

WEAPONS AMENDMENT BILL 1997

EXPLANATORY NOTE

GENERAL OUTLINE

Objective of the Legislation

The legislation seeks to amend the existing *Weapons Act 1990* to correct a number of weaknesses in the Act and its operation, and to achieve a number of new policy outcomes. The new policy outcomes sought are:

- relocation of the schedule of weapons from the body of the Act to a new Regulation and protection of the Regulation from automatic expiry;
- with the exception of provisions relating to safe handling and storage, government service entities are to be exempted from the provisions of the Act, provided that certain reporting requirements are met. Government service entities is to encompass government owned corporations and entities engaged by government to provide government services;
- persons in possession of a weapon are to be required to report the loss or theft of the weapon to a police officer;
- exemption from the Act for members of cadet units who use firearms in the course of activities of a Cadet Corps. When a Cadet Corps uses a firearm not owned by the Commonwealth the units or members are not covered by Commonwealth legislation;
- category A, B, C and H weapons which have been rendered permanently inoperable are to be treated in the same manner as replica firearms. Category C and D weapons, which includes semi-automatic and military style firearms, will remain subject to licensing requirements, regardless of whether they have been rendered permanently inoperable;
- the power to suspend a licensee will be extended to situations in

which the authorised officer suspects that a licensee may no longer be a fit and proper person;

- minimum ages will be applied to persons using shooting galleries. For general shooting galleries this will be 11 years, which is consistent with the general licensing scheme of the Act. For shooting galleries at which paint pellet sports are played, the minimum age will be 15 years.
- employees of armourers, dealers and theatrical ordnance suppliers are to be required to have a licence under the Act. This will ensure that employees who have access to firearms have been vetted by the Police Service;
- at the end of the amnesty period, existing licences will not expire, provided that the licensee has made an application for a new licence. This provision is to operate for a limited time only to allow the Police Service to deal with applications received close to the end of the amnesty period.;
- landowners who sell permission to shoot on their land, or who issue more than 50 permissions are to be required to maintain a register of permissions;
- persons attending an approved range are to be required to comply with a lawful direction of a range officer;
- self employed security guards are to be required to maintain a firearms register in the same manner as a security organisation presently does;
- an offence is to be created of carrying a knife in a public place without a reasonable excuse. A further offence is to be created of carrying a knife in a night club, regardless of the excuse;
- the legislation is to make provision to allow an authorised officer to release information about a person to a doctor or psychologist. The information may be released to assist the doctor or psychologist in forming an opinion as to whether the person is suitable to have possession of a firearm.

The legislation also seeks to amend the *Drugs Misuse Act 1986* and the *Statutory Instruments Act 1992*. The purpose of these amendments will be to locate all subordinate legislation which is exempted from automatic expiry in a schedule to the Statutory Instruments Act.

Means of Achieving Policy Objectives

The objectives listed are to be achieved principally by amendment to the Weapons Act. As indicated, consequential amendments are necessary to the Drugs Misuse Act and the Statutory Instruments Act.

It will also be necessary to make significant amendments to the *Weapons Regulation 1996*. This is to be done for concurrent commencement with this legislation.

Estimated Cost of Implementation for Government

The implementation of this legislation will not entail any cost to government.

Consistency with Fundamental Legislative Principles

The legislation authorises certain police officers to release to a doctor or psychologist certain information about a person applying for a licence. The information which can be released is anything which may assist a doctor or psychologist to determine if the applicant is a fit and proper person to hold a licence.

This might be seen as adversely affecting the rights and liberties of the subject person and as such a breach of fundamental legislative principles. This has been considered, and it remains necessary, in the public interest, to create such a provision. It is clearly desirable that a practitioner who is providing an opinion about a person's fitness to possess a firearm should be in possession of all information about the person which may be relevant to the decision. To do otherwise would mean that public safety is subordinate to what is, at best, a vaguely defined personal right to privacy.

This would be contrary to the principles and objects of the Act.

Consultation conducted in Development of the Bill

The following bodies have been consulted in relation to the issues included in the Bill which are of concern to them:

- Department of Natural Resources
- Department of Environment;

- Department of Primary Industries, Fisheries and Forestry;
- The Queensland Museum

NOTES ON PROVISIONS

PART ONE—PRELIMINARY

Clauses 1 and 2 specify the short title of the proposed Act and provide for its commencement

PART TWO—AMENDMENT OF THE *WEAPONS ACT* *1990*

Act amended

Clause 3—identifies the Weapons Act as the Act being amended by this part.

Amendment of s 2 (Application of Act)

Clause 4(1)—amends section 2(a) to include members of military cadet groups in the exemptions to the Act.

