

# **WEAPONS (HANDGUNS AND TRAFFICKING) AMENDMENT BILL 2003**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

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

The *Weapons (Handguns and Trafficking) Amendment Bill 2003* details proposed amendments that will give effect to the objectives of the Council of Australian Governments (COAG) agreement, related Australasian Police Ministers Council (APMC) resolutions and to the terms of the *National Firearms Trafficking Policy Agreement*. The proposed Bill will amend the *Weapons Act 1990* (the Act), the *Weapons Categories Regulation 1997*, the *Judicial Review Act 1991*, and the *Police Powers and Responsibilities Act 2000* (PPRA). Further amendments to the Weapons Regulations will be necessary following passage of the proposed Bill.

As a consequence of a shooting incident by a licensed handgun owner at Monash University on 21 October 2002, the Prime Minister initiated a discussion with Premiers and Chief Ministers about options for tightening handgun control.

Commonwealth, State and Territory Heads of Government agreed to develop a plan to significantly tighten handgun controls. Heads of Government requested that the APMC develop detailed proposals for a national approach to handgun control. In order to facilitate APMC consideration, the Prime Minister provided a list of key measures to promote handgun law reform. The APMC then made specific recommendations for consideration by the COAG.

COAG agreed on a national approach to restrict availability and use of handguns by sporting shooters and endorsed 28 resolutions made by the APMC. COAG agreed that legislative and administrative measures be in place by 30 June 2003 and that a handgun amnesty be in place from 1 July 2003 until 1 January 2004. Further, COAG agreed that a compensation scheme for legally held handguns operate during the amnesty.

*Weapons (Handguns and Trafficking) Amendment  
Bill 2003*

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The proposed legislation for the COAG agreement contains a broad range of measures, which are designed to:

- ensure further restrictions and requirements be imposed on historical collectors of temporarily inoperable handguns;
- implement the introduction of a system of graduated access to handguns for legitimate sporting shooters based on training, experience and event participation;
- provide mandatory participation rates in club organized handgun competition shoots for sporting shooters;
- implement the banning of handguns held by sporting shooters that are under prescribed barrel length;
- generally ban handguns held by sporting shooters over .38 calibre (or 9mm);
- implement increased reporting requirements for shooting clubs;
- provide increased responsibilities for clubs before accepting new members and for members making application for a licence or a permit to acquire a firearm;
- implement broader licence revocation powers, including suspending, revoking or refusing a licence on the basis of criminal intelligence and negligent storage;
- provide indemnities for regulated and unregulated health practitioners who provide information that may affect a person's licence;
- conduct a review of the legislative requirements for safe storage of firearms; and
- substantially increase penalties for the illegal possession of a firearm.

The principal focus of the COAG agreement is on regulation of licensed handguns.

The APMC *National Firearm Trafficking Policy Agreement* (the Firearms Trafficking Agreement) resolved that all jurisdictions would make further provision for the control of the illegal trade in firearms in Australia through:

- (i) border protection against illegal firearms, the Commonwealth to provide APMC with a detailed strategy for increased Customs

detections of illegally imported handguns at the November 2002 APMC;

- (ii) clarifying legislation governing safety testing of imported firearms;
- (iii) examining legislative or administrative changes that may be required to prevent the release of a large quantity of handguns landed in Australia prior to recent changes to the importation laws;
- (iv) seeking to establish a Commonwealth cross-border firearms trafficking offence;
- (v) ensuring substantial penalties for the illegal possession of a firearm;
- (vi) introducing nationally consistent regulation of the manufacture of firearms;
- (vii) introducing offences relating to defacing serial numbers;
- (viii) introducing an offence of illegal manufacture which attracts substantial penalties;
- (ix) extending the definition of possession of a firearm;
- (x) introducing close associate provisions for firearm dealers;
- (xi) proscribing certain persons from employment in firearm dealerships;
- (xii) providing for increased recording, reporting and inspection of firearm part transactions;
- (xiii) introducing laws designed to restrict the illegal supply of firearms;
- (xiv) making it an offence to conspire to commit an interstate firearm offence; and
- (xv) introducing tough penalties for firearm record falsification.

Paragraphs (i) to (iv) are matters that are within the responsibility of the Commonwealth. Paragraphs (v) to (xv) are matters under the responsibility of the States and Territories. Some matters addressed by the Firearms Trafficking Agreement have already been implemented under the Act. However, giving effect to the objectives of the Agreement will result in a substantial strengthening of weapons policy throughout Queensland.

## **Means of Achieving Policy Objectives**

The Bill achieves the objectives of the COAG agreement and the Firearms Trafficking Agreement by amending the *Weapons Act 1990*, the *Weapons Categories Regulation 1997*, the *Judicial Review Act 1991*, and the *Police Powers and Responsibilities Act 2000*.

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

There are no alternative means of achieving the policy objectives other than by legislative reform.

## **Estimated Cost for Government Implementation**

The costs associated with the national handgun buyback are likely to be substantial. The expected cost for the Queensland Government of the handgun buyback could reach from \$4 million to \$13 million.

Compensation payments will be funded firstly from \$15 million remaining from the 1996 firearms buyback and then shared on a two-thirds: one-third basis between the Commonwealth, and the States and Territories. The method of distributing the initial \$15M among the States and Territories is still the subject of consultation between the Commonwealth, States and Territories. Administrative costs incurred by jurisdictions as a direct result of the compensation scheme will be included in cost of the compensation scheme. The Commonwealth will reimburse States and Territories, for payments properly made under the buyback scheme.

However, the Commonwealth have indicated that it may not contribute its share of the compensation costs if particular States or Territories do not fully implement the COAG Agreement.

## **Consistency with Fundamental Legislative Principles**

While this Bill recognises the importance of protection of law-abiding citizens, by ensuring a balance between the rights and liberties of individuals and the institution of Parliament, a number of proposals have been identified as having possible fundamental legislative principles issues under the *Legislative Standards Act 1992*. Possible fundamental legislative principle issues include:

- increased penalties;

- limitations on information available to a person who appeals a decision by the Commissioner or Deputy Commissioner to refuse or revoke a licence on the basis of criminal intelligence;
- allowing a Supreme Court Judge to authorise the use of covert evidence gathering powers for the investigation of serious weapons offences;
- requiring current licensees to surrender prohibited handguns that are currently lawfully held;
- protection of informers;
- affecting the onus of proof when establishing possession;
- jurisdiction for indictable offences; and
- a transitional regulation making power.

### **Increased penalties**

Current penalties under the Act do not reflect the seriousness of the conduct. For example, unlawful possession of highly restricted firearms such as handguns, high-powered semi-automatic rifles, and military style weapons attracts a maximum penalty of only 2 years imprisonment. Unlawful possession of a semi-automatic or pump action shotgun or possession of a bulletproof vest attracts a maximum penalty of only 1-year imprisonment. The unlawful sale or manufacture of these firearms attracts the same minor penalties.

The substantial increase in penalties is considered justified and is required to comply with the COAG Agreement and the Firearms Trafficking Agreement.

