

WEAPONS AND ANOTHER ACT AMENDMENT BILL 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The *Weapons Act 1990* (the Act) consolidates the laws regulating the purchase, possession, use, carrying and sale of weapons and articles to prevent the misuse of weapons. The impetus for the consolidation of the Act was the Port Arthur incident. In response to this tragic event, the Commonwealth and the States agreed upon minimum standards to prevent the misuse of weapons. The principles underlying the Act are —

- (1) weapon possession and use are subordinate to the need to ensure public and individual safety; and
- (2) public and individual safety is improved by imposing strict controls on the possession of weapons and requiring the safe and secure storage and carriage of weapons.

The amendments within this Bill ensure clarity, efficiency and investigative effectiveness in the administration and enforcement of the Act and the *Police Powers and Responsibilities Act 2000* (the PPRA).

The *Weapons Amendment Act 1996* effected major changes to the weapons licensing and acquisition framework in Queensland. At the time, the Act provided the legislative basis for an initial firearm amnesty. The legislation applied only to this specific amnesty period, which concluded on 30 September 1997. No further amnesty has been conducted since that time. This Bill provides legislative authority to conduct amnesties.

In January 2002, the first of the five-year firearms (non-business) licences issued in 1997 expired. All non-business licensees are required to renew their licences before they expire. Section 18 (Renewal of licences) of the Act provides that a licensee may apply for the renewal of the licence within a period of 46 days starting 60 days before the day the licence expires. Compliance with the 14 day limit is a critical requirement for the renewal of licenses.

Unlike a new firearms licence application, which does not specify a timeframe for the issue of a licence and allows the Authorised Officer, Weapons Licensing Branch (the authorised officer) to consider anything at the officer's disposal, the authorised officer must decide a renewal application before the licence expires. Regardless of whether the authorised officer has identified a matter that requires further investigation, there is no provision within the Act that permits the authorised officer to extend the determination of an application for the renewal of a licence for a reasonable time. Bearing in mind that at most the authorised officer will have a period of less than 60 days to make a decision, and possibly only 15 days, an authorised officer may easily be put in a position of having to decide the application without having a proper opportunity to investigate everything which in his or her opinion requires further investigation.

Advice from the authorised officer is that the impact of this requirement is compounded by the lack of essential information provided by the applicant. With an increasing number of non-business firearms licence renewals falling due in 2003 to 2005, the current legislative requirements will have the effect of not providing the authorised officer with sufficient time to decide an application for the renewal of a licence. This may lead to inappropriate persons having their licences renewed. Because of these consequences, amendments relating to the renewal of licences are essential.

Persons wishing to renew their licence in accordance with section 18 of the Act do not need to complete a Weapons Act Safety Course (WASC) prior to the renewal of the licence. However, it is arguable that the renewal provisions in the Act do require a person to successfully complete a WASC prior to the renewal of the person's licence.

This argument is postulated because subsection 18(8) of the Act provides that subsection 10(2) to (6) of the Act applies to the renewal of a licence with any necessary changes. A person seeking to renew a weapons licence must have an adequate knowledge of safety practices for the use, storage and maintenance of the weapon or category of weapon, the possession of which is to be authorised by the licence (section 10(2)(b) of the Act). The effect is that all persons must comply with the Act by successfully completing a WASC prior to making an application to renew a weapons licence. Because of these consequences, an amendment is essential to clearly provide that it is not a prerequisite for an existing licensee to complete a WASC prior to the renewal of the licence.

If a firearm licence expires as a consequence of a licensee failing to comply with the renewal requirements or by not submitting a renewal application and the licensee wishes to continue to possess firearms, the

person must make a new application for a licence and pay all the prescribed fees. The person must also satisfy the Commissioner of the Queensland Police Service (QPS) that he or she has adequate knowledge of safety practices for the use, storage and maintenance of weapons.

Once a person is unlicensed, there is no provision within the Act that allows the Commissioner to recognise a licensee's previously held, immediately before the expiry of the licence, Queensland firearms licence as an alternative proof of weapons competency. However, section 2(1)(m) (Application of Act) of the Act permits the Commissioner to grant in the prescribed manner an exemption from the application of certain provisions of the Act.

