

Advance

(1)

South Australia

**Firearms (Firearms Prohibition Orders)
Amendment Bill 2008**

A BILL FOR

An Act to amend the *Firearms Act 1977* and to make related amendments to the *Criminal Law Consolidation Act 1935* and the *Summary Offences Act 1953*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Firearms (Firearms Prohibition Orders) Amendment Act 2008*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Firearms Act 1977*

4—Amendment of section 5—Interpretation

- (1) Section 5(1)—after the definition of *automatic firearm* insert:

capacity of a magazine—see subsection (2);

carry on a business—see subsections (3) to (6) and (9);

- (2) Section 5(1)—after the definition of *class H firearms* insert:

close associate of an applicant for or the holder of a dealer's licence—see subsection (1a);

- (3) Section 5(1), definition of *the consultative committee* or *the committee*—delete the definition

- (4) Section 5(1)—after the definition of *dealer's licence* insert:

District Court means the Administrative and Disciplinary Division of the District Court;

- (5) Section 5(1)—after the definition of *firearms permit* insert:

firearms prohibition order means an order issued under Part 2A (including an interim firearms prohibition order);

Firearms Review Committee or *committee* means the Firearms Review Committee established under this Act;

- (6) Section 5(1)—after the definition of *firing mechanism* insert:

fit and proper person—see subsections (10) to (13) and section 6B(2);

- (7) Section 5(1)—after the definition of *to give* insert:

grounds of a recognised firearms club—see subsection (7);

grounds of a recognised paint-ball operator—see subsection (8);

- (8) Section 5(1)—after the definition of *handgun* insert:

interim firearms prohibition order—see section 10A;

- (9) Section 5(1)—after the definition of *paint-ball operator* insert:

possession of a firearm—see subsections (14) and (15);

- (10) Section 5(1), definition of *receiver*—delete "metal or plastic"

- (11) Section 5—after subsection (1) insert:

(1a) For the purposes of this Act, 2 persons are *close associates* if—

- (a) 1 is a relative of the other; or
- (b) they are in partnership; or
- (c) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
- (d) 1 is a body corporate and the other is a director, manager, secretary or public officer of the body corporate; or

- (e) 1 is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or
- 5 (f) 1 is a trustee of a trust and the other is a beneficiary of the trust or, in the case of a discretionary trust, an object of the trust; or
- (g) 1 has a right to participate, or participates, (otherwise than as a shareholder in a body corporate) in income or profits derived from a business conducted by the other; or
- 10 (h) 1 is in a position to exercise, or exercises, control or significant influence over the conduct of the other.
- (12) Section 5(11)—delete "convicted" wherever occurring and substitute in each case:
found guilty
- (13) Section 5(11)—after paragraph (c) insert:
- 15 (ca) has been found guilty of an offence prescribed by regulation; or
- (14) Section 5—after subsection (12) insert:
- (13) In deciding whether a person is a *fit and proper person* to have possession of a firearm or ammunition or to hold or have possession of a licence for the purposes of this Act, regard may be had to the reputation, honesty and integrity of the person and of people with whom the person associates.
- 20 (14) For the purposes of this Act (other than Part 3 Division 2A), a person has *possession of a firearm* if—
- (a) the person has custody of the firearm or has the firearm in the custody of another; or
- 25 (b) the person has and exercises access to the firearm; or
- (c) the person occupies, or has care, control or management of, premises, or is in charge of a vehicle, vessel or aircraft, where the firearm is found.
- 30 (15) However, subsection (14)(c) does not apply if the person establishes that—
- (a) he or she did not know, and could not reasonably be expected to have known, that the firearm was on or in the premises, vehicle, vessel or aircraft; or
- 35 (b) the firearm was in the lawful possession of another or he or she believed on reasonable grounds that the firearm was in the lawful possession of another.

5—Insertion of sections 6A and 6B

After section 6 insert:

6A—Registers

- 5
- (1) The Registrar must maintain—
- (a) a register of licences issued under this Act; and
- (b) a register of firearms registered under this Act; and
- (c) a register of firearms prohibition orders issued under this Act.
- 10
- (2) If the Registrar is satisfied that a person has a proper interest in the contents of a register, the Registrar may permit that person to inspect the register, or portion of the register.
- (3) The register of firearms prohibition orders must be made available to the public by electronic or other means.
- 15
- (4) The Registrar may integrate a register maintained under this section with other law enforcement systems maintained in this State or elsewhere.

6B—Power to require medical examination or report

- 20
- (1) The Registrar may, as reasonably required for the purposes of determining whether a person is a fit and proper person to have possession of a firearm or ammunition or to hold or have possession of a licence for the purposes of this Act, require the person to—
- (a) submit to an examination by a health professional, or by a health professional of a class, specified by the Registrar; or
- 25
- (b) provide a medical report from a health professional, or from a health professional of a class, specified by the Registrar, (including an examination or report that will require the person to undergo some form of medically invasive procedure).
- 30
- (2) A person may be taken not to be a fit and proper person to have possession of a firearm or ammunition or to hold or have possession of a licence for the purposes of this Act, if the person fails to comply with a requirement made under subsection (1).
- (3) In this section—
- health professional* means—
- 35
- (a) a medical practitioner; or
- (b) a psychologist; or
- (c) a person of a class prescribed by regulation.

