

Weapons Prohibition Act 1998 No 127

[1998-127]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Miscellaneous Acts (Local Court) Amendment Act 2007 No 94 (not commenced)

Authorisation

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New South Wales

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Weapons Prohibition Act 1998 No 127



New South Wales

An Act to prohibit and control the possession and use of certain weapons; to repeal the *Prohibited Weapons Act 1989*; to amend certain other Acts; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Weapons Prohibition Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Principles and objects of Act

(1) The underlying principles of this Act 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.

(2) The specific objects of this Act 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.

4 Definitions

(1) In this Act:

apprehended violence order means:

- (a) a final apprehended violence order under the *Crimes (Domestic and Personal Violence) Act 2007*, or
- (b) (Repealed)
- (c) an order or a decision under an Act or law of a place other than New South Wales, being an order or a decision that is prescribed for the purposes of this definition by the regulations.

approved means approved by the Commissioner from time to time.

authorised employee of an authorised theatrical weapons armoured or authorised weapons dealer means a person who:

- (a) is an employee of the armoured or dealer concerned, and
- (b) is eligible to be issued with a permit, and
- (c) is authorised in writing by the Commissioner.

authorised officer means a person who is authorised by the Commissioner for the purposes of this Act.

authorised theatrical weapons armoured means a theatrical weapons armoured who is the holder of a theatrical weapons armoured permit.

authorised weapons dealer means a weapons dealer who is the holder of a weapons dealer permit.

buy includes:

- (a) purchase by wholesale, retail, auction or tender, and
- (b) hire, and
- (c) take possession under a hire-purchase agreement, and
- (d) cause or permit anything referred to above.

Commissioner means the Commissioner of Police.

exercise a function includes perform a duty.

function includes a power, authority or duty.

genuine reason means a genuine reason as referred to in section 11.

holder of a permit means the person to whom it is issued.

interim apprehended violence order means:

- (a) an interim court order under the *Crimes (Domestic and Personal Violence) Act 2007*, or
- (b) an order or decision under an Act or law of a place other than New South Wales, being an order or decision that is prescribed for the purposes of this definition by the regulations.

manufacture a prohibited weapon includes repair or test the weapon in the course of carrying on a business.

permit means a permit in force under this Act.

possession of a prohibited weapon includes any case in which a person knowingly:

- (a) has custody of the weapon, or
- (b) has the weapon in the custody of another person, or
- (c) has the weapon in or on any premises, place, vehicle, vessel or aircraft, whether or not belonging to or occupied by the person.

prohibited weapon means anything described in Schedule 1.

public museum means an institution that:

- (a) has a written constitution that states the museum's charter, goals and policies, and
- (b) has a stated acquisition policy, and
- (c) acquires, conserves and exhibits objects of scientific or historical interest for the purposes of study, education and public enjoyment, and
- (d) is sufficiently financed to enable the conduct and development of the museum, and
- (e) has adequate premises to fulfil its basic functions of collection, research, storage, conservation, education and display, and
- (f) is regularly open to the public.

sell includes:

- (a) sell by wholesale, retail, auction or tender, and
- (b) parting with something under a hire-purchase agreement, and
- (c) barter or exchange, and
- (d) supply for profit, and

- (e) offer for sale, receive for sale, have in possession for sale or expose or exhibit for sale, and
- (f) conduct negotiations for sale, and
- (g) consign or deliver for sale, and
- (h) cause or permit anything referred to above.

theatrical weapons armourer means a person who, in the course of carrying on a business, manufactures, buys or sells prohibited weapons for use in connection with cinematographic, television or theatrical productions.

use a prohibited weapon includes causing a reasonable belief that the weapon will be used.

weapons dealer means a person who, in the course of carrying on a business, manufactures, buys or sells prohibited weapons otherwise than for use in cinematographic, television or theatrical productions.

weapons prohibition order means an order in force under section 33.

- (2) For the purposes of this Act:
 - (a) anything that would be a prohibited weapon if it did not have something missing from it, or a defect or obstruction in it, is taken to be a prohibited weapon, and
 - (b) a person in or on (or in or on any part of) any premises, vehicle, vessel or aircraft in which there is a prohibited weapon is to be regarded as having possession of the weapon unless the person proves otherwise, and
 - (c) if parts of a prohibited weapon are in the possession of, or are being carried by, 2 or more persons, each of those persons is to be regarded as possessing the weapon.

5 Amendment of Schedule 1

The regulations may:

- (a) amend Schedule 1 by adding the name or description of anything, or
- (b) amend Schedule 1 by omitting the name or description of anything, or
- (c) amend Schedule 1 by amending the name or description of anything for the purpose of more accurately describing the thing concerned, or
- (d) omit Schedule 1 and insert in its place a Schedule containing the names or descriptions of anything.

6 Application of Act

- (1) This Act binds the Crown in right of New South Wales and, so far as the legislative power of Parliament permits, the Crown in all its other capacities (except as otherwise provided by this section).
- (2) A person is not guilty of an offence under this Act or the regulations only because of something done by the person while acting in the ordinary course of the person's duties:
 - (a) as a police officer (or as a student police officer), or
 - (b) as a correctional officer employed in the Department of Corrective Services, or
 - (c) as a member of the police force, or as a custodial officer (however described), of the Commonwealth or of another State or Territory, or
 - (d) as a member of the armed forces of the Commonwealth, or of any government that is allied or associated with the Commonwealth in any war or joint military exercise in which the Commonwealth is engaged.
- (3) A person is not guilty of an offence under Part 2 only because of possessing a prohibited weapon:
 - (a) that is being conveyed or stored in the ordinary course of the person's duties in the business of a carrier or warehouse operator, or
 - (b) that has been seized by the person, under the authority of any Act or other law, in the course of the person's duties as an employee or officer of a government agency or public authority, or
 - (c) while acting in the ordinary course of the person's duties as a member (other than a police officer) of the Police Force.
- (4) The regulations may exempt any person or class of persons from the operation of any provision or requirement of this Act in such circumstances, and subject to such conditions, as may be specified in the regulations. Any such regulation may create offences in relation to a failure to comply with a condition prescribed in relation to an exemption.

