

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

### **REPORT**

After the Tonic Nightclub shooting incident, the Government pledged to introduce new laws to curb motor cycle gang violence. The *Firearms (Firearms Prohibition Orders) Amendment Bill 2008* gives effect to that pledge.

The Bill strengthens the powers of Police to combat firearms related violence by introducing Firearms Prohibition Orders, giving Police the ability to ban persons with a known propensity for violence, or persons who associate with such persons, from possessing or accessing firearms.

Although primarily aimed at targeting motor cycle gangs and their associates, Firearms Prohibition Orders can also be applied to any person who has a known history of serious crime or violence, or who has been identified by a medical professional as being a risk to themselves or others because of a health condition.

Complementing the prohibition orders is a range of ancillary legislation which will provide the Police with further tools to both investigate firearms related crime, and to ensure that only appropriately responsible persons are able to gain a firearms licence and possess registered firearms.

This is the first step in the process of refocusing the attention of Police from the regulation of the legitimate firearms community, towards combatting the criminal elements who use firearms in the furtherance of their criminal endeavours.

### **Environmental Context**

In South Australia, the majority of violent criminal behaviour with firearms does not involve legitimate firearms owners, nor legitimately owned, secured and registered firearms.

Whilst there is some conjecture as to the quantity of illegal firearms circulating in the community, there is no doubt that there is a market for unrecorded and essentially untraceable firearms to be used for a criminal purpose. It is the nature of this enterprise that there exists difficulties in Police being able to prevent this trade and the subsequent crime arising from it.

## Firearms (Firearms Prohibition Orders) Amendment Bill 2008

In light of this, examination by SAPOL's Firearms Legislative Reform Project has determined that there are three main, but not exclusive, levels of firearms related offences within the State.

Firstly, offences committed by otherwise legitimate firearms owners in relation to administrative or regulatory matters, not involving violence, which include such matters as 'insecure firearms', 'storage of firearms and ammunition together' and such like.

Secondly, intentional criminal behaviour involving firearms, committed by those with a history of violence, association with others involved in crime, or with a tendency or potential towards violent or criminal behaviour, including intentional shootings, carriage of firearms, and firearms trafficking.

Thirdly, there are 'incidental' offences, involving the use of easily accessed and available firearms, which may involve persons belonging to both the legitimate firearms community or criminals, including domestic violence related shootings or threats, suicides, or offences arising from mental health conditions.

Thus far, firearms regulation has focussed on placing controls and conditions on the licensing of firearms owners. Offences involving violence and the criminalised use of firearms tend to be rolled into generalised offence categories, such as assaults, wounding or murder. Matters involving specific firearms related offences, not involving violence, tend to be heard summarily, and as a consequence the penalties applicable tend to be low, and in many cases involving career criminals, offences under the Firearms Act are withdrawn or not proceeded with in deference to other more serious charges.

This has been compounded with difficulties of prosecuting a person for possession offences with regards to non-registered and unrecorded firearms, wherein purported ignorance of the existence of a firearm, such as in a car in which a criminal is travelling in, can severely limit, if not negate, a successful prosecution.

It is in consideration of this that the focus should be on the behaviour of persons, rather than on the firearm itself. This is combined with the view that firearms ownership and possession is a privilege, not a right, and that the ultimate determination of the exercise of the privilege is vested in the State. It is intended to concentrate Police efforts on reducing the level of firearms related crime, and taking pre-emptive action on the potential for that to occur, while maintaining an appropriate level of co-operative regulation within the legitimate firearms using community.

## **Firearms Prohibition Orders**

The Bill provides for the introduction of two levels of Firearms Prohibition Orders.

The first is an Interim Firearms Prohibition Order, which can be issued by any Police Officer, but requiring the authorisation of a supervisor. An interim order can be issued against a person if it is suspected on reasonable grounds that possession of a firearm by the person would be likely to result in undue danger to life or property, or that the person, through their behaviour, is not a fit and proper person to possess a firearm. Interim orders provide for an immediate response by Police which will effectively prohibit a subject person from gaining access to a firearm, regardless of any other action being taken against the person.