6—Substitution of heading to Part 2 Division 2

Heading to Part 2 Division 2—delete the heading to Division 2 and substitute:

Division 2—Firearms Review Committee

7—Amendment of section 7—Establishment

- 5 (1) Section 7(1)—delete "Consultative" and substitute:
Review
- (2) Section 7(2)—delete "consultative"
- (3) Section 7(3)—delete subsection (3) and substitute:
- 10 (3) The Governor may appoint a member of the committee to preside at meetings of the committee.

8—Amendment of section 8—Quorum etc

Section 8(1)—delete "consultative"

9—Amendment of section 9—Allowances and expenses

Section 9—delete "consultative"

15 **10—Amendment of section 10—Procedure**

Section 10—delete "consultative" wherever occurring

11—Insertion of Part 2A

After Part 2 insert:

Part 2A—Firearms prohibition orders

20 **10A—Interim firearms prohibition order issued by police officer**

- (1) Subject to subsection (2), a police officer may issue an interim firearms prohibition order against a person if the police officer suspects on reasonable grounds that—
- 25 (a) possession of a firearm by the person would be likely to result in undue danger to life or property; or
- (b) the person is not a fit and proper person to possess a firearm.
- (2) If the police officer issuing the order is not of or above the rank of sergeant, the officer must, before issuing the order, obtain the authorisation (either orally or in writing) of a police officer of or
- 30 above that rank.
- (3) An interim firearms prohibition order must be in a form approved by the Registrar.
- (4) For the purposes of this Act, an interim firearms prohibition order
- 35 applies to a person as soon as it is issued against the person, but the order only comes into force against the person when it is served personally on the person.

- 5
- (5) If a police officer proposes to issue an interim firearms prohibition order against a person, the officer may—
- (a) require the person to remain at a particular place while the order is prepared and issued so that the order may be served on the person; and
 - (b) if the person refuses or fails to comply with the requirement or the officer has reasonable grounds to believe that the requirement will not be complied with, arrest and detain the person in custody (without warrant) for—
 - 10 (i) so long as may be necessary for the order to be served on the person; or
 - (ii) 2 hours,whichever is the lesser.
- (6) A person against whom an interim firearms prohibition order is issued must notify the Registrar in writing of an address for service.
- (7) An interim firearms prohibition order expires 28 days after the Registrar is notified in writing of the person's address for service.
- (8) The Registrar may, on his or her own initiative, revoke an interim firearms prohibition order by notice in writing served personally or
20 by post on the person against whom it is issued.

10B—Firearms prohibition order issued by Registrar

- 25
- (1) The Registrar may issue a firearms prohibition order against a person if satisfied that—
- (a) —
 - (i) possession of a firearm by the person would be likely to result in undue danger to life or property; or
 - (ii) the person is not a fit and proper person to possess a firearm; and
 - (b) it is in the public interest to prohibit the person from possessing and using a firearm.
- 30
- (2) For the purposes of this Act, a firearms prohibition order applies to a person as soon as it is issued against the person, but the order only comes into force against the person when it is served personally on
35 the person.
- (3) A firearms prohibition order will be taken to be served on a person against whom an interim firearms prohibition order is in force if it is served by registered post on the person at the address for service notified to the Registrar by the person under section 10A.
- 40
- (4) A firearms prohibition order served on a person must be accompanied by a notice setting out the Registrar's reasons for issuing the order.

- 5
- (5) If the decision to issue the order was made because of information that is classified by the Registrar as criminal intelligence, the only reason required to be given is that the decision was made on public interest grounds.
 - (6) The Registrar may, on his or her own initiative or on application, revoke a firearms prohibition order by notice in writing served personally or by post on the person against whom it is issued.

10C—Effect of firearms prohibition order

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- (1) A person to whom a firearms prohibition order applies is disqualified from obtaining any licence or permit under this Act.
 - (2) While a firearms prohibition order is in force against a person—
 - (a) any licence or permit under this Act held by the person is suspended; and
 - (b) section 31A does not apply.
 - (3) A person against whom a firearms prohibition order is in force must not acquire, possess or use a firearm, firearm part or ammunition.

Maximum penalty:

- 15
- (a) in the case of a firearm—\$75 000 or imprisonment for 15 years;
 - (b) in the case of a firearm part or ammunition—\$35 000 or imprisonment for 7 years.
- (4) If a firearms prohibition order comes into force against a person, the person must forthwith surrender to the Registrar all firearms, firearm parts and ammunition owned by the person.

Maximum penalty:

- 25
- (a) in the case of a firearm—\$50 000 or imprisonment for 10 years;
 - (b) in the case of a firearm part or ammunition—\$20 000 or imprisonment for 4 years.
- 30
- (5) A person against whom a firearms prohibition order is in force—
 - (a) must not be present at—
 - (i) the grounds of a firearms club or the range of a commercial range operator; or
 - (ii) a place at which a person carries on the business of manufacturing, repairing, modifying or testing firearms, firearm parts or ammunition or buying, selling or hiring out, firearms, firearm parts or ammunition; or
 - (iii) any other place of a kind prescribed by regulation; and
 - (b) must not become a member of a firearms club; and
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- 40

- (c) must not be in the company of a person who has a firearm on or about his or her person or under his or her immediate physical control.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- 5 (6) It is a defence to prosecution for an offence against subsection (5)(c) to prove that the person did not know, and could not reasonably be expected to have known, that the other person had a firearm on or about his or her person or under his or her immediate physical control.

- 10 (7) A person against whom a firearms prohibition order is in force must not reside at premises on which there is a firearm, firearm part or ammunition.

