

# **Explanatory Memorandum**

## ***FIREARMS AMENDMENT BILL 2021***

The *Firearms Amendment Bill 2021* (“the Bill”) introduces a suite of amendments to tackle serious and organised crime, offending which involves or may involve firearms, for example family violence. The Bill introduces firearms prohibition orders, firearms technology and “taking-part-in” offences aimed at tackling the illegal manufacture of firearms, and a permanent general amnesty into the within the *Firearms Act 1973* (“Firearms Act”), increases the penalties in relation to stealing firearms and possession of stolen firearms, and modernises out-dated definitions within the Firearms Act.

### Firearms Prohibition Order Scheme

The Firearms Prohibition Order (“FPO”) scheme gives the Commissioner of Police (“Commissioner”) the power to make a FPO against a person, if satisfied that:

- (a) possession of a firearm or related items by the person would likely result in undue danger to life or property; or
- (b) the person is not a fit and proper person to possess a firearm etc; or
- (c) it is in the public interest for a FPO to be made against the person.

Once served with a FPO, the person becomes a “prohibited person” subject to a number of conditions to prevent them from having access to firearms or related items, including:

- all licences, permits, approvals and authorisations issued to the prohibited person under the Firearms Act are revoked;
- the prohibited person must surrender all firearms, parts and ammunition;
- the prohibited person is prohibited from acquiring, possessing or using firearms, major firearm parts, prohibited firearm accessories and ammunition; and
- the prohibited person is prohibited from certain conduct such as entering or residing at certain places where firearms are present, and associating with persons in possession of a firearm.

Several offences have been introduced to support the enforcement of the FPO scheme. These offences apply to prohibited persons who breaches their FPO. Depending on the nature of the offence, a person in breach will face maximum terms of imprisonment of 1-14 years and fines between \$4,000 and \$75,000. Offences which apply to prohibited persons include:

- Failure to surrender firearm-related licences or permits.
- Failure to surrender firearms and related items.
- Acquiring a firearm or related item.
- Entering, remaining or residing at places set aside predominantly for activities involving firearms (i.e. shooting range, firearm manufacturer, paintball club).
- Entering or remaining at a residence where a firearm or related item is stored.
- Residing at a residence where a firearm or related item is stored.
- Being in company with a person who is in possession of a firearm.

For offences relating to firearm possession / acquisition, the offence is considered more serious if the firearm is a handgun, prohibited firearm or a major firearm part relating to these items. For this reason, offences involving these items attracts a higher penalty.

Where a FPO is in place, Police have a number of enforcement powers to determine if the prohibited person has committed an offence in relation to their order, including:

- stop and search the prohibited person and a person who is in their company;
- enter and search any place occupied by, or under the control of the prohibited person, including any vehicle at the place; and
- stop, detain and search any vehicle being occupied by the prohibited person, regardless of where the vehicle is located.

### Illegal Manufacture, Repair and Dealing in Firearms and Firearms Technology Offences

The Bill inserts new offences so that a person who unlawfully manufactures, repairs or deals ("firearms activity") a firearm, major firearm part, prohibited firearm accessory or ammunition commits a crime. It is currently an offence under the Firearms Act for a person to repair or manufacture a firearm or handgun, however the new offences provide stricter penalties for illegal manufacture and repair (previously 5 years imprisonment or 14 years for a handgun) and expands the offence to dealing in firearms.

The Bill also inserts a new offence for a person who participates in the unlawful firearms activity. A person is deemed to have participated in any of these offences if the person:

- takes, or participates in, a step, or causes a step to be taken in the firearms activity;
- provides or arranges finance for a step in the firearms activity;
- provides the place in which a step in the firearms activity is taken, or allows a step in the firearms activity to be taken at a place of which the person is an owner, lessee or occupier or of which the person has care, control or management;
- is in possession of, provides or supplies a firearms precursor for a step in the manufacture or repair of a firearm, major firearm part, prohibited firearm accessory or ammunition.

The Bill also inserts new offences relating to the unauthorised possession, unauthorised creation or development, and unauthorised dissemination of firearms technology. Firearms technology is defined to include:

- a thing that is programmed, configured or otherwise enabled to carry out a step in the manufacture or repair of a firearm, major firearm part, prohibited firearm accessory or ammunition, or to change an object into a component of one of these items. A 'thing' is a reference to any machinery, equipment, object or device including a 3D printer, moulding device, milling device, remote controlled device (e.g. drone), electronic firing mechanism, railgun technology or any other prescribed thing;

- any type of digital or electronic reproduction of technical drawing of the design of a firearm, major firearm part, prohibited firearm accessory or ammunition (including hard copies);
- a plan, drawing, instruction, template or computer program, in digital or electronic form, for the manufacture or repair of a firearm, major firearm part, prohibited firearm accessory or ammunition (including hard copies).

The penalty for these offences is imprisonment for 10 years and the summary conviction penalty is imprisonment for 3 years. There are a number of exceptions to these offences, including if the conduct engaged in by the person is necessary in conducting scientific, medical, educational, military or law enforcement research that has been approved in writing by the Commissioner.

In order to investigate these technology-based offences, the Bill also provides Police with the power to access electronic devices. If Police suspect on reasonable grounds that a person is in possession of firearms technology (for example, electronic plans stored on a computer), Police may direct that a person provide a password, device or other information to enable access to the firearms technology. Failure to comply with this direction without a lawful excuse is 10 years imprisonment and the summary conviction penalty is 3 years imprisonment.

#### Increased penalties for Criminal Code and section 23 offences

The proposed amendments to *The Criminal Code* involve increasing the penalties for stealing a firearm, and for being in possession of a stolen or unlawfully obtained firearm. Currently, a person convicted of stealing a firearm is only liable for a general stealing penalty of 7 years imprisonment, under section 378. The proposed amendments will insert a special case of stealing a firearm into section 378(5) which will attract a higher penalty of 14 years imprisonment.

Similarly, there is an additional proposed amendment of inserting a special case of being in possession of a stolen or unlawfully obtained firearm into section 417A and to specify a penalty of 10 years imprisonment. Currently persons in possession of stolen or unlawfully obtained firearms are only liable for the general penalty of 7 years imprisonment under section 417. The increase of these penalties is intended to deter individuals from being in possession of firearms without holding the required licence and from obtaining such firearms unlawfully.

The penalty for an offence under section 23(9a), of discharging any firearm, or shot, bullet, missile or other projectile from a firearm, in a manner that causes fear, has been increased. Currently this is only a simple offence and the penalty is imprisonment for 3 years or a fine of \$12,000. The Bill elevates the offence to a crime, and increases the penalty to imprisonment for 7 years imprisonment, with a summary conviction penalty of imprisonment for 3 years and a fine of \$36,000. This offence is similar in nature to the offence under section 68(1) of *The Criminal Code* of being armed in a way that may cause fear (a more general offence that extends to items other than firearms). For consistency, the penalty for an offence under section 23(9a) has been increased to parity with the offence under section 68(1) of *The Criminal Code*.

The other offences under section 23(1), (3), (5), (9) and (10a) have been expanded to also apply to major firearm parts.

### Permanent amnesty

The Bill also creating a permanent amnesty to encourage the surrender of firearms etc.

### Consequential Amendments to other Acts

A number of consequential amendments have also been made to the *Sentencing Act 1981*. To maintain consistency in firearms regulation policy across the statute book, and where relevant, the Bill includes the concepts of “major firearm part”, “prohibited firearm accessory” and “firearms technology” where it is appropriate in the following Acts: *Criminal Organisations Control Act 2012*; *Prohibited Behaviour Orders Act 2010*; *Restraining Orders Act 1997*; *Children and Community Services Act 2004*; *Court Security and Custodial Services Act 1999*; and *Prisons Act 1981*.

## **PART 1 - Preliminary**

### **Clause 1. Short Title**

Pursuant to clause 1, when the Bill receives Royal Assent, it will be known as the *Firearms Amendment Act 2021* (“the Act”).

### **Clause 2. Commencement**

Clause 2 provides that the short title and commencement provisions come into effect on Royal Assent.

The provisions of the Act relating to the penalty increase for discharging a firearm in a public place, and the amendments to the Criminal Code, come into operation 28 days after the Act receives Royal Assent.

The rest of the Act will come into operation on a date fixed by proclamation to allow for implementation, including the making of regulations to support the administration of the Firearms Prohibition Order (FPO) scheme.

## **PART 2 – *Firearms Act 1973* amended**

### **Clause 3. Act amended**

Clause 3 specifies that Part 2 of the Bill amends the *Firearms Act 1973* (“Firearms Act”).

### **Clause 4. Part 1 heading inserted**

Clause 4 inserts a new heading “Part 1 – Preliminary” before section 1, as part of a number of stylistic amendments to the Firearms Act to provide greater clarity around the content of subsequent provisions.

### **Clause 5. Section 3 deleted**

Clause 5 removes section 3. Under section 7(4)(f) of the *Reprints Act 1984*, section 3 was previously omitted from the Firearms Act in 2000. This amendment officially removes section 3 and is administrative in nature.

## Clause 6. Section 4 amended

Clause 6 deletes the definitions of “ammunition”, “firearm”, “handgun” and “possession” and inserts new definitions for each of these terms, as follows:

**“ammunition”** has been amended to mean anything made or modified specifically for discharge from a firearm. This includes a cartridge, projectile, primer or propellant made or modified specifically for use in manufacturing anything for discharge from a firearm. A number of items are specifically excluded from the definition of firearms. To ensure no items are unintentionally left out or inadvertently captured, regulations may prescribe any other items to be included in or excluded from this definition.

**“firearm”** has been amended to mean a device that is made, modified or capable of being modified to discharge or propel a shot, bullet, missile or other projectile, irrespective of whether the device is operable, inoperable, assembled, in parts, complete or incomplete. An inoperable firearm is different to a firearm that has been rendered permanently inoperable, as the latter is not considered a firearm. A number of items are specifically excluded from the definition of firearms. To avoid capturing unintended items, regulations may also prescribe anything to be excluded from the definition. The amendment also ensures that a firearm does not have to be considered lethal to fall within the definition.

