

Passed by both Houses



New South Wales

Firearms Amendment (Public Safety) Bill 2002

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

Legislative Council

2002

Clerk of the Parliaments



New South Wales

Firearms Amendment (Public Safety) Bill 2002

Act No , 2002

An Act to amend the *Firearms Act 1996* to authorise the use of dogs by police officers to detect firearms and explosives in public places and to make further provision with respect to the regulation and control of firearms; to amend the *Weapons Prohibition Act 1998* and the *Criminal Procedure Act 1986*; and for other purposes.

See also *Summary Offences Amendment (Public Safety) Act 2002*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Firearms Amendment (Public Safety) Act 2002*.

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 Schedules 1 and 2.

4 Amendment of other legislation

The Acts and the regulation specified in Schedule 3 are amended as set out in that Schedule.

Schedule 1 Amendment of Firearms Act 1996

(Section 3)

[1] Section 4 Definitions

Omit the definition of *firearms dealer* from section 4 (1). Insert instead:

firearms dealer means a person who, in the course of carrying on a business or in carrying out the person's duties as a club armoured:

- (a) manufactures, purchases, sells, transfers, tests, repairs or converts firearms or firearm parts, and
- (b) possesses firearms or firearm parts for the purpose of doing anything referred to in paragraph (a).

[2] Section 4 (1)

Insert in alphabetical order:

test a firearm or firearm part includes carry out developmental work or research into the manufacture of a firearm or firearm part.

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

Insert "convert," after "manufacture," where firstly and thirdly occurring under the category heading "**Firearms dealer licence**" in section 8 (1).

[4] Section 8 (2)

Insert "and firearms dealer licences, and specify the authority conferred by each such sub-category" after "licences".

[5] Section 9 Authority conferred by licence—additional matters

Omit "altered (otherwise than to convert it into a prohibited firearm)" from section 9 (1) (a) (ii).

Insert instead "converted".

[6] Section 11 General restrictions on issue of licences

Insert after section 11 (5):

- (5A) A licence must not be issued to a person if the Commissioner is of the opinion, having regard to any criminal intelligence report or other criminal information held in relation to the person, that:
 - (a) the person is a risk to public safety, and
 - (b) the issuing of the licence would be contrary to the public interest.
- (5B) The Commissioner is not, under this or any other Act or law, required to give any reasons for not issuing a licence on the grounds referred to in subsection (5A).

[7] Section 11 (7)

Omit “The”. Insert instead “Despite any other provision of this section, the”.

[8] Section 11 (8)

Omit the note following the subsection.

[9] Section 29 General restrictions on issuing permits

Insert after section 29 (3):

- (3A) A permit must not be issued to a person if the Commissioner is of the opinion, having regard to any criminal intelligence report or other criminal information held in relation to the person, that:
 - (a) the person is a risk to public safety, and
 - (b) the issuing of the permit would be contrary to the public interest.
- (3B) The Commissioner is not, under this or any other Act or law, required to give reasons for not issuing a permit on the grounds referred to in subsection (3A).

[10] Section 29 (4)

Omit “The”. Insert instead “Despite any other provision of this section, the”.

[11] Section 43

Omit the section. Insert instead:

43 Firearms dealers must be licensed

A person must not:

- (a) carry on activities as a firearms dealer, or
- (b) possess a firearm in the person's capacity as a firearms dealer,

unless authorised to do so by a firearms dealer licence.

Maximum penalty: imprisonment for 7 years.

[12] Section 50A

Insert after section 50:

50A Unauthorised manufacture of firearms

- (1) A person who manufactures a firearm is guilty of an offence under this subsection unless the person is authorised by a licence or permit to manufacture the firearm.

Maximum penalty: imprisonment for 10 years.

- (2) A person who manufactures a prohibited firearm or pistol is guilty of an offence under this subsection unless the person is authorised by a licence or permit to manufacture the prohibited firearm or pistol.

Maximum penalty: imprisonment for 20 years.

- (3) Without limiting the operation of subsection (1) or (2), those subsections apply to a person regardless of whether the firearm concerned was manufactured in the course of carrying on a business.

- (4) If on the trial of a person for an offence under subsection (2) the jury is not satisfied that the accused is guilty of the offence charged but is satisfied on the evidence that the accused is guilty of an offence under subsection (1), it may find the accused not guilty of the offence charged but guilty of an offence under subsection (1), and the accused is liable to punishment accordingly.

