

Firearms Amendment Bill 2003

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Western Australia

LEGISLATIVE ASSEMBLY

(Pro forma amendments)

Firearms Amendment Bill 2003

A Bill for

An Act to amend the *Firearms Act 1973* and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Firearms Amendment Act 2003*.

2. Commencement

- 5 (1) Except as provided in subsection (3), this Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.
- 10 (3) Sections 13 and 21 come into operation on the day on which this Act receives the Royal Assent.

3. The Act amended

The amendments in this Act are to the *Firearms Act 1973**.

[* *Reprinted as at 11 August 2000.*

15 *For subsequent amendments see Western Australian Legislation Information Tables for 2002, Table 1, p. 146 and Act No. 28 of 2003.]*

Part 2 — Amendments about paintball

4. Section 4 amended

Section 4 is amended by inserting in the appropriate alphabetical positions the following definitions —

5

“

“**paintball**” means a game in which players attempt to shoot at one another with prescribed paintball guns using prescribed paintball pellets;

10

“**paintball gun**” means a firearm designed to discharge or propel paintball pellets;

“**paintball pellets**” means pellets —

15

(a) consisting primarily of a dye or a similar prescribed substance; and

(b) designed to be discharged or propelled from a firearm;

”.

5. Section 8 amended

After section 8(1)(m) the following paragraphs are inserted —

“

20

(ma) by a person who, at a venue that is approved and properly constructed and maintained for the playing of paintball, is in possession of, handles or uses a prescribed paintball gun or prescribed paintball pellets —

25

(i) with the permission of the owner of the paintball gun; or

30

(ii) if the owner of the paintball gun is an approved club or other approved organisation, as a member of that club or other organisation;

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(mb) by a person who is in possession of prescribed paintball pellets;

”.

6. Section 11A amended

5 After section 11A(2)(d) the following paragraph is inserted—

“

(da) in the case of a prescribed paintball gun, it is required by the person to conduct or engage in paintball in accordance with this Act;

10

”.

7. Section 23 amended

(1) After section 23(5) the following subsection is inserted —

“

15

(5a) Subsection (5)(c) does not apply to a paintball gun where the alteration is in accordance with the manufacturer’s design and is effected by the addition of a commercially produced product that does not alter the type or velocity of a projectile fired from the gun.

”.

20

(2) Section 23(8) is amended by deleting “A person who,” and inserting instead —

“ Except as provided in subsection (8a), a person who, ”.

(3) After section 23(8) the following subsection is inserted —

“

25

(8a) A player of a paintball game being conducted in accordance with a licence under this Act does not commit an offence under subsection (8) if the person points a paintball gun, named and identified in that licence, at another person while playing the game.

30

”.

Part 3 — Amendments about handguns and other matters

8. Section 4 amended and consequential amendments

- 5 (1) Section 4 is amended by inserting in the appropriate alphabetical positions —

“

“**carry**” includes to have on or about one’s person;

10 “**Department**” means the department of the Public Service principally assisting in the administration of this Act;

“**medical practitioner**” means an individual who is registered as a medical practitioner under the *Medical Act 1894*;

”.

- 15 (2) Section 5(4) is amended by deleting “Police Department” and inserting instead —

“ Department ”.

- 20 (3) Sections 8(1)(d)(ii) and 23(7a)(a) are amended by deleting “Police Department of the Public Service” and inserting instead —

“ Department ”.

9. Section 5B repealed

Section 5B is repealed.

s. 10

10. Section 6 amended

Section 6(3) is amended as follows:

- (a) by deleting “on conviction, to imprisonment for 5 years.” and inserting instead —

5

“

on conviction —

- (a) for a first offence, to imprisonment for 5 years;
(b) for a subsequent offence, to imprisonment for 10 years.

10

”;

- (b) by deleting the summary conviction penalty clause and inserting instead —

“

Summary conviction penalty for a first offence:

15

Imprisonment for 3 years or a fine of \$12 000.

”.

11. Section 8 amended

- (1) Before section 8(1)(n) the following paragraph is inserted —

“

20

- (mc) by a person who is in possession of, or carries, but does not use, an antique mechanism firearm;

”.