Maximum penalty:

- 15 (a) in the case of a firearm—\$50 000 or imprisonment for 10 years;

- (b) in the case of a firearm part or ammunition—\$20 000 or imprisonment for 4 years.

- 20 (8) It is a defence to prosecution for an offence against subsection (7) to prove that the person did not know, and could not reasonably be expected to have known, that the firearm, firearm part or ammunition was on the premises.

- 25 (9) A person against whom a firearms prohibition order is in force must inform each other person of or over the age of 18 years who resides or proposes to reside at the same premises as the person of the fact that a firearms prohibition order is in force against the person and ask each such person whether or not he or she has or proposes to have a firearm, firearm part or ammunition on the premises.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- 30 (10) A person must not supply a firearm, firearm part or ammunition to a person to whom a firearms prohibition order applies or permit such a person to gain possession of a firearm, firearm part or ammunition.

Maximum penalty:

- 35 (a) in the case of a firearm—\$75 000 or imprisonment for 15 years;

- (b) in the case of a firearm part or ammunition—\$35 000 or imprisonment for 7 years.

- 40 (11) A person who has a firearm on or about his or her person or under his or her immediate physical control must not be in the company of a person to whom a firearms prohibition order applies.

Maximum penalty: \$10 000 or imprisonment for 2 years.

- (12) If a person to whom a firearms prohibition order applies resides at premises, a person who brings a firearm, firearm part or ammunition onto the premises or has possession of a firearm, firearm part or ammunition on the premises is guilty of an offence.

5

Maximum penalty:

- (a) in the case of a firearm—\$50 000 or imprisonment for 10 years;
- (b) in the case of a firearm part or ammunition—\$20 000 or imprisonment for 4 years.

10

- (13) It is a defence to prosecution for an offence against subsection (10), (11) or (12) to prove that the person did not know, and could not reasonably be expected to have known, that a firearms prohibition order applies to the person.

- (14) For the purposes of this section—

15

- (a) if a person to whom a firearms prohibition order applies is on or in premises or a vehicle, vessel or aircraft (other than any premises, vehicle, vessel or aircraft to which the public are admitted) when a firearm, firearm part or ammunition is found on or in the premises, vehicle, vessel or aircraft, the person will be taken to possess the firearm, firearm part or ammunition unless it is proved that the person did not know, and could not reasonably be expected to have known, that the firearm, firearm part or ammunition was on or in the premises, vehicle, vessel or aircraft; and

20

25

- (b) a person will be taken to acquire a firearm if—

- (i) the person knowingly takes, or participates in, any step, or causes any step to be taken, in the process of acquisition of the firearm; or
- (ii) the person knowingly provides or arranges finance for any step in that process; or
- (iii) the person knowingly provides the premises in which any step in that process is taken, or suffers or permits any step in that process to be taken in premises of which the person is an owner, lessee or occupier or of which the person has care, control or management; and

30

35

- (c) a person will be taken to supply a firearm if—

- (i) the person knowingly takes, or participates in, any step, or causes any step to be taken, in the process of supply of the firearm; or
- (ii) the person knowingly provides or arranges finance for any step in that process; or

40

(iii) the person knowingly provides the premises in which any step in that process is taken, or suffers or permits any step in that process to be taken in premises of which the person is an owner, lessee or occupier or of which the person has care, control or management.

(15) The Registrar may exempt a person, unconditionally or subject to conditions, from a specified provision of this section and may vary or revoke an exemption by notice in writing served personally or by registered post on the holder of the exemption.

12—Amendment of section 11—Possession and use of firearms

(1) Section 11(7)—delete "The" and substitute:

Subject to this section, the

(2) Section 11—after subsection (7) insert:

(7a) The maximum penalty for an aggravated offence is as follows:

- (a) where the firearm is a prescribed firearm—\$75 000 or imprisonment for 15 years;
- (b) where the firearm is a class C, D or H firearm—\$50 000 or imprisonment for 10 years;
- (c) where the firearm is any other kind of firearm—\$35 000 or imprisonment for 7 years.

(7b) An offence against this section is an aggravated offence if it has been proved that the offender—

- (a) was carrying a loaded firearm or a firearm and a loaded magazine that can be attached to and used in conjunction with the firearm; or
- (b) had a firearm concealed about the person.

(7c) A person will be taken to be carrying a firearm or magazine if the person has the firearm or magazine on or about the person or if it is under the person's immediate physical control.

(7d) A firearm will be taken to be loaded if a round is in the breech or barrel of the firearm or in a magazine comprising part of or attached to the firearm.

(3) Section 11(8)—after "A person" insert:

who has not previously been found guilty of an offence against this section

(4) Section 11(8)—after "two years" insert:

(and subsections (7a) to (7d) do not apply)

13—Amendment of section 12—Application for firearms licence

Section 12(6)(b)—delete paragraph (b)

14—Amendment of section 13—Provisions relating to firearms licences

- (1) Section 13(4)(b)—delete "with the approval of the consultative committee; and"
- (2) Section 13(4)(c)—delete paragraph (c)
- (3) Section 13(9)—before "post" insert:

5 registered

15—Amendment of section 14—Acquisition of firearms

Section 14(7)—after "A person" insert:

who has not previously been found guilty of an offence against this section

16—Amendment of section 14A—Supply of firearms

10 Section 14A(7)—after "A person" insert:

who has not previously been found guilty of an offence against this section

17—Amendment of section 15—Application for permit

Section 15(4)—delete subsection (4) and substitute:

15 (4) The Registrar may grant a permit before the expiration of 28 days
after the application for the permit was made if the Registrar is
satisfied that—

(a) it is safe to do so; and

20 (b) the applicant is the owner of a registered firearm of the same
class as that to be acquired under the permit or there are
special reasons for doing so.