### **Limitations on information available to a person who appeals a decision by the Commissioner to refuse or revoke a licence on the basis of criminal intelligence**

The COAG Agreement provides for allowing the Commissioner to refuse or revoke a licence on the basis of criminal intelligence or other relevant information. It is considered that these amendments are necessary to ensure the QPS has sufficient licensing powers to protect the community from persons who, based on criminal intelligence, have the potential to risk to public safety, or where the issuing of a licence to that person would be

contrary to the public interest. These amendments are consistent with the purpose of the Act, which is to limit the availability of firearms to fit and proper persons who have a genuine reason to possess a firearm.

A person will have the right to appeal the decision. However, only the judicial official considering the appeal will be provided with the reasons for the decision. This limitation is necessary. The proposed authority would be unusable if the Queensland Police Service was forced to reveal sensitive operational information as part of an appeal process.

### **Allowing a Supreme Court Judge to authorise the use of covert evidence gathering powers for the investigation of serious weapons offences**

The COAG agreement requires jurisdictions establish substantial penalties for illegal firearm possession. The unlawful trafficking, supply and manufacture of firearms is considered very serious conduct. The proposed increased penalties for the unlawful supply and manufacture reflects the seriousness of the conduct and will result in these offences being reclassified as indictable offences. The current provisions of the PPRA prevent the use of covert evidence gathering powers for the investigation of these serious offences. The use of these intrusive powers is considered justifiable, and is subject to appropriate safeguards.

### **Requiring current licensees to surrender prohibited handguns that are currently lawfully held**

Another COAG measure requires the prohibition of lawfully held handguns. The prohibition of high calibre, very concealable, handguns is considered by COAG to be justifiable in the public interest. Handgun owners will be paid fair compensation for firearms surrendered.

### **Protection of informers**

To further restrict illegal supply of firearms the introduction of legislation designed to provide protection of the identity of informers who supply information to a police officer in respect to the commission of an offence against the Act is required. Additionally, preventing the source of information from being disclosed and providing a court with the power to prohibit publication of proceedings are issues not unreasonable and are

consistent with the Firearms Trafficking Agreement to restrict illegal supply of firearms.

### **Affecting the onus of proof when establishing possession**

The Bill implements clause 13 of the Firearms Trafficking Agreement. This new provision, that implements the clause, creates an evidentiary aid to proving possession in respect to a charge of unlawfully possessing a firearm. The provision declares that if a firearm is found in a premises, the occupier or person concerned with the management of the place is taken to be in possession of the firearm. The presumption is not absolute or conclusive. Also, the presumption is rebuttable if the person shows the court the firearm was brought to the place by a licensed person, the person didn't know the firearm was at the place, or someone else had responsibility for the firearm. The provision in effect requires occupiers to take some responsibility for a firearm located in a place.

### **Jurisdiction for indictable offences**

The Bill confers the right of jurisdiction election on the prosecution, with respect to offences punishable by 4 to 10 years imprisonment. Offences punishable by more than 10 years imprisonment must be referred to the District Court. A Magistrate may elect to refer a charge to the District Court despite the prosecution election. The scheme means that most offences under the Act will continue to be decided in the Magistrates Court.

### **A transitional regulation making power and relevant transitional provision**

Transitional provisions are required to ensure sufficient time is allowed for individuals affected by a change proposed to become compliant with new requirements or prohibitions. Several existing licensees will be affected by the changes proposed under the Bill. Examples of individuals affected by the changes to the Act include collectors who will be required to be a member of an approved historical society and dealers who will be prevented from having unfit associates.

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

Extensive consultation has occurred during the development of the Bill within the Queensland Police Service, Government Departments and non-government entities. The following departments have been consulted during the development of the Bill:

- Department of the Premier and Cabinet;
- Treasury Department;
- Department of Justice and Attorney-General;
- Department of State Development (Business Regulation Review Unit);
- Department of Employment and Training;
- Department of Primary Industries;
- Department of Natural Resources and Mines;
- Environmental Protection Agency (Queensland Parks and Wildlife Service);
- Department of Innovation and Information Economy, Sport and Recreation Queensland (Sport and Recreation Queensland);
- Queensland Health; and
- Department of Families.

In addition, the following private entities have been consulted during the development of the Bill:

- Agforce;
- Sporting Shooters Association of Australia (Queensland Branch);
- Firearm Dealers Association of Queensland;
- Queensland Shooting Association;
- Queensland Amateur Pistol Shooters Association;
- Victoria Barracks Historical Society;
- Arms Collectors Guild of Queensland;
- Historical Arms Collectors Incorporated;
- International Practical Shooting Confederation (Australia);
- Security Industry Regulatory Council.



A consultation draft of the Bill was forwarded to relevant Government Departments and non-government entities requesting written comments. As a consequence of responses received consideration has been given to and where necessary changes made to the Bill.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

#### **Short Title**

Clause 1 specifies the short title of the Bill.

#### **Commencement**

Clause 2 provides for the commencement of the Bill.

### **PART 2—AMENDMENT OF WEAPONS ACT 1990**

#### **Act Amended in pt 2**

Clause 3 states that this part amends the *Weapons Act 1990*.

#### **Amendment of s 2 (Application of Act)**

Clause 4 amends section 2(9) to provide correct cross references.

#### **Insertion of new s 8A (Notes in Text)**

Clause 5 inserts a new section, 8A to allow for notes to be read and interpreted as part of the Act.

## **PART 2—LICENCES**

### **Amendment of s 10B (Fit and proper person)**

Section 10B currently provides the minimum requirements an authorised officer must consider in determining whether a person is a fit and proper person for the issue, renewal, suspension or revocation of a licence.

Clause 6 inserts paragraph (ca) to section 10B(1) allowing an authorised officer to consider any criminal intelligence or information when deciding whether a person is a fit and proper person. The clause also renumbers section 10B(3) to (5) and inserts ‘-licensees’ after ‘person’ to the heading of the provision.

Subsection (3) provides a licensed dealer is not a fit and proper person unless each associate of the dealer is a fit and proper person. Subsection (4) provides a person is not a fit and proper person if the person is prevented by a court order other than a temporary protection order issued by a Queensland court or another court from holding a licence or possessing a weapon.

Additionally paragraph (b) of subsection (5) is replaced to clarify the scope of the 5-year period that is relevant for an authorised officer who may suspend or revoke a licence.

### **Insertion of new 10C (Fit and proper person – dealer’s associate)**

Clause 7 inserts a new 10C and provides that an authorised officer may consider any criminal intelligence or other information in deciding or considering the issue, renewal, suspension or revocation of a dealer’s licence whether a dealer’s associate is not a fit and proper person to be an associate of a dealer. A new subsection (2) provides that an associate of a dealer is not a fit and proper person to be an associate if the person is a ‘prohibited person’. Also, a person is not fit and proper to be an associate of a dealer if the associate has been convicted of, discharged from custody on a conviction of prescribed offence, or subject to a domestic violence order in a ‘relevant period’, and the relationship between the dealer and the person would be contrary to the public interest because of those matters. Convictions include offences relating to the misuse of drugs, use or threatened use of violence and the carriage, discharge or possession of a weapon.

Subsection (3) defines the term ‘relevant period’ for use in this section.

