

Passed by both Houses



New South Wales

Firearms Amendment (Trafficking) Bill 2001

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Firearms Act 1996 No 46	2
4 Amendment of Criminal Assets Recovery Act 1990 No 23	2
Schedules	
1 Amendment of Firearms Act 1996	3
2 Amendment of Criminal Assets Recovery Act 1990	17

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2001*



New South Wales

Firearms Amendment (Trafficking) Bill 2001

Act No , 2001

An Act to amend the *Firearms Act 1996* to make further provision for the regulation and control of firearms; to amend the *Criminal Assets Recovery Act 1990*; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Firearms Amendment (Trafficking) Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Firearms Act 1996 No 46

The *Firearms Act 1996* is amended as set out in Schedule 1.

4 Amendment of Criminal Assets Recovery Act 1990 No 23

The *Criminal Assets Recovery Act 1990* is amended as set out in Schedule 2.

Schedule 1 Amendment of Firearms Act 1996

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

close associate—see section 4B.

purchase includes:

- (a) purchase by wholesale, retail, auction or tender, and
- (b) obtain by barter or exchange, and
- (c) cause or allow anything referred to above.

sell includes:

- (a) sell by wholesale, retail, auction or tender, and
- (b) dispose by barter or exchange, and
- (c) sell for profit, and
- (d) offer for sale, receive for sale, have in possession for sale or expose or exhibit for sale, and
- (e) conduct negotiations for sale, and
- (f) consign or deliver for sale, and
- (g) cause or allow anything referred to above.

[2] Section 4 (1)

Insert “receiver,” after “frame,” in the definition of *firearm part*.

[3] Section 4 (1)

Omit “buys” from paragraph (a) of the definition of *firearms dealer*.
Insert instead “purchases”.

[4] Section 4 (1)

Insert after the definition of *possession*:

Note. See also section 4A.

[5] Sections 4A and 4B

Insert after section 4:

4A Meaning of “possession” of a firearm—proof of possession

- (1) Without restricting the meaning of the word *possession*, for the purposes of any proceedings under this Act, a firearm is taken to be in the possession of a person so long as it is in or on any premises owned, leased or occupied by, or in the care, control or management of, the person, unless the court is satisfied that:
 - (a) the firearm was placed in or on, or brought into or on to, the premises by or on behalf of a person who was lawfully authorised by or under this Act to possess the firearm, or
 - (b) the person did not know and could not reasonably be expected to have known that the firearm was in or on the premises, or
 - (c) on the evidence before it, the person was not in possession of the firearm.
- (2) In this section, *premises* means any place, vehicle, vessel or aircraft.

4B Meaning of “close associate” of firearms dealer

- (1) For the purposes of this Act, a person is a *close associate* of an applicant for, or the holder of, a firearms dealer licence if the person:
 - (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the licence applicant or licence holder, and by virtue of that interest or power is or will be able to exercise a significant influence over or with respect to the conduct of that business, or
 - (b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the licence applicant or licence holder.

(2) In this section:

relevant financial interest, in relation to a business, means:

- (a) any interest in the capital or assets of the business, or
- (b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

relevant position, in relation to a business, means a position whose holder participates in the management of the business (whether in the capacity of a director, manager or secretary or in any other capacity).

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

- (a) to participate in any managerial or executive decision, or
- (b) to elect or appoint any person to any relevant position.

[6] Section 7 Offence of unauthorised possession or use of firearms

Omit “10 years” from section 7 (1). Insert instead “14 years”.

[7] Section 8 Licence categories and authority conferred by licence

Omit “buy” wherever occurring under the category heading **Firearms dealer licence** from section 8 (1).

Insert instead “purchase”.

[8] Section 11 General restrictions on issue of licences

Omit section 11 (5) (d). Insert instead:

- (d) is subject to a good behaviour bond, whether entered into in New South Wales or elsewhere, or

[9] Section 17B

Insert after section 17A:

17B Firearms dealer licences—restrictions on issue

The Commissioner must not issue a firearms dealer licence if the Commissioner:

- (a) is of the view that a person who (in the opinion of the Commissioner) is or will be a close associate of the applicant is not a fit and proper person to be a close associate of the holder of a firearms dealer licence, or
- (b) is not satisfied that the applicant is to be the person primarily responsible for the management of the business to be carried on under the authority of the licence.

[10] Section 29 General restrictions on issuing permits

Omit section 29 (3) (d). Insert instead:

- (d) is subject to a good behaviour bond, whether entered into in New South Wales or elsewhere, or

[11] Sections 43 (a), 49 (1), 65 (1) (b), (2) and (2) (b)

Omit “buy” wherever occurring.

Insert instead “purchase”.

