

[Act 1998 No 127]



New South Wales

## Weapons Prohibition Bill 1998

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

#### Overview of Bill

The object of this Bill is to replace the *Prohibited Weapons Act 1989* with a more comprehensive legislative scheme for regulating the possession and use of prohibited weapons.

The underlying principles of this Bill are:

- (a) to confirm that the possession and use of prohibited weapons is a privilege that is conditional on the overriding need to ensure public safety, and
- (b) to improve public safety by imposing strict controls on the possession and use of prohibited weapons.

The specific objects of this Bill are as follows:

- (a) to require each person who possesses or uses a prohibited weapon under the authority of a permit to have a genuine reason for possessing or using the weapon.
- (b) to provide strict requirements that must be satisfied in relation to the possession and use of prohibited weapons.
- (c) to provide an amnesty period to enable the surrender of prohibited weapons.

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\* Amended in committee—see table at end of volume.

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## Outline of provisions

### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** sets out the principles and objects of the proposed Act (as stated in the above overview).

**Clause 4** defines certain words and expressions used in the proposed Act. The term prohibited weapon is defined to mean anything described in Schedule 1 to the proposed Act, and *Commissioner* refers to the Commissioner of Police who will be the regulatory authority under the proposed Act.

**Clause 5** enables the list of prohibited weapons in Schedule 1 to the proposed Act to be amended by the regulations.

**Clause 6** provides that the proposed Act will bind the Crown, but will not apply to certain classes of persons (eg police officers and military personnel).

### **Part 2 Permits for prohibited weapons**

#### **Division 1 Requirement for permit**

**Clause 7** requires any person who possesses or uses a prohibited weapon to be authorised by a permit under the proposed Act. The unauthorised possession or use of a prohibited weapon by a person includes possessing or using a weapon for any purpose otherwise than in connection with the person's genuine reason for possessing or using the weapon.

#### **Division 2 Permit scheme**

**Clause 8** sets out the permit categories and specifies the authority that the permit confers. The permit categories are general permits, weapons dealer permits and theatrical weapons armourers permits. The regulations may provide for different types of general permits.

**Clause 9** provides for the making of applications for permits.

**Clause 10** provides for the issuing of permits by the Commissioner, and specifies the mandatory and discretionary grounds for refusing a permit application.

**Clause 11** requires the applicant for a permit to have a genuine reason for possessing or using a prohibited weapon before a permit can be issued to the applicant.

**Clause 12** requires a person to notify the Commissioner when such a genuine reason ceases to exist.

**Clause 13** provides for the form of permits and the particulars to be specified.

**Clause 14** provides for the conditions to which a permit is subject.

**Clause 15** provides that the term of a permit is 5 years (or less if specified in the permit).

**Clause 16** enables the Commissioner to suspend a permit.

**Clause 17** provides for the automatic suspension of a permit on the making of an interim apprehended violence order against the permit holder.

**Clause 18** enables the Commissioner to revoke a permit on certain grounds (eg for any reason for which the holder would have been refused a permit in the first place). A permit is automatically revoked on the making of an apprehended violence order against the permit holder.

**Clause 19** provides that, as a consequence of the suspension or revocation of a permit, any prohibited weapon in the person's possession must be surrendered to a police officer.

### **Part 3 Weapons dealers and theatrical weapons armourers—special provisions**

**Clause 20** requires a weapons dealer who carries on a business as such to hold a weapons dealer permit, and requires a theatrical weapons armourer (ie a person who manufactures, buys or sells prohibited weapons for use in connection with cinematographic, television or theatrical productions) who carries on a business as such to hold a theatrical armourers weapons permit.

**Clause 21** requires weapons dealers and theatrical weapons armourers, before they take possession of a prohibited weapon from any person for the purposes of repairing or testing it, to sight the person's permit.

**Clause 22** requires weapons dealers and theatrical weapons armourers to ensure the security of displayed prohibited weapons.