Clause 4(2)—omits sections 2(f) and 2(j). These sections presently provide exemptions from the Act for Corrective Services officers and staff of government museums. The exemptions available to these entities are extended to a wider range of government entities. The provision is redrafted and outlined in the new sections 2(2) to (8) discussed below.

Clause 4(3)—amends section 2(g) to remove a reference to persons training to become security guards. This has the effect of widening the exemption to any person engaged in training to obtain a licence under the

Act.

Clause 4(4)—inserts the word “or” at the end of each paragraph in this section where necessary. This has the effect of clarifying that each of the provisions stands alone and are not intended to be cumulative.

Clause 4(5)—inserts new sub-sections (2) to (8). These provisions create a scheme of exemptions from the Act for government departments and other entities performing functions for or on behalf of the government.

Proposed section 2(2) exempts government service entities and their employees from the operations of the Act, when the possession or use of a weapon is necessary in carrying out the entity’s function.

Proposed section 2(3) provides that the exemption granted to government entities does not extend to an exemption from the safe handling requirements of the Act and Regulation. The exemption is also subject to certain conditions being met. These are outlined in proposed sub-section (4).

Proposed section 2(4) provides that the exemption granted to government entities applies only if the entity meets certain conditions. These are that the entity must:

- notify the Commissioner of Police of the acquisition and disposal of any weapon;
- maintain a register which records the storage place of the weapon and each time a weapon is issued to an employee and returned;
- notify the Commissioner of Police of the identity of any employee to whom it is proposed to issue a weapon;
- before issuing a weapon, be satisfied that the employee holds a licence under the Act, is trained in the use of the weapon, and necessarily requires the weapon in the performance of duty.

Proposed section 2(5) requires that an employee of a government service entity may be issued with a weapon even if the employee’s licence does not authorise possession of the category of weapon issued. For example, an employee of the Department of Primary Industries may hold a firearms licence authorising possession of category A and B weapons. That employee may be issued with a

Category C firearm in the performance of duty.

Proposed sections 2(6) and (7) exclude prescribed service entities and their employees from a specific provision of sub-section 2(4). The effect of this will be that employees of a prescribed entity will not be required to have firearms licences in their own right before the employee may issue firearms to them. This provision will apply to the Corrective Services Commission and any other entity prescribed in Regulation. They are intended to apply to government and private entities which manage correctional facilities. In these cases, the training undertaken is more stringent than the training normally necessary to obtain a licence, and therefore requiring an employee to have a licence is not necessary.

Proposed section 2(8) defines “government service entity” as any department of the State Government, a State or Commonwealth museum, the Corrective Services Commission, or another entity prescribed under regulation. Government owned corporations, or private organisations engaged by the State to provide a government service may be prescribed in terms of this section.

Amendment of s 5 (Definitions)

Clause 5(1)—omits a number of existing definitions.

Clause 5(2)—provides amended definitions of the terms omitted.

“Ammunition” is amended to use the definition provided in the *Explosives Act 1952*. This is a ‘sign-post’ definition which uses the definition already developed in another Act. The purpose for doing so, rather than developing a new definition, is that the *Explosives Act* is the principal legislation regulating the purchase, possession and storage of explosives, of which ammunition is included. The *Weapons Act* deals with ammunition in a very limited way, and relies on the provisions of the *Explosives Act* to regulate purchase and storage.

Defining the term in this way avoids the necessity to develop policy specific to the *Weapons Act*, and taps into the policy already developed for what is the principal regulatory scheme. Attempting to develop a new definition creates a risk of developing two schemes which are inconsistent, or which may over time become inconsistent. There is also a further risk that any body of law which has developed around

the existing Explosives Act definition may not be applicable to this Act after an attempt to redefine the term.

“Antique firearm” is amended to include firearms manufactured prior to 1900 and which are not designed to discharge commercially available cartridge ammunition. The words “commercially available” have been added as some antique firearms are designed to accept cartridge ammunition. Where cartridge ammunition is not commercially available the firearm is included in the definition of antique, and is therefore excluded from the scheme of the Act (see definition of “firearm”).

“Armourer” is amended to include the manufacture and modification of weapons as the business of an armourer.

“Category A” through to “Category R” inclusive, are redefined to reflect the removal of the categories from the Act and their replacement in the *Weapons Categories Regulation 1997*’.

“Public place” is now defined. Because this Bill creates a new offence of carrying a knife in a public place, it has become necessary to define the term.

“Purchase” is defined to mean obtain under a sale. This has been inserted to give the term a meaning which is complementary to “sell”, which is also newly defined in this clause.

