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

FIREARMS (PROHIBITED PISTOLS) AMENDMENT BILL 2003

EXPLANATORY STATEMENT

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Firearms (Prohibited Pistols) Amendment Bill 2003

Explanatory Statement

Outline

The Firearms (Prohibited Pistols) Amendment Bill, when enacted, will amend the *Firearms Act 1996* (the Act) and the Firearms Regulations (the Regulations) made under that Act, to give effect to resolutions of the Australasian Police Ministers' Council (APMC), endorsed by the Council of Australian Governments (COAG), to place greater restrictions on access to certain types of pistols.

The APMC/COAG resolutions were focussed on removing from the community pistols which are:

- easily concealable;
- high powered; and/or
- have a significant magazine capacity.

Under the existing firearms legislation persons are able to obtain a licence to possess such a pistol for the purposes of business or employment, sport or target shooting or collecting. The new provisions of the Act, required pursuant to the APMC/COAG resolutions will place further restrictions on access to these "prohibited pistols" for sport or target shooting and impose additional requirements where such pistols are collected.

The new provisions will, among other things:

- limit access to "prohibited pistols" for sport and target shooting to where they are used in a limited range of particular events;
- provide for graduated access to "prohibited pistols" for shooting purposes;
- require persons licensed to use "prohibited pistols" to satisfy minimum participation rates in competitions requiring the use of such pistols;
- impose additional requirements before "prohibited pistols" can be collected; and
- impose additional requirements on shooting clubs in relation to members who are licensed to use "prohibited pistols".

The amendments to the Act also provide for a "buyback" of "prohibited pistols". Some persons who are presently licensed to possess such pistols will, as a result of the amendments, cease to be entitled to a licence for such pistols. Provided the pistols concerned are surrendered before 1 January 2004, the owners of those pistols will be entitled to compensation for the surrendered pistols.

Formal clauses

Clauses 1, 2 and 3 are formal clauses which, respectively:

- state the name of the amending Act;
- provide for the commencement of the amending Act on 1 July 2003; and
- explain that the Act being amended is the *Firearms Act 1996*.

Clause 4 – Section 4 - amended definition of “active”

Clause 4 amends the definition of “active” for the purpose of describing what it is to be an active member of a firearms club. The new definition is required because more stringent requirements as to participation rates have been introduced for members of shooting clubs who are licensed to possess and use “prohibited pistols”. The participation rates for members of the different types of firearms clubs are set out in *new regulation 4A* of the regulations as amended by **clause 30** of the amending Act.

Clause 5 – Section 4 - new definitions of “barrel length” and “prohibited pistol”

Clause 5 amends section 5 of the Act by inserting new definitions for the terms “barrel length” and “prohibited pistol”.

The term “prohibited pistol” needs to be defined because the implementation of the APMC/COAG resolutions means that certain pistols, which may presently be possessed and used for some sporting shooting events, will now only be able to be possessed and used for such purposes in more limited circumstances. These “prohibited pistols” are those considered to present the greatest potential risk to the community, when in the wrong hands, because of their firepower or their multi-round capacity or the fact that they are small and, therefore, more readily concealed.

Clause 6 – New section 15 - Approved clubs

Section 15 of the Act enables the Registrar of Firearms (the registrar) to approve firearms clubs for the purposes of the Act. **Clause 6** replaces the present section 15 with a *new section 15*. The new section provides for three categories of firearms clubs which may be approved:

- a collectors' club;
- a hunting club; and
- a shooting club.

These provisions are necessary to enable appropriate obligations to be placed both upon persons who apply to be licensed under the Act and clubs of whom licensed firearms owners are members. For example, the new provisions in relation to licences for the purpose of collecting pistols, will require that a collectors' club endorse any such licence application by a member of the club.

The present section 15(3) of the Act requires the registrar to consider whether a club has a shooting range or club premises and the membership rules of a club, prior to deciding whether to declare a club an "approved club". Whether it has a shooting range is likely to be a more relevant consideration for a shooting or hunting club, than for a collectors' club.

The *new section 15* is drafted in a way which enables more directly relevant factors to be taken into account before the registrar may approve a club of a particular type.

