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**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**FIREARMS AND PROHIBITED WEAPONS
LEGISLATION AMENDMENT BILL 2017**

EXPLANATORY STATEMENT

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FIREARMS AND PROHIBITED WEAPONS LEGISLATION AMENDMENT BILL 2017

Introduction

This explanatory statement relates to the Firearms and Prohibited Weapons Legislation Amendment Bill 2017 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

This explanatory statement must be read in conjunction with the Bill. It is not, and is not intended to be, a comprehensive description of the Bill. What is written about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview of the Bill

The purpose of the Bill is to make a range of amendments to improve the operations of firearms and prohibited weapons legislation. The Bill has been developed following targeted stakeholder consultation.

Summary of amendments to the *Firearms Act 1996* and *Firearms Regulation 2008*

- The Firearms Act authorises a person to possess and use a firearm for which he or she is licensed. In the case of firearms instructors, this requirement has the unintended effect that an instructor cannot lawfully use a firearm belonging to a friend or relative of the student while demonstrating to that student the proper and safe use of the firearm. This Bill will correct that situation.
- The registrar currently has the power to refuse to issue a firearms licence where information held by a law enforcement agency indicates that it would be contrary to the public interest for the applicant to have access to a firearm. The Bill authorises the registrar to withhold the reasons for refusing to issue a licence where to do so would reveal security sensitive information.
- Composite entity firearms licences are required for companies or government agencies that possess and use firearms as part of their business. The Bill will authorise the registrar to issue a category C composite entity licence to the owner or operator of a zoo, for the management of animals.
- Collectors who are licensed to possess more than 10 category A or B firearms are required to store their weapons in a metal, brick or concrete safe; however, this requirement does not apply the same storage requirements to all category A and B licensees. This will lead to consistency and bring storage requirements appropriately into line.
- The Bill also makes several minor and technical amendments to the Firearms Act and Regulation.

Summary of amendments to the *Prohibited Weapons Act 1996* and *Prohibited Weapons Regulation 1997*

- The Bill allows the registrar to issue a permit authorising the use of suppressors under certain prescribed circumstances.
- The Bill prohibits the possession of an article with a blade or spike that is disguised as an article that does not look like a weapon, for example a credit card knife.
- The Bill provides that a centre-fire rifle magazine (other than a self-loading rifle magazine) with a capacity of more than 10 rounds is a prohibited article.
- The Bill replaces references to ***soft body armour*** with ***body armour*** as a prohibited article and provides a new definition of ***body armour*** to align with the national definition used for customs purposes.
- The Bill will also make several minor and technical amendments to the Prohibited Weapons Act and Regulation.

Human rights implications

New sections 18A to 18C of the *Firearms Act 1996*, contained within clause 7 of the Bill, engage the right to a fair trial contained within section 21 of the *Human Rights Act 2004*. Section 21 (1) of the Human Rights Act provides that—

Everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

While section 21 (1) of the Human Rights Act is primarily concerned with an accused person's rights during criminal trials, it also encompasses rights that an individual may have under civil or administrative law. Clause 7 of the Bill engages section 22 (1) of the Human Rights Act by limiting an applicant's right to procedural fairness, a right recognised by law. New section 18A limits an applicant's access to security sensitive information where the registrar has refused an application for a firearms licence on the basis of that information. While the registrar is still required to give the applicant reasons for the refusal, the registrar is not be required to give reasons to the extent that giving those reasons would disclose the security sensitive information.

An applicant who has had his or her application for a firearms licence refused on the basis of security sensitive information currently has a right to apply to either the ACT Civil and Administrative Tribunal (ACAT) (under section 260A of the *Firearms Act*), or to the Supreme Court (under the *Administrative Decisions (Judicial Review) Act 1989*) to have the refusal decision reviewed.

