

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, *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 and you do not need to own the item. For example, you leave your TV at home when you go out, but you’re still in possession of your TV. Or your friend might lend you their gun – you would possess the gun because you control it, even if you do not own it.
- **Custody** is similar to possession. But instead of just having control of it, you have more immediate access to it. You have custody of something when you are carrying or holding it, or it is close at hand – for example, if it’s in your car while you are driving.

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. This 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 kinds of antique weapons (Firearms Regulation 2017, 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 (such as a water pistol, Nerf gun, or a toy gun with an orange tip that clearly looks like a toy).

Imitation firearms do not require licences and registration like regular firearms, but they do require a permit to use or possess and are otherwise *treated like actual firearms by the law*. This means that it is an offence to possess or use one without a permit. Also, if you use an imitation firearm in an offence like armed robbery, it’s treated as a “dangerous weapon” just like a real firearm.

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.

Prohibited firearms require a different category of licence to possess or use them. These licences have stricter requirements and will only be issued if they are needed for reasons such as farming or for pest control of large animals.

There are higher penalties for unauthorised possession of a prohibited firearm than for other firearms.

3.2 Licences and permits

A person cannot legally possess or use a firearm without a licence or permit issued by the Commissioner of Police.

There are several categories of **licence** which allow people to possess or use firearms (*Firearms Act 1996*, section 8). The categories vary depending on the type of firearm or the person’s job (e.g. a firearms dealer, a collector, an armourer at a shooting club).

To issue a licence, the Commissioner must be satisfied that you:

- are aged 18 or over;
- are living in or about to move to NSW;
- have a genuine reason for possessing or using a firearm;
- don’t have a Firearms Prohibition Order (FPO) against you;
- are not legally excluded because of the types of offences you’ve committed in the past;
- don’t currently have a final or interim Apprehended Violence Order (AVO) against you;
- haven’t had a final Apprehended Violence Order (AVO) against you in the last 10 years, unless the AVO was revoked;
- are a fit and proper person to possess a firearm;
- have completed any required firearms training and safety courses; and
- will store the firearm safely.

(*Firearms Act 1996*, sections 11 and 12).

Licences are valid for 5 years (*Firearms Act 1996*, section 21(1)), but can be revoked or suspended by the Commissioner at any time (*Firearms Act 1996*, section 22).

A **permit** can be issued by the Commissioner if they would otherwise issue a licence but the person’s reason for applying falls outside the licensing scheme. For example, permits can be issued to people aged 12-18, museums, historical re-enactors, or people who have come from overseas to participate in a shooting competition (*Firearms Act 1996*, sections 28 and 32; *Firearms Regulation 2017*, Parts 5 and 6). Many of the same restrictions around getting a firearms licence apply to obtaining a permit.

3.3 Unlawful possession of a firearm or pistol

It is an offence to use or possess a firearm or pistol without a licence or permit. The maximum penalty is 5 years’ imprisonment for a firearm (*Firearms Act 1996*, section 7A(1)) or 14 years for a pistol or prohibited firearm (*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 is deemed 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).

3.4 Using a firearm

To “use” a firearm means to fire it, or to 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). This could include pointing an imitation firearm at someone if they believe it’s real.

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

3.5 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) restricts people’s ability to possess firearms, parts and ammunition, or to be around firearms.

It also gives the police increased powers to search people and their premises and vehicles.

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

4.2 Making an 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)).

An FPO can be made against you even if you have never possessed or used a firearm. For example, FPOs are sometimes made against people who have a record of violence or who make threats like “I’ll shoot you”, even if they don’t have any access to a gun.

An FPO is indefinite, which means that it will last forever unless it is revoked by the Commissioner (or if you successfully appeal to NCAT against the FPO).

4.3 Internal review of decision to make FPO

If the Commissioner of Police has made an FPO against you, you may apply for an internal review of this decision (*Firearms Act 1996*, section 75(1)(f)). 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 to the Commissioner of Police within 28 days of being notified of (or given reasons for) the decision.

4.4 Review by NSW Civil and Administrative Tribunal (NCAT)

If your internal review application is unsuccessful, you can apply to the NSW Civil and Administrative Tribunal (NCAT) for a review of the decision. An application must be made within 28 days of the determination of the internal review. (*Administrative Decisions Review Act 1997*, section 55; Civil and Administrative Tribunal Rules 2014, r 23).

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).

Applications to NCAT can be made by filling in the application form, available at: https://www.ncat.nsw.gov.au/Pages/apply_to_ncat/apply_to_ncat.aspx.

General information about going to NCAT can be found on its website at: https://www.ncat.nsw.gov.au/Pages/going_to_the_tribunal/going_to_the_tribunal.aspx.

4.5 Restrictions on people subject to FPOs

A person subject to an 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 an FPO (sections 74(4), (5)) (maximum penalty: 14 years’ imprisonment for a pistol or prohibited firearm; 5 years’ imprisonment in any other case)

4.6 Police powers to search people subject to FPOs

Under section 74A of the *Firearms Act 1996* a police officer may search a person who is subject to an 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*.

In 2016, the Ombudsman reviewed the police’s use of the power to make FPOs and produced a report, which discussed the search powers and found that the police were sometimes misusing them, e.g. by searching people who did *not* have FPOs against them. See https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0016/37132/Review-of-police-use-of-firearms-prohibition-order-search-powers.pdf.

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 Weapons prohibition orders

6.1 Introduction

A Weapons Prohibition Order (WPO) is a bit like a Firearms Prohibition Order (FPO).

A person with a WPO against them cannot get a permit to possess or use a prohibited weapon.

6.2 Making a WPO

If the Commissioner of Police believes you are not fit to be allowed to possess a prohibited weapon, the Commissioner can make a WPO against you (*Weapons Prohibition Act 1998*, section 33(1)).

A WPO is often made against a person who has been caught using a prohibited weapon – but a WPO can be made against someone who has never actually possessed or used a prohibited weapon.

A WPO is indefinite, which means that it will last forever unless it is revoked by the Commissioner.

6.3 Review of WPO

Unlike an FPO, there is no right to apply to NCAT for review of a WPO.

It may be possible to apply to a court and to argue that the decision to make the WPO was unfair or unreasonable, but this is a complex and expensive process.

6.4 Consequences of a WPO

A person subject to a WPO cannot get a permit to possess or use a prohibited weapon.

A person subject to a WPO must not possess or use a prohibited weapon (maximum penalty: 10 years' imprisonment) (*Weapons Prohibition Act*, section 34(1)).

If you have a WPO against you, and a prohibited weapon is found in any premises that you occupy (e.g. a house where you usually live), or where you are present (e.g. a friend's house or other building that you are visiting), the weapon is presumed to be in your possession unless you can prove otherwise.

It is also an offence to sell or give a prohibited weapon to another person, knowing that the other person has a WPO against them (maximum penalty: 10 years' imprisonment) (*Weapons Prohibition Act*, section 34(3)).

WPOs don't give police the same search powers as FPOs. This means that, if you have a WPO against you, the police will usually need reasonable suspicion or a warrant to search you or your premises.

7 Knives

Some types of knives (e.g. flick knives, butterfly knives) are **prohibited weapons**. Other types of knives are lawful to own or possess, but there are some restrictions.

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).

8 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.

9 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.

10 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*.

11 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 be given a warning or caution or referred to a youth justice conference for some types of offences. For more information about these options, see our 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 May 2022 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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