

What's New – Summary of Key Changes

Firearms and Criminal Groups Legislation Amendment Act 2013

This legislation has passed through parliament and commences on 1 November 2013. This legislation extends the effect of a Firearms Prohibition Order (FPO) and increases the police powers in relation to a person who is subject to an FPO.

In addition, references to 'sale' and 'purchase' are replaced throughout the *Firearms Act 1996* (the Act) with 'supply' and 'acquire'. The definition of 'supply' will include not just selling, but the transfer of ownership by gift or otherwise. The definition of 'acquire' will mean accept or receive supply of.

Definitions

The definition of acquire has been amended to 'accept or receive supply of' and has been broadened by removing the reference to 'a firearm'. **'Acquire means accept or receive supply of'**.

The definition of sell has been removed and replaced with 'supply'.

'Supply means transfer ownership of, whether by sale, gift, barter, exchange or otherwise, and includes the following:

- Offer for supply, receive for supply, have in possession for supply or expose or exhibit for supply,
- Conduct negotiations for supply,
- Consign or deliver for supply,
- Cause or allow supply.

Definition in section 4(1) of the Act to a firearms dealer licence replaces 'purchases, sells, transfers' with 'acquires, supplies'.

For the purposes of section 74A of the Act, premises include any place, whether built on or not.

References

- Reference to sale, sell, sold, selling, transfer throughout the Act have been replaced by 'supply, supplier, supplied'.
- References to purchase, purchased, purchasing have been replaced by 'acquire, acquired, acquisition, acquiring'
- References to purchaser have been replaced by 'other person'.
- References to bought or otherwise acquired have been replaced by 'acquired'.
- References to prohibited firearm or pistol have been replaced by 'pistol or prohibited firearm' to distinguish that the reference includes any pistol.
- Reference to authority of a firearms dealer licence 'purchases, sells, transfers' in section 8 is replaced by 'acquires, acquire and supplies / supply'.

Offences

An offence has been added by the inclusion of section 50B of the Act which covers 'lending' or giving possession (without transfer of ownership) of a firearm or firearm part to an unauthorised person. *This offence may now be prosecuted on indictment.*

The offence of acquire, possess or use a firearm, firearm part or ammunition while subject to an FPO are increased to 14 years imprisonment where the firearm is a pistol or prohibited firearm.

The offence of supply of a firearm, now includes supply of a firearm part or ammunition and the penalty for acquisition, supply is increased where the firearm is a pistol or prohibited firearm.

The introduction of 'attempting' to commit an offence by the insertion of section 51CA of the Act whereby any attempt to commit an offence has the same penalty, on conviction, as if the offence occurred.

Review of FPO

Insertion of section 75(1A) of the Act which precludes a person from appealing the making of an FPO where that person would be refused a licence or permit under sections 11(5) or 29(3) of the Act. Section 75(1B) of the Act provides for an internal review only (not an ADT appeal) of the decision to make a firearms prohibition order against a person.

Firearms Prohibition Order Part 7

Application of the Legislation

The provisions of this amendment apply to all FPO's issued on or after 1 November 2013 and also extend to any FPO in existence before the new provisions commenced.

An FPO is an order made against a person by the Commissioner of Police to prohibit the person from acquiring, possessing or using a firearm and this prohibition now extends to acquisition or possession of a firearm part or ammunition.

Section 73

- ✓ An FPO is made by the Commissioner and takes effect upon personal service by a police officer.
- ✓ An FPO may be revoked at any time by the Commissioner for any or no stated reason.
- ✓ The Commissioner may exempt a person, either unconditionally or subject to certain conditions, from a specified provision of section 74 of the Act.

Section 74 Effects of an FPO

A person subject to an FPO must not acquire, possess or use a firearm. *Offence: 5 years imprisonment or 14 years if the firearms is a pistol or prohibited firearm.*

A person subject to an FPO must not acquire or possess a firearm part or ammunition. *Offence: 5 years for ammunition, 5 years for firearms generally, 14 years for any kind of pistol or prohibited firearm.*

A person must not supply or give possession of a firearm, firearm part or ammunition to a person knowing that the person is subject to an FPO. *Offence: 14 years if the firearm or part relates to any kind of pistol or prohibited firearm, 5 years in any other case.*

The person subject to the FPO is committing an offence if firearms, firearms part or ammunition are kept or found on premises at which the person resides. *Offence: 50 penalty units or 12 months imprisonment or both. There is a defence where the person did not know and could not reasonably be expected to know that a firearm, firearm part or ammunition were on the premises or where they took reasonable steps to prevent the firearm, firearm part or ammunition from being on the premises.*

A person subject to an FPO must not, without reasonable excuse attend:

- A firearms dealership premises, or
- A shooting range, or
- The premises of a shooting club, or
- Any other premises prescribed by the regulations.

Offence: 50 penalty units or 12 months imprisonment or both.

No Defence: Membership of a firearms club is not a reasonable excuse for being on premises.

Section 4A reference to a firearm is taken to include a reference to a firearm part or ammunition for proof of possession for proceedings for an offence under this section.

Section 75 Review by the ADT of certain decision

In relation to a person who has an FPO made against them, if that person would be required to be refused a firearms licence or permit under sections 11(5) or 29(3) of the Act (a disqualified person), there is a right of appeal for an Internal Review by CMU, but no appeal right to the ADT.

A disqualified person for the purpose of section 75 of the Act is a person who would be refused a firearms licence or permit for:

- ✓ A conviction for a prescribed offence within 10 years of the application being made,
- ✓ An AVO, or within 10 years of the making of an AVO (other than an AVO that has been revoked),
- ✓ A good behaviour bond for a prescribed offence,
- ✓ Subject to an FPO,
- ✓ Under 18 years of age.