New section 18C provides that, if the ACAT or court decides that reasons for the refusal of an application for a firearms licence disclose security sensitive information, the ACAT or court must ensure that any security sensitive information is not disclosed in any reasons for the decision, and that hearings

that would disclose security sensitive information must be held in private. This further engages the right to a fair and public hearing in section 22 (1) of the Human Rights Act.

Section 28 (1) of the Human Rights Act provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28 (2) of the Human Rights Act then provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered. Section 28 (2) further provides five factors that must be considered when determining whether a limit on human rights is considered justified.

The limit that this Bill places on the right to procedural fairness in section 22 (1) is considered reasonable and justifiable in a free and democratic society, taking into account the factors enumerated in section 28 (2) of the Human Rights Act, namely:

(a) The nature of the right affected

The right to procedural fairness is a very important right that has long been recognised by the common law. The requirements of procedural fairness include that an applicant should not be penalised by a decision unless he or she has been given notice of a decision affecting their rights or interests.

New sections 18A and 18C of the Firearms Act affect an individual's right to procedural fairness in that the registrar, as a decision-maker, is not required to disclose the basis for the registrar's decision in reasons for refusing an application for a firearms licence where to do so would reveal security sensitive information.

In administrative review of the decision to refuse the application for a firearms licence, ACAT or the court must hold any hearing or part of a hearing that would disclose the security sensitive information in private. ACAT or the court must also ensure that security sensitive information is not disclosed in any reasons for their decision.

(b) The importance of the purpose of the limitation

The purpose of limiting the right to procedural fairness in this instance is to protect public safety from harm that may arise from the disclosure of security sensitive information held by a law enforcement agency.

Security sensitive information is defined in new section 18A (3) of the Firearms Act as information held by a law enforcement agency the disclosure of which could be reasonably be expected to—

- (a) prejudice a criminal investigation; or
- (b) enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement; or
- (c) endanger a person's life or physical safety.

(c) The nature and extent of the limitation

The refusal to disclose security sensitive information when giving reasons for the refusal of an application for a firearms licence limits the right to procedural fairness, contained within section 21 (1) of the Human Rights Act. While the registrar is still required to give an applicant the reasons for the refusal of the licence, the registrar need not disclose any security sensitive information on which that refusal is based.

In a hearing before ACAT or the court, evidence or submissions that would disclose security sensitive information must be held in private, in the absence of the public, the applicant for review, the applicant's representative and any other interested party. This limits section 22 (1) of the Human Rights Act, which provides that everyone has the right to have rights and obligations recognised by law decided by an independent court or tribunal after a fair and public hearing. The ACAT or court must also ensure that security sensitive information is not disclosed in any reasons for their decision on the application for administrative review of the registrar's refusal to issue a firearms licence.

(d) The relationship between the limitation and its purpose

The limitation on the right to procedural fairness in new sections 18A and 18C achieves the purpose of protecting the disclosure of security sensitive information, and ultimately thereby protecting public safety. The purpose of protecting public safety is achieved in this instance through protecting the disclosure of security sensitive information which might otherwise be misused if it were made public.

(e) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

Full disclosure of the reasons for refusing an application for a firearms licence, including any security sensitive information on which the decision was based, would mean the right to procedural fairness was not engaged. This option, however, would fail to adequately protect the public from any harm that may arise from the disclosure of the security sensitive information.

Appropriate safeguards have been built into new sections 18A to 18C to minimise the restriction on the right to procedural fairness, including:

- the registrar's decision on whether to withhold security sensitive information is reviewable by both ACAT and the court;
- the registrar may not delegate to another person his or her function to withhold security sensitive information (under new section 35 (2) of the Firearms Act, inserted by clause 9 of the Bill); and
- the registrar may choose to allow certain parts of any information to be released to the applicant in a hearing, despite that information's status as security sensitive information, under new section 18C (3) of the Firearms Act.

OUTLINE OF PROVISIONS OF THE BILL

PART 1 PRELIMINARY

Clause 1 Name of Act

This clause provides that the name of the Act is the *Firearms and Prohibited Weapons Legislation Amendment Act 2017*.

