

## CRIMES (FIREARMS) AMENDMENT BILL 1988

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the Firearms Bill 1988.

The object of this Bill is to amend the Crimes Act 1900 so as—

- (a) to insert into that Act certain offences and other provisions currently contained in the Firearms and Dangerous Weapons Act 1973 (the "1973 Act") which is intended to be repealed by the proposed Firearms Act 1988; and
- (b) to increase the maximum penalties for certain of those offences.

---

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments to the Crimes Act 1900.

**Clause 4** provides that firearms and other dangerous articles seized by the police under certain provisions of the 1973 Act are to be dealt with as if they had been seized under corresponding provisions intended to be inserted into the Crimes Act 1900 by the proposed Act.

### SCHEDULE 1—AMENDMENTS

#### **Offence of possessing firearms and certain other weapons or articles for criminal purposes**

Schedule 1 (2) amends section 33B of the Principal Act which presently prohibits the use of weapons for certain criminal purposes. The amendments will make it an offence punishable by penal servitude of up to 12 years if a person possesses an offensive weapon (such as a firearm) with intent—

- to commit an indictable offence; or
- to prevent a lawful arrest; or
- to resist a member of the Police Force carrying out his or her duty.

*Crimes (Firearms) Amendment 1988*

---

The section as amended replaces the offence provided by section 58 of the 1973 Act.

**Offences where danger created with firearms or spear guns**

Schedule 1 (3) inserts into the Principal Act proposed sections 93F-93H as Part 3B (Offences Relating to Firearms etc.). Of the proposed sections:

Section 93F defines "firearm" for the purposes of proposed Part 3B.

Section 93G (Causing danger with firearm or spear gun) relates to having or using a loaded firearm or loaded spear gun in a public place (or anywhere, if the consequence is to endanger anybody). The maximum penalty for an offence will be imprisonment for 10 years.

Section 93H (Trespassing with firearm or spear gun) relates to trespassing with a firearm or imitation firearm or spear gun on fenced land or in a building or firing a firearm or spear gun on to any such land or into any building. The maximum penalty for an offence will also be imprisonment for 10 years.

The proposed sections restate with minor modifications offences presently set out in sections 43 and 44 of the 1973 Act.

**Searching for, and seizure and disposal of, firearms and other dangerous articles**

Schedule 1 (4) and (5) insert into the Principal Act proposed sections 357 and 358B. Of the proposed sections:

Section 357 (Searching for and seizing firearms etc.) empowers members of the Police Force to search for and seize firearms and other dangerous articles reasonably suspected of having been used in the commission of indictable offences, certain offences under the Principal Act or offences under the proposed Firearms Act 1988 or Prohibited Weapons Act 1988 (or during the course of taking action to prevent domestic violence offences).

Section 358B (Disposal of seized firearms etc.) allows a Local Court to make an order for the return of anything seized under proposed section 357 and provides for its forfeiture to the Crown in other cases.

The proposed sections restate the substance of sections 75, 77 and 78 of the 1973 Act.

**Summary proceedings for proposed new indictable offences**

Schedule 1 (6) inserts into Chapter 3 of Part 14 (Offences Punishable by Justices and Procedure before Justices Generally) of the Principal Act proposed section 496A (Indictable offences punishable summarily without consent of accused: dangerous weapons) which will enable offences against proposed section 93G or 93H (described above) to be prosecuted in a Local Court constituted by a Magistrate as an alternative to proceeding by way of indictment. The maximum penalty for a conviction in a Local Court for such an offence will be imprisonment for 2 years or a fine of \$5,000, or both.

Schedule 1 (7) amends section 497 (General provisions regarding indictable offences punishable summarily without consent of accused) of the Principal Act so as to make it clear that a Local Court may decline to deal with an offence against proposed section 93G or 93H and that such an offence may be dealt with on indictment.

The above references to provisions of the Principal Act relating to summary proceedings are references to those provisions as to be amended or inserted by the proposed Crimes (Amendment) Act 1988. (It is intended to commence those amendments before the proposed firearms legislation.)

