

SECOND READING SPEECH – HON. M.T. (RENE) HIDDING MP

Firearms (Miscellaneous Amendments) Bill 2015

Madam Speaker,

I move that the Bill now be read a second time.

The purpose of this Bill is to introduce legislation to amend the *Firearms Act 1996* and the *Forensic Procedures Act 2000*.

These amendments have been developed over a period of time and have undergone considerable consultation across a broad range of stakeholders, including the public. The previous Government approved a review of this Act in 2009, with public consultation occurring in 2010. Since commencing my position as Minister for Police and Emergency Management, I have requested that further development of the amendments proposed at that time and during the consultation period be given priority. I have taken the time to read the public submissions from 2010, which totalled over 100 written submissions. I have also consulted extensively during my time and sought advice from the advisory committee which had been established by the previous government.

This committee is the Tasmania Firearms Consultative Committee and is comprised of members who represent various key stakeholders in the community. These include sporting shooting associations, licensed firearm dealers, members from shooting clubs and members of the general community.

I have also taken the time to consult with spokespersons in the community who have in the past expressed concerns over firearms policy in Tasmania. I have had direct contact with Mr Roland Browne, from Gun Control Australia. We have sought to meet all of the communities' reasonable requirements and expectations and as a result, Madam Speaker we now have this Bill before the House.

This particular Bill contains a number of amendments to the *Firearms Act 1996*, along with a consequential amendment to the *Forensic Procedures Act 2000*.

The Bill seeks to clarify and define a number of terms embodied within the Act. The definition of firearm has been amended to ensure that items which may unintentionally fit within this definition, but are not intended to be firearms, such as flare guns, nail guns and captive bolt devices for farmers are

able to be excluded from the auspices of the Act by regulatory amendment. Other definitions now included are for an 'imitation firearm' and 'manufacture'.

A definition of possession has now been provided for. This definition is broad, but it is not intended to capture situations such as where a firearms licence holder is co-habiting with a person who is not a firearms licence holder. It is also not intended to capture someone who is acting lawfully.

The Bill creates a separate offence for the possession of a prohibited firearm without an exemption or licence. Previously, one offence covered the unlawful possession of all types of firearms.

This new offence is viewed with such gravity as a prohibited firearm in this context would most usually be a military assault style weapon that is not capable of being registered or for which a licence cannot be obtained. This offence will be treated as an indictable offence under the *Criminal Code Act 1924*. This means the matter is to be determined in the Supreme Court before a judge and a jury. The penalty upon conviction for such an offence is a maximum sentence of 21 years jail.

Section 10 of the Act has been amended to rectify an anomaly relating to the acquisition of firearms by licenced firearm dealers. It was never intended that the requirement to lodge an application to acquire was to apply to a firearms dealer who is acquiring a firearm for on-sale. Dealers are required to register any acquisition on their transaction register within 24 hours. This record is an official business document and is required to be provided, by statute, to the Commissioner on a quarterly basis.

There is also provision within the Act for these documents to be inspected at any reasonable time and such records must be kept for at least 6 years. This amendment will ensure clarity in the legislation.

During the consultation period, it was submitted that there should not be a limit on the number of category C and D firearms a collector may acquire, as a single or pair of firearms would not amount to a collection.

Appropriate amendments have been made to ensure that a collector may acquire more than one of each of these categories if the genuine reason for acquisition of each firearm is for commemorative, historical, thematic or investment purposes.

The Bill introduces a new section which allows for the carriage or use of firearms kept for collection purposes during a commemorative or historical event approved by the Commissioner. The use of such firearms will be governed by the granting of a permit by the Commissioner of Police and conditions may be imposed on the permit that the Commissioner considers appropriate.

As a result of this amendment, section 47 has been amended to provide for firearms that are rendered temporarily inoperable for the purposes of collection, to be rendered temporary operable for the purposes of participating in a commemorative or historical event or for the purposes of cleaning or maintenance.

Only Category A, B, C and H firearms are allowed to be rendered temporarily inoperable under this section. Category D firearms kept for collection purposes must be rendered permanently incapable of being fired and this amendment does not change that requirement.

