

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the Weapons Prohibition Act 1998 (the Weapons Act) as follows:

- (a) to modify and extend the list of prohibited weapons under the Weapons Act,
- (b) to provide for a separate category of military-style weapons in that list,
- (c) to modify and extend offences relating to the unauthorised sale of prohibited weapons (including a new offence of selling weapons on an ongoing basis),
- (d) to create an offence relating to the unauthorised manufacture of prohibited weapons,
- (e) to provide that authorised weapons dealers and authorised theatrical weapons armourers must keep records of their sales,
- (f) to provide mandatory grounds for refusing a weapons permit on the basis of criminal intelligence held about an applicant for a permit where that person is considered a risk to public safety,

Explanatory note page 2

Weapons and Firearms Legislation Amendment Bill 2010

Explanatory note

- (g) to make further provision in respect of the safe keeping of prohibited weapons,
- (h) to make other miscellaneous amendments in respect of permits and other matters under the Weapons Act.

The Bill also amends the Firearms Act 1996 (the Firearms Act) to clarify provisions dealing with imitation firearms and exemptions for antique firearms and to make other miscellaneous amendments.

The Bill also makes consequential amendments to other legislation.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Weapons Prohibition Act

1998 No 127

Amendments relating to list of prohibited weapons

Schedule 1 [29]–[40] amend the list of things that are identified as prohibited weapons in Schedule 1 to the Weapons Act. In particular, the amendments provide as follows:

- (a) bombs, grenades, rockets, missiles, mines and flame throwers are grouped into a separate category of prohibited weapons known as military-style weapons,
- (b) Improvised Explosive Devices are included as types of bombs,
- (c) articles that are produced and identified as children's toys that are similar in appearance to certain military-style weapons, kung fu sticks or side-handled batons are not taken to be prohibited weapons,
- (d) Taser guns or similar anti-personnel conducted energy devices are listed separately from hand-held defence or anti-personnel devices designed to administer an electric shock on contact,
- (e) cartridges containing probes or prongs for Taser guns or similar anti-personnel conducted energy devices are added to the list of prohibited weapons,
- (f) imitation or replica firearms are removed from the list of prohibited weapons as they are to be dealt with solely under the Firearms Act (see Schedule 2 [1] and [2]),
- (g) the description of body armour vests is modified to include articles designed for protection against electroshock or conducted energy devices,
- (h) handcuffs are now described as a set of ring-shaped shackles of any material (and connected by any means) that are designed to be worn on the wrists,

thumbs or ankles, including thumb and leg cuffs, but excluding antique

Explanatory note page 3

Weapons and Firearms Legislation Amendment Bill 2010

Explanatory note

handcuffs, children's toys and handcuffs designed to be released by the wearer,

(i) firearm magazines are now described as detachable firearm magazines and include a number of additional types of magazines (such as those for machine guns),

(j) other minor wording or technical changes are made to the descriptions of articles in the list of prohibited weapons.

Schedule 1 [1] makes a consequential amendment to insert a definition of military-style weapon for the purposes of the Weapons Act.

Amendments relating to permits

Schedule 1 [4] replaces an existing provision that prevents a permit under the Weapons Act from being issued to a person who is subject to a recognisance to keep the peace with an equivalent provision that prevents a permit being issued if the person is subject to a good behaviour bond in relation to an offence prescribed by the regulations.

Schedule 1 [5] provides for the mandatory refusal of an application for a permit under the Weapons Act on the grounds that the Commissioner of Police, having regard to any criminal intelligence report or other criminal information held in relation to the applicant, is of the opinion that the applicant is a risk to public safety or that the issuing of the permit would be contrary to the public interest.

Schedule 1 [6] and [7] make consequential amendments.

Schedule 1 [13] provides that, in the case of a person whose permit is suspended on such grounds, the Commissioner is not required to give reasons to the person for the suspension or to request that the person provide the Commissioner with reasons why the permit should not be revoked. Schedule 1 [14] provides that the Commissioner is also not required to give any reasons for revoking a permit on those grounds.

Schedule 1 [26] provides that certain provisions of the Administrative Decisions Tribunal Act 1997 (for example, the requirement to provide the applicant with reasons for decisions) do not apply to an application to the Administrative Decisions Tribunal for a review of a decision to refuse to issue a permit on the grounds referred to above. The Tribunal is also required, if an application for review of the decision is made, not to disclose the existence or content of any criminal intelligence report or criminal information that formed the basis of the refusal to issue the permit.

An applicant for a permit under the Weapons Act must have a genuine reason for possessing or using a prohibited weapon before a permit can be issued to the applicant.

Schedule 1 [8] provides that membership of a historic or commemorative club or society approved by the Commissioner is a genuine reason.

