



SUBMISSION

Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019

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Introduction

The Firearm Dealers Association – Queensland Inc. (FDAQ) was established in 1983. It is an industry body, whose members are required to be the holders of a current Firearm Dealers, Armourers or Theatrical Ordnance Suppliers Licence as issued by the Weapons Licensing Branch of the Queensland Police Service.

Members are located in every area of the State. A quarterly meeting is held in Brisbane and regular newsletters advise members of industry, technical and legislative developments.

FDAQ members are daily in touch with the news and needs of shooters throughout Queensland.

The FDAQ Inc is pleased to have the opportunity to respond to the provisions encompassed in the document entitled "Weapons and Other Legislation (Firearms Offences) Amendment Bill 2019

General Comment

The Firearm Dealers Association – Queensland Inc. (FDAQ) acknowledges proposals to amend the Weapons Act 1990 in this Bill, however whilst we appreciate the attempt, we are disappointed that there was no consultation with us prior to presentation to the Queensland Parliament.

The FDAQ finds that the Bill prepared falls far short of the changes needed, changes that the FDAQ has been requesting over several years and several changes of government. The FDAQ is disappointed with some of the proposed changes and therefore makes this submission.

Author

This submission is prepared by the Secretary (Jan Linsley) with the approval and oversight of the Executive Committee of Firearm Dealers Association - Qld Inc.

Inquiries may be directed to the Secretary at the mailing address on the front page or to email: [REDACTED]

Proposed Amendments –

1. Part 2 Clause 3 - Amendment of the Criminal Code

Section 317 of the current Act (below) states that it is illegal to use a firearm to resist arrest:

Acts intended to cause grievous bodily harm and other malicious acts

(1) Any person who, with intent—

(a) to maim, disfigure or disable, any person; or

(b) to do some grievous bodily harm or transmit a serious disease to any person; or

(c) to resist or prevent the lawful arrest or detention of any person; or

(d) to resist or prevent a public officer from acting in accordance with lawful authority— either—

(e) in any way unlawfully wounds, does grievous bodily harm, or transmits a serious disease to, any person; or

(f) unlawfully strikes, or attempts in any way to strike, any person with any kind of projectile or anything else capable of achieving the intention; or

(g) unlawfully causes any explosive substance to explode; or

(h) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or

(i) causes any such substance or thing to be taken or received by any person; or

(j) puts any corrosive fluid or any destructive or explosive substance in any place; or

(k) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person;

is guilty of a crime, and is liable to imprisonment for life.

The addition of sections 317AA and 317AB is therefore redundant.

2. Part 2 Clause 4 - Amendment of section 398 (punishment of stealing)

Section 398 Clause 15 increases the penalty for stealing a firearm or ammunition from 10 years to 14 years.

Although the FDAQ has requested special penalties for stealing firearms, separate consideration should be given to penalties for stealing ammunition.

For example, Range Operators may be accused of stealing ammunition when collecting ammunition left at a range after everyone else has gone home. This is common practice for Range Operators who hold the ammunition until someone claims it or until the owner is identified. The penalty as suggested is excessive, even at 10 years, for what may well be normal practice. Either the reference to ammunition in this section should be removed completely or separate penalties should apply for stealing ammunition, with recourse to appeal.

3. Part 3 Clause 6 - Amendment of Section 30 (Prescribed circumstances for searching persons without warrant)

The FDAQ has no objections to the amendment of section 30 to include 'a firearms prohibition order', however we have concerns from the general perspective of the right for police to search without a warrant. Urgent circumstances where waiting for a warrant to be issued is excused, should be outlined and clarified in the Act.

4. Part 3 Clause 7 - Amendment of Section 30 (Prescribed circumstances for searching persons without warrant)

Comments align with those to Clause 6

5. Part 3 Clause 8 - New Section 808AA - Review of additional powers for firearms prohibition orders

Section 808AA refers exclusively to firearms prohibition orders and refers to a report on police officers' use of powers to enter and remain on premises that would otherwise constitute trespass, search without warrant and search a vehicle without warrant. This amendment appears to ensure that police do not abuse their powers of entry without warrant, however the report is only required once within the first 3 years after commencement of the added police powers. The FDAQ is of the opinion that the Minister should receive the public interest monitor report within the first 2 years of the commencement of the operation of the powers, with a requirement for an ongoing annual report.

