

# FIREARMS AMENDMENT BILL 2003

## Explanatory Memorandum

### *Part 1 - Preliminary*

This Part contains the title of the Act, the commencement provisions and the relationship the Act has to other written laws.

**Clause 1** Short title and citation.

**Clause 2** This clause sets out the commencement provisions.

The phased proclamation of the Act will allow subsidiary legislation to be drafted and to enable the licensing of paintball gun prior to allowing the game to be played.

**Clause 3** Formally identifies the Act to be amended being the *Firearms Act 1974*.

### *Part 2 – Amendments about paintball*

**Clause 4** This clause defines the terms “**paintball**”, “**paintball gun**” and “**paintball pellets**”. The clause also provides that subsidiary legislation is required to describe the paintball gun and the paintball pellet. For example, this will allow regulations to be drafted to prohibit the use of red and brown paintball pellets.

**Clause 5** This new subclause allows members of the public to be in possession of a paintball gun and paintball pellets whilst playing the game of paintball at an approved venue by exempting them from the requirement to have a firearm licence (in such circumstances).

**Clause 6** The amendment specifically identifies the playing of paintball as a genuine reason for a firearm licence to be issued. Before a firearm licence can be granted, the Commissioner of Police must be satisfied that the applicant has a genuine reason for acquiring or possessing a firearm. While the Commissioner could utilise the provisions of section 11A(2)(f) (which provides the acquiring or possession of a firearm is for another approved purpose) generally it is considered that this provision relates to one off circumstances, rather than general applications.

**Clause 7** Section 23(5)(c) creates an offence where a person without lawful excuse alters a firearm from the design or characteristics of its original manufacture. Paintball guns, due to their design, need to be maintained on a regular basis; specifically their seals need to be periodically replaced. The new provision will allow a person to

maintain a paintball gun and modify it in accordance with the manufacturer's specifications without contravening this provision.

Under section 23 (8) of the Act, the pointing of a firearm at another person is a serious offence, currently punishable with 2 years imprisonment. The game of paintball involves the pointing of a paintball gun at another person. Accordingly, sub-clause (3) inserts a new provision that exempts a person from the offence provisions whilst playing the game of paintball.

### ***Part 3 – Amendment about handguns and other matters***

**Clause 8** This clause addresses a number of administrative matters contained in the Act. In 1997, the Police Department changed its name to the Western Australia Police Service. The *Firearms Act 1973* refers to the 'Police Department' in a number of places. This amendment removes this term and replaces it with the generic term 'Department'.

The term medical practitioner is used in section 23B of the Act, however it is not defined. This new provision inserts a definition of a medical practitioner.

**Clause 9** Removes the Firearm Advisory Committee established under section 5B of the Act. This is in line with the recommendations made by the Machinery of Government Review of Boards and Committees in 2001.

**Clause 10** Section 6 of the Act enables the Governor to make regulations on the recommendation of the Commissioner to prohibit the acquisition, sale, possession or use of any firearm, silencer or other contrivance of a similar nature, or ammunition whether or not licensed under this Act. The section further provides that where the Firearm Regulations 1974 does not provide a penalty then the person who contravenes the regulations commits an indictable offence resulting in imprisonment for 5 years or on summary conviction a penalty of imprisonment for 18 months or a fine of \$6 000.

It is proposed that where a person is convicted for a second or subsequent offence they be subject to 10 years imprisonment. The hearing of a charge summarily has been restricted to the first offence.

**Clause 11** Section 11 of the Act prohibits the Commissioner of Police from granting a licence where the Commissioner is of the opinion the person is not a fit and proper person to hold a licence. Some of the matters that the Commissioner must consider regarding the applicant are:

- have they been convicted of an offence involving an assault with a weapon;
- have they been convicted of an offence involving violence;
- do they fail to meet the standards of mental or physical fitness required.

A new provision has been inserted, whereby the Commissioner may form that opinion based on criminal intelligence and not be required to disclose the details of any such criminal intelligence.

An appropriate review provision has been included (refer to Clause 15).

