

FIREARMS BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

- Prohibited Weapons Bill 1988;
- Crimes (Firearms) Amendment Bill 1988.

The objects of this Bill are—

- (a) to repeal the Firearms and Dangerous Weapons Act 1973 (the “1973 Act”); and
- (b) to replace its provisions regulating the lawful possession and use of pistols, rifles, shotguns and other firearms with new provisions that simplify firearms controls.

The proposed Act will also substantially increase the maximum penalties for offences involving firearms.

(The provisions of the 1973 Act prohibiting the possession of dangerous weapons and articles are intended to be replaced by the proposed Prohibited Weapons Act 1988. Certain other provisions of the 1973 Act are intended to be inserted in the Crimes Act 1900.)

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 defines certain terms used in the proposed Act.

Clause 4 states that the proposed Act will bind the Crown, with certain exceptions (such as members of the Police Force or prison officers acting in the course of their employment as such).

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PART 2—REGULATION OF FIREARMS

Clause 5 makes it an offence for a person to possess or use a firearm unless authorised to do so by a licence or permit. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or, if the firearm was a pistol, imprisonment for 10 years or, in any other case, imprisonment for 5 years (on conviction on indictment).

Clause 6 makes it an offence for a person to buy a firearm unless authorised to have possession of it by a licence or authorised to buy it by a permit. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or, if the firearm was a pistol, imprisonment for 10 years or, in any other case, imprisonment for 5 years (on conviction on indictment).

Clause 7 makes it an offence for a person to buy or take possession of a firearm from another person unless the other person is authorised by a licence or permit to possess, sell or otherwise give possession of the firearm and the person buying or taking possession of the firearm (except from the holder of a dealer's licence) sights the licence or permit.

The clause also makes it an offence for a person to sell or give possession of a firearm to another person unless the other person is authorised by a licence or permit to possess or to buy or take possession of the firearm and the person selling or giving possession of the firearm (except to the holder of a dealer's licence) sights the licence or permit. The maximum penalty in each case is a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 8 makes it an offence for a person, in carrying on a business, to manufacture, buy, sell, transfer or repair firearms or to possess them for those purposes without a licence. A licence would not be required to authorise the buying, selling or trading of firearms on infrequent occasions so as not to amount to the carrying on of a business. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or imprisonment for 7 years (on conviction on indictment).

Clause 9 makes it an offence for a person to possess a spare barrel for a pistol unless the person is authorised to possess the pistol or barrel by a licence. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 10 requires a person who is carrying a firearm to produce it and any licence or permit authorising possession of it for inspection on (or in certain cases, to produce the licence or permit as soon as practicable, but not more than 6 hours, after) a demand for their production by a member of the Police Force. An appropriate caution must be given by the member. The maximum penalty for not complying is a fine of \$2,000 or imprisonment for 1 year, or both.

Clause 11 requires a person who has or comes into possession of a firearm or a substantial part of a firearm, and who ceases to be or is not authorised to possess it, to surrender the firearm or part to a member of the Police Force or to a person who is so authorised. The maximum penalty for not complying is a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 12 requires a person who possesses a firearm or spare barrel for a firearm to take all reasonable precautions for its safekeeping. The maximum penalty for not complying is, if the firearm was a pistol, a fine of \$5,000 or imprisonment for 2 years, or both, or, in the case of any other firearm or a spare barrel, a fine of \$2,000 or imprisonment for 1 year, or both.

Clause 13 makes it an offence for a person to sell or give possession of an unsafe firearm to another person without warning the other person appropriately. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

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A member of the Police Force is authorised by this clause to seize a firearm in a public place if it is suspected on reasonable grounds to be unsafe.

Clause 14 makes it an offence for a person to shorten a firearm (other than a pistol or an unrifled air gun) or to possess, sell or give possession of such a firearm without being authorised to do so by a licence or permit. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or imprisonment for 10 years (on conviction on indictment).

Clause 15 makes it an offence for a person to shorten a firearm so as to convert it into a pistol unless a licence authorises possession of the pistol. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or imprisonment for 10 years (on conviction on indictment).

Clause 16 makes it an offence for a person to handle or use a firearm while under the influence of alcohol or another drug. A person must not sell or transfer a firearm to another person if the other person is under the influence of alcohol or another drug or appears to be mentally ill. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or imprisonment for 5 years (on conviction on indictment).

Clause 17 makes it an offence for a person to sell firearm ammunition unless the buyer is the holder of a licence or the seller is authorised to sell it to someone who does not hold a licence. It is also an offence for a person to buy firearm ammunition unless the person is the holder of a licence or authorised to buy it by a permit. The maximum penalty is a fine of \$2,000.

Clause 18 makes it an offence for a person to deface or alter any identifying mark on a pistol or barrel for a pistol or to possess a pistol or barrel for a pistol on which any identifying mark has been defaced or altered. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or imprisonment for 5 years (on conviction on indictment).

Clause 19 makes it an offence for a person to possess, sell or transfer a firearm designed to tranquillise, immobilise or administer vaccines or medicines to animals unless authorised by a licence or permit. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 20 makes it an offence for a pawnbroker to take a firearm or spare barrel for a firearm into pawn. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

PART 3—LICENCES AND PERMITS

Division 1—Provisions relating to licences

Clause 21 ensures that licences will be available to authorise activities that were licensed under the Firearms and Dangerous Weapons Act 1973.

Clause 22 enables regulations to be made prescribing the types of licences that may be issued for the purposes of the proposed Act.

Clause 23 provides that applications for licences are to be made in accordance with the regulations under the proposed Act.

Clause 24 provides for the Commissioner of Police to issue or refuse licences and prevents a licence from being issued until a period fixed by the regulations has expired.

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Clause 25 sets out some of the circumstances in which a licence is not to be issued. For example, a licence is not to be issued to a person who has been convicted of a prescribed offence and a licence to authorise the use of a pistol is not to be issued to a person who does not have good reason for holding it. The Commissioner of Police must be satisfied as to the good character of the applicant. Regulations may be made providing other grounds for refusing a licence. The Commissioner may refuse to issue a licence if of the belief that its issue would be contrary to the public interest.