The Bill also expands the provisions of the legislation to ensure that there is no ambiguity that it is lawful to be in possession of a firearm for the undertaking of routine maintenance and cleaning of the firearm.

An amendment has been made to restrict firearms dealers from supplying a firearm to any person unless the person is the holder of a current firearms licence and a current permit to acquire a firearm and the dealer has sighted both of these documents. This prevents the 'loan' of such a firearm and therefore circumventing the required waiting period or 'cooling off period'.

Currently the legislation imposes a condition on a person who applies for a firearms licence to be able to meet the storage and safety requirements that are imposed by the Act. An applicant for a firearm's licence has not yet acquired a firearm and therefore most are not able to meet this requirement at this stage of the process. The requirement for the Commissioner to be satisfied that a person can meet the storage and safety requirements is more appropriate once the person has made an application for a permit to acquire a firearm. Appropriate amendments have been made to the relevant sections to ensure that this will now be the case.

Some processes that currently occur during the licence process are sought to be formalised in legislation. This Bill seeks to provide the Commissioner the authority to require an applicant or current licence holder to provide information relating to his or her physical or mental health. The Act currently restricts the granting of a licence unless the Commissioner is satisfied that a person is a fit and proper person to hold such a licence. When determining if a person is a fit and proper person

the Commissioner is to take into account a number of factors including the mental and physical condition of the person.

The amendment places a requirement on an applicant to obtain a written report from a medical practitioner or psychologist about the applicant's physical or mental health, for the Commissioner to consider in his or her deliberations. Alternatively, the Commissioner may provide to a medical practitioner or psychologist information that he or she holds which may influence their professional opinion as to the mental or physical health of the applicant if the Commissioner considers that on reasonable grounds that the health professional is not aware of the information.

The Bill seeks to amend the legislation to ensure that, if the Commissioner suspects on reasonable grounds that an applicant's identity is false then the Commissioner may require the applicant to provide an identifying particular, such as fingerprints or DNA.

Allowing for enquiries into the identity of a person will assist to ensure that legal name changes are not undertaken in order to gain a firearms licence by a person who would otherwise be refused a licence due to their previous history. This situation has occurred interstate. Madam Speaker, protection and safety for all people are the key factors driving these amendments.

Madam Speaker, section 54 of the Act provides for the immediate surrender of any firearm in the possession of a person whose licence is surrendered, suspended or cancelled. This provision currently does not include ammunition or firearm parts. If a licence has been surrendered, cancelled or suspended, common sense dictates that a person should not be in possession of any ammunition or firearm part. The Bill seeks to amend this section so that ammunition and firearm parts must be also be surrendered in these circumstances.

An amendment has been made to reduce the 28 day waiting period for a person who makes application for a permit to acquire a second or subsequent firearm. The amendment will not affect the process to be followed for a person who is acquiring their first firearm.

Currently the Act provides that the Commissioner is only to grant a permit to acquire a firearm after 28 days have elapsed from the date of lodgement of the application. There are two reasons for this requirement. Firstly, this waiting period introduces a 'cooling-off period' to ensure that a person does not lodge an application for a permit to acquire a firearm on impulse with the intention of accessing a firearm for the purposes of self-harm or harm to another person. However, this measure is not

justifiable once the person already owns a firearm, it can be characterised as unnecessary and frustrating red tape.

Secondly, the 28 day waiting period was introduced to ensure that there was sufficient time for a police officer to inspect the applicant's storage requirements to ensure that the storage requirements meet the required standards. If a person already owns a firearm then obviously the storage requirements have been previously met.

The amendment seeks to provide for the granting of a permit to acquire for a second or subsequent firearm after sufficient time has expired to allow the Commissioner to consider the application properly and in normal circumstances in not less than 14 days after the lodging of the application.

