

1991

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

WEAPONS BILL 1991

EXPLANATORY MEMORANDUM

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## WEAPONS BILL 1991

The Weapons Bill 1991 (the Bill) introduces significant reforms to the law relating to the possession and use of weapons in the ACT.

The Bill repeals the Gun Licence Act 1937 and replaces it with legislation which recognises three basic categories of weapon. Dangerous weapons are those which are generally used in the community for sporting and recreational shooting and security purposes. Restricted weapons are those specified in Schedule 2 which are used for theatrical purposes or collected as curiosities or ornaments. Schedule 3 details those weapons the possession of which is prohibited.

A Registrar of Weapons administers the legislation and is the licensing authority for the purposes of the Bill. An applicant for a dangerous weapons licence will need to meet specified criteria the most significant of which is that the applicant requires the weapon for an approved reason. Clause 5 of the Bill details those circumstances which will amount to approved reasons.

The Bill details some circumstances where the Registrar must refuse to grant the applicant a licence.

Decisions of the Registrar are reviewable by the ACT Administrative Appeals Tribunal.

To enhance weapons control and aid weapons tracing each weapon possessed by a dangerous weapons licensee must be registered on his or her licence. A licence authorises the licensee to possess and use only those weapons registered on the licence. Again, an applicant for registration will have to meet specified criteria before the Registrar can register a weapon on his or her licence.

A system of endorsements applies to facilitate the possession and use of a dangerous weapon registered on another licence in certain circumstances, for example, where an employee uses the weapon of a licensed employer in the course of his or her employment.

The Bill recognises the particular potential for misuse of certain types of weapon. A weapon which has been modified to incorporate a pistol grip is prohibited, however a person who was licensed under the repealed Act for that weapon will be able to continue to possess it for shooting competition purposes only. Self-loading centre fire rifles of a military type may only be possessed for shooting competition purposes by a person who is a member of an approved club.

The provisions of the Bill are detailed in the Attachment.

It is estimated that the Bill will not have any significant effect on revenue notwithstanding that the Bill requires that persons who surrender weapons in certain specified circumstances shall be compensated.

ATTACHMENT

## WEAPONS BILL 1991

## PART I - PRELIMINARY

Clause 1 provides that the Bill, when made, may be cited as the Weapons Act 1991.

Clause 2 provides for the commencement of clauses 1 and 2 when the Bill is notified in the Gazette and all other clauses on a date fixed by the Minister by notice in the Gazette, or within six months.

Clause 3 provides that certain Acts, specified in Schedule 1 to the Bill, are repealed. The Acts concerned are the Gun Licence Acts, which previously regulated possession and use of weapons.

Clause 4 is an interpretation provision.

A dangerous weapon is defined to be (apart from certain specified exceptions) any weapon from which a shot, bullet or other missile can be propelled. A dangerous weapon does not include a prohibited weapon or a restricted weapon.

A restricted weapon is defined to be an article specified in Schedule 2 to the Bill, which includes imitation weapons and weapons generally collected as curiosities and ornaments.



A prohibited weapon is defined as a pistol grip weapon which is a weapon, other than a pistol, which is fitted with a pistol grip or a stock designed to fold, swivel or telescope or to be readily detachable. These weapons are of concern because of their ease of concealability. A prohibited weapon also includes an item in Schedule 3 to the Bill.

Clause 5 details the circumstances in which a person or corporation may be taken to require a dangerous weapon for an approved reason. Examples of approved reasons are that a person is: a member of an approved club (as defined in clause 4); a member of the ACT Antique and Historical Arms Association or otherwise a collector of dangerous weapons; in a business in which large amounts of money are regularly held or carried; involved in the running of a rural property; involved in work requiring a weapon; or is a recreational shooter or hunter in another State or Territory or possesses the approval of an ACT rural landholder to shoot on that person's property. Clause 5 also sets out special requirements for those wishing to use or possess semi-automatic weapons of a military style or pistol grip weapons in which case the person must be a member of an approved club and take part in club competitions.

By virtue of clause 24 the Registrar must satisfy himself or herself that an applicant for a licence requires a dangerous weapon for one of these approved reasons before granting a licence. In order to be so satisfied the Registrar may make such enquiries as he or she considers necessary.

Clause 5 also specifies the range of approved reasons for a body corporate or partnership and these are limited to situations where large sums of money or goods (to the value of \$30,000 or more) are regularly carried, where the work done is as a security organisation (as defined in subclause 5(4)) or where the body is an approved club.

## PART II - ADMINISTRATION

Clause 6 allows the chief police officer to appoint a person to be the Registrar of Weapons. The person must be a police officer of the rank of Superintendent or above, and the appointment is to be in writing. The chief police officer is defined in subclause 4(1).

Clause 7 provides that the Registrar has those functions which are given under the Bill or any other law of the ACT.

Clause 8 gives the Registrar power to do all things necessary or convenient for carrying out the functions of the Registrar.

Clause 9 provides that the Minister may write to the Registrar giving directions as to the performance of the Registrar's functions or the exercise of his or her powers, and the Registrar must comply with those directions. However, the Minister may not give such directions in relation to a particular case.

Clause 10 allows the Registrar, by writing, to delegate his or her powers or functions.

Clause 11 allows for the chief police officer to appoint an acting Registrar while there is a vacancy in the office or while the Registrar is absent.

Clause 12 provides that there shall be a Register of Weapons, in which the Registrar is to keep details of each licence granted under the Bill. The required particulars are detailed and include, in relation to a dangerous weapons licence, the list of weapons registered or endorsed on it, the particulars of the person from whom each weapon was acquired and the date of acquisition or disposal of each weapon.

Clause 13 provides that if the chief police officer so requests, the Registrar is to provide to the Minister reports and recommendations on matters referred to the Registrar by the chief police officer. The clause also provides that the Registrar is to determine guidelines for the security of premises on which dangerous or restricted weapons are kept. The guidelines are to be determined by notice in the Gazette and be published in a daily newspaper published and circulating in the Territory.

Subclauses 13(2) and (3) deal with the guidelines made by the Registrar. Subclause 13(2) provides that section 6 of the Subordinate Laws Act 1989 applies to the guidelines but that the guidelines come into effect on the day after the last day on which they may be disallowed.

