

2008

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**FIREARMS
AMENDMENT BILL 2008**

EXPLANATORY STATEMENT

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Firearms Amendment Bill 2008

Outline

In 2003, following the Port Arthur massacre in 1996 and the Monash University shooting in 2002, the ACT Government agreed to amend the *Firearms Act 1996* in two stages. The first stage of amendments implemented the agreement reached by the Australasian Police Ministers' Council (APMC) in relation to handgun reforms with the enactment of the *Firearms (Prohibited Pistols) Amendment Act 2003*.

The second stage of amendments contained in this Bill seeks to implement the resolutions contained in the National Firearms Trafficking Policy Agreement, as they relate to the ACT. Recommendations of two reviews of firearms law and procedures carried out by the Firearms Consultative Committee and the Department of Justice and Community Safety respectively, have also informed a number of the amendments contained in this Bill.

A national review of State and Commonwealth firearms legislation conducted by the Australian Crime Commission revealed that jurisdictional inconsistencies in firearms regulation might be exploited by criminal syndicates. Furthermore, recent police operations in the ACT have highlighted weaknesses in our current firearms and prohibited weapons legislation. In particular, inadequate penalties fail to reflect the seriousness of offences and prescriptive schedules of prohibited items restrict charging of offences and allow dangerous weapons to remain in the community.

This Bill seeks to address these areas, as well as to modernise, streamline and simplify the legislation dealing with firearm ownership in the ACT.

The Bill streamlines and simplifies the firearms licensing provisions to add reliability to application process with the adoption of standard mandatory and discretionary criteria.

In November 2006, the Government publicly committed to reforming firearms legislation to implement a long-term solution to the issues surrounding the paintball industry in the ACT. Due to the increasing popularity of paintball activities, and the nationally coordinated competition circuit such as the Super Sevens, there is growing community pressure to decriminalise the private ownership of paintball markers and allow people to obtain licences to own and store paintball markers.

This Bill seeks to regulate the paintball industry in a way that provides enthusiasts with a proven commitment to participation in paintball tournaments, with a means of purchasing, owning and storing their own paintball marker, but will not permit children, or people who would not otherwise be entitled to apply for a firearms licence, to privately own paintball

markers. Paintball markers will be classified as firearms, thereby applying the existing offence provisions in relation to firearms to illegal possession or use of paintball markers.

This new regime, however, will not prevent occasional paintball players from accessing and using paintball markers at approved paintball ranges for recreational games of paintball, in the same way as occasional players currently use existing paintball ranges.

Firearms Amendment Bill 2008

Detail

PART 1: PRELIMINARY

Clause 1 — Name of Act

This is a technical clause that names the Act. The name of the Act would be the *Firearms Amendment Act 2008*.

Clause 2 — Commencement

The Act commences on the day fixed by the Minister by written notice.

PART 2: FIREARMS ACT 1996

Clause 3 — Legislation amended — pt 2

This clause identifies the Act to be amended, namely the *Firearms Act 1996*.

Clause 4 — New sections 2 to 2B and part 1A heading

Clause 4 inserts section 2 explaining that the definitions and signpost definitions would now be contained in a dictionary at the end of the Act. This is a common form of modern legislative drafting and makes all the definitions easily accessible. A later clause will relocate all of the definitions currently contained in section 4 to the dictionary at the end of the Act.

Section 2A explains that notes included in the Act for added explanation would not be part of the Act. Notes are a common addition in legislative drafting and aid in the interpretation of the legislation.

Section 2B inserts a new section into the Act to apply the Criminal Code to the offences in the Act that have not been redrafted in this Bill. Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies.

PART 1A: IMPORTANT CONCEPTS

Clause 5 — Definitions for Act

Section 4, definitions of *acquire, ammunition, approved shooting range, authorised instructor, authorised member, chief police officer, composite entity, dealer’s licence, employee, endorsed, firearm, firearm part, firearms dealer, firearms prohibition order, genuine reason, occupier, possession, principal, prohibited firearm and prohibited pistol*

Clause 5 omits the current definitions of acquire, ammunition, approved shooting range, authorised instructor, authorised member, chief police officer, composite entity, dealer’s licence, endorsed, firearm, firearm part, firearms dealer, firearms prohibition order, genuine reason, occupier, possession, principal, prohibited firearm and prohibited pistol from the definitions section, section 4. It is intended that important definitions or key concepts in the Act will be included in this new part, Important Concepts, whilst all other definitions will be relocated to the dictionary at the end of the Act.

Clause 6 — Section 4, definitions (as amended)

As stated previously, this clause relocates the definitions contained in section 4 (as amended) to the dictionary at the end of the Act.

Clause 7 — Section 4, remainder

Clause 7 omits the remaining definitions from the Act.

Clause 8 — Sections 4A to 6B

Clause 8 contains the definitions of the key concepts of the Act, as well as the important section dealing with the suitability test to be applied when a firearms licence is applied for or when the registrar is considering the suspension or cancellation of a licence. This clause also deals with people who are exempt from the application of the Act or parts of the Act, and the new scheme to be introduced to deal with unregulated firearms.

Section 4A states the proposed definition of a *firearm*. This definition was previously contained in two sections, sections 4 and 4A. In an effort to simplify the Act, these definitions have been merged into one section, section 4A, and drafted in a clearer format. Subsections (1)(b)(iv) and (2)(b) have been added to allow an item that has been declared by the registrar to be a firearm according to proposed section 5 to be defined as a firearm; and likewise exclude an item that has been declared not to be a firearm under section 5 from the definition. The operation of section 5 is explained further in Part 1C. Subsection (1)(b)(iii) adds paintball marker to the definition of firearm. This section is part of the new scheme contained within the Act to regulate paintball. Paintball markers will no longer classified as ‘prohibited firearms’, but are now classified as a ‘firearm’ according to the Act.

Section 4AB states the proposed definition of a *prohibited firearm*. This definition was previously contained in two sections, sections 4 and 4A. In an

effort to simplify the Act, these definitions have been merged into one section, section 4AB, and drafted in a clearer format. The definition of prohibited firearm now also includes prohibited pistols; there will no longer be a distinction between prohibited firearms and prohibited pistols.

Subsections (1)(b) and (2) have been added to allow an item that has been declared by the registrar to be a prohibited firearm according to the proposed section 5 to be defined as a prohibited firearm; and likewise exclude an item that has been declared not to be a prohibited firearm under section 5 from the definition. The operation of section 5 is explained further in Part 1C. Subsection (3) of the proposed section was previously contained in section 5 of the Act, but is better placed and more relevant in this new section. This subsection allows the prohibited firearms schedule to be amended by regulation.

Section 4AC states the proposed definition for *acquire*. The definition of acquire was previously contained in section 4 of the Act. 'Acquire' is an important concept of the Act as it is intended that each and every exchange or change in possession of a firearm will be recorded. This will enable tracking of firearms and minimise opportunities for illegal diversion. However, there will be circumstances of temporary possession, which are exceptions to the application of the definition. Therefore, a dealer will not acquire a firearm if possession of a firearm is taken to: repair it or store it; or if licensees loan firearms of the same category or calibre to each other during an approved shooting competition; or if a person is receiving instruction from an authorised instructor; or for the purposes of shooting at a shooting gallery, show, fair or amusement centre. Subsection (2)(d) also specifically classifies people using paintball markers at approved paintball ranges as having temporary possession of a paintball marker. This subsection allows unlicensed people to participate in paintball activities at approved paintball ranges.

Section 4AD states the proposed definition of *dispose*. This is a new definition to be included in the Act. 'Dispose' is an important concept of the Act as it is intended that each and every exchange or change in possession of a firearm will be recorded. This will enable tracking of firearms and minimise opportunities for illegal diversion. Dispose is a broad term intended to cover any time a firearm changes hands and possession is transferred to another person, whether or not money is exchanged at that time.

Section 4B states the proposed definition of *possession* and must be read in conjunction with section 4BA and 4BB — proof of possession. This definition is the cornerstone of many of the offences in the Act and incorporates two concepts: 'actual custody' and 'care, control and management'. 'Actual custody' includes firearms found on the person, or on their premises (including a car), whilst 'care, control and management' includes firearms a person can control; prevent others using; sell; or use. A person can be found to be in possession of a firearm if it falls within either of these two concepts.

Subsection (1)(b) states that a person has possession of a firearm if the person has the firearm in or on premises owned, leased or occupied by the

person. In the APMC National Firearms Trafficking Policy Agreement 2002 all states and territories agreed to ensure that a charge of illegal possession could be made in circumstances where an illegal firearm is found in premises with a person or persons, even where there is no actual physical possession of the firearm by any person. Subsection (1)(b) of this section reflects that resolution, as did the previous section 4B(2)(a) of the Act. All Australian jurisdictions comply with this resolution.

When subsection (1)(b) is relied on in a prosecution, it becomes the operative provision for proving possession in the section 16 and 16AA offences. As subsection (1)(b) is a physical element to be read with the relevant offence, the fault element is intention. That is to say, when relying on subsection (1)(b), the prosecution must prove that the accused intended that the firearm was on the premises owned, leased or occupied by the defendant.

Subsection (2) restates the previous position with respect to possession of firearm parts.

Section 4B must be read in conjunction with sections 4BA and 4BB—*Evidence of possession — care, control or management of firearms*. Section 4BA provides a number of defences to people found to be in possession of a firearm only because it was in or on premises owned, leased or occupied by the person. The accused has a defence if they can adduce evidence which suggests that that the firearm was brought onto the premises by someone else and the person did not know that the firearm was there; or that the firearm was brought onto the premises by an authorised person and the authorised person was present at the premises; or the person can satisfy the court that the firearm was not in their possession, then the offence would not be proved. It is then for the prosecution to rebut this evidence beyond reasonable doubt.

Section 4BB provides guidance of how to prove a person is in possession of a firearm by having care, control or management of that firearm. As with section 4BA, a person may use these factors as a defence to a charge of possession if it is alleged that the person had possession of a firearm by having care, control or management of the firearm. This section can also be used to assist in determining if a person was in possession of a firearm even when they did not physically have possession of the firearm.

Section 4BC deals with *taking possession under a credit contract*. This provision redrafts section 4B(2) of the Act.

Section 4BD provides authority to possess and use firearms in certain circumstances. This is akin to the notion expressed in 4AC (2) — ‘temporary possession’. Subsection (1) authorises the possession of a firearm in the context of a shooting or paintball competition where the person borrowing the firearm is already licensed to use a firearm of the same kind, the lender is a licensee and both are present during the competition. Subsection (2) authorises the possession of a firearm at an approved shooting range where an authorised instructor supervises the person and the firearm is owned by either the club or the instructor. Subsection (3) authorises the possession of

airguns at a shooting gallery, show, fair, or amusement centre where the person is under the immediate supervision by an appropriate person.

Section 4BE inserts a new section dealing with the regulation of the paintball industry. Currently, all of the paintball provisions are contained in regulation 46 of the *Firearms Regulation 1997*.

Section 4BE will allow both the operators and the adult employees of the operator to possess and use paintball markers at their approved paintball range in the course of operation of the paintball range or the employee's employment. Paintball range operators and their employees are already permitted to do this according to regulation 46. Subsection (3) will also permit an adult to possess and use a paintball marker at an approved paintball range if the range operator knows they are using the marker and the person is participating in a paintball activity conducted by the operator.

Essentially this means that adult members of the community may attend an approved paintball range and play paintball using the range operator's paintball markers. There is no requirement for players using the range and the operator's paintball markers to be licensed. A paintball marker licence will only be required if a player wishes to personally own and store a paintball marker.

Minors will not be permitted to play paintball at an approved range nor personally own a paintball marker.

Section 4BF deals with the definition of *close associate* of firearms dealers. This section is an integral part of a package of provisions informed by the National Firearms Trafficking Policy Agreement 2002 and designed to further regulate firearms dealer's licences. It is intended that a firearms dealer's licence application be refused where a close associate of the applicant is not a suitable person; or if the applicant is not primarily responsible for the management of the business of the dealership. A close associate is a person who holds or will hold a financial interest in the dealer's business and who is able to exercise significant influence over the conduct of the business.

Sections 4BG, 4BH and 4BI apply when the registrar has to decide if someone is suitable or not under the Act, whether it be in relation to an application or another purpose within the Act. These sections form a key concept of the Act and are referred to repeatedly throughout the Act. Section 4BH lists the discretionary criteria the registrar must consider when deciding whether an individual is suitable, whilst section 4BI lists the mandatory criteria that will automatically render an individual unsuitable if one or more apply. The following table shows the criteria in a simplified format:

DISCRETIONARY CRITERIA	MANDATORY CRITERIA
<ul style="list-style-type: none"> ▪ Physical or mental condition likely to endanger or cause breach of peace 	<ul style="list-style-type: none"> ▪ Personally exercise continuous and responsible control over firearms

<ul style="list-style-type: none"> ▪ Released from prison within past 10 years 	<ul style="list-style-type: none"> ▪ Subject to protection order within past 10 years
<ul style="list-style-type: none"> ▪ Subject to protection order that has been revoked within past 10 years 	<ul style="list-style-type: none"> ▪ Convicted or found guilty of a firearms, weapons, violent, drug or alcohol offence (punishable by imprisonment for longer than 1 year) within past 10 years.
<ul style="list-style-type: none"> ▪ Convicted or found guilty of a firearms, violent, drug, alcohol or weapons offence (other than an offence punishable by imprisonment for longer than 1 year) within past 10 years 	<ul style="list-style-type: none"> ▪ Subject to order prohibiting possession of firearms or corresponding order within past 10 years.
<ul style="list-style-type: none"> ▪ Subject to interim protection order within past 10 years 	<ul style="list-style-type: none"> ▪ Any other criteria prescribed by regulation
<ul style="list-style-type: none"> ▪ Given undertaking to keep peace or be of good behaviour in past 10 years 	
<ul style="list-style-type: none"> ▪ Licence has been suspended or cancelled in past 10 years 	
<ul style="list-style-type: none"> ▪ Information held by a law enforcement agency 	
<ul style="list-style-type: none"> ▪ Any other criteria prescribed by regulation 	

Most of these criteria are redrafts of section 21 of the Act. However, in light of resolution 13 of the APMC Special Meeting on Firearms (Handguns) November 2002, a further discretionary criteria based upon criminal intelligence or information held by a law enforcement agency will be added to the suitable person test. Although that resolution contemplated an ability to refuse and revoke handgun licences and applications on the basis of criminal intelligence, it is considered prudent that this safeguard be applicable to all firearm licensing issues where a requirement to be a suitable person is necessary. Currently, the ACT is the only jurisdiction without provisions allowing refusal or revocation of licences on the basis of criminal intelligence. The Australian Institute of Criminology reported that the lack of such provisions in the ACT hampers the ability of police services to utilise intelligence information and reduces the capacity of the licensing authority to effectively regulate firearms licences.

