

The administration of the act is reviewed by the child safety commissioner on an annual basis. The enhancement provisions contained in this bill will of course be part of the review by the commissioner.

The bill will also place two specific 'carnal knowledge' offences within category 2. This will enable the secretary to exercise discretion in determining whether to issue an assessment notice. 'Carnal knowledge' offences are historical, and experience has shown that they often encompass situations where the 'offender' and 'victim' engaged in sexual behaviour as boyfriend and girlfriend. The presumption is that the secretary must refuse to give an assessment notice, however may exercise discretion to do so, provided that doing so does not pose an unjustifiable risk to the safety of children.

The bill also makes provision for the Victorian Civil and Administrative Tribunal to make interim orders pending the final determination of a matter. The purpose of this amendment is to limit any serious implications for applicants and any children in their care, if there is a delay in hearing a matter.

Accordingly, the bill provides a defence to the offences of engaging in child-related work without an assessment notice, and engaging a person without an assessment notice, where the Victorian Civil and Administrative Tribunal has issued a stay order.

Finally, the bill makes a range of minor technical amendments to clarify some terms within the act. These technical amendments will enhance the clarity and efficiency of the act. The bill also makes minor technical amendments to other acts.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until Wednesday, 5 September.

In my opinion, the Firearms Amendment Bill 2007, as introduced to the Legislative Assembly, is compatible with human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The bill amends the Firearms Act 1996, the Crimes Act 1958 and the Magistrates' Court Act 1989 to further provide for various matters relating to the regulation of firearms in Victoria.

Human rights issues

The provisions of the bill raise a number of human rights issues.

1. Provision of information

Section 13 of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

The right is based upon article 17 of the International Covenant on Civil and Political Rights. The United Nations Human Rights Committee has referred to the notion of privacy as revolving around protection of 'those aspects of a person's life, or relationships with others, which one chooses to keep from the public eye, or from outside intrusion.'

A number of provisions of the bill require provision of information by persons for the purpose of regulating the use of firearms (see, for example, clauses 5, 6, 18, 20, 22, 24, 26, 31, 33, 34, 35, 39 and 48). In many cases the provision of the information would not interfere with a person's private life. However, to the extent that it may do so it is necessary for the purposes of proper regulation of firearms in the interests of safety of the community. It cannot be regarded as arbitrary and accordingly does not limit the right.

2. Display of firearms

Section 15 of the charter protects freedom of expression.

Clauses 21 and 22 of the bill amend the provisions of the Firearms Act which restrict the circumstances in which firearms and cartridge ammunition can be displayed and impose penalties upon persons who fail to comply with permits to display firearms or cartridge ammunition.

However, the right to free expression may be subject to lawful restrictions reasonably necessary to respect the rights of others, including for the protection of public order.

The restrictions imposed on the display of firearms by the provisions are necessary and reasonable. Accordingly the provisions are compatible with the right to free expression in s 15 of the charter.

3 Property rights — s 20

Section 20 of the charter establishes a right not to be deprived of property otherwise than in accordance with law.

The bill amends a number of provisions relating to the surrender, forfeiture and disposal of firearms (see clauses 19, 42 and 43).

FIREARMS AMENDMENT BILL

Statement of compatibility

Mr CAMERON (Minister for Police and Emergency Services) tabled the following statement in accordance with the Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act 2006, I make this statement of compatibility with respect to the Firearms Amendment Bill 2007.

Section 20 only prohibits a deprivation of property that is carried out unlawfully. As the surrender, forfeiture and disposal of firearms occur in accordance with the processes set out in the act any deprivation of property that occurs as a result of the amendments would take place under powers conferred by legislation, in accordance with the law. There is an implied limitation on the power to make laws depriving persons of property that the laws must not do so in an arbitrary manner. 'Arbitrary' in this context may mean 'capriciously', 'unpredictably' or 'inconsistently'.