18—Amendment of section 15A—Reasons for refusal of permit

Section 15A(5) and (6)—delete subsections (5) and (6)

19—Amendment of section 15B—Transfer of possession

25 (1) Section 15B(9)(a)(i)—delete "licensed dealer in firearms or a responsible officer of a
recognised firearms club who has been authorised by the Registrar to witness the
transfer for the purposes of this subsection (an *authorised officer*) or a member of the
police force" and substitute:

prescribed person

30 (2) Section 15B(9)(a)(i)—delete "dealer, authorised officer or member of the police
force" and substitute:

prescribed person

(3) Section 15B(9)(a)(ii)—delete "dealer, authorised officer or the member of the police
force" wherever occurring and substitute in each case:

prescribed person

35 (4) Section 15B(10)—delete "licensed dealer in firearms or a member of the police force"
and substitute:

prescribed person

(5) Section 15B—after subsection (13) insert:

(14) In this section—

prescribed person means—

- (a) a police officer; or
- (b) a licensed dealer in firearms; or
- (c) a responsible officer of a recognised firearms club authorised by the Registrar to witness the transfer of possession of a firearm under this Division; or
- (d) a Public Service employee authorised by the Registrar to witness the transfer of possession of a firearm under this Division.

20—Amendment of section 15C—Obligations of prescribed person

(1) Section 15C(1)—delete "dealer, authorised officer or member of the police force" and substitute:

prescribed person

(2) Section 15C(2)—delete "dealer, authorised officer or member of the police force" and substitute:

prescribed person

(3) Section 15C(2)—delete "dealer, authorised officer or police officer" and substitute:

prescribed person

(4) Section 15C(3)—delete "dealer, authorised officer or member of the police force" and substitute:

prescribed person

(5) Section 15C(4)—delete "dealer or authorised officer" and substitute:

licensed dealer in firearms or a responsible officer of a recognised firearms club authorised by the Registrar to witness the transfer of possession of a firearm for the purposes of this Division

(6) Section 15C—after subsection (4) insert:

(5) In this section—

prescribed person has the same meaning as in section 15B.

21—Amendment of section 17—Dealer's licence

(1) Section 17(3)(a)—after subparagraph (i) insert:

- (ia) a close associate of the applicant is a fit and proper person to be a close associate of the holder of such a licence; or
- (ib) the applicant is to be the person primarily responsible for the management of the business intended to be carried on under such a licence; or

- (2) Section 17(3)(a)—delete "and the consultative committee agrees with the Registrar's decision"
- (3) Section 17(4)(c)—delete "with the approval of the consultative committee; and"
- (4) Section 17(4)(d)—delete paragraph (d)
- 5 (5) Section 17(4b)—before "post" insert:
registered
- (6) Section 17(4d)—before "post" insert:
registered
- (7) Section 17(4e)—delete subsection (4e)

10 **22—Amendment of section 20—Cancellation, variation and suspension of licence**

- (1) Section 20(1)—before paragraph (a) insert:
 - (aa) obtained the licence improperly; or
- (2) Section 20(1)—after paragraph (b) insert:
15 or
 - (c) in the case of a dealer's licence—
 - (i) has a close associate who is not a fit and proper person to be a close associate of the holder of such a licence; or
 - 20 (ii) is not primarily responsible for the management of the business carried on under the licence,
- (3) Section 20(1)—delete "with the concurrence of the consultative committee,"
- (4) Section 20(1)—before "post" insert:
registered
- 25 (5) Section 20(1a)—delete "with the agreement of the consultative committee and after" and substitute:
, after
- (6) Section 20(1b)—delete subsection (1b) and substitute:
30 (1b) The cancellation or variation of a licence under subsection (1a) will be effected by written notice served personally or by registered post on the holder of the licence.
- (7) Section 20(2)—before "post" insert:
registered
- (8) Section 20(2)—delete "for a period not exceeding three months (or such longer period as is allowed in a particular case by the consultative committee)"
- 35 (9) Section 20(2)—after "subsection (1)" insert:
or (1a)

23—Repeal of section 20A

Section 20A—delete the section

24—Amendment of section 21BA—Cancellation or suspension of permit

- (1) Section 21BA(1)—delete "with the agreement of the consultative committee,"
- 5 (2) Section 21BA(2)—delete "for a period not exceeding three months (or such longer period as is allowed in a particular case by the consultative committee)"

25—Substitution of Part 3 Division 6

Part 3 Division 6—delete Division 6 and substitute:

**Division 6—Firearms clubs, paint-ball operators and
commercial range operators**

21H—Requirement to expel certain persons from firearms clubs

- (1) If the controlling body of a recognised firearms club has reasonable cause to believe that—
- 15 (a) the actions or behaviour of a member of the club has been such that there is a threat to the member's own safety or the safety of others associated with the member's possession or use of a firearm; or
- (b) a firearms prohibition order applies to a member,
20 the controlling body must expel the person from membership of the club.
- (2) Subsection (1)(b) does not apply—
- (a) to an interim firearms prohibition order; or
- 25 (b) to a firearms prohibition order until the period allowed for an appeal against the order has expired or, if an appeal has been instituted, until the appeal lapses or is finally determined.
- (3) A person incurs no civil or criminal liability as a result of action taken in good faith in compliance, or purported compliance, with this section.

