

PROHIBITED WEAPONS BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Firearms Bill 1988.

The object of this Bill is to prohibit the possession of certain dangerous firearms and other weapons and articles. The proposed Act will replace similar provisions presently contained in the Firearms and Dangerous Weapons Act 1973 (the "1973 Act") which is intended to be repealed by the proposed Firearms Act 1988.

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. "Prohibited weapon" means anything described in Schedule 1 to the proposed Act. Regulations may be made to add items to that Schedule.

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).

PART 2—PROHIBITED WEAPONS AND PROHIBITED ARTICLES

Clause 5 makes it an offence for a person to possess or use a prohibited weapon, unless authorised by a permit or the regulations. The maximum penalty is a fine of \$5,000 or imprisonment for 2 years, or both (on summary conviction) or imprisonment for 14 years (on conviction on indictment).

Clause 6 makes it an offence for a person to possess a prohibited article (at present confined to handcuffs), unless authorised by a permit or the regulations. 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).

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Clause 7 requires a person who possesses a prohibited weapon or article to produce it and any permit authorising its possession on demand 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 8 requires a person who has or comes into possession of a prohibited weapon or article, and who ceases to be or is not authorised to possess it, to deliver the weapon or article to a person who is so authorised or surrender it to a member of the Police Force. The maximum penalty for not complying is a fine of \$5,000 or imprisonment for 2 years, or both.

PART 3—PERMITS

Clause 9 enables the Minister to issue a permit authorising possession of a prohibited weapon or article. The permit may be subject to conditions and may be revoked for any reason the Minister considers sufficient.

Clause 10 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 11 makes it an offence for the holder of a permit to contravene its conditions. The maximum penalty is a fine of \$5,000.

Clause 12 requires the holder of a permit, on demand by a member of the Police Force, to produce the permit for inspection or to state the holder's name and address. 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 13 requires the holder of a permit to surrender it as soon as it is revoked or expires. The maximum penalty for not complying is a fine of \$2,000 or imprisonment for 1 year, or both.

PART 4—SUPPLEMENTARY

Clause 14 requires a person who possesses a prohibited weapon or article acquired from another person to state the name and address of the other person and the date on which it was acquired on demand by a member of the Police Force. The maximum penalty for not complying is a fine of \$2,000 or imprisonment for 1 year, or both.

Clause 15 enables an application to be made to a Local Court in relation to a prohibited weapon or article surrendered or seized under the proposed Act or the proposed Firearms Act 1988. The Court may decide whether the weapon or article is to be forfeited, returned or otherwise disposed of.

Clause 16 makes the parent or guardian of a person under 18 who contravenes the proposed Act or the regulations made under it 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 17 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 for the offence on indictment only if the prosecutor consents and 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.

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Clause 18 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 19 allows certain certificates given by the Commissioner of Police to be admissible in evidence.

Clause 20 enables regulations to be made by the Governor-in-Council for the purposes of the proposed Act. The regulations may create an offence with a maximum penalty of \$5,000.

Clause 21 gives effect to Schedule 2 which contains savings and transitional provisions.

SCHEDULE 1—PROHIBITED WEAPONS

Schedule 1 contains a list of prohibited weapons.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

Schedule 2 contains provisions of a savings or transitional nature which convert permits for prohibited weapons or articles under the Firearms and Dangerous Weapons Act 1973 to permits under the proposed Act. Pending applications for permits may be treated as applications for permits under the proposed Act. Weapons or articles surrendered under section 56 of the 1973 Act are to be disposed of in accordance with the proposed Act.