Part 2 Permits for prohibited weapons

Division 1 Requirement for permit

7 Offence of unauthorised possession or use of prohibited weapon

- (1) A person must not possess or use a prohibited weapon unless the person is authorised to do so by a permit.

Maximum penalty:

- on summary conviction—100 penalty units or imprisonment for 2 years, or both,
- on conviction on indictment—imprisonment for 14 years.

(2) Without limiting the operation of subsection (1), a person who is the holder of a permit to possess or use a prohibited weapon is guilty of an offence under this section if the person:

- (a) possesses or uses the prohibited weapon for any purpose otherwise than in connection with the purpose established by the person as being the genuine reason for possessing or using the weapon, or
- (b) contravenes any condition of the permit.

Division 2 Permit scheme

8 Permit categories and authority conferred by permit

(1) The categories of permits and the authority they confer are as follows:

General permit

Authorises the holder of the permit to possess or use a prohibited weapon of the kind specified in the permit, but only for the purpose established by the holder as being the genuine reason for possessing or using the prohibited weapon.

Weapons dealer permit

Authorises the holder of the permit, and any authorised employee, to possess, buy, sell and manufacture prohibited weapons of the kind specified in the permit, but only in the course of carrying on business as a weapons dealer and only at the premises specified in the permit (or at such other premises as may be approved).

Theatrical weapons armourer permit

Authorises the holder of the permit, and any authorised employee, in the course of carrying on business as a theatrical weapons armourer:

- (a) to possess, use, buy, sell and manufacture prohibited weapons of the kind specified in the permit, and
- (b) to supervise and train persons who are involved in a cinematographic, television or theatrical production in the use of prohibited weapons to which the permit relates.

The authority conferred by a theatrical weapons armourer permit also authorises those persons who are involved in the cinematographic, television or theatrical production concerned to possess and use prohibited weapons to which the permit relates, but only while under the supervision of the holder of the permit or an

authorised employee.

- (2) The regulations may prescribe different types of general permits.
- (3) The authority conferred by a permit is subject to the regulations.

9 Application for permit

- (1) A person may apply to the Commissioner for a permit.
- (2) An application must be in the approved form and be accompanied:
 - (a) by the fee prescribed by the regulations, and
 - (b) by such information and particulars as may be prescribed by the regulations.
- (3) An applicant for a permit must provide proof of the applicant's identity in accordance with the requirements of the *Financial Transaction Reports Act 1988* of the Commonwealth that apply in respect of the opening of a bank account.
- (4) On receiving an application for a permit, the Commissioner may carry out such investigations and inquiries as the Commissioner considers necessary to enable the Commissioner to consider the application properly.
- (5) Section 12 of the *Criminal Records Act 1991* does not apply in relation to an application for a permit.

10 Issuing of permit

- (1) The Commissioner may, after considering an application for a permit:
 - (a) issue a permit to the applicant, or
 - (b) refuse to issue a permit to the applicant.
- (2) A permit must not be issued unless:
 - (a) the Commissioner is satisfied that the applicant is a fit and proper person and can be trusted to have possession of prohibited weapons without danger to public safety or to the peace, and
 - (b) the applicant (including such authorised employees as are nominated by the applicant) has completed, to the satisfaction of the Commissioner, such training and safety courses as may be approved in relation to the kind of permit sought, and
 - (c) the Commissioner is satisfied that such storage and safety requirements as may be approved (either generally or in a particular case) are capable of being met by the applicant.

- (3) A permit must not be issued to a person who:
- (a) has, within the period of 10 years before the application for the permit was made, been convicted in New South Wales or elsewhere of an offence prescribed by the regulations, whether or not the offence is an offence under New South Wales law, or
 - (b) is subject to an apprehended violence order or who has, at any time within 10 years before the application for the permit was made, been subject to such an order (other than an order that has been revoked), or
 - (c) is subject to a recognisance, granted in New South Wales or elsewhere, to keep the peace, or
 - (d) is subject to a weapons prohibition order.
- (4) The Commissioner may refuse to issue a permit if the Commissioner considers that the issue of the permit would be contrary to the public interest.
- (5) The regulations may provide other mandatory or discretionary grounds for refusing the issue of a permit.
- (6) Subsection (3) extends to offences that have been committed, or to apprehended violence orders that have been made, or to recognisances that have been granted, before the commencement of this section.

11 Genuine reason

- (1) The Commissioner must not issue a permit authorising the possession or use of a prohibited weapon unless the applicant has, in the opinion of the Commissioner, a genuine reason for possessing or using the weapon.
- (2) Without limiting the reasons that the Commissioner may be satisfied are genuine reasons, the Commissioner may determine that an applicant has a genuine reason for possessing or using a prohibited weapon if the applicant:
- (a) states that he or she intends to possess or use the weapon:
 - (i) for any one or more of the reasons set out in the Table to this subsection, or
 - (ii) for any other reason prescribed by the regulations, and
 - (b) is able to produce evidence to the Commissioner that he or she satisfies the requirements (if any) specified in respect of any such reason.

Table

Reason: recreational/sporting purposes

The applicant must demonstrate that the recreational or sporting activity concerned

requires the possession or use of the prohibited weapon for which the permit is sought.

Reason: business/employment purposes

The applicant must demonstrate that it is necessary in the conduct of the applicant's business or employment to possess or use the prohibited weapon for which the permit is sought.