*Crimes (Firearms) Amendment 1988*

---

**Offence of possession of dangerous article in public place**

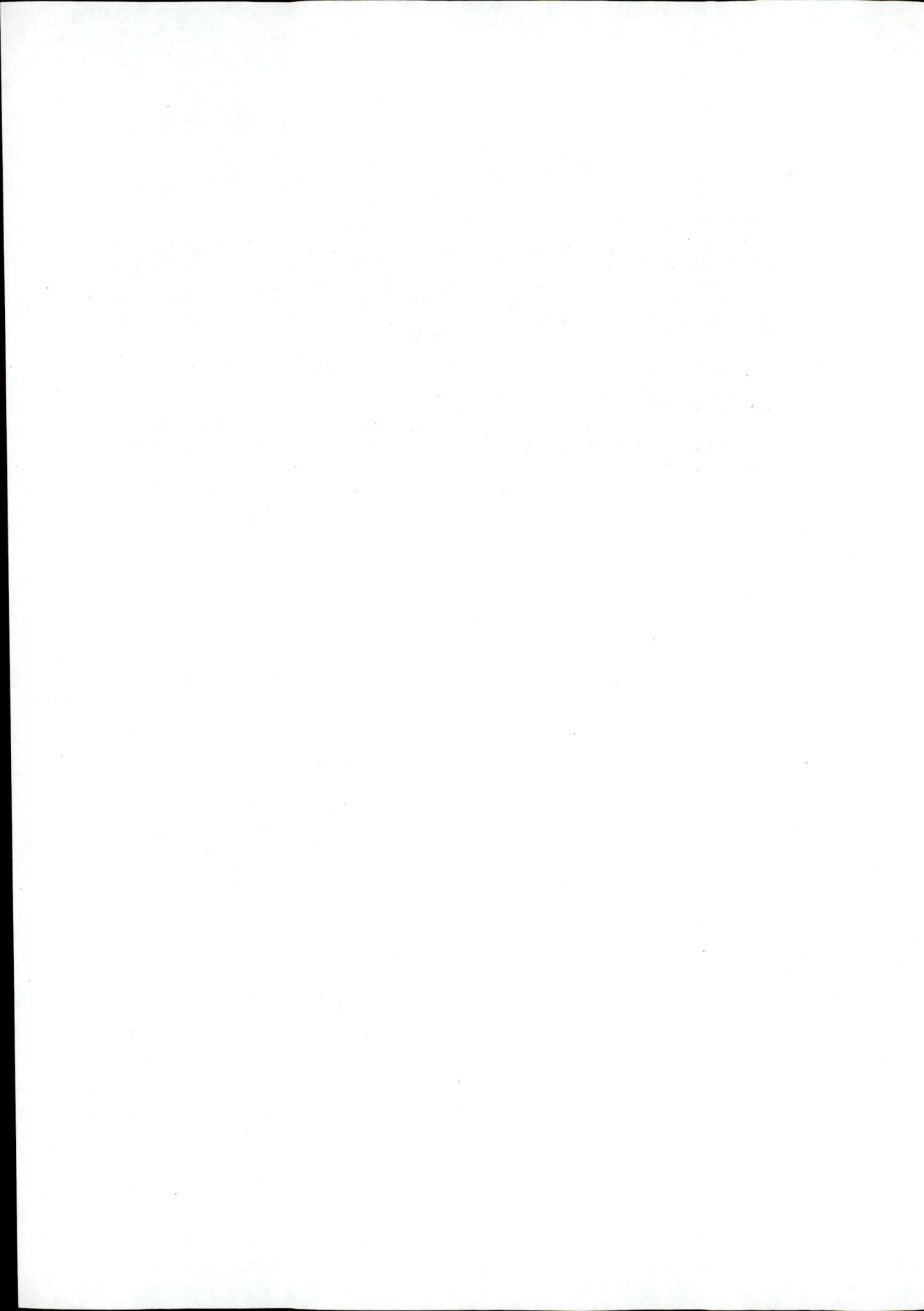
Schedule 1 (8) inserts into the Principal Act proposed section 545E (Possession of dangerous articles other than firearms) which makes the possession in a public place of such articles as smoke bombs, teargas capsules, fuses or detonators an offence. The maximum penalty for any such offence will also be imprisonment for 2 years or a fine of \$5,000, or both. Proceedings for such an offence can only be taken in a summary manner in a Local Court constituted by a Magistrate.

The proposed section restates the offence provided by section 57 of the 1973 Act.

**Consequential amendments**

Schedule 1 (1) amends section 1 (Short title and contents of Act) of the Principal Act as a consequence of the intention to insert into that Act the additional provisions mentioned above.

---



# CRIMES (FIREARMS) AMENDMENT BILL 1988

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Transitional

SCHEDULE 1—AMENDMENTS

---



# CRIMES (FIREARMS) AMENDMENT BILL 1988

NEW SOUTH WALES



No. , 1988

---

---

## A BILL FOR

An Act to amend the Crimes Act 1900 as a consequence of the repeal of the Firearms and Dangerous Weapons Act 1973.

---

---

*Crimes (Firearms) Amendment 1988*

---

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Crimes (Firearms) Amendment Act 1988.