**“handgun”** has been amended to mean a firearm that is reasonably capable of being carried or concealed about the person, and, when used, can be aimed and fired or discharged from one hand. The amendment ensures that the handgun does not have to be considered lethal to fall within the definition.

**“possession”** has been amended to apply to new items defined under the Bill, to account for the nature of the item and to provide for a more detailed set of conditions.

In accordance with proposed section 4A, a person is deemed to be in “possession” of a firearm, major firearm part, prohibited firearm accessory, sound suppressor, firearms precursor (other than firearms technology) or ammunition if they:

- have physical possession of the item;
- have direct or remote custody or control of the item;
- have and exercise access to the item in a place, whether alone or not;
- occupy, or have care, control or management of, a place where the item is found;
- are in charge of a vehicle where the item is found.

In accordance with proposed section 23AH(2), a person is deemed to be in “possession” of firearms technology if:

- any of the circumstances listed above under section 4A apply to the person and the firearms technology;

- any of the circumstances listed above under section 4A apply in relation to the person and a computer or other data storage device holding the firearms technology;
- the person controls or accesses the firearms technology via a remote computer or web portal, including one controlled by another person or located outside Western Australia (WA). This captures, for example, the “cloud” or rented spaces on a server.

A person who occupies or manages a place where firearms technology is found is not automatically deemed to be in “possession” of it merely because they occupy or manage that place, as long as another person has lawful possession of it at that time. The same applies for a person in charge of a vehicle.

Clause 6 also amends a number of other existing definitions, and inserts a number of new definitions, including the following:

**“dealer”** has been amended to include persons dealing in major firearm parts. Consequentially, the definition of **“deal”** reflects this amendment.

**“firearms precursor”** has the meaning given in section 23AF(1). The term is inserted to regulate certain items that can be used in the process of manufacturing and repairing firearms, major firearm parts, prohibited firearm accessories or ammunition. The term is defined broadly to include:

- firearms technology;
- things capable of being programmed or enabled to behave like firearms technology in carrying out a step in the manufacture or repair of the firearms, major firearm parts, prohibited firearm accessories or ammunition;
- a substance or material used, or capable of being used, in a step in the manufacture or repair of the above-mentioned items;
- hand grip moulds or other moulds for manufacturing or repairing the above-mentioned items.

To allow for legislation to keep pace with technological advancements, regulations may prescribe any item to be considered a firearms precursor.

**“firearms prohibition order”** (FPO) means an order made under section 29A(1). A FPO is made by the Commissioner of Police (Commissioner) against a person and bans them from holding a licence or permit, having access to certain premises where firearms are stored, and associating with persons in possession of firearms. Specific non-compliance offences and penalties apply.

**“firearms technology”** has the meaning given in section 23AG(1). The term is inserted to facilitate the regulation of technology used in the repair and manufacture of firearms, major firearm parts, prohibited firearm accessories or ammunition and includes:

- any thing that is enabled to carry out a step in the manufacture or repair of a firearm, major firearm part, prohibited firearm accessory or ammunition (this includes changing an object into any one of these components);

- any type of digital or electronic reproduction of a technical drawing of the design of a firearm (including hard copies);
- any digital or electronic plan, drawing, instruction, template or computer program for the manufacture or repair of a firearm (including hard copies).

Specific items to be considered as firearms technology are listed, such as 3D printers and railgun technology. To account for technological developments, regulations may prescribe further items for the purpose of this definition.

**“major firearm part”** is inserted to facilitate the regulation of items which are capable of being used to create firearms or modify existing firearms. The term is defined to mean any of the following items that have been made or modified for use in a firearm:

- a gas piston, friction assembly, action bar, breech bolt or breech block;
- a frame or chassis including a frame blank or chassis blank;
- a barrel or barrel blank;
- an assembled trigger mechanism;
- a receiver or slide;
- a magazine;
- a thing that includes at least one of the things listed above.

To allow for legislation to keep pace with technological advancements, regulations may prescribe items to be included in the definition.

**“paintball gun”** has been amended to mean a firearm that is made or modified to discharge or propel paintball pellets. This ensures that any item capable of behaving as a paintball gun, even if not initially designed to do so, is captured by the definition.

**“paintball pellets”** has been amended to include pellets that have been made or modified to be discharged or propelled from a firearm.

**“place”** refers to the definition given in section 3 of the *Criminal Investigations Act 2006* (CIA). The term means any land, building, structure, tent or mobile home or a part of any land, building, structure, tent or mobile home.

**“prescribed”** is inserted to mean prescribed by the regulations made under the Firearms Act, including the *Firearms Regulations 1974* (the Regulations) and any future regulations that may be made.

**“prohibited firearm”** is inserted to mean a firearm in respect of which the acquisition, sale, possession or use is prohibited in regulations.



**“prohibited firearm accessory”** is inserted as a new term to facilitate the regulation of items which are capable of being used for unlawful activity. The term is defined to include, in layman’s terms, a bump stock, folding stock, detachable stock or chassis carbine kit. To allow for legislation to keep pace with developments in technology, any other thing that may be fitted to or used in conjunction with a firearm may be prescribed in regulations for the purpose of this definition.

**“prohibited person”** is defined to mean a person who is subject to a firearms prohibition order banning them from acquiring a firearms licence or permit.

**“sound suppressor”** is inserted as a new term and is defined to mean a device that is made or modified to be fitted to a firearm to reduce the noise when firing or discharging. This includes but is not limited to a silencer to allow for more effective regulation. The definition of “silencer” under existing section 17B is removed.

**“thing relevant to an offence”** refers to the definition given in section 5 of the CIA. The concept is intended to include things in any way connected to any offence or which may provide evidence relevant to any offence or alibi. The term is relevant in this Bill to what police may seize when searching places, vehicles and persons in relation to FPOs.

**“vehicle”** refers to the definition given in section 5 of the CIA to ensure consistency with the definition of “place”.

#### **Clause 7. Section 4A inserted**

Clause 7 inserts a new section 4A titled “Possession of firearms and other things” which provides a definition for **“possession”** in relation to a firearm, major firearm part, prohibited firearm accessory, sound suppressor, firearms precursor (excluding firearms technology) and ammunition. This term is defined under Clause 6 of this Explanatory Memorandum.

#### **Clause 8. Section 5A amended**

Section 5A permits the Commissioner to delegate certain powers under the Firearms Act.

Clause 8 amends section 5A to provide that the powers to make or revoke a FPO may only be delegated to a police officer who holds the rank of Commander or above.

#### **Clause 9. Section 6 amended**

Clause 9 amends section 6, which deals with the Governor’s regulation making power to prohibit the acquisition, sale, possession or use of certain items.

Section 6(1) of the Firearms Act enables the Governor to make regulations on the recommendation of the Commissioner to prohibit the acquisition, sale, possession or use of certain items. This subsection is amended to include the regulation of major firearm parts and sound suppressors.

Section 6(1a) empowers the Governor to make regulations in respect of particular firearms and ammunition that require special precautions on recommendation of the Commissioner. This subsection is amended to include the regulation of major firearm parts.

Section 6(2) provides that certain items regulated under section 6(1) may be forfeited to the Crown. This subsection is amended to include the forfeiture of major firearm parts.

#### **Clause 10. Section 7 amended**

Section 7 permits the Governor to order dealers and manufacturers to deliver firearms or ammunition to the Commissioner in emergency situations.

Clause 10 amends section 7 to include the delivery of major firearm parts.

#### **Clause 11. Part 2 heading and Part 2 Division 1 heading inserted**

Clause 11 inserts a new Part and Division heading “Part 2 – Licences, permits and approvals”, consistent with other stylistic amendments to the Firearms Act.

#### **Clause 12. Section 8 amended**

Section 8 provides for exemptions from licensing requirements.

Section 8(1) lists persons who are exempt from requiring a licence under the Firearms Act. This subsection is amended to account for the inclusion major firearms part into the Act.

Other amendments ensure consistency with other parts of the Bill, both in terms of content and form. For example, a person lawfully approved to receive a surrendered firearm is not required to hold a licence under the Firearms Act.

The definition of ***antique mechanism firearm*** under section 8(2) is amended to separate shots and bullets from the concept of missiles and to include an additional reference to “other projectile”. Projectiles and missiles are different in the harm that they cause. “Missile” is defined in the Firearms Act as causing physical injury.

#### **Clause 13. Section 9A amended**

Clause 13 modernises section 9A(2a) by removing obsolete wording to provide that a Firearm Collector’s Licence is valid for a period of 3 years from the day on which it was issued.

#### **Clause 14. Part 2 Division 2 heading inserted**

Clause 14 inserts a new Division heading “Division 2 – Requirements and restrictions”, consistent with other stylistic amendments.

### **Clause 15. Section 11 amended**

Section 11 deals with the Commissioner's discretion in relation to approvals, permits and licences.

Clause 15 amends section 11 to provide that the Commissioner cannot grant an approval or permit or issue a licence under the Firearms Act to a prohibited person, that is a person in relation to whom a FPO is in force. Clause 15 also makes amendments to circumstances in which the Commissioner may refuse an application consistent with other amendments made by the Bill.

### **Clause 16. Section 11A amended**

Section 11A(1) provides that a genuine reason is required to acquire any approval, permit or licence. Section 11A(2) sets out what is to be considered a genuine reason.

Clause 16 extends the scope of these subsections to apply to major firearm parts and prohibited firearm accessories.

Section 11A(3) is amended to include the concept of major firearm part within the provision regarding the requirement for the Commissioner to be satisfied of the genuine reason and the reason can be reasonably justified.

Section 11A(4) is amended to include the concept of a major firearm part within the provision, which provides that forming part of a genuine firearm collection or ammunition collection is not considered a genuine reason for acquiring a major firearm part under a licence (other than a Firearm Collector's Licence or an Ammunition Collector's Licence).