### **Amendment to s 12 (Licences)**

Clause 8 omits subsections 12(2) and (3). The effect of these subsections is dealt with in the proposed s 49A.

### **Amendment of s 15 (Authorised officer decides application)**

Clause 9 inserts a note relating to applications for a collector's licence (weapons), a concealable firearms licence and a dealer's licence. Also, the clause inserts a new subsection (5) to confer the authority on the authorised officer to refuse an application for a licence, acting on the basis of criminal intelligence or information referred to in the new provisions of section 10B or 10C. However, approval must be given for refusal on these grounds by the Commissioner or Deputy Commissioner acting personally and cannot be delegated.

### **Amendment of s 16 (Issue of licence)**

Clause 10 removes the reference to section 15(4)(a) and provides that a licence must be endorsed with the conditions imposed by the authorised officer. The clause also amends section 16(2) to clarify conditions, information and codes prescribed under regulation that may be endorsed on a licence or certificate.

### **Amendment of s 17 (Uses permitted under licence)**

Clause 11 omits section 17. Section 49A (Authority given by licence) now deals with uses permitted under a licence.

### **Amendment of s 18 (Renewal of licences)**

Clause 12 inserts a new subsection (7), which enables the authorised officer to reject an application for a licence renewal, acting on the basis of criminal intelligence or other information of the kind referred to in section 10B or 10C. However, the authorised officer can only reject the application if the Commissioner or Deputy Commissioner has approved that the application be rejected. The decision to reject an application to renew a licence must be made personally by the Commissioner or Deputy Commissioner.

The clause also amends section 18(8)(b) to provide for the authorised officer to endorse any relevant condition or other information when renewing a licence under this section.

### **Insertion of new ss 18A – 18C**

#### **18A Additional application requirements for collector's licence for category H weapon**

Clause 13 inserts a new section 18A. The new section relates only to applications for a collectors licence (weapons), or for a renewal of the licence. If the applicant intends collecting temporarily inoperable handguns the application must be accompanied by a declaration signed by a representative of an 'approved historical society'. The declaration is to state that the applicant holds current membership and the representative is satisfied that the applicant is a genuine collector of weapons. Subsection (2) provides an exemption to the requirement if the applicant is an approved historical society. Subsection (3) provides that the declaration is current for 28 days from the day it is signed by the representative.

#### **18B Additional application requirements for concealable firearms licence**

Clause 13 inserts a new section 18B for a graduated access by persons entering sports or target shooting for category H weapons. A declaration signed by a representative of an approved pistol club must accompany a application for the issue or renewal of a concealable firearms licence. The application is not properly made unless the declaration satisfies the requirements stated in subsection (1).

The section does not impose all the requirements for graduated access if the applicant has held the equivalent of a concealable firearms licence in another state for at least 12 months, the person has held membership with an interstate shooting club, and has satisfied the participation requirements imposed under the other states laws. Similar exemption to graduated access is provided to overseas shooters who relocate to Queensland, if the person demonstrates participation in handgun shooting competitions at a very high level over a 2 year period.

Subsection (5) provides that the declaration is current for 28 days from the day it is signed by the representative.

### **18C Additional application requirements for dealer's licence**

Clause 13 inserts a new section 18C provides that if the application is for a dealer's licence or renewal or a dealer's licence the approved form must require the applicant to disclose the full name, residential address and occupation of an associate of the dealer, and other details relating to the persons interest. The section is designed to identify persons involved in a firearms dealership that may not be fit and proper to be a dealer's associate.

### **Amendment of s 19 (Notice of rejection of application to issue or renew licence)**

Clause 14 amends section 19 which requires an authorised officer to provide the applicant a 'notice of rejection', specifying the reason for the rejection, when the applicant is refused a licence. Clause 14 inserts a new subsection (2) that allows the authorised officer where an application to issue or renew a licence is rejected on the basis of criminal intelligence or other information that is not publicly available, to issue a notice of rejection stating the reason as 'confidential information'. Reasons for a decision that relate to information that is publicly available must be disclosed.

### **Amendment of s 20 (Term of Licence)**

Clause 15 amends section 20(2) to (4) by renumbering these subsections to (4) to (6) and inserts new subsections (2) and (3). The new subsection (2) allows the authorised officer, subject to any direction by the Commissioner, to extend by written notice given to a licensee, the term of the licence in order to coincide with the licensee's next birthday. The amendment is designed to remove current periods where licence renewals peak in comparison to other annual periods. Subsection (3) provides that no fee payable for the extension of a term under subsection (2).

### **Amendment of s 21 (Certain licences transferable)**

Clause 16 omits unnecessary words in accordance modern drafting practices.

### **Amendment of s 24 (Change in licensee's circumstances)**

Section 24 provides a condition of a licence that licensee must advise an officer in charge of police any change in particulars within 14 days of the change.

Clause 17 amends subsection (1) by requiring the licensee to provide the particulars of the change that the officer reasonably requires. The clause renumbers subsections 24(2)(c) and (d) as subsections 24(2)(f) and (g) and inserts new subsections 24(2)(c), (d) and (e). The clause also renumbers subsections 24(3), (4) and (5) and inserts a new subsection 24(3). Subsection 24(3) provides that if advice of a change in licensee's associates is given under subsection 24(2)(e) the licensee must provide the information prescribed by subsection 24(3) in the approved form.

### **Amendment of s 25 (Authorised officer may amend licence conditions)**

Clause 18 defines the term, 'conditions of a licence' for section 25.

### **Insertion of new s 25A (Authorised officer may require information about licensed dealer's associates)**

Clause 19 inserts a new s 25A which provides that an authorised officer may, by written notice and in the approved form, require a licensed dealer to provide a declaration to the authorised officer of any associates of the dealer within 7 days. Subsection 25(2) provides an offence for a dealer who fails to give a declaration under this section. Subsection 25(3) provides that a licensed dealer who makes a declaration to an authorised officer about the dealer's associates, details of the dealer's associates or a change in the dealer's associates can not be prosecuted for failing to disclose that information before the authorised officer has made the requirement. Subsection 25(4) provides that it is not a reasonable excuse for subsection (2) that the giving the declaration may incriminate the person for an offence for which the person can not be prosecuted under subsection (3).

### **Amendment of new s 27B (Notice of intention to revoke because dealer's associate is not fit and proper)**

Clause 20 inserts a new section that applies if an authorised officer is satisfied that an associated of a licensed dealer is not a fit and proper person

to be an associate of a licensed dealer. Subsection 27B(2) states the information that must be contained in the notice. Subsection 27B(3) provides what an authorised officer is to have regard to in deciding what is a reasonable time under this section.

### **Amendment of s 28 (Suspension of licence by giving suspension notice)**

Section 28 allows an authorised officer to suspend a licence, by a suspension notice if the licensee fails to comply with conditions or has committed offences prescribed in the section. Clause 21 amends the section by inserting a new subsection (4) that provides authority for the authorised officer to suspend a licence because the licensee is not a fit and proper person, acting on the basis of criminal intelligence or other information of the kind referred to in the section 10B or 10C. However, the authorised officer can only suspend the licence if the Commissioner or Deputy Commissioner, acting personally, approves the licence be suspended.

