



Criminal Code Amendment (Firearms Trafficking) Act 2022

No. 30, 2022

An Act to amend the *Criminal Code Act 1995*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 30, 2022

An Act to amend the *Criminal Code Act 1995*, and for related purposes

[Assented to 1 April 2022]

The Parliament of Australia enacts:

1 Short title

This Act is the *Criminal Code Amendment (Firearms Trafficking) Act 2022*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	2 April 2022

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Firearms trafficking

Criminal Code Act 1995

1 Subsections 360.2(1) and (2) of the *Criminal Code*

Repeal the subsections, substitute:

Basic offence

- (1) A person commits an offence if:
- (a) the person engages in conduct that constitutes an offence (the ***underlying offence***) against a firearm law; and
 - (b) the person does so in the course of trade or commerce:
 - (i) among the States; or
 - (ii) between a State and a Territory, or between 2 Territories; and
 - (c) the primary element of the underlying offence involves:
 - (i) the disposal of a firearm or a firearm part by the person; or
 - (ii) the acquisition of a firearm or a firearm part by the person.

Penalty: Imprisonment for 20 years or a fine of 5,000 penalty units, or both.

Aggravated offence—disposing or acquiring 50 or more firearms or firearm parts in 6 month period

- (2) A person commits an offence if:
- (a) the person engages in conduct on one or more occasions that constitutes an offence (the ***underlying offence***) against a firearm law; and
 - (b) the person does so in the course of trade or commerce:
 - (i) among the States; or
 - (ii) between a State and a Territory, or between 2 Territories; and
 - (c) the primary element of the underlying offence involves:

- (i) the disposal of a firearm or a firearm part by the person; or
 - (ii) the acquisition of a firearm or a firearm part by the person; and
- (d) the conduct on any occasion, or on 2 or more occasions taken together, results in the disposal, or acquisition, by the person of:
- (i) 50 or more firearms; or
 - (ii) 50 or more firearm parts; or
 - (iii) a combination of firearms and firearm parts such that the sum of the firearms and the firearm parts is 50 or more; and
- (e) if the disposal or acquisition of the firearms or parts mentioned in paragraph (d) resulted from conduct on 2 or more occasions taken together—the occasions of conduct occurred during a 6 month period.

Penalty: Imprisonment for life or a fine of 7,500 penalty units, or both.

Provisions relating to basic offence and aggravated offence

- (2A) There is no fault element for any of the physical elements described in paragraphs (1)(a) and (2)(a), other than the fault elements (however described), if any, for the underlying offence.
- (2B) To avoid doubt:
- (a) in determining whether the conduct referred to in paragraph (1)(a) or (2)(a) constitutes the underlying offence, any defences or special liability provisions (however described) that apply in relation to the underlying offence have effect; and
 - (b) a person may be convicted of an offence against subsection (1) or (2) even if the person has not been convicted of the underlying offence; and
 - (c) for the purposes of subsection (2)—it is immaterial whether:
 - (i) the underlying offence is the same on each occasion; or
 - (ii) the conduct constituting the underlying offence is the same on each occasion; or

(iii) the firearms or firearm parts to which the conduct relates are of the same kind.

(2C) Absolute liability applies to paragraphs (1)(b) and (c) and (2)(b), (c) and (e).

Note: For absolute liability, see section 6.2.

(2D) Strict liability applies to paragraph (2)(d).

Note: For strict liability, see section 6.1.

Definitions

2 Before subsection 360.3(1) of the *Criminal Code*

Insert:

Basic offence

3 Paragraph 360.3(1)(a) of the *Criminal Code*

Repeal the paragraph, substitute:

- (a) the person takes or sends a thing from one State or Territory to another State or Territory; and
- (aa) the thing is a firearm or firearm part; and
- (ab) the person does so in the course of trade or commerce:
 - (i) among the States; or
 - (ii) between a State and a Territory, or between 2 Territories; and

4 Subsection 360.3(1) of the *Criminal Code* (penalty)

Repeal the penalty, substitute:

Penalty: Imprisonment for 20 years or a fine of 5,000 penalty units, or both.