“Sell” is now defined. Section 36 of the Act creates an offence of selling a weapon to a person unless the sale occurs under certain circumstances. One of those circumstances is that the purchaser has a permit to acquire the weapon. In some cases dealers have passed possession of a firearm to a customer after a sale has been negotiated, but before a permit to acquire has been obtained by the purchaser. The supply of the firearm is said to be a ‘loan’ until the permit is obtained. To overcome these types of arrangements, the term “sale” is now defined, and includes an agreement to sell.

Clause 5(3)—amends the definition of “major component part” by inserting a comma after the word “barrel”. The purpose of this is to correct a drafting error so that “barrel” and “breech bolt” are clearly two distinct items.

Clause 5(4)—amends the definition of “Weapon” to include firearms in the definition, as well as to reflect the changed location of the weapons

categories.

Insertion of new ss 6A and 6B

Clause 6—inserts proposed sections 6A and 6B

Proposed section 6A provides definitions of “replica of a weapon’ and “replica”. The Act currently defines only the term “replica”. It was seen as necessary to provide definitions of both, as the two terms are used to mean different things throughout the Act. In some cases the term “replica’ is used to mean a replica of any weapon. In other instances the term is applied to a specific item, such as a replica of a speargun, which would not normally fall within the definition of a weapon.

This definition also now includes permanently inoperable category A, B, C and H weapons. This has the effect of removing items of this type from the definition of a firearm, and therefore from the licensing and registration scheme. This recognises that permanently inoperable firearms of this type are largely analogous to replicas and should be subject to the same regulatory burden.

Proposed section 6B provides a new definition of the term “security guard”. The amended definition takes into account that a security guard may be protecting his or her own property, and recognises that some licence holders have obtained firearms licences to allow them to protect their own property. This has tended to apply to persons carrying on a business in which large sums of cash or other valuables are regularly carried. These licensees are acting as security guards, but do not undertake the same level of training as a security guard.

This amendment will include persons such as this in the definition of security guard, the result will be that a person who wishes to obtain a firearm to protect his or her property, rather than engage a trained security guard, will be required to undergo the same training as a guard. The definition is a wide one, and will include a wide range of persons who are employed in occupations which entail watching over or guarding property. The vast majority of those persons are not intended to be covered by the provisions of the Act. It is only when those persons seek to carry a firearm in the course of their duties that the Act will create any requirements on them

Amendment of s 7 (How a firearm is made “permanently inoperable”)

Clause 7—inserts two further subsections for Section . This section presently outlines that a firearm is permanently inoperable if it is rendered so in the manner prescribed in the regulation. This clause

Proposed subsection (2) deems that a firearm is not rendered permanently inoperable unless certified as such by an armourer or other person approved by the Commissioner.

Proposed subsection (3) requires that the Commissioner may only approve a person to perform this function only if satisfied that the person has the adequate expertise or experience to fulfil the function.

Amendment of s 10 (Limitations on issue of licence)

Clause 8(1)—replaces section 10(4) to widen the range of circumstances under which a person can be considered to have adequate knowledge of firearms safety practices. Circumstances proposed for inclusion are:

- holding an authority in another jurisdiction, or
- completion of a course at least equivalent to that required of new licence applicants.

This will allow the holder of a current licence in another jurisdiction to avoid having to undertake a course in firearms safety on moving to Queensland. Persons who have completed courses which are equivalent or better than the course required of new applicants will also be able to avoid a further basic course. This might include for example a person qualified by the military who seeks a civilian licence under this Act.

Clause 8(2)—amends section 10(6) to clarify the time at which the period mentioned in this section commences.

Clause 8(3)—replaces the word “firearm” with “weapon”. This will mean that a person convicted of an offence involving any type of weapon will be deemed not fit and proper for a period of five years. Presently this provision relates only to firearms offences.

Amendment of s 13 (Application for licence)

Clause 9(1)—renumbers section 13(4) in consequence of the insertion of new subsections (3) and (4).

Clause 9(2)—inserts new subsections (3) and (4).

Proposed subsection (3) widens the means by which an applicant for a licence may demonstrate that he or she is a genuine recreational shooter. At present the Act only allows written permission from a landowner to be used for this purpose. It is proposed that membership of prescribed organisations may also be used to support a claim of recreational shooting as the genuine reason for possessing a firearm.

Proposed subsection (4) allows an organisation to be prescribed only if it is a rural landowner in its own right, or if it holds permission from a landowner for its members to shoot on the landowners property.

Amendment of s 14 (Inquiries into application)

Clause 10(1)—renumbers sections 14(4) to (6) in consequence of the insertion of new subsections.