**Clause 12** Section 11A of the Act provides that the person must show a genuine reason for acquiring or possessing a firearm to the Commissioner. “Genuine reason” is defined in section 11A(2). It has been Police Service policy in relation to section 11A(2)(c) *the firearm is for use in hunting or shooting of a recreational nature on land the owner of which has given permission for that hunting or shooting*, that a letter be obtained from the owner of a property stating that the applicant is permitted to use his/her property for shooting.

The Ombudsman has criticised the Police Service for requiring the applicant to supply written permission from the landowner that the applicant is permitted to use the land for recreational shooting. The Ombudsman considered it was *ultra vires* of the Act and the policy should be discontinued. It is considered reasonable and prudent that written permission be provided to the Commissioner. In order that the Commissioner can lawfully require written permission to satisfy the genuine reason test, the word ‘written’ has been inserted.

**Clause 13** The penalty provision relating to the offence described in section 19 has been repealed and substituted with new provisions that include;

- offences where a person was carrying a firearm and
  - a prohibited drug or plant as defined under *the Misuse of Drugs Act 1981*; or
  - being in possession of an amount of money (ie \$2 000) will be subject to a penalty of 14 years imprisonment.
- circumstances of aggravation where a person is convicted of selling 3 or more unlicensed firearms in their possession and will be subject to a penalty of 14 years imprisonment.
- if at the time of the offence
  - the person had been refused or was disqualified from holding a licence or permit or it had been revoked;
  - the firearm was a handgun
  - any number or identification marks had been defaced or removedthe offender will be subject to 7 years imprisonment.
- where none of the above circumstances apply and the person is in possession of a firearm without the appropriate licence or

permit, the penalty that may be imposed will be 5 years imprisonment.

- Subsection (4) deals with the illegal manufacture of firearms including handguns. This subsection is being amended to include a new penalty –

in the case of the manufacture of a handgun, to imprisonment for 14 years;

in any other case, to imprisonment for 5 years.

Where the matter is heard summarily, upon conviction the penalty, except in the case of the manufacture of a handgun, is imprisonment for 2 years or a fine of \$8 000.

- The remaining penalties in subsection 4 that relate to the selling, purchasing and disposing of a firearm, that were not specifically increased have been increased from 18 months imprisonment or a fine of \$6 000 to 2 years imprisonment or a fine of \$8 000.

**Clause 14** Section 21 of the principle Act deals with penalties relating to the restriction, limitation or conditions placed on a firearm license. These penalties have not been reviewed since 1996 and are considered inadequate. The Bill increases the penalty from 12 months or a fine of \$4 000 to imprisonment for 18 months or a fine of \$6 000.

**Clause 15** This new provision complements section 11 of the Act, by inserting a new provision, whereby the Commissioner of Police may take into consideration whether the applicant is a fit and proper person to hold a firearm licence based on an intelligence report or other information held in relation to the applicant, that the applicant is a threat to public safety. Where the Commissioner exercises this provision, he is not required to disclose the information relied on.

Pursuant to section 22 the Commissioner's decision can be reviewed. Should an appeal be lodged the Commissioner must ensure that the magistrate or tribunal is provided with all the information on which the decision was based in regard to the appeal.

The magistrate or the firearms appeal tribunal may order that the information on which the Commissioner made his decision shall not be disclosed if

- it would prejudice
  - the safety of a person
  - the administration of the Act
  - the investigation or prosecution for an offence under the Act

- it reveals the identity of a police officer acting as an undercover officer
- it was not in the public interest.

**Clause 16** Section 22C provides a number of offences relating to the Extract of Licences, Licences, Permits etc. This provision was inserted in 1996.

Under section 22C, the holder of a Corporate Licence, a Dealer’s Licence, a Repairer’s Licence, a Manufacturer’s Licence or an Ammunition Collector’s Licence shall compile, maintain and furnish to the Police Service records in such manner as is prescribed. There is currently no offence for knowingly supplying incorrect or misleading information. This amendment addresses this anomaly.

