



New South Wales

# Firearms and Weapons Prohibition Legislation Amendment Bill 2015

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

The *Security Industry Amendment (Regulation of Training Organisations) Bill 2015* is cognate with this Bill.

## Overview of Bill

The object of this Bill is to amend the *Firearms Act 1996* (the ***Firearms Act***) as follows:

- (a) to enable the Commissioner of Police to consider spent convictions when dealing with applications for firearms licences and permits,
- (b) to increase the maximum penalty for certain offences concerning pistols, prohibited firearms, shortened firearms or converted firearms from 10 years' imprisonment to 14 years' imprisonment,
- (c) to increase the maximum penalty for the offence of defacing or altering numbers, letters or identification marks on a firearm or firearm barrel, or possessing such a defaced or altered firearm or firearm barrel, from 5 years' imprisonment to 14 years' imprisonment,
- (d) to extend the operation of the offence of defacing or altering numbers, letters or identification marks on firearm barrels, or possessing such a defaced or altered firearm barrel, to other firearm parts,
- (e) to create a new offence of using, supplying or acquiring such defaced firearms (or defaced firearm parts) or giving possession of them to another person and an offence of supplying, acquiring or possessing defaced firearm parts or giving possession of such parts to another person,
- (f) to create a new offence of possessing digital blueprints for the manufacture of firearms on 3D printers or electronic milling machines,

- (g) to create a new offence of using, supplying, acquiring or possessing a stolen firearm or firearm part or giving possession of a stolen firearm or firearm part to another person.

This Bill also:

- (a) amends the *Weapons Prohibition Act 1998* to create a new offence of possessing digital blueprints for the manufacture of prohibited weapons on 3D printers or electronic milling machines, and
- (b) makes consequential amendments to the *Criminal Procedure Act 1986*.

## 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 the date of assent to the proposed Act.

## Schedule 1 Amendment of Firearms Act 1996 No 46

**Schedule 1 [1] and [2]** amend sections 10 (Applications for licences) and 30 (General provisions relating to permits) of the Firearms Act to enable the Commissioner of Police to consider the spent convictions of applicants for firearms licences and permits. The amendments provide that section 12 (What are the consequences of a conviction becoming spent?) of the *Criminal Records Act 1991* will not apply in relation to an application for a firearms licence or permit. That section sets out the consequences of a conviction becoming spent, being that:

- (a) a person is not required to disclose to any other person for any purpose information concerning a spent conviction, and
- (b) a question concerning the person's criminal history is taken to refer only to any convictions of the person which are not spent, and
- (c) in the application to the person of a provision of an Act or statutory instrument:
- (i) a reference in the provision to a conviction is taken to be a reference only to any convictions of the person which are not spent, and
- (ii) a reference in the provision to the person's character or fitness is not to be interpreted as permitting or requiring account to be taken of spent convictions.

**Schedule 1 [3]–[6] and [12]** amend various offence provisions of the Firearms Act to provide that if the firearm concerned is a pistol or prohibited firearm the offence is to carry a maximum penalty of 14 years' imprisonment (rather than 10 years' imprisonment).

**Schedule 1 [7]** inserts proposed sections 51F and 51G into the Firearms Act. Proposed section 51F contains a new offence to prohibit the possession of a digital blueprint for the manufacture of a firearm on a 3D printer or on an electronic milling machine. The offence is to carry a maximum penalty of 14 years' imprisonment. Proposed section 51G contains a number of defences to the new offence, including defences relating to innocent production, dissemination or possession, conduct for the public benefit and approved research.

**Schedule 1 [8]** inserts proposed section 51H into the Firearms Act to prohibit the use, supply, acquisition or possession of a stolen firearm or firearm part or giving possession of a stolen firearm or firearm part to another person. The offence is to carry a maximum penalty of 14 years' imprisonment. The proposed section provides for a defence to a prosecution if the defendant can prove that the defendant did not know and could not reasonably be expected to have known that the firearm or firearm part concerned was stolen.

**Schedule 1 [9]** amends section 62 of the Firearms Act to increase the maximum penalty for offences relating to shortening firearms, or possessing, supplying or giving possession of shortened firearms to others, from 10 years' imprisonment to 14 years' imprisonment.

**Schedule 1 [10]** amends section 63 of the Firearms Act to increase the maximum penalty for offences relating to converting firearms from 10 years' imprisonment to 14 years' imprisonment.

**Schedule 1 [11]** substitutes section 66 of the Firearms Act so as to:

- (a) increase the maximum penalty for defacing or altering any number, letter or identification mark on any firearm or firearm barrel, or possessing such a defaced or altered firearm or firearm barrel, from 5 years' imprisonment to 14 years' imprisonment, and
- (b) extend the operation of that offence so that it also applies to all such numbers, letters and identification marks on other firearm parts, and
- (c) make it an offence, carrying a maximum penalty of 14 years' imprisonment, to do any of the following without the authorisation of the Commissioner of Police:
  - (i) use, supply or acquire a defaced or altered firearm or give possession of such a firearm to another person,
  - (ii) supply or acquire a defaced firearm part or give possession of a defaced firearm part to another person.

It is a defence to a prosecution if the defendant can prove that the defendant did not know, and could not reasonably be expected to have known, that the firearm or firearm part was a defaced firearm or defaced firearm part (as the case requires).

**Schedule 1 [13]** makes a consequential amendment.

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

**Schedule 2 [1]** inserts proposed sections 25B and 25C into the *Weapons Prohibition Act 1998*. Proposed section 25B contains a new offence to prohibit the possession of a digital blueprint for the manufacture of a prohibited weapon on a 3D printer or on an electronic milling machine. The offence is to carry a maximum penalty of 14 years' imprisonment. Proposed section 25C contains a number of defences to the new offence, including defences relating to innocent production, dissemination or possession, conduct for the public benefit and approved research.

**Schedule 2 [2]** makes a consequential amendment.

## **Schedule 3      Amendment of Criminal Procedure Act 1986 No 209**

**Schedule 3 [1]–[4]** make consequential amendments to section 268 (Maximum penalties for Table 2 offences) of, and Schedule 1 (Indictable offences triable summarily) to, the *Criminal Procedure Act 1986*.



New South Wales

# Firearms and Weapons Prohibition Legislation Amendment Bill 2015

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New South Wales

# Firearms and Weapons Prohibition Legislation Amendment Bill 2015

No. , 2015

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## **A Bill for**

An Act to amend the *Firearms Act 1996* and the *Weapons Prohibition Act 1998* to make further provision with respect to the regulation and control of firearms and prohibited weapons; and for other purposes.

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See also the *Security Industry Amendment (Regulation of Training Organisations) Bill 2015*.

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

1

**1 Name of Act**

2

This Act is the *Firearms and Weapons Prohibition Legislation Amendment Act 2015*.

3

**2 Commencement**

4

This Act commences on the date of assent to this Act.

5

<b>Schedule 1</b>	<b>Amendment of Firearms Act 1996 No 46</b>	1
<b>[1] Section 10 Applications for licences</b>		2
Insert after section 10 (3):		3
(4) Section 12 of the <i>Criminal Records Act 1991</i> does not apply in relation to an application for a licence.		4 5
<b>[2] Section 30 General provisions relating to permits</b>		6
Insert after section 30 (9):		7
(10) Section 12 of the <i>Criminal Records Act 1991</i> does not apply in relation to an application for a permit.		8 9
<b>[3] Section 36 Unregistered firearms</b>		10
Omit “imprisonment for 10 years” from section 36 (1).		11
Insert instead “imprisonment for 14 years”.		12
<b>[4] Section 50 Acquisition of firearms</b>		13
Omit “imprisonment for 10 years”. Insert instead “imprisonment for 14 years”.		14
<b>[5] Section 50AA Acquisition of firearm parts</b>		15
Omit “imprisonment for 10 years” from section 50AA (2).		16
Insert instead “imprisonment for 14 years”.		17
<b>[6] Section 51BA Restrictions on supply of firearm parts</b>		18
Omit “imprisonment for 10 years” from section 51BA (2).		19
Insert instead “imprisonment for 14 years”.		20
<b>[7] Sections 51F and 51G</b>		21
Insert after section 51E:		22
<b>51F Possession of digital blueprints for manufacture of firearms</b>		23
(1) A person must not possess a digital blueprint for the manufacture of a firearm on a 3D printer or on an electronic milling machine.		24 25
Maximum penalty: imprisonment for 14 years.		26
(2) Subsection (1) does not apply to a person who is:		27
(a) authorised by a licence or permit to manufacture the firearm concerned,		28
or		29
(b) acting in the ordinary course of the person’s duties as a member (other than a police officer) of the Police Force.		30 31
(3) In this section:		32
<i>digital blueprint</i> means any type of digital (or electronic) reproduction of a technical drawing of the design of an object.		33 34
<i>possession</i> , of a digital blueprint, includes the following:		35
(a) possession of a computer or data storage device holding or containing the blueprint or of a document in which the blueprint is recorded,		36 37

(b)	control of the blueprint held in a computer that is in the possession of another person (whether the computer is in this jurisdiction or outside this jurisdiction).	1 2 3
<b>51G</b>	<b>Defences for offences under section 51F</b>	4
(1)	<b>Innocent production, dissemination or possession</b>	5
	It is a defence to a prosecution for an offence under section 51F if the defendant proves that the defendant did not know, and could not reasonably be expected to have known, that the defendant possessed the digital blueprint concerned.	6 7 8 9
(2)	It is a defence to a prosecution for an offence under section 51F if the defendant proves that the digital blueprint concerned came into the defendant's possession unsolicited and the defendant, as soon as the defendant became aware of its nature, took reasonable steps to get rid of it.	10 11 12 13
(3)	<b>Public benefit</b>	14
	It is a defence to a prosecution for an offence under section 51F if the defendant proves that the conduct engaged in by the defendant:	15 16
(a)	was of public benefit, and	17
(b)	did not extend beyond what was of public benefit.	18
(4)	Conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:	19 20
(a)	enforcing or administering a law of the State, or of another State, a Territory or the Commonwealth, or	21 22
(b)	monitoring compliance with, or investigating a contravention of, a law of the State, or of another State, a Territory or the Commonwealth, or	23 24
(c)	the administration of justice.	25
(5)	The question of whether a person's conduct is of public benefit is a question of fact and the person's motives for engaging in the conduct are irrelevant.	26 27
(6)	<b>Approved research</b>	28
	It is a defence to a prosecution for an offence under section 51F if the defendant proves that the conduct engaged in by the defendant:	29 30
(a)	was necessary for or of assistance in conducting scientific, medical, educational, military or law enforcement research that has been approved by the Attorney General in writing for the purposes of this section, and	31 32 33 34
(b)	did not contravene any conditions of that approval.	35
<b>[8]</b>	<b>Section 51H</b>	36
	Insert in appropriate order:	37
<b>51H</b>	<b>Stolen firearms or firearm parts</b>	38
(1)	A person must not use, supply, acquire or possess a stolen firearm or firearm part or give possession of a stolen firearm or firearm part to another person. Maximum penalty: imprisonment for 14 years.	39 40 41
(2)	It is a defence to a prosecution for an offence under this section if the defendant proves that the defendant did not know, and could not reasonably be expected to have known, that the firearm or firearm part concerned was stolen.	42 43 44

(3)	This section applies in relation to a stolen firearm or firearm part whether it was stolen before or after the commencement of this section.	1 2
<b>[9]</b>	<b>Section 62 Shortening firearms</b>	3
	Omit “imprisonment for 10 years” from section 62 (1).	4
	Insert instead “imprisonment for 14 years”.	5
<b>[10]</b>	<b>Section 63 Converting firearms</b>	6
	Omit “imprisonment for 10 years” wherever occurring.	7
	Insert instead “imprisonment for 14 years”.	8
<b>[11]</b>	<b>Section 66</b>	9
	Omit the section. Insert instead:	10
	<b>66 Defaced or altered firearms or firearm parts</b>	11
(1)	A person must not, unless authorised by the Commissioner to do so:	12
(a)	deface or alter any number, letter or identification mark on any firearm or firearm part, or	13 14
(b)	use, supply, acquire or possess a defaced firearm or give possession of a defaced firearm to another person, or	15 16
(c)	supply, acquire or possess a defaced firearm part or give possession of a defaced firearm part to another person.	17 18
	Maximum penalty: imprisonment for 14 years.	19
(2)	It is a defence to a prosecution for an offence under subsection (1) (b) or (c) if the defendant proves that the defendant did not know, and could not reasonably be expected to have known, that the firearm or firearm part was a defaced firearm or defaced firearm part (as the case requires).	20 21 22 23
(3)	In this section:	24
	<i>defaced firearm</i> means a firearm on which any number, letter or identification mark has been defaced or altered.	25 26
	<i>defaced firearm part</i> means a firearm part on which any number, letter or identification mark has been defaced or altered.	27 28
<b>[12]</b>	<b>Section 70 False or misleading applications</b>	29
	Omit “imprisonment for 10 years”. Insert instead “imprisonment for 14 years”.	30
<b>[13]</b>	<b>Section 84 Proceedings for offences</b>	31
	Insert “51F, 51H,” after “51E,” in section 84 (2).	32

