

TASMANIA

FIREARMS AMENDMENT BILL 2007

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FIREARMS AMENDMENT BILL 2007

(Brought in by the Minister for Police and Emergency Management, the Honourable David Edward Llewellyn)

A BILL FOR

An Act to amend the *Firearms Act 1996* and certain regulations under that Act and to make related amendments to the *Police Offences Act 1935*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Firearms Amendment Act 2007*.

2. Commencement

- (1) Except as provided by this section, this Act commences on the day on which this Act receives the Royal Assent.
- (2) The provisions of Part 3 commence on a day or days to be proclaimed.

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Part 2 – Firearms Act 1996 Amended

PART 2 – FIREARMS ACT 1996 AMENDED

3. Principal Act

In this Part, the *Firearms Act 1996** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “dealings record”:

“employment”, with a firearms dealer, includes engagement under a contract for services;

- (b) by inserting the following definition after the definition of “licensee”:

“light ordnance” means –

- (a) a bazooka, rocket launcher or prescribed weapon that, although not a firearm within the meaning of this Act, is designed to be capable of –

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- (i) being carried and used manually; and
 - (ii) firing a projectile by non-explosive means such as a propellant; and
- (b) a shell, rocket or other projectile that –
 - (i) is designed to be fired by a weapon referred to in paragraph (a); and
 - (ii) has not been permanently rendered inert;
- (c) by omitting paragraph (b) from the definition of “pistol” and substituting the following paragraph:
 - (b) has an overall length not exceeding 65cm;
- (d) by inserting the following definition after the definition of “police family violence order”:

“police officer” means a member of the Police Service established under section 4 of the *Police Service Act 2003*;

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5. Section 3A inserted

After section 3 of the Principal Act, the following section is inserted in Part 1:

3A. Meaning of “close associate” of firearms dealer

(1) For the purposes of this Act, a person is taken to be a close associate of the holder of or an applicant for a firearms dealer licence if the person (either in his or her own right or on behalf of any other person) –

(a) holds or will hold a relevant financial interest or relevant position in the business that is or is proposed to be carried on under the licence and, by virtue of that interest or position, is or will be able to exercise a significant influence over that business; or

(b) is entitled to exercise a relevant power over the conduct of the business that is or is proposed to be carried on under the licence.

(2) In this section –

“**relevant financial interest**”, in a business, means an interest in the capital or assets of the business or an entitlement to receive, in any capacity, any income from the business;

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“relevant position”, in a business, means a position whose occupant participates in the management of the business;

“relevant power”, over the conduct of a business, means a power (however exercisable) to participate in any managerial or executive decision or to elect or appoint any person to a relevant position.

6. Section 4 substituted

Section 4 of the Principal Act is repealed and the following section is substituted:

4. Possession of firearms

For the purposes of this Act –

- (a) if a person knowingly has a firearm in the custody of another person, the first-mentioned person is still taken to possess the firearm; and
- (b) if 2 or more persons possess parts of a firearm, each of them is taken to possess the firearm.

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7. Section 6 amended (Application of Act)

Section 6 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(b) “, other than a junior constable or trainee,” after “officer”;
- (b) by omitting from subsection (1)(b)(iii) “that” and substituting “the”;
- (c) by omitting from subsection (1)(b)(iv) “incidents.” and substituting “incidents; or”;
- (d) by inserting the following paragraph after paragraph (b) in subsection (1):
 - (c) a junior constable or trainee possessing or using a firearm in accordance with subsection (3) while acting in the ordinary course of the junior constable’s or trainee’s duties.
- (e) by inserting in subsection (2) “, other than a junior constable or trainee,” after “officer”;
- (f) by inserting the following subsections after subsection (2):
 - (3) A junior constable or trainee possessing or using a firearm under subsection (1) –

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- (a) must not consume intoxicating liquor or be under the influence of alcohol or any other drug; and
- (b) must not be present at any place where liquor is being consumed except in the ordinary course of the junior constable's or trainee's duties.

(4) In this section –

“junior constable” means a junior constable as defined in the *Police Service Act 2003*;

“trainee” means a trainee as defined in the *Police Service Act 2003*.

8. Section 11 amended (Dealing in firearms)

Section 11 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) A person is guilty of an indictable offence punishable under the *Criminal Code* if the person deals in firearms without holding a firearms dealer licence.

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9. Section 16 amended (Category C firearms licence)

Section 16(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “of ammunition” after “rounds”;
- (b) by inserting in paragraph (b) “of ammunition” after “rounds”;
- (c) by inserting in paragraph (c) “of ammunition” after “rounds”.

10. Section 17 amended (Category D firearms licence)

Section 17(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (b) “of ammunition” after “rounds”;
- (b) by inserting in paragraph (c) “of ammunition” after “rounds”;
- (c) by inserting in paragraph (d) “of ammunition” after “rounds”.

11. Section 26 amended (Possession and use of firearm under licence)

Section 26 of the Principal Act is amended as follows:

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- (a) by omitting “The” and substituting “(1) The”;
- (b) by inserting the following subsections:
 - (2) However, it is not an offence under subsection (1) for the holder of an active non-sporting firearms licence to possess and use a firearm specified in the licence at an approved range if –
 - (a) the firearm is used only for orientation purposes; and
 - (b) the holder of the licence has the permission of the club or person in charge of the range; and
 - (c) the holder of the licence is not entered or engaged in any kind of shooting competition at the range; and
 - (d) the person has not used that firearm, for orientation purposes, at any range on more than 3 occasions in the 6-month period immediately preceding the day on which the person is attending the range.

