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

FIREARMS LEGISLATION AMENDMENT BILL 2020

**EXPLANATORY STATEMENT AND HUMAN RIGHTS ACT COMPATIBILITY
STATEMENT (HUMAN RIGHTS ACT 2004 S37)**

**Presented by
Mick Gentleman MLA
Minister for Police and Emergency Services**

FIREARMS LEGISLATION AMENDMENT BILL 2020

OVERVIEW OF THE BILL

This Bill amends the laws regulating firearms and weapons in the ACT to support the legitimate activities of biathletes, pentathletes and Commonwealth aviation security inspectors.

This Bill will have positive impacts on public safety and the sporting community in the ACT and has been developed following stakeholder consultation.

The Firearms Legislation Amendment Bill 2020 will make amendments to the *Firearms Act 1996*, *Firearms Regulation 2008* and *Prohibited Weapons Act 1996* including:

- a) exemptions from the Firearms Act and Prohibited Weapons Act to allow aviation security inspectors to carry fake weapons including imitation firearms and prohibited weapons in order to test the airport security at Canberra Airport;
- b) exemptions for biathlon and modern pentathlon athletes, participants, coaches and officials to possess and use laser target shooting devices (imitation firearms) for the purposes of training and competing in biathlon and pentathlon events and competitions;
- c) prescribing biathlon and modern pentathlon sporting organisations in the ACT.

Exemptions for aviation security inspectors

The Firearms Act generally requires a person to be authorised by a permit to possess and use an imitation firearm.

However, the Firearms Act provides that people can be exempted from a provision of the Act in relation to a firearm the person possesses or uses, in specified circumstances.

This Bill provides that aviation security inspectors, as defined in the *Aviation Transport Security Act 2004* (Cwlth), will be exempt from the requirements to have a permit to possess and use an imitation firearm, in the exercise of their functions.

The Bill similarly provides that aviation security inspectors who carry prohibited weapons (for example, blunted knives and fake improvised explosive devices) in the course of their duties, do not commit an offence under the Prohibited Weapons Act.

These amendments will support aviation security inspectors in their functions by allowing them to possess and use imitation firearms and prohibited weapons in order to conduct systems tests at passenger, staff and goods screening points at Canberra Airport. These tests strengthen the overall public safety at the Canberra Airport.

Exemptions relating to biathlon and pentathlon participants

A laser target shooting device falls within the definition of an *imitation firearm* under the Firearms Act.

For the biathlon and modern pentathlon sporting communities, this Bill includes an exemption for participants, athletes, coaches and officials of biathlon or modern pentathlon from the requirement to obtain a permit for their laser target shooting devices. This is intended to support the genuine needs of these sporting communities, assist with promoting the sport and to support young athletes becoming involved in the sport.

The new arrangement for laser target shooting devices brings the ACT into line with New South Wales and Victoria which have amended their firearms laws to authorise the possession and use of laser target shooting devices to support the needs of the biathlon and modern pentathlon communities.

Laser target shooting devices made their Olympic debut in the modern pentathlon event at the 2012 summer games. The new firearms, which are safer as they fire a laser instead of ammunition, allow spectators to get closer to the action. In biathlon, the laser rifle is emerging as a popular alternative to the .22 calibre small-bore rifles, for similar reasons. These changes affect the classification of the firearms used in these sports, and the requirements for athletes. The amendments for these sporting activities support and reflect these changes.

CONSISTENCY WITH HUMAN RIGHTS

Broadly, the Bill engages, and places limitations on, the following rights under the *Human Rights Act 2004* (HR Act):

- Section 8 – Recognition and equality before the law

The Bill also engages, and supports, the following HR Act rights:

- Section 9 – Right to life

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28 (2) of the HR Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

International human rights law places obligations on governments to “respect, protect and fulfil” rights. The obligation to respect means the government must ensure its organs and agents do not commit violations themselves; the obligation to protect means governments must protect individuals and groups from having rights interfered with by third parties and

punish perpetrators; and the obligation to fulfil means governments must take positive action to facilitate the full enjoyment of rights.

The European Court of Human Rights has considered the positive obligation of governments to uphold rights in depth, noting government must put in place legislative and administrative frameworks to deter conduct that infringes rights, and to undertake operational measures to protect an individual who is at risk of rights infringement.¹

Section 28 of the HR Act requires that any limitation on a human right must be authorised by a Territory law, be based on evidence, and be reasonable to achieve a legitimate aim.