- (2) Section 8(2) is amended by inserting before the definition of “approved” —

25

“

“antique mechanism firearm” means a muzzle loading firearm (including a percussion lock handgun that is muzzle loading) that uses black powder to propel a shot, bullet, or other missile;

30

”.

12. Section 9A amended

- (1) Section 9A(2) is amended by deleting “A Firearm Collector’s Licence or an” and inserting instead —

“ An ”.

- 5 (2) After section 9A(2) the following subsection is inserted —

“

- (2a) A Firearm Collector’s Licence is valid for a period of 3 years from the day on which it was issued or last renewed unless that day was before the day on which the *Firearms Amendment Act 2003* section 12 came into operation, in which case it is valid for a period of 5 years from the day on which it was issued or last renewed.

”.

13. Section 11 amended

- (1) Section 11(3) is amended as follows:

- (a) by deleting “is satisfied that”;
- (b) in paragraph (a) by inserting before “at any time” —
“ is satisfied that ”;
- (c) by deleting “or” after paragraph (a);
- (d) in paragraph (b) by inserting before “the person fails” —
“ is satisfied that ”;
- (e) by deleting the full stop at the end of paragraph (b) and inserting instead —

25 “

; or

- (c) suspects, on the basis of an intelligence report or other information held in relation to the person, that the person is a threat to public safety.

30

”.

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(2) Section 11 is amended —

(a) if, when this Act receives the Royal Assent, section 365 of the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* has come into operation, by inserting after subsection (4) the following subsection —

“

(4a) The Commissioner is not required under this Act or any other Act or law to disclose information relied on under subsection (3)(c) unless the disclosure is required under the *State Administrative Tribunal Act 2004*.

”;

(b) otherwise, by inserting after subsection (4) the following subsection —

“

(4a) The Commissioner is not required under this Act or any other Act or law to disclose information relied on under subsection (3)(c) unless the disclosure is required under section 22AA.

”.

(3) If, when this Act receives the Royal Assent, section 365 of the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* has not come into operation, when that section comes into operation section 11(4a) is amended by deleting “section 22AA.” and inserting instead —

“ the *State Administrative Tribunal Act 2004*. ”.

14. Section 11A amended

Section 11A(2)(c) is amended by inserting before “permission” —

“ written ”.

15. Section 15 amended and transitional provision

- (1) Section 15(1) is amended by deleting “heirloom, or sentimental” and inserting instead —

“ or heirloom ”.

- 5 (2) After section 15(2) the following subsections are inserted —

“

- (3) For the purposes of this Act, a handgun manufactured after 1946 can form part of a genuine firearm collection only if —

- 10 (a) it is owned by a person who is, in the opinion of the Commissioner, a student of arms as defined in subsection (4); and
- (b) the handgun is within the scope of that person’s interest as a student of arms.

- 15 (4) In subsection (3) —

“**student of arms**” means a person who can be shown to have a prolonged and genuine interest in the study, preservation, or collection of firearms.

- 20 (5) In considering whether a firearm has significant commemorative value, the Commissioner has to take into account any special significance that the firearm, or any firearm or firearms of the same kind as that firearm or of a related kind, has to a particular event in history.

- 25 (6) In considering whether a firearm has significant historical value, the Commissioner has to take into account any special significance that the firearm, or any firearm or firearms of the same kind as that firearm or of a related kind, has to a particular period in history.

- 30 (7) In considering whether a firearm has significant thematic value, the Commissioner has to take into

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account any special significance that the firearm, or any firearm or firearms of the same kind as that firearm or of a related kind, has to the development, manufacture, or use of firearms.

- 5 (8) In considering whether a firearm has significant heirloom value to a particular person, the Commissioner has to take into account any special significance that the firearm has because it was owned or possessed by a direct or indirect member of that person's family.
- 10
- (9) In considering whether or not it would be appropriate for a person to obtain, or continue to hold, a Firearm Collector's Licence, the Commissioner may take into account any information provided about that person by a person or body designated under section 15A as an accredited society of collectors.
- 15

”.