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(3) In this section –

**“active non-sporting
firearms licence”** means
a firearms licence that –

- (a) authorises its holder to use a firearm; and
- (b) does not specify, as a purpose for which that firearm may be used, range shooting, sport shooting or target shooting;

“orientation purposes”, in relation to a firearm, means any or any combination of the following:

- (a) sighting the firearm;
- (b) testing the firearm or its components or ammunition;
- (c) acquiring familiarity with the firearm;

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- (d) acquiring greater proficiency in the use of the firearm;

“range” includes shooting gallery.

12. Section 28 amended (Applications for licences)

Section 28(2) of the Principal Act is amended by inserting after paragraph (ca) the following paragraph:

- (cb) in the case of an application for a firearms dealer licence, contain the name and address of each person who is a close associate of the applicant and particulars of the nature of that close association; and

13. Section 29 amended (General restrictions on granting licence)

Section 29 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “old” and substituting “of age”;
- (b) by omitting from subsection (2)(e) “continuous” and substituting “reasonable”;

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(c) by omitting paragraph (f) from subsection (2) and substituting the following paragraph:

(f) whether the person is subject to a restraint order, interim restraint order, family violence order, interim family violence order or police family violence order or has, at any time in the 5-year period immediately before lodging the application, been subject to such an order;

(d) by omitting from subsection (2)(g) “that” and substituting “whether”;

(e) by omitting paragraph (d) from subsection (3) and substituting the following paragraph:

(d) is subject to a firearms prohibition order, or one or more of the following in relation to personal injury:

(i) a restraint order;

(ii) an interim restraint order;

(iii) a family violence order;

(iv) an interim family violence order;

(v) a police family violence order; or

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14. Section 29A inserted

After section 29 of the Principal Act, the following section is inserted in Division 5:

29A. Restriction on granting firearms dealer licence

- (1) The Commissioner must not grant an application for a firearms dealer licence unless the Commissioner is satisfied that –
 - (a) the applicant will have primary responsibility for the management of the business proposed to be carried on under the licence; and
 - (b) the applicant's close associates, if any, are fit and proper persons to be close associates of a firearms dealer.
- (2) In deciding whether a person is a fit and proper person to be a close associate of a firearms dealer, the Commissioner may, as regards that person, take into account any of the matters that are to be taken into account under section 29(2) in respect of an applicant for a licence.

15. Section 33 substituted

Section 33 of the Principal Act is repealed and the following section is substituted:

33. Restrictions on granting Category H firearms licence

(1) The Commissioner must not grant an application for a Category H firearms licence unless the Commissioner is satisfied that –

(a) the applicant has one of the following genuine reasons for applying for the licence:

(i) sport or target shooting;

(ii) business or employment;

(iii) firearms collection;

(iv) security industry work;
and

(b) the person needs to possess or use a firearm of the category to which the application relates in connection with that genuine reason.

(2) In this section –

“security industry work” does not include the close personal protection of other persons.

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16. Section 42 amended (Requirements relating to animal welfare)

Section 42 of the Principal Act is amended by omitting paragraphs (c) and (d) and substituting the following paragraphs:

- (c) an inspector under the *Animal Health Act 1995*; or
- (d) an inspector or officer under the *Animal Welfare Act 1993*; or
- (e) an authorised person under the *Dog Control Act 2000*; or
- (f) an authorised officer under the *Nature Conservation Act 2002*; or
- (g) a prescribed person.

17. Section 47 amended (Special conditions of certain licence)

Section 47(1)(a)(ii) of the Principal Act is amended by omitting “if it is not practicable to comply with subparagraph (i),”.

18. Section 48 amended (Compliance with conditions of licence)

Section 48 of the Principal Act is amended by omitting “any condition specified in” and substituting “the conditions of”.

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19. Section 51 amended (Cancellation of licence)

Section 51 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or police family violence order”;
- (b) by omitting from subsection (2)(f) “of the opinion” and substituting “satisfied”;
- (c) by inserting the following paragraph after paragraph (f) in subsection (2):
 - (fa) if, in the case of a firearms dealer licence, the Commissioner is satisfied that –
 - (i) the holder does not have primary responsibility for the management of the business carried on under the licence; or
 - (ii) the holder has a close associate who is not a fit and proper person to be a close associate of a firearms dealer; or
- (d) by inserting the following subsection after subsection (3):
 - (3A) In deciding, under subsection (2), whether a person is a fit and proper person in any respect, the Commissioner may, as regards

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that person, take into account any of the matters that are to be taken into account under section 29(2) in respect of an applicant for a licence.

20. Section 53 amended (Suspension of licence)

Section 53 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “or an interim family violence order” and substituting “, interim family violence order or police family violence order”;
- (b) by omitting subsection (2) and substituting the following subsection:
 - (2) Unless sooner revoked by the Commissioner, the suspension of the licence has effect –
 - (a) if the suspension is imposed consequent on an interim restraint order or interim family violence order, for the duration of that order or such lesser period as a court may determine; or
 - (b) in any other case, for such period not exceeding 6 months as the

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Commissioner specifies in
the notice under
subsection (1).

