



ABN 22 870 745 340

Our Ref: 22186/33

7 November 2012

Ms Rachel Simpson  
Director, Committees  
NSW Legislative Assembly  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Attn: Jacqueline Isles

Dear Ms Simpson

**Re Use of anti-personnel spray and batons by Police Integrity Commission officers**

I refer to your letter dated 30 October 2012 and confirm that the Commission will attend the Roundtable Discussion to be held on 12 November next regarding use of anti-personnel spray and batons by Commission officers.

I would like to submit the following further information for the Committee's consideration.

Since the submission made by the Commission in August 2010 regarding anti-personnel spray and batons, the Commission has become aware that the removable ammunition magazines which are used in the semi-automatic pistols owned by the Commission are "prohibited weapons" under cl 4(4) of Schedule 1 of the *Weapons Prohibition Act 1998*.

This means that Commission officers who are exempt under s 124(1) of the *Police Integrity Commission Act 1996* ("PIC Act") from the requirement to obtain a permit to possess and use semi-automatic pistols (and ammunition for any such pistol), must nevertheless obtain a permit for the magazine which holds the ammunition. There are presently 19 such operational officers at the Commission. They are the officers who are designated by me as "approved former police officers". They must also obtain permits for anti-personnel spray and batons.

In addition to the 19 "approved former police officers" there are currently 9 operational officers at the Commission who are not "seconded police officers" or "approved former police officers". Those officers receive the same firearms and weapons training as the approved former police officers but do not enjoy the exemptions provided by s124 (1) and (2) of the PIC Act. Accordingly those officers are required to obtain permits for pistols, magazines, handcuffs, body armour, anti-personnel spray and batons.

The Firearms Registry of the NSW Police Force is responsible for issuing Commission permits. In August this year the Firearms Registry proposed that the Commission's circumstances would be more suitably addressed if the relevant Commission officers were granted the same exemptions as police officers and corrections officers under s 6 of the *Firearms Act 1996* and s6 of the *Weapons Prohibition Act 1998*. Attached is a copy of the proposal, which the Commission supports.

Section 6 of the *Firearms Act 1996* is as follows:

#### 6 Application of Act

- (1) This Act binds the Crown in right of New South Wales and, in 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 under this Act or the regulations only because of something done by the person while acting in the ordinary course of the person's duties:
- (a) as a police officer (or as a student police officer enrolled in the New South Wales Police Academy), or
  - (b) as a prison officer employed in the Department of Corrective Services, or
  - (c) as a police officer, or as a prison officer, of the Commonwealth, another State or a Territory, or
  - (d) 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 or joint military exercise in which the Commonwealth is engaged, or
  - (e) (Repealed)
  - (f) 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 or on 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 under section 7 or 7A only because of possessing a firearm or firearm part:
- (a) that is being conveyed or stored in the ordinary course of the person's duties in the business of a carrier or warehouse operator, or
  - (b) that has been seized by the person, under the authority of any Act or other law, in the course of the person's duties as an employee or officer of a government agency or public authority, or
  - (c) while acting in the ordinary course of the person's duties as a member (other than a police officer) of the Police Force.
- (4) A person who is a member of the Australian Navy Cadets, the Australian Cadet Corps or the Air Training 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:
- (a) for the purposes of activities of the Cadets or the Corps of which the person is a member, and
  - (b) in accordance with such guidelines as may be fixed by order of the Commissioner.

Section 6 of the *Weapons Prohibition Act 1998* is as follows:

#### 6 Application of Act

- (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 otherwise provided by this section).
- (2) A person is not guilty of an offence under this Act or the regulations only because of something done by the person while acting in the ordinary course of the person's duties:
- (a) as a police officer (or as a student police officer), or
  - (b) as a correctional officer employed in the Department of Corrective Services, or
  - (c) as a member of the police force, or as a custodial officer (however described), of the Commonwealth or of another State or Territory, or
  - (d) 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 or joint military exercise in which the Commonwealth is engaged.
- (3) A person is not guilty of an offence under Part 2 only because of possessing a prohibited weapon:
- (a) that is being conveyed or stored in the ordinary course of the person's duties in the business of a carrier or warehouse operator, or
  - (b) that has been seized by the person, under the authority of any Act or other law, in the course of the person's duties as an employee or officer of a government agency or public authority, or
  - (c) while acting in the ordinary course of the person's duties as a member (other than a police officer) of the NSW Police Force.
- (4) The regulations may exempt any person or class of persons from the operation of any provision or requirement of this Act in such circumstances, and subject to such conditions, as may be specified in the regulations. Any such regulation may create offences in relation to a failure to comply with a condition prescribed in relation to an exemption.

