

CLAUSE NOTES

Firearms (Miscellaneous Amendments) Bill 2015

Background:

The Bill introduces contemporary legislation to address emerging issues relating to the regulation of firearms in the State of Tasmania.

PART 1 – PRELIMINARY MATTERS

Clause 1: Short title

Specifies the name of the proposed Act.

Clause 2: Commencement

Specifies that the Act commences on a day or days to be proclaimed. This will allow for different clauses of the Act to be proclaimed at different times.

PART 2 – FIREARMS ACT 1996 AMENDED

Clause 3: Principal Act

Specifies that in this Part, the *Firearms Act 1996* is referred to as the Principal Act.

Clause 4: Section 3 amended (Interpretation)

Section 3 of the Act is amended by providing for *paintball pellets* to be included in the definition of ammunition.

The definition of *firearm* is amended to include any device declared by the regulations not to be a firearm.

A definition of a *firearms heirloom licence*, *imitation firearm* and *manufacture* have been inserted.

The definition of *light ordnance* has been omitted and the Act has a definition of *ordnance* inserted. This definition includes the items that were included in *light ordnance*.

Clause 5: Section 3B inserted

3B. Meaning of “possession”

This clause inserts a new section to provide for the meaning of *possession* in the context of this Act.

Clause 6: Section 9 amended (Possession or use of firearms)

This clause omits the current section and substitutes a new section 9 which creates two offences. The first relates to being in possession of or using a firearm when not the holder of an appropriate licence. It now includes a provision for a person to be charged with a possessing or using a firearm which a licence cannot be issued for, such as a stun gun/taser.

The second part of the amendment creates a new offence of possessing or using a prohibited firearm without an appropriate licence or if a licence cannot be issued for such a firearm. This will be an indictable offence and punishable under the *Criminal Code Act 1924*

Clause 7: Section 10 amended (Acquiring firearms)

This clause amends the section to clarify that this section does not apply to a licenced firearms dealer.

Clause 8: Section 13A amended (Possession of ex-military firearms and ordnance)

The term 'light' is omitted from this section.

Clause 9: Section 16 amended (Category C firearms licence)

This clause amends this section by not limiting the number of firearms a collector may acquire. Currently this section restricts the limit to one or a pair of category firearms which would not amount to a collection. The genuine reason for the collection of the category C firearm still applies, ie a collector must show commemorative, historical, thematic or investment value for each firearm he or she wishes to acquire.

Clause 10: Section 17 amended (Category D firearms licence)

This clause amends this section by not limiting the number of firearms a collector may acquire. Currently this section restricts the limit to one or a pair of category firearms which would not amount to a collection. The genuine reason for the collection of the category D firearm still applies, ie a collector must show commemorative, historical, thematic or investment value for each firearm he or she wishes to acquire.

Clause 11: Section 18 amended (Category H firearms licence)

This section is amended by omitting .45 and substituting .46.

Clause 12: Section 21A amended (Militaria firearms licence)

This clause amends the section by removing the word 'light'.

Clause 13: Section 22 amended (Additional authority relating to possession)

This clause amends the section by inserting a new subsection of (da). This section authorises a person who holds a licence to possess the firearm in certain circumstances. These circumstances have been extended to include possession of a firearm for the cleaning, or undertaking routine maintenance of, the firearm.

Clause 14: Section 25 amended (Purchase and sale)

This clause amends section 25(2) to restrict the sale and supply of a firearm to any person, unless the person is the holder of a licence that authorises the possession of the category of a firearm and, a current permit to acquire that type of firearm and that the dealer has sighted both the licence and the permit.

Subsection (4) is omitted to allow market forces to prevail and not to restrict competition.

Clause 15: Section 27A inserted

27A. Use of collection firearms on certain occasions

This clause inserts a new provision to provide the Commissioner of Police the authority to grant a permit to the holder of a firearm licence granted for the genuine reason of collection to carry or use any firearm held under the licence at a commemorative or historical event approved by the Commissioner and held on an approved range.

The Commissioner may impose any conditions on the permit that the Commissioner considers appropriate. There will be prescribed fee for an application for the permit. Consequential amendments have been made to section 47 of the Act in this Bill to provide for the use of the collection firearms.

The holder of a permit must comply with the terms and conditions of the permit and an appropriate penalty provision has been included.

Clause 16: Section 29 amended (General restrictions on granting a licence)

This clause amends the section by removing subsection (1)(e). The requirement for the Commissioner to be satisfied that a person can meet the storage and safety requirements of the Act is more appropriate once the person has made an application for a permit to acquire a firearm. A consequential amendment has been made to section 60 of the Act within this Bill.

