

WEAPONS AMENDMENT BILL 1993

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The *Weapons Act 1990* was passed in September 1990 and was progressively proclaimed during 1991, being fully proclaimed by 1 January 1992. The scope of this Act was to consolidate and amend the laws regulating or prohibiting the purchase, possession, use, carrying and sale of certain weapons and articles. It also provided for the prevention of the misuse of weapons and other related purposes. The *Weapons Amendment Bill 1993* has three objectives, (1) to improve the operational effectiveness of the Weapons Act, (2) to adopt the resolution of the Australian Police Ministers' Council on reciprocal licensing, (3) redrafting in accordance with legislative standards aimed at preserving and enhancing the individual's rights and liberties, and with current drafting practice.

Reasons for Bill

Since its introduction a number of technical problems affecting the operation and efficiency of the Act have been identified. The Bill makes the necessary technical amendments to ensure ongoing effective operation of the legislation.

Estimated Cost for Government Implementation

There are no staffing or program costs.

Consultation

Consultation was carried out by the Queensland Police Service both internally and with relevant government agencies. Submissions were also received from a number of peak community representative groups, including the Sporting Shooters Association, Firearms Dealers Association, Arms Collectors Guild, Field Long Bow Association and the Theatrical Ordinance Suppliers.

Notes on Provisions

Clause 1 states the short title of the Act.

Clause 2 provides for the commencement of the Act.

Clause 3 provides that the *Weapons Act 1990* is amended as set out in the Act.

Clause 4 omission of section 1.3 and 1.4.

Clause 5 Amendment to section 1.5 (Application of Act)

— amends exclusions to the Act under section 1.5 “Application of the Act” to exclude government and privately contracted corrective services officers and persons undergoing training to become government and privately contracted custodial correctional officers.

— extends section 1.5 “exclusions” to persons training to become security guards when on a prescribed course and under the supervision of a weapons’ trainer.

— omits section 1.5(2) to accord with 1991 amendments to the *Acts Interpretation Act 1954* which make the provision unnecessary.

Clause 6 Amendment of section 1.6 (Interpretation)

— expressly defines certain terms used within the Act as well as omitting those no longer considered necessary and revises other definitions to accord with current drafting practice.

— the definition of the term “firearm” is expanded to include firearms which are incapable of operation as the result of minor broken mechanism/s or due to the gun being disassembled. This corrects an inadvertent omission during the development of the Weapons Act and repeats the situation under the Firearms and Offensive Weapons Act.

— in addition the definition of “firearm” will exclude certain items which were administratively excluded from the licensing process: including a powerhead, explosive tool, captive bolt humane killer, speargun, longbow or crossbow or a replica of a speargun, longbow or crossbow.

— the definition of the term “replica” is extended beyond a facsimile to include ‘copies’ of weapons.

— a shooting gallery is defined to include a place used for paint pellet sports.

Clause 7 Amendment of section 2.2 (Limitation of issue of a licence)

— revises section 2.2 in accordance with current drafting practice.

— extends the limitation on issue of licence to persons subject to “interstate orders” within the meaning of the *Domestic Violence (Family Protection) Act 1989*.

Clause 8 Amendment of section 2.7 (Authorised officer determines application)

— removes the requirement of the “cooling off” period under section 2.7 for the issue of a security guard’s weapons licence where the security guard already has another licence under the Act.

Clause 9 Replacement of section 2.20 (Visitors to Queensland)

— amended to include special recognition of interstate and territory firearms licences. A person seeking special recognition must establish an entitlement to the weapon in the normal place of residence and must only be visiting Queensland. A power then exists where the person may (a discretionary power within the meaning of s.32CA(1) of *The Acts Interpretation Act 1954*) be issued with a licence.

Clause 10 Amendment of sections 3.2 (Training Minors), 3.3 (Use of weapons by unlicensed persons) and replacement of sections 3.4 (Weapons on private property) to 3.7B (Possession of weapon whilst under the influence of liquor or drugs).

s.3.2 (Training Minors)

— will provide for a revised section in accordance with current drafting practice.

s.3.3 (Use of weapons by unlicensed persons)

— will replace and revise the old provisions in accordance with current drafting practice.

s.3.4 (Use of weapons by unlicensed persons in primary production)

— will replace and revise the current provisions in accordance with current drafting practice.