21I—Obligation to report

- 5
- (1) If the controlling body of a recognised firearms club has reasonable cause to suspect in relation to a member of the club that the member is suffering from a physical or mental illness or condition, or that other circumstances exist, such that there is a threat to the member's own safety or the safety of another associated with the member's possession or use of a firearm, the club must, as soon as practicable after the suspicion is formed, make a report to the Registrar including—
- 10
- (a) the name and address of the person the subject of the suspicion; and
- (b) the suspected threat to safety and circumstances giving rise to the threat (including the nature of any physical or mental illness or condition contributing to the threat).
- 15
- (2) If a member of a recognised firearms club or a person employed or engaged at the grounds of a recognised firearms club has reasonable cause to suspect that a person to whom a firearms prohibition order applies has gained or attempted to gain access to the grounds of the club, the member or person must, as soon as practicable after the suspicion is formed, report the matter to a police officer.
- 20
- (3) If a commercial range operator or a person employed or engaged at the range of a commercial range operator has reasonable cause to suspect that a person to whom a firearms prohibition order applies has gained or attempted to gain access to the range of the operator, the operator or person must, as soon as practicable after the suspicion is formed, report the matter to a police officer.
- 25
- (4) A person incurs no civil or criminal liability in making a report in good faith in compliance, or purported compliance, with this section.

26—Amendment of section 24A—Identification of firearms

30 Section 24A(7)—delete subsection (7) and substitute:

- (7) A person who—
- (a) defaces, alters or removes the identifying characters of a firearm without the authority of the Registrar; or
- 35 (b) has possession of a firearm that does not have identifying characters as required under this section or the identifying characters of which have been defaced or altered without the authority of the Registrar,

is guilty of an offence.

Maximum penalty:

- 40 (a) if the firearm is a prescribed firearm or a class C, D or H firearm—\$35 000 or imprisonment for 7 years;
- (b) if the firearm is any other kind of firearm—\$20 000 or imprisonment for 4 years.

27—Insertion of Part 4A

After Part 4 insert:

Part 4A—Review and appeal

26A—Review of interim firearms prohibition order

- 5
- (1) A person to whom an interim firearms prohibition order applies may apply to the Registrar for review of the decision to issue the order.
 - (2) The making of an application under this section does not affect the operation of the decision to which the application relates.
 - 10 (3) On a review, the Registrar may affirm the decision or revoke the interim firearms prohibition order.

26B—Review by Firearms Review Committee

- 15
- (1) A person aggrieved by a decision of the Registrar—
 - (a) to refuse an application for a licence, or renewal of a licence or an application for a permit authorising the acquisition of a firearm; or
 - (b) to impose or vary licence conditions (other than prescribed conditions); or
 - 20 (c) to vary a firearms licence by restricting the classes of firearms to which the licence relates or to vary or revoke a purpose endorsed on the licence; or
 - (d) to suspend or cancel a licence or permit; or
 - (e) to refuse to revoke a suspension of a licence or permit; or
 - (f) to refuse an application for a permit to acquire ammunition; or
 - 25 (g) to refuse an application for registration of a firearm; or
 - (h) to cancel the registration of a firearm; or
 - (i) to refuse to approve grounds of a recognised firearms club or recognised paint-ball operator or to revoke such an approval; or
 - 30 (j) to impose conditions on an approval of grounds of a recognised firearms club or recognised paint-ball operator or to vary such conditions; or
 - (k) to refuse to approve the range of a recognised commercial range operator or to revoke such an approval; or
 - 35 (l) to impose conditions on an approval of the range of a recognised commercial range operator or to vary such conditions,

may apply to the Registrar for the Registrar to refer the decision to the Firearms Review Committee for review of the decision.

- 5
- (2) If the Registrar did not give reasons in writing at the time of making the decision, the Registrar must do so on request made within 28 days of the making of the decision.
- (3) If a decision was made because of information that is classified by the Registrar as criminal intelligence, the only reason required to be given is that the decision was made on public interest grounds.
- (4) An application under this section must be made—
- 10
- (a) within 28 days of the making of the decision; or
- (b) if a request for reasons in writing is made under subsection (2)—within 28 days after receipt of the reasons in writing.
- (5) The Registrar may, in the Registrar's discretion, extend the time for making an application under this section even if the time for making the application has ended.
- 15
- (6) The making of an application under this section does not affect the operation of the decision to which the application relates or prevent the taking of action to implement the decision.
- (7) However, on an application under this section, the Registrar may, in the Registrar's discretion, stay or vary the decision pending the decision of the committee on the review.
- 20
- (8) On an application under this section, the Registrar must refer the decision to the committee, and the committee may, on the review—
- (a) affirm the decision; or
- (b) remit matters to the Registrar for consideration or further consideration.
- 25

26C—Right of appeal to District Court

- (1) A person aggrieved by—
- 30
- (a) a decision of the Firearms Review Committee to affirm the decision of the Registrar; or
- (b) if a matter is remitted to the Registrar by the Firearms Review Committee, a decision of the Registrar following remission of the matter; or
- (c) a decision of the Registrar to issue a firearms prohibition order,
- 35
- may appeal against the decision to the District Court.
- (2) If the committee or the Registrar has not given the person reasons in writing for making the decision appealed against, the committee or Registrar must do so on request made within 28 days after the person received notice of the decision.
- 40
- (3) If a decision was made because of information that is classified by the Registrar as criminal intelligence, the only reason required to be given is that the decision was made on public interest grounds.