The combined effect of section 6 of the Subordinate Laws Act 1989 and sub-clause 13(2) and (3) is that the guidelines must be laid before the Assembly within 15 sitting days after appearing in the Gazette and may be disallowed by the Assembly within 15 sitting days after they have been laid before it.

Clause 14 makes it an offence, without reasonable excuse, to contravene a guideline set under clause 13. The penalty is \$2,000.

Clause 15 allows the Minister to declare, by notice in the Gazette and in a daily Territory newspaper, an amnesty during which time a person cannot be prosecuted in respect of the possession of a surrendered weapon. The period of the amnesty is to be specified but is unlimited as to time.

### PART III - LICENCES

#### Division 1 - Requirement to be licensed

Clause 16 provides, in subclause 16(1), a penalty of \$5000 or imprisonment for 2 years, or both, for any person who manufactures, possesses, acquires, sells or disposes of any prohibited weapon.

Subclause 16(2) prohibits, persons from knowingly importing into the ACT or exporting from the ACT a prohibited weapon, with the same penalty.

Clause 17 prohibits, in subclause 17(1), a person from manufacturing, possessing, using or allowing to be used, acquiring, selling or disposing of a restricted weapon except in accordance with a restricted weapons licence granted to that person for that weapon.

Subclause 17(2) prohibits a person from knowingly importing into or exporting from the ACT a restricted weapon, unless the person has a restricted weapons licence authorising him or her to do so.

The penalty in both cases is \$2,000 or imprisonment for 12 months, or both.

Clause 18 prohibits the possession or use of a dangerous weapon, other than a spear gun, unless the person concerned has a dangerous weapons licence on which that weapon is registered or endorsed or the person is otherwise authorised under the Bill. The penalty is \$2,000 or imprisonment for 12 months, or both.

Clause 19 prohibits a person other than the holder of a dealer's licence from dealing in dangerous or restricted weapons. The penalty is \$2,000 or imprisonment for 12 months, or both.

Clause 20 provides general exemptions for certain classes of person from the requirements contained in the Bill.

Broadly, the classes of persons exempted are police officers, members of the Commonwealth Defence Forces or visiting forces, members of the Councils of the War Memorial and the Museum of

Australia who have weapons forming part of the memorial collection of either of those bodies, visitors from interstate who are licensed to use or possess a weapon under the law of a State or another Territory, and persons specifically exempted by regulations made under the Bill.

Clauses 21 and 22 deal with specific exemptions from the requirement for a licence for dangerous and restricted weapons in certain circumstances. Clause 21 provides that no licence is required for use or possession when the weapon is required by law to be carried on a ship or aircraft by a member of the crew, when the weapon is designed for use by a veterinary surgeon to destroy animals or for administering drugs to animals, when the weapon is being used for instruction purposes by a properly authorised instructor at an approved shooting club, or when the weapon is used at a shooting gallery at a show or similar place of entertainment under the supervision of the owner or an employee who hold an appropriate licence on which the weapon is registered or endorsed.

Clause 21 also provides exemption from the requirement for a licence for use or possession of a dangerous weapon if the weapon is brought into the ACT temporarily by a person from a State or another Territory the law of which does not require the person to hold a licence to possess and use the weapon or if the weapon is brought in for the purpose of taking part in a shooting competition held by an approved club and the weapon is not used for any other purpose while in the ACT.

Clause 22 provides an exemption from the requirement for a licence for the possession of a dangerous or restricted weapon in the case of a carrier or warehouseman who is simply carrying or storing the weapon for someone else and also in the case of the executor of a deceased licensee. This clause also makes provision for a 7 day period for a person who has possession of a weapon but who is unable to obtain a licence for it, or whose licence has expired, to dispose of the weapon without penalty while in possession during that period. It also provides that a person who has authority to possess a dangerous weapon under the law in another jurisdiction does not need a licence for possession of a dangerous weapon for 28 days after taking up residence in the ACT.

#### Division 2 - Dangerous weapons licences.

Clause 23 provides that application may be made to the Registrar by a natural person for a dangerous weapons licence or by a body corporate for a corporate dangerous weapons licence. The application is to be in accordance with a form approved by the Registrar and be accompanied by the determined fee.

Clause 24 provides that, in the case of a natural person 18 years or older, the Registrar must grant a dangerous weapons licence if satisfied that the applicant is a fit and proper person, requires the weapon for an approved reason and has satisfactorily completed a course in the safe handling of dangerous weapons or has proper training and experience in the safe handling of dangerous weapons. In the case of an application for possession

only of a self-loading centre fire rifle of a military type the Registrar must also be satisfied that the applicant is a collector of weapons.

If the applicant is under 18 the Registrar must be satisfied that he or she is a fit and proper person, is a member of an approved club, requires the licence in order to take part in club competitions and has completed a course or has proper training and experience in the safe handling of dangerous weapons.

As well the clause provides that the Registrar must grant a dangerous weapons licence to a body corporate or a partnership if satisfied that it requires the weapon for an approved reason. The meaning of 'approved reason' is contained in clause 5.

Subclause 24(2) specifies a number of circumstances to which the Registrar must have regard in determining whether an applicant is a fit and proper person. These include whether the applicant has within the previous eight years been released from a term of imprisonment, within the previous eight years been subject to a recognisance to keep the peace or be of good behaviour, is the subject of an interim protection order under the Domestic Violence Act 1986 or within the previous eight years has been the subject of a protection order under that Act, or is the subject of an interim restraining order under the Magistrates Court Act 1930 or within the previous eight years has been the subject of a restraining order under that Act.



These circumstances are not exhaustive of the matters which the Registrar can consider in deciding whether a person is fit and proper. He or she can consider any other relevant matter. For example the Registrar may consider the physical fitness of the applicant, whether the applicant suffers from any mental or emotional instability or if the applicant is adversely affected by drugs or alcohol.

Clause 25 provides that the Registrar must refuse to grant a dangerous weapons licence if an applicant or, in the case of a partnership or a body corporate, a partner or a person connected with the management or direction of the body corporate, has within 8 years prior to making the application, been convicted of an indictable offence. In the case of a natural person the Registrar shall also refuse the application where the person is the subject of a protection order under the Domestic Violence Act 1986 or a restraining order under the Magistrates Court Act 1930 or a similar order in a State or another Territory.