Whether a limitation is reasonable depends on whether it is proportionate. Proportionality can be understood and assessed as explained in *R v Oakes*². A party must show that:

[f]irst, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair “as little as possible” the right or freedom in question. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of “sufficient importance”³.

The limitations on human rights in the Bill are proportionate and justified in the circumstances because they are the least restrictive means available to achieve the purposes of the Bill to protect public safety and support the participation of community members in sporting activities.

Rights engaged and supported

The Bill engages and supports the right to life (section 9 HR Act).

The Bill will have the effect of supporting safety and security measures at Canberra Airport, to ensure the safety of those using air services and airport facilities.

Enhancing the security measures designed to combat terrorism supports right to life, and the notion that no-one may be arbitrarily deprived of life.

Rights engaged and limited

¹ Colvin, M & Cooper, J, 2009 *‘Human Rights in the Investigation and Prosecution of Crime’* Oxford University Press, p.425. For more detail on positive obligations, see generally, Akandji-Kombe, J, 2007 *‘Positive obligations under the European Convention on Human Rights’*, Council of Europe.

² [1986] 1 S.C.R. 103.

³ *R v Oakes* [1986] 1 S.C.R. 103.

The amendments in the Bill primarily engage and limit the right to recognition and equality before the law because they exempt certain people from offences under the firearms laws and regulations.

Section 8 – Recognition and equality before the law

Section 8 (3) of the HR Act states:

Everyone is equal before the law and is entitled to equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

The right reflects the notion that the law should not elevate the protection of particular groups in the community above that of others. Section 8 of the HR Act establishes that the starting position is that everyone is equal before the law. This is not an absolute right, and this Bill has legitimate aims to promote public safety at airports and support the needs of biathlon and modern pentathlon participants. The right is engaged because Clauses 5, 6 and 9 of the Bill exempt particular people from the requirements to hold permits and otherwise committing offences under the Firearms Act and the Prohibited Weapons Act. The limitation is important to support the efforts of aviation security inspectors in conducting safety testing in public airports. It also supports the sports of biathlon and modern pentathlon. Section 5 (1) of the Firearms Act notes that the possession and use of firearms is a conditional privilege balanced with the need to ensure and improve public safety. The limitations of the provisions in this Bill to allow a certain category of the community the right to possess and use firearms is the least restrictive to ensure those groups are able to carry out specific, targeted activities supported by law.

Firearms Legislation Amendment Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Firearms Legislation Amendment Bill 2020**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

CLAUSE NOTES

Part 1 – Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Firearms Legislation Amendment Act 2020*.

Clause 2 — Commencement

This clause provides that the Act will commence on the day after its notification day.

Clause 3 — Legislation amended

This clause provides that the Act amends the *Firearms Act 1996*, *Firearms Regulation 2008* and *Prohibited Weapons Act 1996*.

Part 2 – Firearms Act 1996

Clause 4 –Schedule 2, part 2.1, section 2.1

This clause is consequential on the amendment made by clause 6, and adds the definitions of ‘coach’ and ‘participating’ into the definitions for Schedule 2, Part 2.1 of the Firearms Act.

‘Coach’ in the sport of biathlon or modern pentathlon means a person who, within the previous 5 years, has provided training or instruction in the sport to someone else. This definition has been drafted to reflect the nature of biathlon and modern pentathlon as multi-discipline sports, where training for these sports is often conducted with coaches of the individual disciplines, rather than a coach involved in all of the disciplines. It is not intended to exclude coaches of individual disciplines. Additionally, as the definition of coach does not make reference to accreditation or qualifications, others who provide instruction in the sport could be considered to be a coach, such as other athletes and parents and guardians of a junior athlete.

‘Participating’ in the sport of biathlon or modern pentathlon means receiving instruction, practising, training or competing in the sport. This definition is intended to include all legitimate activities involved in the sport.

Clause 5 – Exemptions for Act Schedule 2, part 2.2, new item 6

Clause 5 amends the schedule of the Firearms Act that sets out the descriptions of persons who are exempt from the provisions of the Firearms Act in particular circumstances.

This clause inserts an additional item to the table at Schedule 2, part 2.2 of the Firearms Act.

The new item 6 exempts aviation security inspectors from the Firearms Act when possessing or using firearms in exercise of their functions under the Aviation Transport Security Act.