**Clause 17** Section 23 provides for the general offences within the Act. The attendant penalties have not been reviewed since 1996. The amendment increases the penalties as detailed below:

Current provisions and penalty	Proposed penalty
<p><b>23. General offences</b></p> <p>(1) A person who permits possession of any firearm or ammunition to be taken by another person where there are reasonable grounds for believing that he knows, or ought to know, that the other person is affected by alcohol or drugs, or alcohol and drugs, or that the other person is of unsound mind, commits an offence. Penalty: Imprisonment for 12 months or a fine of \$4 000.</p> <p>(2) A person who uses, carries or is otherwise in actual physical possession of a firearm whilst affected by alcohol or drugs, or alcohol and drugs, commits an offence. Penalty: (a) if the firearm is loaded, imprisonment for 18 months or a fine of \$6 000; or (b) otherwise, imprisonment for 12 months or a fine of \$4 000.</p> <p>(3) Unless he holds a licence or permit under this Act entitling him to do so or section 8 applies, a person who carries or uses a firearm commits an indictable offence and is liable — (a) if the firearm concerned was a handgun, on conviction, to imprisonment for 5 years; or (b) otherwise, to imprisonment for 18 months or a fine of \$6 000.</p> <p>Summary conviction penalty in a case to which paragraph (a) applies: Imprisonment for 2 years or a fine of \$8 000.</p> <p>[(4) repealed]</p> <p>(5) A person who, without lawful excuse, — (a) defaces or alters any number or identification mark on a firearm; (b) is in possession of a firearm whereon any number or identification mark, whether or not a number or mark recorded on the licence or permit relating thereto, has been altered or defaced; or</p>	<p>18 months imprisonment or a fine of \$6 000</p> <p>2 years imprisonment or \$8 000 18 months imprisonment or a fine of \$6 000</p> <p>7 years imprisonment</p> <p>4 years imprisonment or a fine of \$16 000</p> <p>3 years imprisonment or a fine of \$12 000</p>

Current provisions and penalty	Proposed penalty
<p>(c) alters a firearm —</p> <p>(i) from the design or characteristics of its original manufacture; or</p> <p>(ii) so that its calibre, character or kind differs from what it was when any current licence or permit relating to it was issued, or is in possession of a firearm that has been so altered, commits an indictable offence and is liable —</p> <p>(d) if the firearm concerned was a handgun, on conviction, to imprisonment for 5 years; or</p> <p>(e) otherwise, to imprisonment for 6 months or a fine of \$2 000.</p> <p>Summary conviction penalty in a case to which paragraph (d) applies: Imprisonment for 12 months or a fine of \$4 000.</p> <p>(6) Subject to subsection (7a), a person who uses a contrivance commonly known as a silencer, or any contrivance of a similar nature, commits an offence.</p> <p>Penalty: Imprisonment for 18 months or a fine of \$6 000.</p> <p>(7) Subject to subsection (7a), a person who is in possession of a contrivance commonly known as a silencer, or any contrivance of a similar nature, commits an offence.</p> <p>Penalty: Imprisonment for 12 months or a fine of \$4 000.</p> <p>(7a) A person who, being —</p> <p>(a) a member of the Police Force or an employee of the Police Department of the Public Service acting in the performance of his duties; or</p> <p>(b) the holder of an authority which is in force under section 17B, uses or is in possession of, as the case requires, a contrivance referred to in subsection (6) or (7) does not commit an offence under that subsection.</p> <p>(8) A person who, without lawful excuse, points a firearm at any other person commits an offence.</p> <p>Penalty: Imprisonment for 2 years or a fine of \$8 000.</p> <p>(9) A person who, —</p> <p>(a) whilst carrying, or in actual physical possession of, or having the custody or control otherwise than by way of storage of, any firearm or ammunition, fails or omits to take all reasonable precautions to ensure its safe keeping;</p> <p>(b) having failed or omitted to take all reasonable precautions to prevent the same, permits a young person under the age of 18 years to have unlawful possession of a firearm;</p> <p>(c) without lawful excuse, discharges any firearm or any shot, bullet or other missile from a firearm, onto, from or across any road;</p> <p>(d) being responsible for the storage of any firearm or ammunition, fails —</p> <p>(i) to provide and use adequate storage facilities to ensure its safety;</p> <p>(ii) where prescribed requirements as to security are specified in relation to a firearm or ammunition of a prescribed kind, to ensure that those requirements are observed; or</p> <p>(iii) otherwise, to safeguard it from loss or improper use; or</p> <p>(e) being responsible for the storage of any firearm or ammunition, refuses to permit a member of the Police Force to inspect the storage facilities provided, at a reasonable time after such an inspection is requested in writing by the member of the Police Force, commits an offence.</p>	<p>7 years imprisonment 4 years imprisonment or fine of \$16 000 3 years imprisonment or fine of \$12 000</p> <p>7 years imprisonment</p> <p>3 imprisonment or fine of \$12 000</p> <p>3 years imprisonment or fine of \$12 000</p> <p>Penalty: (a) for a first offence, a fine of \$2</p>