Clause 10(2)—inserts new subsections (4) to (7) which seek to provide a scheme which allows an authorised officer to make inquiries into the mental and physical suitability of an applicant, and to this end, to provide information about an applicant to a doctor or psychologist who has provided an opinion as to the applicants suitability.

Proposed subsection (4) allows an authorised officer to release information held by the Police Service if the authorised officer believes that the practitioner who provided the opinion was not aware of the information, and the information may influence the practitioner's opinion.

Proposed subsection (5) allows the authorised officer to provide further information. This allows a second opinion to be sought after information has been provided to the practitioner.

Proposed subsection (6) requires the authorised officer to advise the applicant if information is to be released pursuant to this section.

Proposed subsection (7) protects the authority to disclose information under this section from the provisions of any other Act. This includes, for example, the provisions of section 10.1 of the *Police Service Administration Act 1990* which create an offence to improperly disclose information.

Amendment of s 15 (Authorised officer decides application)

Clause 11— inserts proposed subsection 15(5). The provision deems that when an application for a licence is rejected on the grounds that the applicant is not a fit and proper person, the applicant is not entitled to reapply for a licence for three years.

Amendment of s 20 (Term of Licence)

Clause 12—This amendment clarifies that a licence expires if the licensee is disqualified from holding the licence.

Amendment of s 24 (Change in licensees circumstances)

Clause 13—omits section 24(2) and the examples which apply to it. In its present form it is doubtful that, if a particular circumstance changes more than once, a licensee is obliged to report the subsequent change. The examples are moved into the substantive provision because this provides for more clarity in the section.

Also in its present form, licensees would not be obliged to report changes from the circumstances outlined in an application to renew a licence.

This amendment also defines the term “representative” for the purpose of this section.

Amendment of s 28 (Suspension of Licence)

Clause 14—widens the power to suspend a licence. The present power to suspend exists only when an authorised officer is satisfied that a licensee has been charged with certain offences, or is temporarily unable to comply with a condition of the licence. In these cases suspension can last until the charge is disposed of or the licensee is able to comply with all licence conditions.

The existing provisions do not allow the suspension of a licence if an authorised officer suspects that a licensee may no longer be a fit and proper person. The amendment proposed provides that power to an authorised officer. In such cases the suspension lasts until the authorised officer lifts the suspension, or for thirty days, whichever is the sooner.

Amendment of s 29 (Revocation of licence)

Clause 15—amends section 29(1)(b) to replace the word “firearm” with the word “weapon”. This allows the revocation of a licence on conviction for an offence involving weapons. In its present form, a revocation may be invoked only if the conviction is for an offence involving a firearm.

Amendment of s 32 (Temporary recognition of interstate licences for particular purposes)

Clause 16—amends section 32 to recognise interstate visitors licences. In its present construction, section 32 allows a person who holds a licence in another State to visit Queensland and possess a weapon on the basis of that licence. This does not provide for a person who is not a resident, but still holds a licence or permit, in another State. For example, a resident of another country who plans to compete in a major shooting event in another state would obtain the equivalent of a visitor’s licence from that state.

In those circumstances, section 32 does not presently authorise that person to possess or use a firearm while in Queensland. It may be however that the visitor enters Australia through a Queensland port, or wishes to train in Queensland in preparation for the competition. This situation is inconsistent with the aim of nationally uniform legislation.

The proposed amendment removes the residency requirement of the existing section to overcome this anomaly.

Amendment of Part 3 (Acquisition and sale of weapons)

Clause 17—amends the heading of part 3 and provides definitions for the part. Part 3 of the Act is amended in later sections to include the disposal of weapons into the legislative scheme. This clause amends the headings of part 3 and Division 1 of that part to reflect the later changes. In essence the word “disposal” is added to the headings.

This clause also inserts a new section 34A which defines the terms “firearm” and “weapon” for the purposes of Part 3. The definitions have the effect of removing barrels, breechbolts and top slides from the acquisition and disposal scheme. This means that a licensed person may purchase one of those items without the need to obtain a permit to acquire.

Amendment of s 35 (Acquisition of weapons)

Clause 18—amends section 35 to clarify what is intended by the term “acquisition”. Sub clause (1) inserts a further example for section 35(1) and sub clause (2) widens the application of section 35(6).

These amendments are intended to provide that mere passing of physical possession does not constitute acquisition by the receiver or disposal by the giver. Some degree of permanency must attach to the passing. This will allow a person to loan another person a weapon on a short term basis, or have another person store a weapon on the owner’s behalf for a short period (other than on a commercial basis, in which case no time limit applies).