The second level is a Firearms Prohibition Order issued by the Registrar of Firearms. These orders carry the full range of powers, and may be issued if the Registrar is satisfied that possession of a firearm by a subject person would be likely to result in undue danger to life or property, or the person is not a fit and proper person to possess a firearm and it is in the public interest to prohibit the person from possessing and using a firearm. Proposed Police powers in relation to Registrar issued orders are strong, but necessary. A person subject to one can be stopped and searched on sight, any vehicle, vessel or aircraft they are in charge of can be stopped and searched, and the place of residence of subject persons can be inspected at any reasonable time, for firearms, firearm parts or ammunition.

The Bill provides for a range of offences in relation to Firearm Prohibition Orders, making it an offence for a person-

- to possess a firearm;
- to reside in premises if there is a firearm on the premises or to bring a firearm on to premises where a person subject to a firearms prohibition order resides;
- to supply a person subject to a firearms prohibition order with a firearm;

to attend any shooting range or firearms dealership.

## **Revised Appeal Process**

Against the background of the strong compliance powers, the Bill makes amendments to establish a thorough appeal process. The Bill changes the name of the Firearms Consultative Committee to the Firearms Review Committee. In line with the Committee's change of name, the Bill removes the requirement that the Committee give its approval before the Registrar can

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

make specified decisions. Instead, the Firearms Review Committee will act as a body of review. A person aggrieved by a decision of the Registrar may apply for review of the decision by the Committee. The Committee may affirm the decision of the Registrar or remit matters to the Registrar for consideration or further consideration. The amendment Bill removes the existing right of appeal to a magistrate and instead establishes a right of appeal from decisions of the Registrar and the Firearms Review Committee to the Administrative and Disciplinary Division of the District Court.

### **Complementary Proposals**

The Bill provides for the creation of aggravated offences under the Firearms Act. This will consist of carrying a loaded firearm or a firearm and a loaded magazine for the firearm, or if a person has a firearm concealed about the person.

The Bill also provides a range of reporting requirements on certain bodies and persons. Firearms clubs are required to report to the Registrar on members who the club considers to be a person who should not have access to firearms, and reporting persons will receive indemnity from civil or criminal liability for doing so. Likewise, medical professionals and other prescribed persons will be required to report to the Registrar on persons they have seen in their professional capacity and have determined may pose a risk to themselves or others if they possessed firearms. This complements current law, but also strengthens the ability of Police and Health services to take positive pre-emptive action to mitigate the potential for a Port Arthur or Virginia Tech type tragedy occurring in South Australia.

Further, medical professionals and other prescribed persons will be required to report to the Registrar if they treat a person who has suffered a wound caused by a firearm, and will be required to furnish police with any projectile or fragment of such removed from a wound. Naturally, the welfare of the injured party is paramount, but early advice to Police will allow for timely and appropriate follow up investigation.

The Bill also provides for tighter controls on the manufacture of, and dealing in, firearms. Broader provisions on the associations and employees of firearms dealers will mean the Registrar has a greater say in who may take part in this legitimate business, as well as stronger laws in relation to manufacture will provide Police the tools to make a significant impact into the clandestine firearms trade.

In terms of direct crime fighting powers, Police will have the power to require a person whom they suspect on reasonable grounds is committing an offence in relation to firearms to state

their full name, and whether they are the owner of the firearm, part or ammunition to which the question relates, or if not, to state who is the owner. They will also be required to answer questions in relation to the purpose of possession of the firearm, and who else may have had possession of it.

To assist in progressing successful prosecution, certain terms and definitions will be clarified or expanded by the Bill.

A definition of 'possession' of a firearm is inserted.

A person is to be taken to have possession if the person-

- has custody of the firearm or has the firearm in the custody of another or
- has and exercises access to the firearm or
- occupies, or has care, control or management of, premises, or is in charge of a vehicle, vessel or aircraft, where the firearm is found,

unless the person establishes that-

- 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
- 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.

Further, the Bill provides for the expansion of the term 'fit and proper person' to have possession of a firearm, licence or ammunition, by altering the reference from being convicted of an offence under the Firearms Act, or an offence involving actual or threatened violence, to having been found guilty of such offence. This will allow for the application of previous offences where a person has been convicted without penalty, in the assessment processes of the Registrar for matters where a determination as to a persons fitness for access or possession of firearms is required. This will be complemented by a broadening of criteria to allow the reputation, honesty and integrity of a person, and the people with whom that person associates with, to be taken into account.