Amendment of Weapons Act 1990

6. Part 4 Clause 11 - Amendment of Section 57 (Particular conduct involving a weapon in a public place prohibited)

Whilst the FDAQ has no objections to the amendment of the maximum penalty to 10 years, the definition of a public place is a concern.

The Act currently states:

“public place means any place that the public is entitled to use, is open to the public, or used by the public, whether on payment or otherwise.

(1) In this section— public place includes a vehicle that is in or on a public place. weapon includes— (a) an antique firearm, spear gun, longbow or sword; and
(b) a replica of a weapon; and
(c) a replica of a thing mentioned in paragraph (a); and
(d) a slingshot or shanghai.

- (2) *A person must not, without reasonable excuse, carry a weapon exposed to view in a public place. Maximum penalty—40 penalty units or 6 months imprisonment.*
- (3) *A person must not, without reasonable excuse, carry in a public place a loaded firearm or a weapon capable of being discharged. Maximum penalty—120 penalty units or 2 years imprisonment.*
- (4) *A person must not, without reasonable excuse, discharge a weapon in, into, towards, over or through a public place. Maximum penalty—200 penalty units or 4 years imprisonment”*

The definition of a public place should be termed in a way to exclude a range or private property with the appropriate licences and permissions.

7. Part 4 Clause 12 - Insertion of new Section 57A Firing at dwelling houses, buildings of vehicles

Subsection 2 talks about firing a firearm at a house, another building or a vehicle with reckless disregard for the safety of any person during a public disorder, which is defined as a riot or other civil disturbance that gives rise to a serious risk to public safety but it could be argued that the section could refer to police firing at a house, other building, vehicle etc. Subsection 3 specifically clarifies that it is not police, saying "A person must not, in the course of an organised criminal activity"

These sections appear to simply make it more illegal than it already is to fire at a building or vehicle, by referring to a public disorder or criminal activity while doing the firing. Such things are already illegal, therefore the insertion of these sections is not required.

8. Part 4 Clause 13 - Insertion of new Sections 67A and 67B

This refers to a digital blueprint for manufacture of a firearm and the device that could be used to manufacture the firearm from the blueprint, except for licensed armourers and police.

Since it is already illegal to manufacture a firearm without a licence, the legislation is unnecessary.

There are defences against the offence, which is at least an attempt to mitigate the possibility of an innocent or accidental offence, however the defendant has to PROVE his mitigating circumstances. To enforce a penalty here there needs to be some **intent** for misuse of these items combined.

Collectors collect media and drawings and a lot the collector firearm books now have blueprints of firearms and how they are made or were made in the past. These drawings are now available digitally. The Lithgow Museum even sells such hard copy books, and posters of their original firearm blueprints for our iconic 303.

So if someone is a collector or a firearms enthusiast with a normal license and is also an engineer is he in breach of the Weapons Act? He has no intent to break the law but by his normal occupation and digital library is made a criminal.

9. Part 4 Clause 14 - Insertion of new Part 5A -Firearms prohibition orders

The most recent meeting of the Ministerial Forum discussed the concept of Firearms Prohibition Orders which are being introduced into all states.

Subsection 3 requires surrender of all firearms, prohibited things and ammunition for any firearm in the possession of the person to a police officer immediately. However it would make more sense and be more consistent with other parts of the Act where a person is applying for a review of the decision, to be permitted to specify a licensed firearm dealer or other licensed person to whom the firearms and other paraphernalia should be delivered to hold them or sell them if the FPO is made permanent. If it's revoked on application for review, the person can then take back possession of his property.

We suggest the addition of a clause that the surrendered items are returned to the defendant should the FPO be revoked.