### **Clause 17. Section 12 amended**

Section 12 deals with unsafe or unserviceable firearms and is amended by clause 17 to incorporate the new concept of major firearm part.

### **Clause 18. Part 2 Division 3 heading inserted**

Clause 18 inserts a new Division heading: "Division 3 – Firearm collections and accredited societies of collectors", consistent with other stylistic amendments.

### **Clause 19. Section 15 amended**

Section 15 deals with firearm collections.

Clause 19 amends section 15 to provide that a major firearm part can form part of a genuine firearm collection and that a single major firearm part may be considered a collection.

## **Clause 20. Section 15B amended**

Clause 20 amends the wording of section 15B to make clear that it is an obligation for an accredited society of collectors to inform the Commissioner following the expulsion of one of its members.

## **Clause 21. Part 2 Division 4 heading inserted**

Clause 21 inserts a new Division heading “Division 4 – Categories of licences”, consistent with other stylistic amendments.

## **Clause 22. Sections 16 and 16A replaced**

The existing sections 16 and 16A of the Firearms Act deal with licences and possession of firearms by security officers, respectively.

Clause 22 repeals these sections and incorporates their modified content into Division 4 of the new Part 2, as follows:

### **Section 16 Overview of Division**

Section 16 provides an overview of the Division. Each type of licence is provided for under a distinct section for clarity.

### **Section 16A Firearm licence**

Section 16A sets out what the holder of a Firearms Licence is entitled to do. In addition to existing rights, the licence holder may possess, carry and lawfully use magazines capable of being used with the firearm, as well as any major firearm part that formed a part of it when the licence was issued, and any major firearm part (excluding magazines) subsequently approved by the Commissioner.

### **Section 16B Approval in relation to replacement or additional major firearm parts**

Section 16B provides that the Commissioner may allow the holder of a Firearms Licence to possess major firearm parts, excluding magazines, either in addition to other lawfully possessed parts or to replace irreparable parts.

The licence holder must apply for approval using the correct form. The Commissioner must be satisfied that the major firearm part is in connection with the firearm named in the licence. The major firearm part must then be named and identified in the licence for consistency.

Magazines are excluded from this section because the use of magazines is authorised by default under a Firearms Licence.

## **Section 16C Firearm Collector's Licence**

A Firearm Collector's Licence is amended to provide for the lawful possession of any major firearm part that formed a part of the firearm when the licence was issued.

## **Section 16D Corporate Licence**

Section 16D sets out what the holder of a Corporate Licence is entitled to do. In addition to existing rights, the licence holder may possess, carry and lawfully use magazines capable of being used with the firearm, as well as any major firearm part that formed a part of the firearm when the licence was issued, and any major firearm part (excluding magazines) subsequently approved by the Commissioner.

Provisions regarding the possession of firearms by security officers (currently under section 16A) are incorporated into this new section for clarity.

## **Section 16E Approval for holder of Corporate Licence to possess replacement or additional major firearm parts**

Section 16E mirrors the intent of the provisions under section 16B in relation to replacement or additional major firearm parts but are amended to apply to a single holder of a Corporate Licence.

## **Section 16F Dealer's Licence**

Section 16F sets out what the holder of a Dealer's Licence is entitled to do. In addition to existing rights, the licence holder may deal in major firearm parts and arrange for the repair or servicing of major firearm parts by the holder of a Repairer's Licence.

They may also deal in a prohibited firearm accessory provided it has been lawfully approved and endorsed and bought or sold via a person in lawful possession of the item.

These additional items extend to what may be lawfully carried as part of normal work and used for testing and demonstrations.

## **Section 16G Repairer's Licence**

Section 16G sets out what the holder of a Repairer's Licence is entitled to do. In addition to existing rights, the licence holder may repair major firearm parts belonging to persons in lawful possession of them.

They may also repair a prohibited firearm accessory provided it has been lawfully approved and endorsed.

These additional items extend to what may be lawfully carried as part of normal work and used for testing.

A repairer's licence lawfully approved and endorsed may allow the holder, their employee or partner to make or possess firearms technology for the purposes of repairing firearms, major firearms parts, or prohibited firearm accessories which they are lawfully entitled to repair.

### **Section 16H Manufacturer's Licence**

Section 16H sets out what the holder of a Manufacturer's Licence is entitled to do. In addition to existing rights, the licence holder may manufacture major firearms parts and prohibited firearm accessories that have been lawfully approved and endorsed, as well as sell or otherwise dispose of such items.

These additional items extend to what may be lawfully carried as part of normal work and used for testing and demonstrations.

A manufacturer's licence lawfully approved and endorsed may allow the holder, their employee or partner to make or possess firearms technology for the purposes of manufacturing firearms, major firearms parts, ammunition or prohibited firearm accessories which they are lawfully entitled to manufacture.

A person other than the licence holder who was granted approval by the Commissioner to create or possess firearms technology may carry out these actions on behalf of the licence holder and disseminate the technology back to the licence holder.

### **Section 16I Approval for certain licence holders to deal in, repair or manufacture prohibited firearms accessory**

Section 16I provides that the Commissioner may permit the holder of a Dealer's Licence, Repairer's Licence or Manufacturer's Licence to carry out their lawful actions in relation to a prohibited firearm accessory.

They may be granted approval to deal with such items either generally or in respect of a specific accessory. The appropriate application form must be used. If successful, the prohibited firearm accessory must be endorsed on the licence.

### **Section 16J Approval for certain licence holders and other persons to create, develop and be in possession of firearms technology**

Section 16J provides that the Commissioner may allow the holder of a Repairer's Licence or Manufacturer's Licence to make or possess firearms technology. Approval may also be granted to a nominated person to act on behalf of the licence holder and disseminate it back to the holder.

## **Section 16K Shooting Gallery Licence**

Section 16K creates a separate section to provide for Shooting Gallery Licences.

## **Section 16L Ammunition Collector's Licence**

Section 16L creates a separate section to provide for Ammunition Collector's Licences.

### **Clause 23. Part 2 Division 5 heading inserted**

Clause 23 inserts a new Division heading "Division 5 – Categories of permits and other approvals", consistent with other stylistic amendments.

### **Clause 24. Section 17 amended**

Section 17 deals with temporary permits.

Clause 24 amends section 17 to include major firearm parts within the scope of the temporary permit provisions.

### **Clause 25. Section 17B amended**

Section 17B provide that the Minister may authorise an agriculture inspector to possess, carry and use silencers.

Clause 25 amends section 17B to remove all references to silencers and update the provision with the term "**sound suppressor**" (defined within Clause 6 of this Bill).

### **Clause 26. Part 2 Division 6 heading inserted**

Clause 26 inserts a new Division heading "Division 6 – Licensing procedure", consistent with other stylistic amendments.

### **Clause 27. Section 18 amended**

Clause 27 amends section 18(6) to extend the Commissioner's licensing powers to include granting an approval within the scope of the provision.

### **Clause 28. Part 2 Division 7 heading inserted**

Clause 28 inserts a new Division heading "Division 7 – Offences in relation to licences, permits and approvals", consistent with other stylistic amendments.

### **Clause 29. Section 19 amended**

Section 19 deals with licencing offences.

Clause 29 amends a number of provisions to include major firearm parts within the scope of the offence provisions.

Section 19(1) contains an offence for a person who does not hold a relevant licence or permit to sell, purchase, deliver, dispose of or possess firearms or ammunition. This offence is extended to major firearm parts.

To allow for a licence holder to meet their safe keeping and storage obligations, and to ensure that innocent persons are not captured under the licencing offences, an exemption to the offence is inserted in relation to a person who is considered to be in possession of the item merely because they are occupying or managing the place where the item is found, as long as another person is in lawful possession of the item at that time. The same applies to a person in charge of a vehicle. This provision is intended to capture circumstances including a spouse who is a firearms licence holder and another who occupies the place where the firearms are stored.

The offence under section 19(2) for unlawful sale, purchase, delivery, disposal or possession of various items is extended to include a major firearm part which relates to a handgun or prohibited firearm. A penalty of imprisonment for 5 years is inserted in relation to these items.

The offences for unlawful manufacturing or repair of a firearm or ammunition under section 19(4) are removed. These offences are provided for under the proposed sections 23AC and 23AD.

#### **Clause 30. Section 19AA amended**

Section 19AA deals with certain offences of lesser severity.

Clause 30 amends section 19AA to include major firearm part within the scope of the provision.

#### **Clause 31. Part 2 Division 8 heading inserted**

Clause 31 inserts a new Division heading “Division 8 – Revocation, cancellation and other matters”, consistent with other stylistic amendments.

#### **Clause 32. Section 20 amended**

Section 20(1) permits the Commissioner to refuse to renew, or to revoke, a licence, permit or approval in certain circumstances.

Clause 32 amends section 20(1)(aa) to include circumstances where the Commissioner is satisfied that harm may be suffered by any person as a result of a person retaining or regaining possession of a major firearms part or prohibited firearm accessory.

#### **Clause 33. Part 2 Division 9 heading inserted**

Clause 33 inserts a new Division heading “Division 9 – Conduct of business”, consistent with other stylistic amendments.



### Clause 34. Part 3 heading inserted

Clause 34 inserts a new Part heading “Part 3 – Review of decisions”, consistent with other stylistic amendments.

### Clause 35. Section 22 amended

Clause 35 is amended to allow the decision of the Commissioner to make a FPO against a person to be subject of review by the State Administrative Tribunal (“SAT”).

A definition of “**FPO decision**” under section 22 has been inserted to mean any decision made by or on behalf of the Commissioner under the new Part 8 (Firearms Prohibition Orders – “FPO”).

A definition of “**section 24 material**” has been inserted to mean the statement of reasons for a decision under the Firearms Act, other documents and material referred to for that decision that is required to be provided to the SAT under section 24 of the *State Administrative Tribunal Act 2004* (“SAT Act”).

