

Weapons Bill 1998

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Western Australia

LEGISLATIVE COUNCIL

(As amended in Committee)

Weapons Bill 1998

A Bill for

An Act to prohibit the bringing or sending into the State, carriage, possession, purchase, sale, supply and manufacture of certain weapons, to control the carriage and possession of other weapons, to amend —

- **the *Firearms Act 1973*; and**
- **the *Police Act 1892*,**

and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Weapons Act 1998*.

2. Commencement

- 5 (1) Subject to subsection (2), this Act comes into operation on such day as is fixed by proclamation.
- (2) Sections 6, 7 and 8 and item 2 of Schedule 1 come into operation on the day 6 months after the day fixed under subsection (1).

10 3. Interpretation

In this Act, unless the contrary intention appears —

“article” includes a liquid or gas;

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

“controlled weapon” means —

- 15 (a) an article prescribed by regulations to be a controlled weapon; or
- (b) any other article, not being a firearm or a prohibited weapon, made or modified to be used —
- (i) to injure or disable a person;
- 20 (ii) to cause a person to fear that someone will be injured or disabled by that use; or
- (iii) for attack or defence in the practice of a martial sport, art or similar discipline;

“conveyance” means anything used or capable of being used to transport people or goods by air, land or water and it does not matter how it is propelled or that it may ordinarily be stationary;

5 “defence” means self-defence, defence of another or defence of property;

“firearm” has the same meaning as in section 4 of the *Firearms Act 1973*;

10 “possess” includes to have control or dominion over and to have the order or disposition of;

“prohibited weapon” means an article prescribed by regulations to be a prohibited weapon;

“weapon” means a prohibited weapon, a controlled weapon or an article to which section 8 applies.

15 **4. Relationship to other laws**

This Act is in addition to and not instead of any other written law relating to weapons.

20 **5. Crown bound**

This Act binds the Crown in right of the State and, so far as the legislative power of Parliament permits, in all its other capacities.

Part 2 — Offences

6. Prohibited weapons

- (1) Except as provided in subsections (2) and (3) and section 10, a person who —
- 5 (a) brings or sends a prohibited weapon into the State;
- (b) carries or possesses a prohibited weapon;
- (c) purchases, sells or supplies a prohibited weapon; or
- (d) manufactures a prohibited weapon,
- or attempts to do any of those things, commits an offence.
- 10 Penalty: \$8 000 or imprisonment for 2 years.
- (2) A person does not commit an offence under subsection (1)(b) if the person carries or possesses the prohibited weapon only so as to deliver it into the custody of —
- (a) a member of the Police Force; or
- 15 (b) an employee in the Police Service.
- (3) A person does not, by doing or attempting to do something referred to in subsection (1), commit an offence against that subsection if it is for the purpose of fulfilling a contract for the provision of a prohibited weapon to a person who may lawfully possess it.
- 20

7. Controlled weapons

- (1) Except as provided in section 10, a person who, without a lawful excuse, carries or possesses a controlled weapon commits an offence.
- 25 Penalty: \$4 000 or imprisonment for one year.

- (2) Except as provided in section 10, a person who has a lawful excuse to carry or possess a controlled weapon commits an offence if the person carries or possesses it in a manner that could reasonably be expected to cause someone —

- 5 (a) to be injured or disabled; or
 (b) to fear that someone will be injured or disabled.

Penalty: \$4 000 or imprisonment for one year.

- (3) In this section a lawful excuse to carry or possess a controlled weapon does not include the excuse that the weapon is carried or possessed for defence.

- 10 (4) Subsection (3) does not apply to a controlled weapon of a kind prescribed for the purposes of this subsection as long as it is carried or possessed in such circumstances, if any, as the regulations may prescribe.

- 15 (5) Regulations under subsection (4) may apply generally or to a particular person or class of persons.

8. Other articles carried or possessed as weapons

- (1) Except as provided in subsections (3) and (5) and section 10, a person who carries or possesses an article, not being a firearm, a prohibited weapon or a controlled weapon, with the intention of using it, whether or not for defence —

- 20 (a) to injure or disable any person; or
 (b) to cause any person to fear that someone will be injured or disabled by that use,

25 commits an offence.

Penalty: \$4 000 or imprisonment for one year.