(5) In this section:

manufacture a firearm includes assemble a firearm from firearm parts.

[13] Section 51D

Insert after section 51C:

51D Unauthorised possession of firearms in aggravated circumstances

- (1) A person who is in possession of more than 3 firearms is guilty of an offence under this subsection if:
- (a) the firearms are not registered, and
 - (b) the person is not authorised by a licence or permit to possess the firearms.

Maximum penalty: imprisonment for 10 years.

- (2) A person who is in possession of more than 3 firearms any one of which is a prohibited firearm or pistol is guilty of an offence under this subsection if:
- (a) the firearms are not registered, and
 - (b) the person is not authorised by a licence or permit to possess the firearms.

Maximum penalty: imprisonment for 20 years.

- (3) If on the trial of a person for an offence under subsection (2) the jury is not satisfied that the accused is guilty of the offence charged but is satisfied on the evidence that the accused is guilty of an offence under subsection (1), it may find the accused not guilty of the offence charged but guilty of an offence under subsection (1), and the accused is liable to punishment accordingly.

[14] Section 63 Converting firearms

Insert after section 63 (2):

- (3) A person must not, unless authorised to do so by a permit, alter the construction or action of a firearm that is not a prohibited firearm so as to convert it into a prohibited firearm.

Maximum penalty: imprisonment for 10 years.

- (4) A person must not provide another person with any information or thing that the person knows, or could reasonably be expected to know, is to be used for the purpose of altering the construction or action of a firearm if the other person is not authorised by a licence or permit to possess a firearm of the kind to which it is capable of being so altered.

Maximum penalty: imprisonment for 10 years.

[15] Part 6A

Insert after Part 6:

Part 6A Use of dogs to detect firearms and explosives

72A Definitions

- (1) In this Part:

premises means any building or structure, vehicle, vessel or aircraft and any place, whether built on or not.

public place includes:

- (a) a place (whether or not covered by water), or part of premises, that is open to the public or is used by the public, whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons, and
- (b) a road, or a road related area, within the meaning of the *Road Transport (General) Act 1999*.

relevant firearm or explosives offence means an offence under this or any other Act involving the possession or use of a firearm or explosive.

72B Part does not confer power of entry or detention

Nothing in this Part confers on a police officer a power:

- (a) to enter any premises that the officer is not otherwise authorised to enter, or
- (b) to detain a person who the officer is not otherwise authorised to detain.

72C General authority to use dogs for detecting firearms or explosives

- (1) If a police officer is authorised to search a person for the purpose of detecting a relevant firearms or explosives offence, the officer is entitled to use a dog for that purpose.
- (2) A police officer is, for the purpose of detecting a relevant firearms or explosives offence, entitled to be accompanied by a dog under the officer's control if the officer is entitled to enter, or be in or on, particular premises in the exercise of the officer's functions.
- (3) Neither the State nor a police officer is liable to any action, liability, claim or demand merely because a dog entered, or was in or on, premises as provided by subsection (2).

72D General firearms or explosives detection using dogs

- (1) For the purposes of this section, ***general firearms or explosives detection*** is the detection or tracking of firearms or explosives, including live or spent ammunition or any residue from a firearm or explosive, in a public place (including in any vehicle in a public place or in the possession of a person who is in a public place).
- (2) A police officer is authorised to use a dog to carry out general firearms or explosives detection without a warrant.
- (3) A police officer carrying out general firearms or explosives detection under this section is to take all reasonable precautions to prevent the dog touching a person.

- (4) A police officer is required to keep a dog under control when the officer is using the dog to carry out general firearms or explosives detection under this section.
- (5) The provisions of this section do not affect the search of a person whom a police officer reasonably suspects is committing a relevant firearms or explosives offence.

72E Monitoring by Ombudsman

- (1) For the period of 2 years after the commencement of this section, the Ombudsman is to keep under scrutiny the exercise of the powers conferred on police officers by this Part.
- (2) For that purpose, the Ombudsman may require the Commissioner of Police to provide information about the exercise of those powers.
- (3) The Ombudsman must, as soon as practicable after the expiration of that 2-year period, prepare a report on the exercise of those powers and furnish a copy of the report to the Minister and the Commissioner of Police.
- (4) The Minister is to lay (or cause to be laid) a copy of the report before both Houses of Parliament as soon as practicable after the Minister receives the report.
- (5) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.
- (6) The report:
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and

- (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,
on the first sitting day of the House after receipt of the report by the Clerk.