Following advice from the QPS Solicitor, the Commissioner issued an exemption which provided that proof of successful completion of a WASC would not be required, provided that within six months prior to the making of the application for a licence, the applicant previously held a Queensland Weapons Act licence that had not otherwise been suspended, revoked or cancelled. This exemption only applies to persons who were holders of a firearms licence, a concealable firearms licence, a collector's licence (heirloom) or (weapons) or a minor's licence within six months immediately prior to the making of the new application. In order to maintain consistency with the character of the existing exemptions contained in section 10 of the Act, this exemption is to be incorporated into the Act.

Recently, the Weapons Licensing Branch revoked a licensee's concealable firearms license, due to the licensee being convicted of an offence relating to the misuse of drugs in the Magistrates Court. The licensee appealed the revocation of licence. This appeal was dismissed by the Magistrates Court and the decision of the authorised officer confirmed, the licensee made a further appeal to the District Court. This appeal was heard in the Brisbane District Court in February 2002 before McGill J (*Phillips v. Woolcock* [2002] QDC 35). In delivering his decision on 15 March 2002, McGill J stated:

“ ... [paragraph 16] I am deciding the appeal on the basis of what I consider to be the correct interpretation of the Act: in my opinion it is that s.10(6) does not operate in respect of s.29 so that matters listed in ss.(6) do not automatically render a person not a fit or proper person so as to justify revocation under s.29...

[paragraph 37] The appeal is allowed, the order of the magistrate of 9 August 2001 is set aside, and in lieu thereof it is ordered that the appeal against the decision of the respondent on 3 April 2001 to

revoke the appellant's licence under the Weapons Act 1990 be allowed, and that decision be set aside. I substitute a decision that the licence not be revoked...”

The effect of this decision is that the authorised officer can not apply the ‘fit or proper person’ provisions contained within section 10 of the Act to determine whether a person is a ‘fit and proper person’, in circumstances where the officer is giving consideration to the suspension or the revocation of a licence under the Act. This Bill makes the necessary amendments to clearly enable the application of section 10, 10A and 10B of the Act to the issue, renewal, suspension or revocation of a licence under this Act.

Section 34A (Definitions for pt 3) of the Act provides that in this section – ‘firearm’ does not include a barrel, breechbolt or top slide of a firearm and ‘weapon’ does not include a barrel, breechbolt or top slide of a firearm. The effect of this section is to limit the application of these definitions only to that section rather than to the Part 3 (Acquisition, sale and disposal of weapons) of the Act. This Bill corrects the scope of this section.

Concerns have been raised that the meaning of ‘public place’ within the Act does not enable police to take enforcement action against a person who is found in a school and is in possession of a knife without a reasonable excuse. The Act defines a ‘public place’ as any place that the public is entitled to use, is open to the public, or used by the public, whether on payment or otherwise.

While a State or a private school may arguably be a public place during operating hours, entry to that place is limited to specific persons. That is, students, teachers, and any one else who has legitimate business at the school. It is arguable that this group constitutes a section of the ‘public’. If so, then a school may be a public place during school hours. However, it is arguable that this specific group of persons does not constitute the public and therefore a school is not a public place. The latter view is supported by the *Education (General Provisions) Act 1989* which provides the offence of trespass for a person who enters the grounds of a State school without permission or a reasonable excuse. Similarly, a person trespasses on land within a private school an offence is committed under section 4A(1) (Entering or remaining in or upon buildings, enclosed farms etc. without lawful excuse) of the *Vagrants Gaming and Other Offences Act 1931*. To clearly provide that it is an offence for a person to be in possession of a knife, without a reasonable excuse in a school, amendments to section 51 of the Act are essential.