Clause 7 – Section 16 Unauthorised possession or use of a firearm prohibited

Section 16 makes it an offence for a person to possess or use a firearm unless the person is authorised to do so by a licence, a permit, or otherwise under the Act. A

higher maximum penalty applies for possession of a prohibited firearm than for other types of firearms. **Clause 7** replaces section 16 with a *new section 16* which applies the higher penalty for unauthorised use or possession of a prohibited firearm to unauthorised use or possession of a prohibited pistol.

Clause 8 - Section 23(4) Genuine reasons for having a licence – amendment to table, item 1

Section 23 of the Act provides that the registrar cannot issue a firearms licence unless satisfied that the applicant has a “genuine reason” for possessing or using the firearm. A table in the provision sets out the “genuine reasons” for which a licence can be granted and explains what evidence of those genuine reasons must be produced before a licence can be issued.

One of the genuine reasons for the issue of a firearms licence is for the purpose of “sport/target shooting”. The item in the table setting out the requirements to establish that genuine reason for being granted a licence is amended to reflect requirements in *new section 36A* which will need to be met by applicants for category H licences, i.e. licences authorising the possession and use of pistols.

Clause 9 – Section 23(4) - Amendment to table, item 8

Another of the genuine reasons for the issue of a firearms licence is that the applicant requires the firearm for “firearms collection”. As evidence of this the applicant must show that he or she is a member of an approved collectors’ club or association, the members of which collect firearms of the type for which the licence is sought.

The bill amends this part of the table in section 23 to include further requirements as to what constitutes evidence of having a genuine reason of “firearms collection” in order to be granted a firearms licence. In addition to being a member of an approved collectors’ club, the applicant will have to show that his or her firearms collection has genuine commemorative or investment value or historical or thematic structure, and

the applicant will also have to have his or her licence application endorsed by the collectors' club of which the applicant is a member.

If the applicant seeks a licence to collect a firearm which is produced after 1946, he or she will have to demonstrate the thematic structure of the collection and that he or she researches or studies firearms as a "student of arms".

Clause 10 – Sections 27 and 28 Category H licences and Collectors' licences

Sections 27 and 28 of the Act, respectively, deal with category H licences and collectors' licences. A category H licence enables a person to possess and use a pistol. It can only be issued to a person who has established one of the "genuine reasons" for being issued with the licence and whom the registrar is satisfied has a special need to possess and use a pistol.

Section 27 is replaced by a *new section 27* to, additionally, require that a category H licence only be issued to a person who is a member of a relevant approved club, and who provides written evidence that the club endorses the licence application, where the genuine reason for the licence is sport or target shooting or firearms collection.

Existing section 28 restricts the issue of a collectors' licence to those applicants whom the registrar is satisfied are collectors of firearms and members of an approved collectors' club and whose collection is of significant commemorative, historical, thematic or investment value.

This provision is replaced by a *new section 28* which provides that the registrar may only issue a collectors licence to a person where the registrar is satisfied that the person collects firearms.

Clause 11 – New section 36A Special conditions for category H licences for sporting or target shooting

Clause 11 inserts a *new section 36A* which sets out the requirements and restrictions applying to the first twelve months of a category H licence (ie. a licence for a pistol for sport/target shooting).

The APMC/COAG resolved that access to a pistol should be graduated, and that the holder of the licence should demonstrate a commitment to the sport and undertake certain training and meet minimum participation rates before being permitted to own a pistol.

The regime set out in *new section 36A* applies to a person who is issued with a category H licence and who has not previously held such a licence.

For the first six months of the licence the following conditions apply:

- the licensee must not own a pistol;
- the licensee must satisfactorily complete a firearm safety training course conducted by an approved shooting club; and
- the licensee must satisfy minimum requirements as to participation in organised shooting activities conducted by an approved shooting club.

The participation requirements are prescribed in the regulations.

Provided the requirements, applying in the first six months of the licence are met, during the second six months of the licence the licensee may own a limited range of firearms, including pistols.

At the end of the first twelve month period of the licence the holder of the licence will be able to acquire additional pistols but only if the holder can show a good reason for the acquisition of such a pistol.