**5 Commencement**

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

**Amendment of Crimes Act 1900 No. 40**

3. The Crimes Act 1900 is amended as set out in Schedule 1.

**10 Transitional**

4. Section 358B of the Crimes Act 1900, as amended by this Act, applies to an article seized and detained under section 77 of the Firearms and Dangerous Weapons Act 1973 if the article has not been disposed of under section 78 of that Act.

15

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**)—

(a) After the matter relating to Part 3A, insert:

20

PART 3B—OFFENCES RELATING TO FIREARMS ETC.—ss.  
93F–93H

(b) From the matter relating to Part 10, omit “ss. 357A–357E”, insert instead “ss. 357–357E”.

(c) From the matter relating to Part 10, omit “s. 358A”, insert instead “ss. 358A, 358B”.

25

(d) Before the matter relating to section 546, insert:

(D5) UNLAWFUL POSSESSION OF CERTAIN DANGEROUS  
ARTICLES—s. 545E

(2) Section 33B (**Use or possession of weapon to resist arrest etc.**)

(a) Section 33B (a)—

30

Omit “threatens to use”, insert instead “, threatens to use or possesses”.

(b) Section 33B—

Before “with intent”, insert “with intent to commit an indictable offence or”.



*Crimes (Firearms) Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

(c) Section 33B—

Omit “ten”, insert instead “12”.

(3) Part 3B (sections 93F–93H)—

After Part 3A, insert:

5

PART 3B—OFFENCES RELATING TO FIREARMS ETC.

**Definition**

93F. In this Part—

“firearm” has the same meaning as in the Firearms Act 1988.

**Causing danger with firearm or spear gun**

10

93G. (1) Any person who—

(a) possesses a loaded firearm or loaded spear gun—

(i) in a public place; or

(ii) in any other place so as to endanger the life of any other person; or

15

(b) fires a firearm or spear gun in or near a public place; or

(c) carries or fires a firearm or spear gun in a manner likely to injure, or endanger the safety of, himself or herself or any other person or any property, or with disregard for the safety of himself or herself or any other person,

20

is liable to imprisonment for 10 years.

(2) For the purposes of this section—

(a) a firearm is to be regarded as being loaded if there is ammunition—

(i) in its chamber or barrel; or

25

(ii) in any magazine or other device which is in such a position that the ammunition can be fitted into its chamber or barrel by operation of some other part of the firearm; and

30

(b) a spear gun is to be regarded as being loaded if a spear, or an instrument or thing similar to a spear, is fitted to it.

(3) A person is not guilty of an offence under this section for possessing or doing anything referred to in subsection (1) if the person satisfies the court that he or she had a reasonable excuse for possessing it or doing it or possessed it or did it for a lawful purpose.

35

**Trespassing with or dangerous use of firearm or spear gun**

93H. (1) In this section—

“inclosed lands” has the same meaning as in the Inclosed Lands Protection Act 1901.

*Crimes (Firearms) Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

(2) A person who, possessing a firearm, imitation firearm, spear gun or imitation spear gun, enters any inclosed lands or any building is liable to imprisonment for 5 years.

5 (3) A person who fires a firearm or spear gun on to any inclosed lands or into any building is liable to imprisonment for 10 years.

(4) A person is not guilty of an offence under this section for doing anything if the person establishes that he or she—

- 10 (a) had the permission of the owner or occupier of the inclosed lands or building concerned to do it; or
- (b) had some other reasonable excuse for doing it or did it for a lawful purpose.

(4) Section 357—

Before section 357A, insert:

**Searching for and seizing firearms etc.**

15 357. (1) This section applies—

- (a) to any indictable offence; and
- (b) to an offence against section 545E; and
- 20 (c) to an offence against the Prohibited Weapons Act 1988, the Firearms Act 1988 or a regulation made under either of those Acts.

(2) If a member of the police force suspects, on reasonable grounds, that a dangerous article is being or has been used in the commission of an offence to which this section applies and that it is in the possession of any person in a public place or is in any

25 vehicle, vessel, aircraft, package or receptacle which is in a public place and is in the possession or under the control of any person, the member may, without warrant—

- (a) detain and search the person and any such vehicle, vessel, aircraft, package or receptacle; and
- 30 (b) seize and detain any dangerous article found as a result of the search.

(3) A member of the police force who for the time being is lawfully in any premises may seize and detain any dangerous article which the member finds in those premises and in respect

35 of which the member suspects, on reasonable grounds, that an offence to which this section applies is being or has been committed.