Clause 2 Commencement

This clause provides for the commencement of the Act. The Act commences on the day after its notification day, except for sections 26, 27 and 28, which commence six months after notification, and section 31, which commences one month after notification.

Clause 3 Legislation amended

This clause provides that the Act amends the *Firearms Act 1996*, *Firearms Regulation 2008*, *Prohibited Weapons Act 1996* and *Prohibited Weapons Regulation 1997*.

PART 2 FIREARMS ACT 1996

Clause 4 Authority to possess and use firearms temporarily Section 14 (2) (d)

This clause is a technical amendment as a consequence of the amendments made by clause 5.

Clause 5 Section 14 (3) (b)

This clause provides that an instructor may temporarily possess and use a registered firearm where the instructor is licensed to possess or use a firearm of that kind.

The intent of the amendment is to allow an authorised instructor to provide instruction to a person in the use of a firearm without limiting the firearm used to one owned by the instructor or the club at which the instructor works. For example, a student may attend a firearms range with a parent who has a firearms licence and a registered firearm. The amendments made by clause 5 would allow an authorised instructor to demonstrate the safe and proper use of a firearm to the student using the parent's firearm.

Clause 6 Assessing suitability of individuals—discretionary criteria Section 18 (2), definition of *law enforcement agency*, paragraph (d)

This amendment updates the definition of *law enforcement agency* to include the Australian Criminal Intelligence Commission (ACIC), following the merger of the Australian Crime Commission and CrimTrac on 1 July 2016 to form ACIC.

Clause 7 New sections 18A to 18C

This clause inserts new sections 18A to 18C into the Firearms Act.

New section 18A provides that where the registrar refuses to approve an application for a firearms licence on the basis of security sensitive information, he or she does not need to give reasons for the decision to the extent that it would disclose that information. The registrar may not delegate this function (see clause 9 below). The intent of new section 18A is to prevent the inadvertent disclosure of criminal intelligence held by a law enforcement agency mentioned in section 18 (2).

The definition of **security sensitive information** provided by this clause is designed to ensure the safety and security of people and prevent law enforcement agencies being impeded in carrying out criminal investigations.

New section 18B provides for administrative review where the registrar refuses to approve a firearms licence application on the basis of security sensitive information. If an applicant for a firearms licence seeks a review in either the ACT Civil and Administrative Tribunal (ACAT) or the court of the decision to refuse the licence, the registrar must apply to the ACAT or court for a decision on whether the information on which the registrar has based his or her refusal is, or is not, security sensitive information. The ACAT is empowered by section 260A of the Firearms Act to review a decision to refuse to issue or renew an adult firearms licence; the court is empowered to review an administrative decision by the *Administrative Decisions (Judicial Review) Act 1989*.

When the ACAT or court decide the information is security sensitive information (under new section 18B), new section 18C provides that they must receive evidence and submissions that would disclose security sensitive information in private in the absence of the public, the applicant for review, the applicant's representative or any other interested party. The ACAT or court must also ensure that they do not disclose security sensitive information in any reasons for their decision. New section 18C (3) provides the ACAT or court does not need to receive evidence or submissions on security sensitive information if the registrar agrees otherwise.

Clause 8 Firearms declarations by registrar Section 31 (2)

This clause makes a technical amendment to ensure consistent drafting across ACT legislation.

Clause 9 Delegation by registrar New section 35 (2)

This clause provides that the registrar must not delegate his or her function when making a decision to protect security sensitive information under new sections 18A to 18C.

**Clause 10 Adult firearms licences—refusal
Section 58 (1) (d)**

This clause permits the registrar to issue a licence to an applicant who lives in the ACT for a firearm that will be stored in New South Wales, if the registrar is satisfied that the storage requirements under section 28 of the *Firearms Act 1996* (NSW) will be met.