Reason: film/TV/theatrical purposes

The applicant must demonstrate that the film, television or theatrical activity concerned requires the possession or use of the prohibited weapon for which the permit is sought.

Reason: weapons collection

The applicant must demonstrate that the applicant's prohibited weapons collection has a genuine commemorative, historical, thematic or financial value.

Reason: public museum purposes

The applicant must demonstrate that the public museum concerned is involved in the collection and display of prohibited weapons.

Reason: heirloom

The applicant must demonstrate that the applicant has inherited the prohibited weapon for which the permit is sought and that the weapon has a genuine sentimental value.

Reason: animal management

The applicant must be a veterinary practitioner (within the meaning of the [Veterinary Practice Act 2003](#)), or an organisation that has responsibilities for animal management, and demonstrate that it is necessary in the conduct of the applicant's responsibilities to possess or use the prohibited weapon for which the permit is sought.

Reason: scientific purposes

The applicant must demonstrate that the prohibited weapon for which the permit is sought is required for legitimate scientific purposes.

- (3) The possession or use of a prohibited weapon for personal protection, or for the protection of any other person, is not a genuine reason for the possession or use of the weapon. However, any such reason may constitute a genuine reason in the case of a prohibited weapon referred to in clause 4 (1) of Schedule 1 or in the case of a prohibited weapon that is of a kind prescribed by the regulations for the purposes of this subsection.
- (4) Subsection (3) does not limit the reasons that the Commissioner may determine are not genuine reasons for the purposes of possessing or using a prohibited weapon.

12 Requirement to notify Commissioner if genuine reason ceases to exist

If a permit holder's genuine reason for possessing or using a prohibited weapon can no longer be established by the holder, the holder must, within 7 days of ceasing to have that genuine reason, notify the Commissioner in writing of that fact.

Maximum penalty: 50 penalty units.

13 Form of permit

- (1) A permit is to be in any one or more forms approved by the Commissioner. The manner and form in which the information referred to in subsection (2) is to be specified in, or recorded on, the permit is to be determined by the Commissioner (including, for example, by way of magnetic strip or other electronic means).
- (2) A permit must:
 - (a) if the Commissioner so determines in the case of any particular kind of permit, contain a recent photograph of the holder (such photograph being obtained in accordance with arrangements determined by the Commissioner), and
 - (b) bear the signature of the holder, and
 - (c) specify the authority conferred by the permit and the kind of prohibited weapons to which it relates, and
 - (d) specify the genuine reason for which the holder was issued with the permit, and
 - (e) specify (in the case of a weapons dealer permit) the premises where the prohibited weapons to which the permit relates are authorised to be kept, and
 - (f) contain such other details as may be prescribed by the regulations.
- (3) The holder of a permit must, immediately after being issued with the permit, write the person's usual signature in ink in the space provided for it on the permit (unless the permit already bears the person's signature).

Maximum penalty (subsection (3)): 20 penalty units.

14 Conditions of permit

- (1) A permit is subject to such conditions as the Commissioner thinks fit to impose and as are specified in the permit.
- (2) In addition to the conditions specified in a permit, a permit is subject to the following conditions:
 - (a) the holder must not allow any other person to possess or use any prohibited weapon in the holder's possession if that other person is not authorised to possess or use the weapon,

(b) the holder must, in accordance with such arrangements as are agreed on by the holder and the Commissioner, or, in the case of an authorised weapons dealer or authorised theatrical weapons armourer, at any reasonable time, allow inspection by a police officer, an authorised officer, or such other person as may be prescribed by the regulations, of the holder's facilities in respect of the storage and safe keeping of the prohibited weapons in the holder's possession,

(c) the permit cannot be transferred to another person.

(3) A permit is subject to such other conditions as may be prescribed by the regulations.

15 Term of permit

(1) A permit continues in force for a period of 5 years (or such shorter period as may be specified in the permit) from the date on which it was issued unless it is sooner surrendered or revoked or it otherwise ceases to be in force.

(2) A permit may be renewed by making an application, in accordance with this Act, for a new permit (referred to in this Act and the regulations as a **subsequent permit**).

16 Suspension of permit

(1) The Commissioner may, if the Commissioner is satisfied there may be grounds for revoking a permit, suspend the permit by serving on the permit holder, personally or by post, a notice:

(a) stating that the permit is suspended and the reasons for suspending it, and

(b) requesting that the permit holder provide the Commissioner with reasons why the permit should not be revoked.

(2) The Commissioner must suspend a permit in accordance with this section if the Commissioner is aware that the permit holder has been charged with a domestic violence offence within the meaning of the *Crimes (Domestic and Personal Violence) Act 2007* or the Commissioner has reasonable cause to believe that the permit holder has committed or has threatened to commit a domestic violence offence within the meaning of that Act.

(3) A suspended permit does not authorise the possession or use of any prohibited weapon during the period specified in the notice suspending the permit.

17 Suspension of permit on making of interim apprehended violence order

(1) A permit is automatically suspended on the making of an interim apprehended violence order against the permit holder.

(2) The permit is suspended until the order is confirmed or revoked.

18 Revocation of permit

- (1) A permit is automatically revoked if the permit holder becomes subject to a weapons prohibition order or an apprehended violence order.
- (2) A permit may be revoked:
 - (a) for any reason for which the permit holder would be refused a permit, or
 - (b) if the permit holder:
 - (i) supplied information in, or in connection with, the application for the permit which was (to the permit holder's knowledge) false or misleading in a material particular, or
 - (ii) contravenes any provision of this Act or the regulations, whether or not the permit holder has been convicted of an offence in respect of the contravention, or
 - (iii) contravenes any condition of the permit, or
 - (c) if the Commissioner is of the opinion that the permit holder is no longer a fit and proper person to hold a permit, or
 - (d) for any reason the Commissioner considers sufficient in the circumstances, or
 - (e) for any other reason prescribed by the regulations.
- (3) The Commissioner may revoke a permit by serving personally or by post on the permit holder a notice stating that the permit is revoked and the reason for revoking it.
- (4) The revocation of a permit by such a notice takes effect when the notice is served or on a later date specified in the notice.
- (5) The Commissioner may, by serving a further notice on the holder of a permit, cancel a notice revoking the permit before the notice takes effect.