However if a weapon is loaned to another person or stored by another person for more than three months, then a disposal and acquisition has occurred, and the transaction is subject to the acquisition and disposal requirements of the Act.

The definition of the term “purchase” is also removed. That definition will now appear in section 5. (See clause 5).

Amendment of s 36 (Sale of weapons)

Clause 19—inserts the words disposes or disposal throughout section 36 so that the provisions of the section apply to any disposal of a weapon, rather than be limited to selling, as is the case presently.

Amendment of s 39 (Limitations on issue of permits to acquire)

Clause 20—amends section 39(5) , which provides for a number of circumstances under which an applicant for a permit to acquire is not to be considered as a fit and proper person to be issued with a permit to acquire a weapon. A similar provision exists in respect to the issue of licences at section 10(6). This amendment brings the two provisions more closely into line. To this end, section 39 is amended to include in the circumstances in which a person is deemed not fit and proper:

- conviction of any offence involving a weapon, rather than a firearm;
- subject to a domestic violence order;

The section is also amended to clarify the time period in which the deeming provision applies.

Amendment of s 41 (Inquiries into application)

Clause 21—amends section 41. This section outlines the rights and obligations of an authorised officer who is considering an application for a permit to acquire. Section 14 provides for a similar scheme in relation to an application for a licence and the two sections are intended to be largely similar.

Clause 10 amends section 14 to include an ability for an officer to release certain information to a doctor or psychologist. This clause amends section 41 for the same purpose.

Insertion of new s 51

Clause 22—creates a new offence of carrying a knife in a night club. Knives used in the preparation or consumption of food are excluded from this provision.

In this provision, a night club is licensed premises in which entertainment is provided, and which is trading after 11.00pm. This is achieved through defining the terms licensed premises and night club. The effect is that the offence of carrying a knife occurs if the premises or the part of the premises are open for trading and will be open after 11.00pm on that day. For example, if a hotel offers a cabaret which is open until 1.00am, the section of the hotel in which the cabaret is held is a night club, but only while entertainment is being conducted. If the cabaret commences when a band begins to play at 7.00pm, the premises are not a night club before that time, even if they are open and trading.

Amendment of s 52 (Physical possession and use of a weapon sometimes allowed for the purposes of training a minor)

Clause 23—amends section 52. This section currently refers to a “minor over 11 years...”. This term is changed to a person “...who is at least 11 years...”. This makes the section consistent with expressions of age in other parts of the Act and clarifies that the term includes a person who is exactly 11 years old.

Amendment of s 55 (Use of weapons by unlicensed person at shooting gallery allowed)

Clause 24—amends section 55 to impose an age limit which will apply to persons who may use a firearm at a shooting gallery. In the case of paint pellet sport activities (which are licensed as a shooting gallery) the minimum age for participation will be 15 years. For other shooting galleries the minimum age will be 11 years, consistent with the general scheme of the Act.

Insertion of new s 55A

Clause 25—inserts a new section 55A which clarifies that a person to whom a weapon is supplied by a licensed Theatrical Ordnance Supplier may have possession of and use the weapon, provided the possession and use is supervised by the supplier.

In the case of film and similar productions, when the use of a weapon is necessary the item is normally supplied by a licensed Theatrical Ordnance Supplier. There is, however, some doubt as to the position of the cast and crew of film and similar productions in relation to those weapons. The existing Act does not contain a provision dealing with this issue.

This section is intended to clarify that possession under these circumstances is lawful.

Insertion of new s 60A

Clause 26—inserts new section 60A to create an obligation on a person to report the loss or theft of a weapon to a police officer. The provision applies not only to an owner of a weapon, but to the person who has possession of it at the time it is lost or stolen.

Replacement of s 67 (Possessing and acquiring particular items prohibited)

Clause 27—replaces the existing section 67 in its entirety. In its present form, section 67 creates an offence to have in one's possession or acquire certain items without reasonable excuse. The section provides for a range of items including handcuffs and similar restraints, devices similar to nanchaku (the martial arts weapon) or batons.

This section is omitted and replaced with a similar section of three subsections.

Proposed subsection (1) creates an offence of having possession of a restricted item without reasonable excuse. Restricted items will be those items mentioned in the existing section, but will be relocated by operation of this amendment.

Proposed subsection (2) is used to indicate that crowd control or traffic control does not represent a reasonable excuse for which to have possession of a restricted item. This provision is inserted to stop security providers from wearing unnecessary weapons when performing traffic control, or operating as bouncers in licensed premises, or crowd controllers at other events.