Clause 17: Section 29B inserted

29B. Commissioner may seek further information

This clause inserts new provisions to provide the authority for the Commissioner to do a number of things in relation to an application by a person for a firearms licence. In particular the Commissioner may require an applicant to provide a report from a medical practitioner about the applicant's physical condition and a report from a medical practitioner or psychologist about the applicant's mental health.

The new section authorises the Commissioner, once a report has been provided by the medical practitioner or psychologist, to provide the medical practitioner or psychologist with information that the Commissioner has in his or her possession and ask the medical practitioner or psychologist for a further report.

The Commissioner can only provide the information that is held in his or her possession if the Commissioner considers on reasonable grounds that the medical practitioner or psychologist is not aware of the information and the information may influence the medical practitioner's or psychologist's opinion about the applicant's physical condition or mental health. The Commissioner must advise the applicant the fact that the information is being supplied to the medical practitioner or psychologist.

It also authorises the Commissioner to request the applicant to provide an identifying particular to verify the applicant's identity, if the Commissioner suspects on reasonable grounds that the applicant's stated identity is false or misleading. An identifying particular for the purposes of this section includes fingerprints, DNA or any other means by which a person may be identified.

An applicant is taken to have withdrawn the application if within a period specified period by the Commissioner, the applicant refuses or fails to provide a report or fails to comply with the providing an identifying particular.

The new section also states that unless the Commissioner considers that an identifying particular is currently required for the investigation of an offence, the Commissioner must, after deciding the application, return to the applicant any identifying particular or destroy the identifying particular and notify the applicant in writing of its destruction and destroy any record or copy of the identifying particular.

Clause 18: Section 31 amended (Restrictions on granting Category C firearms licence)

This clause amends the section by providing animal population control to be included in this section as a genuine reason for a category C licence.

Clause 19: Section 35A inserted

35A. Variation of conditions of licence

This clause provides for the Commissioner to vary or review a condition imposed on a licence at any time. The variation of a condition will come into effect on giving notice of that variation in writing to the holder of the licence. Notice may be given by email or facsimile or by leaving it at, or sending by post to, the person's residential or postal address or place or address of business or employment, whichever is the last known to the server.

Clause 20: Part 2, Division 5A inserted

Division 5A – Renewal of licences

The clause inserts a number of new sections to allow for a person to make application to renew a firearms licence. Currently, when a licence is due to expire a licensee must make an entirely new application.

Clause 21: Section 37 amended (Genuine reasons)

This clause amends the section to allow fishing for the commercial purposes within the meaning of the *Living Marine Resources Management Act 1995* and a conducting a paintball business as genuine reasons to possess or use a firearm.

Clause 22: Section 39 amended (Requirements relating to recreational hunting or vermin control)

This section omits the reference to the Director General of Lands.

Clause 23: Section 40 amended (Requirements relating to primary production)

This clause amends the section to clarify what is required to be shown by the applicant for the purposes of obtaining a licence for the genuine reason of primary production. It also removes the category C reference to a firearm to ensure that all applicants for any category of firearm will be required to provide the same information.

Clause 24: Section 45 amended (Form of licence)

This section amends the Act to include that a licence for a person is to include the licence holder's residential address.

Clause 25: Section 46 amended (General conditions of licence)

This clause includes the requirement for a licence holder to provide the Commissioner of Police, in an approved form, of any change in the licensee's name or residential address within 14 days after that change.

Clause 26: Section 47 amended (Special conditions of certain licence)

This clause provides for the use of some types of firearms that are possessed for collection purposes. This clause now provides for the discharge of a firearm in circumstance that are specifically approved by the Commissioner. Further it provides for firearms that are temporarily rendered inoperable to be rendered temporarily operable for the purposes of undertaking routine cleaning or maintenance or for participating in a shoot held in accordance with the new provision of this Bill at section 27A.

These amendments only relate to firearms that have been rendered temporarily inoperable not those that are required to be made permanently incapable of being fired.

Clause 27: Section 51 amended (Cancellation of licence)

This clause omits the words 'or interim restraint order'. This removes the ambiguity between sections 53(1) and 53(3).

Clause 28: Section 54 amended (Surrender of licence and firearm)

This clause inserts the words 'ammunition and firearm parts' into subsections (3), (4)(a), and (5). This provides for the surrender or seizure of ammunition or firearm parts which can be assembled into a firearm upon the surrender, suspension or cancellation of a firearms licence.