Clause 26 enables conditions to be prescribed for licences and empowers the Commissioner of Police to impose conditions not inconsistent with the prescribed conditions.

Clause 27 states that a licence expires at the end of the term specified in it.

Clause 28 provides that a licence cannot be transferred.

Division 2—Provisions relating to permits

Clause 29 indicates the matters that are to be authorised by permits.

Clause 30 enables regulations to be made prescribing the types of permits that may be issued under the proposed Act.

Clause 31 provides that applications for permits are to be made in accordance with the regulations under the proposed Act.

Clause 32 declares that the Commissioner of Police may refuse to issue a permit if of the belief that its issue would be contrary to the public interest.

Clause 33 enables conditions to be prescribed for permits and empowers the Commissioner of Police to impose conditions on permits. The term of a permit may be prescribed or be determined by the Commissioner.

Division 3—Provisions relating to licences and permits

Clause 34 provides that the regulations are to prescribe the authority conferred by a licence or permit and makes that authority subject to the conditions of the licence or permit.

Clause 35 enables the Commissioner of Police to suspend a licence and allows regulations to be made providing for suspension of permits.

Clause 36 enables the Commissioner of Police to revoke a licence or permit on a ground set out in the clause or for any prescribed reason.

Clause 37 requires the holder of a licence or permit (if in possession of it) to produce it for inspection or to state the holder's name and address, on demand by a member of the Police Force. An appropriate caution must be given by the member. The maximum penalty is a fine of \$2,000 or imprisonment for 1 year, or both.

Clause 38 requires the holder of a licence or permit to surrender it as soon as it is suspended or revoked. The maximum penalty is a fine of \$2,000 or imprisonment for 1 year, or both.

PART 4—FIREARMS PROHIBITION ORDERS

Clause 39 allows the Commissioner of Police to make an order prohibiting a person from possessing firearms if it is not in the public interest for the person to possess firearms.

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Clause 40 makes it an offence for a person to possess a firearm in contravention of a firearms prohibition order. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or, if the firearm was a pistol, imprisonment for 10 years or, in any other case, imprisonment for 5 years (on conviction on indictment).

A person must not sell or transfer a firearm to another person knowing that the other person is subject to such an order. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or, if the firearm was a pistol, imprisonment for 10 years or, in any other case, imprisonment for 5 years (on conviction on indictment).

PART 5—APPEALS

Clause 41 provides that a person may appeal to a Local Court against—

- the refusal of or failure by the Commissioner of Police to issue a licence or permit; or
- a condition imposed by the Commissioner on a licence or permit; or
- the revocation of a licence or permit; or
- a firearms prohibition order; or
- the refusal of an approval under the regulations or a condition imposed on such an approval.

Clause 42 sets out procedural matters relating to appeals. An appeal is to be dealt with by way of a new hearing and the Local Court hearing the appeal is not to be bound by the rules of evidence.

Clause 43 provides that, until an appeal is determined, it does not affect any condition imposed on a licence or permit or a firearms prohibition order against which it was made.

PART 6—SUPPLEMENTARY

Clause 44 makes it an offence for a person to give false or misleading information when making an application under the proposed Act. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 45 makes it an offence for the holder of a licence or a permit to contravene its conditions. The maximum penalty is a fine of \$5,000.

Clause 46 makes it an offence for a person to—

- (a) falsely represent that he or she is the holder of a licence, a permit or an approval; or
- (b) forge or fraudulently alter a licence, a permit or an approval; or
- (c) give a licence, a permit or an approval to another person for its unlawful use; or
- (d) steal a licence, a permit or an approval; or
- (e) possess a forged, fraudulently altered, borrowed or stolen licence, permit or approval.

The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

Clause 47 makes it an offence for a person, with intent to deceive, to alter or make a false entry in records required to be kept by the regulations. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both.

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Clause 48 enables an application to be made to a Local Court in relation to a firearm (not being a prohibited weapon) surrendered or seized under the proposed Act. The Court may decide whether the firearm is to be forfeited, returned or otherwise disposed of.

Clause 49 enables the Commissioner of Police to delegate the Commissioner's functions under the proposed Act to a limited range of persons.

Clause 50 makes the parent or guardian of a person under 18 who contravenes the proposed Act or the regulations liable to the same penalty as that to which that person is liable, whether or not proceedings are taken against that person. A parent or guardian is so liable only if he or she knowingly authorised or permitted the contravention.

Clause 51 makes a director of a corporation or a person concerned in the management of a corporation which contravenes the proposed Act or regulations liable to the same penalty as the corporation, whether or not proceedings are taken against the corporation. Such persons are so liable only if they knowingly authorised or permitted the contravention.

Clause 52 provides that offences against the proposed Act or the regulations are to be dealt with summarily before a Local Court. A Local Court may hear and determine proceedings for an offence summarily where a penalty is provided for conviction on indictment only if the Court thinks it proper for the offence to be so dealt with. In any other case any such offence is to be dealt with on indictment.

Clause 53 provides that an offence against the proposed Act or the regulations may be dealt with summarily before a Local Court if the information is laid within 1 year of the date on which the offence is alleged to have been committed.

Clause 54 provides that, where an instrument under the proposed Act may be served on a person by post, it is sufficient to address it to the last address of the person known to the Commissioner of Police.

Clause 55 allows certain certificates given by the Commissioner of Police to be admissible in evidence.

Clause 56 enables regulations to be made by the Governor-in-Council for the purposes of the proposed Act, including regulations with respect to licences, permits, approvals, fees, training and supervision and pistol or rifle ranges. The regulations may create an offence with a maximum penalty of \$5,000.

Regulations may not be made so as to impose a registration scheme for firearms other than pistols or to require the holder of a licence authorising possession of a firearm to obtain a permit to purchase the firearm or firearm ammunition.

Clause 57 repeals the 1973 Act and the Firearms and Dangerous Weapons Regulation.

Clause 58 gives effect to Schedule 1 which contains savings and transitional provisions.

Clause 59 updates the definition of "firearms offence" in section 5 of the Search Warrants Act 1985.

SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

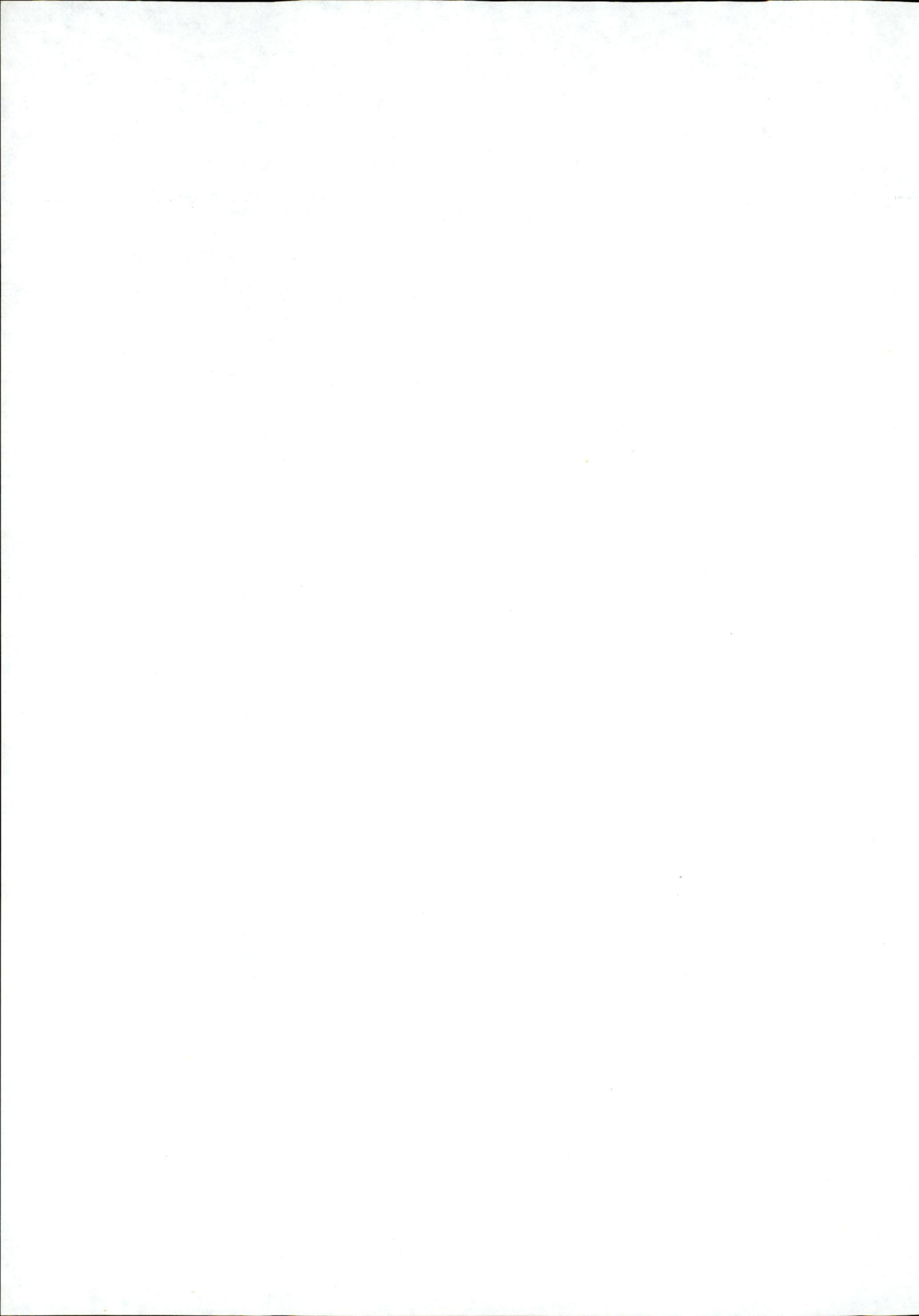
Schedule 1 contains provisions of a savings or transitional nature which convert current licences, permits, approvals and firearms prohibition orders under the 1973 Act into corresponding licences, permits, approvals and orders under the proposed Act.

Pending applications and appeals are to be treated as having been made or commenced under the proposed Act.

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Firearms surrendered or seized, or ordered to be disposed of or forfeited, under certain provisions of the 1973 Act are to be treated as having been surrendered or seized, or ordered to be disposed of or forfeited, under the proposed Act.

A provision is included enabling regulations of a savings or transitional nature to be made.



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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS

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No. , 1988

A BILL FOR

An Act to regulate firearms and increase penalties for offences involving firearms; to repeal the Firearms and Dangerous Weapons Act 1973; and for other purposes.

See also Prohibited Weapons Bill 1988; Crimes (Firearms) Amendment Bill 1988.

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Firearms Act 1988.

5 Commencement

2. (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed for the commencement of section 57 for the purpose of repealing different provisions of the Firearms and Dangerous Weapons Act 1973 or the regulations made under that Act on different days.

Definitions

3. (1) In this Act—
 - “approval” means an approval in force under the regulations;
 - 15 “blank fire firearm” means a device that is designed for firing blank cartridges only, such as a starting pistol;
 - “firearm” means—
 - (a) a gun, or other weapon, that can propel anything wholly or partly by means of an explosive; or
 - 20 (b) a blank fire firearm; or
 - (c) an air gun,
 but does not include anything declared by the regulations not to be a firearm;
 - 25 “firearm part” means a barrel, breech, trigger mechanism, operating mechanism or magazine designed as, or reasonably capable of forming, part of a firearm;
 - “firearms prohibition order” means an order in force under section 39;
 - “licence” means a licence in force under this Act;
 - “permit” means a permit in force under the regulations;
 - 30 “pistol” means a firearm that is reasonably capable of being raised and fired by one hand and that does not exceed any prescribed dimension;
 - “to use”, in relation to a firearm, means to fire the firearm or to hold it so as to cause a reasonable belief that it will be fired, whether or not it is capable of being fired.
- 35 (2) For the purposes of this Act—
 - (a) anything that would be a firearm if it did not have something missing from it, or a defect or obstruction in it, is to be regarded as a firearm; and

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- (b) if firearm parts (including a barrel) are possessed, or being carried, by two or more persons, each of them is to be regarded as possessing or carrying the firearm; and
- 5 (c) a person who takes possession of anything under a hire-purchase agreement is to be regarded as having bought it and the person who possessed it immediately before possession was so taken is to be considered as having sold it; and
- 10 (d) a person who is authorised to possess or use a firearm by a permit issued under the Prohibited Weapons Act 1988 is to be regarded as authorised to possess or use the firearm by a licence.