Explanatory note page 4

Weapons and Firearms Legislation Amendment Bill 2010

Explanatory note

Schedule 1 [9] modifies the current requirements relating to weapons collection as a genuine reason for possessing or using a prohibited weapon, so that an applicant for a permit must:

(a) be a current member of a collectors' club or society approved by the Commissioner in accordance with the regulations, and

(b) demonstrate that the applicant's weapons collection has a genuine commemorative, historical, thematic or financial value.

Schedule 1 [10] provides that a permit under the Weapons Act must contain a recent photograph of the permit holder (currently a photograph is only required if the

Commissioner so determines).

Schedule 1 [11] makes it clear that the Commissioner may impose conditions on a permit under the Weapons Act at any time. Schedule 1 [12] makes a consequential amendment.

Schedule 1 [15] provides that a person who is the holder of a permit under the Weapons Act must immediately surrender to a police officer the permit and any prohibited weapon in the person's possession if the permit ceases to be in force for any reason (and not only because of a suspension or revocation, as is currently the case).

Amendment relating to record keeping by weapons dealers and theatrical weapons armourers

Schedule 1 [17] requires authorised weapons dealers and authorised theatrical weapons armourers to keep records of all their weapons sales. The maximum penalty for failing to comply with this requirement is 50 penalty units.

Amendments relating to miscellaneous offences

It is currently an offence for a person to sell a prohibited weapon to an unauthorised buyer, with a maximum penalty of 50 penalty units or imprisonment for 12 months, or both. Schedule 1 [20] recasts that offence in a new section and increases the maximum penalty to imprisonment for 14 years. The new section also provides for a separate offence of selling a military-style weapon to an unauthorised buyer, with a maximum penalty of imprisonment for 20 years. Schedule 1 [19] makes a consequential amendment.

Schedule 1 [20] also makes it an offence to sell a prohibited weapon in contravention of the above unauthorised sale offences on an ongoing basis. A person will be guilty of an ongoing unauthorised sale offence if the person sells a weapon on 3 or more separate occasions during any consecutive period of 12 months. The maximum penalty for this offence is imprisonment for 20 years.

Schedule 1 [21] creates offences of manufacturing prohibited weapons without a permit. The maximum penalty is imprisonment for 14 years for prohibited weapons and 20 years for military-style weapons.

Explanatory note page 5

Weapons and Firearms Legislation Amendment Bill 2010

Explanatory note

Amendments relating to safe keeping of prohibited weapons

Schedule 1 [24] inserts a new Part 4A into the Weapons Act dealing with the safe keeping of prohibited weapons. The current general safe keeping requirement (ie that a person who possesses a prohibited weapon must take all reasonable precautions to ensure its safe keeping) is preserved. The new Part 4A further provides for 3 levels of specific safe keeping requirements which deal with matters such as safes, receptacles and the buildings in which prohibited weapons are to be stored.

Generally, the safe keeping requirements are in line with current guidelines issued by the NSW Firearms Registry or that are imposed as conditions on permits under the Weapons Act.

The regulations may prescribe the prohibited weapons that must meet the level 1 and level 2 safe keeping requirements. Level 3 requirements will generally apply to military-style weapons. In each case, a permit holder does not have to comply with a safe keeping requirement if the Commissioner is satisfied that alternative arrangements of a standard not less than the specified requirements have been made. The Commissioner may also vary or modify a safe keeping requirement for a particular permit holder by imposing a condition on the relevant permit.

Schedule 1 [3] and [22] make consequential amendments.

Amendments clarifying operation of penalties

Schedule 1 [2], [16], [18], [23] and [25] merely restate the existing penalties that apply to indictable offences under the Weapons Act. The purpose of these

amendments is to clarify the existing arrangement in which indictable offences under the Weapons Act are, in accordance with the Criminal Procedure Act 1986, to be dealt with summarily unless the prosecution elects otherwise. The maximum penalty for these offences, if dealt with summarily, will continue to be imprisonment for 2 years or a fine of 100 penalty units (or both). However, indictable offences under the Weapons Act that attract a maximum penalty of imprisonment for 20 years (ie the new offences involving selling or manufacturing military-style weapons or selling weapons on an ongoing basis) may only ever be prosecuted on indictment (see Schedule 1 [27] which replaces section 43 of the Weapons Act).

Other amendments

Schedule 1 [28] extends the regulation-making power under the Weapons Act so that the regulations may make provision for or with respect to the approval of clubs, societies or organisations in relation to the use or possession of prohibited weapons (including requirements in relation to the membership of such clubs, societies or organisations).

Schedule 1 [41] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 1 [42] inserts savings and transitional provisions into the Weapons Act as a consequence of the enactment of the proposed Act.

