

## **FIREARMS AMENDMENT BILL 2021**

### *Introduction and First Reading*

Bill introduced, on motion by **Mr P. Papalia (Minister for Police)**, and read a first time.

Explanatory memorandum presented by the minister.

### *Second Reading*

**MR P. PAPALIA (Warnbro — Minister for Police)** [12.44 pm]: I move —

That the bill be now read a second time.

The Firearms Amendment Bill 2021 includes significant reforms that advance the McGowan government’s commitment to community safety and combating serious and organised crime in Western Australia. These new laws target criminals and other dangerous people’s access to, and possession of, firearms. The reforms aim to take firearms, including handguns, out of their hands and off our streets.

Outlaw motorcycle gangs and firearms are synonymous. Over decades, there have been numerous examples of the violent use of firearms by OMCGs here, interstate and overseas. Last year’s assassination of the Rebels OMCG president at the Perth Motorplex in Kwinana Beach highlighted how readily and recklessly bikies turn to firearms to further their criminal activities. This year we saw further examples of this contemptible and criminal behaviour, including an incident linked to organised crime that saw a man arrested in East Perth after holding a motorist at gunpoint during a carjacking on the Graham Farmer Freeway; and a drive-by shooting in suburban Port Kennedy, which targeted the home of a Mongols OMCG member. Offenders involved in all these incidents have been taken into custody. I would like to take this opportunity to commend again the police officers in Taskforce Ravello who apprehended and charged the criminal subsequently convicted of the murder at the Perth Motorplex and the OMCG member who allegedly procured it. I also acknowledge our gang crime squad, which is tireless in its determination to see the 99 per cent prevail over the one per cent.

This bill will strengthen the Western Australia Police Force’s enforcement activities targeting serious and organised crime, including by providing police with the ability to prohibit criminals, OMCG members and dangerous people from possessing a firearm; and the introduction of new unlawful manufacturing and firearms technology offences, and tougher penalties.

The bill contains four key reforms. The first reform introduces a firearms prohibition order scheme into the Firearms Act 1973. Under these amendments, police will be able to make an FPO against anyone who, if in possession of a firearm or related item, would likely result in undue danger to life or property; or if the person is not a fit and proper person to possess a firearm; or it is in the public interest for an FPO to be made against the person.

The second reform is new, and refers to illegal manufacturing, participating—termed “take part in”—in unlawful firearms activity and firearms technology offences. The amendments will keep up with technological advances by making it illegal to possess or use “firearms technology” to manufacture plastic 3D firearms. The use of this technology has been on the rise in the United States of America, and can produce firearms capable of firing live bullets and which are difficult to detect through traditional metal detectors and scanning equipment. Although there have so far been very few detections in Western Australia, the McGowan government is seeking to get ahead of this trend.

The third key reform is a suite of increased penalties for firearms-related theft offences under the Criminal Code and the offences targeting drive-by shootings or discharging a firearm at a house or other building under the Firearms Act.

The final reform is to legislate a permanent firearms amnesty.

Importantly, this bill will also complement and add to the enforcement provisions in the Criminal Law (Unlawful Consorting and Prohibited Insignia Bill) 2021 introduced by the Attorney General just a few weeks ago. These two significant reforms are the first part of a reform package being progressed by the McGowan government to leave OMCGs, other criminal organisations and serious offenders in no doubt that Western Australia intends to be the most hostile jurisdiction for them to pursue their criminal activities.

I will now turn to the bill in more detail. The Firearms Amendment Bill 2021 will amend the Firearms Act 1973 and make a number of consequential amendments to other acts to reduce criminals’ and other dangerous people’s access to firearms within Western Australia.

Clause 6 of the bill prescribes some new definitions, including those germane to the new firearms prohibition order scheme and new manufacturing and firearms technology offences, and modernises some existing definitions including the definitions of “ammunition” and “firearm”. Other new definitions include “major firearm part” and “prohibited firearm accessory” that have been introduced to better capture and regulate parts of firearms that are just as dangerous as complete firearms. Many of these new and amended definitions, and other provisions in the

bill, draw on the recommendations in the Law Reform Commission of Western Australia’s *Review of the Firearms Act 1973 (WA)* published in October 2016.

Central to the bill is the introduction of a firearms prohibition order scheme, under clause 53 of the bill, which will insert new part 8 into the Firearms Act, to provide police with new powers to ban individuals from possessing firearms, including handguns.

The FPO scheme will give the Commissioner of Police or his delegate the power to make an FPO against a person who should not be in possession of a firearm. Although members of OMCGs are clearly target candidates for FPOs, terrorist suspects and family violence offenders are among others who will also fall within their remit. The bill prescribes that a decision to make an FPO can be delegated to a police officer of the rank of commander or above. An FPO can be made on a person regardless of whether they have, or have ever had, a firearm-related licence or approval, and regardless of whether they are in a category of person who would be usually exempt from licensing requirements, such as a juvenile. An FPO must be served in person and remains in place for 10 years from the date of service.