### **Amendment of s 29 (Revocation of licence by giving revocation notice)**

Section 29 allows the authorised officer, by the issue of a revocation notice to a licensee, to revoke the licence in accordance with the section. Clause 22 expands the operation of this section to include: contravening a participation condition or special condition; where a licensee fails to satisfy the authorised officer that the licensee took reasonable precautions to prevent the loss or stealing; the authorised officer reasonably believes that the licensee has unlawfully disposed of the weapon; or on the basis of criminal intelligence or other information of a kind mentioned in section 10B(1)(ca) or 10C(1).

### **Amendment of s 30 (Suspension or revocation notice)**

Section 30 provides the officer must state specific reasons for the suspension or revocation of a licence on a notice. Clause 23 inserts a new subsection 1(A) that allows the authorised officer where a license is suspended or revoked on the basis of criminal intelligence or other information that is not publicly available, to state the reason as 'confidential information'.

### **Amendment of s 36 (Sale or disposal of weapons)**

Clause 24 amends section 36 to ensure the scope of subsection includes disposing of a weapon, other than to another person.

### **Amendment of s 38 (Issue etc. of permits to acquire)**

Clause 25 amends section 38 by creating an offence for a person other than an authorised officer to issue, endorse or alter a permit to acquire. The maximum penalty proposed for this offence is 100 penalty units or 2 years imprisonment.

### **Amendment of s 39 (Limitations on issue of permits to acquire)**

Clause 26 replaces section 39(2). The new subsection imposes additional limitations on a holder of a collector's licence (weapons) seeking to acquire a temporarily inoperable handgun. The section omits subsections 39(4) and 39(5) as they are sufficiently dealt with in s 10B of the Act. Subsection 39(6) is renumbered as to subsection 39(4).

### **Amendment of s 40 (Application for permit to acquire)**

Section 40 provides the requirements for an application for a permit to acquire made by a person. Clause 27 inserts subsection (4) to provide that where the permit to acquire application is made for a prescribed category H weapon handgun manufactured on or after 1 January 1947 under a collectors licence (weapons), a declaration signed by an approved historical society's representative must accompany the application. The declaration is to provide that the representative is satisfied that the weapon is of obvious and significant commemorative, historic, thematic or investment value.

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

Section 49 provides authority for the Commissioner to establish and maintain a record of all firearms in Queensland. Clause 28 amends section 49 by requiring for additional prescribed information for each antique handgun to be entered in the firearms register. Also the clause defines 'owner' for the purpose of this section.



**Insertion of new section 49A (Authority given by licence), replacement of s 50 (Possession of weapons) and insertion of new 50A (Possession of unregistered firearms) and 50B**

Clause 29 inserts a new section 49A (Authority given by licence) to provide that the authority given by a licence authorises a licensee to possess and use a weapon or category of weapon endorsed on the licence, subject to a regulation, condition or participation condition.

Clause 29 replaces section 50 (Possession of weapons) and increases the existing penalties for the unlawful possession of a weapon, according to the number and category of weapon unlawfully possessed by a person.

The clause also inserts new section 50A (Possession of unregistered firearms). This section creates a new offence of a licensee possessing an unregistered firearm. Subsection (2) exempts a licensed dealer or licensed armourer from this section if compliance is maintained under section 71 (Licensed dealer and armourers to keep register) of the Act. Subsection 50A provides definitions of 'firearm' and 'unregistered firearm' for the section.

**Insertion of new s 50B**

Clause 30 inserts before section 51 the new offence of unlawful supply of weapons. Section 50B is designed to capture the conduct of persons who unlawfully supply another person with weapons but which does not constitute trafficking. A person who unlawfully supplies a weapon to another will be exposed to a range of substantial penalties.

**Replacement of s 53 (An unlicensed person may use a weapon at an approved range)**

Clause 31 replaces section 53. The new section provides authorisation for an unlicensed person who is not an excluded person or is licensed to possess another category of weapon, to possess and use a weapon under the supervision of a range officer at an approved range. Further, the clause provides that before the unlicensed person may possess and use the weapons, the person must meet the requirements contained within subsection 53(2). Also the section requires the range officer will then be required to endorse the approved form with a declaration as required by subsection 53(3). Subsection (4) provides that the approved forms and declarations made under this section are to be retained by the approved

club for a period of 3 years. Subsection 53(7) defines ‘excluded person’ for the purpose of this section.

**Amendment of s 54 (Possession or use of weapon by unlicensed person in primary production sometimes allowed)**

Clause 32 amends section 54 by omitting the word ‘physically’.

**Replacement of s 60 (Secure Storage of weapons)**

Clause 33 amends section 60 by providing an offence for a licensee who has control of a weapon at a place but does not keep the weapon in secure storage facilities at the place when the person is not in physical possession of the weapon. The clause also provides that the registered owner of a firearm commits an offence if the owner of the firearm does not ensure that secure storage facilities for the firearm are available at the place shown in the firearms register as the place where the firearm is generally kept.

**Amendment of s 61 (Shortening Firearms)**

Clause 34 amends section 61 by increasing the penalty for a person who commits an offence under this section to a maximum penalty of 100 penalty units or 2 years imprisonment.

**Amendment of s 62 (Modifying construction or action of firearms)**

Clause 35 amends section 62 by increasing the penalty for a person who commits an offence under this section to a maximum penalty of 100 penalty units or 2 years imprisonment.

**Amendment of s 63 (Altering identification marks of weapons)**

Clause 36 amends section 63 by increasing the penalty for a person who commits an offence under this section to a maximum penalty of 100 penalty units or 2 years imprisonment.

**Amendment of s 69 (Armourers to be licensed)**

Clause 37 amends section 69(1A) increasing penalties for a person who commits an offence under this section. The penalties proposed range from: 200 penalty units or 4 years imprisonment for category A, B or M weapons;

to 300 penalty units or 7 years imprisonment for a category C or E weapon; to 500 penalty units and 10 years imprisonment for category D, H or R weapons.

**Amendment of s 70 (Employees of dealers and armourers)**

Clause 38 amends section 70 by increasing the penalty for a person who commits an offence under this section to a maximum penalty of 100 penalty units.

**Amendment of s 71 (Licensed dealers and armourers to keep register)**

Clause 39 amends section 71 by redrafting subsection (2) to comply with modern drafting practices.

**Amendment of s 72 (Annual returns by licensed dealers)**

Clause 40 amends section 72 to reflect the mandatory nature of the provision. The clause inserts penalties for this section. The penalty is inserted as section 156 is to be omitted.

**Replacement of s 73 (Dealers etc. to require information)**

Clause 41 replaces section 73 by providing that a person who is licensed dealer, licensed armourer or agent, employee or representative of the dealer or armourer commits an offence if the person purchases from, trades with, sells to or deals in any weapon with another person unless the person provides the trader with the particulars required by this section.

**Amendment of s 75 (Collector to be licensed)**

Clause 42 amends section 75 to reflect the mandatory nature of the provision. The clause inserts penalties for this section. The penalty is inserted as section 156 is to be omitted.