Current provisions and penalty	Proposed penalty
<p>Penalty: \$1 000.</p> <p>(9a) A person who from any place, discharges any firearm, or any shot, bullet, or other missile from a firearm, to the danger of, or in a manner to cause fear to, the public or any person, commits an offence.</p> <p>Penalty: <b>Imprisonment for 2 years or a fine of \$8 000.</b></p>	<p>000</p> <p>(b) for a subsequent offence, imprisonment for 12 months or a fine of \$4 000</p> <p>2 years imprisonment or a fine of \$8 000</p>

**Clause 18** Section 23B currently indemnifies a medical practitioner who advises the Commissioner in good faith that because of a patient’s physical, mental, or emotional condition, is not in the patient’s interest or the public interest for them to hold a firearm licence. The indemnity in section 23B has been extended to include psychologists, registered nurses and prescribed classes of social workers and professional counsellors.

**Clause 19** Currently office holders of sporting clubs and organizations licensed pursuant to section 11A(2), are required to inform the Commissioner where, in their opinion, a member or a person intending to join the club or organization is not a fit and proper person to hold a firearm license.

Generally, the sporting clubs and organisations to which this condition applies support and fulfil these obligations in the belief it is in the public interest that persons who are not fit and proper should be excluded from such activities. However, with the increase in civil litigation the sporting clubs and organisations are concerned about being sued for passing on such judgements.

The new provision will indemnify officers of the clubs or organizations from criminal or civil action or remedy provided they acted in good faith.

**Clause 20** Section 32 deals with the requirement for Dealers, Repairers and Manufacturers to properly secure all firearms and ammunition when their premises are not open for business. With the increased number of offences involving firearms the current penalty does not reflect the seriousness of failing to comply with this provision.

The current penalty is \$2 000. The amendment provides for an increased penalty for a first offence, a fine of \$4 000 and imprisonment for 2 years or a fine of \$8 000 for a subsequent offence

**Clause 21** Section 34 of the Act allows the Governor to make regulations that are necessary or expedient.

The recent amendments to the *Firearm Regulations 1994* in August 2003 inserted a new provision to require holders of Dealer licenses to

provide to the Commissioner information about other persons who may be concerned in the management of the business (eg financial interests, subject to a violent restraining order or a conditional release order or convicted of offences under the Criminal Code (murder, assaults and sexual offences)). The Police Service considered that the current regulatory provision allowed the drafting of these regulations. However, there is now some doubt whether section 34 does provide the authority to draft such regulations and this amendment clarifies the issue.

**Clause 22** This amendment is a consequential amendment of clause 9 which repeals section 5B.

**Clause 23** These general penalty amendments have not been amended since 1996. The Bill recommends the following increases in penalties:

Current provisions and penalty	Proposed penalty
<p><b>19.</b> Licensing offences            (5) A person who conducts, or is concerned in the conducting of, a shooting gallery otherwise than in accordance with a licence under this Act authorising him to do so commits an offence.            Penalty: \$1 000.</p>	<p>\$2 000</p>
<p><b>23. General offences</b></p> <p>(10) A person who, without reasonable excuse, uses a firearm on land belonging to another person without the express or implied consent of the owner or occupier of that land or some person apparently authorised to act on behalf of the owner or occupier, commits an offence.  <b>Penalty: \$1 000.</b></p> <p>(10a) A person who, without reasonable excuse, carries a firearm, other than on a road open to the public, onto or across land that is used for or in connection with primary production without the express or implied consent of the owner or occupier of that land or some person apparently authorised to act on behalf of the owner or occupier, commits an offence.  <b>Penalty: \$1 000.</b></p> <p>(10b) For the purposes of subsection (10) and subsection (10a), the holding of a permit issued under the <i>Wildlife Conservation Regulations 1970</i> shall not be taken to be a reasonable excuse.</p> <p>(11) A person who by act or omission commits any breach of the provisions of this Act for which no penalty is specifically provided commits an offence.  <b>Penalty: \$1 000.</b></p>	<p>\$2 000</p> <p>\$2 000</p> <p>\$2 000</p>