Once served with an FPO, the person will become a “prohibited person” subject to a number of conditions to prevent them from having access to firearms or related items, including: all licences, permits, approvals and authorisations issued to the prohibited person under the Firearms Act are revoked; the prohibited person must surrender all firearms, parts and ammunition; the prohibited person is prohibited from acquiring, possessing or using firearms, major firearm parts, prohibited firearm accessories and ammunition; and the prohibited person is prohibited from certain conduct such as entering or residing at certain places where firearms are present, and associating with persons in possession of a firearm.

Where an FPO is in place, police will have a number of enforcement powers to determine whether the prohibited person has committed an offence in relation to their FPO, including: to stop and search the prohibited person and a person who is in their company; to enter and search any place occupied by, or under the control of, the prohibited person, including any vehicle at the place; and to stop, detain and search any vehicle being occupied by the prohibited person, regardless of where the vehicle is located.

Several offences will be introduced to support the enforcement of the FPO scheme. These offences will apply to prohibited persons who breach their FPO. Depending on the nature of the offence, a person in breach will face maximum terms of imprisonment of one to 14 years and fines between \$4 000 and \$75 000. Offences that will apply to prohibited persons include: failure to surrender firearm-related licences or permits; failure to surrender firearms and related items; acquiring a firearm or related item; entering, remaining or residing at places set aside predominantly for activities involving firearms—that is, a shooting range, firearm manufacturer, paintball club; entering or remaining at a residence where a firearm or related item is stored; residing at a residence where a firearm or related item is stored; and being in company with a person who is in possession of a firearm. For offences relating to firearm possession/acquisition, the offence will be considered more serious if the firearm is a handgun, prohibited firearm or a major firearm part relating to these items. For this reason, offences involving these items will attract a higher penalty.

As previously mentioned, the Firearms Act provides that a licence or permit cannot be issued to a person under the age of 18 years. Given the purpose of an FPO, such orders will be able to be made against persons under the age of 18 years. This reflects FPO schemes in other Australian states and territories. In Western Australia, police anticipate that an FPO will be rarely made against a young teenager, and more commonly made against a person under 18 years when there is a clear need—for example, when the juvenile is associating with persons who are involved in illegal activities involving firearms. This measure aims to prevent serious and organised crime groups from engaging juveniles to carry out illegal activities in place of adults who have been issued with an FPO. Further, in order to give effect to corresponding laws, it is necessary that FPOs issued in Western Australia can also apply to juveniles in Western Australia. Western Australia’s new FPO scheme will be similar to schemes in other Australian jurisdictions. As five Australian jurisdictions have legislated corresponding firearms prohibition order schemes, the bill will also introduce provisions to enable FPOs issued in other states to be enforced in WA. Once enacted, WA will seek similar corresponding recognition of our scheme.

Although the new FPO scheme is necessarily strong, appropriate safeguards are included in the bill. Clause 35 of the bill will provide that the decision of the Commissioner of Police, or their delegate who must be of the rank of commander or above, to make an FPO will be subject to review by the State Administrative Tribunal. An FPO decision as affirmed or varied by the SAT, or one that is substituted, may be appealed to the Supreme Court. Importantly, the bill will also provide that, in order to protect sensitive police information, the Commissioner of Police will be provided the opportunity to withdraw any confidential information from proceedings.

I turn now to the second key reform in this bill—the illegal manufacturing and firearms technology offences. Clause 43 of the bill inserts new offences so that a person who unlawfully manufactures, repairs or deals—“firearms activity”—a firearm, major firearm part, prohibited firearm accessory or ammunition, commits a crime. It is currently an offence under the Firearms Act for a person to repair or manufacture a firearm or handgun. However, the new offences will provide stricter penalties for illegal manufacturing and repair, and expand the offence to dealing in firearms.

The bill will also insert a new offence for a person who participates, or “takes part”, in the unlawful firearms activity. A person will be deemed to have participated in any of these offences if the person takes, or participates in, a step, or causes a step to be taken in the firearms activity; provides or arranges finance for a step in the firearms activity; provides the place in which a step in the firearms activity is taken, or allows a step in the firearms activity to be taken at a place of which the person is an owner, lessee or occupier, or of which the person has care, control or management; or is in possession of, provides or supplies a firearms precursor for a step in the manufacture or repair of a firearm, major firearm part, prohibited firearm accessory or ammunition.

The new firearms activity offences will not be contingent on whether the firearm, major firearm part, prohibited firearm accessory or ammunition is actually manufactured into a functioning firearm. These offences will ensure that any person who has contributed to the production of an illegal firearm will be guilty of a crime, and reflect outcomes supported nationally by the former Ministerial Council for Police and Emergency Management to address the illegal manufacture of firearms. These offences are intended to capture anyone involved in the process of manufacturing firearms, from the people involved in financing to providing premises, equipment and materials.

The penalty for these offences will be 14 years’ imprisonment. This is in line with the penalty provisions for the illegal manufacturing offences in New South Wales, South Australia, the Australian Capital Territory and Victoria. The general defences in the Criminal Code will apply to these offences.