Proposed subsection (3) defines a restricted item as one mentioned in the Weapons Categories Regulation. That regulation is created on the commencement of Part 5 of this Bill.

Amendment of division heading

Clause 28—Amends the heading of Division 2. Division 2 of part 4 of the Act currently deals with Dealers and Armourers. The division heading is changed to reflect amendments which also include the employees of dealers and armourers.

Replacement of s 70 (Age of employees)

Clause 29—amends section 70, which currently requires that an employee of a dealer must be at least 18 years of age. This section is replaced and will now require that an employee of a dealer or armourer must be 18 years and must also have a licence under the Act.

This section will apply to any employee who will have access to weapons as a result of their employment. It will also be immaterial what categories of weapons the employees own licence authorises possession of. This means that an employee who holds a licence authorising possession of category A and B weapons only, may obtain access to other categories of weapons in the course of employment by a licensed dealer.

Amendment of s 72 (Annual returns by licensed dealers)

Clause 30—omits an unnecessary reference to the former schedules. The term was left in the Act in error during the amendments which removed the former schedules.

Amendment of s 73 (Dealer etc. to require information)

Clause 31—amends section 73 to clarify that a dealer or armourer may only do business with a person who provides all of the identifying information prescribed under the regulation. The present reference to “any” prescribed particulars is unclear.

Amendment of s 75 (Collector to be licensed)

Clause 32—removes an unnecessary phrase from section 75 and makes it clearer to the reader.

Collectors are generally licensed to collect all categories of weapons and in any case it is possible to limit the type of weapons collected by imposing a condition on the licence. This makes the condition superfluous as it presently appears in the section.

Amendment of s 77 (Collector’s licence(weapons))

Clause 33—amends the provisions relating to the types of weapons a collectors licence authorises possession of. An amendment to the definition of Replica, discussed in clause 6 above, has the effect of moving permanently inoperable category A, B, C and H weapons into the definition of replica weapons. This has the effect of removing these items from the licensing and acquisition schemes.

This means that making the words “or permanently” as they appear in section 77(2)(b) unnecessary. This amendment removes those words.

Amendment of s 100 (limits on approvals)

Clause 34—amends section 100. This section presently allows that a range may be approved only if it is conducted by an approved shooting

club. This has been found to be unnecessarily restrictive, in that other bodies may have a legitimate need to conduct a shooting range. These include bodies who are conducting training for persons to obtain a licence under the Act, or associations which conduct ranges on behalf of a number of shooting clubs. This amendment widens the existing provision to allow such bodies the opportunity to conduct an approved range.

Amendment of s 101 (Authorised officer may grant or refuse range approval)

Clause 35—amends section 101, which outlines the conditions which an authorised officer must be satisfied are met before he or she may approve a range. These include that the range will be used for the sport of target shooting. Because of the amendments to section 100 training will now also be a legitimate use for a range.

This amendment includes training as a use to which a range may be put.

Amendment of s 108 (Responsibilities of range operator)

Clause 36—amends section 108. This section presently requires that a range operator ensures that persons using a range are supervised by a range officer. The section also requires that the range officer is licensed to possess the category of weapon being used on the range.

This has proved unworkable in practice, as persons attending a range may be licensed for any category of weapon. In its practical application this has meant that range officers have needed to be licensed for all categories of weapons. As very few people are so licensed, the provision has proven virtually impossible to comply with.

It is also suggested that basic safety procedures apply to all categories of weapons, and a person appointed as a range officer need not necessarily be licensed for all categories of weapons in order to properly supervise their use at a range.

To overcome this problem the proposed amendment removes the requirement for a range officer to be licensed for all categories of weapons being used on the range. The range officer will need only be the holder of a firearms licence of any category.

Amendment of s 110 (Responsibilities of person attending an approved range)

Clause 37(1)—replaces an incorrect reference to a weapon “type” with the correct term weapon “category”.

Clause 37(2)—inserts a new subsection 110(3) which requires a person attending a range to comply with a direction of a range officer. The Act places responsibilities on both range operators and range officers to ensure persons attending the range do not contravene the Act. These responsibilities are not presently accompanied by any authority to give directions in fulfilment of this responsibility.

This amendment inserts such an authority and creates an offence for a person who fails to comply with a direction.

Any direction given by the range officer must be given for the purposes of the Act or for safety reasons.

Amendment of s 115 (Theatrical ordnance suppliers to be licensed)

Clause 38—amends section 115 to clarify that the reference to a replica is a reference to a replica of a weapon.

Replacement of s 116 (Employees of theatrical ordnance suppliers)

Clause 39—Replaces section 116 to require that an employee of a theatrical ordnance supplier must be 18 years and must also have a licence under the Act. The present section requires only that an employee of a theatrical ordnance supplier must be at least 18 years of age.