10. Part 5A Clause 141C - Commissioner may make firearms prohibition order

The Labor Ministerial Panel for firearms outlined that FPO's were for terrorists, bikies and people that would be on a 24 hour watch list, "the real bad buggers" – the ministers quote. This amendment looks like further redundant legislation against, drug addicts, DVO notice recipients, people that get in drunken brawls or scuffles in bars (because all of these people are not fit, in the public interest, to have possession of a firearm). There is already legislation to prevent them access to firearms and most importantly a firearms license. If the TEST is weak for the implementation of these FOP's we are concerned that we will see FPOs used unnecessarily and not restricted to the elite criminals. The test must be high, in order not to fill the courts with appeals over unjustified cases or consume valuable Police resources with non-warranted follow ups.

This legislation should include a prohibited persons register AND the ability of clubs, dealers and armourers to enquire of WLB about people with FPOs. Although the onus is on the person with the FPO, in the case of a dangerous person, failure to provide the information to these people/groups may put them in a dangerous position, should they refuse entry.

We have serious concerns about the Commissioner making a firearms prohibition order without recourse to a court or tribunal. We understand an emergent situation may require quick action, but even in that case, confirmation by an independent justice process must be included. We further believe that an appeals process for decisions of police must be a part of any legislation relating to firearms.

11. Part 5A Clause 141D (8e)

(8) A person who is subject to a firearms prohibition order must not without reasonable excuse attend—

e) *the premises of an approved historical society; or*

This clause is overly restrictive and may mean that people with a FPO cannot attend an RSL. Veterans who are not seen to be fit and proper for a Weapons Act license because of PTSD, can no longer attend a RSL where inert service firearms are on display?

11. Part 5A Clause 141D - (11) Effect of firearms prohibition order

Queensland Farmers and primary producers as well as Queensland firearm dealers will need access to an online check for a FPO.

The Weapons Act permits rural employees to use firearms that belong to the property for normal work duties if they are unlicensed. Employers will need a quick reliable mechanism to check this upon employment; how often will they have to keep on checking this information - monthly? yearly?

Queensland firearm dealers will also need to check on FPOs as they employ unlicensed people for premises alterations, shop fitting, maintenance and upkeep. Firearms are in the physical possess of the dealer whilst these tasks are carried out.

Range Operators will also need access to an FPO Register since unlicensed persons are permitted under the Act to use the range provided they sign a Form 33 declaration. Some ranges don't have electricity, let alone internet access to run these checks.

12. Part 5A Clause 141D - (12) Meaning of prohibited thing'

prohibited thing means—

(a) *an antique firearm; or*

(b) *a silencer or other thing mentioned in the Weapons Categories Regulation 1997, section 8(1)(h); or*

(c) *a magazine.*

This term is too broad to be in the Weapons Act which needs to be far more specific.

Again dealers will need a mechanism to check online if someone has a FPO before booking out or releasing to a customer an antique firearm, as there is no permit-to-acquire needed for these, even in Category H.

Not securing items like a trigger or a stock from an old rifle that used to belong to Grandad may allow access by someone with an FPO who enters the shed where such items are stored, will result in a charge.

What public notice will be put forward upon implementation to ensure compliance and to help the public understand this new provision?

Additional Proposals

145 - Applicant may carry on business pending review

A person who applies for the review of—

(a) the refusal to renew a dealer's licence, armourer's licence or theatrical ordnance supplier's licence; or

(b) the revocation of a dealer's licence, armourer's licence or theatrical ordnance supplier's licence;

is entitled, until the review is decided, to carry on business as if the licence had been renewed or had not been revoked.

NEW PART

Section 145—

insert—

(2) Subsection (1) does not apply if a firearms prohibition order is in effect against the person.

This needs to be altered to state that the Dealership or Armourers licensee can keep operating independently of the person with the FOP, without influence or attendance by the person with the FPO under a NEW suitable nominee, while the matter is being reviewed by the courts. If for some reason an FOP is implemented against the nominee for a large dealer or wholesaler where would police store in excess of 7000 firearms securely?

The scope of this amendment is only for small dealerships not large businesses or medium family businesses where a whole family is dependent on the income, not just an individual. This legislation is to increase community safety, then firearms at all times must be stored securely. This is not possible by QPS if they shut down a medium or large dealer and take possession of these firearms. Also the burden on QPS would be horrendous.