Section 4BI subsection (1)(b)(iii) states that a person will not be suitable if they have been convicted or found guilty in the ACT or elsewhere of a prescribed offence, whether on indictment or summarily, within the past 10 years. The definition of a prescribed offence has been expanded to include an offence against this Act or corresponding law, or an offence that involves violence, drugs, alcohol or weapons in the ACT or elsewhere. The offence must be punishable by imprisonment for longer than 1 year or, in other words, indictable. This definition more clearly reflects the intended policy to severely restrict the availability of firearms to people with relevant criminal histories.

Section 4BJ allows the registrar to approve firearms training courses, shooting and paintball competitions and events.

PART 1B: OPERATION OF ACT

Section 4C redrafts section 4E of the Act in a simpler format with consistent language.

Section 4D deals with composite entity licences and redrafts section 4D of the Act in light of the decision to omit partnerships from the Act. Partnerships will be omitted from the Act on the basis that partnerships are not a legal entity, create unnecessarily complex provisions and only one partnership currently holds a firearms licence in the ACT. Transitional provisions will be included to deal with the existing partnership.

Section 4E refers to the new schedule 2 to the Bill — People exempt from Act etc. Schedule 2 redrafts section 6, 6A and 6B of the Act into a table format in an effort to simplify the Act and make the provisions easier to understand.

This section indicates that schedule 2 includes three categories of exemption:

- exempt from the Act in relation to a firearm the person possesses or uses;
- does not commit an offence in relation to a firearm the person possesses or uses; and
- does not commit an offence in relation to a firearm.

PART 1C: UNREGULATED FIREARMS

Part 1C of the Bill has been proposed to address a real-time and critical issue of our community. Due to the sophisticated nature of technology and the improved access to worldwide information and products, it has become increasingly apparent that the prescriptive nature of the 'prohibited firearm' schedule contained in the Act cannot keep abreast of the types of firearms now being developed and manufactured both locally and internationally. The list of prohibited firearms contained in schedule 1 of the Act is struggling to keep up with the firearms that are now freely available on the worldwide market. There have been recent examples where the registrar has been made aware of firearms that pose a significant threat to the community, yet elude the technical definitions contained within the prohibited firearm schedule to the Act. In these circumstances the registrar has been unable to do anything about these firearms that elude the technical parameters of traditional firearms as prescribed in the Act.

These weapons can vary from 'backyard' style manufacturing to new technology such as the 'Metal Storm' electronic system. These new techniques of manufacturing and re-manufacturing are crossing the boundaries of traditional technical descriptions of firearms. The Government's intention with this part is to ensure that any items that behave like firearms are

regulated, irrespective of whether the item strictly meets the technical definitions.

Part 1C of the Bill is designed to deal with this issue in an immediate, direct and transparent manner by providing police with the power to seize a firearm that meets the criteria outlined in section 4H. A review mechanism is available to people who have had items seized.

Part 1C will not apply to firearms that are currently registered in the ACT.

Section 4G provides the definitions specifically relevant to Part 1C — ‘unregulated firearm’. This definition is designed to capture firearms that were not contemplated by the legislature at the time the Act was made, and therefore are not regulated within the community, either by licensing, registration or prohibition mechanisms, but would pose a risk to the safety of the community.

Section 4H provides a power to police to seize an item if it meets the criteria listed in the section. In order to use this power of seizure, the police officer must believe, on reasonable grounds, that the item comes within the definition of an unregulated firearm; and the seizure is necessary to prevent being concealed, lost or destroyed, and the seizure is necessary because the thing would pose a risk to the safety of the community if the item is used.

Section 4I requires the police officer who seizes an item under 4H to leave a receipt for the item. This section prescribes the information that the receipt must contain.

Section 4J will provide that once an item is seized under section 4H, the police may take the item to another place for examination or processing. This stage of the process is time-limited to 7 days unless a magistrate grants an extension. At this time, the registrar and police will analyse the item to determine whether the item meets the criteria in section 4F. The person from whom the item was seized has a right to be heard or make a submission during the examination process. This affords the person the opportunity to inform the police of any information that may be relevant to the analysis of the item, for example if there is a relevant and lawful purpose for the item. The police will also be required to inform the person of the results of the analysis.

Section 4K permits other entitled people to inspect the item seized during the examination process, for example, other public servants or technical experts.

Section 4L imposes an obligation on the registrar to review each seizure under section 4H. If the registrar decides as a result of the review that the item is not an unregulated firearm; or is not connected with an offence; or does not pose a risk to the safety of anyone if used, then the item must be returned to the person from whom it was seized. Subsection (2) states that if the item is not a prohibited firearm within 30 days of the item being seized, then the item must be returned to its owner or reasonable compensation paid.

Subsection (2) will allow the payment of reasonable compensation by the Territory to the owner of the thing for its loss where the thing cannot be returned within a reasonable time.

It is envisaged that reasonable compensation will be determined by an objective assessment and agreement. Any dispute on the quantum of reasonable compensation may be taken to a Territory court.

Section 4M will state that if an item is a prohibited firearm within the 30 day period, then there is no requirement to return the item, nor pay compensation. The item is forfeited to the Territory and may be destroyed or disposed of by the police.

The Government is of the view that the forfeiture of prohibited weapons without compensation meets the needs of both community safety and addresses unethical attempts to profit from items that do not have a legitimate use in the ACT.

PART 1D: REGISTRAR DECLARATIONS

Part 1D will enable the registrar to declare items to be firearms, prohibited firearms or neither. This part will enable the registrar to deal with types of firearms that do not currently fall within the descriptions contained in the Act. A declaration will classify a firearm as prohibited or not, and give the Executive an opportunity to give the declaration legislative effect. A declaration that the item is neither a firearm nor prohibited firearm would have the legal effect that the item would not be subject to the Act.

The registrar may make a prohibited firearms declaration pursuant to section 5(1)(b).

Section 5 deals with the types of declaration the registrar may make and the form of the declaration. According to subsection (1) the registrar may make 4 types of declaration:

- declare an item to be a firearm;
- declare an item to be a prohibited firearm;
- declare that an item is not a firearm or prohibited firearm.

A declaration made under this section, by disallowable instrument, will be valid for 3 months. The registrar will also be required to publish a declaration made under this section in the Canberra Times so that the community is made aware of the item and its classification under the Act.

The ability for the registrar to make declarations that an item is a firearm or prohibited firearm augments the existing powers of the Executive to permanently declare something to be a firearm to which a category of licence applies (section 17 of the Act) or to permanently prescribe a prohibited firearm by regulation (clause 8, new section 4AB).

Section 6 sets out the purpose of the prohibited firearms declaration.

In summary, the power to make these kinds of short-term declarations will provide the community with the protections afforded by the Act at the earliest possible time. The Government is of the view that the power to make short-term declarations of prohibited firearms is warranted given the growth and diversification of weapons manufacturing.

Section 6 enables a two-day grace period from criminal liability after the notification of the declaration.

Clause 9 — Section 10

Clause 9 amends section 10 to allow the registrar to delegate the registrar's functions to a police officer of any rank, rather than to a police officer who holds a rank of or above the rank of sergeant. The Australian Federal Police proposed this amendment for operational reasons. Section 232 of the *Legislation Act 2001* requires that any delegation be made in writing.

Clause 10 — Section 12

Clause 10 redrafts section 12 into two separate sections dealing with reports and recommendations and the registrar's guidelines. Guidelines do not have the force of law unless the empowering legislation provides that they are binding. Case law indicates that where a decision is made in accordance with guidelines and those guidelines do not accord with the legislation under which the decision is made, the decision will be invalid.

Registrar guidelines have been extended to include criteria for determining whether or not it is in the public interest to issue a licence; whether or not it is in the public interest to put a condition on a licence; safe storage of firearms in vehicles; the criteria for approving shooting ranges; the operation of shooting ranges; the criteria for approving paintball ranges; the operation of paintball ranges; the declaration of things to be, or not be, firearms or prohibited firearms according to section 5; and anything else prescribed by regulation.

Not only does clause 10 provide guidance to the firearms community as to how they may comply with the law, further information is provided regarding how the registrar's discretion may be exercised in certain circumstances.

**Clause 11 —Amnesty
Section 13(1)**

Clause 11 will amend section 13(1) of the Act to change the name of the offence contained in section 16 and section 16AA as amended in the Bill.

Clause 12 —Section 14

Clause 11 redrafts section 14 of the Act and removes subsection (2) in relation to the approval of shooting ranges. New part 7A will deal more comprehensively with the scheme for approving shooting ranges.

Clause 13 —New section 15A

Clause 13 inserts a section dealing with the registrar's approval to possess ammunition as a collector. This section is a redraft of sections 99(3), 99(4)

and 99(5) of the Act. It is more appropriate and easier to locate if the approval provision is separate to the offence provision.

Clause 14 —Part 3 and division 3.1 headings

Clause 14 changes the heading of part 3 from ‘Licences and Permits’ to ‘Firearms Licences’. This change is consistent with the new scheme within the Act to have only one scheme to regulate the possession of firearms — licensing. All permits in the Act, excepting permits to acquire, have been amended to become licences thereby requiring the same suitability criteria and omitting unnecessary duplication of provisions.

Division 3.1 contains the primary possession offence of the Act.

PART 3: FIREARMS LICENCES

Clause 15 —Section 16

Clause 15 redrafts the offence of unlawfully possessing or using a firearm. The structure of the offence is harmonised with the principles of the *Criminal Code 2002*. The maximum applicable penalties will be increased and graduated, between 5 years and 20 years, depending upon the number of firearms unlawfully possessed and whether or not the firearms are prohibited. The increases in penalty reflect the true seriousness of the offences and the APMC agreement that the offence of illegal possession, particularly of a prohibited firearm, should attract a substantial imprisonment penalty.

Section 16 sets out the offence of possessing or using prohibited firearms. The penalties associated with these offences are greater than those associated with other firearms to reflect the nature of the offence. The penalties range from ten years for possession of 1 or 2 prohibited firearms to 20 years for possession of 10 or more prohibited firearms.

Section 16AA sets out the offence of the unauthorised possession or use of firearms other than prohibited firearms. The penalties range from five years for possession of 1 or 2 firearms to 20 years for possession of 10 or more firearms.

Section 16AB provides for alternative verdicts in relation to prosecution of the offence of unauthorised possession or use of firearms. Where the trier of fact, either a jury or judge, is not satisfied that the defendant committed the offence under section 16 but is satisfied beyond reasonable doubt that an offence against section 16AA has been committed.

In order for alternative verdicts to be available the defendant must be provided with procedural fairness in relation to that finding of guilt. The defence will need to have reasonable notice of the alternatives to allow it address these issues during proceedings.

Section 16AC sets out the offences related to contraventions of a condition by a licensee and replaces subsection 16(2) of the Act. The penalties associated

with these offences have been significantly increased in line with other increases in the Bill. This increase reflects the public policy concern that where a person is the holder of a firearms licence, the observance of licence conditions is critically important. This is particularly highlighted in relation to the safe keeping of firearms. Where a licensee fails to appropriately store firearms, the community is exposed to the risk that the firearm may be stolen, enter the illegal firearms trade, and be used in the commission of a serious offence.

Thus, the integrity of the licensing scheme for the safe ownership and management of firearms generally is predicated on strict compliance with licence conditions.

Clause 16 — Division 3.2 heading

Clause 16 changes the heading of Division 3.2 from ‘Licensing scheme’ to ‘Licensing schemes— general’, and inserts a number of general provisions in relation to the licensing scheme. It is envisaged that there will only be a licensing scheme in the Act, rather than both a licensing scheme and a permit scheme to prevent unnecessary duplication of provisions. Therefore, all of the permits contained in the Act (excepting permits to acquire) will become licences.

Under the new licensing scheme there will be the following types of licence:

- adult firearms licence;
- minors firearms licence;
- composite entity firearms licence;
- temporary international firearms licence.

Section 16A defines the type of licences in the Act. *Adult firearms licence* refers to those licences in division 3.2A. The definition of *minors firearms licence* refers to new division 3.2B of the Bill dealing with minors firearms licences. The definition of *composite entity firearms licence* refers to new division 3.2C of the Bill dealing with composite entity firearms licences. The definition of *temporary international firearms licence* refers to new division 3.2D of the Bill dealing with temporary international firearms licences.

Section 16B redrafts section 35(2) of the Act and places it in a more appropriate place in the Act. The maximum penalty remains unchanged at 10 penalty units.

Section 16C redrafts section 42(1)(a) of the Act, including a time limit upon when firearms must be surrendered to police following suspension or cancellation, and places it in a more appropriate place in the Act.

Section 16D redrafts section 42(1)(b) of the Act, including time limits upon when a licence must be surrendered to police following suspension or cancellation, and places it in a more appropriate place in the Act.

Section 16E redrafts section 42(2) of the Act and places it in a more appropriate place in the Act.

Section 16F has been inserted into the Bill to remove any doubt about the procedure for renewals. All renewals of licence are treated as fresh applications; therefore the 28-day waiting period specified in section 22B applies to renewals as well as first time applications.

Clause 17 — Section 17

Clause 17 redrafts section 17 of the Act, with the addition of subsections (5), (6) and (7) which deal with the power of the registrar to declare a category of licence that applies to a particular firearm. A declaration made under section 17(5) will be a disallowable instrument and must be published in a daily newspaper published and circulated in the ACT.

This provision allows the registrar to classify firearms of a kind that are not currently licensed in the ACT.

Clause 18 — Authority conferred by licence — additional matters Section 18(2)

Clause 18 redrafts section 18(2) to delete the reference to category D licences. Under the new scheme in the Bill, introduced to regulate category D firearms, it is not possible for a category D licence to be authorised for use in a shooting competition.

Clause 19 — Sections 19 to 35

Clause 19 creates a new division — Division 3.2A Licensing schemes — adult firearms licences.

Section 19 renames and redrafts section 19(1) of the Act, but does not change the effect of the section. Applicants of or above the age of 18 may apply to the registrar for an adult firearms licence. Applicants must provide '100 points' of identification in the same way as a person would provide identification when opening a bank account with the information and documentation prescribed by the regulation.

Section 19A redrafts section 19(2) of the Act, and specifies that an applicant must be given information about the requirement to complete an approved firearms training course in addition to information about the firearm storage and safety requirements under the Act.

Section 20 renames and redrafts section 20 of the Act. Any reference to a renewal of a firearms licence has been omitted as licensing procedures in the ACT are based upon each renewal being a fresh application for a firearms licence. This is a policy designed to allow stringent background checks to be carried out each time a licence is applied for and determining that an applicant is still a suitable person to hold a firearms licence. Section 16G reflects that policy statement.

Subsection 20(3) gives the registrar a power to request that an applicant provide consent, in writing, to the disclosure to the registrar of personal health information about the applicant from a health record. The registrar may only

make this request of an applicant based upon a belief on reasonable grounds that the applicant's mental health may affect the applicant's ability to handle firearms responsibly. This provision is grounded in a policy imperative of protecting the community by preventing access to firearms to people who are unable to handle firearms responsibly.