The Bill also provides the Registrar with the power to request a person to undergo a medical examination or provide a report to the Registrar to assist in any process where it is necessary to determine whether the person is a fit and proper person. No offence is committed if a person

refuses to do so but the person may then be taken not to be a fit and proper person for the relevant purpose.

## **Conclusion**

The *Firearms (Firearms Prohibition Orders) Amendment Bill 2008* is the first step in the refocusing of firearms regulation in South Australia. It provides for increasing the powers of Police in relation to violent crime involving firearms, and provides Police strong powers for taking pre-emptive and compliance authority over persons who, through their own actions and history, have shown they are a menace to society and a threat to public safety. Such strong powers are complemented by development of judicial review process, and are targeted against those who have shown a propensity for the use of violence for their own ends, rather than against the legitimate legal firearms community. The Bill will introduce the strongest powers available nation wide to Police in South Australia to combat violent firearms related crime.

## **EXPLANATION OF CLAUSES**

### **Part 1—Preliminary**

#### **1—Short title**

#### **2—Commencement**

#### **3—Amendment provisions**

These clauses are formal.

### **Part 2—Amendment of *Firearms Act 1977***

#### **4—Amendment of section 5—Interpretation**

This clause makes some consequential amendments to the interpretation section in the principal Act, and makes the following substantive changes to the meaning of "fit and proper" and "possession". The concept of fit and proper person is currently relevant to decisions about licences and permits and is relevant under the proposal to the issue of firearms prohibition orders. The concept of possession is central to the current Act and, in particular, to the offences set out in section 11.

#### ***Fit and proper***

- An amendment to subsection (11) substitutes references to "convicted" with references to "found guilty" in paragraphs (b) and (c), the effect of which is to apply the grounds on which a person may be taken not to be fit and proper for the purposes of subsection (11) to a person who has been found guilty of an offence captured by paragraphs (b) or (c). This departs from the current position which limits the ability to make such a finding to a person who has been convicted of such offences. A further amendment to subsection (11)

inserts new paragraph (ca) and extends the grounds on which a person may be taken not to be fit and proper for the purposes of subsection (11) to a person who has been found guilty of any prescribed offence.

- Subclause (13) has been inserted to broaden the grounds on which a person may be found not to be fit and proper. In 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 regard may be had to the reputation, honesty and integrity of the person and of the people with whom the person associates.

***Possession***

- Subclause (14) extends the meaning of possession of a firearm beyond the meaning currently given to the term in the Act (other than for the purpose of Part 3 Division 2A) by deeming a person to be in possession of a firearm if the person—
  - has custody of the firearm or has the firearm in the custody of another; or
  - has and exercises access to the firearm; or
  - occupies, or has care, control or management of, premises, or is in charge of a vehicle, vessel or aircraft, where the firearm is found.
- Subclause (15) prescribes the basis on which a person caught by the extended meaning of possession of a firearm under subclause (14) can establish his or her defence as follows:
  - if 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
  - if 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 new sections**

This clause inserts new sections 6A, 6B and 6C.

**6A—Registers**

Proposed section 6A requires the Registrar to maintain a register of licences, a register of firearms registered and a register of firearms prohibition orders. The first 2 registers are currently the subject of section 27.

The proposed section also prescribes various rules governing the inspection, availability and maintenance of the registers, in particular, ensuring that the new register of firearms prohibition orders is made publicly available.

**6B—Power to require medical examination or report**

Proposed section 6B enables the Registrar to require a medical examination or report for the purpose of determining whether a person is a fit and proper person. This is a new power.

**6—Substitution of heading to Part 2 Division 2**

This clause deletes and substitutes a new heading for Division 2 of Part 2 and is consequential on the substitution of the Firearms Consultative Committee with the Firearms Review Committee in the principal Act. It is proposed that instead of decisions of the Registrar relating to licences etc being vetted by the Committee on an ongoing basis, the scheme provides that a person aggrieved by a decision of the Registrar may apply for review of the decision by the Committee. See new section 26B.

**7—Amendment of section 7—Establishment**

**8—Amendment of section 8—Quorum etc**

**9—Amendment of section 9—Allowances and expenses**

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

Clauses 7 to 10 change the name of the Committee established under the Act from the Firearms Consultative Committee to the Firearms Review Committee and make other consequential amendments.