- (4) An appeal under this section must be made—
- (a) within 28 days after the person received notice of the decision appealed against; or
 - (b) if a request for reasons in writing is made under subsection (2)—within 28 days after the person received the reasons in writing.
- (5) On an appeal under this section, the Registrar may apply to the District Court for a determination that information classified by the Registrar as criminal intelligence is criminal intelligence.
- (6) The Court must maintain the confidentiality of information that is the subject of an application under subsection (5).
- (7) If the Court proposes to determine that the information is not criminal intelligence, the Registrar must be informed of the proposed determination and given the opportunity to withdraw the information from the proceedings.
- (8) If the Court determines that the information is criminal intelligence or the Registrar withdraws the information, the Court must continue to maintain the confidentiality of the information.
- (9) The confidentiality of information is maintained only if—
- (a) the information is not used except for the purposes of the proceedings; and
 - (b) the information is not disclosed to the appellant, the appellant's representatives or any member of the public; and
 - (c) evidence and submissions about the information are received and heard in private in the absence of the appellant and the appellant's representatives and are not disclosed to any member of the public; and
 - (d) the information is not disclosed in the Court's reasons for decision.
- (10) The Court may take any steps it considers appropriate to maintain the confidentiality of the information.

28—Relocation of sections 26A to 26D

Sections 26A, 26B, 26BA, 26C and 26D—redesignate the sections as sections 21C, 21D, 21E, 21F and 21G respectively and relocate the sections so that they appear at the beginning of Part 3 Division 6 (as inserted by this Act)

29—Substitution of section 27

Section 27—delete the section and substitute:

27—Manufacture of firearms or firearm parts

- (1) Subject to this section, a person who—
- (a) manufactures a firearm or firearm part; or

- (b) takes part in the manufacture of a firearm or firearm part,
is guilty of an offence.
- 5 (2) Subsection (1) does not apply to the manufacture of a firearm or
firearm part by a person in the ordinary course of carrying on
business as a licensed dealer pursuant to the licence.
- (3) It is a defence to prosecution for an offence against subsection (1) to
prove that, in the case of a firearm part, the firearm part was a
firearm part for a firearm registered in the name of, or otherwise in
the lawful custody of, the person who manufactured the firearm part.
- 10 (4) For the purposes of this section, a person takes part in the
manufacture of a firearm or firearm part if—
- (a) the person takes, or participates in, any step, or causes any
step to be taken, in the process of manufacture of the firearm
or firearm part; or
- 15 (b) the person provides or arranges finance for any step in that
process; or
- (c) the person provides the premises in which any step in that
process is taken, or suffers or permits any step in that
process to be taken in premises of which the person is an
owner, lessee or occupier or of which the person has care,
control or management.
- 20 (5) Subject to subsection (6), the maximum penalty for an offence
against this section is as follows:
- (a) if the firearm is a prescribed firearm or the firearm part is a
firearm part for a prescribed firearm—\$75 000 or
imprisonment for 15 years;
- 25 (b) if the firearm is a class C, D or H firearm or the firearm part
is a firearm part for a class C, D or H firearm—\$50 000 or
imprisonment for 10 years;
- 30 (c) if the firearm or firearm part is any other kind of firearm or
firearm part—\$35 000 or imprisonment for 7 years.
- (6) A person who has not previously been found guilty of an offence
against this section may, at the discretion of the prosecutor, be
prosecuted for a summary offence against this section except where
the firearm is a prescribed firearm or the firearm part is a firearm part
for a prescribed firearm, but on conviction of a summary offence
against this section the maximum penalty is \$10 000 or
imprisonment for 2 years.
- 35

27A—Obligation to report unsafe situations associated with firearms

5 (1) If a medical practitioner, or other person prescribed for the purposes of this subsection, has reasonable cause to suspect in relation to a person whom he or she has seen in his or her professional capacity—

10 (a) that the person is suffering from a physical or mental illness or condition, or that other circumstances exist, such that there is a threat to the person's own safety or the safety of another associated with the person's possession or use of a firearm; and

(b) that the person has, or might be intending to acquire, a firearm,

15 the medical practitioner or other prescribed person must make a report to the Registrar under this section.

20 (2) If an employer has reasonable cause to suspect in relation to an employee whose work with the employer involves the possession or use of a firearm that the employee is suffering from a physical or mental illness or condition, or that other circumstances exist, such that there is a threat to the employee's own safety or the safety of another associated with the employee's possession or use of a firearm, the employer must make a report to the Registrar under this section.

25 (3) A report under this section—

(a) must be made as soon as practicable after the suspicion is formed; and

(b) must include—

30 (i) the name and address of the person the subject of the suspicion; and

(ii) the suspected threat to safety and circumstances giving rise to the threat (including the nature of any physical or mental illness or condition contributing to the threat).

35 (4) A person incurs no civil or criminal liability in taking action in good faith in compliance, or purported compliance, with this section.