**Replacement of ss 76 and 77**

Clause 43 replaces section 76 (Collector's licence (heirloom)) by providing that it is a condition of a collector's licence (heirloom) that the

licensee may possess an heirloom only if it is made permanently inoperable.

The clause amends section 77 (Collector's licence (weapons)) by providing conditions for the collection of category A, B, C, D, M, R, and H weapons. Subsection (2) of the section defines the term 'collectable firearm' for the purpose of this section.

The section identifies the new limitations applying to temporarily inoperable modern handguns.

#### **Amendment of s 78 (Weapons not to be discharged or operated)**

Clause 44 amends section 78 to reflect the mandatory nature of the provision. The clause inserts a penalties for this section. The penalties are inserted as section 156 is to be omitted.

#### **Amendment of s 79 (Approval of arms fair)**

Clause 45 amends section 79 to reflect the mandatory nature of the provision. The clause inserts penalties for this section. The penalties are inserted as section 156 is to be omitted.

#### **Amendment of s 82 (Removal of register and weapons)**

Clause 46 amends subsection 82 to reflect the mandatory nature of the provision. The clause inserts penalties for this section. The penalties are inserted as section 156 is to be omitted.

#### **Amendment of s 83 (Licensed collector leaving Queensland)**

Clause 47 amends section 83 to reflect the mandatory nature of the provision. The clause inserts penalties for this section. The penalties are inserted as section 156 is to be omitted.

#### **Amendment of s 90 (A nominee is required for some applications)**

Clause 48 amends section 90 by omitting the term 'nominee' and inserting the term 'representative' for consistency and in line with modern drafting practices. The clause also provides that the maximum penalty for an offence against subsection (5) is 20 penalty units.

**Amendment of s 91 (Duty of nominee)**

Clause 49 amends section 91 by omitting the term ‘nominee’ and inserting the term ‘representative’ for consistency and in line with modern drafting practices.

**Amendment of s 92 (change of nominee)**

Clause 50 amends section 92 by omitting the term ‘nominee’ and ‘nominee notice’ and inserting the term ‘representative’ and ‘representative notice’ for consistency and in line with modern drafting practices. The clause amends subsection 92(3) to reflect the mandatory nature of the provision. The clause inserts a penalty for this section. The penalty is inserted as section 156 is to be omitted.

**Replacement of s 97 (Club must keep range use register books)**

Clause 51 amends section 97 by providing as a condition of an approved club’s permit that the club keep and make available a range register for use at any range being used by the club. The clause provides the requirements that a licensee and range officer must meet before the licensee uses the range. Failure to comply with subsection (2) is an offence with a maximum penalty of 20 penalty units.

**Amendment of s 98 (Service of notice on approved shooting club)**

Clause 52 amends section 98 by omitting the term ‘nominee’ and inserting the term ‘representative’ for consistency and in line with modern drafting practices.

**Insertion of new s 98B (Membership of approved pistol clubs)**

Clause 53 inserts a new section 98B that declares it is a condition of an approved pistol club’s shooting permit, that the club must not accept a person for membership of the club unless the person submits with the application for membership the information required in subsection 98B(1). Importantly, the prospective member must satisfy the fit and proper person test applied to licence holders.

**Amendment of s 106 (Revoking or suspending approval)**

Clause 54 amends section 106 for consistency and corrects a reference to a shooting club permit.

**Amendment of s 108 (Responsibilities of range operator)**

Clause 55 amends section 108 by inserting a penalty for contravening subsections (2) or (3). The penalty is inserted as s 156 is to be omitted.

**Amendment of s 110 (Responsibilities of person attending an approved range)**

Clause 56 amends subsection 110(1) by omitting the word ‘physically’ and inserts a penalty for contravening subsection (1). The amendments clarify the scope of the section to ensure the connection with the range. The penalty is inserted as s 156 is to be omitted.

**Amendment of s 111 (Approval of shooting galleries)**

Clause 57 amends section 111 to reflect the mandatory nature of the provision. The clause inserts a penalty for this section. The penalty is inserted as s 156 is to be omitted.

**Amendment of s 114 (Conduct of persons resorting to shooting galleries)**

Clause 58 amends subsection 114(1) to reflect the mandatory nature of the provision. The clause inserts a penalty for this section. The penalty is inserted as s 156 is to be omitted.

**Amendment of s 115 (Theatrical ordnance suppliers to be licensed)**

Clause 59 amends subsection 115(1) to reflect the mandatory nature of the provision. The clause inserts a penalty for this section. The penalty is inserted as s 156 is to be omitted.

**Amendment of s 118 (Weapons may be supplied for theatre, film, and television productions)**

Clause 60 amends subsection 118(2) by omitting the penalty, as supplying the weapon in circumstances that are not authorised under the licence is punishable under other provisions of the Act.

**Amendment of s. 120 (Removal of register and weapons)**

Clause 61 amends section 120 to reflect the mandatory nature of the provision. The clause inserts penalties for this section. The penalties are inserted as s 156 is to be omitted.

**Amendment of s. 121 (Annual returns by licensed theatrical ordnance supplier)**

Clause 62 amends section 121 to clarify the obligation imposed under the section. The clause inserts a penalty for this section. The penalty is inserted as s 156 is to be omitted.

**Amendment of s 127 (Obligations of security organisation in relation to the possession or use of a weapon)**

Clause 63 amends subsection 127(3) by omitting the word ‘physically’ as a security organisation may not be a natural person, and only a natural person may physically possess a thing. The clause also clarifies that the penalty contained within the section applies only to subsection (4).

**Insertion of new pt 5**

Clause 64 inserts a new part 5 into the Act.

## **PART 5—ADDITIONAL REQUIREMENTS IN RELATION TO CATEGORY H WEAPONS**

### ***Division 1—Requirements for holders of concealable firearms licence***

#### **Section 130 (Application of Div 1)**

This section provides that the division applies to the holder of concealable firearms licence whose genuine reason is to possess category H firearms for the purpose of sports or target shooting. Consequently, the division does not apply if the genuine reason for the licence is only another reason.

#### **Section 131 (Limitation on number of concealable firearms particular licensees may acquire)**

This section 131 provides a person who is the holder of a concealable firearms licence for the purpose of sports or target shooting is only permitted to acquire a maximum of 2 firearms during the first year after the issue of a licence.

The section exempts a person who currently holds a firearms licence of another State and has complied with participation conditions of that State. Additionally, an exemption will be offered to a person that is authorised under the law of another country to possess a category H weapon for sports or target shooting and in the previous two year period consistently participated in nationally or internationally recognised competitions.

#### **Section 132 (Conditions for concealable firearms licence)**

Section 132 provides that the holder of a concealable firearms licence, who is a member of an approved shooting club, must not possess a weapon with:

- a calibre greater than .38 inch;
- a weapon that is semi automatic and has a barrel length of less than 120 mm unless it has an overall length of at least 250 mm measured parallel to the barrel;



- a weapon that is not semi automatic and has a barrel length of less than 100 mm unless it has an overall length of at least 250 mm measured parallel to the barrel;
- a weapon with a capacity of not more than 10 rounds.

However, an authorised officer may authorise the holder of a licence, by an accreditation condition endorsed on the licence to possess a category H weapon if the authorised officer is satisfied that the holder is to participate in an accredited event. Accredited events are to be identified by regulation.

