

FIREARMS AND WEAPONS LEGISLATION AMENDMENT BILL 2017

First Reading

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Niall Blair.

Second Reading

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (12:16): I move:

That this bill be now read a second time.

The Firearms and Weapons Legislation Amendment Bill 2017 amends the Firearms Act 1996 and the Weapons Prohibition Act 1998, and the respective regulations, to provide for the updated National Firearms Agreement [NFA], National Firearms Amnesty and miscellaneous firearms and weapons amendments. In 1996 when all firearms were categorised and the original NFA was drafted, fundamental aspects of the regulation of firearms in this country were agreed. This put Australia in the enviable position of having one of the most effective firearms regimes in the world. The Joint Commonwealth-New South Wales review into the Martin Place siege recommended an update to the "technical" elements of the NFA.

Nothing in the "technical update" of this bill changes Australia's 20-year approach to firearms regulation: Firearm owners must still be licensed; individuals must still have a genuine reason to possess a firearm; personal protection is still not a genuine reason to acquire a firearm licence; firearms must still be registered; and "Permits to Acquire" are still needed for each additional firearm. The technical update to the NFA will: streamline the NFA so it is easier to follow; add an opening statement setting out the purpose of the agreement and firearms regulation more broadly; incorporate the 2002 national handgun agreement and other ministerial decisions so the NFA is now the single reference point for firearms regulation; and make machinery changes to its wording and structure. This bill updates the laws in New South Wales to reflect the new NFA and make other related changes.

At the same time as the technical update was occurring, concerns arose regarding the importation of a certain brand of lever-action shotgun. The Commonwealth placed a ban on the importation of lever-action shotguns of more than five rounds to allow time to consider whether lever-action shotguns were categorised correctly. The ban was not at the instigation of the New South Wales Government, nor did it prohibit lever-action shotguns from being possessed or used. Lever-action shotguns of five rounds and under have continued to be acquired in New South Wales. Significant debate and consultation has occurred at State and Commonwealth levels regarding lever-action shotguns.

As a result, the categorisation of lever-action shotguns has changed in the NFA, and amendments in this bill reflect the final, nationally endorsed, NFA. There will be some special provisions to "grandfather" those already licensed for these firearms, which I will come to later. The updated NFA re-categorises rimfire rifle/shotgun combinations as Category A firearms, which reflects the existing New South Wales provision. The bill provides for a transition period of three months so that the NSW Police Force can implement the changes.

Other amendments to the Firearms Act and the Weapons Prohibition Act address issues arising from court decisions, were recommended by the New South Wales Firearms Registry to improve operations, or were requested by stakeholders to improve the legislation. Amendments to the regulation are consequential and also provide for New South Wales' participation in the three-month National Firearm Amnesty, which commences on 1 July 2017. The amnesty is a key outcome of the Commonwealth and State review of the Lindt cafe siege. It is designed to encourage people with an unregistered firearm to surrender it, register it and/or get a licence for it.

I now turn to the details of the bill. Schedule 1 deals with amendments to the Firearms Act 1996. An amendment to the section 4 definitions will clarify that a disassembled firearm is still a firearm if, when re-assembled, it would be a firearm or prohibited firearm. This does not change the fundamental definition of a firearm, but provides clarity for the courts. An amendment to section 4D

reduces red tape and simplifies processes by removing the requirement for a "Permit to Acquire" [PTA] for imitation firearms. A PTA is the commissioner's approval for an individual to purchase a firearm, and it facilitates the auditing and tracking of registered firearms. As imitation firearms do not have to be registered, a permit to acquire an imitation firearm serves no practical purpose. Permits to possess or use an imitation firearm will still be required, which provides the necessary safeguards for these firearms. This is supported by a consequential amendment to section 51.

Throughout the bill, including, first, at new section 40 (2), legislative notes will clarify that a "pistol" includes a "prohibited pistol". The 2009 Court of Criminal Appeal decision of *Thalari v Regina* held that the definition of "pistol" at section 4 already encompasses a "prohibited pistol" but, for abundant clarity, we are expressly noting this throughout the Act. Amendments to section 8 and schedule 1 to the Act provide for the re-categorisation of lever-action shotguns from Category A. Lever-action shotguns of five rounds or under will be Category B and those over five rounds will be Category D. Current legitimate lever-action licence holders have done no wrong. Their firearms have not significantly featured in crime. Accordingly, the bill creates a grandfathering provision, which will be in new part 10 of schedule 3 to the Firearms Act. Those currently with a Category A licence who own a lever-action shotgun may be issued with a Special Category B licence, at no cost, if they do not already have a Category B or Category D licence.