Given the scope of subsection (3), requests for consent to the disclosure of personal health information from an applicant will occur very rarely.

Subsection (4) allows the Registrar to refuse to consider the application further if the applicant fails to provide stated information. A failure to consent can be considered amongst other discretionary criteria in section 4BH to deal with the question of whether the applicant is able to handle the firearm responsibly.

The *Health Records (Privacy and Access) Act 1997* (Health Records Act) provides for access to this kind of information and sets out the limitations on the use or disclosure of the information. Section 7 of that Act sets out the manner in which the Registrar may obtain health related information about the applicant. Section 13A is the operative provision of the Act that effects the lawful access to the information.

Principle 10 — *Limits on disclosure of personal health information* of the Health Records Act. Clause 7 of principle 10 is particularly relevant and requires that consent be in writing by a legally competent person is provided for the release of information. Clause 8 limits the use of the information by the Firearms Registrar for the purpose for which the information was given. In effect, the Registrar can only use this information for the purpose of considering the application for a firearms licence.

Section 21 redrafts section 21(1) of the Act.

Section 22 of the Bill incorporates parts of sections 21, 22 and 23 to include all of the grounds of which the registrar must be satisfied before issuing an adult firearms licence. If an applicant fails to satisfy the registrar in relation to one or more of these grounds, their application must be refused. These grounds are easily represented in the following table:

GROUND FOR MANDATORY REFUSAL OF LICENCE
▪ Registrar not satisfied of applicant's identity
▪ Registrar not satisfied that applicant is suitable
▪ Registrar not satisfied that applicant has genuine reason for possessing or using firearm
▪ Registrar not satisfied that applicant will comply with relevant storage requirements
▪ Registrar not satisfied that applicant is, or is about to become, resident of ACT; or possession or use of firearm necessary for business or employment
▪ Registrar not satisfied that firearm will be stored in ACT
▪ Applicant not an adult

<ul style="list-style-type: none"> ▪ Applicant already holds licence of category applied for (other than renewal)
<ul style="list-style-type: none"> ▪ If other than category D licence — applicant not completed appropriate approved training course
<ul style="list-style-type: none"> ▪ If category D licence — applicant not accredited by approved entity
<ul style="list-style-type: none"> ▪ Registrar considers it would be otherwise contrary to public interest

Only subsection 22(1)(f) was not previously in the Act. This subsection requires that the registrar be satisfied that the firearms to which the licence applies will be stored in the ACT. As the ACT has no jurisdiction to regulate firearms that are not stored in the ACT, it is necessary that ACT licensed firearm holders store their firearms in a place that is regulated by ACT law.

Section 22A clearly states the nine categories that can apply to an adult firearms licence. The category of paintball marker licence is the only new category of adult firearms licence. Minors will not be permitted to obtain a paintball marker licence for private ownership of paintball markers.

Section 22B restates section 21(2) to ensure that a 28-day cooling-off period applies to every application for an adult firearms licence.

Section 23 is redrafted in the Bill. Section 23 is an important section that states, in table form, the genuine reasons an applicant may rely upon in order to satisfy section 22(1)(c), an integral requirement of licence applications. Applicants must state that he or she intends to possess or use the firearm for any one or more of the genuine reasons listed in column 2 of the table, and then satisfy the requirements listed in column 3 of the table.

The table contained in section 23 of the Act remains largely unchanged in the Bill. However, amendments are proposed for items 4 and 9, and the table has been redrafted to use consistent terminology.

Currently, item 4 of the table specifies that an applicant may rely upon the genuine reason of vertebrate pest control if they are a professional contract shooter engaged or employed in controlling vertebrate pest animals, or they are a person acting on behalf of a government agency that has functions relating to the control or suppression of vertebrate pest animals. The Bill amends this item to incorporate a specific and limited access to category D firearms for primary producers culling large feral animals. This amendment is part of a group of amendments designed to incorporate the 1996 APMC resolution into the Act. This resolution is explained more fully below at section 26.

This clause omits the genuine reason of composite entity from the table in section 23 as composite entity licence provisions will be contained in Division 3.2C. The table in section 23 now only pertains to adult firearms licences.

Paintball activity will be a genuine reason for possessing and using a paintball marker under the new scheme to regulate the private ownership of paintball markers. Item 9 of the table will be amended accordingly.

Section 23A redrafts section 23(2) of the Act and separates it out into a stand-alone provision. The effect of this provision will not change.

Sections 24, 25, 27 and 28 are redrafted in a simplified format and include the new terminology of 'adult firearms licence'. The effect of these sections will not change.

Section 26 will be substantially amended to more specifically incorporate the 1996 APMC resolution regarding category D firearms licences. Currently, a category D firearms licence shall only be issued with the written authority of the Minister. This requirement will not change. However, the Bill explains circumstances when this discretionary authority might be exercised.

A 1996 APMC resolution stated that a limited class of primary producers should have access to a category D firearm for the purpose of culling large feral and Brucellosis and Tuberculosis Campaign animals. It was agreed that the licence should only be issued where there is a demonstrated need for a category D firearm, e.g. where a Government authority requires the undertaking of specific culling in a relevant area. It was further decided that an applicant must show that no other means of dealing with the problem (including the use of a different category of firearm, or the contracting of a professional shooter) is practicable. Applicants must also meet accredited professional shooter's qualifications, including safety training requirements, and a licence may only be issued for a nominated period in accordance with the demonstrated need, which must not exceed 12 months. Upon expiry of the nominated period, the firearm is to be returned to the authorities or stored as approved. The resolution stated that only one category D firearm may be issued to each applicant, and the licence shall only authorise use of the firearm within a prescribed geographical location (normally the licensee's property). It was agreed that approval from the Civil Aviation Safety Authority will be required in order to shoot from a helicopter, and the use of Category D firearm for ground culling will only be allowed where airborne culling is not practicable.

This resolution was not reflected in the Act, and has therefore led to a number of inappropriate category D firearm licence applications. The proposed amendments incorporate this APMC resolution into the Act, thereby providing more guidance to applicants, the Registrar and the Minister as to when a category D licence might be granted. It is proposed that ministerial authorisation will still be required and the licence will be subject to any conditions the Minister deems appropriate.

Section 29 is redrafted to omit the transitional provision included in subsection (1). This provision commenced in December 1996 and is now redundant. The title of the section and some wording of the section have been amended to include the new terminology of 'adult firearms licence'.

Section 30 will be inserted into the Act as part of the package of provisions informed by the National Firearms Trafficking Policy Agreement 2002 and designed to further regulate firearms dealer's licences. A firearms dealer's licence application will be refused where a close associate of the applicant is not a suitable person; or if the applicant is not primarily responsible for the management of the business of the dealership. A close associate is a person who is able to exercise significant influence over the conduct of the business.

Section 30A is a new provision dealing with restrictions of the issue of paintball marker licences. This provision will require that the registrar be satisfied that the applicant has participated in at least 4 paintball competitions. The applicants will need to provide some form of evidence to satisfy the registrar of this requirement.

Section 31 deals with the physical form of adult firearms licences and details the requirements for an adult firearms licence issued in the ACT. This section has been amended to delete the following requirements for the following reasons:

- specify the registered firearms to which the licence relates — this requirement has been deleted for two reasons: many licence holders have too many firearms to physically list on the licence; and in the interests of community safety, it is preferable that the firearms are not listed on the licence in the event the licence is lost or stolen;
- specify the premises where the firearm is authorised to be kept — this requirement has been deleted for community safety reasons, if the licence is lost or stolen it is not desirable for a premises where firearms are stored to become public information;
- contain a reference to the requirements under the Act relating to the storage and safe keeping of the firearm — this requirement has been deleted as there is not enough room on a licence to list this information. Each firearm holder is provided with information regarding storage when granted a licence.

Information regarding the registered firearms to which a licence relates and the premises where the firearms are authorised to be kept will be recorded at the Firearms Registry and kept on file.

An adult firearms licence will contain the following information:

- the licensee's name;
- recent photograph of the licensee;
- signature of licensee;
- licence category;
- for a dealer's licence, collector's licence or heirloom licence — the categories of firearms for which the licence is issued;
- the date the licence expires;
- for a licence other than a dealer's licence or paintball marker licence — calibre of ammunition the licensee is authorised to buy or possess;
- genuine reason for the issue of the licence;
- for a category D licence—the circumstances when the firearm may be used; and

- any other particulars prescribed by regulation.

Stating the calibre of ammunition the licensee is authorised to buy or possess is a new requirement of the Act. Given that the firearms are no longer going to be listed on the licence, it is necessary to list this information so that dealers and authorised members are aware of the calibre of ammunition they can lawfully sell to a licensee.

Section 32 is a redraft of section 35(1) using 'adult firearms licence' terminology and a simplified format. The former section 35(2) is now contained in section 16C.

Clause 20 — Section 36

Clause 20 deals with the conditions of licence applicable to each adult firearms licence issued in the ACT. The heading of section 36 and subsection (1) uses consistent terminology of 'adult firearms licences'. A further consideration will also be added that the registrar must not put a condition on an adult firearms licence unless the registrar believes on reasonable grounds that the condition is in the public interest. This provision is designed to attend to the human rights considerations relevant to holding a firearms licence. It ensures that these rights are not unnecessarily impeded through the invalid imposition of conditions upon licence holders.

Section 36 is also amended to include a further condition of licence for an adult firearms licence. It will be a condition of every adult firearms licence that the licensee stores all firearms to which the licence relates at premises in the ACT. This condition is to ensure that the ACT Firearms Registry can regulate the firearms held by an ACT licensee.

Subsection 36(1)(d) deals with inspection of storage facilities. Recent studies of firearms theft in Australia by the Australian Institute of Criminology highlighted the need for firearms owners to be more vigilant in safely storing and securing their firearms. It is therefore imperative that police have the power to inspect premises where firearms are stored, in a manner that shows how the firearms are being stored on a day-to-day basis. This amendment will allow police to inspect a licence holder's storage facility as a condition of licence, therefore the consent of occupier and written acknowledgement requirements will not apply to this right of entry. Licence holders will be giving their consent to entry upon acceptance of the conditions of licence. Regulation will provide that an inspection must not be carried out more than twice each year unless carried out under part 7 of the Act; only if the licensee is present; and only between 7am and 7pm.

If the licence holder refuses police entry, they will be in breach of this licence condition and therefore liable for an offence pursuant to section 75C. However, section 75F provides a defence of reasonable excuse to a possible offence of breaching a licence condition if the licence holder refuses police entry, and that refusal was reasonable in all the circumstances.

Section 36AA is part of the new regime to regulate category D firearms licences explained earlier at section 26. Category D firearms held under a category D licence are to be returned upon the expiry of the licence or dealt with in accordance with arrangements approved by the registrar, which may include dealing with the firearm at an earlier time. The firearm may also only be used in the circumstances stated in the licence.

Clause 21 —Section 36A

Clause 21 changes the heading of section 36A to use consistent terminology of ‘adult firearms licences’. Subsection (1) is also redrafted to include this terminology and simplify the format. The effect of this section is not changed.

Clause 22 —Section 36A(2)(b)

Clause 22 amends section 36A(2)(b) so that an applicant for a handgun licence for sport or target shooting purposes must complete an approved firearms training course that has been conducted by an approved shooting club. This amendment places a further requirement upon applicants that they complete a particular approved course, rather than just any course to the satisfaction of the registrar. This amendment implements standardised training levels for category H applicants.

Clause 23 —Section 37

Clause 25 amends section 37 to use consistent terminology of ‘adult firearms licence’.

Clause 24 —Sections 38 to 44

Clause 24 inserts section 38 into the Act. Section 38 deals with special conditions for paintball marker licences. As stated previously, paintball marker licences will only be available to adults, and will be subject to the condition that paintball markers may only be used at approved paintball ranges. Using a paintball marker outside an approved paintball range will be an offence under section 16AC, as the owner will be in contravention of the conditions of licence.

Section 39 will be amended to use consistent terminology of ‘adult firearms licences’ and simplify the format of the section. Subsection (2) will be inserted to specifically deal with category D firearms licences. Restricting the term of category D firearms licences to 1 year is consistent with the 1996 APMC resolution detailed at section 26.

Section 40, including the heading, will be amended to use consistent terminology of ‘adult firearms licences’. Section 40 allows the registrar to suspend an adult firearms licence if he believes on reasonable grounds that it is in the public interest to suspend the licence.

Section 40A enables the registrar to suspend an adult firearms licence if the registrar believes on reasonable grounds that the licensee has been charged with, committed or threatened to commit a domestic violence offence or corresponding offence. This amendment allows the registrar to suspend an

ACT firearm licence if he or she believes that the licence holder has been charged with, committed or threatened to commit a domestic violence offence outside the ACT, which was not possible under the current Act.

Section 41 redrafts the current section 41 to use consistent terminology of 'adult firearms licence' and 'suitable person' rather than 'fit and proper person'. This clause also amends section 41 to delete subsection (1) dealing with firearms prohibition orders as, under the new scheme, firearms prohibition orders will not be available. See clause 44 for further information.

Section 42 redrafts and separates section 41(2) of the Act. The effect of the section will not change.

Section 42A redrafts and separates subsections 41(4), (5) and (6), and uses the provisions of the *Legislation Act 2001*, part 19.5, to govern how the notice of cancellation may be served.

Division 3.2B Licensing scheme — minors firearms licences

Clause 24 also creates a new division 3.2B: *Licensing scheme — minors firearms licences*, to deal exclusively with minors firearms licences. As stated previously, all permits in the Act (excepting permits to acquire) will be converted to licences in order to streamline the processes in the Act. The fundamental difference between minors' licences and the other licences contained in the Act is that minors are not, and will not, be permitted to own firearms. In fact, a further requirement will be added to require a minor to lodge an application for a minors firearms licence in the presence of a person with parental responsibility for the minor, in addition to providing written consent. Minor licensees will also be able to apply for an extension of their licence to apply whilst an adult licence is approved, so any training being undertaken can continue throughout the subsequent application process.

Section 42C contains the definitions that are specific to division 3.2B. The definitions of parental responsibility and responsible person are consistent with the *Children and Young People Act 1999*.

Section 42D states that a child will not be able to own a firearm.

Section 42E redrafts subsections 49(1), (2) and (3) to make the application requirements for a minor licence clearer and easily understood. Subsection (3) has been added to require a minor to lodge an application for a minors firearms licence in the presence of a person with parental responsibility for the minor. This requirement has been inserted to reduce the likelihood of written parental consent being forged, and to ensure, as far as possible, that a person with parental responsibility for the minor is aware of the implications of the minor obtaining a firearms licence.