Also, the limitations don't apply to category H weapons that are black-powder pistols.

It is an ongoing condition of a licence that the holder is a member of an approved pistol club.

### **Section 133 (Participation conditions for concealable firearms licence)**

Section 133 provides participation conditions for licensees who hold a concealable firearms licence for one or more classes of category H weapons.

Every handgun owner must participate in at least 6 handgun shooting competitions conducted on different days. If the handgun owner has firearms in a number of classes, the additional participation requirements under the section may be satisfied by using a handgun from the class in a practice shoot organised by the club. As is the case with shooting competitions, the club organised practice shoot must be conducted on different days. For example if a person owns three handguns that are described in two classes of handgun, the licensee will be required to participate in 8 club organised shoots conducted on 8 different days. At least 6 of these shoots must be handgun shooting competitions.

It is intended for handguns to be divided into four classes, namely, air pistol, rim fire pistol, centre fire up to .38 together with black powder pistols of any calibre, and finally centre fire pistols over .38 calibre.

Further, the section requires that if the category H weapon to be used is a high calibre weapon, the handgun shooting competitions must be accredited events.

The section also identifies participation conditions are to be varied in circumstances where the owner of the particular class of weapon has possession of the weapon for a period less than 12 months.

In addition, where the holder of a concealable firearms licence provides the authorised officer with substantial reasons for failure to comply with participation rates, the authorised officer may decide the number of times the holder must use the weapon for competition to satisfy the participation condition. The adjustment may be made prospectively, for example when a licensee will be overseas for an extended period and unable to comply, or retrospectively for example where an extended illness has prevented use of a handgun.

The amendment defines the term ‘high calibre weapon’ use in this section.

### **Section 134 (Holders of concealable firearms to keep participation record)**

Section 134 provides that if the holder of a concealable firearms licence is the registered owner of a category H weapon, the holder must advise the approved pistol club of participation conditions and any change in writing as required by subsection 134(2). Further, the section requires the holder to enter the information immediately after the holder’s participation in the club organised shoot has ended. The holder will also be required to have the entry endorsed by a range officer.

### **Section 135 (Show cause notice)**

This section provides authority for the authorised officer to issue a concealable firearms licence holder a written ‘show cause notice’ where the authorised officer reasonably suspects the holder has failed to comply with a participation condition. The show cause period ends 28 days after the issue of the notice.

### **Section 136 (Consideration of representations)**

Section 136 allows the holder of a concealable firearms licence to make written representations to the authorised officer in the show cause period. The authorised officer must consider all written representations made under this section.

### **Section 137 (Notice to dispose)**

This section provides authority for the authorised officer to issue a ‘notice to dispose’ to the holder if after considering representations under section 136 the authorised officer is not satisfied the holder has complied with a participation condition. The provision requires the holder to dispose of the weapon within three months of issue of the notice in a manner prescribed under this section.

Further, the section provides that a recipient of a notice who has delivered a weapon to a licensed dealer, as required by a notice to dispose, cannot re-acquire that same weapon unless the person obtains a current permit to acquire.

A person who fails to provide evidence of the disposal to an authorised officer within a 4 month period is liable to maximum penalty of 60 penalty units. A weapon that is surrendered to police under this section becomes the property of the state and no compensation is payable for the weapon.

The section is an alternative to revocation of the person’s license.

## ***Division 2—Requirement for collectors***

### **Section 138 (Condition for collector’s licence (weapons))**

The section provides that the holder of a collector’s licence (weapons) must not possess temporarily inoperable category H weapons unless the holder is a member of an approved historical society. Further, unless authorised by the authorised officer in accordance with this section, the holder of a collector’s licence (weapons) must not possess modern handguns that temporarily inoperable.

## ***Division 3—Requirements for approved pistol clubs***

### **Section 139 (Endorsement of participation record)**

Section 139 provides requirements for range officers of an approved pistol club where club organised shoots are being conducted. The provision requires the range officer of the approved club must on request of a person competing in an event, but before the club shoot ends on that day,

inspect the persons participation record and if satisfied the entry is correct endorse the entry.

### **Section 140 (Approved pistol club to give annual report)**

Section 140 provides a requirement of clubs to provide an annual report of participation shoots to the authorised officer of club members that are owners of category H handguns.

The provision allows clubs to either detail club members that have failed to meet the participation conditions or report that each member who currently holds category H handguns has complied with the participation conditions within the relevant financial year.

### **Section 141 (Show cause notice)**

This section provides authority for the authorised officer to issue a ‘show cause notice’ to a club for failing to comply with section 140 (Approved club to give annual report).

A ‘show cause notice’ must contain information outlined in section 141(2). Subsection 141(3) provides that the show cause notice period must be for a period of at least 28 days after the day the show cause notice is given to the approved pistol club.

### **Section 141A (Consideration of representations)**

Section 141A allows the approved pistol club to make written representations to the authorised officer in the show cause period. The section requires that the authorised officer must consider all written representations made within this period.

## ***Division 4—Disclosure requirements for approved pistol clubs and approved historical societies***

### **Section 141B (Disclosure requirements)**

Section 141B requires that as part of the approval of a relevant entity’s shooting club permit or approval that a representative of the club must advise the commissioner in writing and within 14 days of when a member

of the entity stops being a member or when the member of the entity is expelled and the reason for the expulsion from the entity. The clause provides protection to the representative from any criminal or civil action that may arise from the information given.

The section applies to approved pistol clubs and approved historical societies.

### **Amendment of pt 6 (Appeals)**

Clause 65 amends the Part 6 heading by omitting the heading and inserting the new heading 'Part 6-Appeal and Rights of Review'.

### **Amendment of s 142 (Right of appeal against decisions)**

Clause 66 amends section 142 by omitting the term 'nominee' and inserting the term 'representative' for consistency.

### **Insertion of new s 142A (Particular provision for appeals against or reviews of decisions based on criminal intelligence)**

Clause 67 inserts section 142A which applies to an appeal from or review of a 'relevant decision', as defined by this section, from a decision made by an authorised officer concerning the refusal to consider an application for a licence, refusal to renew a licence, suspend or revoke based on criminal intelligence or other information of the kind mentioned in section 10B(1)(ca) of 10C(1) of the Act.

The provision provides sufficient authority for the court not to disclose the content of any criminal intelligence when deciding an appeal or reviewing a decision to which this section applies. The term 'criminal intelligence' is defined for the section. The protections provided under the section only apply to specific types of information, and not all information that was used for a decision under s 10B or 10C of the Act.

### **Replacement of s 151 (Disclosure by doctors and psychologists of certain information)**

Clause 68 replaces section 151. Essentially, the scope of the section is extended to information provided by a nurse and other health practitioners prescribed by regulation. The COAG Agreement requires that social

workers and professional counsellors be afforded the protection provided under the section.

The amendment of the section will provide protection to professional carers from any criminal or civil action that may arise from the information given.