The grandfathering provisions apply only for the particular lever-action shotgun registered to the person, and only while that shotgun remains registered in their name. The provisions cease if the shotgun is supplied to another person or is lost, stolen or destroyed. Grandfathering applies to the firearm, not the person. I understand that only a few hundred licence holders will qualify for the Special Category B licence. If someone with the Special Category B licence wished to acquire another lever-action shotgun, they would need to apply for the Category B or D licence and meet those criteria. Grandfathering will apply only to current legitimate firearms licence holders, not to those with merely a Permit to Acquire for a lever-action shotgun. Part 10 also provides for New South Wales to recognise any transitional arrangements set up in other jurisdictions.

I now return to the details of the bill. Section 8 is also amended to give effect to one other significant change in the updated NFA. The 1996 NFA limited primary producers to only one Category D firearm for the genuine reason of pest control activity. The new NFA sets no limit on the number of these category D firearms. This enables jurisdictions to determine what limits are appropriate. New South Wales supported this change to the NFA, but has decided to allow no more than three registered Category D firearms for pest control purposes. This recognises the legitimate needs of primary producers while maintaining robust regulation of Category D firearms. Allowing up to three Category D firearms, however, raises a potential issue about which firearm could be used on which property if, for example, a licensee is a primary producer or the owner/lessee/manager of land used for primary production, and the licensee is participating in a Government-authorised pest eradication campaign. A further amendment to section 8 makes it even clearer that the licence holder is authorised to use the Category D firearm only on the rural property specified in the licence.

Firearms regulation in New South Wales provides an appropriately rigorous regime to manage legal firearms at the same time as minimising the chance of these legal firearms ending up in the illegal market. However, this regime is undeniably complex. The remainder of the bill includes amendments to the Act to provide clarity, address anomalies, further remove red tape or improve the management of legal firearms. This, in turn, ensures that law enforcement resources can be best used to focus on combating illegal firearms. New section 78 and amendments to sections 10 and 30 bring the Act into the electronic communication age by allowing for online licence and permit applications, and for electronic notifications by the commissioner. Section 11 and section 29 are amended to remove an inefficiency and to provide clarity to applicants and dealers about the impact of apprehended violence orders [AVOs].

New sections 11 (5) (c) and 29 (3) (c) of the Act will require the mandatory refusal of a firearms application, both licence and permit, where the applicant is subject to an AVO or interim AVO or where an applicant has, at any time within 10 years before the application was made, been subject to such an order. Section 23 (1) currently provides for the automatic suspension of a licence if the licensee is the subject of an interim AVO. However, there is no statutory ground to refuse a firearms application where a person is subject to an interim AVO until court proceedings have occurred. This can take several months and, in the meantime, the firearms application remains in limbo. The new

sections will remove this anomaly so the application can be refused where the applicant is subject to an interim AVO. The applicant can reapply if the full AVO is not made and no further charges or orders apply. This would be a fresh application in line with usual processes. Section 44A will be extended so that those who are the subject of an interim AVO cannot be involved in a firearms dealing business.

Section 11 is also amended to restrict the issuing of licences to persons who are registrable persons under the Child Protection (Offenders Registration) Act 2000, including from other jurisdictions. This will be a strict prohibition, no longer requiring an exercise of the commissioner's discretion. In the event they are no longer a registrable person under that Act, they may apply for a firearms licence. Amendments to sections 6B, 16A and 32 of the Act will remove confusion about what constitutes "direct supervision" at shooting ranges for unlicensed persons, and the level of supervision required for those with probationary or minor's licences. Section 6B will now spell out clearly that, for unlicensed shooters, supervision must be one on one—that is, the person supervising the unlicensed shooter is supervising one unlicensed person only. Sections 16A and 32 deal with the supervision of those with probationary or minor's licences and will be supported by the creation of a new clause 133 in the regulation that sets out the factors to be considered by shooting range supervisors for deciding the appropriate level of supervision.

Some of these factors will include: the person being in the direct line of sight of the supervisor, who must at all times be ready and able to give directions and render immediate assistance to the shooter; the general competency of persons being supervised; the firearms proficiency of persons being supervised; the number of persons being supervised and the number who are actively engaged in shooting; and the effect of the landscape and range configuration on the supervisor's obligations with regard to line of sight and rendering assistance. An amendment to section 17A of the Act is designed to provide clarity to clubs and members about their participation requirement, to be consistent with the amendments to the regulation that create part 9A within the regulation. It does not change the current requirements in section 17A (6), but provides further explanation of the compliance period in which the requirements apply.

Section 29 is amended to clarify that a person must have a legitimate reason for possessing or using a firearm. This provides consistency with the regulation, which uses the "legitimate reason" terminology. The amendment does not alter what is expected of a person and the commissioner will continue to use the legislated discretion in determining if a person has a legitimate reason for the permit. Rather, consistently with the rest of the firearms scheme and the National Firearms Act [NFA], it makes it clear that an applicant for a permit must be a fit and proper person—as with a licence—and have a valid reason for wanting the permit and related firearm—again, as with a licence.