- (c) by omitting from subsection (3) “a” and
substituting “the”.

**21. Section 54 amended (Surrender of licence and
firearm)**

Section 54 of the Principal Act is amended by
inserting after subsection (5) the following
subsection:

- (6) In this section –

“**firearm**” includes a weapon of the
kind referred to in paragraph (a)
of the definition of “light
ordnance” in section 3.

**22. Section 60 amended (General restrictions on
granting permits)**

Section 60 of the Principal Act is amended by
omitting subsection (2) and substituting the
following subsection:

- (2) In deciding whether the applicant is a fit
and proper person, the Commissioner
may, as regards the applicant, take into
account any of the matters that are to be
taken into account under section 29(2) in
respect of an applicant for a licence.

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23. Section 65 amended (Period of permit)

Section 65(a) of the Principal Act is amended by omitting “14” and substituting “90”.

24. Section 84 substituted

Section 84 of the Principal Act is repealed and the following section is substituted:

84. General requirements

- (1) A person in possession of a firearm must take all reasonable precautions to ensure that the firearm is kept safely.
- (2) A person in possession of a firearm must take all reasonable precautions to ensure that the firearm is not stolen or lost.
- (3) A person in possession of a firearm must take all reasonable precautions to ensure that the firearm does not come into the possession of a person who is not authorised to possess it.

Penalty: In the case of –

- (a) a prohibited firearm, a fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both; or

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- (b) any other firearm, a fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months, or both.

25. Section 93A inserted

After section 93 of the Principal Act, the following section is inserted in Division 1:

93A. Business management declarations

- (1) The Commissioner may serve a licensed firearms dealer with a notice requiring the licensed firearms dealer to provide the Commissioner with a business management declaration.
- (2) The licensed firearms dealer must comply with the notice within 14 days after it is served.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (3) In this section –

“business management declaration”
is a declaration by a licensed firearms dealer, signed before a justice, that –

- (a) states who, at the time of signing, has primary

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responsibility for the management of the business carried on under the licence; and

(b) does whichever of the following applies to the licensee at the time of signing:

(i) states the name and address of each of the licensee's close associates and explains, in each case, the precise nature of their association with the licensee;

(ii) states that, since the licence was issued or, as the case may be, the licensee last provided a business management declaration for the licence, there has been no change regarding the licensee's close associates (either as to number,

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name, address or
nature of
association).

26. Section 96A inserted

After section 96 of the Principal Act, the following section is inserted in Division 2:

96A. Employment restrictions, &c.

- (1) The holder of a firearms dealer licence must not employ a proscribed person in a job that gives the proscribed person access to any firearms or ammunition dealt with under the licence.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (2) A proscribed person must not apply for or accept employment that gives the proscribed person access to any firearms or ammunition dealt with under a firearms dealer licence.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (3) The holder of a firearms dealer licence must not cause or allow a proscribed person to –

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- (a) act as an agent for the business carried on under the licence; or
- (b) participate in the management of the business carried on under the licence.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years, or both.

(4) A proscribed person must not –

- (a) act as an agent for a business carried on under a firearms dealer licence; or
- (b) participate in the management of the business carried on under a firearms dealer licence.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years, or both.

(5) It is a defence in proceedings for an offence under subsection (1) or (3) if the defendant establishes that, on the day of the alleged offence, he or she did not know, and could not reasonably have been expected to know, that the person to whom the alleged offence relates was a proscribed person.

(6) For the purposes of this section, a person is taken to be a proscribed person on a particular day if the person –

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- (a) has, in the 10-year period immediately preceding that day, had a firearms dealer licence cancelled; or
- (b) has, in the 10-year period immediately preceding that day, had an application for a licence or permit under this Act refused on the grounds that –
 - (i) the person was not considered a fit and proper person to be issued with the licence or permit; or
 - (ii) the person was not considered a fit and proper person to be trusted with possession of firearms; or
 - (iii) the issue of the licence or permit would be contrary to the public interest; or
- (c) is subject to an interim restraint order or interim family violence order or a similar interim order in force under a law of another jurisdiction; or
- (d) is subject to a restraint order, family violence order or police family violence order or a similar

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order in force under a law of another jurisdiction; or

- (e) is subject, either in this State or elsewhere, to a good behaviour bond relating to an offence of or involving violence; or
- (f) is subject to a firearm prohibition order.

27. Section 99A inserted

After section 99 of the Principal Act, the following section is inserted in Division 2:

99A. Licence to be cancelled in certain circumstances

- (1) The Commissioner must cancel a firearms dealer licence if the Commissioner is satisfied that –
 - (a) the licensee does not have primary responsibility for the management of the business carried on under the licence (in this section referred to as “the firearms business”); or
 - (b) the licensee has a close associate who is not a fit and proper person to be a close associate of a firearms dealer.

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- (2) In deciding whether a person is a fit and proper person to be a close associate of a firearms dealer, the Commissioner may, as regards that person, take into account any of the matters that are to be taken into account under section 29(2) in respect of an applicant for a licence.

