

1995

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Weapons (Amendment) Bill 1995

EXPLANATORY MEMORANDUM

Circulated by authority of

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WEAPONS (AMENDMENT) BILL 1995

OUTLINE

General outline

The purpose of the Bill is to amend the *Weapons Act 1991* so as to resolve a number of omissions and difficulties which have become apparent since the introduction of the Act.

One significant change is the introduction of a new category of licence for inoperable weapons. This is aimed at those weapons which are of historical significance or which are held as mementos. Although the Act has provided for the keeping of dangerous weapons which have been rendered inoperable, there has been no provision until now for the keeping of prohibited weapons which have been rendered inoperable. Under the proposed regime, licensees will be required to satisfy the Registrar of Weapons that they are fit and proper persons to hold a licence and that the weapons have been rendered inoperable in accordance with the Registrar's guidelines. The Registrar will also be able to demand production of weapons in order to check their continued inoperability before renewing an inoperable weapons licence.

In accordance with a resolution of the Australian Police Ministers Council in 1991, the sale or transfer of semi-automatic weapons is prohibited by the Bill. To date this matter has been dealt with by way of a Consumer Product Safety Order under the *Consumer Affairs Act 1973*. A number of items have also been added to the list of prohibited weapons, including Butterfly knives, ballistic knives and other articles. Silencers, which have until now been prohibited items, will be licensed as dangerous weapons for strictly approved reasons to persons who can show that they have a genuine approved use for them, such as specialised animal handlers.

The Bill also formalises the carriage of weapons by approved security personnel for overseas dignitaries; requires veterinary surgeons who were previously exempted from the requirements of the Act to hold dangerous weapons licences; restricts the circumstances in which compensation is payable for surrendered weapons; and includes other formal and minor amendments discussed further below. It also allows for the possible future introduction of photographic licences for all licence holders, subject to further development of proposals in this area.

Financial impact

Nil.

NOTES ON CLAUSES

Clause 1 - Short title

This clause is a formal clause to provide for the short title of the Act.

Clause 2 - Commencement

This clause provides for commencement of the Act by notification in the Gazette.

Clause 3 - Principal Act

This clause cites the *Weapons Act 1991* as the Principal Act.

Clause 4 - Interpretation

Section 4 of the Principal Act is the definition section. This clause defines starting pistols which are modified or imitation pistols as dangerous weapons. It also amends the definition of authorised instructor to require that the person has completed an approved instructor's course (see clause 12).

The clause also extends the definition of "dangerous weapon" to include silencers which have been prohibited weapons until now. It also defines inoperable weapons and inoperable weapons licences.

The clause also extends the definition of "prohibited weapon" to allow for other "weapons, articles or devices" to be prescribed by way of regulation.

Clause 5 - Approved reasons

Section 5 of the Principal Act includes the approved reasons for which the Registrar of Weapons may grant a dangerous weapons licence. This clause adds certain categories of persons who may qualify:

- a person employed or engaged by the RSPCA, CSIRO or other prescribed bodies whose principal aim is research into animal diseases or management of animal welfare or research into plants;
- veterinary surgeons who use the weapon in the course of their duties;
- in the case of a crossbow, where either the person is a member of an approved archery club and uses the weapon in competition; or the person uses it for scientific research, such as in plant research;
- in the case of the types of starting pistols which are licensed as dangerous weapons, either a person who is an official starter, or if the weapon is held by a prescribed sporting organisation, that organisation.

The clause also defines approved archery clubs.

Clause 6 - Reports, recommendations and guidelines

This clause provides that the Registrar may publish in the gazette guidelines for rendering a dangerous or prohibited weapon inoperable.

Clause 7 - Repeal

This clause repeals section 14 of the Principal Act which made it an offence for a person to contravene the Registrar's published guidelines as to safe custody of weapons. Because existing section 82 (1) of the Principal Act creates an offence of keeping a dangerous weapon (other than a spear gun) otherwise than in a locked container or so as to prevent another person from having access to it without the owner's consent, there have been until now two different legislative standards for safekeeping of weapons. The Registrar's guidelines as to safekeeping become persuasive only rather than attracting criminal consequences, but compliance with them will provide a defence to prosecution under section 82(1) (discussed further at clause 28).

Clause 8 - Prohibited weapons

This clause adds an offence of using or causing or permitting the use of a prohibited weapon.

Clause 9 - Insertion

This clause insert new offences of possessing an inoperable weapon which would otherwise be a dangerous or prohibited weapon, unless the person holds an inoperable weapons licence. The penalties for those offences are the same as those applying to dangerous and prohibited weapons respectively.

Clause 10 - Exemptions - general

This clause exempts a prison officer of a State or another Territory who is acting in the course of his or her duties from the Act.