(3) For the purposes of this Act, possession of a firearm includes a case in which a person knowingly—

- (a) has custody of the firearm; or
- (b) has the firearm in the custody of another person; or
- 15 (c) has the firearm in or on any premises, place, vehicle, vessel or aircraft, whether or not belonging to or occupied by the person.

Application of Act

4. (1) This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities (except as provided otherwise by this section).

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(2) A person is not guilty of an offence against this Act or the regulations only because of something done by the person while acting in the ordinary course of the person's duties—

- 25 (a) as a member of the Police Force or as a prison officer of the Commonwealth, a State or a Territory; or
- (b) as a member of the armed forces of the Commonwealth or of any Government that is allied or associated with the Commonwealth in any war in which it is engaged; or
- 30 (c) as, or under the authority of, the person in charge of a ship or an aircraft, but only for the purpose of having equipment of the ship or aircraft repaired or tested by a person authorised to do so by a licence.

(3) A person is not guilty of an offence against this Act only because of possessing a firearm or firearm parts being conveyed or stored in the ordinary course of the person's duties in the business of a carrier or warehouse operator.

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(4) A person who is a member of the Australian Cadet Corps is not required to be the holder of a licence or permit to authorise the person to possess a firearm, but only while possessing it—

- 40 (a) for the purposes of activities of that Corps; and

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- (b) in accordance with such guidelines as may be fixed by order of the Commissioner of Police.

PART 2—REGULATION OF FIREARMS**Possession or use of firearms**

- 5 5. A person shall not—

- (a) possess a firearm; or
(b) use a firearm,

unless authorised to do so by a licence or a permit.

Maximum penalty on summary conviction—50 penalty units or
10 imprisonment for 2 years, or both.

Maximum penalty on conviction on indictment—imprisonment for 10 years (if it is established beyond reasonable doubt that the firearm concerned was a pistol) or imprisonment for 5 years (if it is not so established).

Buying of firearms

- 15 6. A person shall not buy a firearm, unless—

- (a) authorised to possess it by a licence; or
(b) authorised to buy it by a permit.

Maximum penalty on summary conviction—50 penalty units or
imprisonment for 2 years, or both.

20 Maximum penalty on conviction on indictment—imprisonment for 10 years (if it is established beyond reasonable doubt that the firearm concerned was a pistol) or imprisonment for 5 years (if it is not so established).

Duties of buyers, sellers etc. of firearms

- 25 7. (1) A person shall not buy or take possession of a firearm from another person, unless—

- (a) the other person is authorised to possess the firearm by a licence or to sell or otherwise give possession of the firearm by a permit; and
(b) except where the other person is the holder of a dealer's licence, the person buying or taking possession of the firearm has sighted the
30 licence or permit.

(2) A person shall not sell or give possession of a firearm to another person, unless—

- (a) the other person is authorised to possess the firearm by a licence or to buy or take possession of the firearm by a permit; and

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- (b) except where the other person is the holder of a dealer's licence, the person selling or giving possession of the firearm has sighted the licence or permit.

Maximum penalty on summary conviction—50 penalty units or 5 imprisonment for 2 years, or both.

Dealers to be licensed

8. Unless authorised to do so by a licence, a person shall not, in carrying on a business—

- 10 (a) manufacture, buy, sell, transfer or repair firearms or firearm parts; or
 (b) expose or offer firearms for sale; or
 (c) possess firearms for the purpose of selling, transferring or repairing them; or
 15 (d) possess firearm parts for the purpose of selling, transferring or repairing them, or of manufacturing firearms.

Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

Maximum penalty on conviction on indictment—imprisonment for 7 years.

20 Possession of spare barrels for pistols

9. A person shall not possess a barrel for a pistol, unless the person is authorised by a licence to possess the pistol or the barrel.

Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

25 "On-the-spot" inspection of firearms by police

10. (1) A person who is carrying a firearm or possesses a firearm that is within the immediate vicinity of the person shall, on the demand of a member of the Police Force at any time, produce for inspection by that member—

- 30 (a) the firearm; and
 (b) any licence or permit that authorises the person to possess the firearm.

Maximum penalty on summary conviction—20 penalty units or imprisonment for 1 year, or both.

- 35 (2) A person is guilty of an offence under this section only if the member of the Police Force, when making the demand, explains to the person that failure to comply with the demand is an offence against this Act.

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(3) A person is not guilty of an offence under this section because of failing to produce a licence or permit if the person—

- (a) has a reasonable excuse for not having the licence or permit when the demand is made; and
- 5 (b) produces it, as soon as is practicable (but not more than 6 hours) after the demand for its production is made, to the member of the Police Force who made the demand or to another such member nominated by that member.

(4) In this section, “firearm” includes a firearm part.

10 Disposal of firearms by unauthorised holders

11. (1) A person—

- (a) who comes into possession of a firearm or a substantial part of a firearm, but is not authorised by or under this Act or the Prohibited Weapons Act 1988 to possess the firearm; or
- 15 (b) who possesses a firearm or a substantial part of a firearm and ceases to be so authorised to possess the firearm,

shall immediately surrender the firearm or part to a member of the Police Force or (but only after having obtained the consent of such a member if the firearm concerned is a pistol) deliver the firearm or part to a person who
20 is authorised by a licence or permit to possess the firearm or firearms of the kind concerned.

Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

(2) A person does not contravene any other provision of this Act just by
25 delivering or surrendering anything in accordance with this section or by accepting its delivery.