— will extend the provisions to exempt unlicensed employees and members of the immediate family of a primary producer on any land used for primary production, to use a weapon under the authority of a licensed primary producer.

s.3.5 (Use of weapons by unlicensed persons at a shooting gallery)

— will provide for use of a weapon in accordance with the conditions of approval of the shooting gallery.

s.3.6 (Weapons etc. on private property)

— will replace and revise old provisions in accordance with current drafting practice.

— will include definitions under the section for “owner”, “private land” and an extension of the definition of “weapon” to assist in application of the section.

— will provide for exculpation of persons who have a “reasonable excuse”.

s.3.7 (Weapons etc. in public places)

— will replace and revise current provisions in accordance with current drafting practice.

— will provide for an extension of the definition of “weapon” to assist in the application of this section.

s.3.7A (Dangerous conduct with weapon prohibited generally)

- will replace and revise old provisions in accordance with current drafting practice.
- will extend the offence to include dangerous conduct that is likely to cause death or injury to a person.

s.3.7B (Possession of weapon etc. under influence of liquor or drug)

- will replace and revise current provisions in accordance with current drafting practice.
- will provide for an extension of the definition of “weapon” for this section.

Clause 11 s.3.30 (Deactivation of collector’s weapons)

- will replace and revise old provisions in accordance with current drafting practice.
- will provide for an exemption of antique firearms which are not a Schedule 1 weapon.

Clause 12 Replacement of Division of Part 3 (Approved Clubs) and insertion of Division 4—Approved Shooting Clubs (ss. 3.39 to 3.48D) and Division 4A—Approved Ranges.

s.3.39 (Only an approved shooting club may conduct target shooting with Schedule 2 weapons)

- new section.

s.3.40 (Application for shooting club permit)

- new section, will provide for application to be made to an ‘authorised officer’.
- will provide that the permit is for the purpose of target shooting.
- will provide that applications must be in the approved form, accompanied by the prescribed fee and with required particulars.

s.3.41 (Authorised officer may grant or refuse a shooting club permit)

— new section, will provide that an authorised officer may grant the shooting club permit when satisfied as to the purpose of the shooting club, appropriate range facilities, compliance with s.3.40, the governing body and a nominated person are ‘fit and proper persons’, and compliance with s.3.44 (where necessary).

s.3.42 (Authorised officer to give reasons for refusing to grant permit)

— new section, will provide for written reasons to be given.

s.3.43 (Conditions to apply to permit)

— new section, will provide for discretionary conditions on ranges, having regard to the protection of persons and property.

s.3.44 (A nominee is required for some applications)

— new section, will provide for a nominee to be required in circumstances where an application for a shooting club permit is made by an unincorporated association of persons, or a shooting club prescribed by regulation.

s.3.45 (Duty of nominee)

— new section, will provide that a nominee must exercise reasonable diligence to ensure certain persons comply with Division 4 and Division 4A.

s.3.46 (Change of nominee)

— new section, will provide for obligations and procedural steps to be taken when there is to be a new nominee.

s.3.47 (How to decide whether an individual is a fit and proper person)

— new section, will provide for matters an authorised officer may have regard to and reports an authorised officer may obtain in order to determine whether an individual is a fit and proper person for this Division.

s.3.48 (Authorised officer may amend permit conditions)

— new section, will provide when conditions may be amended, matters an authorised officer must have regard to, procedural requirements and when amendments will take effect.

s.3.48A (Authorised officer may make temporary amendment of conditions)

— new section, will provide when temporary amendment of conditions may be made, matters an authorised officer may have regard to, procedural requirements and when amendments will take effect.

s.3.48B (Revoking or suspending a permit)

— new section, will provide for revocation or suspension of a permit when the Act or a condition of the permit is contravened, or where it is likely that a person will be injured or suffer loss. The section will also provide for procedural matters and the effect of revocation or suspension of the permit.

s.3.48C (Club must keep range register books)

— new section, will provide when a register must be available, when particulars must be entered and a penalty for false or misleading entries.