28. Section 104 substituted

Section 104 of the Principal Act is repealed and the following section is substituted:

104. Conveying firearms and ammunition

- (1) A person who conveys a firearm or any ammunition must comply with the prescribed safety requirements.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 12 months.

- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that, at the relevant time, the relevant firearm or ammunition was being conveyed –
- (a) in connection with the defendant's employment or livelihood; and
 - (b) no further than reasonably necessary in the circumstances.

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- (3) A court that convicts a person of an offence under subsection (1) in respect of any firearm or ammunition may, in addition to any other penalty it may impose, order that the firearm or ammunition is forfeited to the Crown.
- (4) Any firearm or ammunition forfeited to the Crown pursuant to subsection (3) is to be disposed of as the Minister determines.

29. Section 105 amended (Sale and possession of ammunition)

Section 105(1) of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraphs:

- (b) the person selling or supplying the ammunition has seen the licence or authority of the other person; and
- (c) the person selling or supplying the ammunition is –
 - (i) a firearms dealer; or
 - (ii) an employee of a firearms dealer; or
 - (iii) authorised by the Commissioner in writing to sell or supply the ammunition.

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30. Section 108 amended (Inspection of firearms)

The penalty under section 108(1) of the Principal Act is amended by omitting “20” and substituting “50”.

31. Part 7, Division 2A inserted

After section 110 of the Principal Act, the following Division is inserted in Part 7:

Division 2A – Trafficking

110A. Unlawful trafficking in firearms

- (1) A person is guilty of an indictable offence punishable under the *Criminal Code* if the person traffics in firearms without lawful excuse.
- (2) For the purposes of subsection (1), a person is taken to traffic in firearms without lawful excuse if –
 - (a) the firearms are registrable firearms; and
 - (b) the firearms are not registered or the person is not the registrant of the firearms; and
 - (c) on one or more occasions, the person carries out one or more of the following activities:

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- (i) sells or otherwise disposes of the firearms to any other person (whether or not that other person is in Tasmania);
 - (ii) receives or delivers the firearms from or to any other person (whether or not that other person is in Tasmania);
 - (iii) modifies, prepares or packs the firearms for sale or delivery to any other person (whether or not that other person is in Tasmania);
 - (iv) conveys the firearms from one place to another;
 - (v) has possession of, or conceals, the firearms for or in connection with an activity referred to in subparagraph (i), (ii), (iii) or (iv).
- (3) Without restricting the generality of the expression “possession”, a person is taken to be in possession of a firearm for the purposes of this section so long as it is on any premises owned or occupied by the person, unless the person proves that

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he or she had no knowledge of the firearm being on those premises.

(4) In this section –

“premises” includes –

- (a) an area of land, whether built on or enclosed; and
- (b) a building or a part of a building, whether permanent or temporary; and
- (c) a structure or a part of a structure, whether permanent or temporary; and
- (d) a vehicle;

“registrable firearms” means firearms that, by virtue of section 74(1), a person must not sell, acquire, possess or use unless they are registered;

“vehicle” means any thing capable of transporting people, objects or materials by air, road, rail or water, regardless of how the thing is moved or propelled.

110B. Extra-territorial application of anti-trafficking provisions

(1) If –

- (a) a person carries out an activity referred to in section 110A(2)(c) outside, or partly outside, Tasmania; and
- (b) there is a real and substantial link between the activity and Tasmania –

section 110A applies to the activity as if it had been carried out wholly within Tasmania.

(2) For the purposes of subsection (1), there is a real and substantial link between an activity and Tasmania if –

- (a) a significant part of the conduct relating to, or constituting, the carrying out of the activity occurs in Tasmania; or
- (b) where the activity is carried out wholly or partly outside Tasmania, substantial harmful effects arise in Tasmania.

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Part 2 – Firearms Act 1996 Amended

32. Section 111 amended (Possession of loaded firearm in public place)

Section 111 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 years, or both.

- (b) by omitting the penalty from subsection (2) and substituting the following penalty:

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 years, or both.

- (c) by inserting in subsection (3) “of ammunition” after “round”.

33. Section 113 amended (Recklessly discharging firearm)

Section 113 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (3) However, subsection (2) does not apply to a police officer or animal welfare officer who, acting responsibly in the course of his or her employment,

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discharges a tranquiliser gun or other firearm within 250 metres of a dwelling house in order to –

- (a) avert or control a threat to life or property posed by a dangerous, injured, diseased or potentially diseased animal; or
 - (b) end the suffering of an injured or diseased animal.
- (4) In this section –

“animal welfare officer” means a person referred to in any paragraph of section 42.