Safe keeping of firearms

12. A person who possesses a firearm or spare barrel for a firearm shall take all reasonable precautions to ensure its safe keeping.

30 Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both (if it is established beyond reasonable doubt that the firearm concerned was a pistol) or 20 penalty units or imprisonment for 1 year, or both (if it is not so established).

Unsafe firearms

35 13. (1) A person shall not sell or give possession of a firearm to another person knowing that it is unsafe, except after giving an appropriate warning.

Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

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(2) A member of the Police Force may seize any firearm in the possession of any person if—

- (a) the firearm is in a public place; and
- (b) the member suspects on reasonable grounds that the firearm is unsafe.

(3) For the purposes of this section, a firearm is to be considered as being unsafe (apart from any other reason for which it may be unsafe) if, because of some mechanical defect or its general condition, it may reasonably be considered to be unsafe.

10 Shortening firearms

14. (1) A person shall not, unless authorised to do so by a licence or permit—

- (a) shorten a firearm (except a pistol or an unrifled air gun); or
- (b) possess any such firearm that has been shortened; or
- (c) sell or give possession of any such firearm that has been shortened to another person.

Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

20 Maximum penalty on conviction on indictment—imprisonment for 10 years.

(2) The regulations may provide that types of firearms are to be considered as having been shortened for the purposes of this section only if they (or specified parts of them) have prescribed characteristics.

Converting firearm into a pistol

25 15. A person shall not shorten a firearm so as to convert it into a pistol, unless a licence has been issued authorising possession of the pistol.

Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

30 Maximum penalty on conviction on indictment—imprisonment for 10 years.

Restrictions where alcohol or other drugs concerned

16. (1) A person shall not handle or use a firearm while the person is under the influence of alcohol or any other drug.

35 (2) A person shall not sell or give possession of a firearm to another person—

- (a) if the person knows or has reasonable cause to believe that the other person is under the influence of alcohol or any other drug; or

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(b) if the other person's appearance or behaviour is such that the person intending to sell or give possession of the firearm believes or has reasonable cause to believe that the other person is incapable of exercising responsible control over the firearm.

5 Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

Maximum penalty on conviction on indictment—imprisonment for 5 years.

Sale or purchase of ammunition

10 17. (1) A person shall not sell firearm ammunition, unless—

(a) the buyer is the holder of a licence; or

(b) the seller is the holder of a licence or the sale is authorised by a permit.

(2) A person shall not buy firearm ammunition, unless—

15 (a) the person is the holder of a licence; or

(b) the person is authorised to buy it by a permit.

Maximum penalty on summary conviction—20 penalty units.

Defacing or altering identification marks

20 18. A person shall not, unless authorised by the Commissioner of Police to do so—

(a) deface or alter any number, letter or identification mark on any pistol or barrel for a pistol; or

(b) have possession of any pistol or barrel for a pistol on which any number, letter or identification mark has been defaced or altered.

25 Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

Maximum penalty on conviction on indictment—imprisonment for 5 years.

Tranquillising equipment

30 19. A person shall not possess or sell or otherwise give possession of any firearm designed for use in tranquillising, immobilising or administering vaccines or other medicines to animals, unless authorised by a licence or permit to possess, sell or otherwise give possession of the firearm.

35 Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

Pawning of firearms prohibited

20. A pawnbroker shall not take a firearm or a barrel for a firearm into pawn.

Maximum penalty on summary conviction—50 penalty units or 5 imprisonment for 2 years, or both.

PART 3—LICENCES AND PERMITS**Division 1—Provisions relating to licences****Purposes for which licences must be available**

21. (1) Licences must be available for each of the following purposes:

- 10 (a) to authorise the possession and use of pistols;
 (b) to authorise the possession and use of rifles and shotguns;
 (c) to authorise the manufacture, buying, selling, transfer or repair of firearms and firearm parts so as to allow a business to be carried on;
 15 (d) to authorise the possession of firearms by collectors;
 (e) to authorise the possession and use of blank fire firearms for sporting or theatrical events;
 (f) to authorise anything else which a licence may authorise under this Act.

20 (2) This section does not limit the purposes for which licences may be available, the conditions to which they may be subject or the authority they may confer.

Classes of licences

22. (1) The regulations may provide for different classes of licences.

25 (2) A licence may be issued to a person for a firearm or firearms specified in it or for a type or types of firearms prescribed by the regulations and specified in it.

Applications

23. An application for a licence must be made in the prescribed manner and be accompanied by the prescribed fee, if any.

30 Issue of licence

24. (1) Licences are to be issued or refused by the Commissioner of Police.

(2) A licence must not be issued until after the prescribed period expires.

Restrictions on issue of licences

35 25. (1) A licence must not be issued to a person—

- (a) who is not a natural person; or

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- (b) who has at any time or, if the regulations so provide, within a specified period before the application for the licence was made, been convicted in New South Wales or elsewhere of a prescribed offence, whether the offence was committed before or after the commencement of this section and whether or not the offence is an offence under New South Wales law; or
- (c) who is subject to a recognisance, granted in New South Wales or elsewhere, to keep the peace; or
- (d) who is subject to a firearms prohibition order.
- (2) A licence must not be issued unless—
- (a) the Commissioner of Police is satisfied that the applicant is of good character and repute and can be trusted to have possession of firearms without danger to the public safety or to the peace; and
- (b) if required by the regulations, the applicant has completed, to the satisfaction of the Commissioner of Police, training and testing in accordance with the regulations.
- (3) Without limiting the generality of subsection (2), a licence must not be issued if the Commissioner has reasonable cause to believe that the applicant may not personally exercise continuous and responsible control over firearms because of—
- (a) the applicant's way of living or domestic circumstances; or
- (b) any previous attempt by the applicant to commit suicide or cause a self-inflicted injury; or
- (c) the applicant's intemperate habits or being of unsound mind.
- (4) The Commissioner of Police must not issue a licence that authorises possession and use of a pistol unless the Commissioner is satisfied that the applicant for the licence has good reason for possessing and using the pistol.
- (5) A licence must not be issued for the purpose of authorising the possession or use of a prohibited weapon within the meaning of the Prohibited Weapons Act 1988.
- (6) The Commissioner of Police may refuse to issue a licence if the Commissioner considers that issue of the licence would be contrary to the public interest.
- (7) The regulations may provide other mandatory or discretionary grounds for refusing the issue of a licence.

