



New South Wales

# Firearms and Weapons Legislation Amendment (Criminal Use) Bill 2020

## 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 *principal Act*) as follows—

- (a) to create a new offence of knowingly taking part in the unauthorised manufacture of firearms or firearm parts and to provide that the offence will include being in possession of certain matter (referred to as a *firearm precursor*) for the purposes of manufacturing a firearm or firearm part,
- (b) to confer seizure powers on police officers in relation to the new offence,
- (c) to require firearms prohibition orders to be reviewed every 10 years by the Commissioner of Police,
- (d) to provide that the power of a police officer to search a person who is subject to a firearms prohibition order for firearms or firearm parts may also be exercised in relation to any other person who is present on the subject person's premises,
- (e) to make it clear that the powers of a police officer in connection with firearms prohibition orders (including search powers in relation to persons other than the subject person) may only be exercised if reasonably required to determine whether the subject person has committed an offence arising out of the making of the order,
- (f) to make other miscellaneous amendments in connection with the operation and enforcement of firearms prohibition orders, including enabling firearms prohibition orders under the law of another jurisdiction to be enforced in this State.

The Bill also amends the *Weapons Prohibition Act 1998* to create a similar offence of taking part in the unauthorised manufacture of prohibited weapons or parts of 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

### Offence of taking part in unauthorised manufacture of firearms or firearm parts

**Schedule 1[1] and [2]** make it clear that the authority conferred by a firearms dealer licence includes the manufacturing of firearm parts for those firearms to which the licence applies.

**Schedule 1[3]** makes it an offence (with a maximum penalty of imprisonment for 20 years) for a person to knowingly take part in the manufacture of a firearm or firearm part knowing that the manufacture of the firearm or firearm part is not authorised by a licence or permit under the principal Act. The term *takes part* includes the possession of a firearm precursor for the purposes of manufacturing a firearm or firearm part. A *firearm precursor* is defined as any object, device, substance, material or document used or capable of being used in the process of manufacturing a firearm or firearm part (including computer software or plans). The offence will apply regardless of whether a firearm or firearm part is actually manufactured and double jeopardy provisions are included to ensure that a person is not liable to be convicted of both the new offence and another manufacturing offence under the principal Act that relates to the same or substantially the same act.

**Schedule 1[3]** also authorises a police officer to seize and detain any firearm, firearm part or firearm precursor (including a computer or data storage device on which a firearm precursor is held or contained) that may provide evidence of the commission of the new offence and to require persons to provide assistance or information in accessing the information held or contained in the thing seized. The forfeiture provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* will apply in relation to anything seized under proposed section 51K.

**Schedule 1[10]** provides that the new offence of taking part in the unauthorised manufacture of a firearm or firearm part is to be prosecuted on indictment only.

### Firearms prohibition orders

**Schedule 1[4]** requires the Commissioner of Police to review a firearms prohibition order after the order has been in force for 10 years and provides that the review is to be completed within 6 months.

**Schedule 1[6]** provides that the powers of a police officer under section 74A of the principal Act (including any search powers) may only be exercised if reasonably required to determine whether a person who is the subject of a firearms prohibition order has committed an offence arising out of the making of the order against the person and may be exercised immediately following service of the order on the person, but only if the person has been given an opportunity to surrender all firearms, firearm parts or ammunition lawfully in the person's possession.

**Schedule 1[7]** amends section 74A of the principal Act to make further provision with respect to the powers of a police officer to search for firearms, firearm parts or ammunition. The amendment authorises a police officer to search persons other than the subject person who are present on the premises occupied by or under the control or management of the subject person and to search any vehicle, vessel or aircraft situated on those premises and not just those occupied by or under the control or management of the subject person. The provisions of the *Law Enforcement (Powers and Responsibilities) Act 2002* relating to the conduct of personal searches will apply to the searching of persons for firearms, firearm parts or ammunition under section 74A of the principal Act. The amendment also requires the police to announce that they are authorised under that section to enter premises and to give any person who is present an opportunity to allow entry. **Schedule 1[5]** makes a consequential amendment to the heading to section 74A.

**Schedule 1[8]** authorises a police officer to seize and detain any firearm, firearm part or ammunition found in conducting a search under section 74A of the principal Act that the officer suspects on reasonable grounds may provide evidence of the commission of an offence relating to a firearms prohibition order. The amendment also provides that the provisions of the principal Act that relate to the enforcement of firearms prohibition orders will apply to firearms prohibition orders made under a provision of the law of another jurisdiction prescribed by the regulations.

**Schedule 1[9]** provides that the Commissioner's function to review firearms prohibition orders may only be delegated to a police officer of or above the rank of inspector.

## **Schedule 2      Amendment of Weapons Prohibition Act 1998 No 127**

**Schedule 2** amends the *Weapons Prohibition Act 1998* to create an offence of taking part in the unauthorised manufacture of prohibited weapons and parts of prohibited weapons along the same lines as the offence of taking part in the unauthorised manufacture of firearms or firearm parts.

## **Schedule 3      Amendment of Firearms Regulation 2017**

**Schedule 3** amends the *Firearms Regulation 2017* to prescribe the provisions of the laws of other jurisdictions under which firearms prohibition orders are made so that those orders may be enforced in this State as if they were orders made under the principal Act.