When making a FPO, the Commissioner is likely to rely on confidential intelligence information that would not ordinarily be available publicly or provided to the person against whom the FPO is made. Where review proceedings are commenced in the SAT, the respondent (Commissioner) would generally be required to provide the applicant (the person against whom a FPO is made) with a bundle of documents that are in the respondent’s possession or under the respondent’s control and are relevant to the SAT’s review of the decision.

As the reasons for making a FPO are likely to contain confidential intelligence information and sources that must remain protected, clause 35 requires that the Commissioner (or authorised delegate) advise the SAT of any confidential information that is not to be released to the applicant as part of the “section 24 material” (and that would otherwise ordinarily be provided to the applicant for review during proceedings in the SAT.)

This confidential intelligence information identified by the Commissioner is referred to under clause 35 as “**clause 5 matter**”. This definition refers to information that is currently exempt under Schedule 1 clause 5 of the *Freedom of Information Act 1992*. Information that is intended to be captured within this definition of clause 5 matter includes (but is not limited to) all information regarding content and information regarding sources that is contained within WA Police Force State Intelligence holdings.

Should the Commissioner (or authorised delegate) identify clause 5 matter within the section 24 material that is provided to the SAT, the SAT must treat that information in the same manner that it would treat information that is considered “protected matter” under the SAT Act.

The intent of this clause and the clause 5 protected matter definition is to ensure that the SAT, when conducting proceedings for a reviewable decision or sitting in its own jurisdiction:

1. Admits into evidence and receives the clause 5 matter from the Commissioner;
2. Hears the clause 5 matter evidence in private; and
3. Gives due and proper consideration to the clause 5 matter evidence in its decision-making.

In proceedings for the review of a decision made by or on behalf of the Commissioner under the Firearms Act, if the Commissioner identifies that any of the section 24 material contains clause 5 matter –

- a) The Attorney-General cannot issue a certificate under section 159(2) of the SAT Act in relation to the clause 5 matter. This is to ensure that the SAT cannot make an order under section 159(4) of the SAT Act that would allow the disclosure of information that the Commissioner has identified as clause 5 matter.
- b) The SAT must treat the clause 5 matter as if it were “protected matter” as defined under the SAT Act. This includes the following –
  - a. the SAT cannot direct a party to a proceeding to produce the clause 5 matter to the other party (section 34(6) SAT Act);
  - b. the clause 5 matter must be returned to the Commissioner when it is no longer required by the SAT (160(1) SAT Act);
  - c. the clause 5 matter may only be disclosed to a sitting member of the SAT (section 160(2)(a) SAT Act).
- c) The SAT must issue reasons for a final decision (sections 77 and 78 SAT Act) in a way that is compatible with sections 160(1) and (2)(a) SAT Act.
- d) The SAT must receive any evidence in relation to the clause 5 matter in private and in the absence of any party to the proceeding, other than the Commissioner or the Commissioner’s representative. Section 61 of the SAT Act does not apply to any hearing during which the SAT is to consider section 24 material that the Commissioner has classified as clause 5 matter.
- e) Clause 5 matter cannot be published. Section 62 of the SAT Act does not apply to any information within the section 24 material that the Commissioner has classified as clause 5 matter.

In relation to the review of a FPO decision, the following provisions of the SAT Act do not apply: sections 21, 22, 25(2), 29(5)(b). This means that during proceedings for the review of a FPO decision –

- a) The person who is seeking a review of the decision by the Commissioner to issue a FPO may not request the Commissioner to provide the person with a written statement of the reasons for the decision;
- b) The SAT may not order the Commissioner to provide reasons for a FPO decision;
- c) The SAT may not make an order staying the operation of a FPO decision; and
- d) The Commissioner’s decision to issue a FPO is taken to have had effect from the time the SAT reviewed the decision.

The constitution of the Tribunal for a review of a FPO decision will still be determined by the President of the SAT, pursuant to section 11 of the SAT Act.

#### **Clause 36. Section 22AA inserted**

Clause 36 provides that a decision from the SAT in a proceeding under section 22 of the Firearms Act, may be appealed to either the Court of Appeal under section 105(3)(a) of the SAT Act (if the Tribunal included a judicial member), and to the General Division of the Supreme Court under section 105(3)(b) of the SAT Act (if there was no judicial member on the Tribunal). The definition of “**Supreme Court proceeding**” has been defined to include both courts, as well as the reference to the Supreme Court under section 59(10)(b) of the SAT Act on a question of law arising in a proceeding under section 22 of the Firearms Act.

If the court dealing with the Supreme Court proceeding does not consider that the information identified by the Commissioner (or authorised delegate) as clause 5 matter can be properly considered as protected matter under the SAT Act, the court must provide the Commissioner the opportunity to withdraw the relevant matter from the Supreme Court proceeding. If the matter is withdrawn from proceedings, the court must also prohibit the publication of, or reference to, the withdrawn matter.

This clause provides the Commissioner with the following options to protect confidential intelligence information –

1. To withdraw all of the clause 5 matter from proceedings in the Supreme Court so that the confidential intelligence information and any sources are not revealed publicly or to the applicant;
2. To withdraw some of the clause 5 matter and allow other parts of it to be used in proceedings;
3. To decline the opportunity to withdraw the clause 5 matter and allow the material to be used in proceedings.

If the court does consider the clause 5 matter can be properly considered to be protected matter for the purposes of section 94(5)(a) SAT Act, the Supreme Court must ensure the clause 5 matter is not disclosed in any way other than to a member of the Court as constituted for the purposes of the Supreme Court proceeding.

#### **Clause 37. Part 4 heading inserted**

Clause 37 inserts a new Part heading “Part 4 – Extracts of Licences”, consistent with other stylistic amendments.

#### **Clause 38. Section 22A amended**

Section 22A provides for a Firearms Act Extract of Licence.

Clause 38 amends section 22A by including the concept of major firearm part where relevant to ensure consistency with other amendments made by the Bill.

### **Clause 39. Section 22B amended**

Section 22B deals with the penalty for failure to return an Extract of Licence.

Clause 39 amends section 22B(d) by including major firearm parts to ensure consistency with the content of proposed section 16D regarding Corporate Licences.

### **Clause 40. Section 22C amended**

Clause 40 extends the scope of the existing offence under section 22C(1)(d) to include procuring a major firearm part by using or trying to use another person's Extract of Licence, licence, permit, approval or authorisation.

Minor editing amendments are also made.

### **Clause 41. Part 5 heading and Part 5 Division 1 heading inserted**

Clause 41 inserts a new Part and Division heading "Part 5 – Offence" and a new Division and title "Division 1 – General offences", consistent with other stylistic amendments.

### **Clause 42. Section 23 amended**

Clause 42 makes a number of amendments to section 23, which deals with general offences.

Section 23(1) contains an offence to permit possession of a firearm to a person who is intoxicated. This offence is amended to include possession of a major firearms part.

Section 23(3) contains an offence to carry or use a firearm without a licence, permit or lawful exemption. This offence is amended to include a major firearm, and the penalty is imprisonment for 4 years or a fine of \$16,000. If the firearm is a handgun or prohibited firearm, or a major firearm part that relates to a handgun or prohibited firearm, the penalty is imprisonment for 7 years. This penalty is higher for items related to handguns and prohibited firearms to reflect the serious and aggravating risk to community safety that these items cause.

Section 23(5) contains an offence to make certain alterations to a firearm or to possess a firearm in such a way altered. This offence is amended to include a major firearm part. The penalty for this offence is imprisonment for 4 years or a fine of \$16,000, or 7 years imprisonment if the firearm is a handgun. A penalty of imprisonment for 7 years is added in relation to a major firearm that relates to a handgun or has been modified in a manner prescribed.

Section 23(6), (7) and (7a) contain two offences relating to the unlawful possession and use of a silencer. These offences are repealed and replaced with updated terminology ("sound suppressor"). An exemption to these offences is inserted in respect of members of the armed forces or other specified disciplined forces acting in the course of their duty. Furthermore, a person is not considered to be in unlawful possession of a sound suppressor if:

- the person is permitted to receive a sound suppressor being surrendered;

- the person is considered to be in possession of the sound suppressor merely because they occupy or manage the place where it was found, as long as it is in the lawful possession of another person at that time. The same applies to a person in charge of a vehicle.

Section 23(9) contains a number of offences the penalties for which are a fine of \$2,000 for a first offence. Major firearm parts are added to the scope of a number of these offences. A minor edit also separates shots and bullets from the concept of missiles and provides for “other projectiles” so as to cover items that are not missiles.

Section 23(9)(e) contains an offence for a person responsible for a storage facility to refuse access to Police for inspection purposes. To align with other jurisdictions in Australia, this section is amended to provide that Police may inspect storage facilities at any reasonable time without the requirement to request an inspection in writing.

Section 23(9a) contains an offence to discharge a firearm, bullet shot or missile so as to cause fear. For a summary offence, the penalty fine is increased from \$12,000 to \$36,000. Imprisonment for 3 years remains. An indictable offence is inserted, carrying a maximum penalty of imprisonment for 7 years. These updated penalties are in line with those provided for under section 68 of the *Criminal Code* and make clear that a person who discharges a firearm so as to cause fear is equally as culpable as a person who arms themselves with a weapon in public with the same intent. Minor editing amendments are also made to this offence

Section 23(10a) contains an offence for an unauthorised person to carry a firearm on certain land connected to primary production. This offence is extended to include major firearm parts. The clarification under section 23(11A) in relation to that offence is consequentially amended to reflect this.

### **Clause 43. Part 5 Divisions 2 to 4 inserted**

Clause 43 inserts three new Divisions and titles to Part 5.

These Divisions provide for new offences which, inter alia, criminalise unlawful uses of items which are not currently regulated, such as “firearms technology”. They provide for the following:

#### **Division 2 — Offences relating to prohibited firearm accessories**

##### **Section 23AA Acquisition, sale, possession or use of prohibited firearm accessories**

Section 23AA creates a new offence to acquire, sell, possess or use a prohibited firearm accessory without lawful authority. The penalty is a fine of \$36,000 and imprisonment for 3 years if the matter is dealt with summarily.