Section 42F allows the registrar to request further information from an applicant. This provision mirrors a similar provision with respect to adult firearms licences. Subsection 42F(3) gives the registrar a power to request that an applicant supply a medical certificate from a doctor certifying that the

applicant's mental health will not affect the applicant's ability to handle firearms responsibly.

The registrar may only make this request of an applicant based upon a belief on reasonable grounds that the applicant's mental health may affect the applicant's ability to handle firearms responsibly. This provision is grounded in a policy imperative of protecting the community by preventing access to firearms to people who are unable to handle firearms responsibly.

Section 42G states that the registrar must issue a minors firearms licence to an applicant unless there is a provision in the Act preventing the registrar from granting the licence (e.g. one of the subsections of section 42H applies).

Section 42H states that, as with an application for an adult firearms licence, the registrar must be satisfied of the applicant's identity, that the applicant is suitable and that the applicant has a genuine reason for using a firearm. A minor must satisfy the same suitability criteria that applies to an adult and is set out in sections 4BD, 4BE and 4BF.

Section 42I clearly states that minors are only entitled to be licensed to use category A, category B and category H firearms. Under no circumstances will minors be licensed to use category C firearms, category D firearms or paintball markers. Nor will minors be allowed to apply for a collectors licence, heirlooms licence or firearms dealer licence.

Section 42J imposes the same 28 day waiting period upon the issue of a minors firearms licences that applies to adult firearms licences.

Section 42K states that the only genuine reasons that will be acceptable for minors licences are firearms training and target pistol training. This provision will not change the effect of the Act but makes the restrictions clearer. Under no circumstances will a minor be entitled to be licensed for the purposes of recreational hunting, primary production, rural purposes, business or employment, animal welfare or vertebrate animal pest control.

Section 42L deals with the physical form of minors firearms licences and details the requirements for a minors firearms licence issued in the ACT. This section mirrors the relevant parts of section 33 with respect to adult firearms licences.

A minors firearms licence will contain the following information:

- licensee's name;
- recent photograph of the licensee;
- signature of licensee;
- state that it is a minors firearms licence;
- licence category;
- date licence expires;
- calibre of ammunition the licensee is authorised to acquire or possess;
- genuine reason for the issue of the licence; and
- any other particulars prescribed by regulation.

Section 42M allows replacement minors firearms licences to be issued in the event the licence is lost, stolen or destroyed. The registrar is required to notify firearms dealers of the incident and record it in the register of firearms. This provision mirrors section 32 in relation to adult firearms licences.

Section 42N deals with minors firearms licence conditions. Similar to an adult firearms licence, the registrar will need to consider whether a proposed condition is in the public interest. As minors will not be permitted to own firearms, many of the conditions relevant to adult firearms licences will not be relevant. Therefore, the only standard conditions that a minors firearms licence will be subject to are:

- the licensee must not allow anyone else to possess or use any firearm being used by the licensee if the other person is not authorised to possess or use the firearm;
- the licensee must not possess, at any one time, an amount of ammunition that exceeds the amount (if any) prescribed by regulation, unless authorised in writing by the registrar; and
- the licence cannot be transferred to someone else.

Section 42O(1) redrafts section 49(7) of the Act. Section 42O(2) inserts a new provision to enable minors firearms licences to be extended for up to 60 days after the licensee turns 18 years old, to enable the licensee to continue firearms or target pistol training whilst an application for another licence is processed. In order to be eligible for the extension, the licensee must apply for another licence before their 18th birthday, and have commenced receiving instruction or taking part in an event before their 18th birthday. If the criteria in subsection (2) are met, then the registrar may extend the operation of a minors firearms licence.

Section 42P deals with the suspension of minors' firearms licences and mirrors section 40 with respect to adult firearms licences. Section 42P allows the registrar to suspend a minor's firearms licence if he believes on reasonable grounds that it is in the public interest to suspend the licence.

Section 42Q mirrors 40A and enables the registrar to suspend a minors firearms licence if the registrar believes on reasonable grounds that the licensee has been charged with, committed or threatened to commit a domestic violence offence or corresponding offence. This amendment allows the registrar to suspend an ACT firearm licence if he or she believes that the licence holder has been charged with, committed or threatened to commit a domestic violence offence outside the ACT, which was not possible under the current Act.

Section 42R deals with the cancellation of minors firearms licences and mirrors section 41 with respect to adult firearms licences.

Section 42S deals with when the cancellation of a minors firearms licence takes effect and mirrors section 42A with respect to adult firearms licence.

Division 3.2C Licensing scheme — composite entity firearms licences

New division 3.2C deals exclusively with composite entity firearms licences and explains how the regulatory scheme contained within the Bill applies specifically to composite entities that require firearms to carry on their business.

Section 42U defines a composite entity as a corporation (including an approved club) or a government agency. The Bill also introduces the concept of a principal of a composite entity, which effectively is the person who applies for the firearms licence on behalf of the composite entity. For a corporation, the principal must be an executive officer of the corporation. For a government agency, the principal is the head of the agency.

Section 42V states that a principal of a composite entity may apply for a composite entity firearms licence and provides the documentation an applicant must provide. This section replicates section 19(1) of the Act, with the added requirement that the composite entity must provide proof of the composite entity's identity.

Section 42W mirrors section 20 of the Act specifically in relation to composite entity firearms licences. This section entitles the registrar to request further information from an applicant.

The registrar may only make this request of an applicant based upon a belief on reasonable grounds that the applicant's mental health may affect the applicant's ability to handle firearms responsibly. This provision is grounded in a policy imperative of protecting the community by preventing access to firearms to people who are unable to handle firearms responsibly.

Section 42X redrafts section 21(1) of the Act specifically in relation to composite entity firearms licences.

Section 42Y incorporates parts of sections 21, 22 and 23 of the Act to include all of the grounds the registrar must be satisfied of before issuing a composite entity firearms licence. This provision mirrors section 22 of the Bill with respect to adult firearms licences. If the applicant fails to satisfy the registrar in relation to one or more of these grounds, their application must be refused. These grounds are easily represented in the following table:

GROUND FOR MANDATORY REFUSAL OF LICENCE
▪ Registrar not satisfied of the entity's and principal's identity
▪ Registrar not satisfied that the principal is suitable
▪ Registrar not satisfied that composite entity has genuine reason for possessing or using a firearm
▪ Registrar not satisfied that the entity will comply with relevant storage requirements

- | |
|--|
| <ul style="list-style-type: none"> ▪ Registrar not satisfied that firearm will be stored in ACT - Registrar must not issue a licence of the category applied for to the applicant |
| <ul style="list-style-type: none"> ▪ Registrar considers it would be otherwise contrary to public interest |

Only subsection 42Y(1)(e) was not previously in the Act. This subsection requires that the registrar be satisfied that the firearms to which the licence applies will be stored in the ACT. As the ACT has no jurisdiction to regulate firearms that are not stored in the ACT, it is necessary that ACT licensed firearm holders store their firearms in a place that is regulated by ACT law.

Section 42Z states the five categories that can apply to composite entity firearms licences. Composite entities will not be permitted to have a collector, heirloom, paintball marker or firearms dealer licence.

Section 42ZA states that a composite entity firearms licence will be issued to the principal on behalf of the composite entity.

Section 42ZB redrafts section 21(2) of the Act to ensure that a 28-day cooling-off period applies to an application for a composite entity licence, as it does to every firearms licence application.

Section 42ZC redrafts item 9 of the table contained in section 23 and states that the genuine reasons that will be accepted for a composite entity firearms licence are:

- the entity carries on business in the ACT as a security organisation; or
- the entity leases or manages land in the ACT used for primary production and the firearms is to be used solely in relation to farming or grazing activities;
- the entity is an approved club; or
- if the entity is a government agency — it is necessary for an employee to possess a firearm in the course of employment.

The definition of 'security organisation' remains unchanged from the Act.

Section 42ZD stipulates that neither a security organisation nor a government agency may obtain a composite entity firearms licence for the purpose of sport or target shooting.

Section 42ZE redrafts section 24 of the Act specifically in relation to composite entity firearms licences.

Section 42ZF redrafts section 25 of the Act specifically in relation to composite entity firearms licences.

Section 42ZG stipulates that only a government agency may apply for a category D composite entity firearms licence. Security organisations and approved clubs will not have access to category D composite entity firearms licences.

Section 42ZH interprets and applies section 27 of the Act specifically to category H firearms licences. The issue of category H composite entity firearms licences is limited to security organisations; approved clubs for the purpose of sport or target shooting; or another entity that produces evidence that satisfies the registrar that the entity has a special need to possess or use a pistol.

Section 42ZI deals with the physical form of composite entity licences and details the requirements for a composite entity licence issued in the ACT. As composite entity licences are issued to the composite entity, in the name of the registered principal, the actual licence will contain the following information:

- the names of the entity and registered principal;
- a recent photograph of the registered principal;
- the registered principal's signature;
- the licence category;
- the date the licence expires;
- the calibre of ammunition the licence authorises the registered principal and each registered user to acquire or possess;
- the genuine reason to possess or use a firearm licensed to the licensee;
- any other particulars prescribed by regulation.

Section 42ZJ redrafts section 35(1) of the Act specifically in relation to composite entity firearms licences.

Section 42ZK deals with the conditions of licence that are applicable to each composite entity firearms licence issued in the ACT, and mirrors section 36 with respect to adult firearms licences. As in section 36 of the Bill, a new consideration will be inserted that the registrar must not put a condition on an adult firearms licence unless the registrar believes on reasonable grounds that the condition is in the public interest. This provision is designed to ensure that an applicant's human rights are not unnecessarily impeded through the invalid imposition of conditions upon licence holders.

Section 42ZL states the term of a composite entity firearms licence. The term of a composite entity licence will not change as stated in regulation 10 of the *Firearms Regulation 1997*. This section has been inserted into the Bill to bring all of the composite entity provisions together into one division.

Section 42ZM redrafts section 39 of the Act specifically in relation to composite entity firearms licences. The section allows the registrar to suspend a composite entity's firearms licence if he believes on reasonable grounds that it is in the public interest to suspend the licence. Given that a composite entity firearms licence is issued to the composite entity, in the name of the principal, and the principal must satisfy the suitability criteria, subsection (2) applies to the registered principal.

Section 42ZMA mirrors 40A and enables the registrar to suspend a composite entity's firearms licence if the registrar believes on reasonable grounds that

the register principal has been charged with, committed or threatened to commit a domestic violence offence or corresponding offence. This amendment allows the registrar to suspend an ACT firearm licence if he or she believes that the licence holder has been charged with, committed or threatened to commit a domestic violence offence outside the ACT, which was not possible under the current Act.

Section 42ZN deals with the cancellation of composite entity firearms licences and mirrors section 41 with respect to adult firearms licences.

Section 42ZO deals with when the cancellation of a composite entity firearms licence takes effect and mirrors section 42A with respect to adult firearms licence.

Division 3.2D Licensing scheme — temporary international firearms licences

Division 3.2D has been inserted into the Bill to deal with two types of permit/licence that are available under the Act. International visitor permits (section 45A of the Act) and temporary licences for staff of internationally protected people (section 31 of the Act) will be converted to temporary international firearms licences consistent with the new scheme within the Act to have only one scheme to regulate the possession of firearms — licensing. All permits, excepting permits to acquire, will be amended to become licences thereby requiring the same suitability criteria and omitting unnecessary duplication of provisions. The two types of temporary international firearms licence will be differentiated using the concept of genuine reason that is already used in the Act. Therefore, a temporary international firearms licence may be issued if the applicant satisfies the registrar that they are either: a member of the staff of an internationally protected person (or other declared person) and their duties include the protection of that person while in the ACT; or an international visitor who satisfies the same criteria that were contained in section 45A of the Act.

Section 42ZOA will provides a definition of ‘corresponding local licence’. A licence or permit will not be corresponding unless it allows possession of the particular type of firearm that is sought to be used in Australia.

Section 42ZP states that an adult may apply for a temporary international firearms licence and provides the documentation an applicant must provide. This section provides that applications must contain information prescribed by regulation and is akin to section 19 of the Bill with respect to adult firearms licences.

Section 42ZPA will allow the registrar to request further information that is reasonably required to decide whether or not to grant the application.

Section 42ZPB redrafts section 21(1) of the Act with respect to temporary international firearms licences.

Section 42ZPC replicates section 22 of the Bill with respect to temporary international firearms licences. This section of the Bill incorporates parts of sections 21, 22 and 23 of the Act to include all of the grounds the registrar must be satisfied of before issuing a temporary international firearms licence. If an applicant fails to satisfy the registrar in relation to one or more of these grounds, their application must be refused. These grounds are easily represented in the following table:

GROUND FOR MANDATORY REFUSAL OF LICENCE
▪ Registrar not satisfied of applicant's identity
▪ Registrar not satisfied that applicant is a resident of a foreign country
▪ Registrar not satisfied that applicant has genuine reason for possessing or using firearm
▪ Registrar not satisfied that applicant will comply with relevant storage requirements
▪ Applicant not an adult
▪ Registrar considers it would be otherwise contrary to public interest

Section 42ZPD will apply the same 28-day waiting period to temporary international firearms licences as applies to every other type of licence under the Act. This waiting period is essential in order to verify information provided in an application, as well as encourage international visitors to make appropriate arrangements for their firearms before they enter the ACT.

Section 42ZQ will set out the two genuine reasons that may be accepted for the issue of a temporary international firearms licence. Subsection (1)(a)(i) redrafts section 31 of the Act and will allow a staff member of an internationally protected person or other 'declared person' whose duties include the protection of that person while in the ACT, to apply for a temporary firearms licence. The firearm to which the application relates must be a pistol of not more than 11.43mm calibre that is not fully automatic or capable of conversion to being fully automatic. A 'declared person' must be declared by the Minister, and such a declaration will be a notifiable instrument. This amendment has been included to make future provision for people who may validly require protection while visiting the ACT, but do not fall within the definition of 'internationally protected person'. Requiring that the Minister declare a person for the operation of this section places a further safeguard upon the access to this type of firearms licence.

Section 42ZQ(1)(b)(ii) redrafts section 45A of the Act and will allow an international visitor to the ACT to apply for a temporary international firearms licence, if they are participating in an approved shooting or paintball competition. Subsection (1)(a)(ii)(C) includes approved paintball competitions. Therefore an international visitor may access a temporary firearms licence authorising their participation in an approved paintball competition, in the same manner as an applicant may access a temporary firearms licence for the purpose of participating in an approved shooting competition.

Section 42ZQA states the proposed physical form of a temporary international firearms licence. Although the form for the licence is similar to that of an adult firearms licence and a minors firearms licence (in sections 31 and 42M of the Bill), further requirements have been included in light of the fact that the licensee is not a resident of the ACT. Therefore, the following additional things will need to be noted on the physical temporary licence:

- the particulars prescribed by regulation of the firearm for which the licence is issued;
- the licensee's address while in the ACT;
- if the genuine reason is 'international visitor' — the purpose for which the firearm may be possessed or used; and
- each condition put on the licence by the registrar.