Clause 12 - Section 37(a) Special conditions of licences for collection purposes

Section 37 sets out some special conditions which apply to licences issued for the purpose of firearms collection. Section 37(a) requires that a firearm, in a collection, which is manufactured after 1 January 1900 must be rendered incapable of being fired, in a manner which is prescribed in the regulations.

This provision is amended to extend the same requirement to a “prohibited pistol” which is possessed for the purposes of firearms collection. This is to give effect to the APMC/COAG resolution that prohibited pistols may only be collected if they are rendered, temporarily, inoperative.

Clauses 13, 14 and 15 – Section 41 Cancellation of licence

Section 41 of the Act sets out the circumstances in which a licence to possess or use a firearm is, or may be, cancelled.

Clause 13 inserts a *new section 41(1A)* to the effect that if a person who holds a category H licence, issued for the genuine reason of target or sport shooting, ceases to be an active member of an approved shooting club, the registrar must cancel the licence.

Clause 14 inserts, for section 41(2), an example of when a person is no longer fit and proper to hold a licence, where the firearms are lost or stolen because of the negligence of the licensee.

Clause 15 notes that the subsections of section 41 will be renumbered when the Act is next republished.

Clauses 16 and 17 - Section 48 Permits to acquire firearms

Section 48 of the Act enables the holder of a licence to apply to the registrar for a permit to acquire a firearm and authorises the registrar to issue a permit to acquire a firearm where:

- the applicant holds the appropriate type of licence;

- the 28 day “cooling off period” has passed; and
- the registrar is satisfied that the applicant has a good reason for acquiring the firearm.

Clause 17 amends section 48 to introduce additional requirements to be met, before the registrar can issue a permit for the acquisition of a pistol by the holder of a category H (sport/target) licence.

The new requirements are that:

- the acquisition is in accordance with any conditions on the licence;
- the registrar has been advised by the approved shooting club of which the licensee is a member about the competition shooting discipline for which the pistol is required, that the club endorses the permit application and the licensee can comply with the requirements of the Act in relation to safety and storage of firearms.

Clause 16 is a consequential technical provision related to the renumbering of subsections of section 48.

Clause 18 - New sections 84A and 84B Unauthorised manufacture of firearms

One of the APMC/COAG resolutions in relation to handgun control was to prohibit the sale, ownership, possession, manufacture and use of handguns for sporting shooting purposes, unless the possession and use of such handguns is otherwise permitted in accordance with the resolutions. Existing provisions of the Act give effect to this resolution in relation to sale (see sections 84(1) and 67(2)), ownership, possession and use (see sections 16 and 4 and 4B – definition of “possession”).

Clause 18 introduces *new section 84A*, which addresses the requirement to prohibit the manufacture of prohibited pistols. In addition to prohibiting the manufacture of prohibited pistols, it makes it an offence to manufacture any firearm, unless authorised by a licence or permit to do so.

The maximum penalty for unauthorised manufacture of a firearm is 10 years imprisonment or 1000 penalty units or both. A significantly higher maximum penalty of 20 years imprisonment or 1500 penalty units, or both, is provided for unauthorised manufacture of a prohibited pistol or prohibited firearm.

These provisions are in accordance with the commitment of all jurisdictions to put in place appropriate legislative measures to combat firearms trafficking.

New section 84B is a procedural provision which allows for an alternative verdict that an accused is guilty of the unauthorised manufacture of firearms, where the accused has been charged with, but not found guilty of, the unauthorised manufacture of prohibited pistols or prohibited firearms.

Clause 19 – Section 115 Disclosure by health professionals of certain information

Section 115 presently facilitates the disclosure by a doctor, to the registrar of firearms, of information about a patient who is unsuitable to be in possession of a firearm. The provision protects a doctor who makes such a disclosure from any legal action which might otherwise be taken concerning the disclosure of confidential information.

Section 115 is replaced by a *new section 115* to:

- apply to a broader range of health professionals; and
- in addition to protecting a health professional, who makes an honest disclosure, from civil or criminal liability, make it clear that a disclosure under this provision does not amount to a breach of confidence or professional ethics.

Clauses 20 and 21 – Section 126 Regulation-making power

Section 126 provides that regulations may be made for the purposes of the Act and describes the types of matters in relation to which regulations may be made.