Clause 26 provides that the Registrar, when granting a licence to a body corporate, must issue it in the name of the person who is in control or is the manager of the body in the ACT to be held by that person on behalf of the body corporate. Where a licence is granted to a partnership, the Registrar is to issue it in the name of one or more of the partners to be held on behalf of the partnership.

Clause 27 provides that a dangerous weapons licence shall be in a form approved by the Registrar.

Clause 28 sets out the effect of a dangerous weapons licence. A dangerous weapons licence authorises the holder to possess and use a dangerous weapon registered or endorsed on the licence, except in the case of a self-loading centre fire rifle of a military type or a pistol grip weapon which may only be possessed and used by the person on whose licence they are registered. The system of endorsements will not apply to these weapons.

A corporate dangerous weapons licence authorises the holder to possess a weapon registered on the licence.

Clause 28 also sets out the effect of a dangerous weapons licence granted to a person under 18. Such a licence authorises the holder to possess and use a dangerous weapon registered or endorsed on the licence, but only while on a shooting range owned or occupied by an approved club and under the supervision of an authorised instructor or when taking part in a club conducted competition.

Because of the limitation of the authority to possess a dangerous weapon given by a licence held by a person under 18, subclause 28(2) provides that an adult licensee is authorised to possess a dangerous weapon registered on the licence of the person under 18, provided that they are both members of an approved club and the adult is accompanying the other person to or from the club or an associated competition and has the weapon for that purpose.

### **Division 3 - Restricted weapons licences**

Clause 29 provides that an application may be made to the Registrar for a restricted weapons licence. The application is to be made in an approved form and be accompanied by the determined fee.

Clause 30 contains the grounds on which the Registrar must be satisfied before granting a restricted weapons licence. They are that:

- the applicant is over 18 and is a fit and proper person to hold such a licence;
- the applicant wants the weapon as a curiosity or for ornamental purposes or for use in a theatrical production;
- reasonable provision has been made for the safe keeping of the weapon;
- the weapon can be reliably distinguished from other restricted weapons; and
- the weapon is safe.

The clause also provides that the Registrar must consider whether it is in the interests of public safety to grant the licence.

Clause 31 provides that a restricted weapons licence is to be in a form approved by the Registrar.

Clause 32 requires the holder of a restricted weapons licence to return it to the Registrar within 7 days of either ceasing to

possess the weapon to which the licence relates or the expiry of the licence. A penalty of \$1,000 is provided together with a defence of reasonable excuse.

Clause 33 provides that a restricted weapons licence authorises a holder to do, in respect of the weapon to which the licence relates, any of the following things which are specified on the licence:

- possess or use;
- acquire or dispose of;
- import into or export from the ACT;
- manufacture.

#### Division 4 - Dealers' licences

Clause 34 provides that application may be made to the Registrar for a dealer's licence in a form approved by the Registrar and accompanied by the determined fee.

Clause 35 provides that the Registrar must grant a dealer's licence if satisfied that the premises are suitable for the business of dealing in dangerous or restricted weapons and that the applicant (or in the case of a body corporate or partnership, each person concerned in the direction or management of the body corporate or partnership) is a fit and proper person to hold such a licence. Similarly to clause 24 the Registrar may consider any relevant matter in establishing his or her satisfaction that the applicant is a fit and proper person.

In deciding whether or not the premises are suitable subclause 35(2) requires the Registrar to consider three aspects:

- the security of the premises against unauthorised entry;
- whether adequate provision has been made on the premises for the safe custody of dangerous or restricted weapons; and
- unless the licence is to be granted subject to a condition prohibiting the testing of weapons on the premises, whether an efficient bullet recovery box or bullet stop is provided on the premises.

Clause 36 provides that the Registrar must not grant a dealer's licence if the applicant would be refused a dangerous weapons licence or a corporate dangerous weapons licence on one of the grounds specified in clause 25.

Clause 37 provides that a dealer's licence shall be in a form approved by the Registrar.

Clause 38 provides that a dealer's licence authorises the holder to do whichever of the following as are specified on the licence:

- possess or use dangerous or restricted weapons;
- acquire or dispose of dangerous or restricted weapons;

- export or import dangerous or restricted weapons from or to the ACT;
- manufacture dangerous or restricted weapons;
- test, repair or modify dangerous or restricted weapons.

Clause 39 provides a penalty of \$2,000 for a licensed dealer who alters the premises to which the licence relates without the approval of the Registrar. The clause also provides for a licensed dealer to apply to the Registrar for approval to alter the premises, and that the Registrar is to give approval if satisfied, after considering the matters set out in subclause 35(2), that the alterations will not affect the suitability of the premises for carrying on the business of a dealer.

Clause 40 requires a licensed dealer to keep a Dealer's Book, in a form approved by the Registrar, in which is to be kept particulars of any manufacture, acquisition, modification, test repair, sale or disposal by the dealer, or surrender to the dealer, of a dangerous or restricted weapon. Entries are to be made within 24 hours of the event. The penalty for failure to make the required entries, without reasonable excuse, is \$2,000 or imprisonment for 12 months, or both. A penalty of \$2,000 is also provided for the failure of a licenced dealer, without reasonable excuse, to keep the Dealer's Book for 7 years after the date of the last entry and for failure without reasonable excuse after cancellation, surrender or expiration of the licensed dealer's licence, to forward the Dealer's Book to the Registrar within 7 days.

Clause 41 makes it an offence for a licensed dealer to knowingly or recklessly make an incorrect record in the Dealer's Book, or to destroy, mutilate or falsify a record in the Dealer's Book. The penalty is \$2,000 or imprisonment for 12 months or both.

Clause 42 provides that licensed dealers must make a quarterly return within 14 days of the end of the quarter, and in the approved form, to the Registrar regarding the manufacture, acquisition, modification, repair, testing, sale or disposal, or possession on the premises to which the licence relates, of any dangerous or restricted weapon. A penalty of \$1,000 is provided for a failure to comply, with a defence of reasonable excuse.

Clause 43 prohibits a licensed dealer from, in the course of carrying on business as a licenced dealer, keeping dangerous or restricted weapons at any place other than on the premises specified on the licence. The penalty is \$2,000 or imprisonment for 12 months, or both with a defence of reasonable excuse.

