

# South Australia



## FIREARMS (MISCELLANEOUS) AMENDMENT ACT 1996

No. 70 of 1996

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ANNO QUADRAGESIMO QUINTO

**ELIZABETHAE II REGINAE**

A.D. 1996

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No. 70 of 1996

An Act to amend the Firearms Act 1977.

[Assented to 22 August 1996]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Firearms (Miscellaneous) Amendment Act 1996*.
- (2) The *Firearms Act 1977* is referred to in this Act as "the principal Act".

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Amendment of s. 5—Interpretation**

3. Section 5 of the principal Act is amended—

- (a) by striking out from the definition of "airgun" in subsection (1) "pistol" and substituting "handgun";
- (b) by inserting after the definition of "automatic firearm" in subsection (1) the following definitions:

"class A firearms" means—

- (a) air rifles, air guns and paint-ball firearms; and
- (b) .22 rim fire rifles (not being self-loading rifles); and
- (c) single or double barrel shotguns (not being self-loading or pump action shotguns);

"class B firearms" means—

- (a) muzzle loading firearms (not being handguns); and
- (b) revolving chamber rifles; and

- (c) centre fire rifles (not being self-loading centre fire rifles); and
- (d) break action combination shotguns and rifles; and
- (e) all other firearms (not being prescribed firearms, handguns, self-loading firearms or pump action shotguns) that are not class A firearms;

"class C firearms" means—

- (a) self-loading rim fire rifles having a magazine capacity of 10 rounds or less; and
- (b) self-loading shotguns having a magazine capacity of five rounds or less; and
- (c) pump action shotguns having a magazine capacity of five rounds or less,

but does not include revolving chamber rifles;

"class D firearms" means—

- (a) self-loading rim fire rifles having a magazine capacity of more than 10 rounds; and
- (b) self-loading centre fire rifles; and
- (c) self-loading shotguns having a magazine capacity of more than five rounds; and
- (d) pump action shotguns having a magazine capacity of more than five rounds,

but does not include revolving chamber rifles;

"class H firearms" means handguns;

"collector's licence" means a firearms licence that is endorsed with the purpose of collecting and displaying firearms;

"commercial range operator" means a person who carries on the business of providing—

- (a) a shooting range (not being a shooting gallery) for use by members of the public; and
- (b) firearms for use by members of the public at the range;;

(c) by striking out the definition of "**dangerous firearm**" in subsection (1);

(d) by striking out the definition of "**firearms licence**" in subsection (1) and substituting the following definitions:

"**firearms licence**" means a firearms licence granted under this Act and includes a firearms permit;

"**firearms permit**" means a permit referred to in section 12(4);

"**firing mechanism**" of a firearm means the mechanism of the firearm that is designed for the purpose of firing the firearm;

"**to give**" a firearm means to transfer ownership of the firearm to another person as a gift and includes transfer of the ownership of a firearm to a beneficiary of a deceased estate by the executor or administrator in the distribution of the estate;

"**handgun**" means a firearm the barrel of which is less than 400 millimetres in length and that is designed or adapted for aiming and firing from the hand and is reasonably capable of being carried concealed about the person;;

(e) by inserting the following definitions after the definition of "**licence**" in subsection (1):

"**licensed dealer**" in firearms or ammunition means a person who is licensed under this Act or a corresponding enactment of another State or Territory of the Commonwealth to carry on the business of dealing in firearms or ammunition;

"**loading mechanism**" of a firearm means all the parts of the firearm (except the barrel) that are designed to place or hold or to place and hold a round in position for firing and includes the magazine of the firearm (if any);;

(f) by striking out the definition of "**owner**" in subsection (1) and substituting the following definition:

"**owner**" of a firearm includes—

- (a) the executor or administrator of a deceased estate that includes a firearm; and
- (b) the administrator or manager of the estate of a person who is unable to manage his or her affairs if the estate includes a firearm; and
- (c) the donee of an enduring power of attorney during a period of legal incapacity suffered by the donor of the power if the donor is the owner of a firearm; and
- (d) the Official Trustee or the registered trustee of a bankrupt estate that includes a firearm;;

(g) by striking out the definition of "**pistol**" from subsection (1) and substituting the following definitions:

"**prescribed firearm**" means a firearm of a class prescribed by regulation for the purposes of this definition;

"**pump action shotgun**" means a shotgun that is reloaded manually by moving the forward hand grip which is part of the loading mechanism of the gun backwards and then forwards;;

- (h) by inserting after the definition of "**to purchase**" in subsection (1) the following definitions:

"**receiver**" of a firearm means the metal or plastic body or frame of the firearm that is designed to hold the firing mechanism or the loading mechanism or both in place but does not include the stock or barrel of the firearm;

"**recognised commercial range operator**" means a commercial range operator declared to be a recognised commercial range operator by the Minister pursuant to this Act;;

- (i) by inserting after the definition of "**the Registrar**" in subsection (1) the following definition:

"**relative**" in relation to a person means the spouse, parent or remoter lineal ancestor, son, daughter or remoter issue or brother or sister of the person;;

- (j) by striking out the definition of "**restricted firearm**" from subsection (1) and substituting the following definition:

"**round**" means a projectile and propellant whether held together by a cartridge or not;;

- (k) by striking out the definition of "**self-loading firearm**" in subsection (1) and substituting the following definition:

"**self-loading firearm**" means—

(a) a firearm that is designed to fire a round when the trigger is brought to the firing position and to continue to fire one or more rounds by releasing the trigger and returning it to the firing position to fire each additional round; but

(b) does not include a double barrel shotgun that is not designed to hold additional rounds in a magazine;;

- (l) by inserting after the definition of "**to sell**" in subsection (1) the following definition:

"**shooting gallery**" means an indoor or outdoor gallery at which members of the public can use .177 calibre air guns or air rifles (but not paint-ball firearms) that are attached to a shooting bench to shoot at stationary or moving targets;;

- (m) by inserting after the definition of "**silencer**" the following definition:

"**spouse**" includes a putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*);;

- (n) by striking out subsection (2) and substituting the following subsection:

(2) For the purposes of this Act the capacity of a magazine that has been modified to reduce its capacity will only be regarded as having the reduced capacity, instead of its capacity as manufactured, if it has been modified in a manner approved by the Registrar.;

- (o) by inserting "unless he or she establishes on the balance of probabilities that he or she was not carrying on such a business" after "sold in excess of 20 in that period" in subsection (3);
- (p) by inserting "unless he or she establishes on the balance of probabilities that he or she was not carrying on such a business" after "sold in excess of 50 000 rounds in that period" in subsection (5);
- (q) by inserting after subsection (8) the following subsections:

(9) A reference in this Act to a person who carries on the business of primary production includes—

- (a) where the business is carried on by a company—a director of the company; and
- (b) the person (if any) employed to manage the business,

if the director or manager resides on or near the land on which the business is carried on or visits the land frequently for the purposes of the business.

(10) For the purposes of this Act a person who has a mental or physical condition that would make it unsafe for him or her to possess a firearm or ammunition must be taken not to be a fit and proper person to have possession of a firearm or ammunition or to hold or have possession of a licence.

(11) For the purposes of this Act a person may be taken not to be a fit and proper person to have possession of a firearm or ammunition or to hold or have possession of a licence if the person—

- (a) has not complied with the requirements of this Act in relation to the safe handling, carriage or use of firearms; or
- (b) has been convicted of an offence against this Act or corresponding legislation of another State or Territory of the Commonwealth; or
- (c) has been convicted of an offence involving actual or threatened violence in this State or any other State or Territory of the Commonwealth or in any other part of the world; or
- (d) has been guilty of fraud or deception for the purpose of obtaining a licence or permit under this Act or under corresponding legislation in another State or Territory of the Commonwealth; or
- (e) is the subject, or has in the past been the subject, of a domestic violence restraining order under the *Domestic Violence Act 1994* or any other order of a similar nature made by a court whether in this State or any other State or Territory of the Commonwealth.

(12) Subsection (11) does not limit the grounds on which a person may be taken not to be a fit and proper person for the purposes of this Act.

#### **Amendment of s. 5A—Crown not bound**

4. Section 5A of the principal Act is amended by inserting "in right of this State or to the Crown in any other capacity" after "the Crown".

**Amendment of s. 7—Establishment of consultative committee**

5. Section 7 of the principal Act is amended—

(a) by striking out from subsection (2) "three members" and substituting "six members";

(b) by inserting the following word and paragraphs after paragraph (c) of subsection (2):

and

(d) one must be a medical practitioner; and

(e) one must be a person who carries on the business of primary production and uses a firearm or firearms for the purposes of that business; and

(f) one must be a person who has experience in the administration of, or in participating in, a competitive discipline using firearms being a discipline in which shooters compete at the Olympic Games or the Commonwealth Games.;

(c) by inserting the following subsection after subsection (2):

(2a) The committee must include at least two men and two women.

