

# **POLICE POWERS AND RESPONSIBILITIES AND ANOTHER ACT AMENDMENT BILL 2001**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objective of the Legislation**

The Police Powers and Responsibilities and Another Act Amendment Bill 2001 ("the Bill") corrects a technical defect which appears in the *Police Powers and Responsibilities Act 2000* ("PPRA 2000") and reaffirms Parliament's intention that provisions relating to the use of force are to be contained within Chapter 9 of the PPRA 2000.

The Bill also amends the *Weapons Act 1990* to require the licensing of category H weapons rendered permanently inoperable and imposing greater controls on collector's licences for weapons rendered temporarily inoperable.

#### **Means of Achieving Policy Objectives**

The legislation will ensure that there is no doubt that the power for a police officer to use reasonable force when exercising or attempting to exercise a power under any section of the PPRA 2000 and any other Act is centrally contained within Chapter 9 of the PPRA 2000.

The legislation will require the licensing of category H weapons whether made permanently inoperable or not and to impose greater controls on a collector's licence for category H weapons rendered temporarily inoperable.

#### **Alternative Means of Achieving Policy Objectives**

The policy objectives cannot be achieved in any way other than by the introduction of the Bill.

### **Estimated Cost of Implementation for Government**

There will be no financial impact from the Bill with regards to the amendment to the PPRA 2000. The financial impact of the Bill in relation to the *Weapons Act 1990* is expected to be minimal.

### **Consistency with Fundamental Legislative Principles**

It is intended to commence the Bill retrospectively to 1 July 2000. This will ensure there is no doubt as to Parliament's intention in the PPRA 2000 that use of force provisions were to be centrally contained in Chapter 9 of the PPRA 2000. The retrospective amendment will not affect any evidence gathered through the use of a surveillance device to date but will ensure that valuable evidence of serious criminal offences is not lost through a technical error in the PPRA 2000.

The Bill is consistent with Fundamental Legislative Principles in relation to the amendments to the *Weapons Act 1990*.

### **Consultation conducted in Development of the Bill**

As the Bill, so far as the amendment to the PPRA 2000, only corrects a technical defect, there was no general consultation on the contents. The Public Interest Monitor, however, was consulted on the Bill.

The following government departments were consulted during the development of the policy for the amendments to the *Weapons Act 1990*:

- The Department of The Premier and Cabinet;
- The Department of Primary Industries, Office of Rural Communities;
- The Department of Employment, Training and Industrial Relations; and
- Treasury Department.

The Sporting Shooters Association of Australia (Qld) Inc. and the Firearms Dealers Association - Queensland Inc. support the proposal to require licensing of Category H weapons.

## **NOTES ON PROVISIONS**

### **General notes**

A question recently arose as to whether the words, "to use reasonable force" where they appear in section 144(d) of the PPRA 2000 could in turn act to prevent a police officer using force to install, maintain and remove a surveillance device operating under a warrant issued by virtue of section 131 of the PPRA 2000. Section 131 does not refer to the use of force. It was contended that Parliament may have intended that force could only be used with respect to a tracking device used pursuant to section 144.

The words, "to use reasonable force" appear in error in section 144(d) of the PPRA 2000.

It was, and remains, the intention of Parliament that provisions relating to the use of force by a police officer or assistant when exercising or attempting to exercise any power under the PPRA 2000 or any other Act, be centrally located within Chapter 9 of the PPRA 2000. Consequently, section 375 of the PPRA 2000 is to be taken to provide a police officer and any assistant with the power to use reasonable force when exercising a power contained in Chapter 4 of the PPRA 2000.

It is the intention of Parliament that the Chapters of the PPRA 2000 should not be read as separate codes in isolation of other relevant aspects of the Act.

### **Specific notes**

## **PART 1—PRELIMINARY**

### **Short title**

Clause 1 specifies the short title of the Bill.

### **Commencement**

Subclause 2(1) of the Bill provides that Part 2 (Amendment of *Police Powers and Responsibilities Act 2000*) is taken to have commenced on 1 July 2000.

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Subclause 2(2) of the Bill provides that Part 3 (Amendment of *Weapons Act 1990*) commences on a day to be fixed by proclamation.

**PART 2—AMENDMENT OF *POLICE POWERS AND  
RESPONSIBILITIES ACT 2000***

**Act amended in pt 2**

Clause 3 provides that the Bill amends the PPRA 2000.

**Amendment of s 144 (Powers under surveillance warrants)**

Clause 4 cures the technical defect in the section by removing the words "to use reasonable force". The words are removed retrospectively to ensure that Parliament's original intention in the legislation is clear.

**Amendment of s 152 (What covert search warrant must state)**

Clause 5 amends section 152 of the PPRA 2000 to remove reference to the use of "reasonable help and force" and to entering "the place, covertly or by subterfuge". Chapter 9 of the PPRA 2000 provides for using reasonable force and assistance. The power of entry (covertly or by subterfuge) is contained in section 155.

**Replacement of s 375 (Power to use force—exercise of certain powers)**

Clause 6 amends section 375 of the PPRA 2000 to remove any doubt that section 375 applies to **any** power contained in the PPRA 2000 or **any** other Act.

**PART 3—AMENDMENT OF *WEAPONS ACT 1990***

**Act amended in pt 3**

Clause 7 provides the Bill amends the *Weapons Act 1990*.

### **Amendment of s 5 (Definitions)**

Clause 8 amends the definition of 'collector' so that a collector means a person who collects or holds out as being ready to collect, whether on behalf of the collector or another person, a weapon or weapons.

### **Amendment of s 6A (What is a "replica")**

Clause 9 omits the reference to category H weapons rendered permanently inoperable from the definition of replica.

### **Amendment to s 49 (Commissioner to maintain firearms register)**

Clause 10 inserts a new subsection which provides for a definition of "firearm" for the purposes of section 49, to include a category H weapon rendered permanently inoperable. This will require the Commissioner to maintain a record of category H weapons rendered permanently inoperable.

### **Amendment to s 77 (Collector's licence (weapons))**

Subclause 11(1) amends section 77(2)(b) of the *Weapons Act 1990*. The section will provide that category A, B C or H weapons that are firearms manufactured after 1900 and of obvious and significant commemorative, historic, thematic or investment value, only if the weapons are made temporarily inoperable. This will limit licences issued under this provision for weapons rendered temporarily inoperable, only to those weapons of obvious and significant commemorative, historic, thematic or investment value.

Subclause 11(2) inserts a new paragraph, section 77(2)(c), which makes reference to a category H weapon made permanently inoperable whether or not of commemorative, historic, thematic or investment value. This enables a person in possession of a category H weapon made permanently inoperable to obtain a collectors licence, whether or not for the weapon's commemorative, historic, thematic or investment value.

## **PART 8—TRANSITIONAL PROVISIONS**

### **Transitional provision for *Police Powers and Responsibilities and Another Act Amendment Act 2001***

Clause 12 inserts a new section, section 173, into the *Weapons Act 1990*. The new provision provides for a 3 month amnesty for persons in possession of a category H weapon made permanently inoperable prior to the commencement of Bill. This will allow these persons to obtain licences during this period without fear of prosecution.