s.3.48D (Service of notice on approved shooting club)

— new section, will provide for service on a nominee and saves the operation of other laws with respect to service.

s.3.48E (Application for range approval)

— new section, will provide that an authorised officer may approve ranges for target shooting and details required in an application.

s.3.48F (Limits on approvals)

— new section, will provide for approval of Schedule 2 and Schedule 3 ranges, a range cannot be approved for both Schedule 2 and Schedule 3 weapons, and Schedule 2 ranges will be approved with Schedule 2 shooting clubs.

s.3.48G (Authorised officer may grant or refuse range approval)

— new section, will provide that an authorised officer may in the approved form approve ranges for target shooting ranges which are appropriate having regard to the need to protect persons and property, in line with ss. 3.48E and 3.48F.

s.3.48H (Authorised officer to give reasons for refusing to grant approval)

— new section, will provide that written reason must be given for refusal to approve a range.

s.3.48I (Conditions to apply to approval)

— new section, will provide that certain conditions (in writing) may be imposed on the range and as prescribed by regulation, having regard to the protection of persons and property.

s.3.48J (Authorised officer may amend approval conditions)

— new section, will provide when amendment may be made, having regard to the protection of persons and property, submissions by a range operator, the procedure to be followed and the effect of amendments.

s.3.48K (Authorised officer may make temporary amendment of condition)

— new section, will provide when temporary amendment may be made, having regard to the protection of persons and property, the procedure to be followed and the effect of amendments.

s.3.48L (Revoking or suspending approval)

— new section, will provide when an authorised officer may revoke or suspend an approval, that being when the Act is contravened or to protect a person or property. Procedural requirements and the effect of revocation or suspension are also included.

s.3.48M (Range can be dealt with in conjunction with shooting club permit)

— new section, will provide that range and shooting club permits may be included in the same application under Division 4.

s.3.48N (Responsibilities of range operator)

— new section, will provide for a definition of a “range operator” and supervision responsibilities of the range operator on a range in regard to range officers and steps to be taken to ensure that the Act is not contravened.

s.3.48O (Responsibility of range officer)

— new section, will provide that reasonable steps must be taken to ensure that the Act is not contravened.

s.3.48P (Responsibilities of person attending an approved range)

— new section, will provide when a person may possess or use a weapon if the possession or use is authorised as set out therein, or permitted by a range officer and within the conditions of range approval and having regard to the protection of persons and property.

s.3.48Q (Possession of Schedule 1 weapon on approved range is unlawful)

— new section, stating Schedule 1 weapons are not allowed on ranges.

Clause 13 Amendment of s.3.50 (Conditions of approval)

— applies the relevant requirements of section 3.50 (shooting gallery conditions) when a shooting gallery is used solely for paint pellet sports.

Clause 14 Amendment of s.3.52 (Conduct of persons resorting to shooting galleries)

— applies the relevant requirements of section 3.52 (persons resorting to shooting galleries) when the shooting gallery is used solely for paint pellet sports.

Clause 15 Replacement of s.3.56 (Use of theatrical ordnance supplies)

— will provide that a theatrical ordnance supplier may only supply a weapon for use in theatrical, film or television production.

Clause 16 s.3.56A (Weapons may be supplied for theatre, film and television productions)

— new section, will provide definitions of ‘licensee’ and ‘personal supervision’ for the purpose of application to the section, also when personal supervision is necessary, the appropriate steps to be taken when a weapon is not properly used, and “when” a weapon is properly used.

Clause 17 Replaces Division 7 of Part 3 (Security Guards) and inserts Division 7 (Security guards and security organisations)

s.3.60 (An armed security guard must be licensed)

— new section, will provide that a security guard must have a security guard's weapons licence.

s.3.61 (Training courses for security guards)

— new section, will provide that for a person to be licensed they must pass an approved training course, as often as required by regulation. Failure to do so may result in cancellation or suspension of their licence.

s.3.62 (Control over way security guard carries weapon)

— new section, will provide that weapons must be carried as prescribed by regulation.

s.3.63 (Security guard must record prescribed information)