#### **Part 4      Miscellaneous offences**

**Clause 23** makes it an offence for a person to buy a prohibited weapon without a permit that authorises the person to possess the weapon, makes it an offence for a person to buy a prohibited weapon from an unauthorised seller, and makes it an offence to sell a prohibited weapon to an unauthorised buyer.

**Clause 24** prohibits the sending of prohibited weapons by, or to, persons who are not authorised to possess them.

**Clause 25** requires any advertisement for the sale of a prohibited weapon to state that a permit is needed for the prohibited weapon and to specify the relevant permit number of the seller.

**Clause 26** provides that reasonable precautions must be taken to ensure the safe keeping of prohibited weapons.

**Clause 27** provides for the on-the-spot inspection of prohibited weapons by an authorised officer or police officer.

**Clause 28** requires unauthorised persons to surrender prohibited weapons that come into their possession.

**Clause 29** requires permit holders to produce their permits when requested by an authorised officer or police officer.

**Clause 30** requires a permit holder to notify the Commissioner of any change in the particulars specified in the permit.

**Clause 31** prohibits the making of false or misleading statements in applications for permits.

**Clause 32** prohibits the misuse of a permit (including the false representation by a person that he or she is the holder of a permit).

#### **Part 5      Weapons prohibition orders**

**Clause 33** enables the Commissioner to make an order prohibiting a person from possessing a prohibited weapon if it is not in the public interest for the person to have a prohibited weapon.

**Clause 34** provides that it is an offence to possess a prohibited weapon in contravention of such an order. It will also be an offence to sell or transfer prohibited weapon to another person knowing that the other person is subject to a weapons prohibition order.

## **Part 6      Miscellaneous provisions**

**Clause 35** confers jurisdiction on the Administrative Decisions Tribunal to review decisions of the Commissioner under the proposed Act that relate to permits.

**Clause 36** allows interstate transactions between authorised persons.

**Clause 37** requires the Commissioner to keep a register of permits.

**Clause 38** enables medical and other health practitioners to disclose opinions about patients who are not suitable to have prohibited weapons.

**Clause 39** allows a police officer to seize prohibited weapons that are connected with an offence under the proposed Act.

**Clause 40** deals with the disposal of surrendered or seized firearms, and enables the Local Court to order that such weapons are to be sold on behalf of the owner concerned.

**Clause 41** enables the Commissioner to delegate functions under the proposed Act to police officers and other authorised persons.

**Clause 42** provides that certain offences under the proposed Act and the regulations may be dealt with by way of penalty notices (ie "on-the-spot" infringement notices).

**Clause 43** provides for the manner in which proceedings for offences under the proposed Act are to be dealt with.

**Clause 44** requires an information for an offence to be laid within 2 years of the date on which the offence is alleged to have been committed.

**Clause 45** provides for parents to also be liable for offences that are committed by children or young persons.

**Clause 46** makes directors of corporations liable for offences under the proposed Act that are committed by corporations.

**Clause 47** provides for the service of notices under the proposed Act.

**Clause 48** provides for certificate evidence in relation to certain matters under the proposed Act.

**Clause 49** requires an authorised officer (ie non-police officers who have certain inspection powers under the proposed Act) to produce his or her identification if required to do so.

**Clause 50** empowers the making of regulations for the purposes of the proposed Act.

**Clause 51** gives effect to the Schedule of savings and transitional provisions.

**Clause 52** repeals the *Prohibited Weapons Act 1989* and the *Prohibited Weapons Regulation 1997*.

**Clause 53** gives effect to the Schedule of consequential amendments to other Acts.

**Clause 54** provides for a review of the proposed Act after 5 years.

## Schedules

**Schedule 1** contains a list of things that are prohibited weapons.

**Schedule 2** contains savings and transitional provisions, including a power to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act. Special provision is made for a 3-month amnesty in relation to the unauthorised possession of prohibited weapons for the purposes of surrendering such weapons. A 6-month amnesty is provided in relation to the possession of certain prohibited weapons that were not prohibited weapons under the former Act. Existing permits will be continued under the proposed Act for a limited period to enable the new regime to be phased in.

**Schedule 3** contains amendments to other Acts that are consequential on the enactment of the proposed Act.