34. Section 118 amended (Silencers and magazines)

Section 118 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “magazine” and substituting “firearms magazine”;
- (b) by omitting from subsection (2)(a) “rounds” and substituting “rounds of ammunition”;
- (c) by inserting the following subsection after subsection (2):

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- (3) A person must not possess a detachable firearms magazine that is –
- (a) capable of holding more than 10 rounds of ammunition and being used in a pump-action centre-fire rifle; or
 - (b) capable of holding more than 10 rounds of ammunition and being used in a lever-action centre-fire rifle; or
 - (c) capable of holding more than 15 rounds of ammunition and being used in a bolt-action centre-fire rifle.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

35. Section 120A inserted

After section 120 of the Principal Act, the following section is inserted in Division 3:

120A. Conspiracy to commit firearms offence in other jurisdiction

- (1) A person is guilty of an indictable offence punishable under the *Criminal Code* if, in Tasmania, the person conspires with another person, wherever located, to commit an offence against a foreign firearms law.
- (2) A person is guilty of an indictable offence punishable under the *Criminal Code* if, by doing any act or making any omission in Tasmania, the person –
 - (a) instigates another person, wherever located, to commit an offence against a foreign firearms law; or
 - (b) enables or aids another person, wherever located, to commit an offence against a foreign firearms law; or
 - (c) abets another person, wherever located, in committing an offence against a foreign firearms law.
- (3) In this section –

“foreign firearms law” means a law, of a jurisdiction outside Tasmania, that provides for the regulation, registration or control of firearms or like weapons.

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Part 2 – Firearms Act 1996 Amended

36. Section 123 amended (Misuse of licences and permits)

Section 123 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 years, or both.

37. Section 124 amended (Defacing or altering identification marks)

Section 124 of the Principal Act is amended as follows:

- (a) by inserting “, either intentionally or recklessly,” after “must not”;
- (b) by omitting the penalty and substituting the following penalty:

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 years, or both.

38. Section 125 amended (Altering or falsifying records)

Section 125 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

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Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 years, or both.

39. Section 126 amended (False or misleading statements)

Section 126 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 years, or both.

40. Section 133A inserted

Before section 134 of the Principal Act, the following section is inserted in Part 9:

133A. Interpretation of Part

In this Part –

“**ammunition**” includes a projectile falling within paragraph (b) of the definition of “light ordnance” in section 3;

“**firearm**” includes a weapon falling within paragraph (a) of the definition of “light ordnance” in section 3.

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Part 2 – Firearms Act 1996 Amended

41. Section 137 amended (Dangerous situations)

Section 137(c) of the Principal Act is amended by omitting “and detain”.

42. Section 146 repealed

Section 146 of the Principal Act is repealed.

43. Section 147 amended (Inherited firearms)

Section 147 of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from subsection (1) and substituting the following paragraph:
 - (a) if it is a registered firearm, deliver it up to –
 - (i) the Commissioner; or
 - (ii) a person (in this section referred to as “the keeper”) who holds a firearms licence of the category appropriate to that firearm; or
- (b) by inserting in subsection (2) “or keeper” after “subsection (1), the Commissioner”;
- (c) by inserting in subsection (2)(b) “or keeper” after “Commissioner”;

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- (d) by inserting in subsection (3) “or keeper” after “before the Commissioner”;
- (e) by inserting in subsection (3) “or keeper” after “requests the Commissioner”;
- (f) by inserting in subsection (4) “or keeper” after “If the Commissioner”;
- (g) by inserting in subsection (4) “or keeper” after “subsection (3), the Commissioner”;
- (h) by inserting in subsection (5) “or keeper” after “Unless the Commissioner”;
- (i) by inserting in subsection (5) “or keeper” after “subsection (3), the Commissioner”;
- (j) by inserting the following subsection after subsection (6):
 - (7) A person, other than the Commissioner, who takes delivery of a firearm pursuant to subsection (1) must comply with his or her obligations under this section as the keeper of that firearm.

Penalty: Fine not exceeding 25 penalty units.

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Part 2 – Firearms Act 1996 Amended

44. Section 149 amended (Disposal of surrendered or seized firearms)

Section 149 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “or ammunition” after “that the firearm”;
- (b) by inserting in subsection (2)(b) “or ammunition” after “firearm”;
- (c) by omitting subsection (3) and substituting the following subsections:
 - (3) If a person is convicted of an offence under Part 5 in respect of which any firearm or ammunition has been seized under section 88, the court, in addition to imposing any other penalty, may order that the seized firearm or ammunition is forfeited to the Crown.
 - (3A) Any firearm or ammunition forfeited to the Crown under subsection (3) is to be disposed of as the Minister determines.
- (d) by omitting subsection (4);
- (e) by inserting in subsection (5) “or ammunition” after “firearms”;
- (f) by inserting the following subsection after subsection (6):
 - (7) In this section –

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“ammunition” includes a projectile falling within paragraph (b) of the definition of “light ordnance” in section 3;

“firearm” includes a weapon falling within paragraph (a) of the definition of “light ordnance” in section 3.

45. Section 155 amended (Exemptions)

Section 155 of the Principal Act is amended by omitting subsection (4) and substituting the following subsection:

- (4) The Commissioner, subject to any specified condition, may exempt a person or class of persons from a provision of this Act relating to the possession or use of any or any combination of the following:
- (a) any ammunition;
 - (b) a firearm;
 - (c) a firearms magazine;
 - (d) a firearm sound suppressor.

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46. Section 161 amended (Regulations relating to specific matters)

Section 161 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “Act.” and substituting “Act, including fee exemptions, concessions, waivers and refunds (full or partial); and”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) the replacement of licences and permits that are stolen, lost, destroyed or damaged.