**Amendment of s. 8—Quorum, etc.**

6. Section 8 of the principal Act is amended—

(a) by striking out "Two members" from subsection (1) and substituting "Four members";

(b) by striking out subsection (2) and substituting the following subsections:

(2) A decision carried by a majority of votes cast by members at a meeting is a decision of the committee.

(3) Each member present at a meeting has one vote on any question arising for decision and, if the votes are equal, the person presiding at the meeting may exercise a casting vote.

**Amendment of s. 11—Possession and use of firearms**

7. Section 11 of the principal Act is amended—

(a) by striking out "a firearm (not being a dangerous firearm)" from subsection (4) and substituting "a class A, B or H firearm";

(b) by striking out paragraph (a) of subsection (4) and substituting the following paragraph:

(a) a person has possession of, or uses, the firearm on the range of a recognised commercial range operator or at a shooting gallery in the normal course of the operation of the commercial range operator or the shooting gallery if the commercial range or the gallery is under the supervision of a responsible person who holds a firearms licence authorising possession of that firearm;;

(c) by inserting after subsection (4) the following subsections:



(4a) No offence is committed under this section in relation to a class C or D firearm by virtue of the fact that—

- (a) a person has possession of the firearm in the ordinary course of the business of carrying or storing goods; or
- (b) a person has possession of, or uses, the firearm in the ordinary course of business as a licensed dealer in firearms if his or her dealer's licence authorises dealing in that class of firearm.

(4b) No offence is committed under this section in relation to a class A, B, C, D or H firearm or a prescribed firearm by virtue of the fact that a person has possession of the firearm if he or she has possession of it on behalf of the Crown.;

(d) by inserting the following word and subparagraph after subparagraph (ii) of paragraph (b) of subsection (5):

or

- (iii) as the Official Trustee or the registered trustee of a bankrupt estate;;

(e) by inserting after subsection (5) the following subsections:

(6) For the purposes of this section—

(a) a person who handles a firearm—

- (i) in the presence, and with the consent, of a person who is the owner of the firearm and who is authorised by or under this Act to have possession of it; or
- (ii) in the premises of a licensed dealer in firearms for the purpose of inspecting the firearm,

does not have possession of the firearm;

(b) a person who has possession of a self-loading rim fire rifle that does not have an inbuilt magazine and does not have possession of any magazine that can be fitted to the rifle has possession of a class C firearm;

(c) a person who has possession of a self-loading rim fire rifle and also has possession of a magazine with a capacity of more than ten rounds that can be fitted to the rifle has possession of a class D firearm even though the magazine is not fitted to the rifle;

(d) a person who has possession of a self-loading or pump action shotgun that does not have an inbuilt magazine and does not have possession of any magazine that can be fitted to the shotgun has possession of a class C firearm;

(e) a person who has possession of a self-loading or pump action shotgun and also has possession of a magazine with a capacity of more than five rounds that can be fitted to the shotgun has possession of a class D firearm even though the magazine is not fitted to the shotgun.

- (7) The maximum penalty for an offence against this section is as follows:
- (a) where the firearm is a prescribed firearm—\$20 000 or imprisonment for four years;
  - (b) where the firearm is a class C, D or H firearm—\$10 000 or imprisonment for two years;
  - (c) where the firearm is any other kind of firearm—\$5 000 or imprisonment for one year.

**Amendment of s. 12—Application for firearms licence**

**8. Section 12 of the principal Act is amended—**

- (a) by striking out paragraph (d) of subsection (1);
- (b) by striking out subsections (3) and (4) and substituting the following subsections:
  - (3) Subject to subsection (4), an application for a firearms licence cannot be made by a person under the age of 18 years.
  - (4) An application for a firearms permit may be made by a person who has reached the age of 15 years but who has not reached the age of 18 years if that person is the spouse, child, brother, sister or employee of a person who holds a firearms licence and who carries on the business of primary production.
  - (4a) A firearms permit may only authorise the possession and use of class A or B firearms registered in the name of the spouse, parent, brother, sister or employer of the licence holder and may only authorise use of the firearm for the purposes of the business of primary production carried on by that person.;
- (c) by striking out paragraph (a) of subsection (5) and substituting the following paragraphs:
  - (a) as to the identity of the applicant (the Registrar may require the applicant to identify himself or herself in the same manner and to the same extent as could be required if the applicant were opening an account at a bank); and
  - (ab) as to the age and the residential and postal addresses of the applicant; and;
- (d) by striking out paragraphs (a) and (b) of subsection (6) and substituting the following paragraphs:
  - (a) —
    - (i) the Registrar is not satisfied that the applicant is a fit and proper person to hold the licence applied for; or
    - (ii) the proposed licence would authorise possession of a class C or D firearm and the Registrar would not be prepared to grant a permit to the applicant to acquire a firearm of that class; or
    - (iii) the Registrar is not satisfied that the applicant will keep firearms in his or her possession secured in accordance with this Act; or

- (iv) the Registrar is satisfied that the applicant could not use any firearm for the purpose or one or more of the purposes to be endorsed on the licence; or
  - (v) the Registrar is satisfied that the applicant could not use any firearm of the class or one or more of the classes to be endorsed on the licence in accordance with the conditions of the licence; or
  - (vi) to grant the application would, in the Registrar's opinion, be contrary to the public interest; and
- (b) the consultative committee agrees that the application should be refused.;
- (e) by striking out from subsection (7) "dangerous firearm" wherever occurring and substituting, in each case, "prescribed firearm";
- (f) by inserting the following subsections after subsection (7):
- (8) An application for a new firearms licence (as distinct from the renewal of a licence) must not be granted until at least 28 days after the application was made.
- (9) The Registrar will be taken to have refused an application for a firearms licence if the application has not been granted within 90 days after it was made.
- (10) A firearms licence does not come into force until the prescribed application fee has been paid.
- (11) A person may hold a collector's licence and another firearms licence for other purposes at the same time.

**Amendment of s. 13—Provisions relating to firearms licences**

**9. Section 13 of the principal Act is amended—**

- (a) by inserting the following subsection after subsection (2):
- (2a) Where a firearms licence is endorsed with the purpose of collecting and displaying firearms no other purpose may be endorsed on that licence.;
- (b) by striking out from subsection (3) "dangerous firearm" and substituting "prescribed firearm";
- (c) by inserting the following subsection after subsection (3):
- (3a) A firearms licence does not authorise the possession and use of a firearm acquired by the holder of the licence on or after the commencement of the *Firearms (Miscellaneous) Amendment Act 1996* if possession of the firearm was transferred to the holder in contravention of Division 2A.;

(d) by striking out "or by post" from subsection (6) and substituting "or by certified mail";

(e) by inserting the following subsection after subsection (8):

(8a) Where the Registrar is considering taking action under subsection (8), he or she may require the holder of the licence—

- (a) to furnish such information as may be necessary or desirable to enable the Registrar to take that action; or
- (b) to verify, by statutory declaration, information already furnished to the Registrar.

Maximum penalty: \$5 000.

#### **Substitution of heading**

10. The heading to Division 2 of Part 3 of the principal Act is struck out and the following heading is substituted:

### **DIVISION 2—ACQUISITION OF FIREARMS**

#### **Substitution of s. 14**

11. Section 14 of the principal Act is repealed and the following section is substituted:

#### **Acquisition of firearms**

14. (1) Subject to this section, a person who acquires a firearm (whether by purchasing the firearm, receiving it as a gift or borrowing or hiring it), without holding a permit granted by the Registrar under this Division (or granted under corresponding legislation in another State or Territory of the Commonwealth) authorising acquisition of the firearm by that person is guilty of an offence.

(2) A person (whether a dealer or not) who sells, gives, lends or hires a firearm to another person without taking reasonable steps to satisfy himself or herself that the person acquiring the firearm—

- (a) holds a permit under this Division (or under corresponding legislation of another State or Territory of the Commonwealth) authorising his or her acquisition of the firearm; or
- (b) is a licensed dealer in firearms and acquires the firearm in the ordinary course of dealing in firearms pursuant to his or her licence,

is guilty of an offence.

(3) Subsection (1) does not apply to a person who purchases a firearm in the ordinary course of carrying on business as a licensed dealer in firearms pursuant to his or her licence.

(4) It is a defence to prosecution for an offence against subsection (1) or (2) to prove that—

- (a) the owner of the firearm carried on the business of primary production and that the firearm was lent temporarily to an employee or relative of the owner for the purposes of that business; or
- (b) the owner of the firearm carried on the business of guarding property and that the firearm was lent temporarily to an employee of the owner for the purposes of that business; or
- (c) the firearm was lent or hired in circumstances (prescribed by or under section 11) in which the person who borrowed or hired the firearm was not required to hold a licence authorising the possession or use of the firearm; or
- (d) the firearm was a class A, B or H firearm and was lent pursuant to a written or oral agreement between the owner and borrower that the borrower would only use the firearm for a purpose or purposes specified in the agreement and would return the firearm to the owner within 10 days; or
- (e) the firearm was borrowed or hired in circumstances prescribed for the purposes of this subsection by regulation.