[12] Sections 44 and 44A

Omit section 44. Insert instead:

44 Information about close associates of firearms dealers

- (1) In an application for a firearms dealer licence, the applicant must give the name and address of each person who is a close associate of the applicant and particulars of the nature of each such person’s association with the applicant.
- (2) If a licensed firearms dealer becomes aware that the close associates of the firearms dealer (if any) have changed since the firearms dealer’s most recent application for a licence, or

declaration under this section, was submitted to the Commissioner, the firearms dealer must submit to the Commissioner within 7 days:

- (a) a declaration notifying the Commissioner in writing of that fact, and
 - (b) the name and address of each person who is a close associate of the firearms dealer and particulars of the nature of each such person's association with the firearms dealer.
- (3) A licensed firearms dealer must, if notice in writing is served on the dealer by the Commissioner, submit to the Commissioner, within such time as is specified in the notice and in the form provided by the Commissioner:
- (a) a declaration that:
 - (i) the firearms dealer (and no other person) is the person primarily responsible for the management of the firearms dealing business that is carried on under the licence, or
 - (ii) another person or other persons (whether instead of or in addition to the licensed firearms dealer) are primarily responsible for the management of that business, and
 - (b) either:
 - (i) a declaration that the close associates of the firearms dealer (if any) have not changed since the most recent application for a licence, or declaration under this section, was submitted to the Commissioner, or
 - (ii) the name and address of each person who is a close associate of the firearms dealer and particulars of the nature of each such person's association with the firearms dealer.
- (4) A person must not, in or in connection with a declaration under this section, make a statement or provide information that the person knows is false or misleading in a material particular.

Maximum penalty (subsections (2)–(4)): 50 penalty units.

44A Prescribed persons not to be involved in firearms dealing business

- (1) If a licensed firearms dealer:
- (a) employs a prescribed person in the business that is authorised by the licence, or
 - (b) permits a prescribed person to act as an agent for, or participate in the management of, that business,
- the firearms dealer and the prescribed person are each guilty of an offence.
- Maximum penalty: imprisonment for 14 years.
- (2) It is a defence for a licensed firearms dealer prosecuted for an offence under subsection (1) if the firearms dealer proves that he or she did not know, and could not reasonably be expected to have known, that the person employed or permitted to act as an agent for, or to participate in the management of, the firearms dealer's business was in fact a prescribed person.
- (3) In this section, *prescribed person* means a person who:
- (a) has, within the preceding 10 years, had his or her firearms dealer licence revoked by the Commissioner for any reason, or
 - (b) has, within the preceding 10 years, been convicted in New South Wales or elsewhere of an offence prescribed by the regulations for the purposes of this section, whether or not the offence is an offence under New South Wales law, or
 - (c) has, within the preceding 10 years, had his or her application for a licence or permit refused by the Commissioner, or had his or her licence or permit revoked, for either or both of the following reasons:
 - (i) the Commissioner was not satisfied that the person was a fit and proper person and could be trusted to have possession of firearms without danger to public safety or to the peace,
 - (ii) the Commissioner considered that issue of the licence or permit to the person would be contrary to the public interest, or
 - (d) is subject to an apprehended violence order, or

- (e) is the subject of a good behaviour bond, whether entered into in New South Wales or elsewhere, or
- (f) is subject to a firearms prohibition order.

[13] Section 45 Recording of transactions

Insert “or firearm parts” after “concerning firearms” in section 45 (1) (a).

[14] Section 45 (1) (b)

Insert “relating to a transaction or dealing concerning a firearm, a spare barrel for a firearm, a firearm frame or a firearm receiver” after “record”.

[15] Section 45 (3)

Insert “, firearm frame or firearm receiver” after “firearm”.

[16] Section 45 (6) (b)

Omit “spare barrels for firearms”.
Insert instead “firearm parts”.

[17] Section 45 (6) (c)

Omit “spare barrel for a firearm”.
Insert instead “firearm part”.

[18] Section 50 Purchase of firearms

Omit “buy”. Insert instead “purchase”.

[19] Sections 51–51C

Omit section 51. Insert instead:

51 Restrictions on sale of firearms

- (1) A person (*the seller*) must not sell, or knowingly take part in the sale of, a firearm to another person (*the purchaser*) unless:
 - (a) the purchaser is authorised to possess the firearm by a licence or permit, and
 - (b) the following documents have been produced to, and inspected by, the seller:

- (i) the purchaser's licence or permit, and
 - (ii) if the purchaser is not a licensed firearms dealer—the purchaser's permit to acquire the firearm (or the equivalent of any such permit that is issued under the law of another State or Territory in respect of the firearm concerned).
- (2) A person other than a licensed firearms dealer must not sell, or knowingly take part in the sale of, a firearm to a person who is not a licensed firearms dealer unless:
- (a) the sale has, in accordance with the regulations, been arranged through a licensed firearms dealer, or
 - (b) in any case where a licensed firearms dealer is not (as determined by the regulations) reasonably available—the sale is witnessed by a police officer authorised by the Commissioner.
- (3) For the purposes of this section, a person *takes part in* the sale of a firearm if:
- (a) the person takes, or participates in, any step, or causes any step to be taken, in the process of that sale, or
 - (b) the person provides or arranges finance for any step in that process, or
 - (c) the person provides the premises in which any step in that process is taken, or suffers or permits any step in that process to be taken in premises of which the person is the owner, lessee or occupier or of which the person has the care, control or management.