The exemptions provided by the above two sections mean that the relevant officers do not need to obtain individual permits in order to use pistols or prohibited weapons in the ordinary course of their duties. The officers would of course still be subject to the applicable policies and procedures of their own agency in relation to the use of same.

There is no policy reason, in my submission, why Commission operational officers should not be treated in the same way as police officers and the other officers named in s 6 of the relevant Acts, particularly as 19 of the 28 Commission officers in question are approved former police officers. (Section 123 of the PIC Act provides that a Commission investigator who is an approved former police officer has and may exercise all the functions of a NSW police officer).

Accordingly I respectfully request the Committee to give consideration and support to the amendments contained in the attached proposals in order to address all of the Commission's ongoing requirements in relation to permits for officers who are required to use pistols and prohibited weapons in the course of their operational duties as officers of the Commission.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Bruce James', written in a cursive style.

**The Hon Bruce James QC  
Commissioner**

## Firearms Act 1996 – No 46

### Section 6

#### *Application of the Act*

- 1. Proposal:** Amend section 6(2) of the *Firearms Act 1996* (the Act) to exempt individuals who are employed by the Police Integrity Commission (PIC) from the requirement to hold a firearms licence or permit where they possess and use a firearm during the course of their employment.
- 2. Context of Proposal:** Currently, section 124(1) of the *Police Integrity Commission Act 1996* provides Commission investigators and surveillance officers who are seconded police, or approved former police officers with an exemption from the requirement to be authorised by a licence or permit to possess or use semi automatic pistols (and accompanying ammunition) whilst acting in their capacity as officers of the Commission.
- 3. Rationale for Proposal:** PIC requires officers who are not afforded the benefit of the above exemption to have access to semi automatic pistols, and thus to date a permit has been required to be issued to both PIC and each individual person.

Further, officers may, during the course of their employment, be in possession of firearms other than semi automatic pistols which may have been seized for example. Although it may be submitted that officers are afforded the benefit of section 6(3)(b) of the Act, it would appear more practical and appropriate to provide a blanket exemption similar to that afforded to a police or prison officer.

- 4. Proposed by:** Firearms Registry, New South Wales Police Force.

# Weapons Prohibition Act 1998 – No 127

## Section 6

### *Application of the Act*

1. **Proposal:** Amend section 6(2) of the *Weapons Prohibition Act 1998* (the Act) to exempt individuals who are employed by the Police Integrity Commission (PIC) from the requirement to hold a permit where they possess and use a prohibited weapon during the course of their employment.
  
1. **Context of Proposal:** Currently, section 124(2) of the *Police Integrity Commission Act 1996* provides Commission investigators and surveillance officers who are seconded police, or approved former police officers with an exemption from the requirement to be authorised by a permit to possess or use handcuffs and body armour vests whilst acting in their capacity as officers of the Commission.
  
2. **Rationale for Proposal:** PIC requires officers who are not afforded the benefit of the above exemption to have access to handcuffs and body armour vests. Further, PIC requires officers to have access to additional items (not prescribed by the above exemption) which are also classified as prohibited weapons, such as oleoresin capsicum (OC) spray, and thus to date a prohibited weapon permit has been required to be issued to both PIC and each individual person.  
  
Further, officers may, during the course of their employment, be in possession of prohibited weapons other than handcuffs and vests which may have been seized for example. Although it may be submitted that officers are afforded the benefit of section 6(3)(b) of the Act, it would appear more practical and appropriate to provide a blanket exemption similar to that afforded to a police or prison officer.
  
4. **Proposed by:** Firearms Registry, New South Wales Police Force.