19 Surrender and seizure of prohibited weapons when permit suspended or revoked

- (1) If a permit is suspended or revoked, the person to whom it was issued must immediately surrender to a police officer:
 - (a) any prohibited weapon in the person's possession, and
 - (b) the permit.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A police officer is authorised to seize any prohibited weapon in the possession of a

person if that person's permit is suspended or revoked.

Part 3 Weapons dealers and theatrical weapons armourers—special provisions

20 Weapons dealers and theatrical weapons armourers must hold permit

- (1) A person must not, in carrying on a business as a weapons dealer, buy, sell or manufacture any prohibited weapon unless authorised to do so by a weapons dealer permit.
- (2) A person must not, in carrying on a business as a theatrical weapons armourer, buy, sell or manufacture any prohibited weapon unless authorised to do so by a theatrical weapons armourer permit.

Maximum penalty:

- on summary conviction—100 penalty units or imprisonment for 2 years, or both,
- on conviction on indictment—imprisonment for 7 years.

21 Additional requirements for weapons dealers and theatrical weapons armourers

- (1) An authorised weapons dealer or authorised theatrical weapons armourer must not take possession of any prohibited weapon for the purpose of repairing or testing it unless the dealer or armourer has seen the permit of the person who is giving possession of the weapon to the dealer or armourer.

Maximum penalty: 50 penalty units.

- (2) The regulations may prescribe other requirements with respect to authorised weapons dealers and authorised theatrical weapons armourers.

22 Security of displayed weapons

- (1) An authorised weapons dealer or authorised theatrical weapons armourer who displays prohibited weapons on the dealer's or armourer's business or other premises must ensure that those weapons are secured in such a manner as would reasonably prevent their removal otherwise than by the dealer or armourer or any employee of the dealer or armourer.

Maximum penalty: 50 penalty units.

- (2) An authorised weapons dealer or authorised theatrical weapons armourer must ensure that any prohibited weapon that is displayed on the dealer's or armourer's business or other premises:

- (a) is under the immediate supervision and control of the dealer or armourer, or an employee of the dealer or armourer, and

- (b) is not displayed to the public unless reasonable precautions are taken to prevent it from being stolen.

Maximum penalty: 50 penalty units.

Part 4 Miscellaneous offences

23 Restrictions on sale and purchase of prohibited weapons

- (1) A person must not buy a prohibited weapon unless the person is authorised to possess the weapon by a permit.

Maximum penalty:

- on summary conviction—50 penalty units or imprisonment for 12 months, or both,
- on conviction on indictment—imprisonment for 5 years.

- (2) A person (**the buyer**) must not buy a prohibited weapon from another person (**the seller**) unless:

(a) the seller is authorised to possess the weapon by a permit, and

(b) the buyer:

(i) has seen the seller's permit, or

(ii) knows that the seller is an authorised weapons dealer or authorised theatrical weapons armourer.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (3) A person (**the seller**) must not sell a prohibited weapon to another person (**the buyer**) unless:

(a) the buyer is authorised to possess the weapon by a permit, and

(b) the seller:

(i) has seen the buyer's permit, or

(ii) knows that the buyer is an authorised weapons dealer or authorised theatrical weapons armourer.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

24 Restrictions on sending and receiving prohibited weapons

- (1) A person who is not the holder of a permit must not send a prohibited weapon to another person.

Maximum penalty: 50 penalty units.

- (2) A person (**the sender**) must not send a prohibited weapon to another person (**the receiver**) if the sender knows (or would be reasonably expected to know) that the receiver would be, because of receiving the weapon or being in possession of it at the place to which it is sent, guilty of any offence under this Act or under any law that applies at that place.

Maximum penalty: 50 penalty units.

- (3) A person who is not the holder of a permit must not receive a prohibited weapon.

Maximum penalty: 50 penalty units.

- (4) It is a defence to a prosecution under subsection (3) if the defendant proves that the prohibited weapon was sent to the defendant without his or her knowledge or approval.

- (5) In this section, **send** includes cause to be delivered.

25 Advertising sale of prohibited weapons

A person who causes to be published an advertisement for the sale of a prohibited weapon must ensure that the advertisement:

- (a) states that a permit is required for the possession or use of the weapon, and
- (b) specifies the permit number of the person on whose behalf the weapon is being sold.

Maximum penalty: 50 penalty units.

26 General requirement for safe keeping of prohibited weapons

A person who possesses a prohibited weapon must take all reasonable precautions to ensure:

- (a) its safe keeping, and
- (b) that it is not stolen or lost, and
- (c) that it does not come into the possession of a person who is not authorised to possess the weapon.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

27 On-the-spot inspection of prohibited weapons

- (1) A person who is in possession of a prohibited weapon must, on the demand of an authorised officer or police officer at any time, immediately produce for inspection by the officer:

- (a) the weapon, and
- (b) any permit that authorises the person to possess the weapon.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A person is guilty of an offence under this section only if the authorised officer or police officer, when making the demand, explains to the person that failure to comply with the demand is an offence under this Act.
- (3) A person is not guilty of an offence under this section because of failing to produce a permit if the person:
 - (a) has a reasonable excuse for not having the permit when the demand is made, and
 - (b) produces it, within 48 hours after the demand for its production is made, to the authorised officer or police officer who made the demand or to another authorised officer or police officer nominated by the officer.