- (3) The amendments made by this section do not affect the validity of a licence or permit that a person already holds under the *Firearms Act 1973* on the day on which this section comes into operation, but on or after that day the grant, issue, or renewal of a licence or permit has to be in accordance with that Act as amended by this section.
- 20

16. Sections 15A and 15B inserted

25 After section 15 the following sections are inserted —

“

15A. Accredited societies of collectors

- (1) The Commissioner may, in writing, designate a person or body, whether incorporated or unincorporated, as an accredited society of collectors for the purposes of this Act.
- 30

- (2) For a person or body to be an accredited society of collectors —
- (a) it has to be incorporated under the *Corporations Act 2001* of the Commonwealth or the *Associations Incorporation Act 1987*; and
- (b) one of its purposes has to be to facilitate the study, preservation, or collection of —
- (i) handguns in particular; or
- (ii) handguns and other firearms.
- (3) The regulations may specify other requirements for a person or body to be an accredited society of collectors.
- (4) The Commissioner may, by notice in writing given to an accredited society of collectors, cancel its designation as an accredited society of collectors for the purposes of this Act.

15B. Information from accredited society of collectors

- (1) If an accredited society of collectors expels any of its members, it is required to notify the Commissioner in writing of the expulsion of the member, identifying the member and the reason for the expulsion.
- Penalty: Imprisonment for 2 years or a fine of \$8 000.
- (2) The notification may include information that the Commissioner might consider relevant to the question of whether or not the member who is expelled is a fit and proper person to hold a Firearm Collector's Licence.

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(3) An accredited society of collectors that is requested at any time to do so may provide to the Commissioner any information that the Commissioner might consider relevant to —

- 5 (a) the question of whether, for the purposes of this Act, a firearm would be, or form part of, a genuine firearm collection; or
- 10 (b) the question of whether a person is a fit and proper person to hold a Firearm Collector's Licence.

(4) Neither an accredited society of collectors that gives the Commissioner any notification or information under this section nor a person involved in the giving of that notification or information is liable in civil or criminal proceedings because of the giving, or the person's involvement in the giving, of the notification or information in accordance with this section if it was in good faith.

”.

20 **17. Section 18 amended**

Section 18(4) is amended as follows:

- (a) in paragraph (a), by deleting “a Firearm Collector's Licence or”;
- 25 (b) by inserting after paragraph (a) a paragraph as follows —

“

(aa) a Firearm Collector's Licence that is to remain in force for a period of less than 3 years is the prescribed fee reduced proportionately by one — thirtysixth for each month or portion of a month;

”.

18. Section 19 amended

(1) Section 19(1) is amended as follows:

(a) by deleting “an offence” and inserting instead —
“ a crime ”;

5 (b) by deleting “subsection (1aa)” and inserting instead —
“ subsection (1ae) or section 19AA ”;

(c) by deleting the penalty clause.

(2) After section 19(1) the following subsections are inserted —

“

10 (1aa) A person who is guilty of a crime under subsection (1)
committed in circumstances referred to in
subsection (1)(a) is liable, on conviction, to
imprisonment for 14 years if at the time of the offence
the person was selling 3 or more firearms without a
15 licence or permit entitling the person to sell any of
them.

(1ab) A person who is guilty of a crime under
subsection (1) —

20 (a) committed in circumstances where the person
was carrying both a firearm that is a subject of
the offence and —

25 (i) a prohibited drug or prohibited plant, as
defined in the *Misuse of Drugs*
Act 1981, when not authorised to be in
possession of that drug or plant under
that Act; or

(ii) an amount of money equal to or greater
than the prescribed amount,
is liable, on conviction, to imprisonment for
30 14 years;

(b) committed in circumstances where the person
was in possession of 3 or more firearms without

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a licence or permit entitling the person to be in possession of any of them, is liable, on conviction, to imprisonment for 10 years unless subsection (1aa) applies.