A number of submissions have been made over the course of the development of these amendments to reduce the age of a youth to be lawfully able to shoot 'in the field' while supervised. Currently the legislation restricts supervised recreational shooting to a person aged 16-17 years. Debate has occurred about this issue and it is somewhat contentious. This Government accepts the argument on both sides and the Bill will make a minor adjustment to reduce the minimum age to shoot in the field, from 16 to 15 years of age. In a new measure, however, for safety reasons of the young person, a person undertaking the supervision of all young people in the field in the future must have held a firearms licence for a continuous period of 5 years

Madam Speaker, it is fair to say that after the tragic events of April 1996 in Port Arthur that the community and the government saw it necessary to place stricter requirements on members of the community who wish to lawfully possess a firearm. In essence, we wish now, as then, to ensure that only a fit and proper person can obtain a firearms licence and in turn, the right to ownership or possession of a firearm. The community rightly expects that when the firearm is not in use that the firearm is properly secured and stored in a way which deters the theft of those firearms.

We know that firearms are a desirable commodity for members of our community who choose to involve themselves in criminal activity. We know that these people will try to gain possession of firearms through any means and whilst the theft of firearms has fluctuated over the years, there has been an increase in these thefts over the past few years. The storage requirements currently imposed by the Act were part of the original legislation, as it was introduced in 1996. These requirements have not been amended since the Act became law.

While a majority of firearms owners exceed the current minimum storage requirements it is fair and appropriate that the minimum standards be upgraded. I have no doubt they were adequate 18 years ago but in reality, times have progressed and legislation needs to be progressive as well. This government sees the need for the minimum storage requirements to be increased to both prevent and deter firearm theft. In short, this government intends to make it harder for firearms to be stolen in Tasmania.

It is the intention of this government to formally regulate the storage of firearms, ammunition and firearm parts by prescribing the minimum storage requirements in regulations. The minimum requirements for the construction of a metal storage receptacle will be prescribed in detail for each category of firearm. This will see the end of firearms being stored in thin metal lockers and even in wooden receptacles.

Further, all firearms safes will be required to be more securely fastened in a manner which deters the possible removal of that safe from the premises. These additional requirements will be effective for their deterrent value but, in the circumstances, are not too onerous on the owners of the firearms, Madam Speaker.

We know, and it is accepted in every jurisdiction that hand guns are a more valuable commodity than other firearms in the criminal community. These types of firearms are easily carried and are easily concealable. If a person had to choose between stealing a long arm or stealing a hand gun then the hand gun would usually be the item of choice.

If firearms were 'stolen to order' as we suspect occurs from time to time then we know that the orders would be for hand-guns rather than long-arms. As a result, it is proper that we increase the storage requirements for these items. I can indicate that the regulations will prescribe that if a person owns one or more handguns then the storage requirements will be the current Category C, D and H storage requirement but now with an additional measure of electronic or audible security that is suitable in all the circumstances. For example Madam Speaker, it is foreshadowed that in addition to the storage safe which must meet prescribed requirements the storage address or storage safe will have at least one element of electronic security which may be an electronic recording security device, or a monitored alarm and/or an audible alarm.

This then takes me to the number of firearms stored at one address, Madam Speaker. There are many firearm owners in Tasmania that own multiple firearms for genuine reasons.

The issue is simple; the more firearms stored at one address the greater the attraction for thieves. The potential harm to the community of a theft of a large number of firearms is also greater. It is the intent of this government to prescribe that the storage requirements for 10 or more firearms at one address will be the same as the storage requirements for one or more hand-guns; that is the addition of an element of electronic security.

Madam Speaker, the government does recognise that there are many firearm owners that already go to a high degree to secure their firearms. Firearms are valuable possessions and owners are keen to protect their investment. Most firearm owners go to great lengths to secure their firearms and protect them from theft to prevent them from falling into the wrong hands with the obvious danger to the community. The government does not want this to change and the legislation will still allow for the Commissioner to be satisfied that the prescribed storage requirements have been met through other means, if the storage is of a standard better or equal to those requirements specified in the regulations.

With the implementation of new storage requirements and to afford a further level of protection to the community, the government has introduced a new offence into the legislation to create an offence for a person to advertise for sale in Tasmania a receptacle for the purposes of storing a firearm, unless that receptacle complies with the requirements relating to storage. This is to ensure that people who are trying to lawfully comply with the legislation are not 'duped' into believing the item complies with Tasmanian legislation and lose money in the process.

Tasmania Police has expressed concerns that some firearms owners, whilst having compliant storage, may not be paying enough attention to the rules surrounding the operation of that storage in the area of security of keys, etc. To encourage better participation in all the elements of firearms security at a domestic residence the Bill increases penalties for non-compliance.

The legislation does not currently specify the requirements for the storage or security of ammunition for firearms dealers or museums. This issue is addressed by amending the Act to ensure that any ammunition, unless under the immediate control of an employee, is stored in an approved locked receptacle.

Currently there is no requirement for a firearm licence holder to inform the Commissioner of any change of address. To ensure that firearms are secure and kept in accordance with the requirements of the legislation, police are required to conduct storage inspections. To achieve this, police need to

be informed of any change in both name and address. The Bill seeks to amend the legislation to require a licensee to notify the Commissioner of this within 14 days after the change.

Madam Speaker, in recognition of a stronger firearms storage regime being accepted by all firearms owners, the Government accepts that it is only right and proper that those owners should be afforded much stronger legislative deterrent to criminal elements considering stealing their firearms so, as a result this Bill will create a new offence for being found in possession of a stolen firearm. This offence will attract a mandatory 3 month term of imprisonment upon conviction, unless exceptional circumstances exist for a magistrate not to impose this penalty.

This Government recognises that mandatory sentencing to a term of imprisonment is a measure which should only be used sparingly within the body of law in Tasmania. Recently the Parliament agreed to a six month term of imprisonment for the intentional serious harm of a police officer on duty. This was clearly done to provide a deterrent, as a measure that would keep police officers safer on duty.

Madam Speaker, this is a strongly similar circumstance. The proliferation of stolen and illegal weapons in Tasmania is a deadly serious matter for this Parliament. If this Parliament was to send a strong message to all Tasmanians that being found in possession of a firearm that has been stolen results in an automatic prison term penalty, those with a propensity to be involved in this illegal trade would think again as the cost to their liberty should far outweigh any gain made from their opportunistic folly. The Government is confident that this measure will see substantially fewer firearms being targeted for theft. In our view the Parliament should participate at every opportunity to reduce the supply of illegal firearms into criminal hands.

Madam Speaker, the Bill provides for an amendment to the Act to include a person that has had a firearm licence cancelled to become a proscribed person for the purposes of employment by a firearms dealer. It currently does not exclude a person who has had a personal firearms licence cancelled.

The Bill amends the Act to provide a defence for a primary producer or an employee of a primary producer to lawfully travel on a road that bounds, bisects or immediately connects property or properties owned by the primary producer without having to comply with the prescribed requirements for conveying a firearm. This will give such a person the ability to travel with a loaded firearm that is available for immediate use but it does not permit such a person to travel a number of

kilometres from one property to another. If a person chooses to do this and not comply with the conveyance requirements then this defence will not apply.

The Bill provides for an amendment to section 109 to provide for a person who is not authorised to be in possession of a firearm to surrender that firearm to a licensed firearm dealer. Regulations will be drafted to detail how that surrendered firearm is to be dealt with, but this will allow for a person who may inherit a firearm to surrender it to a firearms dealer who may seek to purchase the firearm from the person, or who can hold the firearm whilst the person applies for a licence.

Section 110 of the Act has been amended to authorise the possession of an unsafe firearm by a firearms dealer, a collector or a museum.

Under the current legislation it is an offence for a person to handle or use a firearm whilst the person is under the influence of alcohol or any other drug. The term 'handles' has been interpreted by the Courts as actually finding a person with the firearm in that person's hands and this was not the intention of the legislation. If a person is under the influence of an alcohol or drug then any firearm should be locked in a storage receptacle. This section is amended to overcome this issue and a firearm is in the physical possession of a person if it is under their immediate physical control and is not secured in accordance with the requirements of Part 5.