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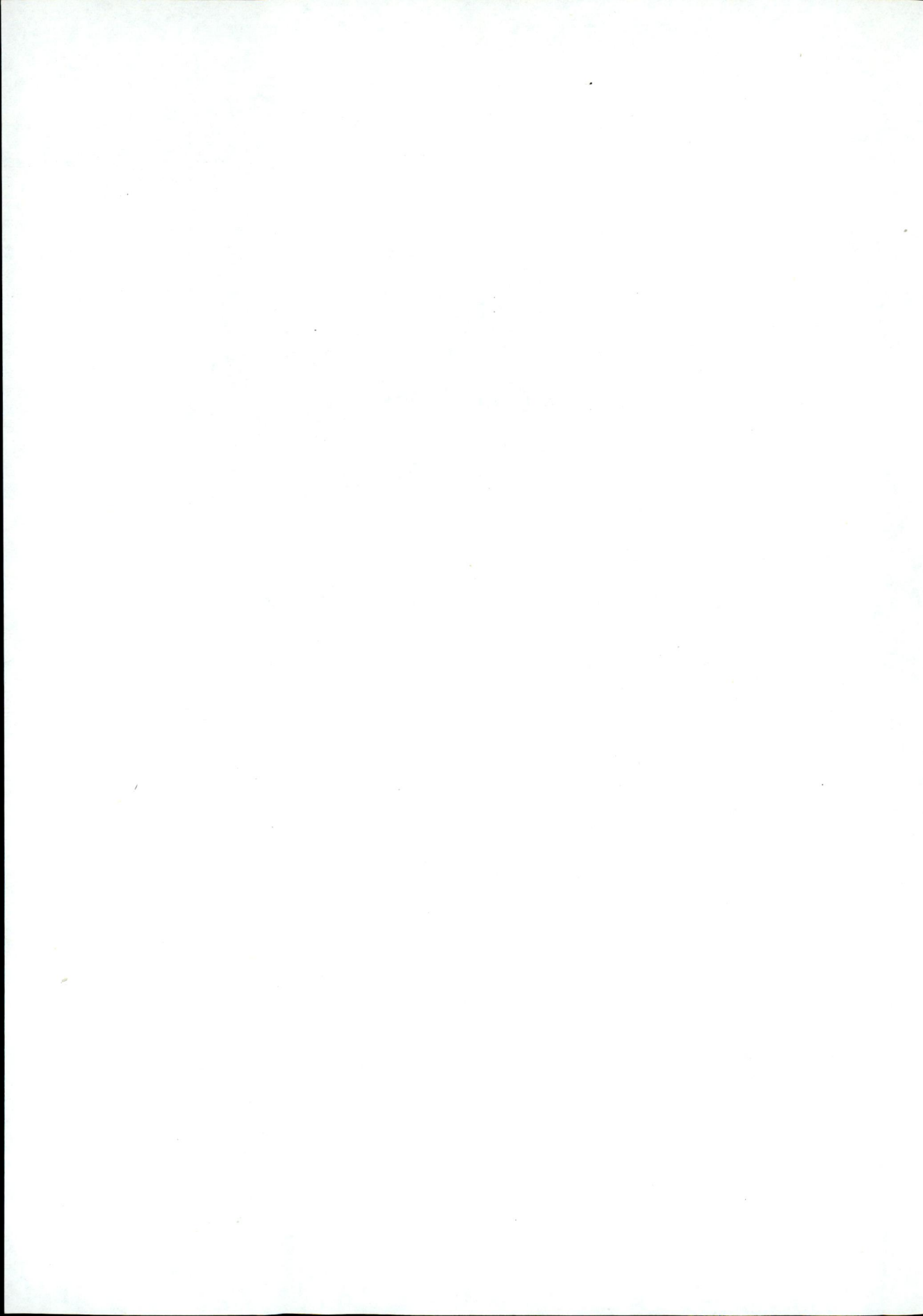
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SCHEDULE 1—PROHIBITED WEAPONS

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS



PROHIBITED WEAPONS BILL 1988

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to prohibit the possession of certain dangerous weapons and other articles; and for other purposes.

*Prohibited Weapons 1988***The Legislature of New South Wales enacts:****PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Prohibited Weapons Act 1988.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act—

10 “firearm” has the same meaning as in the Firearms Act 1988;

“permit” means a permit in force under Part 3;

“prohibited article” means—

15 (a) handcuffs, other than antique handcuffs or children’s toy handcuffs
(in each case of a type for the time being approved by the
Commissioner of Police); or

(b) any other article declared by the regulations to be a prohibited
article;

“prohibited weapon” means anything described in Schedule 1.

- (2) For the purposes of this Act—

20 (a) anything that would be a prohibited weapon or prohibited article if
it did not have something missing from it, or a defect or obstruction
in it, is to be regarded as a prohibited weapon or prohibited article;
and

25 (b) a person in or on (or in or on any part of) a vehicle, vessel or aircraft
in which there is a prohibited weapon or prohibited article is to be
regarded as having possession of the weapon or article unless the
person satisfies the Court otherwise; and

30 (c) if parts of a prohibited weapon or prohibited article are in the
possession of, or being carried by, two or more persons, each of them
is to be regarded as possessing or carrying the weapon or article.