This section will apply to any employee who will have access to weapons as a result of their employment. It will also be immaterial what categories of weapons the employees own licence authorises possession of. This means that an employee who holds a licence authorising possession of category A and B weapons only, may obtain access to other categories of weapons in the course of employment by a theatrical ordnance supplier.

Replacement of s 125 (Control over way security guard carries weapon)

Clause 40—replaces section 125 which, in its present form, allows a

regulation to prescribe the way in which a security guard carries a weapon. There is some doubt that this would allow a regulation to prescribe the times and circumstances in which a weapon may be carried. This amendment clarifies that position.

Amendment of s 126 (Security guard must record prescribed information)

Clause 41—amends section 126 which presently requires a security guard who possesses or uses a weapon in the course of duty to complete the register maintained by the employing organisation. It is proposed to impose a similar condition on self employed security guards through the insertion of section 126A.

This section is amended to clarify that it refers only to security guards who are employed by a security company.

Insertion of new s 126A

Clause 42— inserts a new section 126A which requires a self employed security guard to maintain a register in which prescribed details are recorded. The regulation will prescribe details relating to possession and use of a weapon.

Amendment of s 155 (Disqualification by a court)

Clause 43—amends section 155 which provides the power for a court to revoke a licence if a person is convicted of an offence or subject of an order. This amendment clarifies that the court may also revoke a permit to acquire. The amendment also provides that a when a court disqualifies a person from holding or obtaining a licence, any licence, permit or approval held by the person is revoked by virtue of the disqualification.

Omission of s 160

Clause 44—omits section 160. This is a procedural section which requires any circumstance of aggravation to be charged in the complaint if it is to be relied on during a hearing. The section also provides that a person may be convicted of an offence without any circumstance of aggravation

charged in the complaint.

Due to a recent amendment to the Justices Act this section may now be inconsistent with the provisions of section 47(4) of that Act, which creates certain procedural requirements when alleging circumstances of aggravation. Moreover, the matters dealt with in this section are adequately covered by the procedural provisions of the Justices Act and the Criminal Code.

As such the section is now redundant. There exists also the potential for conflict between the provisions mentioned. These problems are avoided by omission of the section.

Insertion of new s 168A

Clause 45—inserts a new section 168A. One of the reasons which may be relied on to obtain a licence is that the applicant is a recreational shooter. To establish this reason the applicant must produce permission from a rural landowner to shoot on his or her rural land. This amendment creates a requirement on certain landowners to maintain a register to record those permissions.

This provision also deems that any permission given to an organisation for its members to shoot on the rural land is to be counted as one permission.

Amendment of s 173 (Definitions for part 8)

Clause 46—amends the definition of the term “new Act” for the purposes of the part. The Act currently defines the terms “new Act” and “former Act”. It was necessary to do this as a result of major amendments put in place by the *Weapons Amendment Act 1996*. That Act effected major changes to the scheme of weapons licensing and acquisition, and it was necessary to provide for an amnesty period in which the changes could occur. For this reason the transitional arrangements set out in part 8 refer to the former Act and the new Act. These terms mean, respectively, the Act as in force before and after the commencement of the 1996 amending Act.

The definition of “new Act” is amended so that there is no doubt that the term refers to the Act as in force as at the commencement of the Weapons Amendment Act and thereafter.

Amendment of s 174 (Existing licences continue during amnesty)

Clause 47—amends the provisions of section 174 relating to expiration of licences at the end of the expiry period. Section 174 provides that existing licences will expire at the end of the amnesty period, unless sooner suspended, cancelled, revoked or expires. The purpose of this arrangement was to allow holders of licenses under the former licensing scheme the opportunity to apply for a licence under the new scheme. The amnesty period ends on 30 September 1997.

This may create an administrative problem in that it is expected that some licensees will wait until close to the end of the amnesty period before applying for a new licence. The Police Service will be unable to undertake the requisite checks on the licensee, and process the application until after the end of the amnesty period. The effect of this will be that any licence held by such a person will expire, and the person will then automatically commit an offence by possession of any firearms.

To avoid this problem, it is proposed to amend section 174(1) which will deem that an existing licence continues in force at the end of the amnesty period, provided that the licensee has made an application for a new licence. The licence will remain in force until the application has been determined and the applicant is advised in writing of the decision to either renew the licence or reject the application.

This section will also expire on 31 March 1998. This will prevent the continuation of a licence indefinitely because an authorised officer does not, or neglects to make a decision concerning an application for a new licence.