Section 42ZQB will state that the proposed conditions of a temporary international firearms licence. Each applicant granted a temporary international firearms licence will be subject to these standard conditions:

- produce the licensee's passport to the registrar on request;
- possesses or use the firearm only for the genuine reason stated in the licence;
- for an international visitor — the licensee possess or use the firearm only for the purpose stated in the licence;
- complies with storage requirements applicable to a firearm of the type possessed;
- do not allow an unauthorised person to possess or use firearm;
- carry the licence when possessing or using the firearm;
- produce the licence to a police officer on request;
- must not possess an amount of ammunition that the prescribed amount, unless authorised in writing by the registrar;
- the licence cannot be transferred to someone else; and
- any other prescribed condition.

As in section 36 of the Bill, a new consideration will be inserted at section 42ZQB(2) that the registrar must not put a condition on a temporary firearms licence unless the registrar believes on reasonable grounds that the condition is in the public interest. This provision is designed to ensure that an applicant's human rights are not unnecessarily impeded through the invalid imposition of conditions upon licence holders.

Section 42ZR will restrict the term of a temporary international firearms licence to a maximum of 3 months.

Section 42ZRA will deal with the cancellation of temporary international firearms licences. The registrar must cancel a temporary international firearms licence if:

- the registrar would be required to refuse the licence application if the licensee were applying the licence held;
- the licensee gave false or misleading information in the licence application;
- the licensee contravenes any provision of the Act;

- the licensee contravenes a condition of the licence; or
- any other reason prescribed by regulation.

This section redrafts section 41 of the Act to use consistent terminology of 'adult firearms licence' and 'suitable person' rather than 'fit and proper person', as it pertains to temporary international firearms licences.

Section 42ZRB deals with when the cancellation of a temporary international firearms licence takes effect and mirrors section 42A with respect to adult firearms licence.

PART 3A: TEMPORARY RECOGNITION OF INTERSTATE LICENCES AND PERMITS

This new part is designed to group together all the provisions dealing with mutual recognition of interstate firearms regulatory schemes, not only to improve the format of the Act, but also to make the provisions easy to locate for local and interstate users of the Act.

Section 42ZS states definitions of terms used particularly in part 3A. The definition of 'authorised period' has been redrafted based upon the definition of 'specified period' contained in section 43 of the Act, but corrects it by making the further inclusion of a 'purpose prescribed by regulation for section 42SA'.

Definitions of corresponding and local licences are designed to aid the interpretation of the provisions contained in Part 3A, whilst using consistent terminology throughout the Act (i.e. 'corresponding' rather than 'equivalent').

Section 42ZT redrafts subsections 43(1) and 43(2) of the Act, including paintball competitions as part of the new scheme to regulate paintball. This section allows interstate firearms licence holders to possess and use their firearms in the ACT for a period of up to 3 months if they are participating in an approved shooting or paintball competition, or carrying out a purpose prescribed in regulation. The inclusion of category H licences in subsection 42ZT(1)(b) corrects a drafting error contained in section 43(1)(b) of the Act.

Section 42ZU redrafts subsection 43(3) of the Act with respect to temporary recognition of interstate corresponding category C licences or permits.

Section 42ZV redrafts subsections 44(1) and (2) of the Act with respect to interstate residents who hold corresponding category A, category B and paintball marker licences and are moving to the ACT. The substantial effect of this section will not change, but it has been extended to include paintball marker licences in accordance with the proposed new scheme for the regulation of private ownership of paintball markers.

Section 42ZW redrafts subsections 44(3) and (4) of the Act with respect to interstate residents who hold corresponding category C and category H licences and are moving to the ACT. The effect of the sections will not change.

Section 42ZX redrafts section 49 of the Act with respect to the recognition of temporary permits granted interstate to international visitors for shooting or paintball competitions. The substantial effect of this section will not change, but it has been extended to include paintball marker licences in accordance with the proposed new system of regulation of the private ownership of paintball markers.

Clause 25 — Division 3.3

Division 3.3 of the Act deals with permits. Clause 28 effectively omits all of the permit provisions in the Act that do not deal with permits to acquire. This change is consistent with the new scheme within the Act to have only one scheme to regulate the possession of firearms — licensing. All permits, excepting permits to acquire, have been amended to become licences thereby requiring the same suitability criteria and omitting unnecessary duplication of provisions.

PART 3B: PERMITS GENERALLY

Section 43 redrafts section 45 of the Act, omitting the subsections that will no longer be relevant in light of the new scheme within the Act to have only one scheme to regulate the possession of firearms — licensing. All permits, excepting permits to acquire, have been amended to become licences thereby requiring the same suitability criteria and omitting unnecessary duplication of provisions.

However, the *Firearms Regulation 1997* will retain a number of permits for a number of discreet and specialised purposes such as film or theatrical production permits and to authorise the shortening or conversion of firearms.

PART 3C: PERMITS TO ACQUIRE

Section 45 introduces the term ‘acquirer’. The ‘acquirer’ is an adult licensee who applies to the registrar for a permit to acquire a firearm. A person may not apply for a permit to acquire a firearm unless they are licensed to hold a firearm of the category applied for.

Section 45A redrafts subsections 48(1) and 48(2) of the Act. The effect of the sections will not change.

Section 45B stipulates that if a person applies for a permit to acquire, the registrar must grant the application unless the provisions of the Act provide that a permit should not be granted.

Section 46 redrafts subsections 48(3), 48(4) and 48(5) of the Act. The substantial effect of the sections will not change, however if a person applies for a permit to acquire a pistol for sport or target shooting, the registrar will need to be satisfied that the licensee can comply with the safety and storage requirements of the Act. The current Act requires an approved shooting club to advise the registrar if the acquirer can comply with the safety and storage

requirements of the Act. It is a matter for the registrar if the Act is being complied with, not an approved club.

Section 46A will insert a new provision dealing with permits to acquire for international visitors. This provision will allow international shooters to purchase firearms of a type they are authorised to possess. Before the registrar issues a permit to acquire to an international visitor, he or she must be satisfied that the acquirer holds a temporary firearms licence authorising the same kind of firearm as the firearm to be acquired and that the acquirer has a good reason for acquiring the firearm.

46B Section redrafts subsection 48(6) of the Act and imposes a 28-day waiting period upon the issue of permits to acquire. The effect of this provision will not change.

Section 47 deals with the term of a permit to acquire. Section 47(1) redrafts subsection 48(7) of the Act, and will not change the effect of the provision. Section 47(2) will insert a new provision to allow the registrar to extend the life of a permit to acquire for up to 60 days where the permit holder can show the delay in receiving the firearm is outside their control.

Section 48 deals with replacement permits to acquire. Similarly to licences, if the registrar is satisfied that the permit has been lost, stolen or destroyed, a replacement permit to acquire may be issued. The fact that the permit has been lost, stolen or destroyed must be recorded in the register of firearms and disseminated to all licensed firearms dealers.

Section 48A creates an offence for failing to tell the registrar that a permit has been lost, stolen or destroyed within 7 days of the permit holder becoming aware that the permit has been lost, stolen or destroyed. This offence mirrors section 16B of the Bill with respect to licences and carries the same maximum penalty of 10 penalty units. This offence is designed to compel permit holders to keep the registrar informed of any missing permits in an effort to track the acquisitions and disposals of firearms in the community.

Section 48B deals with suspension and cancellation of permits to acquire. This section will allow the registrar to suspend or cancel a permit to acquire for any reason that the registrar might suspend or cancel a licence, and operates in the same way a suspension or cancellation of a licence would operate. This section has been included in the Bill to give the registrar a mechanism to prevent the acquisition of a firearm in circumstances where a licence holder becomes unsuitable to hold a licence, and therefore own firearms.

Section 48C deals with the cancellation of permits to acquire where the registrar is satisfied that permit-holder has given false or misleading information in their application. The registrar must also cancel a permit to acquire if the permit-holder has contravened the Act, whether or not the permit-holder has been convicted of the offence. This also occurs where the permit holder has contravened a condition of the permit.

Section 49 creates an offence for failing to surrender the permit and any firearm that may have been acquired using the permit, in the event of the permit being suspended or cancelled. This offence mirrors section 16D of the Bill with respect to licences and carries the same maximum penalty of 50 penalty units and/or 6 months imprisonment. This offence is designed to compel permit holders to keep the registrar informed of any missing permits in an effort to track the acquisitions and disposals of firearms in the community.

Section 49A states that a regulation may prescribe the details regarding permits to acquire with respect to the applications; conditions and reasons a permit may be suspended or cancelled.

Clause 26 —Part 4

PART 4: REGISTRATION OF FIREARMS AND FIREARM USERS

Part 4 is designed to incorporate the registration scheme for firearms; the offences relating to registration; and the scheme for registered users of firearms that replaces the endorsement regime contained within division 4.3 of the Act.

Registration is aimed at recording and tracking firearms. Therefore the registrar must maintain a firearms register that contains information about each firearm stored in the ACT, including details about the owner of the firearm and anyone else authorised to use the firearm. A person is generally not authorised to use a firearm unless the person is the registered owner, registered principal or registered user of the firearm.

Division 4.1 Interpretation

Section 49B provides a definition of ‘owner and user particulars’. For each registered firearm in the ACT, the owner and user particulars must be recorded in the firearms register. The owner and user particulars include:

- the name of the owner of the firearm;
- the name of the registered principal if a composite entity owns the firearm;
- the name of each registered user of the firearm;
- licence particulars of owners, principals and users of the firearm.

Division 4.2 Register of firearms

Division 4.2 deals with the register of firearms that is to be maintained by the firearms registrar.

Section 50 redrafts sections 50(1) and 50(3) of the Act. This section specifies that the registrar must maintain a register of firearms that can be linked to a national scheme for firearms management or registration and allows information in the register to be accessed by other State and Territory firearm registries. Rather than specifying that the register be linked to the National Exchange of Police Information scheme, the Bill amends the wording to a

more generic form to allow a new national system to be utilised in the event one is developed and agreed to nationally.

Section 50A redrafts section 50(2) of the Act and states the information that the firearms registrar must record in the firearms register. In light of the changes to the form of a licence whereby the address where the firearms are stored is not noted on the physical licence due to safety reasons, this information will be required to be recorded in the firearms register.

Section 50B redrafts section 50(4) of the Act. The effect of this provision will not change.

Section 50C will insert a new provision requiring the firearms registrar to carry out an audit of the firearms register every 2 years and provide a report detailing the results of the audit to the chief executive of the Department of Justice and Community Safety within 3 months of completing the audit. The audit will be a qualitative audit rather than quantitative, therefore it will not be necessary to analyse each and every entry in the register, but rather analyse a percentage of the entries on the register and report on the findings. The number or percentage of entries analysed and the way those entries are chosen will be a matter for the registrar. The information provided in these audits will be used to inform policy decisions; assess the efficacy of the regulatory scheme or in any manner the chief executive deems appropriate.

Division 4.3 Registration of firearms

Division 4.3 will deal with the process of registering firearms in the ACT.

Section 51 deals with applications for registration and empowers each firearm owner to apply to the registrar to register their firearm. Each and every firearm in the ACT will need to be registered, unless they are defined as 'not firearms' in the Regulation, or declared not to be a firearm under the new part 1D, or owned by a temporary international firearms licence holder.

Section 51A redrafts parts of section 51 of the Act, and further empowers the registrar to request further information and determine whether the firearm is safe. The requirement that a firearm must be produced to the registrar upon request before a registration notice is issued remains as an essential step in the registration process.

Section 51B redrafts parts of section 51 of the Act. The effect of this provision will not change.

Section 51C redrafts parts of section 51 of the Act stating the circumstances under which the registrar must refuse to register a firearm.

Section 51D redrafts section 51(6) of the Act. Section 51E redrafts section 51(7) of the Act making it a stand-alone provision.

Section 52 redrafts sections 52(1) and 52(2) and 52(3) of the Act. References to firearms being authorised by permit have been deleted consistent with the

new scheme within the Bill to have only one scheme to regulate the possession of firearms — licensing. The effect of this provision will not change.

Subdivision 4.2.3 Registration of firearms users

Subdivision 4.2.3 will replace the system of endorsing licences contained in division 4.3 of the Act. The new terminology of ‘registered user’ will be used, the system will be extended to apply to paintball marker licences and be more clearly explained, but the substantial effect of the system will not change.

Section 52B redrafts section 57 and parts of section 59 of the Act in a clearer format. This section will allow the holder of one of the categories of licence listed in the section to apply to the registrar to be noted as a registered user of someone else’s firearm. The firearm noted must be of a category that the licence holder is licensed to use and the application must be accompanied by the applicant’s licence and evidence of the registered owner’s consent.

Section 52BA will allow the registrar to request further information as required to process the application. This may require production of the firearm to the registrar.

Section 52BB will state that the registrar must grant an application for registered user unless a provision in the Act prevents it.

Section 52C redrafts section 58 of the Act, and further states that if the registrar requires the registered owner to produce the firearm for inspection, the application must be refused if the firearm is not so produced.

Section 52D redrafts section 59 of the Act in light of the new form of licences which requires details of the firearms held by a licensee to be noted in the firearms register, not on the licensee’s licence. Section 52D deals with how the registration as a user is recorded and the effect of the registration as a user and with registered users of firearms owned by firearms dealers, composite entities and approved clubs.

Section 52E stipulates that a registered user ceased to be registered if the user’s registration is cancelled. However, a cancelled user registration does not prevent a user being registered again.

Section 52F states that the registrar will issue a written notice of cancellation of user registration to the registered user if the firearm registration is cancelled.

Section 52G redrafts section 60(3) of the Act and extends it to cover employees of firearms dealers. Therefore, an employee of a firearms dealer who is a registered user of the dealer’s firearms, ceases to be a registered user on the day he or she ceases to be an employee of the dealer.

Division 4.3 Offences — registration

Section 52H redrafts section 61 of the Act with the addition of an offence relating to firearms dealers' employees. This provision is broken up into three separate offences for easier interpretation. The maximum penalties for these offences will not change.

Section 53 redrafts the offence contained in section 53 of the Act according to *Criminal Code* principles of drafting and using consistent terminology. The maximum penalty will be increased from 6 months imprisonment to 10 years imprisonment for a prohibited firearm and 5 years imprisonment for a non-prohibited firearm. The penalty for disposing, acquiring, possessing or using a firearm that is not registered needed to be increased to reflect the seriousness of the offence and the risk posed of the firearm being diverted to illegal purposes. Unregistered firearms are the firearms of choice for firearms' traffickers.

The Court of Appeal in Victoria affirmed their government's position in relation to increasing the penalty for possessing unregistered firearms in *DPP v Faure [2005] VSCA 91*. Justice Williams restated that possessing unregistered firearms is a very serious matter because it flies in the face of firearms laws by subverting the licensing and registration system, which is the cornerstone of the national agreement.