The amendment to section 36 is a tidy-up of the language. The Act currently provides that it is lawful for a dealer to acquire and take possession of a firearm if it is registered within 24 hours. The amendment makes it clear that a dealer can lawfully already have or retain possession of a firearm if it is so registered. Section 42 amendments arose out of the related provision to provide a more equitable system of dealing with safe storage breaches. They will reduce red tape, reduce court time for minor matters, and allow police and licence holders to better address breaches. This is supported by an amendment to schedule 1 of the Firearms Regulation that will allow police to issue penalty notices for safe storage offences. This does not remove police discretion for serious breaches that warrant seizure and court attendance, but gives police a less heavy-handed option if—and only if—the police officer is satisfied that the breach has been rectified or can be rectified immediately.

The bill amends section 45A to respond to an issue identified since the introduction of the Firearms Amendment (Ammunition Control) Bill 2012. That bill introduced a requirement for firearms dealers to record the name and address of persons purchasing ammunition. Security concerns have developed about the requirement for dealers to record addresses when selling ammunition. If this information is stolen from a firearms dealer or leaked, the homes of firearm owners could be targeted for the theft of firearms and ammunition. The NSW Police Force has no objection to removing this requirement, as a person buying ammunition will still be required to provide their name, firearms licence number and details of their registered firearms before purchasing ammunition.

Section 51I addresses a concern about emerging technology. The Civil Aviation Safety Authority [CASA] has regulations that require that an unmanned aerial vehicle drone must not have any anything attached that may be dropped or that may threaten public safety. This could include a

firearm or prohibited weapon. However, the CASA regulations do not cover the actual use of a firearm that is attached to a drone. With the growing use of aerial drones in both commercial businesses and privately, this amendment is a timely response to this technology. For abundant clarity, section 511 states that a person remotely controlling a device, vehicle, vessel or aircraft to which a firearm is attached is taken to be in possession of that firearm and using it. This will ensure that any remote use of firearms in the future will clearly fall within the firearms regime. To provide flexibility in the future, an exemption enables the Commissioner of Police to approve such possession and use.

The amendment to section 63 is a tidy-up, identified during drafting, to include that a person who may lawfully convert a firearm must only do so under a licence or a permit, which is already provided for in the Act. The note inserted into section 65 and related amendments to sections 65 (3), 67 and 74 arose out of an anomaly identified regarding power tool cartridges. These could be interpreted to fall under the definition of "ammunition, requiring a permit to possess and use", even though the regulation states that devices such as nail guns are not firearms. The amendment will address this inconsistency by including the words, "for any firearm" after the word "ammunition".

The remaining amendments to section 65 and the note in section 65A further clarify the requirements in relation to ammunition, to address an issue raised by stakeholders regarding the interchangeability of .38 calibre special ammunition with a .357 magnum calibre ammunition for certain target pistols. The amendment clarifies that the ammunition that a firearm takes includes that which can be safely fired, regardless of the calibre. Section 78A is also a clarification that is designed to ensure that there is no uncertainty with regard to the new National Domestic Violence Order [DVO] Scheme. To remove any doubt, section 78A will now provide that a person subject to a DVO from another jurisdiction will be prohibited from holding a firearms licence or permit in New South Wales, whether or not the interstate DVO expressly prohibits them from having a firearms licence in their home jurisdiction.

Clause 33 is included in schedule 3 to the Act to address an anomaly raised by the Department of Primary Industries, Fisheries. Clause 55 (2) of the Fisheries Management (General) Regulation, prohibits a person from taking any fish in any waters by means of a spear gun that is fitted with an explosive device, that is, a "powerhead". Clause 63 of the Firearms Regulation provides for the issuing of permits for powerheads, but only for the purposes of underwater spearfishing. The two regulations are inconsistent. Clause 63 permits issued since 1 September 2010 are invalid because of the Fisheries Management (General) Regulation provisions. Following legal advice, we are addressing this inconsistency by back-validating the clause 63 powerhead permits. Clause 63 itself is also being amended by schedule 2 to the bill to clarify that a powerhead can only be used by persons engaged in underwater business or employment, and only for the limited purpose of protection from a shark. I turn now to the remainder of schedule 2 to the bill, which makes amendments to the Firearms Regulation.

The new part 9A provides clarity to clubs about the participation requirements of their members, without making these requirements any more onerous. To achieve this clarity, the part defines the compliance period, which has not changed from the current 12 months; clarifies for pistol sports and target shooters how the existing provisions operate, depending on how many pistols they possess and to which pistols these provisions apply; provides that, if the number of pistols changes, so do the compliance requirements; defines "competitive shooting match", "participation" and "shooting activity"; provides for the same requirements and definitions for long-arm sport or target shooters; provides the requirements for members of approved hunting clubs and defines hunting club events; provides the requirements for members of approved collectors clubs; provides the requirements for category C clay target shooters; and restates the requirements for shooters who are members of more than one club. Participation requirements have been, and remain, designed to ensure that the possession and use of a firearm under the genuine reason of club membership cannot be abused by criminals as a backdoor means to acquire firearms.

