

Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Bill 2023

Explanatory Notes

For

Amendments to be moved during consideration in detail by the Honourable Mark Ryan MP, Minister for Police and Community Safety

Title of the Bill

The short title of the Bill is the Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Bill 2023.

Policy objectives of the Amendments

The objective of the amendments to be moved during consideration in detail (ACiD) of the Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Bill 2023 (the Bill) is to implement further policy initiatives relevant to the minimisation and detection of knife crime and other weapons-related offences.

These amendments complement the objective of the Bill, which is designed to promote community safety, reduce youth offending and minimise the risks associated with knives and other dangerous items.

Achievement of the policy objectives

The amendments to the Bill complement the objective of the Bill by introducing a transitional provision to the Bill stipulating that upon Assent of the Bill, for the purposes of section 46 of the *Anti-Discrimination Act 1991* (AD Act), a person is not taken to discriminate against another person only because they refuse to sell a controlled item to a minor.

Modifying the application of the Anti-Discrimination Act 1991

The Bill introduces a new part 2, division 4B ‘Offences about selling knives and other controlled items’ into the *Summary Offences Act 2005* (SO Act). The new division 4B introduces several new offences into the SO Act, including sections 19G (Sale of controlled

items to minors) and 19I (Sale by employees of controlled items to minors), which prohibit a person (including an employee) from selling a controlled item to a minor.

A controlled item includes knives (other than exempted knives), swords, machetes, axes (including tomahawks), sickles or scythes, spear-guns, spears and replica firearms that are considered a restricted item under the *Weapons Act 1990*.

Additionally, new section 19J (Application of Anti-Discrimination Act 1991, s 46), as inserted by clause 6 of the Bill, provides that a seller is not taken to discriminate against another person under the AD Act, simply because they refuse to sell a controlled item to the person because of the prohibition on sales to minors under this new division.

The new offence provisions (sections 19G and 19I) in the Bill, alongside the associated section 19J, are to commence on a date set by proclamation so that appropriate implementation and educational activities can occur. To capture the intervening period prior to commencement of these provisions, the ACiD introduces a transitional provision to restrict the application of section 46 of the AD Act in relation to the sale of controlled items to minors from the date of Assent of the Bill.

This amendment will provide retailers with flexibility in implementing restrictions on the sale of controlled items to minors.

The amendment is considered necessary noting retailers may wish to cease selling controlled items to minors in the intervening period between Assent of the Bill and commencement of the new obligations imposed under sections 19G and 19I. In such circumstances the amendment would provide assurance to retailers that such action would not raise implications under the AD Act. An additional benefit of the amendment is that it will allow retailers to implement and test procedures in contemplation of the commencement of the offence provisions in the Bill.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives.

Estimated Cost for Government Implementation

There is no cost to Government to implement the amendment in the Bill.

Consistency with Fundamental Legislative Principles

The amendments to the Bill have been prepared with due regard to the fundamental legislative principals outlined in the *Legislative Standards Act 1992* (LSA). Potential breaches of fundamental legislative principles are addressed below.

Modifying the application of the Anti-Discrimination Act 1991

The amendment to the Bill provides, similar to new section 19J of the SO Act in the Bill, that a person is not taken to discriminate against another person because the seller refused to sell a controlled item to a minor. This may infringe upon the fundamental legislative principle

provided for in section 4(3)(h) of the LSA, that legislation should not confer immunity from proceeding or prosecution without adequate justification.

New sections 19G and 19I of the SO Act, as inserted by clause 6 of the Bill are justified as they represent sensible preventative measures designed to restrict young offenders gaining access to these dangerous items. These measures will enhance community safety by encouraging the responsible sale of these items. New section 19J (Application of Anti-Discrimination Act 1991, s 46) is a necessary provision in the Bill to ensure that a person is not taken to have discriminated against a person by complying with these two new offence provisions.

The amendment to the Bill is consistent with the policy objective of the framework provided for in the Bill, being the enhancement of community safety by imposing restrictions on the sale of controlled items to minors. The amendment does not otherwise impose any additional obligation on retailers but will support the optional staged implementation of the reforms.

Any potential impact on the fundamental legislative principles is considered reasonable and justified as these reforms are necessary to address the prevalence of knife crime and youth offending and enhance community safety.

Consultation

No consultation was undertaken in relation to the amendments to the Bill.

Notes on provisions

Part 1 Preliminary

Amendment 1 amends clause 2 (Commencement) of the Bill by identifying that part 2 and sections 4, 6 to 11 and 12 commence on a day to be fixed by proclamation. The remaining provisions in the Bill commence on assent.

Part 3 Amendment of Summary Offences Act 2004

Amendment 2 inserts new clause 11A into the Bill.

Clause 11A introduces a new part 7 (Transitional provisions for Summary Offences (Prevention of Knife Crime) and Other Legislation Amendment Act 2023) into the SO Act which introduces new sections 51 and 52 into the Act.

New section 51 (Application of Anti-Discrimination Act 1991, s46) modifies the application of the *Anti-Discrimination Act 1991*, section 46, to provide that a person (the seller) is not taken to discriminate against another person only because the seller refuses to sell a controlled item because the other person is, or appears to be, a minor. This new section also includes definitions for 'controlled item' and 'exempt knife'.

New section 52 (Expiry of part) identifies that the new part 7 inserted into the SO Act expires on the day of commencement of the new section 19J in the Bill.

The new part 7 commences on assent of the Bill and is a transitional provision, providing sellers of controlled items with the option to immediately stop selling controlled items to minors (prior to the mandatory obligations under the new division 4B introduced by clause 6 of the Bill) without concern that such action may result in a claim under the *Anti-Discrimination Act 1991*.