

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [8.16 p.m.], on behalf of the Hon. Eric Roozendaal: I move

That this bill be now a read a second time.

The Weapons and Firearms Legislation Amendment Bill formalises the recommendations arising out of a substantive review of the Weapons Prohibition Act 1998. A report on this review was tabled in June 2009. The bill strengthens the Weapons Prohibition Act 1998 by providing a more comprehensive range of appropriate offences and penalties to ensure effective control of prohibited weapons. This is of particular importance because, unlike firearms, prohibited weapons are not registrable items. The offences and penalties have been designed to reflect this and to provide for greater alignment with equivalent offences and penalties in the Firearms Act 1996.

As members may be aware, the Weapons Prohibition Act serves to outline those weapons that can be lawfully owned only with a permit and the conditions for a prohibited weapons permit to be issued, and also provides offences applicable to the misuse or unlawful possession of prohibited weapons. The items currently classed as prohibited weapons range from certain types of specialist knives to tasers and knuckledusters. The list is dynamic and additions are made in response to operational feedback from police. For example, over the past few years, items such as road spikes and laser pointers have been included as prohibited. Through this bill, improvised explosive devices and taser-proof clothing are proposed as additions to the Schedule of Prohibited Weapons. As well as providing clear guidelines for the NSW Police Force, the Schedule of Prohibited Weapons serves as a guideline for the Australian Customs and Border Protection Service. In order to import any item on the schedule, the Customs and Border Protection Service requires proof of police authorisation.

The bill amends the definition of a number of items already on the Schedule of Prohibited Weapons to enhance the effectiveness of existing definitions. For example, handcuffs designed as children's toys or theatrical props have been specifically excluded from the definition contained in the schedule. Another important initiative in this bill is the introduction of a separate schedule of military-style prohibited weapons. Items such as bombs, rocket launchers and flamethrowers will be included in the new schedule. The bill introduces a high level of control of these items by prescribing more stringent safe storage requirements. The bill also includes offences related to military-style prohibited weapons both as offences for which there is an assumption against bail in the Bail Act and offences that are to be prosecuted on indictment only. This is appropriate considering the potential risk to public safety represented by these items.

The bill also changes the regulatory model governing the lawful possession and use of imitation firearms. Currently the terms "firearm" and "replica firearm" are used interchangeably in New South Wales legislation. The bill amends the use of these terms and in doing so brings New South Wales legislation into line with legislation in the other States and Territories. The bill adds a new section 4D to the Firearms Act 1996 relating to imitation firearms. This provision includes a definition of "imitation firearm", which essentially means something that would reasonably be taken to be a firearm but is incapable of firing a projectile and therefore does not meet the definition of "firearm". Objects that are produced and identified as children's toys are specifically excluded from the definition of imitation firearm. As is the case today, a permit will be required for lawful possession and use of imitation firearms and these items must be stored according to prescribed safe storage guidelines.

The bill is silent on the definition of "replica firearm". However, as agreed through the Ministerial Council for Police and Emergency Management—Police, this will be taken to refer to firearms that are exact replicas of recognised brands of firearm that are capable of firing a projectile. As replica firearms meet the threshold for the definition of a firearm, they are controlled under the Firearms Act 1996 and require no additional regulatory controls. The bill also removes existing references to imitation and replica firearms from the Weapons Prohibition Act because these items will be regulated only through the Firearms Act.

Criminal intelligence is a vital tool for police, not only in the investigation and prosecution of criminal activity but also in decision-making processes for the issuing of licences and permits. To this end, the bill inserts sections 10 (3A) and 10 (3B) into the Weapons Prohibition Act to provide the Commissioner of Police with the authority to rely on criminal intelligence in determining applications for prohibited weapons permits. The commissioner may refuse a weapons permit on the basis of criminal intelligence held about an applicant for a permit when that person is considered to be a risk to public safety.

So that the contents of police criminal intelligence reports are protected, the commissioner is not required to give reasons for decisions based on the contents of these reports. The bill also makes it clear that any such grounds for not issuing a permit may also be grounds for suspending or revoking the permit. With respect to weapons clubs, the bill ensures the regulation may make provision for the approval of clubs, societies or organisations in relation to the possession or use of prohibited weapons.