**Section 151A (Disclosure by approved shooting clubs and approved historical societies of particular information)**

Clause 68 also inserts a new section 151A (Disclosure by approved shooting clubs and approved historical societies of particular information). Section 151A requires a club or historical society to inform the Commissioner in writing and provide information, when a member is unsuitable to possess a firearm due to mental or physical condition, or when the member becomes a danger their own well being or another person.

The clause provides protection to the entity from any criminal or civil action that may arise from the information given.

**Section 151B (Protection of informers)**

Clause 68 inserts a new section 151B (Protection of informers) to encourage disclosures from within the illicit weapons community. Section 151B is provides that when an informer supplies information to a police officer in respect to the commission of an indictable offence against this Act, the informer's identity at all times shall be kept confidential. The section prescribes circumstances when information about the identity of an informant may be disclosed, including where a court orders the disclosure.

**Section 151C (Source of information not be disclosed)**

Clause 68 inserts a new section 151C (Source of information not to be disclosed). Section 151C applies in a court proceeding where an informer has provided information to police in relation to an indictable offence against this Act. Unless ordered by a court in accordance with section 151C(4) or the informer consents, the prosecutor or a prescribed witness cannot be compelled to provide information that may identify the informant. Again statutory protections are required in the Act in order to encourage disclosure of serious offences under the Act.

### **Section 151D (Power to prohibit publication of proceedings)**

Clause 68 inserts a new section 151D (Power to prohibit publication of proceedings). Section 151D enables the presiding judicial officer to make orders that prohibit the publication of all or any part of the proceedings or the name and address of any witness. The section enables the application to be heard in a closed court and the judicial officer is not bound by the rules of evidence. The judicial officer must have regard to the considerations contained in subsection (4) when deciding the application. Further, the section provides that it is an offence to breach an order by a judicial officer under this section.

### **Insertion of new s 154 (Authorised officers may approve particular weapons to be of particular types)**

Clause 69 inserts a new s 154 prescribing a process for deciding a firearm is an antique firearm, and for deciding an antique firearm is a pre-percussion handgun.

### **Omission of s 156 (Offences generally)**

Clause 70 omits section 156. Particular penalties are instead prescribed for contravening a provision of the Act.

### **Amendment of s 157 (Fraud and unlawful possession of licence etc.)**

Clause 71 amends section 157 by inserting a new maximum penalty of 100 penalty units or two years imprisonment. Further, the clause omits the words, 'null and' from section 157(2).

### **Replacement of s 158 (False or misleading information)**

Clause 72 clarifies the offence of stating any false or misleading information in a document and amends the maximum penalty to 100 penalty units or two years imprisonment.

### **Replacement of s 161 (Proceedings for an offence)**

Clause 73 amends section 161 to include a provision that will enable the prosecution to elect to have offences dealt with in a Magistrates Court and

offences punishable by more than 10 years to be dealt with in District Court.

The clause inserts a provision requiring a proceeding against a person for an indictable offence must be before Magistrate if the proceeding is for a summary conviction or an examination of witnesses in relation to a charge.

A proceeding for an indictable offence before a justice who is not a magistrate is limited to taking or making procedural actions of orders defined under the *Justices of the Peace and Commissioners for Declaration Act 1991*.

A magistrate may on hearing a charge for an indictable offence consider the charge to proceed on indictment and must proceed by way of committal proceedings. Where a charge is proceeded on indictment a plea made at the start of the proceeding must be disregarded and any evidence brought in the proceeding is taken as evidence in the committal of the person for trial or sentence.

Further, the section provides a maximum penalty of 150 penalty units or 3 years imprisonment on a summary conviction for an indictable offence.

### **Section 161A (Indictable offences)**

Clause 73 inserts a new section 161A (Indictable offences). This section defines an offence punishable with 7 years imprisonment as a crime. Further, the section provides that an offence punishable by more than 2 years imprisonment but less than 7 years is a misdemeanour.

### **Section 161B (Circumstances in which particular charges may be joined)**

Clause 73 inserts a new section 161B (Circumstances in which particular charges may be joined). Section 161B enables the joinder of charges, where a number offences in relation to identified sections have occurred over a period of time, into one complaint. The offences are mostly record keeping related offences. However, offences of supply or manufacture occurring on different occasions may also be joined in the same complaint or indictment.



### **Amendment of s 163 (Evidentiary provisions)**

Clause 74 inserts a new subsection (1)(ca) to enable the issue of a certificate to be signed under the Commissioner or Deputy Commissioner that the Commissioner or Deputy Commissioner approved a the authorised officer acting as a result of available criminal intelligence or other information.

The clause also inserts section 163(3A). This section provides that in relation to a charge involving the unlawful possession of a firearm under section 50, the person charged is taken to have been in possession of the firearm if there is proof that at the material time, the firearm was in or on a place of which the person was the occupier or concerned in the management or control unless the person can demonstrate a circumstance described in paragraphs (a) to (c).

### **Amendment of s 172 (Regulation-making power)**

Clause 75 amends subsection 172(3) by increasing the maximum penalty to 20 penalty units.

### **Amendment of pt 8 (Transitional provisions)**

Clause 76 amends part 8 by inserting a new heading before section 173 (Division 1 – Transitional provision for Act 22 of 2001) and after section 173 (Division 2 – Transitional provisions for Weapons (Handguns and Trafficking) Amendment Act 2003).

Clause 76 inserts a new section 174 (Definition for div 2). The terms defined are: ‘amnesty period’, ‘part of a prohibited handgun’ and ‘prohibited handgun’.

Clause 76 inserts a new section 175 (Compensation – prohibited handguns and parts of prohibited handguns). The section inserts provisions to compensate licensed dealers, armourers and licensed persons holding concealable firearms for sports or target shooting, for prohibited handguns and parts surrendered to the Commissioner.

Subsections (2) and (3) provide that compensation is payable for prohibited handguns and parts which the State will receive reimbursement from the Commonwealth. The Commonwealth agreed to fund a handgun buyback for prohibited handguns. However, compensation is only payable

if the handgun or part was manufactured on or before 20 December 2002 and surrendered before the last day of the amnesty period.

Subsections (4) and (5) provide compensation is payable only under this section and in the amount provided under regulation. It is proposed for the regulation to identify a document that lists types of handguns and compensation amounts for the handguns. Where a firearm or part is not listed by the document, regulation may provide further ways for the value to be decided.

Subsections (6) and (7) enable the Commissioner to refuse compensation to a person for a prohibited firearm or part surrendered if the Commissioner believes the firearm or part was manufactured or imported predominately for compensation under this section and is not for genuine commercial sale.

Subsections (8) and (9) provide compensation is payable only if conditions under regulation are complied with. A firearm surrendered under this section becomes the property of the State when compensation is paid under this section.

Clause 76 inserts a new section 176 (Compensation – other handguns and related matters). Section 176 provides that a regulation may provide compensation for a non prohibited firearm and part surrendered under the provisions of section 175 and only if conditions under regulation is complied with. Consequently, a regulation may prescribe a process for compensation relating to modern handguns held under a collectors licence (weapons). A firearm surrendered under this section is State property when compensation is paid under this section.