5 After subsection 360.3(1) of the *Criminal Code*

Insert:

Aggravated offence—taking or sending 50 or more firearms or firearm parts in 6 month period

(1A) A person commits an offence if:

- (a) the person takes or sends (on one or more occasions) one or more things from one State or Territory to another State or Territory; and
- (b) the thing is, or the things include, a firearm or firearm part; and
- (c) the person does so in the course of trade or commerce:
 - (i) among the States; or
 - (ii) between a State and a Territory, or between 2 Territories; and
- (d) the person does so intending that any of the firearms or parts will be disposed of in the other State or Territory (whether by the person or another); and
- (e) the person knows that, or is reckless as to whether:
 - (i) the disposal of any of the firearms or parts; or
 - (ii) any acquisition of any of the firearms or parts that results from the disposal;would happen in circumstances that would constitute an offence against the firearm law of that other State or Territory; and
- (f) the conduct on any occasion, or on 2 or more occasions taken together, results in the taking, or sending, by the person of:
 - (i) 50 or more firearms; or
 - (ii) 50 or more firearm parts; or
 - (iii) a combination of firearms and firearm parts such that the sum of the firearms and the firearm parts is 50 or more; and
- (g) if the taking or sending of the firearms or parts mentioned in paragraph (f) resulted from conduct on 2 or more occasions taken together—the occasions of conduct occurred during a 6 month period.

Penalty: Imprisonment for life or a fine of 7,500 penalty units, or both.

Provisions relating to basic offence and aggravated offence

(1B) Absolute liability applies to paragraphs (1)(ab) and (1A)(c) and (g).

Note: For absolute liability, see section 6.2.

(1C) Strict liability applies to paragraph (1A)(f).

Note: For strict liability, see section 6.1.

(1D) To avoid doubt, it is immaterial for the purposes of paragraphs (1A)(b) and (f) whether the firearms or firearm parts are of the same kind.

Definitions

6 Subsection 360.3(2) of the *Criminal Code* (at the end of the definition of *firearm*)

Add “or (1A)(e) (as the case requires)”.

7 Subsection 360.3(2) of the *Criminal Code* (definition of *firearm part*)

Omit “(1)(c)”, substitute “(1)(c) or (1A)(e) (as the case requires)”.

8 After section 360.3 of the *Criminal Code*

Insert:

360.3A Minimum penalties

(1) Subject to subsections (2) and (3), the court must impose a sentence of imprisonment of at least 5 years for a person convicted of an offence against this Division.

People aged under 18

(2) Subsection (1) does not apply to a person who was aged under 18 years when the offence was committed.

Reduction of minimum penalty

(3) A court may impose a sentence of imprisonment of less than the period specified in subsection (1) only if the court considers it appropriate to reduce the sentence because of either or both of the following:

(a) the court is taking into account, under paragraph 16A(2)(g) of the *Crimes Act 1914*, the person pleading guilty;

- (b) the court is taking into account, under paragraph 16A(2)(h) of that Act, the person having cooperated with law enforcement agencies in the investigation of the offence.
- (4) If a court may reduce a sentence, the court may reduce the sentence as follows:
 - (a) if the court is taking into account, under paragraph 16A(2)(g) of the *Crimes Act 1914*, the person pleading guilty—by an amount that is up to 25% of the period specified in subsection (1);
 - (b) if the court is taking into account, under paragraph 16A(2)(h) of that Act, the person having cooperated with law enforcement agencies in the investigation of the offence—by an amount that is up to 25% of the period specified in subsection (1);
 - (c) if the court is taking into account both of the matters in paragraphs (a) and (b)—by an amount that is up to 50% of the period specified in subsection (1).

360.3B Double jeopardy and alternative verdicts

Double jeopardy

- (1) A person who has been convicted or acquitted of an aggravated offence may not be convicted of a basic offence relating to the aggravated offence that is alleged to have been committed in the period during which the person was alleged to have committed the aggravated offence.
- (2) However, subsection (1) does not prevent an alternative verdict under subsection (4).
- (3) A person who has been convicted or acquitted of a basic offence relating to an aggravated offence may not be convicted of the aggravated offence if any of the occasions relied on as evidence of the commission of the aggravated offence includes the conduct that constituted the basic offence.