The offence will not apply if the person is a licensed firearms dealer and the firearm is register with the period prescribed by regulation. In light of the increased maximum penalty for this offence, a statutory defence will also be inserted into the offence provision in subsection 53(5). It will be a defence to this offence if the person did not know, and could not reasonably be expected to have known, that the firearm was not registered, and the person was not the owner of the firearm.

Section 54 redrafts the offences contained in section 54 of the Act according to *Criminal Code* principles of drafting. This means the section is broken up into three separate offences, but the effect of the section along with the applicable maximum penalties will not change.

Section 55 creates an offence that relates to circumstances where a licensee possesses a firearm where someone else is the registered owner. The rationale for the offence is to restrict access to firearms to duly authorised persons. The unauthorised movement of firearms between licensees interferes with the policy that seeks to track and monitor all firearms.

Clause 27 —Part 5 heading

PART 5: SAFE STORAGE OF FIREARMS

Recent research of the Australian Institute of Criminology, 'Firearms Theft in Australia 2004-05', reports that during that year, nearly nine out of ten firearms reported stolen were registered, and only 53% of incidents of firearms theft were from owners who were compliant with storage requirements. The report found that the majority of incidents where non-

compliance was reported involved the firearms stored in locations other than locked receptacles. The report supports the view that registered firearm holders must be vigilant in complying with the legislated storage requirements, particularly in light of the potential illegal diversion. The safe storage of firearms by registered firearm holders is an essential element of an effectively regulated firearms scheme.

Clause 27 changes the title of Part 5 to 'Safe storage of firearms'. This amendment maintains consistent terminology of safe storage throughout the Act, rather than safekeeping.

Clause 28 —Section 62

Section 62 redrafts the offence contained in section 62 of the Act according to Criminal Code principles of drafting and using consistent terminology. The maximum penalty will be increased from 20 penalty units to 2 years imprisonment for a prohibited firearm and 1 year imprisonment for a non-prohibited firearm. This increase in penalty is justified given the integral part safe storage plays in preventing firearms theft.

Subsection (2) specifically addresses the storage of firearms in vehicles. In 2004-05, 13% of incidents of firearms theft involved theft from vehicles or while the firearms were in transit. A person will contravene the offence contained in subsection (1) if they fail to take all reasonable steps to store a firearm safely in a vehicle in accordance with the registrar guidelines. Subsection (3) allows a regulation to prescribe the reasonable steps.

Clause 29 —Category A and B licence requirements Section 63

Section 63 redrafts section 63 of the Act, but includes storage requirements for paintball marker licences. Paintball marker licence holders will be required to comply with the same storage requirements as are applicable to a category A or category B licence holder.

Clause 30 —Section 63 (1) penalty

This clause increases the penalty for the offence in section 63. A failure to comply with the storage requirements creates an offence carrying a maximum penalty of 1 year imprisonment. This increase of imprisonment reflects the integral part safe storage plays in preventing firearms theft.

Clause 31 —Category C, D and H licence requirements Section 64

Section 64 redrafts section 64 of the Act.

Clause 31 —Section 64(1) penalty

This clause increases the maximum applicable penalty to 2 years imprisonment. Category C, D and H firearms include prohibited firearms and pistols. The potential consequences of these firearms falling into the wrong hands are considerable and therefore warrant a higher maximum penalty to ensure their safe storage.

Clause 33 —Part 6 heading

PART 6: FIREARMS DEALERS

In July 2002 it was agreed by the Australasian Police Ministers Council to introduce close associate provisions for firearms dealers and prohibit the employment of prescribed people in firearms dealerships. These provisions are designed to further regulate the critical role firearms dealers play in regulatory chain: overseeing, recording and notifying the registry of each and every exchange of firearms in the ACT. Firearms dealers are integral to the tracking and lawful registration of firearms, and therefore inherently vulnerable to organised crime and methods of illegal diversion. It is therefore necessary to regulate whom a firearms dealer may employ and the people who may exercise significant influence over the conduct of the dealership.

The change in terminology in the Bill to ‘acquisition’ and ‘disposal’ also plays an important role in this Part.

Division 6.1 Preliminary

Section 65A provides references for a number of definitions used in the new provisions in part 6.

Division 6.2 Licences and licensed firearms dealers

Clause 34 —Sections 66 to 69

Section 66 redrafts the offence contained in section 66 of the Act, adding a further function that dealers perform — temporary storage. The substantial effect of the provision and the applicable maximum penalty for the offence of being an unlicensed firearms dealer will remain unchanged.

Section 66A deals with close associates of firearms dealers. The introduction of close associate provisions further regulates who can obtain a firearm dealers licence and who may continue to hold a firearms dealer licence based upon their close associates. A close associate will be a person who is able to exercise significant influence over the conduct of the business.

Section 66A(1) requires a firearms dealer licence applicant to supply the names, addresses of and particulars of the nature of their association with, any people who are close associates of the applicant. Section 66A(2) places an obligation upon a firearms dealer applicant to give a written declaration to the registrar of any changes to their close associates within 7 days. Section 66A(3) gives the registrar to power to require a firearms dealer to provide a written declaration regarding their close associates.

Section 66A places obligations of disclosure upon firearms dealer licence applicants and licensed firearms dealers. If a dealer or applicant makes a false or misleading statement or gives false or misleading information in an application or a written declaration, then the offences in part 3.4 of the *Criminal Code* will apply. Maximum applicable penalties for these offences range between 6 months and 1 year imprisonment.

Section 66B will provide a definition of prohibited person. Effectively, firearms dealers will only be permitted to employ a person, or allow a person to be involved in the dealership, who is an adult and has satisfied the registrar that they are suitable according to sections 4BD, 4BE and 4BF. A firearms dealer may be satisfied of a person's suitability if they hold a valid adult firearms licence or the registrar issues a statement under section 66C stating that the person is not a prohibited person.

Section 66C enables a firearms dealer to apply to the registrar for a statement regarding a proposed future employee or where the dealer wishes to allow the individual to act as an agent for or taken part in the management of the business. The statement will state whether or not the person is a prohibited person. This section will need to be used by dealers if they are proposing to employ a person who is not a firearms licence holder. As with a licence application, the registrar may require further information from the person in order to process the application for a statement.

Section 66D imposes an obligation on the registrar, where an application for a statement about whether a person is a prohibited person, that a statement is in fact given to the licensed firearms dealer.

Section 66E contains two offences related to prohibited people being involved in firearms dealing businesses. Subsection (1) makes it an offence for a licensed firearms dealer to employ a prohibited person or allow a prohibited person to be involved in a firearms dealership. Subsection (2) makes it an offence for prohibited person to be employed or allowed to be involved in a firearms dealership. Each offence carries a maximum penalty of 10 years imprisonment. Subsection (3) provides a statutory defence to the offence against the firearms dealer. The firearms dealer will have an evidential burden to prove that he or she did not know, and could not reasonably be expected to have known, that the subject person was a prohibited person. It is envisaged that this defence would not be established in the cases where the dealer did not take reasonable steps to ensure the person was licensed or apply to the registrar for a section 66C statement.

Section 67 redrafts the offences contained in section 67 of the Act, using consistent terminology of acquisition and disposal. This terminology gives the offence a broader scope by covering all transactions where the possession of a firearm is transferred to another, whether or not money has changed hands. The broader scope of this offence complements the scheme contained in the Bill that each and every exchange of a firearm be facilitated by a dealer. Therefore the registry is informed of any movement of a firearm, and effective tracking of firearms can occur. The maximum applicable penalties for these offences will not change.

Division 6.3 Licensed firearms dealers — records and returns

Section 67A sets out definitions relevant to division 6.3, namely 'acquire' and 'dispose'.

Section 68 redrafts the offence contained in section 68(1) of the Act in accordance with *Criminal Code* drafting principles. This offence requires a firearms dealer to record each and every acquisition or disposal of a firearm that they facilitate, and provide those records to the registrar. The maximum penalty for this offence will not change.

Section 68AA redrafts sections 68AA(2), 68AA(3) and 68AA(4) of the Act, using consistent terminology of acquire and dispose. This provision specifies the format of the records to be kept by a firearms dealer, and the time frame in which the records need to be made (i.e. within 48 hours of a transaction).

Section 68A redrafts section 68(7) of the Act in a simpler format.

Section 68B redrafts the offence contained in section 68(6) of the Act in accordance with *Criminal Code* drafting principles. The effect of the section and the maximum applicable penalty for the offence will not change.

Section 68C redrafts section 68(5) of the Act in accordance with *Criminal Code* drafting principles and creates a clear obligation through by converting the obligation into an offence. The maximum penalty for this offence will be 20 penalty units. The offence is a strict liability offence. In a prosecution for the offence there is no requirement to prove a mental element such as intention or reckless. Without making this obligation an offence in this way, the registrar would have no means of compelling a former firearms dealer licence holder to provide their records. As firearms dealers are involved in a highly regulated industry, the removal of the mental element is a reasonable measure to ensure the integrity of the firearms dealer scheme.

Section 69 redrafts the offence contained in section 69 of the Act. In order to improve the efficiency of the tracking of firearms, the requirement for firearms dealers to make quarterly returns will be amended to monthly returns. The maximum penalty for this offence will not change.

Clause 35 —Section 70 Heading

This clause amends the heading for section 70.

Clause 36 —Section 70(4) to (6)

Clause 34 redrafts section 70(4) to (6) is amended to change the reference to ‘the premises specified in the licence.’ As discussed in relation to section 33, the requirement to specify the premises where the firearms are authorised to be kept has been deleted for community safety reasons. If the licence is lost or stolen it is not desirable for a premises where firearms are stored to become public information. The amendment to section 70(4) is consistent with this policy and uses the consistent terminology of ‘registered premises’. ‘Registered premises’ is defined in section 51E(c). The substantial effect of the provision and the maximum applicable penalty will not change.

Subsection (5) is redrafted to make the provision clearer. The offence penalties remain unchanged. Subsection (6) exempts that application of the

offence in subsection (5) to firearms that are temporarily stored or store in line with section 36AA(b) (i).

Subsection (6A) redrafts subsection (6) of the Act and does not change the offence penalty. Subsection (6B) exempts instances of temporary storage from the offence.

Clause 37 — Security of displayed firearms Section 71(2)

This clause redrafts section 71(2) of the Act. The effect of the provision is not changed by the amendment.

Clause 38 — Part 7

PART 7: ENFORCEMENT

Clause 38 replaces part 7 — Powers of entry, search and seizure, with a new part 7 — Enforcement. The provisions contained in this new part will be more comprehensive, and human rights compliant, however the substantive effect of the part will not change. The new part 7 will include all provisions relating to enforcement and therefore not require reference to other Acts to fill in the gaps.

The main amendment to the part will be the introduction of a power to enter premises in accordance with a licence condition, to inspect storage facilities. This provision is designed to deal with the problem of non-compliance with safe storage requirements, which has been shown to significantly contribute to the incidence of firearms theft.

Recent research of the Australian Institute of Criminology, 'Firearms Theft in Australia 2004-05', reports that during that year, nearly nine out of ten firearms reported stolen were registered, and only 53% of incidents of firearms theft were from owners who were compliant with storage requirements. The report found that the majority of incidents where non-compliance was reported involved the firearms stored in locations other than locked receptacles. The report supports the view that registered firearm holders must be vigilant in complying with the legislated storage requirements, particularly in light of the potential illegal diversion. The safe storage of firearms by registered firearm holders is an essential element of an effectively regulated firearms scheme.

Under the proposed new scheme, all licence holders will be subject to a condition that they permit up to two inspections of their storage facilities per year. The inspections will only take place when the licence holder is present and between the hours of 7am and 7pm. If entering premises according to licence condition, the police will not be required to separately obtain the licensee's consent pursuant to section 75. If the licensee refuses entry to the police, they will be in breach of a licence condition and liable to prosecution under section 16(2). However, there will be a statutory defence to a

prosecution raised on this basis, that the licensee has a reasonable excuse for refusing police entry.

One further amendment to part 7 will be to include an emergency power of entry. This provision will mirror section 190 of the *Crimes Act 1900* and allow police to enter premises at any time to prevent or stop an offence or breach of the peace involving a firearm.

Division 7.1 Interpretation

Section 73 will include a definition particularly relevant to part 7 — offence. If the offence in question is against another Act, the definition of offence will no longer be limited to those offences that carry a penalty of imprisonment of 6 months or more.

Division 7.2 Powers of police officers

Section 74(1) will list the 6 different powers of entry available to police under the Act. These powers of entry are:

- at any reasonable time, enter premises open to the public;
- at any time, enter a firearms dealer's premises that is open for business;
- at any time, enter premises with occupier's consent;
- enter premises in accordance with licence condition;
- enter premises in accordance with search warrant; or
- emergency power of entry without warrant.

Section 74A redrafts section 74(2) of the Act and requires that police officers produce evidence that they are police. A failure to do so would require officers to leave the premises. The effect of the provision will not change.

Section 75 redrafts section 76 of the Act in accordance with human rights principles. The substantial effect of the provision will not change.

Section 75A redrafts section 74(3) of the Act, listing the general powers police have upon entering a premises, omitting section 74(3)(e) regarding the power of seizure. This power will be dealt with in a separate section. Otherwise, the effect of the provision will not change.

Section 75B applies where a police officer enters registered premises under a licence or permit. Police will be able to inspect any facilities for the storing of firearms, test or remove for testing any firearm modified otherwise than in accordance with the Act. Police officers will also be able to direct a licensee or permit holder, in writing, not use or dispose of the firearm unless it is made safe.

Section 75C redrafts sections 74(4) and 74(5) of the Act. The effect and penalties associated with the section will not change. Section 75D redrafts and expands upon section 74(3)(e) of the Act regarding the power of seizure. The provision gives police officers the power to seize things if the officer is

reasonably satisfied that the seizure is necessary to stop the thing from being concealed, lost or destroyed, or used to commit an offence against the Act. Furthermore, police officers may seize an item at the premises if they are satisfied that the item is connected with an indictable offence.

As well as seizing a thing, police will be able to restrict access to the item and leave it at the premises. Subsection (7) makes it an offence to interfere with an item restricted under subsection (6). Section 75DA will require officers to provide a receipt for seized items. Where access is restricted, the receipt must include notice that it is an offence under 75D (7) to interfere with that item. This offence is a strict liability offence. This is appropriate, as the person will have been advised in writing that interfering with the restricted item is an offence.

Section 75DA sets out the requirements for receipts where items are seized or where access to items left at premises is restricted.

Division 7.3 Search warrants

Division 7.3 redrafts section 77 of the Act in a more comprehensive and segregated format that is human rights compliant.

Section 76 sets out how police may apply for a warrant in person and the grounds upon which a magistrate may issue a warrant. Subsection (6) lists the information that must be stated on a warrant. The main change to this section requires that a warrant only remain valid for a period of 7 days, rather than 1 month under the Act.