5 (1ac) Unless subsection (1aa) or (1ab) applies, a person who is guilty of a crime under subsection (1) committed in relation to a firearm is liable, on conviction, to imprisonment for 7 years if —

- (a) at the time of the offence the offender —
- 10 (i) had been refused, or was disqualified from holding, a licence or permit referred to in subsection (1); or
- (ii) had had a licence or permit referred to in subsection (1) revoked,
- 15 in relation to the firearm or a firearm of the same kind;
- (b) the firearm was a handgun or a prescribed firearm;
- (c) at the time of the offence, any number or identification mark which was on the firearm
- 20 had been defaced or removed; or
- (d) the firearm had been altered from the design or characteristics of its original manufacture.

25 Summary conviction penalty for a crime under subsection (1) committed in any of the circumstances described in this subsection:
Imprisonment for 3 years or a fine of \$12 000.

(1ad) Unless subsection (1aa), (1ab) or (1ac) applies, a person who commits a crime under subsection (1) is

30 liable, on conviction, to imprisonment for 5 years.

Summary conviction penalty: Imprisonment for 3 years or a fine of \$12 000.

”.

(3) Section 19(1aa) is amended by deleting the subsection designation “(1aa)” and inserting instead —

“ (1ae) ”.

(4) Section 19(1a) is amended by deleting “subsection (1)” and inserting instead —

“ subsection (1ac)(a) ”.

(5) Section 19(2) is amended by deleting the penalty clause and inserting instead —

“

Penalty:

- (a) if the firearm concerned was a handgun or a prescribed firearm, imprisonment for 5 years;
- (b) in any other case, imprisonment for 3 years or a fine of \$12 000.

”.

(6) Section 19(4) is amended as follows:

- (a) by deleting paragraph (a);
- (b) by deleting “dealing in,”;
- (c) by deleting “on conviction, to imprisonment for 5 years.” and inserting instead —

“

on conviction —

- (a) in the case of the manufacture of a handgun, to imprisonment for 14 years;
- (b) in any other case, to imprisonment for 5 years.

”;

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- (d) by deleting the summary conviction penalty and inserting instead —

“

5 Summary conviction penalty except in the case of the manufacture of a handgun: Imprisonment for 2 years or a fine of \$8 000.

”.

19. Section 19AA inserted

Before section 19A the following section is inserted —

10 “

19AA. Certain offences of lesser severity

- 15 (1) If a person who has been the holder of a Firearm Licence, Firearm Collector’s Licence, or Ammunition Collector’s Licence does, while that licence has expired but is still capable of being renewed under section 9A, anything that is an offence under this Act but would not have been an offence if the licence had been renewed immediately after its expiry, that offence is not an indictable offence but is triable summarily and is punishable by a fine of \$2 000 instead of the penalty that would otherwise apply for the offence.
- 20 (2) If a person commits an offence under section 19(1) and the only firearm or ammunition concerned is, or is for, a prescribed paintball gun, that offence is not an indictable offence but is triable summarily and is punishable by a fine of \$2 000 instead of the penalty that would otherwise apply for the offence.

25

”.

20. Section 21 amended

30 Section 21(2) is amended in the penalty clause by deleting “12 months or a fine of \$4 000.” and inserting instead —

“ 18 months or a fine of \$6 000. ”.

21. Section 22AA inserted

- (1) If, when this Act receives the Royal Assent, section 365 of the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* has not come into operation,
5 the following section is inserted after section 22 —

“

22AA. Dealing with certain undisclosed information

- (1) If a magistrate or the firearms appeals tribunal
10 proposes to determine an appeal under section 22, the Commissioner must ensure that the magistrate or tribunal is provided with all information to which the Commissioner had regard in making the decision that is the subject of the appeal.
- (2) The magistrate or firearms appeals tribunal may order
15 that the information to which subsection (1) applies is not to be disclosed to the appellant, the appellant's representative or any other person if, on an application by the Commissioner, the magistrate or tribunal is satisfied that the disclosure —
- 20 (a) might prejudice —
- (i) the safety of a person;
 - (ii) the effectiveness of investigation or prosecution of a person for an offence under this Act; or
 - 25 (iii) the proper administration of this Act;
- (b) might reveal the identity of a police officer acting as an undercover officer; or
- (c) might otherwise be contrary to the public interest.
- 30 (3) An application under subsection (2) may be made without notice to the appellant and may be heard and determined in the absence of the appellant.