An indictable offence applies in circumstances of aggravation and the penalty is imprisonment for 7 years. Aggravation includes where the accessory is actually fitted to the firearm and where the offender has possession of the accessory and a firearm to which it could be fitted.

A number of exemptions to this offence are inserted to ensure consistency with other parts of the Bill, including, inter alia, exceptions for members of the Police Force or armed forces in accordance with the performance of the person's duties.

### **Section 23AB Approval to acquire, sell, possess or use prohibited firearm accessories**

Section 23AB provides the Commissioner with discretionary power to approve, in writing, a person or class of persons to acquire, sell, possess or use a prohibited firearm accessory.

## **Division 3 — Offences relating to manufacture, repair and dealing in firearms and other things**

### **Section 23AC Unauthorised manufacture of firearms and other things**

Section 23AC creates a new offence for a person without a valid licence to manufacture a firearm, major firearm part, prohibited firearm accessory or ammunition. Whether or not such items could form part of a functioning item is irrelevant to a charge of unauthorised manufacturing. The penalty for this offence is imprisonment for 14 years.

### **Section 23AD Unauthorised repair of firearms and other things**

Section 23AD creates a new offence for a person without a valid licence to repair a firearm, major firearm part or prohibited firearm accessory. The penalty for this offence is imprisonment for 14 years.

### **Section 23AE Unauthorised dealing in firearms and other things**

Section 23AE creates a new offence for a person without a valid licence to deal in a firearm, major firearm part, prohibited firearm accessory or ammunition. A penalty of imprisonment for 14 years applies.

### **Section 23AF Participating in unauthorised manufacture, repair or dealing in firearms and other things**

Section 23AF creates an offence for a person to participate in a "firearms activity" without a valid licence. The offence is realised whether or not all steps in the activity are completed. The penalty for this offence is imprisonment for 14 years.

**"Firearms activity"** is defined to mean the manufacture, repair or dealing of a firearm, major firearm part, prohibited firearm accessory or ammunition.

To provide clarity, "**participates**" in a firearms activity includes:

- taking action, participating or causing any action to be taken in the process (e.g. possession of a firearms precursor);
- financing any step in the process;

- providing a place (that the person has in some way care of) for any part of the process.

## **Division 4 — Offences relating to firearms technology**

### **Section 23AG Firearms technology**

Section 23AG defines the new concept of “**firearms technology**”. This term is defined under Clause 6 of this Explanatory Memorandum.

### **Section 23AH Unauthorised possession of firearms technology**

Section 23AH creates an offence for a person to be in possession of firearms technology without a valid licence. The penalty for this offence is imprisonment for 10 years and the summary conviction penalty is 3 years imprisonment.

The definition of “**possession**” in relation to firearms technology is inserted. This term is defined under Clause 6 of this Explanatory Memorandum.

### **Section 23AI Unauthorised creation or development of firearms technology**

Section 23AI creates an offence for a person to create or develop firearms technology without a valid licence. The penalty for this offence is imprisonment for 10 years and the summary conviction penalty is 3 years imprisonment.

### **Section 23AJ Unauthorised dissemination of firearms technology**

Section 23AJ creates an offence for a person to disseminate firearms technology without a valid licence. Dissemination applies to electronic and other forms of communication and includes an agreement to share the technology. The penalty for this offence is imprisonment for 10 years and the summary conviction penalty is 3 years imprisonment.

### **Section 23AK Exceptions to s. 23AH, 23AI and 23AJ**

Section 23AK sets out exemptions to the offences under section 23AH, 23AI and 23AJ relating to the unauthorised possession of firearms technology, the unauthorised creation or development of firearms technology and the unauthorised dissemination of firearms technology, respectively.

The following persons (acting in their duties) are exempt from those offences:

- Members of WA Police;
- WA Police employees;
- a member of the Australian armed forces; or
- a member of any other disciplined force specified by the Governor.

Certain conduct is exempt from those offences if it was necessary for:

- administering the law of another Australian jurisdiction;
- monitoring compliance with the law of another Australian jurisdiction;

- the administration of justice;
- specified types of research approved by the Commissioner in accordance with conditions set out in the approval of such research.

#### **Clause 44. Part 5 Division 5 heading inserted**

Clause 44 inserts a new Division heading “Division 5 – Limitation periods”, consistent with other stylistic amendments.

#### **Clause 45. Part 6 heading inserted**

Clause 45 inserts a new Part and title “Part 6 – Disclosure of information under this Act and other matters”, consistent with other stylistic amendments.

#### **Clause 46. Part 7 heading and Part 7 Division 1 heading inserted**

Clause 46 inserts a new Part and Division heading “Part 7 – Enforcement” and a new Division ad title “Division 1 – General enforcement matters”, consistent with other stylistic amendments.

#### **Clause 47. Section 24 amended**

Section 24 contains the general powers of Police under the Firearms Act. Police powers in relation to FPOs are contained in Part 7 Division 2 under clause 50 of this Bill.

Sections 24(1), (2) and (2a) provide that Police may demand a person’s licence or evidence of an exemption under section 8, or seize and take possession of any firearm if Police are of the opinion that harm may be suffered by any person, or the person in possession of the firearm is not a fit and proper person at the time. Police may enter and search any premises that there are reasonable grounds to suspect firearms may be found in the person’s possession. Clause 47(1) amends these sections to include major firearm part and prohibited firearm accessory.

Section 24(3) provides Police with the power to examine a firearm and seize it if Police are of the opinion that it is unsafe or unserviceable. Clause 47(2) includes major firearm part into this section.

Clause 47(3) inserts new sections 24(3A) and (3B) to provide Police with powers to access devices that may store firearms technology. If Police suspect on reasonable grounds that any person is in possession of firearms technology, Police may direct the person to provide a password or other required information to access the technology.

Failure to comply with this direction is a crime and the penalty is imprisonment for 10 years. The summary conviction penalty is imprisonment for 3 years.

If Police form a suspicion on reasonable grounds, section 24(4) provides Police with the power to:

- question any person who is suspected of being able to provide evidence in relation to a suspected offence under the Firearms Act;



- stop, search and detain any person or vehicle who is in possession of a firearm or ammunition without lawful excuse.

Clause 47(4) amends this section to include firearm, major firearm part, prohibited firearm accessory or ammunition.

Section 24(5) requires any firearm or ammunition seized, and any person arrested, to be dealt with according to law. Clause 47(5) inserts major firearm part and prohibited firearm accessory.

Section 24(6) contains a general offence provision for a person who refuses to answer any question, deliberately misleads or refuses to produce any licence / permit, or produce any firearm. The penalty for this offence is a fine of \$4,000. Clauses 47(6) and 47(7) make minor grammatical and stylistic amendments to this section.

Section 24(8) provides that regulations may make provision for the report that Police must provide to the Commissioner after exercising powers without a warrant under section 24(7)(b). Clause 47(8) removes the regulation-making power from this section for steps to be taken after a firearm or ammunition has been seized.

Clause 47(9) amends section 24(9) to include the updated “sound suppressor” term.

#### **Clause 48. Section 25 amended**

Section 25 deals with constructive possession of a firearm, where if a firearm is carried in parts by 2 or more people, all of those people are deemed to be in possession of a firearm.

Clause 48 amends section 25 so that constructive possession includes a firearm, major firearm part or prohibited firearm accessory.

#### **Clause 49. Section 26 amended**

Section 26 provides for a Justice to issue a search warrant when satisfied that there are reasonable grounds for suspecting that firearms have been used in the commission of an offence.

Clause 49 amends section 26(1) so that a search warrant may be issued for any firearm, major firearm part, prohibited firearm accessory, ammunition, firearms precursor or sound suppressor.

Clause 49 amends section 26(2) so that a search warrant may be issued if there are reasonable grounds to suspect that possession of a firearm, major firearm part or prohibited firearm accessory may result in harm being suffered by any person, or the person is not fit and proper to be in possession of the items.

#### **Clause 50. Part 7 Division 2 inserted**

Clause 50 inserts additional powers into the Firearms Act to enable Police to enforce a FPO (contained under clause 53 of this Explanatory Memorandum).

This clause provides a “member of the Police Force” with powers in relation to a FPO. A “member of the Police Force” is defined under section 136 of the *Police Act 1892* as a person appointed under Part I, III, IIIA or IIIB, and includes commissioned and non-commissioned officers, special constables, Aboriginal police liaison officers and police auxiliary officers. This clause note explanation will refer to a “member of the Police Force” as “Police”.

## **Division 2 – Enforcement of powers relating to firearms prohibition orders**

### **Section 26A Additional powers in relation to firearms prohibition orders**

The powers provided to Police under Part 7 Division 2 may be exercised without a warrant. These additional powers are in addition to the existing powers of Police under the Firearms Act or any other law.

### **Section 26B Use of force when exercising powers under this Division**

Section 26B allows Police to use any force against any person or thing that is reasonably necessary to use in the circumstances to exercise a power under Part 7 Division 2. Force may be used to exercise the power, and to overcome any resistance, or resistance that is anticipated on reasonable grounds.

Police may use force that causes damage to the property of another person. Any use of force under this sub-section (1) is subject to Chapter XXVI of the *Criminal Code* that contains provisions relating to assaults and violence to the person generally (including justification, excuse and circumstances of aggravation).

### **Section 26C Entry to and search of places and vehicles in relation to firearms prohibition orders**

Section 26C allows Police to exercise any of the following powers if it is reasonably required to determine whether a prohibited person (or any other person) has committed an offence in relation to FPOs under clause 53 of this Bill:

- Enter and search a place that is occupied by a prohibited person (or a place that is under the care, control or management of a prohibited person). Any vehicle that is at the place may also be searched;
- Search a vehicle at any location that is being occupied by a prohibited person, or a vehicle that the prohibited person has control over. Police may also stop and detain a vehicle for as long as is reasonably necessary to conduct the search.