Clause 20 amends section 126 to include in the list of matters with which the regulations may deal, the conditions applying to the approval of a club and the duties and reporting obligations of approved clubs.

Clause 21 inserts a note into section 126, which explains that examples given as a part of an Act are not exhaustive and do not limit the meaning to be given to the provision in which they appear.

Clause 22 – Part 12 Transitional provisions

Clause 22 inserts *new Part 12* in the Act making transitional provisions to apply to existing category H licences and providing for the buyback of illegal sport or target shooting pistols.

New section 129 explains that a reference to the “amnesty period” in the Act means the period from 1 July 2003 to 31 December 2003, inclusive of these dates. The significance of the amnesty period is twofold. Firstly, a person who had, prior to the amnesty period, been licensed to possess a prohibited pistol, who because of the changes to the Act ceases to be entitled to possess such a pistol, will be entitled to compensation for the pistol if it is surrendered during the amnesty period.

Secondly, during the amnesty period, a person who had, prior to the amnesty period, been licensed to possess and use a prohibited pistol, but who, because of the changes to the Act ceases to be entitled to possess or use such a pistol, will not be liable to prosecution for an offence against section 16 of the Act in relation to the possession of the pistol.

New section 130 preserves the operation of existing declarations of approved clubs, made under section 15 of the Act.

New section 131 is a provision which is intended to apply to persons who, prior to the commencement of the amendments, did not hold a category H licence but were members of approved shooting clubs for a purpose that includes participation in sport

or target shooting activities requiring the use of a pistol. A number of such persons may have already completed a substantial amount of firearms safety training and participated in club activities related to the use of pistols, prior to commencement of *new section 36A*. That section places restrictions on the access a category H licence holder can have to pistols, in the first two six month periods of the licence. The effect of *new section 131* is that, provided the approved club of which a person is a member certifies that the person has commenced participating in relevant club activities as at a particular date, that date will be taken to be the commencement date of the first six month period of the person's category H licence. This will avoid the need for persons who have already commenced relevant participation in shooting clubs to wait an additional six months from 1 July 2003, before they can gain access to the firearms which the Act provides are able to be acquired and used by a category H licensee in the second six months of the licence.

New section 132 is to the effect that a person who had, prior to the commencement of the amendments, been licensed to possess and use a prohibited pistol for the purpose of sport or target shooting, but who, because of the changes to the Act ceases to be entitled to possess or use such a pistol, will not, for the duration of the amnesty period, be liable to prosecution for an offence against section 16 of the Act in relation to the possession of the pistol.

New section 133 is to the effect that a person who had, prior to the commencement of the amendments, been licensed to possess a pistol manufactured after 1946, for the purpose of firearms collection, but who, because of the changes to the Act ceases to be entitled to possess such a pistol, will not, for the duration of the amnesty period, be liable to prosecution for an offence against section 16 of the Act in relation to the possession of the pistol.

New section 134 is necessary because APMC/COAG has agreed that all percussion fired pistols, whenever made, should be registered and a person who wishes to own or use one, should be licensed to do so. To date, the Act has not applied to any firearms manufactured before 1 January 1900. However, the definition of "firearm" in regulation 4 has been amended by **clause 30** so that it will now include any percussion

fired pistol, whenever made. Therefore, unless a person in possession of such a pistol is licensed to possess the pistol and has the pistol registered, the person will be in breach of the Act. ***New section 134*** has the effect of allowing a six month period from 1 July 2003 for persons in possession of such pistols to make arrangements to become licensed and have the relevant pistols registered, before they will be liable in respect of a breach of the Act arising from their possession of such a pistol.

New section 135 provides that a holder of a category H licence issued for the genuine reason of sport or target shooting who acquired a prohibited pistol before 1 July 2003 (that is, before the amendments to the Act commenced), and who ceases to be entitled to possess or use the prohibited pistol, as a result of the amendments to the Act, and who surrenders the pistol to a police officer after 30 June 2003 and before 1 January 2004 is entitled to be paid compensation for the surrendered pistol.