Clause 76 inserts a new section 177 (Possession of prohibited handguns during amnesty period). The section provides that a person who before the amnesty is in lawful possession of a prohibited handgun does not commit an offence under section 132 during the amnesty period. However, a person in lawful possession of a prohibited handgun must not use the firearm unless authorised under section 138 or unless the person has another genuine reason for possession of the handgun. A person who contravenes this section is liable to a maximum penalty of 20 penalty units.

Clause 76 inserts a new section 178 (Licensed collectors). This section applies to a person who immediately before commencement is the holder of a collector's licence (weapons) and lawfully possesses one or more temporarily inoperable modern handguns. The section prescribes a transitional process for person possessing temporarily inoperable handguns

under a collectors licence (weapons) as a result of the new requirement that the person's licence be specifically endorsed to possess such weapons.

Clause 76 inserts a new section 179 (Participation records for s18B) which provides that the requirement to produce a participation record under section 18B(4)(b) does not apply to an application for renewal of a concealable firearms licence made before 1 January 2004.

Clause 76 inserts a new section 180 (Joinder of charges) limiting the use of section 161B to offences occurring after the commencement of the sections. The principal reason for the limitation is that penalties will change as a result of the Bill.

Clause 76 inserts a new section 181 (Transitional regulation-making power) to enable a transitional regulation to make provisions of a saving or transitional nature. The regulation making power expires after 1 year.

Clause 76 inserts a new section 182 (Amendment of regulation by Weapons (Handguns and Trafficking) Amendment Act 2003 does not affect powers of Governor in Council) to provide that the power of the Governor General to further amend the regulation is not affected.

### **Amendment of sch 1**

Clause 77 omits items 4 and 5 from Schedule 1 and inserts items 4 (Limiting or prohibiting acquisition, possession or use of weapons and magazines), 5 (Secure storage facilities for weapons), 11 (Terms of approvals, permits and exemptions), 12 (Approved historical societies), 13 (Record-keeping), 14 (Production of weapons), 15 (Disclosing licence information to approved shooting clubs and approved historical societies), 16 (Registration of antique handguns), and 17 (Providing for approved shooting ranges).

### **Amendment of sch 2**

Clause 78 omits and inserts definitions of terms into the dictionary of schedule 2.

## **PART 3—AMENDMENT OF JUDICIAL REVIEW ACT 1991**

### **Act amended in pt 3**

Clause 79 identifies this part as amending the *Judicial Review Act 1991*.

### **Amendment of sch 2 (Decisions for which reasons need not be given)**

Clause 80 amends Schedule 2 by inserting a new section 5A. The effect of the amendment is that a decision maker is not required to provide a statement of reasons relating to a decision to refuse to issue or to renew a licence, and a decision to suspend or revoke a licence, based on criminal intelligence or other information under the *Weapons Act 1990*.

## **PART 4—AMENDMENT OF JUVENILE JUSTICE AMENDMENT ACT 2002**

### **Act amended in pt 4**

Clause 81 identifies this part as amending the *Juvenile Justice Amendment Act 2002*.

### **Amendment of s 7 (Replacement of pts 1B-1C)**

The *Juvenile Justice Act 1992* currently limits the arrest and prosecution powers of a police officer when a child commits an offence that is not a serious offence. The general policy is that diversionary or at least non-custodial options, such as a caution and notice to appear, should be used with respect to these 'non-serious offences'. However, when a child commits a serious offence such limitations on arrest and prosecution do not apply. Under the *Juvenile Justice Act* a serious offence is an offence punishable by life imprisonment or an offence punishable by at least 14 years imprisonment. However, serious offences do not include receiving stolen property, burglary, or drug offences, if the circumstances would allow a charge for such offences to be dealt with by a Magistrate.

The Amendment Act inserts new ss 10, 11 & 12 of the *Juvenile Justice Act* that prescribe limitations on police officers with respect to arrest and prosecution. Section 10 provides that, other than for serious offences, diversionary options such as cautioning and youth justice conferencing must be used if appropriate. Section 11 provides that, again other than for serious offences, if it is not appropriate to use a diversionary option identified in s 10, a prosecution may only be commenced by notice to appear or by complaint and summons. Section 12 has the effect that despite the limitations under ss 10 & 11 (which only apply to non-serious offences) a police officer may arrest the child in particular circumstances. An arrest is not lawful unless at least one of the circumstances is satisfied. Consequently, the section excuses the prosecution and arrest limitations, prescribed under ss 10 & 11, with respect to non-serious offences. The provisions are silent with respect to any limitation on arrest for serious offences. There is the potential for section 12 to be misinterpreted as imposing a limitation on arrest for both serious and non-serious offences, despite the repeated references back to ss 10 & 11. The Amendment Act will insert these new provisions when it commences on 1 July 2003. For certainty it would be beneficial to clarify the policy intent stated in s 12 before the new provisions commence operation.

Clause 82 amends the Amendment Act before it commences, by including a new subsection 12(5) that declares a police officer's power, to arrest a child without warrant for a serious offence, to be unaffected by the operation of the section.

### **Amendment of s 105 (Amendment of s 214 (Protection of legal practitioner representing child))**

Clause 83 amends section 105(1) of the Amendment Act. Section 105(1) purports to amend s 214(2) of the *Juvenile Justice Act 1992* by replacing the words member of "staff of the" detention centre with the words "detention centre employee". However, the wording of s 214(2) refers to the words member of "staff at a" detention centre. The amendment to s105 (1) therefore identifies the correct words to be amended.

### **Amendment of s 115 (Insertion of new pt 8, div 3)**

Clause 84 amends section 115 of the *Juvenile Justice Amendment Act 2002*, which deals with transitional provisions. The amendment is to correct the reference to the commencement of certain definitions dealing

with youth justice conferencing, to make them consistent with the definitions as they appear in the definitions section of the amending Act.

The Clause amends s 115 of the *Juvenile Justice Amendment Act 2002* to put beyond doubt that a fixed release order under the *Juvenile Justice Act 1992* in force at the commencement of the amending Act becomes a supervised release order. Further, that a contravention of a fixed release order before the commencement of the amending Act may be dealt with as a contravention of a supervised release order.

## **PART 5—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000**

### **Act amended in pt 5**

Clause 85 identifies this part as amending the *Police Powers and Responsibilities Act 2000*.

### **Amendment of sch 4 (Dictionary)**

Clause 86 amends schedule 4, definition ‘serious indictable offence’, as an additional measure proposed to restrict the unlawful supply of weapons. The amendment enables an application to be made to a Supreme Court Judge for the issue of a surveillance warrant, and for a controlled operation to be conducted, for the investigation of particular serious weapons offences. These offences are against the *Weapons Act 1990* and involve the trafficking of weapons or explosives, or the unlawful supply or unlawful manufacture of weapons.

## **PART 6—AMENDMENT OF WEAPONS CATEGORIES REGULATION 1997**

### **Regulation amended in pt 6**

Clause 87 identifies this part as amending the *Weapons Categories Regulation 1997*.

### **Insertion of new s 7A (Category M weapons)**

Clause 88 amends the category 'R' regulation by removing all non military style weapons and incendiary devices normally used by agencies for the eradication of feral animals and inserting these items into a new Category 'M' Regulation. Less concerning weapons are relocated from category R to category M.