevent a person who is subject to an interim apprehended violence order from being employed or involved in the management of the business of a licensed firearms dealer,
- (l) to clarify that a permit for a firearm is not to be issued unless the applicant has a legitimate reason for possessing or using the firearm,
- (m) to clarify the operation with respect to firearms and prohibited weapons of provisions for the mutual recognition of domestic violence orders made in other jurisdictions,
- (n) to provide for the establishment of online firearms and prohibited weapons registry services so that applications can be made and notices served electronically,
- (o) to make it clear that a disassembled firearm or prohibited weapon is to be regarded as a firearm or prohibited weapon,
- (p) to amend provisions dealing with the supervision of unlicensed shooters, persons undertaking firearms safety training, probationary pistol licence holders and minors to clarify the required level of supervision and in some cases to authorise a supervisor to decide on an adequate level of supervision,
- (q) to validate the past issue of permits for a powerhead for spear fishing and to replace provision for permits for powerheads for spear fishing with provision for a permit for a powerhead for protection against shark attack,
- (r) to authorise the issue of penalty notices for certain offences in respect of the safe keeping and storage of firearms and administrative and firearms security obligations of licensed firearms dealers,
- (s) to enact consequential savings and transitional provisions and to make miscellaneous minor amendments.

The Bill also makes amendments to the *Criminal Procedure Act 1986* that are consequential on the proposed new offences concerning the remote controlled possession and use of firearms and prohibited weapons.

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

Recategorisation of lever action shotguns

Section 8 (1) is amended to change the category of lever action shotguns from category A to category B for lever action shotguns with a magazine capacity of no more than 5 rounds and to category D for lever action shotguns with a magazine capacity of more than 5 rounds.

Section 8 (1) is also amended to increase from 1 to 3 the number of category D firearms that a category D licence holder who is a primary producer is permitted to have under the genuine reason of vertebrate pest animal control.

New item 4A of Schedule 1 is consequential on the proposed change of category of lever action shotguns.

New clauses 29–32 of Schedule 3 provide for the transitional arrangements that are to apply following the recategorisation of lever action shotguns to persons who are currently the registered owners of lever action shotguns.

Supervision of shooters

Section 6B is amended to make it clear that the level of supervision required for unlicensed persons shooting at an approved shooting range and for persons undertaking firearms safety training courses is direct supervision so that the supervisor supervises one person only.

Sections 16A and 32 are amended to require that the level of supervision of the holder of a probationary pistol licence or minor's firearms permit is to be as required by the regulations. The regulations are amended in Schedule 2 to the Bill to prescribe supervision requirements, including the requirement that the level of supervision is to be the level that the supervisor reasonably considers to be adequate taking into account listed relevant factors.

Issue of licences and permits

Section 11 (5) (c) is substituted to require an application for a licence to be refused if the applicant is the subject of an interim apprehended violence order.

New section 11 (5) (f) requires an application for a licence to be refused if the applicant is a registrable person or corresponding registrable person under the *Child Protection (Offenders Registration) Act 2000*.

New section 29 (1A) clarifies that the Commissioner is not to issue a permit for a firearm unless satisfied that the applicant has a legitimate reason for possessing or using the firearm.

Section 29 (3) (c) is substituted to require an application for a permit to be refused if the applicant is the subject of an interim apprehended violence order.

New section 29 (3) (f) requires an application for a permit to be refused if the applicant is a registrable person or corresponding registrable person under the *Child Protection (Offenders Registration) Act 2000*.

Ammunition

Section 45A is amended to remove the requirement that the records a licensed firearms dealer keeps for ammunition transactions with a person must include the person's address.

Section 65 is amended to limit restrictions on the supply, acquisition and possession of ammunition to ammunition that is for a firearm so that the restrictions will not apply to ammunition for firearms that are exempted from the operation of the Act (such as explosive powered tools).

Section 65 (5) is inserted to make it clear that a reference to ammunition that a firearm takes extends to any ammunition that can be safely fired in the firearm. **Section 65A (1)** is amended consequentially.

Section 67 is amended to limit restrictions on the pawning of ammunition to ammunition for a firearm.