28 Disposal of prohibited weapons by unauthorised persons

- (1) A person who comes into possession of a prohibited weapon, but is not authorised by or under this Act to possess the weapon, must immediately surrender the weapon to a police officer.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A person does not contravene any other provision of this Act just by delivering or surrendering a prohibited weapon in accordance with this section.

29 Permit must be produced on demand

- (1) A person to whom a permit is issued must, on demand made by an authorised officer or police officer at any time:
 - (a) if the person has the permit in his or her immediate possession—produce the permit for inspection by the officer, or
 - (b) if the person does not have the permit in his or her immediate possession—produce it within 48 hours after the demand is made to the officer who made the demand or to another officer nominated by the officer, or
 - (c) provide proof of that person's identity, and his or her usual place of residence, to the officer.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) A person is guilty of an offence under this section only if the authorised officer or police officer, when making the demand, explains to the person that failure to comply

with the demand is an offence against this Act.

30 Requirement to notify change of particulars

The holder of a permit must, if there is any change in a particular specified in the permit (such as the permit holder's name or place of residence), notify the Commissioner in writing of the particulars of the change within 7 days after the change occurs.

Maximum penalty: 50 penalty units.

31 False or misleading applications

A person must not, in or in connection with an application under this Act or the regulations, make a statement or provide information that the person knows is false or misleading in a material particular.

Maximum penalty:

- on summary conviction—100 penalty units or imprisonment for 2 years, or both,
- on conviction on indictment—imprisonment for 10 years.

32 Misuse etc of permit

A person must not:

- (a) falsely represent himself or herself to be the holder of a permit (whether or not it is in force), or
- (b) forge or fraudulently alter a permit (whether or not it is in force), or
- (c) give possession of a permit to another person for the purpose of using it unlawfully, or
- (d) steal a permit, or
- (e) knowingly have possession of a forged, fraudulently altered, borrowed or stolen permit.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

Part 5 Weapons prohibition orders

33 Commissioner may make weapons prohibition order

- (1) The Commissioner may make an order prohibiting a person from having possession of, or from using, any prohibited weapon if, in the opinion of the Commissioner, the person is not fit, in the public interest, to be permitted to have possession of a prohibited weapon.
- (2) Without limiting the generality of subsection (1), such an order may be made in respect of any person who had possession of or used a prohibited weapon

immediately before the weapon was seized under this or any other Act.

- (3) A weapons prohibition order takes effect when it is served personally on the person to whom it is directed.

34 Effect of weapons prohibition order

- (1) A person must not possess or use a prohibited weapon in contravention of a weapons prohibition order that is in force.

Maximum penalty:

- on summary conviction—100 penalty units or imprisonment for 2 years, or both,
- on conviction on indictment—imprisonment for 10 years.

- (2) Without limiting the generality of subsection (1) and for the purposes only of that subsection, a prohibited weapon found in or on any premises is, in the absence of proof to the contrary, taken to be in the possession of any person subject to a weapons prohibition order who at the time of the finding or around that time was in or on or in occupation of the premises.

- (3) A person must not sell or give possession of a prohibited weapon to another person, knowing that the other person is prohibited from possessing prohibited weapons by a weapons prohibition order.

Maximum penalty:

- on summary conviction—100 penalty units or imprisonment for 2 years, or both,
- on conviction on indictment—imprisonment for 10 years.

- (4) In this section, **premises** includes any structure, vehicle, vessel or aircraft or any place, whether built on or not.

Part 6 Miscellaneous provisions

35 Right to seek review from Administrative Decisions Tribunal

A person may apply to the Administrative Decisions Tribunal for a review of the following decisions:

- (a) the refusal or failure by the Commissioner to issue a permit to the person,
- (b) a condition imposed by the Commissioner on a permit issued to the person,
- (c) the revocation or suspension of a permit issued to the person.

36 Interstate transactions

- (1) Despite any other provision of this Act, a person who is the holder of a permit is, for

the purposes of any transaction between the person and the holder of a corresponding permit outside New South Wales, authorised to buy or sell a prohibited weapon from or to the holder of that corresponding permit.

(2) In this section:

corresponding permit means an instrument (or other form of authorisation) that:

- (a) is in force in a place outside New South Wales, and
- (b) is, in the opinion of the Commissioner, the equivalent of a permit in force under this Act.

37 Register of permits

- (1) The Commissioner is to keep, in such form as the Commissioner determines, a register of permits.
- (2) The register is to contain the following information in respect of each permit:
 - (a) the matters that by or under this Act are required to be specified in the permit (including any conditions specified in the permit),
 - (b) particulars of any suspension, revocation or surrender of the permit.
- (3) The information is to be recorded in the register in such manner as the Commissioner thinks fit.
- (4) The Commissioner may cause to be made such alterations in the register as are necessary to ensure that the information recorded in the register is accurate.

38 Disclosures by doctors and health practitioners of certain information

- (1) If a registered medical practitioner, or other health practitioner of a class prescribed by the regulations, is of the opinion that a patient is an unsuitable person to be in possession of a prohibited weapon:
 - (a) because of the patient's mental condition, or
 - (b) because the practitioner thinks that the patient might attempt to commit suicide, or would be a threat to public safety, if in possession of a prohibited weapon,nothing prevents the practitioner from informing the Commissioner of that opinion.
- (2) This section has effect despite any duty of confidentiality, and any action by a practitioner in accordance with this section does not give rise to any criminal or civil action or remedy.

39 Seizure of prohibited weapons by police officer

If a police officer has reasonable grounds to believe that an offence under this Act or the regulations has been or is being committed, the police officer may seize any prohibited weapon that, in the opinion of the police officer, is connected with the offence.