Clause 44 prohibits a licensed dealer from receiving a dangerous weapon or restricted weapon for modification, testing or repair unless satisfied that the person requiring the work is authorised to possess the weapon and, in the case of a request for modification, the modification is authorised by the Registrar under clause 87. The penalty is \$2,000 or imprisonment for 12 months, or both.

Clause 44 is expressed not to apply to a dangerous or restricted weapon of a person resident in a State or another Territory where the person is not proscribed by the law of that State or other Territory from the possession of the weapon.

#### Division 5 - Licences generally

Clause 45 allows the Registrar to request, in writing, further information in relation to an application for, or renewal of, a licence or the registration or endorsement of a dangerous or restricted weapon on a licence. It also allows the Registrar to require production of a weapon in the case of an application for a restricted weapons licence or the registration of a dangerous weapon on a dangerous weapons licence, so that the Registrar can obtain identification details and determine whether the weapon is safe.

Clause 46 provides that a licensee must sign his or her licence. A penalty of \$1,000 is provided with a defence of reasonable excuse.

Clause 47 allows the Registrar to specify conditions to which a particular licence is subject. The conditions may include those which are reasonable in the interests of public safety.

Subclause 47(3) provides that where the Registrar is satisfied that in the interests of public safety a condition in a licence



should be varied or revoked or a licence should be made subject to a condition he or she, by writing, can require the holder to forward the licence to the Registrar for alteration within 14 days. The penalty for failure to comply with such a request or for contravention of a condition of a licence is \$2,000 or imprisonment for 12 months, or both. A defence of reasonable excuse is provided.

Clause 48 provides that a licence, in general, remains in force for two years from the date it is granted. However, a restricted licence remains in force for the period specified on the licence, which cannot be longer than two years.

Clause 49 provides for renewal of licences. Application for renewal is to be made before the expiry of the term of the licence and be accompanied by the determined fee.

Clause 50 provides for replacement by the Registrar of lost, stolen or destroyed licences by the issue of a copy upon payment by the licensee of the determined fee. It also provides that the holder of a licence which is lost, stolen or destroyed must notify the Registrar within 2 days of becoming aware that it has been lost, stolen or destroyed. The penalty for failure is \$1,000 with a defence of reasonable excuse.

Clause 51 contains provisions for the cancellation or suspension by the Registrar of a licence. Subclause 51(2) contains the

grounds on which the Registrar may cancel or suspend a licence.

These are that:

- there exists a ground on which the Registrar may refuse to grant a licence;
- the holder of a dangerous weapons licence has ceased to require the one dangerous weapon registered on the licence for an approved reason or the dangerous weapon has been modified otherwise than in accordance with an authority under clause 87;
- in the case of a dealer's licence, the dealer is no longer a fit and proper person as he or she is required to be under clause 35 as a pre-condition to the grant of the licence;
- the premises to which a dealer's licence related are no longer suitable for the business;
- the licence was obtained by fraud or misrepresentation;
- the licensee has not complied with a condition of the licence; or
- the licensee has been convicted of an offence under the provisions of the Bill or a corresponding law in another jurisdiction.

Clause 52 requires a licensed dealer who ceases to carry on business at the premises to which the licence relates to surrender the licence to the Registrar within 7 days. A penalty of \$2,000 or imprisonment for 12 months, or both, is provided with a defence of reasonable excuse.

Clause 53 provides for the surrender of weapons where a licence ceases to have effect. It allows for the surrender of weapons to the Registrar or to a licensed dealer at the election of the former licensee. Where a former licensee elects to surrender weapons to a licensed dealer rather than to the Registrar clause 53 requires that the Registrar be notified accordingly.

Subclause 53(1) requires a former dangerous weapons licensee or corporate dangerous weapon licensee, within 7 days of the licence ceasing to have effect, to deliver each dangerous weapon registered or endorsed on the licence to the Registrar or to a licensed dealer. Where the weapons are delivered to a dealer the Registrar is to be notified of certain stated matters within 7 days. Subclause 53(2) provides that where such weapons are not in the possession of the former licensee the Registrar is to be notified within 7 days of the whereabouts of the weapons.

Subclause 53(3) makes similar provision in respect of restricted weapons. Subclause 53(4) also makes similar provision where a dealer's licence ceases to have effect and the former licensee is required to deliver the weapons to the Registrar or a licensed dealer. The subclause recognises that a larger number of weapons will invariably be involved and allows 21 days to comply, with a further 7 days to notify the Registrar where the former licensee has elected to surrender the weapons to a licensed dealer.

Each of the foregoing requirements carried a penalty of \$2,000 or imprisonment for 12 months, or both, for a failure to comply but a defence of reasonable excuse is provided.

Weapons delivered to the Registrar under the provisions of this clause are (if no appeal to the ACT Administrative Appeals Tribunal against the Registrar's decision to cancel suspend or not renew the licence is lodged, or if on the determination of such an appeal the Registrar's decision is upheld) to be considered to have been surrendered to the Registrar.

However if, on appeal, the Registrar's decision is set aside, the Registrar or a licensed dealer to whom they have been delivered must return the weapon or weapons to the owner within 7 days.

If, under the provisions of this clause, a dangerous weapon endorsed on a licence is delivered to the Registrar, the Registrar is to deliver it to the owner, unless the Registrar is otherwise entitled to be in possession of the weapon.

Clause 54 deals with changes in possession of dangerous or restricted weapons. It requires the holder of a dangerous or restricted weapons licence to notify the Registrar within 7 days of ceasing to possess a weapon registered or endorsed on the dangerous weapons licence or to which the restricted weapons licence relates, and at the same time to forward the licence to the Registrar for cancellation of the registration or endorsement or to surrender the licence as the case requires. The penalty for failure to give the necessary advice to the Registrar is \$2,000 with a defence of reasonable excuse being provided.

Clause 55 requires a licensee, other than a licensed dealer, to advise the Registrar of his or her change of address within 7 days of that change and forward the licence to the Registrar for amendment. A penalty of \$1,000 is provided as is a defence of reasonable excuse.

#### PART IV - REGISTRATION AND ENDORSEMENT

##### Division 1 - Registration of weapons

Clause 56 allows an application to be made to the Registrar by the holder of a dangerous weapons licence for registration on the licence of a dangerous weapon owned by him or her. The application is to be in a form approved by the Registrar and accompanied by the applicant's licence and the determined fee.