Section 74 (3), (5) and (6) are amended to limit ammunition restrictions under a firearms prohibition order to ammunition for a firearm.

Remote controlled firearms

New section 51I makes it an offence to possess or use a firearm by remote control unless specifically authorised by a permit. This includes having a firearm on any vehicle, vessel, aircraft or other device that is being operated by remote control.

Online registry arrangements

New section 78 authorises the establishment of online service arrangements for the making of applications for licences and permits for firearms and prohibited weapons and the giving of notices by electronic means.

Sections 10 (1) and 30 (1) are substituted to facilitate the operation of the proposed new online service arrangements provided for by new section 78.

Miscellaneous amendments

New section 4 (2) (c) makes it clear that a collection of the unassembled component parts of a firearm constitute a firearm. The clarification is necessary because of doubt created by the decision of the Court of Criminal Appeal in *Jacob v R* [2014] NSWCCA 65.

New section 4D (1) (c) removes the requirement for a permit to acquire a firearm when an imitation firearm is acquired from a firearms dealer by the holder of a permit for the possession or use of the imitation firearm. **Section 51 (1B)** is inserted consequentially to remove the requirement that a permit to acquire must be produced and inspected when an imitation firearm is acquired.

Sections 4D (2), 7 (1), 32 (5), 36 (1), 39 (1), 50, 50AA (2), 50A (2), 50B, 51 (1A) and (2A), 51A, 51BA (2), 51D (2), 51E, 57, 62 (1), 63 (1), 70, 72 (1) and 74 (1) are amended to insert notes to make it clear that references in those provisions to a pistol include a prohibited pistol.

Section 17A (6) is substituted to clarify that the shooting competition participation requirements for a special category C licence apply to each consecutive 12 month period of the licence.

Section 32 (1) (which requires an application for a minor's firearms permit to be lodged personally) is repealed and transferred to the regulations by an amendment in Schedule 2 to the Bill. **Section 32 (2)** is amended consequentially.

Section 36 (3) is amended to extend the requirement that a licensed firearms dealer must apply for the registration of an unregistered firearm within 24 hours after acquiring the firearm so that the requirement will also apply when the dealer takes possession of an unregistered firearm.

Section 42 is amended to authorise a police officer to decide not to seize a firearm or ammunition that is found not properly stored if the officer is satisfied that the failure has been rectified or will be rectified without delay.

Section 44A is amended to prevent a person from being employed in or participating in the management of the business of a licensed firearms dealer if the person is subject to an interim apprehended violence order or is a registrable person or corresponding registrable person under the *Child Protection (Offenders Registration) Act 2000*.

Section 63 (1) is amended to recognise that a permit (and not just a licence) for a pistol can authorise the conversion of a firearm to a pistol.

New section 78A prevents an overlap between provisions of the Act and provisions that are part of the national scheme for the recognition of domestic violence orders and that require the revocation or refusal of a firearms licence or permit.

New clause 33 of Schedule 3 validates the past issue under the regulations of permits for powerheads for use in spear fishing despite the use of a powerhead for spear fishing being generally unlawful under fisheries laws. Any such permit still in force is revoked.

Schedule 2 Amendment of Firearms Regulation 2006

Temporary amnesty

New Part 12A provides an amnesty for 3 months starting on 1 July 2017 for the surrender of firearms, firearms parts and ammunition, the supply of firearms to firearms dealers and the making of registration applications for unregistered firearms.

Application for minor's firearms permit

New clause 44A requires an application for a minor's firearms permit to be lodged personally by the applicant. This requirement is transferred to the regulations from section 32 of the Act.

Participating requirements for club members

Clause 96 (which deals with the participation requirements for firearms licence holders who are firearms club members) is replaced with a **new Part 9A** that clarifies and improves the consistency of the existing requirements of clause 96. The amendments to **clauses 3, 27, 29, 34 and 93** and the repeal of **clause 90** are consequential on the replacement of clause 96.

Permits for powerheads

Clause 63 (which currently provides for the issue of a permit to possess or use a powerhead for spear fishing) is replaced with provision for the issue of a permit to possess or use a powerhead for protection against shark attack.