Clause 11 - Specific exemptions

This clause removes the exemption for veterinary surgeons using weapons in the course of their practice. They will now be required to apply for a dangerous weapons licence (see clause 5).

It also provides an exemption for the use of a registered starting pistol which is a dangerous weapon by members of prescribed sporting organisations.

Clause 12 - Insertion

This clause provides that an authorised instructor must have completed a course of training in instruction approved by the Registrar.

Clause 13 - Grant of dangerous weapons licence

This clause clarifies that in determining whether a person is a fit and proper person to hold a dangerous weapons licence, the range of factors which the Registrar is to consider under section 24(2) are not exclusive. (Those factors include whether the person within the last eight years has been released from imprisonment, subject to a recognisance, or a respondent to a restraining order or protection order or has had his or her licence cancelled for specified reasons.) It adds to those factors a reference to the applicant's physical or mental condition which in the Registrar's opinion is likely to cause danger to any person or where the applicant as a consequence of the condition is likely to cause a breach of the peace involving the use of a weapon.

The clause also limits consideration by the Registrar of terms of imprisonment to those terms served for conviction of an offence involving a weapon or violence. This reflects the underlying policy of the Act that those persons licensed to hold weapons should not display a propensity to violence.

The clause also changes the reference to the approved courses of instruction. This reflects the amended definition of authorised instructor in the Bill but does not impose any practical change.

Clause 14 - Refusal to grant licence

This clause requires an applicant for a dangerous weapons licence to provide proof of identity.

Under the provisions existing to date (section 25(1)) the Registrar must refuse to grant a licence, among other circumstances, where a person, or or in the case of a body corporate, a director or manager of that body corporate, has been convicted of an indictable offence in the past eight years. This clause limits mandatory refusal on those grounds to those indictable offences which involved the use of a weapon or actual or threatened violence.

Clause 15 - Substitution

The clause repeals section 27 of the Principal Act which provides that a dangerous weapons licence shall be in an approved form. Requirements for all licences are now contained in proposed section 45B.

The clause also provides for the grant of a temporary licence by the Chief Police Officer of the ACT to security personnel for foreign dignitaries. Requests from other countries for approval for personnel to carry weapons in Australia are closely examined by the Commonwealth and stringent conditions are imposed,

but to date there has been no formal mechanism to allow those personnel to carry weapons under ACT law. The clause provides that the type of weapon which may be licensed is a pistol or revolver of not more than .45 calibre that is not fully automatic. The Chief Police Officer must also be satisfied that to grant the licence would not be against the public interest.

Clause 16 - Grant of restricted weapons licence

The clause requires an applicant for a restricted weapons licence to provide proof of identity.

Clause 17 - Repeal

This clause repeals section 31 of the Principal Act which provides that a restricted weapons licence shall be in an approved form. Requirements for all licences are now contained in proposed section 45B.

Clause 18 - Insertion

This clause inserts provisions relating to a new category of licence, the inoperable weapons licence. The Registrar is to grant a licence if satisfied that the applicant is 18 years or over, is a member of the ACT Antique and Historical Arms Association Ltd or a collector of weapons of historical interest or as mementos or for ceremonial or memorial purposes, and is a fit and proper person. In determining whether the person is a fit and proper person the Registrar is to have regard to the same factors as apply to applicants for a dangerous weapons licence. The Registrar must also be satisfied that the weapon is inoperable and the grant of the licence is not contrary to the public interest.

The Registrar is to refuse an inoperable weapons licence on similar grounds as he or she could refuse a dangerous weapons licence. The licensee is to return the licence to the Registrar within seven days of ceasing to hold the weapon or of the expiry of the licence. (This is the same requirement as for restricted weapons under section 32.)

Clause 19 - Grant of dealer's licence

This clause provides that a person who applies for a dealer's licence must satisfy the Registrar that he or she is a fit and proper person to hold such a licence. In determining whether a person is a fit and proper person, the Registrar is to have regard to the matters set out in paragraphs 24(2)(a) to (c) (the provisions which apply to those persons seeking dangerous weapons licences. The listed matters include whether, in the past eight years, the person has been released from imprisonment, has been subject to a recognisance to keep the peace or be of good behaviour, or has been a respondent to a restraining order or a protection order, or is currently subject to an interim restraining or protection order.)

Clause 20 - Repeal

This clause repeals section 37 of the Principal Act which provides that a dealer's licence shall be in an approved form. Requirements for all licences are now contained in proposed section 45B.

Clause 21 - Insertion

This clause provides for an offence of providing false or misleading information to the Registrar.

It also provides for all licences to be in a form approved by the Registrar. It also provides for the power to make regulations concerning photographic licences if that should be pursued in the future.