An offence has been created at section 124 to be in possession of any firearm or firearm part, on which any number, letter or identification mark has been defaced or altered. If at any time, a number, letter or identification mark on a firearm is defaced or altered, the firearm, if it was registered at that time, becomes automatically de-registered and is incapable of being re-registered.

The Act has been amended so that if a person is convicted of certain serious offences which involve a firearm then the firearm involved is automatically forfeited to the Crown. These offences include but are not limited to possessing a loaded firearm in a public place, discharging a firearm into, from or over a public place and recklessly discharging a firearm.

The Bill provides for the introduction of infringement notices to be able to be issued for a contravention of some of the minor offences under the Act. In Tasmania, infringement notices are currently issued for offences that relate to traffic, littering, liquor, fisheries, gaming and environmental issues. This method of dealing with offences has number of features which enhance its usefulness from a criminal justice system perspective.

The review identified a number of offences for which an infringement notice is an appropriate method of dealing with an offence, as an alternative to a summons or arrest.

The use of infringement notices merely provides another option for police officers to deal with these existing offences. If appropriate, police officers will still be able to put a person before a Court or a person issued with an infringement notice can have the matter determined by a Court

The notice will state that the person may avoid a court action by paying the penalty set out in the notice. These notices are payable within 28 days of issue.

There are several courses of action that can be taken by a person who will receive an infringement notice, as is the case with all current types of infringement notices and the usual rules will apply.

It is a process that has benefits for all parties, with the overwhelming benefit that a person who has committed a minor offence is not arrested and deprived of their liberty and then has to go through the court process, or alternatively receive a summons to attend court a number of months after the offence and then go through the court process.

The Act is amended by providing a new section that it is a requirement for a medical practitioner or prescribed practitioner who has reasonable cause to suspect that a person that he or she is treating or seeing in his or her professional capacity is suffering from a wound inflicted by a firearm, that is a 'bullet wound, then the medical practitioner or prescribed person must inform a police officer.

It is reasonable that if a firearm incident has occurred which has resulted in an injury to any person, then that incident should be investigated by police to determine if any person involved may be liable for their behaviour or whether any person needs to have their suitability to be able to access firearms assessed. It is not unreasonable to place this requirement on clinicians, who have other mandatory reporting requirements relating to community safety.

Finally Madam Speaker, the Bill provides for the introduction of the sporting activity of paintball within Tasmania. This will please many Tasmanians who wish to participate in this activity which is available in all other jurisdictions in Australia.

This Bill introduces provisions which will allow an approved operator to carry on a paintball business on an approved range. Only a person aged 16 years and above will be able to participate in the sport of paintball. A person aged 16 or 17 years of age will require the written consent of a person with parental responsibility before being able to participate. Paintball firearms will be required to be stored in accordance with the same requirements as category A firearms and there are specific offences created for contravention of the new paintball provisions.

Section 99C authorises an adult, or a person who is aged 16 or 17 and has parental or guardian consent in writing (young participant), to possess and use a paintball firearm when the adult or young participant is in possession of the paintball firearm with the knowledge and approval of the paintball operator or an employee of the operator and that person is playing, about to play, or has just finished playing paintball on an approved paintball range.

Section 99H creates offences of operating a paintball range that is not approved and operating an approved range without being a registered paintball operator.

Other sections of the Act have been reviewed and administrative amendments have been made, also if appropriate, increases to penalties sections throughout the Act have been included in this Bill.

Madam Speaker, I can advise that regulations will be drafted once the legislation has been passed to provide for procedures for implementing some of the substantive provisions of the Bill, for example, as I have previously stated regulations relating to the storage of firearms. I am hopeful that the drafting process for the regulations can be completed within the next twelve months. That period of time will also allow firearm owners a reasonable period of time to make any necessary changes to comply with the new storage requirements. Tasmania Police has also advised that Firearms Services will, during that period of time, develop a publicity campaign further alerting firearm licence holders of the forthcoming changes.

The Bill will become law on a day or days to be proclaimed.

I commend the Bill to the House.