The application of section 65 (Trafficking) of the Act has been and continues to be the subject of significant criticism by police, particularly

those tasked with the investigation of major and organised crime in this State. The difficulties experienced with section 65 of the Act are that to prove the crime, investigating police must prove, beyond a reasonable doubt, that the vendor acted with the knowledge that the firearm was being procured for the commission of a crime. This is very difficult without specific admissions from the offender or purchaser of the illegal firearms. This Bill will enable police to effectively investigate and institute proceedings against persons illegally trafficking in weapons.

Section 71 (Licensed dealers and armourers to keep register) of the Act does not provide an offence for a dealer or armourer making a false entry in a weapons register. It has been argued that the lack of an appropriate offence provision is inconsistent with other provisions within the Act that create an offence for collectors and other like licensed persons making false or misleading entries into a weapons register. While police officers may institute proceedings under section 408C (Fraud) of the Criminal Code, officers face substantial difficulty in applying this provision because the alleged offender's intent to deceive must be proved. Given the difficulties in proceeding under the Criminal Code, this amendment is essential.

In addition to these issues, this Bill makes a number of technical amendments to the Act to reflect current drafting practices used by the Queensland Office of the Parliamentary Counsel.

The PPRA represents a comprehensive consolidation of the powers conferred and requirements imposed on police officers in Queensland. The QPS has recently commenced a program to introduce drug detection dogs to policing in Queensland. Two handlers and one trainer have undergone an eight-week Drug Detection Dog training course being conducted by the Australian Customs Service in Canberra. These dogs are trained in the detection of a range of dangerous drugs. To maintain the high skill level required to detect dangerous drugs, it is crucial that high quality dangerous drugs are obtained to aid in the ongoing training of these dogs.

It has been argued that the existing provisions of the PPRA do not provide sufficient legislative support to enable the obtaining, possession and the controlled use of dangerous drugs for training purposes as directed by the Commissioner of the QPS. In order to facilitate the training and ongoing use of police drug dogs it is essential that a comprehensive regulatory scheme be contained within the PPRA. This Bill provides that regulatory scheme.

Means of Achieving Policy Objectives

The Bill will resolve each of the identified issues, by amending each relevant provision within the Act and by creating a regulatory regime within the PPRA to:

- (1) allow the police service to have access to dangerous drugs for training purposes; and
- (2) ensure that dangerous drugs in the possession of the police service for training purposes—
 - (a) are carefully handled to ensure their effectiveness for training purposes is not compromised; and
 - (b) are subject to strict tracking and accountability requirements.

Alternative Means of Achieving Policy Objectives

There are no other viable alternatives that achieve the policy objectives other than the amendments proposed in the Bill.

Estimated Cost of Implementation for Government

The financial impact of the Bill will be comparatively low.

Consistency with Fundamental Legislative Principles

The amendments to the Act and the PPRA do not raise any fundamental legislative issues.

Consultation conducted in Development of the Bill

The following proposed amendments were contained in a consultation paper titled, '*Consultation Paper - Weapons and Another Act Amendment Bill 2002*'.

- (1) The provision of a general amnesty provision within the Act.
- (2) Assisting weapons licensees by:
 - removing the strict requirement to lodge a renewal application at least 14 days prior to expiry date and

providing an extension of licence validity, beyond the expiry date, until the renewal application is decided; and

- allowing a person to provide as an alternative proof of weapons competency evidence that the person had possessed a valid firearms licence within a nominated period.
- (3) Extending the application of section 51 of the Act to include educational places.
 - (4) Enabling an authorised officer to apply the ‘fit and proper person’ provisions in section 10 to determine whether a person is a ‘fit and proper person’ when giving consideration to the revocation of a licence under section 29 of the Act.
 - (5) Providing legislative authority for the Commissioner to allow the police service to have access to dangerous drugs for training purposes.

This paper was forwarded to relevant Government Departments, external organisations and interest groups. Entities consulted included the Queensland Council for Civil Liberties, the Victims of Crime Association of Queensland and the Queensland Law Society Incorporated. Only Government Departments and the Firearm Dealers Association of Queensland provided responses to the Police Service about the proposed amendments.

The following additional amendments to the Act were identified during the development of the Bill. These amendments are essential to ensure that the objective of principles of the Act are not undermined and to correct difficulties faced by police officers in the administration and enforcement of this Act.