(5) Subject to subsection (6), a person (whether a dealer or not) who sells, gives, lends or hires the receiver of a firearm to another person is guilty of an offence unless the receiver is sold, given, lent or hired in accordance with this Act.

(6) Subsection (5) does not prevent a licensed dealer in firearms from—

- (a) selling a receiver to another dealer who is entitled to deal in receivers of that kind in the ordinary course of dealing in firearms pursuant to his or her licence; or;
- (b) selling a receiver to the owner of a firearm in the course of the dealer repairing or modifying the firearm pursuant to his or her licence.

(7) The maximum penalty for an offence against this section is as follows:

- (a) where the firearm is a prescribed firearm or class C, D or H firearm or the receiver is suitable for a prescribed firearm or a class C, D or H firearm—\$10 000 or imprisonment for two years;
- (b) where the firearm or receiver is any other kind of firearm or receiver—\$5 000 or imprisonment for one year.

**Amendment of s. 15—Application for permit**

12. Section 15 of the principal Act is amended—

- (a) by striking out from subsection (1) "or approving the purchase or sale" and substituting "the acquisition";

(b) by striking out subsections (3), (4), (4a), (5), (6) and (7) and substituting the following subsections:

(3) Subject to subsection (4) a permit authorising the acquisition of a firearm can only be granted—

- (a) after the expiration of 28 days after the application for the permit was made; and
- (b) if the applicant holds a firearms licence that authorises possession of the firearm.

(4) The Registrar may grant a permit before the expiration of 28 days after the application for the permit was made if the Registrar is satisfied that it is safe to do so and that there are special reasons for doing so.

(5) A licence, to the extent that it authorises possession of a firearm for the purposes of employment by a person carrying on the business of guarding property is not sufficient for the purposes of subsection (3)(b) to justify the granting of a permit to acquire a firearm.

#### **Insertion of s. 15A**

13. The following section is inserted in Part 3 Division 2 after section 15 of the principal Act:

#### **Reasons for refusal of permit**

**15A.** (1) Subject to this section the Registrar may refuse an application for a permit to acquire a firearm of any class if he or she is satisfied that—

- (a) the firearm is particularly dangerous by reason of its design, construction or any other factor; or
- (b) the firearm can easily be converted to an automatic firearm; or
- (c) the firearm is, by reason of its size or any other factor, more readily concealed than other firearms of the same class and is for that, or any other reason, particularly suited to unlawful use; or
- (d) the applicant has in the past acquired a firearm that he or she has failed to produce to the Registrar for registration in accordance with this Act or has been guilty of any other offence against this Act.

(2) Subject to this Act, where the application is for a permit to acquire a class B or class H firearm and the application is properly made the Registrar may only refuse the application if—

- (a) the Registrar is of the opinion that the applicant does not have a genuine reason for acquiring the firearm; or
- (b) the Registrar is entitled to refuse the application under subsection (1).

(3) The Registrar must refuse an application for a permit to acquire a class C firearm unless—

- (a) the following requirements are satisfied:
- (i) the applicant—
    - (A) must carry on the business of primary production; or
    - (B) must be an employee of a person who carries on the business of primary production and must live on or near the land on which that business is carried on and must be employed in the carrying on of that business; or
    - (C) must be a relative of a person who carries on that business and must live on or near the land on which that business is carried on and must be employed in the carrying on of that business; and
  - (ii) the Registrar must be satisfied that the applicant needs the firearm for the purposes of that business and that there is no satisfactory alternative to using a firearm of that class; and
  - (iii) if the application is for a self-loading rifle—the applicant does not have possession of any other self-loading rifle; and
  - (iv) if the application is for a self-loading shotgun—the applicant does not have possession of any other self-loading shotgun or a pump action shotgun; and
  - (v) if the application is for a pump action shotgun—the applicant does not have possession of any other pump action shotgun or a self-loading shotgun.; or
- (b) the following requirements are satisfied:
- (i) the applicant is a member of The South Australian Clay Target Association Incorporated or the Australian Clay Target Association Incorporated and is also a member of a recognised firearms club affiliated with either of those associations; and
  - (ii) the Registrar is satisfied that the applicant needs the firearm for the purpose of an activity of the club conducted in accordance with the rules of the Australian Clay Target Association Incorporated and in accordance with regulations under this Act; or
- (c) the Registrar could, in accordance with subsection (4), grant a permit to the applicant to acquire a class D firearm; or
- (d) requirements prescribed by regulation for the purposes of this paragraph are satisfied.

(4) The Registrar must refuse an application for a permit to acquire a class D firearm unless—

- (a) he or she is satisfied that—

- (i) the applicant gains his or her livelihood wholly or partly from professional shooting; and
  - (ii) the applicant needs the firearm to destroy animals in the course of professional shooting; or
- (b) requirements prescribed by regulation for the purposes of this paragraph are satisfied.

(5) Where the Registrar decides that the application should be refused the applicant may, within one month after receiving notice in writing of the Registrar's decision, require the Registrar to refer the application to the consultative committee.

(6) If the committee does not agree with the Registrar's decision the committee may direct the Registrar to grant the application.

#### **Insertion of Division 2A of Part 3**

14. The following Division is inserted after Division 2 of Part 3 of the principal Act:

#### **DIVISION 2A—TRANSFER OF POSSESSION OF FIREARMS**

##### **Transfer of possession**

**15B.** (1) The owner of a firearm may only transfer possession of the firearm to another person—

- (a) if he or she is selling, giving, lending or hiring the firearm to the other person and transfers possession in accordance with subsection (9); or
- (b) if the firearm is a class A, B or H firearm and is lent pursuant to a written or oral agreement between the owner and borrower that the borrower will only use the firearm for a purpose or purposes specified in the agreement and will return the firearm to the owner within 10 days; or
- (c) if the other person is a licensed dealer in firearms and possession is transferred—
  - (i) to enable the dealer to repair, modify or test the firearm or to display the firearm on behalf of the owner for the purpose of sale; or
  - (ii) to the dealer to hold the firearm during a period during which the owner is not entitled to be in possession of the firearm; or
- (d) if the owner of the firearm carries on the business of primary production and possession of the firearm is transferred temporarily to an employee or relative of the owner for the purposes of that business; or
- (e) if the owner of the firearm carries on the business of guarding property and possession of the firearm is transferred temporarily to an employee of the owner for the purposes of that business; or
- (f) in circumstances (prescribed by or under section 11) in which the person acquiring possession is not required to hold a licence authorising the possession and use of the firearm; or
- (g) in circumstances authorised by regulation.



(2) Subsections (1)(a) and (9) do not apply in relation to the sale of a firearm if the person selling or purchasing the firearm is a licensed dealer in firearms acting in the normal course of carrying on the business of dealing in firearms pursuant to his or her licence.

(3) Subsections (1)(a) and (9) do not apply in relation to the hiring of a firearm that is owned and is hired to another person by a licensed dealer in firearms acting in the normal course of carrying on the business of dealing in firearms pursuant to his or her licence.

(4) When—

(a) selling, lending or hiring a firearm to another person on his or her own behalf; or

(b) selling, giving, lending or hiring a firearm as agent for the owner of the firearm,

a licensed dealer in firearms may, subject to subsection (5), only transfer possession of the firearm to the person purchasing, borrowing or hiring the firearm or receiving it as a gift (or, where that person is a company, to a nominee of the company) and must not—

(c) transfer possession of the firearm to another person on that person's behalf; or

(d) consign the firearm to Australia Post or any other carrier for delivery to that person.

(5) Subsection (4) does not apply in relation to the sale, lending or hiring of a firearm by a licensed dealer in firearms to another licensed dealer pursuant to his or her licence.

(6) A person must not transfer possession of a firearm under subsection (1)(b) unless—

(a) immediately before transferring possession he or she has inspected the firearms licence held by the person who is to borrow the firearm and is satisfied that the borrower is authorised to possess the firearm and use it for the agreed purpose or purposes; and

(b) he or she believes on reasonable grounds that the borrower will not use the firearm for any other purpose.

(7) A person must not transfer possession of a firearm under subsection (1)(d) or (e) or under circumstances prescribed by regulation unless he or she is satisfied, on reasonable grounds, that the person to whom possession is transferred is authorised by a firearms licence to possess and use the firearm for the purpose or purposes for which the firearm is transferred.

(8) A person who borrows a firearm under subsection (1)(b) must return it to the owner within 10 days.