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- (2) A person is presumed to have had the intention referred to in subsection (1) if —
- 5 (a) the article was carried or possessed in circumstances that give reasonable grounds for suspecting that the person had the intention; and
- (b) the contrary is not proved.
- (3) A person does not commit an offence under subsection (1) if the person carries or possesses the article at the person's dwelling for the purpose of using it in lawful defence at the dwelling in
- 10 circumstances that the person has reasonable grounds to apprehend may arise.
- (4) In subsection (3) —
- “dwelling”** has the same meaning as in section 1 of *The Criminal Code*.
- 15 (5) A person who has the immediate control of a business does not commit an offence under section 8(1) if the person carries or possesses the article at a part of the business premises —
- (a) that is not in the view of the public; and
- (b) to which the public does not usually have access,
- 20 for the purpose of using it in lawful defence at the business premises in circumstances that the person has reasonable grounds to apprehend may arise.

9. Section 25 of *The Criminal Code* not affected

- 25 Sections 7(3) and 8(1) do not affect the operation of sections 25 and 31 of *The Criminal Code*.

10. Exceptions

- (1) A person does not commit an offence under section 6, 7 or 8 only because of something done by the person in the performance of the person's functions as —
- 5 (a) a member of the Police Force;
- (b) a special constable appointed under Part III of the *Police Act 1892*;
- (c) an employee in the Police Service; or
- (d) a person —
- 10 (i) engaged to provide a service to the Police Force; or
- (ii) called upon to assist a member of the Police Force or a special constable appointed under Part III of the *Police Act 1892*.
- 15 (2) A person does not commit an offence under section 6 or 7(1) only because of something done by the person in the performance of the person's functions as —
- (a) the Western Australian Museum constituted under the *Museums Act 1969*, a Trustee, member of staff or
- 20 employee of the Museum or a person engaged to provide a service to the Museum whether for remuneration or not; or
- (b) a person establishing or maintaining a museum recognized under Part IV of the *Museums Act 1969* or a
- 25 person employed in or engaged to provide a service to such a museum whether for remuneration or not.
- (3) A person does not commit an offence under section 6, 7 or 8 in such circumstances, if any, as the regulations may prescribe.

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- (4) Regulations under subsection (3) may apply generally or to a particular person or class of persons.

11. Proof of exceptions or lawful excuses

5 In any proceedings against a person for an offence under section 6, 7 or 8 the person has the burden of proving any exception under that section or section 10 or any lawful excuse on which the person seeks to rely.

Part 3 — Enforcement

12. Interpretation

(1) In this Part —

“**Commissioner**” means the Commissioner of Police;

5 “**juvenile justice team**” means a juvenile justice team under
Division 2 of Part 5 of the *Young Offenders Act 1994*;

“**offence**” means an offence under section 6, 7 or 8.

(2) For the purposes of this Part a person is lawfully entitled to
possess something if —

- 10 (a) the person owns it or is authorized by the owner to
possess it; and
- (b) the possession is not prohibited by law or is authorized,
justified or excused by law.

13. Search and seizure without a warrant

15 (1) A member of the Police Force may without a warrant stop,
detain and search anyone who the member suspects on
reasonable grounds to be —

- (a) committing an offence;
- (b) carrying a weapon relating to an offence; or
- 20 (c) carrying something else that will afford evidence as to
the commission of an offence.

(2) A member of the Police Force may without a warrant stop,
detain and search any conveyance where the member suspects on
reasonable grounds that there is located —

- 25 (a) a weapon relating to an offence; or
- (b) anything else that will afford evidence as to the
commission of an offence.

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- (3) A member of the Police Force may without a warrant seize —
- (a) any weapon that the member suspects on reasonable grounds relates to an offence; or
 - (b) anything else that the member suspects on reasonable grounds will afford evidence as to the commission of an offence.

14. Search and seizure with a warrant

- (1) If a justice is satisfied that there are reasonable grounds for suspecting that there is located in a place —
- (a) any weapon relating to an offence; or
 - (b) anything else that will afford evidence as to the commission of an offence,
- the justice may grant a warrant of search and seizure in relation to that place.
- (2) A warrant under subsection (1) authorizes any member of the Police Force with such assistance as the member thinks necessary and with such force as is reasonably necessary for the execution of the warrant —
- (a) to enter the place at any time;
 - (b) to search the place;
 - (c) to stop, detain and search anyone at the place; and
 - (d) to seize —
 - (i) any weapon that the member suspects on reasonable grounds relates to an offence; or
 - (ii) anything else that the member suspects on reasonable grounds will afford evidence as to the commission of an offence.