- (3) For the purposes of this Act, possession of a prohibited weapon or
prohibited article includes a case in which a person knowingly—

(a) has custody of the weapon or article; or

(b) has the weapon or article in the custody of another person; or

35 (c) has the weapon or article in or on any premises, place, vehicle, vessel
or aircraft, whether or not belonging to or occupied by the person.

- (4) The Governor may, from time to time, by regulation amend
Schedule 1—

(a) by adding the name or a description of an article; or

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- (b) by amending a name or description of an article for the purpose of more accurately describing the article concerned.

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).

(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—

- 10 (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.

15 PART 2—PROHIBITED WEAPONS AND PROHIBITED ARTICLES**Possession or use of prohibited weapons**

5. (1) A person shall not—
- (a) possess a prohibited weapon; or
- (b) use a prohibited weapon,

20 unless authorised to do so by a permit or the regulations.

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

Maximum penalty on conviction on indictment—imprisonment for 14 years.

25 (2) In this section—

“use” includes fire or explode and, whether or not the weapon concerned is capable of being fired or exploded, cause a reasonable belief that it will be fired or exploded.

Possession of prohibited articles

30 6. A person shall not possess a prohibited article, unless authorised to do so by a permit or the regulations.

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

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

*Prohibited Weapons 1988***Inspection of prohibited weapons or articles by police**

7. (1) A person who possesses a prohibited weapon or prohibited article shall, on the demand of a member of the Police Force at any time, produce for inspection by that member—

- 5 (a) the weapon or article; and
 (b) any permit that authorises the person to possess the weapon or article.

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

- 10 (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.

- (3) In this section, a reference to a prohibited weapon or a prohibited article includes a reference to a part of a prohibited weapon or prohibited article.
- 15

Delivery to police by unauthorised holders

8. (1) A person—

- (a) who comes into possession of a prohibited weapon or prohibited article, but is not authorised by or under this Act to possess the weapon or article; or
 20 (b) who possesses a prohibited weapon or prohibited article and ceases to be so authorised to possess the weapon or article,

shall immediately deliver the weapon or article to a person who is authorised by a permit to possess it or surrender it to a member of the Police Force.

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

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

30 **PART 3—PERMITS**

Permits

9. (1) The Minister may issue a permit authorising—

- (a) the possession or the possession and use of a prohibited weapon; or
 (b) the possession of a prohibited article.

- 35 (2) A permit may include conditions providing for its expiration, limiting the authority it confers and imposing requirements on the person to whom it is issued.

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(3) The Minister may, for any reason the Minister considers sufficient, revoke a permit by causing written notice of its revocation to be served personally or by post on the person to whom it was issued.

(4) The person to whom a permit was issued may surrender the permit
5 for cancellation.

False or misleading applications

10. A person shall not, in or in connection with an application for a permit, make a statement or provide information that the person knows is false or misleading in a material particular.

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

Contravention of conditions

11. A person to whom a permit is issued shall not contravene any requirement made by the conditions of the permit.

15 Maximum penalty on summary conviction—50 penalty units.

Production of permit

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

20 (a) produce the permit for inspection by the member, if the person possesses it; or

(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.

25 (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 revoked permit

30 13. If a permit is revoked or expires, the person to whom it was issued shall immediately surrender it to the Commissioner of Police.

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

*Prohibited Weapons 1988***PART 4—SUPPLEMENTARY****Information to be supplied**

14. A person who has possession of a prohibited weapon or prohibited article acquired from another person shall, on demand made by a member
5 of the Police Force at any time, inform the member of—

- (a) the name and address of the person from whom the weapon or article was acquired; and
- (b) the date on which it was acquired.

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

Disposal of surrendered or seized weapons or articles

15. On an application made by a member of the Police Force or by any person who claims to be the owner of a prohibited weapon or prohibited article surrendered to or seized by a member of the Police Force in
15 accordance with this Act or the Firearms Act 1988, a Local Court constituted by a Magistrate sitting alone may order that the weapon or article—

- (a) be forfeited to the Crown; or
- (b) be returned to the person; or
- 20 (c) be otherwise disposed of in such manner as the Court thinks fit.