The search powers under this section may be exercised at any time after the service of a FPO, provided that Police have given the prohibited person an opportunity to surrender all firearms, major firearm parts, prohibited firearm accessories and ammunition in the person’s possession.

Police may seize any thing that is relevant to an offence under the Firearms Act if the thing is found in a place or vehicle searched under section 26C. Police may also seize a firearm, major firearm part, prohibited firearm accessory or

ammunition if the item/s are related to an offence under the Firearms Act, regardless of whether a person is authorised under the Firearms Act to be in possession of the item/s.

### **Section 26D Search of persons subject to firearms prohibition orders and certain other persons**

Section 26D allows Police to exercise any of the following powers if it is reasonably required to determine whether a prohibited person (or any other person) has committed an offence in relation to FPOs under clause 53 of this Bill:

- Stop and search a prohibited person;
- Stop and search any person who is in the company of a prohibited person;
- Search any item, package or thing in possession of a person who is subject to a search under section 26D.

In exercising these powers, Police may do any of the following:

- Stop and detain the person being searched for as long as is reasonably necessary to conduct the search;
- Seize any item that is relevant to an offence under the Firearms Act that is found on or in the person's possession, or that the person is carrying or using.

Police may also seize a firearm, major firearm part, prohibited firearm accessory or ammunition if the item/s are related to an offence under the Firearms Act, regardless of whether a person is authorised under the Firearms Act to be in possession of the item/s.

The search powers under this section may be exercised at any time after the service of a FPO, provided that Police have given the prohibited person an opportunity to surrender all firearms, major firearm parts, prohibited firearm accessories and ammunition in the person's possession.

The search powers under section 26D may also be exercised in relation to any person who is in the company of the prohibited person. Police must suspect on reasonable grounds that a person in company of a prohibited person has committed an offence in relation to FPOs under clause 53 of this Bill.

### **Section 26E Seizure of things not immediately surrendered under s. 29I**

If Police suspect on reasonable grounds that any of the following things are located or stored at a place, section 26E allows Police to enter the place and search and seize the things:

- Any licence, permit, approval or authorisation issued under the Firearms Act;
- An Extract of Licence;
- A firearm, major firearm part, prohibited firearm accessory, ammunition, handgun or prohibited firearm.

This search power also applies if the prohibited person cannot immediately surrender these things because the thing is located or stored at a different place, and Police reasonably suspect that the prohibited person is in possession of the things.

This section operates in conjunction with section 29I (failure to surrender firearms and other things when FPO served), contained within clause 53 of this Bill.

Section 26E does not limit the other powers conferred on Police under Part 7 Division 2.

### **Clause 51. Part 7 Division 3 heading inserted**

Clause 51 inserts a new Division heading “Division 3 – Powers of the court and other matters”, consistent with other stylistic amendments.

### **Clause 52. Section 28 amended**

Section 28 provides for the forfeiture of any firearm, ammunition or sound suppressor to the Crown upon the conviction of a person for any offence. If the item lawfully belongs to another person, the Court is required to order that the item be given to the person.

Clause 52 amends section 28 to include the addition of major firearm part and prohibited firearm accessory.

### **Clause 53. Part 8 inserted**

Clause 53 inserts the FPO scheme into the Firearms Act.

The intent of this clause is to set out the requirements for police to make and serve a FPO on a person, and outline the offences that a person against whom a FPO is made will be committing for failing to comply with a FPO.

This clause provides a “member of the Police Force” with powers to make, serve and enforce a FPO. A “member of the Police Force” is defined under section 136 of the *Police Act 1892* as a person appointed under Part I, III, IIIA or IIIB, and includes commissioned and non-commissioned officers, special constables, Aboriginal police liaison officers and police auxiliary officers. This clause note explanation will refer to a “member of the Police Force” as “Police”.

## **Division 1 – Making of firearms prohibition order and other matters**

### **Section 29A Commissioner may make firearms prohibition order**

Under section 29A, the Commissioner may make an order (“**firearms prohibition order**”) against a person if the Commissioner is satisfied that any of the following criteria apply –

- a) Possession of a firearm, major firearm part, prohibited firearm accessory or ammunition by the person would likely result in undue danger to life or property; or
- b) The person is not a fit and proper person to possess a firearm, major firearm part, prohibited firearm accessory or ammunition; or
- c) It is otherwise in the public interest to make a firearms prohibition order against the person.

When determining whether to make a FPO against a person, the Commissioner may have regard to, amongst other things, any intelligence report or other information held by the Commissioner in relation to the person. The intent of this provision is to enable a FPO to be made against any person that it would be reasonably accepted should not be in possession of a firearm, major firearm part, prohibited firearm accessory or ammunition.

A FPO may be made against a person whether or not the person holds (or has held) a firearms licence in Western Australia; has had a licence, permit or approval revoked or not renewed; is exempt from requiring a licence under section 8 of the Firearms Act; or was the subject of a previous FPO that has expired or been revoked.

### **Section 29B Form and content of firearms prohibition order**

Section 29B requires that a FPO be in the approved form (to be contained within the regulations).

This section specifies what a FPO must contain, namely:

- a) The name and date of birth of the person against whom the FPO is made;
- b) The date on which the FPO was made;
- c) The provision of the Firearms Act that empowers the making of the FPO;
- d) That the FPO remain in effect for a period of 10 years beginning on the day on which the FPO is served (unless revoked sooner);
- e) The effect of the FPO, including the conduct prohibited by the FPO and powers that Police have for enforcing the FPO under Part 8;
- f) That if the person against whom a FPO is made changes their address, the person must notify the Commissioner within 7 days of that change; and
- g) That the person against whom the FPO is made may apply to the SAT for a review of the Commissioner's decision to make the FPO.

The FPO must also contain any other particular as prescribed in the regulations.

### **Section 29C Service of firearms prohibition order**

To effect personal service of a FPO against a person, section 29C requires that the Commissioner must ensure that the FPO is served on the person by the FPO being directly handed to the person, or if the person refuses to accept the order, leave it near the person and orally draw the person's attention to it.

Given the potential consequences for failing to comply with a FPO, it is appropriate that service can only be effected on the person against whom a FPO is made and not a third party.

### **Section 29D Powers to request particulars and detain for purposes of service**

Section 29D provides Police the power to request a person's particulars and detain the person for the purposes of service of a FPO. The intent of this section is to obtain the necessary information about a suspected person in order to serve a FPO.

If Police suspect on reasonable grounds that someone is a person on whom a FPO is to be served, Police may direct the person to stop and/or direct the person to provide their personal details. Police may also direct the person to remain at a particular place for as long as is reasonably necessary to serve the FPO, however the person may not remain at the place for longer than 2 hours.

The person may also be directed to accompany Police to the nearest police station or another place, and remain at this location for as long as is reasonably necessary to serve the FPO. The person may not remain at the police station or new location for longer than 2 hours.

If a person has been directed to provide their personal details to Police for the purposes of serving a FPO, and Police suspect on reasonable grounds that the information provided is false, Police may direct the person to produce evidence of the correctness of the detail.

If a person fails to stop or provide their personal details (or evidence of the correctness of) when directed to by Police, or fails to remain at a particular place or police station for as long as reasonably necessary as directed by Police, the person may be detained at a particular place or police station for as long as is reasonably necessary (but not longer than 2 hours) for Police to serve the FPO on the person. If the person is not already under arrest, the detained person is taken to be in lawful custody.

If a person is taken by Police to a location or police station, and unless it is not reasonably practicable to do so, Police must ensure that the person is taken back to the place at which the direction was made, or taken to a place near that place.

### **Section 29E Offences for failing to comply with directions under s. 29D**

Section 29E provides that a person who refuses or fails to comply with a direction from Police to provide particulars commits an offence if the person is without lawful excuse.

A person who is directed to provide their particulars commits an offence if the person refuses or fails to comply with the direction, or provides material that is false in a material particular, without lawful excuse.

A person who is directed to provide evidence of the correctness of their personal detail commits an offence if the person refuses or fails to comply with the direction, or provides material that is false in a material particular, without lawful excuse.

The penalty for each of these offences is imprisonment for 12 months and a fine of \$12,000.

### **Section 29F Proof of service of firearms prohibition order**

Police must complete a certificate of service as soon as practicable after service of a FPO.

The certificate of service must state:

- that Police served the FPO in accordance with section 29C, on the day and at the time and place stated in the certificate; and
- the full name of the person served with the FPO.

In the absence of evidence to the contrary, a certificate of service is sufficient proof of service of the FPO on the person stated to have been served.

### **Section 29G Commencement and duration of firearms prohibition order**

A FPO comes into force when the FPO is served on the person against whom it is made, and remains in force for 10 years beginning on the day on which it comes into force (unless it is revoked sooner).

The Commissioner may revoke a FPO at any time and is not required to provide a reason.

### **Section 29H Revocation of licences, permits, approvals and authorisations of prohibited persons**

Once a FPO against a person comes into force, all licences, permits, approvals and authorisations that the person may hold under the Firearms Act are revoked.

The regulations may provide for a reinstatement of a licence, permit, approval or authorisation that has been revoked to account for circumstances where the SAT or Court has set aside or quashed a decision from the Commissioner to make a FPO.

## **Division 2 – Offences relating to firearms prohibition orders**

### **Section 29I Failure to surrender firearms and other things when firearms prohibition order served**

Section 29I requires the prohibited person (a person against whom a FPO is made against, defined under clause 6 of this Explanatory Memorandum) to immediately surrender to Police any licence, permit, approval or authorisation, or any Extract of Licence, made under the Firearms Act.

Failure to immediately surrender these items is a crime and the penalty is imprisonment for 5 years and a fine of \$20,000.