In this case, the amendments are not arbitrary. They improve the existing provisions to enable regulation of firearms, including surrender, forfeiture and disposal, in the interests of safety of the community. Accordingly, the provisions do not limit the property rights in s 20 of the charter.

4. Search of persons and vehicles

Section 21 of the charter protects the liberty and security of persons. Section 13 of the charter provides that a person has the right not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

Section 149 of the act enables police to search, without a warrant, persons and vehicles for firearms where the officer has reasonable grounds for suspecting that a person is committing or is about to commit an offence against the Act and that person has a firearm in his or her possession. Clause 41 amends s 149 of the act to include cartridge ammunition, silencers and other prescribed items within the search powers.

The search of a person or their vehicle may interfere with a person's private life. However, it cannot be regarded as arbitrary as it is limited to the search for firearms and related items in circumstances where a police officer has reasonable grounds for suspecting that a person is committing or is about to commit an offence. The police officer is required to inform the person of that suspicion as well as the officer's name, rank, place of duty and identification (unless they are in uniform). Accordingly, the provision is compatible with s 13 of the charter.

The search of a person, and sometimes a vehicle, will necessarily involve some restriction upon the liberty and security of the person. However, the limit upon the right is clearly reasonable and justifiable in a free and democratic society for the purposes of s 7(2) of the charter having regard to the following factors:

- the nature of the right being limited;
- the right to liberty and security is expressed in broad terms, but can clearly be limited such as where the rights of other persons are at stake;
- the importance of the purpose of the limitation;
- the purpose of the limitation is to protect the safety of the community and protect the rights to life, liberty and security of others. Those rights are expressly protected by the Charter (ss 9 and 21).

The nature and extent of the limitation

The person being searched will be detained for the purpose of the search. Their physical security will also be affected as they will themselves be searched.

The relationship between the limitation and its purpose

The limitation is directly connected to its purpose. The search power can only be invoked where a police officer has reasonable grounds to believe that an offence is being committed or is about to be committed. It is necessary to be able to search persons and vehicles for firearms in such circumstances in order to prevent firearms offences.

Less restrictive means reasonably available to achieve the purpose

There are no less restrictive means reasonably available to achieve the purpose. In circumstances where police believe that a firearms offence is being or is about to be committed, the police must be able to act quickly to detect firearms in the interests of their own safety and that of the community. Accordingly, the provision is compatible with s 21 of the charter.

5. Strict liability offence in clause 38

Clause 38 of the bill inserts an offence of possessing or carrying a part of a firearm that is capable of being used to alter the category of a firearm in the person's possession, carriage or use so that it becomes a different category of firearm to that which the person is authorised to possess, carry or use under his or her licence. The offence contains exceptions of 'without lawful excuse' and prior consent of the chief commissioner. The offence carries a penalty of 30 penalty units.

Section 130 of the Magistrates Court Act 1989 would apply on summary prosecution so that a defendant claiming he or she had a lawful excuse or prior consent of the chief commissioner would have to adduce or point to evidence that suggests a reasonable possibility that the exception applies. Only then is the prosecution required to prove beyond reasonable doubt that the exception does not apply.

It is questionable whether this provision actually transfers the burden of proof, because once the defendant has adduced or pointed to some evidence, the burden is on the prosecution to prove beyond reasonable doubt the absence of the exception raised.

In any event, any limitation upon the right is reasonable and justifiable in a free and democratic society having regard to the factors in s 7(2) of the charter.

The offence is a regulatory offence and does not carry a severe penalty. The onus is on the prosecution to prove that the person is not authorised under his or her licence to carry that category of firearm. A licence is the principal means by which possession of a firearm is lawful. It is reasonable to presume that a person whose licence does not permit the possession of that weapon is doing so unlawfully. It would be a considerable burden, both in terms of use of resources and in terms of costs, if the Crown had to investigate and bring evidence of all other potential matters that could give rise to an exception in order to disprove a negative.