Maximum penalty on summary conviction: 50 penalty units or imprisonment for 2 years, or both.

Maximum penalty on conviction on indictment: imprisonment for 20 years (if it is established beyond reasonable doubt that the firearm concerned was a prohibited firearm or a pistol), or imprisonment for 5 years in any other case.

51A Restrictions on purchase of firearms

- (1) A person (*the purchaser*) must not purchase a firearm from another person (*the seller*) unless:

- (a) the seller is authorised to possess the firearm by a licence or permit, and
 - (b) the seller's licence or permit has been produced to, and inspected by, the purchaser.
- (2) A person other than a licensed firearms dealer must not purchase a firearm from another person who is not a licensed firearms dealer unless:
- (a) the sale has been, in accordance with the regulations, arranged through a licensed firearms dealer, or
 - (b) in any case where a licensed firearms dealer is not (as determined by the regulations) reasonably available—the sale is witnessed by a police officer authorised by the Commissioner.

Maximum penalty on summary conviction: 50 penalty units or imprisonment for 2 years, or both.

Maximum penalty on conviction on indictment: imprisonment for 14 years (if it is established beyond reasonable doubt that the firearm concerned was a prohibited firearm or a pistol), or imprisonment for 5 years in any other case.

51B Selling firearms on an ongoing basis

- (1) **Offence**
A person must not contravene section 51 on 3 or more separate occasions during any period of 30 consecutive days.
Maximum penalty: imprisonment for 20 years.
- (2) **Jury must be satisfied as to same 3 occasions of sale**
If, on the trial of a person for an offence under this section, more than 3 occasions of selling a firearm are relied on as evidence of commission of the offence, all the members of the jury must be satisfied as to the same 3 occasions in order to find the person guilty of the offence.
- (3) **Alternative verdict—relevant selling offence**
If, on the trial of a person for an offence under this section, the jury is not satisfied that the offence is proven but is satisfied that the person has, in respect of any of the occasions relied on as evidence of commission of the offence under this section, committed a relevant selling offence, the jury may acquit the

person of the offence charged and find the person guilty of the relevant selling offence, and the person is liable to punishment accordingly.

(4) **Double jeopardy provisions**

A person who has been convicted of an offence under this section is not liable to be convicted:

- (a) of a relevant selling offence, or
- (b) of a separate offence under this section,

on the same, or substantially the same, facts as those relied on as evidence of commission of the offence in respect of which the person has been convicted.

(5) A person who has been acquitted of an offence under this section is not liable to be convicted:

- (a) except as provided by subsection (3)—of a relevant selling offence, or
- (b) of a separate offence under this section,

on the same, or substantially the same, facts as those relied on as evidence of commission of the offence in respect of which the person has been acquitted.

(6) A person who has been:

- (a) convicted of a relevant selling offence, or
- (b) acquitted of a relevant selling offence,

is not liable to be convicted of an offence under this section on the same, or substantially the same, facts as those relied on as evidence of commission of the relevant selling offence.

(7) **Liability for relevant selling offences not affected by offence under this section**

Subject to subsections (4) and (5), this section does not:

- (a) remove the liability of any person to be convicted of a relevant selling offence, or
- (b) affect the punishment that may be imposed for any such offence.

(8) **Definition**

In this section, *relevant selling offence* means any offence under this Act (other than under this section) relating to the sale of a firearm.

51C Conspiring to commit and aiding etc commission of offence outside New South Wales

A person must not, in New South Wales:

- (a) conspire with another person or persons to commit an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place that corresponds to a provision of this Act, or
- (b) aid, abet, counsel, procure, solicit or incite the commission of an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place that corresponds to a provision of this Act.

Maximum penalty: the same punishment, pecuniary penalty and forfeiture that the person would be subject to if the offence concerned had been committed in New South Wales.

[20] Section 65 Sale, purchase and possession of ammunition

Omit “buyer” wherever occurring from section 65 (1).
Insert instead “purchaser”.

[21] Section 72

Omit the section. Insert instead:

72 Falsifying or altering records

- (1) A firearms dealer must not, with intent to deceive, make a false or misleading entry in, or alter, a record required to be made or kept under section 45.