*Crimes (Firearms) Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

(4) Where a member of the police force—

(a) enters a dwelling-house in pursuance of an invitation (as referred to in section 357F) or in pursuance of a warrant granted under section 357G, for the purpose (in either case) of investigating whether an offence that the member of the police force suspects or believes to be a domestic violence offence has been committed or for the purpose of taking action to prevent the commission or further commission of such an offence; and

(b) has reasonable cause to believe—

- (i) that a firearm (within the meaning of the Firearms Act 1988) or a spear gun is in the dwelling-house; and
- (ii) that the firearm or spear gun has been or may be used to commit a domestic violence offence,

the member of the police force may search the dwelling-house for the firearm or spear gun and seize and detain the firearm or speargun.

(5) In this section—

“dangerous article” means—

(a) a firearm (within the meaning of the Firearms Act 1988) or a spare barrel for any such firearm, a prohibited weapon or prohibited article (within the meaning of the Prohibited Weapons Act 1988) or ammunition for any such firearm, prohibited weapon or prohibited article; or

(b) a spear gun; or

(c) an article or device, not being such a firearm, capable of discharging by any means—

(i) any irritant matter in liquid, powder, gas or chemical form or any dense smoke; or

(ii) any substance capable of causing bodily harm; or

(d) a fuse capable of use with an explosive or a detonator; or

(e) a detonator;

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

(5) Section 358B—

After section 358A, insert:

**Disposal of seized firearms etc.**

358B. (1) If a dangerous article is seized and detained under section 357, a Local Court constituted by a Magistrate sitting alone may, on application made by a person claiming to be

*Crimes (Firearms) Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

entitled to possession of the article (being an application made at least 21 days after the seizure of the article), order that the article be returned to the person, unless—

5 (a) a person has been charged with an offence in respect of the article; and

(b) the charge has not been withdrawn or finally determined by the person's having been found not guilty of the offence, or the article has been forfeited to the Crown under subsection (2).

10 (2) Any such article shall, at the expiration of the prescribed period, be forfeited to the Crown, unless, before the expiration of that period—

(a) an order has been made under subsection (1) with respect to the article; or

15 (b) a person has been found guilty (whether or not the person has been convicted) of an offence in respect of the article, and the court in which proceedings for the offence were taken, on the application of that or any other person, has otherwise ordered.

20 (3) Despite subsections (1) and (2), if a firearm or spear gun is seized and detained under section 357 (4), the Commissioner of Police shall cause the firearm or spear gun to be returned, when 21 days have expired after its seizure, to the person who was, when the firearm or speargun was seized, occupying or using the dwelling-house in which the firearm or spear gun was seized or to the person from whom the firearm or spear gun was seized unless—

(a) the person is the subject of a firearms prohibition order under the Firearms Act 1988; or

30 (b) possession of the firearm or spear gun by the person would otherwise constitute an offence; or

(c) before those 21 days expire, a person has been charged with an offence in respect of the firearm or spear gun.

35 (4) The Governor may make regulations, not inconsistent with this Act, prescribing any matter required or permitted to be prescribed under this section.

(6) Section 496A—

After section 496, insert:

40 **Indictable offences punishable summarily without consent of accused: dangerous weapons**

496A. (1) Proceedings for an offence under section 93G or 93H may be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.

*Crimes (Firearms) Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

(2) The penalty that a Local Court may impose for any such offence disposed of under this section is imprisonment for a maximum period of 2 years, or a fine not exceeding \$5,000, or both.

5 (3) The provisions of section 56 of the Justices Act 1902 do not apply to proceedings under this section.

(4) A reference in this section to an offence under a provision of this Act includes a reference to an attempt to commit an offence under the provision.

10 (7) Section 497 (**General provisions regarding indictable offences punishable summarily without consent of accused**)—

Omit “or 496” wherever occurring, insert instead “, 496 or 496A”.

(8) Section 545E—

After section 545D, insert:

15 (D5) UNLAWFUL POSSESSION OF CERTAIN DANGEROUS ARTICLES

**Possession of dangerous articles other than firearms**

545E. (1) A person who, in a public place, possesses—

20 (a) anything (not being a firearm within the meaning of the Firearms Act 1988) capable of discharging by any means—

(i) any irritant matter in liquid, powder, gas or chemical form or any dense smoke; or

(ii) any substance capable of causing bodily harm; or

(b) a fuse capable of use with an explosive or a detonator; or

25 (c) a detonator,

is liable, on conviction before a Magistrate, to imprisonment for 2 years, or a fine of 50 penalty units, or both.

30 (2) A person is not guilty of an offence under this section for possessing anything referred to in subsection (1) if the person satisfies the court that he or she had a reasonable excuse for possessing it or possessed it for a lawful purpose.