Section 76A sets out how police may apply for a warrant by phone, fax, radio or another form of communication in urgent or special circumstances.

Sections 76B, 76C and 76D detail the procedures police must follow when executing a warrant on premises, including how their presence should be announced and circumstances in which it is not required; when a copy of the warrant and a document setting out the rights and obligations of the person should be provided; and the circumstances where an occupier is entitled to be present during the search.

Division 7.4 Things seized

Division 7.4 redrafts section 78 of the Act.

Section 77 allows access to seized thing for the purpose of inspection or the taking of extracts where the thing is a document.

Sections 77A deals with the return or forfeiture of things seized under part 7. The period of time an item may remain seized before a prosecution is commenced has been extended to 1 year in accordance with the time limit for commencing prosecutions in the ACT. Section 192 of the *Legislation Act 2001* states this time limit. Reasonable compensation will also be required to

be paid if an item is not or cannot be returned in accordance with section 77B(1).

Division 7.5 Enforcement — miscellaneous

Division 7.5, specifically section 78, will introduce provisions requiring police to minimise any damage and inconvenience that may be caused whilst executing a warrant or exercising any functions under part 7. If the police do cause any damage, written notice of the damage should be provided to the owner, or left in a conspicuous place at the premises. Subsection (3) sets out the information to be expressly included in such a notice.

Section 78A will provide a mechanism for people who suffered loss as a result of the exercise of functions under part 7, to claim compensation from the Territory. A claim for compensation will need to be sought in a court proceeding, and any order for compensation must be just in the circumstances of the case.

Clause 39 —Part 8 heading

PART 8: OFFENCES

Clause 38 changes the heading of part 8 from ‘Miscellaneous Offences’ to ‘Offences’, and inserts the serious offence of trafficking firearms carrying a maximum penalty of 20 years imprisonment. This offence is aimed at criminal enterprises of a serious nature that are involved in the illegal diversion or movement of firearms.

The seriousness of the offenders’ actions is identified through the frequency of illegal dealings or the volume of firearms unlawfully disposed of. Therefore, the offence of trafficking can be established two separate ways: firstly by contravening a dealing provision on 3 or more separate occasions over a 12-month period; and secondly, by contravening a dealing provision involving 4 or more firearms on the same occasion.

Subsection (1) states that a person commits an offence if they contravene a dealing provision on 3 or more separate occasions over a 12-month period. A dealing provision is defined in subsection (6) to mean an offence contained in section 53(1), section 83 or section 84 — unregistered firearms and unlawful disposal or acquisition of firearms. The maximum applicable penalty is 20 years imprisonment. To remove any doubt, subsection (7) ensures that this offence will not have retrospective operation, by specifying that the 12-month period must start of the day after the section commences.

Subsection (2) stipulates that where a person is on trial for an offence against section 79(1), the court must be satisfied of the same three occasions in order to find the offence proved. A separate occasion correlates to a separate transaction. As the example shows, a person may sell two firearms to two different people on the one day, this equates to two transactions or occasions. However, if a person sells three firearms to the one person at the one time, then that equates to one occasion or transaction.

Subsection (3) provides an alternate offence without requiring the offender to be charged alternatively. Therefore, if the court is not satisfied that the offender committed the same three transactions, but were satisfied of one or two of the transactions relied upon, then the court may acquit the person of the trafficking offence, but find the offender guilty of one or two offences pursuant to sections 53, 83 or 84.

Subsection (5) states the second way an offence of tracking firearms may be proven. A person commits the offence of trafficking if they contravene a dealing provision involving four or more firearms on the same occasion. This offence may be proved if the person acquired two firearms and disposed of two firearms on the same occasion. This offence is targeted at the unlawful movement of firearms, so the offence may be proved regardless of whether the firearms are acquired or disposed of.

Clause 40 —Sections 83 to 84B

Section 82A will insert new offences dealing with unlawful operation of a shooting range. There will be two separate offences each carrying a maximum penalty of 200 penalty units and/or 2 years imprisonment. The first offence will deal with the requirement that a shooting range be approved, whilst the second offence will deal with unlicensed operators. Regulations will provide for how an entity will be licensed to operate a shooting range and also the criteria that must be met in order for a range to be approved. These offences will be introduced to further regulate the ranges in an effort to ensure the safety of participants and validate the entities that operate them.

Section 82B mirrors section 82A in relation to paintball ranges. This section will form part of the package of provisions designed to regulate the paintball industry. Given that paintball markers will not be prohibited firearms under the new system, but rather treated akin to category A firearms, it will no longer be necessary to obtain ministerial approval for entities to operate paintball ranges. The operation of paintball ranges will be monitored in the same way as shooting ranges.

Sections 83 and 84 are redrafts of section 84 of the Act, and separate the offences into unlawful disposal and unlawful acquisition. These offences are dealing provisions as defined in section 79(6). Consistent terminology of 'acquire' and 'dispose' will be used throughout the provisions to ensure that all transactions involving firearms are covered by the provisions, whether or not money changes hands.

Section 83 deals with the unlawful disposal of firearms. A person will commit an offence against this section if they are intentionally involved in an unlawful disposal of a firearm. A disposal will be unlawful if:

- (a) the acquirer or disposer is not authorised by licence or permit to possess the firearm; and
- (b) the disposer has not inspected the acquirer's licence or permit; and
- (c) the disposer (if not a dealer) has not inspected the acquirer's permit to acquire (or corresponding permit to acquire); and

- (d) the disposal has not been facilitated by a licensed firearms dealer (unless one of the parties is a dealer).

Section 84 deals with the unlawful acquisition of firearms. A person will commit an offence against this section if they are intentionally involved in an unlawful acquisition of a firearm. An acquisition will be unlawful if:

- (a) the disposer or acquirer is not authorised by licence to possess the firearm; and
- (b) the acquirer has not inspected the disposer's licence (if not a dealer); and
- (c) the acquirer has not inspected the disposer's permit to acquire (or corresponding permit to acquire); and
- (d) the acquisition has not been facilitated by a licensed firearms dealer (unless one of the parties is a dealer).

The maximum penalty for these offences has been increased from 100 penalty units and/or 1 year imprisonment to an aggravated penalty structure of 10 years imprisonment if the firearm involved is a prohibited firearm and 5 years imprisonment for a non-prohibited firearm. This increase in penalty reflects the seriousness of illegal diversion of firearms. If transactions of firearms are conducted unlawfully, then firearms fall out of the system of registration and run a serious risk of being diverted into the illegal market. The aggravated penalty structure reflects the added seriousness of the offence and the potential threat to the community if the firearm involved is prohibited.

Section 84A redrafts section 84A of the Act. The maximum penalties applicable to this offence will remain unchanged at 10 years imprisonment for the unlawful manufacture of a non-prohibited firearm and 20 years imprisonment for the unlawful manufacture of a prohibited firearm, however the offence will no longer be a strict liability offence. Strict liability offences engage the right to the presumption of innocence contained in section 22(1) of the *Human Rights Act 2004*, and it is manifestly disproportionate to have an applicable maximum penalty of 20 years imprisonment in relation to an offence of strict liability.

Section 84A(2) will expressly state that the offence of unlawful manufacture of firearms will not apply to a person who is authorised, by a firearms dealers licence, to manufacture that type of firearm.

Section 84A(3) redrafts section 84A(5) of the Act, without change.

Section 84B of the Act will be deleted. This provision enabled an offender to be found guilty of unlawfully manufacturing a non-prohibited firearm if the court was not satisfied that the firearm produced was prohibited. The new offence contained in section 84A makes the issue of whether or not a manufactured firearm is prohibited, a matter for sentencing.

Clause 41 —Section 93

Clause 41 redrafts the offence contained in section 93 of the Act, but makes provision for people who inherit firearms to temporarily store them with a licensed firearms dealer in certain circumstances. The maximum penalty for this offence will not change.

Section 93A is a new offence dealing specifically with the disposal of inherited firearms. Rather than requiring a person to automatically surrender the firearm to police, this section will allow a person who inherits a firearm and is not authorised to possess the firearm, to temporarily store the firearm with a licensed firearms dealer or give it to a dealer for sale or surrender it to the police. The maximum applicable penalty will be the same as for section 93 — 50 penalty units.

Clause 42 —Restrictions where alcohol or other drugs concerned

New section 97(3)

Clause 42 will be inserted to address the safety issue of intoxicated people participating in a shoot at a shooting range. Section 97 of the Act currently provides offences directed at the person who possesses a firearm whilst under the influence of alcohol or any other drug; and a person who sells or gives possession of a firearm to another person who is intoxicated. These offences fail to address the issue of intoxicated people being permitted to shoot at an approved shooting range, using their own firearm.

Whilst some clubs that operate shooting ranges already enforce a policy preventing people from drinking alcohol before or during a shoot, this new offence will place an obligation upon range operators to monitor the inebriation of the people shooting at their range, to the extent that the person would not be able to exercise responsible control over a firearm. It is envisaged that range operators will not be required to breathalyse people or employ similar techniques, but just rely upon their common sense and a reasonable person's opinion of the person's sobriety or otherwise.

The maximum penalty for this offence will be 50 penalty units and/or 6 months imprisonment.

Clause 43 — Sections 98 and 99

Clause 43 deals with unlawful sale, purchase and possession of ammunition. The offences have been redrafted consistent with *Criminal Code* drafting principles.

Section 98 redrafts section 98(1) of the Act. The maximum penalty for this offence will not change.

Section 98A redrafts section 98(2) with respect to licensed firearms dealers selling ammunition. The maximum penalty for this offence will not change.

Section 98B redrafts sections 98(2) and 98(5) of the Act with respect to authorised club members selling ammunition. It carries a maximum penalty of 6 month imprisonment and/or 50 penalty units.

Section 98C redrafts section 98(4)(a) of the Act. The effect of and the penalty for this offence will not change.

Section 98D redrafts section 98(4)(b) of the Act. The effect of and the penalty for this offence will not change.

Section 99 redrafts section 98(3) of the Act. The maximum penalty for this offence will not change.

Section 99A redrafts the sections 99(1) and 99(2) of the Act. The offence specifically states that the physical element in subsection (1)(b) offence is one of strict liability according to *Criminal Code* drafting principles. The maximum penalty for this offence will not change.

Clause 44 — Section 102

Clause 44 deals with offences with respect to defacing, altering and removing identification marks on firearms. This clause redrafts section 102 of the Act in accordance with *Criminal Code* principles, effectively creating two offences — one in relation to the person who intentionally defaces, alters or removes a number, letter or other identification mark on a firearm or barrel for a firearm; and the other in relation to a person who knowingly possesses a firearm that has such an alteration.

Subsection (3) provides for a statutory defence if the defendant proves that they were authorised in writing by the registrar to carry out the alteration or possess the firearm or barrel.

The redrafting of the offence does not change the effect of the provision, but does increase the maximum penalty from 100 penalty units and/or 1 year imprisonment to 500 penalty units and/or 5 years imprisonment. This is a significant increase in penalty designed to bring the ACT into line more with the penalties in other jurisdictions, and properly reflect the seriousness of the offence. Identification marks and serial numbers are removed or changed on firearms in an effort to divert them from amendments contained in this Bill seeks to implement the resolutions contained in the National Firearms Trafficking Policy Agreement, as they relate to the ACT. Recommendations of two reviews of firearms law and procedures carried out by the Firearms Consultative Committee and the Department of Justice and Community Safety respectively, have also informed a number of the amendments contained in this Bill.

Clause 45 — Possession of firearms under another licence Section

105 This provision has been moved to Clause 26, section 55. The effect and penalty remain unchanged.

Clause 46 — Section 110

Clause 46 redrafts the offence section 110 in line with *Criminal Code* drafting principles. The maximum penalty has been increased from 10 penalty units to 50 penalty units to better reflect the gravity of the offence.

Clause 47 —Part 9

Part 9 of the Act deals with firearms prohibition orders. Clause 47 omits this part of the Act, thereby ceasing the availability of firearms prohibition orders as a means of restricting access to firearms.

A firearm prohibition order prevents a person from having possession of or using a firearm if the registrar believes that it would not be in the public interest for that person to have a firearm. Contravention of a firearms prohibition order carried a maximum penalty of 1-year imprisonment.

Since the commencement of the Act in December 1996, only one firearms prohibition order has been issued.

The suitability criteria used to determine whether or not a person is suitable to hold a firearms licence, contained in sections 4BD, 4BE and 4BF, now sufficiently addresses the problem firearms prohibition orders were designed to cover. A person will not be issued a licence if the registrar believes it would not be in the public interest, and a licence can be cancelled at any time if the registrar would be required to refuse a licence. Information held by law enforcement agencies and protection orders will be considered at the point of application, and may be used as a reason for cancellation of a licence at any time.

The provisions in the Act relating to firearms prohibition orders are not human rights compliant. Therefore given the frequency the orders have been used and the extremely limited circumstances in which they may be applicable, or required, these orders will be deleted from the Act.

Clause 48 —Sections 113 and 114

Clause 48 deals with the review of decisions made under the Act and redrafts sections 113 and 114 of the Act. Section 113 will be split into two sections — one stating the definition of ‘reviewable decision’ and the other stating that an application may be made to the Administrative Appeals Tribunal (AAT) for a review of a reviewable decision. Schedule 4 has been developed as an improved way of listing all of the decisions that may be appealed to the AAT.

Section 114 will be redrafted to ensure each person affected by a reviewable decision is provided with written notice of that decision, and that notice is made in accordance with the requirements of the AAT code of practice.

Clause 49 — Section 116

Clause 49 redrafts section 116 setting out in a clear manner the options available to the court where either a police officer or the owner of the firearm makes an application.

Clause 50 —Offences by corporations Section 122(1) and note

Clause 50 redrafts section 122(1) of the Act using the consistent term of ‘executive officer’ rather than ‘person who is a director of the corporation or who is concerned in the management of the corporation’. ‘Executive officer of

a corporation' is defined in the dictionary as, 'a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.' The effect of this provision will not change.

Clause 51 — Section 124

Clause 51 deals with evidentiary certificates to be used in prosecutions for offences against the Act. The section will be inserted to assist the efficient running of prosecutions for offences against this Act. If it is an element of an offence that the person was licensed or held a permit; was authorised by a licence or permit; or was authorised or approved by the registrar, then the prosecution may prove this element of the offence by tendering a registrar's certificate stating that evidence. In the absence of evidence to the contrary from the accused, the certificate will be conclusive evidence of that element of the offence.

Clause 52 — Regulation-making power Section 126(2)(a)

Clause 52 inserts the consistent term of disposal into section 126(2)(a) of the Act. Therefore, the registrar may make regulations in relation to disposal of firearms.

Clause 53 — New section 126(2)(b)

Clause 53 will allow the registrar to make regulations with respect to the firearms register established under section 50 — new 126 (2)(aa) and in section 126 (2)(b) amends firearms safety training courses' to 'firearms training courses' to be consistent with the terminology used throughout the Bill.