(9) When selling, giving, lending or hiring a firearm to another person, the owner, or former owner, of the firearm may only transfer possession of the firearm to the other person—

(a) if—

- (i) the owner, or former owner, and the person acquiring possession are together in the presence of a licensed dealer in firearms or a responsible officer of a recognised firearms club who has been authorised by the Registrar to witness the transfer for the purposes of this subsection (an "authorised officer") or a member of the police force and the transfer is witnessed by the dealer, authorised officer or member of the police force; and
- (ii) the owner, or former owner, and the person acquiring possession, provide the dealer, authorised officer or the member of the police force with the information, and produce the licenses and permit necessary to enable the dealer, authorised officer or the member of the police force to comply with his or her obligations under this Division; or

(b) through the agency of a licensed dealer.

(10) Where the owner or the person acquiring the firearm is a company, the requirements of subsection (9) are satisfied if a nominee of the company attends before a licensed dealer in firearms or a member of the police force on behalf of the company.

(11) A person must not accept the transfer of possession of a firearm unless possession is transferred to him or her in accordance with this section.

(12) A person to whom possession of a firearm is transferred under subsection (1) who is not the owner of the firearm must not (unless authorised by or under this Act) transfer possession of the firearm to any other person except the owner of the firearm.

(13) A person who contravenes or fails to comply with a provision of this section is guilty of an offence.

Maximum penalty: where the offence is committed in relation to a prescribed firearm or a class C, D or H firearm—\$10 000 or imprisonment for two years

where the offence is committed in relation to any other kind of firearm—\$5 000 or imprisonment for one year.

#### **Obligations of dealer, authorised officer or police officer**

**15C.** (1) A dealer, authorised officer or member of the police force who witnesses the transfer of possession of a firearm for the purposes of this Division must—

- (a) satisfy himself or herself by inspecting the relevant permit and licence that the person acquiring the firearm is entitled to acquire and possess it; and

- (b) record—
- (i) the name and address of the person transferring and the person acquiring the firearm and the number of each of their firearms licences; and
  - (ii) the class, make, calibre and serial number or other identification of the firearm; and
  - (iii) where the firearm is lent or hired—the duration and the terms of the loan or hire; and
  - (iv) such other information as is prescribed by regulation; and
- (c) provide the Registrar with the information recorded under paragraph (b) within one month after possession of the firearm is transferred.

(2) If a dealer, authorised officer or member of the police force is unable to comply with subsection (1) because a person refuses or fails to produce a licence or permit for inspection or to provide information required by subsection (1)(b), the dealer, authorised officer or police officer must prepare and submit a report to the Registrar setting out such information as the Registrar requires in relation to the matter.

(3) A dealer, authorised officer or member of the police force may refuse to witness the transfer of possession of a firearm as required by this Division if he or she is not first paid the fee prescribed by regulation.

(4) A dealer or authorised officer who contravenes or fails to comply with a requirement of this section is guilty of an offence.

Maximum penalty: \$5 000.

#### **What constitutes possession of a firearm**

**15D.** (1) For the purposes of this Division, the owner, or a person to whom the owner has transferred possession, of a firearm has possession of the firearm (and therefore has not transferred possession for the purposes of this Division) while it is in his or her physical possession or is under his or her control.

(2) Without limiting subsection (1), a firearm will be taken to be in the physical possession or under the control of the owner or a person to whom the owner has transferred possession—

- (a) while he or she is handling the firearm or the firearm is under his or her control; or
- (b) while the firearm is—
  - (i) on premises at which the owner or other person usually resides or premises at which the owner or other person is for the time being residing; or
  - (ii) in a vehicle, vessel or aircraft in which the owner or other person is for the time being travelling or residing; or

- (c) where the firearm is used by the owner or other person in the course of carrying on a business—while the firearm is on premises at which that business is carried on; or
- (d) while the firearm is in the physical possession or under the control of an employee of the owner of the firearm or other person in the course of that employment; or
- (e) while the firearm is in the possession of a person on behalf of the owner or other person in the normal course of the firstmentioned person carrying on the business of carrying or storing goods; or
- (f) in any other circumstances prescribed by regulation.

**Substitution of s. 16**

15. Section 16 of the principal Act is repealed and the following section is substituted:

**Requirement for dealer's licence**

16. A person who carries on the business of dealing in firearms or ammunition or both in this State without holding a dealer's licence granted under this Act authorising the carrying on of that business is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for two years.

**Amendment of s. 17—Application for dealer's licence**

16. Section 17 of the principal Act is amended—

(a) by striking out paragraphs (a) and (b) of subsection (3) and substituting the following paragraphs:

(a) the Registrar is not satisfied that—

- (i) the applicant is a fit and proper person to hold such a licence; or
- (ii) the premises at which the applicant intends carrying on the business of dealing in firearms or ammunition is appropriate for that purpose,

and the consultative committee agrees with the Registrar's decision; or

(b) the applicant is not usually resident in this State.;

(b) by inserting after subsection (3) the following subsection:

(3a) A dealer's licence does not authorise dealing in class C or D firearms or the receivers of class C or D firearms unless it is endorsed to that effect.;

(c) by striking out "dangerous firearms" from subsection (4)(a) and substituting "prescribed firearms".

**Amendment of s. 18—Records**

17. Section 18 of the principal Act is amended by inserting after its present contents "Maximum penalty: \$5 000".

**Amendment of s. 19—Term and renewal of licence**

**18.** Section 19 of the principal Act is amended by striking out subsection (1) and substituting the following subsections:

(1) Subject to this Act a firearms licence remains in force—

- (a) in the case of a licence that authorises the possession or use of prescribed firearms or class D or H firearms—for a term not exceeding one year;
- (b) in the case of a licence that only authorises the possession or use of Class A, B or C firearms—for a term not exceeding five years.

(1a) Subject to this Act a dealer's licence remains in force for a term not exceeding five years.

**Insertion of s. 19A**

**19.** The following section is inserted after section 19 of the principal Act:

**Licences to include photographs**

**19A.** (1) All licences granted, renewed varied or replaced under this Act must include a photograph of the holder of the licence.

(2) The Registrar may require the applicant for the grant or renewal of a licence or the holder of a licence that is to be varied or replaced—

- (a) to attend at a specified place for the purpose of having his or her photograph taken; or
- (b) to supply the Registrar with one or more photographs of the applicant or holder of the licence specified by the Registrar.

(3) Where an application is made for the grant, renewal, variation or replacement of a licence and—

- (a) the applicant refuses or fails to comply with a requirement under subsection (2); or
- (b) a photograph taken or supplied under subsection (2) is not suitable, in the Registrar's opinion, for inclusion in a licence,

the Registrar may suspend his or her consideration of the application until the applicant complies with the requirement or a suitable photograph is taken or supplied.

(4) Where the Registrar varies a licence on his or her own initiative and the holder of the licence refuses or fails to comply with a requirement under subsection (2)(a), the Registrar may suspend or cancel the licence.

(5) Where the Registrar is prepared to grant, renew vary or replace a licence but the new licence cannot be issued immediately, the Registrar may issue an interim licence that does not include a photograph of the applicant or holder of the licence.

(6) An interim licence does not come into force until the prescribed application fee has been paid and a receipt for the fee is printed on the licence and the licence remains in force for 28 days or until a licence that includes a photograph is issued to the applicant whichever first occurs.

**Amendment of s. 20—Cancellation, variation and suspension of licence**

**20.** Section 20 of the principal Act is amended—

(a) by inserting the following subsections after subsection (1):

(1a) Where the Registrar is satisfied that—

- (a) it would be contrary to the public interest to permit the holder of a firearms licence to continue to possess and use firearms; or
- (b) the holder of a firearms licence can no longer use any firearm for one or more of the purposes endorsed on his or her licence; or
- (c) a class of firearms to which the licence applies can no longer be used by the holder of the licence in accordance with the conditions of the licence,

the Registrar may with the agreement of the consultative committee and after giving the holder of the licence at least 14 days written notice—

- (d) where paragraph (a) applies—cancel the licence; or
- (e) where paragraph (b) applies—vary the licence by removing the relevant purpose or purposes from the licence; or
- (f) where paragraph (c) applies—vary the licence so that it no longer authorises the possession and use of that class of firearms.

(1b) The cancellation or variation of a licence under subsection (1a) will be effected by written notice served—

- (a) in the case of cancellation—personally on the holder of the licence;
- (b) in the case of variation—personally or by certified mail on the holder of the licence.