**11—Insertion of Part 2A**

This clause inserts new Part 2A into the principal Act, which establishes a scheme for the issuing of firearms prohibition orders.

**Part 2A—Firearms prohibition orders**

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

The proposed section gives a police officer power to issue an interim firearms prohibition order if the officer suspects on reasonable grounds that possession of a firearm by the person would be likely to result in undue danger to life or property or that the person is not a fit and proper person to possess a firearm.

The provision states that 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 of a police officer of or above that rank either orally or in writing.

The provision governs the form in which the order must be made and the manner in which the order takes effect.

The proposed section enables the police officer to require the person to remain at a particular place so that the order may be served on the person and, in circumstances where the person refuses or fails to comply with that requirement or there are reasonable grounds to believe that the person may not comply with that requirement, the police officer may arrest and detain the person for a maximum of 2 hours.

A person against whom an order is issued must notify the Registrar in writing of an address for service and an interim firearms

prohibition order expires 28 days after the Registrar receives such notification.

The Registrar may revoke an interim firearms prohibition order.

### **10B—Firearms prohibition order issued by Registrar**

Proposed section 10B gives the Registrar power to issue a firearms prohibition order against a person. The Registrar may issue a firearms prohibition order if—

- satisfied that possession of a firearm by the person would be likely to result in undue danger to life or property or the person is not a fit and proper person to possess a firearm; and
- it is in the public interest to prohibit the person from possessing and using a firearm.

A police officer issuing an interim order under proposed section 10A need only suspect on reasonable grounds that one of the matters prescribed in paragraph (a) or (b) of section 10A(1) exists. Whereas the Registrar is required under section 10B to be satisfied of either of those matters and that it is in the public interest to prohibit the person from possessing and using a firearm before issuing a firearms prohibition order. A police officer may only make an interim order under section 10A but an order made by the Registrar under section 10B continues until it is revoked.

The provision governs the form in which the order must be made, the manner in which the order takes effect and the basis on which the order will be taken to be served on a person against whom an interim firearms prohibition order under proposed section 10A is already in force.

The Registrar may revoke a firearms prohibition order.

### **10C—Effect of firearms prohibition order**

Proposed section 10C sets out the effect of a firearms prohibition order on the person against whom an order has been issued and on other persons.

The person is subject to the following rules:

- the person is disqualified from obtaining any licence or permit under the Act;
- any licence or permit under the Act held by the person is suspended;
- section 31A (Period of grace on cancellation, suspension etc of licence) does not apply;
- the person must not acquire, possess or use a firearm, firearm part or ammunition;

## Firearms (Firearms Prohibition Orders) Amendment Bill 2008

- the person must forthwith surrender to the Registrar all firearms, firearm parts and ammunition owned by the person;
- the person must not be present at—
  - the grounds of a firearms club or the range of a commercial range operator; or
  - 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
  - any other place of a kind prescribed by regulation;
- the person must not become a member of a firearms club;
- the person 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 (It is a defence 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.);
- the person must not reside at premises on which there is a firearm, firearm part or ammunition (It is a defence 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.);
- the person 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.

The following rules apply in relation to other persons:

- a person must not supply a firearm, firearm part or ammunition to another person to whom a firearms prohibition order applies or permit such a person to gain possession of a firearm, firearm part or ammunition;
- 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;
- 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.

It is a defence to prosecution for an offence against these rules to prove that the person did not know, and could not reasonably be expected to have known, that a firearms prohibition order applied to the other person.

**Possession** is given a special meaning for the purposes of the proposed section: 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.

Acquisition and supply are also given extended meanings in line with other offences in the principal Act (see sections 14 and 14A).

A discretion is given to the Registrar in proposed subsection (15) to exempt a person, unconditionally or subject to conditions, from a specified provision of this section and the Registrar may vary or revoke an exemption by notice in writing served personally or by post on the holder of the exemption. This is designed to enable the particular circumstances to be taken into account and arrangements made, for example, for the delivery of firearms not in the immediate possession of the person.