<p><b>24</b></p>	<p><b>Powers of police</b>  (6) A person who —  (a) refuses or fails without lawful excuse to answer any question put by a member of the Police Force under this Act;  (b) wilfully misleads or wilfully attempts to mislead any member of the Police Force in any particular likely to affect the discharge of his duty under this Act;  (c) refuses or fails to produce any licence or permit held by him under this Act, or any firearm in respect of which any such licence or permit is issued, or any Extract of Licence issued in respect of any such licence or permit or in respect of any exemption or other authorisation, within reasonable time after demand made by a member of the Police Force,  <b>commits an offence and is liable on summary conviction to a fine of \$2 000.</b></p>	<p>\$4 000</p>
<p><b>30.</b></p>	<p><b>Ammunition sales</b>  (4) A person who makes a false representation for the purposes of obtaining ammunition for himself or another person, and any dealer who fails or neglects to comply with the requirements of this section commits an offence.  <b>Penalty: \$1 000</b></p>	<p>\$4 000</p>
<p><b>30A.</b></p>	<p><b>Sale and disposal of firearms</b>  (3) A person who sends a firearm by post to a destination that is outside the State —  (a) is required to address the firearm to premises at which the business of a dealer may lawfully be carried on; and  (b) is not to send ammunition in the package containing the firearm.  <b>Penalty: \$1 000.</b></p>	<p>\$2 000</p>
<p><b>30B.</b>  (2)</p>	<p>Loss, theft, destruction, or disposal out of the State, to be reported  Where any person entitled under this Act to possess a firearm disposes of that firearm —  (a) in a place outside the State; or  (b) to a destination outside the State,  that person is required, as soon as is practicable, to report to the Commissioner the details of the firearm concerned; the manner and date of its disposal; the name, address, and, in the case of a person other than a dealer in firearms, the birth date of any person taking possession of the firearm; and the number, expiry date and nature of any licence, permit or other authorisation to possess a firearm held by that person.  <b>Penalty: \$1 000.</b></p>	<p>\$2 000</p>
<p><b>31.</b></p>	<p><b>Records</b>  (2) The holder of a Corporate Licence, a Dealer's Licence, a Repairer's Licence, a Manufacturer's Licence or an Ammunition Collector's Licence shall compile, maintain and furnish records in such manner as is prescribed, all entries therein shall be made at the time of the transaction to which they relate or, in the case of a transaction involving the acquisition of ammunition by a person who is entitled to acquire it as the holder of an Ammunition Collector's Licence, as soon as may be practicable thereafter, and any such record shall be produced for inspection by any member of the Police Force on his request.  (3) A member of the Police Force shall be permitted to check the stock of firearms and ammunition on any premises in respect of which</p>	

<p>records are required to be kept under subsection (2), or ammunition held by a person who is the holder of an Ammunition Collector's Licence, and shall be provided with reasonable facilities for examining such firearms or ammunition.</p> <p>(4) A person who contravenes subsection (2) or (3) commits an offence.</p> <p><b>Penalty: \$2 000.</b></p>	<p>\$4 000</p>
<p><b>34.</b> Regulations</p> <p>(3) Regulations made under this Act may —</p> <p>(d) provide <b>penalties, not exceeding \$1 000, for the contravention of any regulation.</b></p>	<p>\$2 000</p>

**Clause 24** This Bill inserts a new appeal provision that needs to be repealed, so that all firearm appeals will be dealt with under the *State Administrative Tribunal Act*. To achieve this the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Bill 2003* has been according amended.