[16] Section 75 Review by Administrative Decisions Tribunal of certain decisions

Insert after section 75 (3):

- (4) The following provisions of the *Administrative Decisions Tribunal Act 1997* do not apply to an application to the Administrative Decisions Tribunal for a review of a decision referred to in subsection (1) (a) or (c) that was made on the grounds referred to in section 11 (5A) or 29 (3A):
 - (a) Part 2 of Chapter 5,
 - (b) section 58.
- (5) In determining an application for a review of any such decision, the Administrative Decisions Tribunal:
 - (a) is to ensure that it does not, in the reasons for its decision or otherwise, disclose the existence or content of any criminal intelligence report or other information referred to in section 11 (5A) or 29 (3A), and
 - (b) in order to prevent the disclosure of any such report or other information, is to receive evidence and hear argument in the absence of the public, the applicant for review and the applicant's representative.

[17] Section 81 Delegation

Insert "or the Commissioner's functions under section 11 (5A) or 29 (3A)" after "delegation" in section 81 (1).

[18] Section 84 Proceedings for offences

Omit "Proceedings" from section 84 (1).

Insert instead "Except as provided by this section, proceedings".

[19] Section 84 (2) and (3)

Omit the subsections. Insert instead:

- (2) An offence under section 7, 36, 43, 44A, 50, 50A (1), 51 (1) or (2), 51A, 51D (1), 62, 63, 64, 66, 70, 72 (1) or 74 may be prosecuted on indictment. However, Division 3 of Part 2 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made by the prosecution to proceed on indictment) applies to and in respect of an offence referred to in this subsection.
- (3) An offence under section 50A (2), 51 (1A) or (2A), 51B or 51D (2) is to be prosecuted on indictment only.

[20] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

- (c) the *Firearms Amendment (Public Safety) Act 2002*.

[21] Schedule 3

Insert after Part 3 of the Schedule:

**Part 4 Provisions consequent on enactment of
Firearms Amendment (Public Safety) Act 2002**

17 Restrictions on issuing licences or permits

The amendments made by Schedule 1 [6] and [9] to the *Firearms Amendment (Public Safety) Act 2002* extend to an application for a licence or permit made (but not yet determined) before the commencement of those amendments.

18 Existing firearms dealer licences

- (1) This clause applies to a firearms dealer licence that is due to expire on or before 31 December 2002.
- (2) Any such licence continues in force until 30 June 2003 unless it is sooner surrendered or revoked or otherwise ceases to be in force.

Schedule 2 Miscellaneous amendments to Firearms Act 1996 to clarify operation of existing penalties

Schedule 2 Miscellaneous amendments to Firearms Act 1996 to clarify operation of existing penalties

(Section 3)

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

Omit the matter relating to the penalties at the end of section 7 (1).

Insert instead:

Maximum penalty: imprisonment for 14 years if the firearm concerned is a prohibited firearm or pistol, or imprisonment for 5 years in any other case.

[2] Section 36 Unregistered firearms

Omit the matter relating to the penalties at the end of section 36 (1).

Insert instead:

Maximum penalty: imprisonment for 10 years if the firearm concerned is a prohibited firearm or pistol, or imprisonment for 5 years in any other case.

[3] Section 50 Purchase of firearms

Omit the matter relating to the penalties at the end of the section.

Insert instead:

Maximum penalty: imprisonment for 10 years if the firearm concerned is a prohibited firearm or pistol, or imprisonment for 5 years in any other case.

[4] Section 51 Restrictions on sale of firearms

Insert at the end of section 51 (1) and (2):

Maximum penalty: imprisonment for 5 years.

[5] Section 51 (1A)

Insert after section 51 (1):

- (1A) A person (*the seller*) must not sell, or knowingly take part in the sale of, a prohibited firearm or pistol to another person (*the purchaser*) unless:
- (a) the purchaser is authorised to possess the prohibited firearm or pistol 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 permit that is issued under the law of another State or Territory in respect of the prohibited firearm or pistol concerned).

Maximum penalty: imprisonment for 20 years.

[6] Section 51 (2A)

Insert after section 51 (2):

- (2A) A person other than a licensed firearms dealer must not sell, or knowingly take part in the sale of, a prohibited firearm or pistol 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.