Sporting shooters and club members are legitimate and dedicated sports people and collectors. They work to keep their club's activities clean. The requirements support this objective by ensuring active participation is maintained. In addition to the regulation amendment set out in this legislative package the Government will also look at making broader changes to the firearm regulation. It will circulate a consultation draft in due course. As part of that process the Government

welcomes further comment from sporting shooters and their clubs regarding the new part 9A provisions.

Clause 98 is another red tape reduction amendment. Currently the commissioner may disclose information to a club but not an association. The change will enable the registry to send to an association a customer's identification number. This would assist the association in correctly identifying individuals and support an electronic transfer of member data from a club to the association and then to the registry. It should also remove multiple manual data entries currently required by all organisations. The new part 12A provides for New South Wales participation in the national firearms amnesty, which will be conducted from 1 July this year. All jurisdictions have agreed to participate in a national firearms amnesty, and jurisdictions with a permanent amnesty may undertake special conditions during that time. The key features of the amnesty include: national consistency for the greatest extent practicable, especially to reduce cross-border amnesty shopping; there will be no buyback; and, consistency of message allowing for jurisdictional difference in implementation of the amnesty.

The NSW Police Force is managing the media and communication, and will conduct consultations with firearms dealers about participation in the amnesty. In New South Wales dealers will opt in to ensure they are aware of their responsibilities and expectations. The amnesty will provide for three options: surrender the firearm for destruction with no compensation; have the firearm registered via a dealer; or, hand the firearm to a dealer to be registered and sold. Prohibited weapons may also be accepted if they are surrendered for destruction. In previous amnesties it was not unusual for people to seek to surrender prohibited weapons. Even though it is a firearms amnesty, prohibited weapons may be surrendered for destruction. It is logical to accept these weapons for destruction. There will be an outcomes report based on collected data. Surrender is on a no questions asked basis.

In New South Wales the \$10 registration fee will be waived to encourage people to register their firearms. Licence fees will not be waived. To accommodate remote locations, the regulations provide that the commissioner may designate a remote police station as a participating police station. This provides the commissioner with adequate flexibility to implement the amnesty. Moving on from the amnesty provisions, schedule 1 to the regulation is amended to designate certain dealer record keeping and related offences as suitable for police to issue a penalty notice at the scene as well as to retain the option of taking a person to court. These are in addition to the safe storage offences already mentioned.

Schedules 3 and 4 to the bill amend the Weapons Prohibition Act 1998 and the Weapons Prohibition Regulation 2009 to ensure these instruments remain consistent with the amendments being made to the Fire Arms Act and the regulation. The amendment to clause 35B of the weapons prohibition regulation supports the national firearms amnesty by providing for prohibited weapons to be surrendered. The experience of all jurisdictions during past firearm amnesties is that people will bring prohibited weapons into a police station to be rid of them. All jurisdictions agree that there is value in providing for prohibited weapons surrender. There is no provision in the amnesty to retain the prohibited weapon by permit: it is for surrender only.

Schedule 5 to the bill amends the Criminal Procedure Act 1986 with consequential amendments to include offences relating to remote control devices and aerial drones to be included in the tables. I would like to mention, as strange as it may sound, a change not included in this bill. Concerns have been raised in the firearms community that a licence holder who lawfully borrows a firearm could not lawfully borrow or buy the ammunition needed for the borrowed firearm. Advice from Parliamentary Counsel is that, other than pistols, there is no legal bar on borrowing or buying ammunition from anyone other than a firearms dealer. In light of this legal advice we have not needed to make any amendments and the status quo remains.

These are important amendments that ensure New South Wales accords to a nationally harmonised approach to firearms, and that the firearms regime is responsive to the needs of shooters and the broader community while maintaining public safety. The bill retains the balance between not criminalising legitimate firearm owners and keeping the public safe from firearms that can do significant damage in the wrong hands. The bill provides clarity and corrects anomalies in a complex regime that the Government strives to improve. It must respond to the needs of the legal firearms

community while maintaining control of the ever-changing criminal realm that exploits loopholes and engages with new technologies at a frightening pace.

I conclude my remarks by thanking the Minister's office for providing a detailed second reading speech that I am sure will assist all of those in this House to consider the bill in detail. It is of a high standard. For those who represent Ministers from the other House, a speech that clearly identifies the issues is of great assistance. I thank the Minister, his office and agency for the speech and commend the bill to the House.

Debate adjourned.