I can also advise that the Government plans to move amendments to the bill aimed at strengthening changes proposed in the bill. The need for this has arisen subsequent to the bill being introduced. The bill provides that if a person's firearm or prohibited weapons permit or firearm licence is suspended, revoked or otherwise ceases to be in force they must surrender any firearms or prohibited weapons as well as their licence or permit to a police officer. The proposed amendments seek to clarify that this will not be required in cases where a licensee or permit holder is still covered by the authority of their previous licence or permit—that is, where their re-application is in the post or still being determined by the New South Wales Firearms Registry. This is already provided for in both the Firearms Regulation and the prohibited weapons regulation. The amendment merely seeks to provide greater clarity. I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [8.23 p.m.]: The Weapons and Firearms Legislation Amendment Bill 2010 amends the Weapons Prohibition Act 1998 to modernise legislative and regulatory controls governing the possession and use of prohibited weapons, and makes minor administrative changes to the Firearms Act 1996. The New South Wales Liberal Party and The Nationals support these measures, which continue to enact proposed changes recommended by the review of the Weapons Prohibition Act 1998 and Weapons Prohibition Regulation 1999 and which, I am told, have the full support of the New South Wales police responsible for enforcing the firearms licensing regime and making sure that prohibited weapons stay out of the hands of criminals.

My Liberal and Nationals colleagues and I are satisfied with the consultative measures undertaken by the Government, including the taking of submissions and a review process that continues to keep this legislation up to date in the face of changing technology. It is important that weapons definitions are kept updated so that new weapons technology does not slip through the cracks. For example, in the United States it is customary for weapons manufacturers to tweak designs and specifications of military-style weapons to keep them on store shelves. We are lucky to an extent that we do not have the same firearms culture in Australia and that firearms commonly used in Australia, particularly in New South Wales, are for sporting and recreational purposes or for professionals such as contract shooters, primary producers and the security industry—for whom we maintain strident checks and licensing systems.

I thank the Minister's office and particularly his staff for keeping my office and me briefed on the progress of this legislation. The New South Wales Liberals and The Nationals are committed to keeping our police resourced with the legislative measures they need to keep the most dangerous weapons out of the reach of crooks, while ensuring legitimate sportsmen and recreational shooters are still able to participate in approved firearms-related activities. This bill makes minor amendments to weapons definitions to ensure that children's toys are excluded from those definitions while adding improvised explosive devices, which, I am sure we all agree, no law-abiding citizen of our State has any business possessing for any reason. We remain satisfied that the new schedule for military-style prohibited weapons will keep those weapons exclusively in the hands of those licensed and approved to possess them while toughening penalties and storage provisions.

Having consulted with police, I support measures to allow the police commissioner to rely on criminal intelligence to determine applications for prohibited weapons permits. Again, I stress it must be a priority that prohibited weapons are kept out of the hands of criminals. It is also worth noting that as we march through the years, the definition of an antique weapon continues to change. But while an antique World War I era rifle is just a curiosity to a collector, it can still be used in the commission of a crime, and for this reason we must remain vigilant with our application of the Act. The regulation of imitation firearms will be streamlined through this bill, with clear definitions and the provision for those firearms to be administered exclusively under the Firearms Act.

It is worth noting that an imitation firearm, for all intents and purposes, should be treated as a real firearm and it is important the Act continues to treat them as such. A firearm is a weapon not just because it delivers ordinance but because it is intimidating, and we have an obligation to protect the community from threats and intimidation just as much as we have an obligation to defend people from physical violence or the threat thereof. I note with interest and approval that the Government intends this Act to commence on assent. It has been a frequent criticism by the Legislation Review Committee that too many bills rushed through this place are to commence by regulation, and I hope we see a shift away from that as we move forward.

We have received several amendments to the bill circulated by the Government and the Shooters Party that I will deal with briefly. We are satisfied that Government amendments Nos 1 to 3 meet the fairness test with regard to applications for permits in the mail at the time. However, I trust that this provision will be monitored closely by the relevant authorities. I do not want to see a situation where police are unable to seize prohibited weapons for prolonged periods due to applications being lost in the mail or claims of such. If someone has their licence revoked for whatever reason I want the police to be able to seize those prohibited weapons as quickly as possible so they do not pose a risk to the community. I refer the House to my earlier comments regarding antique weapons and the fact that current requirements are strengthened.

Earlier this evening I received late notice of a fourth amendment from the Shooters Party that seeks to omit the phrase "including a device known as a PVC cannon" from schedule 1 [40]. The New South Wales Liberals and The Nationals do not support this amendment as it describes a homemade or improvised weapon that should

not be available to members of the general public and that should be rightly classified as being not so much a firearm as a mortar or artillery device and prohibited as such.

Before concluding, I particularly thank John Macgowan and Suzanne Frosbery from my office for their work and input on this bill, which even Government members—particularly Government staff—would agree have improved the amendments, and therefore the bill. I commend the bill to the House