Clause 29 Section 60 amended (General restrictions on granting permits)

This clause amends section 60 by including the condition that a person must now also satisfy the Commissioner that the applicant is able to meet the storage and safety requirements specified in the Act in order to be granted a permit to acquire a firearm. This was moved from section 29.

Clause 30: Section 61 amended (Granting permit)

This clause amends this section by omitting subsection (b) and replacing it with a new section. This is to remove the 28-day waiting period to acquire a second or subsequent firearm.

The 28-day waiting period is designed to ensure that the person does not lodge an application to acquire a firearm on impulse with the intent of self-harm or the harm of another. Once a person has a firearm then the need for the waiting period is no longer relevant.

There is a minimum time limit imposed to ensure that there is sufficient time to process and administer the application.

Clause 31: Section 70 amended (Authority of minor's permit)

This clause amends this section by omitting the number 16 and replacing it with 15 throughout this section.

This will reduce the age of minor's permit to enable a 15 year old to shoot recreationally or 'in the field'. The amendment also clarifies that the permit allows for actually shooting the firearm under immediate supervision.

This section also includes an amendment so that only a person who has held a firearm's licence for a continuous period of 5 years is able to supervise a minor.

Clause 32: Section 73A inserted

Minor to act in accordance with permit

A minor is to have a responsibility to comply with a permit. There is an offence and a minor penalty provision included in this section. Matters would be proceeded against under the provisions of the *Youth Justice Act 1997*.

Clause 33: Section 74 amended (Unregistered firearms)

This clause allows for a firearm registered in another state or territory and that is used and possessed in accordance with a corresponding licence is taken to be registered in Tasmania.

Clause 34: Section 83 amended (Register of firearms)

This clause allows for the provision of information from the firearms register to the national body CrimTrac, which has been established since the commencement of the Act.

Clause 35: Section 84 amended (General requirements)

The words 'firearm part or ammunition' have been inserted throughout the section. This is to ensure that these items are also kept safe and to ensure they are not stolen or lost or end up in the possession of a person who is not authorised to have these items.

Clause 36: Section 85 and 86 substituted

85. Licence holder must comply with prescribed storage requirements

This clause amends the Act by repealing sections 85 and 86 and substituting it with a new section. The new section will provide for regulations to prescribe the storage requirements for category A, B, C and D for firearms, firearm parts and ammunition. The new section also allows for regulations to prescribe the storage requirements if the holder of a licence has possession of 10 or more category A, B, C or D firearms, and any firearm parts or ammunition for those firearms.

If a person is the holder of a category H firearm then the regulations will prescribe the storage requirements for this type of firearm, firearm parts and ammunition.

There is a provision in this section that states that the prescribed storage requirements will not apply to a licensee if the licensee satisfies the Commissioner that the licensee has provided alternative arrangements, for the storage of firearms, firearm parts and ammunition in the licensee's possession, that are of the standard not less than the prescribed requirements.

Clause 37: Section 87 amended (Firearms dealer and museum licences requirement)

This clause amends the section to ensure that ammunition held under a firearm dealers licence is kept safe and separate from any firearm.

Clause 38: Section 87A amended (Militaria firearms licence requirements)

This amendment provides for the changes from 'light ordnance' to 'ordnance'.

Clause 39: Section 88 amended (Seizure of firearms if storage requirements not met)

This clause removes the words 'ammunition or light' and inserts the words 'firearm part, ammunition or'. This amendment will allow for the seizure of firearm parts or ammunition if the storage requirements are not met for these items.

Clause 40: Section 89 amended (Record of dealings)

The clause amends this section to remove the legislative requirement that a firearm dealer must keep a record of his or her dealings with ammunition to one where the record must be kept if required by the Commissioner.

Clause 41: Sections 96A amended (Employment restrictions, &c)

This section is amended to ensure that a person who has had a firearm cancelled becomes a proscribed person. The section is also amended to clarify that the reasons for a person to be classified as a proscribed person apply regardless of jurisdiction.

Clause 42: Part 6A inserted

PART 6A - PAINTBALL

The insertion of these sections will provide for the conduct of the game of paintball. It defines certain terms within the section.

A paintball operator and any employee of the paintball operator must have a category A licence. Only category A firearms, air guns, will be able to be used for paintball. A person must apply to the Commissioner to be a registered paintball operator. There will be a fee. The Commissioner must not approve an application unless satisfied of a number of conditions. Paintball will only be able to be played/conducted on an approved range. Any paintball firearms and paintball pellets must be stored in accordance with the requirements of the Act.

