

The Shopfront

YOUTH LEGAL CENTRE

Firearms, weapons and implements

1 Introduction

Some types of weapons and firearms are illegal for people to possess or use without a special licence, permit or authorisation.

Some types of weapons and implements are legal to possess or use, but it can be illegal to possess or use them in some places and situations.

2 Possession and custody

Most firearms and weapons offences involve “possession” or “custody”.

- **Possession** usually means that you control something. It does not have to physically be on you at the time. You also do not need to own the item. For example, you leave your TV at home when you go out, but you’re still said to possess your TV. Alternatively, your friend might lend you their gun while they go on holiday – you would possess the gun because you control it, even if you do not own it.
- **Custody** is narrower and more immediate than possession. You have custody of something when it is on your person or close at hand – for example, in your car.

There are some special definitions of “possession” and “custody” relating to firearms and prohibited weapons (see parts 3.2 and 5.2 of this fact sheet).

3 Firearms

3.1 What is a firearm?

A “**firearm**” means a gun, or other weapon, that is (or at any time was) capable of propelling a projectile by means of an explosive, and includes a blank fire firearm, or an air gun. (*Firearms Act 1996*, section 4). It does *not* include anything declared by the regulations not to be a firearm, e.g. nail guns, some types of antique weapons (Firearms Regulation, clause 4).

A “**pistol**” is a type of firearm that can be raised and fired by one hand, with a maximum length of 65cm.

An “**imitation firearm**” is an item that looks like a firearm but is not a firearm (regardless of colour, weight, material and moving parts). It does not include objects identified as children’s toys. Imitation firearms do not require licences and registration like regular firearms, but are otherwise treated as actual firearms by the law.

A “**prohibited firearm**” is one of the firearms described in Schedule 1 of the Act, including: machine guns, sub-machine guns, self-loading rifles and shotguns, firearms that are capable of being disguised as some other article, cannons, explosive-propelled spear guns, paint-ball guns, firearms with muffling and sound suppressing attachments.

3.2 Possession

It is an offence to use or possess a **firearm** [which includes a pistol] without a licence or permit (i.e. without authorisation) (*Firearms Act 1996*, section 7A(1)).

The maximum penalty is 5 years imprisonment (*Firearms Act 1996*, section 7A(1)), or 14 years for pistols and prohibited firearms (*Firearms Act 1996*, section 7(1)).

"**Possession**" of a firearm includes any case in which a person knowingly:

- (a) has custody of the firearm, or
- (b) has the firearm in the custody of another person, or
- (c) has the firearm in or on any premises, place, vehicle, vessel or aircraft, whether or not belonging to or occupied by the person. (*Firearms Act 1996*, section 4).

Usually, to be guilty of an offence involving possession, the prosecution must prove that you knew the item was there. However, a firearm will be taken to be in your "possession" if it is in or on any premises (which may include a car) owned, leased or occupied by you, *unless it was brought there by someone authorised to possess it or you can show you did not and could not have known it was there* (*Firearms Act 1996*, section 4A).

3.3 Using a firearm

To "**use**" a firearm means to fire the firearm or hold it so as to cause a reasonable belief that it will be fired, whether or not it is actually capable of being fired (*Firearms Act 1996*, section 4).

Using a firearm without authorisation is an offence with a maximum penalty of 5 years (*Firearms Act 1996*, section 7A(1)). If that firearm is a pistol or prohibited firearm, the maximum penalty is instead 14 years (*Firearms Act 1996*, section 7(1)).

Possessing or firing a loaded firearm in a public place is an offence with a maximum penalty of 10 years (*Crimes Act 1900* section 93G).

3.4 Other offences involving firearms

There are also offences under the *Firearms Act 1996* relating to selling firearms, storing them in an unsafe manner, carrying them in public places, etc. All of these offences also attract serious penalties.