Alternative verdict—aggravated offence not proven

- (4) If, on a trial for an aggravated offence, the trier of fact:

-
- (a) is not satisfied that the defendant is guilty of the aggravated offence; but
 - (b) is satisfied beyond reasonable doubt that he or she is guilty of the basic offence relating to the aggravated offence;
- it may find the defendant not guilty of the aggravated offence but guilty of the basic offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Definitions

- (5) In this section:

aggravated offence means an offence against subsection 360.2(2) or 360.3(1A).

basic offence relating to an aggravated offence means:

- (a) if the aggravated offence is an offence against subsection 360.2(2)—an offence against subsection 360.2(1); or
- (b) if the aggravated offence is an offence against subsection 360.3(1A)—an offence against subsection 360.3(1).

9 Sections 361.2 and 361.3 of the *Criminal Code*

Repeal the sections, substitute:

361.2 Trafficking prohibited firearms or firearm parts into Australia

Basic offence

- (1) A person commits an offence if:
- (a) the person imports a thing; and
 - (b) the thing is a firearm or firearm part; and
 - (c) the person imports the firearm or part with the intention of trafficking in the firearm or part; and
 - (d) importing the firearm or part was prohibited under the *Customs Act 1901*:
 - (i) absolutely; or
 - (ii) unless certain requirements were met; and

- (e) if subparagraph (d)(ii) applies—the person fails to meet any of those requirements.

Penalty: Imprisonment for 20 years or a fine of 5,000 penalty units, or both.

Aggravated offence—importing 50 or more prohibited firearms or firearm parts in 6 month period

- (2) A person commits an offence if:
- (a) the person imports (on one or more occasions) one or more things; and
 - (b) the thing is, or the things include, a firearm or firearm part; and
 - (c) the person imports each firearm or part with the intention of trafficking in the firearm or part; and
 - (d) importing each firearm or part was prohibited under the *Customs Act 1901*:
 - (i) absolutely; or
 - (ii) unless certain requirements were met; and
 - (e) if subparagraph (d)(ii) applies in relation to an occasion of importation—the person fails to meet any of those requirements; and
 - (f) any occasion of importation, or 2 or more occasions taken together, results in the importation by the person of:
 - (i) 50 or more firearms; or
 - (ii) 50 or more firearm parts; or
 - (iii) a combination of firearms and firearm parts such that the sum of the firearms and the firearm parts is 50 or more; and
 - (g) if the importation of the firearms or parts mentioned in paragraph (f) resulted from 2 or more occasions of importation taken together—the occasions of importation occurred during a 6 month period.

Penalty: Imprisonment for life or a fine of 7,500 penalty units, or both.

Provisions relating to basic offence and aggravated offence

- (3) Absolute liability applies to paragraphs (1)(d) and (2)(d) and (g).
Note: For absolute liability, see section 6.2.
- (4) Strict liability applies to paragraphs (1)(e) and (2)(e) and (f).
Note: For strict liability, see section 6.1.
- (5) To avoid doubt, it is immaterial for the purposes of paragraphs (2)(b) and (f) whether the firearms or firearm parts are of the same kind.

361.3 Trafficking prohibited firearms or firearm parts out of Australia

Basic offence

- (1) A person commits an offence if:
- (a) the person exports a thing, or enters a thing for export from Australia; and
 - (b) the thing is a firearm or firearm part; and
 - (c) the person exports, or enters for export, the firearm or part with the intention of trafficking in the firearm or part; and
 - (d) exporting, or entering for export, the firearm or part was prohibited under the *Customs Act 1901*:
 - (i) absolutely; or
 - (ii) unless certain requirements were met; and
 - (e) if subparagraph (d)(ii) applies—the person fails to meet any of those requirements.

Penalty: Imprisonment for 20 years or a fine of 5,000 penalty units, or both.

Aggravated offence—exporting or entering for export 50 or more prohibited firearms or firearm parts in 6 month period

- (2) A person commits an offence if:
- (a) the person (on one or more occasions) exports, or enters for export from Australia, one or more things; and

- (b) the thing is, or the things include, a firearm or firearm part; and
- (c) the person exports, or enters for export, each firearm or part with the intention of trafficking in the firearm or part; and
- (d) exporting, or entering for export, each firearm or part was prohibited under the *Customs Act 1901*:
 - (i) absolutely; or
 - (ii) unless certain requirements were met; and
- (e) if subparagraph (d)(ii) applies in relation to an occasion of exportation or entry for export—the person fails to meet any of those requirements; and
- (f) any occasion of exportation or entry for export, or 2 or more occasions taken together, results in the exportation or entry for export by the person of:
 - (i) 50 or more firearms; or
 - (ii) 50 or more firearm parts; or
 - (iii) a combination of firearms and firearm parts such that the sum of the firearms and the firearm parts is 50 or more; and
- (g) if the exportation or entry for export of the firearms or parts mentioned in paragraph (f) resulted from 2 or more occasions of exportation or entry for export taken together—the occasions of exportation or entry occurred during a 6 month period.