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

Section 11 of the principal Act makes it an offence to unlawfully possess a firearm in circumstances where the person—

- does not hold a firearms licence authorising possession of the firearm; or
- holds a licence but the possession or use of the firearm is for a purpose that is not authorised by the licence held by the person.

The proposed amendment to section 11 makes the offence of unlawful possession of a firearm under section 11 an aggravated offence if it has been proved that the offender—

- 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
- had a firearm concealed about the person.

The carrying of a firearm or magazine is taken to have occurred if the person has the firearm or magazine on or about the person or if it is under the person's immediate physical control.

The penalties that apply to an aggravated offence are higher than in the case of an offence against section 11 where there is no aggravating factor.

This clause amends subsection (8) of section 11 by limiting the prosecutor's discretion to prosecute an offence under section 11 as a summary offence. The amendment removes the discretion in the case of a person who has previously been found guilty of an offence against section 11.

**13—Amendment of section 12—Application for firearms licence**

This clause deletes paragraph (b) from section 12(6) to remove the requirement for the consultative committee to agree that an application for a firearms licence made under section 14 of the principal Act should be refused before the Registrar may refuse the application under that section. The removal of paragraph (b) is also consequential on the amendment of Part 2 Division 2, to change the name of the committee established under the Act from the Firearms Consultative Committee to the Firearms Review Committee.

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

This clause amends section 13 by deleting paragraph (c) from subsection (4) and deleting "with the approval of the consultative committee" from paragraph (b) of subsection (4). The amendment to paragraph (b) is consequential on the removal of all references to the consultative committee from the principal Act.

The amendment to subsection (9) is the first in a series of amendments designed to ensure consistency in the form of service of notices effecting variation, suspension or cancellation of licences and permits, in each case requiring the notice to be served personally or by registered post.

**15—Amendment of section 14—Acquisition of firearms**

The proposed amendment to section 14 corresponds with the amendment to section 11(8) and removes the discretion to prosecute a person for a summary offence against section 14 in the case of a person who has previously been found guilty of an offence against section 14.

**16—Amendment of section 14A—Supply of firearms**

The proposed amendment to section 14A corresponds with the amendment to sections 11(8) and 14(7) and removes the discretion to prosecute a person for a summary offence against section 14A in the case of a person who has previously been found guilty of an offence against section 14A.

**17—Amendment of section 15—Application for permit**

This clause amends section 15 by expanding the Registrar's power to grant a permit within 28 days of the application for the permit if the Registrar is satisfied that it is safe to do so and 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**

This clause deletes subsection (5) and (6), which refer to the consultative committee, from section 15A.

**19—Amendment of section 15B—Transfer of possession**

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

Amendments to sections 15B and 15C substitute references to various categories of persons who are authorised to witness the transfer of possession of firearms with references to a prescribed person. Prescribed person is defined to include the categories of persons currently identified in the principal Act and to include a Public

Service employee authorised by the Registrar to witness the transfer of possession of a firearm.

**21—Amendment of section 17—Dealer's licence**

This clause amends section 17 by extending the Registrar's power to refuse an application for a dealer's licence if the Registrar is not satisfied that—

- 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
- the applicant is to be the person primarily responsible for the management of the business intended to be carried on under such a licence.

A definition of close associate is inserted in section 5. This clause makes consequential amendments by removing references to the consultative committee.

The amendments to subsections (4b) and (4d) are part of the series of amendments designed to ensure consistency in the form of service of notices effecting variation, suspension or cancellation of licences and permits, in each case requiring the notice to be served personally or by registered post.

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

This clause extends the power of the Registrar to cancel a licence issued under the Act to a case where the licence has been obtained improperly. The requirement for the Registrar to have the concurrence of the consultative committee before the Registrar can cancel a licence is removed in line with the removal of all references to the consultative committee from the principal Act.

The amendments to subsections (1), (1b) and (2) are part of the series of amendments designed to ensure consistency in the form of service of notices effecting variation, suspension or cancellation of licences and permits, in each case requiring the notice to be served personally or by registered post.

This clause amends subsection (2) by—

- removing a further reference to the consultative committee; and
- removing references from the subsection that prevent the suspension of a licence for more than 3 months; and
- inserting a reference to subsection (1a) to extend the power of the Registrar to suspend the licence under subsection (2) if the Registrar is satisfied of the matters set out in subsection (1a) of the section.