Conditions of licences

26. A licence is subject to—

- (a) any conditions prescribed for licences of the class to which it belongs; and

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- (b) any conditions imposed by order of the Commissioner of Police and set out in it when it is issued, except to any extent that they may be inconsistent with conditions referred to in paragraph (c); and
- 5 (c) any conditions imposed by order of the Commissioner of Police and set out in a notice served personally or by post on the person to whom the licence was issued.

Term of licence

27. Unless previously surrendered or revoked, a licence continues in force from the time of its issue for such term, if any, as is specified in the
10 licence.

Transfer of licence prohibited

28. A licence cannot be transferred.

Division 2—Provisions relating to permits**Purposes for which permits must be available**

- 15 29. (1) Permits must be available for each of the following purposes:
- (a) to authorise the possession or use of pistols in prescribed circumstances;
- (b) to authorise the buying, selling or transfer of firearms in prescribed circumstances;
- 20 (c) to authorise the possession of barrels for pistols;
- (d) to authorise the shortening of a firearm;
- (e) to authorise the buying or selling of firearm ammunition;
- (f) to authorise anything else for which provision may be made by the regulations and which is required by the regulations to be authorised
25 by a permit.

(2) This section does not limit the purposes for which permits may be available, the conditions to which they may be subject or the authority they may confer.

Classes of permits

30 30. (1) The regulations may provide for different classes of permits.

(2) A permit may be issued to a person for a firearm, firearms or firearm ammunition specified in it or for a type or types of firearms or ammunition prescribed by the regulations and specified in it.

Applications

35 31. An application for a permit must be made in the prescribed manner and be accompanied by the prescribed fee, if any.

Refusal on ground of public interest etc.

32. (1) The Commissioner of Police may refuse to issue a permit if the Commissioner considers that issue of the permit would be contrary to the public interest.

- 5 (2) The regulations may provide other mandatory or discretionary grounds for refusing the issue of a permit.

Conditions and term of permit

33. The regulations may prescribe or provide for the Commissioner of Police to impose or determine—

- 10 (a) conditions to which a permit is to be subject; and
 (b) the period for which a permit is to be in force.

Division 3—Provisions relating to licences and permits**Authority conferred by licence or permit**

- 15 34. (1) A licence or permit confers such authority as is prescribed by the regulations.

(2) The authority conferred by a licence or permit is subject to the conditions for the time being to which the licence or permit is subject.

Suspension of licence or permit

- 20 35. (1) If a prescribed member of the Police Force thinks there may be grounds for revoking a licence, the member may suspend the licence by serving personally or by post on its holder a notice—

- (a) stating that the licence is suspended and the reasons for suspending it; and
 25 (b) requesting the person to give the Commissioner of Police reasons why the licence should not be revoked.

(2) A suspended licence does not authorise the possession or use of firearms during the period (not exceeding 28 days) specified in the notice suspending it.

(3) The regulations may provide for the suspension of permits.

30 Revocation of licence or permit

36. (1) In this section, “authority” means a licence or permit.

(2) An authority that authorises its holder to possess or use a firearm is revoked if the holder becomes subject to a firearms prohibition order.

(3) An authority may be revoked—

- 35 (a) for any reason for which its holder would be required to be refused a further authority of the same kind; or

- (b) if its holder—
- (i) supplied information which was (to the holder's knowledge) false or misleading in a material particular in, or in connection with, the application for the authority; or
 - 5 (ii) contravenes this Act or the Prohibited Weapons Act 1988 or the regulations made under either of those Acts, whether or not the holder has been convicted of an offence for the contravention; or
 - (iii) contravenes any condition of the authority; or
 - 10 (c) for any other reason prescribed by the regulations.

(4) The Commissioner of Police may revoke an authority by serving personally or by post on its holder a notice stating that the authority is revoked and the reason for revoking it.

15 (5) The revocation of an authority by such a notice becomes effective when the notice is served or on a later date specified in the notice, whether or not an appeal is lodged against the revocation.

(6) The Commissioner of Police may, by serving a further notice on the holder of an authority, cancel a notice revoking an authority before the notice becomes effective.

20 **Production of licence or permit**

37. (1) A person to whom a licence or permit is issued shall, on demand made by a member of the Police Force at any time—

- (a) produce the licence or permit for inspection by the member, if the person possesses it; or
- 25 (b) state the person's full name and usual place of residence to the member.

Maximum penalty on summary conviction—20 penalty units or imprisonment for 1 year, or both.

30 (2) A person is guilty of an offence under this section only if the member of the Police Force, when making the demand, explains to the person that failure to comply with the demand is an offence against this Act.

Surrender of suspended or revoked licence or permit

38. If a licence or permit is suspended or revoked, the person to whom it was issued shall immediately surrender it to the Commissioner of Police.

35 Maximum penalty on summary conviction—20 penalty units or imprisonment for 1 year, or both.

PART 4—FIREARMS PROHIBITION ORDERS**Firearms prohibition orders**

39. (1) The Commissioner of Police may make an order prohibiting from having possession of or using firearms any person who (in the opinion of the Commissioner) is not fit, in the public interest, to be permitted to have possession of a firearm.

(2) Without limiting the generality of subsection (1), such an order may be made in respect of any person who had possession of or used a firearm immediately before its being seized under this or any other Act.

10 (3) A firearms prohibition order takes effect when it is served personally on the person to whom it is directed.

Effect of firearms prohibition order

40. (1) A person shall not possess or use a firearm in contravention of a firearms prohibition order that is in force.

15 Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

Maximum penalty on conviction on indictment—imprisonment for 10 years (if it is established beyond reasonable doubt that the firearm concerned was a pistol) or imprisonment for 5 years (if it is not so established).