- (1) The insertion of a provision within section 18 of the Act to provide that a person who is renewing a weapons licence does not need to complete another WASC prior to applying to have the person's licence renewed.
- (2) The correction of a drafting error within section 34A (Definitions for pt 3) of the Act.
- (3) The amendment of section 65 of the Act to remove the element of trafficking that has resulted in the general inability for police to charge persons who are identified as unlawfully trafficking weapons.

- (4) The insertion of a new offence provision in section 71 of the Act to provide an offence for a dealer or armourer making a false or misleading entry into a weapons register knowing the entry to be false or misleading in a material particular.

A Consultation Bill containing these additional amendments and those contained in the consultation paper was forwarded to relevant Government Departments, external organisations and interest groups for comment. Entities consulted included the Queensland Council for Civil Liberties, the Victims of Crime Association of Queensland, the Queensland Law Society Incorporated, Queensland Shooting Association, the Sporting Shooters Association of Australia (Qld) and the Firearm Dealers Association. Additional community consultation has been undertaken by the Department of Education with the Queensland Catholic Education Commissions and the Association of Independent Schools of Queensland. In the main, all amendments within the Bill are supported.

NOTES ON PROVISIONS

Short title

Clause 1 is preliminary in nature, specifying the short title of the Bill. There is no commencement clause. Consequently, the Bill will commence on assent.

Clause 2 states that this part amends the *Weapons Act 1990*.

Amendment of s 5 (Definitions)

Clause 3 re-locates the dictionary within section 5 of the Act to Schedule 2.

Amendment of s 10 (Limitations on issue of licence)

Clause 4 amends section 10 by omitting subsections 10(4) to (6), renumbering subsections 10(7) to (9), and links section 10(2)(b) to section 10A of the Act. Subsection 10(4) to (6) are relocated to new sections 10A and 10B.

Insertion of new s 10A (Adequate knowledge of weapon)

This section provides the minimum requirements necessary for a person to have an adequate knowledge of safety practices for the use, storage and maintenance of a weapon, or category of weapon, the possession of which is to be authorised by a licence under this Act.

Insertion of new s 10B (Fit and proper person)

This section outlines the things that the authorised officer must consider, when deciding whether a person is a fit and proper person, for the issue, renewal, suspension or revocation of a licence under this Act.

Amendment of s 15 (Authorised officer decides application)

Clause 6 amends section 15(5)(a) by providing a link to section 10B(2) of the Act.

Amendment of s 18 (Renewal of licences)

Clause 7 amends section 18 by:

- (1) changing the date of lodgment for an application for the renewal of a weapons licence to the date of expiry of the licence within section 18(1).
- (2) extending the strict renewal of licence timeframe for determination of an application by an authorised officer to a maximum of 42 days after the date of the licence expiry within 18(4). The authorised officer may then request further particulars from a person to resolve an identified issue prior to the expiry of a licence.
- (3) inserting new subsections 18(8) and 18(9) to provide a link to the relevant sections of the Act that apply to the renewal of a licence.

Insertion of new s 20A (Continuation of licence until renewal application dealt with)

Clause 8 inserts a new section that applies to a licensee lodging an application to renew the weapons licence in accordance with section 18. The section provides that a licensee who has lodged an application to renew their weapons licence will continue to be licenced until application

is decided and the licensee is notified by the authorised officer. However, the licence will only be valid for 42 days after the date of expiry of the licence.

Amendment of s 24 (Change in licensee's circumstances)

Clause 9 amends section 24(2)(a)(iii) by providing a link to section 10B(2)(a)(i) to (iii) of the Act.

Amendment of s 28 (Suspension of licence)

Clause 10 amends section 28(1)(b) by providing a footnote reference to section 10B of the Act.

Amendment of s 29 (Revocation of licence)

Clause 11 amends section 29(1)(d) by providing a footnote reference to section 10B of the Act.

Amendment of s 31 (Licensee's representative)

Clause 12 amends section 31(5) by providing a link to section 10B of the Act.