27B—Obligations of medical practitioners etc relating to wounds inflicted by firearm

40 (1) If a medical practitioner, or other person prescribed for the purposes of this subsection, has reasonable cause to suspect in relation to a person whom he or she has seen in his or her professional capacity that the person is suffering from a wound inflicted by a firearm, the medical practitioner, or other prescribed person, must make a report to the Registrar under this section.

- (2) A report under this section—
- (a) must be made as soon as practicable after the suspicion is formed; and
 - (b) must include—
 - (i) the name and address of the person the subject of the suspicion or, if the name and address are not known, a description of the person; and
 - (ii) details of the wound; and
 - (iii) any information provided to the practitioner or other person about the circumstances leading to the infliction of the wound.
- (3) If a medical practitioner, or other person prescribed for the purposes of this subsection, treats a person for a wound that the practitioner or person has reasonable cause to suspect was inflicted by a firearm, the practitioner or person must take reasonable steps to retain any ammunition or fragment of ammunition recovered from the wound until it can be collected by a police officer.
- (4) A person incurs no civil or criminal liability in taking action in good faith in compliance, or purported compliance, with this section.

30—Amendment of section 30—Information to be given to police officer

(1) Section 30(1)—delete subsection (1) and substitute:

- (1) A police officer may require a person who the police officer suspects on reasonable grounds is a person to whom this subsection applies—
- (a) to state his or her full name, address and age; and
 - (b) to state whether he or she is the owner of the firearm, firearm part or ammunition and, if not, to state the name of the owner of the firearm, firearm part or ammunition; and
 - (c) to answer questions relating to the firearm, firearm part or ammunition or to other persons who have, or have had, possession, of the firearm, firearm part or ammunition.

(1aa) Subsection (1) applies—

- (a) to a person who has, or recently has had, in his or her possession a firearm, firearm part or ammunition;
- (b) to a person who is in the company of a person who has, or recently has had, in his or her possession a firearm, firearm part or ammunition;
- (c) to a person who is an occupier or in charge of premises or a vehicle, vessel or aircraft on or in which a firearm, firearm part or ammunition is found;

- (d) to a person who is or was on or in any premises, vehicle, vessel or aircraft (other than any premises, vehicle, vessel or aircraft to which the public are admitted) at the time or immediately before a firearm, firearm part or ammunition is found on or in the premises, vehicle, vessel or aircraft.

- (2) Section 30(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$10 000 or imprisonment for 2 years.

31—Amendment of section 32—Power to inspect or seize firearms etc

- (1) Section 32—before subsection (1) insert:

(a1) A police officer may require the owner of a firearm to produce the firearm for inspection at a specified place at a specified time or within a specified period.

- (2) Section 32(1)—after paragraph (cb) insert:

(cc) the holder of a firearms licence authorising use of a firearm can no longer use the firearm for the purpose endorsed on his or her licence; or

- (3) Section 32—after subsection (3) insert:

(3a) A police officer may, as reasonably required for the purpose of ensuring compliance with a firearms prohibition order issued by the Registrar—

(a) detain a person to whom this subsection applies and search the person for any firearm, licence, mechanism, fitting or ammunition liable to seizure under this section; and

(b) stop and detain a vehicle, vessel or aircraft to which this subsection applies and search the vehicle, vessel or aircraft for any firearm, licence, mechanism, fitting or ammunition liable to seizure under this section; and

(c) enter premises to which this subsection applies and search the premises for any firearm, licence, mechanism, fitting or ammunition liable to seizure under this section.

- (3b) Subsection (3a) applies—

(a) to a person who a police officer suspects on reasonable grounds is a person to whom a firearms prohibition order issued by the Registrar applies;

(b) to a vehicle, vessel or aircraft that a police officer suspects on reasonable grounds is in the charge of a person to whom the subsection applies;

(c) to premises that a police officer suspects on reasonable grounds are occupied by, or under the care, control or management of a person to whom the subsection applies.

32—Amendment of section 33—Obstruction of police officer

Section 33, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$10 000 or 2 years imprisonment.

33—Amendment of section 34A—Powers of court on finding person guilty of firearms offence

(1) Section 34A(1)—delete "convicts a person" and substitute:

finds a person guilty

(2) Section 34A(1)—delete "must" and substitute:

may

(3) Section 34A(1)—delete "convicted" wherever occurring

(4) Section 34A(1)—after paragraph (e) insert:

(f) that the person is subject to a firearms prohibition order until further order.

(5) Section 34A(2)—delete "must" and substitute:

may

(6) Section 34A(2)—after paragraph (e) insert:

(f) that the party is subject to a firearms prohibition order until further order.

(7) Section 34A—after subsection (2) insert:

(3) If a court makes an order that a person is subject to a firearms prohibition order, the court may exercise the powers of the Registrar under section 10C(15) to grant an exemption from specified provisions of that section.

(4) If a court makes an order under this section, the Registrar of the court must notify the Registrar of Firearms of the details of the order.