**23—Repeal of section 20A**

This clause repeals section 20A (Reporting obligations of certain persons and clubs). These matters are proposed to be dealt with in new sections 21I and 27A.

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

This clause amends section 21BA by removing references to the consultative committee in subsection (1) and removing references from subsection (2) that prevent the suspension of a permit for more than 3 months.

**25—Substitution of Part 3 Division 6**

This clause substitutes Part 3 Division 6. The provisions for review and appeal are moved to Part 4A. Current sections 26A to 26D are relocated to the beginning of this Division by a later clause.

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

**21H—Requirement to expel certain persons from firearms clubs**

Proposed section 21H imposes an obligation on the controlling body of a recognised firearms club to expel a person from membership of the club if the controlling body has reasonable cause to believe that—

- 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
- a firearms prohibition order applies to a member. (However, this does not apply to an interim firearms prohibition order or 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.)

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**

Proposed section 21I imposes an obligation on the controlling body of a recognised firearms club to make a report to the Registrar if the body—

- 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 obligation is similar to that currently set out in section 20A(2).

The following further obligations are imposed by proposed section 21I—

- 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; and

- 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.

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**

This clause substitutes subsection (7) of section 24A with a new subsection (7) which extends the offence created to include a person who defaces, alters or removes the identifying characters of a firearm without the authority of the Registrar or a person who 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. The proposed amendment increases the maximum penalty for an offence against section 24A.

#### **27—Insertion of Part 4A**

This clause inserts Part 4A into the principal Act. Part 4A sets out the processes and procedures governing rights of review and appeal under the principal Act.

### **Part 4A—Review and appeal**

#### **26A—Review of interim firearms prohibition order**

Proposed section 26A allows a person to whom an interim firearms prohibition order applies to apply to the Registrar for a review of the decision to issue the order. The fact that an application for review has been made does not affect the operation of the original decision and the Registrar may affirm the decision or revoke the interim firearms prohibition order.

#### **26B—Review by Firearms Review Committee**

Proposed section 26B allows a person aggrieved by any decision of the Registrar specified in paragraphs (a) to (l) of proposed section 26B(1) to apply to the Registrar for the Registrar to refer the decision to the Firearms Review Committee for review of the decision.

Proposed subsection (2) facilitates the provision by the Registrar of the Registrar's reasons for making the decision (although if the making of the decision is based on information classified by the Registrar as criminal intelligence, the only reason that need be given is that the decision was made on public interest grounds).

Proposed subsection (3) sets out the procedural requirements that an applicant must adhere to including the time within which an application must be made. It also provides that the making of an application does not affect the operation of the decision to which the application relates or any action necessary to implement the decision.

The referral of the decision to the committee must be made by the Registrar following an application under proposed subsection (1) and the committee may, on the review, affirm the decision or remit matters to the Registrar for consideration or further consideration.

### **26C—Right of appeal to District Court**

Proposed section 26C allows a person to appeal against a decision of—

- the Firearms Review Committee to affirm the decision of the Registrar; or
- a decision of the Registrar following remission of the matter by the Firearms Review Committee; or
- a decision of the Registrar to issue a firearms prohibition order,

to the District Court.

Proposed subsection (2) ensures that the written reasons of the Registrar or the committee for the decision being appealed against are provided (although if the making of the decision is based on information classified by the Registrar as criminal intelligence, the only reason that need be given is that the decision was made on public interest grounds).

Proposed subsection (3) sets out the time within which the appeal must be made.

Proposed subsection (5) establishes that on an appeal, the Registrar may apply to the District Court for a determination that information classified by the Registrar as criminal intelligence is criminal intelligence. The Court must maintain the confidentiality of information subject to such an application.

Proposed subsection (7) ensures that 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.

Proposed subsection (8) provides that 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.

**28—Relocation of sections 26A to 26D**

Sections 26A, 26B, 26BA, 26C and 26D are redesignated as sections 21C, 21D, 21E, 21F and 21G respectively and relocated so that they appear at the beginning of Part 3 Division 6 (as inserted by the measure).

**29—Substitution of section 27**

This clause substitutes section 27 and inserts sections 27A and 27B into the principal Act. The matter currently dealt with in section 27 (Registers) is proposed to be dealt with in section 6A.