Maximum penalty: imprisonment for 20 years.

Firearms Amendment (Public Safety) Bill 2002

Schedule 2 Miscellaneous amendments to Firearms Act 1996 to clarify operation of existing penalties

[7] Section 51 (4)

Insert after section 51 (3):

- (4) If on the trial of a person for an offence under subsection (1A) or (2A) the jury is not satisfied that the accused is guilty of the offence charged but is satisfied on the evidence that the accused is guilty of an offence under subsection (1) or (2), respectively, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.

[8] Section 51

Omit the matter relating to the penalties at the end of the section.

[9] Section 51A Restrictions on purchase of firearms

Omit the matter relating to the penalties at the end of the section.

Insert instead:

Maximum penalty: imprisonment for 14 years if the firearm concerned is a prohibited firearm or pistol, or imprisonment for 5 years in any other case.

[10] Section 62 Shortening firearms

Omit the matter relating to the penalties at the end of section 62 (1).

Insert instead:

Maximum penalty: imprisonment for 10 years.

[11] Section 63 Converting firearms

Omit the matter relating to the penalties at the end of section 63 (1) and (2).

Insert instead at the end of each of those subsections:

Maximum penalty: imprisonment for 10 years.

[12] Section 64 Restrictions where alcohol or other drugs concerned

Omit the matter relating to the penalties at the end of section 64 (1) and (2).
Insert instead at the end of each of those subsections:

Maximum penalty: imprisonment for 5 years.

[13] Section 66 Defacing or altering identification marks

Omit the matter relating to the penalties at the end of the section.
Insert instead:

Maximum penalty: imprisonment for 5 years.

[14] Section 70 False or misleading applications

Omit the matter relating to the penalties at the end of the section.
Insert instead:

Maximum penalty: imprisonment for 10 years if the application relates to a prohibited firearm or pistol, or imprisonment for 5 years in any other case.

[15] Section 72 Falsifying or altering records

Omit the matter relating to the penalties at the end of section 72 (1).
Insert instead:

Maximum penalty: imprisonment for 14 years if the record relates to a prohibited firearm or pistol (or part of a prohibited firearm or pistol), or imprisonment for 5 years in any other case.

[16] Section 74 Effect of firearms prohibition order

Omit the matter relating to the penalties at the end of section 74 (1) and (3).
Insert instead at the end of each of those subsections:

Maximum penalty: imprisonment for 10 years if the firearm concerned is a prohibited firearm or pistol, or imprisonment for 5 years in any other case.

Schedule 3 Amendment of other legislation

(Section 4)

3.1 Criminal Procedure Act 1986 No 209

[1] Section 28 Maximum penalties for Table 2 offences

Insert after section 28 (2) (e):

- (e1) for an offence under section 7, 36, 43, 44A, 50, 50A (1), 51 (1) or (2), 51A, 51D (1), 62, 63, 64, 66, 70, 72 (1) or 74 of the *Firearms Act 1996*—imprisonment for 2 years, or a fine of 50 penalty units, or both.

[2] Schedule 1 Indictable offences triable summarily

Insert “33B (1),” after “31C,” in clause 2 of Table 1.

[3] Schedule 1, Table 2, clause 7

Omit the clause. Insert instead:

7 Firearms Act 1996

An offence under section 7, 36, 43, 44A, 50, 50A (1), 51 (1) or (2), 51A, 51D (1), 62, 63, 64, 66, 70, 72 (1) or 74 of the *Firearms Act 1996*.

3.2 Weapons Prohibition Act 1998 No 127

Schedule 1 Prohibited weapons

Insert after clause 4 (4):

- (5) Any article or device, such as a device known as a **brass catcher**, that is designed to be attached to a firearm for the purposes of catching ejected cartridge cases when the firearm is being fired.

3.3 Weapons Prohibition Regulation 1999

Schedule 1 Persons exempt from requirement for permit

Insert after clause 4:

4A Possession and use of brass catchers by persons holding firearms licence

The holder of a licence or permit under the *Firearms Act 1996* is exempt from the requirement under the Act for a permit to possess or use a prohibited weapon referred to in clause 4 (5) of Schedule 1 to the Act, but only in relation to its use in connection with a firearm to which the licence or permit under the *Firearms Act 1996* applies.