(b) by striking out subsection (3) and substituting the following subsection:

(3) A notice served on the holder of a licence cancelling, varying or suspending the licence under this section must set out the Registrar's reasons for the cancellation, variation or suspension.;

(c) by inserting the following subsections after subsection (4):

(5) Where a firearms licence held by a person—

- (a) has been cancelled or suspended and—
  - (i) the person was a member of a recognised firearms club; or
  - (ii) the licence authorised the person to use a firearm in the course of his or her employment; or
- (b) has been varied and, as a result, the person is no longer entitled to use a firearm—
  - (i) as a member of a recognised firearms club; or
  - (ii) in the course of his or her employment,

the Registrar may, if he or she has complied with subsection (6), inform the club or the person's employer (or both) that the licence has been cancelled, suspended or varied.

(6) The Registrar must serve notice on the holder or former holder of a licence that he or she intends to inform that person's club or employer (or both) of the cancellation, suspension or variation of the licence.

(7) The Registrar is not subject to any civil or criminal liability in respect of action taken by the Registrar under subsection (5).

#### **Substitution of s. 20A**

21. Section 20A of the principal Act is repealed and the following section is substituted:

#### **Reporting obligations of certain persons and clubs**

20A. (1) Where a prescribed person has reasonable cause to believe that—

- (a) a person whom he or she has seen in his or her professional capacity is suffering from a physical or mental illness, disability or deficiency that is likely to make the possession of a firearm by the person unsafe for the person or any other person; and
- (b) that person holds or intends applying for a firearms licence or possesses or has the intention of possessing a firearm,

the prescribed person has a duty to inform the Registrar in writing of the person's name and address, the nature of the illness, disability or deficiency and the reason why, in the opinion of the prescribed person, it is or would be unsafe for the person to have possession of a firearm.

(2) Where a recognised firearms club has reasonable cause to believe that a member of the club is suffering from a physical or mental illness, disability or deficiency that is likely to make the possession of a firearm by the member unsafe for the member or any other person, the club has a duty to inform the Registrar in writing of the member's name and address and the reason why, in the opinion of the club, it is unsafe for the member to have possession of a firearm.

(3) A prescribed person and a club must comply with this section as soon as practicable after first forming the relevant belief.

(4) Compliance by a prescribed person or a club, or by a person on behalf of a prescribed person or a club, with this section does not attract civil or criminal liability.

(5) In this section—

"prescribed person" means a medical practitioner or a person of any other class prescribed by regulation for the purposes of this definition.

**Amendment of s. 21—Breach of conditions, etc.**

22. Section 21 of the principal Act is amended by inserting after its present contents "Maximum penalty: where the condition relates to a prescribed firearm or a class C, D or H firearm—\$10 000 or imprisonment for two years

in any other case—\$5 000 or imprisonment for one year.

**Amendment of s. 21A—Notice of change of address**

23. Section 21A of the principal Act is amended by inserting after its present contents "Maximum penalty: \$2 500".

**Amendment of s. 21AB—Return of licence to Registrar**

24. Section 21AB of the principal Act is amended by inserting the following subsection after subsection (2):

(3) The maximum penalty for an offence against this section is \$5 000.

**Amendment of s. 21B—Acquisition of ammunition**

25. Section 21B of the principal Act is amended—

(a) by inserting after "firearms licence" in subsection (1) (a) "(not being a collector's licence)";

(b) by inserting the following subsection after subsection (2):

(2a) In proceedings for an offence against subsection (2) the onus is on the defendant to establish that he or she held the licence or permit required by subsection (1) when the ammunition was acquired.;

(c) by inserting "(other than a collector's licence)" after "firearms licence" in subsection (5)(a);

(d) by striking out subsection (7) and substituting the following subsections:

(7) In proceedings for an offence against this section the onus is on the defendant to prove that he or she was entitled to purchase, accept, sell or supply the ammunition by virtue of subsection (6).

(8) The maximum penalty for an offence against this section is \$10 000 or imprisonment for two years.

**Insertion of ss. 21BA and 21BB**

26. The following sections are inserted in Division 5 of Part 3 after section 21B of the principal Act:



**Cancellation or suspension of permit**

**21BA.** (1) If the Registrar is satisfied that the holder of a permit under this Division—

- (a) has contravened or failed to comply with a provision of this Act or a condition of the permit; or
- (b) is, for any reason, not a fit and proper person to hold the permit,

the Registrar may, with the agreement of the consultative committee, by notice in writing served personally or by certified mail on the holder of the permit, cancel the permit.

(2) The Registrar may, by notice in writing served personally or by certified mail on the holder of a permit, suspend the permit for a period not exceeding three months (or such longer period as is allowed in a particular case by the consultative committee) pending an investigation as to whether the permit should be cancelled under subsection (1).

(3) A notice served on the holder of a permit suspending or cancelling the permit under this section must set out the Registrar's reasons for the suspension or cancellation.

(4) The Registrar may, on his or her own initiative or on application by a person whose permit is suspended, revoke the suspension.

**Limit on quantity of ammunition**

**21BB.** (1) The Governor may, by regulation, limit the quantity of ammunition of any kind that a person, or a person of a particular class, may acquire during a specified period or may own or have in his or her possession at any one time.

(2) A person who acquires or owns or has possession of ammunition in contravention of a regulation under subsection (1) is guilty of an offence.

Maximum penalty: \$5 000.

**Repeal of s. 21C**

27. Section 21C of the principal Act is repealed.

**Amendment of s. 21D—Appeals**

28. Section 21D of the principal Act is amended—

- (a) by striking out from paragraph (a) of subsection (1) "or approving the purchase or sale" and substituting "the acquisition";
- (b) by inserting the following paragraph after paragraph (b) of subsection (1):
  - (ba) to vary a firearms licence by restricting the classes of firearms to which the licence relates or to vary or revoke a purpose endorsed on the licence;;
- (c) by inserting after "licence" in paragraph (c) of subsection (1) "or permit";
- (d) by inserting after "licence" in paragraph (ca) of subsection (1) "or permit";
- (e) by inserting the following paragraphs after paragraph (f) of subsection (1):

- (g) to refuse to approve the range of a recognised commercial range operator or to revoke such an approval; or
- (h) to impose conditions on an approval of the range of a recognised commercial range operator or to vary such conditions.

**Amendment of s. 22—Application of this Part**

29. Section 22 of the principal Act is amended—

(a) by inserting after "firearms" in paragraph (a) "pursuant to his or her licence";

(b) by striking out paragraph (c) and substituting the following paragraph:

- (c) a person in relation to a firearm that that person has possession of in his or her capacity as—
  - (i) the executor or administrator of a deceased estate; or
  - (ii) the administrator or manager of the estate of a person who is unable to manage his or her affairs; or
  - (iii) the donee of an enduring power of attorney during a period of legal incapacity suffered by the donor of the power; or
  - (iv) the Official Trustee or the registered trustee of a bankrupt estate;;

(c) by striking out "dangerous firearm" twice occurring in paragraph (ca) and substituting, in each case, "prescribed firearm".

**Amendment of s. 23—Duty to register firearms**

30. Section 23 of the principal act is amended by inserting after subsection (4) the following subsection:

(5) The maximum penalty for an offence against this section is as follows:

- (a) where the firearm is a prescribed firearm or a class C, D or H firearm—\$10 000 or imprisonment for two years;
- (b) where the firearm is any other kind of firearm—\$5 000 or imprisonment for one year.

**Amendment of s. 24—Registration of firearms**

31. Section 24 of the principal Act is amended by striking out subsection (2).

**Insertion of s. 24A**

32. The following section is inserted after section 24 of the principal Act:

**Identification of firearms**

24A. (1) Subject to this section, all firearms that are required to be registered under this Act must have stamped or engraved into part of the metal structure of the firearm a number, or a number preceded or followed by a letter or letters, for the purposes of identification.

(2) The identification must be on the outside surface of the firearm where it can be easily seen and must, if possible, be on the receiver of the firearm.

(3) At least four characters must comprise the number or the combination of numbers and letters.

(4) The characters must be at least two millimetres in height and must be stamped to form an indentation to a depth, or be engraved to a depth, of at least 0.5 millimetres.

(5) Where a firearm that is produced for registration does not comply with this section, the Registrar must allocate a number, or numbers and letters, to the firearm and the owner of the firearm must produce the firearm to a member of the police force within 14 days with the identification stamped or engraved on the firearm in accordance with this section.

Maximum penalty: where the firearm is a prescribed firearm or a class C, D or H firearm—\$10 000 or imprisonment for two years

where the firearm is any other kind of firearm—\$5 000 or imprisonment for one year.

(6) This section does not apply to a firearm of historical, archaeological or cultural value if—

(a) to stamp or engrave a number on the firearm would reduce its value; and

(b) the Registrar is satisfied that it can be identified in some other way.

(7) A person who defaces or alters the identifying characters of a firearm is guilty of an offence.

Maximum penalty: where the firearm is a prescribed firearm or a class C, D or H firearm—\$10 000 or imprisonment for two years

where the firearm is any other kind of firearm—\$5 000 or imprisonment for 1 year.