Clause 11 Section 58 (1) (f)

This clause permits the registrar to issue a licence to an applicant who lives in the ACT for a firearm that will be stored in New South Wales if the applicant has the genuine reason for possessing or using the firearm for an activity that occurs in New South Wales.

The intent of the clause is to permit the registrar to issue a firearms licence to an ACT resident who, for example, is employed across the border in New South Wales, and whose employment requires the applicant to possess or use a firearm in that State.

**Clause 12 Adult firearms licences—conditions
Section 73 (1) (c), except note**

This clause provides that it is a condition of an adult firearms licence that each registered firearm held under the licence be stored at either the registered premises for the firearm in the ACT or at premises authorised by a permit issued under section 28 of the *Firearms Act 1996* (NSW). This clause permits a licensee who is an ACT resident but who is employed across the border in New South Wales, and whose employment requires the applicant to possess or use a firearm, to store the firearm in New South Wales.

Clause 13 Section 73 (1) (d)

This clause is a technical amendment to ensure consistent terminology is used in the Firearms Act.

**Clause 14 Composite entity firearms licences—genuine reasons to possess or use firearms
New section 108 (1) (e)**

This clause provides that an entity that owns or operates a zoo has a genuine reason to possess and use a firearm under a composite entity licence for the purpose of animal management.

**Clause 15 Composite entity firearms licences—restriction on issue of category C licences
Section 111 (a)**

This clause expands the genuine reasons for holding a category C composite entity licence to include that the entity is operating a zoo.

Clause 16 Evidentiary certificates
Section 269 (1) (p) (i), new dot point

This clause provides that in a proceeding for an offence the registrar can sign an evidentiary certificate in relation to an approval to possess ammunition as a collector under section 41.

Clause 17 Prohibited firearms
Schedule 1, item 11

This clause provides that a firearm with a suppressor attached is a prohibited firearm if the registrar has not issued a permit to possess or use the suppressor under section 9 of the *Prohibited Weapons Act 1996*.

Clause 18 Dictionary, new definition of *suppressor*

This clause inserts a signpost definition of the term *suppressor* into the dictionary of the Firearms Act.

PART 3 FIREARMS REGULATION 2008

Clause 19 Not firearms—Act, s 6 (2) (a)
Section 6 (1) (a) and (b)

This clause updates language in relation to antique firearms, to align with the language used in New South Wales.

Clause 20 Section 6 (2), new definitions

This clause provides definitions of the terms *antique firearm* and *antique revolver*, to align with the definitions used in New South Wales.

Clause 21 Section 6 (2), definition of *pre-percussion pistol*

This clause omits the obsolete term *pre-percussion pistol* which is replaced with the term *antique firearm* by the amendment made by clause 20

Clause 22 New section 6A

This clause provides that the registrar may declare that an antique firearm is a firearm for which ammunition is not commercially available.

Clause 23 Category C licences, target shooting—Act, s 53 (3)
Section 13 (1), note

This clause is a technical amendment to ensure consistent terminology is used in the Firearms Regulation.

Clause 24 Composite entity, evidence of special need for category C licence—Act, s 272 (2) (o)
Section 30, heading note

This clause is consequential on the amendments expanding the genuine reasons for holding a category C composite entity firearms licence to include zoos, made by clauses 14 and 15.

Clause 25 Sections 32 and 33

This clause is a technical amendment to ensure consistent terminology is used in the Firearms Regulation.

Clause 26 New section 44A

This clause inserts a new provision to ensure consistency on storage requirements for licensees possessing more than 10 firearms, by requiring them to store their firearms in a metal, concrete or brick safe. Previously this requirement only applied to collectors. The amendment expands the storage requirement to all category A and B licence holders.

This clause commences 6 months after its notification to allow category A and B licensees time to prepare for the increased storage requirements of their firearms.

Clause 27 Section 46, heading

This clause is a technical amendment consequential on the amendment made by clause 28.