34—Amendment of section 35—Disposal of forfeited or surrendered firearms etc

(1) Section 35(2)—delete "the other provisions of this Act or" and substitute:

this Act and

(2) Section 35(4)—delete "The" and substitute:

Subject to this Act and the regulations, the

(3) Section 35—after subsection (4) insert:

(5) If a firearms prohibition order applies to a person and the person surrenders a firearm, firearm part or ammunition owned by the person to the Registrar, the following provisions apply, subject to the regulations:

(a) subject to paragraph (e), the Registrar must retain the firearm, firearm part or ammunition—

- 5
- (i) in the case of an interim firearms prohibition order—for the period that the order applies to the person; and
- (ii) in any other case—for the period allowed for an appeal against the order or, if an appeal has been instituted, until the appeal lapses or is finally determined;
- 10 (b) at the end of the period for which the Registrar is required to retain the firearm, firearm part or ammunition under paragraph (a)—
- (i) if the person is subject to a firearms prohibition order—the Registrar must:
- 15 (A) comply with the requirements of the regulations as to the sale or disposal of the firearm, firearm part or ammunition; and
- (B) pay the proceeds of the sale or disposal (if any) to the person;
- 20 (ii) if the person is not then subject to a firearms prohibition order—the Registrar must make the firearm, firearm part or ammunition available for collection by the person or some other person who satisfies the Registrar that he or she is entitled to the firearm, firearm part or ammunition;
- 25 (c) if the person ceases to be subject to a firearms prohibition order before the end of the period referred to in paragraph (a)(ii), the Registrar must make the firearm, firearm part or ammunition available for collection by the person or some other person who satisfies the Registrar that he or she is entitled to the firearm, firearm part or
- 30 ammunition;
- (d) if a firearm, firearm part or ammunition is made available for collection under this subsection but is not collected within the period allowed by the regulations, the Registrar may sell or otherwise dispose of the firearm, firearm part or
- 35 ammunition and pay the proceeds of the sale or disposal into the Consolidated Account;
- (e) the Registrar may, at the request or with the consent of the person, sell or dispose of the firearm, firearm part or
- 40 ammunition during the period for which the Registrar would otherwise be required to retain the firearm and pay the proceeds of the sale or disposal (if any) to the person.

35—Amendment of section 35B—Advertising firearms for sale

Section 35B—delete "or a member of the police force" and substitute:

, an authorised Public Service employee or a police officer

36—Amendment of section 36—Evidentiary provisions

- (1) Section 36—before paragraph (a) insert:
- (aa) that at a specified time a firearms prohibition order applied to, or was in force against, a specified person; or
- 5 (2) Section 36—after paragraph (g) insert:
- (ga) that at a specified time a person was or was not the holder of an exemption under this Act; or
 - (gb) that an exemption under this Act was subject to specified conditions; or

10 **37—Repeal of section 38**

Section 38—delete the section

38—Amendment of section 39—Regulations

- (1) Section 39(2)(af)—after "information" insert:
and documents
- 15 (2) Section 39(2)(af)—after subparagraph (iii) insert:
- (iv) owners of firearms;
- (3) Section 39(2)—after paragraph (af) insert:
- (ag) require information furnished to the Registrar to be verified by statutory declaration;
- 20 (4) Section 39(2)(d)—delete "or recovery" and substitute:
, recovery, waiver or reduction

Schedule 1—Related amendments

Part 1—Amendment of *Criminal Law Consolidation Act 1935*

1—Amendment of section 299A—Orders as to firearms and offensive weapons

- 25 Section 299A(1)(g)—delete paragraph (g) and substitute:
- (g) an order—
 - (i) that a specified person is subject to a firearms prohibition order under the *Firearms Act 1977* until further order; or
 - 30 (ii) prohibiting a specified person from using or possessing an offensive weapon of any kind, or of a kind specified in the order, for a period specified in the order or until further order.

Part 2—Amendment of *Summary Offences Act 1953*

2—Amendment of section 15—Offensive weapons etc

- (1) Section 15(1a)—delete subsection (1a)
- (2) Section 15(1f)(a)—delete paragraph (a)
- 5 (3) Section 15(2)—delete "firearm, magazine,"
- (4) Section 15(3), definition of *firearm*—delete the definition
- (5) Section 15(3a)—delete "a firearm or other offensive weapon or a magazine" and substitute:
an offensive weapon
- 10 (6) Section 15(3a)—delete "firearm, other offensive weapon, magazine" and substitute:
offensive weapon
- (7) Section 15(4)—delete subsection (4)

Schedule 2—Further amendment of *Firearms Act 1977*

1—Amendment of section 13—Provisions relating to firearms licences

- 15 Section 13(6)—delete "certified mail" and substitute:
registered post

2—Amendment of section 21BA—Cancellation or suspension of permit

Section 21BA—delete "certified mail" wherever occurring and substitute in each case:
registered post

3—Amendment of section 24A—Identification of firearms

20 Section 24A(5)—delete "member of the police force" and substitute:
police officer

4—Amendment of section 24B—Cancellation of registration

25 Section 24B(1)—delete "certified mail" and substitute:
registered post

5—Amendment of section 30—Information to be given to police officer

Section 30—delete "member of the police force" wherever occurring and substitute in each case:
police officer

6—Amendment of section 31—Production of licence and certificate of registration

30 Section 31(1)—delete "member of the police force" wherever occurring and substitute in each case:
police officer

7—Amendment of section 32—Power to inspect or seize firearms etc

- (1) Section 32—delete "member of the police force" wherever occurring and substitute in each case:

police officer

- 5 (2) Section 32—delete "member" wherever occurring and substitute in each case:

police officer

8—Amendment of section 33—Obstruction of police officer

Section 33—delete "member of the police force" and substitute:

police officer

10 **9—Amendment of section 34AA—Return of licence that has been delivered or seized**

Section 34AA—delete "member of the police force" and substitute:

police officer

10—Amendment of section 36B—Service of notices

15 Section 36B(1)(c)—delete "certified mail" and substitute:

registered post