40 Disposal of surrendered or seized prohibited weapons

- (1) A Local Court or the Children's Court may, on application by a police officer or by any person who claims to be the owner of a prohibited weapon surrendered to, or seized by, a police officer in accordance with this Act, order that the weapon:
 - (a) be forfeited to the Crown, or
 - (b) be returned to the person claiming to be the owner of the weapon, or
 - (c) be otherwise disposed of in such manner as the Court thinks fit.
- (2) Without limiting subsection (1) (c), the Local Court or the Children's Court may order:
 - (a) that any such weapon is to be sold on behalf of the person claiming to be the owner of the weapon, and
 - (b) that the person is to receive the proceeds of the sale.

41 Delegation

- (1) The Commissioner may delegate to a relevant person any of the Commissioner's functions under this Act or the regulations, other than this power of delegation.
- (2) A delegate may sub-delegate to a relevant person any of the functions delegated by the Commissioner if the delegate is authorised in writing to do so by the Commissioner.
- (3) In this section, **relevant person** means:
 - (a) a police officer or any other member of the Police Force, or
 - (b) a public servant, or
 - (c) any other person prescribed by the regulations.

42 Penalty notices for certain offences

- (1) A police officer may serve a penalty notice on a person if:
 - (a) it appears to the officer that the person has committed an offence under this Act or the regulations, and
 - (b) the regulations prescribe that offence as an offence for which a penalty notice may be issued.

- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further criminal proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of, the same occurrence.
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
 - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences or any other matter under this Act.

43 Proceedings for offences

- (1) Except in so far as an offence may be prosecuted on indictment, proceedings for an offence under this Act or the regulations may be disposed of summarily before a Local Court.
- (2) Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of an offence under section 7, 20, 23, 31 or 34 to the extent that the offence may be prosecuted on indictment.

44 Time for laying information

An offence under this Act or the regulations may be dealt with in a summary manner before a Local Court if the information was laid within 2 years of the date on which the offence is alleged to have been committed.

45 Liability of parents and guardians

- (1) If a person under the age of 18 years contravenes any provision of this Act or the regulations, each parent of the person is taken to have contravened the same provision if the parent knowingly authorised or permitted the contravention.
- (2) A parent may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the parent's child has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on the child for an offence committed by the child under this Act or the regulations.
- (4) In this section, **parent** includes a guardian.

46 Offences by corporations

- (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

47 Service of notices

Any notice or other instrument required or authorised by this Act or the regulations to be served on a person by post is sufficiently addressed if it is addressed to the last address of the person known to the Commissioner.

48 Evidence

A certificate signed by the Commissioner (or by a person holding an office prescribed by the regulations) certifying any one or more of the following:

- (a) that a specified person was or was not, on a day or during a specified period, the holder of a permit,
- (b) that any permit was or was not, on a day or during a specified period, subject to specified conditions,
- (c) that a specified person was or was not, on a specified day or during a specified period, subject to a weapons prohibition order,

- (d) that a specified thing was or was not, on a specified date, approved,
- (e) that a specified address was, on a specified date, the last address known to the Commissioner of a specified person,

is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.

49 Identification of authorised officers

- (1) An authorised officer cannot exercise the functions of an authorised officer under this Act or the regulations unless the officer is in possession of an identification card issued to the officer by the Commissioner.
- (2) In the course of exercising the functions of an authorised officer under this Act or the regulations, the officer must, if requested to do so by any person, produce the officer's identification card to the person.

50 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following matters:
 - (a) the acquisition, possession, storage, safe keeping, maintenance, repair, testing and use of prohibited weapons,
 - (b) training courses in relation to the use of prohibited weapons (in particular in relation to the use of any batons that are prohibited weapons),
 - (c) weapons dealers and theatrical weapons armourers, and their functions,
 - (d) any matter relating to permits,
 - (e) fees payable under this Act or the regulations (including fees for the issuing of permits),
 - (f) exempting persons from specified requirements of this Act or the regulations.
- (3) The regulations may create an offence punishable by a penalty not exceeding 50 penalty units.

51 Savings and transitional provisions

Schedule 2 has effect.

52 Repeals

- (1) The *Prohibited Weapons Act 1989* is repealed.
- (2) The *Prohibited Weapons Regulation 1997* is repealed.

53 (Repealed)

54 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Prohibited weapons

(Section 4 (1))

1 Knives

- (1) A **flick knife** (or other similar device) that has a blade which opens automatically by gravity or centrifugal force or by any pressure applied to a button, spring or device in or attached to the handle of the knife.
- (2) A **ballistic knife** that propels a knife-like blade of any material by any means other than an explosive.
- (3) A **sheath knife** that has a sheath which withdraws into its handle by gravity or centrifugal force or if pressure is applied to a button, spring or device attached to or forming part of the sheath, handle or blade of the knife.
- (4) An **Urban Skinner push dagger** or any other device that consists of a single-edged or multi-edged blade or spike that has a handle fitted transversely to the blade or spike and allows the blade or spike to be supported by the palm of the hand so that stabbing blows or slashes can be inflicted by a punching or pushing action.
- (5) A **trench knife** or any other device that consists of a single-edged or multi-edged blade or spike that is fitted with a handle made of any hard substance that can be fitted over the knuckles of the hand of the user to protect the knuckles and increase the effect of a punch or blow, or that is adapted for such use.
- (6) A **butterfly knife** or “balisong” or any other device that consists of a single-edged or multi-edged blade or spike that fits within 2 handles attached to the blade or spike by

transverse pivot pins and is capable of being opened by gravity or centrifugal force.

- (7) A **star knife** or any other device that consists of a number of angular points, blades or spikes disposed outwardly about a central axis point and that are designed to spin around the central axis point in flight when thrown at a target.

2 Miscellaneous weapons

- (1) Any **bomb, grenade, rocket, missile** or **mine** (or other similar device, such as a tear-gas canister) that is in the nature of (or that expels or contains) an explosive, incendiary, irritant or gas, and whether or not it is “live” or has been deactivated. A “live” rocket must have a propellant charge of more than 100 grams, and a “live” missile must have an explosive or incendiary charge of more than 7 grams, for it to be a prohibited weapon.
- (2) A **flame thrower** that is of military design, or any other device that is capable of projecting ignited incendiary fuel.
- (3) Any device that is designed to propel or launch a bomb, grenade, rocket or missile by any means other than by means of an explosive, including a device known as a PVC cannon.
- (4) A **spear gun** having an overall length (being the length of the spear gun when it is not loaded with a spear) of less than 45 centimetres.
- (5) A **crossbow** (or any similar device) consisting of a bow fitted transversely on a stock that has a groove or barrel designed to direct an arrow or bolt.
- (6) A **slingshot** (being a device consisting of an elasticised band secured to the forks of a “Y” shaped frame), other than a home-made slingshot for use by a child in the course of play.
- (7) A **Saunders “Falcon” Hunting Sling**, or any other device in the nature of a hunting sling, catapult or slingshot that is designed for use with, or a component part of which is, a brace that:
- (a) fits or rests on the forearm or on another part of the body of the user, and
 - (b) supports the wrist against the tension of elastic material used to propel a projectile.
- (8) A **blow-gun** or **blow-pipe** that is capable of projecting a dart, or any other device that consists of a pipe or tube through which missiles in the form of a dart are capable of being projected by the exhaled breath of the user or by any other means other than an explosive.
- (9) Any **dart** capable of being projected from a blow-gun or blow-pipe.

- (10) A **Farallon Shark Dart**, or any other similar device that is designed to expel, on contact, any gas or other substance capable of causing bodily harm and which is reasonably capable of being carried concealed about the person.
- (11) A **dart projector** known as the Darchery dartslinger, or any other similar device that is designed to project a dart by means of an elasticised band.
- (12) A **mace** or any other similar article that consists of a club or staff fitted with a flanged or spiked head, other than a ceremonial mace made for and used solely as a symbol of authority on ceremonial occasions.
- (13) A **flail** or any other similar article that consists of a staff or handle that has fitted to one end, by any means, a freely swinging striking part that is armed with spikes or studded with any protruding matter.
- (14) A **whip** that has a lash which is comprised wholly or partly of any form of metal.
- (15) A whip known as a **cat-o'-nine-tails**, or any other whip that consists of a handle to which there is attached any number of knotted lashes.
- (16) **Kung fu sticks** or "nunchaku", or any other similar article consisting of 2 or more sticks or bars made of any material that are joined together by any means that allows the sticks or bars to swing independently of each other.
- (17) A **side-handled baton** or any other similar article consisting of a baton, staff or rod that is made of any hard substance and has fitted to one side a handle, whether or not that handle is permanently fixed.
- (17A) An **extendable or telescopic baton**.
- (18) Any hand-held defence or anti-personnel device that is designed to administer an electric shock on contact, such as the **Taser Self-Defence Weapon** or an electrified brief-case, but not including any such hand-held device that may lawfully be used on an animal in accordance with the [Prevention of Cruelty to Animals Act 1979](#).
- (19) **Knuckle-dusters** or any other similar article that is made of any hard substance and that can be fitted over the knuckles of the hand of the user to protect the knuckles and increase the effect of a punch or other blow or that is adapted for use as such.
- (20) A **sap glove**, or any other similar article, that consists of a glove (including a fingerless glove) that has a layer of powdered lead sewn under the outer covering and positioned over the knuckle area on the back of the glove.
- (21) A **studded glove**, or any other similar article, that consists of a glove (including a fingerless glove) that has a number of raised studs or spikes made of a hard substance and positioned over the back of the glove to increase the effect of a punch

or blow.

- (22) Any device designed or intended as a **defence** or **anti-personnel spray** and that is capable of discharging by any means any irritant matter comprising or containing any one or more of the following substances in liquid, powder, gas or chemical form:
- (a) chloroacetophenone, known as CN,
 - (b) orthochlorobenzalmalononitrile, known as CS,
 - (c) dypenylaminechloroarsone, known as DM or Adamsite,
 - (d) oleoresin capsicum, known as OC.
- (23) Any device (not being a device referred to in subclause (22)) designed as a defence or anti-personnel spray and that is capable of discharging any irritant matter.
- (24) Any **acoustic** or **light-emitting anti-personnel device** that is designed to cause permanent or temporary incapacity or to otherwise disorientate persons.

3 Replicas, imitations, concealed blades etc

- (1) Any imitation or replica of a **bomb, grenade, rocket, missile** or **mine** (or similar device), unless it is of an approved type.
- (2) Any imitation or replica of a **firearm** in respect of which a licence or permit is required under the [Firearms Act 1996](#) (including any imitation or replica pistol, blank fire pistol, shortened firearm, machine gun or sub-machine gun), unless it is of an approved type.
- (3) A **walking stick** or **cane** that contains a sword or any other single-edged or multi-edged blade or spike of any length or of any material.
- (4) A **riding crop** that contains a knife, stiletto or any other single-edged or multi-edged blade or spike of any length or of any material.
- (5) A **Bowen Knife Belt** or any other similar article consisting of a belt or belt buckle that conceals or disguises within the article a knife or a single-edged or multi-edged blade or spike of any length or of any material.
- (6) Any article or device that:
 - (a) due to its appearance is capable of being mistaken for something else that is not a weapon, and
 - (b) disguises and conceals within it a single-edged or multi-edged blade or spike of any length or of any material.