The prohibited person must also immediately surrender any of the following that are in the prohibited person's possession:

- a firearm;
- a major firearm part;
- a prohibited firearm accessory;
- a prohibited firearm; and
- ammunition.

If the firearm or major firearm part is not a handgun or related to a handgun, and not a prohibited firearm, failure to surrender these items is a crime and the penalty is imprisonment for 7 years and a fine of \$35,000.

If the firearm or major firearm part is a handgun or related to a handgun, or is a prohibited firearm, failure to surrender these items is a crime and the penalty is imprisonment for 14 years and a fine of \$75,000. This penalty is higher for items related to handguns and prohibited firearms to reflect the serious and aggravating risk to community safety that these items cause.

**“Possession”** is defined under clause 6 of the Bill.

If the prohibited person cannot immediately surrender any firearm, major firearm part, prohibited firearm accessory, prohibited firearm, and ammunition in the person's possession because the item/s are located or stored at another place to where the prohibited person is served the FPO, Police may direct the prohibited person to provide information about the location of the item/s and any other necessary information to enable Police to locate the item/s and seize them.

This section operates in conjunction with section 26E (seizure of things not immediately surrendered under section 29I), contained within clause 50 of this Bill.

It is a crime for the prohibited person to refuse or fail without lawful excuse to comply with a direction to provide Police with information about retrieving the above item/s. The penalty for this offence is imprisonment for 10 years and a fine of \$50,000.

### **Section 29J Prohibition on prohibited persons acquiring, possessing or using firearms and other things**

It is a crime for a prohibited person to acquire, be in possession of, or use a firearm, major firearm part, prohibited firearm accessory, prohibited firearm or ammunition.

If the items do not relate to a handgun or prohibited firearm, the penalty for this offence is imprisonment for 7 years and a fine of \$35,000.



If the items relate to a handgun or prohibited firearm, the penalty for this offence is imprisonment for 14 years and a fine of \$75,000. This penalty is higher for items related to handguns and prohibited firearms to reflect the serious and aggravating risk to community safety that these items cause.

If the prohibited person cannot immediately surrender the firearm, major firearm part, prohibited firearm accessory, prohibited firearm or ammunition, but the prohibited person provides Police with information to access the items when directed under section 29I(6)(b), the prohibited person does not commit an offence under section 29J. The information provided to Police by the prohibited person must enable Police to seize the items within 24 hours of the FPO being served.

### **Section 29K Prohibition on prohibited persons entering, or remaining or residing at, certain premises**

The intent of this section is to ensure that prohibited persons are prevented from entering or residing at, any premises where any activities involving firearms, major firearm parts, prohibited firearms accessories or ammunition are occurring.

It is a crime for a prohibited person to enter or remain at any of the following:

- a place where a firearm, major firearm part, prohibited firearm accessory or ammunition is sold, repaired or manufactured;
- a shooting range;
- a shooting club;
- a firearm collectors club;
- a paintball club;
- a commercial premise where a firearm, major firearm part, prohibited firearm accessory or ammunition is stored;
- a place that is set aside predominantly for activities involving firearms.

The penalty for this offence is imprisonment for 10 years and a fine of \$50,000.

It is a crime for a prohibited person to reside at a commercial premise where a firearm, major firearm part, prohibited firearm accessory or ammunition is stored. The penalty for this offence is imprisonment for 10 years and a fine of \$50,000.

It is an offence for a prohibited person to enter or remain at a residence where a firearm, major firearm part, prohibited firearm accessory or ammunition is stored. The penalty for this offence is imprisonment for 12 months and a fine of \$4,000.

It is an offence for a prohibited person to reside at a residence where a firearm, major firearm part, prohibited firearm accessory or ammunition is stored. The penalty for this offence is imprisonment for 5 years and a fine of \$20,000.

**“Commercial premises”** is defined under this section to mean any premise (include residential premises) listed on a Dealer’s Licence, a Repairer’s Licence or a Manufacturer’s Licence. The definition also includes a premise used by an approved warehouseman to store a firearm, major firearm part or ammunition for another person.

### **Section 29L Prohibition on prohibited persons associating with persons in possession of firearms and other things**

It is a crime for a prohibited person to be in company with a person who is in possession of a firearm, major firearm part, prohibited firearm accessory, prohibited firearm or ammunition.

If the items do not relate to a handgun or prohibited firearm, the penalty for this offence is imprisonment for 7 years and a fine of \$35,000.

If the items relate to a handgun or prohibited firearm, the penalty for this offence is imprisonment for 14 years and a fine of \$75,000. This penalty is higher for items related to handguns and prohibited firearms to reflect the serious and aggravating risk to community safety that these items cause.

### **Section 29M Prohibition on giving possession of firearms and other things to prohibited persons**

It is a crime for a person to give a prohibited person a firearm, major firearm part, prohibited firearm accessory, prohibited firearm or ammunition.

If the items do not relate to a handgun or prohibited firearm, the penalty for this offence is imprisonment for 7 years and a fine of \$35,000.

If the items relate to a handgun or prohibited firearm, the penalty for this offence is imprisonment for 14 years and a fine of \$75,000. This penalty is higher for items related to handguns and prohibited firearms to reflect the serious and aggravating risk to community safety that these items cause.

### **Section 29N Prohibited person to notify change of address**

A prohibited person must notify the Commissioner if the person changes their address. This notification must occur within 7 days after the change of address.

The approved manner will be provided for in the regulations.

Failure to notify of a change of address is an offence and the penalty is a fine of \$4,000.

### **Section 29O Recognition of firearms prohibition orders of other jurisdictions**

Section 29O provides for the recognition of a “**corresponding firearms prohibition order**” that has been made and served (and are in force) against a person in another Australian State or Territory.

***“Corresponding firearms prohibition order”*** has been defined to mean an order made in another Australian jurisdiction under legislation that substantially corresponds to Part 8 of the Bill.

A corresponding FPO may be enforced in Western Australia against the person according to this Bill.

#### **Clause 54. Part 9 heading inserted**

Clause 54 inserts a new Part heading “Part 9 – Sale, destruction of firearms and other matters”, consistent with other stylistic amendments.

#### **Clause 55. Section 30A amended**

Section 30A deals with the sale and disposal of firearms.

Section 30A(1) is amended to prescribe that the serial number be listed in an advertisement for the sale of a major firearm part, where applicable. Regulations may prescribe other items. A penalty of \$2,000 is inserted for failure to comply with these requirements, including existing requirements for the sale of a firearm.

Section 30A(2) is amended to ensure that Dealer’s Licence and Manufacturer’s Licence holders comply with advertisement requirements for the sale of a major firearm parts. A penalty of \$2,000 is inserted for failure to comply.

Section 30A(3) is amended to extend to requirements regarding sending a firearms by post to apply to major firearms parts. A penalty of \$2,000 is inserted for failure to comply.

Amendments to the wording of this section make clear that these requirements are obligations.

#### **Clause 56. Section 30B amended**

Section 30B deals with reporting requirements for the loss, theft, destruction, or out of State disposal of firearms or ammunition. Clause 56 amends the scope of this section to include major firearm parts.

A penalty of \$2,000 is inserted for failure to comply with the reporting requirements following the loss or destruction of firearm, major firearm part or ammunition. This penalty aligns with the penalty for failure to report the disposal of such items outside of Western Australia.

Amendments to the wording of this section make clear that these requirements are obligations.

#### **Clause 57. Section 31 amended**

Section 31(3) allows a member of WA Police to check the stock of firearms or ammunition held on any premises required to maintain certain records. Clause 57 extends the scope of items which can be inspected to include major firearm parts.

#### **Clause 58. Section 32 amended**

Section 32 obligates the holder of a Dealer's Licence, a Repairer's Licence, or a Manufacturer's Licence to keep all firearms and ammunition in a secure and safe place outside of business hours. Clause 58 extends the scope of items to be kept securely to include major firearm parts.

#### **Clause 59. Section 33 amended**

Section 33 deals with the disposal of firearms.

Section 33(1) obligates the Commissioner to dispose of a firearm or ammunition in the possession of a member of WA Police in accordance with regulations when the owner cannot be found, is dead or refuses to lawfully dispose of it in a timely manner. This subsection is amended to include the disposal of major firearm parts and prohibited firearm accessories.

Section 33(2) provides that the proceeds of a firearm sale by the Commissioner must be paid to the owner unless the owner is unknown or uncontactable. This subsection is amended to include the sale of major firearm parts.

Section 33(3) provides that, where the Commissioner has accepted safe custody of a firearm or ammunition but the owner has not paid the associated fees, the Commissioner may recover any such unpaid fees, as well as any costs incurred in the recovery of the fees. The Commissioner may recover the fees either in court or by selling the item. This subsection is amended to include major firearm parts and prohibited firearm accessories within its scope.

Subsections are inserted to provide that regulations may prescribe how an item that has come into the possession of WA Police is to be dealt with. However, regulations may not provide for circumstances where:

- the owner cannot be found, dies or refuses to lawfully dispose of the item;
- the owner has failed to pay the safe custody fees for over 2 years;
- the item is surrendered.

## **Clause 60. Sections 33A, 33B and 33C inserted**

Clause 60 inserts 3 new general amnesty sections to provide for the surrendering a firearm, major firearm part, prohibited firearm accessory, sound suppressor or ammunition, as follows:

### **Section 33A Surrender of things to Commissioner**

Section 33A is inserted to provide for the ways in which a person may surrender a firearm, major firearm part, prohibited firearm accessory, sound suppressor or ammunition.

They may do so by taking the item to a police station. Alternatively, they may take it to an approved location, being a location named in the Dealer's Licence or Manufacturer's Licence and approved by the Commissioner. If they surrender the item at an approved location, they must give it to either the holder of the Dealer's Licence or Manufacturer's Licence (the "**responsible person**"), or another person provided for in the Commissioner's approval (the "**approved person**"), to accept it.

If the item is surrendered at a location other than a police station, the Commissioner must specify the approved location, name of the person receiving the item, storage requirements, manner of delivery, and any reporting requirements.