Penalty: Imprisonment for life or a fine of 7,500 penalty units, or both.

Provisions relating to basic offence and aggravated offence

- (3) Absolute liability applies to paragraphs (1)(d) and (2)(d) and (g).

Note: For absolute liability, see section 6.2.
- (4) Strict liability applies to paragraphs (1)(e) and (2)(e) and (f).

Note: For strict liability, see section 6.1.
- (5) To avoid doubt, it is immaterial for the purposes of paragraphs (2)(b) and (f) whether the firearms or firearm parts are of the same kind.

10 After section 361.4 of the *Criminal Code*

Insert:

361.5 Minimum penalties

- (1) Subject to subsections (2) and (3), the court must impose a sentence of imprisonment of at least 5 years for a person convicted of an offence against this Division.

People aged under 18

- (2) Subsection (1) does not apply to a person who was aged under 18 years when the offence was committed.

Reduction of minimum penalty

- (3) A court may impose a sentence of imprisonment of less than the period specified in subsection (1) only if the court considers it appropriate to reduce the sentence because of either or both of the following:
- (a) the court is taking into account, under paragraph 16A(2)(g) of the *Crimes Act 1914*, the person pleading guilty;
 - (b) the court is taking into account, under paragraph 16A(2)(h) of that Act, the person having cooperated with law enforcement agencies in the investigation of the offence.
- (4) If a court may reduce a sentence, the court may reduce the sentence as follows:
- (a) if the court is taking into account, under paragraph 16A(2)(g) of the *Crimes Act 1914*, the person pleading guilty—by an amount that is up to 25% of the period specified in subsection (1);
 - (b) if the court is taking into account, under paragraph 16A(2)(h) of that Act, the person having cooperated with law enforcement agencies in the investigation of the offence—by an amount that is up to 25% of the period specified in subsection (1);
 - (c) if the court is taking into account both of the matters in paragraphs (a) and (b)—by an amount that is up to 50% of the period specified in subsection (1).

11 Section 361.6 of the *Criminal Code* (at the end of the heading)

Add “and alternative verdicts”.

12 Section 361.6 of the *Criminal Code* (after the heading)

Insert:

Double jeopardy

13 Section 361.6 of the *Criminal Code*

Before “A person”, insert “(1)”.

14 At the end of section 361.6 of the *Criminal Code*

Add:

- (2) A person who has been convicted or acquitted of an aggravated offence may not be convicted of a basic offence relating to the aggravated offence that is alleged to have been committed in the period during which the person was alleged to have committed the aggravated offence.
- (3) However, subsection (2) does not prevent an alternative verdict under subsection (5).
- (4) A person who has been convicted or acquitted of a basic offence relating to an aggravated offence may not be convicted of the aggravated offence if any of the occasions relied on as evidence of the commission of the aggravated offence includes the conduct that constituted the basic offence.

Alternative verdict—aggravated offence not proven

- (5) If, on a trial for an aggravated offence, the trier of fact:
 - (a) is not satisfied that the defendant is guilty of the aggravated offence; but
 - (b) is satisfied beyond reasonable doubt that he or she is guilty of the basic offence relating to the aggravated offence;it may find the defendant not guilty of the aggravated offence but guilty of the basic offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Definitions

(6) In this section:

aggravated offence means an offence against subsection 361.2(2) or 361.3(2).

basic offence relating to an aggravated offence means:

- (a) if the aggravated offence is an offence against subsection 361.2(2)—an offence against subsection 361.2(1);
or
- (b) if the aggravated offence is an offence against subsection 361.3(2)—an offence against subsection 361.3(1).

15 Application of amendments—minimum penalties

Sections 360.3A and 361.5 of the *Criminal Code*, as inserted by this Schedule, apply in relation to conduct engaged in at or after the commencement of this Schedule.

[*Minister's second reading speech made in—
House of Representatives on 16 February 2022
Senate on 30 March 2022*]

(35/22)