Liability of parents and guardians

16. (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
25 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.

30 (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.

Proceedings for offences

35 17. (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 resulting from a contravention of section 5, 6 or 7 shall be so dealt with only—

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

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(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 resulting from any such contravention shall be dealt with as an indictable offence.

5 Time for laying information

18. An offence against this Act or the regulations may be dealt with summarily 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.

Evidentiary provisions

10 19. 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 period, the holder of a permit (or of a permit for a specified weapon or article); or

15 (b) that any such permit was issued subject to specified conditions, is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.

Regulations

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

25 Savings and transitional provisions

21. Schedule 2 has effect.

SCHEDULE 1—PROHIBITED WEAPONS

(Sec. 3 (1))

- (1) A firearm—
- 30 (a) that is a machine gun, sub-machine gun, or other firearm capable of propelling projectiles in rapid succession during one pressure of the trigger; or
- (b) that substantially duplicates in appearance (regardless of calibre or manner of operation) a firearm referred to in paragraph (a), but that is not capable of propelling projectiles in rapid succession during one pressure of the trigger, but
- 35 (except as provided by item (2)) not including a self-loading rifle.

*Prohibited Weapons 1988*SCHEDULE 1—PROHIBITED WEAPONS—*continued*

(2) A firearm—

- (a) that is a self-loading rifle described (or the manufacturer of which is described) in the Table to this item, but only if designed to have, or fitted with, a pistol grip; or
- 5 (b) that substantially duplicates in appearance (regardless of calibre or manner of operation) a firearm referred to in paragraph (a); or
- (c) that is a self-loading rifle known as a Bingham; or
- (d) that is a self-loading rifle of or above .50 calibre.

TABLE

- 10 AK (Kalashnikov); AR (Armalite); EM1 (Enfield Model 1); EM2 (Enfield Model 2); Stoner Rifle System; FN (Fabrique Nationale); SIG (Swiss Industrial Company); H & K (Heckler and Koch); CETME (Compania de Estudios Tecnicos de Materiales Especiales); AAA (Australian Automatic Arms); Shiki Jidoju; BM-59 (Beretta Model 59); Madsen LAR; Leader Dynamics; Daewoo;
- 15 SAR 80 (Chartered Industries of Singapore).

(3) A firearm, not being a pistol, of the Uberti or Armi-Jager brands, or any similar firearm fitted with a revolving ammunition cylinder, other than a firearm manufactured prior to the year 1920.

20 (4) A firearm to which there is attached any article or device capable of muffling, reducing or stopping the noise created by firing the firearm.

(5) A firearm, not being a pistol, fitted with a stock which is specially designed so as to be readily detachable, or to operate on a swivel, folding or telescopic basis.

(6) A miniature pistol.

25 (7) A firearm made up in the form of a stylographic or propelling pen or pencil, capable of being used for the discharge of gas, bullets, shot, dye or pyrotechnic flares.

(8) A firearm which substantially duplicates in appearance a walking stick or walking cane.

(9) A firearm capable of discharging by any means any irritant matter in liquid, powder, gas or chemical form or any pyrotechnic flare or dye.

30 (10) Any explosive, incendiary, irritant or poison gas—

(a) bomb; or

(b) grenade; or

(c) rocket having a propellant charge of more than 100 grams; or

(d) missile having an explosive or incendiary charge of more than 7 grams; or

35 (e) mine,

or a similar device.

(11) A cannon or other weapon by whatever name known of a type which will expel a projectile by the action of an explosive or other propellant, and which has a barrel with a bore in excess of 10 gauge, other than—

40 (a) a firearm of the Very or rocket type designed and intended for use for life saving or distress signalling purposes; and