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- 5 (4) The room or place in which the magistrate or the
firearms appeals tribunal hears and determines an
application under subsection (2) is not to be regarded
as an open court, and the magistrate or tribunal may
order that no person is to be in the room or place
without the magistrate's or tribunal's permission.
- 10 (5) The reasons for the decision of the magistrate or the
firearms appeals tribunal on an appeal under section 22
must not disclose the content or source of information
that is the subject of an order made under
subsection (2).

”.

- 15 (2) If, when this Act receives the Royal Assent, section 365 of the
State Administrative Tribunal (Conferral of Jurisdiction)
Amendment and Repeal Act 2004 has not come into operation,
when that section comes into operation section 22AA is
repealed.

22. Section 23 amended

- 20 (1) Section 23(1) is amended in the penalty clause by deleting
“12 months or a fine of \$4 000.” and inserting instead —
“ 18 months or a fine of \$6 000. ”.
- (2) Section 23(2) is amended in the penalty clause as follows:
- 25 (a) in paragraph (a) by deleting “18 months or a fine of
\$6 000;” and inserting instead —
“ 2 years or a fine of \$8 000; ”;
- (b) in paragraph (b) by deleting “12 months or a fine of
\$4 000.” and inserting instead —
“ 18 months or a fine of \$6 000. ”.
- (3) Section 23(3) is amended as follows:
- 30 (a) in paragraph (a) by inserting after “handgun” —
“ or a prescribed firearm ”;

-
- (b) in paragraph (a) by deleting “5 years;” and inserting instead —
“ 7 years; ”;
- 5 (c) in paragraph (b) by deleting “18 months or a fine of \$6 000.” and inserting instead —
“ 4 years or a fine of \$16 000. ”;
- (d) by deleting the summary conviction penalty provision and inserting instead —
- 10 “
Summary conviction penalty:
(a) in a case to which paragraph (a) applies:
Imprisonment for 3 years or a fine of \$12 000;
(b) in a case to which paragraph (b) applies:
Imprisonment for 2 years or a fine of \$8 000.
15 ”.
- (4) Section 23(5) is amended as follows:
- (a) by deleting “an indictable offence” and inserting instead —
“ a crime ”;
- 20 (b) in paragraph (d) by inserting after “handgun” —
“ or was modified in a prescribed manner ”;
- (c) in paragraph (d) by deleting “5 years;” and inserting instead —
“ 7 years; ”;
- 25 (d) by deleting paragraph (e) and inserting instead —
“
(e) otherwise, on conviction to imprisonment for 4 years or a fine of \$16 000.
”;

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- (e) by deleting the summary conviction penalty provision and inserting instead —

“

Summary conviction penalty:

5

- (a) in a case to which paragraph (d) applies:
Imprisonment for 3 years or a fine of \$12 000;
(b) in a case to which paragraph (e) applies:
Imprisonment for 2 years or a fine of \$8 000.

”.

10

- (5) Section 23(6) is amended in the penalty clause by deleting “18 months or a fine of \$6 000.” and inserting instead —

“ 7 years. ”.

- (6) Section 23(7) is amended in the penalty clause by deleting “12 months or a fine of \$4 000.” and inserting instead —

15

“ 3 years or a fine of \$12 000. ”.

- (7) Section 23(8) is amended in the penalty clause by deleting “2 years or a fine of \$8 000.” and inserting instead —

“ 3 years or a fine of \$12 000. ”.

20

- (8) Section 23(9) is amended by deleting the penalty clause and inserting instead —

“

Penalty:

25

- (a) for a first offence, a fine of \$2 000;
(b) for a subsequent offence, imprisonment for 12 months or a fine of \$4 000.

”.

- (9) Section 23(9a) is amended in the penalty clause by deleting “2 years or a fine of \$8 000.” and inserting instead —

“ 3 years or a fine of \$12 000. ”.

23. Section 23A amended

Section 23A is amended as follows:

- (a) by inserting after “19(1)” —
“ to which section 19AA applies ”;
- 5 (b) by deleting “23(5)(c),”.