15. Retaining something seized but not forfeited

- (1) A member of the Police Force may retain anything that has been seized under this Act but that is not forfeited to the Crown if —
- 5 (a) it is required for the investigation of an offence or the prosecution of someone for an offence;
- (b) it relates to a matter that is being dealt with by a juvenile justice team; or
- (c) no person has satisfied the Commissioner that the person is lawfully entitled to possess it,
- 10 and a court has not ordered under section 16(1)(b) or 17(3) that it be delivered to a person.
- (2) If something is seized under this Act, but cannot be retained under subsection (1) it is to be returned to the person from whom it was seized unless it is required by an order under
- 15 section 16(1)(b) or 17(3) to be delivered to another person.

16. Forfeiture and delivery of a weapon on conviction

- (1) A court convicting a person of an offence may order that a weapon relating to the offence —
- 20 (a) is forfeited to the Crown, whether or not the weapon has been seized and retained by a member of the Police Force under this Act; or
- (b) be delivered to another person who is lawfully entitled to possess the weapon if the weapon has been seized and retained by a member of the Police Force under this Act.
- 25 (2) A person claiming to be lawfully entitled to possess a weapon relating to an offence may, in relation to an order under this section —
- (a) be heard in the proceedings for the offence;

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- 5 (b) make an application under section 136A of the *Justices Act 1902* as if the person were a party to the proceedings for the offence; and
- (c) be an aggrieved person for the purposes of section 185 of the *Justices Act 1902*.

17. Forfeiture and delivery of a weapon other than on conviction

- 10 (1) A person claiming to be lawfully entitled to possess a weapon that has been seized and retained by a member of the Police Force under this Act may, within 21 days of the relevant day, apply to a court of petty sessions for an order that the weapon be delivered to the person if —
- (a) no one is charged with an offence to which the weapon relates; or
- 15 (b) someone is charged with an offence to which the weapon relates but upon the hearing and determination of every such charge —
- (i) no one is convicted; or
- (ii) if someone is convicted, no order is made under
- 20 section 16(1).
- (2) In subsection (1) —
- “relevant day”** in relation to a weapon that has been seized and retained by a member of the Police Force under this Act means —
- 25 (a) if no one is charged with an offence to which the weapon relates or dealt with by a juvenile justice team for a matter to which the weapon relates, the day of the seizure of the weapon;

- 5 (b) if no one is charged with an offence to which the
 weapon relates but someone is dealt with by a juvenile
 justice team for a matter to which the weapon relates,
 the day on which every such matter is finally disposed
 of by the team; or
- (c) if someone is charged with an offence to which the
 weapon relates, the day on which every such charge
 has been heard and determined.
- 10 (3) A court hearing an application under subsection (1) may order
 that the weapon be delivered to the person making the
 application if the court is satisfied on the balance of probabilities
 that the person is lawfully entitled to possess the weapon.
- (4) A weapon is forfeited to the Crown if, in the circumstances set
 out in subsection (1) —
- 15 (a) no application for the delivery of a weapon is made
 within the time fixed by that subsection; or
- (b) an application for the delivery of a weapon is made
 within the time fixed by that subsection but every such
 application is dismissed.
- 20 **18. Disposal of a forfeited weapon**
- (1) Subject to subsection (2), if a weapon is forfeited to the Crown
 under this Act the Commissioner may direct that the weapon be
 sold, destroyed or otherwise disposed of in such manner as the
 Commissioner thinks fit.
- 25 (2) If a weapon is forfeited to the Crown —
- (a) by an order under section 16(1)(a); or
- (b) after an order dismissing an application under
 section 17(1),

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the Commissioner is not to make a direction under subsection (1) before the expiration of the time allowed for instituting an appeal against the order or, if an appeal is lodged within that time, before the determination of the appeal.

5 **19. Commissioner may delegate a function**

The Commissioner may by instrument in writing delegate a function conferred on the Commissioner under this Part other than this power of delegation.

Part 4 — Miscellaneous

20. Regulations

5 The Governor may make regulations prescribing all matters that
are required or permitted by this Act to be prescribed, or are
necessary or convenient to be prescribed for giving effect to the
purposes of this Act.

21. Miscellaneous amendments

Amendments are made as set out in Schedule 1.

Schedule 1 — Miscellaneous amendments

[s. 21]

1. *Firearms Act 1973*

5 In the definition of “firearm” in section 4 delete “or other missile;” and
insert instead —

“

or other missile, but does not include anything that is
prescribed in regulations under the *Weapons Act 1998* to be
a prohibited weapon or a controlled weapon;

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”.

2. *Police Act 1892*

Repeal section 65(4a).

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