Explanatory note page 6

Weapons and Firearms Legislation Amendment Bill 2010

Explanatory note

Schedule 2 Amendment of Firearms Act 1996 No 46

Amendments relating to imitation firearms

Imitation firearms (or replica firearms as the term is alternatively expressed) are currently listed as prohibited firearms under the Firearms Act, but are also included as prohibited weapons under the Weapons Act. The following amendments clarify provisions in the Firearms Act relating to the regulation of imitation firearms.

Schedule 2 [1] and [2] provide that an imitation firearm is an object that, regardless of its colour, weight or composition or the presence or absence of any moveable parts, substantially duplicates in appearance a firearm but that is not a firearm. However, it does not include any such object that is produced and identified as a children's toy. The Firearms Act will apply to an imitation firearm in the same way as it applies to a firearm. This means that imitation firearms will be subject to existing firearms safe keeping requirements and restrictions in relation to the buying or selling of firearms. However:

(a) the Commissioner may issue a permit, but not a licence, authorising the possession or use of an imitation firearm, and

(b) an imitation firearm is not required to be registered.

An imitation firearm that is an imitation of a pistol will be taken to be a pistol and an imitation firearm that is an imitation of a prohibited firearm will be taken to be a prohibited firearm.

Schedule 2 [9] omits the reference to imitation or replica firearms in the list of prohibited firearms in the Firearms Act.

Amendments relating to exemptions for antique firearms

Schedule 2 [3] substitutes section 6A of the Firearms Act to extend the exemption currently contained in that provision in respect of certain antique firearms (ie those manufactured before 1900) that do not take breech-loaded metallic cartridges or for which ammunition is not commercially available. At present, section 6A provides that a person may acquire an antique firearm without having to get a permit to acquire it and provides that such firearms are not required to be registered. The substitution extends the exemption to provide that a person is exempt from the requirement for a licence or a permit to actually possess such a firearm. As is currently the case, a person will not be required to register an antique firearm, but will require a licence

or permit to use it.

Other amendments

Schedule 2 [4] and [8] provide that, in the case of a person whose licence or permit under the Firearms Act is suspended on the grounds of a risk to public safety or that it is contrary to the public interest for the person to hold a licence or permit based on criminal intelligence, the Commissioner is not required to give reasons for the suspension or to request that the person provide the Commissioner with reasons why the licence or permit should not be revoked. Schedule 2 [5] and [8] also provide that

Explanatory note page 7

Weapons and Firearms Legislation Amendment Bill 2010

Explanatory note

the Commissioner is not required to give any reasons for revoking a licence or permit on such grounds.

Schedule 2 [6] and [7] provide that a person who is the holder of a licence or permit under the Firearms Act must immediately surrender to a police officer the licence or permit, as the case may be, and any firearm in the person's possession if the licence or permit ceases to be in force for any reason (and not only because of a suspension or revocation as is currently the case).

Schedule 2 [10] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 2 [11] inserts savings and transitional provisions into the Firearms Act as a consequence of the enactment of the proposed Act.

Schedule 3 Amendment of other legislation

Schedule 3.1 amends the Bail Act 1978 to provide that there is a presumption against bail for offences relating to the unauthorised possession, sale, ongoing sale and manufacture of military-style weapons under the Weapons Act.

Schedule 3.11 [3] amends the Criminal Procedure Act 1986 so that certain offences relating to the unauthorised possession, sale, ongoing sale and manufacture of prohibited weapons under the Weapons Act will be dealt with summarily unless the prosecutor elects to have the matter prosecuted on indictment. Schedule 3.11 [1] also amends the Criminal Procedure Act 1986 to provide for the maximum penalty for indictable offences under the Weapons Act when dealt with summarily.

Schedule 3.14 [1] repeals clauses 116 and 116A of the Firearms Regulation 2006, which currently provide for exemptions in respect of certain firearms manufactured before 1900, as a consequence of the amendment made to the Firearms Act by Schedule 2 [3].

Schedule 3.2–3.10, 3.11 [2], 3.12, 3.13, 3.14 [2], 3.15–3.19 and 3.22–3.28 amend a number of Acts and regulations to clarify references to imitation firearms in those Acts and regulations as a consequence of the amendments to the Firearms Act made by Schedule 2 [1], [2] and [9].

Schedule 3.20 amends the Road Transport (Driver Licensing) Act 1998 to provide that photographs stored by the Roads and Traffic Authority for the purposes of permits under the Firearms Act and the Weapons Act are subject to certain limits in respect of their retention and use by that Authority. Schedule 3.21 makes a consequential amendment to the Road Transport (Driver Licensing) Regulation 2008.