These provisions are intended to encourage those persons who, by virtue of the changes to the Act affecting who may own or use a prohibited pistol, cease to be entitled to own or use such pistol to surrender any prohibited pistols in their possession.

New section 136 provides that a firearms dealer who acquired, or ordered, a prohibited pistol prior to 20 December 2002 (the date of the announcement of the COAG agreement to restrict access to pistols) who surrenders the pistol to a police officer after 30 June 2003 and before 1 January 2004 is entitled to be paid compensation for the surrendered pistol. The rationale for this provision is that the COAG decision has reduced the market for prohibited pistols and dealers who, prior to the announcement of COAG's agreement, had purchased or agreed to purchase prohibited pistols unaware of this impending change should not be disadvantaged.

New section 137 is to the effect that the regulations must set out the process for dealing with any dispute about the value of a surrendered pistol.

New section 138 is a provision which enables any further transitional arrangements which may be identified after the amendments commence, to be addressed by way of regulation.

New section 139 is a technical provision to the effect that the transitional provisions cease to form a part of the Act 1 year after they commence.

Clause 23 – Schedule 2 Licence categories and authority conferred, item 5

Schedule 2 of the Act sets out the categories of licence which may be granted under the Act, the firearms to which each licence type applies, and the authority conferred by the licence. **Clause 23** amends the item in the schedule dealing with category H (ie. pistol) licences to the effect that a prohibited pistol may only be used in accordance with the regulations. *New regulation 8A*, inserted by **clause 34**, sets out the circumstances in which a prohibited pistol may be used for sport and target shooting purposes.

Clause 24 – Part 3 Amendment of Firearms Regulations 1997

Clause 24 provides that Part 3 of the amending Act amends the Firearms Regulations.

Clause 25 – Regulation 3, new definition

Clause 25 inserts a new definition of a “target pistol shooter” in regulation 3. This term is used in the new regulations governing the obligations on clubs whose members are target pistol shooters.

Clause 26 – Regulation 3 – renumbering

Clause 26 provides for renumbering of regulation 3.

Clause 27 – New regulations 3 and 3A

Clause 27 inserts *new regulations 3* and *3A*.

New regulation 3 is a provision which explains that notes in the regulations are explanatory and do not form part of the regulations.

New regulation 3A is a provision which explains that provisions of the *Criminal Code Act 2002* and the *Legislation Act 2001* apply to the regulations.

Clause 28 – Regulation 4(a) Not Firearms

The effect of **clause 28** is to amend regulation 4 so that a percussion-fired pistol, whenever manufactured, is included within the definition of “firearm” for the purposes of the Act. As a result of this amendment, a person will be required to have a licence to possess and use such a pistol and such pistols will be required to be registered.

Clause 29 – New Regulation 4A Minimum participation rates for members of approved clubs

Clause 29 inserts *new regulation 4A* which sets out the new minimum participation rate requirements to be met by members of approved clubs, in order to qualify to be licensed to possess and use a pistol.

Clause 30 – Regulation 5(3)(a) Category C licences

Clause 30 reflects the change in terminology to refer in the Act and regulations to a “shooting range” rather than a “range” or a “firing range”.

Clause 31 – Regulation 6(1)(t)

Clause 31 amends regulation 6 to reflect the new requirement that a collector of post-1946 pistols must demonstrate that the collection has thematic structure and the collector researches or studies firearms.

Clause 32 – New regulation 8A Authorised possession or use of prohibited pistols for target or sport shooting

Clause 32 inserts *new regulation 8A* which explains the types of events for which a prohibited pistol may be used by the holder of a category H licence. The term “prohibited pistol” is defined in section 4 of the Act, as amended by **clause 5** of the bill. The events for which such pistols may be used are those known as “Metallic Silhouette” and “Single Action”.

New regulation 8A also provides that the holder of a category H licence may use a registered prohibited pistol with a barrel length of less than 120mm in an approved specialised target shooting competition. This provision is intended to ensure that sporting shooters are not precluded from participating in certain shooting events (including at least one Olympic event) which require the use of pistols with very short barrels.

Clause 33 – New Part 3A Clubs

Clause 33 inserts *new Part 3A* in the regulations comprising *new regulations 31A, 31B, 31C, 31D* and *31E*.