#### **Amendment of s. 25—Notice by owner of registered firearm**

33. Section 25 of the principal Act is amended—

(a) by striking out paragraph (a) of subsection (1);

(b) by inserting the following subsection after subsection (1):

(1a) Without limiting subsection (1)(b) an alteration to a firearm will be taken to affect the nature and performance of the firearm if, as a result of the alteration, the firearm becomes a firearm of a different class.;

(c) by inserting after the present contents of subsection (2) "Maximum penalty: \$5 000";

(d) by striking out "post" from subsection (4) and substituting "certified mail".

**Amendment of s. 26—Notice of change of address**

34. Section 26 of the principal Act is amended by inserting after its present contents "Maximum penalty: \$2 500".

**Insertion of s. 26BA**

35. The following section is inserted after section 26B of the principal Act:

**Recognised commercial range operators**

**26BA.** (1) If the Minister is satisfied that a commercial range operator conducts his or her affairs and activities in a responsible manner, the Minister must, on application by the operator for recognition, declare the operator to be a recognised commercial range operator by notice in the *Gazette*.

(2) If the Minister refuses an application for recognition, the Minister must provide the applicant with a written statement setting out the reasons for the refusal.

(3) If at any time the Minister is satisfied that a recognised commercial range operator has failed to comply with this Act or no longer conducts his or her affairs or activities in a responsible manner, the Minister may, by notice in the *Gazette*, revoke a declaration under subsection (1).

(4) Before revoking a declaration, the Minister must—

- (a) give the operator at least two months written notice of the proposed revocation setting out the Minister's reasons for the proposed revocation; and
- (b) give the operator a reasonable opportunity to make written or oral submissions to the Minister in relation to the proposed revocation.

**Amendment of s. 26C—Approval of grounds of recognised firearms clubs or paint-ball operator**

36. Section 26C of the principal Act is amended by inserting after "varying conditions of an approval" in subsection (8) "on his or her own initiative".

**Insertion of s. 26D**

37. The following section is inserted after section 26C of the principal Act:

**Approval of range of recognised commercial range operator**

**26D.** (1) If any activity involving the use of a firearm takes place on the range of a recognised commercial range operator and the range is not approved under this section in relation to that activity, recognition of the operator under this Part is by force of this section revoked.

(2) If the Registrar is satisfied that the range of a recognised commercial range operator is suitable for the purpose of the activities of the operator, the Registrar may, on the application of the operator, approve the range for use in connection with those activities.

(3) An approval under this section is subject to—

- (a) any conditions prescribed by the regulations; and
- (b) any conditions imposed by the Registrar (which may include a condition limiting the periods during which the range may be used by the operator).

(4) The Registrar may impose conditions pursuant to subsection (3) when he or she approves the range under this section or at any later time.

(5) If the Registrar refuses an application for approval, the Registrar must provide the applicant with a written statement setting out the reasons for the refusal.

(6) If at any time the Registrar is satisfied that a range approved under this section would not be approved if application for approval were made at that time or that a condition of the approval has been contravened, the Registrar may, by notice to the operator, revoke the approval.

(7) The Registrar may, on his or her own initiative or on application by a recognised commercial range operator, vary or revoke conditions of an approval.

(8) Before revoking an approval or varying conditions of an approval on his or her own initiative, the Registrar must—

(a) give the operator at least two months written notice of the proposed revocation or variation setting out the Registrar's reasons for the proposed revocation or variation; and

(b) give the operator a reasonable opportunity to make written or oral submissions to the Registrar in relation to the proposed revocation or variation.

(9) The Registrar, or a person authorised by the Registrar, may, for the purposes of determining an application for approval under this section, reviewing such an approval or determining whether conditions of approval are being or have been contravened, enter and inspect the range of a recognised commercial range operator at any reasonable time.

#### **Amendment of s. 28—False information**

38. Section 28 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) A person who provides information to the Registrar or any other person under this Act that is false or misleading in a material particular is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for two years.;

(b) by striking out from subsection (2) "statement" and substituting "information".

#### **Repeal of s. 29 and insertion of ss. 29, 29A, 29B and 29C**

39. Section 29 of the principal Act is repealed and the following sections are substituted:

##### **Handling firearms when under the influence**

29. (1) A person who handles a firearm while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the firearm is guilty of an offence if—

(a) a round is in the breech or chamber or the magazine of the firearm; or

- (b) the person is handling or is carrying with him or her ammunition that can be used in the firearm.

Maximum penalty: \$10 000 or imprisonment for two years.

(2) A person who transfers possession of a firearm to a person who is so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the firearm is guilty of an offence if—

- (a) a round is in the breech or chamber or the magazine of the firearm; or
- (b) the person to whom possession of the firearm has been transferred is handling or is carrying with him or her ammunition that can be used in the firearm.

Maximum penalty: \$10 000 or imprisonment for two years.

(3) Without limiting subsection (1) or (2), a person is incapable of exercising effective control of a firearm if, owing to the influence of intoxicating liquor or a drug, the use of any mental or physical faculty of that person is lost or appreciably impaired.

#### **Possession of silencer and other parts of firearms**

**29A.** (1) A person who has possession of a silencer is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for two years.

(2) A person who has possession of—

- (a) a mechanism or other fitting that can be fitted to a firearm to convert it to an automatic firearm; or
- (b) a mechanism or other fitting that, when fitted to a suitable firearm, will enable the firearm to fire grenades or other explosive projectiles,

is guilty of an offence unless he or she is authorised to have possession of the mechanism or other fitting by a firearms licence.

Maximum penalty: \$10 000 or imprisonment for two years.

(3) Subsection (2) does not apply to a licensed dealer in firearms in the normal course of carrying on the business of dealing in firearms pursuant to his or her licence.

#### **Possession of the receiver of a firearm**

**29B.** (1) A person who has possession of the receiver of a prescribed firearm or a class C or class D firearm is guilty of an offence unless the receiver comprises part of a registered firearm (whether assembled or dismantled) that is lawfully in his or her possession.

Maximum penalty: \$10 000 or imprisonment for two years.

(2) A person who has possession of the receiver of any other kind of firearm is guilty of an offence unless—

- (a) the receiver comprises part of a registered firearm (whether assembled or dismantled) that is lawfully in his or her possession; or
- (b) that person was the owner of the receiver immediately before the commencement of the *Firearms (Miscellaneous) Amendment Act 1996*.

Maximum penalty: \$5 000 or imprisonment for one year.

(3) This section does not apply to—

- (a) a licensed dealer in firearms in the normal course of carrying on the business of dealing in firearms pursuant to his or her licence; or
- (b) a person in the normal course of the business of carrying or storing goods.

#### **Duty to carry licence**

**29C.** (1) A person who is carrying a firearm on or about his or her person or who has a firearm in his or her immediate physical control must carry with him or her a firearms licence authorising his or her possession of the firearm.

Maximum penalty: \$5 000.

(2) Subsection (1) does not apply to a licensed dealer in firearms in the normal course of carrying on the business of dealing in firearms pursuant to his or her licence.

#### **Amendment of s. 30—Information to be given to police officer**

**40.** Section 30 of the principal Act is amended—

(a) by inserting the following subsection after subsection (1):

(1a) A member of the police force may require the owner of a firearm to answer questions relating to the whereabouts of the firearm or relating to the person or persons who have, or have had, possession, of the firearm.;

(b) by striking out "subsection (1)" from subsection (2) and substituting "this section";

(c) by striking out subsection (3) and substituting the following subsections:

(3) A person who fails or refuses without reasonable excuse to—

- (a) comply with a requirement under this section; or
- (b) answer a question put by a member of the police force to the best of his or her knowledge, information and belief,

is guilty of an offence.

Maximum penalty: \$5 000 or imprisonment for one year.

(4) A person may not decline on grounds of self-incrimination to answer a question put by a member of the police force under subsection (1a) but the answer to any such question is not admissible except in proceedings for an offence against this section.

**Amendment of s. 31—Production of licence and certificate of registration**

41. Section 31 of the principal Act is amended—

- (a) by inserting "or a warden under the *National Parks and Wildlife Act 1972*" after "member of the police force" first occurring in subsection (1);
- (b) by inserting "or warden" after "member of the police force" first occurring in paragraph (a) of subsection (1);
- (c) by inserting after the present contents of subsection (1) (as amended by this section) "Maximum penalty: \$5 000";
- (d) by inserting the following subsection after subsection (2):

(3) A warden under the *National Parks and Wildlife Act 1972* can only act under subsection (1) when the person in possession of a firearm is on a reserve constituted under that Act.