Clause 57 sets out the grounds on which the Registrar must be satisfied before approving an application for registration. They are that:-

- . the applicant is the owner of the weapon;
- . the weapon is of a type which is suitable for the approved reason for which the applicant was granted a licence;
- . the applicant has an adequate knowledge of the ACT law on dangerous weapons;
- . the applicant has an adequate knowledge of safety procedures relating to the weapon; and

- . the weapon is safe.

Subclause 57(2) makes special provision for applications by persons authorised to possess a dangerous weapon under the law of a State or another Territory who move to the ACT. In that case, before approving the application the Registrar must be satisfied that:-

- . the applicant is the owner of the weapon;
- . the applicant wants the weapon for an approved reason;
- . the applicant has an adequate knowledge of the ACT law on dangerous weapons;
- . the applicant has an adequate knowledge of safety procedures relating to the weapon; and
- . the weapon is safe.

In addition, where the application is for the registration of a self-loading centre fire rifle of a military type, the Registrar must be satisfied that within the previous year the applicant has taken part in a competition with that weapon held by or in association with an approved club.

Subclause 57(3) provides that, if the Registrar approves the application, he or she is to register the weapon in accordance with clause 59, which provides for the Registrar to enter the particulars of the weapon which are specified in subclause 12(2) in the Register and on the licence.

Clause 58 provides that, if the Registrar refuses to register a dangerous weapon, the applicant licensee has 7 days to surrender the weapon to the Registrar or a licensed dealer or, if the refusal was because the weapon was unsafe, to deliver the weapon to a licensed dealer to be made safe. In either case, where a weapon is delivered to a licensed dealer the applicant is required to deliver a statement to that effect to the Registrar.

The penalty for failure to comply with these requirements is \$2,000 or imprisonment for 12 months, or both although a reasonable excuse element is provided.

If a weapon is delivered to the Registrar under this clause and either no appeal against the Registrar's decision to refuse registration is lodged or an appeal is lodged and the Registrar's decision is upheld, the weapon is taken to have been surrendered to the Registrar. However, if an appeal is lodged and the Registrar's decision to refuse registration is not upheld, the Registrar has 7 days after notification of the decision of the Administrative Appeals Tribunal to return the weapon to the owner.

Clause 59 provides that registration of a weapon is effected by the Registrar entering the particulars specified in subclause 12(2) in the Register and on the licence.

Clause 60 provides that when a person applies for renewal of a dangerous weapons licence, the Registrar may examine the weapons registered on it to see if they are safe. If the Registrar is

not satisfied that a weapon is safe, he or she is to cancel the registration of the weapon and alter the licence accordingly.

Where the application for renewal is made in respect of a dangerous weapons licence on which a dangerous weapon is registered only because the licensee is a member of an approved club, other than a recreational shooter or hunter, the Registrar is to cancel the registration of that weapon unless satisfied that the licensee continues to require the weapon for a good reason. In determining whether or not the person has a good reason to possess the weapon the Registrar is to consider

- . how many times in the last 12 months the person has attended an approved club to use the weapon in a club competition or activity;
- . the type of club competition or activity engaged in by the person; and
- . any other relevant matter.

Clause 61 provides that the provisions of clause 58 apply to cancellation of registration in the same way as they apply to refusal to register a weapon.

This has the effect that, after the Registrar's decision to cancel registration of a weapon, the licensee has 7 days to deliver the weapon to the Registrar or, if the reason for the decision was that the weapon is unsafe, to deliver it to a licensed dealer to be made safe and give the Registrar a statement to that effect.



As well, it has the effect that if a weapon is delivered to the Registrar because of cancellation of registration and no appeal against the decision is lodged, or an appeal is lodged and the decision is upheld, the weapon is taken to have been surrendered to the Registrar. However, if an appeal is lodged and the Registrar's decision is not upheld then the Registrar has 7 days to return the weapon to the owner.

Division 2 - Endorsement of licences.

Clause 62 prevents endorsement of a pistol grip weapon on a dangerous weapons licence. This is because pistol grip weapons are prohibited except where such a weapon was held by a licensee under the Gun Licence Act 1937 in which case the licensee may continue to possess the weapon for competition shooting purposes only. Such weapons can only be possessed and used by the licensee.

Clause 63 allows the holder of a dangerous weapons licence to apply, in a form approved by the Registrar, for endorsement on his or her licence of a dangerous weapon registered on someone else's licence. The application must be accompanied by the applicant's licence and the determined fee.

Clause 64 sets out the matters of which the Registrar must be satisfied before endorsing a licence.

The applicant must require the weapon for the business of a body corporate or partnership which holds a corporate dangerous weapons licence or for the business of a licensed dealer if the applicant is a director of the body corporate, a member of the partnership, a licensed dealer, or an employee of the body corporate, partnership or licensed dealer in question. In all cases, the Registrar must be satisfied that the applicant requires the weapon for the approved reason for which the licence was granted and has an adequate knowledge both of the ACT law relating to dangerous weapons and of the safety procedures relating to that type of weapon.

Clause 65 provides that if the Registrar approves the application of a person who requires the weapon for the business of a body corporate or licensed dealer, the Registrar is to endorse that person's licence to indicate that he or she is authorised to use or possess a dangerous weapon registered on the corporate dangerous weapons licence or to use in the course of his or her employment a dangerous weapon to which the dealer's licence relates.

If the Registrar approves an application by a member of an approved club, that person's licence is to be endorsed to say that he or she is authorised to possess or use a weapon registered on the club's licence on a shooting range owned and occupied by an approved club in the course of club activities.

If the Registrar approves an application for endorsement from any other person, the licence of that person is to be endorsed with a description of the weapon.

Clause 66 deals with the situation in which the registration of a dangerous weapon endorsed on another person's licence is cancelled. The clause provides for the Registrar to require the other person to produce his or her licence for cancellation of the endorsement. Failure to produce the licence under those circumstances, without reasonable excuse, carries a penalty of \$1,000.

Subclause 66(3) provides that the endorsement on the licence of a person who is a member of an approved club, a director or employee of a body corporate or a partner in or employee of a partnership (where that position was relevant to the endorsement) will be taken to be cancelled as soon as the person ceases to hold that position.