Clause 28 Section 46 (4)

This clause omits section 46 (4), which is being replaced by new section 44A.

PART 4 PROHIBITED WEAPONS ACT 1996

**Clause 29 Prohibited articles and weapons declarations by registrar
Section 4L (2)**

This clause is a technical amendment to ensure consistent drafting across ACT legislation.

**Clause 30 Permits
Section 9 (1)**

This clause permits the registrar to authorise the possession *and use* of a prohibited article. Previously, the registrar could only issue a permit authorising the possession of a prohibited article.

**Clause 31 Prohibited weapons
Schedule 1, part 1.1, new item 10 and example**

This clause includes as a new type of prohibited bladed weapon, in Part 1.1 of Schedule 1, an article that disguises a blade or spike within it, and which, because of its appearance, is capable of being mistaken for something that is not a weapon. The clause gives an example of a credit card knife, which following this amendment will be classified as a prohibited bladed weapon.

This clause commences one month after its notification to give people time to dispose of any prohibited bladed weapons they might possess, such as credit card knives.

Clause 32 Prohibited articles
Schedule 2, item 1

This clause replaces the obsolete term *soft body armour* with *body armour*. A definition of *body armour* is inserted into the dictionary by clause 35.

Clause 33 Schedule 2, item 3

This clause classifies a suppressor as a prohibited article. A definition of *suppressor* is inserted into the dictionary by clause 37.

Clause 34 Schedule 2, new item 8A

This clause classifies as a prohibited article a centre-fire rifle magazine (other than a centre-fire self-loading rifle magazine) with a capacity of more than 10 rounds.

Clause 35 Dictionary, new definitions

This clause inserts new definitions of *anti-ballistic*, *anti-fragmentation*, *body armour* and *suppressor* into the dictionary of the Prohibited Weapons Act.

The new definition of *body armour* is based on the national definition used for customs purposes. The intention of the new definition is not to capture historical forms of body armour, such as chain mail.

PART 5 PROHIBITED WEAPONS REGULATION 1997

Clause 36 Section 12 heading

This clause is a technical amendment consequential on the amendment made by clause 32.

Clause 37 Section 12 (1) and (2)

This clause is a technical amendment consequential on the amendment made by clause 32.

Clause 38 Section 12 (3)

This clause is a technical amendment consequential on the amendment made by clause 32.

Clause 39 New section 12A

This clause inserts new section 12A into the Prohibited Weapons Regulation. New section 21A provides the registrar with the power to issue a permit authorising a person to use a suppressor under certain circumstances. A *suppressor* is defined in the Dictionary (by the amendment to the Dictionary made by clause 35) to mean an article or device intended for use to muffle, reduce or stop the noise created by firing a firearm.

Under new section 12A, the registrar may issue a permit to possess and use a suppressor to a person where the person holds a licence, permit or other

authorisation under the Firearms Act to possess or use a prohibited firearm (such as a firearm with a suppressor attached) and is:

- a conservation officer appointed under section 28 of the *Nature Conservation Act 2014*; or
- contracted or otherwise authorised by the Territory to kill particular fauna (such as an authorisation under section 167 (2) of the Nature Conservation Act); or
- a veterinary surgeon; or
- licensed as a firearms dealer; or
- employed by the CSIRO; or
- a rural lessee, or a person authorised by a rural lessee.

The purposes for which an authorised person may be issued with a permit to possess or use a suppressor are outlined in new section 12A (2) and are:

- killing fauna on a reserve at the direction or under the authority of a conservation officer;
- killing fauna to alleviate its suffering (for a conservation officer or veterinary surgeon);
- undertaking an expedition to collect museum specimens (for an employee of the CSIRO);
- manufacturing, acquiring, disposing of, repairing, maintaining or testing firearms or their parts (for a firearms dealer); and
- killing fauna on a rural lease (for a rural lessee or a person authorised by a rural lessee).