**Amendment of s. 31A—Period of grace on cancellation, suspension, etc., of licence**

42. Section 31A of the principal Act is amended—

- (a) by striking out from subsection (1) "Where" and substituting "Subject to this Act, where";
- (b) by striking out from paragraph (b) of subsection (1) "grant or";
- (c) by striking out paragraph (c) of subsection (1);
- (d) by striking out from subsection (1) "or applied for the licence or permit" and substituting ", or applied for renewal of, the licence";
- (e) by inserting after the present contents of subsection (3):

Maximum penalty: where the firearm is a prescribed firearm or a class C, D or H firearm—\$10 000 or imprisonment for two years

where the firearm is any other kind of firearm—\$5 000 or imprisonment for one year.

- (f) by inserting after the present contents of subsection (4)

Maximum penalty: \$5 000.

**Amendment of s. 32—Power to seize firearms, etc.**

43. Section 32 of the principal Act is amended—

- (a) by striking out paragraph (cb) of subsection (1) and substituting the following paragraph:

(cb) a person has possession of a firearm in contravention of an order of a court whether the order was made in this State or in any other State or Territory of the Commonwealth;;



(b) by inserting after paragraph (d) of subsection (1) the following word and paragraph:

or

(e) a firearm (not being a prescribed firearm)—

- (i) is particularly dangerous by reason of its design, construction or any other factor; or
- (ii) can easily be converted to an automatic firearm; or
- (iii) is, by reason of its size or any other factor, more readily concealed than other firearms of the same class and is for that, or any other reason, particularly suited to unlawful use,;

(c) by inserting after subsection (1) the following subsections:

(1aa) If a member of the police force suspects on reasonable grounds that a person has possession of a firearm, the receiver of a firearm or any other mechanism or fitting in contravention of this Act, the member may seize the firearm, receiver, mechanism or fitting.

(1ab) If a member of the police force suspects on reasonable grounds that a person has possession of ammunition that has been acquired or is held in contravention of this Act the member may seize the ammunition.;

(d) by striking out paragraph (b) of subsection (1a) and substituting the following paragraph:

(b) a person has possession of a licence in contravention of an order of a court;;

(e) by inserting the following subsection after subsection (2):

(2a) If a member of the police force suspects on reasonable grounds that a person who has possession of a firearm, or the receiver of a firearm, has failed to keep the firearm or receiver secured as required by this Act, the member may inspect the firearm or receiver and the means (if any) by which it has been secured.;

(f) by striking out subsection (3) and substituting the following subsection:

(3) A member of the police force may break into, enter and search any premises in which the member suspects on reasonable grounds—

- (a) there is a firearm, licence, receiver, mechanism, fitting or ammunition liable to seizure under this section; or
- (b) a firearm or the receiver of a firearm is kept contrary to the security requirements of this Act.;

(g) by striking out from subsections (2) and (4) "or licence" wherever occurring and substituting, in each case, ", licence, receiver, mechanism, fitting or ammunition".

**Amendment of s. 33—Obstruction of police officer**

44. Section 33 of the principal Act is amended by inserting after its present contents "Maximum penalty—\$5 000".

**Substitution of s. 34**

45. Section 34 of the principal Act is repealed and the following section is substituted:

**Forfeiture of firearms, etc.**

34. (1) Where a firearm, receiver, mechanism, fitting or ammunition is seized under this Part, the Registrar may institute proceedings for forfeiture of the firearm, receiver, mechanism, fitting or ammunition before a court of summary jurisdiction.

(2) If, in proceedings under subsection (1), a court is satisfied that—

- (a) the owner of the firearm, receiver, mechanism, fitting or ammunition is not authorised by or under this Act to be in possession of the firearm, receiver, mechanism, fitting or ammunition; or
- (b) that the return of the firearm, receiver, mechanism, fitting or ammunition to its owner would be likely to result in undue danger to life or property; or
- (c) that the whereabouts of the owner of the firearm, receiver, mechanism, fitting or ammunition has not been, and is not likely to be, ascertained by reasonable inquiry; or
- (d) the owner of the firearm, receiver, mechanism, fitting or ammunition has failed to comply with the requirements of this Act in relation to the safe storage of the firearm, receiver, mechanism, fitting or ammunition; or
- (e) in the case of a firearm—the firearm can easily be converted to an automatic firearm,

it may order that the firearm, receiver, mechanism, fitting or ammunition be forfeited to the Crown, or make such other order for the disposal of the firearm, receiver, mechanism, fitting or ammunition as it thinks appropriate.

(3) A firearm, receiver, mechanism, fitting or ammunition seized under this Part may be held under this subsection—

- (a) until—
  - (i) proceedings are instituted for an order under this section or for an offence in relation to the firearm, receiver, mechanism, fitting or ammunition against the owner of the firearm, receiver, mechanism, fitting or ammunition or a decision is made not to institute such proceedings; or
  - (ii) the expiration of 12 months after the firearm, receiver, mechanism, fitting or ammunition was seized,

whichever first occurs;

- (b) if proceedings of either kind referred to in paragraph (a)(i) are instituted within 12 months after the firearm, receiver, mechanism, fitting or ammunition was seized—until those proceedings are finally determined.

**Amendment of s. 34A—Forfeiture of firearms by court**

46. Section 34A of the principal Act is amended—

- (a) by inserting after "firearm" first occurring in subsection (1) ", receiver, mechanism, fitting or ammunition";
- (b) by striking out paragraph (a) of subsection (1) and substituting the following paragraph:
- (a) where the firearm, receiver, mechanism, fitting or ammunition was owned by the convicted person—that the firearm, receiver, mechanism, fitting or ammunition be forfeited to the Crown or be disposed of in such other manner as the court directs;;
- (c) by inserting after "firearm" wherever occurring in subsection (2) ", receiver, mechanism, fitting or ammunition.

**Substitution of s. 35**

47. Section 35 of the principal Act is repealed and the following section is substituted:

**Disposal of forfeited firearms, etc.**

35. (1) The Registrar may sell or otherwise dispose of a firearm, receiver, mechanism, fitting or ammunition forfeited to the Crown under this or any other Act.

(2) Subject to the other provisions of this Act or the regulations, the Registrar may sell or otherwise dispose of a firearm, receiver, mechanism, fitting or ammunition surrendered to the Registrar.

(3) Where a court makes an order confiscating a firearm to the custody of the Registrar but does not make an order as to the manner in which the firearm should be disposed of or dealt with, the Registrar must, subject to a further order of the court or the order of any other court, keep the firearm for one year and must then sell or otherwise dispose of it as he or she thinks fit.

(4) The proceeds of the sale or disposal of a firearm under this section must be paid into the Consolidated Account.

**Insertion of ss. 35A, 35B, 35C and 35D**

48. The following sections are inserted after section 35 of the principal Act:

**Transporting of firearms**

35A. (1) Subject to any exclusions prescribed by regulation, a person who carries on the business of carrying goods must not, in the course of carrying on that business, carry a firearm and ammunition (whether the ammunition is suitable for use in the firearm or not), or cause a firearm and ammunition to be carried, by the same vehicle, vessel or aircraft.

Maximum penalty: \$5 000.

(2) A person (whether a person who carries on the business of carrying goods or not) must comply with the requirements prescribed by regulation when transporting a class C, D or H firearm or a prescribed firearm.

Maximum penalty: \$5 000.

**Advertising firearms for sale**

**35B.** A person (other than a licensed dealer in firearms) who advertises a firearm for sale must include in the advertisement a statement that transfer of possession of the firearm on sale must take place in the presence of, and be witnessed by, a licensed dealer in firearms, an authorised officer of a recognised firearms club or a member of the police force in accordance with section 15B(9).

Maximum penalty: \$2 500.

**Dealing with firearms by executors, etc.**

**35C.** Where a person is the owner of a firearm as—

- (a) the executor or administrator of a deceased estate; or
- (b) the administrator or manager of the estate of a person who is unable to manage his or her affairs; or
- (c) the donee of an enduring power of attorney; or
- (d) the Official Trustee or the registered trustee of a bankrupt estate,

the owner must, subject to any law to the contrary—

- (e) sell or give the firearm to another person in accordance with this Act as soon as practicable; or
- (f) surrender the firearm to the Registrar.

Maximum penalty: \$5 000.

**Notice to Registrar when storing firearms**

**35D.** A person who has given a firearm to a person who carries on the business of storing firearms to keep the firearm in storage for more than 14 days must, within 14 days after the period of storage commences, provide the Registrar with the following information in writing:

- (a) the name and address of the person to whom the firearm has been given; and
- (b) the place at which the firearm will be stored.

Maximum penalty: \$5 000.