Clause 54 — New section 126(2)(ja)

Clause 54 will allow the registrar to make regulations with respect to the approval of paintball ranges and approved paintball ranges.

Clause 56 — New section 126(2A) and (2B)

Clause 56 inserts two new subsections dealing with category C licences. Section 25 specifies that an applicant for a category C licence must produce evidence to the registrar that they have a special need to possess or use a category C firearm, and that the special need cannot be met in any other way. Section 126(2A) will enable the registrar to prescribe in a regulation the evidence that may be produced to satisfy the registrar of this requirement. Section 126(2B) states that such a regulation will not limit the registrar's discretion in deciding whether a special need has been established.

Clause 57 — Section 128

Clause 57 inserts two new provisions dealing with the licensing of entities to operate shooting and paintball ranges. Under the new regime, a shooting or paintball range will need to be approved and the entity operating the range will need to be licensed. New sections 128 and 129 will allow a regulation to provide for the licensing of an entity to operate an approved shooting or paintball range.

Clause 58 —New part 20

Clause 58 inserts a new part to the Act dealing with the transitional provisions. These provisions are designed to assist with the operational consequences of the changes proposed in this Bill. Given the complexity of reforming a number of provisions and regulations and the necessity of allowing licences and authorisations made under the Act to continue until replaced by new licences and authorisations, transitional provisions have been included in this Bill.

Section 200 contains two definitions to aid the interpretation of this part.

Section 201 deals with the transition of partnership firearms licences. Under the new scheme, partnership licences will no longer be available. This is mainly due to the partnership not being a legal entity. Each of the partners in a partnership will be issued with an individual adult firearms licence of the same category upon the commencement of the Bill. The adult firearms licence will be taken to have been issued on the same day as the original partnership licence was issued.

Section 202 reflects the change in terminology from ‘fit and proper’ to suitable.

Section 203 covers applications for firearms licences made prior to the commencement of the Bill, but not decided. If there are documents or information that is required in the Bill that was not previously required by the legislation to decide an application of that type, the registrar can request that the applicant produce that further information or documentation before deciding the application. If the applicant fails to comply with the registrar’s request, the registrar may refuse to consider the application further.

Section 204 deals with applications for permits made before the commencement day. The application will be taken to be an application of the kind of permit under this Act that the registrar considers appropriate. Once again, if the applicant fails to comply with the registrar’s request, the registrar may refuse to consider the application further.

Section 205 applies to adult firearms licences and composite entity licences. The provision applies the pre-commencement conditions on licences. These conditions may be amended by the Act. Subsection (6) provides that, unless cancelled, the licence ends when original licence would have ended. Section 206 applies to minors firearms licences and Section 207 applies to internationally protected people temporary licences in a similar manner.

Section 208 deals with pre-commencement licences for and international visitors temporary permit. These permits will be taken to be temporary international firearms licences.

Section 209 ensures that that suspension in place at pre-commencement remains in place until the suspension is scheduled to end.

Section 210 allows the registrar to consider applications for the registration of firearms made before the commencement of the Bill.

Section 211 provides that the register under the Bill is taken to include the pre-commencement register. Notably, the registrar will be able to request that an owner of a registered firearm provide information or produce a thing such as the relevant firearm. Where this request is made, the owner will have 30 days in which to comply with the request. A failure may result in the cancellation of the registration by the registrar.

Section 212 deals with the endorsement of licences. Where a person has been endorsed to use a firearm held by another firearms licensee under the pre-commencement Act (under division 4.3), that person will be taken to be the 'registered user' of the other person's firearm.

Section 213 will allow the registrar to issue a certificate in relation to anything that happened under the pre-commencement Act. This will include matters such as the registration of firearms, applications for licences or permits.

Section 214 provides a regulation making power to facilitate matters associated with the enactment of the *Firearms Amendment Act 2008*.

Section 215 provide for the transitional provision in part 20 one year after the commencement date. Reviewable decision within part 20 listed in schedule 4 will also expire at this time.

Clauses 59-67 — Schedule 1

Clause 59-67 make a series of minor amendment to schedule 1 — prohibited firearms. The changes do two things — bring the schedule into line with amendments in the Bill and clarify descriptions of items already in the schedule. Instances where descriptions have been clarified include this at clauses 62 and 64. Clause 67 inserts 3 new items to the schedule.

Clause 68 — Schedule 2 & Schedule 3

Clause 68 amends the legislation by inserting a schedule of people exempt from the Act and an expended schedule of licence categories and authority conferred. Part 2.2 sets out the categories of people exempt from the Act. The categories include for example Australian Federal Police or members of a police service or police fierce of a state or another Territory, members of the Defence Force, and a member of Council of the Australian War Memorial or of staff of the memorial.

Part 2.3 sets out circumstances where certain classes of people do not commit an offence for possessing or using specific types of firearms.

Part 2.4 provides that persons entitled to diplomatic immunity under the relevant Commonwealth legislation does not commit an offence is the person has the requisite written approval.

Schedule 3 replaces existing schedule 2 with an expanded list of licence categories and authority conferred.

Schedule 4 identifies decisions of the firearms registrar made under the Act that are reviewable by the Administrative Appeals Tribunal.

Dictionary

The Dictionary contains definitions of terms used throughout the Act. Definitions within the Dictionary include acquire, approved firearms training course, approved paintball competition, approved paintball range, approved firearms range, firearms dealer, genuine reason, sell, and temporarily store.

PART 3 PROHIBITED WEAPONS ACT 1996

Part 3 makes a series of amendments to the *Prohibited Weapons Act 1996*. The Bill will allow the firearms registrar to deem weapons that are not firearms, but are weapons to be prescribed as prohibited weapons and seized.

Clause 70 — Legislation amended — pt 3

This clause identifies the Act to be amended, namely the *Prohibited Weapons Act 1996*.

Clause 71 —Section 3

This clause subsection amends the meaning of possession for the Prohibited Weapons Act to modernise the language. It does so by adopting the notions associated with possession as they relate to firearms in the Bill.

Clause 72 —New part 1A

This clause inserts definitions of prohibited weapon and prohibited article. Each of these definitions will be linked to schedules that provide a list of things to be included in the respective definition. Subsections 4A(3) and 4B(3) will allow for the addition, amendment or omission of items listed in schedule 1 and 2.

Modified prohibited weapon and modified prohibited article are also defined to cover instances where changes are made to the item.

Clause 73 —New parts 1B to 1D

Clause 73 provides the operative provisions relating to ‘unregulated weapons’. Part 1B of the Bill has been proposed to address a real-time and critical issue of our community. Part 1B of the Bill is designed to deal with this issue in an immediate, direct and transparent manner by providing police with the power to seize a firearm that meets the criteria outlined in section 4C. A review mechanism is available to people who have had items seized.

Part 1B will not apply to weapons that are currently registered in the ACT.

Section 4C provides the definitions specifically relevant to Part 1B— ‘unregulated weapon’. This definition is designed to capture firearms that were not contemplated by the legislature at the time the Act was made, and therefore are not regulated within the community, either by licensing,

registration or prohibition mechanisms, but would pose a risk to the safety of the community.

Section 4D provides a power to police to seize an item if it meets the criteria listed in the section. In order to use this power of seizure, the police officer must believe, on reasonable grounds, that the item comes within the definition of an unregulated firearm; and the seizure is necessary to prevent the item being concealed, lost or destroyed; and the seizure is necessary because the thing would pose a risk to the safety of the community if the item is used.

Section 4E requires the police officer who seizes an item under 4D to leave a receipt for the item. This section prescribes the information that the receipt must contain.

Section 4F will provide that once an item is seized under section 4D, the police may take the item to another place for examination or processing. This stage of the process is time-limited to 7 days unless an extension is granted by a magistrate. At this time, the registrar and police will analyse the item to determine whether the item meets the criteria in section 4D. The person from whom the item was seized has a right to be heard or make a submission during the examination process. This affords the person the opportunity to inform the police of any information that may be relevant to the analysis of the item, for example if there is a relevant and lawful purpose for the item. The police will also be required to inform the person of the results of the analysis.

Section 4G permits other entitled people to inspect the item seized during the examination process, for example, other public servants or technical experts.

Section H imposes an obligation on the registrar to review each seizure under section 4D. If the registrar decides as a result of the review that the item is not an unregulated firearm; or is not connected with an offence; or does not pose a risk to the safety of anyone if used, then the item must be returned to the person from whom it was seized. Subsection (2) states that if the item is not a prohibited firearm within 30 days of the item being seized, then the item must be returned to its owner or reasonable compensation paid. Subsection (2) will allow the payment of reasonable compensation by the Territory to the owner of the thing for its loss where the thing cannot be returned within a reasonable time.

It is envisaged that reasonable compensation will be determined by an objective assessment and agreement. Any dispute on the quantum of reasonable compensation may be taken to a Territory court.

Section 4I will state that if an item is a prohibited firearm within the 30 day period, then there is no requirement to return the item, nor pay compensation. The item is forfeited to the Territory and may be destroyed or disposed of by the police.

The Government is of the view that the forfeiture of prohibited weapons without compensation meets the needs of both community safety and address

unethical attempts to profit from items that do not have a legitimate use in the ACT.

PART 1C: MINISTER'S GUIDELINES

Section 4K will allow for the making of guidelines for the registrar's decisions under section 4L. Guidelines do not have the force of law unless the empowering legislation provides that they are binding. Case law indicates that where a decision is made in accordance with guidelines and those guidelines do not accord with the legislation under which the decision is made, the decision will be invalid.

PART 1D: REGISTRAR DECLARATIONS

Part 1D will enable the registrar to declare items to be prohibited articles, prohibited weapons or neither. This part will enable the registrar to deal with types of weapons that do not currently fall within the descriptions contained in the Act. A declaration will classify a weapon as prohibited or not, and give the Executive an opportunity to give the declaration legislative effect. A declaration that the item is neither a firearm nor a prohibited firearm would have the legal effect that the item would not be subject to the Act.

The registrar may make a prohibited weapon declaration pursuant to section 4L(1)(b).

Section 4L deals with the types of declaration the registrar may make and the form of the declaration. According to subsection (1) the registrar may make 3 types of declaration:

- declare an item to be a prohibited article;
- declare an item to be a prohibited weapon; or
- declare that an item is not a prohibited article or prohibited weapon.

A declaration made under this section, by disallowable instrument, will be valid for 3 months. The registrar will also be required to publish a declaration made under this section in the Canberra Times so that the community is made aware of the item and its classification under the Act.

Section 4M sets out the purpose of the prohibited firearms declaration. Section 4M enables a two-day grace period from criminal liability after the notification of the declaration.

In summary, the power to make these kinds of short-term declarations will provide the community with the protections afforded by the Act at the earliest possible time. The Government is of the view that the power to make short-term declarations of prohibited weapons and prohibited articles is warranted given the growth and diversification of weapons manufacturing.

Clause 74 — Part 2 heading

Clause 74 amends the heading for part 2 from *prohibited weapons and prohibited articles* to *Offences*.

Clause 75 — Sections 5 and 6

This clause amends offences in section 5 and 6 consistent with the Criminal Code. The penalties associated with these offences have been increased to reflect the gravity of the offence in question. The increases included in the Bill are consistent with other jurisdictions.

The offence in section 5 — unauthorised possession or use of prohibited weapon — has been increased from 100 penalty units and 1 year imprisonment to 500 penalty units and 5 years imprisonment. The offence in section 6 — unauthorised possession or use of prohibited articles — has been increased from 50 penalty units and 6 months imprisonment to 200 penalty units and 2 years imprisonment.

Clause 76 — Section 8

This clause amends the provision relating to the offence of disposal of prohibited weapons and articles by unauthorised holders. The penalty associated with the offence is unchanged.

Clause 77 — Section 17

Section 17 deals with evidentiary certificates to be used in prosecutions for offences against the Prohibited Weapons Act. The effect of the provision will not change.

Section 17A provides that the Minister may determine fees through a disallowable instrument.

Clause 78 — Approved forms Section 18

This clause will allow the registrar, rather than the Minister, to approve forms to be used for the Prohibited Weapons Act. These forms will be notifiable instrument.

Clause 79 — New part 5

Clause 58 inserts a new part to the Act dealing with the transitional provisions. These provisions are designed to assist with the operational consequences of the changes proposed in this Bill.

Where a person is in possession of weapons that become prohibited weapons upon the commencement of the Bill, section 51 provides an amnesty period for the resolution of the application. If the person applies for a permit within 30 days of commencement they do not commit an offence under the Act during the period the registrar is deciding the application.

Section 52 deals with instances where individuals make late application to the registrar for prohibited weapons or prohibited article permits. The section provides that the person does not commit an offence if they have applied within 30 days of the commencement day up until when the registrar decides the application. If the registrar refuses the application, the person has seven days — from receiving notice of the decision — within which to either surrender the item to a police officer, dispose of it to a person who is authorised

by permit to possess it or ask the registrar to store it until the review processes have taken place.

Section 53 provides for the making of transitional regulations necessary and convenient for the enactment of the *Firearms Amendment Act 2008*. The transitional provisions in part 5 expire 1 year after the commencement day.

Clause 80 — Schedule 1

This clause amends schedule 1 into two separate schedules — prohibited weapons and prohibited articles. Schedule 1 sets out prohibited weapons as outlined in the new section 4A. The schedule will be divided in four distinct categories: prohibited bladed weapons; prohibited hand weapons; prohibited missile weapons; and, other prohibited weapons. Schedule 2 sets out prohibited articles as outlines in the new section 4B. These distinct categories will improve the Act by making it easier to identify whether a weapon or article is in fact prohibited.

The language used to describe some of the items in the schedules has been changed to better describe classes of weapons or articles. Where appropriate, descriptions used in the *Customs (Prohibited Imports) Regulations 1956* have been adopted. Where this occurs, the effect of the changes is minor and is not intended to cover items not previously prohibited, rather, the changes are aimed at achieving consistency and accuracy.

Schedule 2, now includes soft body armour and modified articles of clothing the purpose of which is to disguise or conceal a weapon. These items will replace section 4 in the *Prohibited Weapons Regulation 1997*. Schedule 2 also inserts into the Prohibited Weapons Act descriptions of an article or device intended to muffle, reduce or stop the noise created by a firearm, commonly known as a silencer.

Other articles designed to be fitted to firearms, including firearm magazines, have also been include in schedule 2.

Schedule 1 — Technical amendments provides minor amendments to the *Firearms Act 1996* and *Prohibited Weapons Act 1996* necessary for the application of the new Bill.

Schedule 2 — Consequential amendments of other legislation set out minor amendments to other legislative instruments including:

- *Court Procedures Act 2004*;
- *Crimes (Sentence Administration) Regulation 2006*;
- *Domestic Violence and Protections Orders Act 2001*;
- *Fair Trading Act 1992*; and
- *Spent Convictions Act 2000*.