If the Commissioner approves an application then a certificate of registration is to be issued. That authorises a paintball operator to conduct a paintball business for 12 months.

Before the expiry of that 12 months the paintball operator is to make application for renewal of registration on payment of the prescribed fee. Such renewal of registration will be subject to a satisfactory inspection of the paintball range.

The Commissioner may suspend the registration of a paintball operation for such a period as the Commissioner thinks fit, or following an inquiry, cancel the registration if satisfied that the registered paintball operator has contravened this Act, contravened another Act, which calls into question the paintball operator's ability to operate a paintball business, or contravened a condition of his or her registration. If the Commissioner suspends or cancels such registration then the Commissioner must give notice to the operator of the decision, the reasons for the decision, and the person's right of review.

A paintball operator must not employ a person who is not the holder of a category A firearms licence. A proscribed person must not apply or accept employment that gives the proscribed person access to paintball firearms or paintball pellets. A registered paintball operator must not cause or allow a proscribed person to act as an agent, or participate in the management of the paintball business. A proscribed person must not act as an agent for or participate in the management of a paintball business. There is a defence for the registered paintball operator to these offences.

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.

Clause 43: Section 101 amended (Mailing firearms outside State)

This clause amends the section by changing the term 'security mail' to 'registered mail'.

Clause 44: Section 104 amended (Conveying firearms and ammunition)

This clause provides for a defence to the offence of not carrying a firearm or ammunition in accordance with prescribed regulations if the primary producer or an employee of a primary producer if the firearm was being conveyed on a road that bounds, bisects or immediately connects properties owned by the primary producer.

Clause 45: Section 106A inserted

106A. Advertising sale of firearm receptacles

The clause inserts a new offence to advertise a receptacle as a firearm storage receptacle that does not meet the prescribed requirements.

Clause 46: Section 107A inserted

107A. Possession of a stolen firearm

This clause provides for a new offence of the possession of a stolen firearm. This offence will attract a mandatory sentence of 3 months imprisonment upon conviction unless the court finds that there were exceptional circumstances. A section has been inserted that states if a term of imprisonment is imposed then a term of not less than 3 months must be served and it must not be suspended.

The new section provides for an authority for a police officer to enter, remain on, and search any premises, which includes a conveyance, on which a police officer has reasonable grounds for believing that a stolen firearm is present.

There is a defence to this offence if a person provides a satisfactory account for the possession or control of the stolen firearm.

Clause 47: Section 109 amended (Surrender of firearms by unauthorised persons)

This clause provides for a person to surrender a firearm to a police officer or a licensed firearm dealer. If the firearm is surrendered to a dealer, that dealer must deal with the firearm in the manner prescribed by the regulations.

If the firearm is not dealt with in a prescribed manner then there is a penalty provision for the dealer.

Clause 48: Section 110 amended (Unsafe firearms)

This clause amends the section to provide for the possession of an unsafe firearm in certain circumstances.

Clause 49: Section 113 amended (Recklessly discharging firearm)

This section has been amended by omitting sub-section (1). This offence was included in the *Criminal Code Act 1924* in 2013.

Clause 50: Section 118 amended (Silencers and magazines)

This clause amends the section to include that a implement designed to suppress the sound of a discharge of a firearm is an offence whether or not the implement forms part of the firearm or can be attached to or removed from the firearm.

Clause 51: Section 119 amended (War games)

This clause amends the section to ensure that the sport of paintball is excluded from this section.

Clause 52: Section 120 amended (Restrictions relating to alcohol and drugs)

This clause amends this section by substituting the word 'handle' with the words 'have physical possession of' and then using this term throughout the section.

A definition of 'physical possession' has been included in this section to assist with the application of the term.

Clause 53: Section 124 substituted

124. Defacing or altering identification marks

This clause repeals the current section and replaces it with a new section. The new section provides for two offences, the first that it is an offence to intentionally or recklessly deface or alter any number, letter or identification mark on any firearm or firearm part. The second is that it is an offence to possess any firearm part, on which any number, letter or identification mark has been defaced or altered.

This section also makes any firearm that has had any number, letter or identification mark defaced or altered automatically unregistered for the purposes of the Act.

Clause 54: Section 129 amended (Amnesty)

This clause remove the words 'any offence relating to'. This is clarify that this is not a blanket amnesty and that the amnesty only applies to offences contained within the *Firearms Act 1996*.

Clause 55: Section 133 repealed

This clause repeals this clause as this Bill introduces a definition of possession in section 3 which relates to the entire Act.