4 Firearms prohibition orders

4.1 Introduction

A Firearms Prohibition Order (FPO) gives the police increased powers to search people and premises. It also restricts people's ability to possess firearms, parts and ammunition, or to be around firearms.

These laws were introduced to deter bikie and criminal gangs from possessing firearms, but a FPO can be made against anyone.

4.2 Making a FPO

The Commissioner of Police can make a Firearms Prohibition Order (FPO) 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 (*Firearms Act 1996* section 73(1)).

4.3 Review of decision to make FPO

If the Commissioner of Police has made a FPO against you, you may apply for an internal review of this decision. This means asking the Police to reconsider the decision.

The procedure for review is set out in the *Administrative Decisions Review Act 1997* section 53. An application for review must be made in writing within 28 days of being notified of (or provided with reasons for) the decision.

If your internal review application is unsuccessful, you can apply to the NSW Civil and Administrative Tribunal (NCAT) for a review of the decision. However, you *cannot* apply to NCAT if you are a “**disqualified person**”, i.e. if you are under 18, subject to an AVO or good behaviour bond, have been convicted of certain offences in the last 10 years, or are a registrable person under child protection laws (*Firearms Act 1996* section 75).

4.4 Restrictions on people subject to FPO

A person subject to a FPO must not (*Firearms Act 1996* section 74):

- possess a firearm or part of a firearm (maximum penalty: 14 years imprisonment for a pistol or prohibited firearm; 5 years imprisonment in any other case)
- possess ammunition (maximum penalty: 5 years imprisonment)
- live at a place where there is a firearm, unless they can show that they did not and could not know that the firearm was there, or tried to prevent the firearm from being there (maximum penalty: \$5,500 fine and/or 12 months imprisonment)
- go to a place where there are firearms, e.g. a firearms dealer or shooting range (maximum penalty: \$5,500 fine and/or 12 months imprisonment)

It is also an offence for a person to supply or give possession of a firearm, firearm part or ammunition to another person knowing that the other person is subject to a FPO (sections 74(4), (5)) (maximum penalty: 14 years imprisonment for a pistol or prohibited firearm; 5 years imprisonment in any other case)

4.5 Police powers to search people subject to FPO

Under section 74A of the *Firearms Act 1996* a police officer may search a person who is subject to a FPO (or their premises, vehicle, vessel or aircraft) “as reasonably required” for the purpose of determining whether a person who is subject to the FPO has committed one of the above offences under section 74.

Unlike most other searches, the police *do not need a search warrant* and they *do not need any reasonable suspicion*.

5 Prohibited weapons

5.1 What is a prohibited weapon?

Prohibited weapons are listed in Schedule 1 of the *Weapons Prohibition Act 1998*. They include items such as:

- certain kinds of knives (e.g. flick knives and butterfly knives)
- military-style weapons (including bombs, grenades, flamethrowers etc.)
- tasers
- spear guns
- blow guns or dart guns
- laser pointers with a power output of more than 1 milliwatt

- chemical defence sprays
- slingshots
- nunchakus
- crossbows
- knuckle-dusters
- batons and telescopic batons

Even novelty items, like a belt buckle or keyring shaped like a knuckle-duster, can be prohibited weapons.

5.2 Possession and use of a prohibited weapon

It is an offence to possess or use a **prohibited weapon** without a permit. The maximum penalty is 14 years imprisonment (*Weapons Prohibition Act 1998*, section 7(1)).

"**Possession**" of a prohibited weapon includes any case in which a person knowingly:

- (a) has custody of the weapon, or
- (b) has the weapon in the custody of another person, or
- (c) has the weapon in or on any premises, place, vehicle, vessel or aircraft, whether or not belonging to or occupied by the person (*Weapons Prohibition Act 1998*, section 4).

"**Use**" a prohibited weapon includes causing a reasonable belief that the weapon will be used (*Weapons Prohibition Act 1998*, section 4).

