

Acts Amendment (Weapons) Bill 2009

EXPLANATORY MEMORANDUM

Part 1 – Preliminary matters

Clause 1. Short Title

Cites the short title of the Act as the *Acts Amendment (Weapons) Act 2009*.

Clause 2. Commencement

Part 1 comes into operation on Assent. The remaining provisions in the Bill come into operation on the day after Assent except for proposed section 8A of the Weapons Act [contained in clause 8 of the Bill] which comes into operation on the 28th day after assent day.

Part 2 – *The Criminal Code* amended

Clause 3. *The Criminal Code* amended

This Part amends *The Criminal Code*.

Clause 4. Sections 68A to 68E inserted

Section 68A This section places the onus on an accused person to prove that they have a lawful excuse where they are charged with an offence under the new sections 68B, 68C, 68D or 68E.

This section makes further provision that a person has a lawful excuse if they have reasonable grounds to believe that the need for defence may arise, they are armed only for defence and they are armed with oleoresin capsicum spray or a briefcase or suitcase designed to discharge an electric current to deter theft. This is consistent with the provisions of section 10 of the Weapons Act 1999 which allows for certain exceptions to be made for these circumstances to be prescribed in the *Weapons Regulations 1999*.

Also set out in this section are the categories of persons who are deemed to have a lawful excuse and includes certain categories of person to whom exceptions apply in section 10 of the *Weapons Regulations 1999*.

Section 68B This section defines “*place of public entertainment*” and “*prescribed place*” as places where a person commits an offence if they are in or attempt to enter whilst armed. Not only does it describe these places in which a person is not permitted to be armed but it also creates an offence where a person may attempt to enter a “*prescribed place*”. The penalty for this offence is 5 years imprisonment if tried on indictment, or imprisonment for 3 years or a fine of up to \$36,000 if tried summarily.

Section 68C This section creates an offence of being armed “in company” and addresses those circumstances where people may form or congregate in groups to intimidate or attack others. The penalty for this offence is 5 years imprisonment if tried on indictment, or imprisonment for 3 years or a fine of up to \$36,000 if tried summarily.

Section 68D In this section, a person will not be allowed to simultaneously be in possession of or have access to a prescribed amount of money (the amount currently prescribed in Regulation 2B of the *Firearms Regulations 1974* is \$3,000.00) and a dangerous or offensive weapon. The penalty for this offence is 5 years imprisonment if tried on indictment, or imprisonment for 3 years or a fine of up to \$36,000 if tried summarily.

Section 68E In this section, a person will not be allowed to simultaneously be in possession of or have access to certain defined prohibited drugs or plants and a dangerous or offensive weapon. The penalty for this offence is 5 years imprisonment if tried on indictment, or imprisonment for 3 years or a fine of up to \$36,000 if tried summarily.

Both Sections 68D and 68E are intended to address those situations where a person dealing in illicit drugs arms themselves for personal protection or to intimidate or attack other persons. It is intended to protect innocent members of the public.

Part 3 – Weapons Act 1999 amended

Clause 5. Act amended

This Part amends the *Weapons Act 1999*.

Clause 6. Section 6 amended

Section 6(1) of the *Weapons Act 1999* currently makes provision for a penalty of \$8 000 of imprisonment for 2 years where a person:

- (a) brings or sends a prohibited weapon into the State;
- (b) carries or possess a prohibited weapon;
- (c) purchases, sells or supplies a prohibited weapon; or
- (d) manufactures a prohibited weapon.

These penalties are considered to be out-of-date and not reflective of current community expectations that people need to be deterred from accessing and possessing prohibited weapons that are a danger to public safety; particularly where weapons are used to intimidate and assist with furthering other illegal activities. The increase in penalties is also intended to meet public expectations that the punishment should fit the crime; although these are maximum penalties, there is discretion for the courts to impose appropriate penalties subject to the circumstances of the case.

In the case of a prohibited weapon, the new penalty is imprisonment for 3 years and a fine of \$36000.

Clause 7. Section 7 amended

Sections 7(1) and 7(2) of the *Weapons Act 1999* provide that a person commits an offence if they carry or possess a controlled weapon without a lawful excuse or if they carry or possess a controlled weapon without lawful excuse in a manner that could be expected to cause someone to be injured or disabled; or to cause fear that someone will be injured or disabled.

The current penalty for an offence under this section is imprisonment for one year or a fine of \$4000. This is to be increased to imprisonment for 2 years and a fine of \$24 000.

Clause 8. Section 8A inserted

The new section 8A will prohibit the sale or supply of a controlled weapon to a person under the age of 18 years. This section does however make provision that a person has a defence if they can prove that they reasonably believed that possession by the child was lawful under section 7 of the Weapons Act 1999 or that it was supplied for a lawful sporting or recreational activity or in circumstances prescribed by regulations.

The Weapons Act and Regulations currently make provision to prescribe certain circumstances where a person does not commit an offence in sections 6, 7 or 8; this provision will be extended to include section 8A.

Clause 9. Section 8 amended

Section 8 (in subsections (3) and (5)) currently allows a person to have an article in their home or business for use in circumstances where its use is reasonable for a lawful defence. In circumstances where this is not the case, the current penalty is imprisonment for one year or a fine of \$4000. This is to be increased to imprisonment for 2 years and a fine of \$24 000.

Clause 10. Section 10 amended

This section now includes the new section 8A which would allow for exceptions to be made under Regulations, for offences under proposed section 8A [if there is a need to do so in the future].

Clause 11. Section 11 amended

This section now includes the new section 8A so that the burden of proof on proving an exception or lawful reason, rests with the accused person in respect of offences under new section 8A.

Clause 12. Section 12 amended

This section now includes the new section 8A which enables police to exercise certain powers [such as search and seizure] without warrants in respect of offences under new section 8A, in the same way as police currently exercise powers in respect of offences under section 6,7 or 8 of the Weapons Act..