20 (2) Without limiting the generality of subsection (1) and for the purposes only of that subsection, a firearm found in or on any premises shall, in the absence of proof to the contrary, be regarded to be possessed by any person subject to a firearms prohibition order who at the time of the finding or recently to that time was in or on or in occupation of the premises.

25 (3) A person shall not sell or give possession of a firearm to another person, knowing that the other person is prohibited from possessing firearms by a firearms prohibition order.

Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

30 Maximum penalty on conviction on indictment—imprisonment for 10 years (if it is established beyond reasonable doubt that the firearm concerned was a pistol) or imprisonment for 5 years (if it is not so established).

(4) In this section, “premises” includes any structure, vehicle, vessel or aircraft or any place, whether built on or not.

35 PART 5—APPEALS**Right to appeal**

41. (1) A person may appeal to a Local Court constituted by a Magistrate sitting alone against—

40 (a) the refusal of or failure by the Commissioner of Police to issue a licence or permit to the person; or

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- (b) a condition imposed by the Commissioner of Police on a licence or permit issued to the person; or
- (c) the revocation of a licence or permit issued to the person; or
- (d) a firearms prohibition order made against the person; or
- 5 (e) if the regulations so provide, the refusal or failure of the Commissioner of Police to grant an approval under the regulations to the person or the conditions imposed by the Commissioner of Police on any such approval.

(2) Appeals must be made within such periods as are fixed by the
10 regulations—

- (a) to the Local Court nearest the place of residence of the appellant; or
- (b) if the regulations provide for an appeal to be made to another Local Court—to that other Local Court.

15 Conduct of appeal

42. (1) An appeal shall be dealt with by the Local Court by way of a new hearing and new evidence or new information may be given on the appeal.

20 (2) A Local Court hearing an appeal is not bound by the rules of or practice as to evidence and may be informed of any matter in such manner as the Local Court thinks fit.

(3) Except as provided by this section, the procedure for an appeal is to be decided on by the Local Court hearing it.

25 (4) A Local Court, in determining an appeal, must have regard to this Act, the regulations, the circumstances of the case and the public interest.

(5) A Local Court may determine an appeal—

- (a) by dismissing it; or
- (b) by directing the Commissioner of Police to take such action under this Act or the regulations as the Local Court thinks appropriate to
30 dispose of the appeal.

Effect of appeal

43. (1) If an appeal is made to a Local Court against—

- (a) a condition imposed on a licence or permit; or
 - (b) a firearms prohibition order,
- 35 the condition or order continues in force until the appeal is determined by the Court, unless the Court otherwise orders.

(2) The decision of a Local Court on an appeal is final and binding on the appellant and the Commissioner of Police.

PART 6—SUPPLEMENTARY**False or misleading applications**

44. A person shall not, in or in connection with an application under this Act or the regulations, make a statement or provide information that
5 the person knows is false or misleading in a material particular.

Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

Contravention of conditions

45. A person to whom a licence or permit is issued shall not contravene
10 any requirement made by the conditions of the licence or permit.

Maximum penalty on summary conviction—50 penalty units.

Misuse of licences, permits or approvals

46. (1) A person shall not—

- 15 (a) falsely represent himself or herself to be the holder of an authority;
or
(b) forge or fraudulently alter an authority; or
(c) give possession of an authority to another person for the purpose of its being unlawfully used; or
(d) steal an authority; or
20 (e) have possession of a forged, fraudulently altered, borrowed or stolen authority.

Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

(2) In this section, “authority” means a licence or permit, or an approval
25 issued under the regulations, whether or not it is in force.

Altering or falsifying records

47. A person shall not, with intent to deceive—

- (a) alter any record required to be made or kept by or under the
regulations; or
30 (b) make a false or misleading entry in any such record.

Maximum penalty on summary conviction—50 penalty units or imprisonment for 2 years, or both.

Disposal of surrendered or seized firearms

48. (1) On an application made by a member of the Police Force or by
35 any person who claims to be the owner of a firearm surrendered to or seized by a member of the Police Force in accordance with this Act, a Local Court constituted by a Magistrate sitting alone may order that the firearm—

- (a) be forfeited to the Crown; or

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(b) be returned to that person; or

(c) be otherwise disposed of in such manner as the Court thinks fit.

(2) In this section, "firearm" does not include a prohibited weapon as defined in the Prohibited Weapons Act 1988.

5 Delegation

49. (1) The Commissioner of Police may delegate to an authorised person any of the Commissioner's powers, authorities, duties or functions under this Act or the regulations, other than this power of delegation.

10 (2) A delegate may sub-delegate to an authorised person any of the powers, authorities, duties or functions delegated by the Commissioner of Police if the delegate is authorised in writing to do so by the Commissioner.

(3) In this section, "authorised person" means—

(a) a member of the Police Force; or

(b) a public servant; or

15 (c) any other prescribed person.

Liability of parents and guardians

50. (1) If a person under the age of 18 years contravenes any provision of this Act or the regulations, each parent of the person shall be taken to have contravened the same provision if the parent knowingly authorised or
20 permitted the contravention.

(2) A parent may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the parent's child has been proceeded against or convicted under that provision.

25 (3) Nothing in this section affects any liability imposed on the parent's child for an offence committed by the child against this Act or the regulations.

(4) In this section, "parent" includes a guardian.

Offences by corporations

51. (1) If a corporation contravenes any provision of this Act or the
30 regulations, each person who is a director of the corporation or who is concerned in the management of the corporation shall be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

35 (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Proceedings for offences

5 **52. (1)** Proceedings for an offence against this Act or the regulations may be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.

(2) Despite subsection (1), an offence against this Act for which a penalty is provided if a conviction is obtained on indictment shall be dealt with
10 summarily before a Local Court only—

(a) if the prosecutor proposes that it be so dealt with; and

(b) while the Local Court is satisfied that it is proper for the offence to be so dealt with.

(3) In any other case, an offence against this Act for which such a penalty
15 is provided shall be dealt with as an indictable offence.

Time for laying information

53. An offence against this Act or the regulations may be dealt with in a summary manner before a Local Court if the information was laid within 1 year of the date on which the offence is alleged to have been committed.