If the item is being surrendered to the holder of the Dealer's Licence or Manufacturer's Licence, then it is that licence holder's responsibility to ensure that the storage and reporting requirements are fulfilled.

The penalty for failure to comply with these requirements is imprisonment for 18 months and a fine of \$18,000.

### **Section 33B Amnesty for things surrendered to Commissioner**

Section 33B is inserted to improve public safety by encouraging the surrendering of firearms, major firearm parts, prohibited firearm accessories, sound suppressors and ammunition without penalty.

A person lawfully and genuinely surrendering such an item cannot be charged for offences related to the possession of the item at the time of surrender. Furthermore, they cannot be charged for carrying it to the location for surrender. An amnesty for the purpose of delivering an item to Police aligns with provisions under the *Weapons Act 1999*.

The above does not apply in relation to offences committed before the item is surrendered. For example, if a person committed robbery with a firearm before they surrendered it, then that person remains culpable for that offence, regardless of having surrendered the firearm.

## **Section 33C Licensing, sale and disposal of surrendered firearms, major firearm parts and ammunition**

Section 33C is inserted to provide that a person may apply for a valid licence, permit or approval for the firearm, major firearm part or ammunition they lawfully surrendered. They must apply for a relevant licence within 14 days of surrendering the item.

If the person who surrenders the item does not apply for lawful acquisition within 14 days, or if their application is refused, the Commissioner may sell or dispose of the item as they see fit. If the item is sold, the Commissioner may decide whether the proceeds are paid to the owner or the Consolidated Account.

### **Clause 61. Section 34 amended**

Clause 61 amends section 34 to confer additional regulation making powers to the Governor for dealing with procedural matters necessary to give effect to the provisions of this Bill affecting the new terms, major firearm parts and prohibited firearms accessories.

### **Clause 62. Section 35 inserted**

Clause 62 inserts a new section requiring the Minister for Police to review the operation and effectiveness of the amendments made by the Bill. The review must be carried out 5 years after this clause comes into operation. A report must be tabled in Parliament.

### **Clause 63. Part 10 inserted**

Clause 63 inserts a new Part and title “Part 10 – Transitional provisions for *Firearms Amendment Act 2021*” at the end of the Firearms Act.

Part 10 comprises section 36, as follows:

#### **Section 36 Licences under repealed s. 16**

Section 36 is inserted to provide for transitional arrangements for licences regulated under the repealed section 16.

The term “**commencement day**” is coined for transitional purposes. It refers to the day on which the existing sections 16 and 16A of the Firearms Act are lawfully repealed and replaced.

A table is inserted to illustrate how licences designated under the existing section 16 of the Firearms Act are to be considered when the Act comes into operation.

On commencement day, all applications for licences designated under current provisions will automatically convert to applications for the equivalent licences proposed in the Bill, as set out in the table.

As such, if a person applied for a Repairer's Licence under the existing section 16(1)(e) of the Firearms Act and their application had not yet been determined by commencement day, then it would automatically convert to an application for a Repairer's Licence under section 16G of the Act.

If a licence was in force before commencement day, then the period for which it was permitted to be in force is unaffected by the Act coming into operation.

#### **Clause 64. Schedule 1 deleted**

Clause 64 removes Schedule 1. Under section 7(4)(f) of the *Reprints Act 1984*, Schedule 1 was previously omitted from the Firearms Act in 2000. This amendment officially removes Schedule 1 and is administrative in nature.

#### **Clause 65. Various penalties amended**

Clause 65 provides a summary table outlining the various lexical and syntactical changes to sections relating to penalties throughout the Act.

#### **Clause 66. Various references to gender removed**

Clause 66 provides a summary table outlining the various changes to gender-biased language throughout the Act.

### **Part 3 – Other Acts amended**

#### **Division 1 — The *Criminal Code* amended**

##### **Clause 67. Act amended**

Clause 67 specifies that Part 3 Division 1 of the Bill amends the *Criminal Code*.

##### **Clause 68. Section 378 amended**

Clause 68 amends section 378(5) of the *Criminal Code* to include 'firearm' in the list of aggravating theft offences. A penalty of imprisonment for 14 years applies.

##### **Clause 69. Section 417A amended**

Clause 69 amends section 417A of the *Criminal Code* to create an offence for possession of a firearm reasonably suspected to be stolen or otherwise unlawfully obtained. A penalty of imprisonment for 10 years applies.

#### **Division 2 — *Criminal Organisations Control Act 2012* amended**

##### **Clause 70. Act amended**

Clause 70 specifies that Part 3 Division 2 of the Bill amends the *Criminal Organisations Control Act 2012* (COCA).

### **Clause 71. Section 3 amended**

Section 3 of COCA defines terms used within that Act.

Clause 71 amends section 3 of COCA to remove the term “firearm” and “firearm licence” and insert two new terms which reflect amendments made by this Bill to the Firearms Act.

The terms “**firearm item**” is inserted to mean a firearm, major firearm part, prohibited firearm accessory or ammunition. The term “**firearms authorisation**” means any licence, permit or approval given in respect of a firearm item, or any Extract of Licence under the Firearms Act.

### **Clause 72. Various references to “firearm” and “firearms” replaced**

Clause 72 provides a table summarising the sections within COCA for which the repealed terms are to be replaced with the new terms.

### **Clause 73. Various references to “firearms licence”, “firearms licences”, “authorisation”, “licence” and “firearms licenses” replaced**

Clause 73 provides a table summarising the sections within COCA for which the repealed terms are to be replaced with the new terms.

## **Division 3 — *Prohibited Behaviour Orders Act 2010* amended**

### **Clause 74. Act amended**

Clause 74 specifies that Part 3 Division 3 of the Bill amends the *Prohibited Behaviour Orders Act 2010* (PBO Act).

### **Clause 75. Section 3 amended**

Section 3 of the PBO Act defines terms used within that Act.

Clause 75 amends section 3 of the PBO Act to remove the term “firearm” and “firearm licence” and insert the terms “**firearm item**” and “**firearms authorisation**” in a manner consistent with the definitions inserted under clause 70 of this Bill.

### **Clause 76. Various references to “firearm” and “firearms” replaced**

Clause 76 provides a table summarising the sections within the PBO Act for which the repealed terms are to be replaced with the new terms.

### **Clause 77. Various references to “firearm licence” and “firearm licences” replaced**

Clause 77 provides a table summarising the sections within the PBO Act for which the repealed terms are to be replaced with the new terms.



## **Division 4 — *Restraining Orders Act 1997* amended**

### **Clause 78. Act amended**

Clause 78 specifies that Part 3 Division 4 of the Bill amends the *Restraining Orders Act 1997* (RO Act).

### **Clause 79. Section 3 amended**

Section 3 of the RO Act defines terms used within that Act.

Clause 79 amends section 3 of the RO Act to remove the term “firearm” and “firearm licence” and insert the terms “***firearm item***” and “***firearms authorisation***” in a manner consistent with the definitions inserted under clause 71 of this Bill.

### **Clause 80. Various references to “firearm” and “firearms” replaced**

Clause 80 provides a table summarising the sections within the RO Act for which the repealed terms are to be replaced with the new terms.

### **Clause 81. Various references to “firearms licence”, “firearms licences” and “firearms licenses” replaced**

Clause 81 provides a table summarising the sections within the RO Act for which the repealed terms are to be replaced with the new terms.

## **Division 5 — Other Acts amended**

### **Clause 82. *Children and Community Services Act 2004* amended**

Section 112 of the *Children and Community Services Act 2004* (CCS Act) defines terms used within Division 8 of that Act in relation to powers of restraint, search and seizure.

Clause 82 amends section 112 of the CCS Act to remove the term “firearm” and insert the term “***firearm article***” to mean a firearm, major firearm part, prohibited firearm accessory or ammunition, as defined in this Bill.

Section 117 of the CCS Act provides for how an article seized from a child is to be dealt with by an authorised officer or approved person.

Clause 82 amends section 117 of the CCS Act to replace the term “firearm” with the term “firearm article”.

### **Clause 83. *Court Security and Custodial Services Act 1999* amended**

Section 95(a) of the *Court Security and Custodial Services Act 1999* (CSCS Act) provides that an authorised person may lawfully possess a firearm, ammunition, a silencer or contrivance of a similar nature if they are exercising certain functions under that Act.

Clause 83 updates section 95(a) of the CSCS Act by amending what such an authorised person may possess. References to items rendered obsolete by the Bill are removed and replaced with a firearm, major firearm part, prohibited firearm accessory, sound suppressor, firearms technology or ammunition, as defined under this Bill.

### **Clause 84. *Prisons Act 1981* amended**

Section 49B of the *Prisons Act 1981* (Prisons Act) sets out the circumstances in which a prison officer may lawfully possess a firearm, ammunition, silencer or contrivance of a similar nature.

Clause 84 amends section 49B of the Prisons Act by amending what a prison officer may possess in those circumstances. References to items rendered obsolete by the Bill are removed and replaced with a firearm, major firearm part, prohibited firearm accessory, sound suppressor, firearms technology or ammunition, as defined under this Bill.

### **Clause 85. *Sentencing Act 1995* amended**

Item 5 of Schedule 1A Part 1 of the *Sentencing Act 1995* (Sentencing Act) sets out offences under the Firearms Act which are to be considered relevant indictable offences for sentencing matters involving a declared criminal organisation.

Clause 85 removes this item and replaces it with a new item 5 to reflect amendments made by this Bill.

The reference to the offence under section 19(4) is removed and replaced with wider manufacturing and repair offences under the proposed sections 23AC(1) and 23AD. References to offences under sections 6(3), 19(1), 23(3) and (5) are maintained and updated to reflect the amended content of those sections.

Section 23(9a) of the Firearms Act contains an offence to discharge a firearm to cause fear. For sentencing matters involving a declared criminal organisation, this offence is to be considered a relevant indictable offence rather than a relevant simple offence.