Amendment of s 34A (Definitions for pt 3)

Clause 13 amends section 34A by providing that the definitions within this section apply to Part 3 (Acquisition, sale and disposal of weapons) of the Act.

Amendment of s 51 (Possession of a knife in a public place)

Clause 14 amends section 51 by providing that in addition to public places, this section applies to State and private schools.

Amendment of s 65 (Unlawful trafficking in weapons)

Clause 15 amends section 65 by removing the element of 'to facilitate the commission of a crime' to provide that a person who unlawfully carries on the business of trafficking in weapons or explosives commits a crime.

Amendment of s 71 (Licensed dealers and armourers to keep register)

Clause 16 amends section 71 by providing that it is an offence under the Act for a licensed dealer or armourer knowingly making a false or misleading entry into the weapons register. The maximum penalty for a contravention of this clause is 40 penalty units.

Amendment of s 100 (Limit on approvals)

Clause 17 amends section 100(c) by providing a link to section 10A(2) of the Act.

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

Clause 18 amends section 101(1)(a)(i) by providing a link to section 10A(2) of the Act.

Insertion of new ss 168B-168C

Clause 19 inserts new sections 168B and 168C as contained in the Bill into the *Police Powers and Responsibilities Act 2000*.

168B Amnesty declaration

This section provides authority to enable the Commissioner of the QPS, with the approval of the Minister, to declare an amnesty for firearms of particular types.

The section provides the advertising requirements for the conduct of the amnesty. Future amnesties will have the following possible outcomes. A person may choose to either:

- (1) surrender an illegal firearm to a police officer or a licensed dealer for disposal; or
- (2) register a firearm to an existing firearm licence; or
- (3) apply for a firearm's licence to lawfully possess that firearm.

During the amnesty, persons who voluntarily surrender for disposal illegal firearms or who apply for a firearm licence or to register firearms to an existing licence in their possession may do so without fear of prosecution for possession of the illegal firearm. However, a amnesty will

not provide protection to any person possessing an illegal firearm other than surrendering it to a police officer, registering the firearm to an existing licence or applying for a firearm licence.

A person surrendering a particular type of firearm during an amnesty will not be paid compensation for the surrender of the firearm.

168C Dealing with surrendered firearm

This section provides that a surrendered firearm becomes the property of the State and is taken to be forfeited to the State to be dealt with by the Commissioner of the QPS in accordance the requirements of chapter 11, part 3, division 7 of the PPRA.

Amendment of s 172 (Regulation making power)

Clause 20 creates a link to Schedule 1 (Subject matter for regulations) of the Act.

Amendment of schedule

Clause 21 renumbers the schedule as schedule 1 of the Act

Insertion of new schedule 2 (Dictionary)

Clause 22 creates new schedule to enable the re-location of the existing definitions within section 5 of the Act.

Act amended in pt 3

Clause 23 provides that this part amends the *Police Powers and Responsibilities Act 2000*.

Amendment of s 420 (Application of pt 3)

Clause 24 amends section 420 by extending the operation of Chapter 11 (Administration), part 3 (Dealing with things in the possession of the police service) of the PPRA to include a new Part 4 — Use of dangerous drugs for training.

Insertion of new ch 11, pt 4

Clause 25 inserts the new Part 4, Use of dangerous drugs for training, as contained in the Bill into the PPRA.

Within clause 25, are the new sections 443A to 443O.

443A Object of pt 4

This section provides that the object of part 4 is to ensure that training in the police service in relation to dangerous drugs is realistic and effective. The section prescribes how the objective will be achieved.

443B Definitions for pt 4

This section provides the meaning of “agency arrangement”, “commissioner direction”, “drug control officer”, “drug vault”, “register of dangerous drugs for training” and “secure facility” for this part.

443C Appointment and qualifications

This section allows the Commissioner of the QPS to appoint a person as a drug control officer if the Commissioner considers the person has the necessary expertise or experience or if the person has satisfactorily completed training approved by the Commissioner.