Clause 56: Section 133A amended (Interpretation of Part)

This clause removes the word 'light' from the section so that the reference is just to 'ordnance'.

Clause 57: Section 137 amended (Dangerous Situations)

This amendment clarifies that the authorities conferred by this section are applicable if the person is to harm themselves or another person.

Clause 58: Section 141 amended (Reviews)

This clause amends the section to include some of the new provisions which are introduced by this Bill to be able to be the subject of a review by a Magistrate.

Clause 59: Section 149 amended (Disposal of surrendered or seized firearms)

This clause amends the section to detail matter which the court may take into consideration to determine if a firearm is to be forfeited to the Crown. It details a number of offences whereby if person is convicted of one of these then the firearm is automatically forfeited.

The clause also amends the section to provide the Commissioner of Police with the authority to determine how to dispose of firearms that have been forfeited. Currently the legislation states that the Minister is to make this determination. This determination should be an administrative action and not place the Minister in the invidious position of deciding disposal of firearms that may belong to constituents.

This section is also amended by removing the word 'light' so the section relates to 'ordnance'.

Clause 60: Section 157A inserted

157A. Infringement notices

This clause provides for the issuing of infringement notices for a number of minor offences. The offences that have been included are listed in Schedule 1A.

Clause 61: Section 158 amended (Evidence)

This clause provides for a certificate which stipulates that a firearm is of a certain category is evidence of that fact.

Clause 62: Section 158A and 158B inserted

158A. Medical practitioner to report firearm incidents

This clause amends this section by inserting a section that places a requirement for a medical practitioner, or other prescribed person who has reasonable cause to suspect in relation to a person who he or she has seen in his or her professional capacity that the person is suffering from a wound inflicted by a firearm to report that matter to police.

The report must be made as soon as practicable after the suspicion is formed and must include the name and address of the person treated or a description, details of the wound and any information provided to the practitioner or other person about the circumstances leading to the infliction of the wound.

Reasonable steps must be taken to retain any ammunition or fragment of ammunition recovered from the wound until it can be collected by a police officer.

No civil or criminal liability occurs if the information is provided in good faith.

158B. Limitation on proceedings

This clause inserts a section provides for proceedings to be instituted within 12 months after the date of the offence except for those matters which are crimes and have no statute of limitations.

Clause 63: Schedule I amended (Prohibited Firearms)

This clause inserts two items, an ex-military firearm and any ordnance, as a prohibited firearm.

Clause 64: Schedule 1A inserted

SCHEDULE 1A – INFRINGEMENT NOTICE OFFENCES

This clause inserts a schedule which lists the offences for which an infringement notice may be issued, and it lists the number of penalty units for each offence. The penalty units have been set at one-tenth of the fine.

- section 23(2) – fail to provide document within required period;
- section 48 – fail to comply with conditions of a licence;
- section 82 – fail to produce registered firearm for inspection;
- section 91 – alter a dealings record otherwise than by inderlineation or striking out;
- section 92 – fail to provide a copy of dealings record on ceasing to hold a dealer licence;
- section 93(1) – fail to forward quarterly return;
- section 93A – fail to provide business management declaration;
- section 94(1) – fail to affix label;
- section 95(1) – fail to notify of loss, theft or destruction of a firearm;
- section 96(2) – fail to provide particulars as requested;
- section 97 – display firearm otherwise than in accordance with requirements;
- section 98(1) – repair firearm without seeing licence, permit or certificate of registration;
- section 98(2) – repair firearm that is not registered;
- section 99 – fail to keep a records safe as required;
- section 106 – advertise sale of firearm when not a firearm's dealer;
- section 108(2) – person carrying firearm fail to state name and place of residence;
- section 122(1) – fail to produce licence or permit for inspection;
- section 122(2) – holder of licence or permit fail to state name and address;
- section 138(2) – fail to provide, or provide information as requested; or
- section 147(7) – fail to comply with obligations a keeper of firearm.

PART 3 – FORENSICS PROCEDURES ACT 2000 AMENDED

Clause 65: Principal Act

Specifies that in this Part, the *Forensic Procedures Act 2000* is referred to as the Principal Act.

Clause 66: Section 3 amended (Interpretation)

This clause inserts a new subsection (ab) that the offences at section 107A and 114 of the *Firearms Act 1996* are included in the definition of 'serious offence' in the Principal Act.

PART 4 – REPEAL OF ACT

Clause 67: Repeal of Act

This clause provides that the *Firearms (Miscellaneous Amendments) Act 2015* is repealed on the three hundred and sixty fifth day from the day on which it commences.