**Amendment of s. 36—Evidentiary provisions**

**49.** Section 36 of the principal Act is amended—

- (a) by striking out paragraphs (d) and (e) and substituting the following paragraphs:

- (d) that a person or body was, or was not, a firearms club, paint-ball operator or commercial range operator; or
  - (e) that a firearms club, paint-ball operator or commercial range operator was, or was not, a recognised firearms club, recognised paint-ball operator or recognised commercial range operator;;
- (b) by inserting the following paragraph and word after paragraph (f):
- (fa) that the range of a recognised commercial range operator was, or was not, approved under this Act; or;
- (c) by inserting the following word and paragraph after paragraph (g):
- or
- (h) that information required to be provided under this Act to the Registrar has, or has not, been provided.

**Insertion of ss. 36A and 36B**

50. The following sections are inserted after section 36 of the principal Act:

**General defence**

36A. It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

**Service of notices**

36B. (1) A notice or other document required or authorised to be given to or served on a person under this Act may be given or served as follows:

- (a) by personal service on the person or the agent of the person;
- (b) by leaving it for the person at his or her place of residence or, in the case of a company, at the company's registered office, with someone apparently over the age of 16 years;
- (c) by serving it by certified mail on the person or an agent of the person at his or her last known address.

(2) Service by post is effected by addressing, prepaying and posting the notice or document and service will be taken to have occurred when the notice or document, or notice that the notice or document is available for collection, would be delivered in the ordinary course of post.

**Substitution of s. 37**

51. Section 37 of the principal Act is repealed and the following section is substituted:

**General amnesty**

37. (1) The Registrar may, with the approval of the Minister, from time to time declare a general amnesty from one or more of the provisions of this Act.

(2) An amnesty—

- (a) must be declared by notice published in the *Gazette* and in a newspaper circulating generally throughout the State; and
- (b) applies in relation to the provision or provisions of this Act specified in the notice for such period as is specified in the notice; and
- (c) applies for the benefit of all members of the class or classes of persons affected by the provision or provisions to which the amnesty relates; and
- (d) is subject to the terms and conditions (if any) set out in the notice.

(3) The Registrar may, with the approval of the Minister, vary or revoke the declaration of an amnesty under subsection (1) by notice published in the *Gazette* and in a newspaper circulating generally throughout the State.

**Amendment of s. 38—Commencement of proceedings for offences**

52. Section 38 of the principal Act is amended by striking out subsection (1).

**Amendment of s. 39—Regulations**

53. Section 39 of the principal Act is amended—

(a) by striking out paragraph (ab) of subsection (2) and substituting the following paragraph:

(ab) amend or replace the definition of class A, B, C, D or H firearms in section 5;

(b) by striking out "while not in use" from paragraph (ad) of subsection (2);

(c) by inserting the following paragraph after paragraph (ad) of subsection (2):

(ada) provide or empower the Registrar to determine requirements for the safe custody of the receivers of firearms;;

(d) by inserting the following subparagraph after subparagraph (ia) of paragraph (af) of subsection (2):

(ib) recognised commercial range operators;;

(e) by striking out "a division 8 fine" from paragraph (g) of subsection (2) and substituting "a fine of \$2 500".

(f) by inserting the following subsection after subsection (2):

(3) A regulation made under this section or any other provision of this Act may confer discretionary powers.

**Substitution of schedule**

54. The schedule of the principal Act is repealed and the following schedule is substituted:

**SCHEDULE**  
*Transitional Provisions*

**Interpretation**

1. (1) In this schedule unless the contrary intention appears—

"amending Act" means the *Firearms (Miscellaneous) Amendment Act 1996*;

"the application date" means the application date fixed by proclamation for the purposes of this definition;

"licensed dealer" in firearms means a person who was immediately before the commencement of the amending Act the holder of a dealer's licence granted under this Act;

"new licence" means a firearms licence granted by the Registrar pursuant to an application made on or before the application date by the holder of an old licence;

"old licence" means a firearms licence in force immediately before the commencement of the amending Act;

"the surrender date" means the surrender date fixed by proclamation for the purposes of this definition;

"unexpired term" of an old licence means the period commencing on the date on which a new licence is granted under this Act to the holder of the old licence and the date on which the old licence would have expired if the amending Act had not been enacted.

(2) The Governor may by proclamation fix the application date and the surrender date and may, by subsequent proclamation or proclamations, vary either of those dates to a later date.

**Firearms licences**

2. (1) An old licence remains in force—

(a) until midnight at the end of the day that is the application date; or

(b) if the holder of the licence had applied (and paid the prescribed fee) for a new licence on or after the commencement of the amending Act and on or before the application date—until the new licence is granted or the surrender date whichever first occurs.

(2) Subject to this schedule, an old licence that remains in force under subclause (1) authorises the possession and use of firearms as though the amending Act had not been enacted.

**Application for new licence**

3. (1) Subject to subclause (2), the holder of an old licence who applies for a new licence on or after the commencement of the amending Act and on or before the application date may elect that the term of the new licence will be—

- (a) equal to the unexpired term of the old licence; or
  - (b) equal to one year plus the unexpired term of the old licence; or
  - (c) equal to three years plus the unexpired term of the old licence.
- (2) The term of a new licence authorising the possession and use of—
- (a) class A, B or C firearms must not exceed five years;
  - (b) class D or H firearms or prescribed firearms must not exceed one year.

**Class C and D firearms**

4. (1) The holder of an old licence—

- (a) who was authorised by that licence immediately before the commencement of the amending Act to have possession of firearms now defined as class C or D firearms; and
- (b) who applied for a new licence on or before the application date,

is entitled to have possession of, but (subject to subclause (2), (3) or (4)) not to use, a class C or D firearm until the surrender date if he or she was the owner of the firearm immediately before the commencement of the amending Act.

(2) A person referred to in subclause (1) who was the owner of a firearm now defined as a class C firearm immediately before the commencement of the amending Act may use the firearm until the application date for the purposes of the business of primary production (if any) carried on by that person.

(3) A person referred to in subclause (1) who was the owner of a firearm now defined as a class C or D firearm immediately before the commencement of the amending Act may use the firearm until the application date for a purpose or purposes prescribed by regulation if the requirements prescribed by the regulations have been satisfied.

(4) A person referred to in subclause (1) who was the owner of a firearm now defined as a class C or D firearm immediately before the commencement of the amending Act may, if his or her livelihood was, immediately before the commencement of that Act, and continues to be wholly or partly professional shooting, use the firearm until the application date for the purposes of destroying animals in the course of professional shooting.

(5) An old licence or a new licence that authorises the holder to have possession of and use firearms now defined as class C firearms on the ground that he or she carries on the business of primary production only authorises the possession and use of one class C rifle and one class C shotgun.

(6) The Registrar may refuse to grant a new licence to an applicant—

- (a) if the licence would authorise possession and use of a class C or D firearm that is in the applicant's possession; and
- (b) if the applicant were proposing to acquire that firearm, the Registrar would not be prepared to grant a permit to the applicant to acquire it.

**Applications before the amending Act**

5. An application for a firearms licence or a permit to purchase a firearm made before the commencement of the amending Act lapses on the commencement of that Act.



**Dealer's licences**

6. A dealer's licence in force immediately before the commencement of the amending Act which has not been endorsed by the Registrar to authorise dealing in class C or D firearms and in the receivers of those classes of firearms, authorises the dealer to retain possession of class C or D firearms and the receivers of those classes of firearms that were lawfully in his or her possession in the normal course of dealing in firearms immediately before the commencement of the amending Act until the surrender date.

**Possession of receivers and other fittings**

7. (1) A person who immediately before the commencement of the amending Act owned and was lawfully in possession of the receiver of a class C or D firearm that did not comprise part of a registered firearm (whether assembled or dismantled) may retain possession of the receiver if, on or before the surrender date, it is incorporated as part of a registered firearm that the person is entitled to possess and use under this Act.

(2) A person who immediately before the commencement of the amending Act was lawfully in possession of—

- (a) a mechanism or other fitting that could be fitted to a firearm to convert it to an automatic firearm; or
- (b) a mechanism or fitting that when fitted to a suitable firearm, would enable the firearm to fire grenades or other explosive projectiles,

may retain possession of the mechanism or fitting until the surrender date.

**Regulations may provide for compensation**

8. (1) The regulations may provide for compensation to be paid—

- (a) to licensed dealers in firearms or ammunition affected by the enactment of the amending Act; and
- (b) to persons who own class C or D firearms or parts, mechanisms, fittings accessories or ammunition for class C or D firearms.

(2) No proceeding for judicial review or for a declaration, injunction, writ, order or other remedy may be brought to challenge or question—

- (a) the amount of compensation payable under regulations made under subclause (1) or a determination of, or a determination or decision that affects, the amount of compensation payable under regulations made under that subclause; or
- (b) proceedings or procedures under regulations made under subclause (1); or
- (c) an act, omission, matter or thing incidental or relating to the operation of regulations under subclause (1).

(3) Compensation payable pursuant to a regulation referred to in subclause (1) must be paid from the Consolidated Account which is appropriated by this subclause to the necessary extent.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor