

Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019

Explanatory Notes for amendments to be moved during consideration in Detail by Trevor Watts MP, Member for Toowoomba North.

Short title

The short title of the Bill is the Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019.

Policy objectives and the reasons for them

The policy objectives of the Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019 (the Bill) are to strengthen the legislative framework pertaining to weapon and firearm crime by:

- increasing current penalties for certain weapon and firearm offences;
- introducing new offences;
- introducing a new legislative framework to prohibit high risk individuals from acquiring, possessing or using a firearm.

Achievement of policy objectives

The policy objectives will be achieved by amending the Criminal Code, the *Police Powers and Responsibilities Act 2000* and the *Weapons Act 1990* for particular purposes.

Firearm Prohibition Orders

The Bill inserts a new Part 5A 'Firearms prohibition orders' into the *Weapons Act 1990*. The overriding objective of a Firearm Prohibition Order (FPO) legislative framework is to prevent a high risk person from acquiring, possessing or using a firearm.

Under the framework, the commissioner may make an order (FPO order) against a person if, in the opinion of the commissioner (a) the person is not fit, in the public interest, to have possession of a firearm; or (b) the person is a participant in a criminal organisation within the meaning of the *Penalties and Sentences Act 1992* or is subject to a control order under that Act.

A FPO takes effect when a police officer serves a copy of the order personally on the person against whom it is made and can be revoked at any time by the commissioner.

The effect of a FPO is as follows:

1. A person who is subject to a FPO must not acquire, possess or use a firearm: **maximum penalty—15 years imprisonment**
2. A person who is subject to a FPO must not acquire or possess a prohibited thing or ammunition for any firearm: **maximum penalty—7 years imprisonment**

3. If a FPO comes into effect against a person, the person must immediately surrender to a police officer all firearms, prohibited things and ammunition for any firearm in the possession of the person: **Maximum penalty—500 penalty units or 10 years imprisonment (for a firearm) or 200 penalty units or 4 years imprisonment (for a prohibited thing or ammunition for any firearm)**
4. A person must not supply or give possession of a firearm to another person knowing that the other person is subject to a FPO: **maximum penalty—15 years imprisonment**
5. A person must not supply or give possession of a prohibited thing or ammunition for any firearm to another person knowing that the other person is subject to a FPO: **maximum penalty—7 years imprisonment**
6. A person who is subject to a FPO commits an offence if a firearm, prohibited thing or ammunition for a firearm is kept or found on premises at which the person is residing. It is a defence if the defendant proves the defendant (a) did not know, and could not reasonably be expected to have known, that the firearm, prohibited thing or ammunition was on the premises; or (b) took reasonable steps to prevent the firearm, prohibited thing or ammunition from being on the premises: **maximum penalty—500 penalty units or 10 years imprisonment**
7. A person who is subject to a FPO must not without reasonable excuse attend (a) a place at which a licensed dealer carries on business under the licence; or (b) a place at which a licensed armourer carries on business under the licence; or (c) a range for weapons target shooting; or (d) the premises of a shooting club; or (e) the premises of an approved historical society; or (f) an arms fair; or (g) any other premises of a type prescribed by regulation for this paragraph: **maximum penalty—500 penalty units or 10 years imprisonment**
8. A person subject to a FPO must (a) inform each other person who is 18 years or more and who resides or proposes to reside at the same premises as the person of the fact that a FPO is in effect against the person; and (b) ask each of the persons mentioned (a) whether or not they have or propose to have a firearm, prohibited thing or ammunition for any firearm on the premises: **maximum penalty—200 penalty units or 4 years imprisonment**
9. A person who has physical possession of a firearm must not, without reasonable excuse, be in the company of a person subject to a FPO: **maximum penalty—200 penalty units or 4 years imprisonment**

A prohibited thing is defined to mean (a) an antique firearm; or (b) a silencer or other thing mentioned in the *Weapons Categories Regulation 1997*, section 8(1)(h); or (c) a magazine.

Firing at dwelling houses, buildings or vehicles

The Bill inserts a new section 57A 'Firing at dwelling houses, buildings or vehicles' into the *Weapons Act 1990*. The offence imposes a maximum penalty of 14 years imprisonment for any person who

fires a firearm at a dwelling house, another building or a vehicle with reckless disregard for the safety of any person. A maximum penalty of 16 years imprisonment will apply to any person who, during a public disorder, fires a firearm at a dwelling-house, another building or a vehicle with reckless disregard for the safety of any person commits an offence. Public disorder is defined to mean a riot or other civil disturbance that gives rise to a serious risk to public safety, whether at a single location or resulting from a series of incidents at the same or different locations.

A maximum penalty of 16 years will also apply to a person who, in the course of an organised criminal activity, fires a firearm at a dwelling house, another building or a vehicle with reckless disregard for the safety of any person.

Possession of digital blueprints for manufacture of firearms

The Bill inserts a new sections 67A 'Possession of digital blueprint and device for manufacture of firearms' and 67B 'Defences for offence against 67A' into the *Weapons Act 1990*.

Pursuant to section 67A, a person who possesses both a digital blueprint for the manufacture of a firearm and a 3D printer, electronic milling machine or other device capable of manufacturing the firearm commits an offence. A maximum penalty of 14 years imprisonment applies.

The offence does not apply to a person who is authorised by an armourer's licence to manufacture the firearm concerned or is acting in the ordinary course of the person's duties as a member, other than a police officer, of the Queensland Police Service.

Section 67B contains a list of defences for the offence. Accordingly, it is a defence if the defendant proves:

- the defendant did not know, and could not reasonably be expected to have known, that the defendant possessed the digital blueprint concerned;
- 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;
- the conduct engaged in by the defendant was of public benefit and did not extend beyond what was of public benefit;
- the conduct engaged in by the defendant was necessary for or of assistance in conducting scientific, medical, educational, military or law enforcement research.

Intent to resist arrest

The Bill inserts new provisions specifically targeted at the discharging of a firearm or use or possession of weapon with the intent to resist or prevent the lawful arrest or detention of the person.

Section 317AA 'Discharging firearm or other loaded arms with intent to resist arrest' carries a maximum penalty of 25 years imprisonment.

Section 317AB 'Use or possession of offensive weapon or instrument to resist arrest' carries a maximum penalty of 15 years imprisonment. The penalty is increased to 18 years imprisonment if the person commits an offence in company of 1 or more persons.

Punishment of stealing firearm or ammunition

The Bill increases the penalty for the existing offence of section 398 of the Criminal Code 'Punishment of stealing'. Under the Bill, the maximum penalty for stealing a firearm or ammunition is increased from 10 years imprisonment to 14 years imprisonment.

Particular conduct involving a weapon in a public place prohibited

The Bill increases penalties for existing offences contained in section 57(3) and (4) of the *Weapons Act 1990*. Specifically, section 57(3) provides that a person must not, without reasonable excuse, carry in a public place a loaded firearm or a weapon capable of being discharged. The Bill amends the current maximum penalty of 120 penalty units or 2 years imprisonment to 10 years imprisonment.

Section 57(4) provides that a person must not, without reasonable excuse, discharge a weapon in, into, towards, over or through a public place. The current maximum penalty is increased from 200 penalty units or 4 years imprisonment to 10 years imprisonment.

Alternative ways of achieving policy objectives

There are no known alternate ways to achieve the policy objectives.

Estimated cost for government implementation

It is expected that there will be an increase in cost with respect to police officers involved in the monitoring of the FPOs, however it is not possible at this stage to estimate the exact financial implication.

Consistency with fundamental legislative principles

The Bill potentially departs from the fundamental legislative principles as outlined in section 4 of the *Legislative Standards Act 1992* (LSA).

Section 4(2)(a) of the LSA provides that legislation must have sufficient regard to the rights and liberties of individuals and the institution of Parliament.

The proposed amendments to the Criminal Code, which includes the creation of new offences and the increase in penalties for existing offences may potentially impact on the rights and liberties of the individuals. However, new section ss 317AA 'Discharging firearm or other loaded arms with intent to resist arrest' and section 317AB 'Use or possession of offensive weapon or instrument with intent to resist arrest or prevent investigation' and the increase in penalty to section 398 'Punishment of stealing' are considered justified because they are required to enhance community safety in response to the significant risks imposed by weapons crime.

The proposed amendments to the *Weapons Act 1990*, which includes the creation of new offences and the increase in penalties for existing offences may potentially impact on the rights and liberties of the individuals. However, new section 57A 'Firing at dwelling houses, buildings or vehicles', section 67A 'Possession of digital blueprint and device for manufacture of firearms' and part 5A 'Firearms prohibition orders' are considered justified because they are required to enhance community safety in response to the significant risks imposed by weapons crime.

The power of the police commissioner to impose a firearms prohibition order also potentially departs from the fundamental legislative principles by impacting on the rights and liberties of the individuals. While this may be considered particularly coercive in the case of individuals who require firearms for

their employment, it is considered justified to ensure the commissioner can respond persons who pose a high risk to the safety of Queenslanders.

Consultation

There was consultation undertaken on the Bill with external stakeholders about the proposed amendments.

Consistency with legislation of other jurisdictions

In relation to FPOs, other Australian jurisdictions, including South Australia, New South Wales, Victoria and Tasmania have implemented FPO legislative frameworks. Accordingly, it is important that a FPO framework is adopted in Queensland to achieve national consistency with respect to firearms regulation.

The increase in penalties for existing offences, including 'Discharging firearm with intent to resist arrest', 'Use or possession of offensive weapon or instrument to resist arrest', 'Punishment of stealing (firearm or ammunition)' and 'Particular conduct involving a weapon in a public place prohibited' aligns Queensland with other Australian jurisdictions, including New South Wales.

A range of new offences, including 'Firing at dwelling houses, buildings or vehicles', 'Possession of digital blueprint and device for manufacture of firearms' have been adopted from existing new South Wales provisions.

Notes on provisions

Clause 1 refers to the short title of the Bill.

Clause 2 provides that Part 2 amends the Criminal Code.

Clause 3 inserts new sections 317AA 'Discharging firearm or other loaded arms with intent to resist arrest' and 317AB 'Use or possession of offensive weapon or instrument to resist arrest'. Section 317AA provides that a person who, with intent to resist or prevent the lawful arrest or detention of the person or another person (a) discharges any firearm or other loaded arms; or (b) attempts to discharge any firearm or other loaded arms; commits a crime. The maximum penalty is 25 years imprisonment.

Section 317AB(1) states that a person who uses, attempts to use, threatens to use or possesses an offensive weapon or instrument with intent to prevent or hinder— (a) the lawful apprehension or detention of the person or another person; or (b) the investigation by a police officer of an actor circumstance that reasonably calls for investigation by the officer; commits a crime. The maximum penalty is 15 years imprisonment. Subsection (2) prescribes that a person who commits an offence against subsection (1) in company of 1 or more persons is liable to imprisonment for 18 years.

Clause 4 amends section 398 'Punishment of stealing', clause 15 'stealing firearm or ammunition' by omitting 10 years and inserting 14 years.

Clause 5 provides that Part 3 amends the *Police Powers and Responsibilities Act 2000*.

Clause 6 amends section 30 'Prescribed circumstances for searching persons without warrant' by omitting 'or an interstate domestic violence order' contained in section 30(a)(i) and inserting 'an interstate domestic violence order or a firearms prohibition order'.

Clause 7 amends section 32 'Prescribed circumstances for searching vehicle without warrant' by omitting 'or an interstate domestic violence order or a firearms prohibition order' contained in section 30(1)(a) and inserting 'an interstate domestic violence order or a firearms prohibition order'.

Clause 8 inserts a new section 808AA 'Review of additional powers for firearms prohibition orders'. The new section 808AA requires the public interest monitor to ensure the operation and effectiveness of the powers of a police officer under sections 19, 29 and 31, in relation to a person who is subject to a firearms prohibition order, are reviewed within 3 years after the commencement of the operation of the powers.

Clause 9 amends schedule 6 by inserting 'firearms prohibition order' into the Dictionary.

Clause 10 provides that Part 4 amends the *Weapons Act 1990*.

Clause 11 amends section 57 'Particular conduct involving a weapon in a public place prohibited' by omitting the penalty prescribed in subsection (3) and (4) and inserting a maximum penalty of 10 years imprisonment.

Clause 12 inserts a new section 57A 'Firearm at dwelling houses, buildings or vehicles'. Section 57A(1) provides that a person must not fire a firearm at a dwelling house, another building or a vehicle with reckless disregard for the safety of any person. The maximum penalty is 14 years imprisonment. Section 57A(2) states that a person must not, during a public disorder, fire a firearm at a dwelling house, another building or a vehicle with reckless disregard for the safety of any person. The maximum penalty is 16 years imprisonment. Section 57A(3) provides that a person must not, in the course of an organised criminal activity, fire a firearm at a dwelling house, another building or a vehicle with

reckless disregard for the safety of any person. The maximum penalty is 16 years imprisonment. Lastly, section 57A(4) provides that in the prosecution of an offence against subsection (1), (2) or (3), it is not necessary to prove that a person was actually placed in danger by the firing of the firearm.

Clause 13 inserts new sections 67A 'Possession of digital blueprint and device for manufacture of firearms' and 67B 'Defences for offence against section 67A'. Section 67A provides that a person must not possess (a) a digital blueprint for the manufacture of a firearm; and (b) a 3D printer, electronic milling machine or other device capable of manufacturing the firearm mentioned in paragraph (a). The maximum penalty for this offence is 14 years imprisonment. Relevant defences are contained in section 67B.

Clause 14 inserts a new Part 5A 'Firearms prohibition orders'. A new section 141C 'Commissioner may make firearms prohibition order' details how a firearms prohibition order may be made. Subsection (1) provides that the commissioner may make a firearms prohibition order against a person if, in the opinion of the commissioner the person is not fit, in the public interest, to have possession of a firearm or the person is a participant in a criminal organisation within the meaning of the *Penalties and Sentences Act 1992* or is subject to a control order under that Act.

Subsection (2) states that a firearms prohibition order takes effect when the police officer services a copy of the order personally on the person against whom it is made. Subsection (3) provides that the commissioner may revoke a firearms prohibition order at any time for any or no stated reason.

A new section 141D 'Effect of firearms prohibition order' is inserted, which provides for a range of offences in relation to firearms prohibition orders.

Clause 15 amends section 142 'Right to apply for review of decisions' by inserting subsection (1)(g) 'a decision imposing a firearms prohibition order' to ensure that a person aggrieved by the decision may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

Clause 16 amends section 145 'Applicant may carry on business pending review' by inserting subsection (2) to provide 'Subsection (1) does not apply if a firearms prohibition order is in effect against the person'.

Clause 17 amends schedule 2 by inserting 'firearms prohibition order' into the Dictionary.