These provisions deal with the conditions for approval of a shooting club the members of which use pistols, the obligations of members of such shooting clubs and of the clubs themselves, the conditions for approval of a collectors’ club, the members of which collect pistols, and the type of information the registrar can disclose to such clubs.

New regulation 31A defines what is meant by a “target pistol shooter”. It is a person who holds a category H licence for the genuine reason of sport or target shooting and who is a member of a shooting club or has applied for membership of such a club.

New regulation 31B provides that approval of a shooting club is subject to the following conditions:

- the shooting club can only admit a target pistol shooter, as a member, if the person has provided a police check, character references and details of any other approved shooting club of which the person is a member;
- the shooting club or a relevant office holder must notify the registrar, in relation to a target pistol shooter, about non-renewal of the person’s membership, the person leaving the club or a change to the member’s name or residential address;
- the shooting club, in respect of a target pistol shooter, must advise the registrar of the cancellation or suspension of the person’s membership, including details of the reasons for such cancellation or suspension;
- the shooting club must provide an annual return to the registrar, in respect of target pistol shooters, setting out the name and address of such members, the details of their participation in shooting competitions and details of pistols known to be owned by the members;
- there is an obligation on the relevant office holders of shooting clubs, in respect of target pistol shooters, to advise the registrar if there are reasons for believing that such a person may pose a threat to the community or to himself or herself, if in possession of a pistol;
- the shooting club must not permit a person, whose licence authorising the use of a pistol has been cancelled or suspended, to use such a pistol on the club’s premises or shooting range.

New regulation 31B(2) makes it clear that a club or office holder is not civilly or criminally liable in respect of the honest disclosure of information to the registrar, in accordance with the requirements of *new regulation 31A(1)*.

New regulation 31B(3) explains that *new regulation 31B* applies to an approved shooting club, in respect of members who use pistols, whether or not the club was approved before the commencement of the amending regulation.

New regulation 31C authorises the disclosure of certain information, by the registrar, to a relevant office holder of an approved shooting club about an applicant for membership of the club. The information which may be disclosed is information about:

- the pistols owned by the applicant;
- any other approved club of which the person is a member;
- any other approved club which is known to have refused the person membership in the preceding 5 years;
- any category H licence which has been cancelled in the preceding 5 years;
- any application for a category H licence which has been refused within the preceding 5 years; and
- the applicant's criminal history so far as it is relevant to the application.

New regulation 31D makes it an offence if a target pistol shooter fails to notify the club of which he or she is a member of changes to the person's name and residential address.

New regulation 31E makes the approval of a collectors' club subject to the following conditions:

- the club must advise the registrar of the cancellation or suspension of membership of a person who collects pistols, including details of the reasons for such cancellation or suspension;
- the relevant office holders of an approved collectors' club must, in respect of members who collect pistols, advise the registrar if there are reasons for believing that such a member may not be a fit and proper person to be in possession of a pistol.

New regulation 31E(2) makes it clear that a club or office holder is not civilly or criminally liable in respect of the honest disclosure of information to the registrar, in accordance with the requirements of *new regulation 31E(1)*.

New regulation 31E(3) explains that *new regulation 31E* applies to an approved collectors' club, in respect of members who collect pistols, whether or not the club was approved before the commencement of the amending regulation.

Clause 34 – Regulation 47 Lending for competition

Clause 34 makes a consequential amendment to regulation 47, which is necessary because of amendments made to section 15 of the Act.

Clause 35 – Parts 3A - 7

Clause 35 provides for the renumbering of parts of the Regulations when they are next republished.

Schedule 1 – Additional amendments of Firearms Act 1996

Clause 3 provides that the Act is further amended as set out in Schedule 1 to the amending Act. The amendments in Schedule 1 are:

- consequential amendments arising from the amendments to sections 4, 15, 41, 48 and 113;
- an amendment to section 31 to reflect the adoption of metric measurements of calibre of firearms;
- a *new section 4CA* which explains that provisions of the *Criminal Code Act 2002* and the *Legislation Act 2001* apply to the Act; and

- a new provision in section 113 for an appeal to the Administrative Appeals Tribunal in respect of decisions to approve a club or revoke the approval of a club.