The bill will also insert new offences relating to the unauthorised possession, unauthorised creation or development, and unauthorised dissemination of firearms technology. These offences are aimed at preventing the increasing development of firearms through technologies such as 3D printing.

“Firearms technology” is defined in the bill to include a thing that is programmed, configured or otherwise enabled to carry out a step in the manufacture or repair of a firearm, major firearm part, prohibited firearm accessory or ammunition, or to change an object into a component of one of those items. A “thing” is a reference to any machinery, equipment, object or device such as a 3D printer, moulding device, milling device, remote-controlled device such as a drone, electronic firing mechanism, railgun technology or any other prescribed thing; any type of digital or electronic reproduction of a technical drawing of the design of a firearm, major firearm part, prohibited firearm accessory or ammunition, including hard copies; or a plan, drawing, instruction, template or computer program, in digital or electronic form, for the manufacture or repair of a firearm, major firearm part, prohibited firearm accessory or ammunition, including hard copies. The penalty for these offences will be imprisonment for 10 years, with the summary conviction penalty being imprisonment for three years. There will be a number of exceptions to these offences, including if the conduct engaged in by the person is necessary in conducting scientific, medical, educational, military or law enforcement research that has been approved in writing by the Commissioner of Police. These offences are similar to those enacted in New South Wales.

In order to investigate these technology-based offences, clause 47 of the bill will provide police with the power to access electronic devices. If police suspect on reasonable grounds that a person is in possession of firearms technology—for example, electronic plans stored on a computer—police may direct that person to provide a password, device or other information to enable access to the firearms technology. The penalty for failing to comply with this direction without a lawful excuse will be 10 years’ imprisonment, and the summary conviction penalty will be three years’ imprisonment.

The third key reform advanced by this bill is to increase penalties in the Criminal Code and Firearms Act for the offences of stealing a firearm, being in possession of a stolen or unlawfully obtained firearm, and discharging a firearm in danger or in a manner to cause fear to the public or an individual. The former amendments respond to a number of incidents involving the theft of firearms, including from firearm storage facilities. Under section 378 of the Criminal Code, a person convicted of stealing a firearm is currently liable only for a general stealing penalty of seven years’ imprisonment. Clause 68 will insert into section 378(5) a special case of stealing a firearm, which will attract a higher penalty of 14 years’ imprisonment. Similarly, a further amendment at clause 69 of the bill will insert into section 417A a special case of being in possession of a stolen or unlawfully obtained firearm, which will attract an increased penalty of 10 years’ imprisonment. Currently under section 417, persons in possession of stolen or unlawfully obtained firearms are liable only for the general penalty of seven years’ imprisonment. The increase of these penalties is intended to deter individuals from being in possession of unlicensed firearms and from obtaining such firearms unlawfully. In terms of the offence in section 23(9a) of the Firearms Act, clause 42 proposes that the maximum penalty more than double to seven years’ imprisonment, with the fine for a summary conviction to increase threefold.

Clause 60 provides for the fourth key reform by inserting a permanent amnesty into the Firearms Act. This provision is similar to the amnesty provisions in the Weapons Act 1999, which prescribe that a person does not currently commit an offence for carrying or possessing a prohibited weapon if the person is doing so only to deliver it into the custody of a member of the WA Police Force. As there is no similar provision for firearms under the Firearms Act, the bill will insert an amnesty provision for firearms so that members of the community may hand in their unlicensed firearms, major firearm parts, prohibited firearms accessories, sound suppressor or ammunition without fear of

prosecution for possession. During the 2017 national firearms amnesty, approximately 57 000 unlicensed firearms were surrendered across the country, with 1 242 firearms surrendered in Western Australia. Police ministers across Australia have agreed to a permanent amnesty to provide people with an ongoing opportunity to hand in firearms and other firearm-related items. As part of this general amnesty, over 560 firearms, including more than 50 handguns and over 22 000 rounds of ammunition were handed into the WA Police Force between 1 July and 1 November 2021.

Finally, it is also worthy of note that, under clause 62, the bill will require the new provisions to be reviewed and a report tabled in Parliament five years after they come into force.

This bill sets out strong, targeted firearms reforms to address the fact that illegal and licensed firearms in the wrong hands can have deadly and dangerous consequences. These amendments are aimed squarely at those who are not fit to possess a firearm and who threaten our community by illegally manufacturing, stealing or discharging firearms. As the Australian Criminal Intelligence Commission has stated, illicit firearms are a desirable commodity and enabler of criminal activity. This bill will give police another strong and effective tool to thwart serious and organised crime and their violent use of firearms in WA. The bill is the latest measure in a suite of reforms that will leave outlaw motorcycle gangs and other criminals in no doubt that WA is not the place for them to peddle their drugs, intimidation and violence. The McGowan government is resolute in its commitment to sending that message loud and clear.

I commend the bill to the house.

Debate adjourned, on motion by **Ms L. Mettam**.