

FIRST PRINT

PROHIBITED WEAPONS (AMENDMENT) BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to provide that a person who possesses a spray for self-defence purposes or uses a spray in self-defence will not be guilty of an offence if the spray is one approved by the Minister for Police.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on assent.

Clause 3 gives effect to the scheduled amendments to the Prohibited Weapons Act 1989.

Clause 4 gives effect to the scheduled amendment to the Crimes Act 1900.

Schedule 1 amends the Prohibited Weapons Act 1989 to provide that a person is not guilty of the offence of possessing or using a prohibited weapon if the person possesses for the purpose of self-defence, or uses in self-defence, a spray approved by the Minister for Police (Schedule 1 (1)). The Minister for Police may approve a spray, after consultation with the Minister for Health and the Minister for the Status of Women, if satisfied that it is not lethal or capable of maiming or otherwise causing permanent or significant harm if used against a person (Schedule 1 (2), proposed section 8A).

Schedule 2 amends the Crimes Act 1900 to provide that a person is not guilty of an offence of possessing a dangerous article if the person possesses, for the purpose of self-defence or uses in self-defence, a spray approved by the Minister for Police under proposed section 8A of the Prohibited Weapons Act 1989.

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PROHIBITED WEAPONS (AMENDMENT) BILL 1994

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to amend the Prohibited Weapons Act 1989 and the Crimes Act 1900 to permit the carrying and use of certain approved sprays for self-defence purposes; and for other purposes.

Prohibited Weapons (Amendment) 1994

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Prohibited Weapons (Amendment) Act 1994.

5 Commencement

2. This Act commences on the date of assent.

Amendment of Prohibited Weapons Act 1989 No. 26

3. The Prohibited Weapons Act 1989 is amended as set out in Schedule 1.

10 Amendment of Crimes Act 1900 No. 40

4. The Crimes Act 1900 is amended as out in Schedule 2.

**SCHEDULE 1—AMENDMENT OF PROHIBITED WEAPONS
ACT 1989**

(Sec. 3)

15 (1) Section 5 (Possession or use of prohibited weapons):

After section 5 (2), insert:

(3) A person is not guilty of an offence under this section of possessing or using a prohibited weapon if the person establishes that the weapon:

- 20** (a) was an approved defence spray under section 8A when the offence was alleged to have been committed; and
- (b) was not in the person's possession for any purpose other than self-defence (whether or not the person had any reasonable apprehension of imminent harm); and
- 25** (c) if it was used on another person or persons, was used in self-defence (in circumstances where the person using it had a reasonable apprehension of imminent harm).

30 (4) Subsection (3) applies to an offence under this section regardless of whether it was committed before or after the commencement of the Prohibited Weapons (Amendment) Act 1994, unless the accused was charged before the commencement of that Act.

*Prohibited Weapons (Amendment) 1994***SCHEDULE 1—AMENDMENT OF PROHIBITED WEAPONS ACT
1989—continued****(2) Section 8A:**

After section 8, insert:

Approved defence sprays

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8A. (1) The Minister for Police may, after consultation with the Minister for Health and the Minister for the Status of Women, by notice in the Gazette, declare a spray to be an approved defence spray.

(2) A spray may be declared an approved defence spray if it is designed or intended for use as a defence or anti-personnel spray or if, though not designed or intended for use for that purpose, it is capable of being so used.

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(3) The Minister may approve a spray only if satisfied that the spray when used in its approved form is not lethal or capable of maiming or otherwise causing permanent or significant harm if used against a person.

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(4) The Minister may, by notice in the Gazette, vary or revoke an approval.

(5) Sprays may be approved by reference to such descriptions or classes as the Minister thinks appropriate.

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(6) In this section, "spray" means a container that is capable of discharging by any means any irritant matter in liquid, powder, gas or chemical form.

SCHEDULE 2—AMENDMENT OF CRIMES ACT 1900

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(Sec. 4)

Section 545E (Possession of dangerous articles other than firearms):

After section 545E (2), insert:

(3) Without limiting subsection (2), a person is not guilty of an offence under this section of possessing a thing if the person establishes that the thing:

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(a) was an approved defence spray under section 8A of the Prohibited Weapons Act 1989 when the offence was alleged to have been committed; and

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Prohibited Weapons (Amendment) 1994

SCHEDULE 2—AMENDMENT OF CRIMES ACT 1900—*continued*

(b) was not in the person's possession for any purpose other than self-defence (whether or not the person had any reasonable apprehension of imminent harm).

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(4) Subsection (3) applies to an offence under this section regardless of whether it was committed before or after the commencement of the Prohibited Weapons (Amendment) Act 1994, unless the accused was charged before the commencement of that Act.