20 Service by post

54. Any instrument required or authorised by this Act or the regulations to be served on a person by post is sufficiently addressed if it is addressed to the last address of the person known to the Commissioner of Police.

Evidentiary provisions

25 **55. (1)** A certificate signed by the Commissioner of Police or by a person holding a prescribed office certifying any one or more of the following:

(a) that a specified person was or was not, on a day or during a specified
30 period, the holder—

(i) of a specified licence or of a specified permit or approval under the regulations; or

(ii) of a licence, permit or approval for a specified firearm or other thing for which a licence, permit or approval is required under this Act or the regulations;

35 (b) that any such licence, permit or approval was or was not, on a day or during a specified period, subject to specified conditions;

(c) that a specified person was or was not, on a specified day or during a specified period, subject to a firearms prohibition order;

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(d) that a specified address was, on a specified date, the last address known to the Commissioner of Police of a specified person, is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.

- 5 (2) Any matter expressly required by this Act to be established beyond reasonable doubt is to be determined by the jury, if the offence concerned is tried before a jury.

Regulations

10 **56. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), regulations may be made for or with respect to any of the following matters:

- 15 (a) the acquisition, possession, storage, identification, maintenance, carrying, conveyance, testing and use of firearms;
- (b) training and supervision relating to firearms;
- (c) pistol clubs, and their members, and pistol ranges;
- (d) clubs and ranges for other firearms;
- 20 (e) the approval of shooting ranges and pistol clubs by the Commissioner of Police;
- (f) licences under this Act, duplicate licences under the regulations and permits and approvals under the regulations;
- (g) forms, records, notices and returns;
- 25 (h) fees payable under this Act or the regulations;
- (i) exempting persons from specified requirements of this Act or the regulations.

(3) Regulations may not be made requiring—

- (a) the registration of firearms, other than pistols; or
- 30 (b) the holder of a licence that authorises possession of a firearm to obtain any additional authority to authorise the holder—
- (i) to buy the firearm; or
- (ii) to buy firearm ammunition.

(4) A regulation may create an offence punishable by a penalty not 35 exceeding 50 penalty units.

(5) In this section, “firearm” includes—

- (a) any air gun or spear gun; and
- (b) any part of or for a firearm, an air gun or a spear gun.

Repeals

57. The Firearms and Dangerous Weapons Act 1973 and the regulations made under that Act are repealed.

Savings and transitional provisions

5 58. Schedule 1 has effect.

Amendment of Search Warrants Act 1985 No. 37, s. 5 (Application for warrant in respect of certain offences)

59. The Search Warrants Act 1985 is amended by omitting from section 5 (2) the definition of "firearms offence" and by inserting instead the following definition:

"firearms offence" means an offence under the Firearms Act 1988, the Prohibited Weapons Act 1988 or regulations under either of those Acts, being an offence committed in respect of a firearm or a prohibited weapon within the meaning of those Acts.

15 **SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 58)

Definitions

1. In this Schedule—

"current authority" means a licence, a permit or an approval or order—

20 (a) that was issued, granted or made under a provision of the former Act or of regulations made under the former Act, being a provision that has been repealed by this Act; and

(b) that was in force immediately before the provision was repealed, but does not include a permit authorising the possession of a prohibited weapon or prohibited article or a firearms prohibition order.

25 "former Act" means the Firearms and Dangerous Weapons Act 1973.

Saving of current firearms prohibition orders

2. A firearms prohibition order—

(a) that was made under section 69 (1) of the former Act; and

30 (b) that was in force immediately before that provision was repealed by this Act, shall be treated as a firearms prohibition order under this Act.

Saving of current licences etc.

3. A current authority shall be treated as an authority of the corresponding kind under this Act or the regulations.

35 **Conditions of current licences etc.**

4. (1) The conditions to which a current authority is subject shall be treated as having been imposed by the Commissioner of Police as if this Act had been in force when the authority was issued, granted or made.

*Firearms 1988*SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) This clause does not prevent any such condition from being changed or revoked in accordance with this Act.

Terms of certain current authorities

5 (1) Unless it is sooner surrendered or cancelled, a current authority that was issued for a term continues in force for the unexpired residue of the term.

(2) This clause does not prevent a current authority from being suspended in accordance with this Act.

Applications

10 6. (1) An application, under a repealed provision of the former Act or the regulations made under it, for a licence, a permit or an approval or order, being an application pending immediately before the repeal of the provision by this Act, shall be treated as having been made under the corresponding provision of this Act or the regulations.

(2) This clause does not apply to an application for a permit to authorise the possession of a prohibited weapon or prohibited article.

15 Appeals

7. An appeal under Part 3 of the former Act, being an appeal pending immediately before the repeal of that Part by this Act, shall be treated as having been made under Part 5.

Surrendered or seized firearms etc.

20 8. Anything surrendered or seized, or ordered to be forfeited or disposed of, under the former Act (except under section 56, 77, 78 or 78A) shall be treated as if it had been surrendered or seized, or ordered to be forfeited or disposed of, under this Act.

Evidentiary certificates

25 9. A certificate signed for the purposes of section 82 of the former Act (except a certificate relating to a permit for a prohibited weapon or article) shall be treated as having been signed for the purposes of section 55.

References to former Act etc.

30 10. Except as provided by the regulations, in any instrument (other than this Act, the Prohibited Weapons Act 1988, the Crimes (Firearms) Amendment Act 1988 or a regulation made under this Act)—

- (a) a reference to the former Act extends to this Act and the Prohibited Weapons Act 1988; and
- (b) a reference to the regulations made under the former Act extends to regulations made under this Act and regulations made under the Prohibited Weapons Act 1988; and
- 35 (c) a reference to a provision of the former Act or of a regulation made under the former Act extends to any corresponding provision—
 - (i) of this Act, the Prohibited Weapons Act 1988 or the Crimes Act 1900; or
 - (ii) of a regulation made under this Act or the Prohibited Weapons Act 1988.

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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Regulations**

11. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act;

5 Prohibited Weapons Act 1988;

Crimes (Firearms) Amendment Act 1988.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

10 (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

15 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.