PART 3 – FIREARMS ACT 1996 FURTHER AMENDED

47. Principal Act

In this Part, the *Firearms Act 1996** is referred to as the Principal Act.

48. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “employment”:

“ex-military” means originally designed or intended for, but never in or no longer in, military use;

- (b) by inserting the following definition after the definition of “firearms dealer”:

“firearms dealer employee licence” means a licence referred to in section 19A;

- (c) by inserting the following definition after the definition of “light ordnance”:

“militaria firearms licence” means a licence referred to in section 21A;

*No. 23 of 1996

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Part 3 – Firearms Act 1996 Further Amended

49. Section 11 amended (Dealing in firearms)

Section 11 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (3) A person employed by a firearms dealer must not manually handle a firearm in the course of that employment unless the person holds –
 - (a) a firearms licence of the appropriate category as specified in Division 2 in respect of that firearm; or
 - (b) a firearms dealer employee licence.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (4) A person is to apply for a firearms dealer employee licence in accordance with Division 5.

50. Section 13A inserted

After section 13 of the Principal Act, the following section is inserted in Division 1:

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13A. Possession of ex-military firearms and light ordnance

- (1) A person must not possess an ex-military firearm or ex-military light ordnance unless the person is the holder of a militaria firearms licence.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (2) However, a person does not commit an offence under subsection (1) in respect of an ex-military firearm if the person is authorised to possess the firearm under a firearm heirlooms licence, firearms museum licence or other kind of firearms licence.
- (3) A person is to apply for a militaria firearms licence in accordance with Division 5.

51. Section 18 amended (Category H firearms licence)

Section 18 of the Principal Act is amended as follows:

- (a) by inserting in subsection (3)(e) “of ammunition” after “rounds”;
- (b) by inserting the following subsection after subsection (4):

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- (5) A category H firearms licence for use in the security industry authorises the holder to possess –
- (a) a registered pistol that –
 - (i) does not exceed .38 inch calibre or 9 millimetre calibre; and
 - (ii) is owned by, and has as its registrant, the holder's employer; and
 - (b) factory-manufactured or factory-loaded ammunition for a registered pistol of the kind referred to in paragraph (a).

52. Section 19A inserted

After section 19 of the Principal Act, the following section is inserted in Division 3:

19A. Firearms dealer employee licence

A firearms dealer employee licence authorises the holder to handle manually, in the course of his or her employment with the holder of a firearms dealer

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licence and at the premises specified in the firearms dealer licence –

- (a) firearms of a category specified in the firearms dealer licence; and
- (b) ammunition for such firearms.

53. Section 21A inserted

After section 21 of the Principal Act, the following section is inserted in Division 3:

21A. Militaria firearms licence

A militaria firearms licence authorises the holder to possess and display ex-military firearms and ex-military light ordnance.

54. Section 87A inserted

After section 87 of the Principal Act, the following section is inserted in Part 5:

87A. Militaria firearms licence requirements

- (1) The holder of a militaria firearms licence must comply with the following requirements in respect of the safekeeping, on premises, of any firearm to which the licence applies:
 - (a) the premises are to be in a structurally sound condition;

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- (b) all doors and windows, skylights and other covers on the premises are to be capable of being secured against unlawful entry;
- (c) all reasonable steps are to be taken to secure the premises from unlawful entry;
- (d) the firearm is to have been rendered incapable of discharging ammunition, either permanently or temporarily;
- (e) the ammunition, if any, is to have been rendered permanently inert;
- (f) when on display, the firearms are to be secured to a wall or secure free-standing rack, or placed in a secure display case;
- (g) any prescribed safekeeping requirement.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (2) Subsection (1) does not apply to a licensee if the licensee satisfies the Commissioner that the licensee has provided alternative arrangements for the safekeeping of firearms in the licensee's possession that are of a standard not less than the requirements specified in this section.

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(3) In this section –

“ammunition” includes a projectile falling within paragraph (b) of the definition of “light ordnance” in section 3;

“firearm” includes a weapon falling within paragraph (a) of the definition of “light ordnance” in section 3.

55. Section 88 amended (Seizure of firearms if storage requirements not met)

Section 88 of the Principal Act is amended by omitting “firearm or ammunition” and substituting “firearm, ammunition or light ordnance”.

56. Section 105 amended (Sale and possession of ammunition)

Section 105 of the Principal Act is amended by inserting after subsection (4) the following subsection:

(5) A person employed by a firearms dealer must not manually handle ammunition for a firearm in the course of that employment unless the person holds –

(a) a firearms licence of the appropriate category as specified

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Part 3 – Firearms Act 1996 Further Amended

in Division 2 of Part 2 in respect
of that firearm; or

- (b) a firearms dealer employee
licence.

Penalty: Fine not exceeding 20 penalty
units or imprisonment for a term
not exceeding 12 months, or both.

PART 4 – POLICE OFFENCES ACT 1935 AMENDED

57. Principal Act

In this Part, the *Police Offences Act 1935** is referred to as the Principal Act.

58. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) from the definition of “dangerous article” and substituting the following paragraph:

- (a) any weapon other than a firearm;
and

- (b) by inserting the following definition after the definition of “family violence order”:

“firearm” means a firearm within the meaning of the *Firearms Act 1996*;

59. Section 14B amended (Unlawful entry on land)

Section 14B of the Principal Act is amended as follows:

*No. 44 of 1935

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- (a) by omitting from subsection (2) “penalty not exceeding” and substituting “penalty of”;
- (b) by omitting from subsection (2)(a) “10 penalty units or to” and substituting “a fine not exceeding 10 penalty units or”;
- (c) by omitting from subsection (2)(b) “5 penalty units or to” and substituting “5 penalty units or”;
- (d) by inserting the following subsections after subsection (2):

(2A) However, if the court that convicts a person of an offence under this section is satisfied that the person –

- (a) was in possession of a firearm during the actual commission of the offence; or
- (b) made any use of an aircraft, vehicle or vessel during the actual commission of the offence –

the person is liable to a penalty not exceeding twice that provided for by subsection (2).

(2B) If subsection (2A)(a) applies to the convicted person, the court

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may, in addition to any other penalty it may impose, do either or both of the following:

- (a) order that the firearm is forfeited to the Crown;
- (b) cancel all or any of the licences or permits that the convicted person may hold under the *Firearms Act 1996*.

(2C) A firearm forfeited to the Crown pursuant to subsection (2B) is to be disposed of as the Minister determines.

(e) by inserting the following subsections after subsection (4):

- (5) A police officer who reasonably suspects that a person in possession of a firearm is committing an offence under this section may seize that firearm.
- (6) Section 68 applies if a firearm is seized under subsection (5).

60. Section 37JA inserted

After section 37J of the Principal Act, the following section is inserted in Division 1:

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Part 4 – Police Offences Act 1935 Amended

37JA. Use of spotlights on vehicles on public streets

(1) A person must not, while a vehicle is on a public street, use or allow another person to use a lit spotlight that is affixed to or being carried on the vehicle unless –

- (a) the vehicle is stationary and the spotlight is being used solely for the purposes of inspecting or repairing the vehicle or its engine, if any; or
- (b) the spotlight is being used solely to illuminate street signs or street numbers in order to locate an address; or
- (c) the spotlight is being used solely for the purposes of legitimate infrastructure work.

Penalty: Fine not exceeding 20 penalty units.

(2) For the purposes of subsection (1), a spotlight is to be taken as being carried on a vehicle if the spotlight is connected up, by any means, to a battery, generator or other source of power being carried on –

- (a) the vehicle; or
- (b) another vehicle to which the first-mentioned vehicle is connected.

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(3) To avoid doubt, this section does not apply to the use of lit spotlights by any of the following persons acting in the course of their duty:

- (a) members of the Police Service;
- (b) members of the Tasmanian Ambulance Service established under the *Ambulance Service Act 1982*;
- (c) members of the Tasmania Fire Service established under the *Fire Service Act 1979*;
- (d) members of the State Emergency Service constituted under the *Emergency Services Act 1976*;
- (e) prescribed persons.

(4) In this section –

“legitimate infrastructure work” means the inspection, maintenance and repair of traffic-related, electricity, gas, water or other infrastructure by or on behalf of the entity responsible for the maintenance and safety of that infrastructure;

“on”, a vehicle, includes inside a vehicle;

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“repairing”, a vehicle, includes
changing a tyre on the vehicle;

“spotlight” includes searchlight.

61. Section 37K amended (Interpretation of Division)

Section 37K of the Principal Act is amended as follows:

- (a) by omitting “In” and substituting “(1) In”;
- (b) by inserting in the definition of “prescribed offence” the following paragraph before paragraph (a):
 - (aa) section 14B involving the use of a vehicle, vessel or aircraft; or
- (c) by inserting the following subsection:
 - (2) In the application of this Division to the offence referred to in paragraph (aa) of the definition of “prescribed offence” in subsection (1) –

“vehicle” includes vessel and
aircraft.

62. Section 68 inserted

After section 67A of the Principal Act, the following section is inserted in Part IX:

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68. Procedure for seized firearms

- (1) This section applies if –
 - (a) a police officer reasonably suspects that a person in possession of a firearm is committing an offence under section 14B; and
 - (b) seizes that firearm under section 14B(5).
- (2) The Commissioner is to hold the seized firearm in safe custody pending a decision as to whether or not to prosecute the person for the offence.
- (3) If the Commissioner is satisfied that the person was in lawful possession of the firearm when it was seized, the following provisions apply:
 - (a) if the person is prosecuted, the firearm is, subject to any orders of the court, to be held pending the outcome of the proceedings and may be used in evidence;
 - (b) if the person is prosecuted but is not convicted, or the person is convicted but the court does not make an order under section 14B(2B), the firearm is to be –

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- (i) returned to the person at the conclusion of the proceedings if at that time the firearm is registered and the person is still entitled to possess it; or
 - (ii) in any other case, disposed of as the Minister determines;
 - (c) if the person is not or can no longer be prosecuted, the firearm is to be –
 - (i) returned to the person if at the relevant time the firearm is registered and the person is still entitled to possess it; or
 - (ii) in any other case, disposed of as the Minister determines;
 - (d) if for any reason it proves impossible or impracticable to return the firearm as required by paragraph (b)(i) or paragraph (c)(i), the firearm may be disposed of as the Minister determines.
- (4) If the Commissioner is satisfied that the person was not in lawful possession of the firearm when it was seized, the following provisions apply:

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- (a) if the person is prosecuted, the firearm is, subject to any orders of the court, to be held pending the outcome of the proceedings and may be used in evidence;
- (b) if the person is prosecuted for the offence but is not convicted, or the person is convicted but the court does not make an order under section 14B(2B), the Commissioner is to –
 - (i) pass the firearm, if it is registered, to any claimant who can establish ownership of it and an entitlement to possess it under the *Firearms Act 1996*; or
 - (ii) in any other case, dispose of the firearm as the Minister determines;
- (c) if the person is not, or can no longer be, prosecuted for the offence, the Commissioner is to –
 - (i) pass the firearm, if at the relevant time it is registered, to any claimant who can establish ownership of it and an entitlement to possess it

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under the *Firearms Act 1996*; or

(ii) in any other case, dispose of the firearm as the Minister determines.

(5) Nothing in this section is to be taken as derogating from the powers that a court, police officer or other person may lawfully exercise over the seized firearm with regard to other offences, or crimes, involving that firearm.

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Part 5 – Firearms Regulations 2006 Amended

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PART 5 – FIREARMS REGULATIONS 2006 AMENDED

63. Principal Regulations

In this Part, the *Firearms Regulations 2006** are referred to as the Principal Regulations.

64. Regulation 3A inserted

After regulation 3 of the Principal Regulations, the following regulation is inserted:

3A. Prescribed firearms

For paragraph (f) of the definition of “firearm” in section 3 of the Act, each of the following is a prescribed thing:

- (a) a grenade launcher;
- (b) a mortar that is capable of being carried manually by a single person.

65. Regulation 11A inserted

After regulation 11 of the Principal Regulations, the following regulation is inserted:

*S.R. 2006, No. 109

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s. 66

Part 5 – Firearms Regulations 2006 Amended

11A. Loss and replacement of licences and permits

The Commissioner, on receipt of the prescribed fee, may give the holder of a licence or permit a replacement for that licence or permit if the Commissioner is satisfied that the original licence or permit has been –

- (a) stolen, lost or destroyed; or
- (b) damaged to a degree that renders it unsuitable for use.

66. Regulation 12 amended (Safety requirements for conveying prohibited firearms)

Regulation 12 of the Principal Regulations is amended as follows:

- (a) by inserting in paragraph (b) “reasonably” after “if”;
- (b) by omitting paragraphs (c) and (d);
- (c) by omitting from paragraph (f) “hardwood” and substituting “timber”.

67. Regulation 12A inserted

After regulation 12 of the Principal Regulations, the following regulation is inserted:

12A. Safety requirements for conveying other firearms

The following are safety requirements for conveying a firearm that is not a prohibited firearm:

- (a) the firearm is to be in the unloaded condition;
- (b) ammunition is to be in a closed container, completely separate from the firearm;
- (c) magazines are not to contain any ammunition;
- (d) at least one of the following requirements is to be met:
 - (i) the firearm is to be in a locked receptacle;
 - (ii) the bolt of the firearm is to be in a closed container, completely separate from the firearm;
 - (iii) the firearm is to be fitted with a mechanism that locks or disables the trigger or action and prevents the firearm from being used.

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Part 5 – Firearms Regulations 2006 Amended

68. Regulation 15 amended (Fees)

Regulation 15 of the Principal Regulations is amended as follows:

(a) by omitting “The” and substituting “(1)
The”;

(b) by inserting the following subsections:

(2) However, for an eligible pensioner, the fee that is payable or chargeable for any matter is 80% of the fee prescribed for that matter under subregulation (1).

(3) The fees and charges prescribed under subregulation (1) are GST inclusive.

(4) In this regulation –

“eligible pensioner” means a person who –

(a) is in receipt of a pension under the *Social Security Act 1991* of the Commonwealth;
or

(b) holds a valid pensioner concession card issued under the *National Health*

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Act 1953 of the
Commonwealth;
or

- (c) is in receipt of a
pension under the
Veterans’
Entitlements Act
1986 of the
Commonwealth or
holds a valid
pensioner
concession card
issued under that
Act;

“GST” has the same meaning
as in the *A New Tax*
System (Goods and
Services Tax) Act 1999 of
the Commonwealth.

69. Schedule 1 amended (Fees)

Schedule 1 to the Principal Regulations is
amended as follows:

- (a) by omitting

Fee
units

and substituting the following item:

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Part 5 – Firearms Regulations 2006 Amended

Fee
units
(includ-
ive of
GST))

(b) by inserting after paragraph (d) in item 1
the following:

(e) Issue of replacement licence	6
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(c) by omitting item 2 and substituting the
following:

2. **Permits**

Application for permit (other than minor's permit)	10
Application for minor's permit	15
Issue of replacement permit	10

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Part 6 – Further Amendment, &c., of Firearms Regulations 2006

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**PART 6 – FURTHER AMENDMENT, &C., OF
*FIREARMS REGULATIONS 2006***

70. Further amendment, &c., of *Firearms Regulations 2006*

The amendments of the *Firearms Regulations 2006* effected by Part 5 are not to be taken as preventing their subsequent amendment or rescission by regulation.