Maximum penalty on summary conviction: 50 penalty units or imprisonment for 2 years, or both.

Maximum penalty on conviction on indictment: imprisonment for 14 years (if it is established beyond reasonable doubt that

the firearm or firearm part concerned was a prohibited firearm or a pistol or part of a prohibited firearm or part of a pistol), or imprisonment for 5 years in any other case.

- (2) A person must not, with intent to deceive, make a false or misleading entry in, or alter, any other record required to be made or kept by or under this Act.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

[22] Section 84 Proceedings for offences

Insert after section 84 (2):

- (3) Despite subsection (1), proceedings for any of the following offences must be taken on indictment:
- (a) an offence under section 51 (1) that relates to the sale of a prohibited firearm or a pistol,
 - (b) an offence under section 51B (1) (in all cases).

[23] Section 88 Regulations

Insert after section 88 (2) (r):

- (s) the circumstances in which a certified copy of a licence or permit may be produced in satisfaction of the requirements of this Act or the regulations instead of an original copy of the licence or permit.

[24] Section 93

Insert after section 92:

93 Registration of firearm frames and receivers

- (1) Part 3 of this Act (Registration of firearms) applies to every firearm frame and firearm receiver in the same way as it applies to a firearm.
- (2) However, a firearm frame or firearm receiver is taken to be registered under Part 3 if the frame or receiver forms part of a firearm that is registered under that Part.

[25] Schedule 3 Savings and transitional provisions

Omit “the *Firearms Amendment Act 1996*.” from clause 1 (1).

Insert instead:

any of the following Acts:

- (a) the *Firearms Amendment Act 1996*,
- (b) the *Firearms Amendment (Trafficking) Act 2001*.

[26] Schedule 3

Insert after Part 2 of the Schedule:

**Part 3 Provisions consequent on enactment of
Firearms Amendment (Trafficking) Act 2001**

13 Close associates of firearms dealers

- (1) Section 17B extends to an application for a licence that was made, but not finally determined, before the commencement of that section.
- (2) Section 44 (1), as substituted by the *Firearms Amendment (Trafficking) Act 2001*, does not apply in respect of an application made before the commencement of that subsection.
- (3) Section 44 (2), as substituted by the *Firearms Amendment (Trafficking) Act 2001*, does not apply to the holder of a licence in force at the commencement of that subsection.
- (4) Section 44 (3) extends to the holder of a licence in force at the commencement of that subsection.

14 Nature of proceedings for offences

Section 84 (3) does not apply in respect of an offence committed before the commencement of that subsection.

15 Selling firearms on an ongoing basis

Section 51B does not apply in respect of a sale of a firearm that took place before the commencement of that section.

16 Amnesty concerning firearm frames and receivers

- (1) Subject to the regulations, a person who acquired a firearm frame or receiver before the commencement of this clause that is not registered under Part 3 (as applied by section 93) does not, during the period of 6 months starting on the commencement of this clause, commit an offence under section 36 by possessing, purchasing or selling the frame or receiver.
- (2) However, subclause (1) only operates in respect of the sale or purchase of an unregistered firearm frame or receiver if:
 - (a) the person purchasing the frame or receiver is a licensed firearms dealer, or
 - (b) the transaction has, in accordance with the regulations, been arranged through a licensed firearms dealer, or
 - (c) in any case where a licensed firearms dealer is not (as determined by the regulations) reasonably available, the transaction is witnessed by a police officer authorised by the Commissioner.
- (3) A person who is the holder of a licence or permit and who applies, on or before the expiry of the 6-month period referred to in subclause (1), for the registration of a firearm frame or receiver does not commit an offence under section 36 in respect of the possession of an unregistered firearm frame or receiver that is capable of forming part of a firearm to which the licence or permit relates before the person is notified of the registration or refusal of registration of the firearm or receiver.
- (4) If, after the expiry of the 6-month period referred to in subclause (1), a person who applied for the registration of an unregistered firearm frame or receiver before the expiry of that period is notified that the application has been refused, the person must immediately surrender the frame or receiver to a police officer.

Maximum penalty (subclause (4)): 50 penalty units or imprisonment for 12 months, or both.
- (5) A person does not contravene any other provision of this Act just by surrendering a firearm frame or receiver in accordance with subclause (4).

Schedule 2 Amendment of Criminal Assets Recovery Act 1990

(Section 4)

[1] Section 6 Meaning of “serious crime related activity”

Insert after section 6 (2) (d):

- (e) a firearm offence under section 51B of the *Firearms Act 1996*, or

[2] Section 6 (2) (f)

Omit “or (d)”. Insert instead “or any other paragraph of this subsection”.