Clause 67 provides for the Registrar to be notified within 7 days of a person ceasing to be a member of an approved club, director or employee of a body corporate or partner in or employee of a partnership (as referred to in subclause 66(3)). Notification is to be by the person concerned and also, where the person was an employee, by the body corporate or partnership concerned. The penalty for failure, without reasonable excuse, to notify the Registrar is \$1,000.

#### PART V - POWERS OF ENTRY, SEARCH AND SEIZURE

Clause 68 is an interpretation provision.

Clause 69 gives power for a police officer to enter and search premises.

Subclause 69(1) allows a police officer to enter, without a warrant, premises used for the business of a licensed dealer at any reasonable time when the premises are open for business. A police officer may also enter without a warrant any premises at any time with the consent of the occupier. The entry on to the premises is to be for the purpose of finding out whether the Bill or regulations are being complied with.

However, subclause 69(2) provides that having entered premises the police officer is not entitled to remain if, on request by or on behalf of the occupier, the officer does not produce evidence that he or she is a police officer.

Subclause 69(3) contains the powers which a police officer may exercise after entering premises. The officer may -

- . inspect, copy or take extracts from any book, document or other record which the police officer has reasonable grounds for believing relates to the acquisition, disposal, repair, modification or manufacture of dangerous or restricted weapons;
- . inspect any apparatus, equipment or other article that the police officer has reasonable grounds for believing is used in the manufacture or testing of dangerous or restricted weapons;

- . test, or seize for testing, any dangerous or restricted weapon that the police officer has reasonable grounds to believe does not comply with the Bill or regulations;
- . if he or she believes on reasonable grounds that a dangerous or restricted weapon on the premises is not safe, direct the occupier, in writing, not to use or sell the weapon until it has been made safe and inspected, tested and approved by the Registrar;
- . seize anything which the police officer has reasonable grounds for believing is connected with an offence; and
- . require any person on the premises to make available any books, documents or records on the premises, to furnish information which the police officer has reasonable grounds for believing is connected with an offence, and to answer questions.

Subclause 69(4) provides that a person who fails, without reasonable excuse, to comply with a notice in writing not to use or sell a weapon until it is made safe or a requirement to produce books etc or supply information or answer questions commits an offence for which the penalty is a fine not exceeding \$5,000 or imprisonment for 2 years, or both.

Subclauses 69(5) and (6) have the effect that, while a person is not excused from providing books etc or furnishing information or

answering questions on the grounds that it might incriminate him or her, such a book, document, piece of information or answer or anything obtained as a result of them is not to be used in criminal proceedings other than proceedings under this Bill.

Clause 70 allows a police officer to stop and search a person, vehicle or vessel without a warrant if the officer has reasonable grounds for believing that a dangerous, restricted or prohibited weapon connected with an offence is in the possession of the person, or is in or on the vehicle or vessel.

Because the clause allows a police officer to search a person and that person's clothing and property, it also provides that the police officer carrying out the search must be of the same sex as the person being searched.

Clause 71 provides that, before seeking the consent of the occupier of premises to enter in accordance with clause 69, a police officer must inform the occupier that he or she can refuse to give consent. If the occupier gives consent the police officer is to ask him or her to sign a written acknowledgement that the consent has been given, that the occupier was informed that consent could be refused and the date and time the consent was given. Where, in court proceedings it is necessary to show that consent to the entry was given, failure to produce any acknowledgment is to give rise to the presumption that the occupier did not consent, although that presumption can be rebutted by evidence establishing that consent was given.

Clause 72 deals with search warrants, which may be issued by a Magistrate in response to an information on oath. The information must allege that there are reasonable grounds for suspecting that there may be on particular premises a thing of a particular kind connected with a particular offence against the Bill or that there may be on the premises a dangerous, restricted or prohibited weapon which does not comply with the Bill or Regulations or is unsafe to use. The information must set out the grounds for suspicion.

The warrant is to authorise a named police officer with such assistance and force as is necessary and reasonable to do the following things:-

- . enter the premises;
- . search for the thing, weapon or article referred to in the warrant;
- . exercise any of the powers specified in subclause 69(3).

Subclause 72(2) provides that the magistrate is not to issue a warrant unless he or she has been given any further information required concerning the grounds on which the warrant is requested and is satisfied that there are reasonable grounds for issuing the warrant.

Subclause 72(3) sets out all the things to be included in the warrant including its purpose, the nature of the offence in question and the duration of its operation.

Subclause 72(4) gives power to a police officer searching under a warrant to seize things other than those specified in the warrant. The police officer must believe that the thing is used in the manufacture, sale, modification, testing, repair, export or import of dangerous, restricted or prohibited weapons or that a weapon does not comply with the Bill or regulations or its possession is prohibited. In addition, the officer must have reasonable grounds for believing that seizure is necessary to prevent concealment, loss or destruction of the item or its sale, manufacture, import or export or exposure for sale.

Clause 73 provides (in subclause 73(1)) that unless a prosecution for an offence under the Bill is commenced within 60 days of the seizure of a dangerous or restricted weapon the weapon must be returned to its owner.

Subclause 73(2) provides for the return of a seized dangerous or restricted weapon where proceedings were commenced against the owner but the offence was found not proved.

However, subclauses 73(1) and (2) do not apply if, before the 60 day period is over or the courts find the offence not proved, the owner's licence otherwise is cancelled.

Subclauses 73(4) and (5) allow the Registrar to retain a seized weapon if the owner is charged with an offence under any ACT law which, if proved, would entitle the Registrar to cancel his or her licence. If the charge is not proved, the Registrar must return the weapon to the owner.



Subclause 73(6) provides that if an offence under the Bill is proved, a dangerous or restricted weapon used in connection with the offence is to be forfeited to the Territory, unless it was stolen (in which case it is to be returned to the owner) or the court directs otherwise.

Subclause 76(7) provides that all prohibited weapons seized under clauses 69, 70 and 72 are forfeited to the Territory.

#### PART VI - OFFENCES GENERALLY

Clause 74 allows a court to impose a penalty of up to 5 times the maximum fine provided for an offence under the Bill if a body corporate is convicted of the offence.