5.3 Other offences involving prohibited weapons

Other offences include selling prohibited weapons and storing prohibited weapons unsafely.

6 Knives

It is an offence to **have custody of a knife in a school or public place**, without a reasonable excuse (*Summary Offences Act 1998*, section 11C(1)). The maximum penalty is a \$2,200 fine and/or 2 years imprisonment.

A "**knife**" includes a knife blade, razor blade, or any other blade (*Summary Offences Act 1998*, section 3). This would clearly include things like swords and machetes. There is at least one court decision that says a "knife" does *not* include scissors.

A "**public place**" can include inside a car, if the car is in a public place.

A "**reasonable excuse**" may include carrying a knife for purposes such as work, lawful recreation (e.g. fishing), preparation of food, or genuine religious purposes (section 11C(2)). Self-defence or defence of another person is not a reasonable excuse for carrying a knife (section 11C(3)).

Wielding a knife in a public place or school, in a way that is likely to cause people to fear for their safety, is an offence. The maximum penalty is a \$5,500 fine and/or 2 years imprisonment. (*Summary Offences Act 1998*, section 11E).

It is an offence to **sell knives to children under 16 years of age** unless the seller believes on reasonable grounds that the child is 16 or over. This does *not* include plastic knives for eating, or things like razor blades or scissors. The maximum penalty is a \$5,500 fine (*Summary Offences Act 1998*, section 11F; *Summary Offences Regulation 2015* Clause 11).

7 Offensive implements

It is an offence to have custody of an **offensive implement in a school or public place**, without reasonable excuse (*Summary Offences Act* 1988, section 11B). The maximum penalty is a \$5,500 fine and/or 2 years imprisonment.

An “**offensive implement**” is anything that is:

- made or adapted for the purpose of causing injury to another person, or
- intended to be used to injure or menace a person or damage property.

It is a defence if you can prove you had a **reasonable excuse** or **lawful authority** to have custody of the implement.

8 Car-breaking or house-breaking implements

It is an offence to be in possession of any implement **capable** of house-breaking or safe-breaking (e.g. a crowbar or screwdriver) or of any implement capable of being used to enter and/or drive a conveyance (e.g. a car or boat), without a lawful excuse (*Crimes Act* 1900, section 114(1)(b)).

The maximum penalty is 7 years imprisonment (or, if you have been previously convicted of any indictable offence, 10 years imprisonment).

It does not need to be proven that you had the implements in your possession for the **purpose** of house-breaking or safe-breaking, or with the **intent** to commit an offence of that kind. However, if you had it for an innocent purpose (e.g. you are carrying a screwdriver in your toolbox for work) you will probably be able to prove that you had a lawful excuse.

9 Police powers to search for firearms, weapons and implements

If you are subject to a Firearms Prohibition Order (see part 4 of this document), the police may search you, your vehicle or your place without a search warrant or any reasonable suspicion.

In other situations, police usually need a “**reasonable suspicion**” before they can stop and search you.

If they want to search your home (or other private property) they usually need a **search warrant** or your consent, unless it’s an urgent situation involving domestic violence or a serious risk to someone’s safety.

For more information about police search powers and reasonable suspicion, see our fact sheet on *Police powers and your rights*.

10 Penalties for offences

The penalties listed in this fact sheet are all *maximum* penalties, which are rarely imposed.

The court may also impose other penalties such as a good behaviour bond (now known as a “conditional release order” or “community correction order” for adult offenders).

For some offences (e.g. custody of a knife in a public place), police may issue a penalty notice (i.e. an on-the-spot fine).

Children (under 18 at the time of the offence) may instead be given a warning or caution. For more information about these options, see the separate fact sheet on *The Young Offenders Act: warnings, cautions and youth justice conferences*.

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The Shopfront Youth Legal Centre is a service provided by Herbert Smith Freehills in association with Mission Australia and The Salvation Army.

This document was last updated in February 2019 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.

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