**27—Manufacture of firearms or firearm parts**

Proposed section 27 creates an offence for manufacturing a firearm or firearm part or taking part in the manufacture of a firearm or firearm part unless the manufacturing of the firearm or firearm part is undertaken by a person in the ordinary course of carrying on business as a licensed dealer pursuant to the licence.

The proposed section creates a defence to prosecution for an offence against subsection (1) if it is proved 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.

Proposed section 27 sets out the basis on which a person is deemed to have taken part in the manufacture of a firearm or firearm part in subsection (3).

The penalties for an offence against proposed section 27 are set out in subsection (4) subject to subsection (5), which gives a discretion to prosecute a person for a summary offence against section 27 except where the person has previously been found guilty of an offence against the section or the firearm is a prescribed firearm or the firearm part is a firearm part for a prescribed firearm.

**27A—Obligation to report unsafe situations associated with firearms**

Proposed section 27A imposes an obligation on a medical practitioner or other prescribed person to make a report to the Registrar if the medical practitioner or other person 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 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
- that the person has, or might be intending to acquire, a firearm.

The requirement is similar to that currently set out in section 20A(1).

Proposed subsection (2) imposes an obligation on employers to make a report to the Registrar, 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.

A person incurs no civil or criminal liability in taking action in good faith in compliance, or purported compliance, with proposed section 27A.

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

Proposed section 27B requires a medical practitioner or other prescribed person to make a report to the Registrar, if the medical practitioner or other person 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.

Proposed subsection (2) states that the report must be made as soon as practicable after the suspicion is formed and sets out the form in which the report must be prepared.

The proposed section requires a medical practitioner or other prescribed person who treats a person for a wound that the practitioner or person has reasonable cause to suspect was inflicted by a firearm to take reasonable steps to retain any ammunition or fragment of ammunition recovered from the wound until it can be collected by a police officer.

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**

This clause substitutes subsection (1) and inserts subsection (1a) into section 30 of the principal Act.

The power for police officers to ask questions under section 30 is extended to allow them to ask questions of a person to whom subsection (1) applies—

- about whether the person 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
- that relate to the firearm, firearm part or ammunition or to other persons who have, or have had, possession, of the firearm, firearm part or ammunition.

The police continue to have the power that the principal Act currently provides to ask the person to whom subsection (1) applies to state his or her full name, address and age.

A person to whom these questions may be asked is extended to include 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; or
- 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; or
- 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.

The police continue to have the power that the principal Act currently provides to ask questions under section 30 to a person who has, or recently has had, in his or her possession a firearm, firearm part or ammunition.

The maximum penalty for failure to comply with a requirement is increased in line with the increase in penalties in section 33.

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

This clause inserts a new subsection (a1) into section 32 to enable police to 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.

A new paragraph is inserted into subsection (1) by this clause to allow a police officer to seize a firearm if the police officer suspects on reasonable grounds that 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.

This clause inserts subsection (3a) and (3b) into section 32. The proposed subsections give police the power to stop, detain and search a person in specified circumstances as reasonably required for the purpose of ensuring compliance with a firearms prohibition order issued by the Registrar. The Police may—

- detain a person to whom subsection (3a) applies and search the person for any firearm, licence, mechanism, fitting or ammunition liable to seizure under the section; and
- stop and detain a vehicle, vessel or aircraft to which subsection (3a) applies and search the vehicle, vessel or aircraft for any firearm, licence, mechanism, fitting or ammunition liable to seizure under the section; and
- enter premises to which subsection (3a) applies and search the premises for any firearm, licence, mechanism, fitting or ammunition liable to seizure under the section.

Subsection (3a) applies—

- 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;
- 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;

- 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**

This clause increases the maximum penalty that applies to a person who hinders or resists a police officer acting in the exercise of power conferred by the principal Act to \$10 000 or 2 years imprisonment.

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

This clause deletes references which compel the court to make at least 1 of the orders set out in paragraphs (a) to (e) of section 34A(1) following a person's conviction against an offence involving a firearm, mechanism, fitting or ammunition and inserts references which provide the court with a discretion to make 1 or more of the same orders following a finding of guilt against a person of an offence involving a firearm, mechanism, fitting or ammunition.