— new section, will provide for recording of possession and use of the weapon in a register book as prescribed by regulation.

s.3.64 (Obligation of security organisation in relation to the possession or use of a weapon)

— new section, will provide a definition of "employee" for the purpose of application in this section. Sets out when a security organisation and their employees must not possess weapons.

s.3.65 (Obligation of security organisation in relation to register)

— new section, will provide for keeping, recording and availability of a register re possession and use of weapons by the security organisation. A regulation may prescribe the type of information to be kept in the register, and provision is made for an offence for recording false or misleading information.

s.3.66 (Obligation of members of governing body of security organisation)

— new section, will provide for compliance with this Division.

s.3.67 (Inspection by police officer)

- new section, will provide that when a police officer inspects a register book of a security organisation, the police officer may make appropriate endorsements therein.

Clause 18 Amendment of s.4.6 (Powers in respect to premises specified in licences or approvals under Act)

- omits s.4.6(a) and inserts a new s.4.6(a) which is redrafted in accordance with current drafting practice and fundamental legislative principles.

Clause 19 Amendment of s.4.9 (Seizure and detention of weapons etc.)

- omits s.4.9(1) and inserts a new s.4.9(1) and (1A) in accordance with current drafting practice and extends the current provision to include seizure and retention of a replica of a weapon, a powerhead, explosive tool, captive bolt humane killer, speargun, longbow or crossbow, a replica of a speargun, longbow or crossbow or thing mentioned in s.3.15.

Clause 20 Replacement of s.5.1 (Appeals)

- omits s.5.1 and replaces and revises it in three new sections in accordance with current drafting practice.

s.5.1 (Right to appeal against decision)

- will provide what sections may be appealed against, where the appeal may be lodged, when it must be lodged and procedural matters with respect to the appeal.

s.5.1A (Incidents of Appeal)

- will provide the manner in which an appeal may be treated in the Magistrates Court.

s.5.1B (Appellant may carry on business pending appeal)

- new section.

Clause 21 Amendment of s.6.1 (Detention and disposal of weapons in police custody)

— will provide an amendment to s.6.1(1)(c) and (4) to allow disposal of seized items (in certain circumstances) after 3 months, such disposal being to the Crown and as determined by the Commissioner.

Clause 22 Amendment of s.6.2 (Disqualification by a court)

— will amend s.6.2(1)(c) to allow an extension of the court's powers to order forfeiture to the Crown, that being when a person is convicted of an offence with respect to a weapon, ammunition, speargun, longbow or crossbow.

Clause 23 Insertion of new s.6.4A (False or misleading information)

— will provide a definition for “application” and “notice” to assist in application of these terms within the section. This section will provide for an offence with respect to a false or misleading statement or omission of a statement with respect to notices and applications.

Clause 24 Amendment of s.6.9 (Evidentiary provisions)

— will provide for the omission of section 6.9(1)(c) to (e) and insertion of new provisions. New provisions will relate to evidence of places, approved shooting clubs, age of a person, whether or not a person held a licence, permit or approval and when certificates may be evidence of a matter. The section will also provide when the court may determine the nature of certain things which are produced to the court without opinion evidence.

Clause 25 Amendment of s.6.10 (Service of notice, orders, etc.)

— extends service of notice to range operators.

Clause 26 Omission of Schedule 5.

Clause 27 Insertion of new Part 7.

Part 7—Transitional Provisions and Saving Provisions

s.7.1 (Savings of licences issued under *Firearms and Offensive Weapons Act 1979*)

— replaced and revised, in accordance with current drafting practice. This represents a change in formatting, but no change in law.

s.7.2 (Savings of certificates)

— replaced and revised, in accordance with current drafting practice. This represents a change in formatting, but no change in law.

s.7.3 (Savings of approvals)

— replaced and revised, in accordance with current drafting practice. This represents a change in formatting, but no change in law.

s.7.4 (Numbering and renumbering of Act)

Schedule

There are 43 ancillary matters, these are in the majority simply amending provisions in accordance with current drafting practice e.g. omit 'prescribed', insert 'approved'.

The only minor amendment of any significance is that a miniature cannon has been removed from Schedule 2 and placed in Schedule 3.