Clause 75 creates an offence of knowingly hindering or obstructing a police officer in the exercise of his or her powers under the Bill. The penalty is a fine not exceeding \$2,000 or imprisonment for 12 months, or both.

Clause 76 prohibits the defacing or altering of any identification mark on a dangerous or restricted weapon without the written approval of the Registrar. As well it provides that without the approval of the Registrar no one is to have in his or her possession a dangerous or restricted weapon or spear gun on which any identification mark is defaced or altered. The penalty is \$5,000 or imprisonment for 2 years, or both.

Clause 77 prohibits, in subclause 77(1), a person from selling, lending or giving a restricted weapon to another person who is not the holder of a restricted weapons licence in respect of that weapon. The penalty is \$5,000 or imprisonment for 2 years, or both.

Subclause 77(2) prohibits a person from selling or giving a dangerous weapon to another person unless that other person has a dangerous weapons licence and the weapon is suitable for the approved reason for which the weapons licence of that other person was granted. It also prohibits a person from lending or giving a dangerous weapon to another person unless that other person has a dangerous weapons licence on which that weapon is endorsed.

Subclause 77(3) prohibits a person from selling or giving a dangerous weapon to a person who does not possess a registered dangerous weapon for 28 days after the grant of the person's licence and subclause 77(4) prevents such a person from acquiring such a weapon for 28 days from the grant of the licence.

Subclause 77(5) provides that a corporate licensee or licensed dealer shall not lend or give a dangerous weapon to a person unless the person has a dangerous weapons licence, is an employee of the first person and will use the weapon in the course of the employment.

Subclause 77(6) allows a person to sell, lend or give a dangerous or restricted weapon to another person who does not have a dangerous or restricted weapons licence only if the weapon is

lent, given or sold to a person who is authorised to possess or use the weapon under paragraph 21(1)(a) or (b). Those paragraphs give authority to a person without a licence to possess or use in the course of his or her duties a dangerous or restricted weapon where the weapon is required by law to be carried on a ship or aircraft by a member of the crew or where the weapon is designed for use by a veterinary surgeon to administer drugs to animals.

A person may lend or give a dangerous or restricted weapon to another person who is authorised to possess or use a weapon without a licence by virtue of paragraph 21(1)(d) or to a person who is authorised to possess a weapon without a licence under subclause 22(1).

Paragraph 21(1)(d) allows possession or use of a dangerous weapon if the person is being instructed by an authorised instructor in the use of the weapon and the weapon is owned by the instructor or the approved club by which the instructor is authorised.

Subclause 22(1) enables a person to possess a dangerous or restricted weapon without a licence under certain circumstances, including those of a carrier or warehouseman carrying or storing the weapon for someone else.

The penalty for breach of the provisions of this clause is \$5,000 or imprisonment for 2 years, or both.

Clause 78 prevents a person from selling a dangerous or restricted weapon to a person ordinarily resident in a State or

another Territory unless the seller has reasonable grounds for believing that the buyer is not prohibited by the law of that State or Territory from possessing the weapon. A penalty of \$2,000 or imprisonment for 12 months, or both, is provided.

Clause 79 imposes a penalty of \$1,000 for possession of a spear gun by anyone under 14 years of age.

It also imposes a penalty of \$2,000 on a person who knowingly sells, lends or gives a spear gun to a person who is under 14 years of age or who is not reasonably believed to be of or over 14 years of age.

Clause 80 deals with production of licences. It provides that a person carrying a dangerous or restricted weapon must not, without reasonable excuse, fail to produce his or her licence for inspection when requested by a police officer to do so. A person otherwise authorised to carry the weapon must give reasonable proof of such authority. A person carrying a weapon must, if requested, give the police officer his or her name and address. Failure to comply with any of these requirements carries a penalty of \$1,000 or 6 months imprisonment, or both. Subclause 80(4) imposes an additional penalty of \$1,000 on a person who gives false or misleading particulars of his or her name and address.

Subclause 80(2) provides that a person does not contravene the requirement to produce his or her licence on request if, within 3 days, he or she produces the licence to the Registrar.

A person is not obliged to comply with the request of a police officer unless that officer, on request of that person, produces evidence of being a police officer.

Clause 81 prohibits a person from having possession of a dangerous weapon registered on another person's licence unless that weapon is endorsed on his or her licence or he or she is otherwise authorised under the bill to have possession of the weapon. The penalty is \$5,000 or imprisonment for 2 years, or both.

Clause 82 requires a person having possession of a dangerous weapon (other than a spear gun) to keep it in a locked container or to in some other way prevent others from having access to the weapon without the consent of the owner. The clause also prohibits keeping a loaded weapon unless it is either being used or being prepared for immediate use. The penalty in each case is \$2,000 or imprisonment for 12 months, or both.

Clause 83 requires a person whose dangerous or restricted weapon is lost, stolen or destroyed to notify the Registrar within 2 days of becoming aware of its loss, etc. The penalty for failure is \$2,000 with a defence of reasonable excuse.

Clause 84 prohibits a person, without reasonable excuse, having a dangerous or restricted weapon in a public place. It also prohibits the discharge of such a weapon in, near or onto a public place. However, a person may do any of those things if they are done in accordance with the written approval of the Registrar.

The clause also prohibits a person, without reasonable excuse, from having a dangerous or restricted weapon in his or her possession in a place other than a public place so as to endanger the life of another.

The penalty for breach of these provisions is \$2,000 or imprisonment for 12 months, or both.

Clause 85 prohibits the discharge of a dangerous or restricted weapon on, onto or across land without the consent of the lessee or occupier. In the case of unleased Crown land the written authority of the Registrar is required. The penalty is \$2,000 or imprisonment for 12 months, or both.

Clause 86 makes provisions concerned with the safe handling of weapons. It provides that a person must not carry or use a dangerous or restricted weapon in any place or manner that would be likely to:-

- . endanger the safety of another person;
- . cause reasonable fear of injury; or
- . destroy or damage property.

It also prohibits a person from carrying or using such a weapon with disregard for his or her own safety or that of others, or while under the influence of drugs or alcohol.

A penalty of \$2,000 or imprisonment for 12 months, or both, is provided.

Clause 87 prohibits the modification of dangerous weapons without the authority of the Registrar. The clause sets out the particular forms of weapons to which it relates and specifies what constitutes modification.