443D Appointment conditions

This section provides that a drug control officer holds office on any conditions stated in the drug control officer’s instrument of appointment, a signed notice from the Commissioner, or a regulation. The section provides that a drug control officer’s powers may be limited under a regulation, a condition of appointment, or by written notice given by the Commissioner to the drug control officer.

443E Issue of identity card

This section requires the Commissioner of the QPS to issue to each drug control officer an identity card that identifies the person as a drug control officer under the Bill. The card must contain the signature and a recent photograph of the drug control officer. The section allows a single identity card to be issued.

443F Resignation

This section specifies how a drug control officer can resign.

443G Return of identity card

This section requires that a person who ceases to be an drug control officer must return his or her identity card to the Commissioner of the QPS within 21 days, unless the person has a reasonable excuse for not doing so. The maximum penalty for a contravention of this clause is 40 penalty units.

443H Function and powers of drug control officer

This section sets out the functions and powers of an appointed drug control officer under the PPRA. The section provides that a drug control officer has power, within the police service, to do all things that are necessary to be done in connection with the performance of the drug control officer's functions.

Example — A drug control officer may observe the operational performance of police dogs that have been specifically trained for drug detection.

443I Keeping dangerous drug for use in police service training

This section provides for the keeping and use of dangerous drugs for training in accordance with a commissioner direction.

443J Making commissioner direction

This section enables the Commissioner of the QPS to make a 'commissioner direction' in relation to a batch of a dangerous drug that has come into the possession of the police service in a prescribed manner. The section provides mandatory conditions that must be included in a Commissioner direction. The section provides that the Commissioner must ensure the QPS complies with the conditions of a Commissioner direction.

443K Entering into agency arrangement

This section authorises the Commissioner of the QPS to enter into an agency arrangement with the chief executive of another department or agency if the other party to the arrangement is authorised to possess the

dangerous drugs that are subject to the arrangement. The Commissioner must ensure that the QPS complies with an agency arrangement.

443L Requirements for keeping of dangerous drugs for training purposes

This section sets out the requirements that apply for the police service's possession of dangerous drugs for training purposes.

443M Register of dangerous drugs for training

This section requires the QPS to keep a register of dangerous drugs for training. The register may form part of another register whether kept under this or another Act. The register must be kept in a secure place and in the way, the commissioner considers appropriate. Unless the commissioner otherwise authorises, an entry in the register of dangerous drugs for training may only be made by a drug control officer in the exercise of his or her functions.

The section enables the commissioner may give a direction to restrict access to information included in the register of dangerous drugs for training. It is the responsibility of a drug control officer authorised to record the information in the register to ensure that the information recorded is prevented from being disclosed to a person not authorised to have access to it.

443N Information to be recorded in the register of dangerous drugs for training

This section prescribes the minimum requirements that must be recorded the register of dangerous drugs for training about each batch of a dangerous drug that —

- (1) comes into the possession of the QPS to be used for training purposes;
- (2) is in the possession of the QPS for training purposes if the batch, or part of the batch, is taken from the drug vault where it is stored because it is to be used for training purposes; and
- (3) leaves a drug vault for the last time to be disposed of or to be returned to an entity under an agency arrangement.

The recording of the information required to be recorded under this section must be performed as close as reasonably practicable to the happening of the event to which the recording relates.

4430 Restriction on release of information from register of dangerous drugs for training

This section ensures the security of a drug vault and the safety of a drug control officer or another person associated with keeping dangerous drugs in the possession of the QPS for training purposes. A direction may be given by the Commissioner in circumstances where the safety of persons or security of the drug vault maybe prejudiced. The Commissioner of the QPS may give a direction that restricts access to information recorded in the register of dangerous drugs for training to persons other than a drug control officer or a police officer performing a function associated with the keeping of dangerous drugs in the possession of the police service. If the Commissioner gives a direction, a written record of the reasons for giving the direction must kept.

Amendment of sch 4 (Dictionary)

Clause 26 amends the dictionary to the PPRA to provide definitions for terms used in the Bill.

The terms “agency arrangement”, “commissioner direction”, “drug control officer”, “drug vault”, “register of dangerous drugs for training” and “secure facility” are defined.