4 Miscellaneous articles

- (1) **Body armour vests** (or any other similar article) designed for anti-ballistic purposes

and to be worn on any part of the body (other than helmets or anti-ballistic articles used for eye or hearing protection).

- (2) **Handcuffs** (other than antique handcuffs, or children's toy handcuffs, that are of an approved type).
- (3) **Silencers** or any other device designed for attachment to a firearm for the purpose of muffling, reducing or stopping the noise created by firing the firearm.
- (4) A **firearm magazine**, being:
 - (a) a rimfire magazine with a capacity of more than 15 rounds, or
 - (b) a centre-fire self-loading rifle magazine with a capacity of more than 5 rounds, or
 - (c) a shotgun magazine with a capacity of more than 5 rounds, or
 - (d) a shotgun tubular magazine extension that is capable of extending the capacity of a shotgun magazine to more than 5 rounds, or
 - (e) a pistol magazine with a capacity of more than 10 rounds.
- (5) Any article or device, such as a device known as a **brass catcher**, that is designed to be attached to a firearm for the purposes of catching ejected cartridge cases when the firearm is being fired.
- (6) Any portable **tyre deflation device**, or any other similar portable device, that is designed to puncture, or that has been adapted for the purposes of puncturing, the tyres of a motor vehicle when driven over the device.
- (7) Any article or device, such as a device known as a **caltrop**, that is made up of two or more sharp nails or spines arranged in such a manner that one of them always points upward however the article or device is placed and that is capable of puncturing the feet, paws or hooves of animals when they pass over the article or device.

Schedule 2 Savings and transitional provisions

(Section 51)

Part 1 Preliminary

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

 this Act

Firearms Amendment (Prohibited Pistols) Act 2003, to the extent that it amends this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

- (1) In this Part:

existing permit means a permit:

- (a) that was issued under the former Act, and
- (b) that was in force immediately before the repeal of the former Act by this Act.

former Act means the *Prohibited Weapons Act 1989* as in force immediately before its repeal by this Act.

- (2) For the purposes of this Part, a person is taken to have **acquired** a prohibited weapon if the person has purchased, accepted or received, or otherwise taken possession of, the weapon.

3 Temporary amnesty for surrendering existing prohibited weapons

- (1) This clause applies to any person who:

- (a) acquired a prohibited weapon (other than a prohibited weapon to which clause 4 applies) before the commencement of this clause, and
- (b) is not the holder of a permit under this Act authorising the person to possess the weapon.

- (2) Subject to the regulations, a person to whom this clause applies is exempt from the requirement under Part 2 of this Act to hold a permit authorising possession of the prohibited weapon, but only for the purpose of:

- (a) surrendering the prohibited weapon to any member of the Police Service in accordance with such directions as are issued by the Commissioner, or

(b) proceeding to a police station (or such other place nominated by the Commissioner) for the purposes of surrendering the prohibited weapon.

(3) However, nothing in this clause authorises any such person to use a prohibited weapon without the authority of a permit.

(4) This clause ceases to have effect 3 months after the commencement of this clause (or such later period as may be prescribed by the regulations).

4 Amnesty concerning certain things that have become prohibited weapons

(1) This clause applies to a prohibited weapon referred to in clause 1 (2) or 2 (3) or (24) of Schedule 1.

(2) Subject to the regulations, any person who:

(a) acquired a prohibited weapon to which this clause applies before the commencement of this clause, and

(b) is not the holder of a permit under this Act authorising the person to possess the weapon,

does not commit an offence under section 7 of this Act in respect of the possession of that weapon.

(3) However, nothing in this clause authorises any such person to use a prohibited weapon to which this clause applies without the authority of a permit.

(4) This clause ceases to have effect 6 months after the commencement of this clause (or such later period as may be prescribed by the regulations).

5 Saving of existing permits

(1) Subject to the regulations, an existing permit that authorised the possession or use of a prohibited weapon:

(a) is taken to be a permit of the corresponding kind (as determined by the Commissioner) issued under this Act, and

(b) continues (unless it is sooner suspended or revoked in accordance with this Act or otherwise ceases to be in force) to authorise the possession or use of the weapon in respect of which it was issued for a period of 12 months from the commencement of this clause or for such longer period as may be prescribed by the regulations.

(2) The conditions to which an existing permit is subject are, subject to the regulations, taken to be conditions imposed by the Commissioner under this Act, and any such condition may be varied or revoked in accordance with this Act.

6 Pending applications

An application for a permit made under the former Act that was not finally determined before the repeal of the former Act by this Act is void and does not have any operation with respect to this Act.

7 References to prohibited weapons and articles

A reference in any Act (other than this Act) or statutory instrument to a prohibited weapon or a prohibited article within the meaning of the former Act is to be read as a reference to a prohibited weapon within the meaning of this Act.

Part 3 Provisions consequent on enactment of **Firearms Amendment (Prohibited Pistols) Act 2003**

8 Amnesty for pistol magazines with a capacity of more than 10 rounds

- (1) This clause applies to a prohibited weapon referred to in clause 4 (4) (e) of Schedule 1.
- (2) A person who is the holder of a category H (sport/target shooting) licence under the *Firearms Act 1996* does not commit an offence under section 7 of this Act in respect of the possession of a prohibited weapon to which this clause applies acquired by the person before the buyback period.
- (3) Subclause (2) ceases to have effect in relation to any such person once the buyback period ends.
- (4) Nothing in this clause authorises a person to use a prohibited weapon to which this clause applies (including fitting the prohibited weapon to a pistol).
- (5) In this clause:
buyback period has the same meaning as in section 78 of the *Firearms Act 1996* (as substituted by the *Firearms Amendment (Prohibited Pistols) Act 2003*).

Schedule 3 (Repealed)