Information disclosure

Clause 98 is substituted to extend the existing power of the Commissioner to disclose information to an approved firearms club about an applicant for membership of the club so that the information will also be able to be disclosed to an association with which the approved club is affiliated.

Ammunition

Clause 115A (which relates to supply of ammunition by licensed firearms dealers) is amended to include a note (consequential on an amendment in Schedule 1 to this Bill) that a reference to ammunition that a firearm takes extends to any ammunition that can be safely fired in the firearm.

Supervision requirements

New clause 133 prescribes requirements for supervision for the purposes of sections 16A and 32 of the Act, including the requirement that the level of supervision is to be the level that the supervisor reasonably considers to be adequate taking into account listed relevant factors. The prescribed requirements will also apply for the purposes of other provisions of the Regulation that are amended to standardise existing supervision requirements.

Clauses 31, 35A, 47, 52, 66 and 87 are amended to standardise the existing supervision requirements in the Regulation by requiring supervision to be as required by new clause 133.

Clauses 109A and 110 (which relate to the supervision of unlicensed shooters shooting at an approved shooting range under section 6B of the Act) are amended to change supervision requirements as a consequence of changes to supervision requirements under that section resulting from amendments in Schedule 1 to this Bill.

Penalty notice offences

Schedule 1 (which lists offences that can be dealt with by penalty notice) is amended to list offences dealing with safe keeping and storage of firearms by firearms owners and certain administrative and firearms security obligations of licensed firearms dealers.

Schedule 3 Amendment of Weapons Prohibition Act 1998 No 127

Disassembled prohibited weapons

New section 4 (2) (a1) provides that a collection of the unassembled component parts of a prohibited weapon constitute a prohibited weapon. The clarification is necessary because of doubt created by the decision of the Court of Criminal Appeal in *Jacob v R* [2014] NSWCCA 65.

Online service arrangements

Section 9 (1) and (2) are substituted to facilitate the proposed new online service arrangements provided for by new section 78 of the *Firearms Act 1996* to be inserted by Schedule 1.

Interim apprehended violence orders

Section 10 (3) (b) is substituted to require an application for a prohibited weapons permit to be refused if the applicant is the subject of an interim apprehended violence order.

Child sex offenders

New section 10 (3) (e) requires an application for a permit to be refused if the applicant is a registrable person or corresponding registrable person under the *Child Protection (Offenders Registration) Act 2000*.

Remote controlled prohibited weapons

New section 25D makes it an offence to possess or use a prohibited weapon by remote control unless specifically authorised by a permit. This includes having a prohibited weapon on any vehicle, vessel, aircraft or other device that is being operated by remote control.

Recognition of interstate DVOs

New section 35A prevents an overlap between provisions of the Act and provisions that are part of the national scheme for the recognition of domestic violence orders and that require the revocation or refusal of a prohibited weapons permit.

Schedule 4 Amendment of Weapons Prohibition Regulation 2009

Amnesty

New clause 35B provides an amnesty for 3 months starting on 1 July 2017 for the surrender of prohibited weapons.

Remote controlled prohibited weapons

New clause 26A provides for the issue of a permit to authorise the remote controlled possession and use of a prohibited weapon for the purposes of the proposed new offence to be inserted by Schedule 3 of possessing or using a prohibited weapon by remote control unless authorised by a permit.

Consequential amendment

Clause 5 of Schedule 1 is amended consequentially on the transitional arrangements for the proposed recategorisation of lever action shotguns.

Schedule 5 Amendment of Criminal Procedure Act 1986 No 209

Remote controlled firearms

Section 268 (2) (e) is amended to provide for the maximum Local Court penalty for the proposed new offence of possessing or using a firearm by remote control unless authorised by a permit (see new section 51I in Schedule 1). **Clause 7 of Table 2 of Schedule 1** is amended to provide that the offence must be dealt with summarily unless the prosecution otherwise elects.

Remote controlled prohibited weapons

Section 268 (2) (f) is amended to provide for the maximum Local Court penalty for the proposed new offence of possessing or using a prohibited weapon by remote control unless authorised by a permit (see new section 25D in Schedule 3). **Clause 8 of Table 2 of Schedule 1** is amended to provide that the offence must be dealt with summarily unless the prosecution otherwise elects.