24. Section 23B amended

(1) Section 23B(1) is amended as follows:

- (a) by deleting “medical practitioner” in both places where
it occurs and inserting instead —
10 “ health professional ”;
- (b) in paragraph (b) by inserting before “a person” —
“
in the case of a medical practitioner or
15 registered nurse,
”.

(2) Section 23B(2) is amended by deleting “medical practitioner”
and inserting instead —

“ health professional ”.

(3) After section 23B(2) the following subsection is inserted —

20 “

(3) In this section —

“health professional” means —

- (a) a medical practitioner;
- 25 (b) a registered psychologist as defined in the
Psychologists Registration Act 1976;
- (c) a registered nurse;
- (d) a prescribed class of social worker; or
- (e) a prescribed class of professional counsellor;

“**registered nurse**” means a person registered under Part 3 of the *Nurses Act 1992*.

”.

25. Section 23BA inserted

5 After section 23B the following section is inserted —

“

23BA. Disclosure of certain information by approved club and organisation members

10 (1) If an officer of an approved shooting club or approved organisation is of the opinion that —

(a) a person who is a member of the club or organisation is not a fit and proper person to possess, carry or use a firearm; and

15 (b) the person has a licence under this Act or intends to apply for a licence under this Act or possesses or intends to possess a firearm,

nothing prevents the officer in good faith from informing the Commissioner of that opinion.

20 (2) Nothing done by an officer of an approved organisation or approved shooting club in good faith in accordance with this section gives rise to a criminal or civil action or remedy.

(3) In this section —

25 “**approved organisation**” means an organisation approved under section 11A(2)(b);

“**approved shooting club**” means a shooting club approved under section 11A(2)(a);

“**officer**”, in relation to an approved shooting club or approved organisation —

30 (a) that is a body corporate which is a corporation as defined in section 57A of the

Corporations Act 2001 of the Commonwealth, has the meaning given to that term in section 82A of that Act; and

(b) that is not such a body corporate, means any person (by whatever name called) who is concerned in or takes part in the management of the club or organisation,

but does not include an employee of the club or organisation unless the employee is involved in its management.

”.

26. Section 23D amended

(1) After section 23D(1) the following subsection is inserted —

“

(1a) An offender may be punished summarily under this section for an offence under this Act triable on indictment if, after the provision of this Act in respect to which the offender is charged, a summary conviction penalty is specified for the offence.

”.

(2) Section 23D(2) is amended as follows:

(a) by inserting after “triable on indictment” —

“

for which the person may be punished summarily under this section,

”;

(b) by deleting all of the subsection after “liable on summary conviction to” and inserting instead —

“ the summary conviction penalty specified for the offence. ”.

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27. Section 31 amended

(1) After section 31(2) the following subsection is inserted —

“

5 (2a) A person who compiles, maintains, furnishes or produces a record under section 31(2) knowing it to be incorrect or misleading commits an offence.

”.

(2) Section 31(4) is amended by inserting after “(2)” —

“ , (2a), ”.

10

28. Section 32 amended

Section 32 is amended by deleting the penalty clause and inserting instead —

“

15

Penalty:

- (a) for a first offence, a fine of \$4 000;
- (b) for a subsequent offence, imprisonment for 2 years or a fine of \$8 000.

”.

20

29. Section 34 amended

After section 34(2)(e) the following paragraph is inserted —

“

25 (ea) enabling the Commissioner to require a holder of a Dealer’s Licence to provide to the Commissioner information about any other persons who are involved in the management of, or have a financial interest in, any business conducted under the licence;

”.

30. Schedule 2 repealed

Schedule 2 is repealed.

31. Various penalties replaced

5 Each provision listed in the first column of the Table to this section is amended by deleting the amount set out in the second column of the Table and inserting instead the amount set out in the third column of the Table.

Table

Section	Delete	Insert
19(5)	\$1 000	\$2 000
23(10)	\$1 000	\$2 000
23(10a)	\$1 000	\$2 000
23(11)	\$1 000	\$2 000
24(6)	\$2 000	\$4 000
30(4)	\$1 000	\$4 000
30A(3)	\$1 000	\$2 000
30B(2)	\$1 000	\$2 000
31(4)	\$2 000	\$4 000
34(3)(d)	\$1 000	\$2 000

=====