Accordingly, the provision is compatible with s 25 of the charter.

6. Provision of information to the chief commissioner

A number of provisions of the bill require provision of information to the chief commissioner. It is possible that this

information may disclose a criminal offence or later be used in the prosecution of an offence. In particular, clause 31 of the bill enables the chief commissioner to require the holder of a licence to provide information relating to the acquisition, disposal, possession, hiring or loaning of firearms and related items. Failure to comply with the notice attracts a penalty of 60 penalty units or 12 months imprisonment.

Section 25(2)(k) of the charter provides that a person charged with a criminal offence is entitled not to be compelled to testify against himself or to confess guilt. At the time the person is required to provide information to the chief commissioner he/she will not have been charged with an offence. On this basis the right in s 25(2)(k) of the charter would have no application. However, similar rights in other jurisdictions and the broader right to a fair trial have been interpreted to provide some limited protection at the investigation stage.

Even so, the rights have not been extended so far as to protect persons from providing information necessary for the monitoring and enforcement of compliance in relation to a regulatory regime. In accepting a licence, a person is presumed to know, and to have accepted, the terms and conditions associated with the licence, including the provision of information to the chief commissioner to monitor compliance with those terms and conditions. In the circumstance in which the information is provided there can be no concern about false confessions or ill-treatment of suspects, with the right is designed to protect. Accordingly, the provision is compatible with s 25 of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because to the extent that some provisions do raise human rights issues:

these provisions do not limit human rights; or

to the extent that some provisions may limit human rights, those limitations are reasonable and demonstrably justified in a free and democratic society.

BOB CAMERON, MP
Minister for Police and Emergency Services

Second reading

Mr CAMERON (Minister for Police and Emergency Services) — I move:

That this bill be read a second time.

In the aftermath of the Port Arthur incident in April 1996, the Australasian Police Ministers Council (APMC) entered into the national firearms agreement. Under that agreement, broadly uniform regimes for the regulation and licensing of firearms were put in place in all states and territories.

States and territories have entered into two subsequent agreements to enhance community safety, while preserving the privileges of responsible firearms owners.

The first, the national handgun control agreement, arose from the tragic Monash University shootings in 2002 and the community's resultant demand to restrict the availability and use of handguns, particularly concealable handguns, for target shooting purposes to minimise the risk of future tragedies. The second, the firearms trafficking policy agreement, provides a broadly national approach to allow police to better detect and deter the illegal trade in unregistered firearms.

Within the framework of these agreements, this bill makes a range of technical amendments to the Victorian regulatory regime, designed to:

enhance the regulation of firearms to improve their safe possession, carriage and use;

fulfil the government's 'hunting and 4WD opportunities in Victoria' election commitment to secure access through grazing land for hunters to ensure better access to game reserves;

address technical and remedial issues identified by stakeholders including Victoria Police and the Victorian firearms consultative committee; and

contribute to fulfilment of the government's election commitment to reduce the administrative burden of complying with regulation.

I will now turn to the provisions of the bill.

The bill implements an election commitment in the 'government's hunting and 4WD opportunities in Victoria' policy to 'amend existing firearms legislation to allow hunters unrestricted access to cross into ... game reserves'. It does this by amending section 131 of the Firearms Act to allow hunters to carry (but not use) a firearm on Crown land over which there is a licence, for the purpose of hunting, without having to obtain consent to do so.

The national firearms agreement provides for graduated access to firearms in accordance with their firepower. Weapons are categorised, and the category of a firearm determines the purpose for which a licensee may hold it. Developments in firearms technology since 1996 mean that firearms can be manufactured to technically fall within categories A, B or C (the categories of firearms for which a licence can be obtained for recreational use) but in terms of their actual capacity, should be classified in the more restrictive categories D or E which are only available for restricted occupational or official purposes. The bill allows the chief commissioner to declare a firearm to be a category D or E weapon, and requires that the declaration is published