Clause 6 – Schedule 2, part 2.3, new items 3A to 3G

This clause inserts new items 3A to 3G into the table at Schedule 2, part 2.3 of the Firearms Act, to the effect that sporting organisations and their members, officials, participants and coaches in, and a person attending demonstrations of biathlon or modern pentathlon do not commit an offence for possessing or using laser target shooting devices used in the sport.

Item 3A exempts biathlon and modern pentathlon sporting organisations prescribed by regulation from committing an offence for possessing or using an imitation firearm if the imitation firearm is a biathlon or modern pentathlon laser target shooting device used for the purpose of practising, training, coaching or competing in the sport of biathlon or modern pentathlon.

Item 3B exempts members of sporting (biathlon or modern pentathlon) organisations prescribed by regulation from committing an offence for possessing or using an imitation firearm if the imitation firearm is a biathlon or modern pentathlon laser target shooting device used in the exercise of their functions as a member.

Item 3C exempts a person attending a demonstration of the sport of biathlon or modern pentathlon from committing an offence for possessing or using an imitation firearm if the imitation firearm is a biathlon or modern pentathlon laser target shooting device and possession or use occurs under the supervision of a member of the sporting organisation. This exemption is designed to enable demonstrations to people who are not yet involved in the sport of biathlon or modern pentathlon.

Item 3D exempts officials in sporting competitions conducted by biathlon and modern pentathlon sporting organisations prescribed by regulation from committing an offence for possessing or using an imitation firearm if the imitation firearm is a biathlon or modern pentathlon laser target shooting device used for the purpose of officiating in a biathlon or modern pentathlon, and possession is done in the exercise of their functions as an official.

Item 3E exempts an adult person who is participating in biathlon or modern pentathlon from committing an offence for possessing or using an imitation firearm if the imitation firearm is a biathlon or modern pentathlon laser target shooting device for the purpose of participating in biathlon or modern pentathlon.

Item 3F exempts a child (who, for the purposes of the Firearms Act is at least the minimum age prescribed by regulation which is 12 years old and under 18 years old) from committing an offence for possessing or using an imitation firearm if the imitation firearm is a biathlon or modern pentathlon laser target shooting device for the purpose of participating in the sports. The child must be under the supervision of a coach while in possession of the laser target shooting device.

Item 3G exempts a coach of biathlon and modern pentathlon sports from committing an offence for possessing or using an imitation firearm if the imitation firearm is a biathlon or modern pentathlon laser target shooting device for the purpose of giving training or instructing to a person participating in the sport.

Clause 7 – Dictionary, new definitions

This clause is consequential on the amendments made by clause 4 and clause 6, and adds the definitions of ‘coach’, and ‘participating’ in relation to the sport of biathlon and modern pentathlon into the Dictionary of the Firearms Act.

Part 3 – Firearms Regulation 2008

Clause 8 – Sporting organisations – Act, s23, sch 2, pt 2.3, items 2 and 3 New section 67 (fa) and (fb)

Clause 8 amends section 67 of the Firearms Regulation to add the Australian Biathlon Association, Modern Pentathlon Australia and Modern Pentathlon Association of NSW Inc as prescribed sporting organisations under the Firearms Regulation. This amendment applies to the new exemptions for officials and sporting organisations to possess and use starting pistols under the Firearms Act, section 23, schedule 2, part 2.3, items 2 and 3.

Clause 9 – New section 67A – Sporting (biathlon or modern pentathlon) organisations – Act, s 23, sch 2, pt 2.3, items 3A to 3E.

Clause 9 inserts a new 67A into the Firearms Regulation prescribing the Australian Biathlon Association, Modern Pentathlon Australia and Modern Pentathlon Association of NSW Inc. in relation to the Firearms Act section 23, schedule 2, part 2.3, items 3A to 3E. The State organisations of modern pentathlon are members of Modern Pentathlon Australia, and accordingly is intended that by prescribing Modern Pentathlon Australia all State organisations are prescribed. The Modern Pentathlon Association of NSW Inc. has been included as many ACT pentathletes are members of this organisation, and to avoid any doubt.

Part 4 – Prohibited Weapons Act 1996

Clause 10 – Application of Act - New section 4 (2)

This clause amends section 4(2) of the Prohibited Weapons Act by adding a new section 4(2)(b) to the effect that an aviation security inspector under the Aviation Transport Security does not commit an offence against the Act only because of something done by the person in the exercise of the person’s functions as an aviation security inspector.