Amendment of s 179 (Compensation)

Clause 48—amends section 179 to rectify a possible conflict with Commonwealth legislation. To facilitate the national firearms buy-back scheme, the Commonwealth Government legislated, through the *National Firearms Program Implementation Act 1996* (Cwlth), to refund the State for compensation paid out for surrendered firearms. Section 179 presently provides that compensation to owners of weapons is payable for category C and D weapons.

The use of the term “category C and D weapons” is inaccurate in identifying the types of weapons for which the Commonwealth will refund

the State. The Commonwealth Act describes the types of weapons in full, and does not identify any categories.

Section 179 is amended to more accurately reflect the scheme set out in the Commonwealth Act.

Amendment of s 180 (Expiry of part 8)

Clause 49—amends section 180 to exclude section 174 from expiry of the whole part on 30 September 1998. Section 174 will now expire on 31 March 1998. (See clause 48)

Omission of sch 1

Clause 50—omits schedule 1 of the Act. Schedule 1 contains the descriptions of weapons within each category. These will now appear in the Weapons Categories Regulation, which is created by operation of clause 58.

Amendment of sch 2

Clause 51—amends schedule 2 which provides for the subject matter for regulations to the Act. This schedule is amended by removing the number 2 from the heading so that the schedule is unnumbered. This is necessary as a result of the omission of schedule 1.

The schedule is also amended by inserting a further matter for regulation. This is the declaration of weapons into a particular category for the purposes of the Act.

PART 3—AMENDMENT OF *DRUGS MISUSE ACT* 1986

Act amended

Clause 52— identifies the Drugs Misuse Act as the Act being amended by this part.

Omission of s 60 (Non-application of Statutory Instruments Act, pt 7)

Clause 53—Omits section 60. This section of the Act presently exempts the *Drugs Misuse Regulation 1987* from the staged automatic expiry provisions of the Statutory Instruments Act. This section is omitted, however the Regulation will remain exempted by an amendment to the Statutory Instruments Act. This is effected by part 4 of this legislation.

**PART 4—AMENDMENT OF STATUTORY
INSTRUMENTS ACT 1992****Act amended**

Clause 54—identifies the Statutory Instruments Act as the Act being amended by this part.

Amendment of s 57 and Insertion of new schedule

Clauses 55 and 56—amends section 57 of the Act, to modify the scheme for exemptions from staged automatic expiry.

Part 7 of the Statutory Instruments Act provides a scheme in which subordinate legislation automatically expires ten years after it is made. Section 57 of the Act allows for an extremely limited range of exemptions from the expiry provisions, and until recently no other subordinate legislation had been exempted.

In 1996 the Drugs Misuse Act was amended to exempt the Drugs Misuse Regulation from the expiry provisions. This legislation now seeks to also exempt the Weapons Categories Regulation from exemption.

The need for this exemption arises because of the importance which is now placed on the Regulation. The Weapons Categories Regulation will contain all descriptions of weapons and their categories to which the Act applies. If the regulation was to expire, the Act would become largely ineffective. The description of weapons categories is a vital element of the Act's overall scheme.

It is also true that it may become necessary to amend the categories of weapons as a matter of urgency. When a new item is offered for sale, and it is clear that the item should be scheduled, the item can continue to be sold,

carried and used until the legislation is changed. It is clearly easier and quicker to amend a Regulation for this purpose.

For these reasons a new Regulation is created which contains only the weapons categories and restricted articles, and this Regulation is protected from automatic expiry. The Weapons Regulation 1996, which contains extensive regulatory provisions, remains subject to the automatic expiry provisions.

To facilitate this, the Statutory Instruments Act is amended by creating a schedule of subordinate legislation which is exempted from part 7. The Weapons Categories Regulation, as well as the existing exemption for the Drugs Misuse Regulation are included in this schedule.

PART 5—GENERAL

Making of Weapons Categories Regulation 1997

Clause 57—creates the *Weapons Categories Regulation 1997* which is set out in full in schedule 1. The specific provisions also clarify that despite the fact that the Regulation is created by an Act, the newly created Regulation becomes a Regulation when this legislation commences.

Clause 59 Repeal

Clause 58—Repeals the Act on 31 December 1998. Normally an Act such as this, which is used only to amend another Act or Acts, will be automatically repealed by operation of section 22C of the *Acts Interpretation Act 1954*. That section provides for the automatic repeal of amending Acts after all provisions of the Act have commenced. This Act does not fall within the operation of that provision

For this reason it is necessary to repeal the Act after all its provisions have commenced. The date for repeal was chosen to provide ample time for all provisions to be commenced.