*Prohibited Weapons 1988*SCHEDULE 1—PROHIBITED WEAPONS—*continued*

- (b) an antique muzzle loading firearm; and
- (c) a rifle or shotgun, being a rifle or shotgun manufactured prior to the year 1920.
- (12) A firearm which, or part of which, has a dimension less than the minimum dimension prescribed for the firearm or part by the regulations.
- 5 (13) A spear gun having an overall length of less than 45 centimetres.
- (14) A crossbow, other than an antique crossbow.
- (15) A knife commonly known as a flick knife that has a blade which opens automatically by gravity or centrifugal force or by any pressure applied to a button, spring or device in or attached to the handle of the knife.
- 10 (16) A sheath knife that has a sheath which withdraws into its handle by gravity or centrifugal force or if pressure is applied to a button, spring or device attached to or forming part of the sheath, handle or blade of the knife.
- (17) A walking stick or walking cane containing a sword.
- (18) A riding crop containing a knife or stiletto.
- 15 (19) A device known as a Taser Self Defence Weapon or any similar device.
- (20) A device known as an Urban Skinner push dagger or any similar device.
- (21) A butterfly knife or any similar device.
- (22) A knife commonly known as a star knife or any similar device.
- (23) A flame thrower of military design or similar device.
- 20 (24) A device known as a Farallon Shark Dart or any similar device which is designed to expel, upon contact, any gas or other substance capable of causing bodily harm and which is reasonably capable of being carried concealed about the person.
- (25) A device known as a Saunders "Falcon" Hunting Sling or any other article or device in the nature of a hunting sling, catapult or slingshot which is designed for use
- 25 with, or a component part of which is, a brace which—
 - (a) fits or rests upon the forearm or upon another part of the body of the user; and
 - (b) supports the wrist against the tension of elastic material used to propel a projectile.
- (26) An article known as "The Bowen Knife Belt" or any article of similar design
- 30 capable of concealing or disguising a knife or any like article.
- (27) Any imitation or replica of a pistol, blank fire pistol, shortened firearm, machine gun, sub-machine gun, grenade, bomb, mine or similar device, unless it is of a type for the time being approved by the Commissioner of Police.
- (28) Any article or device of a type commonly known as a knuckle-duster or metal
- 35 knuckles or any article or device made or adapted for use as such.
- (29) A sap glove.
- (30) A studded glove.
- (31) Any article or device designed for attachment to a firearm for the purpose of muffling, reducing or stopping the noise created by firing the firearm.

*Prohibited Weapons 1988*SCHEDULE 1—PROHIBITED WEAPONS—*continued*

(32) Any dart capable of being projected from a blow-gun.

(33) A mace or any similar article other than a ceremonial mace made for and used solely as a symbol of authority on ceremonial occasions.

(34) Any article or device in the form of a flail in which the striking part is armed with spikes or studded with any protruding matter.

(35) A whip the lash of which is comprised wholly or partly of any form of metal.

(36) A cat-o'-nine tails or any similar article or device whether or not it has nine lashes.

(37) An article commonly known as kung fu sticks, otherwise known as nunchaku, or any similar article.

SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS

(Sec. 21)

Definition

1. In this Schedule—

15 “former Act” means the Firearms and Dangerous Weapons Act 1973.

Saving of former permits

2. (1) A permit—

(a) that was issued under section 54 or 55 of the former Act; and

20 (b) that was in force immediately before that provision was repealed by the Firearms Act 1988,

shall be treated as a permit under this Act.

(2) Any such permit relating to a prohibited article under the former Act that is a prohibited weapon under this Act shall be treated as relating to such a prohibited weapon.

Conditions of former permit

25 3. The conditions of any such permit shall, on the commencement of section 9, be treated as having been imposed under section 9.

Term of former permit

4. Unless it is sooner surrendered or cancelled, any such permit that was issued for a term continues in force for the unexpired residue of the term.

30 Applications

5. An application for a permit under section 54 or 55 of the former Act, being an application pending immediately before the commencement of section 9, shall be treated as being an application for a permit under section 9.

Disposal of surrendered weapon or article

35 6. Anything delivered to a member of the Police Force under section 56 of the former Act shall be treated as if it had been delivered to the member under section 8.

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SCHEDULE 2—SAVINGS AND TRANSITIONAL PROVISIONS—*continued***Evidentiary certificates**

7. (1) A certificate signed for the purposes of section 82 of the former Act (being a certificate relating to a permit for a prohibited weapon or prohibited article) shall be treated as having been signed for the purposes of section 19.
- 5 (2) Any such certificate relating to a prohibited article under the former Act that is a prohibited weapon under this Act shall be treated as relating to such a prohibited weapon.