Paragraph (f) is added to section 34A(1) to enable the court to order that the person be subject to a firearms prohibition order until further order. A similar amendment is made to section 34(2), which gives the court a discretion to order that a person who has possession of a firearm and whom the court believes is not a fit and proper person to have possession of a firearm be made subject to a firearms prohibition order until further order.

Proposed subsection (3) gives the court the power to exercise the same power given to the Registrar under section 10C(15) to make exemptions in respect of the conditions imposed by firearms prohibition orders when the court makes an order that a person is subject to a firearms prohibition order. A further amendment is made to ensure that the Registrar of the court notifies the Registrar of Firearms of the details of any firearms prohibition order made under section 34A.

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

This provision sets out the procedures that must follow the surrendering of a firearm, firearm part or ammunition owned by a person against whom a firearms prohibition order has been issued.

In the case of an interim firearms prohibition order the Registrar must retain the firearm, firearm part or ammunition or in any other case the Registrar must retain the said items for the period allowed under the Act for an appeal against the order or, if an appeal has been instituted, until the appeal lapses or is finally determined.

However, if the firearm, firearm part or ammunition is retained by the Registrar and a firearm prohibition order ceases to be in force, 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. If there has been no collection of any of those items within the period allowed by the regulations, the Registrar may sell or otherwise dispose of the firearm, firearm part or ammunition and pay the proceeds of the sale or disposal into the Consolidated Account.

At the end of the period of retention, if the person continues to be subject to a firearms prohibition order, the Registrar must sell or dispose of the firearm, firearm part or ammunition in accordance with the regulations, with the proceeds going to the person. Earlier arrangements for sale or disposal may be put in place at the request or with the consent of the person.

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

This clause makes amendments that are consequential on changes made to sections 15B and 15C by adding a reference to an authorised Public Service employee. Amendments to sections 15B and 15C add an authorised Public Service employee to the categories of persons authorised to witness the transfer of possession of a firearm.

**36—Amendment of section 36—Evidentiary provisions**

This clause inserts new paragraphs (aa), (ga) and (gb) into section 36 of the principal Act. In doing so it ensures that notice can be given to the court by the Registrar that—

- a firearms prohibition order applied to or was in force against a person for a particular period; or
- that at a specified time a person was or was not the holder of an exemption under this Act; or
- that an exemption under the principal Act was subject to specified conditions,

as evidence of those matters.

**37—Repeal of section 38**

This clause repeals section 38. The period within which a prosecution may be commenced will be determined by the rules set out in the *Summary Procedure Act 1921*.

**38—Amendment of section 39—Regulations**

The Governor may make regulations under paragraph (af) of section 39(2) requiring the keeping of records and the furnishing of information to the Registrar by specified bodies, organisations and persons. This clause makes an amendment to that paragraph to provide that such information may be required to be verified by statutory declaration and accompanied by documents. A further amendment is made to paragraph (af) by inserting subparagraph (iv) which adds owners of firearms to the list of specified bodies, organisations and persons about which a regulation under paragraph (af) may be made. Effectively this enables the regulations to establish a scheme for self audits by owners of firearms.

**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**

This clause amends section 299A of the *Criminal Law Consolidation Act 1935* by allowing the court to make an order that a specified person be subject to a firearms prohibition order under the *Firearms Act 1977*, if the court is satisfied of 1 of the

matters set out in paragraphs (a) to (c) of section 299A(1) of the *Criminal Law Consolidation Act 1935*.

## **Part 2—Amendment of *Summary Offences Act 1953***

### **2—Amendment of section 15—Offensive weapons etc**

This clause amends section 15 of the *Summary Offences Act 1953* by deleting all references to firearms and deleting subsection (1)(a) and paragraph (a) of subsection (1f). The amendments remove offences involving loaded firearms from section 15, which are no longer necessary following amendments to section 11 of the *Firearms Act 1977* by this measure. (The amendments to section 11 make the unlawful possession of a loaded firearm (as defined by that section) an aggravated offence and provide for significantly higher penalties than section 15 of the *Summary Offences Act 1953*.)

## **Schedule 2—Further amendment of *Firearms Act 1977***

The Schedule contains technical amendments that substitute the terms—

- "certified mail" with "registered post"; and
- "member of the police force" with "police officer",

throughout the principal Act.