<b>Schedule 2</b>	<b>Amendment of Weapons Prohibition Act 1998</b>	1
	<b>No 127</b>	2
<b>[1] Sections 25B and 25C</b>		3
Insert after section 25A:		4
<b>25B Possession of digital blueprints for manufacture of prohibited weapons</b>		5
(1) A person must not possess a digital blueprint for the manufacture of a prohibited weapon on a 3D printer or on an electronic milling machine.		6
Maximum penalty: imprisonment for 14 years.		7
(2) Subsection (1) does not apply to a person who is:		8
(a) authorised by a permit to manufacture the prohibited weapon concerned, or		9
(b) acting in the ordinary course of the person's duties as a member (other than a police officer) of the Police Force.		10
(3) In this section:		11
<i>digital blueprint</i> means any type of digital (or electronic) reproduction of a technical drawing of the design of an object.		12
<i>possession</i> , of a digital blueprint, includes the following:		13
(a) possession of a computer or data storage device holding or containing the blueprint or of a document in which the blueprint is recorded,		14
(b) control of the blueprint held in a computer that is in the possession of another person (whether the computer is in this jurisdiction or outside this jurisdiction).		15
<b>25C Defences for offences under section 25B</b>		16
(1) <b>Innocent production, dissemination or possession</b>		17
It is a defence to a prosecution for an offence under section 25B if the defendant proves that the defendant did not know, and could not reasonably be expected to have known, that the defendant possessed the digital blueprint concerned.		18
(2) It is a defence to a prosecution for an offence under section 25B if the defendant proves that the digital blueprint concerned came into the defendant's possession unsolicited and the defendant, as soon as the defendant became aware of its nature, took reasonable steps to get rid of it.		19
(3) <b>Public benefit</b>		20
It is a defence to a prosecution for an offence under section 25B if the defendant proves that the conduct engaged in by the defendant:		21
(a) was of public benefit, and		22
(b) did not extend beyond what was of public benefit.		23
(4) Conduct is of public benefit if, and only if, the conduct is necessary for or of assistance in:		24
(a) enforcing or administering a law of the State, or of another State, a Territory or the Commonwealth, or		25
(b) monitoring compliance with, or investigating a contravention of, a law of the State, or of another State, a Territory or the Commonwealth, or		26
(c) the administration of justice.		27

(5)	The question of whether a person’s conduct is of public benefit is a question of fact and the person’s motives for engaging in the conduct are irrelevant.	1 2
(6)	<b>Approved research</b>	3
	It is a defence to a prosecution for an offence under section 25B if the defendant proves that the conduct engaged in by the defendant:	4 5
	(a) was necessary for or of assistance in conducting scientific, medical, educational, military or law enforcement research that has been approved by the Attorney General in writing for the purposes of this section, and	6 7 8 9
	(b) did not contravene any conditions of that approval.	10
<b>[2]</b>	<b>Section 43 Proceedings for offences</b>	11
	Insert “25B (1),” after “25A (1),” in section 43 (2).	12

<b>Schedule 3</b>	<b>Amendment of Criminal Procedure Act 1986</b>	1
	<b>No 209</b>	2
<b>[1]</b>	<b>Section 268 Maximum penalties for Table 2 offences</b>	3
	Insert “51F, 51H,” after “51E,” in section 268 (2) (e).	4
<b>[2]</b>	<b>Section 268 (2) (f)</b>	5
	Insert “25B (1),” after “25A (1),”.	6
<b>[3]</b>	<b>Schedule 1 Indictable offences triable summarily</b>	7
	Insert “51F, 51H,” after “51E,” in clause 7 of Table 2.	8
<b>[4]</b>	<b>Schedule 1, Table 2</b>	9
	Insert “25B (1),” after “25A (1),” in clause 8.	10