Clause 22 - Cancellation and suspension of licence - general

This clause provides that the Registrar may cancel or suspend a dangerous weapons licence on which more than one dangerous weapon is registered or endorsed, where the same approved reason applies to all such weapons and the licensee has ceased to require a dangerous weapon for that approved reason.

Clause 23 - Insertion

This clause provides that where the Registrar has cancelled a licence, the licensee must surrender his or her licence as soon as practicable and no later than seven days after being notified of the decision.

Clause 24 - Application for registration

This clause allows for application for registration of inoperable weapons.

Clause 25 - Approval of application

This clause provides for approval by the Registrar of registration of inoperable weapons. It also restricts the requirement to have an adequate knowledge of the laws and safety practices concerning dangerous weapons to applicants for dangerous weapons licences.

Clause 26 - Refusal of registration - duties of licensees

This clause extends the provisions of the Act which concern refusal by the Registrar of registration of dangerous weapons to include inoperable weapons.

Clause 27 - Cancellation of registration

This clause provides that where the approved reason for a dangerous weapon has ceased to exist or the weapon is no longer suitable for that approved

reason, the Registrar shall cancel the registration of that weapon and alter the licence accordingly.

The clause also extends the Registrar's existing power, when a person applies for a licence to be renewed, to demand production of any registered dangerous weapon in order to determine that it is safe. The power to demand production will apply to inoperable weapons.

Clause 28 - Search warrants

This clause clarifies existing section 72 to ensure that a magistrate may issue a search warrant either where there are reasonable grounds for suspecting either that a weapon may be connected with an offence against the Act or regulations, or in the case of a dangerous weapon if the weapon is unsafe. This removes any uncertainty that both requirements need to be met.

Clause 29 - Forfeiture etc of weapons

This clause adds ammunition to the seized property which must be returned to the owner by the Registrar where a prosecution is not instituted. It also extends the existing exemption to provide that ammunition need not be returned by the Registrar where a prosecution for other ammunition offences has been instituted against the owner.

Clause 30 - Insertion

This clause clarifies that a reference to ammunition in the Act includes a reference to components of ammunition such as primers and propellants.

Clause 31 - Sale etc of weapons

This clause prohibits the sale or transfer of semi-automatic weapons, in line with the recommendations of the Australian Police Ministers Council in 1991. To date sales of these items have been prohibited by way of a Consumer Product Safety Order under the *Consumer Affairs Act 1973*. The clause provides for penalties on the same scale as those applying to possession or dealing with prohibited weapons.

Clause 32 - Safekeeping of weapons

This clause amends the existing section to provide that a licensee must keep a dangerous weapon, other than an inoperable weapon or spear gun, in a locked container and under such conditions as will prevent another person from having access to it without the owner's consent. Proposed section 82(1A) provides that it is a defence if the defendant satisfies the court that he or she reasonably believed he or she had complied with the Registrar's guidelines on safe custody. (See also clause 7.)

Clause 33 - Possession of ammunition

This clause exempts persons who lawfully hold a starting pistol which is licensed as a dangerous weapon from the offences relating to ammunition where that ammunition is blank cartridges for use in a starting pistol.

Other amendments are formal changes only.

Clause 34 - Sale of ammunition

This clause provides that a licensed dealer may sell ammunition which is able to be used in a starting pistol if he or she is satisfied that the person has an approved reason for requiring a starting pistol.

Clause 35 - Substitution

This clause repeals the existing provision relating to compensation and provides that the Territory shall compensate the owner where the weapon is lawfully held but its sale is prohibited. This is a more restrictive approach to compensation than under the existing provisions. When the Principal Act commenced in 1991, compensation was made available to cover the surrender under the Act of any dangerous or restricted weapon, since the Act was imposing a more restrictive licensing regime than had previously been the case and it was intended to avoid any disadvantage to people who held weapons at that time. The current provision is intended to avoid the Territory effectively subsidising individuals' purchases of weapons which they no longer wish to hold.

The clause also provides that the Registrar may dispose of uncollected weapons after more than six months if reasonable attempts have been made to contact the owner of the weapon and no other reason exists for holding the weapon (such as for evidentiary purposes in criminal proceedings).

Clause 36 - Review of decisions

This clause includes decisions relating to licences for inoperable weapons in the class of decisions which are reviewable.

Clause 37 - Schedule 2

This clause provides that starting pistols which are imitation pistols and which consequently are classified as dangerous weapons do not come within the definition of restricted weapon.

Clause 38 - Schedule 3

This clause adds a number of items to the list of prohibited weapons, including Butterfly knives, blowguns, ballistic knives, certain martial arts weapons and other articles. It also includes modified articles of clothing or other accessories used to conceal or disguise weapons.

The clause also removes silencers from the list of prohibited weapons as these will now be licensed as dangerous weapons. It prohibits military style and pistol crossbows, as other crossbows will be allowed for approved purposes such as scientific research.