In deciding whether to give an authority under this clause, the Registrar is to consider whether to do so would be likely to prejudice public safety. An authority only lasts for 6 months. The penalty for modifying a weapon without authority is \$5,000 or imprisonment for 2 years, or both.

Clause 88 provides that a person who has authority under clause 87 to modify a weapon must produce the weapon to the Registrar within 7 days after the work has been done so that the Registrar can determine whether the weapon has been modified in accordance with the authority. The penalty for failure is \$1,000. This clause also provides for the Registrar to make appropriate alterations to the licence on which a modified weapon is registered.

Clause 89 prohibits a person from using or possessing a dangerous weapon modified otherwise than in accordance with the authority of the Registrar. A penalty of \$5,000 or imprisonment for 2 years, or both, is provided.

Clause 90 relates to the possession of ammunition.

Subclause 90(1) provides that a person shall not possess ammunition and a penalty of \$1,000 is provided. However subclause 90(1) is expressed not to apply to a licensed dealer or authorised member, to ammunition suitable for a weapon registered or endorsed on the person's licence, to a person approved under subclause 90(3) being a collector of ammunition, to ammunition which is kept as a memento, or where ammunition is left over following the cancellation, suspension, surrender or expiry of a licence or where the registration or endorsement of a weapon has ceased and a period of 28 days has not elapsed.

In considering an application for approval as a collector the Registrar is to have regard to various specified matters including the safety of members of the public.

Clause 91 deals with the sale of ammunition.

Subclause 91(1) provides that a person, other than a licensed dealer or authorised member, shall not sell ammunition and a penalty of \$2,000 or imprisonment for 12 months, or both, is provided.

A licensed dealer may sell ammunition only to a licensed person for a weapon registered or endorsed on that licence, to a collector as approved by the Registrar under subclause 90(4) or to an interstate resident whom the dealer reasonably believes is not proscribed by the law of the State or other Territory from possessing the ammunition.



An authorised member, being a person defined in subclause 4(1) as a person authorised in writing by an approved club to sell ammunition, may only sell ammunition on the club premises to club members or persons competing at the premises and it must be ammunition of a kind suitable for a weapon registered or endorsed on a licence or from a weapon being used in the competition at the premises.

A penalty of \$2,000 applies to a licensed dealer or authorised member who, without reasonable excuse, contravenes the requirements.

#### PART VII - MISCELLANEOUS

Clause 92 provides that, if a dangerous or restricted weapon is surrendered to the Registrar, under the provisions of clause 53 or clause 58, the Territory must pay compensation to the owner.

Clause 93 requires the Registrar, in considering the safety of a weapon under clauses 30, 57 or 60, to have regard to a certificate by a licensed dealer that in the dealer's opinion the weapon is safe.

Clause 94 details what is required to establish the state of mind of a natural person or a body corporate where it is necessary to do so in a prosecution for an offence under the Act.

Clause 95 allows a complaint to be made to the Registrar on any matter arising out of the grant of a dangerous or restricted weapons licence. The complaint must be in writing, signed by the complainant and must specify the grounds for the complaint.

Clause 96 provides that the Registrar is to investigate a complaint made under clause 95 as he or she thinks fit and give notice of the complaint to the person against whom the complaint is made. If, on investigation, the Registrar finds grounds for cancellation of a licence, the licence may be cancelled. For the purposes of the investigation, the Registrar may require a person to give information relevant to the investigation or to produce documents or a dangerous or restricted weapon in his or her possession.

Clause 97 provides that, in proceedings for an offence under the Bill, the Registrar may sign a certificate which will be evidence of the matters stated in that certificate. The clause sets out the matters which may be specified in the certificate.

Clause 98 provides that application may be made to the ACT Administrative Appeals Tribunal for review of certain decisions of the Registrar under the Bill. The relevant decisions are set out in the clause.

Clause 99 deals with notification by the Registrar of a decision of the kind set out in clause 98, in regard to which review by the ACT Administrative Appeals Tribunal may be sought. The clause provides that notice in writing of the decision is to be

given, and that the notice is to contain a statement to the effect that an application for review by the ACT Administrative Appeals Tribunal of the decision referred to in the notice may be made.

In the case of a decision to refuse to grant a licence under clauses 24,25,30,35, or 36, to refuse to approve an application for alteration of premises to which a dealer's licence applies or to refuse to approve an application for registration of a dangerous weapon, the notice is to be given to the applicant.

Where the Registrar decides to cancel a licence after an investigation arising from a complaint, the notice is to be given to the complainant.

Where the Registrar decides to specify, vary or cancel conditions of a licence the notice is to be given to the applicant or licensee as the case requires.

In any other case the notice is to be given to the licensee.

Clause 100 provides that a notice required to be given to the Registrar may be given by:-

- . delivering it to the Registrar personally;
- . sending it by certified mail, addressed to the Registrar; or
- . leaving it at the Registrar's office with a person employed there.

Clause 101 gives power to the Minister to determine fees for the purposes of the Bill by notice in the Gazette.

Clause 102 gives power to the Executive to make regulations not inconsistent with the Bill.

#### PART VIII - SAVINGS AND TRANSITIONAL

Clause 103 is an interpretation provision.

Clause 104 is a transitional provision for the benefit of persons holding licences under the Gun Licence Act 1937 in respect of a pistol grip weapon. A pistol grip weapon is defined in subclause 4(1).

A person holding such a licence at the commencement of the Bill is deemed to hold a dangerous weapons licence granted under the Bill. Then, as soon as possible after commencement of the Bill, the Registrar is to grant a dangerous weapons licence to that person, and register the weapon under the Bill. Once the licence has been granted it will remain in force either until the licence under the Gun Licence Act would have expired or for 3 months, whichever is the greater length of time.

Clause 105 applies to a licence granted under the Gun Licence Act 1937 and in force immediately before the date of commencement of the Bill. It provides that such a licence is to remain in force and the Gun Licence Act is to apply both to the licence and to the holder as if that Act had not been repealed.

A licence which continues in force under the provisions of this clause for 3 months or less may be renewed either in accordance with the Gun Licence Act (as if it had not been repealed) or in accordance with the Bill. However, if the licence continues in force for more than 3 months it must be renewed in accordance with the Bill.